



A-570-827  
Changed Circumstance Review  
**Public Document**  
AD/CVD Office OI: SB

February 18, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Antidumping Duty Order on Certain Cased Pencils from the  
People's Republic of China: Decision Memorandum for  
Preliminary Results of Antidumping Duty Changed Circumstances  
Review Requested by the Dixon Ticonderoga Companies

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I. Summary

In response to a request from the Dixon Ticonderoga Company (Ticonderoga), and Beijing FILA Dixon Stationery Co., Ltd. (Beijing Dixon),<sup>1</sup> the Department of Commerce (Department) is conducting a changed circumstances review (CCR) of the antidumping (AD) duty order on certain cased pencils (pencils) from the People's Republic of China (PRC).<sup>2</sup> The Department is conducting this CCR pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216. The *Order* was revoked with respect to pencils exported by Beijing Dixon effective July 18, 2013.<sup>3</sup> Ticonderoga and Beijing Dixon requested that the Department find that Fila Dixon Stationery (Kunshan) Co., Ltd. (Kunshan Dixon), which was formed after the *Revocation* and now produces pencils exported by Beijing Dixon, is the successor-in-interest to Beijing Dixon.

We recommend that you approve the analysis we developed in this memorandum and preliminarily find<sup>4</sup> that the Beijing Dixon, with a new business license under which it is an exporter, exporting pencils produced by Kunshan Dixon, is the successor-in-interest to Beijing

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<sup>1</sup> A/k/a Beijing Dixon Ticonderoga Stationery Company, Ltd. and Beijing Dixon Stationery Company, Ltd.

<sup>2</sup> See *Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66909 (December 28, 1994) (*Order*).

<sup>3</sup> See *Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order In Part; 2010–2011*, 78 FR 42932 (July 18, 2013) (*Revocation*) and accompanying Issues and Decision Memorandum (IDM).

<sup>4</sup> Due to the closure of the Federal Government in Washington, DC on February 17, 2015, the Department reached this determination on the next business day (*i.e.*, February 18, 2015). See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).



Dixon as that entity existed at the time of *Revocation*.

## II. Background

On December 28, 1994, the Department published the AD *Order* on pencils from the PRC.<sup>5</sup> On July 18, 2013, the Department revoked the *Order* on pencils from the PRC with respect to merchandise exported by Beijing Dixon, based on its finding that Beijing Dixon had not made sales at less than fair value for three consecutive years.<sup>6</sup> At the time the Department revoked the *Order*, Ticonderoga was importing the pencils produced and exported by Beijing Dixon.<sup>7</sup>

On November 27, 2014, Beijing Dixon, and Ticonderoga (the Dixon Companies) requested that the Department conduct a CCR for purposes of determining that Kunshan Dixon is the successor in interest to Beijing Dixon for the purposes of administering the *Order* and the revocation with respect to Beijing Dixon, and that, therefore, the *Revocation* applies to Beijing Dixon and Kunshan Dixon.<sup>8</sup> The Dixon Companies also requested that the Department conduct the CCR on an expedited basis, and issue the preliminary results of CCR together with the initiation.<sup>9</sup>

The Dixon Companies reported that the City of Beijing, the domicile of Beijing Dixon at the date of the *Revocation*, required Beijing Dixon to relocate its production facilities outside of the City of Beijing.<sup>10</sup> In response, Beijing Dixon formed a subsidiary, Kunshan Dixon, in Kunshan, Suzhou City, Jiangsu Province, PRC.<sup>11</sup> According to the Dixon Companies, Kunshan Dixon is now manufacturing pencils using Beijing Dixon's production machinery and equipment, which were relocated to Kunshan Dixon.<sup>12</sup>

Beijing Dixon also relocated its Beijing operations to a new location within Beijing, and its business license was amended to exclude the production of pencils; the business scope now reflects the company's activities as importing, exporting, and selling pencils.<sup>13</sup>

In support of its request, the Dixon Companies provided the following:

- Kunshan Dixon's Articles of Association and business license, which indicate that Kunshan Dixon was formed on September 1, 2013, and that its business scope includes the production and sales of pencil slats and pencils.<sup>14</sup>
- A shareholder resolution regarding personnel appointments for Kunshan Dixon.<sup>15</sup>

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<sup>5</sup> See *Order*.

<sup>6</sup> See *Revocation*.

<sup>7</sup> *Id.*

<sup>8</sup> See letter from Dixon, "Request for Changed Circumstances Review pursuant to 19 CFR §351.216 on behalf of Dixon Ticonderoga Company" dated November 27, 2014 at 4 (CCR Request) and refiled on December 10, 2014 correcting a filing deficiency noted by the Department.

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at Exhibit 1 and 3.

