



**October 22, 2024**

**PUBLIC VERSION**

Mak Chemicals, Inc.  
C/o David M. Murphy  
Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP  
599 Lexington Avenue, 36th floor  
New York, NY 10022  
dmurphy@gdlsk.com

Matthew L. Kanna  
On behalf of CP Kelco U.S., Inc.  
Greenberg Traurig, LLP  
2101 L Street NW, Suite 1000  
Washington, DC 20037  
kannam@gtlaw.com

**RE: EAPA Case No. 7850 – Notice of Determination as to Evasion**

---

To the Counsels for the Above-Referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7850, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that Mak Chemicals, Inc. (Mak Chemicals) entered merchandise covered by antidumping duty (AD) order A-570-985 (the *Order*) into the customs territory of the United States through evasion.<sup>1</sup> Substantial evidence demonstrates that Mak Chemicals evaded the *Order* by importing Chinese-origin xanthan gum from the People’s Republic of China (China) that had been transshipped through Indonesia. Mak Chemicals failed to declare that the xanthan gum was subject to the *Order* upon entry and, as a result, no cash deposits were applied to the merchandise at the time of entry.

**I. Background & Procedural History (Pre-Interim Measures)**

*Allegation and Initiation*

CP Kelco U.S., Inc. (the *Alleger*, or CP Kelco) filed an EAPA allegation against Mak Chemicals on October 3, 2023,<sup>2</sup> and on November 29, 2023, the Trade Remedy Law Enforcement

---

<sup>1</sup> 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).

<sup>2</sup> See the October 3, 2023, letter from the *Alleger* entitled, “Xanthan Gum from the People’s Republic of China: Allegation of Evasion of Antidumping Order via Transshipment through Indonesia against Mak Chemicals Inc., *et al.*” (Allegation).

Directorate (TRLED), within CBP's Office of Trade (OT), acknowledged receipt of the properly filed Allegation.<sup>3</sup> CBP initiated an investigation pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as EAPA on December 20, 2023.<sup>4</sup> The allegation asserted that available information reasonably suggested that Mak Chemicals evaded the *Order* by transshipping Chinese-origin xanthan gum through Indonesia and failed to declare that the covered merchandise was, in fact, from China.

In support of its allegation, the Alleger provided an affidavit from its senior director of Biogum Strategic Platforms, Mr. Shaw Gilmer; a 2018 report issued by the U.S. International Trade Commission (USITC); manifest data; and information from Mak Chemicals' website, which all reasonably suggested that Mak Chemicals entered Chinese-origin xanthan gum into the customs territory of the United States through evasion.

Mr. Gilmer, who is familiar with the production capacity and available supply for the xanthan gum industry globally, affirmed in an affidavit that xanthan gum is only manufactured in four countries worldwide: Austria, France, China, and the United States.<sup>5</sup> This claim was supported by a 2018 report issued by the USITC. The USITC's finding in its investigation states that xanthan gum is only produced in Austria, France, China, and the United States; both claims support a conclusion there is no xanthan gum production in Indonesia.<sup>6</sup> Despite this evidence, public U.S. import data listed total imports of xanthan gum from Indonesia equaling 31,000 kg as of July 2023.<sup>7</sup> In addition, Mak Chemicals' website did not list xanthan gum as a product for sale.<sup>8</sup> According to its website, "Mak Chemicals is a supplier of monomers, specialty monomers, oligomers, plasticizers, epoxy resins, green surfactants, silicone fluids, silanes, siloxanes, titanium dioxide, and VOC exempt solvents."<sup>9</sup>

Furthermore, the Alleger provided trade data showing that the average unit value of xanthan gum from Indonesia is significantly lower when compared to countries such as Austria and France that do produce xanthan gum, supporting a conclusion that the origin of the imported Indonesia shipments is more likely China.<sup>10</sup> The manifest data showed that Mak Chemicals was listed as the notify party on a bill of lading (BOL) for a shipment of 15,500 kg of xanthan gum on July 23, 2023, leaving the Port of Singapore, transiting through Jakarta, Indonesia, then arriving at the Port of Newark/New York, United States.<sup>11</sup> This value is consistent with the gross quantity of 15,500 kg of xanthan gum arriving in the United States from Indonesia in July 2023.<sup>12</sup> Similarly, on June 18, 2023, the data shows another shipment of 16,128 kg of xanthan gum transiting through similar routes before arriving into the United States.<sup>13</sup> Based on the

---

<sup>3</sup> See CBP email, "EAPA 7850 - Receipt of Properly Filed Allegation," dated November 29, 2023.

