



## U.S. Customs and Border Protection

### PUBLIC VERSION

April 24, 2024

#### Via Email

Ebuy Enterprises Limited  
RM 401 4/F Wanchai Central Bldg 89  
Lockhart Rd  
Wan Chai, Hong Kong  
[lijia@sinoebuy.com](mailto:lijia@sinoebuy.com)

Highland USA International Inc.  
41-12A Main Street, Num D09  
Flushing, NY, 11355-3133  
[highland1919@outlook.com](mailto:highland1919@outlook.com)

Matthew Kanna, Esq.  
Greenburg Traurig LLP  
On behalf of CP Kelco U.S., Inc.  
2101 L St., N.W. Suite 1000  
Washington, DC, 20037  
[kannam@gtlaw.com](mailto:kannam@gtlaw.com)

### **Re: Notice of Determination as to Evasion - EAPA Consolidated Case 7813**

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To the Representatives and Counsel of the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Consolidated Case 7813, U.S. Customs and Border Protection (“CBP”) has determined there is substantial evidence that Ebuy Enterprises Limited (“Ebuy”) and Highland USA International, Inc. (“Highland”), collectively the “Importers,” entered merchandise covered by antidumping duty (“AD”) order A-570-985 (the “*Order*”) on xanthan gum from the People’s Republic of China (“China”)<sup>1</sup> into the customs territory of the United States through evasion.

Substantial evidence demonstrates that Ebuy and Highland evaded the *Order* by transshipping Chinese-origin xanthan gum, covered merchandise, through Malaysia and declaring the entries as Malaysian-origin, resulting in no cash deposits being collected on the merchandise. The basis for CBP’s determination is explained in detail below.

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<sup>1</sup> See *Xanthan Gum from the People’s Republic of China: Antidumping Duty Order*, 78 FR 43,143 (Dep’t Commerce July 19, 2013) (the “*Order*”).

**I. Background & Procedural History (Pre-Interim Measures)**

*Allegation, Formal Receipt, and Initiation*

On March 2, 2023, CP Kelco U.S., Inc. (the “Alleger” or “CP Kelco”)<sup>2</sup> filed an EAPA allegation through counsel claiming that U.S. importer Sxcus Global Inc. (“Sxcus”) was evading AD order A-570-985 on xanthan gum (“xanthan gum” or “the covered merchandise”) from China (EAPA Case No. 7813). On April 12, 2023, the Alleger amended its EAPA allegation to clarify that Ebuy was the importer and Sxcus was the consignee.<sup>3</sup> On May 23, 2023, CP Kelco filed a similar but separate EAPA allegation pertaining to a different U.S. importer, Highland (EAPA Case Number 7825).<sup>4</sup> In both allegations, CP Kelco alleged that available information reasonably suggests that Ebuy and Highland evaded the *Order* by transshipping Chinese-origin xanthan gum through Malaysia. The Trade Remedy Law Enforcement Directorate (“TRLED”) acknowledged receipt of the Alleger’s properly filed EAPA allegations pertaining to Ebuy and Highland on May 31, 2023, and June 15, 2023, respectively. On September 27, 2023, in accordance with 19 C.F.R. § 165.13(b), CBP found factors warranting consolidation were present in EAPA Case Numbers 7813 and 7825. These investigations were consolidated as EAPA Consolidated Case 7813.<sup>5</sup>

*Ebuy*

According to the EAPA allegations filed by CP Kelco,<sup>6</sup> Habita Food Industries Sdn. Bhd. (“Habita”), which is located in Bukit Mertajam, Malaysia, has exported significant quantities of xanthan gum to the United States.<sup>7</sup> The Alleger provided import data to support its claim that Habita exported significant quantities of xanthan gum to consignee Sxcus.<sup>8</sup> The Alleger also provided trade data that shows a single shipment of xanthan gum, reported as being Indian in origin, departing Yantian, China, which was routed through Port Klang, Malaysia, before arriving in Houston, Texas.<sup>9</sup>

