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Re: Notice of initiation of investigation and interim measures taken as to Cementing Products Inc.; Global Envirotech Industries LLC; Kerui Group US, LLC; and Kerui Petroleum Equipment 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 Cementing Products Inc. (“Cementing”); Global Envirotech Industries LLC (“Global Envirotech”); Kerui Group US, LLC (“Kerui Group”); and Kerui Petroleum Equipment (“Kerui Petroleum”) (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, 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 Cementing, Global Envirotech, Kerui Group, and Kerui Petroleum on April 16, 2019.² These four 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further below, and the entries covered by the consolidated investigation are those entered for consumption, or withdrawn from warehouse for consumption, from April 16, 2018, through the pendency of this investigation.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 Cementing, Global Envirotech, Kerui Group, and Kerui Petroleum.³ CP Kelco alleges that Cementing, Global

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”).

² See the April 16, 2019, Receipt Notification Emails to Matthew Kanna and Leah Scarpelli of Arent Fox LLP for EAPA Allegations 7282 (Cementing), 7285 (Global Envirotech), 7286 (Kerui Group), and 7307 (Kerui Petroleum), respectively.

³ See Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7282 – Cementing Products Inc.” (May 7, 2019) (“Cementing Initiation”), Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7285 – Global Envirotech Industries LLC” (May 7, 2019) (“Global Envirotech Initiation”), Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7286 – Kerui Group US, LLC” (May 7, 2019) (“Kerui Group Initiation”), and Memorandum to Africa R. Bell, Acting Director, Enforcement Operations Division, “Initiation of Investigation for EAPA Case Number 7307 – Kerui Petroleum Equipment” (May 7, 2019) (“Kerui Petroleum Initiation”).

Envirotech, Kerui Group, and Kerui Petroleum evaded the AD order on xanthan gum from China by importing xanthan gum that was manufactured in China but transshipped through Malaysia.⁴

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 Malaysia.⁷ For each allegation, CP Kelco also provided information from bills of lading identifying shipments of xanthan gum indicating country of origin Malaysia.⁸ CP Kelco argues Malaysia cannot be the country of origin for xanthan gum, because no xanthan gum production exists in Malaysia.

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 Malaysia into the United States originated in China.⁹ In support of its claim, CP Kelco also provided Malaysian import data for the HTS heading that includes xanthan gum. While the annual volumes of the Malaysian imports from China of the HTS heading that includes xanthan gum have been large and growing, the annual volumes of the Malaysian 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

⁴See CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment” for Cementing (December 17, 2018) (“Cementing Allegation”), as revised in CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through Malaysia” for Cementing (March 8, 2019) (“Revised Cementing Allegation”); CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment” for Global Envirotech (December 17, 2018) (“Global Envirotech Allegation”), as revised in CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through Malaysia” for Global Envirotech (March 11, 2019) (“Revised Global Envirotech Allegation”); CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment” for Kerui Group (December 17, 2018) (“Kerui Group Allegation”), as revised in CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through Malaysia” for Kerui Group (March 8, 2019) (“Revised Kerui Group Allegation”); and CP Kelco’s “Xanthan Gum from the People’s Republic of China: Evasion of AD Order via Transshipment through Malaysia” for Kerui Petroleum (March 8, 2019) (“Kerui Petroleum Allegation”).

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

⁵ See Revised Cementing Allegation at 5 and Attachment 4.

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).

⁹ *Id.* at 6 and Attachment 6.

¹⁰ *Id.* at 5 and Attachment 7.

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 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 Malaysia 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 Malaysia, and that Chinese-origin xanthan gum is being imported into the United States with Malaysia falsely declared as the country of origin (*i.e.*, the large and rising volumes of imports into Malaysia from China of the category of merchandise including xanthan gum; the very low volumes of such merchandise imported into Malaysia 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 four 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 Cementing, Global Envirotech, Kerui Group, and Kerui Petroleum 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 Cementing, Global Envirotech, Kerui Group, and Kerui Petroleum entered covered merchandise into the

¹¹ See Cementing Initiation, Global Envirotech Initiation, Kerui Group Initiation, and Kerui Petroleum Initiation.

United States through evasion by means of transshipment through Malaysia. *See* 19 C.F.R. § 165.24(a).