<sup>4</sup> See CBP Memorandum to the File, "Initiation of Investigation for EAPA Case Number 7850," dated December 20, 2023 (Initiation Memo).

<sup>5</sup> *Id.* at 10 and Attachment 11.

<sup>6</sup> *Id.* and Attachments 12.

<sup>7</sup> *Id.* at 6 and Attachment 3. Xanthan gum imports were classified under HTS 3913.90.2015, which is the subheading covering xanthan gum.

<sup>8</sup> *Id.* at 7 and Attachment 5.

<sup>9</sup> *Id.*. VOC appears to stand for "volatile organic compounds."

<sup>10</sup> *Id.* at 11.

<sup>11</sup> *Id.* at 6 and Attachment 4, Descartes Datamyne, USA Bills Import: 06/01/2023 to 09/22/2023.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

description of the shipment contained in the vessel manifest data and the fact that no xanthan gum is known to be manufactured in Indonesia, this merchandise is likely of Chinese origin and is covered by the scope of the *Order*.

#### *CBP Form 28 (CF-28) Requests for Information*<sup>14</sup>

After EAPA's initiation of this investigation, on January 10, 2024, CBP issued three CF-28s to Mak Chemicals, requesting entry supporting documents<sup>15</sup> for entry numbers [ No. ]6995 (entry 6995), [No. ]7183 (entry 7183), and [ No. ]7241 (entry 7241) to review and verify the goods entered. CBP requested the following information in the CF-28s: a copy of the purchase orders (P/Os), BOLs, sales invoices, and proof of payment (invoices, checks, money order, bank statements, wire transfer, *etc.*) for the goods. CBP also requested a detailed description of the commodity and production process, including flow charts and equipment lists; the full production records for the goods, including invoices or P/Os for raw materials used to produce the goods and a copy of any test reports; company ownership information; and Indonesia export documents.

Mak Chemicals had 30 days to reply to the CF-28s, and CBP did not receive any responses for the three entries listed above by the deadline. Accordingly, CBP issued a CBP Form 29 (CF-29) on February 14, 2024, to inform Mak Chemicals that it must comply with CBP's request for entries ending in 6995, 7183 and 7241, with a new deadline of February 21, 2024.<sup>16</sup> On February 15, 2024, CBP received an email from Mak Chemicals' vice president and treasurer, [Name ] informing CBP that the xanthan gum producer was closed due to local holiday and that Mak Chemicals would get back to CBP once the producer re-opened.<sup>17</sup> This email also provided the website link [ Website location ] for the producer of entry 7183. Meanwhile, on February 16, 2024, Mak Chemicals submitted a CBP Form 7501 for the three

---

<sup>14</sup> See CF-28 Requests for Information on entries 6995, 7183 and 7241, dated January 10, 2024 (CF-28 requests).

<sup>15</sup> See 19 C.F.R. § 163.6(a) requiring importers to produce the supporting documentation to CBP upon request. This means by written, oral, or electronic notice, any Customs officer may require the production of entry records by any person listed in § 163.2(a) who is required under this part to maintain such records, even if the entry records were required at the time of entry. Any oral demand for entry records shall be followed by a written or electronic demand. The entry records shall be produced within 30 calendar days of receipt of the demand or within any shorter period as Customs may prescribe when the entry records are required in connection with a determination regarding the admissibility or release of merchandise. Should any person from whom Customs has demanded entry records encounter a problem in timely complying with the demand, such person may submit a written or electronic request to Customs for approval of a specific additional period of time in which to produce the records; the request must be received by Customs before the applicable due date for production of the records and must include an explanation of the circumstances giving rise to the request. Customs will promptly advise the requesting person electronically or in writing either that the request is denied or that the requested additional time period, or such shorter period as Customs may deem appropriate, is approved. The mere fact that a request for additional time to produce demanded entry records was submitted under this section shall not by itself preclude the imposition of a monetary penalty or other sanction under this part for failure to timely produce the records, but no such penalty or other sanction will be imposed if the request is approved, and the records are produced before expiration of that additional period of time.

