



Canada Border
Services Agency

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frontaliers du Canada

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FISC 2020 SP

STATEMENT OF ESSENTIAL FACTS

SCOPE PROCEEDING – CERTAIN FABRICATED INDUSTRIAL STEEL COMPONENTS

**Specialized Prefabricated Process Units
Enerkem Inc.**

Cette Déclaration des faits essentiels est également disponible en français.
This Statement of Essential Facts is also available in French.

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BACKGROUND

[1] On April 25, 2017, the Canada Border Services Agency (CBSA) made final determinations of dumping in respect of certain fabricated industrial steel components (FISC) from the People's Republic of China (China), the Republic of Korea (South Korea), and the Kingdom of Spain (Spain), and subsidizing of certain FISC from China.¹

[2] On May 25, 2017, in Inquiry No. NQ-2016-004, the Canadian International Trade Tribunal (CITT) found that the dumping of certain FISC originating in or exported from China, South Korea (excluding those goods exported by Hanmaek Heavy Industries Co., Ltd.) and Spain (excluding those goods exported by Cintasa, S.A.), and the subsidizing of FISC from China, caused injury to the domestic industry.²

[3] On February 28, 2020, as a result of applications for judicial review filed with the Federal Court of Appeal (FCA), the FCA set aside the decision of the CITT in Inquiry No. NQ-2016-004, dated May 25, 2017, insofar as it related to product exclusion requests from Fluor Canada Ltd., Suncor Energy Inc., Fort Hills Energy L.P., and LNG Canada Development Inc. On June 26, 2020, the CITT's re-determination on remand from the FCA was that its finding, dated May 25, 2017, was revised to contain several exclusions.³

[4] On December 20, 2019, the CBSA received an application for a scope ruling from Enerkem Inc. (Enerkem) of Montreal, Quebec, as to whether its Specialized Prefabricated Process Units (SPPU) are subject to the CITT injury finding noted above.

[5] The application for the scope ruling was complete and met all requirements under the *Special Import Measures Act* (SIMA) to warrant the initiation of a scope proceeding. The applicant provided arguments and evidence in support of its position that SPPU are not subject to the CITT's finding.

[6] On January 17, 2020, pursuant to subsection 63(8) of the SIMA, the CBSA initiated a scope proceeding with respect to the goods that are the subject of the application.

[7] On March 20, 2020, due to the complexity and novelty of the issues presented by the scope proceeding, the CBSA extended the period of the proceeding to 210 days, pursuant to subsection 66(2) of SIMA.

[8] The administrative record for this scope proceeding closed on June 10, 2020.

[9] On the basis of the information on the record and the consideration of the relevant factors contained in section 54.6 of the *Special Import Measures Regulations* (SIMR), as well as other relevant factors, the CBSA's preliminary assessment is that the goods that are the subject of the

¹ <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/fisc2016/fisc2016-fd-eng.html>

² <https://decisions.citt-tcce.gc.ca/citt-tcce/a/en/item/354750/index.do>

³ <https://decisions.citt-tcce.gc.ca/citt-tcce/a/en/item/481179/index.do>

application, SPPU, are not subject to the CITT's finding in respect of certain FISC.

DESCRIPTION OF GOODS THAT ARE THE SUBJECT OF THE APPLICATION⁴

[10] The goods in question in this scope proceeding are SPPU for use in converting non-recyclable residual material (RDF) to methanol.

[11] The proposed biofuel facility will convert the following RDF into methanol: wood residue of bark, construction and demolition wood, mixed plastics and fiber, and sorting center rejects. The different types of raw materials will be processed together in proportions according to the specification for production.

[12] Enerkem's patented technology chemically recycles the carbon contained in non-recyclable, non-compostable waste. Enerkem's process converts this carbon into a pure synthesis gas (also called syngas), which then turns into biofuels and chemicals using commercially available catalysts.

[13] The proposed facility requires approximately 107 SPPU. Each SPPU, if imported, will have been assembled in a foreign fabrication yard by assembling a structural steel framework and incorporating process equipment, piping, steel, instrumentation, electrical and insulation. Once imported, the SPPU will be inter-connected on the site of the facility in Varennes, Quebec to form the complete facility.

[14] Enerkem indicated that a portion of the steel for the project may be sourced from South Korea, China or Spain. Specific vendors have not yet been selected by Enerkem.

[15] Enerkem estimated that the total FISC value for the plant represents 7% of the entire project value.

