



DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-155]

Certain Pea Protein from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that
countervailable subsidies are being provided to producers and exporters of certain pea protein
(pea protein) from the People's Republic of China (China) during the period of investigation,
January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this
preliminary determination.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Kristen Johnson and Laura Griffith,
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) 482-4793 and (202) 482-6430, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff
Act of 1930, as amended (the Act). Commerce published the notice of initiation of this

investigation on August 7, 2023.¹ On September 8, 2023, Commerce postponed the preliminary determination of this investigation until December 11, 2023.²

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included in Appendix II of this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The product covered by this investigation is pea protein from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ Commerce received timely filed comments from interested parties on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce intends to issue its preliminary decision regarding comments concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations in the preliminary determination of the companion AD investigation, the deadline for which is February 7, 2024.⁶ We will incorporate the scope

¹ *See Certain Pea Protein from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 88 FR 52116 (August 7, 2023) (*Initiation Notice*).

² *See Certain Pea Protein from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 88 FR 62055 (September 8, 2023).

³ *See* Memorandum, "Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Certain Pea Protein from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁵ *See Initiation Notice*, 88 FR at 52117.

⁶ *See Certain Pea Protein from the People's Republic of China: Postponement of the Preliminary Determination in the Less-Than-Fair-Value Investigation*, 88 FR 82831 (November 27, 2023) (*AD Postponement Notice*).

decision from the AD investigation into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in case and rebuttal briefs.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that confers a benefit to the recipient, and that the subsidy is specific.⁷ For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making the preliminary findings, it relied, in part, on facts available, and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce’s requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.⁸ For further information, *see* “Use of Facts Otherwise Available and Adverse Inferences” in the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 703(e)(1) of the Act, we preliminarily find that critical circumstances exist with respect to imports of subject merchandise for Yantai Oriental Protein Tech Co., Ltd. (Yantai Oriental), Zhaoyuan Junbang Trading Co., Ltd. (Junbang), the non-responsive companies,⁹ and all other producers and/or exporters. For a full discussion of our preliminary critical circumstances determination, *see* the “Critical Circumstances” section of the Preliminary Decision Memorandum.

Alignment

⁷ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁸ *See* sections 776(a) and (b) of the Act.

⁹ The non-responsive companies are: Focuserb LLC, Golden Protein Limited, Shandong Jianyuan Bioengineering Co., and Yantai Wanpy International Trade.

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of pea protein from China based on a request made by PURIS Proteins, LLC (the petitioner).¹⁰ Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled no later than April 22, 2024, unless postponed.¹¹

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Junbang and Yantai Oriental that are not zero, *de minimis*, or based entirely on the facts otherwise available. Commerce calculated the all-others rate using a simple average of the individual estimated subsidy rates calculated for the examined respondents.¹²

Rate for Non-Responsive Companies

Four potential exporters and/or producers of pea protein from China did not respond to Commerce's quantity and value (Q&V) questionnaire.¹³ We find that, by not responding to the

¹⁰ See Petitioner's Letter, "Petitioner's Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination," dated November 14, 2023.

¹¹ See *AD Postponement Notice*.

¹² When two respondents are under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's proprietary U.S. sale quantities for the merchandise under consideration; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

¹³ The four companies are Focusherb LLC, Golden Protein Limited, Shandong Jianyuan Bioengineering Co., and Yantai Wanpy International Trade.

Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD subsidy rate for these four companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce’s Q&V Questionnaire, the four companies did not cooperate to the best of their ability in this investigation.

Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the four companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available to the non-responsive companies, *see* “Use of Facts Otherwise Available and Adverse Inferences” in the Preliminary Determination Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy Rate (percent <i>ad valorem</i>)
Yantai Oriental Protein Tech Co., Ltd. ¹⁴	16.46%
Zhaoyuan Junbang Trading Co., Ltd. ¹⁵	15.09
Focusherb LLC	342.53
Golden Protein Limited	342.53
Shandong Jianyuan Bioengineering Co.	342.53
Yantai Wanpy International Trade	342.53
All Others	15.78%

Suspension of Liquidation

¹⁴ Commerce preliminary finds the following companies to be cross-owned with Yantai Oriental: Jiujiang Tiantai Food Co., Ltd.; Shandong Sanjia Investment Holding Group Co., Ltd.; Yantai Yiyuan Bioengineering Co., Ltd.; and Yantai Zhongzhen Trading Co., Ltd.

¹⁵ Commerce preliminary finds Yantai Shuangta Food Co. Ltd. to be cross-owned with Junbang.

In accordance with section 703(e)(2)(A) of the Act, because we find that critical circumstances exist for Junbang, Yantai Oriental, the non-response companies, and all other producers and/or exporters, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the *Federal Register*. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in the *Federal Register* in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs on the preliminary decision regarding the scope of the AD and CVD pea protein investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the AD and CVD pea protein investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

All interested parties will also have the opportunity to submit case briefs or other written comments on non-scope issues within this CVD pea protein investigation. Interested parties will

be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁶ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁷ As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁸ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain 1) the party's name, address, and telephone number; 2) the number of participants and whether any participant is a foreign national; and 3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a date, time, and location to be determined.²⁰

¹⁶ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO, Service, and Other Procedures*).

¹⁷ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁸ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁹ See *APO, Service, and Other Procedures*, 88 FR at 67069.

²⁰ See 19 CFR 351.310(d).

U.S. International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, Commerce will notify the ITC of its determination. If Commerce's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of pea protein from China are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: December 11, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary

for Enforcement and Compliance.

Appendix I

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 five 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.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Critical Circumstances
- VI. Analysis of China's Financial System
- VII. Diversification of China's Economy
- VIII. Use of Facts Otherwise Available and Adverse Inferences
- IX. Subsidies Valuation
- X. Benchmarks and Interest Rates
- XI. Analysis of Programs
- XII. Calculation of the All-Others Rate
- XIII. Recommendation

[FR Doc. 2023-27699 Filed: 12/15/2023 8:45 am; Publication Date: 12/18/2023]