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I-29, I-31 and I-32

BEFORE THE
INTERNATIONAL TRADE ADMINISTRATION OF THE
U.S. DEPARTMENT OF COMMERCE
AND THE
U.S. INTERNATIONAL TRADE COMMISSION

ORGANIC SOYBEAN MEAL FROM INDIA

PETITION FOR THE IMPOSITION OF
ANTIDUMPING AND COUNTERVAILING DUTIES PURSUANT
TO SECTIONS 701 AND 731 OF THE TARIFF ACT OF 1930, AS AMENDED

PETITIONERS:

ORGANIC SOYBEAN PROCESSORS OF AMERICA, AMERICAN NATURAL PROCESSORS, LLC, LESTER FEED & GRAIN CO., ORGANIC PRODUCTION SERVICES, LLC, PROFESSIONAL PROTEINS, LTD., SHEPPARD GRAIN ENTERPRISES LLC, SIMMONS GRAIN COMPANY, SUPER SOY, LLC, AND TRI-STATE CRUSH LLC

VOLUME I

GENERAL ISSUES AND INJURY

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I. INTRODUCTION AND SUMMARY

This Petition is submitted on behalf of the Organic Soybean Processors of America ("Coalition" or "OSPA") and eight (8) domestic processors, American Natural Processors, LLC, Lester Feed & Grain Co., Organic Production Services, LLC, Professional Proteins, Ltd., Sheppard Grain Enterprises LLC, Simmons Grain Company, Super Soy, LLC, and Tri-State Crush LLC (collectively, "Petitioners") before the U.S. Department of Commerce (the "Department" or "Commerce") and the U.S. International Trade Commission (the "Commission" or "ITC"). The Petitioners seek the imposition of antidumping duties ("AD") and countervailing duties ("CVD") on U.S. imports of organic soybean meal ("OSBM" or "subject merchandise") from India ("subject imports") pursuant to Sections 701 and 731 of the Tariff Act of 1930, as amended ("the Act"), 19 U.S.C. § 1671 and §1673. The Petitioners account for [ ] of OSBM production in the United States and, as such, represent the U.S. industry within the meaning of sections 702(c)(4) and 732(c)(4) of the Act, 19 U.S.C. §§ 1671a(c)(4), 1673 a(c)(4).

The linchpin of the U.S. organic production chain is the network of nearly two dozen small and/or family-owned U.S. Department of Agriculture ("USDA")-certified organic soybean processors such as the Petitioners that procure certified organic soybeans, process (otherwise known as "crush") those certified organic soybeans into OSBM using certified organic methods, and provide that certified OSBM to certified organic animal feed producers. The certified OSBM is the key protein component of animal feed sourced by certified organic poultry and dairy producers. If the flood of dumped and subsidized imports of subject merchandise from India continues to displace the U.S.-produced certified OSBM, the domestic processors' losses and declines in terms of production, prices, profits, market share, and employment will lead to the imminent eradication of domestic processing capabilities of certified OSBM. The U.S.-certified

organic poultry and dairy industry and U.S. consumers who desire such products at record levels of demand will soon be entirely reliant on imports to support the organic production chain leading to uncertain pricing, food insecurity and the failure to meet the U.S. Congress' policy imperative of increasing organic farming and production.

The domestic OSBM industry has been materially injured and is threatened with further material injury by reason of the dumped and subsidized imports of subject merchandise from India. As detailed in this Petition, the volume of subject imports is significant, both in absolute terms and relative to both U.S. production and U.S. consumption. The domestic industry held a steady U.S. market share of approximately eighty percent (80%) in OSBM from 2014-2016.[1] The unfairly traded imports of OSBM began surging into the U.S. market in late 2016, gaining market share at the direct expense of the domestic producers.[2] As a result, domestic OSBM producers' market share dropped to fifty-nine percent (59%) in 2018, forty-one percent (41%) in 2019 and thirty-one percent (31%) in 2020.[3] The domestic industry's loss was the Indian OSBM producers' gain: India's market share of subject merchandise in the United States increased from less than two percent (2%) in 2014 to more than sixty-two percent (62%) in 2020.[4] India has become the U.S. market's largest foreign source of OSBM since 2017, representing ninety percent (90%) of all OSBM imports in 2020.[5] The "tipping point" came in in 2019 when the subject imports exceeded the domestic production of OSBM, more than doubling from 134,086 metric tons in 2018 to 306,621 metric tons in 2019, while domestic production plummeted from 298,458 metric tons to

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[1] *See* Agromeris, "Impact of Imported Organic Soybean Meal on U.S. Market *Addendum # 2*", dated March 26, 2021 (hereinafter Agromeris Addendum #2) at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3 of this Petition).
[2] *See id.*
[3] *See id.*
[4] *See id.*
[5] *See id.*

177,159 metric tons.[6] The trend held in 2020: the U.S. imported 389,017 metric tons of subject merchandise from India while it consumed only 193,069 metric tons of U.S.-produced OSBM.[7] Meanwhile, the U.S. OSBM producers have decreased prices nearly thirty percent (30%) per unit from 2014 to 2020,[8] are operating at approximately thirty-five (35%) capacity utilization,[9] losing sales[10] and ultimately facing closure or abandoning the organic industry.[11] The material injury to the domestic industry comes at a time when the U.S. organic industry is experiencing unprecedented growth. Demand for downstream organic poultry and dairy products increased more than six and one-half percent (6.5%) in 2020.[12] Unfortunately, the unfairly traded subject imports are meeting this growing U.S. demand, instead of the domestic industry that has invested millions in capital expenditures to meet strict USDA-certified organic standards.

The information provided in this Petition demonstrates that during the period of investigation ("POI"), the surge of subject imports entered the domestic market at prices below the costs at which U.S. soybean crushers could produce OSBM and achieve a profit/positive crush margin[13] using USDA-certified organic soybeans. Indian producers of the subject merchandise were able to offer these prices and capture this market share as a result of dumping and a series of subsidy programs that the Department, the Commission and the World Trade Organization

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[6] *See id.*
[7] *See id.*
[8] *See* Declaration of Peter Golbitz (hereinafter Golbitz Decl.) at para. 16 (Exhibit I-29).
[9] *Id.* at para. 18.
[10] *See* (Exhibit I-31); *see also* Agromeris Addendum #2 at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3).
[11] *See* Agromeris, "Impact of Imported Organic Soybean Meal on U.S. Market Final Report", issued May 15, 2019 and supplemented on September 25, 2020 and October 21, 2020 (hereinafter Agromeris Final Report) at 8. (Exhibit I-3).
[12] *See* Golbitz Decl. at para. 4.
[13] *See* Agromeris Final Report at 22 ("In soybean meal production the crush margin is the difference between the cost of the raw material, soybeans, and the value or selling price of the meal and oil from that production.").

("WTO") repeatedly have found to be in violation of U.S. trade laws and multilateral trade agreements.

This Petition contains information reasonably available to the Petitioners in support of the imposition of AD and CVD duties on imports of subject merchandise from India. Volume I of the Petition provides the general information and injury allegations, Volume II details the subsidy programs at issue, and Volume III provides the antidumping allegations.

II. GENERAL INFORMATION

A. Identity of the Petitioners and Related Contact Information (19 C.F.R. § 207.11(a) and 19 C.F.R. § 351.202(b)(1)).

This Petition is filed by the Organic Soybean Processors of America (the "Coalition") and the eight (8) U.S. OSBM processors listed below.

Each individual OSBM processor constitutes a domestic interested party within the meaning of 19 U.S.C. § 1677(9)(C) and 19 C.F.R. § 351.102(b)(17). The table attached hereto as Exhibit I-1[14] provides information for each of these individual petitioners.

The Coalition constitutes a domestic interested party within the meaning of 19 U.S.C. §§ 1677(9)(E)-(G) and 19 C.F.R. §351.102(b)(17).

Petitioners' contact information is as follows:

Organic Soybean Processors of America
800 North Capitol Street NW
#800
Washington, D.C. 20002
Contact: Hunter Moorhead
Email: hmoorhead@crshq.com
Phone: (202)559-0170

American Natural Processors, LLC
600 Stevens Port Drive, Suite 325

[14] *See* Coalition Members Identification and Contact Information. (**Exhibit I-1**).

Dakota Dunes, SD 57049
Contact: Sam Jennett
Email: samj@americannatural.us
Phone: (712)225-3500

Lester Feed & Grain Co.
206 Clinton Avenue
Lester, IA 51242
Contact: Jesse Moser
Email: jessem@lesterfg.com
Phone: (712)478-4440

Organic Production Services, LLC
802 Julian R Allsbrook Hwy,
Weldon N.C. 27890
Contact: James W. Patterson
Email: jpatterson@ops.farm
Phone: (803)684-5288

Professional Proteins Ltd.
2346 Hwy 1 and 92
Washington, Iowa 52353
Contact: Beth Bennett
Email: beth.bennett@windstream.net
Phone: (319) 652-6541

Sheppard Grain Enterprises, LLC
1615 Maryland Rd.,
Phelps, NY 14532
Contact: John Sheppard
Email: jsheppard@SheppardGrain.com
Phone: (315)548-9271

Simmons Grain Co.
600 Snyder Rd.
PO Box 432
Salem, OH 44460
Contact: Annette Cook
Email: annette@simmonsgrain.com
Phone: (330) 337-6327

Super Soy, LLC
N 3503 Hwy 104
Brodhead, WI 53520
Contact: Andy Strommen
Email: andysssf@gmail.com

Phone: (608) 654- 5123

Tri-State Crush
801 N. Huntington Street,
Syracuse, IN 46567
Contact: Travis Luke
Email: Travis@tristatecrush.com
Phone: (913) 416-5662

B. Identity of the Domestic Industry on whose behalf the Petition is Filed (19 C.F.R. § 207.11(b)(2)(ii) and 19 C.F.R. § 351.202(b)(2)).