[16] The structural components of the SPPU include:

- Main structural columns and beams
- Secondary structure for pipe supports
- Temporary structure for transport
- Shipped loose structure
- Lifting legs
- Structural bracing
- Stairs
- Platforms
- Handrails
- Ladders and safety cages
- Grating

⁴ Exhibit 2 (NC) FISC 2020 SP

- Trolley beams
- Bases plates and bracing connections

[17] Other components of the SPPU include:

- Piping (carbon steel, stainless steel and copper)
- Pipe fittings
- Valves
- Heat exchangers
- Columns
- Vessels
- Pumps
- Demisters
- Strainers
- Scrubbers

DESCRIPTION OF THE SUBJECT GOODS

[18] For the purpose of this scope proceeding, the goods that are subject to the CITT finding (“subject goods”) are defined as:

Fabricated structural steel and plate-work components of buildings, process equipment, process enclosures, access structures, process structures, and structures for conveyancing and material handling, including steel beams, columns, braces, frames, railings, stairs, trusses, conveyor belt frame structures and galleries, bents, bins, chutes, hoppers, ductwork, process tanks, pipe racks and apron feeders, whether assembled or partially assembled into modules, or unassembled, for use in structures for:

1. *oil and gas extraction, conveyance and processing;*
2. *mining extraction, conveyance, storage, and processing;*
3. *industrial power generation facilities;*
4. *petrochemical plants;*
5. *cement plants;*
6. *fertilizer plants; and*
7. *industrial metal smelters;*

but excluding electrical transmission towers; rolled steel products not further worked; steel beams not further worked; oil pump jacks; solar, wind and tidal power generation structures; power generation facilities with a rated capacity below 100 megawatts; goods classified as “prefabricated buildings” under HS Code 9406.00.90.30; structural steel for use in manufacturing facilities used in applications other than those described above; and products covered by Certain Fasteners (RR-2014-001), Structural Tubing (RR-2013-001), Carbon Steel Plate (III) (RR-2012-001), Carbon Steel Plate (VII) (NQ-2013-005), and Steel Grating (NQ-2010-002); originating in or exported from the People’s Republic of China, the Republic of Korea (excluding

those goods exported by Hanmaek Heavy Industries Co., Ltd.) and the Kingdom of Spain (excluding those goods exported by Cintasa, S.A.).

Furthermore, the CITT excluded from its finding goods imported within the 2017 calendar year by Andritz Hydro Canada Inc. from Sinohydro for the Muskrat Falls hydro project in the province of Newfoundland and Labrador.

Furthermore, further to the decision of the FCA dated February 28, 2020, which set aside the Tribunal's finding dated May 25, 2017, insofar as it relates to the product exclusion requested by Fluor Canada Ltd., the product exclusion requested by Suncor Energy Inc. and Fort Hills Energy L.P., and the product exclusion requested by LNG Canada Development Inc., the CITT excluded the following goods from its finding, provided that these goods are subject goods:

1) FISC which is contained in modules containing FISC and goods other than FISC (including but not limited to piping, industrial process equipment or machinery, cables and valves) that are interconnected and assembled together in a permanent manner, with the gross weight of each individual module exceeding 250 tonnes at the time of importation, and with the non-FISC elements accounting for at least 30% of the gross weight of the module at the time of importation, for use in projects located along the coastline of British Columbia;

2) assembled FISC, including structural supporting components, such as skids, columns, and bracing structures, where:

A. the FISC constitutes no more than 50% of the weight of any imported mechanical equipment or pressure equipment as herein defined;

B. the FISC weighs no more than 10,000 kg; and

C. the FISC is permanently attached to any of the following (although any finished unit may be partially disassembled at importation for the sole purpose of shipping):

i. Mechanical equipment, meaning tested engineered mechanical equipment imported as a finished unit in its final operations configuration, designed to meet particular parameters of performance specified by the end user. Mechanical equipment includes but is not limited to hydraulic power units, air; compressor units, pump houses and pump packages, tailings pump barges, dredges, transformers, lube, skids, prime movers, safety showers, chemical injection units, water and waste treatment units, aerial coolers, generator units, vacuum equipment and natural gas heater units.

ii. Pressure Equipment: Pressure equipment means equipment that requires Alberta Boiler Safety Association (or other provincial equivalent) design registration, including pressure vessels, packaged boilers, heat exchangers, bullets and condensers.

