



PUBLIC VERSION

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Via Email

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RE: Notice of Initiation of Investigation and Interim Measures - EAPA Case Number 7814

Dear Counsel and/or Representatives for the above-referenced Entities:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has commenced a formal investigation under Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the Enforce and Protect Act (“EAPA”), for Texas United Chemical Company, LLC (“Texas United”), which is affiliated with and/or operates as TBC-Brinadd, LLC (“TBC-Brinadd”), collectively referred to as the “Importer” or “Texas United.”¹ CBP is investigating whether the Importer evaded antidumping duty (“AD”) order A-570-985 on xanthan gum from the People’s Republic of China (“China”).² CBP found that reasonable suspicion exists that the Importer entered covered merchandise for consumption into the customs territory of the United States through evasion by transshipping Chinese-origin xanthan gum

¹ For the purposes of this EAPA investigation, Texas United and TBC-Brinadd are collectively referenced as the Importer or Texas United unless specifically delineated otherwise. *See* letter from the Allegor “Xanthan Gum from the People’s Republic of China: Supplement to EAPA Case #7814,” dated July 7, 2023 (Allegation Supplement 2) at 2 and Attachments 1 and 2.

² *See Xanthan Gum from the People's Republic of China: Antidumping Duty Order*, 78 FR 43,143 (Dep’t Commerce, July 19, 2013) (the “Order”).

(“xanthan gum” or “the covered merchandise”) through Turkey by the shipper, Neu Kimya Anonim Sirketi (“Neu Kimya”). As a result, CBP is issuing a formal notice of initiation of investigation and interim measures (“Notice”) and imposing the interim measures outlined below.³

I. Period of Investigation

Pursuant to 19 C.F.R. § 165.2, entries covered by an EAPA investigation are those “entries of allegedly covered merchandise made within one year before the receipt of an allegation....” Entry is defined as an “entry, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.”⁴ CBP acknowledged receipt of the properly filed EAPA allegation against the Importer on July 19, 2023.⁵ The entries covered by the investigation are those entered for consumption, or withdrawn from warehouse for consumption, from July 19, 2022, through the pendency of this investigation.⁶

II. Procedural History

On March 2, 2023, CP Kelco U.S., Inc. (the “Alleger” or “CP Kelco”)⁷ filed an EAPA allegation through counsel claiming that U.S. importer TBC-Brinadd was evading AD order A-570-985 on xanthan gum from China. On March 24, 2023, the Alleger supplemented its EAPA allegation to clarify that Texas United is the parent company of TBC-Brinadd and incorporated at the same address in Houston, TX.⁸ Further, the Alleger clarified that Neu Kimya is a subsidiary of Solenis International, LLC (“Solenis”), a private manufacturer based in Wilmington, Delaware, and that Solenis was acquired by Platinum Equity, LLC (“Platinum”), an American private equity investment firm based in Beverly Hills, California on November 9, 2021.⁹ On July 7, 2023, the Alleger supplemented its EAPA allegation a second time to clarify that Texas United and TBC-Brinadd, as of July 2018, share the same Registered Agent and, as of May 2021, share the same President.¹⁰ On July 20, 2023, the Alleger supplemented its EAPA allegation a third time to clarify that CP Kelco (Shandong) is a limited liability corporation, registered by the authority of the Rizhao Supervision and Administration Office for a term spanning from November 5, 2001 to February 7, 2056, and is domiciled at No. 140 Yanhe Road, Wulian County, Rizhao City, Shandong Province, China. However, it is not owned or controlled by a Chinese State-Owned Enterprise (“SOE”), as evidenced by the fact that it is controlled by CP Kelco (U.S.) and its

³ See 19 U.S.C. § 1517(b)(1) (noting that the information provided in the allegation must “reasonably suggest” evasion to initiate an investigation); *see also* § 1517(e) and 19 C.F.R. § 165.24 (noting that the “reasonable suspicion” standard must be satisfied to implement interim measures).

⁴ See 19 U.S.C. § 1517(a)(4); *see also* 19 CFR 165.1.

⁵ See emails entitled, “Email Receipt of Properly Filed Allegation,” dated July 19, 2023.

⁶ See 19 CFR 165.2.

⁷ See letter from the CP Kelco, “Xanthan Gum from the People’s Republic of China: Evasion of Antidumping Order via Transshipment through Turkey,” dated March 2, 2023 (Texas United Allegation) at 2. The alleger is a U.S. producer of domestic like product in the United States and is also a U.S. importer of subject merchandise; thus, pursuant to 19 CFR 165.1(1) & (2), the alleger meets the definition of an interested party that is permitted to submit an EAPA allegation.

