



OTTAWA, May 7, 2024

HPC 2024 IN

STATEMENT OF REASONS

Concerning the initiation of investigations into the dumping and subsidizing of

PEA PROTEIN ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

DECISION

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the Canada Border Services Agency initiated investigations on April 22, 2024, respecting the alleged injurious dumping and subsidizing of pea protein originating in or exported from China.

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

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SUMMARY

[1] On March 1, 2024, the Canada Border Services Agency (CBSA) received a written complaint from Nutri-Pea GP Inc. (Portage La Prairie, MB) and Roquette Canada Limited (Portage La Prairie, MB) (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 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 certain pea protein from China.

INTERESTED PARTIES

Complainants

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

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

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

Other Producers

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

Trade Union

[7] The complainants confirmed that their employees are not represented by a trade union.² The CBSA did its own supplementary research, but could not identify any trade unions that represent the employees of the complainants. As the complainants are the only known producers of HPC pea protein in Canada, this means that there are no known trade unions.

Exporters

[8] The CBSA identified 16 potential exporters of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential exporters were asked to respond to the CBSA's Dumping and Subsidy Requests for Information (RFI).

Importers

[9] The CBSA identified 22 potential importers of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential importers were asked to respond to the CBSA's Importer RFI.

Government

[10] Upon initiation of the investigations, the GOC was sent the CBSA's Government Subsidy RFI.

[11] 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, 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.

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

² Exhibit 2 (NC) – HPC Complaint - Addendum

PRODUCT INFORMATION

DEFINITION³

[12] 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.

ADDITIONAL PRODUCT INFORMATION⁴

[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.

³ Exhibit 2 (NC) - HPC Complaint – para 6

⁴ Exhibit 2 (NC) – HPC Complaint – para 7-14

[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 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 PROCESS⁵

[20] Peas are a rich source of protein, but also consist largely of starch and fiber. HPC 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 HPC 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. HPC – pea protein is dried through spray dryers which essentially involves the wet protein mixture being sprayed in a mist into hot air dryers; and,

⁵ Exhibit 2 (NC) – HPC Complaint – para 17-23

- vi. Packaging – HPC pea protein is finally packaged at filling stations.

CLASSIFICATION OF IMPORTS

[21] The allegedly dumped and subsidized goods are normally imported under the following tariff classification numbers:

3504.00.90.00
2106.10.00.00

[22] 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.

LIKE GOODS AND CLASS OF GOODS⁶

[23] Subsection 2(1) of SIMA defines “like goods” in relation to any other goods as “... (a) goods that are identical in all respects to the other goods, or (b) in the absence of any such 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.

[24] With respect to the definition of like goods, the complainants stated that HPC 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.

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

[26] 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.

THE CANADIAN INDUSTRY

DOMESTIC PRODUCERS

[27] Besides the complainants, there are no other known producers of pea protein in Canada.

⁶ Exhibit 2 (NC) – HPC Complaint – para 41-48

ESTIMATES OF DOMESTIC PRODUCTION

[28] The complaint included the annual production of like goods for the complainants from January 1, 2020 through December 31, 2023.⁷ As the complainants are the only producers in Canada, the complainants account for 100% of the production of pea protein in Canada.

STANDING

[29] Pursuant to subsection 31(2) of SIMA, the following conditions must be met in order for an investigation to be initiated:

- (a) the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint, and
- (b) the production of the domestic producers who support the complaint represents 25% or more of the total production of like goods by the domestic industry.

[30] Based on an analysis of information provided in the complaint, as well as the information gathered by the CBSA, the CBSA is satisfied that the standing requirements of subsection 31(2) of SIMA have been met.

THE CANADIAN MARKET

[31] The complainants, using data from Statistics Canada, provided estimates of pea protein importations from all countries from January 1, 2019 to December 31, 2023.⁸

[32] The CBSA conducted its own independent review of imports of pea protein from the CBSA's Facility Information Retrieval Management (FIRM) database using the tariff classification numbers under which the subject goods are imported from China and all other countries. In addition, the CBSA reviewed its Accelerated Commercial Release Operations Support System (ACROSS) data to correct any errors and remove non-subject imports.

[33] Detailed information regarding the sales from domestic production by the complainants and the volume of imports of subject goods cannot be divulged for confidentiality reasons. The CBSA, however, has prepared the following tables to show the estimated import share of subject goods in Canada as well as the Canadian market as a whole from January 1, 2021 to December 31, 2023.

⁷ Exhibit 1 (PRO) – HPC Complaint – Exhibit 8-4: Market Table

⁸ Exhibit 2 (NC) – HPC Complaint – Exhibit 8-9: Statistics Canada, Import Data for 3504.00.90.00

**Table 1:
CBSA'S ESTIMATE OF PEA PROTEIN IMPORTS (IN CAD)**

Country	2021		2022		2023	
	CAD	%	CAD	%	CAD	%
China	\$14,752,882	33.9%	\$18,773,871	35.8%	\$16,963,514	39.4%
United States	\$26,741,642	61.5%	\$33,598,342	64.1%	\$26,012,560	60.5%
Other	\$1,980,792	4.6%	\$18,382	0.0%	\$53,419	0.1%
Total	\$43,475,316	100%	\$52,390,595	100%	\$43,029,492	100%
Some percent totals may not add to 100% due to rounding						

**Table 2:
CBSA'S ESTIMATE OF PEA PROTEIN IMPORTS
(IN MT)**

Country	2021		2022		2023	
	MT	%	MT	%	MT	%
China	3,392	51.6%	4,755	60.1%	3,480	58.2%
United States	2,922	44.5%	3,154	39.9%	2,495	41.7%
Other	257	3.9%	3	0.0%	4	0.1%
Total	6,571	100%	7,912	100%	5,979	100%
Some percent totals may not add to 100% due to rounding						

[34] The CBSA will continue to gather and analyze information on the volume of imports during the Period of Investigation (POI) of January 1, 2023 to December 31, 2023 as part of the preliminary phase of the dumping and subsidy investigations and will refine these estimates.

EVIDENCE OF DUMPING

[35] The complainants alleged that the subject goods from China have been injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds the export price to importers in Canada.

[36] Normal values are generally based on the domestic selling price of like goods in the country of export where competitive market conditions exist or as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[37] The complainants made the allegation that the HPC pea protein sector in China may not be operating under competitive market conditions and as such, the domestic market pricing for pea protein may not be relied upon for the purpose determining normal values.

Accordingly, the complainants submitted that normal values should be determined under section 20 of SIMA.

[38] The export price of goods sold to importers in Canada is generally the lesser of the exporter's selling price and the importer's purchase price, less all costs, charges and expenses resulting from the exportation of the goods.

[39] Estimates of normal values and export prices by both the complainants and the CBSA are discussed below.

