Organic Soybean Meal from India

Investigation Nos. 701-TA-667 and 731-TA-1559 (Preliminary)

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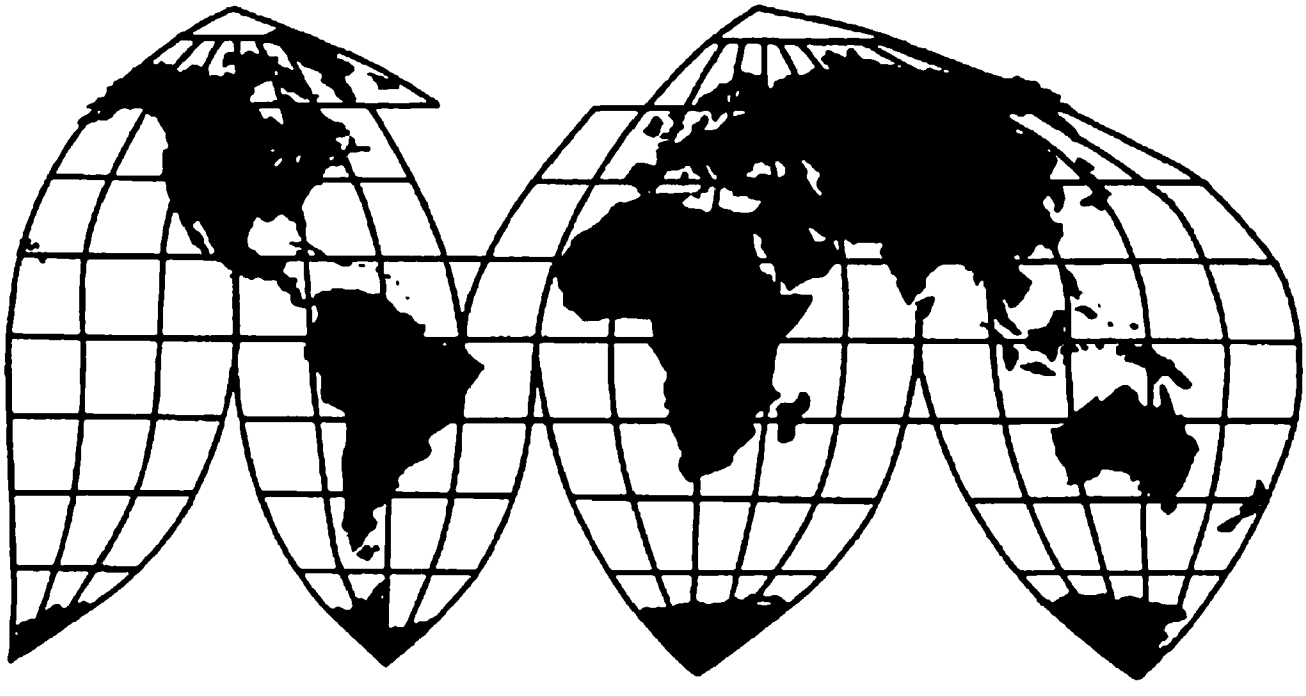
U.S. International Trade Commission



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U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published. Such information is identified by brackets in confidential reports and is deleted and replaced with asterisks (***) in public reports.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-667 and 731-TA-1559 (Preliminary)

Organic Soybean Meal from India

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of organic soybean meal from India, provided for in subheadings 1208.10.00 and 2304.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value ("LTFV") and to be subsidized by the government of India.[2]

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce ("Commerce") of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] *Organic Soybean Meal From India: Initiation of Countervailing Duty Investigation*, 86 FR 22136 (April 27, 2021); and *Organic Soybean Meal From India: Initiation of Less-Than-Fair-Value Investigation*, 86 FR 22146 (April 27, 2021).

duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On March 31, 2021, the Organic Soybean Processors of America, Washington, DC, American Natural Processors, LLC, Dakota Dunes, South Dakota, Lester Feed & Grain Co., Lester, Iowa, Organic Production Services, LLC, Weldon, North Carolina, Professional Proteins Ltd., Washington, Iowa, Sheppard Grain Enterprises, LLC, Phelps, New York, Simmons Grain Co., Salem, Ohio, Super Soy, LLC, Brodhead, Wisconsin, and Tri-State Crush, Syracuse, Indiana filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of organic soybean meal from India.[3]

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 8, 2021 (86 FR 18296). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written testimony and video conference on April 21, 2021. All persons who requested the opportunity were permitted to participate.

[3] On April 6, 2021, Lester Feed & Grain Co. voluntarily withdrew its status as a petitioner.

Views of the Commission

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of organic soybean meal from India that are allegedly sold in the United States at less than fair value and that are allegedly subsidized by the government of India.

I. The Legal Standard for Preliminary Determinations

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.[1] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[2]

II. Background

The Organic Soybean Processors of America ("OSPA") and eight producers of organic soybean meal – American Natural Processors, LLC; Lester Feed & Grain Co.; Organic Production Services LLC; Professional Proteins, Ltd.; Sheppard Grain Enterprises LLC ("Sheppard Grain"); Simmons Grain Company ("Simmons"); Super Soy LLC; and Tri-State Crush LLC (collectively "petitioners") – filed the petitions in these investigations on March 31, 2021.[3] Representatives for petitioners submitted testimony and appeared at the staff conference accompanied by counsel and submitted a joint postconference brief. Field Farms Marketing Ltd. ("Field Farms"),

[1] 19 U.S.C. §§ 1671b(a), 1673b(a) (2000); *see also American Lamb Co. v. United States*, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); *Aristech Chem. Corp. v. United States, 2*0 CIT 353, 354-55 (1996). No party argues that the establishment of an industry in the United States is materially retarded by the allegedly unfairly traded imports.

[2] *American Lamb Co*., 785 F.2d at 1001; *see also Texas Crushed Stone Co. v. United States*, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

[3] On April 6, 2021, Lester Feed & Grain Co. voluntarily withdrew its status as a petitioner and indicated that it *** on the petitions. *See* Petitioners Amendment to the Petition at Exhibit I-34 (April 6, 2021) (EDIS Doc. 738990).

a U.S. importer of subject merchandise, submitted written testimony and appeared at the staff conference, but no respondent entities submitted a postconference brief.[4]

U.S. industry data are based on the questionnaire responses of nine firms that accounted for the majority of U.S. organic soybean meal production in 2020.[5] U.S. import data are based on the questionnaire responses of ten importers that accounted for *** of U.S. imports for organic soybean meal from India in 2020 under HTS subheadings 1208.10.00 and 2304.00.00, "basket" categories under which organic soybean meal is imported.[6] The Commission received usable responses to its foreign producer questionnaires from five producers of subject merchandise in India whose reported exports accounted for *** percent of U.S. imports from India in 2020.[7]

III. Domestic Like Product

A. Legal Standard

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[8] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Tariff Act"), defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[9] In turn, the Tariff Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[10]

By statute, the Commission's "domestic like product" analysis begins with the "article subject to an investigation," *i.e.*, the subject merchandise as determined by the U.S.

[4] Counsel for Bergwerff Organic India Private Limited and Suminter India Organics Pvt. Ltd., a subject producer and its related exporter of organic soybean meal in India, respectively, and counsel for Terra Ingredients, LLC, a U.S. importer of subject merchandise, filed entries of appearance, but did not appear at the staff conference or file postconference briefs.

[5] Confidential Report, Memorandum INV-TT-065 (May 10, 2020) ("CR") at I-4, III-1; Public Report, *Organic Soybean Meal from India*, Inv. Nos. 701-TA-667 and 731-TA-1559 (Preliminary), USITC Pub. 5198 (May 2021) ("PR") at I-4, III-1.

[6] CR/PR at I-4, I-5, IV-1.

[7] CR/PR at I-4, VII-3.

[8] 19 U.S.C. § 1677(4)(A).

[9] 19 U.S.C. § 1677(4)(A).

[10] 19 U.S.C. § 1677(10).

Department of Commerce ("Commerce").[11] Therefore, Commerce's determination as to the scope of the imported merchandise that is subsidized and/or sold at less than fair value is "necessarily the starting point of the Commission's like product analysis."[12] The Commission then defines the domestic like product in light of the imported articles Commerce has identified.[13] The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[14] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[15] The Commission looks for clear dividing lines among

[11] 19 U.S.C. § 1677(10). The Commission must accept Commerce's determination as to the scope of the imported merchandise that is subsidized and/or sold at less than fair value. *See*, *e.g.*, *USEC, Inc. v. United States*, 34 Fed. App'x 725, 730 (Fed. Cir. 2002) ("The ITC may not modify the class or kind of imported merchandise examined by Commerce."); *Algoma Steel Corp. v. United States,* 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd*, 865 F.3d 240 (Fed. Cir.), *cert. denied*, 492 U.S. 919 (1989).

[12] *Cleo Inc. v. United States*, 501 F.3d 1291, 1298 (Fed. Cir. 2007); *see also Hitachi Metals, Ltd. v. United States*, Case No. 19-1289, slip op. at 8-9 (Fed. Cir. Feb. 7, 2020) (the statute requires the Commission to start with Commerce's subject merchandise in reaching its own like product determination).

[13] *Cleo*, 501 F.3d at 1298 n.1 ("Commerce's {scope} finding does not control the Commission's {like product} determination."); *Hosiden Corp. v. Advanced Display Mfrs.,* 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); *Torrington Co. v. United States*, 747 F. Supp. 744, 748-52 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991) (affirming the Commission's determination defining six like products in investigations where Commerce found five classes or kinds).

[14] *See, e.g., Cleo Inc. v. United States*, 501 F.3d 1291, 1299 (Fed. Cir. 2007); *NEC Corp. v. Dep't of Commerce*, 36 F. Supp. 2d 380, 383 (Ct. Int'l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including the following: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. *See Nippon*, 19 CIT at 455 n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[15] *See*, *e.g.*, S. Rep. No. 96-249 at 90-91 (1979).

possible like products and disregards minor variations.[16] It may, where appropriate, include domestic articles in the domestic like product in addition to those described in the scope.[17]

B. Scope Definition

In its notices of initiation, Commerce defined the imported merchandise within the scope of these investigations as:

> . . . certified organic soybean meal. Certified organic soybean meal results from the mechanical pressing of certified organic soybean into ground products known as soybean cake, soybean chips, or 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 U.S. Department of Agriculture (USDA) National Organic Program (NOP) or NOP-equivalent standards under an existing organic equivalency or recognition agreement.
>
> Certified organic soybean meal subject to this investigation has a protein content of 34 percent or higher.
>
> Organic soybean meal that is otherwise subject to this investigation is included when incorporated in admixtures, including but not limited to prepared animal feeds. Only the organic soybean meal component of such admixture is covered by the scope of this investigation.
>
> The products covered by this petition are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) provisions: 1208.10.0010 and 2304.00.0000. Certified organic soybean meal may also enter under HTSUS 2309.90.1005, 2309.90.1015, 2309.90.1010, 2309.90.1030, 2309.90.1032, 2309.90.1035, 2309.90.1045, 2309.90.1050, and 2308.00.9890.[18]

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[16] *See*, *e.g.*, *Nippon*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49*; see also* S. Rep. No. 96-249 at 90-91 (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

[17] *See*, *e.g.*, *Pure Magnesium from China and Israel*, Inv. Nos. 701-TA-403 and 731-TA-895-96 (Final), USITC Pub. 3467 at 8 n.34 (Nov. 2001); *Torrington,* 747 F. Supp. at 748-49 (holding that the Commission is not legally required to limit the domestic like product to the product advocated by the petitioner, co-extensive with the scope).

[18] *Organic Soybean Meal from India: Initiation of Less-Than-Fair-Value Investigation*, 86 Fed. Reg. 22146 (Apr. 27, 2021) (Commerce Antidumping Duty Investigation); *Organic Soybean Meal from*

(*continued*...)

Organic soybean meal is a processed (commonly referred to as "crushed") soybean product produced in compliance with the organic standards set forth by the U.S. Department of Agriculture's ("USDA") National Organic Program ("NOP").[19] Organic soybean meal consists of organic soybean cake, soybean chips, or flakes that are crushed from certified organic soybeans.[20] It is used as a key protein component for animal feed sourced by the organic poultry and dairy industries.[21]

C. Analysis

These investigations raise one issue with respect to the definition of the domestic like product, which is whether to expand the domestic like product beyond the scope to include non-organic soybean meal (both genetically engineered ("GE") and non-GE soybean meal). Petitioners argue that the Commission should not define the domestic like product to encompass non-organic soybean meal, but rather define a single domestic like product coextensive with scope of the investigations.[22] No other party has argued for a different definition of the domestic like product in the preliminary phase of these investigations.

For the reasons discussed below, we define a single domestic like product consisting of organic soybean meal, coextensive with the scope of these investigations.

Physical Characteristics and Uses. Organic and non-organic soybean meal are generally used as an ingredient, specifically as a source of protein, in animal feed.[23] However, unlike non-organic soybean meal, which is typically processed using chemical solvents and from soybeans from any source (including those grown from GE soybean seeds), organic soybean meal must meet the strict specifications and standards prescribed by the USDA's NOP,[24] which ensures

(…*continued*)

India: Initiation of Countervailing Duty Investigation, 86 Fed. Reg. 22136 (Apr. 27, 2021) (Commerce Countervailing Duty Investigation). The scope language further explains that "{t}he HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive."

[19] CR/PR at I-6; Petition, Vol. I at 10-11; Petitioners Postconf. Br. at Answers to Staff Questions pp. 3-4.

[20] CR/PR at I-6-10; Petitioners Postconf. Br. at Answers to Staff Questions p. 3.

[21] CR/PR at I-6-7; Petition, Vol. I at 15-16.

[22] Petition, Vol. I at 21-27; Petitioners Postconf. Br. at 4-5, Answers to Staff Questions pp. 3-9.

[23] CR/PR at I-6.

[24] The USDA's NOP is a comprehensive set of government-developed, audited, and enforced regulations. Petition, Vol. I at Exhibit I-10. Specifically, the NOP certifies and audits producers, processors, or retailers seeking to identify, label, sell, or market a product as organic. Petitioners Postconf. Br. at Answers to Staff Questions p. 2.

that every aspect of production and processing receives organic certification.[25] Under these specifications, organic soybean meal must be processed from USDA-certified organic soybeans[26] using a mechanical extrusion process.[27] The particular processes utilized result in differences in the protein and oil content of organic and non-organic soybean meal, with non-organic soybean meal containing higher amounts of protein and lower amounts of oil than organic soybean meal.[28]

Organic soybean meal is used for animal feed for producers of organic poultry and dairy products required to "provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced and handled by operations certified to the NOP."[29] Because such end users must exclusively rely on organically produced feed, they cannot and will not use non-organic soybean meal as an ingredient for their animal feed.[30] And because organic soybean meal commands a high price premium, petitioners assert that "there is no reasonable scenario where a customer would purchase certified {organic soybean meal} to meet {non-organic} needs."[31]

Manufacturing Facilities, Production Processes and Employees. As discussed above, organic soybean meal must be produced using mechanical extrusion/expeller systems to process the soybeans.[32] Specifically, organic soybeans undergo a cleaning and conditioning process, after which they are run through a mechanical extruder, which cooks the soybeans through friction, temperature, and pressure, releasing oil from the soybeans. The extruded product then may run through an expeller to extract up to 55 percent of the original oil content. The resulting "press cake" is cooled, ground to a final consistency, and stored for distribution.[33] Every step of the process must be USDA NOP certified.[34]

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[25] Petition, Vol. I at 10-11.

[26] Organic soybeans must be cultivated using certain procedures, including: (1) no synthetic fertilizers for 36 months prior to the crop's harvest; (2) no synthetic pesticides (*e.g.*, fungicides, insecticides, herbicides) for 36 months prior to the crop's harvest; and (3) crop rotations, including a soil-building legume or small grain/legume mix, to break weed, insect, and disease cycles and maintain soil fertility. Petition, Vol. I at Exhibits I-10, I-25; Petitioners Postconf. Br. at Answers to Staff Questions p. 4.

[27] Petition, Vol. I at 15, Exhibits I-10, I-25; Petitioners Postconf. Br. at Answers to Staff Questions p. 4; Conference Tr. at 19-20 (Cook). Use of chemical solvents is prohibited for organic products. Petitioners Postconf. Br. at Answers to Staff Questions p. 4.

[28] CR/PR at I-11; Petition, Vol. I at 17; Conference Tr. at 19-20 (Cook), 28-29, 146 (Strommen).

[29] Petition, Vol. I at 17-18.

[30] Petition, Vol. I at 18; Conference Tr. at 92 (Golbitz).

[31] Petitioners Postconf. Br. at Answers to Staff Questions p. 9.

[32] CR/PR at I-11; Petition, Vol. I at 16; Petitioners Postconf. Br. at Answers to Staff Questions pp. 7-8.

[33] CR/PR at I-11; Petition, Vol. I at 17; Petitioners Postconf. Br. at Exhibits 7 & 8.

In contrast, non-organic soybean meal generally is processed using chemical solvent (*e.g.*, hexane) extraction technology, which is less costly and more efficient at extracting oil. This technology entails a steaming and flaking process that allows it to deliver a higher-protein and lower-oil content meal than organic soybean meal.[35] [36]

Channels of Distribution. Most domestically produced organic soybean meal is sold directly to end users, particularly animal feed producers.[37] Petitioners state that although non-organic soybean meal is also mostly sold to animal feed end users, the law prohibits it from being commingled with organic soybean meal during transport and distribution.[38]

Interchangeability. There is limited interchangeability between organic and non-organic soybean meal due to the strict standards and requirements placed on certified organic products by the USDA's NOP.[39]

Producer and Customer Perceptions. According to petitioners, customers and producers view organic soybean meal as being distinct from non-organic soybean meal. They state that the USDA's Agricultural Marketing Service ("AMS") collects, monitors, and publishes separate

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(…*continued*)

[34] Conference Tr. at 20 (Cook); Petitioners Postconf. Br. at Answers to Staff Questions p. 7.

[35] CR/PR at I-11; Petition, Vol. I at 17; Conference Tr. at 19-20 (Cook), 28-29, 146 (Strommen). Petitioners state that while it is possible to process non-organic soybeans into non-organic soybean meal on their mechanical crush machinery, it is not cost-effective to do so. That is because the crush equipment, if used to process non-organic soybeans, is required to be extensively cleaned and flushed at substantial cost, including labor, before processing organic soybeans. In addition, storage of non-organic and organic soy products requires additional and separate storage bins and tanks because the two different types of products cannot be commingled. Moreover, processors using mechanical extrusion machinery to produce non-organic soybean meal will not be competitive with crushers using chemical extraction processes, which have higher yields and lower operating costs. Petitioners Postconf. Br. at Answers to Staff Questions p. 8; Conference Tr. at 30 (Strommen), 40-41 (Luke), 60 (Golbitz).

[36] U.S. importers also recognize that non-organic and organic soybean meal utilize different extraction processes. *See* *** U.S. Importer Questionnaire Response at IV-1; *** U.S. Importer Questionnaire Response at IV-1; *** U.S. Importer Questionnaire Response at IV-1; *see also* *** U.S. Importer Questionnaire Response at IV-1 (stating that "the process and facility is vastly different") and *** U.S. Importer Questionnaire Response at IV-1 (reporting that organic soybean meal must be manufactured in an organic facility with organic inputs).

[37] CR/PR at Table II-1.

[38] Petition, Vol. I at 24-25; Petitioners Postconf. Br. at 5, Answers to Staff Questions pp. 5-7.

[39] Petitioners Postconf. Br. at Answers to Staff Questions pp. 5-6; *see also* *** U.S. Importer Questionnaire Response at IV-1(b) (***); *** U.S. Importer Questionnaire Response at IV-1(b) (***); *** U.S. Importer Questionnaire Response at IV-1(b) (***); *** U.S. Importer Questionnaire Response at IV-1(b) (***); *** U.S. Importer Questionnaire Response at IV-1(b) (***).

data for organic and non-organic soybean meal and that leading agriculture reports such as *Mercaris* likewise separately report data for each product.[40]

Price. Petitioners maintain that organic and non-organic soybean meal are priced separately with no correlation between the two, as they are "completely separate pricing markets."[41] They also claim that organic soybean meal sells at a premium, generally 100 percent and as high as 200 percent, over non-organic soybean meal.[42]

Conclusion. Based on the available information on the record, we find that a reasonably clear dividing line exists between organic and non-organic soybean meal. Unlike non-organic soybean meal, organic soybean meal is subject to strict specifications and requirements set forth by the USDA's NOP, which dictates specific types of organic raw material inputs and production processes. The specific inputs and processing required for organic soybean meal result in different nutrient levels and limitations on interchangeability between organic and non-organic soybean meal. Although organic and non-organic soybean meal are sold through the same channels of distribution, commingling these products during transport and distribution is prohibited by law. Moreover, prices differ between organic and non-organic soybean meal, with organic soybean meal commanding a large price premium over non-organic soybean meal. We accordingly do not expand the definition of the domestic like product beyond the scope to include non-organic soybean meal.

For purposes of these preliminary investigations, we define a single domestic like product consisting of organic soybean meal, coextensive with the scope of the investigations.

IV. Domestic Industry

The domestic industry is defined as the domestic "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[43] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all

[40] Petitioners Postconf. Br. at Answers to Staff Questions p. 7.

[41] Conference Tr. at 96 (Ujczo); Petitioners Postconf. Br. at Answers to Staff Questions p. 9. U.S. importers also report that prices between organic and non-organic soybean meal are never comparable. *** U.S. Importer Questionnaire Response at IV-1; *** U.S. Importer Questionnaire Response at IV-1; *** U.S. Importer Questionnaire Response at IV-1; *see also* *** U.S. Importer Questionnaire Response at IV-1 (stating that ***); *** U.S. Importer Questionnaire Response at IV-1 (indicating that in the U.S. ***).

[42] Petition, Vol. I at 26; Petitioners Postconf. Br. at Answers to Staff Questions p. 6; Conference Tr. at 21 (Cook), 59 (Luke).

[43] 19 U.S.C. § 1677(4)(A).

domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

These investigations raise two domestic industry issues. The first issue is whether the domestic industry includes organic soybean growers in addition to processors. The second is whether appropriate circumstances exist to exclude any firms from the domestic industry pursuant to the statutory related parties provision.

A. Whether the Domestic Industry Includes Soybean Growers

In cases involving processed agricultural products, section 771(4)(E) of the Tariff Act authorizes the Commission to include growers of a raw agricultural input within the domestic industry producing the processed agricultural product if:

> (a) the processed agricultural product is produced from the raw product through a single continuous line of production,[44] and
>
> (b) there is a substantial coincidence of economic interest between the growers and producers of the processed product based upon the relevant economic factors.[45]

Petitioners argue that neither prong of the grower/processer provision is satisfied and that the Commission therefore should not define the domestic industry to include organic soybean growers.[46] No other party has argued otherwise.

We find that the first prong of the grower/processor provision is not satisfied because organic soybeans are not substantially or completely devoted to the production of organic soybean meal. Petitioners, relying upon information published by the USDA and *Mercaris*, estimate that 16.5 percent of domestically grown organic soybeans are processed into organic soybean meal.[47] This percentage is insufficient to

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[44] The statute provides that the processed product shall be considered to be processed from the raw product in a single, continuous line of production if:

(a) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(b) the processed agricultural product is produced substantially or completely from the raw product.

19 U.S.C. § 1677(4)(E)(ii).

[45] 19 U.S.C. § 1677(4)(E)(iii).

[46] Petitioners Postconf. Br. at 6-11.

[47] Petitioners Postconf. Br. at Answers to Staff Questions pp. 13-14, Exhibit 1. Petitioners state that the overwhelming majority of domestically grown organic soybeans are used in the food industry (*e.g.*, roasted soybeans, tofu, and soy milk). *See id.*

satisfy the first prong of the grower/processor provision.[48] Accordingly, we find that there is not a single, continuous line of production for raw organic soybeans and organic soybean meal and need not reach the second prong of the provision. We therefore do not include growers of organic soybeans in the domestic industry, and define the domestic industry to consist of all U.S. processors of organic soybean meal.

B. Related Parties

The other domestic industry issue concerns whether any producers of the domestic like product (*i.e.*, any processors of organic soybeans) should be excluded from the domestic industry pursuant to section 771(4)(B) of the Tariff Act. This provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each investigation.[49]

Three U.S. processors – ***, ***, and *** – are subject to consideration for exclusion under the related parties provision. *** and *** imported subject merchandise from India during the period of investigation ("POI")[50] and *** is ***, a U.S. importer of subject

[48] *See, e.g., Dried Tart Cherries from Turkey*, Inv. Nos. 701-TA-622 and 731-TA-1448 (Preliminary), USITC Pub. 4902 at 9 (June 2019) (first prong not met where 25 to 35 percent of the raw product was used to produce the domestic like product); *Certain Processed Hazelnuts from Turkey*, Inv. No. 731-TA-1057 (Preliminary), USITC Pub. 3656 at 10 (Dec. 2003) (first prong not met where 35 percent of the raw product was used to produce the domestic like product); and *Tart Cherry Juice and Tart Cherry Juice Concentrate from Germany and Yugoslavia*, Inv. Nos. 731-TA-512 and 513 (Preliminary), USITC Pub. 2378 at 14-15 (May 1991) (first prong not met where most of the crops grown were used for processing goods other than the domestic like product).

[49] The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include the following:

(1) the percentage of domestic production attributable to the importing producer;

(2) the reason the U.S. producer has decided to import the product subject to investigation (whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market);

(3) whether inclusion or exclusion of the related party will skew the data for the rest of the industry;

(4) the ratio of import shipments to U.S. production for the imported product; and

(5) whether the primary interest of the importing producer lies in domestic production or importation. *Changzhou Trina Solar Energy Co. v. U.S. Int'l Trade Comm'n*, 100 F. Supp.3d 1314, 1326-31 (Ct. Int'l. Trade 2015), *aff'd*, 879 F.3d 1377 (Fed. Cir. 2018); *see also Torrington Co. v. United States*, 790 F. Supp. at 1168.

