



OTTAWA, November 5, 2024

STATEMENT OF REASONS

Concerning the final decisions with respect to the dumping and subsidizing of

PEA PROTEIN

ORIGINATING IN OR EXPORTED FROM CHINA

DECISIONS

On October 21, 2024, pursuant to subsection 41(1)(a) of the *Special Import Measures Act*, the Canada Border Services Agency terminated the dumping investigation in respect of certain pea protein originating in or exported from China by Shandong Jianyuan Bioengineering Co.,Ltd., Yantai Shuangta Food Co., Ltd., Yantai Oriental Protein Tech Co., Ltd., and Yantai Yiyuan Biological Engineering Co., Ltd. Similarly, on this date, pursuant to paragraph 41(1)(a) of the *Special Import Measures Act*, the Canada Border Services Agency terminated the subsidy investigation in respect of certain pea protein originating in or exported from China by Yantai T.Full Biotech Co., Ltd. On the same date, pursuant to paragraph 41(1)(b) of the *Special Import Measures Act*, the Canada Border Services Agency made final determinations respecting the dumping and subsidizing of certain pea protein originating in or exported from China, with respect to exporters for which the investigations have not been terminated.

Cet *Énoncé des motifs* est également disponible en français.
This *Statement of Reasons* is also available in French.

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SUMMARY OF EVENTS

[1] On March 1, 2024, the Canada Border Services Agency (CBSA) received a written complaint from Nutri-Pea GP Inc. and Roquette Canada Limited, both of Portage La Prairie, Manitoba (hereinafter, “the complainants”) alleging that imports of pea protein originating in or exported from the People’s Republic of China (China) have been dumped and subsidized. The complainants alleged that the dumping and subsidizing have caused injury and are threatening to cause injury to Canadian producers of pea protein.

[2] On March 22, 2024, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainants that the complaint was properly documented. On April 2, 2024, the CBSA informed the Government of China (GOC) that a properly documented complaint had been filed. The GOC was provided with the non-confidential version of the subsidy portion of the complaint and was invited for consultations pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*, prior to the initiation of the subsidy investigation. The CBSA did not receive any request for consultations.

[3] The complainants provided evidence to support the allegations that certain pea protein from China have been dumped and subsidized, as well as evidence that discloses a reasonable indication that the dumping and subsidizing have caused injury or are threatening to cause injury to the Canadian industry producing like goods.

[4] On April 22, 2024, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping and subsidizing of pea protein from China.

[5] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (CITT) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury or are threatening to cause injury to the Canadian industry producing the like goods.

[6] On June 20, 2024, pursuant to subsection 37.1(1) of SIMA, the CITT made a preliminary determination that there is evidence that discloses a reasonable indication that the dumping and subsidizing of pea protein from China have caused injury or are threatening to cause injury to the domestic industry.

[7] On July 22, 2024, as a result of the CBSA’s preliminary investigations and pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping and subsidizing of pea protein originating in or exported from China.

[8] On the same date, pursuant to subsection 8(1) of SIMA, provisional duties were imposed on imports of dumped and subsidized goods that are of the same description as any goods to which the preliminary determinations apply, and that are released during the period commencing on the day the preliminary determinations were made and ending on the earlier of the day on which the CBSA causes the investigations in respect of any goods to be terminated pursuant to subsection 41(1) of SIMA or the day the CITT makes an order or finding pursuant to subsection 43(1) of SIMA.

[9] On July 23, 2024, the CITT initiated an inquiry pursuant to section 42 of SIMA to determine whether the dumping and subsidizing of the above-mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry.

[10] Based on the available evidence, the CBSA is satisfied that pea protein originating in or exported from China by Shandong Jianyuan Bioengineering Co., Ltd., Yantai Shuangta Food Co., Ltd., Yantai Oriental Protein Tech Co., Ltd., and Yantai Yiyuan Biological Engineering Co., Ltd., was not dumped. Similarly, the CBSA is satisfied that pea protein originating or exported from China by Yantai T.Full Biotech Co., Ltd. was subsidized by an insignificant amount. Therefore, on October 21, 2024, the CBSA terminated the dumping and subsidy investigations pursuant to paragraph 41(1)(a), in respect of those goods.

[11] Based on the available evidence, the CBSA is satisfied that pea protein originating in or exported from China, for which the dumping and subsidy investigations have not been terminated under paragraph 41(1)(a) of SIMA, have been dumped and subsidized. Therefore, on October 21, 2024, the CBSA made final determinations of dumping and subsidizing pursuant to paragraph 41(1)(b) of SIMA in respect of those goods.

[12] The CITT's inquiry into the question of injury to the Canadian industry is continuing, and the CITT will issue its decision by November 19, 2024. Provisional duties will continue to be imposed on the subject goods from China until the CITT renders its decision. However, provisional anti-dumping and countervailing duties will not be imposed on imports of goods for which the dumping and/or subsidy investigations have been terminated. Any provisional duties paid or security posted on imports of goods for which the dumping and/or subsidy investigations have been terminated will be refunded, as appropriate.

PERIOD OF INVESTIGATION

[13] The Period of Investigation (POI) for the investigations is January 1, 2023 to December 31, 2023.

PROFITABILITY ANALYSIS PERIOD

[14] The Profitability Analysis Period (PAP) for the investigations is October 1, 2022 to December 31, 2023.

INTERESTED PARTIES

Complainants

[15] The name and address of the complainants are as follows:

Nutri-Pea GP Inc.
880 Philips Street,
Portage La Prairie, Manitoba
R1N 4A4

Roquette Canada Limited
40117 Road 65 North,
Portage La Prairie, Manitoba
R1N 3B5

Other Producers

[16] The complainants stated that they are the only producers of pea protein in Canada.¹ The CBSA conducted its own research, but could not identify any other producers in Canada.

Trade Unions

[17] The complainants confirmed that their employees are not represented by a trade union. As the complainants are the only known producers of pea protein in Canada, this means that there are no known trade unions.

Importers

[18] At the initiation of the investigations, the CBSA identified 22 potential importers of the subject goods from import entry documentation and from information submitted in the complaint. All of the potential importers were asked to respond to the CBSA's importer Request for Information (RFI).² Six importers provided a response to the importer RFI, A&A Pharmachem Inc.; Osage Food Products Inc.; Top Health Ingredients Inc.; Nexxus Foods Inc.; Quadra Chemicals Ltd.; and Nura USA.³

Exporters

[19] At the initiation of the investigations, the CBSA identified 16 potential exporters of the subject goods from import entry documentation and from information submitted in the complaint. All of the potential exporters were asked to respond to the CBSA's dumping and subsidy RFIs.⁴

¹ Exhibit 2 (NC) – HPC Complaint – para 41.

² Exhibit 19 (NC) – Requests for information and industry profit survey sent to importers.

³ Exhibit 23 (NC), 32 (NC), 41 (NC), 52 (NC), 96 (NC) and 129 (NC) – Responses to importer RFI.

⁴ Exhibit 17 (NC) and 18 (NC) – Exporter RFI – Dumping and Subsidy.

[20] Five exporters provided substantially complete responses to the CBSA's dumping and subsidy RFIs: Shandong Jianyuan Bioengineering Co., Ltd., Yantai Shuangta Food Co., Ltd., Yantai Oriental Protein Tech Co., Yantai Yiyuan Biological Engineering Co., Ltd., and Yantai T.Full Biotech Co., Ltd.⁵

[21] In addition, two exporters, Hainan Zhongxin Chemical Co., Ltd. and Nura USA, LLC provided responses to the RFIs. However, these responses were found to be deficient for purposes of the final determination.⁶

Government

[22] For the purposes of these investigations, the GOC refers to all levels of government, i.e., federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

[23] At the initiation of the investigations, the GOC was sent the CBSA's government subsidy RFI⁷ requesting information concerning the alleged subsidy programs available to producers/exporters of subject goods. The GOC did not respond to the government subsidy RFI.

PRODUCT INFORMATION

Definition⁸

[24] For the purpose of these investigations, subject goods are defined as:

High protein content (HPC) pea protein originating in or exported from the People's Republic of China in all physical forms regardless of packaging, with a minimum pea protein content of 65 percent on a dry weight basis calculated using a Jones factor of 6.25, but excluding:

- Texturized pea protein; and
- HPC pea protein that has been incorporated into finished products where the HPC pea protein itself is further processed such that it does not retain its original physical and chemical characteristics and other properties.

⁵ Exhibit 56 (NC), Exhibit 59 (NC), Exhibit 61(NC), Exhibit 64 (NC), Exhibit 68 (NC), Exhibit 72 (NC), Exhibit 83 (NC), Exhibit 85 (NC), Exhibit 107 (NC), Exhibit 109 (NC), Exhibit 116 (NC), Exhibit 124 (NC), Exhibit 126 (NC), Exhibit 139 (NC) – Responses to Exporter RFIs.

⁶ Exhibit 141 (NC), Exhibit 143 (NC) and Exhibit 131(NC) – Responses to Exporter RFIs.

⁷ Exhibit 16 (PRO) – Notice of Initiation sent to the Embassy of the People's Republic of China

⁸ Exhibit 2 (NC) – HPC Complaint – para 6.

Additional Product Information⁹

[13] HPC pea protein is a protein derived from peas, including but not limited to yellow field peas and green field peas. Such peas are sometimes referred to as field peas, yellow peas, or yellow split peas. *Pisum sativum* is the Latin name for the peas utilized in pea protein that is covered by the scope of this product definition. Not covered by the scope of this product definition is protein derived from chickpeas, beans, lentils, or nuts.

[14] HPC pea protein is most commonly identified as “pea protein isolate” but may also be identified by other labels that include “hydrolyzed pea protein,” “pea peptides,” “fermented pea protein,” or “pea protein concentrate.”

[15] HPC pea protein may consist of small amounts of other substances including but not limited to ash, fibre, preservatives, salt, microbiological content, minerals, or masking or flavouring agents. Even in a dry state, HPC pea protein also contains a small amount of moisture from the ambient air.

[16] Excluded from the scope of the product definition is texturized pea protein. Texturized pea protein is HPC pea protein that has gone through an extrusion process to alter the HPC pea protein at the structural and functional level, resulting in a product with a fibrous structure which resembles muscle meat upon hydration for use in meat analogue products.

[17] Also excluded from the scope of this product definition is HPC pea protein that has been incorporated into finished products such that it no longer retains the physical and chemical characteristics and properties of HPC pea protein in a dry state. Products that would fall within this exclusion would include burgers and other meat analogue products, snack bars, pea protein crisps, bakery products, sugar and gum confectionary products, ready to drink non-dairy milks or other liquid protein drinks, cheeses and other non-dairy alternative products, baby foods, food sauces and seasoning, and pet food.

