



U.S. Customs and Border Protection

PUBLIC VERSION

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Re: Notice of Initiation of Investigation and Interim Measures - EAPA Case 7794

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

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), against Colony Gums Inc. (Colony Gums).¹ CBP is investigating whether Colony Gums evaded antidumping duty (AD) order A-570-985 on xanthan gum from the People's Republic of China (China).² CBP has found that reasonable suspicion exists that Colony Gums entered covered merchandise into the customs territory of the United States through evasion, and CBP has imposed interim measures.³

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 into the customs territory of the United States.”⁴ CBP acknowledged receipt of the properly filed

¹ See Letter from CP Kelco, “Xanthan Gum from the People’s Republic of China: Evasion of Antidumping Order via Transshipment through India,” dated October 20, 2022, (Allegation) at 3.

² 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 43143 (July 19, 2013) (*Order*).

³ See 19 USC 1517(e); see also 19 CFR 165.24.

⁴ See 19 USC 1517(a)(4); see also 19 CFR 165.1.

allegation against Colony Gums on January 13, 2023.⁵ The entries covered by this investigation are those entered for consumption, or withdrawn from warehouse for consumption, from January 13, 2022, through the pendency of this investigation.⁶

Initiation

On February 6, 2023, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP's Office of Trade, initiated this investigation under EAPA as a result of the allegation submitted by CP Kelco U.S., Inc. (the *Alleger* or CP Kelco)⁷ concerning the evasion of AD duties by Colony Gums.⁸ In the Allegation, CP Kelco asserts that Colony Gums evaded the *Order* by importing xanthan gum from China into the United States that was transshipped through India.⁹

Description of the Alleged Transshipment Scheme

CP Kelco provided an affidavit from its senior director and a 2018 report issued by the United States International Trade Commission (USITC), both of which assert that xanthan gum is only produced in Austria, France, China, and the United States.¹⁰ As such, India is not included in the list of countries with known xanthan gum production. Nevertheless the U.S. has imports of xanthan gum that are ostensibly from India. CP Kelco provides public U.S. import data for January through August 2022 demonstrating a volume of 15,000 kilograms of xanthan gum imported into the United States for which India was declared the country of origin.¹¹ In particular, CP Kelco also provides vessel manifest data indicating a shipment of xanthan gum leaving India and arriving at the port of Charleston, South Carolina in June 2022.¹² The name "COLONY GUMS/USA" is shown in the vessel manifest data.¹³ The *Alleger* explains that, since Colony Gums is a U.S. company that sells xanthan gum in the U.S. market, the appearance of its name in the vessel manifest data indicates that Colony Gums could be an importer of record.¹⁴ While import data and vessel manifest data show imports of xanthan gum from India, CP Kelco argues India cannot be the country of origin, given India is not one of the countries in which xanthan gum is produced.

CP Kelco states that such xanthan gum mischaracterized as originating from India likely originated in China, noting that in a prior EAPA investigation, CBP found multiple imports of

⁵ See CBP email, "EAPA 7794 - Receipt of Properly Filed Allegation," dated January 13, 2023.

⁶ See 19 CFR 165.2.

⁷ The *Alleger* is a manufacturer, producer, or wholesaler in the United States of a domestic like product; thus, pursuant to 19 CFR 165.1(2), the *Alleger* meets the definition of an interested party that is permitted to submit an EAPA allegation.

⁸ See CBP Memorandum, "Initiation of Investigation for EAPA Case Number 7794," dated February 6, 2023 (Initiation Notice).

⁹ See Allegation at 1-7.

¹⁰ See Allegation at 4, 5, Attachment 3, and Attachment 4 at page 13. See also Initiation Notice at 2.

¹¹ See Allegation at 4 and Attachment 1.

¹² *Id.* at 4 and Attachment 2.