NORMAL VALUE

Complainants' Estimates of Normal Values

Section 15

[40] The complainants stated that home market pricing in China was unavailable to estimate a normal value pursuant to section 15 of SIMA, therefore none was provided.⁹

Section 19(b)

[41] The complainants estimated normal values using a constructed cost approach based on the methodology in paragraph 19(b) of SIMA. The calculation was based on the aggregate of estimates of the cost of production of the subject goods, a reasonable amount for administrative selling and all other costs and a reasonable amount for profits.

[42] Normal values for a single product were estimated due to similar product characteristics among producers.

Complainants' Estimate of Cost of Production

[43] As information regarding Chinese producers' costs of production of subject goods was unavailable to the complainants, the complainants estimated the cost of production of the subject goods from China using the following costing methodology:

- Raw material cost: The main raw material used in the production of HPC pea protein is yellow or green field peas. Import data for peas imported into China is obtained, and the average import value from all sources is considered a reasonable proxy for the cost of peas sourced by Chinese pea protein producers. The complainants then derived a quarterly price for pea imports based on the volume and value data of imports from all sources. Finally, the cost of peas used in the production of HPC pea protein is estimated using a yield factor for how many tonnes of peas produce one tonne of pea protein.¹⁰

⁹ Exhibit 2 (NC) - HPC Complaint – para 52

¹⁰ Exhibit 2 (NC) - HPC Complaint – para 58

- Labour cost: The complainants' weighted average cost per tonne of labour from their costs of pea protein production was used and adjusted in accordance with data reported by International Labour Organization to reflect the difference in labour costs between Canada and China.¹¹
- Overhead cost: The complainants' overhead costs were used as a reasonable proxy to estimate the overhead costs of Chinese HPC producers, with an adjustment made for indirect labour costs in overhead.¹²
- Selling, general, and administrative expenses (SG&A) and Financial Expenses: Publically available financial reports of a Chinese HPC pea protein producer, Shuangfa Food, were used in calculating the SG&A and financial expense ratio; the ratio calculated was 9.8%, expressed as a percentage of Cost of Goods Sold (COGS).¹³
- Reasonable Amount for Profits: Publically available financial reports of a Chinese HPC pea protein producer, Shuangfa Food, were used in estimating a reasonable amount for profits. The Complainants have used the last four-quarter period when Shuangta Food reported a profit, which was in 2021. The amount used was 16.4%, expressed as a percentage of the total cost of production.

Section 20

[44] The complainants did not provided normal value calculations for subject goods based on a surrogate methodology.

CBSA's Estimate of Normal Value

[45] As domestic prices in China are unavailable, the CBSA was unable to estimate normal values following the methodology described in section 15 of SIMA.

[46] With respect to the complainants' allegations that the conditions of section 20 prevail in the HPC pea protein sector in China, based on its own analysis, the CBSA found that there is insufficient evidence to support initiating an inquiry into the allegations that the measures taken by the GOC substantially influence prices in the HPC pea protein sector in China and that the prices are substantially different than they would be in a competitive market. Specifically, there is insufficient evidence associating the GOC measures with significant influence over HPC pea protein prices in China, a lack of evidence supporting that GOC influences Chinese HPC pea protein producers' pricing decisions, as well as a lack of evidence and pricing data confirming Chinese domestic prices of HPC pea protein differ from global benchmarks, and that the differences are a result of GOC involvement.

[47] The CBSA estimated a single normal value using a constructed cost approach based on the methodology in paragraph 19(b) of SIMA, calculated based on the aggregate of estimates

¹¹ Exhibit 1 (PRO) - HPC Complaint – para 59

¹² Exhibit 1 (PRO) - HPC Complaint – para 60

¹³ Exhibit 2 (NC) - HPC Complaint – para 61

of the cost of production of the subject goods, a reasonable amount for administrative selling and other costs and a reasonable amount for profits.

[48] The CBSA reviewed the complainants' methodology for how they estimated the normal values. The CBSA found the approach to be reasonable and accepted the complainants' methodology for estimating all cost component except for the cost of raw materials. The raw material costs used by the complainants in estimating the normal values were not accepted, as they rely on the estimated costs of peas imported into China and assume that only pea protein is derived from peas used in the production process.¹⁴ This overlooks the fact that peas also produce starch and fiber as co-products.¹⁵ As a result, the raw material costs used in the normal value estimates were overstated. Given the absence of more reliable data, as an alternative, the CBSA substituted raw material costs used by the complainants with the complainants' own raw material costs incurred in their production of pea protein for the purposes of estimating a normal value.

EXPORT PRICE

Complainants' Estimates of Export Price

[49] The export price of goods sold to an importer in Canada is generally determined in accordance with section 24 of SIMA as being an amount equal to the lesser of the exporter's sale price for the goods and the price at which the importer has purchased or agreed to purchase the goods adjusted by deducting all costs, charges, expenses, and duties and taxes resulting from the exportation of the goods.

[50] The complainants estimated export prices of subject goods based on data from Statistics Canada and made adjustments to isolate HPC pea protein from other products in the relevant HS codes.

CBSA's Estimates of Export Price

[51] In order to confirm export prices and determine the volume and value of imports of subject goods into Canada from the subject country, the CBSA relied on information available through FIRM and ACROSS. The CBSA reviewed customs data for goods imported within the tariff classification numbers in which HPC pea protein are imported under. The CBSA utilized the descriptions available in the databases as well as leveraged its knowledge and experience to make reasonable assumptions in estimating the export prices of the subject goods.

ESTIMATED MARGINS OF DUMPING

[52] For the purposes of the initiation of the investigation the CBSA has estimated a single normal value based on the methodology of section 19 of SIMA.

¹⁴ Exhibit 1 (PRO) – Confidential Exhibit 6-5, 6-2

¹⁵ Exhibit 2 (NC) – para 19

[53] Based on the normal value estimated, the CBSA estimated the margin of dumping for subject goods from China by comparing the estimated normal value with the estimated export prices for 2023. The CBSA estimates that subject goods from China were dumped by a margin of dumping of 33.2% in 2023, expressed as a percentage of the export price for subject goods from China.

SECTION 20 ALLEGATIONS

[54] Section 20 is a provision of SIMA that may be applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country. In the case of a prescribed country under paragraph 20(1)(a) of SIMA, it is applied where, in the opinion of the CBSA, the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.¹⁶

[55] The provisions of section 20 are applied on a sector basis rather than on the country as a whole. The sector reviewed will normally only include the industry producing and exporting the goods under investigation.

[56] The CBSA initiates dumping investigations on the presumption that section 20 is not applicable to the sector under investigation unless there is information that suggests otherwise.

[57] A section 20 inquiry refers to the process whereby the CBSA collects information from various sources in order to form an opinion as to whether the conditions described under subsection 20(1) of SIMA exist with respect to the sector under investigation. Before initiating an inquiry under section 20, the CBSA must first analyze the information submitted in the complaint and the evidence it has gathered independently to determine if it is sufficient to warrant the initiation of an inquiry.

