



U.S. Customs and Border Protection

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EAPA Case No. 7830

PUBLIC VERSION

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Re: Notice of Determination as to Evasion

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7830, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that ADI ChemTech LLC (ADI ChemTech or Importer) entered merchandise covered by antidumping (AD) duty order A-570-985 on xanthan gum from the People's Republic of China (China)¹ into the customs territory of the United States through evasion. Substantial evidence demonstrates that ADI ChemTech transshipped Chinese-origin xanthan gum through India and then both claimed the merchandise was of Indian origin and failed to declare that the merchandise was subject to the *AD Order* upon entry. As a result, no cash deposits were collected on the merchandise.

Background

On July 11, 2023, CP Kelco U.S. Inc. (CP Kelco or Alleger), a producer of domestic like product, xanthan gum, in the United States, filed an EAPA allegation through its legal counsel against ADI ChemTech.² The Allegation asserted that ADI ChemTech evaded the *AD Order* by importing Chinese-origin xanthan gum into the United States that was transshipped through India by its supplier, Prachin Chemical (Prachin), and not declaring that it was subject to the *AD*

¹ See *Xanthan Gum From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 43,143 (July 19, 2013) (*AD Order*).

² Pursuant to 19 C.F.R. §§ 165.1(2) and 165.11(a), CP Kelco meets the definition of an interested party that is permitted to submit an EAPA allegation.

Order.³ CBP acknowledged receipt of the properly filed allegation against ADI ChemTech on August 16, 2023.⁴

The CP Kelco Allegation included an affidavit from Shaw Gilmer, who, in his position as Senior Director of Biogum Strategic Platforms at CP Kelco, claimed to be familiar with global production and supply of xanthan gum.⁵ Mr. Gilmer attested that xanthan gum is only manufactured in four countries worldwide and this assertion was supported by the United States International Trade Commission's (ITC) 2018 report on xanthan gum from China, which states that xanthan gum is only produced in Austria, France, China, and the United States.⁶ The CP Kelco Allegation also provided evidence that if not made in India, the xanthan gum ADI ChemTech imported from Prachin was most likely Chinese-origin by providing Indian import statistics showing that 81.2 percent of all Indian imports of xanthan gum were Chinese-origin.⁷ CBP found the information in the CP Kelco Allegation reasonably suggested that ADI ChemTech entered covered merchandise for consumption into the customs territory of the United States through evasion. Consequently, on September 5, 2023, CBP initiated an EAPA investigation pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.⁸ The entries covered by the period of investigation (POI) are those entered for consumption, or withdrawn from warehouse for consumption, from August 16, 2022, through the pendency of this investigation.⁹

CF- 28

On September 15, 2023, CBP issued CF-28 questionnaires to ADI ChemTech concerning entries of xanthan gum, entered within the POI, requesting *inter alia*, photographs and a description of equipment used in the production of xanthan gum, factory production records (*e.g.*, stamped timecards, work orders) for the manufacturer of the xanthan gum, details regarding the production process from start to finish, invoices for all raw materials used to produce the xanthan gum, and other entry transaction information.¹⁰ We also requested payment information including proof of payment that would tie the purchase invoices from the manufacturer. If invoices were paid in bulk processing, CBP requested supporting schedules listing the invoice numbers and itemized in-bulk payment requests from the manufacturer.¹¹ ADI ChemTech provided a response to the CF-28s between October 18 – 20, 2023.¹² In response to the request for entry transaction information, ADI ChemTech provided a CF7501, invoice/packing list, bill of lading, insurance information, country of origin certificate and fumigation certification for each entry.¹³ ADI ChemTech did not submit any of the payment information that CBP

³ See Letter from the Alleger, "Xanthan Gum from the People's Republic of China: Evasion of Antidumping Order via Transshipment through India," dated July 11, 2023 (CP Kelco Allegation).

⁴ See CBP's email entitled "EAPA 7830: Receipt of Properly Filed Allegation," dated August 16, 2023.

⁵ See CP Kelco Allegation at Attachment 9.

⁶ *Id.* at Attachment 9 and 10.

⁷ *Id.* at 8 and Attachment 11.

