

## U.S. Action Against Pea Protein from China

Article By:

International Trade Practice at Squire Patton Boggs

---

On July 11, 2023, PURIS Proteins LLC filed antidumping (AD) and countervailing duty (CVD) petitions against pea protein from China, claimed to be (a) sold into the United States at less than normal value (i.e., at unfairly low prices, that are below cost plus reasonable profit, based on market economy standards) and (b) government subsidized (CVD), and requested the imposition of AD import duties of 23.86% to 291.74% and unspecified CVD duties.

Offsetting U.S. AD/CVD import duties are imposed if (a) the U.S. Department of Commerce (DOC) finds dumping and/or subsidies based on responses to DOC questionnaires (and verification audit thereof) of the accused foreign exporters/producers, and (b) the U.S. International Trade Commission (ITC) finds that there is material injury (or threat thereof) by reason of the dumped and/or subsidized imports to a U.S. industry.

The accused country China constitutes 29.2% of all pea protein imports and about \$300 million of annual trade, at least based on basket tariff categories that cover more than the accused product.

The most immediate upcoming deadlines in this investigation are the ITC preliminary injury investigation, as follows:

July 14, 2023: ITC questionnaires issued

July 26, 2023: questionnaire responses due (short extension possible).

August 2, 2023: ITC preliminary staff conference (witness testimony)

August 7, 2023: written comments to ITC

August 25, 2023: ITC preliminary injury decision.

Generally, the ITC finds sufficient indicia of injury to a U.S. industry from the accused imports at this preliminary stage to continue the AD/CVD investigation (i.e., not end it). If so, then the investigation moves to DOC.

The reason is the low legal threshold for the ITC to find injury at this preliminary stage. Still, participation in ITC preliminary injury investigation can lay the factual foundation for a later final

---

negative ITC injury decision, ending the case, which happens around 30%-50% of the time (varies over time). It is critical not to make statements at the rushed ITC preliminary injury stage that hurt at the final stage.

The above said, at least based on the claimed facts of the public version of the petition here, there is some ambiguity as to what said, raising the question of what the actual confidential aggregate industry figures show as to injury even at the preliminary stage. The petition (a) just alleges an inadequate domestic industry return on investment, versus actual losses or seriously declining profitability, and (b) says that the accused imports are apparently under 30% of total imports. These petition claims at least suggest a weaker injury case under ITC law than most petitions. We see.

The ITC web site <https://ids.usitc.gov/case/8133/investigation/8423> has all details of this ITC investigation.

The DOC preliminary CVD subsidy decision is October 5, 2023. But this date is generally extended about 65 days (here to about December 9, 2023) if an investigated exporter satisfactorily fully participates at DOC by accurately answering DOC questionnaires as to the extent (if any) of subsidies and survives a rigorous DOC verification audit thereof. Then the exporter can get a subsidy CVD import duty margin based on its actual extent of received subsidies (if any). In contrast, failure to so participate results in a prohibitively high, adverse DOC CVD import duty.

The DOC preliminary AD decision is December 19, 2023. But this date too is generally extended about 50 days (here to February 7, 2024) if an investigated exporter satisfactorily participates at DOC, fully and accurately answering DOC questionnaires as to the extent (if any) of dumping and (later) a rigorous DOC verification audit thereof. If so, the exporter gets a dumping margin based on its actual extent of dumping (if any), and not the petitioner above claimed dumping margins. In contrast, here too, failure to so participate generally results in the highest above petitioner alleged dumping margin.

AD and CVD import duty liability generally begins as to imports at the time of the DOC preliminary AD or CVD decision. But it can be retroactive 90 days before then — i.e., retroactive to November 8, 2023, if the DOC preliminary AD decision is February 6, 2024; and for CVD September 10, 2023, if the DOC preliminary CVD decision is December 9, 2023. Retroactivity cannot be earlier than 20 days after petition filing, or August 1, 2023. Retroactivity is to address certain 15% or more import surges seeking to avoid AD/CVD. But all the conditions to so find are generally, but not always, not found.

DOC generally issues dumping and subsidy questionnaires to the two largest U.S. exporters from each accused country, to determine their AD/CVD margin. All other exporters from a particular country usually get an AD/CVD margin based on the DOC findings as to the two largest exporters from that country.

The date of DOC final CVD and AD decisions is December 19, 2023 and March 3, 2024, respectively, unless all DOC deadlines are full extended (which is common), where then would be May 2, 2024 for both AD & CVD.

The date of the ITC final injury determination is February 2, 2024 (for CVD) and April 17, 2024 (for AD), but if all deadlines are fully tended, then June 16, 2024.

## **ADDENDUM: SCOPE OF THE INVESTIGATION**

The product within the scope of these investigations 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 more than 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. The scope includes HPC pea protein described above that is blended, combined, or mixed with non-subject pea protein or with other products, including, but not limited to, 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 these investigations. 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.

The merchandise covered by the scope are 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.

© Copyright 2025 Squire Patton Boggs (US) LLP

---

National Law Review, Volume XIII, Number 200

Source URL: <https://natlawreview.com/article/us-action-against-pea-protein-china>