



U.S. Customs and
Border Protection

August 12, 2019

PUBLIC VERSION

EAPA Cons. Case Number: 7281

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Matthew Kanna
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Re: Notice of initiation of investigation and interim measures taken as to Ascension Chemicals LLC; Dr. Bronner's Magic Soaps; Tdale Manufacturing & Distributing, Inc.; UMD Solutions, LLC; Western Energy & Technologies LLC; Crude Chem Technology; and Glob Energy Corporation concerning evasion of the antidumping duty order on xanthan gum from the People's Republic of China

To the Counsel and Representatives of the above-referenced Entities:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has 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 Ascension Chemicals LLC ("Ascension"), Dr. Bronner's Magic Soaps ("DBMS"), Tdale Manufacturing & Distributing, Inc. ("Tdale"), UMD Solutions, LLC ("UMD"), Western Energy & Technologies LLC ("Western Energy"), Crude Chem Technology ("CCT"), and Glob Energy Corporation ("Glob Energy") (collectively, "the Importers"). CBP is investigating whether the importers have evaded the antidumping duty ("AD") order A-570-985¹ on xanthan gum from the People's Republic of China ("China") when importing xanthan gum into the United States. Because evidence establishes a reasonable suspicion that the importers have entered merchandise into the United States through evasion, CBP has imposed interim measures.

Period of Investigation

Pursuant to 19 C.F.R. § 165.2, entries covered by an EAPA investigation are those "entries of allegedly covered merchandise made within one year before the receipt of an allegation...." Entry is defined as an "entry for consumption, or withdrawal from warehouse for consumption,

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 (Dept. Commerce July 19, 2013) ("AD Order on xanthan gum from China").

of merchandise in the customs territory of the United States.” *See* 19 C.F.R. § 165.1. CBP acknowledged receipt of the properly filed allegations against Ascension, DBMS, Tdale, UMD, Western Energy, CCT, and Glob Energy on April 16, 2019.² These seven investigations are now consolidated as discussed further below, and the entries covered by the consolidated investigation are those entered for consumption, or withdrawn from warehouse for consumption, from April 16, 2018, through the pendency of this investigation. *See* 19 C.F.R. § 165.2.

Initiation

On May 7, 2019, the Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, initiated investigations under EAPA as the result of allegations submitted by CP Kelco U.S., Inc. (“CP Kelco”), as to evasion of antidumping duties by Ascension, DBMS, Tdale, UMD, Western Energy, CCT, and Glob Energy.³ CP Kelco alleges that Ascension, DBMS, Tdale, UMD, Western Energy, CCT, and Glob Energy evaded the AD order on xanthan gum from China by importing xanthan gum that was manufactured in China but transshipped through India.⁴

² *See* the April 16, 2019, Receipt Notification Emails to Matthew Kanna and Leah Scarpelli of Arent Fox LLP for EAPA Allegations 7281 (Ascension), 7284 (DBMS), 7288 (Tdale), 7289 (UMD), 7290 (Western Energy), 7303 (CCT), and 7306 (Glob Energy), respectively.

³ *See* Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7281 – Ascension Chemicals LLC” (May 7, 2019 (“Ascension Initiation”)), Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7284 – Dr. Bronner’s Magic Soaps” (May 7, 2019) (“DBMS Initiation”), Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7288 – Tdale Manufacturing & Distributing, Inc.” (May 7, 2019) (“Tdale Initiation”), Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7289 – UMD Solutions, LLC” (May 7, 2019) (“UMD Initiation”), Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7290 – Western Energy & Technologies LLC” (May 7, 2019) (“Western Energy Initiation”), Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7303 – Crude Chem Technology” (May 7, 2019) (“CCT Initiation”), Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7306 – Glob Energy Corporation” (May 7, 2019 (“Glob Energy Initiation”).