[58] The complainants alleged that the conditions described in section 20 of SIMA prevail in regards to the HPC pea protein sector in China. That is, the complainants alleged that this particular industry sector in China does not operate under competitive market conditions and consequently, HPC pea protein prices established in the domestic markets in China would not be reliable for purposes of determining normal values.¹⁷

[59] The complaint included a variety of evidence to support the claim that the GOC substantially determines domestic prices of HPC pea protein in the country and that the prices are substantially different than they would be in a competitive market. Specifically, the complainants provided information concerning:

- GOC policies and subsidies that influence the production and pricing of HPC pea protein;
- GOC policies and subsidies that influence the pea farming sector;
- GOC's importation of low-priced Russian peas;

¹⁶ China is a prescribed country under Section 17.1 of the *Special Import Measures Regulations*.

¹⁷ Exhibit 2 (NC) – HPC Complaint – para 65, 69

- GOC’s ownership and control of HPC pea protein producers; and
- HPC pea protein pricing comparison between China and world benchmarks.

[60] Based on the information submitted in the complaint and the research conducted by the CBSA, the CBSA found that there is insufficient evidence to support initiating an inquiry into the allegations that the measures taken by the GOC substantially influence prices in the HPC pea protein sector in China and that the prices are substantially different than they would be in a competitive market. Specifically, there is insufficient evidence associating the GOC measures with significant influence over HPC pea protein prices in China, a lack of evidence supporting that GOC influences Chinese HPC pea protein producers’ pricing decisions, as well as a lack of evidence and pricing data confirming Chinese domestic prices of HPC pea protein differ from global benchmarks, and that the differences are a result of GOC involvement.

EVIDENCE OF SUBSIDIZING

[61] In accordance with section 2 of SIMA, a subsidy exists where 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.

[62] Pursuant to subsection 2(1.6) of SIMA, a financial contribution exists 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) above 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.

[63] A state-owned enterprise (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 4) some combination thereof.

[64] If a subsidy is found to exist, it may be subject to countervailing measures if it is specific. A subsidy is considered to be specific when it is limited, in law or in fact, to a particular enterprise or is a prohibited subsidy. An “enterprise” is defined under SIMA as also including a “group of enterprises, an industry and a group of industries”. Any subsidy which is contingent, in whole or in part, on export performance or on the use of goods that are produced or that originate in the country of export is considered to be a prohibited subsidy and is, therefore, specific according to subsection 2(7.2) of SIMA for the purposes of a subsidy investigation.

[65] In accordance with subsection 2(7.3) of SIMA, notwithstanding that a subsidy is not specific in law, a subsidy may also be considered specific in fact, having regard as to whether:

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

[66] For 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 countervailable.

SUBSIDY PROGRAMS IN CHINA

[67] In alleging that actionable subsidies were applicable to the subject goods imported from China, the complainants mainly relied on previous CBSA subsidy investigations and the US Department of Commerce’s (USDOC) investigations and past countervailing duty findings. The complainants also relied on industry reports, GOC documents, producer’s annual reports, WTO Notifications, and general news articles and publications.

[68] The complainants referred to the CBSA’s investigations in regards to the subsidizing of *Aluminum Extrusions, Carbon and Alloy Steel Line Pipe, Carbon Steel Welded Pipe, Cold-Rolled Steel, Copper Tube, Decorative and Other Non-structural Plywood, Fabricated Industrial Steel Components, Galvanized Steel Wire, Large Diameter Line Pipe, Mattresses, OCTG, Pup Joints, Photovoltaic Modules, Seamless Casing, Stainless Steel Sinks, Steel Grating, Sucker Rods, Unitized Wall Modules, Upholstered Domestic Seating, and Wind Towers*. Information was also referenced from the ongoing HPC pea protein countervailing duty investigation by the USDOC.

[69] The complainants listed a number of alleged subsidy programs or categories, with references to the provisions in SIMA, under which the subsidy is alleged to constitute a financial contribution and under which it would be considered to be specific and, therefore, actionable. The complainants has also claimed that each program is either used by or is available for use by producers and exporters of HPC pea protein in China. The documents that formed the basis for these allegations were appended to the complaint.

[70] The complainants also emphasized that a number of indirect subsidies exist that are available through the supply chain for whole peas, since whole peas account for the majority of the direct material costs to produce the subject goods.

[71] Given that the complainants' principal evidence with respect to the subsidy programs availability and/or use by HPC pea protein producers/exporters in China consists of references to other subsidy investigations by either the CBSA or the USDOC, the CBSA reviewed the relevant public decision documents for said investigations.

[72] As a result, based on the information available, the CBSA identified 16 potentially actionable subsidy programs that may have benefited Chinese producers/exporters of pea protein. Many of these are programs the CBSA has already countervailed in respect of previous subsidy investigations concerning goods from China. These programs have been grouped into the following five categories:

1. Preferential loans and loan guarantees
2. Grants and grant equivalents
3. Preferential tax programs
4. Relief from duties and taxes; and
5. Goods/services provided by the Government of China

[73] The CBSA's analysis revealed that the alleged subsidy programs constitute potential financial contributions by the GOC that may have conferred benefits to producers/exporters of pea protein. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA.

[74] The description of the identified programs to be investigated are found in the Appendix.

[75] If more information becomes available during the investigation process that indicates that some exporters/producers of subject goods may have benefited from any other programs during the POI that are not included in the Appendix, the CBSA will request complete information from the GOC and exporters/producers of subject goods to pursue the investigation of these programs.

CBSA'S CONCLUSION

[76] Sufficient evidence is available to support the allegations that pea protein originating in or exported from China has been subsidized. In investigating these programs, the CBSA has requested information from the GOC, exporters and producers to determine whether exporters/producers of subject goods received benefits under these programs and whether these programs, or any other programs, are actionable subsidies and, therefore, countervailable under SIMA.

ESTIMATED AMOUNT OF SUBSIDY

[77] The complainants were unable to estimate the amounts of subsidy on a program basis for the subject goods imported from China. Instead, the complainants estimated the amount of subsidy as being equal to the difference between the estimated total cost of production and weighted export price for Chinese pea protein from January 1, 2023 to December 31, 2023.¹⁸

[78] The CBSA estimated the amount of subsidy conferred to exporters of the subject goods from China by comparing the estimated full costs of the subject goods with their total estimated export prices, using the costing and export price methodologies explained in the “evidence of dumping” section.

[79] It is the CBSA’s understanding that subsidies have the effect of lowering the cost of production of goods which allows exporters to pass-through the subsidy benefits in reducing the selling price of those goods to Canada. Therefore, the CBSA is satisfied that the exporters’ ability to sell subject goods to Canada at prices substantially below their estimated costs supports the complainants’ allegations that the imported goods are subsidized.

