



U.S. Customs and Border Protection

December 23, 2021

EAPA Case No. 7579

PUBLIC VERSION

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

[NAME]

[POSITION]

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

Re: Notice of Determination as to Evasion

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7579, U.S. Customs and Border Protection (CBP) has determined there is substantial evidence that A&A Pharmachem Inc. (A&A) entered merchandise covered by antidumping (AD) duty order A-570-985 on xanthan gum from the People’s Republic of China (China)¹ into the customs territory of the United States through evasion. Substantial evidence demonstrates that A&A imported Chinese-origin xanthan gum by transshipping it through India and did not declare that the merchandise was subject to the *AD Order* upon entry and, as a result, no cash deposits were collected on the merchandise.

Background

On November 3, 2020, CP Kelco U.S. Inc. (CP Kelco or Alleger), a producer of domestic like product in the United States, filed an EAPA allegation through its counsel.² CBP acknowledged receipt of the properly filed allegation against A&A on January 28, 2021.³

CBP found the information in the allegation reasonably suggested that A&A entered covered merchandise for consumption into the customs territory of the United States through evasion. Consequently, on February 19, 2021, CBP initiated an EAPA investigation pursuant to Title IV,

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 Letter from the Alleger, “Xanthan Gum from the People’s Republic of China: Evasion of Antidumping Order via Transshipment through India,” dated November 3, 2020 (CP Kelco Allegation).

³ See January 28, 2021, email entitled “EAPA 7579 – Xanthan Gum – A&A Pharmachem.”

section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.⁴ CBP issued CF-28 questionnaires to A&A concerning certain entries of xanthan gum and requested the corresponding entry and production documentation.

After evaluating the information on the record, CBP determined that reasonable suspicion existed that A&A imported xanthan gum in the United States without declaring AD duties. CBP based its determination on 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. Consequently, on May 27, 2021, CBP issued a notice of initiation of investigation and interim measures.⁵

On June 14, 2021, pursuant to 19 CFR 165.5, CBP sent requests for information (RFIs) to A&A and the claimed manufacturer, Sarda Bio Polymers Private Ltd. (Sarda Bio), requesting information on the manufacturer's shipments to A&A, production process, and company financial information.⁶ A&A submitted its response on June 28, 2021.⁷ On August 31, 2021, CBP issued a supplemental RFI to A&A, seeking additional information.⁸ A&A submitted a response on September 21, 2021.⁹ After several attempts to contact Sarda Bio, the company submitted the exhibits to its RFI response on August 23 and 26, 2021. Sarda Bio failed to provide a narrative response with its original questionnaire response, so CBP sent a supplemental RFI on September 17, 2021.¹⁰ On October 4, 2021, Sarda Bio submitted its narrative response and resubmitted many of its original exhibits.¹¹

The Alleger submitted written arguments on November 12, 2021.¹² A&A did not submit any written arguments. No responses to written arguments were submitted.

Analysis

Under 19 USC 1517(c)(1)(A), to reach a 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

⁴ See 19 USC 1517(b)(1); see also 19 CFR 165.15; and 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).

⁵ See "Notice of Initiation of Investigation and Interim Measures – EAPA Case 7579," dated May 27, 2021 (NOI).

⁶ See Memorandum to A&A Pharmachem Inc. USA, "EAPA 7579 Request for Information," dated June 14, 2021; Memorandum to Sarda Bio Polymers Private Ltd., "EAPA 7579 Request for Information," dated June 14, 2021; Memorandum to the File, "RFI to Manufacturer Via Additional Email Addresses," dated June 21, 2021; Memorandum to the File, "Issuance of Request for Information to Identified Manufacturer," dated July 22, 2021.

⁷ See A&A Pharmachem Inc. USA RFI Response dated June 28, 2021.

⁸ See Memorandum to A&A, "EAPA 7579 – Supplemental Request for Information," dated August 31, 2021 (A&A Supplemental RFI).

⁹ See A&A Supplemental RFI Response dated September 21, 2021.

¹⁰ See Memorandum to Sarda Bio, "EAPA 7579; Supplemental Request for Information to Sarda Bio Polymers Private Ltd.," dated September 17, 2021.

¹¹ See Sarda Bio Response to Request for Information dated October 4, 2021 (Sarda Bio Supp RFI Response).