⁴ *See* CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment” for Ascension (December 17, 2018) (“Ascension Allegation”), as revised in CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through India” for Ascension (March 8, 2019) (“Revised Ascension Allegation”); CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment” for DBMS (December 17, 2018) (“DBMS Allegation”), as revised in CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through India” for DBMS (March 8, 2019) (“Revised DBMS Allegation”); CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment” for Tdale (December 17, 2018) (“Tdale Allegation”), as revised in CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through India” for Tdale (March 8, 2019) (“Revised Tdale Allegation”); CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment” for UMD (December 17, 2018) (“UMD Allegation”), as revised in CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through India” for UMD (March 8, 2019) (“Revised UMD Allegation”); CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment” for Western Energy (December 17, 2018) (“Western Energy”), as revised in CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion

CP Kelco provided an affidavit from a senior director at CP Kelco asserting that xanthan gum is only produced in Austria, France, the United States, and China.⁵ In support of that assertion, CP Kelco provided excerpts from a 2018 report of the United States International Trade Commission (“USITC”), stating that xanthan gum is produced in Austria, France, the United States, and China.⁶

Even though, according to CP Kelco, the production of xanthan gum is limited to the aforementioned four countries, CP Kelco provided public U.S. import data indicating that during the last two years hundreds of thousands of kilograms of xanthan gum were imported into the United States from India.⁷ For each allegation, CP Kelco also provided information from bills of lading identifying shipments of xanthan gum indicating country of origin India.⁸ CP Kelco argues India cannot be the country of origin for xanthan gum, because no xanthan gum production exists in India.

CP Kelco notes that in the past, Chinese producers of xanthan gum have attempted to circumvent the AD order and it is likely that the xanthan gum shipments from India into the United States originated in China.⁹ In support of its claim, CP Kelco also provided Indian import data for the HTS heading that includes xanthan gum. While the annual volumes of the Indian imports from China of the HTS heading that includes xanthan gum have been large and growing, the annual volumes of the Indian imports of such products from the other xanthan-gum producing countries (*i.e.*, Austria, France, and the United States) are minimal.¹⁰

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.” See 19 C.F.R. §165.15(b). 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

of AD Order via Transshipment through India” for Western Energy (March 8, 2019) (“Revised Western Energy Allegation”); CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through India” for CCT (March 8, 2019) (“CCT Allegation”); and CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through India” for Glob Energy (March 8, 2019) (“Glob Energy Allegation”).

Because the nature of the evidence submitted by CP Kelco is identical across all seven allegations, the summary of the allegation and initiation below for Ascension is representative of all seven allegations.

⁵ See Revised Ascension Allegation at 5 and Attachment 4. Because the nature of the evidence submitted by CP Kelco is identical across all seven allegations, the summary from the Ascension Allegation is representative of all seven allegations.

⁶ *Id.* at 5 and Attachment 5.

⁷ *Id.* at 4 and Attachments 1 and 2.

⁸ *Id.* at 4-5 and Attachment 3 (Descartes Datamyne information). CP Kelco provided the same type of evidence from that source for the other six importers.

⁹ *Id.* at 6 and Attachment 6.

¹⁰ *Id.* at 5 and Attachment 7.

applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.” See 19 C.F.R. §165.1. Thus, the allegation must reasonably suggest not only that merchandise subject to an AD and/or CVD order was entered into the United States by the importer alleged to be evading, but 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.

In assessing the claims made and evidence provided in the allegation, TRLED found that the allegation reasonably suggests that the Importers are evading AD order A-570-985 by importing Chinese origin xanthan gum to the United States via India and failing to declare the merchandise as subject to that AD order. Specifically, CP Kelco has submitted documentation that reasonably suggests xanthan gum is not produced in India, and that Chinese-origin xanthan gum is being imported into the United States with India falsely declared as the country of origin (*i.e.*, the large and rising volumes of imports into India from China of the category of merchandise including xanthan gum; the very low volumes of such merchandise imported into India from other known xanthan gum producing countries; and the history of attempted circumvention of the xanthan gum AD order by various Chinese companies).

