



**U.S. Customs and
Border Protection**

PUBLIC VERSION

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Via Email

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RE: Notice of Initiation of Investigation and Interim Measures - EAPA Consolidated Case
Number 7813

Dear Counsel and/or Representatives for 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”), for Ebuy Enterprises Limited (“Ebuy”) and Highland USA International, Inc. (“Highland”), collectively, the “Importers.” CBP is investigating whether Ebuy and Highland have evaded antidumping duty (“AD”) order A-570-985 on xanthan gum from the People’s Republic of China (“China”).¹ CBP found reasonable suspicion exists that Ebuy and Highland entered covered merchandise for consumption into the customs territory of the United States through evasion by transshipping Chinese-origin xanthan gum through Malaysia. As a result, CBP is issuing a formal notice of investigation (“Notice”) and imposing the interim measures outlined below.²

¹ 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”).

² See 19 U.S.C. § 1517(b)(1) (noting that the information provided in the allegation must “reasonably suggest” evasion to initiate an investigation); see also *id.* § 1517(e) and 19 C.F.R. § 165.24 (noting that the “reasonable suspicion” standard must be satisfied to implement interim measures).

I. Period of Investigation

Pursuant to 19 C.F.R. § 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 the customs territory of the United States.”³ CBP acknowledged receipt of the properly filed EAPA allegations against Ebuy and Highland on May 31, and June 15, 2023, respectively.⁴ The entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from May 31, 2022, through the pendency of this investigation.⁵

II. Procedural History

On March 2, 2023, CP Kelco U.S., Inc. (the “Alleger” or “CP Kelco”)⁶ 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. On April 12, 2023, the Alleger amended its EAPA allegation to clarify that Ebuy was the importer and Sxcus was the consignee.⁷ On May 23, 2023, CP Kelco filed a similar but separate EAPA allegation pertaining to a different U.S. importer, Highland.⁸ 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. CP Kelco alleged that available information reasonably suggests that Ebuy and Highland evaded the *Order* with respect to Chinese-origin xanthan gum transshipped through Malaysia. The details for these Allegations are as follows.

III. Initiation

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.”⁹ 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.”¹⁰ Thus, the allegation must

³ See 19 U.S.C. § 1517(a)(4); see also 19 CFR 165.1.

⁴ See emails entitled, “Email Receipt of Properly Filed Allegation,” dated May 31, 2023, and June 15, 2023.

⁵ See 19 CFR 165.2.

⁶ 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 CFR 165.1(1) & (2), the alleger meets the definition of an interested party that is permitted to submit an EAPA allegation.

⁷ 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).

⁸ 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

⁹ See 19 C.F.R. § 165.15(b); see also 19 U.S.C. § 1517(b)(1).

¹⁰ See 19 C.F.R. § 165.1; see also 19 U.S.C. § 1517(a)(5)(A).

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.

Ebuy

On March 3, 2023, CP Kelco filed an EAPA allegation¹¹ claiming that U.S. Importer Sxcus Global Inc. (Sxcus) is evading AD order A-570-985 on xanthan gum from China. On June 15, 2023, in accordance with 19 C.F.R. Part 165.12(a), TRLED acknowledged receipt of the Alleger’s properly filed EAPA allegation concerning evasion by the Importer. CP Kelco alleges that available information reasonably suggests that the Importer evaded the *Order* by importing Chinese-origin xanthan gum into the customs territory of the United States after transshipping it through Malaysia.

The Alleger stated that it previously filed an EAPA allegation of evasion of Chinese-origin xanthan gum transshipped through Malaysia.¹² Since that time, the Alleger has maintained that Malaysia has no xanthan gum producers. The Alleger claimed Habita Food Industries Sdn. Bhd. (“Habita”), which is located in Bukit Mertajam, Malaysia, exported significant quantities of xanthan gum to the United States.¹³ The Alleger provided import data to support its claim that Habita exported significant quantities of xanthan gum to consignee Sxcus.¹⁴ The Alleger also provided trade data that shows a single shipment of xanthan gum, reported as being Indian in origin, departing Yantian, China, and routed through Port Klang, Malaysia before arriving in Houston, Texas.¹⁵

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 global market, stating that xanthan gum is only manufactured in four countries worldwide: Austria, France, China, and the United States.¹⁶ The Alleger substantiated this statement by providing documentation from the United States International Trade Commission (ITC) corroborating this information.¹⁷ Furthermore, the Alleger stated that neither Sxcus nor Habita advertise on the internet that they produce and/or sell xanthan gum.¹⁸ As a result, the Alleger stated that there are no xanthan gum producers in either India or Malaysia.¹⁹ Finally, the Alleger provided trade data that shows China is the largest supplier of xanthan gum to Malaysia, accounting for approximately 54.19% of all imports.²⁰ The Alleger stated that due to the aforementioned information, any exports of xanthan gum from Malaysia are likely of Chinese origin.²¹

¹¹ See Ebuy Allegation at 2.