[50] The POI is 2018 to 2020. *See*, *e.g.*, CR/PR at I-4.

merchandise during the POI.[51] [52] Petitioners assert that appropriate circumstances do not exist to exclude these firms from the domestic industry, and no party has argued otherwise.[53] As explained below, we find that appropriate circumstances do not exist to exclude any of the firms from the domestic industry.

***.[54] *** falls under the related parties provision because it imported subject organic soybean meal from India in 2019 and 2020. Specifically, *** imported *** short tons of organic soybean meal in 2019 (the equivalent of *** percent of its domestic production) and *** short tons of organic soybean meal in 2020 (the equivalent of *** percent of its domestic production).[55] *** explains that ***.[56] *** is a petitioner.

*** importation of subject merchandise was small in relation to its domestic production and occurred only in *** as a response to ***. These factors indicate that its primary interest is in domestic production rather than importation. We therefore find that appropriate circumstances do not exist to exclude *** from the domestic industry as a related party.

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[51] CR/PR at III-12; Email Correspondence with *** (May 11, 2021) (EDIS Doc. 742114).

[52] U.S. processors *** and *** purchased subject imports from India during the POI. CR/PR at III-12. The Commission has concluded that a domestic producer that does not itself import subject merchandise or does not share a corporate affiliation with an importer may nonetheless be subject to the related parties provision if it controls large volumes of imports. *See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Argentina, Brazil, Germany, and Italy*, Inv. Nos. 701-TA-362 and 731-TA-707-710 (Review), USITC Pub. 3429 at 8-9 (June 2001). The Commission has found such control to exist, for example, when the domestic producer was responsible for a predominant proportion of an importer's imports and the importer's purchases were substantial. *** purchased a small volume of organic soybean meal from India during one year of the POI. Specifically, the firm purchased *** short tons of subject imports from *** in 2020. *** U.S. Producer Questionnaire Response at II-13. Its purchases accounted for only *** percent of *** imports of subject merchandise that year. *** U.S. Importer Questionnaire Response at II-5a. We find that *** did not control a predominant portion of an importer's imports nor a sufficiently large volume of subject imports for it to qualify as a related party.

*** purchased *** short tons of subject imports from India in 2018, *** short tons in 2019, and *** short tons in 2020. *** U.S. Processor Questionnaire Response at II-13. *** did not identify the importer from which it purchased subject imports from India. The record, however, indicates that its purchases accounted for only *** percent of total imports from India in 2018, *** percent in 2019, and *** percent in 2020. *Compare* CR/PR at Table IV-2 with *** U.S. Processor Questionnaire Response at II-13. We find that *** purchases of subject imports from *** were insufficiently substantial for it to qualify as a related party.

[53] Petitioners Postconf. Br. at 11-13.

[54] *** is the ***, accounting for *** percent of domestic production in 2020. CR/PR at Table III-1.

[55] *** also purchased *** short tons of organic soybean meal from India in 2020, ***. *** U.S. Processor Questionnaire Response at II-13.

[56] *** U.S. Importer Questionnaire Response at II-5a.

***.[57] *** falls under the related parties provision because it imported organic soybean meal from India during the POI. Specifically, the firm's organic soybean meal imports from India were *** short tons in 2018 (the equivalent of *** percent of its domestic production), *** short tons in 2019 (the equivalent of *** percent of its domestic production), and *** short tons in 2020 (the equivalent of *** percent of its domestic production).[58] A representative of *** explained that ***.[59] *** is a petitioner.

Although the volume of *** subject imports ***,[60] it explained that the reason it imported subject merchandise was ***, and the record provides no indication that its subject imports were done in such a manner so as to shield it from the effects of subject imports. Moreover, the firm is a petitioner and ***, which it states ***.[61] These factors indicate that its primary interest is in domestic production rather than importation. Accordingly, we find that appropriate circumstances do not exist to exclude *** from the domestic industry under the related parties provision.

***. *** produced organic soybean meal domestically in 2018 and 2019, but *** in 2020.[62] It meets the statutory definition of a related party because it is the *** of ***, a U.S. importer that imported organic soybean meal from India during the POI.[63] *** organic soybean meal imports from India totaled *** short tons in 2018 (the equivalent of *** percent of *** domestic production), *** short tons in 2019 (the equivalent of *** percent of *** domestic production), and *** short tons in 2020.[64] *** supports the petitions.

Although the volume of *** subject imports ***, *** gross profit, operating income, and net income ***.[65] *** explains that the reason it *** and ***, and the record provides no indication that its subsidiary's imports of subject merchandise shielded *** from the effects of subject imports.[66] In light of these factors, the relatively small size of the firm's operations

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[57] *** was the *** in 2020, accounting for *** percent of U.S. production in 2020. CR/PR at Table III-1.

[58] *** U.S. Importer Questionnaire Response at II-5a.

[59] Conference Tr. at ***.

[60] CR/PR at Table III-9.

[61] *** U.S. Processor Questionnaire Response at III-13a & b. Specifically, *** capital expenditures totaled $*** in 2018, $*** in 2019, and $*** in 2020. *See id.* at III-13a.

[62] *** U.S. Processor Questionnaire Response at II-3a.

[63] *** U.S. Importer Questionnaire Response at II-5a; Email Correspondence with *** (May 11, 2021) (EDIS Doc. 742114).

[64] CR/PR at Table III-11; *** U.S. Importer Questionnaire Response at II-5a. *** also purchased *** short tons of organic soybean meal from India in 2018, *** short tons in 2019, and *** short tons in 2020 because ***. *** U.S. Processor Questionnaire Response at II-13.

[65] CR/PR at Table VI-3.

[66] *** U.S. Processor Questionnaire Response at II-3d (stating ***; *see also* *** U.S. Importer Questionnaire Response at II-4.

relative to the industry as a whole,[67] and the firm's support for the petitions, we find that appropriate circumstances do not exist to exclude *** from the domestic industry as a related party.

For the foregoing reasons, and based on our definition of the domestic like product, we define a single domestic industry consisting of all domestic processors of organic soybeans.

V. Reasonable Indication of Material Injury By Reason of Subject Imports[68]

A. Legal Standards

In the preliminary phase of antidumping and countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.[69] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[70] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[71] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[72] No single factor

[67] *See* CR/PR at Table III-4. *** accounted for *** percent of domestic production in 2018 and *** percent in 2019. *Id*.

[68] Pursuant to Section 771(24) of the Tariff Act, imports from a subject country of merchandise corresponding to a domestic like product shall be deemed negligible if they account for less than three percent (or four percent in the case of a developing country in a countervailing duty investigation) of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition. *See* 19 U.S.C. §§ 1671b(a), 1673b(a), 1677(24)(A)(i), 1677(24)(B); *see also* 15 C.F.R. § 2013.1 (developing countries for purposes of 19 U.S.C. § 1677(36)). The record indicates that subject imports from India exceeded the requisite statutory threshold. Based upon data submitted in response to the Commission's questionnaire, subject imports from India accounted for *** percent of total imports from March 2020 through February 2021. CR/PR at Table IV-3. Consequently, we find that imports of organic soybean meal from India are not negligible.

[69] 19 U.S.C. §§ 1671b(a), 1673b(a).

[70] 19 U.S.C. § 1677(7)(B). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each {such} factor ... and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[71] 19 U.S.C. § 1677(7)(A).

[72] 19 U.S.C. § 1677(7)(C)(iii).

is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[73]

Although the statute requires the Commission to determine whether there is a reasonable indication that the domestic industry is "materially injured or threatened with material injury by reason of" unfairly traded imports,[74] it does not define the phrase "by reason of," indicating that this aspect of the injury analysis is left to the Commission's reasonable exercise of its discretion.[75] In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the "by reason of" standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.[76]

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.[77] In performing its examination, however, the Commission need not isolate

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[73] 19 U.S.C. § 1677(7)(C)(iii).

[74] 19 U.S.C. §§ 1671b(a), 1673b(a).

[75] *Angus Chemical Co. v. United States*, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) ("{T}he statute does not 'compel the commissioners' to employ {a particular methodology}."), *aff'g,* 944 F. Supp. 943, 951 (Ct. Int'l Trade 1996).

[76] The Federal Circuit, in addressing the causation standard of the statute, observed that "{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement." *Nippon Steel Corp. v. U.S. Int'l Trade Comm'n*, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in *Mittal Steel Point Lisas Ltd. v. United States*, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that "this court requires evidence in the record 'to show that the harm occurred "by reason of" the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.'" *See also Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1357 (Fed. Cir. 2006); *Taiwan Semiconductor Industry Ass'n v. U.S. Int'l Trade Comm'n*, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

[77] SAA at 851-52 ("{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports."); S. Rep. 96-249 at 75 (1979) (the Commission "will consider information which indicates that harm is caused by factors other than less-than-fair-value imports."); H.R. Rep. 96-317 at 47 (1979) ("in examining the overall injury being

(*continued*...)

the injury caused by other factors from injury caused by unfairly traded imports.[78] Nor does the "by reason of" standard require that unfairly traded imports be the "principal" cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.[79] It is clear that the existence of injury caused by other factors does not compel a negative determination.[80]

Assessment of whether material injury to the domestic industry is "by reason of" subject imports "does not require the Commission to address the causation issue in any particular way" as long as "the injury to the domestic industry can reasonably be attributed to the subject imports."[81] The Commission ensures that it has "evidence in the record" to "show that the

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(…*continued*)

experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;" those factors include "the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry"); *accord Mittal Steel*, 542 F.3d at 877.

[78] SAA at 851-52 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports."); *Taiwan Semiconductor Industry Ass'n,* 266 F.3d at 1345 ("{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports ... . Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports." (emphasis in original)); *Asociacion de Productores de Salmon y Trucha de Chile AG v. United States*, 180 F. Supp. 2d 1360, 1375 (Ct. Int'l Trade 2002) ("{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury" or make "bright-line distinctions" between the effects of subject imports and other causes.); *see also Softwood Lumber from Canada*, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that "{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, *i.e*., it is not an 'other causal factor,' then there is nothing to further examine regarding attribution to injury"), *citing Gerald Metals,* 132 F.3d at 722 (the statute "does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.").

[79] S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

[80] *See Nippon Steel Corp*., 345 F.3d at 1381 ("an affirmative material-injury determination under the statute requires no more than a substantial-factor showing. That is, the 'dumping' need not be the sole or principal cause of injury.").

[81] *Mittal Steel*, 542 F.3d at 876 &78; *see also id.* at 873 ("While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured 'by reason of' subject imports, the Commission is not required to follow a single methodology for making that determination ... {and has} broad discretion with respect to its choice of methodology.") *citing United*

(*continued*...)

harm occurred 'by reason of' the LTFV imports," and that it is "not attributing injury from other sources to the subject imports." [82] The Federal Circuit has examined and affirmed various Commission methodologies and has disavowed "rigid adherence to a specific formula."[83]

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard.[84] Congress has delegated this factual finding to the Commission because of the agency's institutional expertise in resolving injury issues.[85]

B. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury or threat of material injury by reason of subject imports.

1. Demand Conditions

Organic soybean meal is used as an ingredient in animal feed for organic poultry and livestock.[86] U.S. demand for organic soybean meal is, therefore, primarily driven by consumer demand for organic poultry and dairy products.[87]

The evidence on the record indicates that U.S. demand for organic poultry and dairy products increased during the POI. Organic chicken slaughter rates increased from 50.8 million head in 2018 to 51.6 million head in 2020, an overall increase of 1.6 percent between 2018 and

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(…*continued*)

States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75. In its decision in *Swiff-Train v. United States*, 793 F.3d 1355 (Fed. Cir. 2015), the Federal Circuit affirmed the Commission's causation analysis as comporting with the Court's guidance in *Mittal*.

[82] *Mittal Steel*, 542 F.3d at 873 (quoting from *Gerald Metals*, 132 F.3d at 722), 877-79. We note that one relevant "other factor" may involve the presence of significant volumes of price-competitive nonsubject imports in the U.S. market, particularly when a commodity product is at issue. In appropriate cases, the Commission collects information regarding nonsubject imports and producers in nonsubject countries in order to conduct its analysis.

[83] *Nucor Corp. v. United States*, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); *see also Mittal Steel*, 542 F.3d at 879 ("*Bratsk* did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was 'by reason' of subject imports.").

[84] We provide in our discussion below a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

[85] *Mittal Steel*, 542 F.3d at 873; *Nippon Steel Corp*., 458 F.3d at 1350, *citing U.S. Steel Group*, 96 F.3d at 1357; S. Rep. 96-249 at 75 ("The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.").

[86] CR/PR at II-5.

[87] CR/PR at II-6; Petition, Vol. I at 28; Petitioners Postconf. Br. at 17.

2020.[88] In addition, organic egg layer inventories (another indicator of organic poultry demand) increased from 14.7 million head per week in January 2018 to 17.1 million head per week in December 2020, an overall increase of 16.6 percent during this time period.[89] Organic milk sales also increased from 661 million pounds during January-March 2018 to 725 million pounds during October-December 2020, an overall increase of 9.7 percent during the POI.[90] Consistent with these increases, all responding U.S. producers and importers reported that U.S. demand for organic soybean meal has increased since January 1, 2018.[91]

Apparent U.S. consumption increased by *** percent between 2018 and 2020, from *** short tons in 2018 to *** short tons in 2019 and *** short tons in 2020.[92]

2. Supply Conditions

In these investigations, domestically produced organic soybean meal and imports from subject and nonsubject countries supplied the U.S. market over the POI.

The domestic industry was the largest supplier of organic soybean meal to the U.S. market in 2018 but became the second largest supplier after subject imports in 2019 and 2020. Its share of apparent U.S. consumption declined from *** percent in 2018 to *** percent in 2019 and *** percent in 2020, representing an overall decrease of *** percentage points between 2018 and 2020.[93] The nine U.S. processors that responded to the Commission's questionnaire reported an annual production capacity of *** short tons in 2018, *** short tons in 2019, and *** short tons in 2020.[94] Their capacity utilization declined over the POI from *** percent in 2018 to *** percent in 2019 and *** percent in 2020.[95]

Subject imports' share of apparent U.S. consumption rose from *** percent in 2018 to *** percent in 2019 and *** percent in 2020, representing an increase of *** percentage points over the POI.[96]

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[88] CR/PR at II-6.

[89] CR/PR at II-7. An egg layer is a hen or pullet (a female chicken that has not yet started to lay eggs) producing or capable of producing table or commercial type shell eggs. *See id.* at II-7 n.7.

[90] CR/PR at II-8.

[91] CR/PR at Table II-4. Specifically, all eight responding U.S. processors and ten responding U.S. importers indicated that U.S. demand has increased since January 1, 2018. *See id.*

[92] CR/PR at Tables IV-5, C-1.

[93] CR/PR at Table IV-5.

[94] CR/PR at Table III-4. According to petitioners, the domestic industry consists of approximately 23 operators that collectively have an estimated annual crush capacity of approximately 606,803 short tons. Petition, Vol. I at 29; Petitioners Postconf. Br. at 19.

[95] CR/PR at Table III-4.

[96] CR/PR at Table IV-5.

Nonsubject imports were the smallest source of supply to the U.S. organic soybean meal market. Their share of apparent U.S. consumption increased from *** percent in 2018 to *** percent in 2018, before decreasing to *** percent in 2020, for a decrease of *** percentage points over the POI.[97] According to official import statistics and data submitted by petitioners, the largest nonsubject sources of organic soybean meal were Canada, Turkey, Argentina, and China.[98]

3. Substitutability and Other Conditions

We find that there is a moderate-to-high degree of substitutability between the domestic like product and organic soybean meal from India, and that price is an important consideration in purchasing decisions, along with quality and reliability/availability of supply.[99]

All U.S. processors and most U.S. importers reported that the domestic like product and subject imports were always or frequently interchangeable.[100] In addition, purchasers responding to the Commission's lost sales/lost revenue survey identified quality, price, and reliability/availability of supply more frequently than any other factors as among the top three factors considered in their purchasing decisions.[101] In their responses, certain U.S. purchasers reported that the domestic like product was lower in quality than subject imports and that there was insufficient availability of domestic supply.[102] A majority of U.S. producers (five of eight) reported that differences other than price were sometimes or never important in comparisons between subject imports and the domestic like product, whereas a majority of U.S. importers (six of ten) reported that nonprice differences were always or frequently

[97] CR/PR at IV-5.

[98] CR/PR at VII-15, Table VII-10; Petition, Vol. I at Exhibit I-3; Conference Tr. at 141-144 (Golbitz).

[99] CR/PR at II-9. The degree of substitution between the domestic like product and subject imports depends upon factors such as relative prices, quality (protein content), and conditions of sale (*e.g.*, lead times between order and delivery dates, reliability of supply, *etc*.). CR/PR at II-9.

[100] CR/PR at Table II-5. Specifically, seven of nine U.S processors reported that the domestically produced product was always interchangeable with subject imports, with the remaining two U.S. processors reporting that they were frequently interchangeable. Of ten U.S. importers, four reported that the domestically produced product was always interchangeable with subject imports, four that they were frequently interchangeable, and two that they were sometimes interchangeable. *See id.*

[101] CR/PR at II-10.

[102] CR/PR at V-10-11; *see, e.g.*, *** U.S. Purchaser Questionnaire Response at 6; *** U.S. Purchaser Questionnaire Response at 4(c); *** U.S. Purchaser Questionnaire Response at Addendum; *** U.S. Purchaser Questionnaire Response at 4(c); *** U.S. Purchaser Questionnaire Response at 3; *** U.S. Purchaser Questionnaire Response at 2.

significant.[103] U.S. importers identified differences in quality and lead times as factors affecting purchasing decisions.[104]

U.S. processors and importers sold organic soybean meal from inventories and on a produced-to-order basis, with importers reporting longer lead times for both types of sales. Specifically, U.S. processors reported that the majority (*** percent) of their commercial shipments of organic soybean meal in 2020 came from inventory with lead times averaging *** day. The remaining *** percent of their commercial shipments were produced-to-order, with lead times averaging *** days. Importers reported that a slight majority (*** percent) of their commercial shipments of organic soybean meal in 2020 were produced-to-order, with lead times averaging *** days. The remainder of their commercial shipments came from inventories – *** percent from foreign inventory with lead times averaging *** days and *** percent from U.S. inventory with lead times averaging *** days.[105]

The main raw material input for organic soybean meal production is USDA-certified organic soybeans.[106] Prices for organic soybeans fluctuated over the POI, but were virtually the same at the end of the POI as at the beginning.[107] Raw material costs ranged between *** percent and *** percent of the domestic industry's overall cost of goods sold ("COGS") during the POI.[108]

Another condition of competition relevant to our analysis is the recognition agreement that the USDA had with India during the POI, but which was terminated in January 2021. Under this agreement, the USDA recognized India as the competent authority to accredit certifiers to the USDA's NOP standards within its national borders.[109] India's Agricultural & Processed Food Products Export Development Authority maintained a list of certifying agencies that were accredited to use the USDA's NOP certification process and issue transaction certificates to all organic products prior to export.[110] However, the USDA, upon determining that more oversight in India was necessary to protect the integrity of its organic certification process, terminated

[103] CR/PR at Table II-6.

[104] CR/PR at II-11-12; *see, e.g.,* *** U.S. Importer Questionnaire Response at III-20 (reporting that ***); *** U.S. Importer Questionnaire Response at III-20 (reporting that ***); *** U.S. Importer Questionnaire Response at III-20 (reporting that ***).

[105] CR/PR at II-9.

[106] CR/PR at V-1.

[107] The average price of organic soybeans was $17.76 per bushel in January 2018 and $17.75 per bushel in December 2020. CR/PR at V-1 n.1.

[108] CR/PR at Table VI-1.

[109] Petition, Vol. I at 13; Petitioners Postconf. Br. at 22-23, Answers to Staff Questions pp. 22-24.

[110] Petition, Vol. I at 13.

the recognition agreement with India on January 11, 2021 and provided an 18-month transition period (through July 2022) for organic operations in India to become USDA-certified.[111]

In addition, the COVID-19 pandemic impacted competition by causing Indian port closures, delays in shipments, and a temporary deceleration of subject imports in 2020.[112] According to petitioners, the domestic industry experienced short term benefits as downstream feed companies switched back to the domestic like product from subject imports. Petitioners claim, however, that after the majority of India's ports were reopened in the third quarter of 2020, subject imports again flooded the U.S. market.[113]

C. Volume of Subject Imports

Section 771(7)(C)(i) of the Tariff Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[114]

The volume of subject imports increased from *** short tons in 2018 to *** short tons in 2019 and *** short tons in 2020,[115] for an overall increase of *** percent during the POI.[116]

The share of apparent U.S. consumption held by subject imports also increased over the POI. Subject import market share increased from *** percent in 2018 to *** percent in 2019 and *** percent in 2020.[117] During the POI, subject imports gained *** percentage points of market share largely at the expense of the domestic industry, which lost *** percentage points

[111] Petitioners Postconf. Br. at 22-23, Answers to Staff Questions pp. 23-24. We will consider further in any final phase of these investigations the issue of certification of organic soybean meal from India following USDA termination of the recognition agreement with India in January 2021.

[112] *See, e.g.*, Petitioners Postconf. Br. at 22, Answers to Staff Questions pp. 22-23; *** U.S. Importer Questionnaire Response at II-2b; *** U.S. Importer Questionnaire Response at II-2b; *** U.S. Importer Questionnaire Response at II-2b; *** U.S. Importer Questionnaire Response at II-2b.

[113] Petitioners Postconf. Br. at 22, Answers to Staff Questions pp. 22-23. We will explore in any final phase of these investigations the affect if any of more recent pandemic conditions in India on subject import supply to the U.S. market.

[114] 19 U.S.C. § 1677(7)(C)(i).

[115] CR/PR at Table IV-2.

[116] CR/PR at Table IV-2. Subject import volumes were compiled from U.S. importers' questionnaire responses that as noted above represent *** of U.S. imports of organic soybean meal from India in 2020 under HTS subheadings 1208.10.00 and 2304.00.00, "basket" categories under which organic soybean meal is imported. CR/PR at I-4, I-5, IV-1.

[117] CR/PR at Tables IV-5, C-1.

of market share over the period.[118] Subject imports also increased as a ratio to U.S. production, from *** percent in 2018 to *** percent in 2019 and *** percent in 2020.[119]

We find that the volume of subject imports and the increase in that volume are significant in absolute terms and relative to consumption and production in the United States.

D. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Tariff Act provides that, in evaluating the price effects of subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[120]

As previously discussed, the record in the preliminary phase of these investigations indicates that there is a moderate-to-high degree of substitutability between subject imports and the domestic like product and that price is an important consideration in purchasing decisions.

The Commission collected quarterly pricing data from U.S. processors and importers concerning the quantity and value of one organic soybean meal product shipped to unrelated customers.[121] Six U.S. processors and eight importers provided usable pricing data.[122] Pricing data reported by these firms accounted for approximately 93.2 percent of U.S. processors' U.S. commercial shipments and 97.6 percent of reported U.S. shipments of subject imports from India in 2020.[123] Subject imports undersold the domestic like product in *** or *** percent of

[118] CR/PR at Tables IV-5, C-1. The domestic industry's market share declined from *** percent in 2018 to *** percent in 2019 and *** percent in 2020. *See id.*

[119] CR/PR at IV-2. Thus, the ratio of subject imports to U.S. production increased *** percentage points during the POI.

[120] 19 U.S.C. § 1677(7)(C)(ii).

[121] CR/PR at V-4. The pricing product was certified organic soybean meal having at least a protein content of 44% feed grade. *See id.*

[122] CR/PR at V-4. Not all firms reported pricing for this pricing product for all quarters of the POI.

[123] CR/PR at V-4.

quarterly price comparisons (involving *** short tons of subject merchandise) at margins of underselling ranging from *** percent to ***.[124]

In addition, we observe that of 16 U.S. purchasers that responded to the lost sales/lost revenue survey, 12 reported purchasing subject imports instead of the domestic like product, with all 12 indicating that subject imports were priced lower than the domestic like product.[125] Two of those purchasers reported that price was a primary reason for their decision to purchase subject imports rather than the domestic like product.[126] The volume of these purchases of subject imports totaled 14,500 short tons.[127]

Given the moderate-to-high degree of substitutability between subject imports and the domestic like product, the importance of price in purchasing decisions, the pricing data showing *** underselling, and purchaser responses to the lost sales/lost revenue survey, we find the underselling by subject imports to be significant. As subject imports undersold the domestic like product, subject imports gained *** percentage points of market share during the POI at the expense of the domestic industry.[128]

We have also examined the available data on price trends. Despite a *** percent increase in apparent U.S. consumption over the POI, U.S. processors' prices for the pricing product declined by *** percent during this time.[129] Prices for subject imports increased by *** between 2018 and 2020, but, as discussed above, remained *** prices of the domestic like product in *** quarterly price comparisons.[130] [131] Thus, the record indicates that from 2018 to 2020, as low-priced subject imports more than tripled in volume, domestic prices declined overall despite strong demand. Given the significant increase in the volume of low-priced subject imports during the POI and the importance of price in purchasing decisions, we find that the subject imports depressed domestic like product prices to a significant degree.

We also consider whether the industry's prices were suppressed during the POI. The domestic industry's ratio of COGS to net sales increased overall by *** percentage points over the POI, from *** percent in 2018 to *** percent in 2019 and *** percent in 2020.[132] The

[124] CR/PR at Table V-5.

[125] CR/PR at Table V-8.

[126] CR/PR at Table V-8. Purchasers mostly identified quality and availability as the main non-price reasons for purchasing subject imports instead of the domestic like product. *See id.*

[127] CR/PR at Table V-8.

[128] CR/PR at Tables IV-5, C-1.

[129] CR/PR at Table V-4.

[130] CR/PR at Table V-5.

[131] Two purchasers reported that U.S. processors had reduced prices in order to compete with lower-priced imports from India, with estimates of the price reductions being from *** to *** percent. CR/PR at V-11.