<sup>16</sup> See the CF-29, dated February 14, 2024. Pursuant to 19 U.S.C. § 1509 and 19 C.F.R. § 163, Mak Chemicals is required to produce the supporting documentation upon CBP's request.

<sup>17</sup> See the Memorandum to the File, titled "Supplemental Information," dated March 19, 2024, at Attachment 3 (Supplemental Info Memo).

requested entries,<sup>18</sup> and no other information by the February 21, 2024, deadline; thus, Mak Chemicals still failed to comply with CBP's CF-28 requests for information.

On March 13, 2024, 21 days after the deadline, Mak Chemicals submitted a response to CBP's requests for each entry with partial information. Its response for entry 6995 connecting to P/O [ No. ] included a May 12, 2023 commercial invoice [ Code ], a May 12, 2023 BOL [ No. ], an undated manufacturer's certificate of origin issued by [ Name Email address ], a debit note from [ Name ], a certificate of quality from [ Name ], a May 4, 2023 sea freight invoice from [ Name ], a certificate of fumigation, a marine cargo certificate of insurance, an ISPM pallet certificate, a packing list issued by [Name .], and a safety data sheet.<sup>19</sup>

Mak Chemicals' response for entry 7183<sup>20</sup> consisted of documents linked to P/O [ No. ], and included a [ Date ] 2023 BOL [ Code ]; a [ Date ] 2023 invoice [ Code ]; a packing list from [ Name ] in Malaysia with the goods described as refined glycerine [ Content ]; a [ Date ] 2023 certificate of analysis from Malaysia; a June 8, 2023 additional declaration of heat treatment from [ Name ]; a June 13, 2023 generalized system of preferences certificate of origin issued in Indonesia for [ Name ] for a May 30, 2023 shipment; and a May 30, 2023 marine cargo certificate for a departure date of May 30, 2023.<sup>21</sup>

The documents which were submitted by Mak Chemicals for entry 7241, and connected to P/O [ No. ], included the second page of a June 14, 2023 BOL [ Code ]; a fumigation certificate; an undated Indonesian manufacturer's certificate of origin issued by [ Name ]; an undated xanthan gum certificate of analysis; a June 14, 2023 commercial invoice [ Code ]; a June 14, 2023 debit note; a freight note; a June 14, 2023 Marine Cargo certificate of insurance; a June 14, 2023 packing list; and a safety data sheet.<sup>22</sup>

Although the documents provided appear to support the sales of the goods in the related entries, Mak Chemicals provided no information as to whether and how the xanthan gum was actually produced in Indonesia. The documents that were provided also had several inconsistencies. For example, the issuer of the safety data sheet is unknown for entries 6995 and 7241; however, the document indicates that [ Name ] is the registered company that operates as a chemical manufacturer, importer, or other responsible party. However, the manufacturer certificates of origin were provided by a different company called [ Name ]. Mak Chemicals provides no explanation about how these two companies relate to the xanthan gum imports nor why the names [Type] from the [ Type ] listed on the CBP 7501 entry summary form.<sup>23</sup> In addition, it seems unlikely that [ Name ] is the manufacturer, even though the data sheet says it could be, because it is located on the fifteenth

---

<sup>18</sup> See Mak Chemicals' email with attached 7501 forms, dated February 16, 2024.

<sup>19</sup> See Mak Chemicals' CF-28 response for entry 6995, dated March 13, 2024.

<sup>20</sup> See Mak Chemicals' CF-28 response for entry 7183, dated March 13, 2024.

<sup>21</sup> *Id.*

<sup>22</sup> See Mak Chemicals' CF-28 response for entry 7241, dated March 13, 2024.

<sup>23</sup> See Supplemental Info Memo at Attachment 3.

floor of a building.<sup>24</sup> The information provided does not allow CBP to establish who the manufacturer is, let alone if the xanthan gum was produced in Indonesia.

