Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary injury inquiry
PI-2024-001

Pea Protein

Determination issued
Thursday, June 20, 2024

Reasons issued
Friday, July 5, 2024

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

PEA PROTEIN

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act* (SIMA), has conducted a preliminary injury inquiry into whether there is evidence that discloses a reasonable indication that the dumping and subsidizing of pea protein originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury to the domestic industry, as defined by SIMA.

The pea protein that is the subject of this inquiry is defined as follows:

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 (subject goods).

This preliminary injury inquiry follows the notification, on April 22, 2024, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the subject goods.

In accordance with subsection 37.1(1) of SIMA, the Tribunal has determined that there is evidence disclosing a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry.

Susan D. Beaubien
Susan D. Beaubien
Presiding Member

Cheryl Beckett
Cheryl Beckett
Member

Eric Wildhaber
Eric Wildhaber
Member

The statement of reasons will be issued within 15 days.

Tribunal Panel:	Susan D. Beaubien, Presiding Member Cheryl Beckett, Member Eric Wildhaber, Member
Tribunal Secretariat Staff:	Michael Carfagnini, Lead Counsel Nadja Momcilovic, Counsel Shawn Jeffrey, Lead Analyst Rebecca Campbell, Analyst Joseph Long, Analyst Jameyn Arboleda, Data Services Advisor Esther Song-Ledlow, Senior Registry Officer Lisa Sarpong, Registry Officer

PARTICIPANTS:

	Counsel/Representatives
Nutri-Pea GP Inc. and Roquette Canada Ltd.	Christopher J. Kent Christopher J. Cochlin Andrew Lanouette Michael Milne Hugh Seong Seok Lee Marc McLaren-Caux E. Melisa Celebican Jordan Lebold Jan Nitoslawski Bomin Kim Haneen Faisal Ian Richardson
China Chamber of Commerce of Import and Export of Foodstuffs, Native Produce and Animal By-Products	Vincent Routhier
Top Health Ingredients Inc.	Judy Yeung

Please address all communications to:

The Registry
Telephone: 613-993-3595
Email: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

[1] On March 1, 2024, the complainants, Nutri-Pea GP Inc. (Nutri-Pea) and Roquette Canada Ltd. (Roquette), filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping and subsidizing of pea protein originating in or exported from the People's Republic of China (China) (subject goods) have caused injury or are threatening to cause injury to the domestic industry.

[2] On April 22, 2024, the CBSA initiated investigations respecting the dumping and subsidizing of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act* (SIMA).[1]

[3] As a result of the CBSA's decision to initiate these investigations, on April 23, 2024, the Canadian International Trade Tribunal began its preliminary injury inquiry pursuant to subsection 34(2) of SIMA to determine whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry.[2]

[4] In support of its complaint, Nutri-Pea submitted joint declarations of Jason Gould (Chief Executive Officer), Daniel Bouillon (Chief Financial Officer), and Christianne Rosset (Plant Manager responsible for Nutri-Pea's manufacturing facility and operations).[3] Roquette submitted a joint declaration of Romain Joly (an executive, with Roquette's French parent company, who is Global Head of Roquette's Protein Business Line), Matthieu Dhenaut (General Manager of Roquette's Canadian manufacturing plant) and Brendon Boland (Chief Financial Officer at Roquette).[4]

[5] The Tribunal received submissions opposing the complaint from one importer of Chinese pea protein, Top Health Ingredients Inc. (Top Health), and from the China Chamber of Commerce of Import and Export of Foodstuffs, Native Produce and Animal By-Products (CFNA).[5] CFNA filed no affidavits or sworn declarations but did provide documentary evidence and written submissions, while Top Health only filed written submissions and some documentary evidence.

[6] In reply to CFNA's submissions, Nutri-Pea submitted a further declaration of Christianne Rosset,[6] and Roquette submitted a further declaration of Romain Joly.[7]

[7] On June 20, 2024, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry. The reasons for that determination are set out below.

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1 R.S.C., 1985, c. S-15.

2 As a domestic industry is already established, the Tribunal need not consider the question of retardation.

3 Exhibit PI-2024-001-02.01C at 1–53; Exhibit PI-2024-001-03.01C (protected) at 1–176.

4 Exhibit PI-2024-001-02.01C at 55–129; Exhibit PI-2024-001-03.01C (protected) at 178–322.

5 The CFNA is an organization representing the international trade interests of Chinese companies in a wide range of industries, including those of Chinese pea protein producers.