CF28 Responses and Analysis

As noted above, TRLED initiated the investigations based on the evidence that xanthan gum is made in certain countries, including China, but not in Malaysia, and other factors supporting the conclusion that xanthan gum that entered the United States identified as originating in Malaysia 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

Cementing

Cementing entry documents reference the Malaysian firms [] or [] as manufacturers. CBP did not receive a response to the CF28 issued to Cementing. The CF28 included requests, among other things, for production information that could have enabled CBP to identify the manufacturer of the imported merchandise.

Given no CF28 response was received, CBP does not know whether [] or [] were trading companies or the actual manufacturers for the merchandise in question, or if the xanthan gum associated with the entries was produced in Malaysia. The website of [] indicates the company [],” and makes no reference to other kinds of products such as xanthan gum.¹³ CBP data show that [] was listed as a manufacturer [] of xanthan gum in 2018, while in 2019 to date, for [], [] was listed as a manufacturer of [].¹⁴ Various websites indicate that [] identified for [] are []

¹² *See* CF28 Requests to Cementing (July 25, 2018), Global Envirotech (Feb. 6, 2019), Kerui Group (Feb. 27, 2019), and Kerui Petroleum (Apr. 22, 2019). Additional information was requested from Kerui Petroleum in Request for Additional Information from Kerui Petroleum (June 10, 2019), and, as noted below, Kerui Petroleum provided additional information related to the entry, which it included in a response to a CF29.

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 Malaysian entities identified as the manufacturers for the entries in question.

¹³ *See* Cementing Supplier Website Information (June 10, 2019). CBP could not locate [], and could not find evidence on the internet that []. No CF28 request was issued to Cementing for entries for which [].

¹⁴ *See* Malaysia MIDS Data (August 5, 2019).

[redacted]¹⁵ CBP data show that [redacted] was listed as a manufacturer [redacted] for [redacted] goods in 2018, while in 2019, for [redacted], [redacted] was listed as a manufacturer of xanthan gum.¹⁶

Global Envirotech

Global Envirotech entry documents reference the Malaysian firm [redacted] as manufacturer. In its CF28 response, Global Envirotech included a flowchart of production processing steps (with a heading titled “[redacted]”) that Global Envirotech indicated the supplier had provided, as well as a certificate of origin indicating Malaysia as the country of origin. However, Global Envirotech did not provide the requested production information that could have enabled CBP to identify the manufacturer of the imported merchandise. Global Envirotech stated it has no connection with the producer and that it does not have access to the production information.¹⁷

Global Envirotech did not provide any other evidence that shows that the Malaysian shipper [redacted] was the manufacturer of the xanthan gum, or that the xanthan gum it imported was produced in Malaysia. Also, the website of [redacted] indicates it produces several products, none of which are xanthan gum.¹⁸

Kerui Group

Kerui Group entry documents reference the Malaysian firm [redacted] as manufacturer. In its CF28 response, Kerui Group provided 12 documents with [redacted] stamp titled “Production Record,” dated [redacted], and two documents with [redacted] logos that are titled “Production Process Record” and are also dated [redacted]. None of the 14 documents, however, reference a product name. Kerui Group also provided an export document stamped [redacted], that identifies Kerui Group US, LLC as importer of xanthan gum, and [redacted] as exporter, and lists “Malaysia” as the country of origin, but does not contain a field identifying the manufacturer. In addition, the CF28 response includes six pages of small photos of equipment, with captions identifying different types of equipment, but with no reference to xanthan gum, to any specific product, or to what party uses the equipment in question.

Further, the CF28 response contains a certificate of analysis document with [redacted] letterhead that references xanthan gum, but does not identify a manufacturer. It also contains a certificate of origin for xanthan gum dated [redacted], that identifies [redacted] as the exporter, and Malaysia as the country of origin, but makes no reference to the manufacturer. Finally, the CF28 response contains a purchase order dated [redacted], with Kerui Group US

¹⁵ See Cementing Supplier Internet Information (June 11, 2019).

¹⁶ See Malaysia MIDS Data (August 5, 2019).

¹⁷ See Global Envirotech’s CF28 Response (March 7, 2019).

