A-570-827
Administrative Review
POR: 12/01/17 - 11/30/18
Public Document
E&C/OVIII: SB

March 23, 2019

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

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Cased Pencils from the People's Republic of China: Issues and Decision Memorandum; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case brief submitted by Fila Dixon Stationery (Kunshan) Co., Ltd. (Kunshan Dixon) and its affiliate Beijing Fila Dixon Stationery Co., Ltd. (Beijing Dixon) (collectively, Dixon Companies) in the administrative review of the antidumping duty (AD) order on certain cased pencils from the People's Republic of China (China) covering the period of review (POR) December 1, 2017 through November 30, 2018. The sole mandatory respondent for this administrative review is Kunshan Dixon.[1]

As a result of this analysis, we have not made any changes to the *Preliminary Results*.[2] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Below is the list of the issues in this administrative review for which we received comments:

Comment 1: Whether Kunshan Dixon is Subject to Review
Comment 2 Kunshan Dixon's Claim of No Shipments
Comment 3: Whether Commerce Abused its Discretion

[1] *See* Dixon Companies' Letter, "Certain Cased Pencils from the People's Republic of China: Case Brief and Request for hearing by Fila Dixon Stationery (Kunshan) Co., Ltd. (Case No. A-570-827)," dated November 12, 2019 (Dixon Companies' Case Brief).
[2] *See Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review, in Part; 2017– 2018*, 84 FR 54592 (October 10, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

II. BACKGROUND

On October 10, 2019, Commerce published the *Preliminary Results* of this administrative review. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on the *Preliminary Results*. The Dixon Companies submitted a case brief and requested a hearing.[3] No interested party submitted a rebuttal brief. Subsequently, the Dixon Companies withdrew their request for a hearing.[4] On February 4, 2020, we extended the deadline for the final results to March 24, 2020.[5] Finally, on February 19, 2020, Commerce officials met with counsel for Kunshan Dixon regarding its case brief.[6]

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, 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.

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

---

[3] *See* Dixon Companies' Case Brief.
[4] *See* Dixon Companies' Letter, "Certain Cased Pencils from the People's Republic of China: Withdrawal of Request for Public Hearing," dated January 8, 2020.
[5] *See* Memorandum, "Cased Pencils from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated February 4, 2020.
[6] *See* Memorandum, "Certain Cased Pencils from the People's Republic of China: Ex Parte Meeting," dated February 20, 2020.

IV. DISCUSSION OF THE ISSUES

Comment 1: Whether Kunshan Dixon is Subject to Review

The Dixon Companies' Arguments[7]

- Commerce revoked the AD order with respect to Beijing Dixon and, thereafter in a changed circumstance review (CCR), determined that Kunshan Dixon is a successor in interest (SII) to Beijing Dixon. Accordingly, Commerce should rescind the administrative review with respect to Kunshan Dixon, because the record of the CCR demonstrates that Kunshan Dixon is, in fact, Beijing Dixon, simply operating from a different location. Therefore, as Kunshan Dixon is the confirmed SII to Beijing Dixon, the revocation of the AD order applies to Kunshan Dixon.
  - All production material, equipment, management, and supplies formerly located in Beijing, which Commerce verified, were moved to Kunshan, and all suppliers and customers remained unchanged.
  - Although the *Preliminary CCR* only discusses Beijing Dixon as the exporter, Commerce did not reject Kunshan Dixon as an SII. In the *Final CCR*, Commerce stated that "the revocation of the {AD} *Order* with respect to Beijing Dixon, as that entity existed at the time of revocation, continues to apply to Beijing Dixon as currently structured."[8] "As currently structured" means that "Beijing Dixon was exporting pencils manufactured exclusively by its own company, Kunshan Dixon..."
- Section 351.213(b) of Commerce's regulations only allows for interested parties to request reviews of exporters or producers covered by an AD order. Therefore, because Kunshan Dixon is the SII to Beijing Dixon, Kunshan Dixon is not subject to the administrative review.
- Not rescinding the administrative review is a complete disregard of administrative law, as agencies must follow their own regulations.[9]

Commerce's Position: We disagree that Commerce improperly included Kunshan Dixon in this administrative review. On July 18, 2013, pursuant to 19 CFR 351.222(b), Commerce revoked the AD order as to Beijing Dixon who, at the time, was both an exporter and producer of pencils.[10] However, Commerce limited the *Revocation* to Beijing Dixon as an exporter. In the

---

[7] Dixon Companies' Case Brief at 3-9.