[132] CR/PR at Table VI-1.

record indicates that between 2018 and 2020, the domestic industry's average unit value ("AUV") of net sales (in dollars per short ton) decreased by *** percent from $*** in 2018 to $*** in 2019 and $*** in 2020, while its average unit COGS (in dollars per short ton) increased by *** percent from $*** in 2018 to $*** in 2019 and $*** in 2020.[133] The record reflects that the industry's increasing unit COGS was largely driven by rising unit raw material costs, which increased by *** percent from $*** in 2018 to $*** in 2019 and $*** in 2020.[134] As the domestic industry's prices declined and its costs increased, the industry experienced a cost-price squeeze. During a period of rapidly increasing apparent U.S. consumption, the domestic industry reasonably could have been expected to pass on increasing raw material costs to purchasers. Given the magnitude of the increase in the domestic industry's COGS-to-net sales ratio during a period of rapidly increasing apparent U.S. consumption, we find that subject imports prevented price increases which otherwise would have occurred to a significant degree.

In sum, based on the record of the preliminary phase of these investigations, we find that subject imports significantly undersold the domestic like product and depressed and suppressed domestic prices to a significant degree. We consequently find that subject imports had significant price effects.

E. Impact of the Subject Imports[135]

Section 771(7)(C)(iii) of the Tariff Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry." These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[136]

Even as apparent U.S. consumption by quantity increased *** percent between 2018 and 2020,[137] the domestic industry's performance indicators declined as the industry lost

[133] CR/PR at Table VI-1.

[134] CR/PR at Tables VI-1-2.

[135] In its notice initiating the antidumping duty investigation on organic soybean meal from India, Commerce reported an estimated dumping margin of 158.89 percent. Commerce Antidumping Duty Investigation, 86 Fed. Reg. 22146; CR/PR at I-4.

[136] 19 U.S.C. § 1677(7)(C)(iii). This provision was amended by the Trade Preferences Extension Act ("TPEA") of 2015, Pub. L. 114-27.

[137] CR/PR at Tables IV-5, C-1.

market share to subject imports and experienced the effects of significant price depression and suppression.[138] Specifically, from 2018 to 2020, the industry's production and shipments declined,[139] and its employment and financial indicators also deteriorated. By the end of the POI, the industry had sustained substantial operating and net losses.[140]

The domestic industry's capacity increased by *** percent over the POI, from *** short tons in 2018 to *** short tons in 2019 and *** short tons in 2020.[141] The industry's production, however, declined by *** percent during this time period, from *** short tons in 2018 to *** short tons in 2019 and *** short tons in 2020.[142] Consequently, the industry's capacity utilization declined from *** percent in 2018 to *** percent in 2019 and *** percent in 2020, for an overall decline of *** percentage points over the POI.[143]

The domestic industry's U.S. shipments declined by *** percent between 2018 and 2020, from *** short tons in 2018 to *** short tons in 2019 and *** short tons in 2020.[144] The domestic industry's market share declined from *** percent in 2018 to *** percent in 2019 and *** percent in 2020.[145] The industry's end-of-period inventories declined from *** short tons in 2018 to *** short tons in 2019, before increasing to *** short tons in 2020.[146] Its ratio of end-of-period inventories to total shipments remained at *** percent in each year of the POI.[147]

Employment-related indicators for the domestic industry also trended downward. The domestic industry's number of production and related workers ("PRWs"),[148] total hours worked,[149] wages paid,[150] and productivity[151] were all lower in 2020 than in 2018.

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[138] The domestic industry's share of apparent U.S. consumption declined by *** percentage points between 2018 and 2020 while subject imports' share increased by *** percentage points. CR/PR at Table IV-5.

[139] CR/PR at Tables III-4, IV-5, C-1.

[140] CR/PR at Tables VI-1, C-1.

[141] CR/PR at Tables III-4, C-1.

[142] CR/PR at Tables III-4, C-1.

[143] CR/PR at Tables III-4, C-1.

[144] CR/PR at Tables IV-4, C-1.

[145] CR/PR at Tables IV-5, C-1.

[146] CR/PR at Tables C-1.

[147] CR/PR at Table C-1.

[148] The domestic industry's number of PRWs totaled *** in 2018, *** in 2019, and *** in 2020. Revision Memorandum INV-TT-068 (May 13, 2021) at Table III-12.

[149] Total hours worked were *** in 2018, *** in 2019, and *** in 2020. Revision Memorandum INV-TT-068 (May 13, 2021) at Table III-12.

[150] Wages paid were $*** in 2018, $*** in 2019, and $*** in 2020. Revision Memorandum INV-TT-068 (May 13, 2021) at Table III-12.

[151] Productivity was *** short tons per 1,000 hours in 2018, *** in 2019, and *** in 2020. Revision Memorandum INV-TT-068 (May 13, 2021) at Table III-12.

The domestic industry's financial performance also deteriorated over the POI. Specifically, the domestic industry's net sales declined between 2018 and 2020,[152] as did the industry's gross profit.[153] The industry's operating income and net income decreased throughout this time period, turning into losses in 2020.[154] Similarly, the industry's operating income and net income as a share of net sales and operating return on assets decreased throughout the POI, and turned negative in 2020.[155]

The domestic industry's capital expenditures also decreased from $*** in 2018 to $*** in 2019 and $*** in 2020.[156] Out of nine responding U.S. processors, seven reported negative effects on investment that they attributed to subject imports and four reported negative effects on growth and development.[157]

As discussed above, while apparent U.S. consumption increased substantially between 2018 and 2020, significant volumes of subject imports that were substitutable with the domestic like product increased at even a greater rate, taking market share from the domestic industry. These subject imports significantly undersold the domestic like product and depressed and suppressed domestic prices to a significant degree. Consequently, the significant and increasing volumes of low-priced subject imports caused the domestic industry's production, U.S. shipments, revenues, and financial performance to decline over the POI.

In our analysis of the impact of subject imports on the domestic industry, we have also considered whether there are other factors that may have had an adverse impact on the industry during the POI to ensure that we are not attributing injury from such other factors to subject imports. In this respect, we examined the role of nonsubject imports, which were the

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[152] The domestic industry's net sales by value declined from $*** in 2018 to $*** in 2019 and $*** in 2020. CR/PR at Table VI-1.

[153] The domestic industry's gross profit decreased from $*** in 2018 to $*** in 2019 and $*** in 2020. CR/PR at Table VI-1.

[154] The domestic industry's operating income declined from $*** in 2018 to $*** in 2019 and *** in 2020. CR/PR at Table VI-1. The domestic industry's net income decreased from $*** in 2018 to $*** in 2019 and *** in 2020. *Id.* at Table VI-1.

[155] The domestic industry's operating income as a share of net sales decreased from *** percent in 2018 to *** percent in 2019 and *** percent in 2020. CR/PR at Table VI-1. The domestic industry's net income as a share of net sales decreased from *** percent in 2018 to *** percent in 2019 and *** percent in 2020. CR/PR at Table VI-1. The domestic industry's operating return on assets declined from *** percent in 2018 to *** percent in 2019 and *** percent in 2020. CR/PR at Table VI-7.

[156] CR/PR at Tables VI-7. No domestic processors reported research and development ("R&D") expenses. CR/PR at VI-20 n.20. A representative for Sheppard Grain explained that, "{a}t one time, when there was capital available to conduct and effort of R&D, then yes, Sheppard Grain was involved in that. But we have not been able to be there in four years because of this market dynamic of market share revenues lost from imported soybean meal from India." Conference Tr. at 130 (Sheppard). *** reported that ***. *** U.S. Processor Questionnaire Response at III-13c.

[157] CR/PR at Table VI-9.

smallest source of supply to the U.S. market throughout the POI. The volume and market share of nonsubject imports declined between 2018 and 2020.[158] Thus, nonsubject imports were not responsible for the domestic industry's loss of *** percentage points in market share between 2018 and 2020.[159] We find that nonsubject imports, therefore, cannot explain the magnitude of the domestic industry's loss of market share or declining performance during the POI.[160]

In sum, based on the record of the preliminary phase of these investigations, we find that the significant and increasing volume of subject imports, which significantly undersold the domestic like product and depressed and suppressed the prices of the domestic industry, had a significant impact on the domestic industry.

VI. Conclusion

For the foregoing reasons, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of organic soybean meal from India that are allegedly sold in the United States at less than fair value and that are allegedly subsidized by the government of India.

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[158] Nonsubject imports initially increased from *** short tons in 2018 to *** short tons in 2019, before declining to *** short tons in 2020. CR/PR at Table IV-2. Their market share decreased overall by *** percentage points from *** percent in 2018 to *** percent in 2020. CR/PR at Tables IV-5, C-1.

[159] CR/PR at Table C-1.

[160] We note that the record also indicates that U.S. purchasers and importers reported issues with respect to the quality and availability of supply of the domestic like product. *See, e.g.,* *** U.S. Purchaser Questionnaire Response at 6 (***); *** U.S. Purchaser Questionnaire Response at 4(c) (***); *** U.S. Purchaser Questionnaire Response at Addendum (***); *** U.S. Purchaser Questionnaire Response at 4(c) (***); *** U.S. Purchaser Questionnaire Response at 3 (***); *** U.S. Purchaser Questionnaire Response at 2 (reporting ***); *** U.S. Importer Questionnaire Response at III-20 (reporting that ***); *** U.S. Importer Questionnaire Response at III-14 (stating that ***) & III-19 (stating that ***).

Petitioners dispute any quality or supply issues. They maintain that organic soybean meal from domestic and subject sources were of similar quality. Petitioners Postconf. Br. at 16-17. Petitioners further assert that they had the ability to meet U.S. demand, and to the extent that there was limited availability of domestically grown organic soybeans to crush into organic soybean meal, this was the direct result of increasing volumes of subject imports that discouraged soybean growers from transitioning the additional acreage available in the United States to organic soybean production. Petition, Vol. I at 29; Petitioners Postconf. Br. at 21; Conference Tr. at 117 (Sheppard). Petitioners further counter that U.S. processors not only crushed U.S. grown soybeans, but also imported organic soybeans for processing into organic soybean meal. Petitioners Postconf. Br. at 20-21; Conference Tr. at 21-22 (Cook). In any final phase of the investigations, we intend to investigate further the quality and availability of domestically produced organic soybean meal relative to that of subject imports.

Part I: Introduction

Background

These investigations result from petitions filed with the U.S. Department of Commerce ("Commerce") and the U.S. International Trade Commission ("USITC" or "Commission") by Organic Soybean Processors of America, Washington D.C., American Natural Processors, LLC, ("American Natural Processors"), Dakota Dunes, South Dakota, Lester Feed & Grain Co., ("Lester Feed & Grain"),[1] Lester, Iowa, Organic Production Services, LLC, ("OPS"), Weldon, North Carolina, Professional Proteins Ltd., Washington, Iowa, Sheppard Grain Enterprises, LLC, ("Sheppard Grain"), Phelps, New York, Simmons Grain Co., ("Simmons Grain") Salem, Ohio, Super Soy, LLC, Brodhead, Wisconsin, and Tri-State Crush, Syracuse, Indiana on March 31, 2021, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and less-than-fair-value ("LTFV") imports of organic soybean meal ("OSBM")[2] from India. The following tabulation provides information relating to the background of these investigations.[3] [4]

Effective date	Action
March 31, 2021	Petitions filed with Commerce and the Commission; institution of Commission investigations (86 FR 18296, April 8, 2021)
April 20, 2021	Commerce's notice of initiation (CVD--86 FR 22136, April 27, 2021, AD—86 FR 22146, April 27, 2021)
April 21, 2021	Commission's conference
May 14, 2021	Commission's vote
May 17, 2021	Commission's determinations
May 24, 2021	Commission's views

[1] *** initially was a petitioner and supported the petition, but shortly after their filing dropped its status as petitioner and later *** on these petitions. ***.

[2] See the section entitled "The subject merchandise" in Part I of this report for a complete description of the merchandise subject in this proceeding.

[3] Pertinent *Federal Register* notices are referenced in appendix A, and may be found at the Commission's website (www.usitc.gov).

[4] A list of witnesses who appeared at the conference is presented in appendix B of this report.

Statutory criteria

Section 771(7)(B) of the Tariff Act of 1930 (the "Act") (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

> *shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--[5]

> *In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.. . .In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether. . .(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.. . . In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to. . . (I) actual and potential decline in output, sales, market share, gross profits, operating profits, net profits, ability to service debt, productivity, return on investments, return on assets, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

[5] Amended by PL 114-27 (as signed, June 29, 2015), Trade Preferences Extension Act of 2015.

In addition, Section 771(7)(J) of the Act (19 U.S.C. § 1677(7)(J)) provides that—[6]

(J) EFFECT OF PROFITABILITY.—The Commission may not determine that there is no material injury or threat of material injury to an industry in the United States merely because that industry is profitable or because the performance of that industry has recently improved.

Organization of report

Part I of this report presents information on the subject merchandise, alleged subsidy and/or dumping margins, and domestic like product. Part II of this report presents information on conditions of competition and other relevant economic factors. Part III presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. Parts IV and V present the volume of subject imports and pricing of domestic and imported products, respectively. Part VI presents information on the financial experience of U.S. producers. Part VII presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury as well as information regarding nonsubject countries.

Market summary

OSBM is generally is used to create animal feed. The leading U.S. producers of OSBM are ***, while leading producers of OSBM outside the United States include *** of India. The leading U.S. importers of OSBM from India and nonsubject countries are ***. U.S. purchasers of OSBM are mostly animal feed users or distributors (generally for use in animal feeds); leading purchasers include ***.

Apparent U.S. consumption of OSBM totaled approximately *** in 2020. Currently, at least 10 firms are known to process/crush OSBM in the United States. U.S. producers' U.S. shipments of OSBM totaled *** in 2020 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. importers' U.S. shipments from subject sources totaled *** in 2020 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. importers' U.S. shipments from nonsubject sources totaled *** in 2020 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

[6] Amended by PL 114-27 (as signed, June 29, 2015), Trade Preferences Extension Act of 2015.

Summary data and data sources

A summary of data collected in these investigations is presented in appendix C, table C-1. Except as noted, U.S. industry data are based on questionnaire responses of nine firms that accounted for *** of U.S. production of OSBM during 2020.[7] U.S. imports are based on the questionnaire responses of ten firms that had imported OSBM during 2018-20. These firms accounted for *** of the OSBM from India during 2020.[8] The OSBM industry in India is based on the foreign producer/exporter questionnaire responses of five firms that account for approximately *** percent of all production of OSBM in India and *** percent of exports to the United States from India during 2020.[9]

Previous and related investigations

OSBM has not been the subject of any prior countervailing and/or antidumping duty investigations in the United States.

Nature and extent of alleged subsidies and sales at LTFV

Alleged subsidies

On April 27, 2021, Commerce published a notice in the *Federal Register* of the initiation of its countervailing duty investigation on OSBM from India.[10]

Alleged sales at LTFV

On April 27, 2021, Commerce published a notice in the Federal Register of the initiation of its antidumping duty investigations on product from India[11] Commerce has initiated an antidumping duty investigation based on an estimated dumping margin of 158.89 percent for OSBM from India.

[7] At the Commission's preliminary conference, petitioners indicated that the U.S. industry processes 193,000 metric tons (or 212,746 short tons) of OSBM annually. Conference transcript, p.66 (Golbitz).

[8] At the Commission's preliminary conference, petitioners estimated that the size of the entire U.S. market for OSBM is approximately 682,330 short tons annually. Based on these estimates, imports of OSBM account for at least 550,000-600,000 short tons annually. Conference transcript, p. 66 (Golbitz).

[9] Foreign producer questionnaire responses, sections II-6a and II-6b.

[10] For further information on the alleged subsidy programs, see notice of institution and related CVD Initiation Checklist. 86 FR 22136, April 27, 2021.

[11] 86 FR 22146, April 27, 2021.

The subject merchandise

Commerce's scope

In the current proceeding, Commerce has defined the scope as follows:[12]

> *The merchandise subject to the investigation is certified organic soybean meal. Certified organic soybean meal results from the mechanical pressing of certified organic soybeans into ground products known as soybean cake, soybean chips, or 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 U.S. Department of Agriculture (USDA) National Organic Program (NOP) or equivalently certified to NOP standards or NOP-equivalent standards under an existing organic equivalency or recognition agreement.*
>
> *Certified organic soybean meal subject to this investigation has a protein content of 34 percent or higher.*
> *Organic soybean meal that is otherwise subject to this investigation is included when incorporated in admixtures, including but not limited to prepared animal feeds. Only the organic soybean meal component of such admixture is covered by the scope of this investigation.*

Tariff treatment

Based upon the scope set forth by Commerce, information available to the Commission indicates that the merchandise subject to these investigations are imported under subheading 1208.10.00 (statistical reporting number 1208.10.0010) and heading 2304.00.00 of the Harmonized Tariff Schedule of the United States ("HTS").[13] The 2020 general rate of duty is free

[12] 86 FR 22136, April 27, 2021.

[13] Depending on the nature of the imported product, OSBM may also be reported under HTS statistical reporting numbers 2309.90.1005, 2309.90.1015, 2309.90.1010, 2309.90.1030, 2309.90.1032, 2309.90.1035, 2309.90.1045, 2309.90.1050, or 2308.00.9890. According to note 1 to chapter 23, "Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and byproducts of such processing." Subheading 2309.90.10 covers mixed feeds or mixed feed ingredients, and 2308.00.98 covers miscellaneous vegetable forms of a kind used in animal feeding.

for HTS subheadings 1208.10.00 and 2304.00.00. Decisions on the tariff classification and treatment of imported goods are within the authority of U.S. Customs and Border Protection.

The product

Description and applications

Soybean meal is a processed soybean product primarily used in animal feed as a source of protein.[14] The vast majority is conventional (e.g., using conventional growing practices and typically grown from genetically engineered (GE) seeds). However, small amounts of certified organic and non-GE (sometimes referred to as non-genetically modified organisms and non-GMO) soybean meal–both of which are voluntary certifications and sometimes referred to as identify preserved products[15] –are produced.[16] In the United States, organic soybean meal (OSBM) must be certified to have been produced in compliance with the U.S. Department of Agriculture (USDA) organic standards.[17] OSBM typically contains more than 44 percent protein.[18] Soybean meal encompasses chips, flakes, and cake which are ground for feed use.[19]

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[14] See e.g., National Oilseed Processors Association (NOPA), "Oilseed Processing," October 2015, https://www.nopa.org/oilseed-processing/.

[15] See e.g., Eller, Amanda, "Should You Consider Growing Identity Preserved Specialty Crops?," October 15, 2018, https://emergence.fbn.com/profitability/should-you-consider-growing-identity-preserved-crops; U.S. Soybean Export Council (USSEC), "USSEC, USDA Team Up to Talk Sustainability," U.S. Soybean Export Council, January 16, 2017, https://ussec.org/ussec-usda-team-talk-sustainability/; U.S. Department of Agriculture (USDA), "USDA Coexistence Factsheets - Identity Preserved," February 2015, https://www.usda.gov/sites/default/files/documents/coexistence-identity-preserved-factsheet.pdf.

[16] Buyers of certified products are seeking specific attributes (e.g., organic, non-GE, GlobalG.A.P. or fair trade). The requirements for each certification vary. For example, a certified non-GE certified product may be allowed to be grown conventional growing practices including certain pesticides, which are not allowed under an organic certification. Buyers of certified soybean meal that has been kept segregated thought out the supply chain normally pay a premium. Premiums are reported to vary by attribute, with OSBM commanding a higher premium than non-GE soybean meal. Berry, Renee and Marin Weaver, *Exporting Ecolabels: Is Demand for Certified Sustainable Products Affecting International Trade?* Working Paper ID-052, July 2018; Conference transcript, pp 21, 148-149; Petitioners post-conference brief, Ex 4; Petition pp 10-14.

[17] Certification must be done by a USDA accredited agent or one authorized under an equivalency agreement with another country. There are both U.S. and foreign based certifying agents. Petition, pp 10-14; USDA, Agricultural Marketing Service (AMS), "Accredited Certifying Agents," accessed April 12, 2021, https://www.ams.usda.gov/services/organic-certification/certifying-agents.

[18] Petition, p 15. The National Oilseed Producers Association (NOPA), who's members crush conventional soybeans and account for about 95 percent of the U.S. soybean crush, states that the (continued...)

Soybean meal is mixed with other ingredients (e.g., corn, other meals, and vitamins) to create animal feed.[20] Industry wide, 97 percent of soybean meal goes to poultry and livestock feed uses with the remainder going to food and industrial uses.[21] OSBM is used almost exclusively by the organic poultry industry (about 75 percent of OSBM consumption in the United States) and organic dairy industry (about 25 percent).[22]

Soybean meal is produced from soybeans which are a type of oilseed. (As the name implies, oilseeds yield oil). In the case of in-scope OSBM, the soybeans used by processors must be USDA certified organic.[23] Among other things this means that the use of specific substances (e.g., fertilizers or pesticides) are explicitly allowed or prohibited during cultivation and the plants cannot be grown from GE seeds (sometimes referred to as genetically modified

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(…continued)

protein content in soybean meal is normally between 44 and 49 percent. NOPA, "Oilseed Processing," October 2015, https://www.nopa.org/oilseed-processing/.

[19] Petition, pp 22, Ex. I-14, I-19.

[20] Animal feed blends vary by animal and by growth stage. See e.g., Yorktown Organics, "Layer Feed," accessed March 25, 2021, http://www.yorktownorganic.com/layer_feed.php; Yorktown Organics, "Chick Starter," accessed April 1, 2021, http://www.yorktownorganic.com/chick_starter.php; Lucy Towers, "How to Farm Pigs - Feeding," Hamlet Protein, January 8, 2016, https://www.thepigsite.com/articles/how-to-farm-pigs-feeding.

[21] United Soybean Board, "Soybean Meal," accessed April 1, 2021, https://www.unitedsoybean.org/topics/soybean-meal/; NOPA, "Oilseed Processing," October 2015, https://www.nopa.org/oilseed-processing/; North Carolina Soybeans Producers Association, "Uses of Soybeans," accessed April 1, 2021, https://ncsoy.org/media-resources/uses-of-soybeans/.

[22] Petition, pp 15-16. By comparison, as of the 2018/19 marketing year, about 65 percent of soybean meal was consumed by the poultry industry (i.e., chicken (both broilers and layers) and turkeys), 23 percent by the swine industry, and almost 9 percent by the dairy industry. Decisions Innovations Solutions and prepared for United Soybean Board, "2019 Soybean Meal Demand Assessment: United States," September 2019, 10, https://www.unitedsoybean.org/wp-content/uploads/2019-Soybean-Meal-Demand-Assessment.pdf.

[23] The organic certification offered by USDA is a voluntary certification. Globally, there are a number of voluntary organic certification standards issued including those established by U.S. trading partners. The United States does not recognize the organic standards of other trading partner unless an equivalency agreement has been established with them (see Part VII for more details). Barring equivalency, it is not uncommon for parties in another country to obtain USDA organic certification established in order to export organic products to the United States. Petition, p 6, 10-14; USDA, AMS, *How Does USDA Assess Organic Equivalency with Other Countries?*, accessed April 1, 2021, https://www.ams.usda.gov/services/organic-certification/international-trade/how-does-usda-assess-organic-equivalency-other-countries; USDA, AMS, "International Trade Policies: India," accessed March 31, 2021, https://www.ams.usda.gov/services/organic-certification/international-trade/India.

organisms or GMOs).[24] The vast majority (about 94 percent) of soybean planted acres in the United States of GE soybeans.[25] GE soybeans are not approved for cultivation in India.[26]

Soybeans are a field crop production of which is highly concentrated globally. The top two producing countries–Brazil and the United States–accounted for about 68 percent of global production during 2017/18–2019/20.[27] In that period, India, the sixth largest producer, accounted for about 3 percent of global soybean production. Organic soybeans make up a very small subset of global soybean production. By one estimate, as of 2018, less that 2 percent of global production (about 9.4 million mt) met what authors dubbed a voluntary sustainability standard (VSS): certified organic or one of two non GE-standards.[28] Of this VSS production, authors estimated only about 1.5 million mt (about 15 percent of VSS production) was organic.[29]

According to Petitioner estimates, India has been become the world's largest organic soybean producer.[30] In 2017, India planted 4.4 million acres which produced 485,199 mt of organic soybean 2017.[31] Organic soybeans are a very small share of total U.S. soybean production, less than one percent of total production.[32] In 2019, just over 170 thousand acres

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[24] U.S. organic legal requirements including production and handling are established under 7 C.F.R. §§ 205. See also, Petition, pp 10-14; Miles McEvoy (National Organic Program Deputy Administrator), "Organic 101: Can GMOs Be Used in Organic Products?," USDA, *Organic 101* (blog), February 21, 2017, https://www.usda.gov/media/blog/2013/05/17/organic-101-can-gmos-be-used-organic-products.

[25] The share of soybean acres planted with GE seeds has been about 94 percent since 2014. Non-GE soybeans does not denote organic product. As stated above, to be considered organic product, soybeans must certified to have been grown in compliance with organic criteria: for OSBM, to have been handled and processed (commonly referred to as "crushed") in compliance with organic criteria. ; USDA, NASS, Quick Stats: Soybeans, https://quickstats.nass.usda.gov/, accessed April 2, 2021.

[26] USDA, FAS, "Agricultural Biotechnology Annual," Global Agricultural Information Network (GAIN) report no. IN2019-0109, February 4, 2020, p 1, https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Agricultural%20Biotechnology%20Annual_New%20Delhi_India_10-20-2019.

[27] Production based on metric tons. USDA, PSD Online: Soybean production, accessed April 2, 2021.

[28] Vivek Voora, Cristina Larrea, and Steffany Bermúdez, "Global Market Report: Soybeans," Sustainable Commodities Marketplace Series 2019 (International Institutefor Sustainable Development; State of Sustainability Initiatives, October 2020), pp 1, 3.

[29] Voora, Larrea, and Bermúdez, "Global Market Report: Soybeans," October 2020, pp 1, 3.

[30] These estimates are from, Agromeris, a company hired by Petitioner to provide research and data on OSBM production and trade. Petition, Ex. I-3.