⁸ See 19 U.S.C. § 1517(b)(1); see also 19 C.F.R. § 165.15; and CBP's memorandum, "Initiation of Investigation for EAPA Case Number 7830," dated September 5, 2023 (Initiation).

⁹ See 19 CFR 165.2.

¹⁰ See CF-28s issued to ADI ChemTech, dated September 15, 2023.

¹¹ *Id.*

¹² See ADI ChemTech's CF-28 Response, dated April 11, 2024 (ADI ChemTech's CF-28 Response). We note that ADI ChemTech originally submitted their CF-28 responses to CBP between October 18 – 20, 2023. On April 3, 2024, CBP requested ADI ChemTech to bracket and create business confidential and public versions of the original CF-28 response and ADI ChemTech complied.

¹³ *Id.* The documents for Entry 7823 did not include shipment insurance information.

requested. Notably, the documentation submitted by ADI ChemTech indicates each entry was for xanthan gum and that the country of origin was claimed as India on the entry summary.¹⁴

In response to CBP's request for production information, ADI ChemTech submitted a simple production flow chart; however, the chart did not demonstrate how raw materials were tied to the finished xanthan gum.¹⁵ In fact, no raw materials were listed at all, which could be an indication that no raw materials were consumed. ADI ChemTech submitted a single photograph of a machine called "blended screening;" however, this step does not appear in the production flowchart.¹⁶ The photograph shows that the "blended screening" machine appears to be in a warehouse area and it is not clear from the photograph that the machine is connected to a power supply.¹⁷ The ADI ChemTech CF-28 response contains a video illustrating Prachin's production of *pharmaceutical excipients*, but makes no mention of xanthan gum manufacturing.¹⁸ Regarding the rest of the questions concerning the production of xanthan gum, Prachin stated to ADI ChemTech in an email that the requested information is confidential and cannot be shared.¹⁹

ADI ChemTech's CF-28 Response contains no information on the equipment used in the production of xanthan gum beyond the above cursory references to "blended screening" and a simple production flow chart that does not align with the use of "blended screening," no production records or capacity information, no documentation which traces raw materials through the production process to the entries in question, no list of raw materials used to produce xanthan gum or the requested raw material invoices, and no documents related to transportation and container load plans.

Interim Measures

After evaluating the information on the record, CBP determined that reasonable suspicion existed that ADI ChemTech imported xanthan gum into the United States through evasion. CBP based its reasonable suspicion determination on the information submitted by the Alleger in the CP Kelco Allegation and ADI ChemTech's CF-28 Response.²⁰ Specifically, the affidavits provided in the CP Kelco Allegation, and the applicable ITC report, show that xanthan gum is not produced in India.²¹ The trade data reasonably available to CP Kelco and submitted to CBP show China as the largest exporter of xanthan gum to India, accounting for approximately 81.2 percent by volume in 2023, providing further support that Chinese-origin xanthan gum was transshipped through India to the United States.²² In addition, ADI ChemTech's CF-28 Response did not provide any information to CBP that would contradict CP Kelco's Allegation, or provide explanations to alleviate the reasonable suspicion of evasion.²³ Consequently, on December 11, 2023, CBP issued a notice of initiation of investigation and interim measures, which further outlines the basis for CBP's reasonable suspicion determination.²⁴

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See "Notice of Initiation of Investigation and Interim Measures: EAPA Case 7830," dated December 11, 2023 (NOI) at 1 - 5.

²¹ See CP Kelco Allegation at 7 – 8 and Attachment 9.

²² See CP Kelco Allegation at 8 and Attachment 11.

²³ See ADI ChemTech's CF-28 Response.

²⁴ See NOI.

Request for Information

Also on December 11, 2023, pursuant to 19 C.F.R. § 165.5, CBP issued a request for information (RFI) to ADI ChemTech.²⁵ CBP asked ADI ChemTech about its organizational structure and requested that it provide documents including CBP form 7501 entry summaries (7501), packing lists, invoices, country of origin certificates, bills of lading and purchase orders documenting the purchase of xanthan gum for five entries during the POI, its sourcing of the xanthan gum, and procedural safeguards for preventing transshipment of covered merchandise.

