



## U.S. Customs and Border Protection

### **PUBLIC VERSION**

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RE: Notice of Initiation of Investigation and Interim Measures: EAPA Case 7830

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Dear Counsel and/or Representatives for the above-referenced Entities:

This letter is to inform you that U.S. Customs and Border Protection (CBP) 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), for U.S. importer Adi Chemtech LLC (Adi Chemtech). CBP is investigating whether Adi Chemtech evaded antidumping duty (AD) order A-570-985 on xanthan gum from the People's Republic of China (China).<sup>1</sup> CBP found that reasonable suspicion exists that Adi Chemtech entered covered merchandise into the customs territory of the United States by the transshipping of Chinese-origin xanthan gum through India by the shipper Prachin Chemical (Prachin). As a result, CBP is issuing a formal notice of initiation of investigation and interim measures (NOI) and imposing the interim measures outlined below.<sup>2</sup>

### **Period of Investigation**

Pursuant to 19 CFR 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year before the receipt of an allegation....” Entry is defined as an “entry, or withdrawal from warehouse for consumption, of merchandise in

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<sup>1</sup> See *Xanthan Gum from the People's Republic of China: Antidumping Duty Order*, 78 FR 43143 (Dep't of Commerce, July 19, 2013) (the *Order*).

<sup>2</sup> See 19 USC 1517(b)(1) (noting that the information provided in the allegation must “reasonably suggest” evasion to initiate an investigation); see also 1517(e) and 19 CFR 165.24 (noting that the “reasonable suspicion” standard must be satisfied to implement interim measures).

the customs territory of the United States.”<sup>3</sup> CBP acknowledged receipt of the properly filed EAPA allegation against Adi Chemtech on August 16, 2023.<sup>4</sup> The entries covered by the period of investigation (POI) are those entered for consumption, or withdrawn from warehouse for consumption, from August 16, 2022, through the pendency of this investigation.<sup>5</sup>

## **Initiation**

CBP 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>6</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>7</sup> Thus, the Allegation must reasonably suggest not only that Adi Chemtech entered merchandise covered by 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.

On July 11, 2023, CP Kelco filed an EAPA allegation claiming that U.S. Importer Adi Chemtech is evading the *Order* on xanthan gum from China.<sup>8</sup> As noted above, on August 16, 2023, in accordance with 19 CFR 165.12(a), CBP acknowledged receipt of CP Kelco’s properly filed EAPA allegation concerning evasion by Adi Chemtech. In its Allegation, CP Kelco contends that available information reasonably suggests that Adi Chemtech evaded the *Order* by importing Chinese-origin xanthan gum into the customs territory of the United States after transshipping it through India.

CP Kelco claimed that significant volumes of xanthan gum exported by Prachin from India were entered into the United States by Adi Chemtech.<sup>9</sup> To support its claim, CP Kelco provided trade data that shows several shipments of xanthan gum, reported as Indian origin, departing various ports in India, and arriving at the port of Houston, Texas during the POI.<sup>10</sup>

Furthermore, CP Kelco asserted that xanthan gum cannot be of Indian origin. CP Kelco provided an affidavit from a Senior Director at CP Kelco who is familiar with the global market, stating that xanthan gum is only manufactured in four countries worldwide: Austria, France, China, and the United States.<sup>11</sup> CP Kelco substantiated this statement by providing documentation from the United States International Trade Commission (ITC) corroborating this

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<sup>3</sup> See 19 USC 1517(a)(4); see also 19 CFR 165.1.

<sup>4</sup> See CBP’s email, “EAPA 7830: Receipt of Properly Filed Allegation,” dated August 16, 2023.

<sup>5</sup> See 19 CFR 165.2.

<sup>6</sup> See 19 CFR 165.15(b); see also 19 USC 1517(b)(1).

<sup>7</sup> See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

<sup>8</sup> See CP Kelco’s letter, “Xanthan Gum from the People’s Republic of China: Evasion of Antidumping Order via Transshipment through India,” dated July 11, 2023 (the Allegation).

<sup>9</sup> See the Allegation at 4 – 5.

<sup>10</sup> *Id.*, at 4 – 5 and Attachment 2.

