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Administrative Review  
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**DATE:** July 10, 2013

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
For Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Administrative Review  
of the Antidumping Duty Order on Certain Cased Pencils from the  
People's Republic of China

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## SUMMARY

We have analyzed the case brief submitted in this administrative review. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues:

**Comment 1: Whether to use India or the Philippines instead of Thailand as the primary surrogate country**

**Comment 2: Whether the antidumping duty order should be revoked as to Dixon**

## BACKGROUND

On January 11, 2013, the Department published the preliminary results of this antidumping duty administrative review of certain cased pencils (pencils) from the People's Republic of China (PRC).<sup>1</sup> The period of review (POR) is December 1, 2010, through November 30, 2011. This review covers pencils exported by Beijing Fila Dixon Stationery Company, Ltd., a/k/a Beijing Dixon Ticonderoga Stationery Company, Ltd., a/k/a Beijing Dixon Stationery Company, Ltd. and imported by Dixon Ticonderoga Company (collectively, Dixon).

On January 31, 2013, the Department received comments from Dixon concerning the Department's selection of the surrogate country and surrogate values used in the *Preliminary*

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<sup>1</sup> See *Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order In Part; 2010-2011*, 78 FR 2363 (January 11, 2013) (*Preliminary Results*).



*Results.*<sup>2</sup> The Department conducted verification of Dixon's sales and factors of production responses from April 8, 2013, through April 10, 2013, in Beijing, PRC. On April 23, 2013, we extended the due date for the final results of review to July 10, 2013.<sup>3</sup> We issued a verification report on May 15, 2013.<sup>4</sup> On June 3, 2013, Dixon submitted a case brief.<sup>5</sup> A hearing was held on June 20, 2013.

## **SCOPE OF THE ORDER**

Imports covered by the order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, *etc.*) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: (1) length: 13.5 or more inches; (2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and (3) core length: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

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<sup>2</sup> See Dixon submission, "Certain Cased Pencils from the People's Republic of China: Dixon's Comments Concerning Surrogate Selection, and Submission of Additional Surrogate Value Information" dated January 31, 2013 ("Dixon's Surrogate Value Comments").

<sup>3</sup> See Memorandum from Mary Kolberg to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operation, "Cased Pencils from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review" dated April 23, 2013.

<sup>4</sup> See Memorandum from Mary Kolberg and Sergio Balbontin, International Trade Compliance Analysts, to Susan Kuhbach, entitled "Verification of the Sales and Factors of Production Responses of Beijing Fila Dixon Stationery Company, Ltd. and Dixon Ticonderoga Company in the Antidumping Administrative Review of Certain Cased Pencils from the People's Republic of China" dated May 15, 2013.

<sup>5</sup> See submission from Dixon, "Certain Cased Pencils from the People's Republic of China: Re-Filing Case Brief" dated June 3, 2013.

## CHANGES SINCE THE PRELIMINARY RESULTS

Based on further information and our analysis of the comments received, we have modified our calculations. Specifically, we have determined to use the Philippines as the primary surrogate country for valuing Dixon's factors of production. *See* Comment 1 below. *See also* Department memorandum, "2010-2011 Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Factor Valuation for the Final Results" dated July 10, 2013. Also, as explained below, we have determined to revoke the antidumping duty order on pencils from the PRC with respect to exports by Dixon.

## REVOCATION OF THE ORDER, IN PART

Under section 751(d)(1) of the Tariff Act of 1930, as amended (the Act), the Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth at 19 CFR 351.222. Under 19 CFR 351.222(b)(1) and (2), the Department may revoke an antidumping duty order in part if it concludes that an exporter or producer has sold the merchandise at not less than normal value for a period of at least three consecutive years; the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value; and the continued application of the antidumping duty order is no longer necessary to offset dumping.

The regulations require further that a company requesting revocation submit the following in writing: (1) the company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the three consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; and (3) the agreement to reinstatement in the order if the Department concludes that, subsequent to revocation, the company has sold the subject merchandise at less than normal value. *See* 19 CFR 351.222(e)(1).

We find that Dixon's revocation request, dated January 13, 2012, meets all of the criteria under 19 CFR 351.222(e)(1). With regard to the criteria of 19 CFR 351.222(b)(1) and (2), our final margin calculation demonstrates that Dixon sold the subject merchandise at not less than normal value during the current review period. Dixon also sold subject merchandise at not less than normal value in the 2008-2009 review period.<sup>6</sup> The Department did not conduct an administrative review of the antidumping duty order on pencils for the 2009-2010 review period. However, pursuant to 19 CFR 351.222(d), we are not required to conduct a review of the intervening year so long as we conduct a review in the first and third years of the three-year consecutive time period. In addition, the record demonstrates that Dixon sold the subject in

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<sup>6</sup> *See Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 76 FR 27988 (May 13, 2011).

commercial quantities during each of the three consecutive years cited by Dixon in support of its request for revocation.<sup>7</sup>

Therefore, we determine that Dixon qualifies for revocation of the order on pencils from the PRC pursuant to 19 CFR 351.222(b)(1) and (2) and that the order with respect to subject merchandise exported by Dixon should be revoked. Moreover, in accordance with 19 CFR 351.222(f)(3), we are terminating the suspension of liquidation for subject merchandise exported by Dixon that was entered, or withdrawn from warehouse, for consumption, on or after December 1, 2011, and will instruct U.S. Customs and Border Protection (CBP) to refund, with interest, any cash deposit for such entries.