Furthermore, the Alleger asserted that xanthan gum cannot be of either Indian-origin or Malaysian-origin. The Alleger provided an affidavit from a Senior Director at CP Kelco who is familiar with the global xanthan gum market, stating the product is only manufactured in four

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<sup>2</sup> See Letter from the CP Kelco, “Xanthan Gum from the People’s Republic of China: Evasion of Antidumping Order via Transshipment through Malaysia,” dated March 2, 2023 (“Ebuy Allegation”) at 2. The alleger is a U.S. producer of domestic like product in the United States and is also a U.S. importer of subject merchandise; thus, pursuant to 19 C.F.R. § 165.1, the alleger meets the definition of an interested party that is permitted to submit an EAPA allegation.

<sup>3</sup> See letter from the Alleger “Xanthan Gum from the People’s Republic of China: Supplement to EAPA Case #7813,” dated April 12, 2023 (Allegation Supplement).

<sup>4</sup> See Letter from the CP Kelco, “Xanthan Gum from the People’s Republic of China: Evasion of Antidumping Order via Transshipment through Malaysia,” dated May 23, 2023 (“Highland Allegation”) at 2.

<sup>5</sup> See TRLED’s letter, “RE: Notice of Initiation if Investigation and Interim Measures – EAPA Consolidated Case Number 7813,” dated September 27, 2023 (“NOI”).

<sup>6</sup> See Ebuy Allegation at 2.

<sup>7</sup> *Id.* at 4 and Attachment 1.

<sup>8</sup> *Id.* at 4-5 and Attachment 2.

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

countries worldwide: Austria, France, China, and the United States.<sup>10</sup> The Allegor substantiated this statement by providing documentation from the United States International Trade Commission (ITC) corroborating this information.<sup>11</sup> Furthermore, the Allegor stated that neither Sxcus nor Habita advertise on the internet that they produce and/or sell xanthan gum.<sup>12</sup> The Allegor previously filed an EAPA allegation of evasion of Chinese-origin xanthan gum transshipped through Malaysia.<sup>13</sup> As a result, the Allegor stated that there are no xanthan gum producers in either India or Malaysia.<sup>14</sup> Finally, the Allegor provided trade data that shows China is the largest supplier of xanthan gum to Malaysia, accounting for approximately 54.19% of all Malaysian imports.<sup>15</sup> The Allegor stated that due to the aforementioned information, any exports of xanthan gum from Malaysia are likely of Chinese origin.<sup>16</sup>

On April 12, 2023, based on a review of publicly available trade data, the Allegor amended its allegation to state that Ebuy was the importer in the alleged evasion scheme by Sxcus and Habita.<sup>17</sup> The Allegor stated that Ebuy, Habita, and Sxcus have had a long-standing commercial relationship.<sup>18</sup> The Allegor provided trade data that shows Ebuy was the notifying party for many shipments of different food additives shipped by Habita to Sxcus from 2018 through 2022.<sup>19</sup> As a result, the Allegor claimed Ebuy is acting as the importer of record for certain commercial shipments to Sxcus from Habita, including shipments of xanthan gum.<sup>20</sup>

Therefore, the Allegor asserted that its evidence reasonably suggests that Ebuy is transshipping Chinese-origin xanthan gum through Malaysia to the United States to avoid paying duties pursuant to the *Order*.

### *Highland*

Like the Ebuy allegation, the Allegor claimed Highland is importing Chinese-origin xanthan gum that has been transshipped from China through Malaysia by Habita and declaring the imports of covered merchandise into the United States as Malaysian-origin, not subject to AD duties.<sup>21</sup> To support this contention, the allegation included Malaysian import data showing that China is the source country for over half of all Malaysian imports of Malaysian Harmonized System (“HS”) code 3913909000. The Allegation further explained that this Malaysian HS code is a broad category that includes xanthan gum.<sup>22</sup>

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<sup>10</sup> *Id.* at 5 and Attachment 5.

