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PUBLIC VERSION

EAPA Case Number 7841

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RE: Notice of Determination as to Evasion

To the Counsel and/or Representatives for the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) case number 7841, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that BMF Imports, LLC (BMF Imports) entered merchandise covered by antidumping duty (AD) order A-570-985 on xanthan gum from the People's Republic of China (China)¹ (covered merchandise) into the customs territory of the United States through evasion. Substantial evidence demonstrates that BMF Imports imported Chinese-origin xanthan gum that was transshipped through India. BMF Imports declared the Chinese-origin xanthan gum as Indian-origin and, as a result, no cash deposits were collected on the merchandise.

Background

Allegation and Initiation of Investigation

On August 14, 2023, CP Kelco U.S., Inc. (CP Kelco or Alleger) filed an EAPA allegation claiming that BMF Imports was evading the *Order* on xanthan gum from China,² and on November 10, 2023

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 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).

and December 15, 2023, CP Kelco submitted information supplementing its allegation.³ In accordance with 19 C.F.R. § 165.12(a), CBP acknowledged receipt of CP Kelco's properly filed EAPA allegation against BMF Imports on December 7, 2023.⁴

In its allegation and supplemental submissions, CP Kelco alleged that BMF Imports evaded the *Order* through its imports of xanthan gum shipped from India by Jay Dinesh Chemicals and BizinBiz Technologies Private Limited (BizinBiz).⁵ CP Kelco provided shipment data listing BMF Imports as the consignee for xanthan gum shipped from India by both companies and asserted that, based on official data it provided for U.S. imports of xanthan gum, these shipments were reported, or likely reported, as originating from India.⁶

CP Kelco also provided printouts from Jay Dinesh Chemicals' website, which stated that “{o}ur company is actively engaged as Manufacturer, Exporter and Supplier in a wide range Xanthan Gum Powder in India,” listed xanthan gum as a product available for purchase, and included two pictures of bags of “Xanthan Gum 200 Mesh” with the name “Deosen.”⁷ Noting that Deosen Biochemical (Ordos) Ltd./Deosen Biochemical Ltd. (Deosen) is a known Chinese producer and exporter of xanthan gum, CP Kelco alleged that Jay Dinesh Chemicals is buying Chinese xanthan gum from Deosen, exporting it to the United States, and claiming it originated from India.⁸

With respect to BizinBiz, the *Alleger* averred that this company either does business under the trade name “Elchemy” or that Elchemy is a subsidiary of BizinBiz.⁹ In support of this, the *Alleger* noted that both have the same address.¹⁰ CP Kelco asserted that Elchemy/BizinBiz is a chemical exporter and distributor in India whose website stated that it “connects international buyers with high quality Indian manufacturers” but did not list xanthan gum as a product available for purchase.¹¹

The *Alleger* claimed there is no xanthan gum production in India.¹² In support of this contention, CP Kelco provided an affidavit from the Senior Director of Operations for the Biogums Strategic Platform at CP Kelco, who attested that he is familiar with the global industry for

³ 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.

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

⁵ See Allegation at 3 and 6-7 and Second Supplement to Allegation at 2-3.

⁶ See Allegation at 5-6 and Attachments 3-4 and Second Supplement to Allegation at 3 and Attachments 2-3.

⁷ See Second Supplement to Allegation at 3-4 and Attachment 5 (website at <https://www.jaydinesh.com/xanthan-gum/>). CP Kelco noted 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.

⁸ See Second Supplement to Allegation at 4 and Attachment 6.

