



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

PUBLIC VERSION

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Re: EAPA Case No. 7902 - Notice of Determination as to Evasion

To Counsel or Representative for the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Case 7902, U.S. Customs and Border Protection (“CBP”) has reached a determination as to whether Global Natural Ingredients, LLC (“Global Natural Ingredients” or “the Importer”) evaded the antidumping (“AD”) order A-570-985 on xanthan gum from the People’s Republic of China (“China”).¹ CBP determined there is substantial evidence that Global Natural Ingredients entered covered merchandise for consumption into the customs territory of the United States through evasion, by importing into the United States Chinese-origin xanthan gum and not entering the merchandise as subject to the aforementioned *Order*.

Background

Allegation and Initiation

CP Kelco U.S., Inc. (“CP Kelco” or “the Alleger”) alleged that Global Natural Ingredients entered into the United States Chinese-origin xanthan gum transshipped through India that is subject to the *Order* without declaring it subject to *Order* or paying the required AD cash

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 FR 43143 (U.S. Department of Commerce, July 19, 2013) (“*Order*”).

deposits, and on March 12, 2024, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated an investigation under EAPA against Global Natural Ingredients after finding that the Allegation and information available to CBP reasonably suggested evasion.² The information submitted by CP Kelco supported its allegation of evasion by Global Natural Ingredients, and the additional information considered by CBP, is summarized below.

CP Kelco submitted commercial trade data indicating that Global Natural Ingredients may have entered into the United States xanthan gum and declared India as its country of origin, as described below. The Allegor provided monthly U.S. import data for 2023 (January through December) from USITC DataWeb for Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 3913.90.2015, covering xanthan gum,³ and maritime import data from Descartes Datamyne listing Global Natural Ingredients as the consignee for xanthan gum from India entering the United States.⁴ The Allegor noted that three of the five Descartes Datamyne listings for Global Natural Ingredients shipments are consistent, with regard to timing and quantities, with corresponding USITC DataWeb monthly import data.⁵ These data support CP Kelco’s contention that Global Natural Ingredients imported xanthan gum from India.⁶

CP Kelco submitted information demonstrating that there likely is no production of xanthan gum in India. CP Kelco provided an affidavit from Mr. Shaw Gilmer, Senior Director of Operations for the Biogum Strategic Platforms at CP Kelco, 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, China, France, and the United States.⁷

In addition, CP Kelco provided information indicating it is reasonable to conclude the merchandise in question originated in China, rather than other countries known to have production of xanthan gum. The Allegor provided Global Trade Atlas India import data for Indian tariff subheading 3913.90.90, covering xanthan gum and other natural and modified natural polymers, and argues these data show that China accounted for 86.15% of total imports by volume in January-August 2023 of products covered by this subheading, while imports from Austria, France, and the United States accounted for 0.24%, 1.46%, and 2.47%, respectively, of total imports into India.⁸ CP Kelco maintained that the significant volume of imports from China

² See the March 12, 2024, document titled Initiation of Investigation for EAPA Case Number 7902 (“Initiation Memo”) at 1-2, which references CP Kelco’s final revised allegation dated February 13, 2024 (“the Allegation”), as well as its February 16, 2024, supplement to the Allegation (“Supplement to the Allegation”). Note that footnote 2 of the Initiation inadvertently identified the date of the *Order* as July 19, 2023, rather than the correct date, July 19, 2013. See Initiation Memo.

³ See Initiation Memo at 2, citing the Allegation at 5 and Attachment 7.

⁴ *Id.* at 2, citing the Allegation at 5 and Attachment 8.

⁵ *Id.* at 2, citing the Allegation at 5-7, Attachment 7, and Attachment 8.

⁶ CP Kelco also indicated that the only apparent employee of Global Natural Ingredients, Moiz Khorakiwala, is also the owner of Global Merchants, an Indian exporter that advertises xanthan gum for sale on its website. *Id.* at 8 and Attachments 11, 12, and 13.

⁷ *Id.* at 3, citing the Allegation at 8-9, Attachment 2, and Attachment 15.

