



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

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**PUBLIC VERSION**

EAPA Cons. Case Number: 7282

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**Re: Notice of Final Determination as to Evasion**

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

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation 7282, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that 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”), entered into the customs territory of the United States through evasion merchandise covered by the antidumping duty (“AD”) order A-

570-985<sup>1</sup> 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 Malaysia. 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 Allegor”) against the Importers on April 16, 2019.<sup>2</sup> 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 Malaysia.

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 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. 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.<sup>3</sup>

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 by the Importers identified as originating in Malaysia may have actually originated in China. As part of the EAPA investigation process, CBP reviewed documentation submitted by the Importers in response to

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<sup>1</sup> 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”).

<sup>2</sup> 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.

<sup>3</sup> 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”).

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.<sup>4</sup>

After evaluating the CF28 responses obtained from the Importers, TRLED determined that reasonable suspicion exists that the xanthan gum imported into the United States from Malaysia by the Importers was in fact manufactured in China. Each importer’s failure to submit any information to CBP demonstrating that the merchandise was produced in Malaysia, combined with the information provided by the Alleger 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 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 Malaysian origin, and imposed interim measures.<sup>5</sup>

After interim measures, -CBP sent Requests for Information (“RFIs”) to each of the Importers on August 19, 2019. Cementing submitted its response (“Cementing RFI Response”) on September 9, 2019, and Global Envirotech submitted its response (“Global Envirotech RFI Response”) on September 13, 2019. Neither Kerui Group nor Kerui Petroleum submitted a response.

CBP also sent RFIs to each of the claimed manufacturers, on the dates noted:

- [REDACTED] (“[REDACTED],” aka “Malaysian CM#1”) (Aug. 22, 2019);
- [REDACTED] (“[REDACTED],” aka “Malaysian CM#2”) (Sept. 3, 2019);
- [REDACTED] (“[REDACTED],” aka “Malaysian CM#3”) (Aug. 22, 2019);
- [REDACTED] (“[REDACTED],” aka “Malaysian CM#4”) (Aug. 27, 2019).

None of those claimed Malaysian manufacturers submitted an RFI response.<sup>6</sup>

On November 22, 2019, Global Envirotech submitted additional information, and on November 25, 2019, the Alleger submitted additional information. Global Envirotech’s additional

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<sup>4</sup> 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.

<sup>5</sup> See “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” (Aug. 12, 2019) (“NOI”). In the NOI, TRLED also consolidated the individual investigations involving Malaysia into consolidated case number 7282. *Id.* at 8-9.

<sup>6</sup> No email address was available for [REDACTED], and FEDEX was unable to deliver the RFI to [REDACTED] at the street address identified for that entity on sale documents (*see* FEDEX non-delivery record for RFI questionnaire for Malaysian CM2, dated September 26, 2019).

information consisted of a letter from dated September 28, 2019, from one of the aforementioned claimed manufacturers, [ ], indicating [ ] Global Envirotech xanthan gum [ ].

On December 9, 2019, CBP transmitted by FEDEX an RFI to [ ] with a response deadline of seven calendar days from receipt,<sup>7</sup> and FEDEX records indicate the RFI was received on December 13, 2019.<sup>8</sup> [ ] did not submit a timely response to that RFI.

On December 16, 2019, CBP extended the deadline for submission of written arguments from December 23, 2019 to January 6, 2020.<sup>9</sup>

On January 3, 2020, Global Envirotech submitted its written argument.<sup>10</sup> On January 6, 2020, the Alleger submitted written argument addressing importers Cementing Products and Global Envirotech.<sup>11</sup> On January 24, 2020, the Alleger submitted its response to Global Envirotech's Written Argument.<sup>12</sup>

### **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 “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.

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<sup>7</sup> See December 9, 2019 RFI questionnaire.

<sup>8</sup> See December 13, 2019 FEDEX delivery and invoice document.

<sup>9</sup> See December 16, 2019 email to parties to the investigation.

<sup>10</sup> See “Global Envirotech Industries, LLC Written Argument” (“Global Envirotech Written Argument”), dated January 3, 2020.

<sup>11</sup> See “CP Kelco's Written Arguments” (“CP Kelco Written Argument”), dated January 6, 2020.

<sup>12</sup> See “CP Kelco's Response to Importers' Written Arguments” (“Alleger Response to Written Argument”), dated January 24, 2020.

### *Cementing*

Entry documentation for Cementing's entries of xanthan gum during the period of investigation identified Malaysia as the country of origin. However, Cementing stated several times in its RFI response that the xanthan gum was actually sourced from certain suppliers in China, though Cementing did not provide in its RFI response any production documentation demonstrating which entity actually manufactured the xanthan gum.<sup>13</sup> Furthermore, the Malaysian entities identified on entry documentation as manufacturers, [redacted], did not submit RFI responses. Consequently, the record evidence did not support a conclusion that the xanthan gum imported by Cementing originated in Malaysia.

Neither Cementing nor its Malaysian suppliers acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by Cementing. As noted in the NOI, evidence on the record indicates it is reasonable to conclude that it did originate in China. As stated above, Cementing now also claims it originated in China.

Based on the aforementioned analysis, CBP determines that Cementing misidentified the country of origin and entry type at the times of entry, with the resulting avoidance of applicable AD cash deposits, and therefore, evasion of the AD order occurred. Finally, Cementing Products' failures to provide requested information demonstrating who produced the xanthan gum it imported and to respond to the CF28, and the failure of its Malaysian suppliers 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).