⁹ *Id.* at 2 and Attachment 1.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² See Allegation at 6-7.

biogums/hydrocolloids, as well as the U.S. International Trade Commission's (ITC) 2018 report on xanthan gum from China.¹³ Both the affiant and ITC report declared that xanthan gum is only produced in Austria, France, China, and the United States.¹⁴ In addition, CP Kelco provided Indian import data for xanthan gum showing that China accounted for a significant share (nearly 88 percent) of total imports into India by volume in January 2023 of products covered by the appropriate subheading, and asserted this is further support that Chinese-origin xanthan gum likely was transshipped through India to the United States.¹⁵

CBP found the information submitted by CP Kelco reasonably suggested that BMF Imports entered covered merchandise into the customs territory of the United States through evasion. Consequently, on December 27, 2023, CBP initiated an EAPA investigation pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.¹⁶ 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.¹⁷

Customs Form 28s

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 from BizinBiz, all of which were made during the period of investigation.¹⁸ The CF-28s requested entry documentation and information pertaining to the production of xanthan gum.¹⁹

On December 29, 2023, BMF Imports submitted some entry documentation for entry [#]3672, but did not provide any information regarding production of the imported xanthan gum.²⁰ BMF Imports stated that the xanthan gum supplier, Jay Dinesh Chemicals, did not respond to any of the questions on the CF-28 and that it did not possess that information itself.²¹ On January 19, 2024, CBP issued a second CF-28 to BMF Imports asking it to respond fully to the original CF-28 for entry [#]3672;²² however, BMF Imports did not provide any information in response to CBP's second request.

On December 29, 2023, BMF Imports also submitted some entry documentation for entry [#]4933.²³ While BMF Imports did not provide any of the production records that CBP requested, it provided short narrative responses from BizinBiz/Elchemy, the xanthan gum supplier, which stated, among other things, that [company] in China was the manufacturer of the

¹³ *Id.* at Attachments 8 and 9.

¹⁴ *Id.* at 6-7 and Attachments 8 and 9.

¹⁵ *Id.* at 7 and Attachment 10.

¹⁶ See 19 U.S.C. § 1517(b)(1); see also 19 C.F.R. § 165.15 and CBP Memorandum, "Initiation of Investigation for EAPA Case Number 7841" (Dec. 27, 2023).

¹⁷ See 19 C.F.R. § 165.2.

¹⁸ See CF-28 issued to BMF Imports for entry [#]3672 and CF-28 issued for entries [#]6358 and [#]4933 (Nov. 30, 2023).

¹⁹ *Id.*

²⁰ See BMF Imports' CF-28 Response for entry [#]3672 (Dec. 29, 2023).

²¹ *Id.*

²² See CF-28 issued to BMF Imports for entry [#]3672 (Jan. 19, 2024).

²³ See BMF Imports' CF-28 Response for entry [#]4933 (Dec. 29, 2023).

xanthan gum.²⁴ Since BMF Imports' CF-28 response for entry [#]4933 was incomplete and BMF Imports did not provide any information for entry [#]6358, CBP issued a second CF-28 on January 19, 2024, to BMF Imports requesting a full response to the original CF-28 for both entries.²⁵ On January 29, 2024, BMF Imports submitted some entry documentation for entry [#]6358, but no production records or other information for this entry.²⁶ On that same date, BMF Imports resubmitted the information it had previously submitted for entry [#]4933, but provided no new information.²⁷

Other Information Placed on the Record by CBP

On February 28, 2024, CBP placed on the record of this EAPA investigation publicly available information from the Jay Dinesh Chemicals' website <https://www.jaydineshchemicals.com>, which advertises two xanthan gum products.²⁸ For the first product, "Xanthan Gum Powder," the website contains pictures of packaging marked with "Produce by Fufeng," "Country of Origin CHINA," and "www.fufeng-group.com;" it also contains a "Product Brochure" consisting of a certificate of analysis from "Shandong Fufeng Fermentation Co., Ltd." for xanthan gum food grade 200 mesh.²⁹ For the second product, "Deson {sic} Xanthen {sic} Gum," the website contains pictures of packaging with the names "Deosen" and "Deosen Biochemical (Ordos) Ltd.," and the "Product Brochure" consists of a certificate of analysis for xanthan gum 200 mesh from Deosen Biochemicals (Ordos) Ltd.³⁰ 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.³¹