[18] HPC pea protein can be consumed directly, but it is most often used as an ingredient in the manufacturing of other food and drink products, notably sports and nutritional drinks (e.g., protein shakes); nutrition bars; plant-based meat alternative products (e.g., burgers, sausages, chicken, fish, meatballs); milk alternatives; non-dairy alternatives to other dairy products such as yogurts, cheeses and ice creams; cereals, snacks and other baked goods; food sauces, seasonings and dressings; pasta; sugar and gum confectionary products; baby food; senior and clinical nutrition; and nutraceuticals.

[19] HPC pea protein is produced to different grades which have relatively small variations in characteristics, such as: whether the peas are organic; the particle size of the pea protein (often referred to as “fineness”); pH levels; sodium levels; the exact percentage of protein content; solubility; and moisture levels. HPC pea protein may also commonly have added masking or flavouring agents. These differences are designed to optimize the product for use in different applications. For example, buyers purchasing HPC pea protein for use in the production of beverages generally prefer product that is highly soluble and is also highly dispersible (meaning

⁹ Exhibit 2 (NC) – HPC Complaint – para 7-14.

that it has a uniform distribution in solution). These relatively minor variations do not change the physical characteristics and uses described above and it is often the case that several different grades could be used in a given application.

Production Process¹⁰

[20] Peas are a rich source of protein, but also consist largely of starch and fiber. Pea protein is generally produced through a “wet milling” process which separates and isolates each of these main elements. At a high level, the steps for wet milling pea protein are:

- i. Pea reception and screening – peas are sorted through one or more processes and equipment to remove foreign debris;
- ii. Cleaning and dehulling – peas are de-hulled with various pre-crushers, crushers, and other devices which break the peas and separate the hulls from the peas;
- iii. Milling – pea grist must be crushed and milled through various procedures that process and re-process the grist to the consistency of flour;
- iv. Separation/extraction – separation of the main elements of the pea (namely protein, starch, and fiber);
- v. Drying – Pea protein is dried through spray dryers which essentially involves the wet protein mixture being sprayed in a mist into hot air dryers; and,
- vi. Packaging – Pea protein is finally packaged at filling stations.

Classification of Imports

[25] The subject goods are normally classified under the following tariff classification numbers:

3504.00.90.00
2106.10.00.00

[26] The listing of tariff classification numbers is for convenience of reference only. The tariff classification numbers include non-subject goods. Also, subject goods may fall under tariff classification numbers that are not listed. Refer to the product definition for authoritative details regarding the subject goods.

¹⁰ Exhibit 2 (NC) – HPC Complaint – para 17-23.

LIKE GOODS AND CLASS OF GOODS

[27] Subsection 2(1) of SIMA defines “like goods” in relation to any other goods as goods that are identical in all respects to the other goods, or in the absence of any identical goods, goods the uses and other characteristics of which closely resemble those of the other goods. In considering the issue of like goods, the CITT typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfill the same customer needs as the subject goods.

[28] With respect to the definition of like goods, the complainants stated that pea protein produced by the Canadian industry is like goods to the subject goods. Domestically produced HPC pea protein has the same physical properties, is marketed and sold through the same distribution channels, is purchased by the same end users, is used in the same end uses, and is interchangeable with subject goods. Consequently, the subject goods compete directly with domestic like goods.

[29] For the purposes of this analysis, like goods consist of domestically produced HPC pea protein described in the product definition.

[30] After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that subject goods and like goods constitute only one class of goods.

[31] In its preliminary injury inquiry for these investigations, the CITT further reviewed the matter of like goods and classes of goods. On July 5, 2024, the CITT issued its preliminary inquiry *Statement of Reasons*, indicating that:

“For the purposes of this inquiry, the Tribunal is also satisfied that there is insufficient evidence to find that there is more than a single class of goods..”¹¹

THE CANADIAN INDUSTRY

[32] The domestic industry is comprised of only the complainants. The CBSA conducted independent research but could not identify any other producers in Canada. Based on the available evidence, the CBSA is satisfied that the complainants account for all known production of like goods produced in Canada.

IMPORTS INTO CANADA

[33] During the final phase of the investigations, the CBSA refined the estimated volume and value of imports based on information from CBSA import entry documentation and information received from exporters and importers.

¹¹ Canadian International Trade Tribunal; Preliminary Injury Inquiry – Pea Protein – *Statement of Reasons* (July 5, 2024), PI-2024-001, para. 36.

[34] The following table presents the CBSA’s analysis of imports of pea protein for purposes of the final determinations:

**Import Volumes of HPC Pea Protein
(January 1, 2023 to December 31, 2023)**

Country	% of Total Import Volume
China	62.9%
All Other Countries	37.1%
Total Imports	100.00%

INVESTIGATION PROCESS

[35] Regarding the dumping investigation, information was requested from all known and potential exporters, producers, vendors and importers, concerning shipments of pea protein released into Canada during the POI.

[36] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from all known and potential exporters and producers in China. Information was also requested from the GOC concerning financial contributions made to exporters or producers of pea protein released into Canada during the POI. The GOC was also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters.

[37] The GOC and the exporters/producers were also notified that failure to submit all required information and documentation, including non-confidential versions, failure to comply with all instructions contained in the RFI, failure to permit verification of any information or failure to provide documentation requested during the verification visits or the desk audits may result in the margin of dumping, the amount of subsidy and the assessment of dumping and/or countervailing duties on subject goods being based on facts available to the CBSA. Further, they were notified that determinations on the basis of facts available could be less favorable to them than if complete, verifiable information was made available.

[38] Several parties (i.e., importers and exporters) requested an extension to respond to their respective RFIs. The CBSA reviewed each request but extensions were not granted as the reasons for making the requests did not constitute unforeseen circumstances or unusual burdens.

[39] After reviewing the RFI responses, deficiency letters and supplemental RFIs (SRFIs) were sent to several responding parties to identify any inadequacies in the response, seek clarification of information provided in the responses, and request additional information, where necessary. Desk verifications of the responding exporters’ information were conducted.

[40] Details pertaining to the information submitted by the exporters in response to the dumping and subsidy RFIs as well as the results of the CBSA’s investigations are provided in the *Results of the Dumping Investigation* and *Subsidy Investigation* sections of this document, respectively.

[41] As part of the final phase of the investigations, case briefs and reply submissions were provided by counsel representing the complainant and exporters/producers from China. Summarizations of the representations are provided in **Appendix 2**.

PROCEDURAL ISSUES

[42] On September 19, 2024, counsel for the Canadian producers filed a letter, requesting “leave to file new factual information that became available after the close of the record.”¹² The submission concerned information filed in the CITT RFI process within its parallel inquiry into pea protein and pertained to the issue of what constitutes a “reasonable cost allocation methodology.” Counsel characterized the information as “highly relevant to the CBSA’s investigation” and that “it directly contradicts arguments” made by an exporter in the CBSA’s investigation.¹³

[43] The CBSA will normally not consider any new information submitted by participants subsequent to the closing of the record date. However, in certain exceptional circumstances, it may be necessary to permit new information to be submitted. The CBSA will consider the following factors in deciding whether to accept new information submitted after the closing of the record date:

- a. the availability of the information prior to the closing of the record date;
- b. the emergence of new or unforeseen issues;
- c. the relevance and materiality of the information;
- d. the opportunity for other participants to respond to the new information; and
- e. whether the new information can reasonably be taken into consideration by the CBSA in making the determination

[44] Participants wishing to file new information after the closing of the record date, either separately or in case briefs or reply submissions, must identify this information so that the CBSA can decide whether it will be included in the record for purposes of the determination.

[45] On September 23, 2024, following consideration of the CBSA’s policy, the CBSA accepted the information filed and provided interested parties and their counsel until 5:00 p.m. on Wednesday September 25, 2024, the opportunity to comment on these submissions.¹⁴

¹² Exhibit 288 (NC) – Additional information submitted by counsel on behalf of the complainants, page 1 of 8.

¹³ Exhibit 288 (NC) – Additional information submitted by counsel on behalf of the complainants, page 4 of 8.

¹⁴ Exhibit 289 (NC) – Notice of information accepted after the close of record (refers to Exhibit 288).

[46] The CBSA determined that although submitted after the close of its record, the information was not previously available, is material to the investigation, would not compromise the ability of the CBSA to conduct its proceedings expeditiously and that parties would not be prejudiced by the acceptance of the information given that the CBSA is affording them ample time to comment.

[47] On September 25, 2024, counsel for multiple Chinese exporters, provided comments by the deadline, objecting to the submission of the information after the close of the record and arguing that the submission had not be properly contextualized and was “at best a misstatement of argument.”¹⁵

[48] The CBSA received no other comments or rebuttals to either the information submitted or the reply.

DUMPING INVESTIGATION

[49] The following presents the final results of the investigation into the dumping of pea protein originating in or exported from China.

Normal Value

[50] Normal values are generally determined based on the domestic selling prices of like goods in the country of export, in accordance with the methodology of section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, plus a reasonable amount for profits, in accordance with the methodology of paragraph 19(b) of SIMA.

[51] Where, in the opinion of the CBSA, sufficient information has not been furnished or is not available, normal values are determined pursuant to a ministerial specification in accordance with subsection 29(1) of SIMA.

Export Price

[52] The export price of goods sold to importers in Canada is generally determined in accordance with the methodology of section 24 of SIMA based on the lesser of the adjusted exporter’s sale price for the goods or the adjusted importer’s purchase price. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

¹⁵ Exhibit 290 (NC) – Comments submitted by counsel for Yantai Shuangta Food Co., Ltd. (“Shuangta”), Shandong Jianyuan Bioengineering Co., Ltd. (“Jianyuan”) and the China Chamber of Commerce of I/E of Foodstuffs, Native Produce and Animal By-Products (“CFNA”) regarding Exhibit 288.

[53] Where there are sales between associated persons and/or a compensatory arrangement exists, the export price is determined based on the importer's resale price of the imported goods in Canada to unrelated purchasers, less deductions for all costs incurred in preparing, shipping and exporting the goods to Canada that are additional to those incurred on the sales of like goods for use in the country of export, all costs included in the resale price that are incurred in reselling the goods (including duties and taxes) or associated with the assembly of the goods in Canada and an amount representative of the average industry profit in Canada as provided for in paragraphs 25(1)(c) and 25(1)(d) of SIMA. In any cases not provided for under paragraphs 25(1)(c) and 25(1)(d) of SIMA, the export price is determined in such a manner as the Minister specifies, pursuant to paragraph 25(1)(e).

