



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

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CVD/128

OTTAWA, January 20, 2012

## STATEMENT OF REASONS

**Concerning the initiation of investigations into the dumping and subsidizing of**

**CERTAIN POTASSIUM SILICATE SOLIDS ORIGINATING IN OR EXPORTED  
FROM THE ISLAMIC REPUBLIC OF PAKISTAN**

## DECISION

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the President of the Canada Border Services Agency initiated investigations on January 6, 2012, respecting the alleged injurious dumping and subsidizing of potassium silicate (also known as silicic acid, potassium salt; potassium water glass; potash water glass; potassium silicate glass), of all grades and ratios in a soluble solid including chunks, flakes or powder forms, originating in or exported from the Islamic Republic of Pakistan.

Cet énoncé des motifs est également disponible en français.  
This Statement of Reasons is also available in French.

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## **SUMMARY**

[1] On November 16, 2011, the Canada Border Services Agency (CBSA) received a written complaint from National Silicates Partnership, a private partnership between PQ Canada Company and NSL Potters Canada Company, of Etobicoke, Ontario (the Complainant), alleging that imports of certain potassium silicate solids originating in or exported from the Islamic Republic of Pakistan (Pakistan) are being dumped and subsidized and causing injury and retardation and are threatening to cause injury to the Canadian industry.

[2] On December 7, 2011, pursuant to subsection 32(1) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainant that the complaint was properly documented. The CBSA also notified the government of Pakistan (GOP) that a properly documented complaint had been received and provided the GOP with the non-confidential version of the subsidy portion of the complaint, which excluded sections dealing with normal value, export price and margin of dumping.

[3] The Complainant provided evidence to support the allegations that certain potassium silicate solids from Pakistan have been dumped and subsidized. The evidence also discloses a reasonable indication that the dumping and subsidizing have caused injury and retardation and are threatening to cause injury to the Canadian industry producing these goods.

[4] On January 6, 2012, pursuant to subsection 31(1) of SIMA, the President of the CBSA (President) initiated investigations respecting the dumping and subsidizing of certain potassium silicate solids from Pakistan.

## **INTERESTED PARTIES**

### **Complainant**

[5] The Complainant accounts for a major proportion of the production of like goods in Canada. The Complainant's goods are produced at manufacturing facilities located in Etobicoke, Ontario.

[6] The name and address of the Complainant are:

National Silicates Partnership  
429 Kipling Avenue  
Etobicoke, ON  
M8Z 5C7

[7] There are no other known manufacturers of subject goods in Canada.

## **Exporters**

[8] The CBSA identified three potential exporters and producers of the subject goods from its own research, information provided by the Complainant and CBSA import documentation over the period of January 1, 2010 to September 30, 2011.

## **Importers**

[9] The CBSA identified four potential importers of the subject goods from information provided by the Complainant and CBSA import documentation over the period of January 1, 2010 to September 30, 2011.

## **Government of Pakistan**

[10] For the purpose of these investigations, the GOP refers to all levels of government, i.e. federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

## **PRODUCT INFORMATION**

### **Product Definition**

[11] For the purpose of these investigations, the subject goods are defined as:

Potassium silicate (also known as silicic acid, potassium salt; potassium water glass; potash water glass; potassium silicate glass), of all grades and ratios in a soluble solid including chunks, flakes or powder forms, originating in or exported from the Islamic Republic of Pakistan

### **Additional Product Information**

[12] Potassium silicate solid is also referred to as silicic acid, potassium salt; potassium water glass; potash water glass; potassium silicate glass, potassium silicate chunks and/or potassium silicate flake. The subject goods include all grades of potassium silicate solid such as powder, granules, pellets, tablets, flakes, chunks and/or other solid forms. The chemical symbol for potassium silicate is  $K_2O_3Si$ . Potassium silicate solid is alkaline and commonly manufactured at a ratio of 1.5 to 3.0 relating to silicate ( $SiO_3$ ) to potassium oxide ( $K_2O$ ).

[13] The most common use of potassium silicate solid is as an ingredient in the manufacture of a derivative product, being potassium silicate liquid. Potassium silicate solid is dissolved to form potassium silicate liquid, known commonly in the industry as potassium silicate. Potassium silicate flake or glass/chunks and potassium silicate solid ground/milled powder may be dissolved in water or water and steam to transform it into potassium silicate liquid.<sup>1</sup> The above production definition does not include the derivative product, potassium silicate in liquid form.

[14] The most common end use in Canada of potassium silicate liquid (a primary derivative product) is as an ingredient in drilling fluid or mud slurry thinner in the oil & gas industry (a secondary derivative product). Drilling fluids are pushed into the drill hole to attract and bring to the surface the cuttings created in the drilling process. The silica in the drilling fluid adheres to the drilled surfaces in order to stabilize swelling or heaving clays and seals micro-fractures in the shale indentations to maintain the stability of the drill hole until the oil and tubular gas casing is inserted into the drilled hole. After the drill hole is drilled, oil country tubular goods (“OCTG”) (which include drill pipe, casings and tubing) are used to prevent the bored hole from collapsing.