Interim Measures

After evaluating the record evidence, CBP found that reasonable suspicion existed that BMF Imports entered merchandise covered by the *Order* into the customs territory of the United States through evasion. Accordingly, CBP notified the parties to the investigation of this determination by email on March 26, 2024, and imposed interim measures.³² CBP also provided the parties to the investigation with the Notice of Initiation of Investigation and Interim Measures on April 2, 2024, in accordance with 19 C.F.R. § 165.15(d)(1).³³ CBP based its reasonable suspicion determination on information submitted by CP Kelco, BMF Imports' CF-28 responses, and other information placed on the record by CBP, namely, the CP Kelco Senior Director's affidavit and ITC report in

²⁴ *Id.*

²⁵ See CF-28 issued to BMF Imports for entries [#]6358 and [#]4933 (Jan. 19, 2024).

²⁶ See BMF Imports' CF-28 Response for entry [#]6358 (Jan. 29, 2024).

²⁷ See BMF Imports' CF-28 Response for entry [#]4933 (Jan. 29, 2024).

²⁸ See CBP Memorandum, "EAPA Case No. 7841 – Information from Companies' Websites" (Feb. 28, 2024) (Companies' Websites Memorandum) at Attachment 1. The two products can be seen at <https://www.jaydineshchemicals.com/xanthan-gum-powder.html>. CBP notes that the website <https://www.jaydineshchemicals.com> is distinct from the website referenced in CP Kelco's Allegation and Second Supplement to Allegation, <https://www.jaydinesh.com>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at Attachments 2 and 3, respectively.

³² See CBP Email, "CBP EAPA Investigation 7841 - Initiation of Investigation and Interim Measures" (Mar. 26, 2024).

³³ See CBP Memorandum, "Notice of Initiation of Investigation and Interim Measures: EAPA Case 7841" (Apr. 2, 2024).

the allegation showing that xanthan gum is not produced in India; BMF Imports' failure to provide information in its CF-28 responses showing that Jay Dinesh Chemicals and BizinBiz/Elchemy produced the xanthan gum in India; information from Jay Dinesh Chemicals' websites demonstrating that it sources xanthan gum originating from Chinese manufacturers; and the admission in BMF Imports' CF-28 response for one of its entries from BizinBiz/Elchemy that a Chinese manufacturer produced the imported xanthan gum.³⁴

Post-Interim Measures

On April 5, 2024, CBP issued a Request for Information (RFI) to BMF Imports pursuant to 19 C.F.R. § 165.23(a).³⁵ In the RFI to BMF Imports, CBP requested information regarding the importer's corporate structure and affiliations, accounting and financial practices, procurement and sales practices, and sales reconciliations.³⁶ BMF Imports requested, through counsel, an extension of time to respond to the RFI, which CBP granted.³⁷ Subsequently, counsel for BMF Imports withdrew their representation of the importer.³⁸ BMF Imports did not respond to the RFI by the extended deadline. On May 8, 2024, CBP granted BMF Imports a second opportunity to respond.³⁹ BMF Imports never submitted a response to the RFI to CBP.

On April 5, 2024, CBP also issued an RFI to Jay Dinesh Chemicals pursuant to 19 C.F.R. § 165.23(a).⁴⁰ The RFI issued to Jay Dinesh Chemicals requested information regarding the company's corporate structure and affiliations, accounting and financial practices, sales/exports of covered merchandise to BMF Imports, the production of covered merchandise, and sales and production reconciliations.⁴¹ Jay Dinesh Chemicals did not respond by the deadline set forth in the RFI, so on May 8, 2024, CBP provided Jay Dinesh Chemicals with a second opportunity to respond.⁴² Once again, Jay Dinesh Chemicals did not respond by the deadline. To ensure that Jay Dinesh Chemicals had received the RFI, on June 26, 2024, CBP sent it to the company via FedEx and delivery occurred on June 29, 2024.⁴³ However, Jay Dinesh Chemicals still did not respond to the RFI.