6 Exhibit PI-2024-001-11.01A.

7 Exhibit PI-2024-001-11.01B; Exhibit PI-2024-001-12.01A (protected).

PRODUCT DEFINITION

[8] The CBSA defined the subject goods as follows:[8]

> 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.

THE CBSA'S DECISION TO INITIATE THE INVESTIGATIONS

[9] The CBSA initiated investigations pursuant to subsection 31(1) of SIMA, as it was of the opinion that there was evidence that the subject goods had been dumped and subsidized and that there was evidence that disclosed a reasonable indication that the dumping and subsidizing had caused and were threatening to cause injury to the domestic industry.

[10] The CBSA estimated that the subject goods were dumped by a margin of 33.2% in 2023, expressed as a percentage of the export price.[9]

[11] For the period of January 1, 2023, to December 31, 2023, the CBSA estimated that the subject goods were subsidized by an amount of 9.69%, expressed as a percentage of the export price.[10]

LEGISLATIVE FRAMEWORK

[12] The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of SIMA, which requires the Tribunal to determine "… whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

Reasonable indication

[13] The evidentiary bar for preliminary injury inquiries has been set by Parliament, in section 37.1 of SIMA. The Tribunal's articulation of the standard of evidence required in a preliminary injury inquiry has been carefully crafted to ensure that it conforms to the requirements of SIMA and the World Trade Organization agreements. The Tribunal must examine the evidence on the record using that standard, having regard to the specific circumstances of each case.

[14] The term "reasonable indication" is not defined in SIMA but has been interpreted as requiring a lower evidential standard than is applicable to a final injury inquiry under section 42 of

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8 Exhibit PI-2024-001-02.07 at 1.
9 Exhibit PI-2024-001-05 at 13.
10 *Ibid.* at 17.

SIMA.[11] As such, the evidence underpinning a finding of reasonable indication of injury or threat of injury need not be "conclusive, or probative on a balance of probabilities",[12] as it may not be complete or fully tested. At this early stage of an inquiry, the standard of "reasonable indication" of injury or threat of injury does not require the extensive evidence needed to satisfy the higher threshold of reliability and cogency that is needed in the context of a final injury inquiry.[13]

[15] In making its preliminary determination, the Tribunal considers the injury and threat of injury factors that are prescribed in section 37.1 of the *Special Import Measures Regulations* (Regulations). These include the following:

- the import volumes of the dumped or subsidized goods;
- the effects of these goods on the price of like goods;
- the resulting economic impact of the subject goods on the state of the domestic industry; and
- if the Tribunal finds that injury or a threat of injury exists, whether a causal relationship exists between the dumping or subsidizing of the goods and the injury or threat of injury.

[16] The outcome of a preliminary injury inquiry should not be presumed.[14] The evidential standard is not met by bare, unsubstantiated allegations.[15] The parties to a preliminary injury inquiry must "put their best foot forward" by providing positive and sufficient evidence that is relevant to both the prescribed requirements in SIMA and the factors set forth in the Regulations.[16]

[17] There must be sufficient evidence to persuade the Tribunal that a full inquiry is warranted. The Tribunal will look at whether (i) the evidence is relevant, accurate and adequate; and (ii) in light of the evidence and the opposing submissions of other parties, the allegations stand up to a somewhat probing examination, even if the theory of the case might not seem convincing or compelling.[17]

[18] Before examining whether there is evidence of injury or threat of injury, the Tribunal must address a number of framework issues. Specifically, it must identify the domestically produced goods

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11 *Sucker Rods* (17 July 2018), PI-2018-001 (CITT) at para. 13; *Certain Fabricated Industrial Steel Components* (10 November 2016), PI-2016-003 (CITT) at para. 13.

12 *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

13 *Certain Upholstered Domestic Seating* (19 February 2021), PI-2020-007 (CITT) [*UDS PI*] at para. 15.

14 *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at paras. 18–19.

15 Article 5 of the World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping complaint to determine whether there is sufficient evidence to justify the initiation of an investigation and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article. Article 11 of the World Trade Organization Agreement on Subsidies and Countervailing Measures imposes the same requirements regarding subsidy investigations.

16 SOR/84-927.

17 *UDS PI* at para. 16. See, for example, *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.

that are "like goods" in relation to the subject goods, determine whether there is more than one class of goods and identify the domestic industry that produces those like goods. This is required because subsection 2(1) of SIMA defines "injury" as "material injury to a domestic industry" and "domestic industry" as "… the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods …".

LIKE GOODS AND CLASSES OF GOODS

[19] In order to assess whether the evidence discloses a reasonable indication that the dumping or subsidizing of the subject goods has caused or is threatening to cause injury to the domestic producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It may also consider whether the like goods and subject goods comprise one or more classes of goods.