⁸ *Id.* at 3, citing Supplement to the Allegation at 2 and Attachment 1.

provides further support that Chinese-origin xanthan gum likely was transshipped through India to the United States.⁹

CBP determined that the Importer entered merchandise during the EAPA period of investigation as country of origin [location] under a HTSUS subheading associated with xanthan gum covered by the scope of the *Order*, and, for those entries, did not pay the AD duties/deposits required by the *Order*.¹⁰

Consequently, CBP found that there was sufficient information to reasonably suggest that AD duties were not paid on subject entries of xanthan gum from China imported by Global Natural Ingredients.¹¹

Notice of Initiation of Investigation and Interim Measures

Prior to the initiation of the EAPA investigation, CBP, on November 30, 2023, issued a Customs Form 28 request for information (“CF28”) to Global Natural Ingredients for a lead entry (entry number [number] 4705 (“Entry 4705”)) and two associated entries (entry number [number] 0711 (“Entry 0711”) and entry number [number] 5041 (“Entry 5041”)). In the CF28, CBP asked Global Natural Ingredients to provide the following information for the entries in question:

- 1) entry transaction information (including the original commercial invoice(s), proof of payment(s), purchase order, CF7501, and all bills of lading (including master bills of lading and through bills of lading) (including through bills of lading));
- 2) complete production records for the xanthan gum (to include purchase orders, commercial invoices, and proof of payment for all raw materials used to produce the xanthan gum);
- 3) transportation documents and container load plans from the manufacturer of the raw materials; foreign customs documentation (if imported) for all raw materials;
- 4) complete factory production records, including stamped timecards and work orders;
- 5) description of all the equipment used in the production of xanthan gum;
- 6) photos of each piece of equipment;
- 7) description of the production capacity of all equipment used to manufacture xanthan gum;
- 8) all packaging costs and information; explanation of details regarding the xanthan gum factory businesses; and
- 9) names of all forwarding agents, subcontractors, and intermediaries involved and their contact information.¹²

⁹ *Id.* at 3, citing Supplement to the Allegation at 2.

¹⁰ *Id.* at 4, citing TRLED Receipt Report, dated March 6, 2024.

¹¹ *Id.* at 4.

¹² *See* November 30, 2023, CF28.

On January 26, 2024, Global Natural Ingredients submitted responses to the CF28 for each entry. In each instance, Global Natural Ingredients provided only an entry summary, commercial invoice, packing list, and through bill of lading for shipped xanthan gum, but none of the requested information relating to production.¹³

On March 6, 2024, CBP issued a Customs Form 29, notice of action, (“CF29”) for the three entries. The CF29 indicated CBP determined that the information provided in the CF28 responses was “insufficient to support country of origin and/or the country of origin provided is not consistent with the production or manufacturing of Xanthan Gum.” The CF29 also indicated that the xanthan gum is subject to the *Order*, and proposed several rate advancement actions on the entries, including suspension of the entries, conversion of the entries to type 03, application of suspension of the entries, and application of the China-wide entity deposit rate.¹⁴ The Importer did not respond to the actions proposed in the CF29 by the deadline.

As noted above, Global Natural Ingredients did not provide a complete response to the CF28 covering the three entries in question, failing to provide, among other things, any evidence the merchandise in question was produced in India. Global Natural Ingredients also did not respond to the Center’s proposed CF29 actions by the deadline for providing such a response, and those proposed actions are based on a conclusion the merchandise originated in China. Based on these facts, as well as the aforementioned information submitted with the Allegation (*i.e.*, shipment and entry information, information regarding countries in which there is known xanthan gum production, and Indian import data), CBP found there was reasonable suspicion that the xanthan gum entered into the United States by Global Natural Ingredients during the period of investigation originated in China, and therefore, should have been declared as subject to the *Order* and to AD cash deposits under the *Order*.¹⁵ As such, CBP imposed interim measures pursuant to this investigation.¹⁶

Post-Interim Measures

Requests for Information

On June 27, 2024, CBP issued a request for information (“RFI”) to Global Natural Ingredients in relation to its U.S. entries of xanthan gum.¹⁷ Global Natural Ingredients failed to respond by the July 11, 2024 deadline. On July 12, 2024, CBP again requested a response to the RFI via email, with a new deadline of July 22, 2024,¹⁸ but received no response.¹⁹

¹³ See January 26, 2024, CF28 response document.

¹⁴ See March 6, 2024, CF29 document.

¹⁵ See “Notice of Initiation of Investigation and Interim Measures: EAPA Case 7902,” dated June 17, 2024 (“NOI”), at 5.

¹⁶ *Id.* at 5-6.

¹⁷ See “EAPA 7902 - Request for Information” issued to Global Natural Ingredients, transmitted via email to Global Natural Ingredients, dated June 27, 2024.

¹⁸ See CBP’s email to the representative of Global Natural Ingredients, dated July 12, 2024.

¹⁹ The contact for Global Natural Ingredients confirmed he had received the RFI from TRLED. See July 23, 2024, TRLED email to the File.