⁸ See letter from the Alleger “Xanthan Gum from the People’s Republic of China: Supplement to EAPA Case #7814,” dated March 24, 2023 (Allegation Supplement 1).

⁹ *Id.*, at 3.

¹⁰ See Allegation Supplement 2 at 2 and Attachments 1 and 2.

business license states it is a “wholly foreign owned enterprise.”¹¹ The Department of Commerce (“DOC”) reviewed CP Kelco (Shandong)’s ownership structure and determined that it was not controlled by the People’s Republic of China (“PRC”) and therefore granted a company specific duty rate during the most recent administrative review.¹² The details of this Allegation are explained below.

III. Initiation

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.”¹³ 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.”¹⁴ Thus, the allegation must reasonably suggest not only that the Importer entered merchandise subject to an AD and/or countervailing duty (“CVD”) order into the United States, but that such entry was made by a materially false statement or act, or material omission, that resulted in the reduction or avoidance of applicable AD/CVD cash deposits or other security.

On March 3, 2023, CP Kelco filed an EAPA allegation¹⁵ claiming that U.S. Importer Texas United is evading AD order A-570-985 on xanthan gum from China. On July 19, 2023, in accordance with 19 C.F.R. Part 165.12(a), TRLED acknowledged receipt of the Alleger’s properly filed EAPA allegation concerning evasion by the Importer.¹⁶ CP Kelco alleges that available information reasonably suggests that the Importer evaded the *Order* by importing Chinese-origin xanthan gum into the customs territory of the United States after transshipping it through Turkey.

The Alleger claimed that significant volumes of xanthan gum exported by Neu Kimya from Turkey were entered into the United States by the Importer.¹⁷ To support its claim, the Alleger provided trade data that shows a single shipment of xanthan gum, reported as Turkish in origin, departing Aliaga, Turkey, then routed through the port of Porto de Sines, Sines, Portugal, before arriving at the port of Houston, Texas.¹⁸

¹¹ See letter from the Alleger “Xanthan Gum from the People’s Republic of China: Supplement to EAPA Case #7814,” dated July 20, 2023 (Allegation Supplement 3) at 2 and Attachment 1.

¹² *Id.*, at 2 and 3 and Attachment 2.

¹³ See 19 C.F.R. § 165.15(b); see also 19 U.S.C. § 1517(b)(1).

¹⁴ See 19 C.F.R. § 165.1; see also 19 U.S.C. § 1517(a)(5)(A).

¹⁵ For the purposes of this EAPA investigation, letter(s) from the Alleger “Xanthan Gum from the People’s Republic of China: Evasion of Antidumping Order via Transshipment through Turkey,” dated March 2, 2023, “Xanthan Gum from the People’s Republic of China: Supplement to EAPA Case #7814,” dated March 24, 2023, “Xanthan Gum from the People’s Republic of China: Supplement to EAPA Case #7814,” dated July 7, 2023, and “Xanthan Gum from the People’s Republic of China: Supplement to EAPA Case #7814,” dated July 20, 2023, will be referred to collectively as “Texas United Allegation” unless specifically delineated otherwise.

¹⁶ See “Email Receipt of Properly Filed Allegation.”

¹⁷ See Texas United Allegation at 4 and Attachment 2.

¹⁸ *Id.*, at 4 and Attachment 1.

Furthermore, the Alleger asserted that xanthan gum cannot be of Turkish origin. The Alleger provided an affidavit from a Senior Director at CP Kelco who is familiar with the global market, stating that xanthan gum is only manufactured in four countries worldwide: Austria, France, China, and the United States.¹⁹ The Alleger substantiated this statement by providing documentation from the United States International Trade Commission (ITC) corroborating this information.²⁰ As a result, the Alleger stated that there are no xanthan gum producers in Turkey.²¹ Finally, the Alleger provided trade data that shows China is the largest supplier of xanthan gum to Turkey, accounting for approximately 84% of all Turkish imports.²² The Alleger stated that due to the aforementioned information, any exports of xanthan gum from Turkey are likely of Chinese origin.²³

Therefore, the Alleger asserted that all evidence reasonably suggests that Texas United is transshipping Chinese-origin xanthan gum through Turkey to the United States to avoid paying applicable AD duties as per the *Order*.