[15] Potassium silicate solid in powder form may also be used to manufacture drilling fluid (or as an additive to drilling fluid) on-site at an oil or gas well. On-site manufacturing takes place in mixers/mix tanks.

[16] Potassium silicate solid is also used in limited agricultural applications as a fertilizer. It helps plants to resist toxicity from phosphorous manganese, aluminum and iron and increases tolerance to salt. Further it aids in resistance to drought by reducing water loss and may in certain situations improve growth and yield. In Canada, the use of potassium silicate solid for agricultural applications is approved for limited applications. Where potassium silicate solid is used in agricultural applications, it is often in a ground powder form.<sup>2</sup>

[17] Potassium silicate solid is also used as an ingredient in refractory brick and refractory mortar. Refractory bricks and refractory mortar are used to line furnaces, ovens, reactor vessels where the furnace, oven, and reactor vessel must withstand very high temperatures. Potassium silicate solid is used because it improves the ability of the bricks and mortar to withstand certain types of chemicals (e.g., corrosive acids).<sup>3</sup>

[18] Potassium silicate solid, to a lesser extent, is also used as a binder in welding rods.<sup>4</sup>

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<sup>1</sup> Dumping Exhibit 2 (NC) - Complaint - Tab 11 of the complaint has additional information about potassium silicate liquid.

<sup>2</sup> Dumping Exhibit 2 (NC) - Complaint - Tab 13 of the complaint has additional information about the use of potassium silicate in agricultural applications.

<sup>3</sup> Dumping Exhibit 2 (NC) - Complaint - Tab 16 of the complaint has additional information about bonding and coating applications.

<sup>4</sup> Dumping Exhibit 2 (NC) - Complaint - Tab 15 of the complaint has additional information about these secondary derivative products.

## **Production Process**

[19] The production process of the potassium silicate solid generally involves three stages: batch preparation, melting in a furnace and hardening/forming.

[20] The batch preparation involves mixing potassium carbonate (a further refined product of potash) and sand/silica as per the desired ratio in the end product, potassium silicate. Fusing of the potassium carbonate with the sand/silica occurs in a high temperature furnace to form a molten potassium silicate. Hardening of the fused potassium silicate takes place when it leaves the furnace and cools to form potassium silicate solid. The potassium silicate solid resembles chunks, flakes, pieces, and granular of clear to cloudy glass.

[21] The potassium silicate solid may be further crushed into a fine anhydrous (i.e. with no water) powder by processing in a powder mill. A more specialized form of potassium silicate solid is hydrous potassium silicate powder, which requires additional manufacturing process steps. The fine potassium silicate solid powder is a highly soluble version of the goods.

## **Classification of Imports**

[22] The subject goods are usually classified under the following Harmonized System (HS) classification code:

2839.90.10.00

[23] This HS code is for convenience of reference only. The HS code listed may include non-subject goods. Also, subject goods may fall under HS codes that are not listed. Refer to the product definition for authoritative details regarding the subject goods.

## **LIKE GOODS**

[24] Subsection 2(1) of SIMA defines “like goods”, in relation to any other goods, as goods that are identical in all respects to the other goods, or in the absence of identical goods, goods for which the uses and other characteristics closely resemble those of the other goods.

[25] Certain potassium silicate solids produced by the domestic industry compete directly with and have the same end uses as the subject goods imported from Pakistan. Subject and like goods are made from the same input material and produced in the same general manner. Although certain potassium silicate solids have varying physical characteristics (flake, chunks, pieces, powder form, etc.), they are fully interchangeable. When sold, certain potassium silicate solids are sold via the same channels of distribution, whether subject or like goods, to the same types of customers and in many cases, to the same customers.

[26] After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that subject and like goods constitute only one class of goods.

## CANADIAN INDUSTRY

### **Standing**

[27] As previously stated, the Complainant accounts for the major proportion of known domestic production of like goods.

[28] Subsection 31(2) of SIMA requires that the following conditions be met in order to initiate an investigation:

- a) the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- b) the production of the domestic producers who support the complaint represents 25% or more of the total production of like goods by the domestic industry.

[29] Based on an analysis of information provided in the complaint, as well as other information gathered by the CBSA, the CBSA is satisfied that the standing requirements of subsection 31(2) of SIMA have been met by the Complainant.

## CANADIAN MARKET

[30] The Complainant states that a large proportion of the demand for potassium silicate solid in Canada, whether imported or domestically produced, is for use as an ingredient in the derivative product, potassium silicate liquid.

[31] The Complainant identifies the derivative product markets for potassium silicate solid in Canada as an ingredient used in the manufacture of drilling fluid; an ingredient used in an agricultural supplement; an ingredient in refractory bricks and refractory mortar; and as an ingredient in welding stick electrodes.<sup>5</sup>

[32] The Complainant submits that the majority of the domestic production and imports of potassium silicate solid are used as an ingredient in the manufacture of the derivative product, potassium silicate liquid, which is subsequently used to make drilling fluids (also known as mud or slurry) to be used in the oil and gas drilling industry.<sup>6</sup> The most common purchasers of this derivative product are drilling fluid service companies typically retained by oil and gas exploration companies.<sup>7</sup>

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<sup>5</sup> Dumping Exhibit 2 (NC) - Complaint – paragraph 72.