<sup>11</sup> *Id.* at 5-6 and Attachment 6.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 4. In the Ebuy Allegation the Allegor stated “numerous EAPA allegations,” but it only cited to EAPA case 7281, which CBP found that Malaysia had no xanthan gum producers.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 6 and Attachment 7.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at Attachment 3.

<sup>18</sup> *See* Allegation Supplement at 4.

<sup>19</sup> *Id.* at 4 and Attachment 4.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *See* Highland Allegation at 1 and 3-4.

<sup>22</sup> *Id.* at 6-7 and Attachment 8.

The allegation included the ITC 2018 report on xanthan gum originating from China, similar to that provided with the Ebuy allegation, showing that Malaysia is not a significant exporter of xanthan gum. This report further showed that during the original ITC investigation, production of xanthan gum occurred in only four countries: China, France, Austria, and the United States.<sup>23</sup> CP Kelco provided an affidavit from the Allegor’s Senior Director of Biogum Platforms asserting that Malaysia has no xanthan gum production.<sup>24</sup>

Further, CP Kelco provided a credit report and company profile for Habita that shows it is likely a grocery wholesaler, rather than a xanthan gum producer.<sup>25</sup> In addition, the Allegation also included U.S. import shipment data from Descartes Datamyne showing that Highland was the recipient of shipments of merchandise described as xanthan gum with Habita as the shipper.<sup>26</sup> Thus, the allegation reasonably suggested that Highland imported xanthan gum into the United States that was declared as Malaysian-origin even though Malaysia has no known xanthan gum production, and the declared manufacturer is likely a grocery wholesaler.

TRLED will initiate an investigation if it determines that “{t}he 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....”<sup>27</sup> Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption 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 covered merchandise.”<sup>28</sup> Thus, the allegation must reasonably suggest not only that the Importer entered merchandise subject to an AD and/or countervailing duty (“CVD”) order into the United States, but that such entry was made by a materially false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD/CVD cash deposits or other security.

In assessing the claims made and evidence provided in the allegations described above, TRLED found the allegations reasonably suggested that Ebuy and Highland have evaded AD order A-570-985 by transshipping Chinese-origin xanthan gum through Malaysia and importing this merchandise to the United States without declaring the merchandise subject to the *Order*. Consequently, the investigation pertaining to Ebuy was initiated on June 22, 2023, and the investigation pertaining to Highland was initiated on July 7, 2023.

#### *CBP Form 28 Requests for Information*

After initiating these EAPA investigations, CBP issued CBP Form 28 (“CF-28”) requests for information (“RFI”) to Ebuy and Highland for entries made during the periods of investigation

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<sup>23</sup> *Id.* at and Attachment 7, page 13, and 1-11.

<sup>24</sup> *Id.* at 6 and Attachment 6.

<sup>25</sup> *Id.* at Attachment 5.

<sup>26</sup> *Id.* at Attachment 2. CBP confirmed this information from CBP sources.

<sup>27</sup> See 19 C.F.R. § 165.15(b); see also 19 U.S.C. § 1517(b)(1).

<sup>28</sup> See 19 C.F.R. § 165.1; see also 19 U.S.C. § 1517(a)(5)(A).

(“POIs”).<sup>29</sup> Specifically, on July 6, 2023, a CF-28 was issued to Ebuy for entry number [ # ] 3672. On July 18, 2023, a CF-28 was issued to Highland for entry number [ # ] 0355. The CF-28s included requests for production information including, but not limited to:

- Photographs and a description of equipment used in the production of xanthan gum;
- Production records;
- Details regarding the production process from start to finish;
- Invoices for all raw materials used to produce xanthan gum;
- Documents related to transportation and container load plans;
- Factory production records, (e.g., stamped timecards, work orders, purchase orders to produce the final shipment of xanthan gum) at Habita Food Industries Sdn Bhd.;
- Company-specific histories; and
- The name(s) of owners, corporate officers, forwarding agents, subcontractors, and intermediaries involved and their contact information.

Importantly, this information could have enabled CBP to verify factory capabilities, production processes, country of origin, and confirm the identity of the manufacturer of the imported merchandise.