In assessing the claims made and evidence provided in the allegations, and as discussed above, TRLED found the allegation reasonably suggested that Texas United has evaded AD order A-570-985 by transshipping Chinese-origin xanthan gum through Turkey and importing this merchandise to the United States without declaring the merchandise subject to the *Order*. Consequently, TRLED initiated EAPA investigation pertaining 7814 on August 3, 2023.

IV. Interim Measures

Not later than 90 calendar days after initiating an investigation under EAPA, CBP will decide based on the record evidence if there is reasonable suspicion that such merchandise covered by the *Order* was entered into the United States through evasion.²⁴ CBP need only have sufficient evidence to support a reasonable suspicion that the importer alleged to be evading entered merchandise covered by an AD and/or CVD order into the customs territory of the United States by a materially 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.²⁵ If reasonable suspicion exists, CBP will impose interim measures pursuant to 19 U.S.C. § 1517(e) and 19 CFR § 165.24. As explained below, CBP is imposing interim measures because, based on the record evidence, there is reasonable suspicion that the Importer entered covered merchandise into the customs territory of the United States through evasion.

CF-28 Responses

After initiating this EAPA investigation, CBP issued a Customs Form 28 (“CF-28’s”) requests for information to Texas United for entries made during the period of investigation (“POI”).²⁶ Specifically, on August 25, 2023, a CF-28 was issued to Texas United for entry numbers

¹⁹ *Id.*, at 6 and Attachment 6.

²⁰ *Id.*, at 6 and Attachment 7.

²¹ *Id.*

²² *Id.*, at 6 and Attachment 8.

²³ *Id.*, at 6.

²⁴ See C.F.R. § 165.24(a); see also 19 U.S.C. § 1517(e).

²⁵ *Id.*

²⁶ See CF-28 issued to Texas United, dated August 25, 2023.

[#] 4552, [#] 9832, [#] 4279, [#] 5367, and [#] 7785. The CF-28's included requests for production information including, but not limited to:

- Photographs and a description of equipment used in the production of xanthan gum;
- Production records;
- Details regarding the production process from start to finish;
- Providing invoices for all raw materials used to produce xanthan gum;
- Documents related to transportation and container load plans;
- Factory production records, (e.g., stamped timecards, work orders);
- Company-specific histories;
- Providing the name(s) of owners, corporate officers, forwarding agents, subcontractors, and intermediaries involved and their contact information; and
- Entry transaction information including the original commercial invoice(s), proof of payment(s), purchase order, CF7501, and all bills of lading (master bills of lading including through bills of lading).

Importantly, this information could enable CBP to verify factory capabilities, production processes, country of origin, and confirm identify of the manufacturer of the imported merchandise, to aid in finding whether there is reasonable suspicion as to evasion, of covered merchandise entered into the customs territory of the United States, by the Importer.

On September 19, 2023, the Importer requested in writing (via email) a 30-day extension to respond to the CF-28, until October 25, 2023, to gather and provide the information requested,²⁷ notably, no written correspondence between CBP and the Importer ever granted the 30-day extension. On September 26, 2023, as a courtesy, CBP emailed the customs broker on record a copy of the original CF-28, noting that a response was two days overdue and had not yet been received.²⁸ Later on September 26, 2023, the Importer sent an email stating that they assumed the 30-day extension was acceptable,²⁹ but again, no written correspondence between CBP and the Importer ever granted the 30-day extension. On September 29, 2023, CBP re-transmitted the original CF 28's, via the Automated Commercial Environment ("ACE").³⁰ On October 2, 2023, a representative for the customs broker on record for the Importer replied to the email of the retransmitted original CF-28 with "recd".³¹ On October 5, 2023, a partner with Braumiller Law Group, PLLC ("Braumiller"), outside counsel for the Importer, submitted what purported to be [document type] to CBP on behalf of the Importer and included a copy in an email noting, "We are hopeful this will permit you to conclude your inquiry under the CF-28 issued to TUCC (Texas United)".³² However, as of the date of this NOI, [

requirements and document type] do not apply to EAPA investigations. Thus, CBP's investigation into evasion will continue. On October 25, 2023, CBP

²⁷ See CBP's "Email, Request for Information" dated September 19, 2023.

²⁸ See CBP's "Email, FW: Copy of Form 28 for []4552" dated September 26, 2023.

²⁹ See CBP's "Email, Request for Information" dated September 26, 2023.

