



A-570-827  
Administrative Review  
POR: 12/01/17 - 11/30/18  
**Public Document**  
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October 3, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Scot T. Fullerton  
Director, Office VI  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review and Partial Rescission: Certain  
Cased Pencils from the People's Republic of China; 2017-2018

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## I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting this administrative review (AR) of the antidumping duty (AD) order on certain cased pencils (pencils) from the People's Republic of China (China) for the period of review (POR) December 1, 2017 through November 30, 2018.<sup>1</sup> Commerce preliminarily determines that Fila Dixon Stationery (Kunshan) Co., Ltd. (Kunshan Dixon), the sole mandatory respondent, does not qualify for a separate rate and is, therefore, considered part of the China-wide entity. In addition, we are rescinding the AR with respect to Shandong Rongxin Import & Export Co., Ltd. (Rongxin), Wah Yuen Stationery Co. Ltd. and Shandong Wah Yuen Stationery Co. Ltd. (collectively, the Wah Yuen Companies), Tianjin Tonghe Stationery Co. Ltd. (Tianjin Tonghe), Ningbo Homey Union Co., Ltd. (Ningbo Homey), and Orient International Shanghai Foreign Trade Co., Ltd. (SFTC).

## II. BACKGROUND

On December 20, 2018, the Dixon Ticonderoga Company (Dixon) requested an AR of Rongxin, the Wah Yuen Companies, Tianjin Tonghu, and Ningbo Homey.<sup>2</sup> On January 28, 2018, Royal Brush Manufacturing, Inc. (Royal Brush) requested a review of "Beijing Fila Dixon Stationery Co., Ltd. (aka Beijing Dixon Ticonderoga Stationery Co., Ltd. and Beijing Dixon Stationery Co., Ltd.)" (collectively, Beijing Dixon), and Kunshan Dixon.<sup>3</sup> Also, on January 28, 2019, SFTC

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<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 9297, 9300 (March 14, 2019) (*Initiation Notice I*); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 12200, 12206 n.9 (April 1, 2019) (*Initiation Notice II*).

<sup>2</sup> See Dixon's Letter, "Certain Cased Pencils from the People's Republic of China: Request for Administrative Review," dated December 20, 2019.

<sup>3</sup> See Royal Brush's Letter, "Certain Cased Pencils from the People's Republic of China: Request for



requested a review of itself.<sup>4</sup> In March 2019, Commerce initiated an AR of the AD order for the POR.<sup>5</sup>

SFTC subsequently withdrew its request for review,<sup>6</sup> and Dixon withdrew its request for review of Rongxin, the Wah Yuen Companies, Tianjin Tonghe, and Ningbo Homey.<sup>7</sup>

On April 15, 2019, Kunshan Dixon submitted a letter opposing its inclusion in this AR.<sup>8</sup> Kunshan Dixon argued, *inter alia*, that Commerce has revoked the AD order with respect to Beijing Dixon and that, in a subsequent changed circumstances review, Commerce determined that Kunshan Dixon is a successor-in-interest to Beijing Dixon. Therefore, Kunshan Dixon alleged that it is not subject to review.<sup>9</sup> We replied to Kunshan Dixon's letter noting that, while Commerce did revoke the AD order with respect to Beijing Dixon, Commerce did not determine, in its changed circumstances review, that Kunshan Dixon is the successor-in-interest to Beijing Dixon. For this reason, Commerce determined that Kunshan Dixon may be reviewed.<sup>10</sup> Accordingly, on June 13, 2019, we identified Kunshan Dixon as the sole mandatory respondent in this administrative review and issued it an AD questionnaire.<sup>11</sup>

On July 12, 2019, Kunshan Dixon submitted an untimely request for an extension of time to submit its response to section A of the questionnaire and a timely request for an extension to submit its responses to sections C and D of the AD Questionnaire.<sup>12</sup> On July 19, 2019, Kunshan Dixon submitted a response to section A of the AD Questionnaire, which Commerce rejected as untimely and removed from the record of this AR.<sup>13</sup> On September 3, 2019, Kunshan Dixon

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Administrative Review," dated December 28, 2018.

<sup>4</sup> See SFTC's Letter, "Request for Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China, A-570-827," dated January 28, 2019.

<sup>5</sup> See *Initiation Notice I*. We revised the initiation notice with respect to Beijing Dixon, in *Initiation Notice II*, explaining that we should not have initiated a review of Beijing Dixon because the AD order had been revoked with respect to it. 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).

<sup>6</sup> See SFTC's Letter, "Orient International Holding Shanghai Foreign Trade Co., Ltd.'s Withdrawal of Request for Review: Administrative Review of the Antidumping Duty Order on Cased Pencils from the People's Republic of China," dated March 27, 2019 (SFTC Withdrawal).

<sup>7</sup> See Dixon's Letter, "Certain Cased Pencils from the People's Republic of China: Withdrawal of Request for Administrative Review," dated May 31, 2019 (Dixon Withdrawal).

<sup>8</sup> See Kunshan Dixon's Letter, "Objection to Request for Administrative Review of the Antidumping Duty Order on Cased Pencils from the People's Republic of China by Beijing Fila Dixon Stationery Co, Ltd., Fila Dixon Stationery (Kunshan) Co., Ltd. in Opposition to Request for Administrative Review (Case No. A-570-827)," dated April 15, 2019.

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

<sup>10</sup> See Commerce's Letter, "Antidumping Administrative Review of Cased Pencils from the People's Republic of China: Administrative Review of Fila Dixon Stationery (Kunshan) Co., Ltd.," dated May 7, 2019.

