



PUBLIC VERSION

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RE: Notice of Initiation of Investigation and Interim Measures: EAPA Case 7841

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 BMF Imports, LLC (BMF Imports). CBP is investigating whether BMF Imports evaded antidumping duty (AD) order A-570-985 on xanthan gum (xanthan gum or covered merchandise) from the People’s Republic of China (China).¹ CBP found reasonable suspicion exists that BMF Imports entered covered merchandise into the customs territory of the United States by transshipping Chinese-origin xanthan gum through India. As a result, CBP is issuing a formal notice of initiation of investigation and interim measures (NOI) and imposing the interim measures outlined below.²

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

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 Fed. Reg. 43,143 (Dep’t Commerce Jul. 19, 2013) (*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 19 U.S.C. § 1517(e) and 19 C.F.R. § 165.24 (noting that the “reasonable suspicion” standard must be satisfied to implement interim measures).

the customs territory of the United States.”³ The Trade Remedy Law Enforcement Directorate (TRLED) in the CBP’s Office of Trade acknowledged receipt of the properly filed EAPA allegation against BMF Imports on December 7, 2023.⁴ The entries covered by this investigation are those entered for consumption, or withdrawn from warehouse for consumption, from December 7, 2022, through the pendency of this investigation.⁵

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.”⁶ Evasion is defined as “entering covered merchandise into the customs territory of the United States 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 merchandise.”⁷ Thus, the allegation must reasonably suggest not only that the importer alleged to be evading entered merchandise covered by an AD and/or countervailing duty (CVD) order into the United States, but also that such entry was made by a material 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.

On August 14, 2023, CP Kelco U.S., Inc. (CP Kelco or Alleger) filed an EAPA allegation claiming that U.S. importer BMF Imports is evading AD order A-570-985 on xanthan gum from China.⁸ On November 10, 2023 and December 15, 2023, CP Kelco submitted information supplementing its allegation.⁹ As noted above, on December 7, 2023, in accordance with 19 C.F.R. § 165.12(a), TRLED acknowledged receipt of CP Kelco’s properly filed EAPA allegation regarding evasion by BMF Imports. In its allegation and supplemental submissions, CP Kelco alleged available information reasonably suggests that BMF Imports evaded the *Order* by importing xanthan gum produced in China into the customs territory of the United States that was transshipped through India and falsely declared the country of origin of the merchandise as India, thereby failing to pay AD cash deposits.

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

⁴ See TRLED Email, “EAPA 7841 - Receipt of Allegation” (Dec. 7, 2023).

⁵ See 19 C.F.R. § 165.2.

⁶ See 19 C.F.R. § 165.15(b); see also 19 U.S.C. § 1517(b)(1).

⁷ See 19 U.S.C. § 1517(a)(5); see also 19 C.F.R. § 165.1 (setting forth the definition of “evasion”).

⁸ See Letter from CP Kelco, “Xanthan Gum from the People’s Republic of China: Evasion of Antidumping Order via Transshipment through India by Jay Dinesh Chemicals and BMF Imports, LLC” (Aug. 14, 2023) (Allegation).

⁹ See Letter from CP Kelco, “Xanthan Gum from the People’s Republic of China: First Supplement to EAPA Case #7841: Allegation of Evasion of Antidumping Order via Transshipment through India against Jay Dinesh Chemicals and BMF Imports, LLC” (Nov. 10, 2023) (First Supplement to Allegation) and Letter from CP Kelco, “Xanthan Gum from the People’s Republic of China: Second Supplement to EAPA Case #7841: Allegation of Evasion of Antidumping Order via Transshipment through India against Jay Dinesh Chemicals and BMF Imports, LLC” (Dec. 15, 2023) (Second Supplement to Allegation). Because all the information contained in the First Supplement to Allegation is also provided in the Second Supplement to Allegation, when citing to information that is contained in both submissions, CBP cites only to the Second Supplement to Allegation for ease of reference.

CP Kelco first alleged that BMF Imports evaded the *Order* by importing xanthan gum shipped by Jay Dinesh Chemicals, a chemical products manufacturer in India.¹⁰ CP Kelco provided maritime import data listing BMF Imports and Jay Dinesh Chemicals as the consignee and shipper, respectively, for a single 27,528 kilogram (kg) shipment of xanthan gum from India to the United States in January 2023.¹¹ Citing U.S. import data showing that 27,528 kg of xanthan gum was imported from India in January 2023, CP Kelco asserted that the U.S. import data confirmed that the aforementioned shipment was reported as originating from India.¹²