[8] *Id*. at 6-7 (citing *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 80 FR 19073 (April 9, 2015) (*Final CCR*)).

[9] *Id*. (citing *Fort Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) (*Stewart Schools*), and *Torrington Co. v. United States*, 82 F.3d 1039, 1049 (Fed. Cir. 1996) (*Torrington*)).

[10] *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). Commerce published a final rule amending 19 CFR 351.222(b) which applied to all reviews initiated on or after June 20, 2012. The administrative review for the *Revocation* was initiated in January 2012. Thus, Commerce's amendment did not apply to the *Revocation*. *See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 77 FR 29875 (May 21, 2012). Reference to 19 CFR 351.222(b) thus refers to Commerce's regulations in effect prior to June 20, 2012.

Revocation analysis, Commerce reviewed certifications submitted by Beijing Dixon indicating that it did not sell pencils to the United States at less than normal value for at least three consecutive years, that it would not do so in the future, and that it sold pencils to the United States in commercial quantities for a period of at least three consecutive years.[11] Beijing Dixon also agreed that Commerce may reinstate the order if it concludes that Beijing Dixon sells pencils at less than normal value subsequent to revocation.[12] Commerce concluded that "the order with respect to subject merchandise exported by {Beijing Dixon} should be revoked."[13]

In a subsequent request for a CCR, Beijing Dixon informed Commerce that, since the *Revocation*, it had relocated its production facilities to the city of Kunshan and registered Kunshan Dixon as its production subsidiary.[14] Beijing Dixon, which remained domiciled in Beijing, amended the scope of its business license to exclude the production, but not the export, of pencils.[15] Beijing Dixon began exporting the pencils produced by Kunshan Dixon, whose business license at that time allowed for the production, but not the export, of pencils.[16] In its CCR request, Beijing Dixon asked that Commerce determine that Kunshan Dixon is the SII to Beijing Dixon and, as a result, that the revocation of the AD order also applied to Kunshan Dixon.[17] However, Commerce determined that Kunshan Dixon was not, in fact, the SII to Beijing Dixon, stating:

> {W}e preliminarily find that Beijing Dixon, operating under an amended business license, and exporting pencils produced by its subsidiary Kunshan Dixon, is the {SII} to Beijing Dixon at the time of the *Revocation*. These preliminary results do not constitute a finding that Kunshan Dixon is the {SII} to Beijing Dixon at the time of the *Revocation*, because the *Revocation* applies to Beijing Dixon, the exporter. Contrary to the Dixon Companies' argument that Kunshan Dixon is the {SII}, the evidence demonstrates that Kunshan Dixon is a producer of pencils, and not an exporter of pencils from {China}. 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.[18]

In the *Final CCR*, Commerce stated, "{a}s explained in the {*Preliminary CCR*}…, the *Revocation* of the antidumping duty order with respect to Beijing Dixon, as that entity existed at the time of *Revocation*, continues to apply to Beijing Dixon as currently structured."[19]

---

[11] *Revocation* and accompanying IDM at 3, Comment 2.
[12] *Id*.
[13] *Id*.
[14] *See Certain Cased Pencils from the People's Republic of China: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 80 FR 10457 (February 26, 2015) (*Preliminary CCR*) and accompanying Preliminary Decision Memorandum (PDM).
[15] *Id*. at 2.
[16] *Id*. at 5.
[17] *Id*. at 1.
[18] *Id.* at 6-7. We reiterated this determination to Kunshan Dixon in a letter relating to this review. *See* Commerce 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.
[19] *See Final CCR*, 80 FR at 19074.

Commerce also stated that it "adopts the reasoning and findings of fact outlined in the {*Preliminary CCR*}."[20] Thus, because the *Revocation* only revoked the order with respect to Beijing Dixon as an exporter and Commerce did not determine Kunshan Dixon to be an SII to Beijing Dixon, Commerce determines, as it did in the *Preliminary Results*, that the order was not revoked with respect to Kunshan Dixon.