The allegations pertaining to all seven importers contained identical types of evidence and reasonably suggest that covered merchandise has entered into the customs territory of the United States by means of evasion, and that Ascension, DBMS, Tdale, UMD, Western Energy, CCT, and Glob Energy may have been importing such merchandise. Consequently, TRLED initiated investigations pursuant to 19 U.S.C. §1517(b)(1).¹¹

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, TRLED will decide based upon the record of the investigation if there is reasonable suspicion that such covered merchandise was entered into the United States through evasion. Therefore, CBP need only have sufficient evidence to support a reasonable suspicion that merchandise subject to an AD or CVD order was entered into the United States by the importer alleged to be evading by a material false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD or CVD cash deposits or other security. 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 there is a reasonable suspicion that Ascension, DBMS, Tdale, UMD, Western Energy, CCT, and Glob Energy entered covered merchandise into the United States through evasion by means of transshipment through India. See 19 C.F.R. § 165.24(a).

CF28 Responses and Analysis

¹¹ See Ascension Initiation, DBMS Initiation, Tdale Initiation, UMD Initiation, Western Energy Initiation, CCT Initiation, and Glob Energy Initiation.

As noted above, TRLED initiated the investigations based on the evidence that xanthan gum is made in certain countries, including China, but not in India, and other factors supporting the conclusion that xanthan gum that entered the United States identified as originating in India may have actually originated in China. As part of the EAPA investigation process, CBP reviewed documentation submitted by importers in response to Customs Form (“CF”) 28 requests for information for entries that are subject to this EAPA investigation. CBP requested sale, production, and factory documentation from each importer.¹²

Ascension

Ascension entry documents reference the Indian firm [] as manufacturer. In its CF28 response, Ascension provided an invoice from [] and a certificate of origin that identified India as the country of origin. However, Ascension did not provide the production information that could have enabled CBP to identify the manufacturer of the imported merchandise.¹³

Ascension did not provide any other evidence that shows that the Indian shipper [] was the manufacturer of the xanthan gum, or that the xanthan gum it imported was produced in India. Also, the website for [] identifies it as a “[]” and indicates it is a “[]” of xanthan gum, one such chemical, but does not indicate it produces the merchandise it supplies.¹⁴ Furthermore, shipment information available from Panjiva indicates that [] was the consignee for [] shipments of xanthan gum shipped from China.¹⁵

DBMS

DBMS entry documents reference the Indian firm [] as manufacturer. In its CF28 response, DBMS provided an “Importer Security Filing” that identified India as the country of origin of the merchandise. DBMS stated in its response that the merchandise was actually manufactured [].¹⁶ Furthermore, []

¹² See CF28 Requests to Ascension (Feb. 4, 2019), DBMS (Feb. 4, 2019), Tdale (Feb. 4, 2019), UMD (Feb. 7, 2019), Western Energy (Feb. 4, 2019 and Feb. 28, 2019), CCT (Feb. 4, 2019), and Glob Energy (Feb. 4, 2019).

The CF28 requests covered only certain entries covered by the investigation period. Note that []

[], each of the entries in the investigation period for all of the importers, including those for which CF28 requests were sent, involved volumes of xanthan gum in excess of [] metric tons. Such volumes would require manufacturing facilities, rather than, for example, a small laboratory, though no information has been provided or has been obtained indicating that either manufacturing facilities or laboratories exist at the facilities of the Indian entities identified as the manufacturers for the entries in question.

¹³ See Ascension’s CF28 Response (March 5, 2019).

¹⁴ See Ascension Supplier Website Information (June 12, 2019).

¹⁵ See Shipment Information (China to India) – Ascension (July 29, 2019).

¹⁶ See DBMS’s CF28 Response (March 1, 2019).

[] stated in an email that the merchandise it shipped to DBMS was actually manufactured []¹⁷

DBMS did not provide any other evidence that shows that the Indian shipper [] was the manufacturer for the merchandise in question. In fact, as noted above, DBMS and [] acknowledged that the merchandise was actually produced []. In conclusion, there is reasonable suspicion that the xanthan gum imported by DBMS from India was produced in China and then transshipped to the United States, and therefore should be considered to be subject to the AD order.

Tdale

Tdale entry documents reference the Indian firm [] as manufacturer. CBP did not receive a response to CF28 from Tdale. However, CBP did receive a response to a CF29 it sent to Tdale, and in that response, Tdale stated that the merchandise was manufactured in India, that the India Chamber of Commerce had certified it originated in India, and that the India certificate of origin was included in the entry package of documents accompanying the product upon arrival at the United States.¹⁸ Nevertheless, Tdale did not provide the requested production information that could have enabled CBP to identify the manufacturer of the imported merchandise.

