



## U.S. Customs and Border Protection

June 26, 2018

### **PUBLIC VERSION**

EAPA Case Number: 7238

Royal Brush Manufacturing, Inc.  
515 W. 45th Street  
Munster, Indiana 46321

### **Re: Notice of Initiation of Investigation and Interim Measures**

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To Whom it May Concern:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”), to determine whether Royal Brush Manufacturing, Inc. (“RBM”), is evading Antidumping Duty Order A-570-827, covering *Cased Pencils from the People's Republic of China* (hereinafter the “Order”).<sup>1</sup> Because the evidence on the record establishes a reasonable suspicion that RBM has entered merchandise covered by the Order into the United States through evasion, CBP has imposed interim measures pursuant to 19 C.F.R. §165.24.

#### **Period of Investigation**

An EAPA investigation covers entries for consumption of allegedly covered merchandise into the customs territory of the United States, made within the one-year period prior to the receipt of the allegation. 19 C.F.R. §165.2. Entry in this context is the entry for consumption, or withdrawal from warehouse for consumption, of merchandise into the customs territory of the United States. *See* 19 C.F.R. §165.1. At its discretion, CBP may also investigate entries of covered merchandise outside of that period. *Id.*

In this case, Dixon Ticonderoga Company (“Dixon” or “Alleger”) filed an EAPA allegation, claiming that RBM had entered cased pencils that were manufactured in China and transshipped through the Philippines (the “Allegation”). CBP acknowledged receipt of the properly filed Allegation on March 6, 2018. Accordingly, the entries covered by this investigation are those that were entered for consumption, or withdrawn from a warehouse for consumption, from March 6, 2017 through the pendency of this investigation. 19 C.F.R. §165.2.

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<sup>1</sup> *Cased Pencils from the People's Republic of China: Antidumping Duty Order*, 59 Fed. Reg. 66909 (Dec. 28, 1994) (hereinafter “Antidumping Duty Order”); *Certain Cased Pencils from the People's Republic of China: Continuation of Antidumping Duty Order*, 82 Fed. Reg. 41608 (Sept. 1, 2017) (extending the antidumping duty rate for pencils covered under case A-570-827).

## **Initiation**

On March 27, 2018, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated an EAPA investigation in response to the Allegation. In the Allegation, Dixon claimed that RBM has imported, and continues to import, different types of cased pencils, including those with colored and variable hardness graphite cores, which were manufactured in China, transshipped through and repackaged in Subic Bay, Philippines, and entered into the customs territory of the United States as a product of the Philippines. Thus, RBM failed to declare the merchandise as subject to the Order, and evaded payment of antidumping (“AD”) duty deposits. *See* Allegation, at 3. Pencils manufactured in China are subject to AD duties under case number A-570-827 if they feature cores of graphite or other materials and are encased in wood and/or man-made materials. Pencils that fall under the scope of the order are properly classified under subheading 9609.10.00 of the Harmonized Tariff schedule of the United States (“HTSUS”),<sup>2</sup> although this classification is not dispositive as to the scope of the Order.<sup>3</sup>

In the Allegation, Dixon provided evidence to support the claim that multiple shipments of cased pencils subject to A-570-827 were made in China by [ ] (hereinafter the “Chinese Manufacturer”) under a purchase contract entered into by [ ] (hereinafter “Trading Company”), with instructions to mark the merchandise as “Made in Philippines.” *See* Allegation, at Exh. 1 (demonstrating a “Purchase Contract” identified by number RT02902, between the Chinese Manufacturer and the Trading Company). The contract applies expressly to item numbers RTN-157, RTN-158, and WPEN-12, which correspond to item numbers used by RBM in its online catalog for colored pencils.<sup>4</sup>

Dixon further alleged that in the transaction documented above, the Trading Company required the products to be certified to U.S. standards for levels of heavy metals and phthalates, and to bear RBM’s trademark “Royal & Langnickel.” *See* Allegation, at Exh. 3 (demonstrating a production order for 278 cartons of RTN 157; 322 cartons of RTN 158; and 139 cartons of WPEN-12, with product specifications and the trademarks indicated therein). Dixon provided documentation wherein the Trading Company specifically instructed the Chinese Manufacturer on how to mark the boxes of the products as “Made in Philippines” for shipment. *See* Allegation, at Exh. 2 (containing marking instructions for boxes in which the items in the contract would be shipped to Subic Bay).