[20] Subsection 2(1) of SIMA defines "like goods", in relation to any other goods, as follows:

> **(a)** goods that are identical in all respects to the other goods, or
>
> **(b)** in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

[21] In determining the like goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).[18] The Tribunal considers the same factors in determining whether there is more than one class of goods.

[22] HPC pea protein is also referred to as "pea protein isolate", "hydrolyzed pea protein", "pea peptides", "fermented pea protein" or "pea protein concentrate". At issue in the complaint brought by Nutri-Pea and Roquette is HPC pea protein derived from peas, including but not limited to yellow field peas and green field peas. Protein derived from chickpeas, beans, lentils or nuts is excluded from the scope of the goods relevant to this complaint.[19]

[23] Texturized pea protein is also excluded from the scope of the product definition. 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.

[24] Equally excluded from the scope of the 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. A wide range of food products fall within this exclusion and are manufactured using pea protein as an ingredient. Such food products include but are not limited to plant-based meat alternative products, beverages, sauces and seasoning,

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18 See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

19 Exhibit PI-2024-001-05 at 5, at paras. 13–14.

baby food, cereal, baked goods, ice creams, spreads and other desserts as well as pet food[20] or animal feed having a high nutrient content.[21]

[25] As to its composition, HPC pea protein has a protein content greater than 65%, typically ranging from 80% to 85%, on a dry weight basis.[22] It 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.[23]

[26] HPC pea protein is often sold in powder form and is pasteurized for human consumption. It can be blended with other substances and sold as a dry or powder product or as a liquid/solution. As protein derived from plants, HPC pea protein may be consumed directly, but it is frequently used as an ingredient in the manufacturing of other food and drink products, including being used as an alternative to animal protein.[24]

[27] The CBSA concluded that domestically produced pea protein of the same description as the subject goods is like goods to the subject goods. The CBSA further found that the subject goods and like goods constitute only one class of goods.[25]

[28] In their complaint, Nutri-Pea and Roquette submitted that the pea protein produced in Canada that meets the product definition is like goods to the subject goods. They also argued that there is a single class of goods.

[29] CFNA contends that there are multiple classes of pea protein, which are distinguishable on numerous grounds. These purportedly include whether the pea protein is prepared from organic peas, non-organic peas, genetically modified organism (GMO) peas, non-GMO peas and the protein content of the pea protein which may fall within different ranges, such as 65–72%, 72–85%, and over 85%. CFNA says that these variables, and their permutations and combinations, affect selling price and, potentially, the end uses of the pea protein.

[30] When assessed against the witness statements provided by Nutri-Pea and Roquette, the Tribunal finds that CFNA has not provided evidence demonstrating that the production processes for the manufacture of pea protein would differ, or would be dependent upon, the type or genus of the peas or certain characteristics of the starting or raw material.

[31] Nutri-Pea and Roquette, on the other hand, have provided statements from witnesses attesting that the production processes remain unaffected by whether the sourced peas used as starting material are organic (or not) or GMO (or not).[26] These characteristics likewise do not affect the pea protein's

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20 *Ibid.* at 6, at para. 17.
21 Exhibit PI-2024-001-02.01C at 4, at para. 6.
22 *Ibid.* at 4, at para. 6.
23 Exhibit PI-2024-001-05 at 5, at para. 15.
24 Exhibit PI-2024-001-02.01C at 4, at para. 6.
25 Exhibit PI-2024-001-05 at 7.
26 Exhibit PI-2024-001-11.01B at para. 5; Exhibit PI-2024-001-11.01A at para. 12.

characteristics, the channels of trade through which the goods are marketed and sold, or the types of customers.[27]

[32] In all, there is insufficient evidence for the Tribunal to find that there are different markets, customers, channels of trade, distribution, marketing and end uses which are anchored in the distinctions that CFNA proposes.

[33] The definition of the subject goods is relatively narrow and is limited by the type of raw material input (peas) and defined ranges of protein content for the pea protein. Although the range of protein content may be a variable, Nutri-Pea has provided reply evidence that pea protein is not subdivided into distinct products based on protein content alone, as customers can substitute or otherwise make satisfactory adjustments with other ingredients when using pea protein in the manufacture of other products.[28]

