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3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-155]

Certain Pea Protein from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable August 1, 2023

FOR FURTHER INFORMATION CONTACT: Patrick Barton or T.J. Worthington, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0012 or (202) 482-4567, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On July 12, 2023, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of certain pea protein (pea protein) from the People's Republic of China (China) filed in proper form on behalf of PURIS Proteins, LLC (the petitioner), a domestic producer of pea protein.[1] The CVD petition was accompanied by an antidumping duty (AD) petition concerning imports of pea protein from China.[2]

On July 17, 18, and 25, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petition.[3] On July 18, 2023, the petitioner filed requests for extensions

[1] *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Pea Protein from China," dated July 12, 2023 (Petition).
[2] *Id*.
[3] *See* Commerce's Letter, "Supplemental Questions," dated July 17, 2023 (Volume I Supplemental Questionnaire); *see also* Commerce's Letter, "Supplemental Questions," dated July 18, 2023; and Memorandum, "Phone Call with Counsel to the Petitioner," dated July 25, 2023 (Scope Memorandum).

of time to respond to the supplemental questionnaires.[4] On July 21 and 26, 2023, the petitioner timely filed responses to these requests for additional information.[5]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of pea protein in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petition is supported by information reasonably available to the petitioner.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act.[6] Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[7]

Period of Investigation

Because the Petition was filed on July 12, 2023, the period of investigation (POI) is January 1, 2022, through December 31, 2022.[8]

Scope of the Investigation

The product covered by this investigation is pea protein from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

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[4] *See* Petitioner's Letters, "Request for Extension to Respond to Volume I Supplemental Questionnaire," dated July 18, 2023; and "Request for Extension to Respond to Volume III Supplemental Questionnaire," dated July 18, 2023.
[5] *See* Petitioner's Letters, "Response of Petitioner to Volume I Supplemental Questionnaire," dated July 21, 2023 (General Issues Supplement); "Response of Petitioner to Volume III Supplemental Questionnaire," dated July 21, 2023; and "Certain Pea Protein from China / Petitioner's Response to Second Supplemental Questionnaire," dated July 26, 2023 (Scope Supplement).
[6] *See* Petition at Volume I (pages 2-3). PURIS Proteins, LLC is an interested party, as defined in sections 771(9)(C) and (D) of the Act, respectively.
[7] *See* "Determination of Industry Support for the Petition" section, *infra.*
[8] *See* 19 CFR 351.204(b)(2).

Comments on Scope of the Investigation

On July 17 and 25, 2023, Commerce requested information from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[9] On July 21 and 26, 2023, the petitioner provided clarifications and revised the scope.[10] The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for parties to raise issues regarding product coverage (*i.e.*, scope).[11] Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.[12] To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5 p.m. Eastern Time (ET) on August 21, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5 p.m. ET on August 31, 2023, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that the parties consider relevant to the scope of the investigation be submitted during that time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All scope comments must also be filed on the record of the concurrent AD investigation.

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[9] *See* Volume I Supplemental Questionnaire at 3-4; *see also* Scope Memorandum.
[10] *See* General Issues Supplement at 1-8 and Exhibits I-S2 and I-S3; *see also* Scope Supplement.
[11] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.
[12] *See* 19 CFR 351.102(b)(21) (defining "factual information").

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's (E&C) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[13] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided an opportunity for consultations with respect to the Petition.[14] The GOC did not request consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

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[13] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at: https://access.trade.gov/help.aspx and a handbook can be found at: https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

[14] *See* Commerce's Letter, "Countervailing Duty Petition on Certain Pea Protein from the People's Republic of China," dated July 13, 2023.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[15] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[16]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[17] Based on our analysis of the information submitted on the record, we have determined that pea protein, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[18]

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[15] *See* section 771(10) of the Act.
[16] *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).
[17] *See* Petition at Volume I (pages 13-20 and Exhibits I-17 through I-26); *see also* General Issues Supplement at 9-15.
[18] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Certain Pea Protein from the People's Republic of China (China Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering Certain Pea Protein from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS.

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in the appendix to this notice. To establish industry support, the petitioner provided its 2022 production of the domestic like product and compared this to the estimated total 2022 production of pea protein by the U.S. industry.[19] We relied on data provided by the petitioner for purposes of measuring industry support.[20]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[21] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).[22] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[23] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[24] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[25]

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[19] *See* Petition at Volume I (page 4 and Exhibits I-2 through I-6); *see also* General Issues Supplement at 8 and Exhibit I-S4.
[20] *See* Petition at Volume I (page 4 and Exhibits I-2 through I-6); *see also* General Issues Supplement at 8 and Exhibit I-S4. For further discussion, *see* Attachment II of the China CVD Initiation Checklist.
[21] *See* Petition at Volume I (page 4 and Exhibits I-2 through I-6); *see also* General Issues Supplement at 8 and Exhibit I-S4. For further discussion, *see* Attachment II of the China CVD Initiation Checklist.
[22] *See* Attachment II of the China CVD Initiation Checklist; *see also* section 702(c)(4)(D) of the Act.
[23] *See* Attachment II of the China CVD Initiation Checklist.
[24] *Id*.
[25] *Id*.