However, CBP did not receive a response from either importer. Consequently, CBP issued Ebuy a proposed Notice of Action, CBP Form 29 (“CF-29”), on August 14, 2023, and CBP issued Highland a proposed CF-29 on August 22, 2023.<sup>30</sup> The CF-29s advised each Importer that failure to provide information requested in the CF-28 requests, which were issued in connection with CBP’s attempt to verify the origin and validity of referenced entries, within 10 days would result in rate advancement for the entries and a bill would be issued for the duties owed. Again, CBP did not receive a response from either importer, though the broker for at least one importer apparently received the Notice according to an email read receipt.<sup>31</sup> Given that no CF-28 or CF-29 responses were received from either importer, CBP was unable to confirm whether the xanthan gum associated with the entries subject to the CF-28 requests for information are produced in Malaysia.

#### *Other Information acquired and considered by CBP*

According to apparent affiliate of Ebuy, Anhui Ebuy International Co., Ltd.’s (“Anhui Ebuy”) website, it is a Chinese producer of xanthan gum and other products that are of Chinese-origin.<sup>32</sup> Additionally, Anhui Ebuy’s web-based contact page has U.S. Importer Ebuy Enterprises Limited’s physical address matching the address provided for Ebuy by CP Kelco.<sup>33</sup> Also, printouts of a commercial real estate website of Ebuy’s address in the WanChai Central Building

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<sup>29</sup> See CF-28s issued to Ebuy and Highland, dated July 6, 2023, and July 18, 2023, respectively.

<sup>30</sup> See CF-29s issued to Ebuy and Highland, dated August 14, 2023, and August 22, 2023, respectively.

<sup>31</sup> See “Read: Copy of Form 29 for [ # ] 0355,” dated August 22, 2023.

<sup>32</sup> See CBP Memorandum to the File “EAPA Inv. No. 7813: Ebuy Enterprises Limited,” dated June 30, 2023 (“Memo to File”) at Attachment 1.

<sup>33</sup> See Allegation Supplement at 2.

shows that it is an office building, located in the WanChai central business district of Hong Kong, China, not a factory.<sup>34</sup>

In addition, the address provided by the Allegor for Habita Food Industries is No. 21<sup>st</sup> Floor, Lorong Sepakat Satu, Taman Bandar Raya, 14000 Bukit Mertajam, Malaysia.<sup>35</sup> An alternative spelling of Habita's address would be No. 21<sup>st</sup> Floor, Lorong Sepakat 1, Taman Bandaraya, 14000 Bukit Mertajam Malaysia.<sup>36</sup> Google Maps' Street View shows the address is for a restaurant with possible living quarters above. Furthermore, a printout of a restaurant review shows the address listed in the Allegation and associated pictures match the Google Maps' Street View. In short, there is no photographic evidence to suggest the presence of a xanthan gum production factory at that address. This information corroborates the Allegation's claim that Habita did not produce the xanthan gum in Malaysia that Habita sold to Ebuy. The fact that Ebuy appears to be affiliated with a Chinese xanthan gum producer, combined with the fact that there is no evidence on the record that Habita could have produced the xanthan gum in Malaysia, indicates that Habita likely provided Chinese-origin xanthan gum to Ebuy.

## **II. Interim Measures**

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based on the record evidence if there is reasonable suspicion that such merchandise covered by the *Order* was entered into the United States through evasion. CBP need only have sufficient evidence to support a reasonable suspicion that the importer alleged to be evading entered merchandise covered by an AD and/or CVD order into the customs territory of the United States by a materially false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD and/or CVD cash deposits or other security. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 U.S.C. § 1517(e) and 19 CFR § 165.24.