In support of the Allegation, Dixon provided an “Inventory Report” from the Chinese Manufacturer, showing the dates that the indicated batches of colored pencils left the warehouse. *See* Allegation, at Exh. 4 (identifying quantities of 278, 322 and 139, with item numbers matching those indicated in the contract RT02902). Dixon further provided a delivery receipt showing that the same batches of pencils were transferred to the Trading Company with a reduction in price for repacking in the Philippines. *See* Allegation, at Exh. 5. Dixon also provided a copy of the container load plan from Ningbo, China to Subic Bay, Philippines. *See* Allegation, at Exh. 6.

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<sup>2</sup> Subheading 9609.10.0000, HTSUS, provides, in relevant part, for “Pencils . . . : Pencils and crayons, with leads encased in a rigid sheath.”

<sup>3</sup> *See* Antidumping Duty Order, 82 Fed. Reg. 41,608-09.

<sup>4</sup> *See* [http://www.royalbrushstore.com/c/cool-art\\_pencils](http://www.royalbrushstore.com/c/cool-art_pencils) (last viewed June 22, 2018).

Finally, Dixon alleged that the same batches of pencils described above, which originated in China, were imported into the U.S. customs territory by RBM and claimed to be of Philippines origin. *See* Allegation, at Exh. 7 (using publicly available shipping data to show the total amount of cartons matched the sum of the three batches, *i.e.*,  $278 + 322 + 139 = 739$ , with the goods described therein as “pencils (lead encased),” and with indication that they are classifiable under Heading/Subheading 9609.10, HTSUS, and shipped from the Philippines “manufacturer” identified as [ ] (hereinafter the “Shipper in the Philippines”). *See id.*

On March 13, 2018, Dixon supplemented the Allegation with additional evidence (“Supplement”). The additional evidence included a statement of accounts receivable from the alleged Chinese Manufacturer indicating, among other things, that the Trading Company is a regular client, and places orders with instructions to mark the products ordered as “Made in Philippines.” *See* Supplement, at Exh. 3. These materials also implicate additional RBM item numbers, RTN-154 and RTN-155, and indicate that a company named [ ], and an individual [ ] are also involved in transactions for colored pencils provided to RBM through the Trading Company. *See* Supplement, at Exhs. 2-4. These materials show that Trading Company places orders for importers other than RBM, with such products also being required to meet U.S. standards regarding the levels of both heavy metals and phthalates. *See* Supplement, at Exh. 3 (indicating a purchase order for 600 units of colored pencils).

CBP will initiate an EAPA investigation if it determines that that the information provided in the allegation “reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion.” *See* 19 C.F.R. § 165.15(b). Evasion is defined as “the entry of covered merchandise ... by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.” *See* 19 C.F.R. § 165.1. Evasion, for EAPA purposes, does not require the importer to have knowledge of the action or omission that caused the reduction in, or complete failure to pay, antidumping or countervailing duties.

Dixon alleged a specific scheme of evasion through transshipment and supported its claims with documentary evidence. Taken as a whole, the Allegation and accompanying documents reasonably suggest that merchandise covered by the Order had been entered for consumption into the customs territory of the United States through evasion. In light of the above, CBP initiated an investigation, based on the finding that the Allegation reasonably suggested evasion under 19 C.F.R. § 165.15(b).

### **Interim Measures**

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide, based the facts asserted in the allegation as supported by the record evidence uncovered through the investigation, if there is reasonable suspicion that covered merchandise was entered into the customs territory of the United States through evasion. Therefore, CBP need only have sufficient evidence to create a reasonable suspicion that merchandise subject to the indicated antidumping duty or countervailing duty (AD/CVD) order was entered into the U.S. customs territory through a material false statement or act, or material omission, that resulted in a reduction to, or complete

avoidance of, the applicable AD/CVD cash deposits or other security. If reasonable suspicion exists, CBP will impose interim measures to protect the revenue, pursuant to 19 U.S.C. §1517(e) and 19 C.F.R. §165.24. As explained below, CBP is imposing interim measures because there is a reasonable suspicion that RBM entered covered merchandise into the United States through evasion. *See* 19 C.F.R. §165.24(a).