CBP also issued an RFI to BizinBiz on April 5, 2024, pursuant to 19 C.F.R. § 165.23(a), requesting information regarding the company's corporate structure and affiliations, accounting and financial practices, sales/exports of covered merchandise to BMF Imports, the production of covered

³⁴ *Id.* at 7.

³⁵ See CBP Letter to BMF Imports, "EAPA 7841 Request for Information" (Apr. 5, 2024).

³⁶ *Id.*

³⁷ See Letter from BMF Imports, "Xanthum *{sic}* Gum Through India: Extension Request for Request for Information" (Apr. 15, 2024) and CBP Email, "EAPA 7841 - Extension of RFI Due Date for BMF Imports" (Apr. 18, 2024).

³⁸ See Letter from BMF Imports, "Xanthum *{sic}* Gum Through India: Withdrawal of Notice of Appearance" (May 2, 2024).

³⁹ See CBP Email to BMF Imports, "EAPA 7841 - Request for Information from BMF Imports - Second Opportunity to Respond" (May 8, 2024).

⁴⁰ See CBP Letter to Jay Dinesh Chemicals, "EAPA 7841 - Request for Information" (Apr. 5, 2024).

⁴¹ *Id.*

⁴² See CBP Email to Jay Dinesh Chemicals, "EAPA 7841 - Request for Information from Jay Dinesh Chemicals - Second Opportunity to Respond" (May 8, 2024).

⁴³ See CBP Memorandum, "EAPA Case No. 7841 – FedEx Shipment Tracking and Proof of Delivery for Request for Information to Jay Dinesh Chemicals" (Jul. 12, 2024) at Attachments 1 and 2.

merchandise, and sales and production reconciliations.⁴⁴ BizinBiz requested, through counsel, an extension of time to respond to the RFI, and CBP granted its request.⁴⁵ Although counsel for BizinBiz later withdrew their representation, BizinBiz responded to the RFI, but CBP rejected its response multiple times because it did not comply with CBP’s filing requirements regarding claims for business confidential treatment and the provision of public summaries.⁴⁶ On June 12, 2024, BizinBiz timely submitted its RFI response in proper form.⁴⁷

In its RFI response, BizinBiz described itself as a “dealer for connecting buyers and sellers dealing in Chemicals and Chemical Products” and being “in the business of distribution and sales.”⁴⁸ BizinBiz reported that it uses the trade name “Elchemy” in India and has a subsidiary in the United States with the name “Elchemy Inc.”⁴⁹

BizinBiz asserted that it does not produce the “subject merchandise” (*i.e.*, xanthan gum).⁵⁰ BizinBiz stated that it imports xanthan gum from China, and specifically named [[company](#)] as the supplier of the xanthan gum sold to the United States.”⁵¹ BizinBiz provided an extract from an email to BMF Imports regarding an order for xanthan gum that stated “[[information in email](#)]” with a product origin of “[[origin](#)].”⁵²

Documentation in BizinBiz’s RFI response illustrates that it sourced xanthan gum from China. This includes purchase orders for xanthan gum from BizinBiz/Elchemy to [[company](#)] with an address in China and the statement “The product is of Chinese Origin”; commercial invoices and a packing list from [[company](#)] to BizinBiz noting the xanthan gum was country of origin China and shipped from [[country](#)]; a certificate of analysis for xanthan gum from [[company](#)]; a marine insurance policy for xanthan gum shipped from China noting the country of origin was China; and a bill of lading from [[company](#)] to BizinBiz stating the country of origin of the xanthan gum was China.⁵³ BizinBiz also included some documentation related to the xanthan gum it exported to BMF Imports; notably, the commercial invoice and packing list both stated the country of origin was India, and a photograph of packaged xanthan gum showed the country of origin stated on the label was India.⁵⁴

⁴⁴ See CBP Letter to BizinBiz, “EAPA 7841 - Request for Information” (Apr. 5, 2024).