In assessing the Allegation, CBP determined that the information submitted by CP Kelco reasonably suggested that Ebuy and Highland entered merchandise covered by A-570-985 into the customs territory of the United States through evasion. Consequently, CBP imposed interim measures on September 20, 2023.<sup>37</sup>

### *Notice of Initiation of Investigation and Enactment of Interim Measures*

Based on the record evidence through September 20, 2023, which is described in detail above, CBP determined that reasonable suspicion existed that Ebuy and Highland entered covered merchandise into the United States and evaded the *Order* by declaring entries of Chinese-origin xanthan gum as having a country of origin of Malaysia.<sup>38</sup>

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<sup>34</sup> See Memo to File, Attachment 2, dated July 30, 2023.

<sup>35</sup> See Ebuy Allegation at 3.

<sup>36</sup> See Memo to File, Attachment 3, dated July 30, 2023.

<sup>37</sup> See TRLED's letter, "RE: Notice of Initiation if Investigation and Interim Measures – EAPA Consolidated Case Number 7813," dated September 27, 2023. See also TRLED's Email, "EAPA Consolidated Case No. 7813: Notice of Enactment of Interim Measures," dated September 20, 2023.

<sup>38</sup> See NOI.

In accordance with 19 U.S.C. § 1517(e)(1)-(3), CBP suspended the liquidation of each unliquidated entry of covered merchandise that entered on or after June 22, 2023, the date of the initiation of the Ebuy investigation and July 10, 2023, the date of initiation of the Highland investigation; extended the period for liquidating each unliquidated entry of covered merchandise that entered before the date of the initiation of the investigation; and took additional measures necessary to protect the revenue of the United States. On September 27, 2023, interested parties were notified that CBP had commenced a formal EAPA investigation of Ebuy and Highland and that interim measures had been enacted.<sup>39</sup>

### **III. Post-Interim Measures**

#### *Requests for Information & Written Arguments*

On October 13, 2023, CBP issued RFIs to Ebuy, Highland, and Habita via email.<sup>40</sup> These entities were advised to respond to the RFI's by October 27, 2023. These entities failed to supply any responses to CBP's questions. On November 14, 2023, CBP afforded these entities an additional opportunity to respond by sending the original RFIs via Fedex, with delivery confirmation receipt. Despite confirmation of receipt by Highland and Habita,<sup>41</sup> these entities, again, failed to respond. Through the date of this determination, Ebuy, Highland, and Habita have failed to provide any information to CBP that would contradict CP Kelco's allegations or provide explanations to alleviate suspicion of evasion as expounded upon throughout this Notice.

#### *Analysis*

Because Ebuy, Highland, and Habita never responded to CBP's RFIs, TRLED's ability to obtain information for its investigation was impeded significantly. Similarly, interested parties failed to submit written arguments. Again, by failing to do so, Ebuy and Highland missed another opportunity to potentially refute the allegations giving rise to the consolidated investigation and put forth arguments to rebut the evidence on the record. EAPA's regulations at 19 C.F.R. § 165.6(a) state that if "the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion...."<sup>42</sup>

Because Ebuy, Highland, and Habita all failed to respond to CBP's RFIs in the multiple instances described above, CBP finds that these entities have not cooperated and complied with CBP's RFIs during the underlying investigation to the best of their abilities. These entities are all either importers or foreign producers or exporters falling under 19 C.F.R. § 165.6(a). As such, CBP is drawing inferences adverse to the interests of Ebuy and Highland and relying on information submitted to CBP in the Allegations and other information uncovered during CBP's

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<sup>39</sup> *Id.*

<sup>40</sup> See Letter from CBP to Ebuy, "TRA - Request for Information to Ebuy," dated October 13, 2023; see also Letter from CBP to Highland, "TRA - Request for Information to Highland," dated October 13, 2023; see also Letter from CBP to Habita, "TRA - Request for Information to Habita," dated October 13, 2023.

<sup>41</sup> See CBP Memorandum to the File, "Proof of RFI Delivery," dated November 21, 2023.

<sup>42</sup> See also 19 U.S.C. § 1517(c)(3)(A).

investigation as described below.<sup>43</sup>

Under 19 U.S.C. § 1517(c)(1)(A), to reach a final determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption 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 of any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”<sup>44</sup> As discussed in this determination, the record of this investigation contains substantial evidence that covered merchandise was entered by Ebuy and Highland into the United States through evasion.