In its case brief, Kunshan Dixon cites Commerce's statement in the *Final CCR*, "the *Revocation* of the AD order with respect to Beijing Dixon continues to apply to Beijing Dixon as currently structured," without acknowledging that the phrase "as currently structured" refers to the exporter Beijing Dixon as the SII, not to Beijing Dixon as it had been structured before Kunshan Dixon became a separate entity.[21] We continue to find in these final results that the phrase "as currently structured" referred to Beijing Dixon and not Kunshan Dixon. This is the same as what we found in the *Preliminary CCR*, which stated that Kunshan Dixon was not an SII to Beijing Dixon, and the *Revocation*, which revoked the order solely with respect to Beijing Dixon as an exporter.

It is worth noting that: (1) the Dixon Companies did not contest Commerce's characterizations of these entities in the *Final CCR*;[22] (2) Commerce has not determined that Kunshan Dixon is an SII to Beijing Dixon or that the two companies should be treated as a single entity (nor has such a request been made); and (3) Kunshan Dixon, in this administrative review, maintains that it is only a producer and not an exporter of pencils like Beijing Dixon (*see* Comment 2).

Finally, we disagree with Kunshan Dixon that including Kunshan Dixon in this administrative review is in violation of the law or of Commerce's regulations and practice.[23] Commerce received a timely request, in accordance with 19 CFR 351.213(b), for an administrative review of this AD order.[24] As explained in a letter to Kunshan Dixon, Royal Brush Manufacturing, Inc. (Royal Brush), which requested a review of Kunshan Dixon, certified that it was a domestic interested party pursuant to 19 CFR 351.213(b), and no evidence on the record of this administrative review undermines or calls into question Royal Brush's certified statement.[25] For these reasons, we have not rescinded this administrative review with respect to Kunshan Dixon.

---

[20] *Id*.
[21] *See* Dixon Companies' Case Brief at 6-8.
[22] *See Preliminary CCR*, 80 FR at 2364 (noting that "Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.") and *Final CCR*, 80 FR at 19074 (noting that "We invited comments from interested parties, but no party commented on the *Preliminary Results* or requested a hearing.").
[23] *See* Dixon Companies' Case Brief at 8-9.
[24] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 9297, 9300 (March 14, 2019) (*Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 12200, 12207 n.9 (April 1, 2019); and Royal Brush Manufacturing, Inc.'s Letter, "Certain Cased Pencils from the People's Republic of China: Request for Administrative Review," dated January 25, 2019 (Royal Brush's Review Request).
[25] *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; Royal Brush's Review Request at 1.

Comment 2: Kunshan Dixon's Claim of No Shipments

The Dixon Companies' Arguments[26]

- Assuming, arguendo, that Commerce did not intend to include Kunshan Dixon as the SII to Beijing Dixon, Commerce must still rescind the review because Kunshan Dixon is only a producer and not an exporter of pencils. U.S. Customs and Border Protection (CBP) entry data, placed on the record by Commerce, show that Kunshan Dixon did not export pencils to the United States during the POR.
- Section 351.213(d)(3) of Commerce's regulations states, in relevant part, that Commerce may rescind an administrative review with respect to a particular exporter/producer if it concludes that the exporter/producer had no entries, exports, or sales of subject merchandise during the POR.
- It is Commerce's practice to rescind an administrative review when there are no entries of subject merchandise during the POR, and the U.S. Court of International Trade (CIT) has affirmed this practice.[27]
- Not rescinding the administrative review would be counter to Commerce's regulations, policy, stated practice, and precedent, and places an unnecessary burden on Commerce.

Commerce's Position: We disagree that we should rescind this review on the basis of no shipments. Commerce's practice regarding no-shipment claims requires that, in order to identify that a company had no shipments to the United States during the POR, that company must submit a timely no-shipment certification, which Kunshan Dixon did not do. Indeed, in *Mexico—Welded Pipe* and *Allegheny*, both of which the Dixon companies cite in support of their argument, the companies in question submitted timely no-shipment certifications.

In the *Initiation Notice*, Commerce instructed producers or exporters, for which it initiated a review, that had no shipments during the POR to notify Commerce of the same within 30 days of publication of the *Initiation Notice* in the *Federal Register*. In this case, notifications were due by April 15, 2019. Although three other named companies submitted timely no-shipment certifications,[28] Kunshan Dixon did not, nor did it request an extension to do so. Moreover, Commerce has rejected untimely no shipment certifications where a party has notified Commerce after the established deadline.[29]

---

[26] *See* Dixon Companies' Case Brief at 9-11.