¹³ *Id.*

¹⁴ *Id.* at 4-5.

xanthan gum from China that were transshipped through India.¹⁵ CP Kelco also supported its claim that the merchandise in question originated from China by providing Indian import data for the tariff classification that includes xanthan gum.¹⁶ The volumes of the Indian imports show that China is the largest supplier to India of products under that tariff classification and account for 80% of imports.¹⁷ The share of imports from Austria, France, and the United States account for 10% of imports.¹⁸

CP Kelco maintains that Colony Gums transships merchandise covered by the *Order*. In support of that assertion, CP Kelco provides a xanthan gum product descriptions from the Colony Gums website, which shows no mention of the country of origin of the xanthan gum offered for sale in the United States.¹⁹ Additionally, CP Kelco provides a quality control page from the Colony Gums website indicating that Colony Gums provides country of origin letters upon request only, which demonstrates Colony Gums' care in limiting country of origin disclosure.²⁰

Therefore, CP Kelco concludes that all evidence reasonably suggests that Colony Gums is transshipping xanthan gum from China through India to the United States to avoid paying duties as per the *Order*.

Initiation Assessment

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.”²¹ 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.”²² Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or CVD order was entered into the United States by the importer through evasion, but that such entry was made by a material false statement or act, or material omission, which resulted in the reduction or avoidance of applicable AD and/or CVD cash deposits or other security.

¹⁵ *Id.*, at 4, citing Letter for EAPA Consolidated Case Number 7281, “Notice of initiation of investigation and interim measures taken as to Ascension Chemicals LLC; Dr. Bronner’s Magic Soaps; Tdale Manufacturing & Distributing, Inc.; UMD Solutions, LLC; Western Energy & Technologies LLC; Crude Chem Technology; and Glob Energy Corporation concerning evasion of the antidumping duty order on xanthan gum from the People’s Republic of China,” dated August 12, 2019.

¹⁶ *Id.* at 6 and Attachment 8.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 5-6, Attachment 5, and Attachment 6.

²⁰ *Id.* at 6 and Attachment 7.

²¹ See 19 CFR 165.15(b); see also 19 USC 1517(b)(1).

²² See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

In assessing the basis for the Allegation, CBP finds that the information submitted by CP Kelco reasonably suggests that Colony Gums entered merchandise covered by the *Order* into the customs territory of the United States through evasion. Specifically, data reasonably available to CP Kelco and submitted to CBP indicate Colony Gums imported xanthan gum subject to the *Order* into India from China. The Alleger provides evidence—an affidavit from a CP Kelco senior director and a 2018 USITC report—that there is no known xanthan gum production in India.²³ Besides the Alleger’s evidence, CBP has since determined evasion of the *Order* by way of transshipment through India in March 2020 and December 2021, in EAPA Consolidated 7281 and EAPA 7579, respectively.²⁴ In the notices of investigation initiation and interim measures for EAPA Consolidated 7281 and EAPA 7579, CBP also referenced the 2018 ITC report.²⁵ During these investigations no known Indian production capabilities have surfaced. If there is no known xanthan gum production in India, then it is reasonable to infer that any xanthan gum exported from India is being transshipped through India. Furthermore, public U.S. import data show imports of xanthan gum into the United States for which India was declared the country of origin.²⁶ Finally, the Alleger provided vessel manifest data evidencing that Colony Gums may be the importer of record for a xanthan gum shipment.²⁷ Consequently, TRLED initiated an investigation pursuant to 19 USC 1517(b)(1) and 19 CFR 165.15.²⁸

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, TRLED will decide based on the record of the investigation if there is reasonable suspicion that merchandise covered by the *Order* was entered into the United States through evasion. 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 there is a reasonable suspicion that the importer entered covered merchandise into the United States through evasion by means of transshipment through India.²⁹

²³ See Allegation at 5, Attachment 3, and Attachment 4 at page 13.

²⁴ See Letter for EAPA Consolidated Case Number 7281, “Notice of Final Determination as to Evasion,” dated March 9, 2020, and Letter for EAPA Case Number 7579, “Notice of Determination as to Evasion,” dated December 23, 2021.