Injury Test

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[26]

The petitioner contends that the industry's injured condition is illustrated by the adverse impact on the domestic industry's sales volumes, market share levels, and return on investments; significant volume of subject imports; underselling and price depression and/or suppression; lost sales and revenues; and layoffs.[27] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[28]

Initiation of CVD Investigation

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of pea protein from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find

[26] *See* Petition at Volume I (pages 21-22 and Exhibits I-6 and I-29.
[27] *Id.* at Volume I (pages 21-41 and Exhibits I-4, I-6, I-29 through I-32, and I-34 through I-41.
[28] *See* China CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Pea Protein from the People's Republic of China (Attachment III).

that there is sufficient information to initiate a CVD investigation on 23 of 25 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate an investigation of each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner identified 18 companies in China as producers and/or exporters of pea protein.[29] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event that Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to the potential respondents. Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. However, for this investigation, the main HTSUS subheadings under which the subject merchandise would enter (3504.00.1000, 3504.00.5000, and 2106.10.0000) are basket categories under which non-subject merchandise may enter. Therefore, we cannot rely on CBP entry data in selecting respondents. Instead, we intend to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

Exporters/producers of pea protein from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from E&C's website at https://www.trade.gov/ec-adcvd-case-announcements. Responses to the Q&V questionnaire must be submitted by the relevant Chinese

[29] *See* General Issues Supplement at 1 and Exhibit I-S1.

producers/exporters no later than 5 p.m. ET on August 15, 2023, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of pea protein from China are materially injuring, or threatening material injury to, a U.S. industry.[30] A negative ITC determination will result in the investigation being terminated.[31] Otherwise, this CVD investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)-(iv). Section 351.301(b) of

[30] *See* section 703(a)(1) of the Act.
[31] *Id.*

Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[32] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[33] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.[34] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; Commerce will grant untimely filed requests for the extension of time limits only in limited cases where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning factual information prior to submitting factual information in this investigation.[35]

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[32] *See* 19 CFR 351.301(b).
[33] *See* 19 CFR 351.301(b)(2).
[34] *See* 19 CFR 351.302.
[35] *See* 19 CFR 301; *see also Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at: https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[36] Parties must use the certification formats provided in 19 CFR 351.303(g).[37] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.*, by filing the required letters of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[38]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: August 1, 2023.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

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[36] *See* section 782(b) of the Act.

[37] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule*, available at: https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

[38] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Appendix

Scope of the Investigation

The product within the scope of this investigation is high protein content (HPC) pea protein, which is a protein derived from peas (including, but not limited to, yellow field peas and green field peas) and which contains at least 65 percent protein on a dry weight basis. HPC pea protein may also be identified as, for example, pea protein concentrate, pea protein isolate, hydrolyzed pea protein, pea peptides, and fermented pea protein. Pea protein, including HPC pea protein, has the Chemical Abstracts Service (CAS) registry number 222400-29-5.

The scope covers HPC pea protein in all physical forms, including all liquid (*e.g.*, solution) and solid (*e.g.*, powder) forms, regardless of packaging or the inclusion of additives (*e.g.*, flavoring, suspension agents, preservatives).

The scope also includes HPC pea protein described above that is blended, combined, or mixed with non-subject pea protein or with other ingredients (*e.g.*, proteins derived from other sources, fibers, carbohydrates, sweeteners, and fats) to make products such as protein powders, dry beverage blends, and protein fortified beverages. For any such blended, combined, or mixed products, only the HPC pea protein component is covered by the scope of this investigation. HPC pea protein that has been blended, combined, or mixed with other products is included within the scope, regardless of whether the blending, combining, or mixing occurs in third countries.

HPC pea protein that is otherwise within the scope is covered when commingled (*i.e.*, blended, combined, or mixed) with HPC pea protein from sources not subject to this investigation. Only the subject component of the commingled product is covered by the scope.

A blend, combination, or mixture is excluded from the scope if the total HPC pea protein content of the blend, combination, or mixture (regardless of the source or sources) comprises less than 5 percent of the blend, combination, or mixture on a dry weight basis.

All products that meet the written physical description are within the scope of the investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of the investigation:

- burgers, snack bars, bakery products, sugar and gum confectionary products, milk, cheese, baby food, sauces and seasonings, and pet food, even when such products are made with HPC pea protein.

- 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. These products are commonly described as textured pea protein or texturized pea protein.

- HPC pea protein that has been further processed to create a small crunchy nugget commonly described as a pea protein crisp.

- protein derived from chickpeas.

The merchandise covered by the scope is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) categories 3504.00.1000, 3504.00.5000, and 2106.10.0000. Such

merchandise may also enter the U.S. market under HTSUS category 2308.00.9890. Although HTSUS categories and the CAS registry number are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

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