Furthermore, the manufacturer certificate of origin, xanthan gum certificate of analysis, and the certificate of quality provided by Mak Chemicals are all undated, which is an uncommon business practice. Therefore, CBP is unable to determine when they were issued and if they relate to the entries being imported. Mak Chemicals also did not provide any appropriate proofs of payment. Most importantly, no production documents, such as factory profile information, production processes and machinery used, raw material purchases, labor timesheets, *etc.*, were provided.<sup>25</sup> Given the lack of production records demonstrating how xanthan gum is produced and the lack of records of raw material purchases provided, there is sufficient reason to doubt whether the reported Indonesian companies actually produced xanthan gum in Indonesia, let alone which company was the supplier. In sum, Mak Chemicals failed to provide sufficient evidence in its CF-28 responses to indicate that Indonesia is the country of origin of the xanthan gum it imported to the United States.

## **II. Interim Measures & Post Interim Measures**

### *Interim Measures*

After evaluating the information on the record, on March 26, 2024, CBP issued its Notice of Initiation and Interim Measures.<sup>26</sup> TRLED determined that there was reasonable suspicion that Mak Chemicals evaded the *Order* by claiming the xanthan gum it imported into the United States was of Indonesia origin when it was actually of Chinese origin.<sup>27</sup> TRLED based its finding on the information provided in the Allegation and the fact the three CF-28 responses did not include any production information that demonstrated that the xanthan gum exported was actually produced in Indonesia during the period of investigation (POI).<sup>28</sup> Although Mak Chemicals provided some evidence to establish that Indonesia is the correct country of origin of the xanthan gum imported into the United States, CBP cannot rely on that evidence as it is unreliable and insufficient.

### *Requests for Information (RFI)*

CBP afforded Mak Chemicals and the Indonesian suppliers another opportunity to clarify and provide supporting documentation to show the actual country of origin of the xanthan gum imported into the United States. On April 2, 2024, CBP issued RFIs to Mak Chemicals, [Name

---

<sup>24</sup> See Mak Chemicals' CF-28 response for entry 6995, dated March 13, 2024. The commercial invoice for this sale lists [Name] as located at [Address] ....

<sup>25</sup> See Mak Chemicals' CF-28 response for entry 7183; Mak Chemicals' CF-28 response for entry 6995; and Mak Chemicals' CF-28 response for entry 7241.

<sup>26</sup> See CBP Memorandum "Re: Notice of Initiation of Investigation and Interim Measures - EAPA Case 7850," dated March 26, 2024 (NOI).

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

<sup>28</sup> In accordance with 19 C.F.R. § 165.2, the entries covered by this investigation are those entered for consumption, or withdrawn from warehouse for consumption, from November 29, 2022, through the pendency of this investigation.

Indomakmur Gemilang, Petrkemindo Mandiri, and PT. Nirmala Avijaya] via emails;<sup>29</sup> and on April 24, 2024, CBP followed up the emails by sending the RFIs physically via FedEx mail to [ Names ].<sup>30</sup> These companies are listed in the entry documents provided to CBP (e.g., the 7501 form and the manufacturer certificate of origin from [ Name ]).<sup>31</sup>

The RFIs issued to Mak Chemicals asked for information regarding its corporate structure, sales, accounting and financial practices and information about the Indonesian suppliers. Similarly, the RFIs issued to [ Names ] requested information regarding each company's corporate structure, sales, accounting and financial practices and information about each company's production process to confirm origin of the xanthan gum. CBP questioned all three companies because there is conflicting information on the record as to who the actual Indonesian supplier is. Therefore, the information sought by all the RFIs was highly relevant to allow CBP to identify who actually produced the xanthan gum and where that production took place.

### *Mak Chemicals' RFI Response*

On May 15, 2024, CBP timely received an RFI response from Mak Chemicals, which confirmed that [Name ] and [Name ] own the company, where [Name ] holds [No. ] of shares and [ Name ] holds [No. ] of the shares.<sup>32</sup> The RFI response also stated that Mak Chemicals had sales of xanthan gum totaling \$[ No. ] during the POI.<sup>33</sup> Mak Chemicals began its xanthan gum distribution business in the U.S. market in 2023 and has no affiliates.<sup>34</sup> Mak Chemicals stated that its xanthan gum imports were a new trial product that it wanted to develop a business around, and it had resulted in acquiring three or four customers.<sup>35</sup> However, Mak Chemicals has now ceased purchasing and selling xanthan gum.<sup>36</sup>