[54] Where, in the opinion of the CBSA, sufficient information has not been furnished or is not available, export prices are determined pursuant to a ministerial specification under subsection 29(1) of SIMA.

Margin of Dumping

[55] The margin of dumping by an exporter is equal to the amount by which the total normal value exceeds the total export price of the goods, expressed as a percentage of the total export price. All subject goods imported into Canada during the POI are included in the determination of the margins of dumping of the goods. Where the total normal value of the goods does not exceed the total export price of the goods, the margin of dumping is zero.

[56] Further information regarding each exporter is detailed below.

RESULTS OF THE DUMPING INVESTIGATION

Normal Values and Export Prices

Shandong Jianyuan Bioengineering Co., Ltd.

[57] Shandong Jianyuan Bioengineering Co., Ltd. (Jianyuan Bioengineering) is a privately held limited liability company established in 2020. Jianyuan Bioengineering is a manufacturer of pea protein, pea starch and other co-products.

[58] Subject goods shipped to Canada during the POI were produced in Jianyuan Bioengineering's manufacturing facility located in Shandong, China and in its additional wholly owned manufacturing facility, Hengyuan Biotechnology Co., Ltd. (Hengyuan Biotechnology), also located in Shandong. All subject goods shipped to Canada during the POI were sold by Jianyuan Bioengineering through its trading subsidiary, Jianyuan International Co., Ltd. (Jianyuan International).

[59] Exports by Jianyuan Bioengineering represent 5.1% of the volume of subject goods shipped to Canada during the POI.

[60] Jianyuan Bioengineering, Hengyuan Biotechnology and Jianyuan International each provided a substantially complete response to the dumping RFI. supplemental RFIs (SRFI) were sent to each entity to gather additional information and seek clarifications regarding their original responses. Desk verifications of their information were conducted in August 2024.

[61] During the POI, Jianyuan Bioengineering had sufficient sales of like goods in the domestic market that met the conditions of sections 15 and 16 of SIMA. As such, normal values were determined pursuant to section 15 of SIMA, based on domestic selling prices of like goods.

[62] Jianyuan Bioengineering exported subject goods to several unrelated importers in Canada during the POI. Export prices for the subject goods were calculated in accordance with section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[63] The total normal value compared to the total export price resulted in a margin of dumping of 0% for Jianyuan Bioengineering, expressed as a percentage of the export price.

Yantai Oriental Protein Tech Co., Ltd

[64] Yantai Oriental Protein Tech Co., Ltd (Oriental) is a privately held limited liability company established in 2008. Oriental is a manufacturer and exporter of pea protein, pea starch and other co-products.

[65] All subject goods released into Canada during the POI were produced in Oriental's manufacturing facility located in Shandong, China. Both Oriental and its related trading company, Yantai Zhongzhen Trading Co., Ltd. (Zhongzhen), sold goods produced by Oriental to Canada.

[66] Exports by Oriental represents 0.8% of the volume of subject goods shipped to Canada during the POI.

[67] Oriental and Zhongzhen each provided a substantially complete response to the dumping RFI. SRFIs were sent to both entities to gather additional information and seek clarifications regarding their original responses. Desk verifications of Oriental's and Zhongzhen's information were conducted in August 2024.

[68] During the POI, Oriental had sufficient sales of like goods in the domestic market that met the conditions of sections 15 and 16 of SIMA. As such, normal values were determined pursuant to section 15 of SIMA, based on domestic selling prices of like goods.

[69] Oriental exported subject goods to three unrelated importers in Canada during the POI. Export prices for the subject goods were determined in accordance with section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[70] For purposes of the final determination, the total normal value compared to the total export price results in a margin of dumping of 0% for Oriental, expressed as a percentage of the export price.

Yantai Shuangta Food Co., Ltd

[71] Yantai Shuangta Food Co., Ltd (Shuangta) is publically traded limited liability company established in 1992. Shuangta manufactures multiple products from peas, including vermicelli, pea starch, pea protein and pea fiber products.

[72] The subject goods shipped in Canada during the POI were produced in Shuangta's manufacturing facility located in Shandong, China. All subject goods shipped to Canada during the POI were sold through its wholly owned trading subsidiary, Zhaoyuan Junbang Trading Co., Ltd. (Junbang).

[73] Exports by Shuangta represents 23.3% of the volume of subject goods shipped to Canada during the POI.

[74] Shuangta and Zhaoyuan Junbang Trading Co., Ltd. each provided responses to the dumping RFI. SRFIs were sent to both entities to gather additional information and seek clarifications regarding their original responses. Desk verifications of Shuangta and Junbang's information were conducted in August 2024.

[75] During the POI, Shuangta had sufficient sales of like goods in the domestic market that met the conditions of sections 15 and 16 of SIMA. As such, normal values were calculated pursuant to section 15 of SIMA, based on domestic selling prices of like goods.

[76] Shuangta exported subject goods to several unrelated importers in Canada during the POI. Export prices for the subject goods were calculated in accordance with section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[77] The total normal value compared to the total export price resulted in a margin of dumping of 0% for Shuangta, expressed as a percentage of the export price.

Yantai T.Full Biotech Co., Ltd.

[78] Yantai T.Full Biotech Co., Ltd. (Yantai T.Full) is a privately held limited liability company established in 2011. All subject goods shipped to Canada during the POI were produced in Yantai T.Full's manufacturing facility located in Shandong, China.

[79] Exports by Yantai T.Full represents 13.4% of the volume of subject goods shipped to Canada from China during the POI.

[80] The response to the dumping RFI from Yantai T.Full was substantially complete. SRFIs were sent to Yantai T.Full to gather additional information and seek clarifications regarding its original response. A verification of Yantai T.Full's information was conducted in August 2024 by way of Verification Questionnaires.

[81] During the POI, Yantai T.Full had sufficient sales of like goods in the domestic market that met the conditions of sections 15 and 16 of SIMA. As such, normal values were determined pursuant to section 15 of SIMA, based on domestic selling prices of like goods.

[82] Yantai T.Full exported subject goods to several unrelated importers in Canada during the POI. Export prices for the subject goods were determined in accordance with section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[83] For purposes of the final determination, the total normal value compared to the total export price results in a margin of dumping of 5.3% for Yantai T.Full, expressed as a percentage of the export price.

Yantai Yiyuan Biological Engineering Co., Ltd.

[84] Yantai Yiyuan Biological Engineering Co., Ltd. (Yiyuan) is a privately held limited liability company established in 2019. All subject goods shipped to Canada during the POI were produced at Yiyuan's manufacturing facility located in Shandong, China.

[85] Exports by Yiyuan represents 0.1% of the volume of subject goods shipped to Canada during the POI.

[86] The response to the dumping RFI from Yiyuan was substantially complete. SRFIs were sent to Yiyuan to gather additional information and seek clarification regarding its original response. A verification of Yiyuan's information was conducted in August 2024 by way of Verification Questionnaires.

[87] During the POI, Yiyuan did not have sufficient sales of like goods in the domestic market that met the conditions of sections 15 and 16 of SIMA. As such, normal values were determined pursuant to paragraph 19(b) of SIMA, based on the aggregate of the cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits. A reasonable amount for profits was determined under subparagraph 11(1)(b)(iii) of the SIMR, using the weighted average profit made on the sales by other producers in the country of export.

[88] Yiyuan exported subject goods to one unrelated importer in Canada during the POI. Export prices for the subject goods were determined in accordance with section 24 of SIMA, based on the lesser of the exporter's selling price and the importer's purchase price, adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[89] For purposes of the final determination, the total normal value compared to the total export price results in a margin of dumping of 0% for Yiyuan, expressed as a percentage of the export price.

All Other Exporters – China

[90] For exporters of subject goods that did not provide a response to the dumping RFI or did not furnish sufficient information, the normal values and export prices were determined pursuant to a ministerial specification under subsection 29(1) of SIMA, which is based on a comparative analysis of facts available.

[91] In establishing the methodology for determining the normal values and export prices for all other exporters from China, the CBSA considered all of the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimates at the initiation of the investigation, information submitted by parties who responded to the dumping RFI, and CBSA import documentation.

[92] The CBSA decided that the normal values and export prices determined for the exporters from China whose submission was complete for purposes of the final determination, rather than the information provided in the complaint or estimated at initiation, would be used to establish the methodology for determining normal values for all other exporters of subject goods from China since it is more relevant and reflects the trading practices of a Chinese exporter of subject goods during the POI.

[93] The CBSA examined the difference between the normal value and the export price for each individual transaction, and considered that the highest amount for the exporter (expressed as a percentage of the export price), was an appropriate basis for determining normal values. This methodology relies on information related to goods that originated in China and in general, provides an incentive for exporters to participate by ensuring that exporters who have provided the necessary information requested in a dumping investigation will always have a more favourable outcome than those who have not participated.

[94] As a result, based on the facts available, for all other exporters that did not provide a response to the dumping RFI, normal values of subject goods originating in or exported from China were determined based on the highest amount by which a normal value exceeded the export price, on an individual transaction for the cooperative exporters during the POI. The transactions were examined to ensure that no anomalies were considered, such as very low volume and value, effects of seasonality or other business factors. No such anomalies were identified.

[95] The CBSA considered that the information submitted on the CBSA import documentation was the best information on which to determine the export price of the goods as it reflects actual import data.

[96] If the CITT finds that the dumped imports from China are causing injury, the CBSA will impose anti-dumping duty on these goods. Based on the methodology described above, in the event of a finding by the CITT, the normal value for all other exporters from China will be determined by advancing the export price by 24.9%, pursuant to a ministerial specification under subsection 29(1) of SIMA.

Summary of Results – Dumping

[97] A summary of the results of the dumping investigation respecting all subject goods released into Canada during the POI are as follows:

Summary of Results – Dumping Period of Investigation (January 1, 2023 to December 31, 2023)

Exporter	Margin of Dumping (% of Export Price)	Volume of Subject Goods (% of Total Imports)
Shandong Jianyuan Bioengineering Co., Ltd.	0%	3.2%
Yantai Oriental Protein Tech Co., Ltd.	0%	0.5%
Yantai Shuangta Food Co., Ltd.	0%	14.6%
Yantai T. Full Biotech Co., Ltd.	5.3%	8.4%
Yantai Yiyuan Biological Engineering Co., Ltd.	0%	0.1%
All Other Exporters	24.9%	36.1%
Total – China		62.9%
All Other Countries		37.1%
All Countries		100.00%

[98] In order to make a final determination of dumping, the CBSA must be satisfied that:

- i) the subject goods have been dumped; and
- ii) that the margin of dumping of a particular exporter is not insignificant.