¹⁸ See Global Envirotech Supplier Website Information (June 12, 2019).

LLC letterhead, that references “Country of Origin and Manufacturer” as “Malaysia,” but does not indicate that [] manufactured the xanthan gum.¹⁹

Kerui Group did not provide any documentation that shows that the Malaysian shipper [] manufactured xanthan gum, such as detailed production records,²⁰ or that the xanthan gum it imported was produced in Malaysia. Also, various information from the internet indicate that [].²¹ In addition, CBP data shows that [] was listed as a manufacturer [] for [] goods in 2018, while in 2019, for [], [] was listed as a manufacturer of xanthan gum.²²

Kerui Petroleum

Kerui Petroleum entry documents reference the Malaysian firm [] as manufacturer. The CF28 request asked for various documents, including any “associated with entry to validate Country of Origin.” In its CF28 response, Kerui Petroleum provided a certificate of origin for xanthan gum dated [], that identifies [] as the exporter, and Malaysia as the country of origin, but makes no reference to a manufacturer. Kerui Petroleum also provided a purchase order dated [], with Kerui Petroleum letterhead, that describes “Country of Origin and Manufacturer” as Malaysia, but makes no reference to the manufacturer.²³

CBP requested additional production documentation, and in a response to CBP’s subsequent CF29 notice, Kerui Petroleum resubmitted various documents included in its CF28 response, but in addition, provided additional documents stamped [] titled “Production Record” and “Production Process Record” dated [] or []. None of the documents, however, reference xanthan gum. The CF29 response also includes six pages of small photos of equipment, with captions identifying different types of equipment, but no reference is made to xanthan gum, to any specific product type, or to what party uses the equipment in question. In addition, the CF29 response includes a certificate of analysis document with [] letterhead that references xanthan gum, but does not identify a manufacturer.²⁴

¹⁹ See Kerui Group’s CF28 Response (March 20, 2019).

²⁰ The “Production Record” and “Production Process Record” documents referenced above do not reference a product name, and even if those documents were assumed to pertain to xanthan gum, it is not evident that they can be linked to the merchandise referenced in the entry identified in the CF28.

²¹ See Kerui Group Supplier Internet Information (June 11, 2019).

²² See Malaysia MIDS Data (August 5, 2019).

²³ See Kerui Petroleum’s CF28 Response (May 17, 2019).

²⁴ See Kerui Petroleum’s CF29 Response excerpts (June 25, 2019). CBP had requested additional detailed production information on June 10, 2019. See the June 10, 2019 email to Kerui Petroleum.

Kerui Petroleum did not provide any documentation that shows that the Malaysian shipper [] manufactured xanthan gum, such as detailed production records,²⁵ or that the xanthan gum it imported was even produced in Malaysia. Also, various websites indicate that [].²⁶ In addition, CBP data shows that [] was listed as a manufacturer [] for [] goods in 2018, while in 2019, for [], [] was listed as a manufacturer of xanthan gum.²⁷

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 Malaysia was in fact manufactured in China. Each importers' failure to submit any information to CBP demonstrating that the merchandise was produced in Malaysia, combined with the information provided by the allegor and available from other sources (*e.g.*, Malaysian supplier websites, *etc.*) regarding xanthan gum import trends and lack of xanthan gum production in Malaysia, 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 Cementing, Global Envirotech, Kerui Group, and Kerui Petroleum, 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 refiling 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 Cementing, Global Envirotech, Kerui Group, and Kerui Petroleum 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 four investigations on Cementing, Global Envirotech, Kerui Group, and Kerui Petroleum into a single investigation covering all four importers. The new consolidated case number will be EAPA Consolidated Case No. 7282, and a single

²⁵ The "Production Record" and "Production Process Record" documents referenced above do not reference a product name, and even if those documents were assumed to pertain to xanthan gum, it is not evident that they can be linked to the merchandise referenced in the entry identified in the CF28.

²⁶ *See* Kerui Petroleum Supplier Internet Information (June 11, 2019).

²⁷ *See* Malaysia MIDS Data (August 5, 2019).

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 four importers are alleged to have entered suspected Chinese-origin xanthan gum from Malaysia, 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 7282” 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,



Christopher Bowman
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