Mak Chemicals said it does not have any price lists for its sales of xanthan gum, long-term purchase contracts, short-term purchase contracts, product codes, catalogs, or brochures, nor does it conduct internet-based advertising.<sup>37</sup> Mak Chemicals indicated that because xanthan gum was Mak Chemicals' new trial product, potential customers offered the price first, and if the customer's offered purchase price aligned with Mak Chemicals' purchase price, the sale was accepted.<sup>38</sup>

---

<sup>29</sup> See CBP's emails titled, "EAPA 7850: U.S. Customs and Border Protection Request for Information," "EAPA 7850: U.S. Customs and Border Protection Request for Information - Mfg-2" and "EAPA 7850: U.S. Customs and Border Protection Request for Information - Mfg.-3" (collectively, April 2<sup>nd</sup> Supplier RFI Emails), dated April 2, 2024.

<sup>30</sup> See CBP's Memorandum to the File titled, "2<sup>nd</sup> Supplemental Information to the Administrative Record of EAPA Case 7850" (2<sup>nd</sup> Supplemental Info Memo), dated June 14, 2024.

<sup>31</sup> See Mak Chemicals' CF-28 response for entry 6995.

<sup>32</sup> See Mak Chemicals' RFI response "Investigation - EAPA Case 7850 Investigation of Xanthan Gum from China: Initial RFI Response of Mak Chemicals, Inc." (Mak Chemicals' RFI Response), dated May 15, 2024, at 3.

<sup>33</sup> *Id.* at 17.

<sup>34</sup> *Id.* at 6.

<sup>35</sup> *Id.* at 10.

<sup>36</sup> *Id.* at 10 and 15.

<sup>37</sup> *Id.* at 11.

<sup>38</sup> *Id.*

Mak Chemicals said it would receive the BOL, commercial invoice, certificate of analysis, packing list, and certificate of origin from the vendor and then forward the documents to Danny Stolba to file the customs entry.<sup>39</sup> Mak Chemicals would send the BOL to the freight forwarder, who would then send an arrival notice when the shipment was due for arrival into the port listed on the BOL. Additionally, Mak Chemicals would send the delivery order to the carrier at the time of pick up from the port listed on the order.<sup>40</sup>

Mak Chemicals stated that xanthan gum was purchased “through an unrelated buying agent in India, [ Name ] ([Name ]) {located} at [Address ].”<sup>41</sup> Mak Chemicals maintains that it relied on its buying agent in the selection of the manufacturers and said that the buying agent would verify the factory’s profile and production capabilities.<sup>42</sup> Mak Chemicals also said it relied on its customs broker, Mr. Danny Stolba, for guidance on the classification and AD/CVD matters.<sup>43</sup> In addition, Mak Chemicals said it relied on the supplier-issued certificate of origin to substantiate the origin of the xanthan gum imported by Mak Chemicals into the United States.<sup>44</sup>

On June 17, 2024, CBP issued a Supplemental RFI questionnaire to Mak Chemicals and the submission was timely received on July 10, 2024.<sup>45</sup> Mak Chemical’s Supp. RFI response indicates that [Name ] is an independent agent in India, which is paid by the supplier, and indicates that Mak Chemicals did not directly pay [Name ] and that no written agreement exists between [Name ] and Mak Chemicals.<sup>46</sup>

According to Mak Chemicals, the three shipments associating with BOLs [ Codes ] are xanthan gum sample sales that Mak Chemicals ordered on the phone; therefore, there are no customer contracts, purchase orders or order confirmations available.<sup>47</sup> CBP noted that BOL [ Code ], dated March 4, 2023, links to air tracking number [ Code ] for a shipment that arrived on March 5, 2023, indicating a sample of xanthan gum from [ Name ] China.<sup>48</sup> After receiving this sample shipment of xanthan gum directly from China in March 5, 2023, Mak Chemicals then received a commercial shipment of xanthan gum from Indonesia, with a BOL file date of April 28, 2023, for a shipment containing 640 packages (16,128 Kg.) of food grade xanthan gum shipped by [ Name ] in container number [ Code ].<sup>49</sup>

---

<sup>39</sup> Mr. Stolba is the name of the broker used by Mak Chemicals. *Id.* at 15.

<sup>40</sup> *Id.* at 15

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 19.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 15 and 16.