The Petitioners submit this Petition on behalf of the domestic industry that processes USDA-certified organic soybeans into USDA-certified OSBM, which is primarily used in animal feed production. The domestic industry generally consists of more than two dozen relatively small-scale USDA-certified organic soybean-crushing operations, characterized by their use of lower output, extrusion/expeller (solvent-free/hexane-free) systems that process organic soybeans into meal by mechanical means. The table provided in Exhibit I-2 identifies the domestic producers of OSBM known to the Coalition and Petitioners at this time.[15]

C. Degree of Industry Support (19 C.F.R. § 351.202(b)(3)).

According to 19 U.S.C. § 1671a(c)(4)(A) and 1673a(c)(4)(A), a petition is considered filed by or on behalf of the domestic industry if: (1) domestic producers who support the petition account for at least twenty-five percent (25%) of the total production of the domestic like product (*i.e.*, the "25% Test") and (2) domestic producers who support the petition account for more than fifty percent (50%) of the production of the domestic like product produced by that portion of the

[15] Upon information and belief, **Exhibit I-2** reflects the most recent listing of certified OSBM processors in this rapidly shifting industry. The Agromeris Final Report provides the initial listing of 21 domestic producers of OSBM based on USDA's listing of certified processors and industry research. *See* Agromeris, "Impact of Imported Organic Soybean Meal on U.S. Market Final Report", issued May 15, 2019 and supplemented on September 25, 2020 and October 21, 2020 (hereinafter Agromeris Final Report) at 22 (**Exhibit I-3**). The Coalition membership subsequently expanded on that list based on market intelligence. *See* Declaration of John Sheppard (hereinafter Sheppard Decl.) at para. 7 (**Exhibit I-4**); Declaration of Annette Cook (hereinafter Cook Decl.) at para. 7 (**Exhibit I-5**).

industry expressing either support for, or opposition to, the petition (*i.e.*, the "50% Test").[16] To the best of Petitioners' knowledge, both of these requirements are satisfied in the instant Petition.

1. Petitioners Satisfy the "25% Test"

Upon Petitioners' information and belief, twenty-three (23) USDA-certified organic soybean processors perform extraction / "crushing" operations to yield OSBM in the United States.[17] These USDA-certified organic soybean processors produced 193,069 metric tons of certified OSBM in 2020.[18]

Included at Exhibit I-5 are survey responses from the Coalition and the individual Petitioners expressing their support for the Petition.[19] As declared by each company in the survey responses, the following table represents the Petitioners' known production volume of OSBM during 2020:

Domestic OSBM Production from Supporters of the Petition [20]

Producer		2020 Domestic Production	
[			]
[			]
[			]
[			]
[			]

[16] *See* 19 U.S.C. § 1671a(c)(4)(A).
[17] *See* **Exhibit I-2**.
[18] *See* Agromeris Addendum #2 at *U.S. Organic Soybean Meal Supply and Demand* (Exhibit I-3).
[19] *See* Survey Reponses from Coalition Members (**Exhibit I-6**); Sheppard Decl. at para. 8 (Exhibit I-4); Cook Decl. at para. 8 (Exhibit I-5).
[20] *Id.*
[21] [ ]. *See id.*
[22] [ ]. *See id.*
[23] [ ]. *See id.*
[24] [ ]. *See id.*
[25] [ ]. *See id.*

	Producer	2020 Domestic Production	
[			]
[			]
[			]
	Total Short Tons:	165,922	
	Total Metric Tons: (Short Tons Mass/1.102)	**150,564**	

The eight (8) individual Petitioners account for approximately [ ] of the total OSBM production in the United States. Therefore, the Petitioner satisfies the 25% Test under 19 U.S.C. § 1671a(c)(4)(A)(i) and 19 U.S.C. § 1673a(c)(4)(A)(i).

2. Petitioners Satisfy the "50% Test"

The Petitioners satisfy the 50% Test. Of the twenty-three (23) certified OSBM producers in the United States, eight (8) expressed a position regarding this Petition.[29] All responding parties supported the Petition.[30] None (*i.e.*, zero) of the parties that responded to the Coalition's surveys opposed the Petition.[31] Therefore, the Petitioners satisfy the 50% Test pursuant to 19 U.S.C. § 1671a(c)(4)(A)(ii) and 19 U.S.C. § 1673a(c)(4)(A)(ii) as one hundred percent (100%) of the certified OSBM domestic producers that have taken a position on the Petition expressly support the Petition.

The Petitioners take the position at this time that there is no reason to exclude any domestic producer from the definition of the industry under 19 U.S.C. § 1677(4)(B), including [

[26] [ ]. *See id.*
[27] [ ]. *See id.*
[28] [ ]. *See id.*
[29] *See* Sheppard Decl at para. 8 (Exhibit I-4) and Cook Decl. at para. 8 (Exhibit I-5).
[30] *See id.*
[31] *See id.*

]. [

].[34] Petitioners reserve the right to argue for such an exclusion during the course of the investigation if another U.S. producer claims to be a part of the industry and/or is found to be importing OSBM. Petitioners note that, because their membership "constitutes a major proportion" of the total domestic production of the "like product", material injury to its operations is probative of material injury to the entire domestic industry within the meaning of 19 U.S.C. § 1677(4)(A).

D. **Previous Requests for Import Relief (19 C.F.R. §351.202(b)(4))**

The Petitioners have not previously sought relief from imports of the subject merchandise under section 337 of the Tariff Act of 1930 (19 U.S.C. §§ 1337, 1671a, 1673a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. §§ 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862).

E. **Scope of Investigation and a Detailed Description of the Subject Product (19 C.F.R. §351.202(b)(5))**

1. **Product Description**

The subject merchandise covered in this Petition is USDA-certified (or certification equivalent to, or recognized by, the USDA) OSBM. As detailed below, the United States imposes

[32] *See* Sheppard Decl. at para.23. (Exhibit I-4).
[33] *See id.*
[34] *See id.*

an identical certification standard for domestic OSBM and imported OSBM. The certificate of origin attached hereto as Exhibit I-7 reflects an example description of the subject OSBM as utilized in the domestic market.[35] The certificate of origin attached hereto as Exhibit I-8 reflects that the imports of subject merchandise is the same in all material respects to the domestic like product.[36] As a result of these identical standards, the proposed domestic like product and the scope of the subject merchandise are identical.

2. The Certification of OSBM

Interest in organic farming migrated from Europe to the United States in the early 1900s.[37] Beginning in the 1950s, as the U.S. public became more concerned about the potential adverse environmental and public health effects of agricultural chemicals and so-called "factory farming" methods, a small but slowly increasing number of farmers began to adopt organic production practices.[38] In 1990, the U.S. Congress passed the Organic Foods Production Act ("OFPA") "{t}o promote the production of organically produced foods through the establishment of a national standard production for organically produced products and providing for the labeling of organically produced products."[39] The act authorized the creation of a National Organic Program ("NOP") within the USDA to establish standards for producers and processors of organic foods, and permit such operations to label their products with a "USDA Organic" seal after being officially certified by USDA-accredited agents ("ACAs").[40] The NOP's purpose is to give consumers confidence in the legitimacy of products sold as organic, permit legal action against

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[35] *See* Laboratory Analysis of Domestic Soybean Meal (**Exhibit I-7**).
[36] *See* Imported Organic Soybean Meal Certificate of Origin (**Exhibit I-8**).
[37] *See* Congressional Research Service, Organic Agriculture in the United States: Program and Policy Issues, No. 7-5700, Johnson, R., November 25, 2008 at 2 (**Exhibit I-9**).
[38] *See id.* at 4.
[39] *See* Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. §§ 6501-6524.
[40] *See id.*

those who use the term fraudulently, increase the supply and variety of available organic products, and facilitate international trade in organic products.[41]

The key difference between organic and conventional agriculture is that organic farming is "a production system that is managed in accordance with the {Organic Foods Production} Act and regulations. . . to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity."[42] In contrast to conventional agriculture production, organic agriculture is both an approach to food production based on biological methods that avoid the use of synthetic crop or livestock production inputs and a broadly defined philosophical approach to farming that puts value on resource efficiency and ecological harmony.[43] Accordingly, under the NOP, producers, processors and handlers who wish to market their products as organic are required to follow strict production practices as prescribed by the regulations.[44] The USDA accredits private and state ACAs, who visit producers, processors, and handlers to certify that their operations abide by the standards; ACAs also conduct annual reviews to verify continued compliance.[45] It is unlawful for anyone to use the word "organic" on a product if it does not meet the standards set forth in the law and regulations.[46] In short, the NOP requires that every aspect of production and processing receive organic certification.[47]

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[41]*See* Congressional Research Service, Organic Agriculture in the United States: Program and Policy Issues, No. 7-5700 at 2 (Exhibit I-9).
[42]*See* 7 C.F.R. § 205.2.
[43]*See, generally,* USDA National Institute of Food and Agriculture (NIFA) *available at* https://nifa.usda.gov/program/organic-agriculture-program.
[44] The NOP regulations are prescribed in 7 C.F.R. § 205, as authorized by 7 U.S.C. §§6501-22.
[45] *See* 7 C.F.R. §§ 205.400-599.
[46] *See* 7 U.S.C. § 6506.
[47] *See* USDA Agricultural Marketing Service National Organic Program Handbook ("NOP Handbook") (relevant excerpts) at 2603. (**Exhibit I-10**). The full NOP Handbook that prescribes the procedures required in production and processing is available at https://www.ams.usda.gov/rules-regulations/organic/handbook.

The NOP standard governs the domestic like product and the imports of subject merchandise. Specifically, in order for the USDA to certify a producer, handler or processor to market a crop or product as USDA-certified organic product, or use the USDA Organic label, they need to be inspected and approved by one of the USDA-approved ACAs.[48] According to the USDA, eighty (80) certifying agencies are currently USDA-accredited and authorized to certify operations to the USDA organic standards.[49] Of these, forty-eight (48) are based in the U.S. and thirty-two (32) operate in foreign countries.[50] Twenty-one (21) additional certifying agents are authorized through recognition agreements between the U.S. and foreign governments.[51] Each of these certifying agents is authorized to issue an organic certificate to operations that comply with the USDA organic regulations.