⁴⁵ See Letter from BizinBiz, “Xanthum {sic} Gum Through India: Extension Request for Request for Information” (Apr. 15, 2024) and CBP Email, “EAPA 7841 - Extension of RFI Due Date for BizinBiz” (Apr. 18, 2024).

⁴⁶ See CBP Emails, “RE: EAPA 7841 - Rejection of BizinBiz Technologies Private Limited's RFI Response and Opportunity to Resubmit” (May 8, 2024); “EAPA 7841 - Second Rejection of BizinBiz Technologies Private Limited's RFI Response and Opportunity to Resubmit” (May 30, 2024); and “EAPA 7841 - Third Rejection of BizinBiz Technologies Private Limited's RFI Response and Opportunity to Resubmit” (Jun. 7, 2024).

⁴⁷ See Letter from BizinBiz, “EAPA 7841 – Revised response to Request for Information by BizinBiz Technologies Private Limited” (Jun. 12, 2024) (BizinBiz RFI Response).

⁴⁸ *Id.* at 3 and 33.

⁴⁹ *Id.* at 19 and Exhibit 1.

⁵⁰ *Id.* at 7 and 14-15.

⁵¹ *Id.* at 24, 30 and 33.

⁵² *Id.* at 28-29.

⁵³ *Id.* at Exhibits 7 and 12.

⁵⁴ *Id.* at Exhibit 12.

BizinBiz explained that the Indian Chamber of Commerce provided a certificate of origin based on the following activities that BizinBiz conducted: [activities

].⁵⁵

No party to the investigation submitted written arguments.

Analysis as to Evasion

Under 19 U.S.C. § 1517(c)(1)(A), 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.”⁵⁶ “Covered merchandise” is defined as “merchandise that is subject to a CVD order... and/or an AD order.”⁵⁷ “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.”⁵⁸ Substantial evidence on the record of this investigation supports a determination that BMF Imports entered covered merchandise into the United States through evasion, resulting in the avoidance of applicable AD/CVD cash deposits or other security.

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 or exporter of the covered merchandise.⁵⁹ Furthermore, an adverse inference may be used by CBP with respect to the U.S. importer or foreign producer or exporter “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought”⁶⁰

Under 19 U.S.C. § 1517(c)(3)(A), 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, {CBP} 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 best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that

⁵⁵ *Id.* at 24-25; *see also* Exhibit 10 (containing a certificate of origin for xanthan gum for a transaction with BMF Imports stating “Country of origin: India”).

⁵⁶ *See also* 19 C.F.R. § 165.27(a) (implementing 19 U.S.C. § 1517).

⁵⁷ *See* 19 C.F.R. § 165.1.

⁵⁸ *See* 19 U.S.C. § 1517(a)(5); *see also* 19 C.F.R. § 165.1 (setting forth the definition of “evasion”).

⁵⁹ *See* 19 U.S.C. § 1517(c)(2); *see also* 19 C.F.R. § 165.5(a).

⁶⁰ *See* 19 U.S.C. § 1517(c)(3)(B) and 19 C.F.R. § 165.6(c).

party in selecting from among the facts otherwise available to make the determination as to evasion”⁶¹

As explained above, CBP provided BMF Imports and Jay Dinesh Chemicals with multiple opportunities to respond to their respective RFIs, but neither submitted a response to CBP. Accordingly, CBP determines that both BMF Imports and Jay Dinesh Chemicals failed to act to the best of their abilities in this EAPA investigation by their lack of cooperation and responsiveness to CBP’s RFIs. Because of BMF Imports’ and Jay Dinesh Chemicals’ failure to respond to the RFIs, the record lacks information directly from BMF Imports and Jay Dinesh Chemicals pertaining to their corporate structure and affiliations, accounting and financial practices, and the production, sale, and exportation of xanthan gum imported into the United States. Due to the lack of information on the record from both BMF Imports and Jay Dinesh Chemicals, CBP was not able to conduct an on-site verification of any purported xanthan gum production in India or determine that BMF Imports’ entries of xanthan gum originated from India. Therefore, CBP is drawing inferences adverse to BMF Imports and Jay Dinesh Chemicals and will select from among the facts otherwise available to make the determination as to evasion.