[27] *Id*. at 10 (citing *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Rescission of Antidumping Duty Administrative Review*; 2016-2017, 83 FR 54084 (October 26, 2018) (*Mexico—Welded Pipe*) and *Allegheny Ludlum Corp. v. United States*, 346 F.3d 1368 (CIT 2003) (*Allegheny*)).

[28] *See* Shandong Rongxin Import & Export Co., Ltd.'s Letter, "Cased Pencils from the People's Republic of China: Certification of No Sales and Quantity and Value Response," dated March 18, 2019; *see also* Wah Yuen Stationery Co. Ltd.'s Letter, "Certain Cased Pencils from the People's Republic of China: No Shipment Certification," dated April 15, 2019; Wah Yuen Stationery Co. Ltd.'s Letter, "Certain Cased Pencils from the People's Republic of China: No Shipment Certification," dated April 15, 2019. The request to review these companies was subsequently timely withdrawn prior to the *Preliminary Results*. *See Preliminary Results* and accompanying PDM at 1-2.

[29] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Administrative Review, 2017-2018*, 84 FR 44859 (August 27, 2019) and accompanying IDM at Comment 2 (rejecting a respondent's untimely no shipment letter and deeming it part of the NME-wide entity); *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 21st Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27230 (June 14, 2017) and accompanying IDM at Comment 2 (rejecting

Kunshan Dixon also argues that CBP data filed on Commerce's record (used to choose mandatory respondents) support the claim that it did not have any shipments during the POR.[30] However, even if no entries appear in the results of the initial CBP data query, upon receiving a no-shipment certification, Commerce requests that CBP confirm the veracity of the certification.[31] Commerce has, on occasion, received CBP information that contradicts respondents' no-shipment certifications.[32] Had Kunshan Dixon filed a timely no-shipment certification, Commerce would have inquired about the certification and CBP would have had ample time to investigate. Kunshan Dixon's statement in its case brief that it had no entries during the POR is, thus, an unsubstantiated claim.

Finally, as noted in Comment 3 below, the courts have upheld Commerce's authority to enforce its deadlines in similar circumstances.

Comment 3: Whether Commerce Abused its Discretion

The Dixon Companies' Arguments[33]

- Commerce abused its discretion when it did not permit Kunshan Dixon to file responses to the AD questionnaire; therefore, Commerce should rescind the review.
    - Kunshan Dixon requested an extension of time to submit its response to section A of the questionnaire, but did not receive a response from Commerce regarding this request.
    - A month after Kunshan Dixon submitted its response to section A of the questionnaire, Commerce rejected the questionnaire response, as well as Kunshan Dixon's request to submit responses to sections C and D of the questionnaire.
- Under *Grobest*, while Commerce may enforce its deadlines by rejecting filings, the discretion is not absolute:[34]
    - The rejection resulted in an inaccurate and disproportionate dumping margin;
    - Kunshan Dixon was diligent in submitting its section A response filing as soon as it realized a discrepancy between what it believed was, and Commerce's explanation of, the due date;
    - The late submission was, nevertheless, early enough in the proceeding to have allowed Commerce to achieve a correct result; and

---

a respondent's untimely no shipment letter and deeming it part of the NME-wide entity); *Carbon and Certain Alloy Steel Wire Rod from Mexico: Wire Rod from Mexico 2016-2017*, 83 FR 56800 (November 14, 2018) at 8 (rejecting a respondent's no shipments letter as untimely and applying AFA) (unchanged in *Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 31028 (June 28, 2019)).

[30] *See* Dixon Companies' Case Brief at 9-11.

[31] *See Initiation Notice*, 84 FR at 9297.

[32] *See, e.g.*, *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2016-2017*, 83 FR 65630 (December 21, 2018) and accompany PDM at 7-8; unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 38002 (August 5, 2019) and accompanying IDM.

[33] *See* Dixon Companies' Case Brief at 11-12.

[34] *Id*. (citing *Grobest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342 (CIT 2012) (*Grobest*)).

- The burden on Commerce in considering the late submission would likely have been minimal.

