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Border Protection

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Re: Notice of Final Determination as to Evasion

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

Pursuant to an examination of the record in Enforce and Protect Act ("EAPA") Investigation 7281, U.S. Customs and Border Protection ("CBP") has determined that there is substantial

evidence that 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”), entered into the customs territory of the United States through evasion merchandise covered by the antidumping duty (“AD”) order A-570-985¹ on xanthan gum from the People’s Republic of China (“China”). Substantial evidence demonstrates that the Importers imported Chinese-origin xanthan gum that was transshipped through India.² As a result, no cash deposits were applied to the merchandise at the time of entry.

Background

The Trade Remedy Law Enforcement Directorate (“TRLED”), within CBP’s Office of Trade, acknowledged receipt of the properly filed allegations by CP Kelco U.S., Inc. (“CP Kelco” or “the Alleger”) against the Importers on April 16, 2019.³ CP Kelco alleged the Importers evaded the AD order on xanthan gum from China by importing xanthan gum that was manufactured in China but transshipped through India.

TRLED found the information provided in the allegation reasonably suggested that covered merchandise has been entered for consumption by the Importers into the customs territory of the United States through evasion. 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. Consequently, on May 7, 2019, TRLED initiated investigations under EAPA based on the allegations submitted by CP Kelco, as to evasion of antidumping duties by the Importers.⁴

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 CBP also identified an instance in which the transshipped merchandise had been misclassified by an importer as merchandise other than xanthan gum, as noted below. The discussion of evasion focuses upon transshipment of Chinese-origin merchandise through India, which applied to the instance in which xanthan gum was misclassified as another product.

³ 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.

⁴ 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,

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 by the Importers identified as originating in India may have actually originated in China. As part of the EAPA investigation process, CBP reviewed documentation submitted by the Importers in response to Customs Form (“CF”) 28 requests for information for entries that are subject to this EAPA investigation. CBP requested sales, production, and factory documentation from each importer.⁵

After evaluating the CF28 responses obtained from the Importers, TRLED determined that reasonable suspicion exists that the xanthan gum imported into the United States by the Importers from India was in fact manufactured in China. Each importer’s failure to submit any information to CBP demonstrating that the merchandise was produced in India, combined with the information provided by the 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, created an objective basis for CBP to conclude that the xanthan gum imported by each importer into the United States may have been produced in China, and thus, should have been subject to AD duties. Consequently, CBP found there was reasonable suspicion that the Importers were evading the AD order by importing xanthan gum manufactured in China, but falsely marked as being of Indian origin, and imposed interim measures.⁶

After interim measures, CBP sent Requests for Information (“RFIs”) to each of the Importers on August 19, 2019. Ascension submitted its response (“Ascension RFI Response”) on September 13, 2019, DBMS submitted its response (“DBMS RFI Response”) on September 10, 2019, UMD submitted its response (“UMD RFI Response”) on September 13, 2019, Western Energy submitted its response (“Western Energy RFI Response”) on September 12, 2019, CCT submitted its response (“CCT RFI Response”) on September 13, 2019, and Glob Energy submitted its response (“Glob Energy RFI Response”) on September 13, 2019. Tdale did not submit an RFI response.

On August 20, 2019, CBP sent RFIs to each of the claimed manufacturers:

Chem Fert Chemicals (“Indian CM#1”);
[] (“Indian CM#2”);
[] (“Indian CM#3”).

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”).

As noted in the NOI, [] the named entities listed above, the investigation []]. See NOI at 8 (footnote 24).

⁵ 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).

⁶ See “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” (Aug. 12, 2019) (“NOI”). In the NOI, TRLED also consolidated the individual investigations involving India into consolidated case number 7281. *Id.* at 10.

Chem Fert Chemicals (“Chem Fert”) submitted a response (“Chem Fert RFI Response”) on September 3, 2019, identifying itself as one of the claimed manufacturers.⁷ [] also submitted a response (“[] RFI Response”) on September 3, 2019. [] did not submit an RFI response.

On November 22, 2019, DBMS submitted additional factual information. On November 23, 2019, Ascension, UMD, CCT, and Glob Energy submitted additional factual information. On November 25, 2019, Ascension and the Alleger submitted additional factual information. These submissions of additional factual information are referenced below. On December 5, 2019, DBMS and Western Energy submitted rebuttal information.

On December 16, 2019, CBP extended the deadline for submission of written arguments from December 23, 2019 to January 6, 2020.⁸

On January 2, 2020, Ascension, CCT, Glob Energy, and UMD submitted written arguments.⁹ On January 6, 2020, the Alleger submitted written argument addressing importers Ascension, CCT, Glob Energy, UMD, DBMS, and Western Energy, and DBMS submitted written argument.¹⁰ On January 24, 2020, the Alleger, Ascension, CCT, Glob Energy, UMD, and DBMS submitted responses to written arguments.¹¹

Final Determination as to Evasion

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

⁷ CBP had previously treated the identity of this claimed manufacturer, as well as the others, and business confidential. Chem Fert did not treat as business confidential its identity as a supplier of xanthan gum to importers involved in this investigation. Also, as noted below, various importers publicly identified Chem Fert as an Indian supplier of xanthan gum to them.

The Chem Fert document is dated August 27, 2019, but it was submitted to EAPA on September 3, 2019. Chem Fert stated in its response that it is not a xanthan gum manufacturer, that it imports the xanthan gum from China and repackages, and claims that the U.S. importers to which it shipped the xanthan gum were well aware of these facts. See aforementioned document from Chem Fert.

⁸ See December 16, 2019 email to parties to the investigation.

⁹ See “Written arguments pursuant to C.F.R. §165.26 for Ascension Chemicals LLC / EAPA Cons. Inv. (Case) No.: 7281” (“Ascension Written Argument”), “Written arguments pursuant to C.F.R. §165.26 for Crude Chem Technology / EAPA Cons. Inv. (Case) No.: 7281” (“CCT Written Argument”), “Written arguments pursuant to C.F.R. §165.26 for Glob Energy Corporation / EAPA Cons. Inv. (Case) No.: 7281” (“Glob Energy Written Arguments”), and “Written arguments pursuant to C.F.R. §165.26 for UMD Solutions LLC / EAPA Cons. Inv. (Case) No.: 7281” (“UMD Written Argument”), each dated January 2, 2020.