<sup>6</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 74, 75 and 77.

<sup>7</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 93 and 94.

[33] Prior to the fourth quarter of 2010, the Complainant states that there has been no commercially viable Canadian production of potassium silicate solid, and that to their knowledge, no other Canadian company has plans to commence production of potassium silicate solid in the near or long term.<sup>8</sup>

[34] The Complainant estimated the import portion of the Canadian market using the best information available to them from Statistics Canada and from publicly available import data.

[35] The CBSA conducted its own analysis of imports of goods based on actual import data from CBSA documentation.

[36] A review of CBSA import data demonstrated similar trends with respect to subject good imports to those provided by the Complainant.

[37] Detailed information regarding the volume of subject good imports and domestic production cannot be divulged for confidentiality reasons. The CBSA has, however, prepared the following table to show the estimated import share of potassium silicate solid in Canada.

**CBSA Estimates of Import Share**  
**(By Volume)**

<b>Country</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011 (Jan-Sept)</b>
<b>Pakistan</b>	38%	32%	56%	61%
<b>USA</b>	62%	67%	43%	39%
<b>Other Country Imports</b>	0%	1%	1%	0%
<b>Total Imports</b>	100%	100%	100%	100%

**EVIDENCE OF DUMPING**

[38] The Complainant alleged that subject goods from Pakistan have been injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds the export price to importers in Canada.

[39] Normal value is generally based on the domestic selling price of like goods in the country of export where competitive market conditions exist, or on the full cost of the goods plus a reasonable amount for profits.

[40] The export price of goods sold to importers in Canada is the lesser of the exporter's selling price and the importer's purchase price, less all costs, charges, and expenses resulting from the exportation of the goods.

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<sup>8</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 66 and 68.

[41] The Complainant's allegations of dumping are based on the comparison of estimated normal values of the allegedly dumped goods with estimated export prices based on statistical data for shipments of subject goods to Canada from January 1, 2010, to September 30, 2011.

[42] The CBSA's analysis of the alleged dumping is based on a comparison of the CBSA's estimated normal values, with selling prices reported in CBSA import documents of subject goods sold to importers in Canada.

### **Estimated Normal Value**

[43] The Complainant estimated normal values using a constructed cost approach to reflect the methodology defined under section 19 of SIMA. The Complainant started with their own cost of production and then made downward adjustments to take into account cost differences with respect to raw material input, gas and direct labour. This estimated full cost was then marked-up by the Complainant, with an estimated amount for general, selling and administrative costs as well as profits.<sup>9</sup>

[44] The CBSA found the Complainant's estimates for direct production costs to be reasonable and representative. The CBSA, however, used publicly available information on three chemical manufacturers in Pakistan, to estimate the amount of general selling and administrative expenses as well as an amount for profits. Combining these costs, the CBSA arrived at a reasonable estimate for normal value.

### **Estimated Export Price**

[45] The export price of imported goods is generally determined in accordance with subparagraph 24(a)(i) to (iii) of SIMA as being an amount equal to the lesser of the exporter's selling price for the goods and the price at which the importer has purchased or agreed to purchase the goods adjusting by deducting all costs, charges, and expenses, duties and taxes resulting from the exportation of the goods.

[46] The complainant used a deductive methodology to estimate export prices, using Statistics Canada import data as well as another data source. The Complainant also provided documentation and explanations to support these estimates.

[47] The CBSA used actual import data from its internal information system and documentation to arrive at the estimated export prices of the allegedly dumped goods. Export prices were estimated for every subject good transaction during the period of January 1, 2010 to September 30, 2011.

[48] Given the greater accuracy of the CBSA's estimate of export prices using actual importation data, the CBSA's margin of dumping estimate incorporated export price estimates using this data rather than those provided in the complaint.

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<sup>9</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 133-146.

## **Estimated Margin of Dumping**

[49] The CBSA estimated a margin of dumping by comparing its estimates of normal values (based on a cost-plus methodology); with the export prices obtained from CBSA import documents.

[50] Based on this analysis, it is estimated that the subject goods from Pakistan were dumped. The overall weighted average margin of dumping is estimated to be 35.6%, expressed as a percentage of export prices.

## **MARGIN OF DUMPING AND VOLUME OF DUMPED GOODS**

[51] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied that the margin of dumping of the goods of a country is insignificant or the actual and potential volume of dumped goods of a country is negligible, the President must terminate the investigation with respect to the subject goods of that country.

[52] Pursuant to subsection 2 (1) of SIMA, a margin of dumping of less than 2% of the export price is defined as insignificant and a volume of dumped goods is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the dumped goods.

[53] On the basis of the estimated margin of dumping and the import data for the period of January 1, 2010 to September 30, 2011, summarized in the table below, the estimated margin of dumping is not insignificant and the estimated volume of dumped goods is not negligible.