3) FISC incorporated into any of the following:

A. An electrical house meaning a prefabricated walk-in modular outdoor enclosure to house medium voltage switchgear imported as a finished unit in its final operational configuration, where the electrical house meets Canadian Standards Association requirements prior to importation;

B. A skid-mounted sub-station meaning a prefabricated walk-in modular outdoor enclosure to house electrical switchgear imported as a finished unit in its final operational configuration, where the sub-station meets Canadian Standards Association requirements prior to importation;

but not excluding goods that meet the foregoing definition that also contain mechanical or process equipment.

[19] For additional information on the subject goods, please refer to the CITT's *Findings and Reasons* in Inquiry No. NQ-2016-004^{5&6} and the CBSA's *Statement of Reasons* (SOR) respecting the FISC final determinations⁷.

RELEVANT SCOPE RULINGS

FISC 2018 SP-02 – Shanghai Shuangyan's Chemical Equipment and Metering Modules

[20] On August 7, 2018, the CBSA received an application for a scope ruling from Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd. (SSCEM) whether its steam-assisted gravity drainage well pair modules, termination modules and metering modules are subject to the CITT finding. SSCEM acknowledged that its modules contain FISC.

[21] Parties argued that the product definition does not include complex modules, and that the modules in question are engineered, manufactured goods with specified industrial tasks that are fundamentally different from mere FISC.

[22] Other parties argued that that the FISC product definition includes complex modules, that the modules in question are not manufactured goods, and that non-FISC elements do not change the essential characteristics of FISC.

[23] On January 4, 2019, the CBSA made a scope ruling that the FISC portion of SSCEM's steam-assisted gravity drainage well pair modules, termination modules and metering modules are subject to the CITT's finding.⁸ The CBSA found that modules, simple and complex, are intermediate construction of a process facility, and that a trade remedy may apply to a good incorporated within another good.

⁵ <https://decisions.citt-tcce.gc.ca/citt-tcce/a/en/item/354750/index.do>

⁶ <https://decisions.citt-tcce.gc.ca/citt-tcce/a/en/item/481179/index.do>

⁷ <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/fisc2016/fisc2016-fd-eng.html>

⁸ <https://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2018/fisc201802-sr-eng.html>

FISC 2018 SP-01 – Woodfibre’s Liquefied Natural Gas Modules Including Pipe Rack Modules

[24] On June 26, 2018, the CBSA received an application for a scope ruling from Woodfibre LNG Limited whether its liquefied natural gas (LNG) modules including pipe rack modules are subject to the CITT finding. The applicant argued the product definition in the CITT finding did not include complex modules. The applicant argued that complex LNG modules including pipe rack modules are manufactured finished goods and that the FISC portion loses its characteristics when further processed and combined with substantial amounts of non-FISC elements.

[25] On November 23, 2018, the CBSA made a scope ruling that the FISC portion of Woodfibre’s LNG modules including pipe rack modules are subject to the CITT’s finding.⁹ The CBSA viewed modules, simple and complex, as intermediate construction of a process facility. Modularization of FISC with non-FISC elements performed in Canada or in foreign countries does not alter the characteristics of FISC. FISC in both simple and complex modules provides the structural steel framework and support to which non FISC elements are connected. The characterization of modules as stand-alone, finished goods distinct from its parts is not consistent with the reality of the different standards and codes that apply to different parts of a module and how the modules are warranted.

INTERESTED PARTIES AND REQUESTS FOR INFORMATION

Applicant

[26] The name and address of the applicant are as follows:

Enerkem Inc.
1130 Sherbrooke St W, Suite 600
Montreal, Quebec, H3A 2M8

[27] Enerkem is a private company, founded in 2000. It is headquartered in Montreal, Canada and is majority-owned by institutional, clean technology and industrial investors. Enerkem implements facilities that utilize municipal solid waste to produce clean fuels and renewable chemicals. In addition to licensing its technology, the company provides fully fabricated SPPU, equipment, and handles assembly on-site.

[28] A copy of the non-confidential version of the scope ruling application filed by Enerkem is available on the CBSA’s Listings of Exhibits website at <https://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2020/fisc2020-ex-eng.html>.

⁹ <https://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2018/fisc2018-sr-eng.html>

Canadian Industry

[29] At the initiation of the scope proceeding, the CBSA identified 48 Canadian producers of like goods to the CITT's finding on FISC based on information from the applicant and the most recent scope proceeding that concluded on January 4, 2019, concerning certain FISC.

[30] The CBSA sent a Producer Request for Information (RFI) to all producers of like goods to the CITT's finding on FISC. The CBSA received responses from five Canadian producers of FISC, namely: L.A. Brayer Industries Ltd., Ocean Steel & Construction Ltd., Supermetal Structures Inc., Supreme Group LP, and Walters Inc. The CBSA also received a response to the Producer RFI from the Canadian Institute of Steel Construction (CISC). The CISC is an industry association consisting of a broad range of stakeholders in the Canadian steel construction industry. Its members include Canadian producers of FISC.