[80] The CBSA’s analysis of the information indicates that subject goods imported into Canada during the period of January 1, 2023 to December 31, 2023 were subsidized and that the estimated amount of subsidy is 9.69% of the export price.

EVIDENCE OF INJURY

[81] The complainants alleges that the subject goods have been dumped and subsidized and that such dumping and subsidizing have caused and are threatening to cause material injury to the pea protein industry in Canada.

[82] SIMA refers to material injury caused to the domestic producers of like goods in Canada. The CBSA has concluded that pea protein produced by the domestic industry are like goods to the subject goods from China.

[83] In support of its allegations, the complainants provided evidence of:

- Increased subject imports, loss of market share, lost sales, and a lack of growth;
- Price Undercutting;
- Price Depression;
- Price Suppression;
- Reduced Profitability;
- Decline in the return on investments and the negative effects on inventories, cash flow, and the ability to raise capital;
- Decline in capacity utilization; and
- Negative effects on employment¹⁹

¹⁸ Exhibit 2 (NC) - HPC Complaint – para 223

¹⁹ Exhibit 2 (NC) - HPC Complaint – para 225-291

INCREASED VOLUME OF SUBJECT GOODS, LOST MARKET SHARE, LOST SALES, AND A LACK OF GROWTH

[84] The complainants alleged that the subject imports from China have increased significantly in recent years, directly contributing to its lost market share, lost sales, and a lack of growth. To support their allegations, the complainants provided their estimates of imports²⁰ from 2019 to 2023 and their production for the domestic market from 2020 to 2023²¹, examples of lost sales to key customers due to low-priced Chinese imports,²² and information on a lack of growth to the domestic industry.²³

[85] Given concerns with respect to the confidentiality of the information of the domestic producers, the CBSA is limited in its ability to discuss certain information contained in the complaint concerning the relative changes in the volume of subject imports when compared to domestic production and changes in market share. However, the complaint alleges that the volume of subject good imports has increased significantly in recent years and this increase has had an adverse impact on the market share of the domestic industry.

[86] On a relative basis, imports from China have increased relative to domestic production. From 2021 to 2023, the volume of subject imports increased in relation to domestic production for domestic consumption. Further, while the total apparent Canadian market for pea protein decreased from 2021 to 2023, imports from China increased.

[87] The CBSA's analysis of market share found that during the period of 2021-2023, imports of subject goods from the subject countries gained 7.2% market share, increasing from 2021 to 2023. At the same time the market share of domestic production decreased slightly.

[88] Based on above, the CBSA finds that the injury factors of increased volume of subject goods, lost market share, lost sales, and a lack of growth are sufficiently supported and linked to the allegedly dumped and subsidized goods.

PRICE UNDERCUTTING²⁴

[89] The complainants argued that the allegedly dumped and subsidized goods have captured market share by undercutting the prices of the Canadian producers. To support this allegation the complainants provided import pricing data from 2020 to 2023.²⁵ According to the complainants, the vast majority of the domestic industry's sales of HPC pea protein are of an industry standard 80-85 percent protein content, and to the complainants' knowledge, the same is true with respect to imported HPC pea protein from China.²⁶

²⁰ Exhibit 2 (NC) - HPC Complaint – Exhibit 8-9: Statistics Canada, Import Data for 3504.00.90.00

²¹ Exhibit 1 (PRO) - HPC Complaint - Exhibit 8-4: Market Table

²² Exhibit 1 (PRO) - HPC Complaint – para 285

²³ Exhibit 1 (PRO) - HPC Complaint – Exhibit 8-5

²⁴ Exhibit 2 (NC) – HPC Complaint– para 239-245

²⁵ Exhibit 1 (PRO) - HPC Complaint - Exhibit 8-4: Market Table

²⁶ Exhibit 2 (NC) - HPC Complaint – para 239

[90] The evidence of price undercutting provided by the complainants compares the average unit value of the subject goods as calculated based on Statistics Canada data, for the period of 2020 to 2023, against the complainants' price during the same period. The result of this comparison demonstrates significant and steady undercutting from the subject goods on both an individual and cumulated basis.

[91] In addition to the evidence discussed above, the complainants provided specific examples of sales offers for which prices from the subject countries were less than that of the complainants' price offers. This evidence supports the allegation that subject good prices for these offers have been undercutting the complainants' price offerings.²⁷

[92] The CBSA examined the complainants' allegations of price undercutting by comparing the complainants' weighted average price per MT for pea protein to the CBSA's estimated unit import prices for subject goods during the period of 2021 to 2023. The average prices calculated by the CBSA reveal a trend similar to that described by the complainants. From 2021 until 2023, the average price of subject goods has been significantly less than the complainants' average unit selling price.

[93] The CBSA also notes that, based on average per MT prices, imports from China also undercut imports from all other countries for 2021, 2022, and 2023.

[94] Based on the above and the CBSA's analysis of the information contained in the complaint, the CBSA finds the claim of price undercutting to be supported and sufficiently linked to the allegedly dumped and subsidized goods.

PRICE DEPRESSION²⁸

[95] The complainants submitted that the price discrepancies discussed above have resulted in price depression during the period of review. To support the allegations of price depression, the complainants provided domestic industry pricing data from 2020 to 2023.

[96] Overall, the information contained in the complaint generally establishes a trend of minor domestic price increases of pea protein from the period of 2021 to 2023 and most recently from 2022 to 2023 thereby not supporting the complainants' allegations of price depression. As such, the CBSA finds that the injury factor of price depression not to be sufficiently supported nor reasonably linked to the alleged dumped and subsidized goods.

PRICE SUPPRESSION²⁹

[97] The complainants submitted that the price discrepancies discussed above have resulted in price suppression during the period of review. To support the allegations of price suppression, the complainants provided industry pricing and cost of production data from 2020 to 2023.

²⁷ Exhibit 1 (PRO) - HPC Complaint – para 242-245

²⁸ Exhibit 2 (NC) – HPC Complaint– para 246-250

²⁹ Exhibit 2 (NC) – HPC Complaint– para 246-250

[98] Overall, the information contained in the complaint generally demonstrates that the adverse price effects from Chinese imports have prevented price increases for those like goods that would otherwise likely have occurred. As such, the CBSA finds that the injury factor of price suppression to be sufficiently supported and reasonably linked to the alleged dumped and subsidized goods.

REDUCED PROFITABILITY³⁰

[99] The complainants alleged that the injurious impact of the dumped and subsidized goods is demonstrated by reduced profits. To support this allegation, the complainants have provided both separate and consolidated income statements for the two domestic producers of pea protein for the period of 2020 to 2023.

[100] The CBSA has reviewed the complainants' financial results and found a downward trend on an annual basis from 2021 to 2023 with respect to revenue and profitability.