[31] Petition, Ex. I-3.

[32] Conference transcript, p. 64.

were harvested to produce 156,721 mt of organic soybeans.[33] (During 2017/18–19/20, total U.S. soybean production averaged about 112 million mt annually.[34]) Iowa was the largest organic producing state accounting for about 13 percent of harvested acres and 15 percent of quantity based on mt in 2019.[35] Some of these organic soybeans are grown under contract while some are available for purchase on the open market.[36]

Soybeans have a number end uses including feed and edible oil as well as use in food (e.g., edamame, tempeh, and tofu). End use is one of the major factors which dictates what cultivars are planted. Different cultivars are available for feed and food end uses.[37] Feed grade organic soybeans normally range in protein content from 38 percent to 44 percent with higher protein content going to higher grade feed.[38] Food grade organic soybeans normally have a 44 percent or higher protein content.[39] Whether the soybeans will be grown using conventional methods or under a VSS also impacts which cultivars are grown as does government approval (or lack-thereof) of GE cultivars.

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[33] U.S. Department of Agriculture (USDA) and National Agricultural Statistics Service (NASS), "2019 Organic Survey," Special Studies, 2017 Census of Agriculture, October 2020, Table 13, https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/ORGANICS.pdf; U.S. Soybean Export Council (USSEC), "Conversion Table," U.S. Soybean Export Council, October 6, 2015, https://ussec.org/resources/conversion-table/. USDA publishes organic crop data based on surveys which are not conducted every year. The previous survey covered 2016 when 124,591 acres were estimated to be used to produce organic soybeans. USDA, National Agricultural Statistics Service (NASS), "Acreage," June 30, 2017, 15, https://downloads.usda.library.cornell.edu/usda-esmis/files/j098zb09z/9306t159c/mg74qp76z/Acre-06-30-2017.pdf; Agricultural Marketing Resource Center, "Organic Soy," November 2017, https://www.agmrc.org/commodities-products/grains-oilseeds/organic-soy.

[34] USDA, PSD Online: Soybean production, accessed April 2, 2021.

[35] USDA, NASS, "2019 Organic Survey," Table 13; U.S. Soybean Export Council (USSEC), "Conversion Table." Soybeans, the majority of which are conventional, are produced in over half of all U.S. states, although production is concentrated in the mid-west and along the Mississippi river. In 2020, the top five largest soybean producing states were Illinois (about 12 percent of harvest acres), Iowa (11 percent), Minnesota (9 percent), North Dakota (7 percent), and Indiana (7 percent). USDA, NASS, "Acreage," June 30, 2020, p 15, https://www.nass.usda.gov/Publications/Todays_Reports/reports/acrg0620.pdf.

[36] Conference transcript, p 132; Cargill, "Bell & Evans Finances Transition of 50,000 U.S. Acres to Certified Organic in 5 Years Through Cargill, Rodale Institute Partnership," accessed April 28, 2021, https://www.cargill.com/2021/bell-evans-finances-transition-of-50,000-u.s.

[37] See e.g., Hartman, Glen, Michelle Pawlowski, Theresa Herman, and Darin Eastburn, "Organically Grown Soybean Production in the USA: Constraints and Management of Pathogens and Insect Pests," *Agronomy*, 6, 2016, pp 2-3, https://doi.org/10.3390/agronomy6010016.

[38] Petition, p 14.

[39] Petition, p 14.

To produce meal, soybeans are processed (commonly referred to as "crushed") into meal and oil. Globally most soybeans are crushed (about 87 percent during 2017/18–2019/20) versus consumed as whole beans.[40] While soybeans can be crushed close to where they are grown, they can also be shipped and crushed anywhere. (For example, China produced about 5 percent of soybeans globally but accounted for 30 percent of soybean meal production during 2017/18–2019/20.[41]) The United States is the second largest soybean meal producer globally and accounted for about 19 percent of global production during 2017/18–2019/20: India, the sixth largest producer, for about 3 percent.[42] However, with regards to OSBM, India appears to be the larger producer. Petitioners estimates Indian output of OSBM was 384,912 mt as of 2018.[43] Petitioners estimate that OSBM is unlikely to account for more than 1 percent of the U.S. meal market.[44] Based on Petitioner's estimates, between 2018 and 2020 U.S. OSBM production fell from 324,259 mt to 193,069 mt: a large share of this meal is likely produced from imported soybeans.[45]

Manufacturing processes

The soybean crushing process is a multi-step process intended to produce meal and oil. A major difference between organic and non-organic soybean crushing, is that the manner of separating oils is restricted in OSBM production. While there can variation to the manufacturing process the general crushing process is as follows.[46] After harvest, soybeans are graded and

[40] U.S. Department of Agriculture (USDA) and Foreign Agricultural Service (FAS), "Oilseeds: World Markets and Trade," World Agricultural Outlook Board, February 2021, 16, https://apps.fas.usda.gov/PSDOnline/Circulars/2021/02/Oilseeds.pdf.

[41] Production based on metric tons. USDA, PSD Online: Soybean production, accessed April 2, 2021; USDA, PSD Online: Soybean Meal production, accessed April 2, 2021.

[42] The United States accounted for about 19 percent of global production during 2015/16–2019/20: India for about 3 percent. Production based on metric tons. USDA, PSD Online: Soybean Meal production 2015/17–2019/20, accessed April 2, 2021.

[43] Petition, Ex. I-3; Petitioners post-conference brief, p 25.

[44] Conference transcript, p 64.

[45] Petitioners estimate that between 2014 and 2018, U.S. organic soybeans accounted for a low of 5 percent and a high of 29 percent of total U.S. organic crush. Petition, Ex. I-3; Petitioner Conference testimony and presentation submission, p 47.

[46] Petition, p. 16-18, Ex I-19; U.S. Soy, "Behind the Crush," September 1, 2019, https://ussoy.org/behind-the-crush/; NOPA, "Oilseed Processing," October 2015, https://www.nopa.org/oilseed-processing/; van Eys, J E, "Manual of Quality Analyses For Soybean Products in the Feed Industry." (U.S. Soybean Export Council, n.d.), pp B-1–B-2, https://ussec.org/wp-content/uploads/2015/10/Manual-of-Quality-Analyses.pdf.

then cleaned before being dried.[47] The soybeans are cleaned again and then go through a cracking process (also called grinding) intended to break the soybean in to several pieces after which the hulls are removed.

Next the oil is separated from the solids which are ground into meal.[48] For OSBM this is generally done by a mechanical extruding-expelling process.[49] Under USDA organic rules, OSBM processors cannot use solvents mixtures (a process referred to as extracting) to remove oils.[50] Solvent based extracting– which involves conditioning (heated) and flattened the bean into flakes before putting them in a solvent mixtures— is the standard way to separate the oil from the flakes for conventional soybean meal.[51] To make OSBM, the soybeans are first extruded which cooks the soybeans to release oil.[52] Some OSBM processors will sell the extruded product as full fat meal (i.e., meal where oil has not been pressed out and that has a protein content around 38 percent).[53] Most, however, is then mechanically expelled (sometimes referred to as pressing) a process which produces cake and oil.[54] As a result of using mechanical extrusion-expelling, oil content in OSBM ranges from 5 to 7 percent (vs. less than 1 percent in soybean meal produced by solvent based extracting) and normally has a protein content of 44 to 48 percent.[55]

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[47] Most soybeans are dried either by either traditional storing during which the beans are dried or hot dehulling which uses flash drying. U.S. Soy, "Behind the Crush," September 1, 2019, https://ussoy.org/behind-the-crush/.

[48] De-fatted flakes can also enter a different manufacturing process to produce other soy products such as soy protein isolates. U.S. Soy, "Behind the Crush," September 1, 2019, https://ussoy.org/behind-the-crush/; NOPA, "Oilseed Processing," October 2015, https://www.nopa.org/oilseed-processing/; van Eys, "Manual of Quality Analyses for Soybean Products," pp B-1–B-2; Petition, Ex. I-14 and I-19.

[49] Petition, p 17, Exhibit I-19; U.S. Soy, "Behind the Crush," September 1, 2019, https://ussoy.org/behind-the-crush/; NOPA, "Oilseed Processing," October 2015, https://www.nopa.org/oilseed-processing/; van Eys, "Manual of Quality Analyses for Soybean Products," pp B-1-B-2.

[50] Petition, Ex. I-3.

[51] If produced by extracting the solvent is removed in a process known as desolventizing. The resulting de-fatted flakes are then toasted and dried. National Oilseed Processors Association (NOPA), "Oilseed Processing"; van Eys, "Manual of Quality Analyses for Soybean Products," pp B-1–B-2; Petition, Ex. I-14.

[52] Petition, p 17, Ex. I-19.

[53] Conference transcript, pp 41-42, 148-149.

[54] Petition, p 17, Ex. I-19; van Eys, "Manual of Quality Analyses for Soybean Products," p B-1.

[55] Petition, Ex. I-3; Conference transcript, p71-73.

Domestic like product issues

The petitioner proposes one domestic like product that is coextensive with the proposed scope of these investigations.[56] [57]

[56] Petition, p. 21.

[57] Appendix D presents a summary of U.S. producers' and U.S. importers' responses on the comparability of genetically engineered versus organic soybean meal and full narrative responses to the questions on the comparability of these products.

Part II: Conditions of competition in the U.S. market

U.S. market characteristics

Organic soybean meal ("OSBM") is the key protein component of animal feed sourced by certified organic poultry and dairy producers. The product can consist of organic soybean cake, chips, or flakes that result from the processing or "crushing" of feed-grade organic soybeans.[1] The U.S. OSBM market is segmented into three categories: 1) OSBM processed in the United States from U.S.-grown organic soybeans, 2) OSBM processed in the United States from imported organic soybeans (or a mix of U.S. and imported organic soybeans), and 3) imported OSBM.[2]

Apparent U.S. consumption of OSBM increased during 2018-20. Overall, apparent U.S. consumption in 2020 was *** percent higher than in 2018.

Channels of distribution

U.S. processors and importers sold mainly to animal feed users, as shown in table II-1.[3] Reported other end users include feed mills, internal consumption, and transfers to related firms.

[1] Petition Vol. I, pp. 1, 14.

[2] Petition Vol. I, p. 29.

[3] The majority of OSBM is delivered by truck in bulk shipments and imports arrive in twenty-foot containers of approximately twenty-two metric tons (22.2 short tons). OSBM cannot be comingled with other products during transportation to ensure organic integrity. Petitioner's postconference brief, Answers to Staff Questions, p. 6.

Table II-1
OSBM: U.S. processors' and importers' U.S. shipments, by sources and channels of distribution, 2018-20

Item	Calendar year		
	2018	2019	2020
	Share of reported shipments (percent)		
U.S. processors' U.S. shipments of OSBM:			
Distributors	***	***	***
Animal feed users	***	***	***
Other end users	***	***	***
U.S. importers' U.S. shipments of OSBM from India:			
Distributors	***	***	***
Animal feed users	***	***	***
Other end users	***	***	***
U.S. importers' U.S. shipments of OSBM from nonsubject countries:			
Distributors	***	***	***
Animal feed users	***	***	***
Other end users	***	***	***
U.S. importers' U.S. shipments of OSBM from all other countries:			
Distributors	***	***	***
Animal feed users	***	***	***
Other end users	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Geographic distribution

U.S. processors and importers reported selling OSBM to all regions in the contiguous United States (table II-2). For U.S. processors, 6.8 percent of sales were within 100 miles of their production facility, 78.9 percent were between 101 and 1,000 miles, and 14.3 percent were over 1,000 miles. Importers sold 58.9 percent within 100 miles of their U.S. point of shipment, 39.0 percent between 101 and 1,000 miles, and 2.1 percent over 1,000 miles.

Table II-2
OSBM: Geographic market areas in the United States served by U.S. processors and importers

Region	U.S. processors	Importers
Northeast	3	9
Midwest	7	7
Southeast	3	5
Central Southwest	3	3
Mountain	1	4
Pacific Coast	2	6
Other	0	0
All regions (except Other)	0	3
Reporting firms	8	10

Note: All other U.S. markets, including AK, HI, PR, and VI.

Source: Compiled from data submitted in response to Commission questionnaires.

Supply and demand considerations

U.S. supply

Table II-3 provides a summary of the supply factors regarding OSBM from U.S. processors and India. Both U.S. and Indian processors reported increasing capacity, however U.S. processors reported decreasing capacity utilization while Indian processors reported an increase.

Table II-3
OSBM: Supply factors that affect the ability to increase shipments to the U.S. market

	Capacity (short tons)		Capacity utilization (percent)		Ratio of inventories to total shipments (percent)		Shipments by market, 2020 (percent)		Able to shift to alternate products
Country	2018	2020	2018	2020	2018	2020	Home market shipments	Exports to non-U.S. markets	No. of firms reporting "yes"
United States	***	***	***	***	***	***	***	***	6 of 9
India	***	***	***	***	***	***	***	***	0 of 5

Note: Responding U.S. processors accounted for *** of U.S. production of OSBM during 2020. Responding foreign processor/exporter firms accounted for approximately *** of U.S. imports of OSBM from India during 2020. For additional data on the number of responding firms and their share of U.S. production and of U.S. imports from India, please refer to Part I, "Summary data and data sources."

Source: Compiled from data submitted in response to Commission questionnaires.

Domestic production

Domestic processors have excess capacity and are focused on supplying the domestic market. Based on available information, U.S. processors of OSBM have the ability to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced OSBM to the U.S. market. The main contributing factors to this degree of responsiveness of supply are limited inventories, a lack of ability to shift shipments from alternate markets, and the limited availability of domestically grown organic soybeans. However, there is availability of unused capacity, and some ability to shift production to or from alternative products.

Domestic capacity increased while production decreased leading to a decline in capacity utilization during 2018-20. The *** of inventories remained stable over the period. There were *** export shipments during 2018-20. Other products that processors reportedly can produce on the same equipment as OSBM are organic soybean oil and waste products, non-genetically engineered (GE) soybean meal, hulls, soy lecithin, and canola meal and oil. Reported factors affecting U.S. processors' ability to shift production include the time and cost to clean and flush equipment when switching from non-GE to OSBM, one to two days of lost production in reconfiguring equipment for a different oil seed, and time and cost to get certified from a USDA-National Organic Program (USDA-NOP) authority. A commonly reported production constraint was the availability of domestically grown organic soybeans.

Subject imports from India

Based on available information, processors of OSBM from India have the ability to respond to changes in demand with small-to-moderate changes in the quantity of shipments of OSBM to the U.S. market. The main contributing factors to this degree of responsiveness of supply are *** to shift to or from alternate products and *** inventories. However, there is *** capacity and *** ability to shift shipments from alternate markets.

Indian processors' capacity, production, and capacity utilization increased during 2018-20 while the ratio of inventories to total shipments decreased. Indian processors ship approximately *** of their OSBM production to non-U.S. markets, including Canada and Europe. Responding foreign processors reported no ability to switch production to other products.

Imports from nonsubject sources

Nonsubject imports accounted for *** percent of total U.S. imports in 2020. Sources of nonsubject imports during 2018-20 were Argentina, Canada, China, the Netherlands, and Turkey.

Supply constraints

Reported supply constraints from India stem from logistics issues due to COVID-19 and the USDA certification issue where USDA ended its organic recognition agreement with India.

U.S. demand

Based on available information, the overall demand for OSBM is likely to experience small changes in response to changes in price. The main contributing factors are the limited availability of viable substitute products and the moderate cost share of OSBM in animal feed products.

End uses and cost share

U.S. demand for OSBM depends on the demand for U.S.-produced downstream products. End uses reported by firms include animal feed for organic poultry, livestock, and hogs.

OSBM accounts for a moderate share of the cost of poultry, livestock, and hog feed. Reported cost shares were 54 percent OSBM for poultry broiler feed, 42 percent OSBM for poultry egg layer feed, 30 percent OSBM for livestock feed, 30 percent OSBM for livestock dairy feed, and 40 percent OSBM for hog feed.

Business cycles

Four of 8 responding U.S. processors and 6 of 10 importers indicated that the market was subject to business cycles or conditions of competition, specifically, that organic soybeans are harvested in the fall in the northern hemisphere. U.S. processor *** reported other certified organic soybean crushers in and outside the United States as a condition of competition. *** reported that the most distinctive condition of competition is the price disparity between domestic and imported OSBM. Importer *** reported the lengthy process to shift from conventional to organic soybean farming and the insufficient supply of U.S. organic soybeans to meet demand. Reported changes in conditions of competition include increased imports from India and various factors affecting the supply chain such as the COVID-19 pandemic.

Demand trends

Most firms reported an increase in U.S. demand for OSBM since January 1, 2018 (table II-4).

Table II-4
OSBM: Firms' responses regarding U.S. demand and demand outside the United States

Item	Increase	No change	Decrease	Fluctuate
Demand in the United States				
U.S. processors	8	0	0	0
Importers	10	0	0	0
Demand outside the United States				
U.S. processors	5	0	0	0
Importers	5	1	0	0

Source: Compiled from data submitted in response to Commission questionnaires.

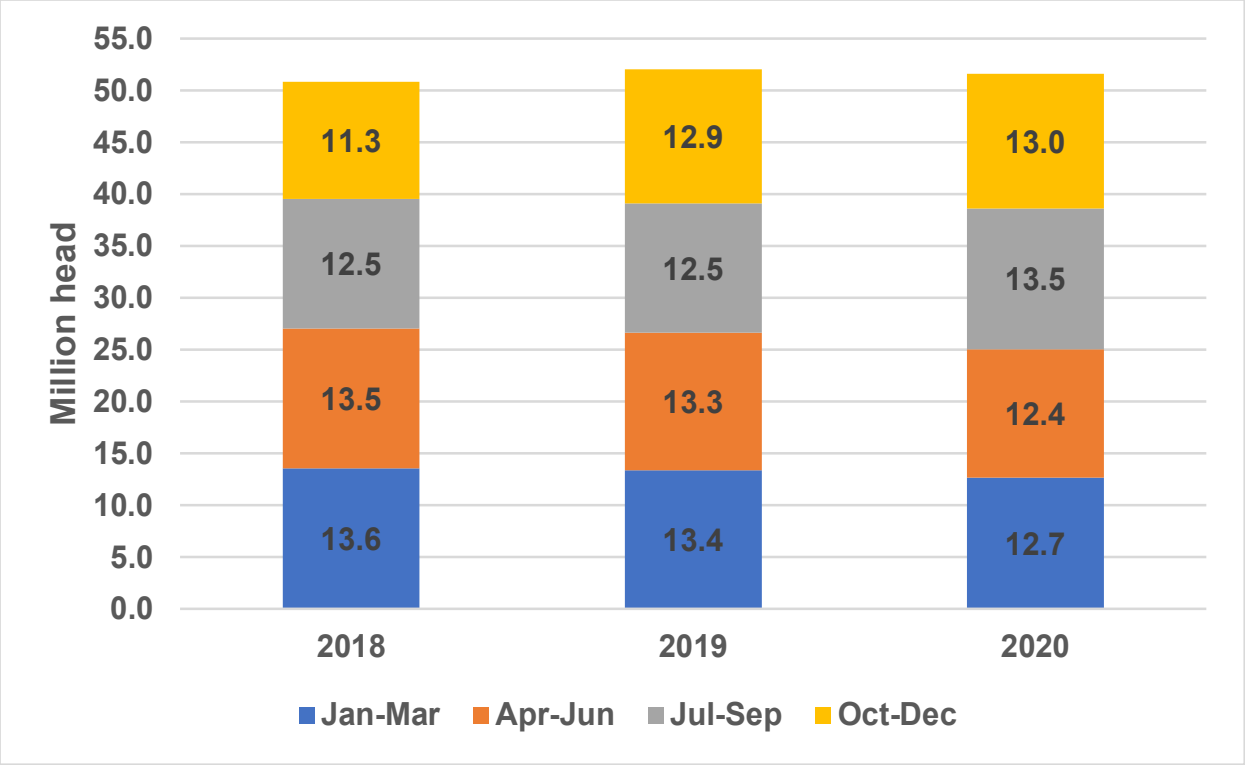
U.S. demand for OSBM is driven predominantly by consumer demand in the organic poultry sector and dairy production.[4] As shown in figure II-1, organic chicken slaughter in the United States increased from 50.8 million head in 2018 to 52.0 million head in 2019 then decreased to 51.6 million head in 2020, an overall increase of 1.6 percent from 2018 to 2020.[5] Slaughters during January-March and April-June decreased 6.6 and 8.1 percent respectively from 2018 to 2020 when processing facilities had to adjust operations in response to the

[4] Approximately 75 percent for organic poultry and 25 percent for organic dairy. Petition Vol. I, pp. 15-16.

[5] An increase in slaughters from consumer demand for organic chicken indicates the chicken population increased, creating higher demand for feed.

COVID-19 pandemic.[6] Slaughters during July-September and October-December increased 8.3 and 15.6 percent respectively from 2018 to 2020. Another indicator of poultry demand is organic egg layer inventories,[7] which averaged 14.7 million head per week during January 2018, 15.7 million head per week during December 2018, 16.2 million head per week during December 2019, and 17.1 million head per week during December 2020.[8] Overall, egg layer inventories increased 16.6 percent from January 2018 to December 2020.

Figure II-1
OSBM: Number of organic chickens slaughtered in the United States, quarterly, January 2018-December 2020



Source: Weekly USDA Certified Organic Poultry and Eggs (Mon), Agricultural Marketing Service, USDA Livestock, Poultry & Grain Market News.

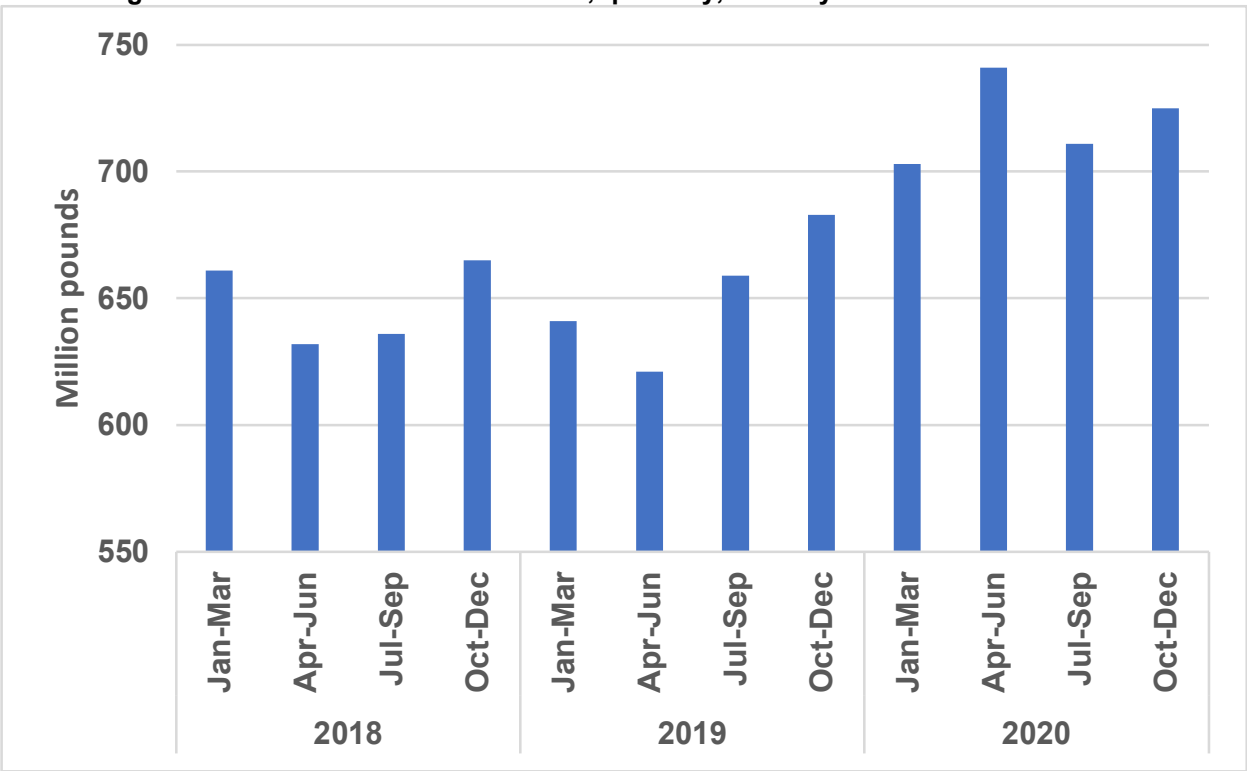
[6] https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=98331.

[7] An egg layer is a hen or pullet (a female chicken that has not yet started to lay eggs) producing table or commercial type shell eggs. https://www.ams.usda.gov/market-news/livestock-poultry-and-grain-poultry-and-egg-terms#L.

[8] Weekly USDA Certified Organic Poultry and Eggs (Mon), Agricultural Marketing Service, USDA Livestock, Poultry & Grain Market News.

USDA organic milk sales were 661 million pounds during January-March 2018, were a period low of 621 million pounds during April-June 2019, and were a period high of 741 million pounds during April-June 2020 (a 19.3 percent year over year increase) (figure II-2).[9] Overall, organic milk sales increased 9.7 percent from January-March 2018 to October-December 2020.

Figure II-2
OSBM: Organic milk sales in the United States, quarterly, January 2018-December 2020



Source: Monthly USDA Estimated Fluid Milk Products Sales Report, Agricultural Marketing Service.

Importer *** reported that demand for OSBM used in dairy feed decreases during summer months when cows go on pasture to feed.[10]

[9] Increased demand for organic milk indicates an increase in the number of organic milk cows in the United States, creating higher demand for OSBM.

[10] Petitioners note that the decrease in demand for dairy feed during summer months is inconsequential relative to the totality of demand. Conference transcript, p. 114 (Sheppard).