<sup>15</sup> *Id.* at Exhibit 2.

- Invoices purporting to demonstrate the movement of the pencil-manufacturing machinery from the former location of Beijing Dixon to the current location of Kunshan Dixon.<sup>16</sup>
- An amendment to Beijing Dixon's Articles of Association and business license demonstrating changes in Beijing Dixon's business scope to exclude the manufacturing of pencils.<sup>17</sup>
- An amendment to Beijing Dixon's Articles of Association and business license demonstrating a change in Beijing Dixon's registered address.<sup>18</sup>

On December 10, 2014, the Department requested additional information from the Dixon Companies regarding the CCR Request.<sup>19</sup> The Department received the Dixon Companies' additional information on December 19, 2014.<sup>20</sup> The Dixon Companies provided the following:

- Documentation showing that Beijing Dixon continues to be the exporter of the Dixon Companies' pencils:
  - Sales order for pencils from Kunshan Dixon to Beijing Dixon;
  - Loading notice showing Kunshan Dixon as the supplier and Beijing Dixon as the recipient;
  - Sales slip demonstrating the item and quantity acquired by Beijing Dixon from Kunshan Dixon;
  - Purchase notice demonstrating the sale of pencils from Kunshan Dixon to Beijing Dixon;
  - Warehouse entry list demonstrating purchases of pencils manufactured by Kunshan Dixon;
  - Chinese customs export pre-declaration forms demonstrating that Beijing Dixon is the exporter of pencils and that the manufacturer of them is Kunshan Dixon.<sup>21</sup>
- Information showing that Beijing Dixon's general manager is now also the executive director of Kunshan Dixon and that the same person serves as the legal representative of both companies.<sup>22</sup>
- Clarification that responsibilities of these two positions are the same.<sup>23</sup>
- Full translations of the invoices purporting to demonstrate the movement of the pencil-making machinery from Beijing Dixon to Kunshan Dixon (submitted in

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<sup>16</sup> *Id.* at Exhibit 4.

<sup>17</sup> *Id.* at Exhibit 5 and 8.

<sup>18</sup> *Id.* at Exhibit 6 and 7.

<sup>19</sup> *See* letter from the Department, "Changed Circumstances Review Requested by the Dixon Ticonderoga Company for Certain Cased Pencils from the People's Republic of China: Request for Supplemental Information" dated December 10, 2014.

<sup>20</sup> *See* letter from Dixon, "First Response of Dixon Ticonderoga Company to Request for Supplemental Information: Changed Circumstances Review Requested by the Dixon Ticonderoga Company for Certain Cased Pencils from the People's Republic of China" dated December 19, 2014 (CCR Supplemental).

<sup>21</sup> *Id.* at Exhibit 1.

<sup>22</sup> *Id.* and at 6 and 7.

<sup>23</sup> *Id.* and at 7.

- Dixon's CCR Request).<sup>24</sup>
- Material supply invoices showing that Kunshan Dixon has the same material suppliers that Beijing Dixon had at the time of *Revocation*.<sup>25</sup>
  - Customer orders that show Beijing Dixon's customer base has not changed as a result of the formation of Kunshan Dixon.<sup>26</sup>

### III. Scope

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>24</sup> *Id.* at Exhibit 4.

<sup>25</sup> *Id.* and at 9-10 and Exhibit 5.

<sup>26</sup> *Id.* and at 9 and Exhibit 6.

#### IV. Successor-in-Interest Analysis

##### A. Analytical Framework

In making a successor-in-interest determination, the Department examines several factors, including, but not limited to, changes in the following: 1) management; 2) production facilities; 3) supplier relationships; and 4) customer base.<sup>27</sup> While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.<sup>28</sup> Thus, if the record demonstrates that, with respect to the production and sale of subject merchandise, the new company operates as the same business entity as the predecessor company, the Department generally accords the new company the same AD treatment as its predecessor.<sup>29</sup> In conducting a successor-in-interest analysis, while we generally consider information from immediately before and after the formation of a new entity, the Department considers all information on the record relevant to the determination.<sup>30</sup>

In this case, the CCR Request and CCR Supplemental information demonstrate that, since the *Revocation*, Beijing Dixon has amended its business license to eliminate the production of pencils from its scope of business, and Kunshan Dixon was formed and is now producing the pencils exported by Beijing Dixon using the same equipment and machinery. Therefore, we have analyzed Beijing Dixon's operations during the period from the effective date of the *Revocation* through the amendment of its business license and the formation of Kunshan Dixon.