<sup>45</sup> See Mak Chemicals’ Supplemental RFI response, “Investigation - EAPA Case 7850 Investigation of Xanthan Gum from China: Supplemental RFI Response of Mak Chemicals, Inc.” (Mak Chemical’s Supp. RFI response), dated July 10, 2024.

<sup>46</sup> *Id.* at 12-14.

<sup>47</sup> *Id.* at 6 and Exhibit S3.1\_IV-Q10 and Exhibit S3.2\_IV-Q10.

<sup>48</sup> See Supplemental Info Memo at Attachment 1.

<sup>49</sup> *Id.* See also, Mak Chemical’s Supp. RFI response at 3 and Exhibit S3.1\_IV-Q10 for Manufacturer Chart.

### *Non-Responsive Indonesian Suppliers*

CBP did not receive any RFI responses from [ Names ], despite CBP's solicitation and the opportunities provided to respond to the RFIs.<sup>50</sup> According to the CF-28s responses, [ Name ] is the manufacturer that issued the Indonesia certificate of origin; however, on the entry summary declarations made to CBP, [ Name ] was declared as the manufacturer.<sup>51</sup> CBP clearly explained in the RFI questions that CBP was seeking the information to understand their products and production processes so that CBP could make a determination as to evasion. The foreign suppliers in this investigation were provided multiple opportunities to respond to their RFI questionnaires since CBP sent the RFIs, along with a copy of the public version of the NOI via email,<sup>52</sup> and then followed up the non-response to the emails by mailing via FedEx<sup>53</sup> the hard copies of the RFIs to each of the suppliers. Nevertheless, the aforementioned Indonesian suppliers never responded to CBP's RFIs.

### *Voluntary Factual Information and Written Arguments*

CBP did not receive any voluntary factual information or written arguments from Mak Chemicals or the Alleger.

### **III. Analysis as to Evasion**

Under 19 U.S.C. § 1517(c)(1)(A), to reach a determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” 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>54</sup>

During this investigation, CBP attempted to obtain information from all parties involved in the investigation, but the Indonesian suppliers failed to cooperate to the best of their abilities by not responding to CBP's RFIs. Also, Mak Chemicals provided no evidence in its RFI responses to corroborate that the imported xanthan gum was actually produced in Indonesia. As a result, CBP is not able to determine the xanthan gum was manufactured in Indonesia and cannot confirm the suppliers' production capabilities. Therefore, the record does not contain information to corroborate Mak Chemicals claims regarding country of origin.

---

<sup>50</sup> See April 2<sup>nd</sup> Supplier RFI Emails; see also 2<sup>nd</sup> Supplemental Info Memo.

<sup>51</sup> See Mak Chemicals' CF-28 response for entry 7183; Mak Chemicals' CF-28 response for entry 6995; Mak Chemicals' CF-28 response for entry 7241; and Mak Chemicals' RFI Response at Exhibit IV-Q12.2.h.

<sup>52</sup> See CBP's April 2<sup>nd</sup> Suppliers RFI Emails.

<sup>53</sup> See CBP's 2<sup>nd</sup> Supplemental Info Memo.

<sup>54</sup> See 19 C.F.R. § 165.1.



The following evidence on the record indicates the xanthan gum did not originate in Indonesia, and can be presumed to have originated in China: the affidavit from the Alleger’s senior director stating that xanthan gum is only manufactured in Austria, France, China and the United States;<sup>55</sup> the applicable USITC report indicated xanthan gum is only manufactured in those four countries;<sup>56</sup> and the U.S. trade data reasonably available to the Alleger and submitted to CBP that suggests Mak Chemicals’ imports originated in China because of Indonesia’s geographical location and the lower value of xanthan gum there compared to Austria and France.<sup>57</sup>

The only evidence on the record that suggests the country of origin as other than China are the purported certificates of origin and testing documents for the entries listed in the Mak Chemicals RFI response.<sup>58</sup> However, CBP finds the certificates and testing documents unreliable because they are not linked to actual production documents and there are no production documents to tie the U.S. imports under investigation to the certificates or testing documents. In other words, the lack of responses from the Indonesian suppliers prevents CBP from validating the authenticity of the certificates of origin and the testing documents; therefore, there is insufficient evidence on the record linking the Indonesian suppliers to these documents.