¹² See Letter from CP Kelco, "EAPA Investigation – Case #7579; Written Argument," dated November 12, 2021.

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.”

Substantial evidence on the record of this investigation supports a determination that A&A entered covered merchandise into the United States through evasion, resulting in the avoidance of applicable AD deposits or other security. Specifically, A&A purchased Chinese origin xanthan gum from, Sarda Bio, and declared it as Indian origin. CBP officials analyzed the CF-28 and RFI responses from A&A and Sarda Bio and noted significant discrepancies, which calls into question Sarda Bio’s claim that it produces xanthan gum. In its supplemental RFI response A&A provided its email communication with Sarda Bio. The email communications indicated that on September 15, 2019, A&A started an inquiry with Sarda Bio, requesting a quote for 2,000 kg of sports product/food grade xanthan gum (80 mesh or 200 mesh).¹³ Sarda Bio stated that it imports xanthan gum from China and stated that the Chinese xanthan gum undergoes further processing, *i.e.*, sterilization, processing, and packaging, at Sarda Bio’s Indian facility to qualify as country of origin India.¹⁴ On December 13, 2019, Sarda Bio informed A&A that it would take 25 days from order date for the xanthan gum to be manufactured and dispatched from the factory in India, with an additional 50-60 days by sea to arrive in Los Angeles.¹⁵ On December 21, 2019, A&A issued a purchase order to Sarda Bio for 2,500 kg of xanthan gum.¹⁶ On December 31, 2019, just 10 days later, Sarda Bio informed A&A that its order was ready for export, which is much sooner than the estimated 25 day production period from the date of the purchase order that Sarda Bio originally quoted.¹⁷ The commercial invoice issued by Sarda Bio to A&A on January 4, 2019, indicated that the xanthan gum was manufactured in November 2019.¹⁸ The “multimodal transport document” indicated a shipment date of January 17, 2020, and the manufacturer date of November 2019.¹⁹ The declared production dates on transportation documents and Sarda Bio’s statements to A&A of a 25-day production time, all contradict one another. CBP requested Sarda Bio to explain the discrepancy, the company stated that, “when the order was finalised {sic}, we thought to ship from existing stock instead of undertaking the manufacturing process.”²⁰

In Sarda Bio’s RFI responses, it stated that it is part of the Sarda Group along with Sarda Starch Private Limited (Sarda Starch).²¹ Contrary to its statement in emails to A&A above that its facility is limited to further processing Chinese-origin xanthan gum, Sarda Bio claimed that Sarda Starch, “has the facility to produce the covered merchandise. Hence Sarda Bio purchases the covered merchandise as and when required from it. Also, it buys the covered merchandise from local market.”²² CBP asked whether Sarda Bio maintains consumption worksheets, cost center codes, etc. that track the monthly consumption of inputs and outputs on a product specific basis and the company responded that, “no such records maintained.”²³ CBP also noted that the Sarda Starch’s financial audit reports listed only the purchase of xanthan gum and do not identify

¹³ See A&A Supp RFI Response at Appendix J at 288.

¹⁴ *Id.* at 284 - 285.

¹⁵ *Id.* at 275.

¹⁶ *Id.* at 274.

¹⁷ *Id.* at 273.

¹⁸ *Id.* at Appendix K at 299.

¹⁹ *Id.* at Appendix N at 314.

²⁰ See Sarda Bio Supp RFI Response at 28.

²¹ *Id.* at 1.

²² *Id.* at 4.

²³ *Id.* at 16.

costs related to manufacturing. Sarda Bio responded that it does not segregate out costs related to production.²⁴ The company listed all of the significant inputs used to produce xanthan gum as [LIST OF INGREDIENTS], as the top 3 inputs.²⁵ However, Sarda Bio provided no record of purchases of [INGREDIENT] a critical component of xanthan gum production in its raw material purchase invoices.²⁶

Also as mentioned in the NOI, the production records provided by Sarda Bio are out of order. Raw material purchases for ingredients that supposedly could be used to make xanthan gum, such as [LIST OF INGREDIENTS] are dated November 20, 2019, while [INGREDIENT] is dated August 25, 2019 (87 days before the other materials).²⁷ The quality monitoring, process sheets, and employee attendance sheets do not indicate whether they pertain to the production of xanthan gum or another product and are dated November 22, 23, 24, and 25, 2019.²⁸ In its RFI response, Sarda Bio provided a diagram indicating that blending takes place right after the grinding process; however, the batch blending sheet is dated December 26, 2019 (31 days after the purported production dates).²⁹ Also, the certificate of analysis is dated November 20, 2019, which means the analysis was performed before the product was manufactured.³⁰