Subsequent to initiation of the investigation, CBP issued a CBP Form 28, Request for Information (“CF28”), to RBM on April 25, 2018. CBP requested full production records for a shipment of art pencils to RBM identified as Entry No. [ ]7828. CBP inspected this shipment, and found the pencils contained therein met the dispositive written description of the merchandise subject to the Order. The pencils were bearing RBM’s trademark of “Royal & Langnickel,” and were identified as “Sketching Pencils,” item number SPEN-12.<sup>5</sup> The shipment was entered on [ ], 2018, and was indicated as having been manufactured by its supplier, the Shipper in the Philippines, [ ], in Subic Bay (hereinafter “Subic Bay facility”).

In a letter dated May 25, 2018, RBM responded to the CF28, providing information and documents relevant to the pencils in Entry No. [ ]7828 (“Response”). In the Response, RBM asserted that the supplier for its pencils, the Shipper in the Philippines [ ], uses wood slats and pencil cores from China, combined with paint and packaging from the Philippines, to manufacture pencils in its Subic Bay facility. *See* Response at 3. Specifically, RBM claimed that the pencils were made according to a standard manufacturing process by RBM’s supplier, the Shipper in the Philippines [ ], at the Subic Bay facility. This process generally involves:

- i) grooving wood slats in preparation for cores;
- ii) filling wood slats with cores, and gluing slats together to create “slat sandwiches”;
- iii) shaping slat sandwiches into raw pencils;
- iv) painting/varnishing each pencil;
- v) stamping logos (if any) onto each pencil;
- vi) sharpening pencils;
- vii) inspecting pencils prior to packaging; and
- viii) placing pencils in final retail packaging.

*See e.g.*, Response, at Exh. 3, Question 4.3 (providing a description of each step in the manufacturing process performed by the Shipper in the Philippines [ ], in the Subic Bay facility).<sup>6</sup>

RBM supported the Response with documents, include purchasing, invoicing, export, shipping, and entry documents, all in reference to a transaction identified by contract number [ ]. These documents confirm that RBM’s pencil supplier, the Shipper in the Philippines [ ], operates in the Subic Bay facility at the following address: [ ]. They also validate that some of the claims made by Dixon in the Allegation, including the involvement of the Trading Company [ ]

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<sup>5</sup> *See e.g.*, [http://www.royalbrushstore.com/products/productdetail/SPEN-12+-+12+PC+SKETCHING+PENCILS/part\\_number=SPEN-12/201.0.1.1.67808.1006207.0.0.0](http://www.royalbrushstore.com/products/productdetail/SPEN-12+-+12+PC+SKETCHING+PENCILS/part_number=SPEN-12/201.0.1.1.67808.1006207.0.0.0) (last viewed June 22, 2018).

<sup>6</sup> *See generally* <https://pencils.com/pencil-making-today-2/> (last viewed June 26, 2018).

], as well as certain terminology and marks used on the documents attached to the Allegation. Moreover, some of the documents appear to undermine the likelihood of actual “manufacturing” having taken place at the Subic Bay facility. A more detailed explanation follows below.

The Response was accompanied by an invoice and bill of lading for a shipment of “Pencil Materials” from the Trading Company [ ] in China to the Shipper in the Philippines [ ] at the Subic Bay facility. The invoice describes “Pencils Materials” to be comprised of [ ] units of pencil slats, [ ] units of colored lead, [ ] units of sketching lead and [ ] units of ferrules. Yet the ratio of slats compared to the units of lead or “cores” does not match with the production process.<sup>7</sup> In addition, the accounting of the cores provided by the Trading Company [ ] to the Shipper in the Philippines [ ] is devoid of detail as to the different colors and hardness of the cores provided. RBM does not sell just one color, nor just one hardness of graphite cored pencil. Rather, RBM offers a range of colors and hardness; typically 12 different colors/hardness per package. Neither the invoice nor the summary shows this complexity.

The Response was also accompanied by two certifications, that both support an origin of China for these pencils. Specifically, there is a third party certification for the item number [ ] of the product involved, indicating that the imported products comply with an array of U.S. safety standards. *See* Response, at Exh. 3, Annex 13. The third party certifier used for this certification, [ ] is located in China, and reviewed the pencils with the understanding that they were of Chinese origin (as specified on the certification). *See id.* Moreover, the date of submission for testing is listed as [ ], 2018, which would be after the products had made entry into the United States, and thus *after* the CF28 was issued to RBM.