##### B. Relevant Facts

###### 1. Management

The general manager of Beijing Dixon at the time of revocation continues in that capacity and is now also serving as the Executive Director of Kunshan Dixon. These two positions carry the same responsibilities with respect to the production and pricing of pencils. The Kunshan Dixon shareholder resolution, Kunshan Dixon's business license, and amendment to Beijing Dixon's business license, demonstrate that the same person holds these two titles, and that Kunshan

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<sup>27</sup> See, e.g., *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010); and *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941 (November 18, 2005) (*Brake Rotors—PRC*), citing *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Brass Sheet—PRC*).

<sup>28</sup> See, e.g., *Brake Rotors—PRC*.

<sup>29</sup> See, e.g., *Brass Sheet—PRC*.

<sup>30</sup> See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results and Termination, in part, of the Antidumping Duty Changed Circumstance Review*, 76 FR 64898 (October 19, 2011).

Dixon is subject to management by Beijing Dixon.<sup>31</sup>

## 2. Production Facilities

At the time of the *Revocation*, Beijing Dixon operated its pencil production facilities in Beijing. The Dixon Companies report that the production facilities have since been relocated to Kunshan, Suzhou City, Jiangsu Province. The movement invoices of the pencil-manufacturing machinery and equipment demonstrate that Beijing Dixon moved the machinery and equipment it had been using to produce pencils in Beijing at the time of *Revocation* to the Kunshan Dixon facility; this machinery and equipment are now being used by Kunshan Dixon to manufacture pencils.<sup>32</sup>

These movement invoices further demonstrate that Kunshan Dixon is using the machinery to produce the same products that Beijing Dixon had been producing with the machinery, pencils.

## 3. Customer Base

Customer orders submitted in the CCR Supplemental demonstrate that Beijing Dixon's customer base is unchanged since the formation of Kunshan Dixon.<sup>33</sup>

## 4. Suppliers

The material input supplier invoices submitted in the CCR Supplemental demonstrate that Kunshan Dixon is sourcing its material inputs from the same suppliers as Beijing Dixon at the time of *Revocation*.<sup>34</sup>

## C. Analysis

The Department will consider a company the successor-in-interest to the previous entity if the new company's resulting operations are not materially dissimilar to those of its predecessor.<sup>35</sup> We analyzed the information provided by the Dixon Companies with regard to its management, production facilities, customer base, and suppliers. Based on this analysis, set forth below, we preliminarily find that Beijing Dixon, operating under an amended business license, and exporting pencils produced by its subsidiary Kunshan Dixon, is the successor-in-interest to Beijing Dixon at the time of the *Revocation*. These preliminary results do not constitute a finding that Kunshan Dixon is the successor-in-interest to Beijing Dixon at the time of the *Revocation*, because the *Revocation* applies to Beijing Dixon, the exporter.<sup>36</sup> Contrary to the Dixon Companies' argument that Kunshan Dixon is the successor-in-interest, the evidence demonstrates that Kunshan Dixon is a producer of pencils, and not an exporter of pencils from

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<sup>31</sup> See CCR Request at Exhibit 1, 2 and 8, respectively.

<sup>32</sup> See CCR Supplemental at Exhibit 4.

<sup>33</sup> See, e.g., *Id.* at Exhibit 1. While our successor-in-interest analysis concerns Beijing Dixon, the exporter, we note the customer orders between U.S. customers and Ticonderoga, submitted in the CCR Supplemental, demonstrate that Ticonderoga is also selling to the same customers that it sold to prior to the formation of Kunshan Dixon.

<sup>34</sup> *Id.* at Exhibit 5.

<sup>35</sup> See *Brake Rotors—PRC*, 70 FR 69941.

<sup>36</sup> See the public version of Memorandum, "Final Results Calculation Memorandum for Beijing Dixon Ticonderoga Stationery Co., Ltd. and Dixon Ticonderoga Company" dated July 10, 2013 at Attachment IV, attached to this preliminary determination memorandum.

the PRC. As such, because the *Revocation* was with regard to the exporter only, and not the

exporter and/or producer, there is no basis at this time for evaluating the appropriate application of the *Order* to Kunshan Dixon.<sup>37</sup>

## 1. Time Period

The Department has preliminarily limited its analysis to Beijing Dixon as it existed at the time of *Revocation* until the amendment to Beijing Dixon's business license and the formation of Kunshan Dixon. It is the Department's practice to consider all information on the record relevant to the determination; in this instance, this includes information about the Dixon Companies as they existed at the time of *Revocation* and as they exist currently.<sup>38</sup>

## 2. Successorship Analysis

### a. Management

We preliminarily determine that Beijing Dixon's management has not changed in a material manner. Production and pricing is directly managed by the General Manager of Beijing Dixon who also serves as the Executive Director of Kunshan Dixon. Finally, there have been no changes to Beijing Dixon's shareholders or Board of Directors in terms of number of members, actual members, or structure.<sup>39</sup>