<sup>11</sup> *Id.*, at 7 and Attachment 9.

information.<sup>12</sup> As a result, CP Kelco stated that there are no xanthan gum producers in India.<sup>13</sup> In addition, CP Kelco provided trade data that shows China is the largest supplier of xanthan gum to India, accounting for approximately 81% of all Indian imports.<sup>14</sup> CP Kelco stated that due to the aforementioned information, it is highly likely that any exports of xanthan gum from India are of Chinese origin.<sup>15</sup>

Moreover, CP Kelco submitted evidence that neither Adi Chemtech nor Prachin is engaged in the trade or manufacture of xanthan gum, respectively. CP Kelco notes that Adi Chemtech's website indicates it is a supplier of "golden rare and exceptional essential oils," categorizing its products into four groups: essential oils, carrier oils, butters, and lotions.<sup>16</sup> CP Kelco also notes that Prachin's website indicates the products it sells are categorized into four groups: pharma and nutraceutical; ceramics and paints; food and nutrition; and cosmetics.<sup>17</sup> CP Kelco remarks that neither company's website lists xanthan gum as a product for sale.

In sum, CP Kelco maintains that the record evidence reasonably suggests that Adi Chemtech is transshipping Chinese-origin xanthan gum through India to the United States to avoid paying applicable AD duties as per the *Order*.

In assessing the claims made and evidence provided in the allegations, and as discussed above, CBP found the allegation reasonably suggested that Adi Chemtech evaded the *Order* by transshipping Chinese-origin xanthan gum through India and imported this merchandise to the United States without declaring it to be covered by the *Order*. Consequently, CBP initiated EAPA investigation pertaining 7830 on September 5, 2023.<sup>18</sup>

## 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.<sup>19</sup> 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.<sup>20</sup> If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 USC 1517(e) and 19 CFR 165.24. As explained below, CBP is imposing interim measures because, based on the record evidence, there is reasonable suspicion that Adi Chemtech entered xanthan gum into the customs territory of the United States through evasion.

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<sup>12</sup> *Id.*, at 7 and Attachment 9.

<sup>13</sup> *Id.* at 7 – 8.

<sup>14</sup> *Id.*, at 8 and Attachment 11.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 6 and Attachments 4 – 5.

<sup>17</sup> *Id.* at 7 and Attachment 8.

<sup>18</sup> See CBP's memorandum, "Initiation of Investigation for EAPA Case Number 7830," dated September 5, 2023.

<sup>19</sup> See CFR 165.24(a); see also 19 USC 1517(e).

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

## CF-28 Response

After initiating this EAPA investigation, CBP issued Customs Form 28 (CF-28) requests for information to Adi Chemtech for entries [number]7823, [number]1672, [number]3165, [number]9849 and [number]6257 made during the POI.<sup>21</sup> The CF-28s included requests for production information including, but not limited to:

- Photographs and a description of each piece of equipment used in the production of xanthan gum;
- Production records, including production capacity;
- Details regarding the production process from start to finish and documents which demonstrate how the raw materials to the finished product is documented, such as a purchase order number which may appear on production documents;
- Provide 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);
- Company-specific histories;
- Providing the name(s) of owners, corporate officers, forwarding agents, subcontractors, and intermediaries involved and their contact information; and
- Entry transaction information including the original commercial invoice(s), proof of payment(s), purchase order, contracts, CF7501, and all bills of lading (master bills of lading including through bills of lading). We also requested that the proof of payment tie the invoice(s) to the manufacturer, and if necessary, to provide supporting payment schedules noting the specific invoices.<sup>22</sup>

Adi Chemtech provided a response to the CF-28s between October 18 – 20, 2023.<sup>23</sup>

In response to 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.<sup>24</sup> Adi Chemtech did not submit any of the payment information that CBP 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.<sup>25</sup>

Concerning the requested corporate information, Adi Chemtech provided a chart which indicates Prachin's organization, and includes the names of some managers, but mostly contains the names of the various departments of the company.<sup>26</sup> Other than an indication that the company was founded in 1989, no other corporate information was provided for Prachin, such as the requested company history or the names of the owners.<sup>27</sup>

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<sup>21</sup> See CF-28s issued to Adi Chemtech, dated September 15, 2023.