### **Estimated Margin of Dumping and Imports of Subject Goods** **January 1, 2010 to September 30, 2011**

<b>Country</b>	<b>Estimated Share of Total Imports by Volume</b>	<b>Estimated Dumped Goods as % of Total Imports by Volume</b>	<b>Estimated Margin of Dumping as % of Export Price</b>
<b>Pakistan</b>	57.2 %	57.2%	35.6%
<b>USA</b>	42.3%	N/A	N/A
<b>Other Countries</b>	0.5%	N/A	N/A
<b>Total Imports (All Countries)</b>	100%	N/A	N/A

## EVIDENCE OF SUBSIDIZING

[54] In accordance with section 2 of SIMA, a subsidy exists where there is a financial contribution by a government of a country other than Canada that confers a benefit on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods. A subsidy also exists in respect of any form of income or price support within the meaning of Article XVI of the *General Agreement on Tariffs and Trade*, 1994, being part of Annex 1A to the *World Trade Organization (WTO) Agreement*, that confers a benefit.

[55] Pursuant to subsection 2(1.6) of SIMA, a financial contribution exists where:

- a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
- b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;
- c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or
- d) the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) above where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

[56] Where a subsidy is found to exist, it may be subject to countervailing measures if it is specific. A subsidy is considered to be specific when it is limited, in law, to a particular enterprise or is a prohibited subsidy. An “enterprise” is defined under SIMA as also including a “group of enterprises, an industry and a group of industries”. Any subsidy which is contingent, in whole or in part, on export performance or on the use of goods that are produced or that originate in the country of export is considered to be a prohibited subsidy and is, therefore, automatically considered to be specific for the purposes of a subsidy investigation.

[57] A state-owned enterprise (SOE) may be considered to constitute “government” for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with, governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or some combination thereof.

[58] In accordance with subsection 2(7.3) of SIMA, notwithstanding that a subsidy is not specific in law, a subsidy may also be considered specific in fact, having regard as to whether:

- a) there is exclusive use of the subsidy by a limited number of enterprises;
- b) there is predominant use of the subsidy by a particular enterprise;
- c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and
- d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

[59] For purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an “actionable subsidy”, meaning that it is countervailable.

[60] The Complainant alleged that the subject goods originating in Pakistan have benefited from actionable subsidies provided by various levels of the GOP, which may include the governments of the respective provinces in which the exporters are located, and from the governments of the respective municipalities in which the exporters are located.

[61] In support of their allegations, the Complainant provided information such as documents from the GOP’s Ministry of Commerce - Trade Development Authority of Pakistan, the Ministry of Industries & Production, and various other government departments. Further, they provided publications from the WTO as well as the United States Department of Commerce regarding Pakistan.

### **Programs Being Investigated**

[62] In reviewing the information provided by the Complainant and obtained by the CBSA through its own research, the CBSA has developed the following categories of programs and incentives that may be provided to manufacturers of the subject goods in Pakistan:

- I. Grants Provided for Export Performance;
- II. Preferential Loans;
- III. Incentives for Small and Medium Enterprises;
- IV. Export Processing Zones;
- V. Preferential Income Tax Rates;
- VI. Excessive Remission of Duties and Taxes;
- VII. Purchases from State-Owned Enterprises.

[63] In total, 26 alleged subsidy programs will be investigated by the CBSA. A full listing of all programs to be investigated by the CBSA may be found in **Appendix 1**. As explained in more detail therein, there is sufficient reason to believe that these programs may constitute actionable subsidies provided by the GOP and that the exporters and producers of the subject goods benefit from these programs.

[64] In the case of programs where an enterprise's eligibility or degree of benefit is contingent upon export performance or the use of goods that are produced or originate in the country of export, such programs will be considered prohibited subsidies under section 2 SIMA.

[65] For those programs where incentives are provided to enterprises operating in Export Processing Zones or other designated areas, the CBSA considers that these may constitute actionable subsidies for the reason that eligibility is limited to enterprises operating in such regions.

[66] As well, the CBSA is satisfied that there is sufficient evidence indicating that the exporters of subject goods may receive subsidies in the form of grants, relief from duties or taxes, and provision of goods and services, which provide a benefit and that are not generally granted to all companies in Pakistan.

[67] The CBSA will investigate whether such programs constitute actionable subsidies.

## **Conclusion**

[68] Sufficient evidence is available to support the allegation that the subsidy programs outlined in **Appendix 1** are available to exporters and producers of the subject goods in Pakistan. In investigating these programs, the CBSA has requested information from the GOP, exporters and producers to determine whether these programs are "actionable subsidies" and, therefore, countervailable under SIMA.

## **Estimated Amount of Subsidy**

[69] The Complainant alleged that these programs significantly lower the cost of production of the subject goods. The Complainant estimated the amount of subsidy by comparing the export price of the subject goods, as determined using trade data obtained from Statistics Canada and trade data from other North American trade publications, with the total cost of production, as determined using cost estimates from like goods production in the United States.