For international trade, either importing into the United States or exporting from the United States to other countries, the NOP collaborates with the USDA Foreign Agricultural Service ("FAS:) and Office of the U.S. Trade Representative (USTR) to establish international trade agreements for organic products.[52] The most common type of organic trade agreement is an organic equivalency arrangement where the USDA has determined that a foreign government's standards, organic control system oversight, and enforcement programs meet or exceed the

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[48]*See* 7 C.F.R. §§ 205.400-599.

[49]*See* U.S. Department of Agriculture, Agricultural Marketing Service, Organic Certifying Agents https://www.ams.usda.gov/resources/organic-certifying-agents.

[50]*See id.*

[51]*See id.*

[52]According to the most recent edition of the World of Organic Agriculture, eighty-seven (87) countries have organic standards, while another eighteen (18) are in the process of drafting regulations. Some countries have no organic regulations *per se* but do have national production standards. While such standards do provide a national definition of organic products and are a reference point for certification practices, they do not necessarily lead to the adoption of a national inspection and certification system which would be overseen by the government. The Organic Trade Association in the United States maintains an online database that lists the state of organic regulation in countries around the world. *See* Willer, Helga and Julia Lernoud (Eds.) (2018): The World of Organic Agriculture Statistics and Emerging Trends 2019. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM – Organics International, Bonn, available at https://orgprints.org/37018/1/willer-lernoud-2019-world-of-organic-low.pdf.

requirements of the NOP.[53] If two countries are equivalent, organic products can be sold in either country with just one organic certification.[54] The USDA currently has equivalency agreements with Canada (2009), European Union (2012), Japan (2014), Korea (2014) and Switzerland (2015).[55]

Alternatively, the USDA may use recognition agreements.[56] With a recognition agreement, the USDA recognizes foreign governments as the competent authority to accredit certifiers within their national borders, although the certified operations still need to be certified to NOP standards. The United States entered into a recognition agreement with the Government of India (GOI) in 2006.[57] As a result, several certifying agents in India were authorized to certify organic farms and processing facilities to USDA organic standards.[58]

The National Programme for Organic Production (NPOP) establishes the rules for organic production in India.[59] India's Agricultural & Processed Food Products Export Development Authority ("APEDA") administers the NPOP and issues a Transaction Certificate ("TC") to all India-produced organic products that meet the organic certification standards prior to export.[60] The APEDA also maintains a list of thirty-two (32) certifying agencies in India including fourteen (14) which, until recently, were accredited to use the USDA NOP certification process.[61]

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[53]*See* U.S. Department of Agriculture, Agricultural Marketing Service, How Does USDA Assesses Organic Equivalency with Other Countries, https://www.ams.usda.gov/services/organic-certification/international-trade/how-does-usda-assess-organic-equivalency-other-countries.
[54]*See id.*
[55]*See* U.S. Department of Agriculture, Agricultural Marketing Service, International Trade Partners, https://www.ams.usda.gov/services/organic-certification/international-trade.
[56]*See id.*
[57]*See* U.S. Department of Agriculture, Agricultural Marketing Service, International Trade Policies: India, https://www.ams.usda.gov/services/organic-certification/international-trade/India.
[58]*See* List of Accredited Certification Bodies Under NPOP. (**Exhibit I-11**).
[59] *See id.*
[60]*See Agricultural and Processed Food Products Export Development Authority Trade Notice, Issuance of Transaction Certificates for Export of Organic Products*, dated November 21, 2014 (**Exhibit I-12**).
[61] *See* List of Accredited Certification Bodies Under NPOP. (Exhibit I-11).

On January 11, 2021, the USDA terminated the organic recognition arrangement with APEDA.[62] According to the USDA Agricultural and Marketing Service ("AMS"), a more active oversight presence in India was/is needed to directly protect organic integrity.[63] The NOP provided an 18-month transition period (through July 2022) for certified organic operations in India to become USDA-certified. While the Petitioners support the USDA's efforts to ensure the integrity of the USDA organic certification, these efforts will do little to address the unfairly traded imports of subject merchandise into the United States. Indeed, while the APEDA, in response to the USDA's decision, arguably retaliated against the USDA by not issuing any TCs to allow for the export of OSBM in early 2021, these exports came back on-line in late Q1 2021.[64]

3. Specifications, Physical Characteristics, and Uses

The subject merchandise can consist of USDA-certified organic soybean cake, soybean chips, and/or soybean flakes that result from the processing or "crushing" of feed grade[65] USDA-certified organic soybeans.[66] There are general specifications that apply to any type of soybean meal whether conventional, non-genetically modified (non-GMO) or organic.[67] However, in contrast to any other soybean meal product, OSBM then must meet the strict specifications and standards prescribed by the NOP.

The Federal Grain Inspection Service ("FGIS") of the USDA Grain Inspection, Packers

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[62] *See USDA AMS NOP U.S.-India Recognition Agreement Transition Update for USDA-Accredited Certifiers*, dated January 14, 2021. (**Exhibit I-13**).
[63] *See id.*
[64] *See* Sheppard Decl. at para 25 (Exhibit I-4); Cook Decl. at para. 25 (Exhibit I-5).
[65] Feed grade organic soybeans generally have a protein content of 38% (low grade feed) to 44% (high grade feed). Food grade organic soybeans typically have a 44% or higher protein content and are used in foods such as tofu and edamame. *See* U.S. Soy Info: International Buyers' Guide, Chapter 2: Quality Standards for U.S. Soybeans and Soy Products (hereinafter "U.S. Soy Info") at 2-2 (**Exhibit I-14**); *Bo Zhang et al., Seed quality attributes of food-grade soybean from the U.S. and Asia* (2010), Euphytica 173: 387, 388 (**Exhibit I-15**); *see, e.g.*, USDA AMS National Organic Grain and Feed Stuffs Report (hereinafter "AMS Organic Report"), dated March 10, 2021 (showing segmentation between feed and food grade soybeans (**Exhibit I-16**).
[66] *See* U.S. Soy Info at 2-5-8 (Exhibit I-14).
[67] *Id.*

and Stockyards Administration ("GIPSA") is the agency that generally determines the standards for soybean and soybean-derived products.[68] However, as FGIS has determined that soybean meal, whether conventional, non-GMO or organic, is a processed product, it does not govern OSBM.[69] Rather, the quality specifications and trading rules adopted by the National Oilseed Processors Association ("NOPA") serve as "de facto" general standards for soybean meal and related products.[70] Pursuant to these general rules, soybean cake is defined as the product after the extraction of part of the oil from soybeans.[71] Soybean chips and flakes are defined as those produced by cracking, heating, and flaking soybeans and reducing the oil content of the conditioned product.[72] The NOPA also provides general guidance on the marketing of soybean meal products.[73]

The USDA's NOP then provides the precise specifications and standards for OSBM. The key specification for OSBM is that, in contrast to other types of soybean meal, it is processed without the use of chemical solvents such as hexane.[74] The result is that OSBM typically consists of more than forty-four percent (>44%) protein, seven percent (7%) fiber, and six percent (6%) fat/oil.[75] "Full fat" OSBM can have a protein content of approximately thirty-eight percent (38%) and a fat content of nearly twenty percent (20%).[76]

OSBM mainly serves as an animal feed ingredient for organic poultry (approximately 75%

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[68] *See id.* at 2-1.
[69] *See id.* at 2-5.
[70] *See id.* at 2-5.
[71] *See id.* at 2-5.
[72] *See id.* at 2-6.
[73] *See id.* at 2-6.
[74] *See* 7 C.F.R. §205.105; *see also* National Organic Standards Board Materials Subcommittee, Proposal: Prevention Strategy Guidance for Excluded Methods, dated August 11, 2015 (hereinafter *NOP GMO Guidance*) (**Exhibit I-17**).
[75] *See* Exhibit I-7 that provides chemical analysis of OSBM products; *see also* Sheppard Decl. at para. 12 (Exhibit I-4); Cook Decl. at para. 12 (Exhibit I-5); U.S. Soy Info at 2-6 (Exhibit I-14).
[76] *See* Sara Willis, *The Use of Soybean Meal and Full Fat Soybean Meal by the Animal Feed Industry* (**Exhibit-I-18-1**).

of U.S. OSBM demand) and dairy (approximately 25% of U.S. OSBM demand) with a nominal amount used for other organic livestock (*e.g.*, pork) farming operations.[77]

4. Production Methodology

The production of OSBM consists of soybean processors sourcing raw certified organic soybeans and "crushing" the certified organic soybeans into meal, oil, and waste.[78] Certified OSBM processors use of lower output, extrusion/expeller (solvent-free/hexane-free) systems that process organic soybeans into meal by mechanical means.[79] While the yield amount of OSBM varies based on crush and extraction technology and the soybean composition, the average yield of OSBM is between seventy-eight to eight-one percent (78-81%), the oil yield is twelve to eighteen percent (12-18%) and the waste is approximately three percent (3%), which is mostly hulls and foreign matter.[80] The OSBM provides the overwhelming majority of the value derived from the processing of certified organic soybeans.[81] Certified OSBM processors must use certified organic soybeans and only mechanical means to crush/extrude the soybeans and expel any oil.[82] This reduces the oil content in the OSBM from the initial eighteen to twenty percent (18-20 percent), to five to seven percent (5 – 7%).[83] In contrast, processors of conventional (*i.e.*, non-