³⁰ See CBP's "Email, Copy of Form 28 for []4552" dated September 29, 2023.

³¹ See CBP's "Email, Re: Copy of Form 28 for []4552" dated October 2, 2023.

³² See CBP's "Email, [] – Texas United Chemical Corp." dated October 5, 2023.

notified Braumiller that a response to the CF-28 was still required by law.³³ On October 26, 2023, Braumiller submitted a response to the CF-28.³⁴

Analysis

In assessing the basis for the Allegation, CBP finds that the information submitted by CP Kelco reasonably suggests that the Importer entered merchandise covered by the *Order A-570-985* into the customs territory of the United States through evasion. Specifically, the affidavits provided in the allegation, and the applicable ITC report show that xanthan gum is not produced in Turkey.³⁵ Additionally, the trade data reasonably available to the Alleger and submitted to CBP show China as the largest importer of xanthan gum to Turkey, accounting for approximately 84% by volume in 2022, providing further support that Chinese-origin xanthan gum was transshipped through Turkey to the U.S.³⁶

In addition, the Importer's response to CBP's CF-28's corroborated CP Kelco's allegations, as it admitted, and provided documentation supporting the fact, that xanthan gum imported by the Importer originated from, and was produced in, China.³⁷ Through the date of this Notice, the Importer has yet to provide any information to CBP that would contradict CP Kelco's allegations or provide explanations to alleviate reasonable suspicion of evasion as expounded upon throughout this Notice.

V. Notice of Investigation and Enactment of Interim Measures

Pursuant to 19 CFR § 165.15(d)(1), CBP will issue notification of its decision to initiate an investigation to all parties to the investigation no later than 95 calendar days after the decision has been made, and the actual date of initiation will be specified therein. Based on the information described herein, TRLED has initiated an investigation concerning the evasion of the AD Order on xanthan gum from China. In addition, based on the information available on the record, CBP finds that there is reasonable suspicion that Texas United engaged in evasion and as a result, CBP is imposing interim measures on Texas United's imports subject to this investigation.³⁸

Specifically, in accordance with 19 U.S.C. § 1517(e)(1)-(3), CBP shall:

- (1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after August 8, 2023, the date of the initiation of the investigation;
- (2) pursuant to the Commissioner's authority under 19 U.S.C. § 1504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before July 19, 2023, the date of the initiation of the investigation; and

³³ See CBP's "Email, FW: [**subject**] – Texas United Chemical Corp." dated October 25, 2023.

³⁴ See letter from Braumiller Law Group "CF-28 Response Oct 26, 2023," dated October 26, 2023(CF-28 Response).

³⁵ See Texas United Allegation.

³⁶ See Texas United Allegation at 6 and Attachment 8.

³⁷ See CF-28 Response at 2 and Attachment 3.

³⁸ See 19 U.S.C. § 1517(e); see also 19 C.F.R. § 165.24.

(3) pursuant to the Commissioner’s authority under 19 U.S.C. § 1623, 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.³⁹

In addition, CBP will require live entry and reject any entry summaries that do not comply with live entry procedure and require refiling of entries that are within the entry summary rejection period. CBP will also evaluate Texas United’s continuous bonds to determine their sufficiency. Finally, CBP may pursue additional enforcement actions, as provided by law, consistent with 19 U.S.C. § 1517(h).

For any future submissions or factual information submitted to CBP pursuant to this EAPA investigation, please provide a business confidential version and a public version with a public summary⁴⁰ using the EAPA Case Management System (“CMS”), found at <https://eapallegations.cbp.gov>. All public versions will be accessible to the parties to the investigation via the CMS.⁴¹ Please note that CBP is requiring that all documents submitted via the CMS are made text searchable, especially if those documents are submitted as PDFs.

Should you have any questions regarding this investigation, please feel free to contact us at eapallegations@cbp.dhs.gov. Please include “EAPA Case Number 7814” in the subject line of your email. Additional information on this investigation, including the applicable statute and regulations, may be found on CBP’s website at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

Sincerely,



Victoria Cho
Acting Director, Enforcement Operations Division
Trade Remedy Law Enforcement Directorate
CBP Office of Trade

³⁹ See also 19 C.F.R. § 165.24(b)(1)(i)-(iii).

⁴⁰ See 19 C.F.R. §§ 165.4, 165.23(c), and 165.26.

⁴¹ You will need a login name and password to use the CMS. The website will direct you how to obtain those.