Substitute products

Most U.S. processors (6 of 7 responding) reported that there are no substitutes for OSBM while 7 of 10 importers reported that there are substitutes. Reported substitutes for OSBM include sesame meal, canola meal, sunflower meal, rapeseed meal, flaxseed meal, and roasted soybeans. Importer *** reported organic canola meal as a substitute but is not reliable as there is very little available in the United States. Importer *** also reported organic canola meal as a substitute but noted that in most cases OSBM is the preferred source of protein. Importer *** reported rapeseed meal as a substitute but noted that it is not a great substitute as the available volume is low and the product quality is volatile and questionable as it has been known to harm livestock.

Substitutability issues

The degree of substitution between domestic and imported OSBM depends upon such factors as relative prices, quality (protein content),[11] and conditions of sale (e.g., lead times between order and delivery dates, reliability of supply, etc.). Based on available data, staff believes that there is a moderate-to-high degree of substitutability between domestically produced OSBM and OSBM imported from India. While U.S. processors and importers indicated that domestic OSBM and that imported from India is always or frequently interchangeable, firms' responses varied regarding the significance of differences other than price (such as quality), as well as differing lead times due to the types of shipments (made-to-order versus shipments from inventory) limit the substitutability between domestic and Indian OSBM.

Lead times

U.S. processors reported that *** percent of their commercial shipments of OSBM were sold from inventory, with lead times averaging *** day. The remaining *** percent of their commercial shipments were produced-to-order, with lead times averaging *** days. U.S. importers reported that *** percent of their commercial shipments were produced-to-order, with lead times averaging *** days. The remaining commercial shipments came from inventories; *** percent from foreign inventory with lead times averaging *** days and *** percent from U.S. inventory with lead times averaging *** days.

[11] The quality of OSBM is determined by its protein content. OSBM needs to have a protein content between 44 and 48 percent to be marketable. Conference transcript, pp. 93, 119 (Sheppard, Cook).

Factors affecting purchasing decisions

Purchasers responding to lost sales lost revenue allegations[12] were asked to identify the main purchasing factors their firm considered in their purchasing decisions for OSBM. The major purchasing factors identified most frequently by firms were quality, price, and reliability/availability of supply. Other factors reported by purchasers were organic integrity and vendor reliability.

Comparison of U.S.-produced and imported OSBM

In order to determine whether U.S.-produced OSBM can generally be used in the same applications as imports from India, U.S. processors and importers were asked whether the products can always, frequently, sometimes, or never be used interchangeably. As shown in table II-5, most U.S. processors and importers indicated that domestic OSBM and OSBM imported from India are always or frequently interchangeable. A plurality of U.S. processors reported that domestic OSBM and that from nonsubject countries are always interchangeable while half of importers reported that the pair are frequently interchangeable.

Table II-5
OSBM: Interchangeability between OSBM produced in the United States and in other countries, by country pair

Country pair	Number of U.S. processors reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
United States vs. India	7	2	0	0	4	4	2	0
United States vs. nonsubject	3	2	2	0	1	5	4	0
India vs. nonsubject	2	1	1	0	2	4	3	0

Note: A=Always, F=Frequently, S=Sometimes, N=Never.

Source: Compiled from data submitted in response to Commission questionnaires.

[12] This information is compiled from responses by purchasers identified by Petitioners to the lost sales lost revenue allegations. See Part V for additional information.

***, which reported frequent interchangeability between U.S. and nonsubject countries, reported that the USDA-NOP has reciprocal agreements allowing OSBM produced in nonsubject countries to be acceptable for use under their rules. ***, which reported OSBM between U.S. and nonsubject countries as sometimes interchangeable, noted that the Black Sea region and South American OSBM is lower in protein than that from the United States and India. Importer ***, which reported frequent interchangeability, reported that Indian OSBM (using Indian soybeans) is higher in protein than U.S.-crushed OSBM (using U.S., Chinese, Argentinian, and/or Black Sea origin soybeans).

In addition, U.S. processors and importers were asked to assess how often differences other than price were significant in sales of OSBM from the United States, India, or nonsubject countries. As seen in table II-6, a majority of U.S. processors reported that non-price factors were sometimes or never important. Importers' responses were mixed with a majority reporting non-price factors as always or frequently important regarding sales between the United States and India, a plurality reporting always or frequently between the United States and nonsubject countries, and a plurality reporting always and sometimes between India and nonsubject countries.

Table II-6
OSBM: Significance of differences other than price between OSBM produced in the United States and in other countries, by country pair

Country pair	Number of U.S. processors reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
United States vs. India	1	2	3	2	4	2	3	1
United States vs. nonsubject	1	1	2	1	3	3	2	0
India vs. nonsubject	0	0	2	0	2	1	2	1

Note: A = Always, F = Frequently, S = Sometimes, N = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

***, which reported that non-price factors are sometimes important, reported that Indian OSBM is a better value than that from the Black Sea, China, or South America because of its higher quality relative to price. Importer ***, which reported that non-price factors are always important, reported that it is more efficient to transport OSBM directly from India than to import soybeans to the United States because of a higher risk of rejection of imported soybeans than soybean meal. Importer ***, which reported that non-price factors are always important, reported that U.S. OSBM has suffered from poor quality, Indian OSBM typically has higher quality, Chinese OSBM has lower quality, South American OSBM has "okay" quality, and eastern Europe has "medium"

quality. ***, which reported that non-price factors are frequently important between the United States and India and the United States and nonsubject countries, reported that supply disruptions are common due to the extended transportation network. Importer ***, which reported that non-price factors are frequently important, reported that imports from India typically have longer lead times, varying availability, and higher transportation costs when compared to the U.S. product. U.S. processor *** reported that traceability and integrity of organic soy products from India or nonsubject countries are always important.

Part III: U.S. processors' production, shipments, and employment

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the subsidies and dumping margins was presented in *Part I* of this report and information on the volume and pricing of imports of the subject merchandise is presented in *Part IV* and *Part V*. Information on the other factors specified is presented in this section and/or *Part VI* and (except as noted) is based on the questionnaire responses of nine firms that accounted for the majority of U.S. production of OSBM during 2020.

U.S. processors

The Commission issued a U.S. producer questionnaire to 23 firms based on information contained in the petition, and through staff research. Nine firms provided usable data on their operations.[1] Staff believes that these responses represent the majority-based on the petitions and the estimates made by the responding processors of U.S. production of OSBM. [2] [3]

Table III-1 lists U.S. processors of OSBM, their production locations, positions on the petition, and shares of total production.

[1] *** provided a partial questionnaire, but it had indicated that it had *** short tons of annual capacity to produce both OSBM and GE soybean meal during 2018-20. Based on the nine complete U.S. processor questionnaire responses, ***.

[2] The petitioners indicated that the domestic industry of processors/crushers has approximately 551,000 metric tons (607,000 short tons) of annual capacity, and that its production is approximately 193,000 metric tons (213,000 short tons) per year. Conference transcript, pp. 67-69 (Ujczo) and Petition, p. 7 and exh. I-3, p. 25. Based on the questionnaire responses of the nine responding processors and the partial response of ***, staff believes that the estimated *** short tons of processing capacity and production of *** short tons constitutes the majority of capacity and production of OSBM in the United States during 2020.

[3] Organic Production Services, an OSBM processor and petitioner, did not complete a U.S. processor questionnaire despite numerous attempts by staff and petitioner's counsel. Petitioners' counsel filed a letter on behalf of the firm.

Table III-1
OSBM: U.S. processors of OSBM, their positions on the petition, production locations, and shares of reported production, 2020

Firm	Position on petition	Production location(s)	Share of production (percent)
American Natural Processors	Petitioner	Cherokee, IA	***
Exact Extrusion	***	Rockford, OH	***
Modesto Milling	***	Planada, CA	***
Professional Proteins	Petitioner	Washington, IA	***
Sheppard Grain	Petitioner	Phelps, NY	***
Simmons Grain	Petitioner	Salem, OH	***
Super Soy	Petitioner	Brodhead, WI	***
Tri-State Crush	Petitioner	Nappanee, IN	***
Yorktown Organics	***	Tampico, IL	***
Total			***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Table III-2 presents information on U.S. processors' ownership, related and/or affiliated firms.

Table III-2
OSBM: U.S. processors' ownership, related and/or affiliated firms, 2018-20

* * * * * * *

As indicated in table III-2, no U.S. processors are related to foreign producers of the subject merchandise and one firm, *** is related to U.S. importers of the subject merchandise, which includes ***. In addition, as discussed in greater detail below, three U.S. processors (***) directly imported the subject merchandise and five purchased the subject merchandise from U.S. importers.

Table III-3 presents U.S. processors' reported changes in operations since January 1, 2018. Eight of the nine responding U.S. processors reported prolonged shutdowns or curtailments.

Table III-3
OSBM: U.S. processors' reported changes in operations, since January 1, 2018

* * * * * * *

Table III-3--Continued
OSBM: U.S. processors' reported changes in operations, since January 1, 2018

* * * * * * *

U.S. production, capacity, and capacity utilization

Table III-4 and figure III-1 present U.S. processors' production, capacity, and capacity utilization during 2018-20. Total capacity increased by *** percent during 2018-20. Total production decreased by *** percent from 2018-20. Capacity utilization decreased by *** percentage points from 2018 to 2020. ***.[4] *** accounted for the vast majority of decline in production from 2018 to 2020.[5] From 2018 to 2020, ***

[4] ***. *** U.S processor questionnaire, section II-3c.
[5] ***

***.[6] The processors combined capacity utilization for OSBM during 2020 was more than ***.[7] In its U.S. processors' questionnaire response, ***.[8] According to its website, Simmons Grain has a processing capacity of 2.5 million bushels per year, which equates to approximately 72,000 short tons of annual capacity for OSBM.[9]

Table III-5 presents U.S. processors' production by type during 2018-20. During 2018-20, six of the nine responding firms and at least *** of the production of OSBM utilized imported soybeans.[10] *** reported using its own/related farms' grown organic soybeans. *** used domestically purchased soybeans in their processing of OSBM, while *** soybeans for its processing of OSBM.[11]

[6] ***.

[7] At the Commission's preliminary conference, Sheppard Grain indicated it had less than 20 percent capacity utilization in 2020 compared to 95 percent capacity utilization during 2018. Conference transcript, p. 49 (Sheppard).

[8] *** U.S. processor questionnaire response, section II-15.

[9] At the Commission's preliminary conference, the petitioners indicated that there were 37 bushels per metric ton and the domestic industry has the processing capacity of about 30 million bushels, annually. Conference transcript, pp. 66-67, and http://www.simmonsgrain.com/organic-products/.

[10] Simmons Grains, ***, stated that due to the shortage of U.S. produced soybeans, it imported from several sources, including South America, the Black Sea region, and India. This also enabled it to hedge against impact to its supply of soybeans, such as bad weather, poor harvests, pests, or other calamities. Conference transcript, pp. 21-22 (Cook).

[11] U.S. processor questionnaire responses, section II-7.

Table III-4
OSBM: U.S. processors' production, capacity, and capacity utilization, 2018-20

Item	Calendar year		
	2018	2019	2020
	Capacity (short tons)		
American Natural Processors	***	***	***
Exact Extrusion	***	***	***
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Production (short tons)		
American Natural Processors	***	***	***
Exact Extrusion	***	***	***
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Table continued on next page.

Table III-4--Continued
OSBM: U.S. processors' production, capacity, and capacity utilization, 2018-20

Item	Calendar year		
	2018	2019	2020
	Capacity utilization (percent)		
American Natural Processors	***	***	***
Exact Extrusion	***	***	***
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Share of production (percent)		
American Natural Processors	***	***	***
Exact Extrusion	***	***	***
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Figure III-1
OSBM: U.S. processors' production, capacity, and capacity utilization, 2018-20

* * * * * * *

Table III-5
OSBM: U.S. processors' overall plant capacity and production on the same equipment as subject production, 2018-20

* * * * * * *

Alternative products

As shown in table III-6, *** percent of the product produced on the equipment used to produce OSBM during 2018-20, by U.S. processors was OSBM. The overall capacity utilization rate decreased by *** percentage points during 2018-20. Total production on the same machinery decreased by *** percent during 2018-20, while overall capacity increased by *** percent. Five firms (***) reported that they processed both OSBM and other out-of-scope products.[12] One firm, Tri-State Crush, stated that it produces non-GE soybean meal on the same equipment as OSBM, but that this requires a significant amount of time to clean and flush the equipment between organic and non-GE productions runs.[13] *** was the largest out-of-scope producer on the same equipment it used to process OSBM during 2018-20. *** accounted for *** percent of all of the out-of-scope production during 2020.[14] The *** overall production was for out-of-scope products, non-GE soybean meal.[15]

Table III-6
OSBM: U.S. processors' overall plant capacity and production on the same equipment as subject production, 2018-20

* * * * * * *

[12] Other products included soybean oil, soybean cake, conventional/genetically engineered soybean meal, and occasional other products.

[13] Conference transcript, pp. 40-41 (Luke).

[14] *** U.S. processor questionnaire response, section II-3a.

[15] *** indicated that it processed both genetically engineered and organic OSBM.

U.S. processors' U.S. shipments and exports

Table III-7 presents U.S. producers' U.S. shipments, export shipments, and total shipments during 2018-20. From 2018 to 2020, the quantity of U.S. shipments decreased by *** percent. During 2018-20, the value of U.S. shipments decreased by *** percent. The unit values for U.S. shipments decreased by *** percent during 2018-20. Three firms (***) reported internal consumption, accounting for *** percent of U.S. shipments in 2018 and *** percent in 2020. From 2018 to 2020, U.S. processors' export shipments were ***. *** accounted for approximately *** percent of all U.S. shipments during 2020.

Table III-8
OSBM: U.S. processors' U.S. shipments, export shipments, and total shipments, 2018-20

* * * * * * *

U.S. processors' inventories

Table III-8 presents U.S. producers' end-of-period inventories and the ratio of these inventories to U.S. producers' production, U.S. shipments, and total shipments during 2018-20**.** These data show that U.S. producers' inventories fluctuated but decreased by *** percent

during 2018-20.[16] The ratios of inventories to production, U.S. shipments, and total shipments *** during 2018-20. [17]

Table III-8
OSBM: U.S. processors' inventories, 2018-20

* * * * * * *

U.S. processors' imports and purchases

U.S. processors' imports and purchases of OSBM are presented in tables III-9 through III-11.[18] Three firms (***) imported OSBM from India during 2018-20. Four firms (***) purchased OSBM that was imported from India during 2018-20, increasing from a combined *** short tons in 2018 to *** short tons in 2020. *** stated that it did so as it "was less expensive to purchase than to manufacture." ***.

[16] Four of the nine responding processors indicated that they had end-of-period inventories during 2020, including ***. *** U.S. processor questionnaire responses, section II-7.

[17] Sheppard Grain stated that OSBM is generally bought or produced closer to distribution of it. Conference transcript, p. 117 (Sheppard).

[18] ***.

Table III-9
OSBM: U.S. processors * U.S. imports, 2018-20**

*	*	*	*	*	*	*

Table III-10
OSBM: U.S. processors * U.S. imports, 2018-20**

*	*	*	*	*	*	*

Table III-11
OSBM: U.S. processors * U.S. imports, 2018-20**

*	*	*	*	*	*	*

U.S. employment, wages, and productivity

Table III-12 shows U.S. processors' employment-related data. During 2018-20, PRW's decreased by *** percent, while total hours worked and wages paid decreased by *** percent and *** percent, respectively. Hourly wages and unit labor costs increased by *** percent and *** percent, respectively, during 2018-20. During 2018-20, productivity fluctuated but decreased by *** percent.[19] [20]

Table III-12
OSBM: Average number of production and related workers, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 2018-20

* * * * * * *

[19] *** did not complete the questions regarding employment.
[20] *** shutdown all production of OSBM during 2020.

Part IV: U.S. imports, apparent U.S. consumption, and market shares

U.S. importers

The Commission issued importer questionnaires to 10 firms believed to be importers of subject OSBM, as well as to all U.S. processors of OSBM.[1] Usable questionnaire responses were received from 10 companies, representing *** of OSBM U.S. imports from India in 2020 under HTS subheadings 1208.10.00 and 2304.00.00, "basket" categories. Table IV-1 lists all responding U.S. importers of OSBM from India and other sources, their locations, and their shares of U.S. imports, in 2020.

Table IV-1
OSBM: U.S. importers, their headquarters, and share of total imports by source, 2020

Firm	Headquarters	Share of imports by source (percent)		
		India	Nonsubject sources	All import sources
All Star Trading	Oak Brook, IL	***	***	***
Caprock Land	Santa Fe, NM	***	***	***
Field Farms	Petrolia, ON	***	***	***
Modesto Milling	Empire, CA	***	***	***
Perdue	Salisbury, MD	***	***	***
Sheppard Grain	Phelps, NY	***	***	***
Simmons Grain	Salem, OH	***	***	***
SureSource	Wilmington, DE	***	***	***
Terra Ingredients	Minneapolis, MN	***	***	***
Western Grain	Kirkland, QC	***	***	***
Total		***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. imports

Figure IV-1 and table IV-2 presents data for U.S. imports of OSBM from Indian and all other sources. Subject imports from India accounted for *** percent of total imports of OSBM by quantity and *** percent by value in 2020. During 2018-20, subject imports from India increased by *** percent, based on quantity, and by *** percent, based on value. While the vast majority of the increase in U.S. imports from India was accounted for by ***

[1] The Commission issued questionnaires to those firms identified in the petition, along with firms that, based on a review of data provided by a compilation of the mailing list of possible U.S. importers.

***, all firms except *** had higher U.S. imports from India in 2020 compared to 2018 The ratio of subject imports to U.S. production increased from *** percent in 2018, to *** percent of U.S. production in 2020. The average unit value (dollars per short ton) of subject imports from India decreased by *** percent during 2018-20. The average unit value for imports from nonsubject sources increased by *** percent from 2018-20. Nonsubject imports had a share of quantity and value of total imports that was *** during 2018-20, respectively. Seven of the 10 responding firms reported U.S. imports from nonsubject sources during 2018-20. Three firms (***).[2] ***. In contrast, *** increased U.S. imports from nonsubject sources in 2020.[3] As noted above, most responding firms, including ***, increased imports from India in 2019 and 2020. During 2018-20, imports from all sources increased by *** percent based on quantity, and *** based on value.

[2] ***.
[3] ***.

Table IV-2
OSBM: U.S. imports by source, 2018-20

*	*	*	*	*	*	*

Figure IV-1
OSBM: U.S. import quantities and average unit values, 2018-20

* * * * * * *

Negligibility

The statute requires that an investigation be terminated without an injury determination if imports of the subject merchandise are found to be negligible.[4] Negligible imports are generally defined in the Act, as amended, as imports from a country of merchandise corresponding to a domestic like product where such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or the initiation of the investigation. In the case of countervailing duty investigations involving developing countries (as designated by the United States Trade Representative), the statute indicates that the negligibility limit is 4 percent rather than 3 percent.[5] Imports from India accounted for *** percent of total imports of OSBM by quantity during March 2020

[4] Sections 703(a)(1), 705(b)(1), 733(a)(1), and 735(b)(1) of the Act (19 U.S.C. §§ 1671b(a)(1), 1671d(b)(1), 1673b(a)(1), and 1673d(b)(1)).

[5] Section 771 (24) of the Act (19 U.S.C § 1677(24)).

through February 2021. Table IV-3 presents U.S. imports during the twelve-month period preceding the petition.

Table IV-3
OSBM: U.S. imports in the twelve month period preceding the filing of the petition, March 2020 through February 2021

Item	March 2020 through February 2021	
	Quantity (short tons)	Share quantity (percent)
U.S. imports from.--		
India	***	***
Nonsubject sources	***	***
All import sources	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Apparent U.S. consumption

Table IV-5 presents data on apparent U.S. consumption for OSBM during 2018-20. From 2018 to 2020, apparent U.S. consumption based on quantity increased by *** percent and based on value increased by *** percent. This increase in apparent consumption was due to the increased quantity of subject imports which was greater than the decline in U.S. producer's U.S. shipments. During 2018-20, U.S. producers' U.S. shipments decreased by *** percent and *** percent based on quantity and value, respectively. From 2018 to 2020, U.S. importers' U.S. shipments from subject sources increased by *** percent and *** percent, based on quantity and value, respectively.

Table IV-4
OSBM: Apparent U.S. consumption, 2018-20

* * * * * * *

U.S. market shares

U.S. market share data are presented in figure IV-3 and table IV-6, during 2018-20. The share of U.S. apparent consumption held by U.S. importers' U.S. shipments from India increased by *** percentage points from 2018 to 2020, in quantity terms, while on a value basis U.S. imports of OSBM from India share of apparent U.S. consumption increased by *** percentage points from 2018 to 2020. U.S. producers' U.S. shipments, based on market share, decreased by *** percentage points during 2018-20, based on quantity, and decreased by *** percentage points based on value.

Table IV-5
OSBM: U.S. market shares, 2018-20

* * * * * * *

Figure IV-2
OSBM: U.S. market shares, 2018-20

* * * * * * *

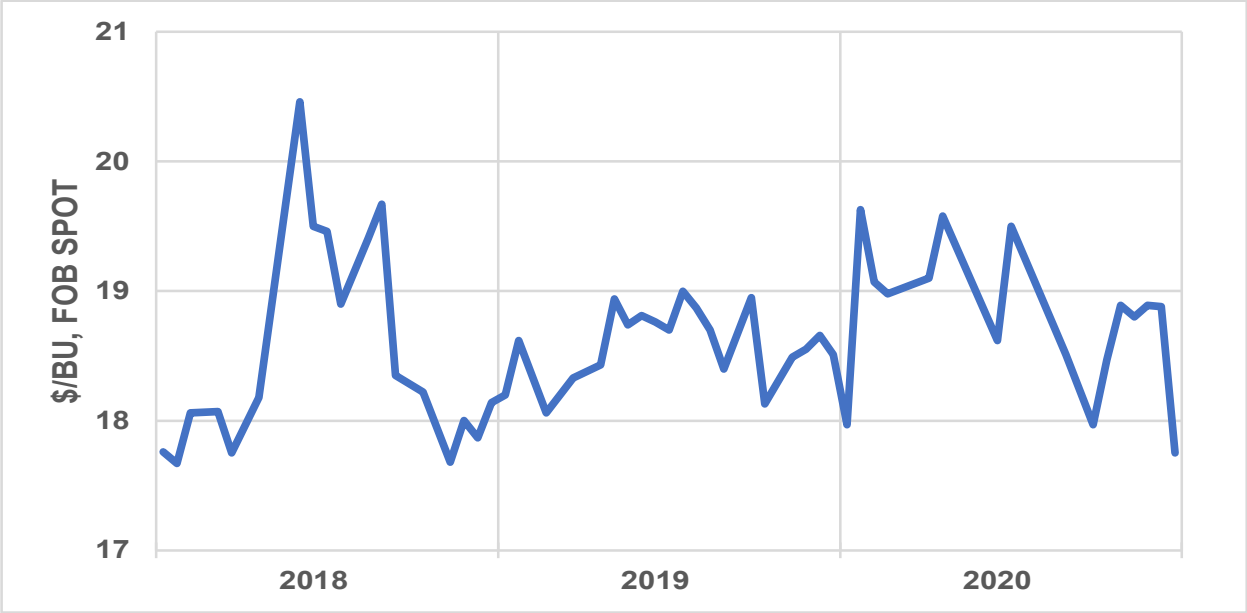
Part V: Pricing data

Factors affecting prices

Raw material costs

The main raw material input for organic soybean meal (OSBM) production is USDA-certified organic soybeans. The average price for USDA-certified organic soybeans was at a period-low of $17.67 per bushel in January 2018, increased 15.8 percent to a period high of $20.46 per bushel in June 2018, and decreased 13.6 percent to $17.68 per bushel in November 2018. The price increased irregularly from the end of 2018 to $19.63 in January 2020 before decreasing irregularly to $17.75 per bushel in December 2020 (figure V-1).[1] [2] Raw materials as a share of the total cost of goods sold ("COGS") reported by U.S. processors was *** percent in 2018, *** percent in 2019, and *** percent in 2020.

Figure V-1
OSBM: Average prices for farm gate feed grade organic soybeans, bi-weekly, January 2018-December 2020



Source: USDA National Organic Grain and Feedstuffs Report, Agricultural Marketing Service, USDA Livestock, Poultry & Grain Market News.

[1] The average price was $17.76 per bushel at the beginning of the period and $17.75 per bushel at the end of the period.

[2] There are no trading exchanges, such as the Chicago Board of Trade, or futures trading for organic products. Petitioner's postconference brief, Answers to Staff Questions, p. 7.

Energy costs

Electricity is used to run motors that power the process of crushing soybeans into meal. U.S. processor Tri-State Crush testified that the crushing process is very energy intensive and that costs can be as high as 30 percent of COGS.[3] [4] U.S. processor Sheppard Grain stated that energy expenses can vary depending on where the production plant is located geographically.[5]

Transportation costs to the U.S. market

Transportation costs for OSBM shipped from India to the United States averaged 11.0 percent during 2020. These estimates were derived from official import data and represent the transportation and other charges on imports.[6]

U.S. inland transportation costs

Five of 9 U.S. processors and seven of 10 importers reported that they typically arrange transportation to their customers. U.S. processors reported that their U.S. inland transportation costs ranged from 1.7 to 15.0 percent while importers reported costs of 2.2 to 12.0 percent.

Pricing practices

Pricing methods

U.S. processors and importers reported setting prices mostly using transaction-by-transaction negotiations and contracts (table V-1).[7] U.S. processor *** sets its contracts for most of its sales when it purchases soybeans. When it knows the price of the organic soybeans, it can calculate the OSBM (and oil) price. The "other" method, as reported by U.S. processor ***, is toll pricing.

---

[3] Conference transcript, p. 127 (Luke).

[4] See part VI of this report for more information on COGS.

[5] Conference transcript, p. 82 (Sheppard).

[6] The estimated transportation costs were obtained by subtracting the customs value from the c.i.f. value of the imports for 2020 and then dividing by the customs value based on the HTS reporting numbers 1208.10.0010 and 2304.00.0000. Both HTS reporting numbers include other products and/or conventional soybean meal.