[101] The available evidence establishes a trend of a worsening financial situation, thereby supporting the complainants' allegations of impacted financial results and reduced profitability. As such, the CBSA finds that the injury factor of reduced profitability is sufficiently supported and reasonably linked to the alleged dumped and subsidized goods.

DECLINE IN THE RETURN ON INVESTMENTS AND THE NEGATIVE EFFECTS ON INVENTORIES, CASH FLOW, AND THE ABILITY TO RAISE CAPITAL³¹

[102] The complainants alleged that the injurious impact of the dumped and subsidized goods is demonstrated by an actual or potential decline in the return on investments, as well as actual or potential negative effects on inventories, cash flow, and the ability to raise capital. The complainants provided confidential information to support these allegations.

[103] The available evidence supports the complainants' claim of a decline on the return on investments, an actual negative effect on inventories and cash flow, and a potential negative effect on the ability to raise capital. As such, the CBSA finds that the injury factors above are sufficiently supported and reasonably linked to the alleged dumped and subsidized goods.

DECLINE IN CAPACITY UTILIZATION³²

[104] The complainants alleged that the dumped and subsidized goods have resulted in a decline in capacity utilization at their production facilities. The complainants provided information concerning their production and capacity from 2020 to 2023.

³⁰ Exhibit 2 (NC) – HPC Complaint – para 258-260

³¹ Exhibit 2 (NC) – HPC Complaint – para 261-266

³² Exhibit 2 (NC) – HPC Complaint – para 267-270

[105] The available evidence supports the complainants' claim of a decline to overall capacity utilization from 2021 to 2023. The CBSA finds that the injury factor of a decline to capacity utilization is sufficiently supported and reasonably linked to the alleged dumped and subsidized goods.

NEGATIVE IMPACT ON EMPLOYMENT³³

[106] The complainants submitted that the loss of sales volume and revenue due to subject Chinese imports have adversely affected employment levels across the domestic industry.³⁴

[107] The CBSA has analyzed the information provided in the complaint and found a reduction in employment from 2021 to 2023.

[108] The complaint also provided evidence from a letter of support from Merit Functional Foods (Merit) who was an HPC pea protein producer in Canada from 2022 to 2023. In its letter, Merit explained that within a year the company went into receivership due to the low-priced Chinese imports and was forced to close and lay off 110 staff.³⁵

[109] The available evidence supports the complainants' claim of a negative effect on employment. The CBSA finds that this injury factor is sufficiently supported and reasonably linked to the allegedly dumped and subsidized goods.

CBSA'S CONCLUSION—INJURY

[110] Overall, based on the evidence provided in the complaint, and supplementary data available to the CBSA through its own research and customs documentation, the CBSA finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods from China have caused injury to the pea protein industry in Canada in the form of increased volume of subject good imports, lost market share, lost sales, a lack of growth, price undercutting, price suppression, reduced profitability, a decline in the return on investments, negative effects on inventories, cash flow, and the ability to raise capital, a decline in capacity utilization, and negative effects on employment.

THREAT OF INJURY

[111] The complainants alleged that the dumped and subsidized goods threaten to cause further material injury to the domestic producers of pea protein. The complainants provided the following information to support the allegation that imports of subject goods threaten to cause further injury to the Canadian industry.

³³ Exhibit 2 (NC) – HPC Complaint – para 271-277

³⁴ Exhibit 2 (NC) - HPC Complaint – para 271

³⁵ Exhibit 2 (NC) - HPC Complaint – Exh 8-12 Merit Functional Foods Corporation, Letter of Support (February 10, 2024)

Chinese and Global Market Conditions Will Incentivize Increased Chinese Exports

[112] According to the complainants, Chinese and global market conditions will incentivize increased subject Chinese exports in the next 12 to 24 months.³⁶ To support this allegation the complaint included data with respect to a number of market conditions which, according to the complainants, will make Canada an attractive market for the continued export of subject goods. These conditions include:

- Economic Crisis in China; and
- Unlikely to be a significant Chinese market for HPC Pea Protein in the next 12 to 24 months.

[113] The CBSA has reviewed the extensive information contained in the complaint with respect to the allegation of difficulties in the Chinese economy and the potential impact on demand for pea protein in the domestic market. With respect to the information in the complaint concerning this condition, the CBSA found this information to be general and not sufficiently linked to pea protein or the demand for pea protein.

[114] The complainants provided evidence that pea protein producers in China primarily focus pea protein production for export markets while shifting production in the same facilities to vermicelli primarily for the domestic market.³⁷ The complainants also submitted evidence that consumers in China are more skeptical of plant-based proteins than international markets with sales of alternative meat products lagging far behind other Western nations.³⁸

[115] The CBSA finds that certain market conditions outlined in the complaint to reasonably support the allegation that there is unlikely to be a significant domestic Chinese market for HPC pea protein in the next 12 to 24 months. As a result, the CBSA finds that producers of subject goods in China may view Canada as an attractive market for future exports.

Increased Volumes of HPC Pea Protein Are Likely to Enter the Canadian Market at Injurious Prices

[116] According to the complainants, increased volumes of HPC pea protein are likely to enter the Canadian market at injurious prices. To support this allegation the complaint included information related to the following topics:³⁹

- Rate of increase of subject imports;
- Chinese producers are export-oriented;
- Significant freely disposable capacity in China; and
- Trade measures impacting sale of Chinese pea protein in other global markets.

³⁶ Exhibit 2 (NC) - HPC Complaint – para 294

³⁷ Exhibit 2 (NC) - HPC Complaint – para 302

³⁸ Exhibit 2 (NC) - HPC Complaint – para 303

³⁹ Exhibit 2 (NC) - HPC Complaint – para 305-324

[117] Based on the CBSA's own the analysis of imports and the complainants' forecasts, the CBSA found a likelihood of increased imports of subject goods over the next 12 to 24 months.

[118] As mentioned earlier, the complainants provided evidence that pea protein producers in China primarily focus pea protein production for export markets. Additionally, the complainants provided a sampling of four of the largest Chinese pea protein producers to demonstrate how significant export markets are to their overall business. For these four exporters, the complainants provided evidence that 90% or more of their production is for export.⁴⁰

[119] The complainants also provided evidence that Chinese producers of pea protein have enormous excess capacity that could be utilized to take a larger market share of the Canadian pea protein market. For example, the complainants listed the capacity of six known Chinese producers of pea protein,⁴¹ and mentioned that Chinese excess capacity would be more than enough to overwhelm the entire Canadian market, let alone the portion of the Canadian market that domestic industry currently possesses.⁴²

[120] Lastly, the complainants provided evidence that there are ongoing trade measures impacting the sale of pea protein in the United States concerning the dumping and subsidizing of Chinese pea protein into the United States. The complainants believe that the decline of Chinese imports into the United States from trade measures could result in the diversion of goods to Canada. As recently as December 2023 and February 2024, the United States announced provisional duties as a result of its dumping and subsidy investigations.⁴³ The complainants stated that after the imposition of provisional countervailing duties in December 2023, imports of pea protein into the United States from China dropped by 40%.⁴⁴ It is the belief of the complainants that the reduction in volume to the United States will continue as well as the low prices offered by Chinese exporters of pea protein given the current trade measures in force.