In selecting from among the facts otherwise available and applying adverse inferences to BMF Imports and Jay Dinesh Chemicals, CBP is relying on information from the allegation and supplements to the allegation, publicly available information on Jay Dinesh Chemicals’ and Chinese xanthan gum producers’ websites, BMF Imports’ CF-28 responses, and BizinBiz’s RFI response. Specifically, CBP is relying on the information detailed below that demonstrates a lack of xanthan gum production by Jay Dinesh Chemicals in India.

Information in the allegation establishes that xanthan gum is not manufactured in India. Rather, the affidavit from a Senior Director at CP Kelco and the 2018 ITC report on xanthan gum from China both affirm that xanthan gum is only produced in Austria, France, China, and the United States.⁶² In addition, supplements to the allegation contain printouts from the Jay Dinesh Chemicals website <https://www.jaydinesh.com> displaying pictures of packaged xanthan gum with the name “Deosen.”⁶³ As the Allegor points out, Deosen is a known Chinese manufacturer and exporter of xanthan gum.⁶⁴ To substantiate this, CP Kelco provided the *Federal Register* notice for the final results of the Department of Commerce’s 2020-2021 administrative review of the AD order on xanthan gum from China, which included Deosen and other exporters, as shown below:

Exporter

Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.)/Shandong Fufeng Fermentation Co., Ltd./Xinjiang Fufeng Biotechnologies Co., Ltd	
Meihua Group International Trading (Hong Kong) Limited/Langfang Meihua Biotechnology Co., Ltd./Xinjiang Meihua Amino Acid Co., Ltd	
Jianlong Biotechnology Co., Ltd. (formerly, Inner Mongolia Jianlong Biochemical Co., Ltd)	
Deosen Biochemical (Ordos) Ltd./Deosen Biochemical Ltd	65

⁶¹ See 19 C.F.R. § 165.6(a).

⁶² See Allegation at Attachments 8 and 9.

⁶³ See Second Supplement to Allegation at 4 and Attachment 5.

⁶⁴ *Id.* at 4.

⁶⁵ *Id.* at 4 and Attachment 6 (containing *Xanthan Gum from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020-2021*, 88 Fed. Reg. 9,861) (Dep’t Commerce Feb. 15, 2023).

Similarly, the affidavit in the allegation from CP Kelco’s Senior Director of Operations for the Biogums Strategic Platform lists Deosen as one of the producers of xanthan gum in China, in addition to Neimenggu Fufeng Biotechnologies Co., Meihua Holdings Group Co Ltd, CP Kelco (Shandong) Biological Company Limited, and “others.”⁶⁶ As such, not only does the information submitted by the Allegor establish that xanthan gum is not manufactured in India, it also shows that Jay Dinesh Chemicals sources xanthan gum from a Chinese producer.

Moreover, publicly available information that CBP placed on the record from another Jay Dinesh Chemicals website, <https://www.jaydineshchemicals.com>, shows that Jay Dinesh Chemicals advertises two xanthan gum products that originate from Chinese manufacturers.⁶⁷ For the first product, “Xanthan Gum Powder,” pictures on the website depict packaging with the markings “Produce by Fufeng,” “Country of Origin CHINA,” and “www.fufeng-group.com,” and the associated product brochure consists of a certificate of analysis from Shandong Fufeng Fermentation Co., Ltd. for xanthan gum food grade 200 mesh.⁶⁸ For the second product, “Deson {sic} Xanthen {sic} Gum,” pictures show packaging with the names “Deosen” and “Deosen Biochemical (Ordos) Ltd.,” and the accompanying product brochure consists of a certificate of analysis for xanthan gum 200 mesh from Deosen Biochemicals (Ordos) Ltd.⁶⁹ Publicly available information that CBP also placed on the record from Deosen Biochemical (Ordos) Ltd.’s website and Fufeng Group’s LinkedIn page demonstrates that both companies are located in China.⁷⁰ In short, this information also shows that Jay Dinesh Chemicals sells xanthan gum obtained from Chinese producers.