### b. Production Facilities

Although Beijing Dixon's production facilities have been relocated, we preliminarily determine that this is not a material change. The changes involved in the relocation of the production facility, and the formation of Kunshan Dixon, do not constitute the formation of a new entity because Beijing Dixon continues to be the exporter of pencils. Further, there have been no material changes in the production line or the products produced, because Kunshan Dixon continues to use the same pencil-producing machinery formerly used by Beijing Dixon.<sup>40</sup>

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<sup>37</sup> See *Michaels Stores, Inc. v. United States*, 766 F.3d 1388, 1391-93 (Fed. Cir. 2014) (recognizing that AD rates in nonmarket economy proceedings are appropriately tied to the exporter, not the producer).

<sup>38</sup> See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results and Termination, in part, of the Antidumping Duty Changed Circumstance Review*, 76 FR 64898 (October 19, 2011) and accompanying I at Comment 2 (*Sawblades—PRC*); see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 75 FR 41148 (July 15, 2010), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) (*TRBs—PRC*) (where the Department considered information over a nine-year period in making a successor-in-interest determination).; and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006), and accompanying IDM, at Comment 3 (where the Department analyzed whether a company formed by the merger of two companies excluded from the AD order was the successor-in-interest to the excluded companies, using data from more than 10 years).

<sup>39</sup> See CCR Request at Exhibit 1, 2 and 8, respectively.

<sup>40</sup> See CCR Supplemental at Exhibit 4.

### c. Customer Base

We preliminarily determine that Beijing Dixon's customer base has not changed with the formation of Kunshan Dixon. That is, Beijing Dixon's selling practices have not changed.<sup>41</sup> While our successor-in-interest analysis concerns Beijing Dixon, the exporter, we note the customer orders between U.S. customers and Ticonderoga, submitted in the CCR Supplemental, demonstrate that Ticonderoga is also selling to the same customers that it sold to prior to the formation of Kunshan Dixon.

### d. Suppliers

We preliminarily determine that Beijing Dixon's supplier base has not changed in a material manner with the formation of Kunshan Dixon; the material supply invoices submitted in the CCR Supplemental demonstrate that Beijing Dixon continues sourcing its raw materials, through Kunshan Dixon, from the same suppliers as it did prior to the changes under examination in this CCR.<sup>42</sup>

In cases where we have found companies not to be the successor-in-interest, the changes in those companies' management, production facilities, suppliers, and customer base were of such significance that their operations differed from their prior operations. For example, in the 2008-2009 administrative review of *TRBs—PRC*, the Department found a newly-acquired company not to be the successor-in-interest to the former company because the new owners replaced the company's Board of Directors and General Manager and significantly expanded the company's production facilities.<sup>43</sup> In *Polychloroprene Rubber—Japan*, the Department found that a company whose ownership changed was not the successor to its prior form because the new owners established a new subsidiary in the United States for purposes of selling the subject merchandise, thereby changing the company's selling practices. It also replaced all of the senior managers at the company, and it altered the structure of the Board of Directors.<sup>44</sup>

Here, while the pencil-production location has changed since the *Revocation*, we preliminarily find that the changes do not rise to such significance that they render Beijing Dixon, operating under an amended business license and exporting pencils produced by Kunshan Dixon, a new entity that is not the successor-in-interest to the operations of Beijing Dixon as they existed at the time of *Revocation*.

## D. Recommendation

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<sup>41</sup> See, e.g., *Id.* at Exhibit 1.

<sup>42</sup> *Id.* at Exhibit 5.

<sup>43</sup> See *TRBs—PRC*.

<sup>44</sup> See *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 61796 (October 21, 2004), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 67890 (November 22, 2004) (*Polychloroprene Rubber—Japan*).

In performing a successor-in-interest analysis, no one factor is dispositive, and we rely on the totality of circumstances to determine if a company's operations remain essentially unchanged. In this case, while Beijing Dixon experienced a change when it relocated its production facilities, and amended its business license to eliminate pencil production from the scope of its operations, these changes do not appear to result in a significant change to the business' operations. Beijing Dixon continues to be the exporter of pencils, with Kunshan as its subsidiary providing the same pencils from the same equipment; there have been no significant changes in corporate ownership or control, the customer base or the material supplier base.

Based on the above analysis, because the *Revocation* was with regard to the exporter, and there have been no significant changes to the exporter, we preliminarily recommend finding that the operations of Beijing Dixon are essentially the same as those at the time of the *Revocation*. Therefore, we preliminarily recommend finding that Beijing Dixon, operating under an amended business license, is the successor-in-interest to Beijing Dixon at the time of the *Revocation* of the *Order*.

Agree

Disagree

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

18 FEBRUARY 2015  
(Date)