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[77]*See* Agromeris Final Report at 23 (Exhibit I-3).
[78]*See id.* at 14; Golbitz Decl. at para. 11 (Exhibit I-29); Sheppard Decl. at para. 14 (Exhibit I-4); Cook Decl. at para. 14 (Exhibit I-5). *.see generally* William Shurtleff & Akiko Aoyagi, History of Soybean Crushing: Soy Oil and Soybean Meal, Soyinfo Center, October 30, 2006, *available at* https://www.soyinfocenter.com/HSS/history.php.
[79]*See id.*
[80]*See* Agromeris Final Report at 14 (Exhibit I-3); Sheppard Decl. at para. 11 (Exhibit I-4); Cook Decl. at para.11 (Exhibit I-5); *see generally* M.A. Ibanez, et al., *Chemical composition, protein quality and nutritive value of commercial soybean meals produced from beans from different countries: A meta-analytical study*, Animal Feed Science and Technology 267 (2020) 14531 (**Exhibit I-18-2**); Robert Blair, Nutrition and Feeding of Organic Cattle, CABI, March 2011, *available at* https://www.cabi.org/bookshop/book/9781845937584/. Lecithin is also a by-product that is produced from degumming the oil. This product is less than one percent (1%) of the yield. *See* Cook Decl. at para. 23 (Exhibit I-5).
[81]Ming-Hsun Chen, *et al.*, *Techno-Economic Analysis of Extruding-Expelling of Soybeans to Produce Oil and Meal* (2019), Agricultural and Biosystems Engineering Publications. (**Exhibit I-19**).
[82]*See id.*; C. Dunkley, *et al.*, Amino Acid Content in Organic Soybean Meal for the Formulation of Poultry Feed, University of Georgia Extension, Circular 1140, June 2018. (**Exhibit I-20**).
[83]*See* Agromeris Final Report at 14 (Exhibit I-3).

organic) soybean meal use soybeans from any source and a chemical solvent (*e.g.*, hexane) extraction technology that reduces oil content in the final soybean meal to less than one percent (1%).[84]

Specifically, the production of OSBM uses the following traditional, time-proven process. First, feed grade certified organic soybeans undergo cleaning and conditioning processes.[85] Conditioned certified organic soybeans then run through a mechanical extruder, which "cooks" the certified organic soybeans through friction, temperature, and pressure, thereby causing the oil to release from the soybeans at the cellular level.[86] This aspect of the process reduces the trypsin inhibitor count of the certified organic soybeans, which in turn renders the product palatable to poultry and dairy cows.[87]

The extruded product then runs through a screw press, extracting nearly fifty-five (55%) of the original oil content.[88] The resulting "press cake" is then cooled, ground to a final consistency, and stored for distribution.[89] Producers then distribute the wholesale OSBM in bulk by truck and rail, with a predominant initial destination of feed mills.[90] The feed mills then mix together various organic feed ingredients, with the OSBM providing the main protein content, to meet the nutritional requirements of their customers (*i.e.*, organic animal farmers).[91]

OSBM must be certified as organic by ACAs utilizing the NOP standard at all stages of the production process. Specifically, the NOP requires that "each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock,

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[84]*Id.* at 14; U.S. Soy Info at 8-11 (Exhibit I-14).
[85]*See* U.S. Soy Info at 8-11.
[86]*See id.*
[87]*See id.*
[88]*See id.*
[89]*See id.*
[90]*See* Sheppard Decl. at para. 15 (Exhibit I-4); Cook Decl. at para. 15 (Exhibit I-5).
[91]*See id.*

livestock products, or other agricultural products that are intended to be sold, labeled, or represented as '100 percent organic,' 'organic,' or 'made with organic (specified ingredients or food group(s))' must be certified."[92] The NOP standards expressly apply to processors of organic products such as soybeans.[93] It follows that for OSBM to be certified as "organic", the processor must use organic inputs (*i.e*, organic-certified soybeans) and processes (*e.g.*, "chemical-free") as the NOP expressly requires. In order for the customers of the OSBM – namely, the producers of livestock such as dairy or poultry – to receive USDA's organic certification under the NOP, "the operation must 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."[94] As a result, the soybean meal that provides the main nutritional elements of the animal feed must be organic-certified. Every aspect of the OSBM production and processing chain must meet the strict certification, compliance, and record-keeping/reporting requirements of the NOP.[95]

5. <u>Tariff Classification</u>

The subject merchandise falls under the following subsections of the Harmonized Tariff Schedule of the United States (2020) Revision 28 ("HTSUS"):[96]

- 1208.10.0010—Flours and meals of oil seeds or oleaginous fruits, other than those of mustard: Of soybeans: Certified organic; and

- 2304.00.0000—Residues and waste from the food industries; Prepared animal feed; Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves (cracklings): Oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soybean oil; and

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[92] 7 C.F.R. § 205.100
[93] *See* NOP Handbook at 2603. (Exhibit I-10).
[94] 7 C.F.R. § 205.237(a).
[95] *See generally* 7 C.F.R. §§ 205.1-205.699.
[96] *See* HTSUS, Chapters. 12 & 23 (revised 28, 2020). **(Exhibit I-21)**.

The Petitioners recognize that the HTSUS provides for the organic-certified product in HTSUS subheading 1208.10.0010. However, a review of the relevant USDA FAS's Global Agricultural Trade System (GATS) data demonstrates that imports of OSBM enter U.S. ports of entry (POEs) utilizing HTSUS heading 2304, which is typically used for conventional soybean meal.[97] A straight-forward analysis of these GATS entries demonstrates that the higher-premium priced goods are OSBM, rather than the imports of conventional soybean meal, which are significantly lower priced.[98] While the Petitioners provide the HTSUS subheadings in compliance with 19 C.F.R. § 351.202(b)(5), they are only informational. The Petitioners request that the below-provided written description of the product control the scope of this investigation.

6. Proposed Scope of the Investigation

The scope of investigation is as follows:

> **The merchandise subject to the petition is certain certified organic soybean meal. Certified organic soybean meal can consist of ground soybean cake, ground soybean chips, and/or ground soybean flakes, with or without oil residues. Soybean cake is the product after the extraction of part of the oil from soybeans. Soybean chips and soybean flakes are produced by cracking, heating, and flaking soybeans and reducing the oil content of the conditioned product. "Certified organic soybean meal" is certified by the U.S. Department of Agriculture (USDA) National Organic Program (NOP) or equivalently certified to NOP standards.**
>
> **The products covered by this petition are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 1208.10.0010 and 2304.00.0000. Certified organic soybean meal may also enter under HTSUS 2309.90.1005, 2309.90.1015, 2309.90.1010, 2309.90.1030, 2309.90.1032, 2309.90.1035, 2309.90.1045, 2309.90.1050, 2308.00.9890.**

[97]*See* 2020 GATS Data. (**Exhibit I-22**); Agromeris Final Report at 10 (Exhibit I-3); Golbitz Decl. at para. 17 (Exhibit I-29); Sheppard Decl. at para. 20 (Exhibit I-4); Cook Decl. at para. 20 (Exhibit I-5).
[98]*See id.*

The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

F. **The Name of the Home Market Country (19 C.F.R. § 351.202(b)(6))**

The subject merchandise is manufactured or produced in and exported to the United States from the country of India. The Petitioners do not have any evidence indicating that the subject merchandise is produced in a country other than that from which it is exported.

G. **Proposed Pricing Products (19 C.F.R. §207.11(b)(2)(iv))**

The Petitioners respectfully request that the Commission seek pricing data on the following proposed product definitions:

PRODUCT 1: certified organic soybean meal having at least a protein content of 44%, feed grade.

H. **Importers of OSBM from India (19 C.F.R. §207.11(b)(2)(iii); 19 C.F.R. §351.202(b)(9))**

The table attached hereto as Exhibit I-23 provides the names, addresses, telephone numbers, fax numbers, and websites of those importers of subject merchandise known to the Petitioners.[99] There may be, however, additional importers of Indian organic OSBM unknown to the Petitioners, such as commodity brokers, domestic feed mills, and other entities of final use. For that reason, the Petitioners respectfully request that the Department and the Commission further investigate this information from U.S. Customs and Border Protection ("CBP") or other available resources to ensure completeness of this information.

[99] *See* Importers of Organic Indian Soybean Meal (**Exhibit I-23**).

I. The Names and Addresses of Each Person Believed the Sell the Merchandise at Less than Normal Value and the Proportion of Total Exports to the United States (19 C.F.R. §§ 351.202(b)(7)(i)(A) and (7)(ii)(A))

The table attached hereto as Exhibit I-24 provides the names, city, state, and estimated capacity of those foreign manufacturers, producers, and exporters of subject merchandise known to the Petitioners.[100] There may be, however, additional foreign manufacturers, producers, and exporters of subject merchandise unknown to the Petitioners. Information reasonably available to the Petitioners does not allow the identification of the proportion of total exports to the United States during the most recent twelve-month period by the listed producers. The Petitioners believe, however, that the companies listed in Exhibit I-24 account for the majority of the subject exports. For those reasons, the Petitioners respectfully request that the Department and the Commission further investigate this information from CBP or other available resources to ensure completeness of this information.