[121] Given the increased volume of subject goods from China as described in the Injury Section the CBSA finds that the volume of subject goods will continue to increase and threaten to injure the Canadian domestic industry. The CBSA also finds that the information available suggests that Chinese producers of pea protein are likely export-oriented. Based on the above, the CBSA also finds that the information available suggests there is likely significant excess production capacity for pea protein in China. The CBSA also finds that the recent imposition of provisional anti-dumping and countervailing measures in the United States, may have contributed to subject goods being diverted from this market into Canada. The CBSA also finds that the continued existence of these measures in force could lead to increased exports of subject goods into Canada in the future and threaten to injure the Canadian domestic industry. All of the factors above that were examined likely will result in increased volumes of pea protein to enter the Canadian market at injurious prices.

⁴⁰ Exhibit 2 (NC) - HPC Complaint – Table 15

⁴¹ Exhibit 2 (NC) - HPC Complaint – Table 16

⁴² Exhibit 2 (NC) - HPC Complaint – para 317

⁴³ Exhibit 2 (NC) - HPC Complaint – para 320

⁴⁴ Exhibit 2 (NC) - HPC Complaint – para 321

Canada Remains an Attractive Market for Chinese Exports

[122] The complainants submitted that Canada will remain an attractive market for dumped and subsidized subject goods over the next 24 months due to a number of factors, including: strong economic performance relative to other developed countries, the rate of increase of subject imports, and the opportunities for growth in the plant-based protein market.⁴⁵

[123] The CBSA does not find that the information provided with respect to the general economic conditions in Canada is sufficient to reasonably establish that Canada will remain a more attractive pea protein market than any other country in the following 24 months. However, a review of the CBSA's estimates of imports and export prices does suggest a trend of increasing imports of subject goods to Canada at prices below those offered by the domestic producers. Further, when paired with the information provided in the complaint which suggests that there are growth opportunities in the plant-based protein market in Canada, the CBSA acknowledges the likelihood that Canada may remain an attractive market for dumped and subsidized subject goods.

Chinese Pea Protein Producers Continue to be Subsidized

[124] The complainants submitted that Chinese producers of pea protein likely will continue to benefit from substantial subsidies received at all levels of government in China and referenced their arguments made in the complaint. Furthermore, the complainants highlighted the recent preliminary determination made by the USDOC in December 2023 on subsidy for pea protein from China.⁴⁶

[125] As discussed earlier, information provided in the complaint, gathered through the CBSA's own research and/or made available through public documents, together indicates that sufficient evidence exists respecting subsidy programs in China that benefit the exporters of subject goods. The CBSA finds that the arguments outlined in the complaint reasonably support the allegation that the continuation of subsidies available to Chinese pea protein producers likely threatens to cause injury.

Subject Imports from China Are Likely to Continue to be Dumped at Injurious Low Prices

[126] As described in the Injury section, the complainants alleged that the subject imports have caused material injury to the domestic industry in the form of price undercutting, price suppression and price depression.⁴⁷ The complainants submitted that these injurious pricing effects are likely to continue over the next 24 months as market pressures encourage exporters of subject goods to continue to export to Canada. According to the complainants given the increasing levels of price undercutting, there is no indication that this behaviour is likely to subside in the next 24 months.

⁴⁵ Exhibit 2 (NC) - HPC Complaint – para 325-329

⁴⁶ Exhibit 2 (NC) - HPC Complaint – para 330-331

⁴⁷ Exhibit 2 (NC) - HPC Complaint – para 333-340

[127] As discussed in the respective sections, the CBSA finds the complainants' allegations of price undercutting and price suppression to be well documented, well supported and reasonable. Further, the CBSA finds that the continued presence of these conditions threaten to cause further injury to the domestic industry.

The Magnitude of Dumping Margin and Amount of Subsidy is Significant

[128] The complainants stated that the magnitude of alleged dumping and subsidizing of the subject goods demonstrates a real threat to the domestic industry. The complainants argued that the evidence demonstrates that importers and exporters of subject goods are willing to resort to substantial margins of dumping and amounts of subsidy in order to secure sales in the Canadian market.⁴⁸

[129] Based on the CBSA's estimates with respect to the margin of dumping and amount of subsidy, the CBSA finds that there is a reasonable indication that the subject goods have been dumped and subsidized, and that the magnitude of this alleged dumping and subsidizing is such that it poses a threat of material injury to the Canadian domestic industry.

Subject Imports from China are Likely to Negatively Impact the Domestic Industry

[130] As discussed in the Injury section, the complainants submitted that the significantly increasing volumes of dumped and subsidized subject imports have caused material injury to the domestic industry. The complainants alleged that the price effects of the subject imports include: reduced industry sales and production volumes, lost sales, decline in market share and capacity utilization, and significantly reduced industry profitability. The complainants argued that all indications are that these adverse impacts are likely to continue and may grow as subject import volumes increase, threatening to cause further injury to the domestic industry.⁴⁹

[131] As discussed in the respective sections, the CBSA finds the complainants' allegations that the subject imports have adversely impacted the domestic industry to be reasonable and well supported. Specifically, the CBSA finds that the complainants have provided sufficient evidence to reasonably link the allegations of reduced sales and production volumes, lost sales, decline in market share and capacity utilization, and reduced industry profitability, to the allegedly dumped and subsidized goods. Further, the CBSA finds that the continued presence of the allegedly dumped and subsidized goods threaten to cause further injury to the domestic industry.

⁴⁸ Exhibit 2 (NC) - HPC Complaint – para 341

⁴⁹ Exhibit 2 (NC) - HPC Complaint – para 342

CBSA'S CONCLUSION—THREAT OF INJURY

[132] The complaint contains evidence that discloses a reasonable indication that there is a threat of injury to the pea protein industry in Canada. The information provided in the complaint indicates that imports of allegedly dumped and subsidized subject goods from China are posing a threat of injury to the Canadian domestic industry. Given the presence of the risk factors discussed above, the CBSA believes that the allegation of threat of injury is reasonably supported.

CAUSAL LINK—DUMPING/SUBSIDIZING AND INJURY/THREAT OF INJURY

[133] The CBSA finds that the complainants have sufficiently linked the injury they have suffered to the alleged dumping and subsidizing of the subject goods imported into Canada. This injury includes increased volume of subject good imports, lost market share, lost sales, a lack of growth, price undercutting, price suppression, reduced profitability, a decline in the return on investments, negative effects on inventories, cash flow, and the ability to raise capital, a decline in capacity utilization, and negative effects on employment.