¹⁰ See “CP Kelco’s Written Arguments” (“CP Kelco Written Argument”), dated January 6, 2020, and “Submission of Written Argument Pursuant to 19 C.F.R. § 165.26, Dr. Bronner’s Magic Soaps” (“DBMS Written Argument”), dated January 6, 2020, respectively.

¹¹ See “CP Kelco’s Response to Importers’ Written Arguments” (“CP Kelco Response to Written Arguments”), “Responses to 19 C.F.R. §165.26 for Ascension Chemicals LLC” (“Ascension Response to Written Arguments”), “Responses to 19 C.F.R. §165.26 for Crude Chem Technology” (“CCT Response to Written Arguments”), “Responses to 19 C.F.R. §165.26 for Glob Energy Corporation” (“Glob Energy Response to Written Arguments”), “Responses to 19 C.F.R. §165.26 for UMD Solutions LLC” (“UMD Response to Written Arguments”), and “Response to CP Kelco U.S., Inc.’s January 6, 2020 Written Argument Pursuant to 19 C.F.R. §165.26(b)(1)” (“DBMS Response to Written Arguments”), all dated January 24, 2020.

“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 merchandise.” Thus, the statute outlines three elements for CBP to address in reaching a determination: 1) whether the entries in question are covered merchandise (*i.e.*, merchandise that is subject to an AD/CVD order) when they entered into the customs territory of the United States; 2) whether such entry was made by a material false statement or act or material omission; and 3) whether there was a resulting reduction or avoidance of applicable AD/CVD cash deposits or other security. As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion, and that there is a basis for concluding that substantial evidence indicates the Importers’ imports, were merchandise entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

Ascension

As noted above, Chem Fert has stated not only that it does not produce xanthan gum, but also that the xanthan gum it shipped to the importer was manufactured in China. Neither Chem Fert nor the importer provided requested production documentation related to the actual xanthan gum imported into the United States that could have enabled CBP to determine the country of origin. Given their failure to provide that information, and the evidence on the record cited in the NOI supporting a conclusion that the merchandise was manufactured in China, CBP determines that the imported merchandise was covered merchandise, subject to the AD order.

The merchandise was misidentified as of Indian origin and Entry Type 01 (‘Consumption – Free and Dutiable’) at the time of entry, instead of Entry Type 03 (‘Consumption – Antidumping/Countervailing Duty’), resulting in the absence of a cash deposit for the entries. Consequently, “there was a resulting reduction or avoidance of applicable AD/CVD cash deposits or other security,” the third evasion element noted above. The importer argues there was no reduction or avoidance because the appropriate cash deposit rate for the entries was 0.00 percent, claiming the merchandise was manufactured and exported from China by “Fufeng” entities for which the cash deposit rate has been 0.00 percent.¹²

Regardless, the information cited by the importer to support its claim that “Fufeng” manufactured and exported the merchandise is inadequate. The importer’s claim regarding the Chinese manufacturer and exporter of the xanthan gum it imported is based on shipment information sourced from Import Genius, a company that compiles certain available information

¹² See Ascension Written Argument at 4 and Ascension Response to Written Arguments at 7-8, citing Department of Commerce and court decisions relating to “Fufeng” entities. Ascension states that subject merchandise it imported from Chem Fert that was manufactured and exported from China by “Fufeng” would be subject to the cash deposit rate of “Fufeng.” See *e.g.* Ascension Response to Written Arguments at 7-8. For the cash deposit rate of a Chinese exporter to be applicable to the non-Chinese exporter of the merchandise, that Chinese exporter would have to have been the supplier of the non-Chinese exporter (in this case, Chem Fert) which, as discussed below, is not established by the information on the record of the investigation.

about shipments of merchandise.¹³ However, the importers were required by CBP to provide documentation demonstrating the actual manufacturer and exporter of the specific merchandise in question, and cannot instead base its identification of manufacturer and exporter for entries on guesses derived from shipment information of a third party source.¹⁴ Also, the Import Genius shipment information does not even make reference to “manufacturer”; “producer”; or “exporter” of the merchandise associated with the shipments.¹⁵ The conclusions about the identity of the Chinese exporter for the listed shipments merely rely on assumptions about the “shipper” information referenced in the Import Genius information.¹⁶ Regarding the identity of the producer, the importer cites additional evidence indicating there are not numerous Chinese producers of xanthan gum, arguing this supports its conclusion that the merchandise it imported was manufactured by a “Fufeng” entity with a 0.00 percent cash deposit rate, but many of the identified producers are not “Fufeng” entities as identified by the Department of Commerce in its proceedings.¹⁷

Regardless of the Import Genius information, given the absence of information pertaining to the actual production and initial distribution stages for the specific merchandise that was entered into the United States by the importer, there is no basis for concluding that the appropriate cash deposit rate should have been 0.00 percent.

Neither Ascension nor Chem Fert acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by Ascension from Chem Fert. The substantial evidence standard does not require CBP to prove that the xanthan gum originated in China in order for a finding of evasion to be made. As noted in the NOI, evidence on the record indicates it is reasonable to conclude that it did originate in China and, furthermore, both Ascension and Chem Fert now claim it originated in China.

Based on the aforementioned analysis, CBP determines that Ascension misidentified the country of origin and entry type at the times of entry, with the resulting avoidance of applicable AD cash deposits, and therefore, that evasion of the AD order occurred.¹⁸ Furthermore, Ascension’s

¹³ See Ascension Written Argument at 4, and Ascension Response to Written Arguments at 6-8 (citing Ascension’s November 23, 2019 submission of new factual information).

¹⁴ Such third party source information has been used in allegations, for which the standard is “information reasonably available,” and may perhaps be considered at later stages of an investigation where parties fail to provide requested information relating to actual shipped merchandise. However, it cannot be used by importers in lieu of actual documentation requested by CBP, as importers are required to provide such actual documentation pertaining to specific merchandise when requested, whether or not in the context of an EAPA investigation.

¹⁵ See Ascension’s November 23, 2019 factual information submission at Exhibits 1 and 2.