J. The Import Volume and Value of Subject Imports (19 C.F.R. § 351.202(b)(8))

The volume and value data of subject imports from India are provided in Exhibit 22 for calendar years from 2014 to 2020 where data are available.[101] The source for the extrapolated import volume and value is the GATS data.[102]

K. The Domestic Like Product Consists of Certified Organic Soybean Meal (19 C.F.R. § 207.11(b)(2)(i))

The Commission should define the domestic like product coextensive with the proposed scope of investigation. In determining whether an industry in the United States experienced material injury or the threat of material injury because of specific imports, the Commission first

[100] *See* Foreign Manufacturers, Producers, and Exporters of Subject Merchandise (**Exhibit I-24**).
[101] *See* 2020 GATS Data. (Exhibit I-22); *see also* Golbitz Decl. at para. 5 (Exhibit I-29).
[102] *Id.*

identifies the domestic like product, defined 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."[103] The domestic like product determination is factual in nature and is made by the Commission on a case-by-case basis by considering the following factors: (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 (6) where appropriate, price.[104] In evaluating these factors, the Commission generally favors clear dividing lines, while disregarding minor variations.[105]

1. Physical Characteristics and Uses

The domestic like product is OSBM that, as described *supra*, consists of certified organic soybean cake, soybean chips, or soybean flakes that result from the processing or "crushing" of feed grade USDA-certified organic soybeans.[106] The OSBM is processed without the use of solvents (*e.g.*, hexane) and can be either full fat or with most of the oil removed via mechanical pressing.[107] Usually blonde in color with a coarse granular consistency, the OSBM has a nutrient content that typically consists of more than forty-four percent (>44%) protein, seven percent (7%) fiber, and six percent (6%) fat.[108]

As indicated throughout this Petition, the domestic like product includes only products that are USDA-certified organic. The express intent of Congress and the purpose of the NOP are to separate conventional products from those that are certified-organic. The certification requirement

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[103] 19 U.S.C. § 1677(10).
[104] *See, e.g.*, *Cleo Inc. v. United States*, 501 F.3d 1291, 1295 (Fed. Cir. 2007); *NEC Corp. v. Department of* Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int'l Trade 1998); *Nippon Steel Corp. v. United States*, 19 C.I.T. 450, 455 n.4 (1995).
[105] *See, e.g.*, *Cleo*, 501 F.3d at 1295.
[106] *See* n. 65 and 66, *supra*; *see also* U.S. Soy Info (Exhibit I-14) and Exhibits I-15 and I-16.
[107] *See* nn. 74, *supra*; *see also* Agromeris Final Report (Exhibit I-3) and Exhibits I-19 and I-20.
[108] *See* nn. 75 and 76, *supra*; *see also* Exhibits I-7 that provides the chemical analysis of organic soybean products, and Exhibit I-18.

establishes clear dividing lines between certified-organic and conventional products. For example, pursuant to the applicable regulations, certified OSBM may only be produced from crushing certified organic soybeans.[109] For soybean production to meet the high threshold for organic certification, the organic soybeans must be cultivated by, including, but not limited to, the following procedures:

- No synthetic fertilizers for 36 months prior to the crop's harvest;
- No synthetic pesticides (*e.g.*, fungicides, insecticides, herbicides) for 36 months prior to the crop's harvest;
- Crop rotations, including a soil-building legume or small grain/legume mix should be planted, to help break weed, insect, and disease cycles and maintain soil fertility; and
- No synthetic hormones or antibiotics for livestock may be used, and organic feeds and pastures/hay must be fed.[110]

The organic soybeans thereafter only may be processed using lower output, extrusion/expeller (solvent-free) systems that process soybeans into meal by mechanical means. The NOP provides for processors such as the Petitioners multiple process, training, and record-keeping requirements that require significant investments and ongoing compliance. For example, OSBM may not be considered USDA-certified organic if it contains pesticides residues at levels greater than five percent (5%) of U.S. Environmental Protection Agency ("US-EPA") conventional maximum residue limits.[111]

In contrast, conventional soybean meal may be produced using soybeans from any source, including those grown from genetically modified (GMO) soybean seeds.[112] Additionally,

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[109]*See* NOP GMO Guidance (Exhibit I-17).
[110]*See, e.g.*, Growing Organic Soybeans on Conservation Reserve Program Land, Iowa State University Extension Agriculture Bulletin PM 1881, August 2003 (**Exhibit I-25**); *see also* NOP Handbook (Exhibit I-10).
[111]*See* 7 C.F.R. § 205.671.
[112]*Cf.* 7 C.F.R. §205.2 that prohibits organic-certified soybean meal to derive from GMO seeds under "excluded methods."

conventional soybean meal processors typically utilize a chemical solvent (*e.g.*, hexane), where the protein content is much higher as the residual oil content is typically much lower (<1% vs. >5%) than OSBM.[113]

The end users of OSBM are the feed mills that supply organic-certified dairy, poultry and other livestock. The NOP requires that these entities only use USDA-certified OSBM.[114]

2. Interchangeability

It follows that there is no interchangeability between OSBM and conventional soybean meal products in the market. Indeed, it is unlawful for producers, handlers or processors such as the Petitioners to comingle conventional and organic products.[115]

3. Channels of Distribution

All OSBM is sold through the same channels of distribution in the United States as it is provided directly to the certified organic animal feed and livestock producers.[116] Nearly all OSBM is used as feed for the dairy and poultry industry.[117] The majority of OSBM is delivered by truck in bulk shipments.[118] Overseas shipments arrive in twenty foot (20') containers transporting approximately twenty-two (22) metric tons.[119] Conventional and non-GMO soybean meal processors may use similar channels of distribution; however, as demonstrated throughout this Petition, there is no comingling of the product. The OSBM is subject to rigorous testing and cannot be comingled with conventional product during transportation and distribution. Transportation

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[113]Ming Hsun-Cheng, *et al.*, Economic Feasibility Analysis of Soybean Oil Production by Hexane Extraction, Industrial Crops and Products 108 at 775-85 (2017) (**Exhibit I-26**).
[114]*See* 7 C.F.R. §205.237(a).
[115]*See* 7 C.F.R. §§ 205.200-290; Golbitz Decl. at para. 13 (Exhibit I-29); Sheppard Decl. at para. 16 (Exhibit I-4); Cook Decl. at para. 16 (Exhibit I-5).
[116]*See* Sheppard Decl. at para. 15 (Exhibit I-4); Cook Decl. at para. 15 (Exhibit I-5).
[117]*See* Agromeris Final Report at 23-24 (Exhibit I-3); *see, also, Mercaris Market Update Report*, U.S. Organic Sector, various 2020 (demonstrating the relationship between OSBM and organic poultry and data)(hereinafter "Mercaris Report") (**Exhibit I-27**).
[118]*See* Sheppard Decl. at para. 15 (Exhibit I-4); Cook Decl. at para. 15 (Exhibit I-5).
[119]*See, e.g.*, USDA AMS National Organic Grain and Feed Stuffs Report, dated March 10, 2021 (Exhibit I-16).

providers also must ensure that residues from conventional products do not contaminate certified organic shipments.

Additionally, products can only be marketed as certified organic subject to the strict guidelines of the NOP. This ensures that conventional and non-GMO products may not be confused with certified OSBM in the various channels of distribution.

Of greater significance, while many global exchanges such as the Chicago Board of Trade ("CBOT") trade in futures relating to conventional soybean meal, there are no trading exchanges or futures trading for OSBM products.[120] This limits the various channels of distribution for OSBM as it is not traded "on paper."

4. Customer and Producer Perception

Customers and producers view all types of OSBM as a single category of products; namely, USDA-certified OSBM that meets NOP standards. The USDA AMS collects, monitors and publishes separate data for conventional soybean meal and OSBM.[121] Leading agricultural reports such as *Mercaris*[122] likewise separately report data for conventional and organic soybean meal.

5. Common Manufacturing Facilities, Productions Processes, and Production Employees

Given that all USDA-certified OSBM must conform to the NOP or equivalent standards for certified organic products, all such products are processed in largely the same manner. The processor must source organic-certified soybeans and use lower output, extrusion/expeller (solvent-free) systems that process soybeans into meal by mechanical means. The NOP strictly proscribes commingling with conventional agricultural products and requires OSBM processors

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[120] *See* Golbitz Decl. at para. 14 (Exhibit I-29); Sheppard Decl. at para. 17 (Exhibit I-4); Cook Decl. at para. 17 (Exhibit I-5).
[121] *See, e.g.*, USDA AMS National Organic Grain and Feed Stuffs Report, dated March 10, 2021 (Exhibit I-16).
[122] *See* Mercaris Report (Exhibit I-27).

to provide detailed plans regarding production processes and handling.[123] In the event where an OSBM processor crushes non-GMO or other non-certified organic products, the processor must receive express authorization to conduct such operations, engage in strict separation and sorting procedures, and perform extensive cleaning.[124] There also is a large distinction between the size of the conventional soybean meal and the OSBM markets. Domestic conventional soybean meal processors crush nearly sixty million (60,000,000) metric tons annually.[125] Domestic OSBM processors crushed just under two hundred thousand (200,000) metric tons in 2020. A typical crush operation serving the organic market will process one hundred to two hundred (100-200) metric tons of soybeans per day, while a conventional, solvent extraction plant that crushes conventional soybeans into meal will process one thousand to three thousand (1,000-3,000) metric tons per day.[126] These differences in scale between the conventional and certified organic soybean meal demonstrate the clear diving lines between these production facilities, processes and employees.

6. Price

OSBM sells at a premium (as high as 200%) compared to conventional soybean meal.[127] End users do not comingle purchases because OSBM sells at a significantly higher price than the price of conventional soybean meal. Given these price differences, there is no reasonable scenario where a customer would purchase certified OSBM to meet conventional needs.[128]

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[123] *See* 7 C.F.R. §§ 205.200-290.
[124] *See* Sheppard Decl. at para. 16 (Exhibit I-4); Cook Decl. at para. 16 (Exhibit I-5).
[125] *See* Agromeris Final Report at 24 (Exhibit I-3).
[126] *Id.*
[127] *See* Golbitz Decl. at para. 17 (Exhibit I-29); Sheppard Decl. at para. 20 (Exhibit I-4) ; Cook Decl. at para. 20 (Exhibit I-5); *see also* AMS Weekly Soybean Crush Report, *available at https://www.ams.usda.gov/mnreports/gx_gr211.tx.*
[128] Golbitz Decl. at para. 17 (Exhibit I-29); Sheppard Decl. at para. 20 (Exhibit I-4); Cook Decl. at para. 20 (Exhibit I-5).

Accordingly, the factors that the Commission considers demonstrate that OSBM and conventional soybean meal are separate products that are not interchangeable or substitutable with each other.

III. SUBSIDY ALLEGATIONS

Volume II of this Petition contains information concerning the alleged countervailable subsidies as well as factual information relevant to the alleged countervailable subsidies such as the laws, regulations, and decrees under which the subsidies were bestowed, the manner in which the subsidies were paid, and the Petitioners' estimation of the value of the subsidies to producers and exporters of OSBM as required by 19 U.S.C. § 1671, 19 C.F.R. § 207.11(b)(1), and 19 C.F.R. § 351.202(b)(7)(ii).