## DISCUSSION OF THE ISSUES

### **Comment 1: Whether to use India or the Philippines instead of Thailand as the primary surrogate country**

Dixon argues that Thailand, used to value the majority of Dixon's inputs in the *Preliminary Results*, is not the appropriate surrogate country to use for the final results. Specifically, according to Dixon, the Thai data relied on by the Department is unusable for the following reasons:

- The Thai harmonized tariff schedule (HTS) category for pencil cores, which is a basket category including both black and colored cores, yields inaccurate values for Dixon's cores because Dixon only purchases black cores. Citing record evidence from an Indian trade magazine (used by the Department in previous pencils reviews) and from black core pencil manufacturers in India and the Philippines,<sup>8</sup> Dixon argues that the Thai surrogate value for cores is ten times the value of black cores. According to Dixon, this suggests that the Thai values are heavily influenced by higher value colored cores. Dixon also argues that the Philippine import value for cores is more comparable to market prices for black cores.<sup>9</sup>
- The Thai import values for erasers are also from a basket category that includes both standard and specialty erasers (*e.g.*, of multiple colors, shapes, designs). Dixon only uses standard erasers in its pencils. Citing record evidence of pencil manufacturers in India and Taiwan, Dixon argues that the surrogate value from Thailand for erasers used in the *Preliminary Results* is nine times the value of standard erasers.<sup>10</sup>
- The Thai HTS values for ferrules are aberrational. More than 99 percent of Thai imports were excluded because they come from the PRC. The remaining quantities are so small and divided among so many countries that they cannot represent commercial quantities of

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<sup>7</sup> See Memorandum from Mary Kolberg to the File, "Business Proprietary Analysis of Commercial Quantities for Dixon Ticonderoga Company" dated May 17, 2013.

<sup>8</sup> Dixon cites its submissions, "Certain Cased Pencils from the People's Republic of China: Comments Addressing Selection of Surrogate Country" dated September 14, 2012, and Dixon's Surrogate Value Comments.

<sup>9</sup> See Dixon's Surrogate Value Comments at 6 and 17.

<sup>10</sup> See *id.* at 10.

commercial grade ferrules used in mass standard pencil production. Citing record evidence of ferrule values from other candidate surrogate countries (*i.e.*, those the Department determined to be at a level of economic development comparable to the PRC), Dixon adds that the surrogate value for ferrules used in the *Preliminary Results* is four times the value of ferrules normally used in the production of subject merchandise.<sup>11</sup>

- DTC Industry Public Co. Ltd. (DTC), the Thai company used in the *Preliminary Results* for valuing overhead, general, and selling, general and administrative expenses (SG&A), does not manufacture pencils in Thailand. Citing a report from a Thai market research firm, Dixon adds that 90 percent of DTC's 2011 production and sales were of pens, while the remainder was split among several different products, none of which was indicative of pencils. Dixon also asserts that DTC officials told the Thai market research firm that the company does not manufacture pencils in Thailand. Finally, Dixon argues that pen manufacturing is a more sophisticated process than pencil manufacturing and that DTC is a highly recognized branded distributor of pens in Thailand which in turn yields the company a higher profit rate than an original equipment manufacturer such as Dixon.<sup>12</sup>

According to Dixon, the record now demonstrates that the Philippines is the appropriate primary surrogate country to use for the final results. Specifically, Dixon argues the following:

- The Philippines satisfies the criteria set forth in section 773(c)(4) of the Act and has been used in several recent Department proceedings.<sup>13</sup>
- The Philippines is a platform for pencils production. Dixon cites to evidence it placed on the record which indicates that Amalgamated Specialties Corporation ("Amalgamated"), a Philippines pencil producer, produces an average of 11 million pencils per month. Dixon asserts that this level of production exceeds the total amount of imports into the Philippines.<sup>14</sup>
- The Philippines has reliable, publicly available data for valuing inputs. The Philippine HTS values for cores, erasers, and ferrules are more reliable than the Thai HTS values.<sup>15</sup>
- The record now includes the financial statement of a Philippines pencils producer, Amalgamated, which can be used to value overhead, SG&A expenses, and profit.<sup>16</sup>

Dixon argues in the alternative that India would also serve as a good surrogate country for this proceeding.

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<sup>11</sup> *See id.* at 10-11.

<sup>12</sup> *See id.* at 12.

<sup>13</sup> *See id.* at 13-14.

<sup>14</sup> *See id.* at 15.

