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# Tax Alert – Canada

## The CITT issues its finding on imports of certain pea protein originating in or exported from the People’s Republic of China

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 19 November 2024, pursuant to subsection 43(1) of the *Special Import Measures Act*<sup>1</sup> (SIMA), the Canadian International Trade Tribunal (CITT) issued its finding that the dumping and subsidizing of certain pea protein originating in or exported from the People’s Republic of China (China) (the subject goods) has caused injury to the domestic industry. Certain exporters were excluded from the finding.<sup>2</sup>

The statement of reasons will be issued on 4 December 2024.<sup>3</sup>

The CITT’s finding defines the subject goods as follows:

“Certain 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 CITT considers requests for a public interest inquiry submitted within 45 days of the injury finding. Information with respect to this process is described below. Please contact our EY Global Trade professionals for more information.

<sup>1</sup> R.S.C., 1985, c. S-15.

<sup>2</sup> [Certain Pea Protein - Canadian International Trade Tribunal.](#)

<sup>3</sup> [Tribunal Finds Injury–Certain Pea Protein from China - Canadian International Trade Tribunal.](#)

## Background

On 22 April 2024, pursuant to subsection 31(1) of the SIMA, the Canada Border Services Agency (CBSA) initiated investigations with respect to the alleged injurious dumping and subsidizing of the subject goods.<sup>4</sup>

On 20 June 2024, pursuant to subsection 37.1(1) of the SIMA, the CITT issued its preliminary determination of injury or threat of injury caused by the subject goods.

Preliminary determinations of dumping and subsidizing respecting the subject goods were issued by the CBSA on 22 July 2024.

For more information with respect to the preliminary determinations, see EY Tax Alert 2024 Issue No. 41, [Canada imposes provisional duties on imports of high protein content pea protein from China](#).

## Final decisions of the CBSA

On 21 October 2024, the CBSA issued its final decisions concerning the dumping and subsidizing of the subject goods.<sup>5</sup>

Pursuant to paragraph 41(1)(a) of the SIMA, the CBSA terminated its dumping investigation in respect of four exporters on the basis that their exports were not dumped. The CBSA also terminated the subsidy investigation in respect of one exporter on the basis that its imports were subsidized by an insignificant amount.

Pursuant to paragraph 41(1)(b) of the SIMA, the CBSA made the following final determination with respect to dumping for all other exporters for which the investigation was not terminated:

- ▶ The margin of dumping for one exporter was determined to be 5.3%, expressed as a percentage of the export price.
- ▶ The margin of dumping for all other exporters will be determined by advancing the export price by 24.9%.<sup>6</sup>

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<sup>4</sup> [Statement of reasons—Initiation of investigations: High Protein Content Pea Protein \(HPC 2024 IN\)](#).

<sup>5</sup> [Statement of reasons—Final decisions: High Protein Content Pea Protein \(HPC 2024 IN\)](#).

<sup>6</sup> For all other exporters that did not receive specific normal values from the CBSA, normal values were determined pursuant to a ministerial specification under subsection 29(1) of the SIMA.

The CBSA made the following final determination with respect to subsidizing for all other exporters for which the investigation was not terminated:

- ▶ Four exporters received individual amounts of subsidy ranging between 1.2% to 2.2%, expressed as a percentage of export price.<sup>7</sup>
- ▶ For all other exporters, the amount of subsidy was determined as 19.5%, expressed as a percentage of the export price.

## **CITT final injury finding**

Following an inquiry pursuant to section 42 of the SIMA, on 19 November 2024, the CITT found, pursuant to subsection 43(1), that the dumping and subsidizing of the subject goods have caused injury to the domestic industry. The CITT's finding excludes subject goods exported by exporters for which the CBSA terminated its dumping and subsidizing investigations. The finding also included one product exclusion for a specific protein drink product.

While the dumped goods in respect of which a finding was made were also found to have caused injury by a massive importation (as the term is defined in the SIMA), the CITT did not find that the goods were likely to seriously undermine the remedial effect of the duties applicable under subsection 3(1) of the SIMA.

Anti-dumping and countervailing duties are now payable on the following subject goods covered by the CITT's finding:

- ▶ Goods imported during the provisional period, which began on the date of the CBSA's preliminary determination of dumping and subsidizing (i.e., 22 July 2024) to the date of the CITT's finding of injury; and
- ▶ Goods released after the date of the CITT's finding of injury.

Anti-dumping and countervailing duties will remain in effect until the finding is rescinded.

A finding of injury expires after five years unless it is continued by the CITT following an expiry review conducted pursuant to subsection 76.03(1) of the SIMA.

## **What's next: Request for a public interest inquiry**

Following an injury finding, the CITT may initiate a public interest inquiry, pursuant to subsection 45(1) of the SIMA, if it is of the opinion that there are reasonable grounds to consider that the imposition of anti-dumping or countervailing duties would not or might not be in the public interest.

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<sup>7</sup> Subsidy amounts for all other exporters were determined under a ministerial specification pursuant to subsection 30.4(2) of the SIMA.

A request for the commencement of a public interest inquiry may be made to the CITT within 45 days of the CITT's finding of injury in accordance with subsection 40.1(1) of the *Special Import Measures Regulations* (Regulations).<sup>8</sup> A request must contain the information prescribed in subsection 40.1(2) of the Regulations, which includes, for example, a statement of the public interest affected by the imposition of the duties, information with respect to the availability of goods from other sources and the impact of the duties on competition in the domestic market and Canadian producers that use the goods as inputs in producing other goods or providing services.

After receiving a request, the CITT decides whether there are reasonable grounds to commence a public interest inquiry.<sup>9</sup> If, after conducting a public interest inquiry, the CITT is of the opinion that the imposition of anti-dumping or countervailing duties on the subject goods would not or might not be in the public interest, it must send a report to the Minister of Finance. In this report, the CITT specifies either a level of reduction of the duties or price(s) that would eliminate injury to the domestic industry.

## Learn more

For more information with respect to the application of anti-dumping or countervailing duties or a request for a public interest inquiry, please contact one of the following EY professionals:

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<sup>8</sup> SOR/84-927.

<sup>9</sup> [Public interest inquiry guidelines - Canadian International Trade Tribunal.](#)

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