[99] Under paragraph 41(1)(a) of SIMA, the CBSA is required to terminate an investigation in respect of any goods of an exporter if it is satisfied that the goods have not been dumped or the margin of dumping of the goods of that exporter is insignificant, meaning a margin of dumping that is less than 2% of the export price of the goods.

[100] As indicated above, HPC pea protein exported to Canada from China by Shandong Jianyuan Bioengineering Co., Ltd., Yantai Shuangta Food Co., Ltd., Yantai Oriental Protein Tech Co., Ltd., and Yantai Yiyuan Biological Engineering Co., Ltd., were not dumped. Therefore, the CBSA is required to terminate the dumping investigation with respect to these goods pursuant to paragraph 41(1)(a) of SIMA.

[101] The margins of dumping determined for all other exporters of HPC pea protein originating in or exported from China are greater than the 2% threshold and are therefore not considered insignificant. As a result, with respect to these exporters, the legislative requirements are satisfied for making a final determination of dumping respecting HPC pea protein originating in or exported from China.

[102] A summary of the margins of dumping by exporter is presented in **Appendix 1**.

SUBSIDY INVESTIGATION

[103] In accordance with section 2 of SIMA, a subsidy exists if there is a financial contribution by a government of a country other than Canada that confers a benefit on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods. A subsidy also exists in respect of any form of income or price support within the meaning of Article XVI of the *General Agreement on Tariffs and Trade*, 1994, being part of Annex 1A to the World Trade Organization (WTO) Agreement that confers a benefit.

[104] Pursuant to subsection 2(1.6) of SIMA, there is a financial contribution by a government of a country other than Canada where:

- (a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
- (b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;
- (c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or
- (d) the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

[105] Where subsidies exist, they may be subject to countervailing measures if they are specific in nature. According to subsection 2(7.2) of SIMA a subsidy is considered to be specific when it is limited, in a legislative, regulatory or administrative instrument, or other public document, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy.

[106] A “prohibited subsidy” is either an export subsidy or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export. An export subsidy is a subsidy or portion of a subsidy contingent, in whole or in part, on export performance. An “enterprise” is defined as including a group of enterprises, an industry and a group of industries. These terms are all defined in section 2 of SIMA.

[107] Notwithstanding that a subsidy is not specific in law, under subsection 2(7.3) of SIMA a subsidy may also be considered specific having regard as to whether:

- (a) there is exclusive use of the subsidy by a limited number of enterprises;
- (b) there is predominant use of the subsidy by a particular enterprise;
- (c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and
- (d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

[108] For the purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an “actionable subsidy,” meaning that it is subject to countervailing measures if the persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods under investigation have benefited from the subsidy.

[109] Financial contributions provided by state-owned enterprises (SOEs) may also be considered to be provided by the government for purposes of this investigation. A SOE may be considered to constitute “government” for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or some combination thereof.

RESULTS OF THE SUBSIDY INVESTIGATION

[110] At the initiation of the investigation, the CBSA sent subsidy RFIs to the GOC, as well as to all known exporters/producers of pea protein in China.

[111] The GOC was also requested to forward the subsidy RFIs to all subordinate levels of government that had jurisdiction over the exporters. The exporters/producers were requested to forward a portion of the subsidy RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as SOEs.

[112] The GOC and the exporters/producers were also notified that failure to submit all required information and documentation, including non-confidential versions, failure to comply with all instructions contained in the subsidy RFI, failure to permit verification of any information or failure to provide documentation requested during the verification visits or desk audits may result in the amount of subsidy and the assessment of countervailing duties on subject goods being based on facts available to the CBSA. Further, they were notified that a determination on the basis of facts available could be less favourable than if complete, verifiable information was made available.

[113] The GOC did not respond to the CBSA's Government subsidy RFI. The lack of response from the GOC limited the CBSA's ability to determine the amount of subsidy in the prescribed manner as the required information relating to financial contribution, benefit and specificity was not provided. It also limited the CBSA's ability to determine whether producers, or other suppliers of goods and services, are public bodies.

[114] Due to a lack of government response, subsidy amounts for all exporters were determined pursuant to subsection 30.4(2) of SIMA, based on a ministerial specification. However, in consideration of the fact that cooperative exporters/producers provided sufficient information in response to their subsidy RFI, for each of these exporters, an individual amount of subsidy was determined based on the information provided and information obtained during the verification.

[115] The available information did not confirm that these programs are generally available to all enterprises in China. Furthermore, due to the lack of a response by the GOC, there is insufficient information on the administrative record to determine that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. Therefore, guided by the principles of subsection 2(7.2) and subsection 2(7.3) of SIMA, the CBSA determined the subsidy derived from these programs to be specific.

[116] For exporters that did not provide sufficient information in response to the subsidy RFI, amounts of subsidy were determined under subsection 30.4(2) of SIMA on the basis of facts available.

[117] An account of the subsidies received by each of the exporters that provided a response to the subsidy RFI is provided below. The amounts of subsidy for each of the exporters are also presented in a summary table in **Appendix 1**. A description of identified programs and incentives is included in **Appendix 3**.

Shandong Jianyuan Bioengineering Co., Ltd.

[118] Shandong Jianyuan Bioengineering Co., Ltd. (Jianyuan Bioengineering) is a producer of subject goods located in Shandong, China and exports subject goods through a related trading company Jianyuan International Co., Ltd. (Jianyuan International).

[119] Jianyuan Bioengineering provided complete responses to the subsidy RFI, and SRFIs. Desk verification of Jianyuan Bioengineering's information was conducted in August 2024.

[120] For purposes of the final determination, Jianyuan Bioengineering was found to have received countervailable benefits from the following nine subsidy programs:

- Program 1: Preferential Loans and loan guarantees
- Program 4: Interest Reduction and Profit Concession of Small and Micro Loans
- Program 7: Export assistance grants & other export development performance grants
- Program 10: Grants for encouraging protein enterprises to increase R&D investment and improve scientific and technological innovation capabilities
- Program 13: Subsidies Related to Science and Technology
- Program 14: Subsidies related to Related to Employment, Training and Recruitment
- Program 17: Corporate income tax reduction for new high tech enterprises (“NHTE”)
- Program 19: Preferential tax policies related to research and investment
- Program 24: VAT refund for comprehensive resource utilization products and services

[121] For purposes of the final determination, the amount of subsidy for Jianyuan Bioengineering is 1.6%, expressed as a percentage of the export price.

Yantai Oriental Protein Tech Co., Ltd

[122] Yantai Oriental Protein Tech Co., Ltd (Oriental) is a producer and exporter of subject goods located in Shandong, China.

[123] Oriental provided complete responses to the subsidy RFI and SRFIs. Desk verifications of Oriental’s information was conducted in August 2024.

[124] For purposes of the final determination, Oriental was found to have received countervailable benefits from the following 11 subsidy programs:

- Program 1: Preferential Loans and Loan Guarantees
- Program 5: Interest subsidy for leading enterprises
- Program 7: Export Assistance Grants & Other Export Development Performance Grants
- Program 8: Design, Research and Development Grants
- Program 11: Pollution Control Award
- Program 12: Subsidies Related to Company/Enterprise Development and Innovation
- Program 13: Subsidies Related to Science and Technology
- Program 14: Subsidies related to Related to Employment, Training and Recruitment
- Program 17: Corporate Income Tax Reduction for New High Tech Enterprises (“NHTE”)
- Program 18: Corporate income tax reduction for micro and small enterprises
- Program 24: VAT refund for comprehensive resource utilization products and services

[125] For purposes of the final determination, the amount of subsidy for Oriental is 1.2%, expressed as a percentage of the export price.

Yantai Shuangta Food Co., Ltd

[126] Yantai Shuangta Food Co., Ltd (Shuangta) is a producer of subject goods located in Shandong, China and exports subject goods through a related trading company Zhaoyuan Junbang Trading Co., Ltd. (Junbang).

[127] Shuangta and Junbang provided complete responses to the subsidy RFI and SRFIs. Desk verifications of their information were conducted in August 2024.

[128] For the purposes of the final determination, Shuangta was found to have received countervailable benefits from the following 13 subsidy programs:

- Program 1: Preferential Loans and loan guarantees
- Program 3: Preferential export financing and export credit guarantee/insurance
- Program 8: Design, research and development grants
- Program 10: Grants for encouraging protein enterprises to increase R&D investment and improve scientific and technological innovation capabilities
- Program 11: Pollution Control Award
- Program 12: Subsidies Related to Company/Enterprise Development and Innovation
- Program 13: Subsidies Related to Science and Technology
- Program 14: Subsidies related to Related to Employment, Training and Recruitment
- Program 15: Subsidies Related to Building
- Program 19: Preferential tax policies related to research and investment
- Program 21: Import tariff exemptions on imported equipment in encouraged industries
- Program 23: Municipal/local income or property tax reductions
- Program 24: VAT refund for comprehensive resource utilization products and services

[129] For purposes of the final determination, the amount of subsidy for Shuangta is 1.3%, expressed as a percentage of the export price.

Yantai T.Full Biotech Co., Ltd.

[130] Yantai T.Full Biotech Co., Ltd. (Yantai T.Full) is a producer and exporter of subject goods, located in Shandong, China.

[131] Yantai T.Full purchased material inputs from a related input supplier, Zhaoyuan Baofa Foodstuffs Co., Ltd. (Zhaoyuan Baofa).

[132] Yantai T.Full and Zhaoyuan Baofa provided complete responses to the subsidy RFI and SRFIs. Desk verifications of their information were conducted in August 2024.

[133] Multiple subsidy programs were found to have conferred benefits to the exporter, Yantai T.Full, by being passed-through from its related supplier, Zhaoyuan Baofa , through the purchase of major raw materials. The CBSA attributed the subsidy received by Zhaoyuan Baofa to the goods exported to Canada because of the relationship between the parties. The CBSA has concluded that a subsidy pass-through test is not required given the relationship between the exporter and the supplier. Consequently, any actionable subsidies received by the related supplier which are attributable to the goods under investigation and exported to Canada, was aggregated with those directly received by the exporter.