¹⁶ *Id.* Furthermore, some of the importer’s conclusions are unsupported even if one were to accept that the Import Genius shipment information were an acceptable basis for identifying manufacturers and exporters. For example, there is no explanation how the data indicate that “most” of the xanthan gum exported by Chem Fert to the importer “had to come from {an Indian firm named} Anshul Life Sciences,” or that all of the imports of xanthan gum by Anshul Life Sciences “were produced by Fufeng {entities identified by the importer}.” See Ascension’s November 23, 2019 factual information submission at Exhibit 1, Sheet 2 (“Analysis Summary”). Furthermore, even if Import Genius shipment information represents information about some actual shipments of xanthan gum from China to India, there is no reason to assume that Import Genius accounts for all, or even most, of the xanthan gum shipped from China to India.

¹⁷ See *e.g.* Ascension Response to Written Arguments at 5-6.

¹⁸ Ascension argues that its misidentifications were due to clerical error, as they did not involve numerous entries and were the result of reliance of Chem Fert’s false statements regarding the origin of the merchandise. See

failure to provide requested information demonstrating who produced the xanthan gum it imported, and the failure of its Indian supplier to provide such information, demonstrate they did not act to the best of their abilities, justifying the application of adverse inferences under 19 U.S.C. § 1517(c)(3).

DBMS

DBMS claimed in its written argument that the xanthan gum it imported is not covered by the scope of the order because the Chinese manufacturer was excluded from the order, which it argues demonstrates no revenue loss occurred from DBMS's misidentification of the merchandise as of Indian origin.¹⁹ DBMS appears to have clarified its position in its response to CP Kelco's written argument, where in addressing CP Kelco's arguments, DBMS did not claim merchandise manufactured by a specific Chinese company is not covered by the scope of the order.²⁰ In its response to CP Kelco's written argument, DBMS claims that the xanthan gum in question was manufactured by [] and exported by [], for which the cash deposit would be 0.00 percent.

DBMS states that because the exporter, [], did not have a separate rate under the AD order, it would be subject to the cash deposit rate of the Chinese exporter, in accordance with Commerce cash deposit instructions that were applicable at the time of the entries.²¹ Because the appropriate cash deposit rate was 0.00 percent, DBMS argues, it cannot be said that there was "any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied," and therefore, evasion cannot be said to have occurred.²²

Regardless of what party or parties may have manufactured and/or exported the merchandise from China, imports into the United States of Chinese-origin xanthan gum that were exported to the importer by [] were not excluded from the order because the Department of Commerce exclusion ruling for this AD order never references []. [] itself has stated not only that it did not produce the xanthan gum, but also that the xanthan gum it shipped to the importer was manufactured in China.²³ Neither [] (in its RFI response) nor the importer (in its responses) provided requested production documentation for the actual xanthan gum imported into the United States that could have enabled CBP to determine the country of origin. Given their failure to provide that information, and the evidence in the allegation cited in

Ascension Written Argument at 4-7 and Ascension Response to Written Arguments at 8-12. However, it is evident that Ascension intended to report the entries as Entry Type 01 ('Consumption – Free and Dutiable') entries of merchandise of Indian origin, so there is no basis for concluding the errors were clerical in nature.

¹⁹ See DBMS Written Argument at 10-11.

²⁰ No Chinese "manufacturer" was excluded from the order. While a manufacturer/exporter combination was excluded from the order, the Allegor notes that exclusion has been in litigation. See CP Kelco Response to Written Arguments at 3-4.

²¹ See e.g. DBMS Response to Written Arguments at 8-9 and 11, citing *Xanthan Gum From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016*, 83 FR 6513, 6514 (February 14, 2018), which was one of the items included in DBMS's November 22, 2019 voluntary submission of factual information.

²² See DBMS Response to Written Arguments at 8-12. DBMS also briefly alluded to the 0.00 percent cash deposit rate in its written argument (see DBMS Written Argument at 12), but elaborated on that, as noted, in its response to written arguments.

²³ See [] email exchange (March 11, 2019). See also [] RFI response (September 3, 2019).

the NOI supporting a conclusion that the merchandise was manufactured in China, CBP determines that the imported merchandise was covered merchandise, subject to the AD order.

In any case, no party to the investigation is questioning the fact that the importer misidentified the country of origin of the imported xanthan gum as India, and it is evident that the importer intended to classify the merchandise as of Indian origin and Entry Type 01 ('Consumption – Free and Dutiable') when the merchandise was entered. Consequently, there is no basis to conclude that the misidentifications were due to clerical errors.²⁴

DBMS argues that the appropriate cash deposit rate for the entries in question was that of [], which it claims was the manufacturer and the exporter from China of the merchandise in question. However, the conclusion that DBMS's entries of merchandise exported to the United States by [] were subject to the cash deposit rate of [] is not supported by the record. The record contains no evidence that the merchandise in question was exported from China by [], and because the evidence provided in support of concluding [] produced the merchandise is suspect, as discussed below.

With regard to the exportation from China, there is no evidence on the record indicating who exported the merchandise from China. DBMS notes that there is evidence from various U.S. Government determinations that [] has exported xanthan gum.²⁵ However, this does not constitute evidence that [] actually exported from China the xanthan gum that DBMS imported from [] in the entries subject to this EAPA investigation. The Indian exporter, [], failed to respond to the RFI it was issued after the NOI, and DBMS also did not provide any evidence pertaining to the actual Chinese exporter of the specific merchandise in question. Furthermore, in an email pre-dating the issuance of the RFI, [] stated to CBP that it did not purchase the xanthan gum from [],²⁶ indicating [] is removed from knowledge of the actual origin and initial distribution of the merchandise.

With regard to the identity of the manufacturer, the information DBMS cites as evidence that the xanthan gum was produced by [] does no more than suggest that a party [] might have been the producer. DBMS's CF28 narrative response references [] as the manufacturer of the xanthan gum imported by DBMS from [], but that narrative also indicates [] was unwilling to provide DBMS with any information that might substantiate that claim.²⁷ The Indian exporter, [], also noted to CBP that [] was unwilling to provide it with information.²⁸ Consequently, both

²⁴ DBMS objected to the Alleger raising the issue of intent of the importers with respect to evasion. *See* DBMS Response to Written Arguments at 12-13, referencing CP Kelco Written Argument at 8. However, intent is applicable with respect to the question of whether or not the misidentifications were the result of clerical errors. Because the misidentifications at the time of entry did not result from clerical errors, the entries were made by a material false statement or act or material omission, and, therefore, any reference to the clerical error exception to evasion in 165.15(c)(1) would be misplaced.