¹² *Id.*, at 4. In the Allegation the Alleger stated “numerous EAPA allegations,” but it only cited to EAPA case 7281, which CBP found that Malaysia had no xanthan gum producers.

¹³ *Id.*, at 4 and Attachment 1.

¹⁴ *Id.*, at 4-5 and Attachment 2.

¹⁵ *Id.*

¹⁶ *Id.*, at 5 and Attachment 5.

¹⁷ *Id.*, at 5-6 and Attachment 6.

¹⁸ *Id.*, at 6.

¹⁹ *Id.*

²⁰ *Id.*, at 6 and Attachment 7.

²¹ *Id.*, at 6.

On April 12, 2023, based on a review of publicly available trade data, the Alleger amended its allegation to state that Ebuy was the importer in the alleged evasion scheme by Sxcus and Habita.²² The Alleger stated that Ebuy, Habita, and Sxcus have had a long-standing commercial relationship.²³ The Alleger 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 2022.²⁴ As a result, the Alleger claimed Ebuy is acting as the importer of record for certain commercial shipments to Sxcus from Habita, including shipments of xanthan gum.²⁵

Therefore, the Alleger asserted that all evidence reasonably suggests that Ebuy is transshipping Chinese-origin xanthan gum through Malaysia to the United States to avoid paying duties as per the *Order*.

Highland

Like the Ebuy allegation, the Alleger claimed Highland is importing 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.²⁶ 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 number is a broad category that includes xanthan gum.²⁷

The allegation also included the ITC 2018 report on xanthan gum 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.²⁸ CP Kelco also provided an affidavit from the Alleger’s Senior Director of Biogum Platforms asserting that Malaysia has no xanthan gum production.²⁹

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.³⁰ 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.³¹ 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.

²² *Id.*, at Attachment 3.

²³ *See* Allegation Supplement, at 4.

²⁴ *Id.*, at 4 and Attachment 4.

²⁵ *Id.*, at 4.

²⁶ *See* Highland Allegation at 1 and 3-4.

²⁷ *Id.* at 6-7 and Attachment 8.

²⁸ *Id.* at and Attachment 7, page 13, and I-11.

²⁹ *Id.* at 6 and Attachment 6.

³⁰ *Id.* at Attachment 5.

³¹ *Id.* at Attachment 2. CBP confirmed this information from CBP sources.

In assessing the claims made and evidence provided in the allegations, and as discussed 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 investigations pertaining to Highland was initiated on July 7, 2023.

IV. 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. As explained below, CBP is imposing interim measures because, based on the record evidence, there is reasonable suspicion that Ebuy and Highland entered covered merchandise into the customs territory of the United States through evasion.

CF-28 Responses

After initiating these EAPA investigations, CBP issued Customs Form 28 (“CF-28”) request for information (“RFI”) to Ebuy and Highland for entries made during their respective periods of investigation (“POIs”).³² 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;
- Providing 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
- Providing 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 identify of the manufacturer of the imported merchandise.

³² See CF-28s issued to Ebuy and Highland, dated July 6, 2023 and July 18, 2023, respectively.

However, CBP did not receive a response from either importer. Consequently, Ebuy was issued a proposed Customs Form 29 (“CF-29”) on August 14, 2023, and Highland was issued a proposed CF-29 on August 22, 2023³³. 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 amount of duties owed. Again, CBP did not receive a response from either importer, though the broker for at least one importer apparently received the Notice.³⁴ Given no CF-28 or CF-29 responses were received, CBP is unable to confirm whether the xanthan gum associated with the entries subject to the CF-28 requests for information are produced in Malaysia, thereby giving further credence to CP Kelco’s allegations.

Other Information acquired by CBP

According to apparent affiliate 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.³⁵ 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.³⁶ Also, printouts of a commercial real estate website of Ebuy’s address in the WanChai Central Building shows that it is an office building, not a factory.³⁷

In addition, printouts relating to the address provided by the Alleger for Habita Food Industries, which is located at Sdn. Bhd. No. 21st Floor, Lorong Sepakat Satu, Taman Bandar Raya, 14000 Bukit Mertajam, Malaysia, show that Satu translates from Malay to English is “1” and Bandar Raya can also be written as Bandaraya, so an alternative spelling of Habita’s address would be No. 21st Floor, Lorong Sepakat 1, Taman Bandaraya, 14000 Bukit Mertajam Malaysia.³⁸ 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.

Analysis

In assessing the basis for the Allegation, CBP finds that the information submitted by CP Kelco reasonably suggests that Ebuy and Highland entered merchandise covered by the *Order A-570-985* into the customs territory of the United States through evasion. Specifically, there is a history of xanthan gum being transshipped through Malaysia and trade data provided by the Alleger that shows shipments of xanthan gum from China through Malaysia to the United States.³⁹ Furthermore, the affidavits provided in the allegations, past EAPA investigations, and ITC report show that xanthan gum is not produced in either India or Malaysia.⁴⁰ Additionally,

³³ See CF-29s issued to Ebuy and Highland, dated August 14, 2023 and August 22, 2023, respectively.