[7] When asked if OSBM prices published by the USDA in its bi-weekly *National Organic Grain and Feedstuffs Report* were used as a benchmark for price negotiation, petitioners responded that the report can give an indication of what is being paid for in the market but it is not frequently tracked and many times prices are not available. U.S. processor Tri-State Crush sets prices based on reported Indian OSBM prices at U.S. ports. Conference transcript, pp. 115-117 (Golbitz, Luke).

Table V-1
OSBM: U.S. processors' and importers' reported price setting methods, by number of responding firms

Method	U.S. processors	Importers
Transaction-by-transaction	7	4
Contract	5	9
Set price list	1	0
Other	1	0
Responding firms	9	9

Note: The sum of responses down may not add up to the total number of responding firms as each firm was instructed to check all applicable price setting methods employed.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. processors and importers reported selling the majority of their OSBM under ***, although importers also had appreciable sales made through *** and U.S. processors had considerable sales through *** (table V-2).

Table V-2
OSBM: U.S. processors' and importers' shares of U.S. commercial shipments by type of sale, 2020

Type of sale	U.S. processors	Importers
Long-term contracts	***	***
Annual contracts	***	***
Short-term contracts	***	***
Spot sales	***	***
Total	100.0	100.0

Note: Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted in response to Commission questionnaires.

Five U.S. processors reported using short-term contracts to set prices, with durations ranging from 90 to 180 days. All five firms did not allow for price renegotiation and had a fixed price and quantity provision. One firm indexed short-term contracts to the actual cost of raw soybeans during the contract period.

Eight importers reported using short-term contracts, with durations ranging from 20 to 150 days. All eight responding importers did not allow for price renegotiation and 7 of these firms had a fixed price and quantity provision. No short-term contracts reported by importers were indexed to raw material prices.

Sales terms and discounts

U.S. processors mostly quote prices on an f.o.b. basis while importers reported quoting prices on a delivered basis.[8] Seven of 8 responding U.S. processors and 8 of 9 responding importers reported offering no discounts.

Price data

The Commission requested U.S. processors and importers to provide quarterly data for the total quantity and f.o.b. value of the following OSBM product shipped to unrelated U.S. customers during 2018-20.

Product 1.--Certified OSBM having at least a protein content of 44%, feed grade.

Six U.S. processors and eight importers provided usable pricing data for sales of the requested product, although not all firms reported pricing for all quarters.[9] [10] Pricing data reported by these firms accounted for approximately 93.2 percent of U.S. processors' shipments of OSBM and 97.6 percent of U.S. shipments of subject imports from India in 2020.[11] Price data for product 1 is presented in table V-3 and figure V-2.

[8] Reported f.o.b. locations by U.S. processors include, ***.

[9] Per-unit pricing data are calculated from total quantity and total value data provided by U.S. processors and importers. The precision and variation of these figures may be affected by rounding, limited quantities, and processor or importer estimates.

[10] ***.

[11] Pricing coverage is based on U.S. shipments reported in questionnaires.

Table V-3
OSBM: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by quarter, 2018-20

Period	United States		India		
	Price (dollars per short ton)	Quantity (short tons)	Price (dollars per short ton)	Quantity (short tons)	Margin (percent)
2018:					
Jan.-Mar.	782	36,504	681	9,829	12.9
Apr.-June	788	41,017	695	11,182	11.8
July-Sept.	787	38,713	691	12,953	12.1
Oct.-Dec.	783	38,431	682	20,832	12.9
2019:					
Jan.-Mar.	785	32,057	687	28,916	12.5
Apr.-June	770	29,936	682	37,895	11.5
July-Sept.	767	32,925	694	27,818	9.5
Oct.-Dec.	762	34,827	704	33,720	7.6
2020:					
Jan.-Mar.	758	31,240	711	49,620	6.2
Apr.-June	***	***	706	53,104	***
July-Sept.	***	***	701	55,896	***
Oct.-Dec.	***	***	702	67,928	***

Note: Product 1: Certified OSBM having at least a protein content of 44%, feed grade.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-2
OSBM: Weighted-average prices and quantities of domestic and imported product 1, by quarter, 2018-20

* * * * * * *

* * * * * * *

Product 1: Certified OSBM having at least a protein content of 44%, feed grade.

Source: Compiled from data submitted in response to Commission questionnaires.

Price trends

Table V-4 summarizes the price trends, by country for product 1. As shown in the table, domestic prices decreased *** percent during 2018-20 while import prices increased 3.0 percent.[12]

Table V-4
OSBM: Summary of weighted-average f.o.b. prices for product 1 from the United States and India

Source	Number of quarters	Low price (dollars per short ton)	High price (dollars per short ton)	Change in price (percent)
United States	***	***	***	***
India	12	681	711	3.0

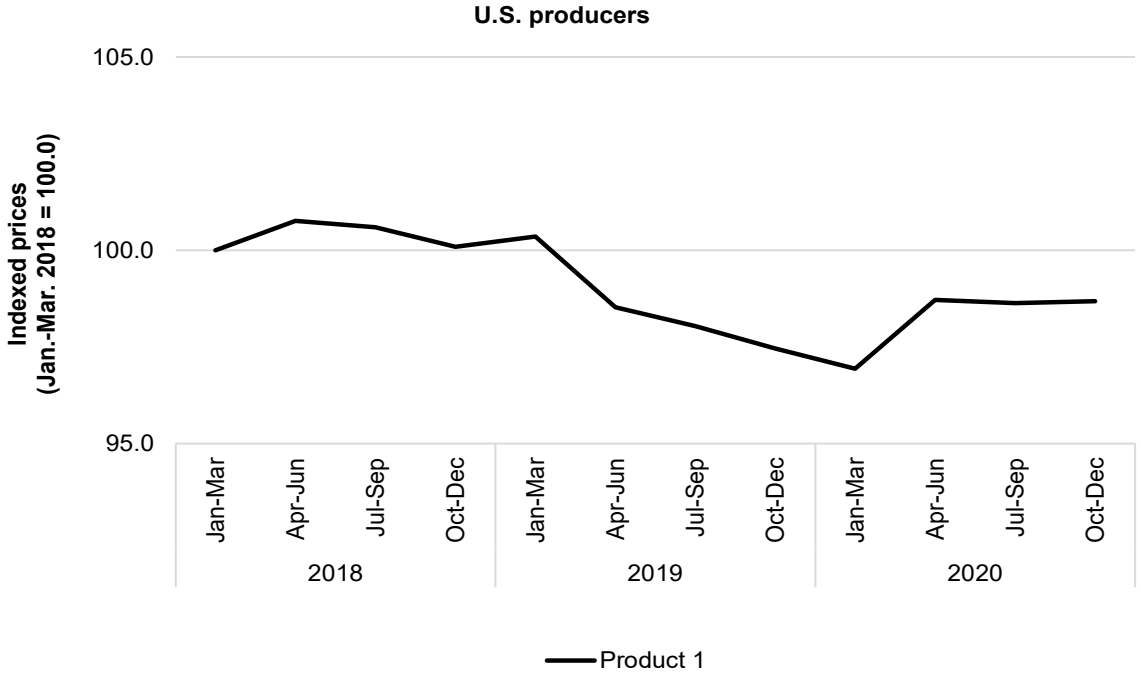
Note: Percentage change from the first quarter in which data were available to the last quarter in which price data were available.

Source: Compiled from data submitted in response to Commission questionnaires.

Indexed prices of U.S. producers' and importers' price data shows the difference in price variation between the two (figures V-3 and V-4). Prices moved mostly in the same direction from January 2018 to June 2019 but mostly moved in opposite directions afterward.

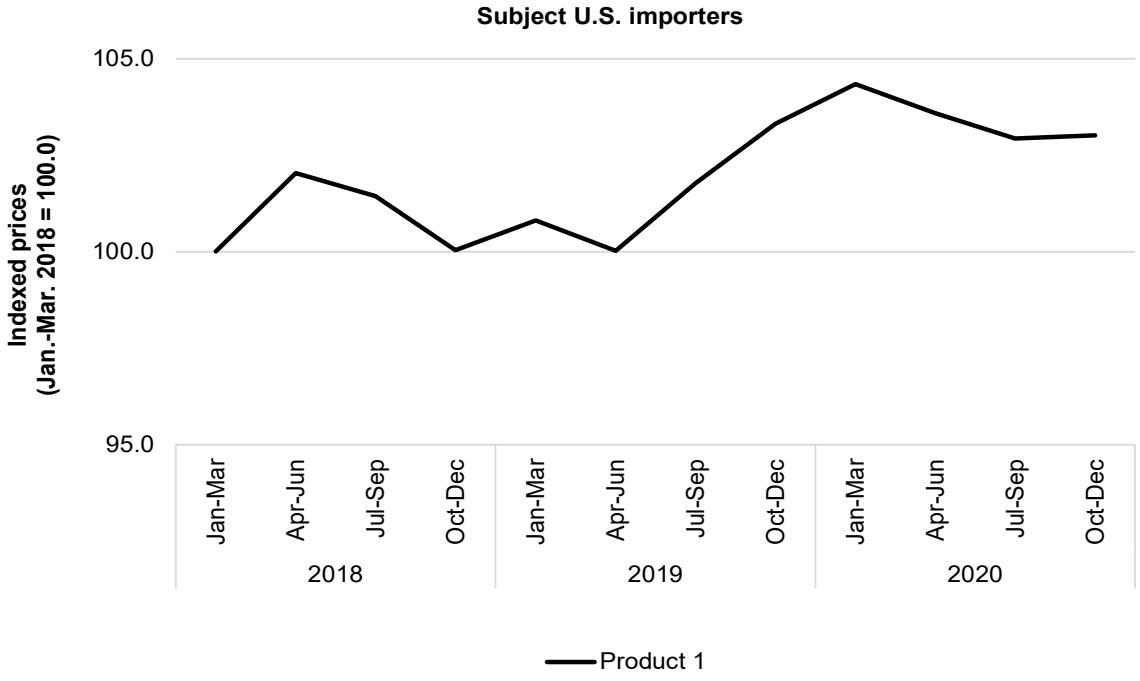
[12] Petitioner asserts that the prices of the majority of OSBM are not linked by contract to the prices of organic soybeans. Petitioner's postconference brief, p. 10.

Figure V-3
OSBM: Indexed U.S. producer prices, January 2018 through December 2020



Source: Compiled from data submitted in response to Commission questionnaires.

Figure V-4
OSBM: Indexed subject U.S. importer prices, January 2018 through December 2020



Source: Compiled from data submitted in response to Commission questionnaires.

Price comparisons

As shown in table V-5, prices for product imported from India were below those for U.S.-produced product in *** instances (*** short tons); margins of underselling ranged from *** to *** percent. There were no instances of overselling.

Table V-5
OSBM: Instances of underselling/overselling and the range and average of margins, 2018-20

Item	Number of quarters	Quantity (short tons)	Average margin (percent)	Margin range (percent)	
				Min	Max
Underselling	***	***	***	***	***
Overselling	***	***	***	***	***

Note: These data include only quarters in which there is a comparison between the U.S. and subject product.

Source: Compiled from data submitted in response to Commission questionnaires.

Lost sales and lost revenue

The Commission requested that U.S. processors of OSBM report purchasers with which they experienced instances of lost sales or revenue due to competition from imports of OSBM from India during 2018-20. Of the nine responding U.S. processors, six reported that they had to either reduce prices or roll back announced price increases, and seven firms reported that they had lost sales. Eight U.S. processors submitted lost sales and lost revenue allegations and identified 35 firms with which they lost sales and revenue.[13] The reported lost sales and lost revenue from these firms were from U.S. purchasers' contract negotiations of OSBM produced in India during 2018-20.

Staff contacted 31 purchasers and received responses from 16 purchasers. Responding purchasers reported purchasing 1.1 million short tons of OSBM during 2018-20 (table V-6).

[13] The petition was filed by the Organic Soybean Processors of America and eight domestic processors as a coalition. After the petition was filed, one firm (***) dropped out as a petitioner. Supplemental lost sales and lost revenue allegations were provided in Petitioner's postconference brief at Exhibit 3.

Table V-6
OSBM: Purchasers' reported purchases and imports, 2018-20

Purchaser	Purchases and imports in 2018-20 (short tons)			Change in domestic share (pp, 2018-20)	Change in subject country share (pp, 2018-20)
	Domestic	Subject	All other		
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
All firms	386,815	566,808	143,943	(19.3)	25.2

Note: All other includes all other sources and unknown sources.
Note: Percentage points (pp) change: Change in the share of the firm's total purchases of domestic and/or subject country imports between first and last years.

Source: Compiled from data submitted in response to Commission questionnaires.

During 2020, responding purchasers purchased 34.3 percent from U.S. processors, 52.6 percent from India, 9.0 percent from nonsubject countries, and 4.1 percent from "unknown source" countries. Purchasers were asked about changes in their purchasing patterns from different sources since 2018. As seen in table V-7, of the responding purchasers, 4 reported decreasing purchases from domestic processors, 2 reported increasing purchases, 3 reported no change, 3 reported fluctuating purchases, and 3 did not purchase any domestic product.[14] Explanations for decreasing purchases of domestic product included price being too high, quality being comparatively low, and an insufficient supply. Explanations for increasing purchases of domestic product included growth and increased business. An explanation for maintaining constant purchases of domestic product was not enough product available.

[14] Of the 16 responding purchasers, 5 purchasers indicated that they did not know the source of the OSBM they purchased.

Purchasers reported fluctuating and no domestic purchases due to quality, price, and availability. Explanations for increasing purchases of Indian product included lower price, better quality, and consistent supply.

Table V-7
OSBM: Changes in purchase patterns from U.S., subject, and nonsubject countries

Source of purchases	Did not purchase	Decreased	Increased	Constant	Fluctuated
United States	3	4	2	3	3
India	0	0	11	2	2
Nonsubject sources	3	3	2	1	3
Sources unknown	3	2	1	2	0

Source: Compiled from data submitted in response to Commission questionnaires.

Of the 16 responding purchasers, 12 reported that, since 2018, they had purchased imported OSBM from India instead of U.S.-produced product. All 12 purchasers reported that subject import prices were lower than U.S.-produced product, and two of these purchasers reported that price was a primary reason for the decision to purchase imported product rather than U.S.-produced product. The two purchasers that reported price was a primary reason estimated the quantity of OSBM from India purchased instead of domestic product; total quantity reported was 14,500 short tons (table V-8). Purchasers mostly identified quality and availability as non-price reasons for purchasing imported rather than U.S.-produced product.

Of the 16 responding purchasers, 2 reported that U.S. processors had reduced prices in order to compete with lower-priced imports from India; 6 reported that U.S. processors had not reduced prices and 8 reported that they did not know (table V-9). The reported estimated price reductions were from *** to *** percent. In describing the price reductions, firms indicated losing money by keeping operations going and purchasing according to market conditions.

Table V-8
OSBM: Purchasers' responses to purchasing subject imports instead of domestic product

Purchaser	Purchased imports instead of domestic (Y/N)	Imports Priced Lower Y/N	If purchased imports instead of domestic, was price a primary reason		
			Y/N	If Yes, quantity purchased instead of domestic (short tons)	If No, non-price reason
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***
Totals	Yes--12; No--4	Yes--12; No--1	Yes--2; No--11	14,500	

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-9
OSBM: Purchasers' responses to U.S. processor price reductions

Purchaser	U.S. processors reduced priced to compete with subject imports (Y/N)	If U.S. processor reduced prices	
		Estimated U.S. price reduction (percent)	Additional information, if available
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
Totals	Yes--2; No--6	10.0	

Note: ***.

Source: Compiled from data submitted in response to Commission questionnaires.

In responding to the lost sales lost revenue survey, purchaser *** provided supplemental information on purchases and market dynamics in an attachment to its survey response. The firm reported with respect to impacts on pricing, "Processing costs are similar in both the U.S. and India, but the cost of organic soybeans are more reasonable in India due to the significant adoption by many farmers of organic farming. For this reason, the Indian soy processing industry has an advantage due to the availability of the nearby organic bean supply. Many new processors started to manufacture organic soybean meal due to the significant availability of organic soybeans and growing worldwide demand for organic soy meal. It is estimated that there were 10 processors of organic soy meal in 2017 and today in 2021, there are approximately 80 processors of organic soy meal." The firm further noted that, "The expansion of the number of organic meal processors {in India} has created more competition

for the business in the U.S. and naturally would lead to lower margins to maintain or attract customers."

Part VI: Financial experience of U.S. processors

Background

Seven U.S. processors (Modesto Milling, Professional Proteins, Sheppard Grain, Simmons Grain, Super Soy, Tri-State Crush, and Yorktown Organics) provided usable financial data.[1] [2] Six out of seven responding U.S. processors' fiscal years end on December 31.[3] Three responding U.S. processors (***) provided their financial data on the basis of generally accepted accounting principles (GAAP), with two (***) reporting financial results on cash basis, one (***) reporting on tax basis, and one (***) on an accrual basis.[4] The questionnaire responses are believed to account for the majority of OSBM sold by processors in the United States. As previously discussed in this report, the processing of OSBM produces oil

[1] Two U.S. processors (***) submitted incomplete U.S. processor questionnaires with no or incomplete financial data and therefore are not included in the aggregated financial data. Staff contacted these processors to amend their questionnaire responses but did not receive usable responses. These firms' combined total shipments are equivalent to less than 15 percent of reported total production in 2020. ***.

[2] ***. Petitioning counsel is ***. ***, April 30, 2021.

Organic Production Services, located in North Carolina, is a certified organic processor that dedicates all of its capacity to organic production of OSBM and soybean oil "to be further processed or for use as part of a complete organic feed." Production Services' webpage, https://ops.farm/, retrieved May 3, 2021.

[3] ***. Small differences exist between the trade and financial sections of the Commission's questionnaire due to timing differences.

[4] Share of GAAP and accrual basis U.S. processors accounted for 91.4 to 95.5 percent of total sales from 2018 to 2020.

("co-products") and one U.S. processor (***) also reported very small amounts of revenue from waste materials such as hulls ("by-product").[5] [6]

Figure VI-1
OSBM: Share of net sales quantity, by company, 2020

* * * * * * *

Source: Compiled from data submitted in response to Commission questionnaires.

[5] With the exception of ***, responding U.S processors reported co-product revenue from sales of organic soybean oil. The co-product revenue fluctuated dramatically within each company, partially due to the amount of "full-fat" OSBM product mix sold in each period, the different ways each U.S. processor classifies hulls, and additional co-products such as ***. One U.S. processor (***) classify hulls as a by-product while other domestic processors such as *** classify hulls as co-products along with organic soybean oil. In addition, ***. Conference transcript, pp. 135-137 (Sheppard) and p. 136 (Luke) and ***, May 6, 2021.

[6] ***. The amount of by-product revenue from hulls varies based on the manufacturing process, product mix of OSBM (percent of protein), and ***. Some U.S. processors "put back" the hulls to increase the protein content of OSBM. as well as different ways U.S. producers classified revenues from hulls noted above. Ibid.

Operations on OSBM

Table VI-1 presents aggregated data on U.S. processors' operations in relation to OSBM from 2018 to 2020, while table VI-2 presents corresponding changes in average unit values ("AUV") data between periods. Table VI-3 presents selected company-specific financial data.

Table VI-1
OSBM: Results of operations of U.S. processors, 2018-20

Item	Fiscal year		
	2018	2019	2020
	Quantity (short tons)		
Total net sales	***	***	***
	Value (1,000 dollars)		
Total net sales	***	***	***
Cost of goods sold.-- Raw materials	***	***	***
Direct labor	***	***	***
Other factory costs	***	***	***
Less: by-product revenue	***	***	***
Total COGS	***	***	***
Gross profit	***	***	***
SG&A expense	***	***	***
Operating income or (loss)	***	***	***
All other expenses / (income), net	***	***	***
Net income or (loss)	***	***	***
Depreciation/amortization	***	***	***
Cash flow	***	***	***
	Ratio to net sales (percent)		
Cost of goods sold.-- Raw materials	***	***	***
Direct labor	***	***	***
Other factory costs	***	***	***
Average COGS	***	***	***
Gross profit	***	***	***
SG&A expense	***	***	***
Operating income or (loss)	***	***	***
Net income or (loss)	***	***	***

Table continued on next page.

Table VI-1—Continued
OSBM: Results of operations of U.S. processors, 2018-20

Item	Fiscal year		
	2018	2019	2020
	Ratio to total COGS (percent)		
Cost of goods sold (before by-product offset).-- Raw materials	***	***	***
Direct labor	***	***	***
Other factory costs	***	***	***
Average COGS	***	***	***
	Unit value (dollars per short ton)		
Total net sales	***	***	***
Cost of goods sold.-- Raw materials	***	***	***
Direct labor	***	***	***
Other factory costs	***	***	***
Average COGS	***	***	***
Gross profit	***	***	***
SG&A expense	***	***	***
Operating income or (loss)	***	***	***
Net income or (loss)	***	***	***
	Number of firms reporting		
Operating losses	***	***	***
Net losses	***	***	***
Data	***	***	***

Note: Certain firms were unable to specifically identify or allocate revenues and/or operating costs to OSBM operations. ***. While revenues and operating expenses are somewhat overstated, staff believes the data reasonably reflect the overall financial condition for OSBM operations.

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-2
OSBM: Changes in AUVs between fiscal years

Item	Between fiscal years		
	2018-20	2018-19	2019-20
	Change in AUVs (percent)		
Total net sales	▼***	▼***	▼***
Cost of goods sold.-- Raw materials	▲***	▲***	▲***
Direct labor	▲***	▲***	▼***
Other factory costs	▲***	▲***	▼***
Average COGS	▲***	▲***	▲***
	Change in AUVs (dollars per short ton)		
Total net sales	▼***	▼***	▼***
Cost of goods sold.-- Raw materials	▲***	▲***	▲***
Direct labor	▲***	▲***	▼***
Other factory costs	▲***	▲***	▼***
Average COGS	▲***	▲***	▲***
Gross profit	▼***	▼***	▼***
SG&A expense	▲***	▲***	▲***
Operating income or (loss)	▼***	▼***	▼***
Net income or (loss)	▼***	▼***	▼***

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-3
OSBM: Select results of operations of U.S. processors, by company, 2018-20

Item	Fiscal year		
	2018	2019	2020
	Total net sales (short tons)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Total net sales (1,000 dollars)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Cost of goods sold (1,000 dollars)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Table continued on next page.

Table VI-3—Continued
OSBM: Select results of operations of U.S. processors, by company, 2018-20

Item	Fiscal year		
	2018	2019	2020
	Gross profit or (loss) (1,000 dollars)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	SG&A expenses (1,000 dollars)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Operating income or (loss) (1,000 dollars)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Table continued on next page.

Table VI-3—Continued
OSBM: Select results of operations of U.S. processors, by company, 2018-20

Item	Fiscal year		
	2018	2019	2020
	Net income or (loss) (1,000 dollars)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	COGS to net sales ratio (percent)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Gross profit or (loss) to net sales ratio (percent)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Table continued on next page.

Table VI-3—Continued
OSBM: Select results of operations of U.S. processors, by company, 2018-20

Item	Fiscal year		
	2018	2019	2020
	SG&A expense to net sales ratio (percent)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Operating income or (loss) to net sales ratio (percent)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Net income or (loss) to net sales ratio (percent)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Table continued on next page.

Table VI-3—Continued
OSBM: Select results of operations of U.S. processors, by company, 2018-20

Item	Fiscal year		
	2018	2019	2020
	Unit net sales value (dollars per short ton)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Unit raw materials (dollars per short ton)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Unit direct labor (dollars per short ton)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Table continued on next page.

Table VI-3—Continued
OSBM: Select results of operations of U.S. processors, by company, 2018-20

Item	Fiscal year		
	2018	2019	2020
	Unit other factory costs (dollars per short ton)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Unit COGS (dollars per short ton)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Unit gross profit or (loss) (dollars per short ton)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Table continued on next page.

Table VI-3—Continued
OSBM: Select results of operations of U.S. processors, by company, 2018-20

Item	Fiscal year		
	2018	2019	2020
	Unit SG&A expenses (dollars per short ton)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Unit operating income or (loss) (dollars per short ton)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Unit net income or (loss) (dollars per short ton)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Table continued on next page.

Note: Certain firms were unable to specifically identify or allocate revenues and/or operating costs to OSBM operations. ***. While revenues and operating expenses are somewhat overstated, staff believes the data reasonably reflect the overall financial condition for OSBM operations.

Source: Compiled from data submitted in response to Commission questionnaires.

Net sales

Revenue primarily reflects commercial sales, but also includes a small amount of internal consumption reported by *** that accounted for *** percent in 2018, *** percent in 2019, and *** percent of net sales quantity, and are not shown separately in this part of the report.[7] As presented in table VI-1, total net sales quantity and value declined by *** percent and *** percent, respectively, from 2018 to 2020. U.S. shipments represent all commercial sales (no exports were reported by responding U.S. processor). As presented in table VI-3, *** reported the largest decline in net sales quantity (***) while the *** U.S. processor *** reported the second biggest decline (***) from 2018 to 2020.[8] *** U.S. processors (***) also reported the largest net sales value losses from 2018 to 2020. *** U.S. processors (***) reported increases in total net sales quantity and value from 2018 to 2020.