#### **IV. Determination as to Evasion**

##### *Adverse Inferences*

In making an evasion determination, EAPA provides CBP the authority to “collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by... issuing a questionnaire with respect to such covered merchandise to “the importer alleged to have engaged in evasion and the foreign producer of the covered merchandise.”<sup>59</sup> The EAPA regulations provide that to obtain “information necessary to carry out its functions and duties... CBP may employ any means authorized by law,” which, as noted in the statute, includes the issuance of questionnaires to interested parties.<sup>60</sup> Furthermore, an adverse inference may be used with respect to U.S. importers, foreign producers, and manufacturers “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought....”<sup>61</sup>

Under 19 U.S.C. § 1517(c)(3), if CBP finds that a party “has failed to cooperate by not acting to the best of the party or person’s ability to comply with a request for information, the Commissioner may, in making a determination {of evasion}, use an inference that is adverse to the interests of that party or person in selecting from among the facts otherwise available to make the determination.” Additionally, the EAPA regulations provide that if “the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the

---

<sup>55</sup> See the Allegation at 6-7 and Attachment 5.

<sup>56</sup> *Id.* at 10 and Attachments 11-12.

<sup>57</sup> *Id.* at 10-11.

<sup>58</sup> See Mak Chemicals’ CF-28 response for entry 7183; Mak Chemicals’ CF-28 response for entry 6995; Mak Chemicals’ CF-28 response for entry 7241; and Mak Chemicals’ RFI Response at Exhibit IV-Q12.2.h.

<sup>59</sup> See 19 U.S.C. § 1517(c)(2).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion....”<sup>62</sup>

Therefore, consistent with 19 U.S.C. § 1517(c)(3)(A) and 19 C.F.R. § 165.6, CBP will apply inferences adverse to the interests of the three Indonesian suppliers. Due to the failure of [ [Names](#) ] to respond to CBP’s RFIs, CBP cannot evaluate whether documentation related to country of origin submitted by Mak Chemicals during this EAPA investigation is accurate. CBP cannot even determine that any of the three suppliers have the capacity to produce xanthan gum or who the actual supplier was in Indonesia for Mak Chemical’s entries. Furthermore, Mak Chemicals states that it sourced its xanthan gum through a [ [Type and Name](#) ] and relied on that company to supply the correct country of origin. This indicates that Mak Chemicals itself cannot be sure of the country of origin of the xanthan gum that it imported to the United States. As a result, CBP is applying inferences adverse to the interests of [ [Names](#) ].<sup>63</sup> In relying upon an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one’s ability with a request for information, CBP will look at the facts otherwise available.

The facts on the record, as established in the Allegation and mentioned above, suggest that all of Mak Chemicals imports originated from China, even though the claimed country of origin was Indonesia. EAPA does not have a knowledge or other culpability requirement for evasion as defined under 19 U.S.C. § 1517(a)(5)(A) and 19 C.F.R. § 165.1. Accordingly, there is no requirement that the importer know of the material or false statement yielding evasion. Thus, CBP does not need to determine any level of culpability, only that an importer entered covered merchandise into the United States through a material statement or omission that resulted in avoidance or reduction in duty liability.

In sum, CBP finds that there is substantial evidence that Chinese-origin xanthan gum was imported by Mak Chemicals into the United States during the POI by evasion by means of transshipment through Indonesia, and that said xanthan gum is covered by the *Order* on xanthan gum from China. Consequently, the required cash deposits were not collected on the merchandise as of the onset of this investigation.<sup>64</sup>

## **V. Actions Taken Pursuant to the Affirmative Determination as to Evasion**

In light of CBP’s determination that substantial evidence demonstrates that Mak Chemicals entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28, CBP will suspend or continue to

---

<sup>62</sup> See 19 C.F.R. § 165.27.

<sup>63</sup> Note: Because CBP is not sure who the actual supplier is based on conflicting evidence on the record and the lack of response from the Indonesia suppliers, CBP is applying adverse inferences to all three entities suspected of being the supplier(s).

<sup>64</sup> The rate applicable to these entries are the China-wide entity rate for the *Order* on xanthan gum from China, unless otherwise specified by the Department of Commerce.

suspend the entries covered by this investigation, until instructed to liquidate. For those entries previously extended in accordance with Interim Measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP may also evaluate Mak Chemicals' continuous bonds in accordance with CBP's policies. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,

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

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