[134] For the purposes of the final determination, Yantai T.Full was found to have received countervailable benefits from the following 10 subsidy programs:

- Program 1: Preferential Loans and loan guarantees
- Program 8: Design, research and development grants
- Program 11: Pollution Control Award
- Program 12: Subsidies Related to Company/Enterprise Development and Innovation
- Program 13: Subsidies Related to Science and Technology
- Program 14: Subsidies related to Related to Employment, Training and Recruitment
- Program 16: Insurance Grants
- Program 17: Corporate income tax reduction for new high tech enterprises (“NHTE”)
- Program 19: Preferential tax policies related to research and investment
- Program 23: Municipal/local income or property tax reductions

[135] For purposes of the final determination, the amount of subsidy for Yantai T.Full is 0.9%, expressed as a percentage of the export price. This amount is insignificant, and as such, the subsidy investigation in respect of the goods of this exporter was terminated pursuant to paragraph 41(1)(a) of SIMA.

Yantai Yiyuan Biological Engineering Co., Ltd.

[136] Yantai Yiyuan Biological Engineering Co., Ltd. (Yiyuan) is a producer and exporter of subject goods, located in Shandong, China.

[137] Yiyuan provided complete responses to the subsidy RFI and Supplemental RFIs. Desk verification of Yiyuan’s information was conducted in August 2024.

[138] For the purposes of the final determination, Yiyuan was found to have received countervailable benefits from the following four subsidy programs:

- Program 7: Export assistance grants & other export development performance grants
- Program 8: Design, Research and Development Grants
- Program 14: Subsidies related to Related to Employment, Training and Recruitment
- Program 24: VAT refund for comprehensive resource utilization products and services

[139] For purposes of the final determination, the amount of subsidy for Yiyuan is 2.2%, expressed as a percentage of the export price.

All Other Exporters – China

[140] For all other exporters of subject goods originating in or exported from China during the POI that did not provide a response to the Subsidy RFI or did not furnish sufficient information, the CBSA determined an amount of subsidy on the basis of the following methodology:

- 1) the highest amount of subsidy for each of the 19 programs, as found at the final determination, for the producers/exporters located in China for whom the CBSA has sufficient information to determine an amount of subsidy, plus;
- 2) the highest amount of subsidy for the 19 programs listed in (1), applied to each of the remaining seven potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the final determination.

[141] In establishing the methodology for determining the amount of subsidy for all other exporters from China, the CBSA considered all of the information on the administrative record, including the complaint filed by the domestic industry, the CBSA's estimate at the initiation of the investigation, and information submitted by exporters of subject goods from China.

[142] This methodology relies on information related to potentially actionable subsidies in China. It recognizes that the GOC did not provide a response to the subsidy RFI; and it limits the advantage that an exporter may gain from not providing necessary information requested in a subsidy investigation as compared to an exporter that did provide the necessary information.

[143] Using the above methodology, for the purposes of the final determination, the amount of subsidy for all other exporters in China is 19.5%, expressed as a percentage of the export price.

Summary of Results – Subsidy

[144] A summary of the results of the subsidy investigation respecting all subject goods released into Canada during the POI follows:

Summary of Results – Subsidy Period of Investigation (January 1, 2023 to December 31, 2023)

Exporter	Amount of Subsidy (% of Export Price)	Volume of Subject Goods (% of Total Imports)
Shandong Jianyuan Bioengineering Co., Ltd.	1.6%	3.2%
Yantai Oriental Protein Tech Co., Ltd	1.2%	0.5%
Yantai Shuangta Food Co., Ltd.	1.3%	14.6%
Yantai T.Full Biotech Co., Ltd.	0.9%	8.4%
Yantai Yiyuan Biological Engineering Co., Ltd.	2.2%	0.1%
All Other Exporters – China	19.5%	36.1%
Total – China		62.9%
All Other Countries		37.1%
All Countries		100.0%

[145] Under paragraph 41(1)(a) of SIMA, the CBSA is required to terminate an investigation in respect of any goods of an exporter if the CBSA is satisfied that the goods have not been subsidized or the amount of subsidy on the goods of that exporter is insignificant.

[146] Pursuant to subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the export price of the goods, for a developed country, is defined as insignificant.

[147] As indicated above, HPC pea protein exported to Canada from China by Yantai T.Full have been subsidized by an insignificant amount. Therefore, the CBSA is required to terminate the subsidy investigation with respect to these goods pursuant to paragraph 41(1)(a) of SIMA.

[148] The amounts of subsidy determined for all other exporters of HPC pea protein originating in or exported from China are greater than the 1% threshold and are therefore not considered insignificant. As a result, with respect to these exporters, the legislative requirements are satisfied for making a final determination of subsidy respecting HPC pea protein originating in or exported from China.

[149] A summary of the results of the subsidy investigation respecting the subject goods released into Canada during the subsidy POI are presented in **Appendix 1**.

DECISIONS

[150] On October 21, 2024, pursuant to paragraph 41(1)(a) of SIMA, the CBSA terminated the dumping investigation with respect of HPC pea protein exported to Canada from China by Shandong Jianyuan Bioengineering Co., Ltd., Yantai Shuangta Food Co., Ltd., Yantai Oriental Protein Tech Co., Ltd., and Yantai Yiyuan Biological Engineering Co., Ltd.

[151] Similarly, pursuant to paragraph 41(1)(a) of SIMA, the CBSA terminated the subsidy investigation with respect of HPC pea protein exported to Canada from China by Yantai T.Full Biotech Co., Ltd.

[152] On the same date, pursuant to paragraph 41(1)(b) of SIMA, the CBSA made final determinations respecting the dumping and subsidizing of HPC pea protein originating in or exported from China, with respect to exporters for which the investigations have not been terminated.

FUTURE ACTION

[153] The provisional period began on July 22, 2024, and will end on the date the CITT issues its finding. The CITT is expected to issue its decision by November 19, 2024. Provisional duties will continue to be imposed on the subject goods from China until the CITT renders its decision. However, provisional duties will no longer be imposed on imports of goods for which the dumping and/or subsidy investigations have been terminated. Any provisional duty paid or security posted will be refunded, as appropriate. For further details on the application of provisional duty, refer to the [Statement of Reasons](#) issued for the preliminary determination.

[154] If the CITT finds that the dumped and subsidized goods have not caused injury and do not threaten to cause injury, all proceedings will be terminated. In this situation, all provisional duty paid or security posted by importers will be returned.

[155] If the CITT finds that the dumped and subsidized goods have caused injury, the anti-dumping duty payable on subject goods released by the CBSA during the provisional period will be finalized pursuant to section 55 of SIMA. Imports released by the CBSA after the date of the CITT's finding will be subject to anti-dumping duty equal to the margin of dumping and countervailing duty equal to the amount of subsidy.

[156] The importer in Canada shall pay all applicable duties. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the customs documents, an administrative monetary penalty could be imposed. The provisions of the Customs Act apply with respect to the payment, collection or refund of any duty collected under SIMA. As a result, failure to pay duty within the prescribed time will result in the application of interest.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[157] Under certain circumstances, anti-dumping and/or countervailing duty can be imposed retroactively on subject goods imported into Canada. When the CITT conducts its inquiry on material injury to the Canadian industry, it may consider if dumped and/or subsidized goods that were imported close to or after the initiation of the investigations constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the CITT issue a finding that there were recent massive importations of dumped and/or subsidized goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determinations could be subject to anti-dumping and/or countervailing duty.

[158] In respect of importations of subsidized goods that have caused injury, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy. An export subsidy is a prohibited subsidy according to subsection 2(1) of SIMA.

PUBLICATION

[159] A notice of these final determinations of dumping and subsidizing will be published in the *Canada Gazette* pursuant to paragraph 41(3)(a) of SIMA.

[160] A notice of the termination of the dumping investigation with respect to HPC pea protein exported to Canada from China Shandong Jianyuan Bioengineering Co., Ltd., Yantai Shuangta Food Co., Ltd., Yantai Oriental Protein Tech Co., Ltd., and Yantai Yiyuan Biological Engineering Co., Ltd. and of the termination of the subsidy investigation with respect to HPC pea protein exported to Canada from China by Yantai T.Full Biotech Co., Ltd., will be published in the *Canada Gazette* pursuant to paragraph 41(4)(a) of SIMA.

INFORMATION

[161] This *Statement of Reasons* is posted on the CBSA's website at the address below. For further information, please contact the officers identified as follows:

Mail: SIMA Registry and Disclosure Unit
Trade and Anti-dumping Programs Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th floor
Ottawa, Ontario K1A 0L8
Canada

Telephone: Andy Fei 343-553-1866
Heath McKenzie 343-574-9246

E-mail: simaregistry@cbsa-asfc.gc.ca

Web site: www.cbsa-asfc.gc.ca/sima-lmsi



Doug Band
Director General
Trade and Anti-dumping Programs Directorate

ATTACHMENTS

Appendix 1: Summary of Margins of Dumping and Amounts of Subsidy
Appendix 2: Dumping and Subsidy Representations
Appendix 3: Description of Identified Programs and Incentives

APPENDIX 1 – SUMMARY OF MARGINS OF DUMPING AND AMOUNTS OF SUBSIDY

Exporter	Margin of Dumping (% of Export Price)	Amount of Subsidy (% of Export Price)
Shandong Jianyuan Bioengineering Co., Ltd.	0%	1.6%
Yantai Oriental Protein Tech Co., Ltd	0%	1.2%
Yantai Shuangta Food Co., Ltd.	0%	1.3%
Yantai T.Full Biotech Co., Ltd.	5.3%	0.9%
Yantai Yiyuan Biological Engineering Co., Ltd.	0%	2.2%
All Other Exporters	24.9%	19.5%

* A margin of dumping of less than 2% of the export price of the goods and an amount of subsidy of less than 1% of the export price of the goods are insignificant pursuant to section 2(1) of SIMA.

Note: The margins of dumping and amounts of subsidy reported in this table were determined by the CBSA for the purposes of the final decisions. These margins and amounts may not reflect the amount of anti-dumping or countervailing duties to be levied on future importations of dumped or subsidized goods. In the event of an injury finding by CITT, normal values and amounts of subsidy for future shipments to Canada will be provided to the exporters who provided sufficient information in their response to the CBSA RFIs, as appropriate. These normal values and amounts of subsidy would come into effect the day after an injury finding. Information regarding normal values of the subject goods and amounts of subsidy should be obtained from the exporters. Imports from any other exporters will be subject to an anti-dumping duty rate and a countervailing duty rate, as applicable, in accordance with a ministerial specification and in an amount equal to the margin of dumping or the amount of subsidy found for “all other exporters” at the final determinations.

Section 10 of SIMA directs that where the whole (or a portion of the) margin of dumping is attributable to an export subsidy, that portion of the margin of dumping shall not be leviable, collectable and payable as anti-dumping duty.