On June 6, 2018, the CBP Attaché for the region that includes the Philippines conducted an unannounced on-site visit at the Subic Bay facility. Throughout this visit, the CBP Attaché witnessed the staff at the facility making minor alterations (*e.g.*, sharpening) to fully manufactured pencils. The Attaché did not witness any substantial manufacturing, and found no significant evidence of the raw materials necessary to manufacture pencils according to the process indicated by RBM in the Response. Moreover, the manufacturing equipment represented as being in use at the Subic Bay facility, both in the Response and on the website for the Shipper in the Philippines [ ], had been dormant for some time evidenced by the covering of dust and cobwebs on the machines.

In addition to the absence of any apparent manufacturing operations, the Attaché also observed evidence of repacking operations for finished pencils from China at the Subic Bay facility. The Attaché found numerous boxes onsite, indicating the origin as China and filled with fully manufactured pencils. Moreover, the Attaché witnessed staff repacking what were indicated as Chinese origin products into boxes labeled, “Made in Philippines” for export to other U.S. companies such as [ ]. Included in these outbound shipments

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<sup>7</sup> Generally, and in the images provided by the Shipper in the Philippines [ ], two pencil slats come together to form a “pencil sandwich” that ultimately yields at least 6 pencils. This process implies that a typical slat-to-core ratio should be, at a minimum, 2 slats for every 6 cores. *See* Response, at Exh. 3, Annex 12a. The invoice from the Shipper in the Philippines [ ], and the “Bill of Materials” provided by RBM indicate a ratio of approximately [ ] slats to [ ] core. *See* Response, at Exh. 3, Annexes 9 and 9a.

were boxes marked for RBM, in the manner indicated in the Allegation, identifying item number [ ], and identifying PO[ ].

In this case, the evidence provided through the site visit to the Shipper in the Philippines [ ] at the Subic Bay facility, as well as the documents provided through RBM's Response, and the documents provided by Dixon in support of the Allegation, collectively create a reasonable suspicion as to evasion. Specifically, the evidence provides a reasonable suspicion that cased pencils, within the scope of A-570-827, were manufactured in China, falsely marked as being of Philippines origin, and shipped to the United States, where they were not entered as Type 03, resulting in the non-payment of AD duties. CBP therefore concludes that there is a reasonable suspicion that RBM has entered covered merchandise into the customs territory of the United States through evasion. *See* 19 U.S.C. § 1517(e); 19 C.F.R. §165.24(a). As such, and as further explained below, CBP has imposed interim measures on relevant shipments of merchandise.

As interim measures, CBP is directing that all unliquidated entries of imported merchandise under this investigation that entered the United States as not subject to AD duties will be rate-adjusted to reflect that they are subject to the Order, and cash deposits are now required. Additionally, "live entry" is required for all future imports of products believed to be cased pencils by RBM, requiring that all entry documents and duties must be provided before cargo is released by CBP into U.S. commerce. CBP will reject any entry summaries and require a refile for those that are within the entry summary reject period, as Type 03, with appropriate AD cash deposits. CBP will further suspend the liquidation for any entry that has entered on or after March 27, 2018, the date of initiation of this investigation; and, CBP will extend the liquidation period for all unliquidated entries that entered before that date. *See* 19 C.F.R. §165.24(b)(1)(i) and (ii). Moreover, CBP will evaluate RBM's continuous bonds and will require single transaction bonds as appropriate.

For any future submissions or factual information that you would like to submit to CBP pursuant to this EAPA investigation, please provide a public version document to CBP at the same time as to the Alleger by serving on Alleger's counsel at [felicia.nowels@akerman.com](mailto:felicia.nowels@akerman.com). *See* 19 C.F.R. §§165.4, 165.23(c), and 165.26. Should you have any questions regarding this investigation, please feel free to contact TRLED at [epallegations@cbp.dhs.gov](mailto:epallegations@cbp.dhs.gov).

Please include "EAPA Case Number 7238" in the subject line of your email. Additional information on EAPA investigations, including the applicable statute and regulations, may be found on CBP's website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,



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