[34] Having regard to the evidence available to the Tribunal in this preliminary injury inquiry, the potential variations or variables in pea protein[29] appear better suited as benchmark products in an eventual final injury inquiry,[30] rather than to define separate classes of goods. The Tribunal is persuaded that, although pea protein within the scope of the product definition comprises a continuum of goods, any differences reflect nuances that are insufficient to create different classes of goods. The production methods, product characteristics, marketing, customers and end uses are all very similar and goods within that continuum are overall substitutable. The Tribunal views the possibility of downward substitutability as evidence of a continuum of goods, and this fact supports the view that there is only a single class of goods.[31] Indeed, the availability of dumped or cheaper goods may spur or incentivize substitution.[32]

[35] The evidence shows that Nutri-Pea and Roquette produce like goods corresponding to the definition of the subject goods. The declarations of Roquette's witnesses[33] as well as Nutri-Pea's witnesses[34] provide detailed descriptions of the manufacturing processes used by the domestic industry to produce pea protein. For both Nutri-Pea and Roquette, the characteristics of pea protein, including protein content, fall within the definition of the subject goods.

[36] For the purposes of this inquiry, the Tribunal is also satisfied that there is insufficient evidence to find that there is more than a single class of goods. Accordingly, the Tribunal will conduct its analysis on the basis that domestically produced pea protein that is of the same description as the subject goods is "like goods" in relation to the subject goods, and that there is a single class of goods.

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27 See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48; Exhibit PI-2024-001-11.01B at para. 5.

28 Exhibit PI-2024-001-11.01A at para. 10.

29 These include whether the pea protein is produced from GMO/non-GMO or organic/non-organic peas, as well as the ranges of protein content in the pea protein.

30 The Tribunal need not determine the issue of the appropriate benchmark products at this stage. It will consider this issue during the preparation of questionnaires in the context of the injury inquiry.

31 See, for example, *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at para. 66.

32 See, for example, *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at para. 57.

33 Exhibit PI-2024-001-02.01C at 57–71; Exhibit PI-2024-001-03.01C (protected) at 180–194.

34 Exhibit PI-2024-001-02.01C at 4–7; Exhibit PI-2024-001-03.01C (protected) at 4–7.

DOMESTIC INDUSTRY

[37] Subsection 2(1) of SIMA defines "domestic industry" as follows:

> … the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

[38] The CBSA concluded that Nutri-Pea and Roquette were the only producers of like goods in Canada and therefore found that they account for 100% of the production of pea protein in Canada.[35] There used to be a third domestic producer of pea protein, Merit Functional Foods Inc., but it ceased production in 2023.[36]

[39] CFNA alleged that other producers such as Ingredion-Verdient Foods, PIP International, PhytoKana, More than Protein, Agrocorp Processing, and Faba Canada (to the extent that they produce pea protein and not only faba bean protein) also form part of the domestic industry.[37]

[40] Nutri-Pea and Roquette dispute this premise. They assert that these other producers are not yet operational or, if so, they manufacture pea protein having a protein content or other features outside the range of the product definition and arising from production methods that differ from those used to manufacture pea protein having a high protein content.[38]

[41] In the absence of any persuasive evidence demonstrating that these other entities are significant producers of like goods, the Tribunal finds that Nutri-Pea and Roquette together form at least a major proportion of the known domestic industry. The Tribunal's conclusion aligns with the CBSA's finding that there are no other producers of like goods.

CROSS-CUMULATION

[42] As the subject goods originate from a single country (China), no issue of cumulation as defined by subsection 42(3) of SIMA arises with respect to either this preliminary injury inquiry or any final injury inquiry.

[43] Where subject goods from the same source are both dumped and subsidized, the Tribunal considers that it is not necessary or practicable to disentangle the effects of subsidizing from the effects of dumping of the same goods.[39]

INJURY ANALYSIS

[44] The complainants allege that the subject goods have caused material injury to the domestic industry through price undercutting, price depression, price suppression, lost sales and market share,

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35 Exhibit PI-2024-001-05 at 7–8.

36 Merit Functional Foods Inc.'s former Co-Chief Executive Officer provided a letter of support to the complaint but provided no data to serve as part of the domestic industry. See Exhibit PI-2024-001-02.01C at 297–298.

37 Exhibit PI-2024-001-06.02 at 5–26, 28–55, 57–63, 65–68, 193–194.

38 Exhibit PI-2024-001-11.01A at paras. 3–8, at 7–54.

39 See, for example, *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) at para. 36.

which in turn caused reduced revenues, profitability, capacity utilization, reduced employment and wages, and that the subject goods have had a negative impact on current and proposed investments.

[45] The reasonable indication of injury analysis involves a consideration of multiple factors. The Tribunal's analysis of the reasonable indication of injury (or threat of injury), having regard to all relevant factors, is provided below.