On December 20, 2023, ADI ChemTech requested an extension to respond to the RFI.²⁶ On December 27, 2023, CBP granted an extension to respond to the RFI.²⁷ ADI ChemTech timely filed its response on January 16, 2024.²⁸ ADI ChemTech's response indicates that its [quantity] supplier of xanthan gum is Prachin.²⁹ In response to CBP's questions whether it verified production capabilities or required factory visits, ADI ChemTech responded that it uses [process of identification of manufacturer

[describing supplier's information].³⁰ However, ADI ChemTech stated, “[describing supplier's information]”³¹

ADI ChemTech submitted documentation such as invoices and packing lists indicating that it purchased [number] xanthan gum from Prachin.³² ADI ChemTech's response also contained certificates of origin for each entry indicating [country] and a copy of [type of document] from Prachin; however, ADI Chemtech did not provide an explanation for that document.³³ The [type of document] document indicates that Prachin conducted tests on [material and results], but it does not detail the actual production of the xanthan gum. There is no information on the documents that would allow CBP to tie them to the actual xanthan gum entries made by ADI ChemTech, *i.e.*, invoice number or production batch number. Also, the [type of document] documents were signed by personnel in charge of quality control on November 11, 2020, approximately 3 years before the entries subject to this investigation.³⁴ The entry dates for shipments from Prachin to ADI ChemTech are between February and September 2023.³⁵

On March 5, 2024, CBP issued a supplemental RFI to ADI ChemTech, seeking additional information to clarify previous responses and documentation previously omitted.³⁶ ADI

²⁵ See Memorandum to ADI ChemTech, “EAPA 7830: Importer Request for Information,” dated December 11, 2023.

²⁶ See ADI ChemTech's extension request dated December 20, 2023.

²⁷ See CBP email entitled, “EAPA 7830: RFI Extension,” dated December 27, 2023.

²⁸ See ADI ChemTech RFI Response dated January 16, 2024.

²⁹ *Id.* at Exhibit I.

³⁰ *Id.* at 16.

³¹ *Id.*

³² *Id.* at Exhibit J.

³³ *Id.* at Exhibit L.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See Memorandum to ADI ChemTech, “EAPA 7830: Supplemental Request for Information,” dated March 6, 2024 (ADI ChemTech Supplemental RFI).

ChemTech timely filed a response on March 18, 2024, and provided the company's financial and banking information, but did not clarify its responses with respect to production information.³⁷

CBP issued an RFI to Prachin on December 11, 2023, and set the deadline to respond as January 3, 2024.³⁸ CBP requested the following information from Prachin: (1) a full description of the manufacturing process for xanthan gum, detailed production capabilities and capacities; (2) information about the source of their raw materials, including supporting documentation establishing proof of source; (3) information about their corporate structure and affiliations; (4) supporting documentation regarding its labor force; and (5) accounting and financial information.

Prachin did not respond by the deadline; therefore, CBP sent the RFI again to Prachin on January 4, 2024, and extended the deadline to respond to January 10, 2024.³⁹ On January 8, 2024, Prachin contacted CBP and provided some limited information; however, Prachin did not fully respond to the questions listed in the RFI nor did it submit its response in EAPA's portal, also known as the case management system (CMS), as requested. On March 6, 2024, CBP provided Prachin a final opportunity to respond to the RFI and set the deadline for March 20, 2024.⁴⁰ In this third opportunity, CBP included the original questions from the RFI sent on December 11, 2023, and additional questions requesting Prachin to discuss its production of *Xanthomonas campestris* (*X. campestris*) and its use in the finished product, xanthan gum, and asked Prachin to provide detailed supplier information if the company purchased xanthan gum. Prachin again failed to provide a response to the RFI.