²⁵ *See* DBMS Response to Written Arguments at 10.

²⁶ *See* [] email exchange (March 11, 2019).

²⁷ *See* DBMS CF28 response at answer 4 to section 14 of the CF28.

²⁸ *See* [] email exchange (March 11, 2019).

the importer and [] failed to obtain information from what they now claim was the manufacturer.

DBMS's CF28 response also contains documents that reference "[]," but as discussed below, none of them includes a full company name, any reference to officials of [], or reference to any actual production by [].

The CF28 response contains a "[]" document, marked with the name [] near a logo, and includes the word "[]" in the name of the product.²⁹ Based on the name near the logo, this would appear, if authentic, to be a document created by [] rather than any [] entity, and therefore, does not demonstrate what party produced the merchandise that might have been represented by the information on that document.³⁰ The CF28 response also contains a "[]," which like the [] document, is marked with the name [] near a logo. The document identifies the same [] that appears on the [] document, and refers to a volume of [] kilograms.³¹ Like the [] document, this would appear, if authentic, to be a document created by [] rather than any [] entity, and also does not demonstrate which party produced the merchandise reflected on that document.

[] failure to respond to CBP's RFI issued after the NOI, as well as its earlier statement to CBP that it did not purchase the material from [], further calls into question any assumptions about the producer of the merchandise based on information on [] documents, given that [] was not dealing directly with the Chinese party it and DBMS are claiming produced the merchandise. Finally, even if one were to assume the documents were genuine and that they represent actual merchandise, and further that the merchandise was actually associated with any of the exports by [] to DBMS, one cannot conclude that the manufacturer was [], which is associated with the 0.00 percent cash deposit rate. The name [] on a company document does not establish which exact company or companies are referenced, and the record contains information indicating there are other Chinese entities [] whose name [].³²

The DBMS CF28 response does contain a document with the word "[]" next to a logo. That document is called "[]," and contains a reference to "[]" in the product name.³³ However, even assuming that this [] with the single word reference to "[]" actually originated with [], because it is just an apparent [], it demonstrates nothing

²⁹ See DBMS CF28 response at "[]" document.

³⁰ The DBMS RFI response contains several such "[]" documents. See DBMS RFI response at Exhibit D1 and Exhibit D20.o (referenced in DBMS RFI narrative as Exhibit 20.o).

³¹ See DBMS CF28 response at "[]" document.

³² See e.g. the reference to []

³³ See DBMS CF28 response at "[]" document. The DBMS RFI response contains a xanthan gum specification, but with a logo referencing [], not []. See DBMS RFI response at Exhibit D1.

regarding the actual identity or identities of the party(ies) that produced the xanthan gum exported by [] to DBMS.

The origin of the DBMS CF28 response documents that contain logos referencing [] or [] is unknown, in part due to [] failure to respond to the RFI, and to [] apparent refusal to provide information to either [] or DBMS. And whether or not DBMS possessed those documents at the time of entry, DBMS declared the merchandise at time of entry as having been manufactured in India.

DBMS also submitted photographs to TRLED in the EAPA investigation that DBMS claims support its assertion that [] manufactured the xanthan gum that it imported from []. Some of the text items visible in these photos, which are claimed by DBMS to be photos of label information on a carton of xanthan gum, are consistent with information in sales documentation submitted by DBMS for one of its three entries.³⁴ DBMS claims in its written argument and its response to written arguments that these photos were of cartons of xanthan gum DBMS had imported from [] that had been “discovered” at a warehouse claimed to be “controlled” by DBMS.³⁵

Included in that new factual information submission with the photos was an April 2, 2019, letter to CBP claiming that the shipments of xanthan gum had been shipped to a third party manufacturer in [] immediately after they cleared customs, and that the third party manufacturer is the only one that can confirm the markings on the cartons. The letter also states that DBMS had, from the last shipment, retained in California a total of 50 cartons of 3000 pounds. The letter references photos showing cartons with markings indicating the product was manufactured by [].³⁶ Those photos referenced in the April 2, 2019, letter to CBP are presumably the aforementioned photos DBMS submitted in its November 22, 2019, factual information submission, which, as noted above, it claims were taken at a warehouse “controlled” by DBMS.

Even if one were to assume they were actual photos of an actual carton of xanthan gum located at a warehouse controlled by DBMS, such a photo cannot be relied upon as proof that the merchandise was produced by []. In addition, if one were to rely on such information, it would only apply to at most one of the multiple DBMS entries during the period of investigation. Furthermore, if the merchandise imported by DBMS from [] was so clearly identified with markings indicating “country of origin” of China and “manufactured by” [], and if DBMS had even “retained” some of the merchandise after it had cleared customs, it is not evident why, at the time of entry the importer identified India as the country of origin and [] as the manufacturer, and did not correct such a classification until after notified by CBP.

Finally, the label on the carton in those photos states [],³⁷ and neither DBMS nor [] appear to have identified that entity as the

³⁴ See DBMS’s November 22, 2019 new factual information submission at the two files containing photos.

³⁵ See DBMS Written Argument at 6-7, and DBMS Response to Written Arguments at 9-10.

³⁶ See DBMS’s November 22, 2019 new factual information submission, Politis & Politis letter, at 1.

³⁷ See DBMS’s November 22, 2019 new factual information submission at the two files containing photos.

supplier of [] or to have otherwise referenced that specific entity in their CF28 or RFI responses. Regardless, the information referenced in the photos pertaining to the supposed manufacturer ([]) and country of origin (China) is information that DBMS itself did not use when filing its entries, and does not constitute credible evidence that the merchandise entered by DBMS was manufactured by [].

In short, regardless of DBMS's assertion that a 0.00 percent cash deposit rate is relevant with regard to whether or not evasion might exist, given the absence of information pertaining to the actual production and initial distribution stages for the merchandise in question, there is no basis for concluding that the appropriate cash deposit rate should have been 0.00 percent for the entries in question.

Neither DBMS nor [] acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by DBMS from []. The substantial evidence standard does not require CBP to prove that the xanthan gum originated in China in order for a finding of evasion to be made. As noted in the NOI, evidence on the record indicates it is reasonable to conclude that it did originate in China, and furthermore, both DBMS and [] now claim it originated in China.