²⁵ See Letter for EAPA Consolidated Case Number 7281, “Notice of initiation of investigation and interim measures taken as to Ascension Chemicals LLC; Dr. Bronner's Magic Soaps; Tdale Manufacturing & Distributing, Inc.; UMD Solutions, LLC; Western Energy & Technologies LLC; Crude Chem Technology; and Glob Energy Corporation concerning evasion of the antidumping duty order on xanthan gum from the People's Republic of China,” dated August 12, 2019 at 4; and, Letter for EAPA Case Number 7579, “Notice of Initiation of Investigation and Interim Measures – EAPA Case 7579,” dated May 27, 2021 at 2.

²⁶ *Id.* at 4 and Attachment 1.

²⁷ *Id.* at 5 and Exhibit 2.

²⁸ See 19 CFR 165.15(d)(2). See also Initiation Notice.

²⁹ See 19 CFR 165.24(a).

CBP Form 28 (CF-28)

As noted above, TRLED initiated the investigation based on the evidence that xanthan gum is made in China, but not in India, and other factors supporting the conclusion that xanthan gum that entered the United States identified as originating in India may have actually originated in China. On February 17, 2023, as part of the EAPA investigation process, CBP issued a CF-28 Request for Information (CF-28 RFI) to Colony Gums concerning entry number [#]0395, which is an entry subject to this EAPA investigation; CBP requested information and documentation pertaining to sales, production, and factory records.³⁰ Colony Gums submitted its CF-28 Response on February 20, 2023.³¹

On the entry summary for entry [#]0395, Colony Gums reported the company [name] as the manufacturer and reported [name] as the COO.³² In accordance with the information reported on the entry summary, Colony Gums provided documentation supplied by the company [name], *e.g.*, an Indian COO certificate certifying that for invoice [numbers], Colony Gums imported Indian-origin xanthan gum.³³

Colony Gums provided an invoice, purchase order, Indian customs bill summary, certificates of analysis, health certificate, bill of lading, prepayment, and certificates of origin that demonstrate the sale and identify India as the COO of the merchandise.³⁴ Colony Gums provided a picture of a piece of machinery equipment (*i.e.*, a [description]), a process flow chart, a certified manufacturing importer exporter code for [name] from the Government of India, four pictures of plant facilities or lab processes, and utility bills ostensibly to demonstrate that [name] manufactured the xanthan gum.³⁵ As described below, the evidence suggests that [name] does have a facility and produces [description]; but the evidence supports a reasonable suspicion that [name] does not produce xanthan gum. The CF-28 RFI requested from the importer: “records of the raw materials obtained by the factory and were available for production - receipts, invoices, or purchase order, and payment records (*e.g.*, cancelled check, bank statement for money transfer, letter of credit, and *etc.*).”³⁶ The importer partially responded to the CF-28 RFI and also forwarded the CF-28 RFI to the exporter to answer some of the production-related questions in the CF-28 RFI.³⁷ Notably, the exporter declined to respond to CBP’s request for: “records of the raw materials obtained by the factory and were available for production - receipts, invoices, or purchase order, and payment records (*e.g.*, cancelled check, bank statement for money transfer, letter of credit, and *etc.*)” citing confidentiality.³⁸ However,

³⁰ See CF-28 for entry [#]0395 sent to Colony Gums, dated February 17, 2023 (CF-28 Request for Information).

³¹ See Colony Gums Response to CF-28 Request for Information, Entry [#]0395, dated February 20, 2023 (CF-28 Response). Colony Gums clarified questions in email after the February 20, 2023, submission.

³² See CF-28 Response, Entry Summary [#]0395.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See CBP Memorandum, “Email Correspondence,” dated May 15, 2023 (Email Correspondence Memo) at Attachment 1.

³⁸ See Email Correspondence Memo at Attachment 2.

the exporter's process flow chart reported in the CF-28 Response illustrated that the process consists of the following consecutive steps: [description of process].³⁹ The process flow chart shows that the first step includes importing commercial grade xanthan gum powder. Thus, the first step of the exporter's process flow chart includes importing commercial grade xanthan gum powder, which appears to be covered by the scope of the *Order* as defined below:⁴⁰

The scope of this order covers dry xanthan gum, whether or not coated or blended with other products. Further, 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.