[134] The complainants submitted that the continued dumping and subsidizing of goods from China will cause further injury to the Canadian domestic industry in the future. As discussed above, the CBSA is of the opinion that this allegation of threat of injury is reasonably supported.

[135] In summary, the CBSA is of the opinion that the information provided in the complaint has disclosed a reasonable indication that the alleged dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian domestic industry.

SCOPE OF THE INVESTIGATIONS

[136] The CBSA is conducting investigations to determine whether the subject goods have been dumped and/or subsidized.

[137] The CBSA has requested information from all potential exporters and importers to determine whether or not subject goods imported into Canada during the POI of January 1, 2023 to December 31, 2023 were dumped. The information requested will be used to determine the normal values, export prices and margins of dumping, if any.

[138] The CBSA has also requested information from the GOC and all potential producers/exporters to determine whether or not subject goods imported into Canada during the POI of January 1, 2023 to December 31, 2023 were subsidized. The information requested will be used to determine the amounts of subsidy, if any.

[139] All parties have been clearly advised of the CBSA's information requirements and the time frames for providing their responses.

FUTURE ACTION

[140] The CITT will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of the goods have caused or are threatening to cause injury to the Canadian industry. The CITT must make its decision on or before the 60th day after the date of the initiation of the investigations. If the CITT concludes that the evidence does not disclose a reasonable indication of injury to the Canadian industry, the investigations will be terminated.

[141] If the CITT finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the CBSA's preliminary investigations reveal that the goods have been dumped and/or subsidized, the CBSA will make preliminary determinations of dumping and/or subsidizing within 90 days after the date of the initiation of the investigations, by July 22, 2024. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigations.

[142] Under section 35 of SIMA, if, at any time before making a preliminary determination, the CBSA is satisfied that the volume of goods of a country is negligible, the investigation will be terminated with respect to goods of that country.

[143] Imports of subject goods released by the CBSA on and after the date of preliminary determinations of dumping and/or subsidizing, other than goods of the same description as goods in respect of which a determination was made that the margin of dumping of, or the amount of subsidy on, the goods is insignificant, may be subject to provisional duty in an amount not greater than the estimated margin of dumping and/or the estimated amount of subsidy on the imported goods.

[144] Should the CBSA make preliminary determinations of dumping and/or subsidizing, the investigations will be continued for the purpose of making final decisions within 90 days after the date of the preliminary determinations.

[145] After the preliminary determinations, if, in respect of goods of a particular exporter, the CBSA's investigations reveal that imports of the subject goods from that exporter have not been dumped or subsidized, or that the margin of dumping or amount of subsidy is insignificant, the investigation(s) will be terminated in respect of those goods.

[146] If final determinations of dumping and/or subsidizing are made, the CITT will continue its inquiry and hold public hearings into the question of material injury to the Canadian industry. The CITT is required to make a finding with respect to the goods to which the final determinations of dumping and/or subsidizing apply, not later than 120 days after the CBSA's preliminary determinations.

[147] In the event of an injury finding by the CITT, imports of subject goods released by the CBSA after that date will be subject to anti-dumping duty equal to the applicable margin of dumping and countervailing duty equal to the amount of subsidy on the imported goods. Should both anti-dumping and countervailing duties be applicable to subject goods, the amount of any anti-dumping duty may be reduced by the amount that is attributable to an export subsidy.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[148] When the CITT conducts an inquiry concerning 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.

[149] Should the CITT issue such a finding, anti-dumping and countervailing duties may be imposed retroactively on subject goods imported into Canada and released by the CBSA during the period of 90 days preceding the day of the CBSA making preliminary determinations of dumping and/or subsidizing.

[150] In respect of importations of subsidized goods that have caused injury, however, 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, as explained in the previous “Evidence of Subsidizing” section. In such a case, the amount of countervailing duty applied on a retroactive basis will be equal to the amount of subsidy on the goods that is a prohibited subsidy.

UNDERTAKINGS

[151] After a preliminary determination of dumping by the CBSA, other than a preliminary determination in which a determination was made that the margin of dumping of the goods is insignificant, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated.

[152] Similarly, after the CBSA has rendered a preliminary determination of subsidizing, a foreign government may submit a written undertaking to eliminate the subsidy on the goods exported or to eliminate the injurious effect of the subsidy, by limiting the amount of the subsidy or the quantity of goods exported to Canada. Alternatively, exporters with the written consent of their government may undertake to revise their selling prices so that the amount of the subsidy or the injurious effect of the subsidy is eliminated.

[153] An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped or subsidized goods. Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone number, mailing address and email address to one of the officers identified in the “Information” section of this document.

[154] If undertakings were to be accepted, the investigation and the collection of provisional duties would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA’s investigation be completed and that the CITT complete its injury inquiry.

PUBLICATION

[155] Notice of the initiation of these investigations is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

INFORMATION

[156] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping and subsidizing. Written submissions should be forwarded to the attention of the SIMA Registry and Disclosure Unit.

[157] To be given consideration in these investigations, all information should be received by the CBSA by August 29, 2024, at noon.

[158] Any information submitted to the CBSA by interested parties concerning these investigations is considered to be public information unless clearly marked “confidential”. Where the submission by an interested party is confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

[159] Confidential information submitted to the CBSA will be disclosed on written request to independent counsel for parties to these proceedings, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the CITT, any court in Canada, or a WTO or Canada-United States-Mexico Agreement (CUSMA) dispute settlement panel. Additional information respecting the CBSA’s policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA’s website.

[160] The schedule of the investigations and a complete listing of all exhibits and information are available at: www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html. The exhibit listing will be updated as new exhibits and information are made available.

[161] This *Statement of Reasons* is available through 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, ON K1A 0L8
Canada

Telephone: Andy Fei 343-553-1866
Aaron Maidment 343-553-1633

Email: simaregistry-depotlmsi@cbsa-asfc.gc.ca

Website: www.cbsa-asfc.gc.ca/sima-lmsi



Doug Band
Director General
Trade and Anti-dumping Programs Directorate

APPENDIX – DESCRIPTION OF IDENTIFIED PROGRAMS

Evidence provided by the complainants and obtained by the CBSA suggests that the Government of China may have provided support to exporters/producers of subject goods in the following manner.

Category 1: Preferential Loans and Loan Guarantees

Program 1: Preferential Loans and Loan Guarantees

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:

- 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 has previously countervailed this program in *Fabricated Industrial Steel Components (FISC)*, *Carbon and Alloy Steel Line Pipe (Line Pipe)*, *Pup Joints*, *Oil Country Tubular Goods (OCTG)*, *Seamless Casing*, *Upholstered Domestic Seating (UDS)*, *Mattresses (MAT)* and *Wind Towers*.

This program may constitute 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. The program may be considered specific pursuant to subsection 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 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.

This program may constitute 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. The program may be considered specific pursuant to subsection 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".