[70] For purposes of the initiation, the CBSA estimated the amount of subsidy conferred to producers of the subject goods by comparing their cost of production, as estimated by the CBSA, with the selling prices reported in CBSA import documents of subject goods sold to importers in Canada.

[71] The CBSA's analysis of the information indicates that goods imported into Canada during the period of January 1, 2010 to September 31, 2011, were subsidized and that the estimated amount of subsidy is 4.1% of the export price of the subject goods.

## AMOUNT OF SUBSIDY AND VOLUME OF SUBSIDIZED GOODS

[72] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied that the amount of subsidy on the goods of a country is insignificant or the actual and potential volume of subsidized goods of a country is negligible, the President shall cause the investigation to be terminated with respect to the subject goods of that country. Under subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the value of the goods is considered insignificant and a volume of subsidized goods of less than 3% of total imports is considered negligible, the same threshold as for the volume of dumped goods.

[73] However, according to section 41.2 of SIMA, the President is required to take into account Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures* when conducting a subsidy investigation. This provision stipulates that a countervailing duty investigation involving a developing country should be terminated as soon as the authorities determine that the overall level of subsidies granted upon the product in question does not exceed 2% of its value calculated on a per unit basis or the volume of subsidized imports represents less than 4% of the total imports of the like product in the importing Member.

[74] SIMA does not define or provide any guidance regarding the determination of a “developing country” for purposes of Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures*. As an administrative alternative, the CBSA refers to the *Development Assistance Committee List of Official Development Assistance Recipients* (DAC List of ODA Recipients) for guidance.<sup>10</sup> As Pakistan is included in the listing, the CBSA will extend developing country status to Pakistan for purposes of this investigation.

[75] The CBSA used actual import data for all countries for the period of January 1, 2010 to September 31, 2011. On the basis of this information, the amount of subsidy and the volume of subsidized goods as a percentage of the volume of total imports is estimated as follows:

### Estimated Amount of Subsidy and Imports of Subject Goods January 1, 2010 to September 31, 2011

Country	Estimated Share of Total Imports by Volume	Estimated Subsidized Goods as % of Country Total	Estimated Subsidized Goods as % of Total Imports	Estimated Amount of Subsidy as % of Export Price
Pakistan	57.2%	75.4%	43.1%	4.1%

[76] The volume of subsidized goods, estimated to be 43.1% of total imports from all countries, is greater than the threshold of 4% and is, therefore, not considered negligible. The amount of subsidy, estimated to be 4.1% of the export price, is greater than the threshold of 2% and is, therefore, not considered insignificant.

<sup>10</sup> The Organization for Economic Co-operation and Development, DAC List of ODA Recipients as at August 2009. The document is available at <http://www.oecd.org/dataoecd/32/40/43540882.pdf>.

## **EVIDENCE OF INJURY OR RETARDATION OR THREAT OF INJURY**

[77] SIMA refers to material injury or material retardation or threat of injury caused to the domestic producers of like goods in Canada. The CBSA has accepted that the potassium silicate solids produced by the Complainant are like goods to those imported from Pakistan. The CBSA's analysis primarily included information on the Complainant's domestic sales, with a focus on the impact of the allegedly dumped and subsidized goods on their production and sale of like goods in Canada.

[78] The Complainant alleges that the goods have been dumped and subsidized, and that such dumping and subsidizing have caused injury and retardation, and is threatening to cause injury to the potassium silicate solid industry in Canada. In support of their allegations, the Complainant provided evidence of underutilization of production capacity, lost sales, lost market share, price depression/suppression, reduced profits, reduced employment and loss of benefit from capital improvement pertaining to both potassium silicate solid and the derivative, potassium silicate liquid.

### **Retardation**

[79] The term "retardation" is defined in SIMA to mean "material retardation of the establishment of a domestic industry".<sup>11</sup> The SIMA Regulations address retardation under 37.1(1).<sup>12</sup> The Complainant alleges that the establishment of the domestic potassium silicate solid industry is and will continue to be materially retarded by the dumped and subsidized potassium silicate solids originating in or exported from Pakistan.

[80] With respect to retardation in this case, the Complainant made several trial runs on equipment that was not yet customized to the production of potassium silicate solid. Following the trial runs, the corporate decision was then made to establish commercially viable production in Canada. The decision resulted in the installation of equipment and customization of the production line to be used for the production of potassium silicate solid in Canada. The Complainant has made a genuine and substantial commitment of resources for the establishment of production of a commercially viable domestic good not previously produced in Canada.

[81] An examination by the CBSA regarding retardation indicates that this is a rare type of injury whereby retardation may arise where there has been some production of the like product, but production has not yet reached a sufficient level to allow consideration of injury or threat of injury. Retardation may also arise in cases where production of the like good has not yet started.

[82] Furthermore, in the review of retardation in historical cases by the Canadian International Trade Tribunal (formerly known as the Anti-dumping Tribunal) (Tribunal), the complainant had to prove that it made a substantial commitment to establish domestic production of the goods, the venture is commercially feasible and there is firm assurance that the plan will be implemented in the near future.