Drawing inferences adverse to the interests of Ebuy and Highland in selecting from the evidence on the record, CBP finds that Ebuy and Highland entered covered merchandise into the United States through evasion. In reaching its determination, TRLED relied on information on the record including, but not limited to:

- The history of xanthan gum being transshipped through Malaysia;<sup>45</sup>
- Trade data provided by the Alleger that shows shipments of xanthan gum from China through Malaysia to the United States;<sup>46</sup>
- Affidavits provided in the allegations;
- Past EAPA investigations involving xanthan gum evasion schemes;
- The ITC report showing that xanthan gum is not produced in either India or Malaysia;<sup>47</sup> and
- Trade data reasonably available to the Alleger and submitted to CBP showed a long-standing commercial relationship between Ebuy, Habita, and Sxcus.<sup>48</sup>

CBP also relies on independently conducted research of publicly available information that found a clear connection between Chinese-based Anhui Ebuy and Ebuy, which apparently share the same physical address. Mapping data suggests Ebuy operates out of an office building rather than a factory capable of producing commercial quantities of xanthan gum, and additional mapping data suggests Habita is likely a restaurant rather than a facility that produces xanthan gum. These facts corroborate the Alleger’s assertion that Habita has no xanthan gum production in Malaysia and that the xanthan gum Ebuy imported from Habita was likely Chinese in origin.

The Importers failed to respond to CBP’s CF-28s, RFIs and CF-29s, thereby failing to provide documentation that CBP requested regarding information about its raw materials included in the production of xanthan gum, *i.e.*, invoices, purchase orders, payments, and factory information,

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<sup>43</sup> See 19 U.S.C. § 1517(c)(3)(B)-(C); *see also* 19 CFR 165.6(c); *see also* the Allegations.

<sup>44</sup> See 19 C.F.R. § 165.1; *see also* 19 U.S.C. § 1517(a)(5)(A).

<sup>45</sup> See Highland Allegation at 4 and Attachment 2. *See also* Notice of Determination as to Evasion for EAPA 7282, dated March 9, 2020.

<sup>46</sup> See Highland Allegation at Attachment 2.

<sup>47</sup> See Highland Allegation at 5-6 and Attachment 5-6. *See also* Ebuy Allegation at Attachment 5.

<sup>48</sup> See Ebuy Allegation Supplement at 4.



time sheets, inventory records, packing materials, and shipping documents. The Importers failed to provide any information to CBP that would contradict CP Kelco's allegations or provide explanations to alleviate suspicion of evasion as expounded upon throughout this Notice. In addition, Ebuy, Highland, and Habita failed to provide the requested accounting and production documentation, such as raw material purchasing invoices, raw material payments, production records, timecards, pay roll records, *etc.*, to support the allegation that the xanthan gum was not produced in China. Given this gap in the record, CBP relied on the above-mentioned evidence present on the record from the Allegations and CBP's own research.

**IV. Determination as to Evasion**

As detailed above, the record establishes that there is substantial evidence that Ebuy and Highland entered covered merchandise into the United States and evaded the *Orders* by declaring entries of Chinese-origin xanthan gum as having a country of origin of Malaysia.

*Actions Taken Pursuant to the Affirmative Determination as to Evasion*

In light of CBP's determination that substantial evidence demonstrates that Ebuy and Highland entered covered merchandise into the customs territory of the United States through evasion, CBP will take action, as applicable, pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28. CBP will suspend or continue to suspend the liquidation of all entries imported by the Importers that are subject to this EAPA investigation, until instructed to liquidate these entries by the Department of Commerce. For those entries previously extended in accordance with Interim Measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries by the Department of Commerce. CBP will also continue to evaluate the importers' continuous bonds in accordance with CBP's policies. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



Victoria Cho  
Director, Enforcement Operations Division  
Trade Remedy Law Enforcement Directorate  
Office of Trade  
U.S. Customs and Border Protection