Based on the aforementioned analysis, CBP determines that DBMS misidentified the country of origin and entry type at the times of entry, with the resulting avoidance of applicable AD cash deposits, and therefore, that evasion of the AD order occurred. Furthermore, DBMS's failure to provide requested information demonstrating who produced the xanthan gum it imported, and the failure of its Indian supplier to provide such information, demonstrate they did not act to the best of their abilities, justifying the application of adverse inferences under 19 U.S.C. § 1517(c)(3).

Tdale

Entry documentation for Tdale's entries of xanthan gum during the period of investigation identified India as the country of origin. However, [], Tdale's Indian supplier, []³⁸ As noted above, Tdale did not submit an RFI response. Neither [] nor the importer provided requested production documentation related to the actual xanthan gum imported into the United States that could have enabled CBP to determine the country of origin. Consequently, there is no evidence on the record to support a conclusion that the xanthan gum imported by Tdale originated in India.

Neither Tdale nor its Indian supplier acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by Tdale. The substantial evidence standard does not require CBP to prove that the xanthan gum originated in China in order for a finding of evasion to be made, and, as noted in the NOI, evidence on the record indicates it is reasonable to conclude that it did originate in China.

³⁸ Unlike []

].

Based on the aforementioned analysis, CBP determines that Tdale misidentified the country of origin and entry type at the times of entry, with the resulting avoidance of applicable AD cash deposits, and therefore, that evasion of the AD order occurred. Furthermore, Tdale's failure to respond to the RFI, and the failure of its Indian supplier to provide requested information demonstrating who produced the xanthan gum it exported to Tdale, demonstrate they did not act to the best of their abilities, justifying the application of adverse inferences under 19 U.S.C. § 1517(c)(3).

UMD

As noted above, Chem Fert has stated not only that it does not produce xanthan gum, but also that the xanthan gum it shipped to the importer was manufactured in China. Neither Chem Fert nor the importer provided requested production documentation related to the actual xanthan gum imported into the United States that could have enabled CBP to determine the country of origin. Given their failure to provide that information, and the evidence on the record cited in the NOI supporting a conclusion that the merchandise was manufactured in China, CBP determines that the imported merchandise was covered merchandise, subject to the AD order.

The merchandise was misidentified as of Indian origin and Entry Type 01 ('Consumption – Free and Dutiable') at the time of entry, instead of Entry Type 03 ('Consumption – Antidumping/Countervailing Duty'), resulting in the absence of a cash deposit for the entries. Consequently, "there was a resulting reduction or avoidance of applicable AD/CVD cash deposits or other security," the third evasion element noted above. The importer argues there was no reduction or avoidance because the appropriate cash deposit rate for the entries was 0.00 percent, claiming the merchandise was manufactured and exported from China by "Fufeng" entities for which the cash deposit rate has been 0.00 percent.³⁹

Regardless, the information cited by the importer to support its claim that "Fufeng" manufactured and exported the merchandise is inadequate. The importer's claim regarding the Chinese manufacturer and exporter of the xanthan gum it imported is based on shipment information sourced from Import Genius, a company that compiles certain available information about shipments of merchandise.⁴⁰ However, the importers were required by CBP to provide documentation demonstrating the actual manufacturer and exporter of the specific merchandise in question, and cannot instead base its identification of manufacturer and exporter for entries on guesses derived from shipment information of a third party source.⁴¹ Also, the Import Genius

³⁹ See UMD Written Argument at 4 and UMD Response to Written Arguments at 7-8, citing Department of Commerce and court decisions relating to "Fufeng" entities. UMD states that subject merchandise it imported from Chem Fert that was manufactured and exported from China by "Fufeng" would be subject to the cash deposit rate of "Fufeng." See e.g. UMD Response to Written Arguments at 7-8. For the cash deposit rate of a Chinese exporter to be applicable to the non-Chinese exporter of the merchandise, that Chinese exporter would have to have been the supplier of the non-Chinese exporter (in this case, Chem Fert) which, as discussed below, is not established by the information on the record of the investigation.

⁴⁰ See UMD Written Argument at 4, and UMD Response to Written Arguments at 6-8 (citing UMD's November 23, 2019 submission of new factual information).

⁴¹ Such third party source information has been used in allegations, for which the standard is "information reasonably available," and may perhaps be considered at later stages of an investigation where parties fail to provide requested information relating to actual shipped merchandise. However, it cannot be used by importers in lieu of

shipment information does not even make reference to “manufacturer”; “producer”; or “exporter” of the merchandise associated with the shipments.⁴² The conclusions about the identity of the Chinese exporter for the listed shipments merely rely on assumptions about the “shipper” information referenced in the Import Genius information.⁴³ Regarding the identity of the producer, the importer cites additional evidence indicating there are not numerous Chinese producers of xanthan gum, arguing this supports its conclusion that the merchandise it imported was manufactured by a “Fufeng” entity with a 0.00 percent cash deposit rate, but many of the identified producers are not “Fufeng” entities as identified by the Department of Commerce in its proceedings.⁴⁴

Regardless of the Import Genius information, given the absence of information pertaining to the actual production and initial distribution stages for the specific merchandise that was entered into the United States by the importer, there is no basis for concluding that the appropriate cash deposit rate should have been 0.00 percent.

Neither UMD nor Chem Fert acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by UMD from Chem Fert. The substantial evidence standard does not require CBP to prove that the xanthan gum originated in China in order for a finding of evasion to be made. As noted in the NOI, evidence on the record indicates it is reasonable to conclude that it did originate in China and, furthermore, both UMD and Chem Fert now claim it originated in China.

Based on the aforementioned analysis, CBP determines that UMD misidentified the country of origin and entry type at the times of entry, with the resulting avoidance of applicable AD cash deposits, and therefore, that evasion of the AD order occurred.⁴⁵ Furthermore, UMD’s failure to provide requested information demonstrating who produced the xanthan gum it imported, and the failure of its Indian supplier to provide such information, demonstrate they did not act to the best of their abilities, justifying the application of adverse inferences under 19 U.S.C. § 1517(c)(3).

Western Energy

actual documentation requested by CBP, as importers are required to provide such actual documentation pertaining to specific merchandise when requested, whether or not in the context of an EAPA investigation.

