



New antidumping and countervailing duty petition: Organic soybean meal from India – consequences for exporters and US importers

International Trade Alert

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On March 31, 2021, the Organic Soybean Processors of America filed a petition with the US Department of Commerce (DOC) and the US International Trade Commission (ITC) alleging that organic soybean meal (OSM) from India is being sold in the United States at less than fair value. The Organic Soybean Processors of America are a US industry trade group comprised of American Natural Processors, LLC, Lester Feed & Grain Co., Organic Production Services, LLC, Professional Proteins, Ltd., Sheppard Grain Enterprises LLC, Simmons Grain Company, Super Soy, LLC and Tr-State Crush, LLC.

The US processors additionally allege that the government of India is providing unfair subsidies to Indian producers and exporters of OSM to the United States. The US processors seek the imposition of antidumping (AD) and countervailing duties (CVD) on imports of OSM from India, alleging dumping margins of 154.12 percent and an unspecified total level of subsidies exceeding 2 percent.

Under US law, a domestic industry can petition the government to initiate an AD investigation to determine whether an imported product is sold in the United States at less than fair value (ie, dumped). A domestic industry may also seek a CVD investigation into alleged subsidization of foreign producers or exporters by a foreign government.

AD/CVD duties may be imposed if the DOC determines that imported goods are dumped and/or unfairly subsidized and if the ITC determines that the domestic industry is materially injured or threatened with such injury by reason of the subject imports.

Products covered by the petition

The merchandise subject to the petition is certain certified organic soybean meal. As described by the petitions, certified OSM can consist of ground soybean cake, ground soybean chips, and/or ground soybean flakes, with or without oil residues. Soybean cake is the product after the extraction of part of the oil from soybeans. Soybean chips and soybean flakes are produced by cracking, heating, and flaking soybeans and reducing the oil content of the conditioned product. "Certified organic soybean meal" is certified by the US Department of Agriculture (USDA) National Organic Program (NOP) or equivalently certified to NOP standards.

The products covered by this petition are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 1208.10.0010 and 2304.00.0000. Certified organic soybean meal may also enter under HTSUS subheadings 2309.90.1005, 2309.90.1015, 2309.90.1010, 2309.90.1030, 2309.90.1032, 2309.90.1035, 2309.90.1045, 2309.90.1050, 2308.00.9890.

The value of US imports of OSM from India was \$249.3 million in 2020.

Foreign producers and US importers of OSM from India

The petition identifies 19 exporters and five US importers of OSM from India. See the lists of exporters and importers from the petition.

Estimated schedule of investigations

AD and CVD proceedings are conducted pursuant to a strict statutory time schedule. Below is an estimated schedule for the AD and CVD investigations on OSM from India.

3/31/2021 – Petition filed

5/17/2021 – ITC preliminary injury determination

6/24/2021 – DOC preliminary CVD determination, if not postponed

8/30/2021 – DOC preliminary CVD determination, if fully postponed

9/7/2021 – DOC preliminary AD determination, if not postponed

10/27/2021 – DOC preliminary AD determination, if fully postponed

3/18/2022 – DOC final AD and CVD determinations, if both preliminary and final determinations are fully postponed and final determinations are aligned

5/2/2022 – ITC final injury determinations, if DOC determinations are fully postponed and DOC final determinations are aligned

5/9/2022 – AD/CVD orders published

Consequences for exporters and US importers

US AD and CVD investigations can result in the imposition of substantial duties, in addition to other already applicable duties and tariffs. If the ITC and DOC make affirmative preliminary determinations, US importers will be required to post cash deposits corresponding to the ad valorem AD and/or CVD duty rates determined for the subject merchandise on or after the date when the DOC's preliminary determination is published in the Federal Register. In certain circumstances, such duty deposit requirements can go into effect retroactively, 90 days prior to the date of publication. The AD and CVD duties will remain in effect if the DOC and ITC make affirmative final determinations.

The DOC calculates specific AD and CVD margins for certain individual producers and exporters selected for examination. Such rates often can be much lower than those alleged in the petition. However, producers and exporters that do not participate in the investigations may be subject to substantially higher margins. Duties imposed at these higher margins may force exporters to stop shipping to the United States and importers to cease importation of subject merchandise. Thus, interested parties – including foreign producers, exporters and importers – should have a strategy for addressing AD and CVD investigations, including possible participation.

Under the statutory time schedule for AD and CVD investigations, the first decision (the preliminary ITC determination whether there is a reasonable indication that the US industry is materially injured or threatened with material injury by reason of the subject imports) must be made within 45 days after the filing of the petition – which in this case is May 17, 2021. An ITC hearing (ie, a public conference) is held about 21 to 23 days after the filing date. As a result, agency staff work – including the issuance of questionnaires to interested parties – begins almost immediately. Thus, quick action is essential to understand the specific implications of these developments and to prepare and implement a pertinent strategy.

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