Import volume of the subject goods

[46] The Tribunal must consider whether the evidence reasonably indicates that the volume of the subject imports significantly increased in absolute terms and relative to domestic production and consumption.

[47] According to the data compiled by the CBSA,[40] the CBSA found that the volume of the subject goods was 3,392 metric tonnes in 2021, 4,755 metric tonnes in 2022 and 3,480 metric tonnes in 2023.[41] The CBSA found that its data supported the allegation of an increase in the volume of the subject goods on an absolute basis from 2021 to 2023 and on a relative basis from 2021 to 2023.[42]

[48] The CBSA data suggest an important increase in subject volumes in 2022, followed with a decline the next year, resulting in a small but significant overall increase in the absolute volume of the subject goods from 2021 to 2023. The market share for subject imports increased between 2021 and 2023 by 7%, while the market share of domestic sales fell slightly during the same period. Further, the market share gain for subject goods occurred as the overall market declined between 2021 and 2023.[43]

[49] In relative terms, the data show that there was a decrease in the ratio of imports relative to domestic production due, in part, to the entrance of Roquette's production into the Canadian market. However, there was a significant increase in the ratio of imports relative to sales from domestic production.[44]

[50] Taken together, this evidence provides a reasonable indication of a significant increase in imports of the subject goods in absolute terms and in relative terms with respect to domestic sales from domestic production.

Price effects of the subject goods

[51] The Tribunal must also consider whether the evidence reasonably indicates that the subject goods have had significant adverse price effects on the like goods.

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40 CBSA Facility for Information Retrieval Management (FIRM) and Accelerated Commercial Release Operations Support System (ACROSS). Exhibit PI-2024-001-05 at 8, at para. 32.

41 Exhibit PI-2024-001-05 at Table 2.

42 *Ibid.* at 18, at para. 86.

43 *Ibid.* at 18, at paras. 86–87, at Table 2.

44 *Ibid.* at Table 2; Exhibit PI-2024-001-03.01C (protected) at 334.

[52] At this preliminary stage, the evidence generally indicates that pea protein is a commodity product and that its purchase is driven by price, with a high degree of price transparency in the market.[45] The Tribunal acknowledges CFNA's argument that pea protein is not necessarily purchased due to price but also based on the pea protein's taste, texture, functionality (solubility, binding), and product consistency. In the context of an eventual final injury inquiry, the Tribunal will explore the factors that purchasers consider when selecting which pea protein to purchase, which could help clarify the extent to which non-price factors are relevant in purchasing considerations.

[53] The complainants argue that the subject goods have significantly undercut the price of the domestic like goods and have caused significant price depression and suppression.

Price undercutting

[54] The CBSA data show that the selling prices of the subject goods have consistently been lower than the selling prices of the domestic like goods, by a significant margin.[46] The CBSA further noted that, "based on average per [metric tonne] prices, imports from China also undercut imports from all other countries for 2021, 2022, and 2023."[47]

[55] Top Health, which opposes the preliminary injury inquiry, has conceded that the domestically produced pea protein is priced higher than the subject goods.[48] There is also evidence that organic pea protein from China is priced lower than like goods produced domestically using non-organic peas.[49] The Tribunal notes that this pricing seems counterintuitive for the market.

[56] Further, the witness statements submitted by the complainants provided several examples of price undercutting or purchaser requests for lower pricing due to competition from subject imports at the account-specific level.[50] The Tribunal accords significant weight to the evidence showing that the complainants, even as new market entrants, lost customers and specific accounts due to subject goods being offered at lower prices.

[57] The Tribunal finds that the evidence at this stage of the proceedings reasonably indicates that the subject goods significantly undercut the price of domestically produced like goods.

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45 Exhibit PI-2024-001-03.01C (protected) at 204, at para. 73; Nutri-Pea's witness provided account-specific evidence in this regard at Exhibit PI-2024-001-03.01C (protected) at 10–11, at paras. 26–29, at 13–16, at paras. 34–44.

46 Exhibit PI-2024-001-03.03 (protected) at Table 3.

47 Exhibit PI-2024-001-05 at 19, at para. 93.

48 Exhibit PI-2024-001-06.01 at 1.

49 Exhibit PI-2024-001-03.01C (protected) at 10–11, at paras. 26–29, at 13–16, at paras. 34–44, at 204–212, at paras. 71–88, at 227–229; Exhibit PI-2024-001-07.02 (protected) at para. 30; Exhibit PI-2024-001-11.01B at para. 5; Exhibit PI-2024-001-12.01A (protected) at para. 5.

50 Exhibit PI-2024-001-03.01C (protected) at 10–11, at paras. 26–29, at 13–16, at paras. 34–44, at 204–212, at paras. 71–88.