³⁴ See “Read: Copy of Form 29 for [#] 0355,” dated August 22, 2023.

³⁵ See Memo to File, Attachment 1, dated July 30, 2023.

³⁶ See Allegation Supplement at 2.

³⁷ See Memo to File, Attachment 2, dated July 30, 2023.

³⁸ See Memo to File, Attachment 3, dated July 30, 2023.

³⁹ See Allegation, at 4-5 and Attachment 2.

⁴⁰ See Allegation, at 5-6 and Attachment 5-6.

the trade data reasonably available to the Alleger and submitted to CBP show a long-standing commercial relationship between Ebuy, Habita, and Sxcus.⁴¹

In addition, the Importers failed to provide to respond to CBP's CF-28 RFIs and CF-29 proposals, thereby failing to provide documentation that CBP requested regarding raw materials included in the production of xanthan gum, *i.e.*, invoices, purchase orders, payments, and factory information, time sheets, inventory records, packing materials, and shipping documents. Through the date of this Notice, the Importers have yet to provide any information to CBP that would contradict CP Kelco's allegations or provide explanations to alleviate reasonable suspicion of evasion as expounded upon throughout this Notice. CBP also conducted independent research of publicly available information to find a clear connection between Chinese-based Anhui Ebuy and Ebuy, which apparently share the same physical address, mapping data suggesting Ebuy operates out of an office building rather than a factory capable of producing commercial quantities of xanthan gum, and additional mapping data suggesting Habita is likely a restaurant rather than a facility that produces xanthan gum.

V. Consolidation of the Investigations

CBP is consolidating the investigations involving Ebuy and Highland into a single investigation covering both Importers. The new consolidated case number will be EAPA Consolidated Case 7813, and TRLED will maintain a single administrative record. At its discretion, CBP may consolidate multiple allegations against one or more Importers into a single investigation, pursuant to 19 C.F.R. § 165.13(b), which provides that:

The factors that CBP may consider [when consolidating multiple allegations] include, but are not limited to, whether the multiple allegations involve: 1) Relationships between the Importers; 2) Similarity of covered merchandise; 3) Similarity of AD/CVD orders; and 4) Overlap in time periods for entries of covered merchandise.

In these investigations, Ebuy and Highland are alleged to have transhipped suspected Chinese-origin xanthan gum through Malaysia and entered the product into the United States to evade the AD order. Furthermore, "CBP finds that there is overlap in time period for entries of the covered merchandise because entries were filed within the common period of investigation. Moreover, the imports during the period of investigation originated from the same Malaysian exporter and/or manufacturer. CBP found that the factors warranting consolidation are present in the investigations of Ebuy and Highland, and therefore CBP is consolidating them and providing this notice pursuant to 19 C.F.R. § 165.13(c). We note that the deadlines for the consolidated investigation will be set from the date of initiation of investigation for the first properly filed allegation, which is June 22, 2023.⁴²

VI. 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

⁴¹ See Allegation Supplement, at 4.

⁴² See, *e.g.*, 19 C.F.R. § 165.13(a).

information described herein, TRLED has initiated an investigation concerning the evasion of the AD Order on xanthan gum from China. In addition, based on the information available on the record, CBP finds that there is reasonable suspicion that Ebuy and Highland engaged in evasion and as a result, CBP is imposing interim measures on Ebuy's and Highland's imports subject to this investigation.⁴³

Specifically, in accordance with 19 U.S.C. § 1517(e)(1)-(3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after June 22, 2023, the date of the initiation of the investigation;
- (2) pursuant to the Commissioner's authority under 19 U.S.C. § 1504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before June 22, 2023, the date of the initiation of the investigation; and
- (3) pursuant to the Commissioner's authority under 19 U.S.C. § 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.⁴⁴

In addition, CBP will require live entry and reject any entry summaries that do not comply with live entry procedure and require refile of entries that are within the entry summary rejection period. CBP will also evaluate Ebuy's and Highland's continuous bonds to determine their sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 U.S.C. § 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 summary⁴⁵ 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.⁴⁶ 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, please feel free to contact us at eapallegations@cbp.dhs.gov. Please include "EAPA Cons. Case Number 7813" 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>.

⁴³ See 19 U.S.C. § 1517(e); see also 19 C.F.R. § 165.24.

⁴⁴ See also 19 C.F.R. § 165.24(b)(1)(i)-(iii).

⁴⁵ See 19 C.F.R. §§ 165.4, 165.23(c), and 165.26.

⁴⁶ You will need a login name and password to use the CMS. The website will direct you how to obtain those.

Sincerely,

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

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