⁴² See UMD’s November 23, 2019 factual information submission at Exhibits 1 and 2.

⁴³ *Id.* Furthermore, some of the importer’s conclusions are unsupported even if one were to accept that the Import Genius shipment information were an acceptable basis for identifying manufacturers and exporters. For example, there is no explanation how the data indicate that “most” of the xanthan gum exported by Chem Fert to the importer “had to come from {an Indian firm named} Anshul Life Sciences,” or that all of the imports of xanthan gum by Anshul Life Sciences “were produced by Fufeng {entities identified by the importer}.” See UMD’s November 23, 2019 factual information submission at Exhibit 1, Sheet 2 (“Analysis Summary”). Furthermore, even if Import Genius shipment information represents information about some actual shipments of xanthan gum from China to India, there is no reason to assume that Import Genius accounts for all, or even most, of the xanthan gum shipped from China to India.

⁴⁴ See e.g. UMD Response to Written Arguments at 5-6.

⁴⁵ UMD argues that its misidentifications were due to clerical error, as they did not involve numerous entries and were the result of reliance of Chem Fert’s false statements regarding the origin of the merchandise. See UMD Written Argument at 4-7 and UMD Response to Written Arguments at 8-11. However, it is evident that UMD intended to report the entries as Entry Type 01 (‘Consumption – Free and Dutiable’) entries of merchandise of Indian origin, so there is no basis for concluding the errors were clerical in nature.

Entry documentation for Western Energy’s entries of xanthan gum during the period of investigation identified India as the country of origin. However, the claimed manufacturer, [] did not submit an RFI response. Neither [] nor Western Energy provided requested production documentation related to the actual xanthan gum imported into the United States that could have enabled CBP to determine the country of origin. Consequently, there is no basis for concluding that the xanthan gum imported by Western Energy originated in India.

Neither Western Energy nor its Indian supplier acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by Western Energy. The substantial evidence standard does not require CBP to prove that the xanthan gum originated in China in order for a finding of evasion to be made, and as noted in the NOI, evidence on the record indicates it is reasonable to conclude that it did originate in China.

Based on the aforementioned analysis, CBP determines that Western Energy misidentified the country of origin and entry type at the times of entry, with the resulting avoidance of applicable AD cash deposits, and, therefore, that evasion of the AD order occurred. Furthermore, Western Energy’ failures to provide requested information demonstrating who produced the xanthan gum it imported, and the failure of its Indian supplier to respond to the RFI, demonstrate they did not act to the best of their abilities, justifying the application of adverse inferences under 19 U.S.C. § 1517(c)(3).

CCT

As noted above, Chem Fert has stated not only that it does not produce xanthan gum, but also that the xanthan gum it shipped to the importer was manufactured in China. Neither Chem Fert nor the importer provided requested production documentation related to the actual xanthan gum imported into the United States that could have enabled CBP to determine the country of origin. Given their failure to provide that information, and the evidence on the record cited in the NOI supporting a conclusion that the merchandise was manufactured in China, CBP determines that the imported merchandise was covered merchandise, subject to the AD order.

The merchandise was misidentified as of Indian origin and Entry Type 01 (‘Consumption – Free and Dutiable’) at the time of entry, instead of Entry Type 03 (‘Consumption – Antidumping/Countervailing Duty’), resulting in the absence of a cash deposit for the entries. Consequently, “there was a resulting reduction or avoidance of applicable AD/CVD cash deposits or other security,” the third evasion element noted above. The importer argues there was no reduction or avoidance because the appropriate cash deposit rate for the entries was 0.00 percent, claiming the merchandise was manufactured and exported from China by “Fufeng” entities for which the cash deposit rate has been 0.00 percent.⁴⁶

⁴⁶ See CCT Written Argument at 4 and CCT Response to Written Arguments at 7-8, citing Department of Commerce and court decisions relating to “Fufeng” entities. CCT states that subject merchandise it imported from Chem Fert that was manufactured and exported from China by “Fufeng” would be subject to the cash deposit rate of “Fufeng.” See e.g. CCT Response to Written Arguments at 7-8. For the cash deposit rate of a Chinese exporter to be applicable to the non-Chinese exporter of the merchandise, that Chinese exporter would have to have been the

Regardless, the information cited by the importer to support its claim that “Fufeng” manufactured and exported the merchandise is inadequate. The importer’s claim regarding the Chinese manufacturer and exporter of the xanthan gum it imported is based on shipment information sourced from Import Genius, a company that compiles certain available information about shipments of merchandise.⁴⁷ However, the importers were required by CBP to provide documentation demonstrating the actual manufacturer and exporter of the specific merchandise in question, and cannot instead base its identification of manufacturer and exporter for entries on guesses derived from shipment information of a third party source.⁴⁸ Also, the Import Genius shipment information does not even make reference to “manufacturer”; “producer”; or “exporter” of the merchandise associated with the shipments.⁴⁹

The conclusions about the identity of the Chinese exporter for the listed shipments merely rely on assumptions about the “shipper” information referenced in the Import Genius information.⁵⁰ Regarding the identity of the producer, the importer cites additional evidence indicating there are not numerous Chinese producers of xanthan gum, arguing this supports its conclusion that the merchandise it imported was manufactured by a “Fufeng” entity with a 0.00 percent cash deposit rate, but many of the identified producers are not “Fufeng” entities as identified by the Department of Commerce in its proceedings.⁵¹

Regardless of the Import Genius information, given the absence of information pertaining to the actual production and initial distribution stages for the specific merchandise that was entered into the United States by the importer, there is no basis for concluding that the appropriate cash deposit rate should have been 0.00 percent.

Finally, CCT’s RFI response indicates that Chem Fert had stated that the xanthan gum it had shipped to CCT was manufactured by a Chinese company named Jianlong, and though no

supplier of the non-Chinese exporter (in this case, Chem Fert) which, as discussed below, is not established by the information on the record of the investigation.

⁴⁷ See CCT Written Argument at 4, and CCT Response to Written Arguments at 6-8 (citing CCT’s November 23, 2019 submission of new factual information).

⁴⁸ Such third party source information has been used in allegations, for which the standard is “information reasonably available,” and may perhaps be considered at later stages of an investigation where parties fail to provide requested information relating to actual shipped merchandise. However, it cannot be used by importers in lieu of actual documentation requested by CBP, as importers are required to provide such actual documentation pertaining to specific merchandise when requested, whether or not in the context of an EAPA investigation.