Normally, normal values will not be applied retroactively. However, normal values may be applied retroactively in cases where the exporter does not adjust export prices to account for increases in domestic prices and/or costs, or the parties have not advised the CBSA in a timely manner of substantial changes that affect values for SIMA purposes. Therefore, where substantial changes occur in prices, market conditions, costs associated with production and sales of the goods, the onus is on the concerned parties to increase the export price accordingly to ensure that any sale made to Canada is not only above the normal value but at or above selling prices and full costs and profit of the goods in the exporter’s domestic market, and advise the CBSA of any substantial changes.

Please consult the [SIMA Self-Assessment Guide](#) for more detailed information explaining how to determine the amount of SIMA duties owing.

APPENDIX 2 – DUMPING AND SUBSIDY REPRESENTATIONS

During the investigations, representations were received on behalf of the complainants, Nutri-Pea GP Inc. and Roquette Canada Limited (hereinafter, “the complainants”)¹⁶ and Hainan Zhongxin Chemical Co., Ltd.¹⁷

Following the closing of the record on August 15, 2022, case arguments were received on behalf of the following parties:

- Yantai T.Full Biotech Co., Ltd.¹⁸
- The complainants¹⁹
- Yantai Shuangta Foods Co., Ltd. (Shuangta), Zhaoyuan Junbang Trading Co., Ltd. (Junbang) (collectively “Shuangta Group”), Shandong Jianyuan Bioengineering Co., Ltd. (Jianyuan Bioengineering), Hengyuan Biotechnology Co., Ltd. (Hengyuan Bioengineering) and Jianyuan International Co., Ltd. (Jianyuan) (collectively “Jianyuan Group”)²⁰

The CBSA also received reply submissions on behalf of the following parties:

- Shuangta Group and Jianyuan Group.,²¹
- The complainants²²

Certain details provided in case briefs and reply submissions were designated as confidential information by the submitting counsel. This has restricted the ability of the CBSA to discuss all issues raised in these submissions. The material issues raised by the parties are summarized as follows:

¹⁶ Exhibits 117 (PRO), 118 (NC), 119 (PRO), 120 (NC), 121 (PRO), 122 (NC), 132 (PRO), 133 (NC), 156 (PRO), 157 (NC), 158 (PRO), 159 (NC), 193 (NC), 196 (PRO), 197 (NC), 198 (PRO), 199 (NC), 246 (PRO), 247 (NC), 250 (PRO), 251 (NC), 253 (PRO), 254 (NC), 258 (PRO), and 259 (NC) - Comments submitted by counsel for the complainants.

¹⁷ Exhibits 209 (PRO) - Comments submitted by Hainan Zhongxin Chemical Co., Ltd. and response from CBSA

¹⁸ Exhibits 278 (PRO) & 279 (NC) – Case brief filed on behalf of Yantai T.Full.

¹⁹ Exhibits 280 (PRO) & 281 (NC) – Case brief filed on behalf of the complainants.

²⁰ Exhibits 282 (PRO) & 283 (NC) – Case brief filed on behalf of Shuangta Group and Jianyuan Group

²¹ Exhibits 284 (PRO) & 285 (NC) – Reply submission filed on behalf of Shuangta Group and Jianyuan Group

²² Exhibits 286 (PRO) & 287 (NC) – Reply submission filed on behalf of the complainants.

DUMPING REPRESENTATIONS

Applicability of Section 20 of Special Import Measures Act (SIMA)

Comments Made During the Investigations

During the investigations, counsel for the complainants submitted comments alleging that the conditions described in section 20 prevail in the pea protein sector in China.²³

Case Briefs

Counsel for complainants argued that, based on the evidence they provided, not applying Section 20 of SIMA in determining normal values is unreasonable. The complainants stated that they provided the CBSA “substantial, probative evidence” that supports the initiation of a Section 20 inquiry into the pea protein sector in China. The complainants contend that they have provided evidence that meet the standard for reaching a conclusion that section 20 applies in the pea protein sector in China by showing “domestic HPC pea protein prices are substantially determined by the GOC” and are “not substantially the same as they would be if they were determined in a competitive market.” They argued that the CBSA has “imposed an unreasonably high standard” to cause a Section 20 inquiry to be initiated and has diverged from its past practice.²⁴

Counsel for Shuangta Group and Jianyuan Group emphasized that the criteria established in section 20 of SIMA demonstrates that it is only to be used in very exceptional circumstances.

Counsel cited the wording in section 20(1)(a) as placing a high bar on the CBSA. It is thus the exception from determining normal values under the provisions of section 15 and 19. As such there must be sufficient evidence to the contrary to engage section 20.²⁵

Reply Submissions

Counsel for the complainants argued that Shuangta Group and Jianyuan Group’s arguments concerning section 20 should be rejected. They submitted that Shuangta Group and Jianyuan Group have encouraged the CBSA to apply a higher standard than what is legally required to find that section 20 conditions exist. They noted that: “Section 20 is not phrased as an exception... but rather calls for an alternative means of determining normal values when the President forms the opinion that conditions precedent exist.”²⁶

²³ Exhibits 117(PRO), 118 (NC), 192 (PRO), 193 (NC), 196 (PRO), 197 (NC), 198 (PRO), 199 (NC), 246 (PRO), 247 (NC) comments submitted by counsel for complainants concerning the application of Section 20.

²⁴ Exhibits 280 (PRO) & 281 (NC) – Case brief filed on behalf of complainants, paragraphs 11, 12, 29 and 33.

²⁵ Exhibit 282 (PRO) – Case Arguments from counsel for Shuangta Group and Jianyuan Group, paragraph 53.

²⁶ Exhibit 281 (NC) – Case brief on behalf of complainants, paragraph 12.

Counsel for several Chinese producers argued that the CBSA did meaningfully examine the section 20 claims and evidence presented by the complainants, both at initiation and at preliminary determination of the dumping investigation.²⁷

CBSA's Response

According to SIMA policy, when evaluating information which suggests that subsection 20(1) conditions may exist in a particular sector, CBSA is to rely on the following test to determine whether to initiate an inquiry:

- i) Is the evidence presented, either by the complainant or the CBSA, in support of an allegation regarding the applicability of section 20 relevant and reasonably reliable?
- ii) If so, would this evidence, if properly verified, be capable of reasonably supporting a positive determination as to the applicability of section 20?

The CBSA did not find that either of these conditions were satisfied. In particular, the evidence on the record was found to not be “capable of reasonably supporting a positive determination as to the applicability of section 20.”

SIMA policy guides the CBSA to test the strength or weight of the evidence by analyzing whether this evidence is reasonably capable of supporting the inferences necessary for making a positive determination.

The non-initiation of a section 20 inquiry was addressed at both the initiation and preliminary determination of the investigations, and was discussed in respective *Statements of Reasons* for those decisions. The CBSA carefully analyzed information on the record, including the information submitted by responding parties, to assess whether there was merit to initiating an inquiry. This included supplemental questions to parties regarding how pricing is established in the domestic market and assessed the documented evidence of selling prices and costs of pea protein in China.

The evidence did not support the initiation of a section 20 inquiry, as even in the circumstance the CBSA had been able to verify all of it, it was incapable of reasonably supporting a positive determination of section 20.

²⁷ Exhibit 285 (NC) – Reply Submission on behalf of Shuangta Group and Jianyuan Group, Part A.

Cost Allocation Methodology

Case Briefs

Counsel for the complainants argued that the costs presented in these proceedings by Shuangta Group, Jianyuan Group, Yantai Oriental and Yantai Yiyuan are deficient and do not “reasonably reflect the costs associated with the production and sale of the product under consideration.” The complainants referenced Article 2.2.1.1 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (WTO Agreement), which states that “costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation”, but only if those records “reasonably reflect the costs associated with the production and sale” of the goods.²⁸

Counsel for the complainants argued that the most reasonable methodology for allocating costs between pea protein and other co-products is “a revenue-based cost allocation.”²⁹ They assert that the Chinese exporters used cost allocation methodologies that do not reasonably reflect the full costs of production of pea protein. The complainants indicate that the CITT and the CBSA previously accepted a revenue-based cost allocation in Wheat Gluten.

Counsel for Shuangta Group and Jianyuan Group submitted that the complainants’ counsel’s insistence that a revenue-based allocation is the only reasonable method for pea protein costing is not supportable. Counsel summarized their position that:

“Shuangta’s costs and allocations were reported to the CBSA as they are recorded in Shuangta’s accounting records, which are kept in accordance with GAAP. Moreover, they “reasonably reflect the costs associated with the production and sale of the product under consideration” as stipulated in the CBSA’s SIMA Handbook.”

Counsel for Shuangta and Jianyuan provided extensive examples of the information submitted to the CBSA to explain the way the company’s costing system tracks costs and allocates amongst the various co-products.³⁰

Reply Submissions

Counsel for the complainants submitted that Shuangta’s cost allocation methodology for pea protein is not “the most reasonable...and the CBSA must use a revenue-based cost allocation to allocate Shuangta’s costs in the final determination.” Counsel referred to WTO rulings that support the use of a revenue-based cost allocation in this case. They argued that it is not enough to simply verify the producers’ chosen costing methodology. Counsel further submitted that when there “‘is compelling evidence available to the investigating authority that more than one allocation methodology potentially may be appropriate to ensure that there is a proper allocation of costs,’ the investigating authority must ‘reflect on’ and ‘weigh the merits of evidence that

²⁸ Exhibit 281 (NC) – Case brief on behalf of the complainants, paragraphs 59-62

²⁹ Exhibit 281 (NC) – Case brief on behalf of the complainants, paragraph 67.

³⁰ Exhibit 282 (PRO) – Case brief on behalf of Shuangta Group and Jianyuan Group, paragraphs 98-105.

relates to such alternative allocation methodologies, in order to satisfy the requirement to ‘consider all available evidence.’”³¹

CBSA’s Response

As pointed out by counsel for the complainants, Article 2.2.1.1 of the WTO agreement indicates that “costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration” As such, there were two issues that the CBSA needed to analyze:

- i) Whether the costs were in accordance with the generally accepted accounting principles of the exporting country, and
- ii) Whether the costs reasonably reflect the costs associated with the production and sale of the product under consideration.

The Chinese exporters’ financial statements were audited, and the exporters relied on their standard accounting practices for purposes of financial reporting in allocating costs of production. That is, the cost allocations can be tied to their audited financial statements. As such, the cost allocation methodologies used by Chinese exporters conform with the Chinese General Accepted Accounting Principles (GAAP).