Xanthan gum that has been blended with other product(s) is included in this scope when the resulting mix contains 15 percent or more of xanthan gum by dry weight. Other products with which xanthan gum may be blended include, but are not limited to, sugars, minerals, and salts.

Xanthan gum is a polysaccharide produced by aerobic fermentation of *Xanthomonas campestris*. The chemical structure of the repeating pentasaccharide monomer unit consists of a backbone of two P-1,4-D-Glucose monosaccharide units, the second with a trisaccharide side chain consisting of P-D-Mannose-(1,4)- P-DGlucuronic acid- (1,2)-a-D-Mannose monosaccharide units. The terminal mannose may be pyruvylated and the internal mannose unit may be acetylated.

Merchandise covered by the scope of this order is classified in the Harmonized Tariff Schedule ("HTS") of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.

Since [name] declined to provide the records of raw material purchases that could have enabled CBP to corroborate the Indian exporter [name] as the manufacturer of the xanthan gum imported by Colony Gums into the United States, stating that such information was confidential, a CBP official asked of the exporter: "It is stated in the attached production flow chart that the commercial grade xanthan gum powder was imported. Which country was it imported from?" to which [name] answered: "the materials are imported from China."⁴¹

Given the lack of records of raw material purchases provided to CBP in response to its inquiries, there is reason to doubt whether [name] actually produced xanthan gum, or that the xanthan gum associated with the entry was produced in India. Colony Gums did not provide conclusive evidence that shows that [name] was the manufacturer of the xanthan gum, or that the xanthan gum it imported was produced in India. While the Importer did provide

³⁹ See CF-28 Response, Entry Summary [#]0395.

⁴⁰ See *Order*. See also Allegation at 3.

⁴¹ See Email Correspondence Memo at Attachment 2.

a picture of a machinery equipment (*i.e.*, a [**name**]), a picture with no context, and without complete production and raw materials records does not prove production.

Moreover, the exporter's own reported steps in its process flow chart (*i.e.*, [**description of the process**]) does not align with the production process of xanthan gum described in the ITC Report:⁴²

Xanthan gum is produced from the fermentation of the bacteria strain *Xanthomonas campestris* (*X. campestris*). The production process requires maintaining the bacteria strain used for culture, providing carbohydrate, nitrogen, and micronutrient sources to initiate the fermentation process, extracting, and refining the xanthan gum from the culture; milling the product into a powder, and finally, packaging it for distribution.

The production process begins with fermentation of the bacteria. First, selected strains of *X. campestris* must be properly maintained and stored for continuous production. A small amount of the strain is expanded in a shake flask, and then further reproduced in a seed tank for scalable expansion, to create the inoculum for large bioreactors. It is then placed in a bioreactor where it interacts with a carbohydrate source (typically a corn derivative, such as cornstarch), a nitrogen source (such as casein hydrolysates, soybean meal, or distillers' solubles), micro-minerals, and water. This step produces xanthan gum broth, which contains xanthan, bacterial cells, and other chemicals. Recovery of the xanthan gum begins by removing the cell debris using either filtration or centrifugation. Then alcohol is added to the broth to separate the xanthan gum from water, creating a xanthan gum fiber. The resulting residual mixture of alcohol, water, cellular debris, and nutrients is distilled to recover the alcohol, while the other residual material is sent to a water waste treatment facility. The xanthan gum fiber is then dried, milled to a particular granule size, and packaged into specified quantities. The product may also be coated with non-water soluble material, such as cottonseed oil or lecithin, to aid in the dispersal of the xanthan gum particles when placed in a solution. At this point, the xanthan gum is marketable.