CP Kelco cited Jay Dinesh Chemicals' website, which states that “{o}ur company is actively engaged as Manufacturer, Exporter and Supplier in a wide range Xanthan Gum Powder in India” and clearly lists xanthan gum as a product available for purchase.¹³ Noting that Jay Dinesh Chemicals' website includes two photographs of bags of “Xanthan Gum 200 Mesh” bearing the name “Deosen,” CP Kelco asserted that Deosen Biotechnology Co., Ltd./Deosen Biochemical Ltd. (Deosen) is a known Chinese producer and exporter of xanthan gum.¹⁴ Thus, CP Kelco alleged that Jay Dinesh Chemicals is buying Chinese xanthan gum from Deosen, exporting it to the United States, and claiming it originates from India to evade the *Order*.¹⁵

The Alleger claimed that BMF Imports also evaded the *Order* by importing xanthan gum shipped by BizinBiz Technologies Private Limited (BizinBiz Technologies) from India.¹⁶ According to the Alleger, it seems that either BizinBiz Technologies is doing business under the trade name “Elchemy” or Elchemy is a subsidiary of BizinBiz Technologies, as both have the same address.¹⁷ CP Kelco asserted Elchemy/BizinBiz Technologies is a chemical exporter and distributor located in Mumbai, India, and that, based on its website, it “connects international buyers with high quality Indian manufacturers {,}” but does not list xanthan gum as a product available for purchase on its website.¹⁸

CP Kelco provided ship manifest data listing BMF Imports and BizinBiz Technologies as the consignee and shipper, respectively, for two shipments each containing 26,754 kg of xanthan gum from India that arrived in the United States in September and October 2023.¹⁹ Citing U.S. import data showing that 62,754 kg of xanthan gum from India entered the United States through Houston-Galveston, TX in September 2023, CP Kelco asserted that, based on the quantity, it is reasonable to assume the two xanthan gum shipments listed in the ship manifest data were reported as originating from India.²⁰

¹⁰ See Allegation at 6 and Attachment 7; see also Second Supplement to Allegation at 3.

¹¹ See Allegation at 5 and Attachment 4.

¹² *Id.* at 5-6 and Attachment 3.

¹³ See Second Supplement to Allegation at 3-4 and Attachment 5 (website at <https://www.jaydinesh.com/xanthan-gum/>). CP Kelco notes that when it filed the Allegation on August 14, 2023, Jay Dinesh Chemicals' website did not explicitly advertise that it purchased, produced, or sold xanthan gum. However, when revisiting Jay Dinesh Chemicals' website in September 2023, the Alleger observed that xanthan gum was clearly listed as a product available for purchase. *Id.* at 3 and Attachments 4 and 5; see also Allegation at 7 and Attachment 7.

¹⁴ See Second Supplement to Allegation at 4 and Attachments 5 and 6.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 2 and Attachment 1.

¹⁸ *Id.*

¹⁹ *Id.* at 3 and Attachment 2.

²⁰ *Id.* at 3 and Attachment 3.

The Allegor claimed there is no xanthan gum production in India.²¹ To support this contention, CP Kelco provided an affidavit from a Senior Director at CP Kelco who is familiar with the global market and the U.S. International Trade Commission’s 2018 report on xanthan gum from China, both of which asserted that xanthan gum is only produced in four countries worldwide: Austria, France, China, and the United States.²² CP Kelco also provided Indian import data for the Indian HS subheading covering xanthan gum and other natural and modified natural polymers showing that China accounted for approximately 87.79% of total imports by volume in January 2023 of products covered by this subheading, while imports from Austria, France, and the United States accounted for 0%, 0.15%, and 0.87%, respectively, of total imports into India.²³ CP Kelco claimed the significant volume of imports from China provides further support that Chinese-origin xanthan gum likely was transshipped through India to the United States.²⁴

In assessing the claims made and evidence provided in the allegation and CP Kelco’s supplemental submissions, CBP found the information submitted by CP Kelco reasonably suggested that BMF Imports evaded the *Order* by transshipping Chinese-origin xanthan gum through India and entering this merchandise into the United States without declaring the merchandise as subject to the *Order*. Consequently, CBP initiated EAPA investigation 7841 pertaining to BMF Imports on December 27, 2023.²⁵

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 merchandise covered by an AD and/or CVD order was entered into the United States through evasion.²⁶ 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.²⁷ If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 U.S.C. § 1517(e) and 19 C.F.R. § 165.24. As explained below, CBP is imposing interim measures because, based on the record evidence, there is reasonable suspicion that BMF Imports entered covered merchandise into the customs territory of the United States through evasion.