Given the lack of production documents provided to CBP in response to its inquiries, there is reason to doubt whether [] actually produced xanthan gum, or that the xanthan gum associated with the entry was produced in India. Also, the website of [

[].¹⁹ Furthermore, shipment information available from Panjiva indicates that [] was the consignee for [] shipments of xanthan gum shipped from China.²⁰

UMD

UMD entry documents reference the Indian firm [] as manufacturer. In its CF28 response, UMD provided an invoice and a packing list from []. Both of these documents identified India as the country of origin for xanthan gum. However, UMD did not provide the requested production information that could have enabled CBP to identify the manufacturer of the imported merchandise. In response to requests in CF28 for information related to production, UMD stated that the manufacturer will not share such information

¹⁷ See DBMS's Exporter's Email (March 11, 2019).

¹⁸ See Tdale email dated August 2, 2019. A CF29 is a CBP Notice of Action.

¹⁹ See Tdale Supplier Website Information (June 12, 2019).

²⁰ See Shipment Information (China to India) – Tdale (July 29, 2019).

“manufacture {sic} will not share this information,” and furthermore, UMD did not specifically identify the name of the manufacturer in its CF28 response.²¹

UMD did not provide any other evidence that shows that the Indian shipper [] was the manufacturer of the xanthan gum, or that the xanthan gum it imported was produced in India. Also, the website of []

[]²² Furthermore, shipment information available from Panjiva indicates that [] was the consignee for [] shipments of xanthan gum shipped from China.²³

Western Energy

CBP sent two CF28 requests to Western Energy for different entries on February 4, 2019, and on February 28, 2019.²⁴ Western Energy entry documents reference the Indian firm [] as manufacturer. Western Energy only responded to the CF28 dated on February 4, 2019, and even though Western Energy provided invoices, packing lists, and certificates of origin that identify India as the country of origin of the merchandise, Western Energy did not provide the requested production information that could have enabled CBP to identify the manufacturer of the imported merchandise.²⁵

Western Energy did not provide any other evidence that shows that the Indian shipper [] was the manufacturer of the xanthan gum, or that the xanthan gum it imported was produced in India. Furthermore, the website of []

[] manufactures xanthan gum.²⁶ []. It does not appear from its website that []

CCT

CCT entry documents reference the Indian firm []. In its CF28 response, CCT provided an invoice from [] that identified India as the country of

²¹ See UMD’s CF28 Response (March 7, 2019).

²² See UMD Supplier Website Information (June 12, 2019).

²³ See Shipment Information (China to India) – UMD (July 29, 2019).

²⁴ The former entry was for []

[]. Additional evidence also indicates that []

Western Energy Background Information (July 17, 2019).

²⁵ See Western Energy’s CF28 Response (February 12, 2019).

²⁶ See Western Energy Supplier Website Information (June 12, 2019).

origin.²⁷ However, CCT did not provide the requested production information that could have enabled CBP to identify the manufacturer of the imported merchandise.²⁸

CCT did not provide any other evidence that shows that the Indian shipper [] was the manufacturer of the xanthan gum, or that the xanthan gum it imported was produced in India. Also, the website of []

[]²⁹ Furthermore, shipment information available from Panjiva indicates that [] was the consignee for [] shipments of xanthan gum shipped from China.³⁰

Glob Energy

Glob Energy entry documents reference the Indian firm [] as manufacturer. In its CF28 response, Glob Energy provided an invoice and a packing list from [] and a certificate of country of origin. All of these documents identified India as the country of origin for xanthan gum. However, Glob Energy did not provide the requested production information that could have enabled CBP to identify the manufacturer of the imported merchandise.³¹

Glob Energy did not provide any other evidence that shows that the Indian shipper [] was the manufacturer of the xanthan gum, or that the xanthan gum that it imported was produced in India. Also, the website of []

[]³² Furthermore, shipment information available from Panjiva indicates that [] was the consignee for [] shipments of xanthan gum shipped from China.³³

Enactment of Interim Measures

Based on the information described above, TRLED determined that reasonable suspicion exists that the xanthan gum that the Importers imported into the United States from India, was in fact manufactured in China. Each importers' failure to submit any information to CBP demonstrating that the merchandise was produced in India, combined with the information provided by the

²⁷ CCT also had an entry that references the Indian firm [] as manufacturer. The website of []

[] manufactures xanthan gum. See Crude Chem Additional Supplier Website Information (June 12, 2019).