As presented in tables VI-1 and VI-2, net sales AUVs of U.S. processors declined by *** percent from 2018 to 2020 ($*** per short ton in 2018, $*** per short ton in 2019, and $*** per short ton in 2020). Table VI-3 shows the aggregated industry AUVs largely reflect the

[7] One U.S. processor (***) accounted for over ***. ***'s U.S. processor questionnaire, II-2a; ***.
[8] *** U.S. processor questionnaire, II-15.

declines in AUV of *** U.S. processors (***).[9] Although *** reported higher net sales from 2018 to 2020, *** reported the largest decline in AUV from 2019 to 2020. With the exception of ***, the remaining responding U.S. processors (***) reported increases in AUVs of OSBM from 2018 to 2020 (table VI-3).[10]

Cost of goods sold and gross profit or loss

Raw material costs (organic soybeans) represent almost all of the overall COGS, ranging from *** percent to *** percent during the period for which data were collected.[11] Raw material costs declined by *** percent in absolute values but increased per unit ($*** per short ton in 2018, $*** per short ton in 2019, and $*** per short ton in 2020. As a ratio to net sales, raw materials increased from *** from 2018 to 2020. Table VI-4 presents raw material costs by source from 2018 to 2020. U.S. processors procured organic soybeans mostly from imported sources (over 80 percent) and purchased domestic organic soybeans, which made up mostly all of the remaining source of raw materials. No responding U.S. processor of OSBM grew their own organic soybeans or were related to domestic organic soybean growers.[12]

[9] The *** U.S. processor *** reported lower AUVs than the industry average and was the lowest AUV reported in 2019 and 2020 while the *** U.S. processor *** consistently reported higher than average AUVs.

[10] ***.

[11] Conference witnesses testified that OSBM is energy intensive and energy costs can be as high as 30 percent of COGS. Conference transcript, p. 82 (Sheppard), p. 124 (Ujczo), and p. 127 (Luke). ***.

[12] ***.

Petitioners believe that the "overwhelming majority" of tolling is not performed for other U.S. OSBM processors and that there is not a double-counting issue in this proceeding. Petitioners' postconference brief, Answers to Staff Questions, p. 25.

Table VI-4
OSBM: Raw materials costs by source, 2018-20

Raw materials	Fiscal year		
	2018	2019	2020
	Value (1,000 dollars)		
Purchased domestic	***	***	***
Imported/foreign beans	***	***	***
Other material inputs	***	***	***
Total, raw materials	***	***	***
	Unit value (dollars per short ton)		
Purchased domestic	***	***	***
Imported/foreign beans	***	***	***
Other material inputs	***	***	***
Total, raw materials	***	***	***
	Share of value (percent)		
Purchased domestic	***	***	***
Imported/foreign beans	***	***	***
Other material inputs	***	***	***
Total, raw materials	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

As presented in table VI-3, the *** U.S. processor (***) reported the lowest average raw material costs from 2018 to 2020, although *** average raw material costs increased during this time. The *** U.S. processor (***) reported fluctuating average raw material costs, with the average declining over the period examined. The highest average raw material costs of over $*** per unit were reported by U.S. processors (***). The directional trend of company-specific average raw material costs varied, with the *** processors (***) reporting opposite directional trends of their average raw materials and their average net sales values). Over *** percent of organic soybeans were sourced from contracts, with the remaining *** percent sourced from spot purchases.[13]

[13] U.S. processor's questionnaires, III-9e.

Other factory costs and direct labor costs remained stable as shares of overall COGS from 2018 to 2020, ranging from *** percent and *** percent, respectively.[14] Other factory costs and direct labor costs consistently declined each year from 2018 to 2020 primarily caused by U.S. processors reductions in OSBM production and moving to other products (non-GMO soybean meal and canola meal/oil), as well as shutdowns and curtailments detailed in table III-3. As a ratio to sales, other factory costs and direct labor costs were steady (fluctuated by *** percent or less) from 2018 to 2020. Average unit other factory costs ($*** per unit) and direct labor costs ($*** per unit) both remained mostly steady, fluctuating by $*** or less from 2018 to 2020. Company-specific average unit other factory costs and direct labor costs varied widely within each company and also industry-wide. *** reported the highest average other factory costs in 2018 while *** reported the highest in 2020. *** reported the highest average direct labor costs during the period for which data were collected and *** reported the lowest among responding U.S. processors.

As presented in table VI-1, gross profit declined by *** percent from 2018 to 2020 ($*** in 2018, $*** in 2019, and $*** in 2020). Gross margins also consistently declined, from *** percent in 2018 to *** percent in 2019 and then down further to *** percent in 2020. The declines in gross profits reflect the declines in overall net sales quantity, as well as revenue that declined at a greater rate than COGS.

As previously discussed, most U.S.-produced OSBM yields other products (mainly organic soybean oil).[15] Table VI-5 presents the revenue from these co-products that are typically produced jointly with OSBM. These co-product revenues represented from *** (2018) to *** (2020) percent of combined revenue during the period examined. OSBM revenue represented between *** (2020) to *** (2018) percent of combined revenue during the period examined. Table VI-6 provides U.S. processors' responses on their allocation methodologies to allocate COGS between OSBM and their co-products.[16]

[14] ***.

[15] Organic soybean lecithin is another co-product that is derived from degumming the soybean oil and ***. Petition, p. 16.

[16] U.S. producers' questionnaires, III-3 and III-9b. As discussed in footnote 5 in this section of the report, ***. The revenues from by-products were deducted from COGS in tables VI-1, VI-2, and VI-3.

Table VI-5
OSBM: Co-product revenue, 2018-20

Raw materials	Fiscal year		
	2018	2019	2020
	Value (1,000 dollars)		
OSBM sales revenue	***	***	***
Co-product sales revenue	***	***	***
Combined OSBM and co-product revenue	***	***	***
	Share of value (percent)		
OSBM sales revenue	***	***	***
Co-product sales revenue	***	***	***
Combined OSBM and co-product revenue	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-6
OSBM: Firms' narrative responses relating to cost allocations between organic soybean meal and co-product(s)

Firm	Co-product cost allocations
***	***
***	***
***	***
***	***
***	***
***	***

Note: ***.

Source: Compiled from data submitted in response to Commission questionnaires.

SG&A expenses and operating income or loss

As presented in table VI-1, U.S. processors' selling, general, and administrative ("SG&A") expense ratios (i.e., total SG&A expenses divided by net sales) increased each year from 4.2 percent in 2018 to 5.5 percent in 2020. Table VI-3 shows that the pattern of company-specific SG&A expense ratios varied, with the *** U.S. processors *** reporting the highest S&GA expense ratios and three processors (***) reporting zero SG&A expenses from 2018 to 2020.[17] Total SG&A expenses declined inconsistently from 2018 to 2020 and average SG&A expenses increasing from 2018 to 2020.

As presented in table VI-1, U.S. processors' operating income decreased each year from $*** in 2018 to $*** in 2019 and then declining to an operating loss of $*** in 2020, reflecting increases in raw material costs and SG&A expenses while net sales declined. Operating margins (i.e. operating income divided by net sales) also declined each year from *** percent in 2018 to *** percent in 2019, with a negative operating margin of *** percent in 2020. On a company-specific basis, three U.S. processors (***) reported negative operating income throughout 2018 to 2020 while the *** processor *** reported the largest decline in operating income from 2018 to 2020 (table VI-3).

[17] ***.

All other expenses/income and net income or loss

Classified below the operating income level are interest expenses, other expenses, and other income. In table VI-1, these items are aggregated with the net amount shown. The net "all other expenses" fluctuated from 2018 to 2020.[18] While the absolute difference between operating and net profits narrowed and widened in conjunction with changes in total interest expense and all other income and expenses, the U.S. industry's operating and net profits followed the same directional trend throughout the period, with the *** U.S. processor *** accounting for the largest shares of net income and the *** U.S. processors *** showing the largest net losses in 2018, 2019, and 2020.[19]

[18] ***.

[19] A variance analysis is not shown due to large differences in OSBM's share of overall production among U.S. processors and resulting variations in the costs allocated to OSBM operations as well as product mix among the reporting firms.

Capital expenditures, assets, and return on assets

Table VI-7 presents capital expenditures, assets, and return on assets ("ROA") of U.S. processors.[20] Table VI-8 provides the U.S. processors' narrative responses regarding the nature and focus of their capital expenditures and substantial changes in assets.

Table VI-7
OSBM: Capital expenditures, total assets, and ROA of U.S. processors, by firm, 2018-19

Item	Fiscal year		
	2018	2019	2020
	Capital expenditures (1,000 dollars)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Total net assets (1,000 dollars)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***
	Operating return on assets (percent)		
Modesto Milling	***	***	***
Professional Proteins	***	***	***
Sheppard Grain	***	***	***
Simmons Grain	***	***	***
Super Soy	***	***	***
Tri-State Crush	***	***	***
Yorktown Organics	***	***	***
All firms	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

[20] No research and development ("R&D") expenses were reported by U.S. processors of OSBM. ***. U.S. processor questionnaire, III-13c.

Table VI-8
OSBM: Firms' narrative responses relating to capital expenditures and assets since January 1, 2018

Firm	Nature and focus of capital expenditures
***	***
***	***
***	***
	Substantial changes in net assets
***	***.
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Capital and investment

The Commission requested U.S. processors of OSBM to describe any actual or potential negative effects of imports of OSBM from India on their companies' growth, investment, ability to raise capital, development and production efforts, or the scale of capital investments. Table VI-9 presents the number of firms reporting an impact in each category and table VI-10 provides the U.S. processors' narrative responses.

Table VI-9
OSBM: Actual and anticipated negative effects of imports on investment, growth, and development, since January 1, 2018

Item	No	Yes
Negative effects on investment	2	7
Cancellation, postponement, or rejection of expansion projects		3
Denial or rejection of investment proposal		1
Reduction in the size of capital investments		2
Return on specific investments negatively impacted		6
Other		1
Negative effects on growth and development	5	4
Rejection of bank loans		1
Lowering of credit rating		1
Problem related to the issue of stocks or bonds		1
Ability to service debt		2
Other		3
Anticipated negative effects of imports	2	7

Note: The count of responses includes the responses of U.S. processors ***, who did not provide usable financial data. ***.

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-10
OSBM: Narratives relating to actual and anticipated negative effects of imports on investment, growth, and development, since January 1, 2018

Item / Firm	Narrative
Cancellation, postponement, or rejection of expansion projects:	
***	***
***	***
***	***
Denial or rejection of investment proposal:	
***	***
Reduction in the size of capital investments:	
***	***
***	***
Return on specific investments negatively impacted:	
***	***
***	***
***	***
***	***
***	***
***	***
Other negative effects on investments:	
***	***
Rejection of bank loans:	
***	***
Lowering of credit rating:	
***	***
Problem related to the issue of stocks or bonds:	
***	***
Ability to service debt:	
***	***
***	***

Table continued on next page.

Table VI-10—Continued
OSBM: Narratives relating to actual and anticipated negative effects of imports on investment, growth, and development, since January 1, 2018

Other effects on growth and development:	
***	***
***	***
***	***
Anticipated effects of imports:	
***	***
***	***
***	***
***	***
***	***
***	***
***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Part VII: Threat considerations and information on nonsubject countries

Section 771(7)(F)(i) of the Act (19 U.S.C. § 1677(7)(F)(i)) provides that—

> *In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors*[1]*--*
>
> *(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,*
>
> *(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,*
>
> *(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,*
>
> *(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,*
>
> *(V) inventories of the subject merchandise,*

[1] Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "The Commission shall consider {these factors} . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition."

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).[2]

Information on the nature of the alleged subsidies was presented earlier in this report ; information on the volume and pricing of imports of the subject merchandise is presented in *Parts IV* and *V*; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in *Part VI*. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries.

[2] Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

The industry in India

The Commission issued foreign producers' or exporters' questionnaires to 10 firms believed to produce and/or export OSBM from India.[3] Usable responses to the Commission's questionnaire were received from five firms: Bergwerff Organic India Private Limited, ("Bergwerff"), Ish Agritech Pvt Ltd., ("Ish Agritech"), Navjyot International Trading Pvt Ltd., ("Navjyot"), Shanti Worldwide, ("Shanti"), and Shri Sumati Oil Industries P Ltd., ("Shri Sumati").[4] According to estimates requested of the responding Indian producers and exporters, these firms' exports to the United States accounted for approximately *** percent of OSBM from India in 2020.[5] According to estimates requested of the responding Indian producers, the production of OSBM in India reported in questionnaires accounts for approximately *** percent of overall production of OSBM in India.[6] Table VII-1 presents information on the OSBM operations of the responding producers and exporters in India. Table VII-2 presents the OSBM data for resales by the *** responding firms' resales of exports of OSBM to the United States during 2020. ***.

[3] These firms were identified through a review of information submitted in the petition and contained in *** records.

[4] The responding firms to the U.S. importers' questionnaire indicated many additional producers and exporters of OSBM in India.

[5] Estimates are based on the responding foreign producers/exporters' questionnaire responses, while the *** of the reported OSBM by the foreign producer/exporters during 2020 was approximately *** percent of reported subject imports reported by responding firms during 2020.

[6] Based on the estimates provided by foreign producers/exporters, the overall production of OSBM in India was nearly 600,000 short tons of OSBM during 2020.

Table VII-1
OSBM: Summary data for producers in India, 2020

Firm	Production (short tons)	Share of reported production (percent)	Exports to the United States (short tons)	Share of reported exports to the United States (percent)	Total shipments (short tons)	Share of firm's total shipments exported to the United States (percent)
Bergwerff	***	***	***	***	***	***
Ish Agritech	***	***	***	***	***	***
Navjyot	***	***	***	***	***	***
Shanti	***	***	***	***	***	***
Shri Sumati	***	***	***	***	***	***
All firms	***	***	***	***	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Table VII-2
OSBM: Summary data for resellers in India, 2020

Firm	Resales of exports to the United States (short tons)	Share of resales of exports to the United States (percent)
Bergwerff	***	***
Shanti	***	***
Shri Sumati	***	***
All firms	***	***

Source: Compiled from data submitted in response to Commission questionnaires.

Changes in operations

As presented in table VII-3 producers in India reported several operational and organizational changes since January 1, 2018.

Table VII-3
OSBM: Indian producers' reported changes in operations, since January 1, 2018

* * * * * * *

Operations on OSBM

Table VII-4 presents information on the OSBM operations of the responding producers and exporters in India during 2018-20, and projections for calendar years 2021 and 2022.

The combined Indian producer's capacity increased by *** percent during 2018-20, while production increased by *** percent, and capacity utilization also increased by *** percentage points from 2018 to 2020, ending at *** percent in 2020. In addition, end-of-period inventories fluctuated, but increased by *** percent during 2018-20, while *** internal consumption/transfers during 2018-20.[7] Commercial and total home market shipments more than doubled from 2018 to 2020, although accounted for *** percent of total shipments annual period during 2018-20.

Total shipments increased by *** percent from 2018 to 2020. Exports of OSBM to the United States increased by *** from 2018 to 2020, while exports to all other markets increased by *** percent during 2018-20. As a share of total shipments, exports to the United States increased by *** percentage points from 2018 to 2020 and accounted for *** of total shipments during 2018-20. Exports to all other markets as a share of total shipments decreased by *** percentage points from 2018 to 2020. Resales exported to the United States on behalf of the responding producers accounted for *** percent of total exports to the United States during 2020. Resales exported to the United States increased

[7] Capacity and production are projected to increase by *** and *** percent, respectively during 2021, but to decrease slightly (*** and *** percent, respectively) in 2022. Total shipments are projected to follow a similar pattern, largely driven by changes to exports to the United States.

by more than *** during 2018-20. Other export markets identified by the Indian producers included ***.[8] [9] [10] [11]

[8] Indian foreign producer questionnaire responses, section II-8.

[9] The primary export markets outside the United States during 2020 for Shri Sumati, which include percentages of exports to each country, are ***. Email Message from *** April 26, 2020.

[10] The primary export markets outside the United States during 2020 for ***, which include percentages of exports of OSBM to each country are ***. Email message from *** May 6, 2021.

[11] *** indicated its exports other than the United States are to ***. Email correspondence with *** April 21, 2021.

Table VII-4
OSBM: Data for producers in India, 2018-20, and projection calendar years 2021 and 2022

*	*	*	*	*	*	*

Alternative products

The Indian producers reported ***.

Exports

According to GTA, the leading export markets for flours and meals of soybeans and soybean oilcake and other solid residues resulting from the extraction of soybean oil from India are the United States, Nepal, and Iran (table VII-5). During 2020, the United States was the top export market for OSBM from India, accounting for 31.3 percent, followed by the Nepal, accounting for 9.8 percent.

Table VII-5
Flours and meals of soybeans and soybean oilcake and other solid residues resulting from the extraction of soy bean oil, whether or not ground or in the form of pellets: India exports by destination market, 2018-20

Destination market	Calendar year		
	2018	2019	2020
	Quantity (short tons)		
United States	195,458	340,810	455,505
Nepal	205,230	138,756	142,161
Iran	248,295	452,625	104,402
Bangladesh	299,940	133,438	103,485
France	237,064	118,029	83,517
Korea	85,197	82,448	75,619
Canada	43,874	59,326	67,099
United Kingdom	7,667	18,519	54,879
Japan	143,768	83,223	49,846
All other destination markets	749,450	292,110	317,650
All destination markets	2,215,943	1,719,286	1,454,164
	Value (1,000 dollars)		
United States	108,721	181,984	246,712
Nepal	85,949	60,133	63,615
Iran	96,785	186,175	42,576
Bangladesh	119,979	51,910	46,142
France	85,665	42,540	39,476
Korea	40,079	40,497	41,223
Canada	23,684	30,524	35,505
United Kingdom	3,736	9,821	30,798
Japan	57,973	36,405	25,832
All other destination markets	294,956	122,832	156,662
All destination markets	917,526	762,821	728,542

Table continued on next page.

Table VII-5—Continued
Flours and meals of soybeans and soybean oilcake and other solid residues resulting from the extraction of soy bean oil, whether or not ground or in the form of pellets: India exports by destination market, 2018-20

Destination market	Calendar year		
	2018	2019	2020
	Unit value (dollars per short ton)		
United States	556	534	542
Nepal	419	433	447
Iran	390	411	408
Bangladesh	400	389	446
France	361	360	473
Korea	470	491	545
Canada	540	515	529
United Kingdom	487	530	561
Japan	403	437	518
All other destination markets	394	420	493
All destination markets	414	444	501
	Share of quantity (percent)		
United States	8.8	19.8	31.3
Nepal	9.3	8.1	9.8
Iran	11.2	26.3	7.2
Bangladesh	13.5	7.8	7.1
France	10.7	6.9	5.7
Korea	3.8	4.8	5.2
Canada	2.0	3.5	4.6
United Kingdom	0.3	1.1	3.8
Japan	6.5	4.8	3.4
All other destination markets	33.8	17.0	21.8
All destination markets	100.0	100.0	100.0

Note.-- United States is shown at the top, all remaining top export destinations shown in descending order of 2020 data.

Source: Official exports statistics under HS subheading 1208.10 and 2304.00 as reported by Ministry of Commerce in the Global Trade Atlas database, accessed April 26, 2021.

U.S. inventories of imported merchandise

Table VII-6 presents data on U.S. importers' reported inventories of OSBM during 2018-2020. All responding firms reported inventories of imports from India, while *** had the largest share of ending inventories during 2020 by responding firms with *** percent. Inventories from subject sources increased during 2018-20 and as a ratio to U.S. imports increased by *** percentage points. Inventories from nonsubject import sources decreased by *** percent during 2018-20.

Table VII-6
OSBM: U.S. importers' inventories, 2018-20

* * * * * * *

U.S. importers' outstanding orders

The Commission requested importers to indicate whether they imported or arranged for the importation of OSBM from subject and nonsubject sources between January 1, 2021 and December 31, 2021 (table VII-7). Subject sources accounted for *** percent of arranged imports during the calendar year 2021. *** had the largest quantities of arranged imports of OSBM arranged from India, during 2021, accounting for *** of all arranged imports of OSBM from India.

Table VII-7
OSBM: Arranged imports, January 2021 through December 2021

* * * * * * *

Antidumping or countervailing duty orders in third-country markets

There are no known current trade remedy actions on imports of OSBM in any third-country markets.

Information on nonsubject countries

Information on organic soybean meal trade and production is very limited, especially on a global scale. Global trade data at the six-digit HS level does not provide information on trade in organic product. Given the limited production of organic soybeans, production and trade of OSBM is known to be minute compared to non-organic soybean meal.[12] Moreover, the existence of different voluntary organic certifications bifurcates the market as what is considered organic varies by country.

The United States requires that a product must be produced in compliance with the USDA's voluntary organic certification program, or one deemed equivalent, to be considered organic.[13] The United States has organic equivalency agreements with seven trading partners, meaning that any OSBM processed or packaged in these countries certified to their organic standards would be treated as organic in the United States (see table VII-8).[14] In addition, any OSBM processed, or packaged in compliance with Canadian organic certification standards in Canada or a third-country market would also be consider OSBM in the United States.[15] However, none of the seven equivalency trading partners are major exporters of soybean meal—the European Union (EU) and Canada are the largest exporters, each constituting about one-half of one percent of global soybean meal exports during marketing years (MY) 2017/18

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[12] OSBM likely accounts for less than 1 percent of all soybean meal production. Conference transcript, p. 64; Vivek Voora, Cristina Larrea, and Steffany Bermúdez, "Global Market Report: Soybeans," Sustainable Commodities Marketplace Series 2019 (International Institute for Sustainable Development; State of Sustainability Initiatives, October 2020), p 1, 3.

[13] U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), *How Does USDA Assess Organic Equivalency with Other Countries?*, accessed April 1, 2021, https://www.ams.usda.gov/services/organic-certification/international-trade/how-does-usda-assess-organic-equivalency-other-countries; USDA, AMS, "International Trade Partners," accessed April 20, 2021, https://www.ams.usda.gov/services/organic-certification/international-trade.

[14] The United States has established organic equivalency with seven trading partners: Canada, the European Union, Taiwan, Japan, Korea, Switzerland, and the United Kingdom. USDA, AMS, International Trade Polices: Canada, European Union, Taiwan, Japan, New, Korea, Switzerland, Mexico, and United Kingdom, accessed April 20, 2021, https://www.ams.usda.gov/services/organic-certification/international-trade.

[15] USDA, AMS, International Trade Polices: Canada, accessed April 20, 2021 https://www.ams.usda.gov/services/organic-certification/international-trade/Canada.

and 2019/20—and some do not export any soybean meal. The amount of global exports (or total production) of OSBM from these countries is unknown. Based on Petitioner's estimates, the United States did not import OSBM from Canada until 2017; U.S. OSBM imports from Canada then ranged from between about 1 to 2 percent of total OSMB imports during 2017-19.[16]

Table VII-8
List of U.S. trading partners with organic equivalency agreements and soybean meal exports and production, MY 2017/18–2019/20

Trading partner	Avg. Soybean meal exports MY 2017/18–2019/20		Avg. Soybean meal production MY 2017/18–2019/20	
	1,000 mt	% share of global total	1,000 mt	% share of global total
Canada	370	0.55	1,487	0.63
European Union	376	0.56	12,351	5.21
Japan	1	<0.01	1,843	0.78
Korea	52	0.08	796	0.34
Switzerland	1	<0.01	11	<0.01
Taiwan	8	0.01	1,768	0.75
United Kingdom	(a)	(a)	(a)	(a)

Note: Total global average soybean meal exports averaged almost 67 million mt annually during 2017/18–2019/20. During this period production averaged almost 237 million mt annually.

Note: Soybean meal exports for the United Kingdom are included with the European Union for this period 2017/18–2019/20.

Source: USDA, AMS, International Trade Polices: Canada, European Union, Japan, South Korea, Switzerland, Taiwan, United Kingdom, https://www.ams.usda.gov/services/organic-certification/international-trade, accessed April 20, 2021 https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery ; USDA, FAS, Production, Supply and Distribution (PSD): Production and Exports: Soybean meal, accessed April 2 and 20, 2021, https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery; USDA, FAS, EU and UK Production, Supply and Distribution (PSD) Datasets and "Brexit," accessed April 23, 2021, https://apps.fas.usda.gov/psdonline/app/index.html#/app/home.

Despite being by far the largest producer of soybean meal of the trading partners with organic equivalency agreements, indications are that the EU, including the United Kingdom, is unlikely to become an important exporter of OSBM. The EU accounted for over 5 percent of

[16] 2019 was the most recent year of data provided. No other U.S. trading partner with an organic equivalency agreement was estimated to be a major supplier of OSBM to the United States by Petitioners. Petition, Ex. I-3.

global soybean meal production during MY 2017/18–2019/20, but is dependent on imports to meet its soymeal demand. In that period, domestically produced soybean meal production was equal to 73.4 percent of domestic consumption.[17] Moreover, the EU crushers are largely dependent on foreign soybeans for supply; the EU is the second largest importer of soybeans after China.[18] In addition, demand for organic foods in the EU is high. As of 2018, the EU was the second largest organic food market, just behind the United States, and had some of the countries with the highest global per capita organic consumption.[19] Finally, trade data suggest that at most there have been minimal U.S. imports of OSBM from the EU during the POI.[20]

The United States also has organic recognition agreements with Israel and New Zealand, however neither country exports soybean meal.[21] According to the USDA, "{r}ecognition agreements allow a foreign government to accredit certifying agents in that country to the USDA organic standards." The United States, which has had an organic recognition agreement with India since, announced it was ending this agreement on January 11, 2021 and that there would be an 18-month transition period. According to the USDA, Indian organic operations will need apply for re-certification (by July 12, 2021) and after July 12, 2022, to export OSBM to the United States, will need to have been certified by an USDA-accredited organic certifier.[22] As of April 2020, the United States has no other organic recognition agreements.

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[17] USDA, Foreign Agricultural Service (FAS), PSD database Soybean meal: Production, Imports, Supply, Domestic Consumption, accessed April 23, 2020, https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery.

[18] USDA, FAS, PSD database Soybean: Imports, accessed April 23, 2020 https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery; USDA, FAS, *Oilseeds and Products Annual: European Union*, GAIN Report. No E42019-0057, April 16, 2020 https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Oilseeds%20and%20Products%20Annual_Vienna_European%20Union_04-01-2019.

[19] See e.g., European Parliament, The EU's Organic Food Market: Facts and Rules (infographic), updated December 10, 2020, https://www.europarl.europa.eu/news/en/headlines/society/20180404STO00909/the-eu-s-organic-food-market-facts-and-rules-infographic; Wunsch, Nils-Gerrit, "The Leading 10 Countries With The Highest Organic Food Per Capita Consumption In 2018," Statista, November 23, 3030, https://www.statista.com/statistics/263077/per-capita-revenue-of-organic-foods-worldwide-since-2007/.