CBP requested detailed information related to line items in the 2018-2019 and 2019-2020 financial audit report for Sarda Bio and the 2018-2019 audit report for Sarda Starch that Sarda Bio provided in its RFI response. Each company had line items indicating that Sarda Bio and Sarda Starch had purchased finished good – xanthan gum. The documents further indicated details of raw materials and finished goods, import expenses, and cost of goods sold. Sarda Bio explained in the narrative of its supplemental RFI response that it purchased [#] kgs of xanthan gum from [COMPANY NAME] between [DATE] and [DATE].³¹ Sarda Starch purchased [#] kg of xanthan gum from [COMPANY] on [DATE] and [#] kg from Sarda Bio on [DATE].³² There is evidence on the record that [COMPANY PRODUCT COUNTRY

].³³ We note [COMPANY] sells the exact type of xanthan gum requested by A&A in its original inquiry to Sarda Bio.³⁴ In Sarda Bio's RFI response, Sarda Bio reported that it between January 28, 2020, and July 31, 2021 it sold a total [#] kgs of xanthan gum (domestic and export), of which [#] kgs went to A&A.³⁵ Sarda Starch reported only domestic sales of [#] kgs of xanthan gum during the same time period.³⁶ Contrary to Sarda Bio's statement that it only keeps some stock as reserve, as mentioned above, Sarda Bio purchased [#] kgs of xanthan gum from [COMPANY], far

²⁴ *Id.* at 26.

²⁵ *Id.* at 17.

²⁶ See Sarda Bio RFI Response at Appendix 18.

²⁷ See Sarda Bio RFI Response at Appendix 18.

²⁸ *Id.* at Appendix 19 and 20.

²⁹ *Id.* at Appendix 17. See also A&A CF28 Response dated October 22, 2021

³⁰ See A&A CF28 Response dated October 22, 2021.

³¹ See Sarda Bio Supp RFI Response at 25.

³² *Id.* at 27.

³³ See Memorandum to the File, dated October 25, 2021.

³⁴ See A&A Supp RFI Response at Appendix J at 288.

³⁵ See Sarda Bio RFI Response at Appendix 26.

³⁶ See Sarda Bio Supp RFI Response at Appendix 29 (Xanthan Sale_SSPL).

exceeding its sale to A&A by over [#] percent. Sarda Bio's 2019-2020 financial audit report indicates that the company has the ability to record the opening stock, purchase, and production quantity of its other products such as [NAME OF PRODUCTS] but without any record evidence of actual production or records of consumption of xanthan gum, along with Sarda Bio's statement that it sold to A&A from, "existing stock instead of undertaking the manufacturing process,"³⁷ CBP concludes that the sale of xanthan gum to A&A consists of the xanthan gum purchased from [COMPANY NAME].

Sarda Bio asserts that Sarda Starch produced, and Sarda Bio sold, xanthan gum and that it only keeps some stock in reserve.³⁸ The information discussed above establishes that Sarda Bio's production documents are not reliable, its commercial documents contradict its statements to its customer, its commercial documents contradict its production documents, and Sarda Bio and Sarda Starch's accounting records show significant purchases of Chinese-origin xanthan gum from [COMPANY].

Consequently, based on the full record of this investigation, CBP determines that there is substantial evidence A&A entered merchandise into the United States through evasion. Based on the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that xanthan gum entered by A&A during the period of investigation were of Chinese-origin and transshipped through India, thus avoiding payment of AD duties, as the merchandise is subject to the China-wide entity rate for the AD order on xanthan gum from China.

Actions Taken Pursuant to the Affirmative Determination as to Evasion

Considering CBP's determination that A&A entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the liquidation for all entries imported by the A&A that are subject to EAPA investigation 7579 until instructed to liquidate these entries. For those entries previously extended in accordance with the interim measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. CBP will also evaluate A&A's continuous bonds 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.

Sincerely,



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

³⁷ See Sarda Bio Supp RFI Response at 28. See also Sarda Bio RFI Response at Appendix 8 and 9.

³⁸ See Sarda Bio Supp RFI Response at 28.