IV. ALL FACTUAL INFORMATION RELATED TO THE CALCULATION OF EXPORT PRICE AND THE CONSTRUCTED EXPORT PRICE OF THE SUBJECT MERCHANDISE AND THE NORMAL VALUE OF THE FOREIGN LIKE PRODUCT (19 C.F.R. § 351.202(B)(7)(I)(B))

Volume III of this Petition contains the necessary information concerning the calculation of the export price and normal value for the OSBM produced and exported from India.

V. MATERIAL INJURY, CAUSATION, AND THREAT (19 U.S.C. § 1671(2) & § 1673(2); 19 C.F.R. § 207.11(B)(2)(V); 19 C.F.R. § 351.202(B)(10))

A. Introduction

This section contains information required in antidumping and countervailing petitions under 19 U.S.C. § 1671(2) and § 1673(2), 19 C.F.R. § 207.11(b)(2)(v), and 19 C.F.R. § 351.202(b)(10). The Act entitles a domestic industry to antidumping and countervailing duty relief if it experiences material injury or the threat of material injury by reason of unfairly traded imports.[129] For the reasons outlined below, the dumped, subsidized imports of subject

[129] *See* 19 U.S.C. §§ 1671, 1673.

merchandise cause material injury and, absent appropriate countermeasures, threaten to cause further injury to the domestic industry.

B. Conditions of Competition (19 U.S.C. § 1677(7)(C)(iii)(V))

In determining the impact of the unfairly traded imports on the state of the domestic industry, the Commission must account for the prevailing conditions of competition in the United States for the subject imports and the domestic like product.[130]

1. The Rising Demand for Organic Products and the Need for OSBM as Feed

The organic foods market in the United States now surpasses fifty billion dollars ($50B) at the retail level, having grown at over ten percent (10%) annually for most of the past decade.[131] Consumer trends supporting cleaner, healthier and more sustainable foods continues to drive growth and change in the organic industry. While organically produced fruits, vegetables, dairy and eggs remain in high demand, poultry and meats now represent the fastest growing area of organic food sales.[132] This increased demand for organic animal proteins results in increased demand for organic feed inputs; primarily, OSBM.

The total actual demand for OSBM in the United States increased from 286,187 metric tons in 2014 to 619,457 metric tons in 2020.[133] Targeting the time period when dumped and subsidized imports of subject merchandise flooded the U.S. market, the U.S. demand for OSBM grew at a compound annual growth rate (CAGR) of 6.5 percent (6.5%) per year.[134]

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[130] 19 U.S.C. § 1677(7)(C)(iii)(V).
[131] *See* Organic Industry Survey 2020, Organic Trade Association (OTA) at 2 (**Exhibit I-28**).
[132] *See id.* at 30, Figure 2.9.
[133] *See* Agromeris Addendum #2 at *U.S. Organic Soybean Meal Supply and Demand* (Exhibit I-3).
[134] *See* Declaration of Peter Golbitz (hereinafter Golbitz Decl.) at para. 4 **(Exhibit I-29).** *See also* spreadsheets on Volume and Value of Subject Imports 2017-2020 (**Exhibit I-30).**

2. The Domestic Industry Has Sufficient Capacity to Meet the Rising Demand for OSBM

To meet this rising demand, the domestic industry has produced OSBM from both domestically grown certified organic soybeans and imported certified organic soybeans.[135] The domestic downstream animal feed industry has also increasingly relied on imports of subject merchandise as a source of supply from countries.[136] The U.S. market for OSBM now has three categories: (1) OSBM processed in the United States from U.S. grown and certified organic soybeans; (2) OSBM processed in the United States from imported certified organic soybeans (or a mix of U.S. and imported certified organic soybeans); and (3) the imported OSBM (*i.e.*, the final, processed product).[137]

As discussed above, the domestic industry consists of twenty-three (23) operators that crush U.S.-grown and imported certified organic soybeans into meal. These U.S. processors crush 100 to 200 metric tons of certified organic soybeans per day[138] and have a combined annual crush capacity that can produce at least 550,638 metric tons of OSBM.[139]

Nevertheless, the domestic industry's capacity utilization has significantly decreased from more than seventy percent (70.6%) in 2017[140] to approximately thirty-five percent (35%) in 2020[141].

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[135]*See* Agromeris Final Report at 5 (Exhibit I-3).
[136]*Id.* at 23-24.
[137]*Id.* at 5.
[138]*See* nn. 17 and 18, *supra.*
[139]*See* Agromeris Final Report at 25 (Exhibit I-3).
[140]*Id.* at 28.
[141]*See* Golbitz Decl. at para. 18 (Exhibit I-29); Sheppard Decl. at para. 21 (Exhibit I-4); Cook Decl. at para. 21 (Exhibit I-5).

C. **The Subject Imports Are Not Negligible (19 U.S.C. §1677(24)(A)(i))**

Pursuant to section 771(24)(A)(i) of the Act, imports from a subject country of merchandise corresponding to the domestic like product are considered negligible if they account for less than three percent (3%) of all such merchandise imported into the United States during the most recent twelve (12) months.[142] Subject imports not negligible, as they accounted for approximately more than ninety percent (90%) of total subject imports of OSBM, either by volume (91.2%) or by value (90.9%), in 2020.[143] Notably, in the challenging COVID-19 supply chain environment in 2020, India increased its market share in the United States while nearly every other foreign source of OSBM to the domestic market declined.[144] This demonstrates that the subject imports have taken an unshakable hold in the U.S. market.

D. **Subject Imports Cause Material Injury to the Domestic Industry (19 C.F.R. § 351.202(b)(10)).**

In determining whether a domestic industry experienced material injury because of unfairly traded imports, the Commission considers the following factors: the volume of the subject imports; the effect of the subject imports on prices in the United States for the domestic like product; and the impact of the subject imports on domestic producers of the domestic like product.[145]

As outlined below, an analysis of these factors shows that the domestic industry continues to suffer material injury due to the subject imports.

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[142]*See* 19 U.S.C. §1677(24)(A)(i). Imports of OSBM from India generally follow a seasonal schedule where the contracting period is in the summer/fall; the first imports from India arrive in fall/early-winter; and carry through Q1/Q2 of the following year. There are steady imports of Indian produced OSBM in Q4, with a high in Q1, and they begin ramping down in Q2. The lowest levels of imports of India-produced OSBM are in late Q2/Q3. An examination of India's imports in Q1 of each year, under normal circumstances, provides the best market analysis. *See* Golbitz Decl. at para. 20 (Exhibit I-29); Sheppard Decl. at para. 24 (Exhibit I-4); Cook Decl. at para. 24 (Exhibit I-5).
[143]*See* Exhibit I-30.
[144]*See* Exhibit I-30.
[145]19 U.S.C. § 1677(7)(B)(i).

1. The Volume of Subject Imports is Significant and Increasing

Section 771(7)(C)(i) of the 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."[146] In this case, both the volume of imports of Indian OSBM and the increase in that volume, in absolute terms and relative to U.S. production and consumption, are significant.

The volume and value of subject imports are significant. The volume of subject imports during the three-year period before the surge of dumped and subsidized subject imports was 4,371 (2014), 8,125 (2015), and 21,963 (2016) metric tons.[147] From 2017-2020, the subject imports' volume significantly increased to 53,335 (2017), 134,086 (2018), 306,621 (2019), and 389,017 (2020) metric tons.[148] The value of the subject imports meanwhile increased each year from approximately $3.8 million (2014), $7 million (2015), and $17 million (2016) to $38 million (2017), $89 million (2018), $192 million (2019) and $249 million (2020).[149] Subject imports now exceed the U.S. market's second largest foreign source of OSBM (Turkey) by more than ten times in volume and value.[150] Of greatest significance, imports of Indian OSBM surpassed U.S. production in 2019 (306,621 metric tons of Indian OSBM vs. 240,044 metric tons of U.S. OSBM) and 2020 (389,017 metric tons of Indian OSBM vs. 193,069 metric tons of U.S. OSBM).[151]

Indeed, 2019 was the "tipping point" where imports of Indian OSBM exceeded domestic OSBM production. Specifically, the United States imported 306,526 metric tons of the subject merchandise worth$192,512,000 in 2019, compared to 134,085 metric tons worth $89,131,000 in

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[146] 19 U.S.C. § 1677(7)(C)(i).
[147] *See* Agromeris Addendum #2 at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3).
[148] *Id.*
[149] *Id.*
[150] *See* Exhibit I-30.
[151] *See* Agromeris Addendum #2 at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3).

2018.[152] This means, while the volume of the subject imports more than doubled in 2019, their annual average unit value plummeted from $665 per metric ton in 2018 to $628 per metric ton in 2019.[153] Indeed, during the 2014 - 2019 period where the volume of subject imports soared, the annual average unit value of these subject imports dropped from a weighted average price of $881 per metric ton in 2014 to $628 per metric ton in 2019, decreasing at an annual average rate of over six percent (6.6%) over that period.[154] The volume of subject imports increased by twenty-one percent (21%) from 306,621 metric tons in 2019 to 389,017 metric tons in 2020,[155] while the U.S. production decreased by over nineteen percent (19.6%) from 240,044 metric tons in 2019 to 193,069 metric tons in 2020[156].