[20] USITC DataWeb/USDOC (HTS provisions 1208.10.0010 and 2304.00.00), accessed April 14, 2021. In addition, a report by Agromeris commissioned by Petitioners does not list the EU or any of its member states as a leading supplier of OSBM. Petition, Ex 1-3.

[21] USDA, AMS, International Trade Polices: Israel and New Zealand accessed April 20, 2021, https://www.ams.usda.gov/services/organic-certification/international-trade; Petition Ex I-8.

[22] USDA, AMS, International Trade Polices: India , accessed April 20, 2021, https://www.ams.usda.gov/services/organic-certification/international-trade/India.

U.S. recognized OSBM is not limited to countries with organic equivalency agreements since if it is certified to meet USDA organic standards, OSBM may be imported from any country. Such imports enter the United States under HTS provisions 1208.10.0010 and 2304.00.0000[23] HTS provision 1208.10.0010 covers organic soybean flours and meal. Imports under this HTS provision–which are not necessarily OSBM, as the provision also covers flours, fell approximately 69 percent between 2018 and 2020 (table VII-9). U.S. import data show that, in addition to imports of from India, the United States only consistently imported certified organic flour and meal products from Canada during 2018–20, although in very small and declining quantities.[24]

[23] Petition, p 18-19

[24] Total imports under HTS 1208. During that period the only other imports under HTS provision 1208.10.0010 were 0.6 mt (x short tons) from Denmark and 1.1 mt (x short tons) from China in 2016. USITC DataWeb/USDOC, access date April 14, 2021.

Table VII-9
Organic soybean flour and meal: U.S. Imports, by source, (HTS 1208.10.0010), 2018-20

Trading partner	Calendar year		
	2018	2019	2020
	Volume (metric tons)		
India	4,192.2	1,754.1	1,650.2
Canada	2,936.6	1,117.4	543.4
China	-	1.1	-
Denmark	-	0.6	-
Total	7,128.8	2,873.1	2,193.7
	Share (percent)		
India	58.8	61.1	75.2
Canada	41.2	38.9	24.8
China	-	0.1	-
Denmark	-	0.1	-
Total	100.0	100.0	100.0

Source: USITC DataWeb/USDOC (under HTS 1208.10.0010),, accessed April 14, 2021.

Most U.S. soybean meal imports enter under HTS subheading 2304.00.00, which does not have a provision breaking out OSBM (table VII-10). Petitioners have provided data and testimony that the majority of U.S. imports from Turkey, Argentina, and China entering under this HTS are OSBM.[25] Of the three countries thought to be primarily shipping OSBM, the largest consistent supplier of soybean meal was Turkey. In a 2019 report, the USDA noted that meal shipments to the United States are likely to be OSBM. However, USDA has also stated that imports from Turkey are probably transshipments from other regional producers.26

[25] Petition, Ex 3; Conference transcript, p. 144-147.

[26] USDA has also reported that there was no significant production of organic soybeans in Turkey. USDA, FAS, Turkey: Oilseeds and Products Update, GAIN report No. TR9004, March 1, 2019 https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Oilseeds%20and%20Products%20Annual_Ankara_Turkey_3-1-2019.pdf; USDA, FAS, Turkey: Oilseeds and Products Update, GAIN report No. TR8017, June 19, 2018. https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Oilseeds%20and%20Products%20Update_Ankara_Turkey_6-19-2018.pdf.

Table VII-10
Soybean oilcake: U.S. imports, by source, (HTS 2304.00.0000), 2018-20

Trading partner	Calendar year		
	2018	2019	2020
	Volume (metric tons)		
India	129,893	304,772	387,269
Canada	186,575	190,999	152,128
Turkey	33,040	21,973	34,276
Argentina	7,978	14,815	7,546
China	41,998	4,449	468
All other	430	463	588
Total	399,914	537,470	582,273
	Share (percent)		
India	32.5	56.7	66.5
Canada	46.7	35.5	26.1
Turkey	8.3	4.1	5.9
Argentina	2.0	2.8	1.3
China	10.5	0.8	0.1
All other	0.1	0.1	0.1
Total	100.0	100.0	100.0

Note: HTS 2304.00.00 covers oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soybean oil.

Source: USITC DataWeb/USDOC (under HTS 2304.00.00), accessed April 14, 2021.

APPENDIX A

FEDERAL REGISTER NOTICES

The Commission makes available notices relevant to its investigations and reviews on its website, www.usitc.gov. In addition, the following tabulation presents, in chronological order, *Federal Register* notices issued by the Commission and Commerce during the current proceeding.

Citation	Title	Link
86 FR 18296, April 8, 2021	*Organic Soybean Meal From India; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations*	https://www.govinfo.gov/content/pkg/FR-2021-04-08/pdf/2021-07195.pdf
86 FR 22136, April 27, 2021	*Organic Soybean Meal From India: Initiation of Countervailing Duty Investigation*	https://www.govinfo.gov/content/pkg/FR-2021-04-27/pdf/2021-08711.pdf
86 FR 22146, April 27, 2021	*Organic Soybean Meal From India: Initiation of Less-Than-Fair-Value Investigation*	https://www.govinfo.gov/content/pkg/FR-2021-04-27/pdf/2021-08710.pdf

APPENDIX B

LIST OF STAFF CONFERENCE WITNESSES

CALENDAR OF PUBLIC PRELIMINARY CONFERENCE

Those listed below appeared in the United States International Trade Commission's preliminary conference via videoconference:

Subject: Organic Soybean Meal from India

Inv. Nos.: 701-TA-667 and 731-TA-1559 (Preliminary)

Date and Time: April 21, 2021 - 9:30 a.m.

OPENING REMARKS:

In Support of Imposition (**Dan Ujczo**, Thompson Hine LLP)

In Support of the Imposition of
Antidumping and Countervailing Duty Orders:

Thompson Hine LLP
Washington, DC
on behalf of

Organic Soybean Processors of America; American Natural Processors, LLC; Organic Production Services, LLC; Professional Proteins, Ltd.; Sheppard Grain Enterprises LLC; Simmons Grain Company; Super Soy, LLC; Tri-State Crush LLC

Peter Golbitz, Founder, Agromeris

Annette Cook, Secretary, Simmons Grain Company,
Secretary, Organic Soybean Processors of America

Andy Strommen, General Manager, Super Soy, LLC

Beth Bennett, Operations Manager, Professional Proteins Ltd.

Travis Luke, Owner and President, Tri-State Crush, LLC

Sam Jennett, Chief Operations Officer, American Natural Processors

John Sheppard, President, Sheppard Grain Enterprises, LLC,
President, Organic Soybean Processors of America

Dan Ujczo)
David Schwartz) – OF COUNSEL
Michelle Li)

Interested Party in Opposition to
Antidumping and Countervailing Duty Orders:

Field Farms Marketing Ltd. ("FFM Ltd.")
Petrolia, Ontario, Canada

Rita Felder, Chief Executive Officer

REBUTTAL/CLOSING REMARKS:

In Support of Imposition (**Michelle Li** and **Dan Ujczo**, Thompson Hine LLP)

-END-

APPENDIX C

SUMMARY DATA

All U.S. producers

Table C-1
OSBM: Summary data concerning the U.S. market, 2018-20

(Quantity=short tons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per short ton; Period changes=percent--exceptions noted)

	Reported data			Period changes		
	Calendar year			Comparison years		
	2018	2019	2020	2018-20	2018-19	2019-20
U.S. consumption quantity:						
Amount	***	***	***	▲***	▲***	▲***
Producers' share (fn1)	***	***	***	▼***	▼***	▼***
Importers' share (fn1):						
India	***	***	***	▲***	▲***	▲***
Nonsubject sources	***	***	***	▼***	▲***	▼***
All import sources	***	***	***	▲***	▲***	▲***
U.S. consumption value:						
Amount	***	***	***	▲***	▲***	▲***
Producers' share (fn1)	***	***	***	▼***	▼***	▼***
Importers' share (fn1):						
India	***	***	***	▲***	▲***	▲***
Nonsubject sources	***	***	***	▼***	▲***	▼***
All import sources	***	***	***	▲***	▲***	▲***
U.S. importers' U.S. shipments of imports from:						
India:						
Quantity	***	***	***	▲***	▲***	▲***
Value	***	***	***	▲***	▲***	▲***
Unit value	***	***	***	▲***	▼***	▲***
Ending inventory quantity	***	***	***	▲***	▲***	▲***
Nonsubject sources:						
Quantity	***	***	***	▼***	▲***	▼***
Value	***	***	***	▼***	▲***	▼***
Unit value	***	***	***	▲***	▼***	▲***
Ending inventory quantity	***	***	***	▼***	▼***	▲***
All import sources:						
Quantity	***	***	***	▲***	▲***	▲***
Value	***	***	***	▲***	▲***	▲***
Unit value	***	***	***	▲***	▼***	▲***
Ending inventory quantity	***	***	***	▲***	▲***	▲***
U.S. producers':						
Average capacity quantity	***	***	***	▲***	▲***	▲***
Production quantity	***	***	***	▼***	▼***	▼***
Capacity utilization (fn1)	***	***	***	▼***	▼***	▼***
U.S. shipments:						
Quantity	***	***	***	▼***	▼***	▼***
Value	***	***	***	▼***	▼***	▼***
Unit value	***	***	***	▼***	▲***	▼***
Export shipments:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	***	***	***	▼***	▼***	▲***
Inventories/total shipments (fn1)	***	***	***	▲***	▼***	▲***
Production workers	***	***	***	▼***	▼***	▼***
Hours worked (1,000s)	***	***	***	▼***	▼***	▼***
Wages paid ($1,000)	***	***	***	▼***	▲***	▼***
Hourly wages (dollars per hour)	***	***	***	▲***	▲***	▲***
Productivity (short tons per 1,000 hours)	***	***	***	▼***	▼***	▲***
Unit labor costs	***	***	***	▲***	▲***	▼***

Table continued on next page.

Table C-1--Continued
OSBM: Summary data concerning the U.S. market, 2018-20
(Quantity=short tons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per short ton; Period changes=percent--exceptions noted)

	Reported data			Period changes		
	Calendar year			Comparison years		
	2018	2019	2020	2018-20	2018-19	2019-20
U.S. producers.--Continued						
Net sales:						
Quantity	***	***	***	▼***	▼***	▼***
Value	***	***	***	▼***	▼***	▼***
Unit value	***	***	***	▼***	▼***	▼***
Cost of goods sold (COGS)	***	***	***	▼***	▼***	▼***
Gross profit or (loss) (fn2)	***	***	***	▼***	▼***	▼***
SG&A expenses	***	***	***	▼***	▼***	▲***
Operating income or (loss) (fn2)	***	***	***	▼***	▼***	▼***
Net income or (loss) (fn2)	***	***	***	▼***	▼***	▼***
Unit COGS	***	***	***	▲***	▲***	▲***
Unit SG&A expenses	***	***	***	▲***	▲***	▲***
Unit operating income or (loss) (fn2)	***	***	***	▼***	▼***	▼***
Unit net income or (loss) (fn2)	***	***	***	▼***	▼***	▼***
COGS/sales (fn1)	***	***	***	▲***	▲***	▲***
Operating income or (loss)/sales (fn1)	***	***	***	▼***	▼***	▼***
Net income or (loss)/sales (fn1)	***	***	***	▼***	▼***	▼***
Capital expenditures	***	***	***	▼***	▼***	▼***
Research and development expenses	***	***	***	***	***	***
Net assets	***	***	***	▲***	▼***	▲***

Note.--Shares and ratios shown as "0.0" percent represent non-zero values less than "0.05" percent (if positive) and greater than "(0.05)" percent (if negative). Zeroes, null values, and undefined calculations are suppressed and shown as "---". Period changes preceded by a "▲" represent an increase, while period changes preceded by a "▼" represent a decrease.

fn1.--Reported data are in percent and period changes are in percentage points.
fn2.--Percent changes only calculated when both comparison values represent profits; The directional change in profitability provided when one or both comparison values represent a loss.

Source: Compiled from data submitted in response to Commission questionnaires.

Related party exclusion

Table C-2
OSBM: Summary data concerning the U.S. market excluding two U.S. producers *, 2018-20**

(Quantity=short tons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per short ton; Period changes=percent--exceptions noted)

	Reported data			Period changes		
	Calendar year			Comparison years		
	2018	2019	2020	2018-20	2018-19	2019-20
U.S. consumption quantity:						
Amount	***	***	***	▲***	▲***	▲***
Producers' share (fn1):						
Included producers	***	***	***	▼***	▼***	▼***
Excluded producers	***	***	***	▼***	▼***	▼***
All producers	***	***	***	▼***	▼***	▼***
Importers' share (fn1):						
India	***	***	***	▲***	▲***	▲***
Nonsubject sources	***	***	***	▼***	▲***	▼***
All import sources	***	***	***	▲***	▲***	▲***
U.S. consumption value:						
Amount	***	***	***	▲***	▲***	▲***
Producers' share (fn1):						
Included producers	***	***	***	▼***	▼***	▼***
Excluded producers	***	***	***	▼***	▼***	▼***
All producers	***	***	***	▼***	▼***	▼***
Importers' share (fn1):						
India	***	***	***	▲***	▲***	▲***
Nonsubject sources	***	***	***	▼***	▲***	▼***
All import sources	***	***	***	▲***	▲***	▲***
U.S. importers' U.S. shipments of imports from:						
India:						
Quantity	***	***	***	▲***	▲***	▲***
Value	***	***	***	▲***	▲***	▲***
Unit value	***	***	***	▲***	▼***	▲***
Ending inventory quantity	***	***	***	▲***	▲***	▲***
Nonsubject sources:						
Quantity	***	***	***	▼***	▲***	▼***
Value	***	***	***	▼***	▲***	▼***
Unit value	***	***	***	▲***	▼***	▲***
Ending inventory quantity	***	***	***	▼***	▼***	▲***
All import sources:						
Quantity	***	***	***	▲***	▲***	▲***
Value	***	***	***	▲***	▲***	▲***
Unit value	***	***	***	▲***	▼***	▲***
Ending inventory quantity	***	***	***	▲***	▲***	▲***
Included U.S. producers':						
Average capacity quantity	***	***	***	▲***	▲***	▲***
Production quantity	***	***	***	▼***	▼***	▲***
Capacity utilization (fn1)	***	***	***	▼***	▼***	▲***
U.S. shipments:						
Quantity	***	***	***	▼***	▼***	▲***
Value	***	***	***	▼***	▼***	▼***
Unit value	***	***	***	▲***	▲***	▼***
Export shipments:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***

Table continued on next page.

Table C-2--Continued
OSBM: Summary data concerning the U.S. market excluding two U.S. producers *, 2018-20**
(Quantity=short tons; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per short ton; Period changes=percent--exceptions noted)

	Reported data			Period changes		
	Calendar year			Comparison years		
	2018	2019	2020	2018-20	2018-19	2019-20
Included U.S. producers.--Continued						
Ending inventory quantity	***	***	***	▼***	▼***	▲***
Inventories/total shipments (fn1)	***	***	***	▼***	▼***	▲***
Production workers	***	***	***	▼***	▼***	▼***
Hours worked (1,000s)	***	***	***	▼***	▲***	▼***
Wages paid ($1,000)	***	***	***	▼***	▲***	▼***
Hourly wages (dollars per hour)	***	***	***	▲***	▲***	▲***
Productivity (short tons per 1,000 hours)	***	***	***	▲***	▼***	▲***
Unit labor costs	***	***	***	▲***	▲***	▼***
Net sales:						
Quantity	***	***	***	▼***	▼***	▼***
Value	***	***	***	▼***	▼***	▼***
Unit value	***	***	***	▼***	▲***	▼***
Cost of goods sold (COGS)	***	***	***	▼***	▼***	▼***
Gross profit or (loss) (fn2)	***	***	***	▼***	▼***	▼***
SG&A expenses	***	***	***	▼***	▼***	▲***
Operating income or (loss) (fn2)	***	***	***	▼***	▼***	▼***
Net income or (loss) (fn2)	***	***	***	▼***	▼***	▼***
Unit COGS	***	***	***	▲***	▲***	▲***
Unit SG&A expenses	***	***	***	▲***	▲***	▲***
Unit operating income or (loss) (fn2)	***	***	***	▼***	▼***	▼***
Unit net income or (loss) (fn2)	***	***	***	▼***	▼***	▼***
COGS/sales (fn1)	***	***	***	▲***	▲***	▲***
Operating income or (loss)/sales (fn1)	***	***	***	▼***	▼***	▼***
Net income or (loss)/sales (fn1)	***	***	***	▼***	▼***	▼***
Capital expenditures	***	***	***	▼***	▼***	▼***
Research and development expenses	***	***	***	***	***	***
Net assets	***	***	***	▲***	▼***	▲***

Note.--Shares and ratios shown as "0.0" percent represent non-zero values less than "0.05" percent (if positive) and greater than "(0.05)" percent (if negative). Zeroes, null values, and undefined calculations are suppressed and shown as "---". Period changes preceded by a "▲" represent an increase, while period changes preceded by a "▼" represent a decrease.

fn1.--Reported data are in percent and period changes are in percentage points.
fn2.--Percent changes only calculated when both comparison values represent profits; The directional change in profitability provided when one or both comparison values represent a loss.

Source: Compiled from data submitted in response to Commission questionnaires.

APPENDIX D

U.S. PRODUCERS' AND IMPORTERS' COMPARISONS OF PRODUCTS BY THE LIKE PRODUCT FACTORS

Tables D-1 (U.S. producers), D-2 (U.S. importers), and D-3 (comparisons of soybean meal), present a summary of U.S. producers' and importers' responses on the comparability of organic soybean meal versus conventional/genetically engineered soybean meal. Tables D-1 and D-2 include the six like product factors and the narratives provided by U.S. producers and importers, and D-3 presents the comparisons of the domestic like product factors table.

Table D-1
OSBM: U.S. producers' comparisons of products by the like product factors; conventional soybean meal and in-scope organic soybean meal

* * * * * * *

Table D-2
OSBM: U.S. importers' comparisons of products by the like product factors; conventional soybean meal and in-scope organic soybean meal

*	*	*	*	*	*	*

Table D-3 presents U.S. producers' and U.S. importers comparisons of in-scope organic soybean meal versus conventional/genetically engineered soybean meal. For the analysis of each of the following six factors the responses are categorized as follows:

F: fully comparable or the same, *i.e.*, have no differentiation between them;

M: mostly comparable or similar;

S: somewhat comparable or similar;

N: never or not-at-all comparable or similar; or

0: no familiarity with products.[1]

Table D-3
OSBM: U.S. producers' and U.S. importers' comparisons of products by the like product factors; conventional soybean meal vs. in-scope organic soybean meal

Factor	U.S. producers				U.S. importers			
	F	M	S	N	F	M	S	N
Physical characteristics	---	---	1	7	---	2	2	5
Interchangeability	---	---	---	8	---	---	1	7
Channels	---	2	3	3	---	4	1	3
Manufacturing	1	---	3	4	---	1	3	3
Perceptions	---	---	1	7	---	2	1	5
Price	---	---	1	7	---	---	2	6

Source: Compiled from data submitted in response to Commission questionnaires.

Physical characteristics and uses

Eight U.S. producers and nine U.S. importers addressed the physical characteristics and end uses of organic soybean meal compared to conventional/genetically engineered. All eight U.S. producers indicated that they were never or not-at-all comparable or somewhat similar, seven U.S. importers indicated that they were never or not-at-all comparable or somewhat similar. At the Commissions conference, petitioners indicated that the other major difference between the conventional/genetically engineered and the organic is the processing that uses hexane solvent, and that there would be a physical difference if you were to analyze them for chemical residues and/or farm chemicals.[2]

[1] In its U.S. processor questionnaire, *** indicated no familiarity in all categories except for Channels. *** was the only processor to indicate no familiarity. ***. Additionally, *** indicated no familiarity in all categories except for physical characteristics and uses.

[2] Conference transcript, pp. 95-96 (Goblitz).

Interchangeability

Eight U.S. producers and eight U.S. importers addressed the question of the ability to substitute products with the same products in the same application of organic soybean meal compared to conventional/genetically engineered. All eight U.S. producers indicated that they were never or not-at-all comparable or similar, while seven U.S. importers indicated that they were never or not-at-all comparable or similar.

Channels of distribution

Eight U.S. producers and eight U.S. importers addressed the basis through which the channels of distribution of organic soybean meal compared to conventional/genetically engineered soybean meal. Six U.S. producers indicated that they were never or not-at-all comparable or somewhat similar, while the eight U.S. importers had varied responses.

Manufacturing facilities and production employees

Eight U.S. producers and seven U.S. importers addressed the basis of whether for organic soybean meal compared to conventional/genetically engineered are manufactured in the same facilities, from the same inputs, on the same/shared machinery and equipment, and using the same employees. Seven U.S. producers indicated that they were either never or not-at-all comparable or similar and somewhat comparable or similar, while six of the seven U.S. importers indicated that they were either never or not-at-all comparable or similar and somewhat comparable or similar.

Customer and producer perceptions

Eight U.S. producers and eight U.S. importers addressed the question of whether organic soybean meal compared to conventional/genetically engineered soybean meal regarding market perceptions. All U.S. producers indicated that they were either never or not-at-all comparable or similar and somewhat comparable or similar, while U.S. importers had varied responses.

At the Commissions conference, petitioners indicated that the organic customers would not be able to utilize conventional or the non-GMO for their products, and that there is no substitute for the organic soybean meal.[3]

[3] Conference transcript, p. 169 (Li).

Price

Eight U.S. producers and eight U.S. importers addressed the question of whether organic soybean meal compared to conventional/genetically engineered soybean meal are comparable regarding price. All U.S. producers and importers indicated that they were either never or not-at-all comparable or similar.

APPENDIX E

SEASONALITY

Figure E-1 and table E-1 presents monthly U.S. producers' U.S. shipments and U.S. importers' imports from January 2018 through February 2021. During 2018, U.S. producers' U.S. shipments accounted for the *** as a share of quantity of imports and U.S. producers' U.S. shipments. From February 2019 through February 2021, U.S. importers' imports of OSBM accounted for *** of U.S. producers and U.S. importers combined.

Table E-1
OSBM: Monthly U.S. producers' U.S. shipments and U.S. importers' imports, January 2018-February 2021

Item	U.S. producers' U.S. shipments	U.S. importers' imports from.--			U.S. producers and U.S. importers combined
		India	Nonsubject sources	All import sources	
	Quantity (short tons)				
U.S. shipments:					
2018:					
January	***	***	***	***	***
February	***	***	***	***	***
March	***	***	***	***	***
April	***	***	***	***	***
May	***	***	***	***	***
June	***	***	***	***	***
July	***	***	***	***	***
August	***	***	***	***	***
September	***	***	***	***	***
October	***	***	***	***	***
November	***	***	***	***	***
December	***	***	***	***	***
2019:					
January	***	***	***	***	***
February	***	***	***	***	***
March	***	***	***	***	***
April	***	***	***	***	***
May	***	***	***	***	***
June	***	***	***	***	***
July	***	***	***	***	***
August	***	***	***	***	***
September	***	***	***	***	***
October	***	***	***	***	***
November	***	***	***	***	***
December	***	***	***	***	***

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Table E-1--Continued
OSBM: Monthly U.S. producers' U.S. shipments and U.S. importers' imports, January 2018-February 2021

Item	U.S. producers' U.S. shipments	U.S. importers' imports from.--			U.S. producers and U.S. importers combined
		India	Nonsubject sources	All import sources	
	Quantity (short tons)				
2020:					
January	***	***	***	***	***
February	***	***	***	***	***
March	***	***	***	***	***
April	***	***	***	***	***
May	***	***	***	***	***
June	***	***	***	***	***
July	***	***	***	***	***
August	***	***	***	***	***
September	***	***	***	***	***
October	***	***	***	***	***
November	***	***	***	***	***
December	***	***	***	***	***
2021:					
January	***	***	***	***	***
February	***	***	***	***	***

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Table E-1--Continued
OSBM: Monthly U.S. producers' U.S. shipments and U.S. importers' imports, January 2018-February 2021

Item	U.S. producers' U.S. shipments	U.S. importers' imports from.--			U.S. producers and U.S. importers combined
		India	Nonsubject sources	All import sources	
	Share across (percent)				
U.S. shipments:					
2018:					
January	***	***	***	***	***
February	***	***	***	***	***
March	***	***	***	***	***
April	***	***	***	***	***
May	***	***	***	***	***
June	***	***	***	***	***
July	***	***	***	***	***
August	***	***	***	***	***
September	***	***	***	***	***
October	***	***	***	***	***
November	***	***	***	***	***
December	***	***	***	***	***
2019:					
January	***	***	***	***	***
February	***	***	***	***	***
March	***	***	***	***	***
April	***	***	***	***	***
May	***	***	***	***	***
June	***	***	***	***	***
July	***	***	***	***	***
August	***	***	***	***	***
September	***	***	***	***	***
October	***	***	***	***	***
November	***	***	***	***	***
December	***	***	***	***	***

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Table E-1--Continued
OSBM: Monthly U.S. producers' U.S. shipments and U.S. importers' imports, January 2018-February 2021

Item	U.S. producers' U.S. shipments	U.S. importers' imports from.--			U.S. producers and U.S. importers combined
		India	Nonsubject sources	All import sources	
	Share across (percent)				
2020:					
January	***	***	***	***	***
February	***	***	***	***	***
March	***	***	***	***	***
April	***	***	***	***	***
May	***	***	***	***	***
June	***	***	***	***	***
July	***	***	***	***	***
August	***	***	***	***	***
September	***	***	***	***	***
October	***	***	***	***	***
November	***	***	***	***	***
December	***	***	***	***	***
2021:					
January	***	***	***	***	***
February	***	***	***	***	***

Note.--Shares and ratios shown as "0.0" represent values greater than zero, but less than "0.05" percent.

Source: Compiled from data submitted in response to Commission questionnaires.

Figure E-1
OSBM: U.S. producers' production and U.S. importers' imports, by month, January 2018- February 2021

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