²⁸ See CCT's CF28 Response (March 4, 2019).

²⁹ See CCT Supplier Website Information (June 12, 2019).

³⁰ See Shipment Information (China to India) – CCT (July 29, 2019).

³¹ See Glob Energy's CF28 Response (March 4, 2019).

³² See Glob Energy Supplier Website Information (June 12, 2019).

³³ See Shipment Information (China to India) – Glob Energy (July 29, 2019).

allegor and available from other sources (*e.g.*, Panjiva, Indian supplier websites, *etc.*) regarding xanthan gum import trends and lack of xanthan gum production in India, creates an objective basis for CBP to conclude that the xanthan gum imported by each importer into the United States was produced in China, and thus should have been subject to AD duties.

As part of interim measures, unliquidated entries of xanthan gum subject to this investigation will be rate-adjusted to reflect that they are subject to the AD order on xanthan gum from China and cash deposits will be owed. Additionally, "live entry" is required for all future imports for Ascension, DBMS, Tdale, UMD, Western Energy, CCT, and Glob Energy, meaning that all entry documents and cash deposits must be provided before cargo is released by CBP into the U.S. commerce. CBP will reject any entry summaries that do not comply with live entry, and require refileing of entries that are within the entry summary rejection period. CBP will also suspend the liquidation for any entry that has entered on or after May 7, 2019, the date of initiation for the investigations incorporated into this consolidated investigation (*see below*); as well as extend the period for liquidation for all unliquidated entries that entered before that date. *See* 19 C.F.R. § 165.24(b)(1)(i) and (ii). CBP will also evaluate the continuous bonds for Ascension, DBMS, Tdale, UMD, Western Energy, CCT, and Glob Energy to determine their sufficiency, among other measures, as needed. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 U.S.C. §1517(h).

Consolidation of the Investigations

TRLED is consolidating the seven investigations on Ascension, DBMS, Tdale, UMD, Western Energy, CCT, and Glob Energy into a single investigation covering all seven importers. The new consolidated case number will be EAPA Consolidated Case No. 7281, and a single administrative record will be maintained. At its discretion, CBP may consolidate multiple allegations against one or more importers into a single investigation, pursuant to 19 C.F.R. §165.13(b), which stipulates that the factors that CBP may consider in consolidating multiple allegations include, but are not limited to, whether the multiple allegations involve: 1) relationships between the importers; 2) similarity of covered merchandise; 3) similarity of AD/CVD orders; and 4) overlap in time periods of entries of covered merchandise.

In these investigations, all seven importers are alleged to have entered suspected Chinese-origin xanthan gum from India, covered by a single AD order. The entries for the importers in question fall within the common period of investigation. Moreover, some importers have a common []. Because factors warranting consolidation are present in these investigations, CBP is consolidating them and providing this notice pursuant to 19 C.F.R. §165.13(c). We note that the deadlines for the consolidated investigation will be set from the date of initiation of all of the allegations, which is May 7, 2019. *See, e.g.*, 19 C.F.R. §165.13(a).

For any future submissions or factual information that you submit to CBP pursuant to this consolidated EAPA investigation, please provide a public version to CBP, as well as to the email addresses of the parties identified at the top of this notice. *See* 19 C.F.R. §§ 165.4, 165.23(c), and 165.26.

Should you have any questions regarding this investigation, please feel free to contact us at eapallegations@cbp.dhs.gov. Please include "EAPA Cons. Case Number 7281" in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP's website at:

<https://www.cbp.gov/trade/tradeenforcement/tftea/enforce-and-protect-act-eapa>.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Bowman".

Christopher Bowman
Acting Director, Enforcement Operations Division
Trade Remedy & Law Enforcement Directorate
CBP Office of Trade