Based on the process chart provided by Colony Gums, it appears that [**name**] processes the commercial grade xanthan gum into a food grade form of xanthan gum and does not actually produce the xanthan gum itself by conducting the necessary chemical reactions and fermentation process. Moreover, besides declining to provide information demonstrating unequivocal production in India, the information that Colony Gums did provide aligned with the Allegation of evasion of the China *Order* by indicating commercial grade xanthan gum powder was sourced from China.⁴³

Exporter Website

⁴² See CF-28 Response, Entry Summary [**#**]0395. See also Allegation at Attachment 4.

⁴³ *Id.* The Importer forwarded questions in the CF-28 RFI to the exporter in India for assistance in answering production related information.

CBP accessed the publicly available [name] website on March 3, 2023.⁴⁴ There is no apparent evidence on the website that [name] manufactures xanthan gum. In other words, the exporter [name] markets itself as an experienced producer of [name]; it does not market itself as a producer of xanthan gum. The exporter does not market itself as a producer of xanthan gum, suggesting it does not produce xanthan gum. Given the: 1) affidavit from Colony Gums' senior director; 2) 2018 report issued by the USITC; and 3) CBP's prior determinations of evasion of the *Order* by way of transshipment through India, the exporter's absence of marketed xanthan gum production is consistent with CBP's understanding of the xanthan gum production industry, *i.e.*, that xanthan gum is not produced in India.⁴⁵

As such, evidence of imports of commercial grade xanthan gum powder from China, the production flow chart which indicates that the exporter processes imported xanthan gum into food grade xanthan gum, the communication with a CBP official indicating that commercial grade xanthan gum is imported from China, the absence of indicators on xanthan gum production on the [name] website, as well as the information provided in the Allegation, *i.e.*, company affidavit, U.S. import data, vessel manifest data, prior EAPA investigation finding evasion of the *Order* by way of transshipment through India, and USITC report, CBP finds reasonable suspicion that merchandise covered by the *Order* was transshipped via India.

Enactment of Interim Measures

Based on the record evidence described above, CBP has determined that reasonable suspicion exists that xanthan gum entered into the customs territory of the United States by Colony Gums was in fact manufactured in China, and thus, such goods were entered in evasion of the *Order*. Therefore, TRLED is imposing interim measures pursuant to this investigation.⁴⁶ 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 February 6, 2023, the date of the initiation of the investigation;
- (2) pursuant to the Commissioner's authority under section 1504(b) of this title, extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation; and
- (3) pursuant to the Commissioner's authority under section 1623 of this title, 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.⁴⁷

In addition, CBP will require live entry and reject any non-compliant entry summaries, as well as require refile of entries that are within the entry summary rejection period. CBP will also

⁴⁴ See CBP Memorandum, "Exporter Website," May 15, 2023 (Website Memo).

⁴⁵ See Letter for EAPA Case Number 7579, "Notice of Determination as to Evasion," dated December 23, 2021 (In which CBP determined there was substantial evidence of evasion of the *Order* by way of transshipment through India).

⁴⁶ See 19 USC 1517(e); *see also* 19 CFR 165.24.

⁴⁷ See 19 CFR 165.24.

evaluate Colony Gums' continuous bonds to determine sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

Any future submissions or factual information that you submit to CBP pursuant to this EAPA investigation must be made electronically using EAPA's case management system (CMS) at <https://eapallegations.cbp.gov/>. Please provide a business confidential and public version to CBP and serve the public version on the parties to this investigation (*i.e.*, to the parties identified at the top of this notice). Public versions of administrative record documents will be available via the EAPA Portal at <https://eapallegations.cbp.gov/>.⁴⁸ Please note that CBP is requiring that all documents submitted via the CMS are made text searchable, especially if those documents are submitted as PDFs.

Should you have any questions regarding this investigation, you may contact us at eapallegations@cbp.dhs.gov and Stephanie.L.Berger@cbp.dhs.gov with "EAPA Case 7794" 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,



Victoria Y. Cho
Acting Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
Office of Trade

⁴⁸ See 19 CFR 165.4; *see also* 19 CFR 165.23(c) and 19 CFR 165.26.