<sup>22</sup> *Id.*

<sup>23</sup> See Adi Chemtech's emails, "Re: CF28," dated October 18 – 20, 2023 (Adi Chemtech's CF-28 Response). We note these emails have been placed on the record as one document and include some embedded emails between Prachin and Adi Chemtech. All the attachments to the emails are attached to Adi Chemtech's CF-28 Response, with the exception of the CF-28s, which have already been placed on the record of this investigation.

<sup>24</sup> *Id.* The documents for Entry 7823 did not include shipment insurance information.

<sup>25</sup> *Id.*

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

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

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.<sup>28</sup> 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.<sup>29</sup> The photograph shows that the blended screening machine appears to be in a warehouse area where raw materials appear to be stored and it is not clear from the photograph that that the machine is connected to a power supply.<sup>30</sup> The Adi Chemtech CF-28 response contains a video illustrating Prachin’s production of pharmaceutical excipients, but makes no mention of xanthan gum manufacturing.<sup>31</sup> 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.<sup>32</sup>

In sum, Adi Chemtech’s CF-28 Response contains no information on the equipment used in the production of xanthan gum, 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.

Importantly, this information which was requested but not submitted could enable CBP to verify factory capabilities, production processes, and confirm the identity of the manufacturer of the imported xanthan gum to aid in determining the country of origin. Without this information there is no record evidence at this time that Prachin manufactured the xanthan gum for the entries at issue.

### *Analysis*

In assessing the record evidence, CBP finds after reviewing the information submitted by CP Kelco, in addition to the responses to the CF 28, that reasonable suspicion exists that Adi Chemtech entered merchandise covered by the *Order* into the customs territory of the United States through evasion. Specifically, the affidavits provided in the Allegation, and the applicable ITC report, show that xanthan gum is not produced in India.<sup>33</sup> Additionally, 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 84% by volume in 2022, providing further support that Chinese-origin xanthan gum was transshipped through India to the United States.<sup>34</sup> 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 as expounded upon throughout this NOI.

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> See the Allegation at 7 – 8 and Attachment 9.

<sup>34</sup> See the Allegation at 8 and Attachment 11.

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

Pursuant to 19 CFR 165.15(d)(1), CBP will issue notification of its decision to initiate an investigation to all parties to the investigation no later than 95 calendar days after the decision has been made, and the actual date of initiation will be specified therein. Based on the information described herein, CBP initiated an investigation concerning the evasion of the *Order* on xanthan gum from China. In addition, based on the information available on the record, CBP finds that there is reasonable suspicion that Adi Chemtech engaged in evasion and as a result, CBP is imposing interim measures on Adi Chemtech's imports covered by this investigation.<sup>35</sup>

Specifically, in accordance with 19 USC 1517(e)(1)-(3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after September 5, 2023, the date of the initiation of the investigation;
- (2) pursuant to the Commissioner's authority under 19 USC 1504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before September 5, 2023, the date of the initiation of the investigation; and
- (3) pursuant to the Commissioner's authority under 19 USC 1623, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.<sup>36</sup>

In addition, CBP will require live entry and reject any entry summaries that do not comply with live entry procedure and require refiling of entries that are within the entry summary rejection period. CBP will also evaluate Adi Chemtech's continuous bonds to determine their sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

For any future submissions or factual information submitted to CBP pursuant to this EAPA investigation, please provide a business confidential version and a public version with a public summary<sup>37</sup> using the EAPA Case Management System (CMS), found at <https://eapallegations.cbp.gov>. All public versions will be accessible to the parties to the investigation *via* the CMS.<sup>38</sup> Please note that CBP requires that all documents submitted *via* the CMS are made text searchable, especially if those documents are submitted as PDFs.

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<sup>35</sup> See 19 USC 1517(e); *see also* 19 CFR 165.24.

<sup>36</sup> See *also* 19 CFR 165.24(b)(1)(i)-(iii).

<sup>37</sup> See 19 CFR 165.4, 165.23(c), and 165.26.

<sup>38</sup> You will need a login name and password to use the CMS. The website will direct you how to obtain those.

Should you have any questions regarding this investigation, please feel free to contact us at [epallegations@cbp.dhs.gov](mailto:epallegations@cbp.dhs.gov). Please include “EAPA Case Number 7830” in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP’s website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victoria Cho".

Victoria Cho  
Director, Enforcement Operations Division  
Trade Remedy Law Enforcement Directorate  
CBP Office of Trade