Price depression

[58] The evidence submitted with the complaint shows a trend of minor domestic price increases for pea protein over the period of 2021 to 2023. The CBSA concluded that this was inadequate to support a finding of price depression.[51]

[59] The Tribunal finds no grounds to disagree with that assessment.

Price suppression

[60] Nutri-Pea and Roquette submit that the adverse effects from Chinese imports have prevented price increases for like goods that would otherwise likely have occurred but for the market presence of subject goods imported and sold at unfair prices. To support these allegations, Nutri-Pea and Roquette provided their domestic sales values and cost of production data from 2020 to 2023.[52]

[61] The CBSA concluded that 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.[53]

[62] Nutri-Pea and Roquette provided an extensive amount of commercial information that the complainants regarded as proprietary and thus designated as confidential. The Tribunal reviewed this confidential information and is satisfied that it confirms the CBSA's assessment of price suppression. Therefore, the Tribunal concludes that there is a reasonable indication of price suppression caused by the subject goods.

Impact on the domestic industry

[63] As part of its analysis under paragraph 37.1(1)(c) of the Regulations, the Tribunal must consider the impact of the dumped or subsidized goods on the state of the domestic industry. In particular, the Tribunal will have regard to all relevant economic factors and indices that have a bearing on the state of the domestic industry.[54] These impacts are to be distinguished from the impact of any other factors affecting the domestic industry.

[64] The Tribunal must also determine whether the evidence discloses a reasonable indication of a causal link between the dumping or subsidizing of the subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped or subsidized goods on the domestic

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51 Exhibit PI-2024-001-05 at 19, at para. 96.

52 Exhibit PI-2024-001-03.01C (protected) at 334–336, 338–340.

53 Exhibit PI-2024-001-05 at 20, at para. 98.

54 Such factors and indices include the following:

> (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity; (i.1) any actual or potential negative effects on employment levels or the terms and conditions of employment of the persons employed in the domestic industry, including their wages, hours worked, pension plans, benefits or worker training and safety; (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital; and (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods.

industry. The standard is whether there is a reasonable indication that the dumping or subsidizing of the subject goods has, *in and of itself*,[55] caused injury.

[65] As the volume of subject goods increased with time between 2020 and 2023, there is evidence showing that the economic situation of the domestic industry has progressively worsened.[56]

[66] Both complainants have provided individual income statements reflecting their financial positions throughout the period of 2020 through 2023, with allowances made for the commencement of operations in Canada by Roquette in 2022.

[67] As discussed above, the evidence shows that subject goods are gaining ground, increasing sales at prices which undercut the pricing of the domestic industry. Indeed, Nutri-Pea and Roquette noted several account-specific instances of sales it alleged were lost to subject goods due to their unfairly low prices.[57]

[68] Under these circumstances, the Tribunal has ascertained a reasonable indication of adverse effects on profitability causing injury to the domestic industry.

[69] The confidential financial information provided by the complainants further demonstrates that, as the complainants continue to lose sales, even with decreasing prices, there is a consequential and accelerating decrease in capacity utilization with an associated increase in inventories. The Tribunal acknowledges CFNA's argument that the complainants' production capacity has been impacted by the opening of a new facility in Portage la Prairie, Manitoba, by Roquette in 2021.[58] The Tribunal will further explore the impact of this development on the domestic industry's capacity and production in the final injury inquiry.

[70] The Tribunal is also satisfied that there is evidence reasonably indicating that the domestic industry has been injured by a lack of return on investment.[59]

[71] Nutri-Pea and Roquette submitted evidence to support their expectation that demand for pea protein and other plant-based proteins will continue to grow worldwide over the next few decades, reflecting increased consumer demand for healthier and more sustainable food sources.[60] To capitalize on this growing market, Roquette decided to establish a pea protein plant to serve the North American market.

[72] Roquette selected Portage la Prairie as the plant location due to its proximity to a rural industrial zone in the heart of Canada's pea-producing regions, with seemingly favourable transportation logistics for supplying the North American market. Roquette describes its Canadian plant as the world's largest HPC pea protein plant designed, as a greenfield development, from the

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55 *Certain Mattresses* (25 April 2022), PI-2021-005 (CITT) at para. 49; *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43.

56 Exhibit PI-2024-001-03.01C (protected) at 324, 334, 338; Exhibit PI-2024-001-05 at Table 2.

57 Exhibit PI-2024-001-05 at 18; Exhibit PI-2024-001-03.01C (protected) at 10–11, at paras. 26–29, at 13–16, at paras. 34–44, at 204–212, at paras. 71–88.

58 Exhibit PI-2024-001-06.02A at 23–26.

59 Exhibit PI-2024-001-03.01C (protected) at 180, 280, 284–285.

60 Exhibit PI-2024-001-02.01D at 748–775.

ground up to be a state-of-the-art facility for processing Canadian yellow peas into HPC pea protein and other co-products and by-products.

[73] The investment required to design, construct and finance such a large manufacturing facility was substantial.[61] When viewed in the context of the decreasing financial performance, the Tribunal concludes that there is a reasonable indication that the subject goods have caused a significant adverse effect with respect to Roquette's return on its investment.

[74] Likewise, Nutri-Pea provided a description of ongoing investments that it has made in its business and facilities dating back to the 1970s. Its witnesses described how competing with dumped and subsidized goods has prejudiced its return on investment and future capacity to raise capital.[62]

[75] Nutri-Pea provided evidence that, between 2020 and 2022, it had been growing and hiring new employees in anticipation of increasing future sales. As the competition from subject imports increased with time, and at progressively lower prices, Nutri-Pea lost sales and customers and found itself having to lay off employees at its plant and significantly reduce its workforce, in 2023, as its profitability worsened.[63]

[76] The Tribunal finds that the available evidence supports Nutri-Pea and Roquette's claim of a decline on the return on investments, a loss of profitability, reduced employment, a negative effect on inventories, and a potential negative effect on the ability to raise capital.

[77] The Tribunal further notes that there is at least a reasonable indication of a negative correlation between the increase in importation of the subject goods and the declining financial performance of the domestic industry.

[78] The Tribunal finds that this evidence provides a reasonable indication of material injury based on the deterioration of the domestic industry's performance, including decreasing profitability and loss of sales.

Causation

[79] Paragraph 37.1(3)(a) of the Regulations requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury on the basis of the volume, the price effect and the impact on the domestic industry of the dumped and subsidized goods.

[80] Both CFNA and Top Health submit that the evidence provided by Nutri-Pea and Roquette is not sufficiently robust to demonstrate that the alleged injury was caused by subject imports. Rather, CFNA and Top Health assert that the alleged injury is self-inflicted, at least in part.

[81] They contend that Chinese suppliers of pea protein are highly experienced in the marketplace with established customer relationships. Under those circumstances, the complainants chose to enter the Canadian market knowing that they would have to compete against Chinese suppliers that enjoy an entrenched position arising from a history of reliably supplying a high-quality pea protein.

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61 Exhibit PI-2024-001-03.01C (protected) at 179.
62 *Ibid.* at 24–26.
63 Exhibit PI-2024-001-02.01C at 18.

[82] Top Health states that the subject goods are frequently made in China with peas imported from Canada and that the cost of peas represents the largest input cost for manufacturers.[64]

[83] Roquette provided evidence that it selected the Manitoba location for its manufacturing facilities based on proximity to pea-growing regions in Canada.[65] Nutri-Pea is a pioneer in the pea protein industry and has operated a plant in Portage la Prairie for over 40 years.[66]

[84] Currently Chinese producers import peas from Canada (and elsewhere) where the peas are processed into subject goods and exported back to Canada. Parties opposed to the inquiry argued that there is no viable business case for a processing plant located in Western Canada to compete with the subject goods in the North American market. The Tribunal is not persuaded by this argument. The premise of a manufacturing facility located in proximity to a source of critical raw material obviates the global cost and logistics of transporting the raw materials.

[85] Moreover, both Nutri-Pea and Roquette are well established in the pea protein industry. Romain Joly stated in his witness statement that Roquette is the pioneer in the field of using pea protein in food products and was one of the first entities to receive United States Food and Drug Administration approval for "Generally Recognized as Safe" status for the use of pea protein in food products.[67]

[86] According to the evidence on the record, Nutri-Pea has been a Canadian manufacturer and producer of food-grade protein isolates, starches and fibres for over 40 years and was involved with developing the technology and expertise to extract protein slurry from the yellow peas grown in Canada to be processed into HPC pea protein.[68]

[87] The Tribunal is not prepared to find that the complainants should have refrained from offering a competing product simply because pre-existing players were already active in the market. The issue in this preliminary injury inquiry is whether the dumping and subsidizing of the subject goods, as found by the CBSA, have distorted marketplace conditions and caused injury to the complainants by precluding their ability to compete fairly.

[88] Top Health also submits that the imported Chinese pea protein is a higher-quality product. It asserts that the subject goods are preferred by Canadian purchasers because the subject goods have superior organoleptic properties, including attributes such as taste, texture, functionality (solubility, binding) and consistency.