⁴⁹ See CCT’s November 23, 2019 factual information submission at Exhibits 1 and 2.

⁵⁰ *Id.* Furthermore, some of the importer’s conclusions are unsupported even if one were to accept that the Import Genius shipment information were an acceptable basis for identifying manufacturers and exporters. For example, there is no explanation how the data indicate that “most” of the xanthan gum exported by Chem Fert to the importer “had to come from {an Indian firm named} Anshul Life Sciences,” or that all of the imports of xanthan gum by Anshul Life Sciences “were produced by Fufeng {entities identified by the importer}.” See CCT’s November 23, 2019 factual information submission at Exhibit 1, Sheet 2 (“Analysis Summary”). Furthermore, even if Import Genius shipment information represents information about some actual shipments of xanthan gum from China to India, there is no reason to assume that Import Genius accounts for all, or even most, of the xanthan gum shipped from China to India.

⁵¹ See e.g. CCT Response to Written Arguments at 5-6.

documentation supporting that claim were provided, this calls into further question any conclusion that a Fufeng entity was the manufacturer.⁵²

Neither CCT nor Chem Fert acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by CCT from Chem Fert. The substantial evidence standard does not require CBP to prove that the xanthan gum originated in China in order for a finding of evasion to be made. As noted in the NOI, evidence on the record indicates it is reasonable to conclude that it did originate in China, and furthermore, both CCT and Chem Fert now claim it originated in China.

Based on the aforementioned analysis, CBP determines that CCT misidentified the country of origin and entry type at the times of entry, with the resulting avoidance of applicable AD cash deposits, and, therefore, that evasion of the AD order occurred.⁵³ Furthermore, CCT's failure to provide requested information demonstrating who produced the xanthan gum it imported, and the failure of its Indian supplier to provide such information, demonstrate they did not act to the best of their abilities, justifying the application of adverse inferences under 19 U.S.C. § 1517(c)(3).

Glob Energy

As noted above, Chem Fert has stated not only that it does not produce xanthan gum, but also that the xanthan gum it shipped to the importer was manufactured in China. Neither Chem Fert nor the importer provided requested production documentation related to the actual xanthan gum imported into the United States that could have enabled CBP to determine the country of origin. Given their failure to provide that information, and the evidence on the record cited in the NOI supporting a conclusion that the merchandise was manufactured in China, CBP determines that the imported merchandise was covered merchandise, subject to the AD order.

The merchandise was misidentified as of Indian origin and Entry Type 01 ('Consumption – Free and Dutiable') at the time of entry, instead of Entry Type 03 ('Consumption – Antidumping/Countervailing Duty'), resulting in the absence of a cash deposit for the entries. Consequently, "there was a resulting reduction or avoidance of applicable AD/CVD cash deposits or other security," the third evasion element noted above. The importer argues there was no reduction or avoidance because the appropriate cash deposit rate for the entries was 0.00 percent, claiming the merchandise was manufactured and exported from China by "Fufeng" entities for which the cash deposit rate has been 0.00 percent.⁵⁴

⁵² See CCT RFI Response in part 3 of a statement from Miles Grendel to a police commissioner in India. Furthermore, CCT provided no explanation in its RFI Response regarding xanthan gum for which [], rather than Chem Fert.

⁵³ CCT argues that its misidentifications were due to clerical error, as they did not involve numerous entries and were the result of reliance of Chem Fert's false statements regarding the origin of the merchandise. See CCT Written Argument at 5-7 and CCT Response to Written Arguments at 8-11. However, it is evident that CCT intended to report the entries as Entry Type 01 ('Consumption – Free and Dutiable') entries of merchandise of Indian origin, so there is no basis for concluding the errors were clerical in nature.

⁵⁴ See Glob Energy Written Argument at 4 and Glob Energy Response to Written Arguments at 7-8, citing Department of Commerce and court decisions relating to "Fufeng" entities. UMD states that subject merchandise it imported from Chem Fert that was manufactured and exported from China by "Fufeng" would be subject to the cash

Regardless, the information cited by the importer to support its claim that “Fufeng” manufactured and exported the merchandise is inadequate. The importer’s claim regarding the Chinese manufacturer and exporter of the xanthan gum it imported is based on shipment information sourced from Import Genius, a company that compiles certain available information about shipments of merchandise.⁵⁵ However, the importers were required by CBP to provide documentation demonstrating the actual manufacturer and exporter of the specific merchandise in question, and cannot instead base its identification of manufacturer and exporter for entries on guesses derived from shipment information of a third party source.⁵⁶ Also, the Import Genius shipment information does not even make reference to “manufacturer”; “producer”; or “exporter” of the merchandise associated with the shipments.⁵⁷

The conclusions about the identity of the Chinese exporter for the listed shipments merely rely on assumptions about the “shipper” information referenced in the Import Genius information.⁵⁸ Regarding the identity of the producer, the importer cites additional evidence indicating there are not numerous Chinese producers of xanthan gum, arguing this supports its conclusion that the merchandise it imported was manufactured by a “Fufeng” entity with a 0.00 percent cash deposit rate, but many of the identified producers are not “Fufeng” entities as identified by the Department of Commerce in its proceedings.⁵⁹

Regardless of the Import Genius information, given the absence of information pertaining to the actual production and initial distribution stages for the specific merchandise that was entered into the United States by the importer, there is no basis for concluding that the appropriate cash deposit rate should have been 0.00 percent.

Neither Glob Energy nor Chem Fert acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by Glob Energy from Chem

deposit rate of “Fufeng.” *See e.g.* Glob Energy Response to Written Arguments at 7-8. For the cash deposit rate of a Chinese exporter to be applicable to the non-Chinese exporter of the merchandise, that Chinese exporter would have to have been the supplier of the non-Chinese exporter (in this case, Chem Fert) which, as discussed below, is not established by the information on the record of the investigation.

⁵⁵ *See* Glob Energy Written Argument at 4, and Glob Energy Response to Written Arguments at 6-8 (citing Glob Energy’s November 23, 2019 submission of new factual information).