On June 27, 2024, CBP issued an RFI to Global Merchants, which had been identified as a potential Indian supplier of xanthan gum to Global Natural Ingredients.²⁰ Global Merchants failed to respond by the July 11, 2024, deadline. On July 12, 2024, CBP again requested a response to that RFI via email, with a new deadline of July 22, 2024,²¹ but received no response.²²

Written Arguments

Neither party to the investigation submitted written arguments.

Analysis

Pursuant to 19 U.S.C. §1517(c)(3) and 19 C.F.R. 165.6, CBP may apply an adverse inference if the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with an RFI made by CBP. In applying an adverse inference against an eligible party, CBP may use the facts otherwise available to make a final determination as to evasion pursuant to 19 U.S.C. § 1517(c)(1)(A) and 19 C.F.R. 165.27. Moreover, 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....” *See* 19 U.S.C. § 1517(c)(3)(B).

Because Global Natural Ingredients never responded to CBP’s RFI, despite having been given multiple opportunities to submit such a response, CBP’s ability to obtain information for its investigation was impeded significantly. EAPA’s regulations at 19 C.F.R. § 165.6(a) state 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 RFI 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....”²³ Because Global Natural Ingredients failed to respond to CBP’s RFI in the multiple instances described above, CBP finds that Global Natural Ingredients has not cooperated and complied with CBP’s RFIs to the best of its ability.

The evidence on the administrative record amounts to substantial evidence of evasion, as Global Natural Ingredients provided no clarification or rebuttal of that evidence though given multiple opportunities to participate in the investigation process. As discussed below, CBP is drawing inferences adverse to Global Natural Ingredients from the information submitted to CBP in the Allegation and other information obtained during CBP’s investigation to conclude that the

²⁰ *See* “EAPA 7902 - Request for Information” issued to Global Merchants, transmitted via an email from Steve Bezirgianian to representatives of Global Merchants, both dated June 27, 2024.

²¹ *See* the email from Steve Bezirgianian to the representative of Global Merchants, dated July 12, 2024.

²² The contact for Global Merchants confirmed he had received the RFI from TRLED. *See* July 23, 2024, TRLED email to the File.

²³ *See also* 19 USC 1517(c)(3)(A).

xanthan gum was of Chinese origin.²⁴ Based on the record of this investigation, it is reasonable to conclude that the xanthan gum imported by Global Natural Ingredients originated in China. As noted above, China is one of only four countries in which it is known that xanthan gum is produced commercially, and available trade data indicate that almost all of the xanthan gum imported into India during a significant portion of the period of investigation was exported from China. Furthermore, as also noted above, prior to the initiation of this EAPA investigation the Center had proposed CF29 actions based on a conclusion the imported merchandise originated in China, and Global Natural Ingredients had not responded to that CF29, despite having been given an opportunity to do so. Thus, there is no evidence on the record suggesting that any production of xanthan gum took place in India.

Under 19 U.S.C. § 1517(c)(1)(A), to reach a final 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 of any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”²⁵ As discussed in this determination and in the NOI, the record of this investigation contains evidence that xanthan gum subject to the *Order* was entered by Global Natural Ingredients into the United States through evasion, resulting in the avoidance of applicable AD cash deposits or other security. Based on that evidence, and the application of adverse inferences as a result of Global Natural Ingredients’ failure to cooperate in the investigation, CBP concludes there is substantial evidence of evasion.

Determination as to Evasion

Based on the totality of information contained in the administrative record, as referenced in the NOI and Global Natural Ingredients’ subsequent failure to respond to the RFI, CBP determines there is substantial evidence that Global Natural Ingredients evaded the *Order* by importing xanthan gum of Chinese origin into the United States by declaring the covered merchandise as type 01 consumption entries and at that time failing to pay the required AD/CVD cash deposits on such subject merchandise.²⁶

Actions Taken Pursuant to the Affirmative Determination as to Evasion

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

²⁴ See 19 USC 1517(c)(3)(B)-(C); see also 19 CFR 165.6(c); see also Initiation Memo and NOI.

²⁵ See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

²⁶ Entry type “01” is the code that CBP requires importers use to designate a standard consumption entry that is not subject to AD/CVD duties. See <https://www.cbp.gov/trade/automated/ace-transaction-details>.

the entries covered by this investigation, until instructed to liquidate. For those entries previously extended in accordance with Interim Measures, CBP will continue to consider those entries as type 03 and continue suspension until instructed to liquidate these entries. CBP may also evaluate the Importer's continuous bond 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
CBP Office of Trade