<sup>11</sup> See Memorandum, "Certain Cased Pencils from the People's Republic of China: Identification of Mandatory Respondent," dated June 13, 2019; see also Commerce's Letter, "Antidumping Duty Questionnaire, dated June 13, 2019 (AD Questionnaire).

<sup>12</sup> See Kunshan Dixon's Letter, "Certain Cased Pencils from the People's Republic of China: Letter to Department and Request for Extension of Time," dated July 12, 2019.

<sup>13</sup> See Commerce's Letter, "Rejection of Untimely Section A Questionnaire Response," dated August 20, 2019.

filed a second objection to Commerce's review of Kunshan Dixon and requested a meeting.<sup>14</sup> Commerce officials met with counsel for Kunshan Dixon on September 24, 2019.<sup>15</sup>

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>16</sup> If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. On August 8, 2019, Commerce explained that because the AD order underlying the review has a December anniversary date, the tolling period overlapped by 31 days.<sup>17</sup> Therefore, the revised deadline for the preliminary results is October 3, 2019.

### **III. 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, chinks, 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.

The HTSUS subheading are provided for convenience and customs purposes only, the written description of the merchandise covered by the scope of the order is dispositive.

### **IV. PARTIAL RESCISSION OF REVIEW**

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<sup>14</sup> See Kunshan Dixon's Letter, "Letter to Commerce re Administrative Review of the Antidumping Duty Order on Cased Pencils from the People's Republic of China by Fila Dixon Stationery (Kunshan) Co., Ltd. in Opposition to Request for Administrative Review (Case No. A-570-827) and Request for Meeting," dated September 3, 2019.

<sup>15</sup> See Memorandum, "Certain Cased Pencils from the People's Republic of China: Ex Parte Meeting," dated September 26, 2019.

<sup>16</sup> See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019..

<sup>17</sup> See Memorandum, "December Order Deadlines Affected by the Partial Shutdown of the Federal Government," dated August 8, 2019. All deadlines in this segment of the proceeding have been extended by 31 days.

As noted above, all of the requests for review of Rongxin, the Wah Yuen Companies, Tianjin Tonghe, Ningbo Homey, and SFTC were timely withdrawn.<sup>18</sup> Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an AR, in whole or in part, if the parties that requested a review withdraw their request within 90 days of the date of publication of the notice of initiation. Accordingly, Commerce is rescinding this review, in part, with respect to these companies.

#### IV. DISCUSSION OF THE METHODOLOGY

##### A. Non-Market Economy (NME) Country Status

In accordance with section 771(18)(C)(i) of the Act, as amended (the Act), any determination that a foreign country is a non-market economy (NME) country shall remain in effect until revoked by Commerce. Commerce considers China to be an NME country.<sup>19</sup> Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

##### B. Separate Rates

Pursuant to section 771(18)(C) of the Act, in proceedings involving NME countries, Commerce maintains the rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>20</sup> It is Commerce's policy to assign all exporters of the merchandise subject to review in an NME proceeding a single rate unless an exporter can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to government control over export activities. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME proceeding under a test first established in *Sparklers*,<sup>21</sup> developed by *Silicon Carbide*,<sup>22</sup> and further refined by *Advanced Technology I* and *Advanced Technology II*.<sup>23</sup> If Commerce

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<sup>18</sup> See SFTC Withdrawal; see also Dixon Withdrawal.

<sup>19</sup> See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum (PDM) at 7-8 unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

<sup>20</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>; see also *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

<sup>21</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

<sup>22</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>23</sup> See *Advanced Technology & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*); see also Final Results of Redetermination Pursuant to Remand Order Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013); and *Advanced Technology & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd*, 581 Fed. Appx. 900 (Fed. Cir. 2014) (*Advanced Technology II*). The remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>.

determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.<sup>24</sup>

In order to demonstrate separate rate status eligibility, Commerce normally requires entities, for which a review was requested, and which were assigned a separate rate in a previous segment of this proceeding, to submit a separate rate certification stating that they continue to meet the criteria for obtaining a separate rate.<sup>25</sup> For entities that were not assigned a separate rate in a previous segment of a proceeding, to demonstrate eligibility, Commerce requires a separate rate application.<sup>26</sup> However, exporters and producers who are selected as mandatory respondents are not eligible for separate rate status unless they respond to all parts of the questionnaire.<sup>27</sup>

Kunshan Dixon, which was a mandatory respondent in this administrative review, did not timely respond to Commerce's AD Questionnaire.<sup>28</sup> Because Kunshan Dixon has not submitted a timely response to Commerce's AD Questionnaire, it has not demonstrated its eligibility for a separate rate. Therefore, we preliminarily consider Kunshan Dixon to be part of the China-wide entity.

Finally, because no review was requested of the China-wide entity,<sup>29</sup> the China-wide rate of 114.90 percent will apply to Kunshan Dixon's entries of subject merchandise into the United States during the POR.<sup>30</sup>

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<sup>24</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR 4327 (January 27, 2014); and *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355 (September 13, 2007).

<sup>25</sup> See *Initiation Notice I*, 84 FR at 9298-99.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 9299.

<sup>28</sup> See Commerce's Letter, "Rejection of Untimely Section A Questionnaire Response," dated August 20, 2019.

<sup>29</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

<sup>30</sup> See *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 24675 (May 30, 2017)).

**V. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.



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Agree

\_\_\_\_\_  
Disagree

10/3/2019

**X** 

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Signed by: JEFFREY KESSLER  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance