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## Appendix II

### List of Companies Eligible for Separate Rate

- (1) Bao Nguyen Honeybee Co., Ltd.
- (2) Daisy Honey Bee Joint Stock Company
- (3) Dak Nguyen Hong Exploitation of Honey Company Limited TA
- (4) Dongnai HoneyBee Corporation
- (5) Hanoi Honey Bee Joint Stock Company
- (6) Hoa Viet Honeybee One Member Company Limited
- (7) Hoang Tri Honey Bee Co., Ltd.
- (8) Huong Rung Trading-Investment and Export Company Limited
- (9) Nhieu Loc Company Limited
- (10) Southern Honey Bee Company Ltd.
- (11) Spring Honeybee Co., Ltd.
- (12) Thanh Hao Bees Co., Ltd.
- (13) Viet Thanh Food Co., Ltd.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C–570–155]

### Certain Pea Protein From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) 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). The period of investigation is January 1, 2022, through December 31, 2022.

**DATES:** Applicable July 5, 2024.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson or 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 or (202) 482–6430, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On December 18, 2023, Commerce published its *Preliminary Determination* in the *Federal Register* and invited interested parties to comment.<sup>1</sup>

<sup>1</sup> See *Certain Pea Protein from the People's Republic of China: Preliminary Affirmative*

Subsequently, on April 23, 2024, Commerce issued its Post-Preliminary Determination.<sup>2</sup> For a complete description of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.<sup>3</sup> The Issues and Decision Memorandum is a public document and is made available to the public 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 Issues and 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

On February 7, 2024, Commerce issued a Preliminary Scope Decision Memorandum in which it determined not to modify the language of the scope as it regards pea protein from China.<sup>4</sup> We received no scope case briefs from interested parties. Therefore, the scope of the investigation, as contained in the *Preliminary Determination*, remains unchanged as noted in Appendix I.

### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs that were submitted by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, see Appendix II to this notice.

*Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 88 FR 87403 (December 18, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memorandum, “Post-Preliminary Decision Memorandum for the Countervailing Duty Investigation on Certain Pea Protein from the People's Republic of China,” dated April 23, 2024.

<sup>3</sup> See Memorandum, “Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Certain Pea Protein from the People's Republic of China,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>4</sup> See Memorandum, “Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Pea Protein from the People's Republic of China: Preliminary Scope Decision Memorandum,” dated February 7, 2024.

## Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>5</sup> For a full description of the methodology underlying our final determination, see the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on facts otherwise available, including with an adverse inference, pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of adverse facts available, see the *Preliminary Determination* PDM<sup>6</sup> and section “Use of Facts Otherwise Available and Application of Adverse Inferences” in the Issues and Decision Memorandum.

## Verification

Commerce was unable to conduct on-site verifications of the information relied on in making its final determination in this investigation. However, in January 2024, we took additional steps in lieu of on-site verifications to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act, by conducting virtual verifications of Yantai Oriental Protein Tech Co., Ltd. (Yantai Oriental) and Zhaoyuan Junbang Trading Co., Ltd. (Junbang).

### Changes Since the Preliminary Determination

Based on our analysis of the comments received from interested parties and our verification findings, we made certain changes to the subsidy rate calculations for Junbang and Yantai Oriental. For a discussion of these changes, see the Issues and Decision Memorandum.

### Final Affirmative Determination of Critical Circumstances

Pursuant to sections 705(a)(2), 776(a), and 776(b) of the Act, and 19 CFR 351.206, Commerce continues to find that critical circumstances exist with respect to imports of pea protein from China for Junbang, Yantai Oriental, all other producers and/or exporters, and the non-responsive companies. For

<sup>5</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; see also section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>6</sup> See *Preliminary Determination* PDM at 8–36.

further information on Commerce’s critical circumstances analysis, *see* the section “Final Critical Circumstances Determination” in the accompanying Issues and Decision Memorandum.

All-Others Rate

Pursuant to section 705(c)(5)(A)(i) of the Act, Commerce will determine an all-others rate equal to the weighted-average countervailable subsidy rates established for exporters and/or producers individually examined, excluding any rates that are zero, *de minimis*, or rates based entirely under section 776 of the Act. We continue to calculate individual estimated countervailable subsidy rates for Junbang and Yantai Oriental that are not zero, *de minimis*, or based entirely on facts otherwise available. Therefore, we determined the all-others rate using the estimated countervailable subsidy rates calculated for Junbang and Yantai Oriental. For further information, *see* the section “Calculation of the All-Others Rate” in the accompanying Issues and Decision Memorandum.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i> )
Yantai Oriental Protein Tech Co., Ltd <sup>7</sup>	16.52
Zhaoyuan Junbang Trading Co., Ltd <sup>8</sup>	15.15
Focusherb LLC	355.89
Golden Protein Limited	355.89
Shandong Jianyuan Bio-engineering Co	355.89
Yantai Wanpy International Trade	355.89
All Others	15.84

Disclosure

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

<sup>7</sup> Commerce 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.

<sup>8</sup> Commerce finds Yantai Shuangta Food Co. Ltd. to be cross-owned with Junbang.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, and because we preliminarily determined that critical circumstances existed with respect to Junbang, Yantai Oriental, all other producers and/or exporters, and the non-responsive companies, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise from China that were entered, or withdrawn from warehouse, for consumption, on or after September 19, 2023, which is 90 days prior to the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise entered or withdrawn from warehouse on, or after, April 16, 2024, but to continue the suspension of liquidation of all entries of subject merchandise between September 19, 2023 and April 15, 2024.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of pea protein from China. Because the final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of pea protein from China no later than 45 days after our final determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will

not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

Administrative Protective Order

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: June 27, 2024.

**Ryan Majerus,**  
*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the 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 Issues and Decision Memorandum

- Summary
- Background
- Scope of the Investigation
- Final Critical Circumstances Determination
- Subsidies Valuation Information

VI. Use of Facts Otherwise Available and Application of Adverse Inferences

VII. Analysis of Programs

VIII. Discussion of the Issues

Comment 1: Whether the Application of Adverse Facts Available (AFA) for the Provision of Whole Peas for Less Than Adequate Remuneration (LTAR) Is Appropriate

Comment 2: Whether the Application of AFA for the Provision of Electricity for LTAR Is Appropriate

Comment 3: Whether Policy Loans to the Pea Protein Industry Are Countervailable

Comment 4: Whether Commerce Should Apply AFA Regarding the Export Buyer's Credits Program (EBCP)

Comment 5: Whether the Income Tax Deductions for Research and Development (R&D) Expenses Under the Enterprise Income Tax (EIT) Law Program Are Specific

Comment 6: Appropriate Benefit Calculation for the Income Tax Deduction for R&D Expenses Program

Comment 7: Whether to Use a Different Sales Denominator in Junbang's Income Tax Program Benefit Calculations

Comment 8: Appropriate Cash Deposit Rate for Cooperative Exporters

IX. Calculation of the All-Others Rate

X. Recommendation

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-154]

### Certain Pea Protein From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that certain pea protein (pea protein) from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2023, through June 30, 2023.

**DATES:** Applicable July 5, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sofia Pedrelli or Katherine Smith, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4310 or (202) 482-0557, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 13, 2024, Commerce published its *Preliminary Determination* in the **Federal Register**, in which we postponed the final determination until June 27, 2024, and invited parties to comment on the *Preliminary Determination*.<sup>1</sup>

For a summary of the events that occurred since the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, see the Issues and Decision Memorandum.<sup>2</sup> The Issues and Decision Memorandum is a public document and is made available to the public 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 Issues and 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

On February 7, 2024, Commerce issued a Preliminary Scope Decision Memorandum in which it determined not to modify the language of the scope as it regards pea protein from China.<sup>3</sup> We received no scope case briefs from interested parties. Therefore, the scope of the investigation, as contained in the *Preliminary Determination*, remains unchanged as noted in appendix I.

## Final Affirmative Determination of Critical Circumstances

We continue to find that critical circumstances exist for imports of pea protein from China for the separate rate companies and the China-wide entity,

<sup>1</sup> See *Certain Pea Protein from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 10038 (February 13, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision memorandum (PDM).

<sup>2</sup> See Memorandum, "Decision Memorandum for the Final Determination in the Less-Than-Fair Value Investigation of Certain Pea Protein from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>3</sup> See Memorandum, "Less-Than-Fair-Value and Countervailing Duty Investigations of Certain Pea Protein from the People's Republic of China: Preliminary Scope Decision Memorandum," dated February 7, 2024.