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<sup>11</sup> *Special Import Measures Act* - R.S.C., 1985, c. S-15 (Section 2) 2(1).

<sup>12</sup> Injury, Retardation or Threat of Injury Factors.

[83] In respect of these factors and the fact that the Complainant is essentially in a start-up phase in its efforts to establish a commercially viable Canadian industry, injury in the form of retardation is well supported.

### **Underutilization of Production Capacity**

[84] The Complainant has stated that they have the capacity to supply the entire Canadian market for potassium silicate solid. That capacity remains for the most part unused as a result of alleged dumped and subsidized subject goods.<sup>13</sup>

[85] They provide further evidence that shows their capacity utilization rate for potassium silicate liquid declining over the past four years as a result of alleged dumped and subsidized subject goods.<sup>14</sup>

### **Lost Sales**

[86] The Complainant provided evidence which illustrates lost sales on a customer-specific basis for both potassium silicate solid and the derivative liquid product. This evidence illustrates declining sales to major accounts. As substantiation, the Complainant submitted internal call reports that show a negative response from customers to sales efforts by NSP.<sup>15</sup>

### **Loss of Market Share**

[87] The Complainant alleged that market share for subject goods increased during the period of January 1, 2010 to September 31, 2011. Information collected by the CBSA confirms this trend in subject good imports. The Complainant stated that the continued presence of allegedly dumped and subsidized subject goods will prevent them from obtaining market share of potassium silicate solid in the future.

[88] Furthermore, during the period of increasing imports from Pakistan, the Complainant alleged that their market share for potassium silicate liquid, the primary derivative product of potassium silicate solid, steadily declined. The Complainant provided information that suggests their market share of potassium silicate liquid in terms of volume consistently decreased between January 1, 2010 and September 30, 2011.<sup>16</sup>

### **Price Suppression and Depression**

[89] The Complainant alleges that the presence of dumped and subsidized subject goods will have a suppressing effect on prices for potassium silicate solid in Canada.

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<sup>13</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 401-407.

<sup>14</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 401-407.

<sup>15</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 387-392.

<sup>16</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 360-366.

[90] Furthermore, the Complainant provided evidence of price suppression of potassium silicate liquid, the primary derivative product of potassium silicate solid, in the form of e-mail correspondences with customers who resisted a proposed price increase designed to recover increasing production costs. The evidence suggests the resistance is due to competitively priced potassium silicate liquid produced from the alleged dumped and subsidized imports of subject goods.<sup>17</sup>

[91] In addition, evidence was provided by the Complainant which shows their attempts to discount prices of potassium silicate liquid in order to maintain customer relationships while competing with goods produced from the alleged dumped and subsidized imports of subject goods from Pakistan.<sup>18</sup>

### **Reduced Profits**

[92] The Complainant alleges that the increasing imports of dumped and subsidized subject goods have had a negative impact on their profitability.<sup>19</sup>

### **Reduced Employment**

[93] The Complainant stated that as a result of decreased production capacity utilization caused by the alleged dumped and subsidized subject goods, employment within their production facilities will be reduced.<sup>20</sup>

### **Loss of Benefit from Capital Improvement**

[94] The Complainant provided evidence that shows significant capital expenditures made to their Etobicoke facility. The Complainant stated that the continued importation of alleged dumped and subsidized subject goods will not allow them to make sales to recover the costs incurred of the capital improvements to establish commercially viable production in Canada.<sup>21</sup>

### **CAUSAL LINK DUMPING/SUBSIDIZING AND INJURY OR RETARDATION OR THREAT OF INJURY**

[95] The CBSA finds that the Complainant provided sufficient evidence that there is a reasonable indication that it has suffered injury and retardation and threat of injury due to the alleged dumping and subsidizing of subject goods imported into Canada. There is a reasonable indication that the injury the Complainant has suffered, in terms of underutilization of capacity, lost sales, loss of market share, price suppression, price depression, reduced profitability, potential loss of employment, and loss of benefit from capital improvement is related directly to the increase in the volume of subject imports and the price advantage the apparent dumping and subsidizing has produced between the subject good imports and the Canadian produced goods.

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<sup>17</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 434-446.

<sup>18</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 417-433.

<sup>19</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 393-395.

<sup>20</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 396-397.

<sup>21</sup> Dumping Exhibit 2 (NC) - Complaint – paragraphs 398-400.

[96] In summary, the information provided in the complaint has established a reasonable indication that the alleged dumping and subsidizing have caused injury and retardation and are threatening to cause injury to the Canadian production of like goods.

## **CONCLUSION**

[97] Based on information provided in the complaint, other available information, and the CBSA's internal data on imports, there is evidence that certain potassium silicate solids originating in or exported from Pakistan have been dumped and subsidized, and there is a reasonable indication that such dumping and subsidizing has retarded the establishment of a commercially viable Canadian industry and has caused injury and is threatening to cause injury to the Canadian industry. As a result, based on the CBSA's examination of the evidence and its own analysis, dumping and subsidy investigations were initiated on January 6, 2012.