Notwithstanding the tumultuous COVID-19 pandemic in 2020, which led to the closure of major ports in India,[157] subject imports reached U.S. shores at a higher volume (389,017 metric tons) than ever before.[158] The average unit value of these imports, nevertheless, remained at the same low level (*i.e.*, $642 per metric ton), which was less than the average unit value in 2018.[159]

As discussed, the U.S. demand for OSBM steadily increased at a CAGR of 6.5% from 2017-2020.[160] The domestic industry held a steady U.S. market share of approximately eighty percent (80%) in OSBM from 2014-2017.[161] As a result of the surge of unfairly traded subject imports, domestic producers' market share dropped to fifty-nine percent (59%) in 2018, forty-

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[152]*Id.*
[153]*See* Agromeris Addendum #2 at *Indian Soybean Meal Exports to the U.S., MT and $ Value* (Exhibit I-3).
[154]*Id.*.
[155]*See* Agromeris Addendum #2 at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3).
[156]*See* Agromeris Final Report, March 26, 2021 Addendum (Exhibit I-3).
[157]*See Mercaris Reports* (Exhibit I-27).
[158]*See* Agromeris Addendum #2 at *Indian Soybean Meal Exports to the U.S., MT and $ Value* (Exhibit I-3).
[159]*Id.*
[160]*See* Golbitz Decl. at para. 4 (Exhibit I-29).
[161]*See* Agromeris Addendum #2 at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3).

one percent (41%) in 2019 and thirty-one percent (31%) in 2020.[162] Meanwhile, the domestic industry's loss was the Indian OSBM producers' gain as India's market share of the U.S. market increased annually from less than two percent (2%) in 2014 to more than sixty-two percent (62%) in 2020.[163]

2. The Price Effects of Subject Imports are Significant (19 U.S.C. § 1677(7)(C)(ii))

In evaluating the effect of subject imports on prices, the Commission must consider whether "there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States," and also whether the effect of imports "otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree."[164] In this instance, both statutory factors indicate a significant price effect due to the subject imports.

a. The Average Unit Value of Subject Imports Declined Significantly and Consistently Undersold the Domestic Products

India's exports of subject merchandise to the United States have consistently decreased in value-per-unit over recent years, noting only a slight increase in 2020 due to disruptions caused by the COVID-19 pandemic:

Indian Exports of Subject Merchandise to the U.S., MT and $ Value[165]

[162]*See* Agromeris Addendum #2 at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3).
[163]*See* Agromeris Addendum #2 at *Indian Soybean Meal Exports to the U.S., MT and $ Value* (Exhibit I-3).
[164]19 U.S.C. § 1677(7)(C)(ii).
[165]*See* Agromeris Addendum #2 at *Indian Soybean Meal Exports to the U.S., MT and $ Value* (Exhibit I-3).

Indian Soybean Meal Exports to the U.S., MT and $ Value								
	2014	2015	2016	2017	2018	2019	2020	CAGR
Metric Tons	4,371	8,125	21,963	53,338	134,085	306,526	389,017	111.3%
% Chge YOY		85.9%	170.3%	142.9%	151.4%	128.6%	26.9%	
Value	$ 3,853,000	$ 7,072,000	$ 17,737,000	$ 38,410,000	$ 89,131,000	$ 192,464,000	$ 249,631,000	100.4%
Value/MT	$ 881	$ 870	$ 808	$ 720	$ 665	$ 628	$ 642	-6.6%

Source: USDA FAS GATS

A comparison of the average unit price of the domestic like product with the average unit prices of the subject imports from India demonstrates that the subject imports have consistently and significantly undersold the domestic like product by wide margins in recent years.[166] As demonstrated above, exports of subject merchandise from India to the United States have grown at the CAGR of 111.3% since 2014, while revenue grew by 100.4% over the same period.[167] In 2019, the United States increased its imports of subject merchandise from India by 128.6 percent (128.6%) to 306,526 metric tons, whereas its value only increased by 116 percent (116%) to $192,464,000.[168] From 2014 to 2019, the average unit value significantly decreased from a weighted average price of $881 per metric ton in 2014, to $665 per metric ton in 2018 and $628 per metric ton in 2019, dropping by 6.6% per year.[169] In 2020, the Indian subject imports' average unit value was $642.[170]

The consistent increase in volume of subject imports and the significant decrease in average unit price, strongly correspond with the implementation of India's subsidy schemes and Indian OSBM companies' dumping practices.[171]

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[166]*See* Agromeris Addendum #2 at *Indian Soybean Meal Exports to the U.S., MT and $ Value* Exhibit I-3); Golbitz Decl. at para. 16 (Exhibit I-29);Sheppard Decl. at para. 19 (Exhibit I-4); Cook Decl. at para. 19 (Exhibit I-5).
[167]*See* Agromeris Addendum #2 at *Indian Soybean Meal Exports to the U.S., MT and $ Value.*
[168]*See id.*; *see also* Agromeris Addendum #2 at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3).
[169]*Id.*
[170]*Id.*
[171]*See* Agromeris Final Report at 39-46 (Exhibit I-3).

b. Subject Imports Have Caused Price Depression and Price Suppression in the U.S. OSBM Market by Consistently Underselling the Domestic Like Product

As a result of the flood of subject imports that consistently and significantly undersold the domestic like product, the price per unit of OSBM processed in the United States has significantly decreased over the same period, steadily decreasing by twenty-seven percent (27%) from a high of [ ] in 2014 to [ ] in 2020.[172]

U.S. prices of OSBM have been consistently falling in a period when demand has been increasing. The price-depressing impact of subject imports is even clearer when juxtaposed with the increase in the subject imports' market share, which skyrocketed from just over one and a half percent (1.5%) in 2014 to more than fifty-two percent (52.7%) in 2019 and to more than sixty-two percent (62.8%) in 2020.[173]

As demonstrated throughout this Petition, a relationship exists among the subject imports, the domestic like product, India's subsidy programs and Indian OSBM companies' dumping practices. Subject imports clearly undersold the domestic like product. These unfair trade practices enabled Indian exporters to offer OSBM at prices that are $100 to $150 per metric ton less expensive than OSBM produced in the United States.[174]

For these reasons, the undersold imports clearly had an adverse effect on the price of the domestic like product and, as further explained below, this underselling affected the domestic industry in a significant and adverse manner.

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[173]*See* Agromeris Final Report, March 26, 2021 Addendum (Exhibit I-3).

[174]*See* Agromeris Final Report at 27 (Exhibit I-3).

c. The Domestic Industry Has Lost Sales and Revenues to Unfairly Traded Subject Imports

The table attached hereto as Exhibit I-31 documents significant lost sales, revenue, and income of the Petitioners by reason of the subject imports for 2017, 2018, 2019 and 2020,[175] which totaled [ ] in lost sales and lost revenues during this period. Accordingly, and based on the evidence reasonably available to the Petitioners, the subject imports have negatively affected the domestic industry by, among other effects, major losses of sales and revenue.

3. The Subject Imports Significantly Impact the Domestic Industry (19 U.S.C. § 1677(7)(C)(iii))

In examining the impact of subject imports on the domestic industry, the Commission "evaluate{s} all relevant economic factors which have a bearing on the state of the industry in the United States."[176] These factors include, but are not limited to, the following:

- Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity;
- Factors affecting domestic prices;
- Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and
- Actual and potential negative effects on the existing development and production efforts of the domestic industry.

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[175] *See* 19 C.F.R. § 207.11(b)(2)(v); Lost Sales and Lost Revenue Allegations (**Exhibit I-31**); Agromeris Addendum #2 at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3). The Agromeris table reports that the domestic producers lost 426,388 metric tons as a result of the subject imports. At the 2020 price for U.S. produced OSBM, this results in U.S. $373,515,888 in lost sales for domestic producers. OSPA canvassed its members and provided lost sales data for the entire membership in Exhibit I-31. The exhibit also has individual lost sales data for several petitioners that could document these direct lost sales. Other petitioners maintained the sales; however, they did so at a significant discount. *See* Sheppard Decl. at para. 26 (Exhibit I-4); Cook Decl. at para. 26 (Exhibit I-5).
[176] 19 U.S.C. § 1677(7)(C)(iii).

The Commission must evaluate all factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[177] Based on information available to the Petitioners, the evidence demonstrates that the domestic industry suffers material injury as a result of the subject imports.

Estimates show that crush throughput and revenue for U.S. soybean crushers and U.S. organic soybeans grew steadily from 2014 to 2016 but decreased sharply when lower-cost and subsidized Indian OSBM flooded the U.S. market starting in late 2016.[178] The domestic industry's estimated crush capacity utilization dropped from seventy percent (70.6%) in 2017 to thirty-five percent (35%) in 2020.[179] That reduced volume of domestic OSBM lowered sales for domestic crushers by an estimated [ ] and nearly [ ].[180]

a. Reduced Levels of Capacity Utilization

The evidence reasonably available to the Petitioners demonstrates that the subject imports reduced the domestic industry's levels of capacity utilization. The domestic industry experienced a significant decrease in throughput and capacity utilization during 2017 and 2018 and those trendlines continued in 2019 and in 2020, with some domestic producers operating at less than twenty percent (20%) capacity.[181]

The domestic industry's decreased throughput coincides with the timing of India's unfair trade practices, the significant volume of subject imports, and the significant underselling by subject imports. Accordingly, and based on the evidence reasonably available to the Petitioners,

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[177] *Id.*
[178] *See* Agromeris Final Report at 29 (Exhibit I-3).
[179] *See* Agromeris Final Report at 5-6; Golbitz Decl. at para. 21 (Exhibit I-29).
[180] *See* Agromeris Final Report at 6; Agromeris Addendum #2 at *Impact of Imports on U.S. Sales of Organic Soybean Meal* (Exhibit I-3).
[181] *See* Agromeris Report at 28; *see also* Exhibit I-20.

the imported Indian OSBM negatively affected the domestic industry by, among other effects, decreasing the U.S. organic soybean crush utilization.[182]

b. Declining Sales

Imported Indian OSBM increased its market share at the direct expense of the domestic industry, causing a significant decline in the domestic industry's sales. The domestic industry experienced a significant decrease in sales, both by value and by volume, from 2014-2020:[183]

Impact of Imports on U.S. Sales of Organic Soybean Meal							
Source of Supply	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
U.S. Processed Meal, MT	231,165	271,332	380,587	403,714	324,259	240,044	193,069
Imported Indian Meal, MT	4,371	8,125	21,963	53,335	134,086	306,621	389,017
Other Imported Meal, MT	50,651	72,841	78,968	56,595	87,806	34,984	37,371
Total Supply, MT	286,187	352,298	481,518	513,644	546,150	581,650	619,457
U.S. Share of Supply	80.8%	77.0%	79.0%	78.6%	59.4%	41.3%	31.2%
Indian Share of Supply	1.5%	2.3%	4.6%	10.4%	24.6%	52.7%	62.8%
U.S. Lost Sales due to imports, MT	55,022	80,966	100,931	109,930	221,891	341,605	426,388
U.S. Lost Sales due to imports (short tons)	60,651	89,250	111,257	121,177	244,593	376,555	470,012
Source: USDA FAS GATS, USDA NASS, Agromeris estimates							

The domestic industry's consistent loss of sales to subject imports from 2017 to 2018, from 2018 to 2019, and from 2019 to 2020, again coincides with India's unfair trade practices.

