



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

PUBLIC VERSION

EAPA Case No. 7579

May 27, 2021

CP Kelco U.S.A. Inc.
c/o Matthew Kanna
Greenberg Traurig LLP
2101 L Street N.W.
Washington, DC 20037

[NAME]

[TITLE]

A&A Pharmachem Inc. USA
16885 West Bernardo Drive, Suite 100
San Diego, CA 92127

Re: Notice of Initiation of Investigation and Interim Measures – EAPA Case 7579

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). Specifically, CBP is investigating whether A&A Pharmachem Inc. (A&A) has evaded the antidumping (AD) duty order A-570-985 on xanthan gum from the People’s Republic of China (China)¹ when importing xanthan gum into the United States. CBP found that the evidence on the record establishes a reasonable suspicion that the importer has entered merchandise into the United States through evasion and, as a result, has imposed interim measures.

Period of Investigation

Pursuant to 19 CFR 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year prior to 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.”² On November 3, 2020, CP Kelco U.S. Inc. (CP Kelco or Alleger), a producer of domestic like product in the United States, filed

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 (July 19, 2013) (*AD Order*).

² See 19 CFR 165.1.

an EAPA allegation through its counsel.³ CBP acknowledged receipt of the properly filed allegation against A&A on January 28, 2021.⁴ In addition, and at its discretion, CBP may investigate other entries of such covered merchandise.⁵

Initiation

On February 19, 2021, the Trade Remedy Law Enforcement Directorate (TRLED) within the CBP Office of Trade initiated an investigation under EAPA as the result of an allegation submitted by CP Kelco, the Allegor, as to evasion of AD/CVD duties by A&A.⁶ CP Kelco alleges that information available to it reasonably suggests A&A evaded the *AD Order* through the transshipment of Chinese-origin xanthan gum.⁷

The Allegor asserts that the U.S. International Trade Commission (ITC) conducted a five-year review and determined that revocation of the antidumping duty order on xanthan gum from China would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The ITC published its findings in November 2018.⁸ The ITC report stated that the original investigation, *i.e.*, 2013, found that four countries produce xanthan gum, the United States, China, Austria, and France, and the 2018 report did not amend the ITC's original findings. The Allegor further argues that CBP initiated an EAPA investigation on August 12, 2019, covering certain imports of xanthan gum from India, and that investigation resulted in multiple findings of evasion, which supports its assertion that there is no xanthan gum production in India.

The Allegor alleges that A&A imported Chinese-origin xanthan gum from India into the United States.⁹ To support its allegation, the Allegor submitted U.S. import data for January through June 2020 for HTS 3913.90.2015 and shipping data showing a single shipment of xanthan gum from India arriving into the United States on February 21, 2020.¹⁰ The Allegor provided an affidavit from Mr. Gilmer, Senior Director of Biogum Strategic Platforms at CP Kelco, affirming that xanthan gum production is limited to four countries and the ITC report confirming the same assertion.¹¹ Also, the Allegor provided information from the website of the exporter of the xanthan gum from India, Sarda Bio Polymers, which states that they are a manufacturer of guar gum.¹² Under the product description for xanthan gum, the website indicates "Sarda Group has a close cooperation with one of the qualitative fermentation product makers in China and offers the specialty product."¹³

³ See Letter from the Allegor, "Xanthan Gum from the People's Republic of China: Evasion of Antidumping Order via Transshipment through India," dated November 3, 2020 (CP Kelco Allegation).

⁴ See January 28, 2021, email entitled "EAPA 7579 – Xanthan Gum – A&A Pharmachem."

⁵ See Memorandum to Brian Hoxie, Director, Enforcement Operations Division, "Initiation of Investigation for EAPA Case Number 7579 – A&A Pharmachem Inc.," dated February 19, 2021 (Initiation).

⁶ *Id.*

⁷ See CP Kelco Allegation.

⁸ See Xanthan Gum from China, Inv. No. 731-TA-1203 (Review), USITC Pub. 4839 at 13 & I-15 (November 2018). See also CP Kelco Allegation at Attachment 4.

⁹ See CP Kelco Allegation at 4.

¹⁰ *Id.* at Attachments 1 and 2.

¹¹ *Id.* at Attachments 3 and 4.

¹² *Id.* at Attachment 6.

¹³ *Id.* at Attachment 7.

Initiation Assessment

TRLED will initiate an investigation if it determines that “{t}he information provided in the allegation ... reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion.”¹⁴ 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.”¹⁵ 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 A&A has engaged in attempts to evade the *AD Order* by transshipping Chinese-origin xanthan gum and falsely claimed the country of origin as India. Specifically, the Allegor submitted documentation reasonably available to it to support these claims: including aggregate import data, China to India and India to the U.S., respectively; company-specific shipment data sourced from PIERS; an affidavit from a company official; and the ITC’s findings in its five-year review. Consequently, TRLED initiated investigations pursuant to 19 USC 1517 (b)(1) and 19 CFR 165.15.¹⁶

Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, TRLED will decide based on the record of the investigation if there is reasonable suspicion that merchandise covered by the *AD Order* was entered into the United States through evasion. If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 USC 1517(e) and 19 CFR 165.24. As explained below, CBP is imposing interim measures because there is reasonable suspicion that A&A entered covered merchandise into the customs territory of the United States through evasion by means of transshipment through India.¹⁷

CF-28 Responses and Analysis

On March 4, 2021, as part of the EAPA investigation process, CBP issued a CBP Form 28, Request for Information (CF-28) to A&A on entry numbers [NUMBER]0464 and [NUMBER]6887.¹⁸ The importer had declared these entries as es as type “01,” not subject to any AD/CVD duties. CBP requested the importer to demonstrate the production process from the raw material to the finished product and provide supporting documentation, *i.e.*, commercial invoice, proof of payment, purchase order, and all bills of lading. CBP also requested factory production records

¹⁴ See 19 CFR 165.15(b); *see also* 19 USC 1517(b)(1).