CBP placed Prachin's January 8, 2024, email on the administrative record.⁴¹ In Prachin's email to CBP, it stated it "source{x} {x}anthan gum as a raw material in its unfinished state" and "unfinished {x}anthan {g}um raw material does not come in a 200-mesh size. It is through our dedicated operations... that we achieve the desired 200-mesh size through processes like pulverizing, blending, and sifting."⁴² Prachin states that 80 mesh is a larger particle size, courser, of a slightly textured or thicker consistency, and often used in industrial applications.⁴³ Xanthan gum of 200 mesh is a smaller particle size, has a smoother texture, has improved solubility, and is used in pharmaceutical and certain food applications.⁴⁴ Prachin provided an internal document labeled "raw material requisition slip," which indicated it purchased xanthan gum but did not include any information on the supplier of xanthan gum.⁴⁵ Prachin also included copies of "batch manufacturing record" for batch number PR/P/XG-0019/23, dated July 7, 2023; however, the batch number does not correspond to any of the entries under investigation during the POI.⁴⁶ Prachin did not provide a complete explanation of its production process

³⁷ See ADI ChemTech Supplemental RFI Response dated March 18, 2024.

³⁸ See Memorandum to Prachin Chemical, "EAPA 7830: Manufacturer Request for Information," dated December 11, 2023 (Prachin Initial RFI).

³⁹ See Memorandum to Prachin Chemical, "EAPA 7830: Manufacturer Request for Information," dated January 4, 2-24 (Prachin 2nd RFI).

⁴⁰ See Memorandum to Prachin Chemical, "EAPA 7830: Manufacturer Request for Information," dated March 6, 2024 (Prachin 3rd RFI).

⁴¹ See Memorandum to the File, "EAPA 7830 – Xanthan Gum from the People's Republic of China," dated May 10, 2024 (Prachin's Email).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

including any discussion of utilizing *X. campestris*, a type of bacteria necessary for the production of xanthan gum, raw material purchases, and related accounting entries, or labor costs. All of the documentation Prachin provided constituted of internal documents with the company's logo on top and no documentation from any external parties such as raw material suppliers.⁴⁷

On May 10, 2024, CBP extended the written argument and response to written argument deadlines to May 20, 2024, and June 4, 2024, respectively. No party submitted written arguments.

Analysis

Under 19 U.S.C. § 1517(c)(1)(A), 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 or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.”⁴⁸ Substantial evidence on the record of this investigation supports a determination that ADI ChemTech entered covered merchandise into the United States through evasion.

Adverse Inference

19 C.F.R. § 165.6(a) provides in relevant part 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”⁴⁹ Because Prachin failed to submit a timely response with any direct answers to the questions in CBP's RFI, despite the numerous opportunities to respond as described above, Prachin has not cooperated or complied with this investigation to the best of its ability. CBP requested detailed information on Prachin's production of *X. campestris*, which is fundamental to the production of xanthan gum.⁵⁰ According to the ITC Report included in the CP Kelco Allegation, xanthan gum is produced from the fermentation of the bacteria strain *X. campestris*.⁵¹ Prachin failed to provide the requested production information. Prachin stated that it purchased xanthan gum in an “unfinished state,” with no explanation as to what that “unfinished state” meant.⁵² The scope of the *AD Order* states, “xanthan gum is included in this order regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber.”⁵³ Therefore, even if there was any processing completed at Prachin's facility to modify the particle size, including what is described in its January 8th email response as

⁴⁷ *Id.*

⁴⁸ 19 C.F.R. § 165.1.

⁴⁹ 19 C.F.R. § 165.6(a). *See* 19 U.S.C. § 1517(c)(3)(A).

⁵⁰ *See* Prachin 3rd RFI.

⁵¹ *See* CP Kelco Allegation at Attachment 10, page I-7.

⁵² *See* Prachin's Email.

⁵³ *Id.* at page 3.

“pulverizing, blending, and sifting,” would not change the country of origin according to the scope of the *AD Order*.⁵⁴