### *Global Envirotech*

In its RFI response, Global Envirotech continued to claim that the xanthan gum in question that it had imported was manufactured in Malaysia.<sup>14</sup> However, Global Envirotech's RFI response did not contain evidence substantiating that claim, and as noted in the NOI, "Global Envirotech did not provide {in its CF28 response} the requested production information that could have enabled CBP to identify the manufacturer of the imported merchandise."<sup>15</sup> In addition, while Global Envirotech claimed payments were made to [redacted],<sup>16</sup> the provided bank statements and money transactions do not [redacted], but instead [redacted].<sup>17</sup>

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<sup>13</sup> Furthermore, as noted in the NOI, when asked specifically for that information in a CF28, Cementing did not even submit a CF28 response. See NOI at 5.

<sup>14</sup> See Global Envirotech RFI Response Narrative at 23-25.

<sup>15</sup> See NOI at 6.

<sup>16</sup> See Global Envirotech RFI Response at 5, 8, and 18.

<sup>17</sup> *Id.* at Exhibit 5 and Exhibit 7.

[ ], which was identified as manufacturer for Global Envirotech entries, did not submit an RFI response. However, just prior to the deadline for voluntary submission of factual information under 19 C.F.R. §165.23, Global Envirotech submitted what appears to be a letter from [ ], dated almost two months earlier, that states that the xanthan gum [ ] was actually [ ]. Global Envirotech did not provide any information supporting this claim, and [ ] did not respond to CBP's RFI requesting information regarding its xanthan gum production and sales to [ ].<sup>18</sup> Consequently, there is no basis for concluding that the xanthan gum imported by Global Envirotech originated in Malaysia.

Global Envirotech, [ ], and [ ] did not act to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by Global Envirotech. As noted in the NOI, evidence on the record indicates it is reasonable to conclude that the xanthan gum did originate in China.

Based on the aforementioned analysis, CBP determines that Global Envirotech 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. Finally, the failure of Global Envirotech and its Malaysian supplier to submit their respective RFI responses demonstrates they did not act to the best of their abilities, justifying the application of adverse inferences under 19 U.S.C. § 1517(c)(3).

#### *Kerui Group*

As indicated above, Kerui Group did not submit an RFI response.<sup>19</sup> The claimed manufacturer for Kerui Group's imported xanthan gum, [ ], did not submit an RFI response, either. Consequently, there is no basis for concluding that the xanthan gum imported by Kerui Group originated in Malaysia.

Neither Kerui Group nor its Malaysian supplier acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by Kerui Group. As noted in the NOI, evidence on the record indicates it is reasonable to conclude that it did originate in China.

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<sup>18</sup> With regard to Global Envirotech's claim in its written arguments that it did not have a sufficient opportunity to provide the information required by CBP, the importer did not make this claim during the investigation, which spanned many months. Furthermore, Global Envirotech appears to have [ ]

[ ] before submitting that to CBP, thereby inhibiting CBP's efforts to further investigate what in any case have turned out to be unsubstantiated claims regarding the actual manufacturer of the xanthan gum.

<sup>19</sup> Furthermore, as noted in the NOI, various documentation submitted by Kerui Group in its CF28 response that appear to refer to production or production processes did not reference a product name and/or a manufacturer, and Kerui Group failed to provide production records showing its claimed manufacturer actually produced the merchandise. See NOI at 6-7.

Based on the aforementioned analysis, CBP determines that Kerui Group 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. Finally, the failure of Kerui Group and its Malaysian supplier to submit their respective RFI responses demonstrates they did not act to the best of their abilities, justifying the application of adverse inferences under 19 U.S.C. § 1517(c)(3).

#### *Kerui Petroleum*

As indicated above, Kerui Petroleum did not submit an RFI response.<sup>20</sup> The claimed Malaysian manufacturer for Kerui Petroleum's imported xanthan gum, [ ], also did not submit an RFI response. Consequently, the evidence on the record does not support a conclusion that the xanthan gum imported by Kerui Petroleum originated in Malaysia.

Neither Kerui Petroleum nor its Malaysian supplier acted to the best of their abilities with regard to providing documentation of the country of origin of the xanthan gum imported by Kerui Petroleum. As noted in the NOI, evidence on the record indicates it is reasonable to conclude that xanthan gum did originate in China.

Based on the aforementioned analysis, CBP determines that Kerui Petroleum 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. Finally, the failure of Kerui Petroleum and its Malaysian supplier to submit their respective RFI responses demonstrates 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).

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<sup>20</sup> Furthermore, as noted in the NOI, various documentation submitted by Kerui Petroleum in its CF28 response (and CF29 submission) that appear to refer to production or production processes did not reference a product name and/or a manufacturer, and Kerui Petroleum failed to provide production records showing its claimed manufacturer actually produced the merchandise. *See* NOI at 7-8.

In this case, the claimed manufacturers did not respond to CBP's RFIs. 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.<sup>21</sup> 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 Alleger.

As noted in the NOI, the Alleger 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 Malaysia.<sup>22</sup> The Alleger also provided information showing the large and rising volumes of imports into Malaysia from China of the category of merchandise including xanthan gum, while the volumes from other xanthan-gum producing countries (*i.e.*, Austria, France, and the United States) are minimal.<sup>23</sup> Furthermore, the Alleger noted the history of attempted circumvention of the xanthan gum AD order by various companies.<sup>24</sup>

Based on the evidence on the record, CBP finds that the Malaysian xanthan gum suppliers have been participating in the transshipment of Chinese-origin xanthan gum through Malaysia. 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 Cementing Products, Global Envirotech, Kerui Group, and Kerui Petroleum during the period of investigation was of Chinese origin and transshipped through Malaysia, and are subject to the China-wide entity rate for the AD order on xanthan gum from China. 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.

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<sup>21</sup> None of the importers provided requested documentation demonstrating the merchandise was manufactured in Malaysia, either.

<sup>22</sup> See NOI at 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Sincerely,

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

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