



PUBLIC VERSION

April 29, 2024

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RE: Notice of Initiation of Investigation and Interim Measures: EAPA Case 7853

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 Just About Foods LLC (Just About Foods). CBP is investigating whether Just About Foods 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 that reasonable suspicion exists that Just About Foods entered covered merchandise into the customs territory of the United States by transshipping Chinese-origin xanthan gum through Mexico. 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....”

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).

Entry is defined as an “entry, or withdrawal from warehouse for consumption, of merchandise in 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 Just About Foods on December 29, 2023.⁴ The entries covered by this investigation are those entered for consumption, or withdrawn from warehouse for consumption, from December 29, 2022, through the pendency of this investigation.⁵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 October 9, 2023, CP Kelco U.S., Inc. (CP Kelco) filed an EAPA allegation claiming that U.S. importer Just About Foods was evading AD order A-570-985 on xanthan gum from China.⁸ On October 10, 2023, and November 10, 2023, CP Kelco submitted information supplementing its allegation.⁹ As noted above, on December 29, 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 Just About Foods.

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

⁴ See TRLED Email, “EAPA 7853 - Receipt of Allegation” (Dec. 29, 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: Allegation of Evasion of Antidumping Order via Transshipment through Mexico against Just About Foods LLC and Just About Foods, S. de R.L. de C.V.” (Oct. 9, 2023) (Allegation).

⁹ See Letter from CP Kelco, “Xanthan Gum from the People’s Republic of China: Supplement to EAPA Case #7853 Allegation of Evasion of Antidumping Order via Transshipment through Mexico against Just About Foods LLC and Just About Foods, S. de R.L. de C.V.” (Oct. 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 #7853 Allegation of Evasion of Antidumping Order via Transshipment through Mexico against Just About Foods LLC and Just About Foods, S. de R.L. de C.V.” (Nov. 10, 2023) (Second Supplement to Allegation); *see also* Letter from CP Kelco, “Xanthan Gum from the People’s Republic of China: Certifications for the Supplement to EAPA Case #7853 Allegation of Evasion of Antidumping Order via Transshipment through Mexico against Just About Foods LLC and Just About Foods, S. de R.L. de C.V.” (Jan. 3, 2024) (containing certifications for the Second Supplement to Allegation).

CP Kelco alleged that available information reasonably suggested that Just About Foods evaded the *Order* by importing xanthan gum produced in China into the customs territory of the United States that was transshipped through Mexico and falsely declared the country of origin of the covered merchandise as Mexico, and thereby failed to pay AD cash deposits.¹⁰ CP Kelco provided monthly U.S. import data for January - August 2023 from USITC DataWeb for Harmonized Tariff Schedule of the United States (HTS) number 3913.90.2015, the subheading covering xanthan gum.¹¹ CP Kelco also provided truck manifest data listing Just About Foods and Just About Foods, S. de R.L. de C.V. (Just About Foods CV) as the buyer and exporter, respectively, of xanthan gum from Mexico entering the United States.¹² CP Kelco asserted the shipments reflected in the truck manifest data of 571 kg and 1,713 kg of xanthan gum from Mexico that arrived in Laredo, Texas on July 6, 2023, and August 16, 2023, respectively, match the net quantities of xanthan gum that entered the United States from Mexico in July 2023 and August 2023, respectively, as reported in the U.S. import data.¹³ Thus, CP Kelco claimed, it is logical to assume these shipments of xanthan gum were reported as originating from Mexico.¹⁴

CP Kelco alleged that Just About Foods is based in San Diego, California and has an official website which lists various products for sale, including xanthan gum.¹⁵ As for Just About Foods CV, the purported manufacturer of xanthan gum, CP Kelco claimed this company is based in Guadalajara, Mexico, does not have an official website or online presence, and appears to be a subsidiary of Just About Foods given the similarity in name.¹⁶

According to CP Kelco, there is no xanthan gum production in Mexico.¹⁷ To support this claim, 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 (ITC)'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.¹⁸ CP Kelco also provided Mexican import data from Global Trade Atlas for the Mexican Harmonized System (HS) subheading covering xanthan gum for the period August 2022 through July 2023, and stated that China accounted for approximately 91.3 percent of total imports by volume, while imports from Austria, France, and the United States were approximately 6.7, 0.1, and 1.9 percent, respectively, of total imports into Mexico.¹⁹ CP Kelco argued the significant volume of Mexican imports from China provides further support that Chinese-origin xanthan gum likely was transshipped through Mexico to the United States.²⁰

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

¹⁰ See Allegation at 1.

¹¹ *Id.* at 5 and Attachment 3 and First Supplement to Allegation at 2 and Attachment 1.

¹² See Allegation at 5 and Attachment 4 and First Supplement to Allegation at 2 and Attachment 2.

¹³ See Allegation at 5 and Attachments 3 and 4 and First Supplement to Allegation at 2 and Attachments 1 and 2.

¹⁴ See First Supplement to Allegation at 2.

¹⁵ See Allegation at 6 and Attachments 5 and 6.

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.* at 6 and Attachments 7 and 8.

¹⁹ *Id.* at 7 and Attachments 9 and 10 and Second Supplement to Allegation at 2 and Attachment 2.