## **SCOPE OF THE INVESTIGATIONS**

[98] The CBSA will conduct investigations to determine whether the subject goods have been dumped and/or subsidized.

[99] The CBSA has requested information relating to the subject goods imported into Canada from Pakistan during the period of January 1, 2010 to September 30, 2011, the selected period of investigation for the dumping investigation. The information requested from identified exporters and importers will be used to estimate normal values and export prices and ultimately to determine whether the subject goods have been dumped.

[100] The CBSA has requested information relating to shipments into Canada of the subject goods from January 1, 2010 to September 31, 2011, the selected period of investigation for the subsidy investigation. The information has been requested from the GOP and the identified exporters, and will be used to determine whether the subject goods have been subsidized and to estimate the amounts of subsidy.

[101] All parties have been clearly advised of the CBSA's information requirements and the time frames for providing their responses.

## **FUTURE ACTION**

[102] The Tribunal will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of the goods has caused injury or retardation or is threatening to cause injury to the Canadian industry. The Tribunal must make its decision on or before the 60<sup>th</sup> day after the date of the initiation of the investigations. If the Tribunal concludes that the evidence does not disclose a reasonable indication of injury or retardation or threat of injury to the Canadian industry, the investigations will be terminated.

[103] If the Tribunal finds that the evidence discloses a reasonable indication of injury or retardation or threat of injury to the Canadian industry and the ongoing CBSA investigations reveal that the goods have been dumped and/or subsidized, the CBSA will make a preliminary determination of dumping and/or subsidizing within 90 days after the date of the initiation of the investigations, by April 5, 2012. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigations.

[104] If the CBSA's investigations reveal that imports of the subject goods have not been dumped or subsidized, that the margin of dumping or amount of subsidy is insignificant or that the actual and potential volume of dumped or subsidized goods is negligible, the investigations will be terminated.

[105] Imports of subject goods released by the CBSA on or after the date of a preliminary determination of dumping and/or subsidizing may be subject to provisional duty in an amount not greater than the estimated margin of dumping and/or the estimated amount of subsidy on the imported goods.

[106] Should the CBSA make a preliminary determination of dumping and/or subsidizing, the investigations will be continued for the purpose of making a final determination within 90 days after the date of the preliminary determination. If a preliminary determination of dumping is made, the Tribunal will initiate an inquiry to determine whether the dumping of the goods has caused injury or retardation or is threatening to cause injury.

[107] If a final determination of dumping and/or subsidizing is made, the Tribunal will continue its inquiry and hold public hearings into the question of material injury to the Canadian industry. The Tribunal is required to make a finding with respect to the goods to which the final determination of dumping and/or subsidizing applies, not later than 120 days after the CBSA's preliminary determination.

[108] In the event of an injury finding by the Tribunal, imports of subject goods released by the CBSA after that date will be subject to anti-dumping duty equal to the applicable margin of dumping and countervailing duty equal to the amount of any actionable subsidy on the imported goods. Should both anti-dumping and countervailing duties be applicable to subject goods, the amount of any anti-dumping duty may be reduced by the amount that is attributable to an export subsidy.

### **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[109] When the Tribunal conducts an inquiry concerning injury to the Canadian industry, it may consider if dumped and/or subsidized goods that were imported close to or after the initiation of an investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry.

[110] Should the Tribunal issue such a finding, anti-dumping and countervailing duties may be imposed retroactively on subject goods imported into Canada and released by the CBSA during the period of 90 days preceding the day of the CBSA making a preliminary determination of dumping and/or subsidizing.

[111] In respect of importations of subsidized goods that have caused injury, however, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy, as explained in the previous section “Evidence of Subsidizing.” In such a case, the amount of countervailing duty applied on a retroactive basis will be equal to the amount of subsidy on the goods that is a prohibited subsidy.

## **UNDERTAKINGS**

[112] After a preliminary determination of dumping by the CBSA, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury or retardation or threat of injury caused by the dumping is eliminated. Acceptable undertakings must account for all or substantially all of the exports to Canada of the dumped goods.

[113] Similarly, after a preliminary determination of subsidizing by the CBSA, a foreign government may submit a written undertaking to eliminate the subsidy on the goods exported or to eliminate the injury or retardation or threat of injury caused by the subsidy, by limiting the amount of the subsidy or the quantity of goods exported to Canada. Alternatively, exporters with the written consent of their government may undertake to revise their selling prices so that the amount of the subsidy or the injury or retardation or threat of injury of the subsidy is eliminated.

[114] Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone and fax numbers, mailing address and e-mail address, if available, to one of the officers identified in the “Information” section of this document.

[115] If undertakings were to be accepted, the investigations and the collection of provisional duty would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA’s investigations be completed and that the Tribunal complete its injury inquiry.

## **PUBLICATION**

[116] Notice of the initiation of these investigations is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

## INFORMATION

[117] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping and subsidizing. Written submissions should be forwarded to the attention of one of the officers identified below.

[118] To be given consideration in this phase of these investigations, all information should be received by the CBSA by **February 13, 2012**.