CBP also requested detailed information of Prachin’s supplier of xanthan gum; however, the company failed to provide such information. Due to Prachin’s failure to fully respond to the RFI, CBP did not have information about Prachin’s production capacity, or any documents directly from Prachin about any efforts to source xanthan gum from an Indian manufacturer. There is no information on the record to explain its purchases of “unfinished” xanthan gum, and specifically, what that term means. Again, xanthan gum of any particle size is within the scope of the *AD Order*. Therefore, given Prachin’s continuous failure to provide responses to questions raised by CBP in its RFIs and there is no information on the administrative record regarding Prachin’s production capacity and sourcing of xanthan gum or raw materials, which are critical pieces of this investigation. As a result, CBP is applying inferences adverse to the interests of Prachin. In relying on an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one’s ability with a request for information, CBP will look at the facts otherwise available. 19 U.S.C. § 1517(c)(3)(A). Based on the information presently on the administrative record, CBP determines that the xanthan gum Prachin sold to ADI ChemTech was Chinese in origin. CBP is basing this finding on the affidavit provided in the CP Kelco Allegation by CP Kelco’s Senior Director stating that xanthan gum is only manufactured in Austria, France, China and the United States;⁵⁵ the applicable ITC report provided in the CP Kelco Allegation corroborating the Senior Director’s assertion that xanthan gum is only manufactured in those four countries;⁵⁶ and the trade data reasonably available to CP Kelco and submitted to CBP show China as the largest exporter of xanthan gum to India, accounting for approximately 81.2 percent by volume in 2023, which provides further support that Chinese-origin xanthan gum was transshipped through India to the United States.⁵⁷

Further, ADI ChemTech provided a purported certificate of origin and testing documents for the entries listed in CBP’s RFIs to ADI ChemTech; however, CBP finds the certificate unreliable because Prachin failed to fully respond to the RFI CBP issued to it and did not provide documentation supporting the authenticity of the certificate of origin. Further, CBP finds the testing documents unreliable because the testing documents are dated three years ago and are not contemporaneous, to the date of entry into the United States. Also, Prachin, as the manufacturer, would have been the entity to collect and maintain source documentation for any raw materials in its normal course of business. Because Prachin failed to respond to CBP’s RFI, CBP cannot evaluate whether documentation submitted by ADI ChemTech in the course of this EAPA investigation is accurate. CBP must be able to, among other things, trace a manufacturer’s raw material purchases to its accounting system; through the production process, *i.e.*, starting inventory, work-in-progress, ending inventory, and finished goods, etc.; and exportation to the U.S. importer. Production records and employee records absent in this case enable CBP to tie the financial and accounting records and substantiate production processes and capability. ADI ChemTech stated, “[description] supplier’s manufacturing processes, {it} [description] supplier’s production facilities.”⁵⁸ Also, ADI ChemTech stated it does [description] policies or procedures related to

⁵⁴ See Prachin’s Email.

⁵⁵ See CP Kelco Allegation at Attachment 9.

⁵⁶ *Id.* at 7-8 and Attachment 10, page 13.

⁵⁷ *Id.* at 8 and Attachment 11.

⁵⁸ ADI ChemTech RFI Response at 16.

AD or countervailing duties (CVD).⁵⁹ EAPA does not have a knowledge or other culpability requirement for evasion as defined under 19 U.S.C. 1517(a)(5)(A) and 19 C.F.R. § 165.1. Accordingly, there is no requirement that the importer know of the material or false statement yielding evasion. Thus, CBP does not need to determine any level of culpability, only that an importer entered covered merchandise into the United States through a material statement or omission that resulting in avoidance or reduction in duty liability.

CBP is applying adverse inferences in this investigation to Prachin. In relying upon an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one's ability with a request for information, CBP will look at the facts otherwise available. Consequently, based on the facts available on the record of this investigation, CBP determines that there is substantial evidence ADI ChemTech entered merchandise into the United States through evasion. Based on the aforementioned analysis, CBP determines that substantial evidence demonstrates that xanthan gum entered by ADI ChemTech during the period of investigation was of Chinese-origin, was transshipped through India, and was declared as Indian in origin on 7501 entry summaries, thus avoiding payment of AD duties, as the merchandise is subject to the China-wide entity rate for the *AD Order* on xanthan gum from China.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

Considering CBP's determination that ADI ChemTech entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28, CBP will suspend or continue to suspend the liquidation for all entries imported by the ADI ChemTech that are subject to EAPA investigation 7830 until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will also evaluate ADI ChemTech's continuous bonds in accordance with CBP's policies and may require single transaction bonds as appropriate. 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
CBP Office of Trade

⁵⁹ *Id.* at 17.