The CBSA has previously countervailed this program in *Line Pipe*, *UDS*, and *Mattresses*.

In a recent preliminary determination of the countervailing duty investigation by the USDOC into certain pea protein from China, it appears that they countervailed this program as "Export Buyer's Credit".

This program may constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA; i.e., 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. The above confers a benefit to the exporter by way of reducing its financial costs upon obtaining loans from a financial institution, and the benefit is equal to the amount of the exemption/deduction. The program may be considered specific pursuant to subsection 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 Equivalents

Program 4: 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.

Evidence provided in the complaint suggests that known exporters of HPC pea protein have obtained grants from the GOC's Foreign Trade Development Fund. The CBSA has previously countervailed this program in *Decorative and Other Non-structural Plywood (Plywood)*.

The financial contribution by the government is the direct transfer of funds pursuant to section 2(1.6)(a) of SIMA. The program may be considered specific pursuant to subsection 2(7.2)(b) of SIMA as a prohibited export-contingent subsidy.

Program 5: 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.

The CBSA has previously countervailed this program in *Sucker Rods, OCTG, Unitized Wall Modules, Galvanized Steel Wire, Aluminum Extrusions, Carbon Steel Welded Pipe, Steel Grating, Plywood, UDS, and Wind Towers*.

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*, which came into force on October 24, 2000. The program was established to support the development of small and medium-sized enterprises, to encourage SMEs 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.

The financial contribution by the government is the direct transfer of funds pursuant to section 2(1.6)(a) of SIMA. The program may be considered specific pursuant to subsection 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 6: Design, Research and Development Grants

A grant that provides financial aid for enterprises determined to have undertaken expenses in design, or research and development.

Evidence provided in the complaint suggests that producers in China of HPC pea protein have obtained grants relating to scientific and technological research and development. The CBSA has also previously countervailed this program in *Sucker Rods, Copper Tube, Photovoltaic Modules and Laminates, OCTG, Unitized Wall Modules, Seamless Casing, Pup Joints, Plywood, UDS, MAT, and Wind Towers*.

The financial contribution by the government is the direct transfer of funds pursuant to section 2(1.6)(a) of SIMA. The program may be considered specific pursuant to subsection 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 7: 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.

The CBSA has previously countervailed similar programs in *Copper Tube*, *MAT* and *Wind Towers* which addressed grants relating to improving environmental performances.

In a recent preliminary determination of the countervailing duty investigation by the USDOC into certain pea protein from China, it appears that they countervailed this program as “Grants for Energy Conservation and Emission Reduction”.

This program appears to be a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government and confers a benefit to the recipient equal to the amount of the grant. The program may be considered specific pursuant to subsection 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: Grants for Encouraging Protein Enterprises to Increase R&D Investment and Improve Scientific and Technological Innovation Capabilities.

In 2019, the Municipal People’s Government of Zhaoyuan implemented a program to support “investment in research and development of the protein industry in the city, accelerate the construction of research and development institutions, improve scientific and technological innovation capabilities, and promote high-quality development.” Under Article 6 of the *Implementation Opinions on Encouraging Protein Enterprises to Increase R&D Investment and Improve Scientific and Technological Innovation Capabilities*, “protein enterprises” are encouraged to “increase investment in research and development activities” which will be “funded by the municipal finance.”

This program is a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA as a direct transfer of funds from the government and confers a benefit to the recipient equal to the amount of the grant. The program may be considered specific pursuant to subsection 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, and likewise pursuant to subsection 2(7.2) because it is limited to a group of enterprises situated within the municipality’s jurisdiction.

Category 3: Preferential Tax Programs

Program 9: 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 (NHTE) are entitled to a reduced income tax rate of 15 percent rather than 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.

The CBSA has previously countervailed this program in *FISC, Line Pipe, Certain Seamless Casing, OCTG, Pup Joints, Plywood, UDS, Container Chassis, MAT* and *Wind Towers*.

The financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to enterprises in certain industries.

Program 10: 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.

The CBSA has previously countervailed this program in *Photovoltaic Modules and Laminates, Seamless Casing, OCTG, Pup Joints, Plywood, UDS, MAT* and *Wind Towers*. Further, the GOC has listed this title in its notification of subsidy programs to the WTO.

In a recent preliminary determination of the countervailing duty investigation by the USDOC into certain pea protein from China, it appears that they countervailed this program as “Income Tax Deduction for Research and Development Expenses Under the Enterprise Income Tax Law (EITL)”.

The financial contribution by the government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 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 11: 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.

The CBSA has previously countervailed this program in *Aluminum Extrusions, Photovoltaic Modules and Laminates, Seamless Casing, OCTG, Pup Joints* and *Wind Towers*.

The financial contribution by the government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 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: 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.

Evidence provided in the complaint indicates that HPC pea protein producers may have received benefits under this program in relation to purchases of imported equipment. The CBSA has previously countervailed this program in *Photovoltaic Modules and Laminates, Unitized Wall Modules, Seamless Casing, Pup Joints*, and *Line Pipe*.

The financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 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: VAT Refund for Plant Protein

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) provides a 70 percent immediate refund upon payment of VAT for companies in certain categories. Paragraph 2.15 of that notice lists “Production of bio-gas, feed and plant protein by starch and vermicelli processing waste liquid and waste residue” in category “II. Waste residue, wastewater (liquid) and waste gas” as activities that can generate the VAT refund.

Evidence provided by the complainants indicates that HPC pea protein producers may have received benefits under this program.

The financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 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: Municipal/Local Income or Property Tax Reductions

This program pertains to reductions and exemptions in tax provided from municipal or local income tax units.

The CBSA has previously countervailed similar programs in *UDS* and *MAT*.

The financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 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 5: Good / Services Provided by the Government at Less Than Fair Market Value

Program 15: Acquisition of Government Inputs/Utilities at Less than Fair Market Value

The complainants allege that exporters may avail themselves of input materials and utilities from state-owned enterprises (SOE) at below fair market value. They have identified whole peas as a raw material ingredient provided to HPC pea protein producers through state-owned and controlled suppliers at less than fair market value. In addition, the complainants identified electricity as an input that may be provided to HPC pea protein producers at less than fair market value.

The CBSA has previously countervailed this program in *Seamless Casing, OCTG, Stainless Steel Sinks, Steel Piling Pipe, Large Line Pipe, Pup Joints, UDS, Container Chassis, and Wind Towers*.

This program may constitute a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA as they involve the provision of goods or services, other than general governmental infrastructure. The program may be considered specific pursuant to subsection 2(7.2) of SIMA because it is limited to enterprises in certain industries.

Program 16: 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.

The CBSA has previously countervailed this program in *Line Pipe* and *Large Line Pipe*.

This financial contribution by the Government consists of government revenue that is otherwise due is foregone or not collected, pursuant to section 2(1.6)(b) of SIMA. The program may be considered specific pursuant to subsection 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.