[89] CFNA made submissions that chemico-physical properties such as pH and solubility are relevant factors with respect to the suitability and substitutability of pea protein which, in turn, should affect demand and pricing to customers.

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64 Exhibit PI-2024-001-06.01 at 2.
65 Exhibit PI-2024-001-02.01C at 57, 61, 65, 115, 116.
66 *Ibid.* at 3, at para. 4.
67 Exhibit PI-2024-001-11.01B at para. 9.
68 Exhibit PI-2024-001-02.01C at 3.

[90] However, there is no evidence that would assist the Tribunal in evaluating the probative strength of these assertions, especially since they pertain to scientific and technical subject matter arising from chemical manufacturing processes which may require expert testimony in the context of a full inquiry.

[91] Without such evidence, it is speculative to conclude that organoleptic or other physical properties of pea protein override pricing as a direct cause of the injury to the domestic industry.

[92] Proprietary processes, technology or intellectual property may be relevant to the manufacture, product characteristics and end uses of pea protein. Aspects of these issues may also potentially be pertinent to product pricing and substitutability or otherwise affect the marketplace by either facilitating or creating impediments to competition. These issues can be explored in a full inquiry, as may be necessary.

[93] When CFNA's allegations are considered in the context of the economic factors and supporting evidence as discussed above, the Tribunal is not persuaded that there is sufficient evidence to support a finding that product quality, as opposed to price, is the dominant cause of the economic injury claimed by the complainants.

[94] The Tribunal finds that the totality of submitted evidence provides a reasonable indication that there is a causal link between the subject imports and the deterioration of the domestic industry's performance, including its falling prices and loss of sales and market share.

Conclusion

[95] For the foregoing reasons and bearing in mind the lower evidentiary threshold applicable at the preliminary injury inquiry stage, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

THREAT OF INJURY

[96] The Tribunal also finds that the complainants have met the evidentiary threshold applicable at the preliminary injury inquiry stage to demonstrate a threat of injury.

[97] The Tribunal considered the following grounds as providing sound justification to conclude that ongoing importation of the subject goods threatens to cause further material injury to the domestic industry.

[98] China has excess capacity that is more than enough to overwhelm the Canadian market. The largest producer in China, Shuangta Foods, had a production capacity of 70,000 tonnes in 2020, which many times exceeds the Canadian domestic market demand.[69]

[99] Moreover, there is evidence that Chinese vermicelli producers in Shandong province have switched to HPC pea protein production to take advantage of current and expected increasing demand for plant-based proteins.[70]

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69 Exhibit PI-2024-001-02.01D at 194.

70 Exhibit PI-2024-001-02.01C at 535, 574–575, 577.

[100] The complainants contend that these factors demonstrate that Chinese producers of the subject goods are highly export-oriented. This is underscored by relatively low economic demand in China for plant-based protein products,[71] which is a major end use for HPC pea protein.

[101] CFNA argues that the size of Chinese production capacity as presented by Nutri-Pea and Roquette as well as the propensity of Chinese producers to seek export markets is overstated, if not exaggerated.

[102] However, the crux of this argument goes to the dimensions of scale. The evidence shows that excess capacity available to Chinese producers is disproportionate to the size of the Canadian market to the point that it is measured exponentially. Even assuming that additional evidence might support CFNA's claims of an overstatement of Chinese production capacity and excess capacity numbers, any reduction would go to the extent of scale and not negate the basic premise that there is substantial Chinese excess capacity that would still be substantial enough to overwhelm the domestic Canadian market.

[103] The Tribunal gives some weight to the fact that an ongoing trade remedy case in the United States is likely to increase the likelihood of subject goods destined for the U.S. market to be diverted to Canada. Even if overall global demand for plant-based products is expected to increase, as argued by CFNA, Canada would remain an attractive export market for subject goods, having regard to generally favourable economic conditions.

[104] There is no evidence suggesting that the ongoing price undercutting and suppression will abate. When considered in conjunction with the factors discussed above, the Tribunal finds that the evidence overall discloses a reasonable indication that the dumping and subsidizing of the subject goods is threatening to cause injury.

CONCLUSION

[105] On the basis of the foregoing analysis, the Tribunal determines there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused, or are threatening to cause, injury to the domestic industry.

Susan D. Beaubien
Susan D. Beaubien
Presiding Member

Cheryl Beckett
Cheryl Beckett
Member

Eric Wildhaber
Eric Wildhaber
Member

71 Exhibit PI-2024-001-02.01C at 580, 593.