<sup>15</sup> *See id.* at 16.

<sup>16</sup> *See id.* at 15.

## Department's Position

Based on the record, as it has been further developed since the *Preliminary Results*, we agree that we should use the Philippines as the primary surrogate country for valuing Dixon's factors of production. Like Thailand, the Philippines is economically comparable the PRC.<sup>17</sup> Similarly, the Philippines, is also a significant producer of comparable merchandise (pencils).<sup>18</sup> Thus, in evaluating the two countries for purposes of selecting a primary surrogate, we have relied on data availability as the deciding factor.<sup>19</sup> For the reasons explained below, the Philippines is the better choice because of the superiority of the Philippine financial data for deriving surrogate financial ratios.

Subsequent to the *Preliminary Results* (but within the deadlines established by 19 CFR 351.301(c)(3)(ii) for submission of surrogate values), Dixon submitted the financial statements of the Philippine pencils producer, Amalgamated, and a printout from the company's website.<sup>20</sup> This information clearly establishes that Amalgamated produces pencils, and that pencils are one of its two main products (the other being crayons). In contrast, the Thai producer that served as the source for surrogate financial ratios used in the *Preliminary Results*, DTC, is engaged principally in the production and trading of pens and related products.<sup>21</sup> Our regulations at 19 CFR 351.408(c)(4) direct that in valuing manufacturing overhead, general expenses, and profit, the Department will normally use information from producers of identical or comparable merchandise. While pens and related products might qualify as comparable products, we now have financial information from a producer of identical merchandise, Amalgamated. Thus, Amalgamated's financial statement is a better source for the surrogate financial ratios for Dixon's pencils production than DTC's financial statements.

With the exception of slats, for which import data is not available in either Thailand or the Philippines,<sup>22</sup> all the other inputs used by Dixon can be valued in the Philippines using publicly

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<sup>17</sup> See Memorandum from Carole Showers to Nancy Decker, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Cased Pencils (Pencils) from the People's Republic of China (PRC)" dated July 24, 2012.

<sup>18</sup> See Memorandum from Sergio Balbontin to the File, "2010-2011 Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Factor Valuation for the Final Results" dated July 10, 2013.

<sup>19</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004), which states that if more than one country satisfies the economically comparable and significant producer criteria for surrogate country selection purposes, "then the country with the best factors data is selected as the primary surrogate country." See also *Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 28803 (May 16, 2013) and accompanying Issues and Decision Memorandum at Comment I.B ("Therefore, because each of the seven countries in the Surrogate Country Letter satisfies the "economic comparability" and "significant producer" prongs of the surrogate country analysis, the Department also will consider data availability in selecting a surrogate country."), and Comment I.C.

<sup>20</sup> See Dixon's Surrogate Value Comments at Exhibit SVC-9 and Exhibit SVC-10.

<sup>21</sup> See Memorandum from Sergio Balbontin to the File, "2010-2011 Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Factor Valuation for the Preliminary Results" dated January 2, 2013, at Attachment 1.

<sup>22</sup> The Department will continue to value pencil slats using surrogate values from Indonesia because the Philippine HTS surrogate value data for slats indicates that all of the slats imported into Philippines during the POR were from the PRC. The Department does not include the value of imports into surrogate countries from non-market economy

available, contemporaneous data. Therefore, consistent with 19 CFR 351.408(c)(2), which directs us, where possible, to value all factors in a single surrogate country, we have selected the Philippines as the primary surrogate because it offers the most complete valuation data.

Having determined to rely on the Philippines as the primary surrogate, we do not reach the issues raised by Dixon with regard to the Thai values it challenges or its suggestion to use India.

## **Comment 2: Whether the antidumping duty order should be revoked as to Dixon**

Dixon asserts the antidumping duty order should be revoked for Dixon. Dixon submitted a request for revocation and, pursuant to 19 CFR 351.222(e)(1), that request contained certifications that Dixon sold the subject merchandise at not less than normal value for at least three consecutive years, that it will not sell the merchandise under normal value in the future, and that it sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Dixon asserts that the Department confirmed such commercial quantities. Dixon argues that the Department stated in the *Preliminary Results* that Dixon met all necessary requirements for revocation except for the *de minimis* rate. Dixon contends that if the Department chooses the surrogate country with the best information (*i.e.*, the Philippines) for the final results, then the margin will be zero percent, and Dixon will have met all requirements for revocation of the order as to Dixon.

## **Department's Position**

As a result of the changes since the *Preliminary Results*, we have calculated a zero margin for Dixon. Consequently, Dixon has demonstrated successfully that it sold the subject merchandise in commercial quantities at not less than normal value for three consecutive years. As a result, we determine that Dixon qualifies for revocation of the order on pencils from the PRC pursuant to 19 CFR 351.222(b)(1) and (2).

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countries. Not to exclude data from these countries would contradict the Department's longstanding determination that non-market economy prices are unreliable for valuing FOPs. See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) and accompanying Issues and Decision Memorandum at Comment 8.