Accordingly, in applying an inference adverse to BMF Imports and Jay Dinesh Chemicals and selecting from among the facts otherwise available in making the determination as to evasion, CBP determines that Jay Dinesh Chemicals does not manufacture any xanthan gum in India and that all of BMF Imports’ entries of xanthan gum consist of merchandise that was produced in China and transshipped through India.

Transshipment

While CBP is applying an adverse inference with respect to BMF Imports, CBP finds the record contains evidence which demonstrates that there is substantial evidence of evasion without the application of an inference adverse to BMF Imports. In its CF-28 responses for one of its entries of xanthan gum from BizinBiz, BMF Imports supplied narrative answers provided directly by BizinBiz, which included the statements “{o}ur manufacturer is [company]” and “{o}ur delivery time is usually within [#] working days to the Port of [port].”⁷¹ These statements demonstrate that BizinBiz procured xanthan gum from a Chinese producer. (However, BizinBiz did not provide any documentation in its CF-28 responses showing that it had sourced the xanthan gum

⁶⁶ See Allegation at Attachment 8.

⁶⁷ See Companies’ Websites Memorandum at Attachment 1.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at Attachments 2 and 3, respectively.

⁷¹ See BMF Imports’ CF-28 Response for entry [#]4933 (Dec. 29, 2023) and BMF Imports’ CF-28 Response for entry [#]4933 (Jan. 29, 2024).

from [company].⁷²) In its RFI response, BizinBiz confirmed that it does not manufacture xanthan gum but instead imports it from China.⁷³ BizinBiz also stated in its RFI response that [company] supplied the xanthan gum sold to the United States and provided documentation showing that it purchased xanthan gum from [company] and the country of origin was China.⁷⁴ Despite the fact that BizinBiz admittedly purchased the xanthan gum from a Chinese producer, BizinBiz indicated in an email to BMF Imports that the product's origin would be “[origin],” and a commercial invoice and packing list from BizinBiz/Elchemy to BMF Imports stated the country of origin of the xanthan gum was India.⁷⁵ As BizinBiz readily acknowledged that it obtained xanthan gum from a Chinese manufacturer but also provided information in its RFI response showing that the country of origin of the xanthan gum was designated as India, CBP determines there is substantial evidence that BMF Imports entered xanthan gum from BizinBiz that was produced in China and transshipped through India.

Furthermore, as explained above, information from Jay Dinesh Chemicals' websites establishes that Jay Dinesh Chemicals sourced xanthan gum from Chinese producers.⁷⁶ Thus, CBP finds there is substantial evidence on the record of this investigation that BMF Imports entered xanthan gum from Jay Dinesh Chemicals that was manufactured in China and transshipped through India.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that substantial evidence demonstrates that BMF Imports entered covered merchandise into the customs territory of the United States through evasion, CBP will take action, as applicable, pursuant to 19 U.S.C. § 1517(d) and 19 C.F.R. § 165.28. CBP will suspend or continue to suspend the liquidation of all entries imported by BMF Imports that are subject to this EAPA investigation until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension of liquidation until instructed to liquidate those entries. CBP will also evaluate BMF Imports' continuous bonds in accordance with CBP's policies and may require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.⁷⁷

Sincerely,



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

⁷² *Id.*; see also BMF Imports' CF-28 Response for entry [#]6358 (Jan. 29, 2024).

⁷³ See BizinBiz RFI Response at 7, 14-15, 28, 30 and 33.

⁷⁴ *Id.* at 24 and Exhibits 7 and 12

⁷⁵ *Id.* at 29 and Exhibit 12.

⁷⁶ See Second Supplement to Allegation at Attachment 5 and Companies' Websites Memorandum at Attachment 1.

⁷⁷ See 19 U.S.C. § 1517(h).