CF-28 Responses

CBP issued Customs Form 28 (CF-28) requests for information to BMF Imports for entry [#]3672 from Jay Dinesh Chemicals and entries [#]6358 and [#]4933

²¹ See Allegation at 6-7.

²² *Id.* at 6-7 and Attachments 8 and 9.

²³ *Id.* at 7 and Attachment 10.

²⁴ *Id.* at 7.

²⁵ See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7841” (Dec. 27, 2023).

²⁶ See 19 C.F.R. § 165.24(a); see also 19 U.S.C. § 1517(e).

²⁷ *Id.*

from BizinBiz Technologies during the period of investigation.²⁸ The CF-28s requested information regarding production and other information, including, but not limited to:

- Photographs and a description of each piece of equipment used in the production of xanthan gum;
- Information pertaining to the production capacity of all equipment used to produce xanthan gum;
- Complete factory production records, including stamped timecards, work orders, and packaging information;
- Factory-specific histories and the name of the factory owners and corporate officers;
- Purchase orders, commercial invoices, and proof of payment for all raw materials used to produce the xanthan gum;
- Transportation documents, container load plans, and foreign customs documentation for raw materials;
- Entry transaction information including the original commercial invoice(s), proof of payment(s), purchase order, CF7501 (*i.e.*, entry summary), and all bills of lading (master bills of lading including through bills of lading); and
- The names of all forwarding agents, subcontractors, and intermediaries involved and their contact information.²⁹

On December 29, 2023, BMF Imports submitted an entry summary, certificate of analysis, certificate of origin, and bill of lading for entry [#]3672, but did not provide any information regarding production of the imported xanthan gum.³⁰ BMF Imports stated that the supplier of the xanthan gum, Jay Dinesh Chemicals, did not respond to any of the questions on the CF-28 and that it did not possess that information itself.³¹ As BMF Imports' response lacked nearly all the information requested by the CF-28, on January 19, 2024, CBP issued a second CF-28 to BMF Imports asking that it respond fully to the original CF-28.³² BMF Imports did not provide any information regarding entry [#]3672 in response to CBP's second request.

Also on December 29, 2023, BMF Imports submitted an entry summary, certificate of analysis, certificate of origin, and bill of lading for entry [#]4933.³³ While BMF Imports did not provide any of the production records requested by CBP, it provided short narrative responses from BizinBiz Technologies/Elchemy, the xanthan gum supplier, indicating, among other things, that the manufacturer of the xanthan gum was [mfr. name] in China.³⁴ Given that BMF Imports' response was largely non-responsive to much of the information requested by the CF-28 for entry [#]4933 and contained no information concerning entry [#]6358, on January 19, 2024, CBP issued a second CF-28 to BMF Imports requesting that it respond

²⁸ See CF-28 issued to BMF Imports for entry [#]3672 and CF-28 issued for entries [#]6358 and [#]4933 (Nov. 30, 2023).

²⁹ *Id.*

³⁰ See BMF Imports' CF-28 Response for entry [#]3672 (Dec. 29, 2023).

³¹ *Id.*

³² See CF-28 issued to BMF Imports for entry [#]3672 (Jan. 19, 2024).

³³ See BMF Imports' CF-28 Response for entry [#]4933 (Dec. 29, 2023).

³⁴ *Id.*

fully to the original CF-28 for these two entries.³⁵ On January 29, 2024, BMF Imports submitted a CBP Form 3461, entry summary, bill of lading, commercial invoice from Elchemy, and packing list from Elchemy for entry [#]6358, but no production records or other information for this entry.³⁶ On that same date, BMF Imports resubmitted the information it had previously submitted for entry [#]4933, but provided no new information for that entry.³⁷

In short, BMF Imports' CF-28 responses contain no information on the equipment used in the production of xanthan gum, no production records, no documentation which traces raw materials through the production process to the entries in question, and no documents related to transportation and container load plans for raw materials. This information, which CBP requested but was 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 Jay Dinesh Chemicals or BizinBiz Technologies/Elchemy produced the xanthan gum for the entries at issue. Moreover, BMF Imports admitted for one of its entries from BizinBiz Technologies/Elchemy that the manufacturer of the xanthan gum was a Chinese producer, [mfr. name].