Commerce's Position: We disagree that we abused our discretion to establish and enforce deadlines in this review. Kunshan Dixon submitted a request for an extension of time to file its section A questionnaire response on July 12, 2019, seven days after its section A response was due.[35] In its request, Kunshan Dixon contended that, according to 19 CFR 351.301(c)(1)(i), "the response to initial questionnaires is 30 days from the date of receipt, which is July 12, 2019."[36] In our response, we explained that, 19 CFR 351.301(c)(1)(i) also states that the time limit for responses to individual sections of the questionnaire, if Commerce requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire.[37] Here, Commerce expressly established a July 5, 2019, deadline for a response to section A of the AD questionnaire and set a different deadline for separate responses to sections C and D. These due dates were featured prominently on the first page of the AD questionnaire.[38] Even though Commerce had not yet responded to its untimely extension request, Kunshan Dixon nevertheless submitted a response to section A on July 19, 2019, 14 days after the established due date. Therefore, we rejected and removed the untimely questionnaire response from the record.[39]

As a threshold matter, Commerce provides all interested parties with an opportunity to request an extension of time to file their submissions. Specifically, 19 CFR 351.302(c) states that:

> Before the applicable time limit established under this part expires, a party may request an extension pursuant to paragraph (b) of this section. An untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists. The request must be in writing, in a separate, stand-alone submission, filed consistent with § 351.303, and state the reasons for the request. An extension granted to a party must be approved in writing.
>
> (1) An extension request will be considered untimely if it is received after the applicable time limit expires or as otherwise specified by the Secretary.
>
> (2) An extraordinary circumstance is an unexpected event that:
>
> (i) Could not have been prevented if reasonable measures had been taken, and
>
> (ii) Precludes a party or its representative from timely filing an extension request through all reasonable means.

[35] *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 (Extension Request).
[36] *Id*.
[37] *See* Commerce's Letter, "Rejection of Untimely Section A Questionnaire Response," dated August 20, 2019 (Rejection Letter).
[38] *See* Commerce's Letter, Antidumping Duty Questionnaire, dated June 13, 2019.
[39] *See* Rejection Letter.

Kunshan Dixon's untimely request for an extension did not claim any "extraordinary circumstances" as a reason for its late submission. Kunshan Dixon acknowledged having received the questionnaire on the date it was released via Enforcement and Compliance's AD and Countervailing Duty (CVD) Centralized Electronic Service System.[40] In the cover letter to the questionnaire, Commerce stated the following:

> If you are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response… If Commerce does not receive either the requested information or a written extension request before 5 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding. Commerce will not accept any requested information submitted after the deadline.

Were there any confusion as to the deadline, Kunshan Dixon should have contacted Commerce to clarify what it believed to be the deadline. Accordingly, in *Dongtai Peak,* the U.S. Court of Appeals for the Federal Circuit (CAFC) affirmed that, in the relevant underlying administrative review, Commerce "properly exercised its discretion in rejecting Dongtai Peak's extension requests and Supplemental Responses because: (1) the extension requests were submitted after the established deadline in violation of 19 CFR 351.302(c), and (2) {the respondent} failed to show 'good cause' for an extension as required by 19 CFR 351.302(b)."[41] The CAFC also found that, under certain circumstances, Commerce is not required to justify its rejections of such untimely-filed extension requests or submissions:

> {The respondent} misunderstands its obligation to submit a written extension request before the time limit specified by Commerce and to "state the reasons for the request." {19 CFR 351.302(c).} That is, Commerce was not required to demonstrate good cause for rejecting Dongtai Peak's untimely submissions. As the Government notes, "it is not for Dongtai Peak to establish Commerce's deadlines or to dictate to Commerce whether and when Commerce actually needs the requested information.[42]

Commerce establishes its deadlines and provides sufficient time and opportunity for interested parties to either file a response or request an extension of time prior to the deadline. For example, the *Initiation Notice* explicitly provides notice of opportunity for extensions and addresses firmly when extensions are considered untimely.[43]

---

[40] *See* Extension Request.
[41] *See Dongtai Peak Honey Indus. v. United States*, 777 F.3d 1343, 1351 (CAFC 2015) (*Dongtai Peak*). *See also Seattle Marine Fishing Supply Co. v. United States*, 679 F. Supp. 1119, 1128 (CIT 1998) ("when the time period expires and no response is submitted, '{Commerce} must refuse to consider untimely submitted information and instead rely on the best information available.'").
[42] *See Dongtai Peak*, 777 F.3d at 1352.
[43] *See Initiation Notice*, 84 FR at 9308 ("Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. *See* 19 CFR 351.302. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires.").