[119] Any information submitted to the CBSA by interested parties concerning these investigations is deemed to be public information unless clearly marked “confidential.” Where the submission by an interested party is confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

[120] Confidential information submitted to the President will be disclosed on written request to independent counsel for parties to these proceedings, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the Tribunal, any court in Canada, or a WTO/NAFTA dispute settlement panel. Additional information respecting the Directorate’s policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA’s Web site.

[121] The investigation schedules and complete listings of all exhibits and information are available at [www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html). The exhibits listing will be updated as new exhibits and information are made available.

[122] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted in English and French on the CBSA's Web site at the address below. For further information, please contact the officers identified as follows:

**Mail:** SIMA Registry and Disclosure Unit  
Anti-dumping and Countervailing Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11th floor  
Ottawa, ON K1A 0L8  
Canada

**Telephone:** Benjamin Walker 613-952-8665  
Michael Manocha 613-954-0036

**Fax:** 613-948-4844

**E-mail:** [simaregistry-depotlmsi@cbsa-asfc.gc.ca](mailto:simaregistry-depotlmsi@cbsa-asfc.gc.ca)

**Web site:** [www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html)



Daniel Giasson  
Director General  
Anti-dumping and Countervailing Directorate

## APPENDIX 1 - DESCRIPTION OF IDENTIFIED PROGRAMS

Evidence provided by the Complainant suggests that the Government of Pakistan may have provided support to manufacturers of subject goods in the following manner. For purposes of this investigation, "Government of Pakistan" refers to all levels of government, i.e. federal, central, provincial/state, regional municipal, city, township, village, local, legislative, administrative or judicial. Benefits provided by state-owned enterprises, which possess, exercise or have been vested with governmental authority may also be considered to be provided by the Government of Pakistan for purposes of this investigation.

### **I. Grants Provided for Export Performance**

- Program 1: Export Investment Support Fund
- Program 2: Assistance for Opening Exporters Offices Abroad
- Program 3: Quality Assurance and Lab Accreditation Scheme
- Program 4: Warehousing Scheme
- Program 5: Inland Freight Subsidy

### **II. Preferential Loans**

- Program 6: Preferential Loans from the State Bank of Pakistan
- Program 7: Preferential Loans from the Soneri Bank

### **III. Incentives for Small and Medium Enterprises (SME)**

- Program 8: Special Loans - State Bank of Pakistan's Refinance Facility for Modernization of SMEs
- Program 9: Loan Guarantees by State Bank of Pakistan/Pakistan Export Finance Guarantee Agency
- Program 10: Grants from Business Support Fund to SMEs
- Program 11: Land at Concessionary Rates in Industrial Estates and Export Processing Zones

### **IV. Export Processing Zones**

- Program 12: Export Processing Zones Incentives and Benefits

### **V. Preferential Income Tax Rates**

- Program 13: Income Tax Exemptions for Undertakings and Set-ups in Specified Areas
- Program 14: Income Tax Exemptions in Export Processing Zones
- Program 15: Preferential Tax Rates for Export Businesses - Final Tax on Exports
- Program 16: Excessive Claims of Deductions and Exemptions and Concessions

### **VI. Excessive Remission of Duties and Taxes**

- Program 17: Manufacturing Bond Scheme
- Program 18: Excessive Repayment of Customs Duties
- Program 19: Drawback and Remission Schemes

Program 20: Ad hoc Additional 1% Duty Drawback

## **VII. Purchases from State-Owned Enterprises**

Program 21: Pakistan Water and Power Development Authority

Program 22: Karachi Electric Supply Corporation

Program 23: Purchases from Other State-Owned Enterprises at Less Than Fair Market Value

Program 24: Pakistan Mineral Development Corporation

Program 25: Cost of Domestic Inputs Lower Than Imported Inputs

Program 26: Purchases from the State Bank of Pakistan

## **DETERMINATIONS OF SUBSIDY AND SPECIFICITY**

Available information indicates that the programs identified under: *Preferential Loans; Incentives for Small and Medium Enterprises (SME), Export Processing Zones Incentives and Benefits; Preferential Income Tax Rates; and Excessive Remission Of Duties And Taxes* would likely constitute a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption.

*Grants Provided for Export Performance* and any other grants would likely constitute a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA in that they involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities; and pursuant to paragraph 2(1.6)(b) of SIMA as amounts owing and due to the government that are forgiven or not collected.

*Purchases from State-Owned Enterprises* at less than fair market value would likely constitute a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA as they involve the provision of goods or services, other than general governmental infrastructure.

Benefits provided to certain types of enterprises or limited to enterprises located in certain areas under program categories: *Preferential Loans; Incentives for Small and Medium Enterprises (SME), Export Processing Zones Incentives and Benefits; Preferential Income Tax Rates; and Excessive Remission of Duties and Taxes* would likely be considered specific pursuant to paragraph 2(7.2)(a) of SIMA.

As well, *Grants Provided for Export Performance* and any other grants, as well as, *Purchases from State-Owned Enterprises* at less than fair market value would likely be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.