[182] *See id.*
[183] *See* Agromeris Final Report at 28 (Exhibit I-3); *see also* Exhibit I-30.

c. Declining Profitability

Subject imports reduced the domestic industry's profitability levels. The low-cost subject imports has pressured the U.S. organic crushers to reduce their crush margin from $80 to $100 per ton, to just $40 to $50 per ton, just enough to cover the cost of operations.[184] For example, commensurate with the price decline, [

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This drop in crush capacity utilization and revenue causes significant concern to the entire domestic organic industry.[187] Lower outputs increase operational costs per ton, which in turn disincentivizes the expansion of operations and contracting with U.S. soybean producers to grow more certified organic soybeans and produce more certified OSBM.[188] This frustrates Congress' mandate in the OFPA to increase organic production in the United States, which should be increasing to meet the strong growth in consumer demand for organic products.

VI. THE DOMESTIC INDUSTRY HAS SUFFERED MILL CURTAILMENTS AND CLOSURES

The pricing pressure from the rapid increase in the unfairly traded subject imports has forced the domestic producers to idle or reduce production and lay off employees. Nearly all the

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[184]Agromeris Final Report at 31 (Exhibit I-3); Sheppard Decl. at para. 19 (Exhibit I-4); Cook Decl. at para. 19 (Exhibit I-5).
[185]*See* Injury Survey Response. (**Exhibit I-32**).
[186]*Id.*
[187]*See* Agromeris Final Report at 6 (Exhibit I-3).
[188]*Id.*

certified OSBM processors located on the west coast of the United States have ceased operations because the feed mills have switched to imported meal.[189] Certified organic soybean meal processors with inland operations in the United States face relatively less pricing pressure from subject imports than the coastal processors due to the freight costs from the east and west coasts; still, they have been experiencing a period of idling down, under-utilized capacity, closures, consolidations, and/or shifting production processes (e.g., moving to sunflower or other products). For example, [

].[190] Domestic processors have moved to non-organic production (such as non-GMOs) in order to maintain some level of operations and to maintain employment.[191] This further frustrates the express mandate of Congress to increase organic production in the United States.

A. **Subject Imports Threaten Material Injury (19 U.S.C. § 1677(7)(F)(i))**

In evaluating the threat of material injury by subject imports, the Act directs the Commission to consider: (1) an increase in foreign producer's productive capacity or unused capacity; (2) a significant rate of increase of the volume or market penetration of the subject imports; and (3) the likelihood that the subject imports are entering at prices that will significantly depress or suppress domestic prices.[192] Each dynamic has been demonstrated above and, based on the evidence reasonably available to the Petitioners, those dynamics will continue absent the imposition of appropriate countervailing duties.

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[189] *Id.* at 30.
[190] *See* Injury Survey Response (Exhibit I-32).
[191] *Id.*
[192] *See* 19 U.S.C. § 1677(7)(F)(i).

Over recent years, India has quickly grown into the number one producer of organic soybeans in the world today, relative to planted area.[193] Based on historic data reported by the Research Institute of Organic Agriculture (FiBL) and India's APEDA, the number of organic farmers in India has been growing at more than thirteen percent (13.9%) per year and is expected to increase due to higher returns for producers and a number of government subsidies.[194] During the same period, India has significantly increased its land committed to growing organic soybeans.[195] Indeed, given the number of organic farmers in India and their need to produce higher value crops, as well as an established production, processing, and export value chain, the trend of rising subject imports, absent a major crop failure or domestic demand for soybean meal that surpasses production, should continue. Likewise, because the timing and increasing levels of unfair trade practices, such as credits available to exporters appear to influence the volume of the imports, the threat to the domestic industry remains as long as these practices – or their replacements – remain in effect.

To that end, with the government of India's continued efforts to raise farmer income, increase organic soybean production, and add value through processing in India, that country will continue expanding its organic production and supporting value-added exports with creative initiatives developed through the Foreign Trade Policy of India schemes and other programs. For example, India recently approved a new agriculture export policy with the stated objective of doubling India's agricultural exports to $60 billion by 2022.[196] Other objectives include doubling farmer income, and further support for the export of organic products.[197] To the extent those

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[193] *See* Agromeris Final Report at 34 (Exhibit I-3).
[194] *Id.*
[195] *Id.*
[196] *See* The Times of India, Article: "Cabinet approves policy to double agri export by 2022" (Dec. 6, 2018) (**Exhibit I-33**)
[197] *Id.*

policies further the unfair trade practices fostered by the GOI's subsidy schemes (and its predecessors as well as successors), and the dumping practices of Indian OSBM companies, antidumping and countervailing duties are necessary to prevent further harm to the domestic industry.

VII. CONCLUSION

The criteria for commencing an investigation are clearly present here. High and rising levels of unfairly traded subject imports have left the domestic industry in an extremely vulnerable condition. Subject imports steadily increased over the last several years, and the high volume of subject imports have demonstrably depressed and suppressed domestic prices. For the reasons stated herein, the Commission and the Department should determine that the subject imports have been unfairly traded, thereby causing material injury to the domestic industry. Accordingly, the Petitioners request that the Department and the Commission promptly grant the relief requested herein, including but not limited to the imposition of appropriate antidumping and countervailing duties upon subject imports.

Respectfully submitted,

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Dated: March 31, 2021

Exhibit No.	Exhibit Title	
I-1	Coalition Members Identification and Contact Information	Public
I-2	Domestic Producers of Organic Soybean Meal	Public
I-3	Impact of Imported Organic Soybean Meal on U.S. Market (Agromeris Report & Supplements)	BPI
I-4	Declaration of John Sheppard	BPI
I-5	Declaration of Annette Cook	BPI
I-6	Domestic Industry Support Survey Response	BPI
I-7	Laboratory Analysis for Indian and Domestic Organic Soybean Meal	BPI
I-8	Imported Indian Organic Soybean Meal Certificate of Origin	BPI
I-9	Congressional Research Service, Organic Agriculture in the United States: Program and Policy Issues, No. 7-5700, Johnson, R., November 25, 2008	Public
I-10	USDA Agricultural Marketing Service National Organic Program Handbook	Public
I-11	List of Accredited Certification Bodies under NPOP	Public
I-12	*Agricultural and Processed Food Products Export Development Authority Trade Notice, Issuance of Transaction Certificates for Export of Organic Products*, dated November 21, 2014	Public
I-13	*USDA AMS NOP U.S.-India Recognition Agreement Transition Update for USDA-Accredited Certifiers*, dated January 14, 2021.	Public
I-14	U.S. Soy Info: International Buyers' Guide, Chapter 2: Quality Standards for U.S. Soybeans and Soy Products	Public
I-15	*Bo Zhang et al., Seed quality attributes of food-grade soybean from the U.S. and Asia* (2010), Euphytica 173: 387	Public
I-16	USDA AMS National Organic Grain and Feed Stuffs Report, dated March 10, 2021	Public
I-17	National Organic Standards Board Materials Subcommittee, Proposal: Prevention Strategy Guidance for Excluded Methods, dated August 11, 2015	Public
I-18-1	Sara Willis, *The Use of Soybean Meal and Full Fat Soybean Meal by the Animal Feed Industry*	Public

I-18-2	M.A. Ibanez, et al., *Chemical composition, protein quality and nutritive value of commercial soybean meals produced from beans from different countries: A meta-analytical study*, Animal Feed Science and Technology 267 (2020) 14531	Public
I-19	Ming-Hsun Chen, *et al.*, *Techno-Economic Analysis of Extruding-Expelling of Soybeans to Produce Oil and Meal* (2019), Agricultural and Biosystems Engineering Publications.	Public
I-20	C. Dunkley, et al., Amino Acid Content in Organic Soybean Meal for the Formulation of Poultry Feed, University of Georgia Extension, Circular 1140, June 2018	Public
I-21	HTSUS Chapters 12 & 23	Public
I-22	2020 GATS Data	Public
I-23	Known Importers of OSBM from India	Public
I-24	Foreign Manufacturers, Producers, and Exporters of Indian Organic Soybean Meal Likely Benefitting from Countervailable Subsidies	Public
I-25	Growing Organic Soybeans on Conservation Reserve Program Land, Iowa State University Extension Agriculture Bulletin PM 1881, August 2003	Public
I-26	Ming Hsun-Cheng, et al., Economic Feasibility Analysis of Soybean Oil Production by Hexane Extraction, Industrial Crops and Products 108 at 775-85 (2017)	Public
I-27	*Mercaris Market Update Report*, U.S. Organic Sector, various 2020	Public
I-28	Organic Industry Survey 2020, Organic Trade Association (OTA)	Public
I-29	Declaration of Peter Golbitz	BPI
I-30	Volume and Value of Subject Imports 2017-2020	Public
I-31	Lost Sales and Lost Revenue Allegations	BPI
I-32	Injury Survey Reports	BPI
I-33	*The Times of India*, Article: "Cabinet approves policy to double agri export by 2022" (Dec. 6, 2018)	Public