The Dixon Companies argue that the circumstances in this administrative review are similar to those in *Grobest*.[44] We disagree. In *Grobest*, the CIT held that Commerce abused its discretion in rejecting a separate rate certification (SRC) that was filed more than seven months before Commerce released its preliminary results.[45] Here, Kunshan Dixon's extension request was submitted less than eighty days before Commerce's deadline for its preliminary results. Further, there is no evidence that Kunshan Dixon demonstrated any diligence in filing a timely request for an extension and, thus, a timely response to section A; as noted, Kunshan Dixon did not communicate with Commerce, in a timely manner, regarding any difficulties in submitting its section A questionnaire response.

In *Grobest*, the CIT weighed "'the burden imposed upon the agency by accepting the late submission,' . . . and 'the need for finality at the final results stage.'"[46] Thus, the facts of that case suggested that the administrative burden of reviewing the SRC rejected by Commerce would not have been great because Commerce had granted the respondent company separate-rate status in the preceding three administrative reviews without needing to conduct a separate-rate analysis.[47] Therefore, the CIT found that, but for the untimeliness of its submission, the respondent would likely have received a separate rate in the segment in question, with minimal administrative burden imposed upon Commerce and, as a result of its rejected submission, was likely assigned an inaccurate and disproportionate margin.[48] Here, because Kunshan Dixon had never before been a respondent in this proceeding, any shipments entering the United States were subject to the China-wide rate. The result of Commerce rejecting Kunshan Dixon's untimely submission maintained the status quo and there is no evidence that this outcome is inaccurate. Further, having not responded to the AD questionnaire, Kunshan Dixon has not established its eligibility for a separate rate and, therefore, remains part of the China-wide entity. Thus, the facts in *Grobest* are distinguishable from the facts in the instant administrative review, because there are no prior reviews indicating that Kunshan Dixon would receive a separate rate, and in all prior reviews, Kunshan Dixon was subject to the China-wide rate.

Furthermore, notwithstanding the distinction between this case and *Grobest*, the case law regarding Commerce's authority to reject untimely-filed submissions is further supported by the CAFC's ruling in *PSC VSMPO*.[49] In *PSC VSMPO*, the CAFC explained that "{t}he role of judicial review is limited to determining whether the record is adequate to support the administrative action. A court cannot set aside application of a proper administrative procedure because it believes that properly excluded evidence would yield a more accurate result if the evidence were considered." The CAFC further held that the CIT's decision to remand Commerce's determination to reject an untimely-filed document "improperly intruded upon Commerce's power to apply its own procedures for the timely resolution of {AD} reviews."[50] Thus, based on the distinctions between this case and *Grobest*, as well as subsequent support

---

[44] *See* Dixon Companies' Case Brief at 11-12.
[45] *See Grobest*, 815 F. Supp. 2d at 1367.
[46] *Id.* at 1365.
[47] *Id.* at 1367.
[48] *Id.*
[49] *See PSC VSMPO-Avisma Corp. v. United States*, 688 F.3d 751, 761 (CAFC 2012) (*PSC VSMPO*).
[50] *Id.*

from the CAFC in *PSC VSMPO*, it was within Commerce's authority to reject Kunshan Dixon's untimely questionnaire response. Accordingly, we find that the circumstances of this case are more comparable with those addressed in *PSC VSMPO* and *Dongtai Peak*, rather than *Grobest*.

In summary, Commerce establishes procedural deadlines to ensure its ability to complete proceedings within statutorily mandated deadlines. The CIT has long recognized the need to establish and enforce time limits for filings, the purpose of which is to aid Commerce in the administration of the AD laws.[51] Therefore, Commerce did not abuse its discretion by rejecting Kunshan Dixon's untimely filed questionnaire response.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of review in the *Federal Register*.

☒ ☐

____________ ____________

Agree Disagree

3/23/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

---

[51] *See Nippon Steel*, 118 F. Supp. 2d at 1377; *see also Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 69644 (November 10, 2015), and accompanying IDM at Comment 19.