In evaluating whether costs reasonably reflect the costs associated with the production of the goods, the CBSA considered the nature of the products, the production processes, and the market conditions for the products. The CBSA could not conclude that physical volume based cost allocation methodologies do not reasonably reflect the costs of production.

The CBSA found the costing methodology employed by cooperative exporters to be reasonable, consistent with their financial reporting practices and in conformity with Chinese GAAP.

³¹ Exhibit 287 (NC) – Reply Submission on behalf of the complainants, paragraph 38.

Ambiguity of the Product Definition

Case Briefs

Counsel for Shuangta and Jianyuan argued that the exclusions specified in respect of the CBSA's product definition do not address "pea protein incorporated as an ingredient in dry powered protein or energy drink mixes. These and similar products are indeed "further processed" in that they include pea protein in powdered form as an ingredient to which additives, stabilizers, nutrients, flavours, preservatives or other agents are blended and processed into a further finished consumer ready product, in dry powder form, which must not be considered as included in the product definition since such products no longer constitute unadulterated pea protein powder "in a raw state."³²

CBSA's Response

Assessments of the subjectivity of goods is based upon the specific good at the time of importation into Canada. As such, dry powdered protein meeting the product definition parameters would be considered subject goods. The difficulty in assessing whether it meets those parameters is a separate issue but does not render the issue conclusive that all such dry pea protein used for drink mixes would satisfy the exclusion of "further processed such that it does not retain its original physical and chemical characteristics and other properties."

A determination of whether the retention of "physical and chemical characteristics and other properties" has been satisfied would be made on a case-by-case examination of the actual facts, in the event of such an import.

The CBSA's Portrayal of Import Data is Prejudicial to the Completeness of Evidence of Dumping

Case Briefs

Counsel for Shuangta and Jianyuan argued that the CBSA's reporting of import statistics distorts the picture of how much subject good volume the cooperative exporters actually account for because of the manner in which the CBSA categorizes "all other exporters".

Counsel noted that this category, which accounted for 43% of subject goods at the preliminary determination, would necessarily include subject goods transshipped through the United States, by US exporters which ultimately sourced their pea protein from cooperative Chinese exporters. As such, the real volume attributable to cooperative exporters in China should be much higher.³³

³² Exhibit 283 (NC) – Case brief filed on behalf of Shuangta Group and Jianyuan Group, paragraph 18.

³³ Exhibit 283 (NC) – Case brief filed on behalf of Shuangta Group and Jianyuan Group.

CBSA's Response

The CBSA acknowledges the likelihood that certain subject goods captured under the category of “all other exporters” that were exported through the United States, originated with exporters that were cooperative in this investigation and shipped subject goods directly from China. However, this fact is immaterial to the CBSA’s final determination, as it does not impact the margin of dumping calculation for cooperative exporters. For exporters that did not participate in the CBSA’s investigation, those volumes are properly categorized as belonging to “all other exporters,” regardless of with whom they originated.

Furthermore, an attempt at a deeper distillation of the CBSA data would still render the picture incomplete, as the CBSA does not have sufficient data to trace the fulsome origin (i.e. producer in China) of those volumes, notwithstanding confidential information on the record cited by counsel which argued a certain amount could be attributed to cooperative exporters.³⁴

Since that issue raised by counsel involves matters of injury, rather than the calculation of margins of dumping, the CBSA must defer any consideration of how this may be addressed to the CITT.

SUBSIDY REPRESENTATIONS

Determination of Amount of Subsidy

Case Briefs

Counsel for the complainants argued that, in the preliminary determinations, exporter specific subsidy rates ranging from 0.8% to 2.2% determined by the CBSA were low when compared to those found by the U.S. Department of Commerce (USDOC), who investigated identical programs in their subsidy investigation on pea protein from China. The subsidy rates determined by the USDOC ranged between 15.15% and 16.2%.³⁵

Counsel for the complainants further indicates that the GOC has not responded to the CBSA subsidy RFI. Counsel therefore argues that in order to prevent future GOC non-participation and not incentivize non-cooperation, the CBSA should determine amounts for subsidy using adverse facts.³⁶

Reply Submissions

Counsel for Shuangta Food and Jianyuan Bioengineering argued that the CBSA has no grounds to rely on the investigation conducted by the USDOC. Counsel argued that many of the programs that were countervailed at preliminary determination were either not specific or did not confer benefit to their companies.³⁷

³⁴ Exhibit 282 (PRO) – Case brief filed on behalf of Shuangta Group and Jianyuan Group, paragraph 32.

³⁵ Exhibit 283 (NC) – Case brief filed on behalf of the complainants, paragraph 123.

³⁶ Exhibit 283 (NC) – Case brief filed on behalf of the complainants, paragraph 130-133.

³⁷ Exhibit 283 (NC) – Reply submission filed on behalf of Shuangta Group and Jianyuan Group, Part C.

CBSA's Response

While acknowledging the concerns raised by the complainants, the CBSA emphasizes that its determinations are based on the specific legislative framework, policies, and procedures established under Canadian law. The fact that the CBSA's determination appears to differ from that of the USDOC is not, therefore, indicative of any error on the part the CBSA.

The CBSA is committed to upholding the integrity of its processes and ensuring that all determinations are made based on reliable, complete, and relevant information in accordance with SIMA.

Specificity of Subsidy Programs

Case Argument

Counsel for Shuangta and Jianyuan argued that the CBSA cannot presume specificity of subsidy programs "in the absence of specific evidence that applies the test for specificity as defined under international trade law and SIMA."

CBSA Response

During the investigations, the Government of China (GOC) did not respond to the CBSA's requests for information. Consequently, the CBSA relied on the best available information to make its determinations.

Due to the lack of response from the GOC, there is insufficient information on the administrative record to determine that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1) of SIMA. Therefore, guided by the principles of subsection 2(7.2) or subsection 2(7.3) of SIMA and the CBSA determined that the subsidy derived from these programs to be specific.

VAT Refund as a Countervailable Subsidy

Case Briefs

Counsel for Shuangta and Jianyuan submitted that the VAT refund for plant protein does not constitute a countervailable subsidy.

"The VAT Refund is simply a return of taxes not owed and therefore is not a "financial contribution" and provides neither a benefit to the recipient (who is simply made whole) nor is it specific as a function of the specificity requirement for the countervailability of an amount."³⁸

³⁸ Exhibit 283 (NC) – Case brief filed on behalf of Shuangta Group and Jianyuan Group, paragraph 121.

Counsel contended that there is no benefit in this instance because “a tax refund cannot be considered as conferring a benefit since it represents a refund of monies paid by the recipient on a tax exempted activity.”³⁹

Reply Submissions

Counsel for the complainants stated that the VAT refund “provides a financial contribution, confers a benefit, and is specific based on the record evidence of this investigation,” and as such, the VAT refund program is a countervailable subsidy under SIMA.

Citing information on the record, Counsel for the complainants further stated that:

“Shuangta and Jianyuan’s treatment of the refund under this program in their submissions and their internal financial records of these refund is sufficient evidence to establish that a benefit has been conferred under the VAT Refund program.”⁴⁰

CBSA Response

According to information on the record, the CBSA determined that the refund conferred a benefit because the program did not merely expedite the refund of net VAT receivables. Rather, the program immediately refunded 70% of the VAT paid, regardless the current VAT net balance. The CBSA determined that this would allow recipients to receive additional financial benefits, when compared to the normal VAT offset policy.

The CBSA determined it to be specific because the fulsome information on the record demonstrated that the program targets a narrow range of industries and is thus not generally available. As such, notwithstanding the non-participation of the GOC, the information on the VAT rebate program supports its specificity.

³⁹ Exhibit 283 (NC) – Case brief filed on behalf of Shuangta Group and Jianyuan Group, paragraph 131.

⁴⁰ Exhibit 287 (NC) – Reply Submissions from Counsel for the complainants, paragraph 60.

APPENDIX 3 – DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES

This Appendix consists of descriptions of the subsidy programs which the responding parties benefited from during the course of the Period of Investigation (POI), and other potentially actionable subsidy programs identified by the Canada Border Services Agency (CBSA) that were not used by the responding exporters/producers during the POI.

The CBSA has used the best information available to describe the potentially actionable subsidy programs that were not used by the responding exporters in the current investigation. This includes using information provided by the exporters and related suppliers, information included in the complaint, as well as information obtained from the CBSA's research.

Subsidy Programs Used by the Responding Exporters

Category 1: Preferential Loans and Loan Guarantees

Program 1: Loans from State-Owned Banks at Preferential Rates

This program relates to government loans at a preferential rate of interest. The benefit provided in this case is a lower rate of interest than would otherwise be available if the enterprises had to obtain a non-guaranteed commercial loan (i.e. the benchmark non-guaranteed commercial loan). Financial institutions may be considered to constitute “government” if they possess, exercise or are vested with government authority, which may be indicated by the following factors:

1. Where a statute or other legal instrument expressly vests government authority in the entity concerned;
2. Evidence that an entity is, in fact, exercising governmental functions; and
3. Evidence that a government exercises meaningful control over an entity.

For the purposes of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, conferring a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA, in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 3: Preferential Export Financing and Export Credit Guarantee/Insurance

The China Export & Credit Insurance Corporation (Sinasure) is a state funded policy oriented insurance company that was established to promote China's foreign trade and economic cooperation. The China Exim Bank and Sinasure each provide export credit guarantees which, according to information from the Bank, have played a key role in supporting Chinese companies to go global” and promoted “the export of new and high tech products.

For the purposes of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA. That is, amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA, in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 4: Interest Reduction and Profit Concession of Small and Micro Loans

Under this program, the Yantai Finance Bureau provides loan subsidies for interest reduction purposes to leading enterprises of agricultural industrialization within the Shandong Province.

For the purposes of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA. That is, amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 5: Interest Subsidy for Leading Enterprises

Under this program, the Yantai Agriculture and Rural Bureau for Financial Allocation provides loan subsidies for leading enterprises of agricultural industrialization in Shandong province.

For the purposes of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA. That is, amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Category 2: Grants and Grant Equivalent

Program 7: Export Assistance Grants & Other Export Development Performance Grants

Companies in China receive such grants provided by the GOC to assist in the development of export markets or to recognize export performance. For example, awards may be provided to assist in marketing and export brand development and overseas investment. Other export awards may also be provided to enterprises that export high-tech products or achieve certain export volume. Financial subsidies may be provided for participations in trade exhibitions. Grants are

provided for trade dispute expenses, the exportation of goods and increasing export value, and the International Service Outsourcing Industry.