Other Information

On February 28, 2024, CBP placed publicly available information from the website <https://www.jaydineshchemicals.com> on the record of this EAPA investigation.³⁸ (This website is distinct from the website referenced in CP Kelco's Allegation and Second Supplement to Allegation, <https://www.jaydinesh.com>.) The website <https://www.jaydineshchemicals.com> lists two xanthan gum products, "Xanthan Gum Powder" and "Deson {sic} Xanthen {sic} Gum."³⁹ Pictures of the "Xanthan Gum Powder" show packaging marked with the words "Produce by Fufeng" and "Country of Origin CHINA" and the website "www.fufeng-group.com."⁴⁰ The "Product Brochure" found on the page for "Xanthan Gum Powder" consists of a certificate of analysis for xanthan gum food grade 200 mesh with the name "Shandong Fufeng Fermentation Co., Ltd." at the top.⁴¹ As for the second product, "Deson Xanthen Gum," pictures depict packaging with the names "Deosen" and "Deosen Biochemical (Ordos) Ltd.," while the "Product Brochure" is a certificate of analysis for xanthan gum 200 mesh with the name "Deosen Biochemicals (Ordos) Ltd." at the top.⁴² CBP also placed publicly available information on the record from Deosen Biochemical (Ordos) Ltd.'s website and Fufeng Group's LinkedIn page showing that both companies are located in China.⁴³ In sum, the website

³⁵ See CF-28 issued to BMF Imports for entries [#]6358 and [#]4933 (Jan. 19, 2024).

³⁶ See BMF Imports' CF-28 Response for entry [#]6358 and [#]4933 (Jan. 29, 2024).

³⁷ *Id.*

³⁸ See CBP Memorandum, "EAPA Case No. 7841 – Information from Companies' Websites" (Feb. 28, 2024) (Companies' Websites Memorandum) at Attachment 1.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at Attachments 2 and 3, respectively.

<https://www.jaydineshchemicals.com> indicates that both xanthan gum products offered by Jay Dinesh Chemicals originate from Chinese manufacturers.

Analysis

In assessing the record evidence, CBP finds that based on information submitted by CP Kelco, BMF Imports' CF-28 responses, and other information placed on the record by CBP, there is reasonable suspicion that BMF Imports entered merchandise covered by the *Order* into the customs territory of the United States through evasion. Specifically, the affidavit and ITC report provided in the allegation show that xanthan gum is not produced in India.⁴⁴ In addition, BMF Imports did not include in its CF-28 responses any of the information that CBP requested with respect to production of the xanthan gum for the entries at issue, and therefore failed to establish that either Jay Dinesh Chemicals or BizinBiz Technologies/Elchemy produced the xanthan gum in India.⁴⁵ Rather, information on Jay Dinesh Chemicals' websites demonstrates that supplier sources xanthan gum originating from Chinese manufacturers.⁴⁶ Furthermore, in the CF-28 response for one of its entries from BizinBiz Technologies/Elchemy, BMF Imports reported that the xanthan gum was manufactured by a Chinese producer.⁴⁷

Enactment of Interim Measures

Based on the record evidence described above, CBP determines reasonable suspicion exists that BMF Imports entered Chinese-origin xanthan gum from Jay Dinesh Chemicals and BizinBiz Technologies/Elchemy that is subject to AD order A-570-985 into the United States that was transshipped through India. Therefore, CBP is imposing interim measures on BMF Imports' entries covered by this investigation.⁴⁸ 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 December 27, 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 December 27, 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.⁴⁹

⁴⁴ See Allegation at Attachments 8 and 9, respectively.

⁴⁵ See BMF Imports' CF-28 Response for entry [#]3672 (Dec. 29, 2023); BMF Imports' CF-28 Response for entry [#]4933 (Dec. 29, 2023); and BMF Imports' CF-28 Response for entry [#]6358 and [#]4933 (Jan. 29, 2024).

⁴⁶ See Second Supplement to Allegation at Attachment 5 and Companies' Websites Memorandum at Attachment 1.

⁴⁷ See BMF Imports' CF-28 Response for entry [#]4933 (Dec. 29, 2023).

⁴⁸ See 19 U.S.C. § 1517(e); see also 19 C.F.R. § 165.24.

⁴⁹ See also 19 C.F.R. § 165.24(b)(1)(i)-(iii).

In addition, CBP will require live entry and reject any entry summaries that do not comply with live entry and require refile of entries that are within the entry summary rejection period. CBP may also evaluate BMF Imports' continuous bond to determine its sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 U.S.C. § 1517(h).

For future submissions or factual information that you submit to CBP pursuant to this EAPA investigation, please provide a business confidential version and a public version with public summaries⁵⁰ 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.⁵¹ 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 with "EAPA Case 7841" in the subject line of your email. Additional information on EAPA investigations, including the applicable statute and regulations, may be found on CBP's website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

Sincerely,

Steven Emilius

Steven Emilius
Acting Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade

⁵⁰ See 19 C.F.R. § 165.4, 165.23(c), and 165.26.

⁵¹ You will need a login name and password to use the CMS. The website will direct you how to obtain those.