²⁰ See Allegation at 7.

suggested that Just About Foods evaded the *Order* by transshipping Chinese-origin xanthan gum through Mexico and entering this merchandise into the United States without declaring the merchandise as subject to the *Order*. Therefore, CBP initiated EAPA investigation 7853 pertaining to Just About Foods on January 23, 2024.²¹

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.²² 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.²³ 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 Just About Foods entered covered merchandise into the customs territory of the United States through evasion.

CF-28 Responses

On February 8, 2024, CBP issued Customs Form 28 (CF-28) requests for information to Just About Foods for entries [#]6848, [#]1328, and [#]5315.²⁴ 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;
- Dated 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);
- The names of all forwarding agents, subcontractors, and intermediaries involved and their contact information; and

²¹ See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7853” (Jan. 23, 2024).

²² See 19 C.F.R. § 165.24(a); *see also* 19 U.S.C. § 1517(e).

²³ *Id.*

²⁴ See CF-28s issued to Just About Foods for entries [#]6848, [#]1328, and [#]5315 (Feb. 8, 2024).

- Photographs of the xanthan gum packaging as imported.²⁵

On March 10, 2024, a customs broker for Just About Foods submitted the following documents for entry [#]5315: entry summary, certificate of origin, inward cargo manifest (CBP Form 7533), commercial invoice, and packing slip.²⁶ However, Just About Foods did not provide any other documentation requested by CBP with respect to production processes or answers in response to the questions on the CF-28 for this entry. For the remaining two entries, Just About Foods did not submit any documentation or answers in response to the questions on the CF-28s. Thus, on April 2, 2024, CBP issued follow-up CF-28s to Just About Foods for all three entries, requesting that it provide detailed answers to the specific questions on the originally issued CF-28s.²⁷ In the follow-up CF-28s, CBP also asked that Just About Foods state the name of the manufacturer and the country of origin of the xanthan gum.²⁸

On April 12, 2024, Just About Foods provided responses to the follow-up CF-28s for each of the three entries.²⁹ While Just About Foods' follow-up CF-28 responses included some of the documents and information requested by CBP, they contain no information on the equipment used in the production of xanthan gum from raw materials, no production records which trace raw materials through the production process to the entries in question, and no documents related to transportation and container load plans for raw materials.³⁰ Just About Foods explained that it has a partnership with Just About Foods CV, which exports [*product type*] from Mexico to the United States, and that [*information about products*], it purchases xanthan gum from Mexican suppliers that import the xanthan gum into Mexico.³¹ Importantly, Just About Foods reported that for entry [#]5315, the xanthan gum was manufactured in China by [*company name*], and that for entries [#]6848 and [#]1328, the xanthan gum was produced by [*company name*] in [*country*].³²

Analysis

In assessing the record evidence, CBP finds that based on information submitted by CP Kelco and Just About Foods, there is reasonable suspicion that Just About Foods 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 demonstrate that xanthan gum is not produced in Mexico, and Mexican import data show that over 91 percent of the xanthan gum imported into Mexico during the period August 2022 through July 2023 came from China.³³ Furthermore, in response to the follow-up CF-28s, Just About Foods reported that it

²⁵ *Id.*

²⁶ See CF-28 Response for entry [#]5315 (Mar. 10, 2024).

²⁷ See Follow-up CF-28s issued to Just About Foods for entries [#]6848, [#]1328, and [#]5315 (Apr. 2, 2024).

²⁸ *Id.*

²⁹ See Follow-up CF-28 Responses for entries [#]6848, [#]1328, and [#]5315 (Apr. 12, 2024).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See Allegation at 6-7 and Attachments 7 through 10 and Second Supplement to Allegation at 2 and Attachment 2.

purchases xanthan gum from Mexican suppliers that import the xanthan gum into Mexico.³⁴ Notably, Just About Foods admitted in its follow-up CF-28 responses that the country of origin for one of its entries of xanthan gum was China; while it claimed the country of origin for the other two entries of xanthan gum was [country], Just About Foods did not provide any documentation pertaining to the production of the xanthan gum from raw materials that would confirm production actually occurred in either of those countries.³⁵

Enactment of Interim Measures

Based on the record evidence described above, CBP determines reasonable suspicion exists that Just About Foods entered Chinese-origin xanthan gum that is subject to AD order A-570-985 into the United States that was transshipped through Mexico. Therefore, CBP is imposing interim measures on Just About Foods' entries covered by this investigation.³⁶ 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 January 23, 2024, 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 January 23, 2024, 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.³⁷

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 Just About Foods' 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 information that you submit to CBP pursuant to this EAPA investigation, please provide a business confidential version and a public version with public summaries³⁸ 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.³⁹ 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.

³⁴ See Follow-up CF-28 Responses for entries [#]6848, [#]1328, and [#]5315 (Apr. 12, 2024).

³⁵ *Id.*

³⁶ See 19 U.S.C. § 1517(e); *see also* 19 C.F.R. § 165.24.

³⁷ *See also* 19 C.F.R. § 165.24(b)(1)(i)-(iii).

³⁸ *See* 19 C.F.R. § 165.4, 165.23(c), and 165.26.

³⁹ 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, you may contact us at eapallegations@cbp.dhs.gov with “EAPA Case 7853” 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,



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