¹⁵ See 19 CFR 165.1; *see also* 19 USC 1517(a)(5)(A).

¹⁶ See Initiation.

¹⁷ See 19 CFR 165.24(a).

¹⁸ See Memorandum to File, “CF-28 Issued to A&A Pharmachem Inc. USA,” dated May 27, 2021.

including stamped timecards, work orders, description and photos of production equipment and production capacity, and transportation documents, including container load plans from the manufacturer.

On April 13, 2021, A&A submitted its CF-28 response pertaining to entry no. [NUMBER]0464.¹⁹ CBP officials analyzed the response and noted several discrepancies. A&A submitted a certificate of analysis, which allegedly details the product specifications, issued by Sarda Bio Polymers Private Limited (Sarda Bio Polymers), is dated [DATE];²⁰ however, that is before the dates on the employee payroll dates and process sheets, [DATE], which would mean that the analysis was performed before the product was manufactured.²¹ Further, the employee payroll and process sheets were issued by [COMPANY NAME], not the manufacturer listed on the entry, Sarda Bio Polymers. All raw material purchase documents from third party suppliers were issued to [COMPANY NAME] and not to the manufacturer listed on the entry, Sarda Bio Polymers. A&A did not provide an explanation of the relationship or function between the two companies other than common management, therefore it is unclear which company is the actual manufacturer of the merchandise.

With regards to the entry no. [NUMBER]6887, for the product [PRODUCT DESCRIPTION], similar issues were found in the documentation. The invoice for [RAW MATERIAL] is dated [DATE], which is after the last production date of [DATE]. All other raw material invoices were dated before first date of production on [DATE]. Finally, “quality system batch sheets for production” have a typed date of issue of [DATE], while the handwritten production dates on the document indicate another set of dates, [DATE].²²

Previous Determination

CBP may obtain information necessary to carry out its functions and duties related to EAPA and may obtain information from its own files and from other agencies of the U.S. Government pursuant to 19 CFR 165.5. Previously, in another EAPA investigation CBP found substantial evidence existed demonstrating that Chinese-origin xanthan gum was transshipped through India.²³ The claimed manufacturers in the case admitted that the xanthan gum originated in China, and the EAPA investigation found no evidence of xanthan gum production in India for the relevant time period.²⁴ The information submitted in the allegation for that investigation also supported the finding of evasion: the ITC report indicating xanthan gum is only manufactured in China, Austria, France and the United States and large and rising volumes of imports into India from China of the category of merchandise including xanthan gum.²⁵

¹⁹ See Memorandum to the File, “CF-28 Responses from A&A Pharmachem Inc. USA,” dated May 27, 2021 (A&A CF-28 Response).

²⁰ *Id.* at Attachment 1.

²¹ *Id.* at Attachment 1.

²² *Id.* at Attachment 2.

²³ See Memorandum to the File, “Notice of Final Determination as to Evasion – EAPA Cons. Case 7281,” dated May 27, 2021 (EAPA Cons Case 7281 Determination).

²⁴ *Id.*

²⁵ *Id.*

Enactment of Interim Measures

Above we discussed the information submitted by the Alleger in the allegation; EAPA's previous finding of evasion in another investigation on xanthan gum; and the discrepancies noted in the production documents submitted by the importer. For these reasons, TRLED finds that there is reasonable suspicion A&A entered covered merchandise into the customs territory of the United States through evasion by means of transshipment and declaring the country of origin, India. Therefore, CBP is imposing interim measures pursuant to this investigation. Specifically, in accordance with 19 USC 1517(e)(1-3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after February 19, 2021, the date of the initiation of the investigation;
- (2) pursuant to the Commissioner's authority under section 504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation February 19, 2021; and
- (3) pursuant to the Commissioner's authority under section 623, take such additional measures as the Commissioner determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise.²⁶

In addition, CBP will require live entry requiring cash deposits to be posted prior to release of merchandise from CBP custody. CBP will reject any entry summaries that do not comply with live entry procedure and require refile of entries that are within the entry summary rejection period. CBP will also evaluate A&A's continuous bonds to determine their sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 USC 1517(h).

For future submissions or factual information that you submit to CBP pursuant to this EAPA investigation, please provide a business confidential version and a public version with a public summary²⁷ using the EAPA Case Management System (CMS), found at <https://eapallegations.cbp.gov>. All public versions of administrative record documents will be accessible to the parties to the investigation via the CMS.²⁸

Should you have any questions regarding this investigation, please feel free to contact us at eapallegations@cbp.dhs.gov. Please include "EAPA Case Number 7579" in the subject line of your email. Additional information on this investigation, including the applicable statute and

²⁶ See also 19 CFR 165.24(b)(1)(i) and (ii).

²⁷ See 19 CFR 165.4, 165.23(c), and 165.26.

²⁸ Please note you will need a login name and password to use the CMS. The website will direct you how to obtain those.

regulations, may be found on CBP's EAPA website, <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

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
CBP Office of Trade