The program was established in the Circular of the Trial Measures of the Administration of International Market Development Funds for Small and Medium Sized Enterprises Cai Qi No. 467, 2000, which came into force on October 24, 2000. The program was established to support the development of small and medium sized enterprises, to encourage them to join in the competition of international markets, to reduce the business risks of the enterprises and to promote the development of the national economy. The granting authority is the Foreign Trade and Economic Department and the program is administered at the local levels.

For the purposes of the final determination, this may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a direct benefit to the recipient equal to the amount of the grant.

For the purposes of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 8: Design, Research and Development Grants

This program constitutes financial aid for enterprises determined to have undertaken expenses in design or research and development.

Grants may be provided for the commercialization of technological innovation and research findings and to promote scientific and technological results.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the grant.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 10: Grants for Encouraging Protein Enterprises to Increase R&D Investment and Improve Scientific and Technological Innovation Capabilities.

This program relates to grants and incentives provided by the Municipal People's Government of Zhaoyuan for pea protein producers to invest in research and development and their production technology.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the grant.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 11: Pollution Control Award

This program relates to grants and incentives introduced by Zhaoyuan Finance Bureau that are given to companies making investments in pollution control equipment.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the grant.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 12: Subsidies Related to Company/Enterprise Development and Innovation

This program constitutes grants and incentives related to company and enterprise development and innovation.

For example, the awards may be provided to encourage and support enterprises to develop new technologies. Grants may also be provided to encourage enterprises to upgrade business technologies and processes.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the grant.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 13: Subsidies Related to Science and Technology

This program constitutes grants and incentives related to science and technology.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the grant.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 14: Subsidies Related to Employment, Training and Recruitment

This program constitutes grants and incentives designed to support job stabilization by assisting companies with unemployment insurance payments as well as supporting the recruitment, training and subsequent job security of their staff. Grants may also be provided to improve labor relations.

Subsidies may also be granted to companies that recruit recent graduates, youths and impoverished laborers. Subsidies may also be provided to agencies that monitor and analyze employment conditions/situations in an area.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the grant.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 15: Subsidies Related to Building

This program constitutes grants provided by the municipal Zhaoyuan Jinling Town people's government for building maintenance during the period of investigation.

For the purposes of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a direct benefit to the recipient equal to the amount of the grant.

For the purposes of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 16: Insurance Grants

This program constitutes grants provided by the Zhaoyuan Municipal Commerce Bureau relating to the re-imbusement of insurance premiums paid.

For the purposes of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a direct benefit to the recipient equal to the amount of the grant.

For the purposes of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Category 3: Preferential Tax Programs

Program 17: Corporate Income Tax Reduction for New High Tech Enterprises (“NHTE”)

Under Article 28.2 of the Enterprise Income Tax Law in China, companies designated as high- or new-technology enterprises (HNTEs) are entitled to a reduced income tax rate of 10 percent instead of the normal national corporate tax rate of 25 percent. The granting authority responsible for this program is alleged to be the State Administration of Taxation and the program is administered by local tax authorities. In its notification of subsidy programs to the WTO, the GOC listed this program.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 18: Corporate income tax reduction for micro and small enterprises

This program provides qualifying small businesses with a reduced tax rate of 10 percent instead of the normal national corporate tax rate of 25 percent.

Qualifying businesses are businesses that are not in restricted or prohibited industries, have a taxable income that does not exceed three million Chinese Yuan, have less than 300 employees and total assets that do not exceed 50 million Chinese Yuan.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 19: Preferential Tax Policies related to Research and Investment

According to Article 30 of the *Enterprise Income Tax Law* and Article 95 of the implementing *Regulations of the Enterprise Income Tax Law*, the expenses born by the enterprise incurred in the work of researching and development of new technologies, products, or techniques can be accounted for at the actual accrued amount of total expenses, thereby reducing the enterprise's actual income tax payable.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Category 4: Relief from Duties and Taxes

Program 21: Import Tariff Exemptions on Imported Equipment in Encouraged Industries

This program is to encourage foreign investment and to introduce advanced technology and equipment from abroad. The GOC provides a subsidy to Foreign Invested Enterprises (FIEs) and certain domestic enterprises engaged in “encouraged” industries in the form of import tariffs and VAT exemptions on imported equipment, including components and parts.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 23: Municipal/Local Income or Property Tax Reductions

This program constitutes reductions and exemptions in tax provided from Municipal/Local Income tax units.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Program 24: VAT Refund for Comprehensive Resource Utilization Products and Services

This program provides a refund of value-added tax equal to 70% of the value-added tax paid by the qualifying companies that meet specific resource utilization standards.

The eligibility criteria is that in accordance with the Notice of the Ministry of Finance and the State Administration of Taxation on Issuing the Catalogue of Value-Added Tax Preferences for Products and Labor Services Involving the Comprehensive Utilization of Resources (CS {2015} No. 78), Shuangta is in line with the comprehensive utilization of resources (i.e., category “II. Waste residue, waste water (liquid) and waste gas” in the Notice), and thus Shuangta can enjoy the preferential policy of 70% immediate refund upon payment of VAT.⁴¹

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the refund.

For the purpose of the final determination, the program may be considered specific pursuant to paragraph 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.

Other Potentially Actionable Subsidy Programs Identified by the CBSA that were Not Used by the Responding Exporters

Based on the information available, for purposes of the final determination, the CBSA has found that these programs were not used by the participating exporters in China. Based on the information available these programs may constitute financial contributions provided by the GOC, confer benefit to companies and appear to be specific. Therefore, For purposes of the final determination, these programs appear to be countervailable.

Category 1: Preferential Loans and Loan Guarantees

Program 2: Zhaoyuan Municipal Policy Loans

The city of Zhaoyuan is the largest HPC pea protein production base accounting for 80% of China’s production. According to a reply to a proposal ‘Recommendations for Strengthening the Protein Health Industry’, the municipal government of Zhaoyuan has set up the Zhaoyuan City “National Foreign Trade Transformation and Upgrading Base certification, in order to lay out the foundation for the development of the high-end protein industry, including pea protein. The Municipal Government of Zhaoyuan provides support with loan guarantees to continue to upgrade the link between the upstream and downstream portions of the industrial chain.

Given the focus of this program on the protein-health sector and in particular HPC pea protein, it is likely that producers in Zhaoyuan have received benefits under these programs. The benefit arising is equal to the difference between what the recipient pays on the loan and the amount that it otherwise would pay on a comparable commercial loan absent a guarantee.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption.

⁴¹ Exhibit 83 (NC) – Subsidy RFI Response from Shuangta and Junbang, Question SQ10.

Due to the lack of a response by the GOC, there is not sufficient information on the record to determine whether this program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available and was thus found to be specific.

Category 2: Grants and Grant Equivalent

Program 6: Foreign Trade Development Fund Grants

Under this program the GOC provides funding support for projects undertaken by exporting enterprises to: improve the competitiveness of their exported products; to develop an export processing base; to support the registration of trademarks in foreign countries; to support the training of foreign trade professional; and, to explore international markets.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the grant.

Due to the lack of a response by the GOC, there is not sufficient information on the record to determine whether this program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available and thus found to be specific.

Program 9: Energy Conservation and Emission Reduction Grant

These are grants provided by the GOC for the purposes of improving environmental performance, such as, monitoring and cleaning pollutants, improving energy efficiency, upgrading facilities to be more environmentally efficient, and treatment of waste water.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the grant.

Due to the lack of a response by the GOC, there is not sufficient information on the record to determine whether this program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available and thus found to be specific.

Category 4: Relief from Duties and Taxes

Program 20: Offsets to Taxable Income Related to Purchases of Domestic Machinery

Under this program, a tax credit up to 40% of the purchase price of domestic equipment may apply to the incremental increase in tax liability from the previous year. The legal bases of this program are the Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects of July 1, 1999 and the Notice of the State Administration of Taxation on Stopping the Implementation of the Enterprise Income Tax Deduction and Exemption Policy of the Investments of an Enterprise in Purchasing Home-made Equipment, No. 52 [2008] of the State Administration of Taxation, effective January 1, 2008.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA. That is, amounts that would otherwise be owing and due to the government are reduced and/or exempted that confer a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a response by the GOC, there is not sufficient information on the record to determine whether this program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available and thus found to be specific.

Program 22: VAT Refund for Plant Protein

This program relates to the refund of VAT amounts paid by companies in certain industries, which includes companies involved in the production of pea protein.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government, and it confers a benefit to the recipient equal to the amount of the refund.

Due to the lack of a response by the GOC, there is not sufficient information on the record to determine whether this program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available and thus found to be specific.

Category 5: Goods/Services Provided by the Government at Less Than Fair Market Value

Program 25: Acquisition of Government Inputs/Utilities at Less than Fair Market Value

This program relates to the government provision of goods or services at prices lower than the fair market value of the goods or services in the territory of the government providing the subsidy. Specifically, the CBSA investigated the acquisition of raw material inputs or utilities (i.e. Electricity, Water) from SOEs or state-controlled enterprises used in the production of subject goods.

State-owned or state-controlled suppliers may be considered to constitute “government” if they possess, exercise or are vested with government authority, which may be indicated by the following factors:

- where a statute or other legal instrument expressly vests government authority in the entity concerned;
- evidence that an entity is, in fact, exercising governmental functions; and
- evidence that a government exercises meaningful control over an entity.

The CBSA requested detailed information from the exporters in order to determine whether the exporter acquired its raw material inputs or utilities from “government”. The subsidy RFI contained a series of questions designated for suppliers, in which information regarding the ownership status of the supplier and other relevant information in order to assess whether the supplier is considered “government” is requested.

For the purposes of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA. That is, the government provides goods or services, other than general infrastructure, or purchases goods, at less than fair market value.

Due to the lack of a response by the GOC, there is insufficient information on the record to determine whether this program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available and thus found to be specific.

Program 26: Provision of Land for Less than Adequate Remuneration by Government

All land in China belongs to the government (i.e., either national or local governments, or through a “collective” at the township or village level), and government land agencies across China control the allocation of land through the granting of land-use rights.

For the purpose of the final determination, this program may be considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA. That is, amounts that would otherwise be owing and due to the government are reduced and/or exempted that confer a benefit to the recipient equal to the amount of the reduction/exemption.

Due to the lack of a response by the GOC, there is insufficient information on the record to determine whether this program is specific pursuant to subsection 2(7.2) or subsection 2(7.3) of SIMA; nor is there sufficient information to indicate that the subsidy is not specific pursuant to the criteria set out in subsection 2(7.1). On the basis of the available information, this program does not appear to be generally available and thus found to be specific.