⁵⁶ Such third party source information has been used in allegations, for which the standard is “information reasonably available,” and may perhaps be considered at later stages of an investigation where parties fail to provide requested information relating to actual shipped merchandise. However, it cannot be used by importers in lieu of actual documentation requested by CBP, as importers are required to provide such actual documentation pertaining to specific merchandise when requested, whether or not in the context of an EAPA investigation.

⁵⁷ *See* Glob Energy’s November 23, 2019 factual information submission at Exhibits 1 and 2.

⁵⁸ *Id.* Furthermore, some of the importer’s conclusions are unsupported even if one were to accept that the Import Genius shipment information were an acceptable basis for identifying manufacturers and exporters. For example, there is no explanation how the data indicate that “most” of the xanthan gum exported by Chem Fert to the importer “had to come from {an Indian firm named} Anshul Life Sciences,” or that all of the imports of xanthan gum by Anshul Life Sciences “were produced by Fufeng {entities identified by the importer}.” *See* Glob Energy’s November 23, 2019 factual information submission at Exhibit 1, Sheet 2 (“Analysis Summary”). Furthermore, even if Import Genius shipment information represents information about some actual shipments of xanthan gum from China to India, there is no reason to assume that Import Genius accounts for all, or even most, of the xanthan gum shipped from China to India.

⁵⁹ *See e.g.* Glob Energy Response to Written Arguments at 6.

Fert. The substantial evidence standard does not require CBP to prove that the xanthan gum originated in China in order for a finding of evasion to be made. As noted in the NOI, evidence on the record indicates it is reasonable to conclude that it did originate in China and, furthermore, both Glob Energy and Chem Fert now claim it originated in China.

Based on the aforementioned analysis, CBP determines that Glob Energy misidentified the country of origin and entry type at the times of entry, with the resulting avoidance of applicable AD cash deposits, and, therefore, that evasion of the AD order occurred.⁶⁰ Furthermore, Glob Energy's failure to provide requested information demonstrating who produced the xanthan gum it imported, and the failure of its Indian supplier to provide such information, demonstrate they did not act to the best of their abilities, justifying the application of adverse inferences under 19 U.S.C. § 1517(c)(3).

Summary

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).

In this case, the claimed manufacturers either did not respond to CBP's RFIs, or failed to provide most of the information requested in the RFI. Given these failures on the part of the alleged foreign manufacturers, CBP concludes that they did not cooperate with CBP's information requests to the best of their ability.⁶¹ As a result, CBP will apply adverse inferences and infer that the claimed foreign manufacturers did not manufacture the imported xanthan gum. Instead, CBP is relying on the existing information on the record, including the information submitted by the Allegor.

As noted in the NOI, the Allegor noted statements from the U.S. International Trade Commission indicating xanthan gum is made in China, Austria, France, and the United States, with no reference to India.⁶² The Allegor also provided information showing the large and rising volumes of imports into India from China of the category of merchandise including xanthan gum, while the volumes from other xanthan-gum producing countries (*i.e.*, Austria, France, and

⁶⁰ Glob Energy argues that its misidentifications were due to clerical error, as they did not involve numerous entries and were the result of reliance of Chem Fert's false statements regarding the origin of the merchandise. *See* Glob Energy Written Argument at 4-7 and Glob Energy Response to Written Arguments at 8-13. However, it is evident that Glob Energy intended to report the entries as Entry Type 01 ('Consumption – Free and Dutiable') entries of merchandise of Indian origin, so there is no basis for concluding the errors were clerical in nature.

⁶¹ Furthermore, neither the importers nor the claimed manufacturers are still claiming the merchandise was made in India, and in fact many of them, as noted above, are acknowledging it was made in China.

⁶² *See* NOI at 4.

the United States) are minimal.⁶³ Furthermore, the Allegor noted the history of attempted circumvention of the xanthan gum AD order by various companies.⁶⁴

Based on the evidence on the record, CBP finds that the Indian xanthan gum suppliers have been participating in the transshipment of Chinese-origin xanthan gum through India. Moreover, the aforementioned failure of the Importers to respond to the best of their abilities also supports the application of adverse inferences. In relying upon an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one's ability with an RFI, CBP will look at the facts otherwise available. On the basis of the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that the xanthan gum entered by Ascension, CCT, DBMS, Glob Energy, Tdale, UMD, and Western Energy during the period of investigation was of Chinese origin and transshipped through India,⁶⁵ and is subject to the China-wide entity rate for the AD order on xanthan gum from China.⁶⁶ At present, that rate is 154.07 percent.

Actions Taken Pursuant to the Affirmative Determination of Evasion

In light of CBP's determination that the Importers entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 U.S.C. §1517(d) and 19 C.F.R. §165.28, CBP will continue to suspend the liquidation for any entry imported by the Importers on or after May 7, 2019, the date of initiation. CBP will continue to extend the period for liquidation for all unliquidated entries that entered before that date until instructed to liquidate these entries. For future entries, CBP will continue to require live entry, which requires that the importers post the applicable cash deposits prior to the release. Finally, CBP will evaluate the continuous bond of the importer 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.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ In addition, CBP identified an entry of xanthan gum by the importer [] during the period of investigation for which the importer claimed the merchandise originated in India and misclassified under an HTSUS code for merchandise other than xanthan gum. CBP corrected that HTSUS classification after the allegation against the importer [] was filed, but before the investigation was initiated. The xanthan gum associated with the entry in question was subject to the interim measures and, now, is subject to the final measures noted below.

⁶⁶ The Allegor submitted information on the record relating to Section 301 duties. *See* CP Kelco Written Argument at 14, citing CP Kelco's November 25, 2019 new factual submission at Attachment 2. Ascension, DBMS, UMD, CCT, and Glob Energy argued that such information does not pertain to the issue of whether or not evasion of the AD order occurred, and DBMS also argued that the Section 301 information should be "not allowed" on the record of the EAPA investigation. *See e.g.* DBMS Response to Written Arguments at 14-15. We conclude that CP Kelco has not demonstrated how the Section 301 information supports a finding of evasion, but also that this does not require that the information it submitted pertaining to Section 301 duties be excluded from the record of the investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian M. Hoxie". The signature is fluid and cursive, with the first name being the most prominent.

Brian M. Hoxie
Director, Enforcement Operations Division
Trade Remedy & Law Enforcement Directorate
Office of Trade