Importers

[31] At the initiation of the scope proceeding, the CBSA identified 46 known and potential importers of subject goods to the CITT's finding on FISC based on information collected from the most recent scope proceeding concerning FISC.

[32] The CBSA sent an Importer RFI to all known and potential importers of subject goods to the CITT's finding on FISC. The CBSA did not receive any responses from importers taking a position on the subjectivity of the goods in the scope application.

Exporters and/or Foreign Producers

[33] At the initiation of the scope proceeding, the CBSA identified 98 known and potential exporters and/or producers of subject goods to the CITT's finding on FISC based on information from the application and the most recent scope proceeding that concluded on January 4, 2019, concerning certain FISC.

[34] The CBSA sent an Exporter RFI to all known and potential exporters and/or producers. The CBSA did not receive any responses taking a position on the subjectivity of the goods in the scope application from exporters.

REQUEST FOR ADDITIONAL INFORMATION

[35] On February 28, 2020, the CBSA sent requests for additional information regarding petrochemical, methanol, and biomass industries. Stakeholders who were sent the requests for additional information include: the applicant, parties that responded to the original RFI, and 11 organizations in Canada, the United States, Australia, and the European Union who may have knowledge of the petrochemical, methanol and biomass industries. The CBSA received

responses to its requests from the applicant¹⁰, CISC¹¹, L.A. Brayer¹², Advanced Biofuels Canada¹³, and Natural Resources Canada¹⁴.

[36] The CBSA also conducted its own research of the petrochemical, methanol, and biomass industries via the Science and Engineering Directorate of the CBSA.¹⁵

POSITIONS OF THE PARTIES

Party Contending that the Goods in Question are Not Subject to the CITT finding

Applicant - Enerkem

[37] Enerkem takes the position that the goods subject to the application are used in a biofuel facility and that such use is not one of the seven uses of FISC listed in the definition of subject goods in the CITT finding.¹⁶

[38] In support of its position, Enerkem noted that the material used as inputs for the biofuel facility include the following waste material: wood residue, mixed plastics and sorting center rejects. In the confidential version of its application, Enerkem listed the approximate proportions of each of the above materials to be used as inputs in its proposed facility.

[39] In its application, Enerkem provided a flowchart and descriptions of each step of the production process for its proposed facility.

[40] In its application, Enerkem argued that petrochemical plants, one of the end uses listed in the definition of subject goods, convert natural resources such as crude oil, natural gas, ores and minerals into products for a wide range of applications, and the raw material for its biofuel facility will not be obtained from natural resources such as crude oil, natural gas, ores and minerals.

[41] In its response to the CBSA's request for additional information, Enerkem further explained why the SPPU should not be considered a petrochemical plant.¹⁷

¹⁰ Exhibit 43 (NC) FISC 2020 SP

¹¹ Exhibit 42 (NC) FISC 2020 SP

¹² Exhibit 41 (NC) FISC 2020 SP

¹³ Exhibit 44 (NC) FISC 2020 SP

¹⁴ Exhibit 51 (NC) FISC 2020 SP

¹⁵ Exhibit 52 (NC) FISC 2020 SP

¹⁶ Exhibit 2 (NC) FISC 2020 SP

¹⁷ Exhibit 43 (NC) FISC 2020 SP

[42] In its response to the request for additional information, Enkema defined petrochemicals as being derived from fossil sources including crude oil, coal, and natural gas. As the output of the SPPU is methanol, Enkema defined methanol as "...four parts hydrogen, one-part oxygen, and one-part carbon..." and stated that the methanol from the proposed Enkema facility is "...the simplest member of a group of organic chemicals called alcohols." and is "not derived from fossil based natural gas". Enkema further stated that "...non-fossil methanol can be measured...by carbon dating analysis which accurately gives the amount of bio-carbon (plant derived carbon) versus petrochemical carbon. Enkema's renewable methanol contains bio-methanol from food, paper, plants, etcetera, mixed with methanol derived from the plastics and packaging found among waste." Lastly, Enkema argued that methanol which is produced from products that originated with petroleum is non-bio-methanol while methanol produced from food, paper and plant waste, and other non-fossil fuel based products is bio-methanol.

[43] Enkema noted that it obtained International Sustainability and Carbon Certification (ISCC) for an existing SPPU plant in Edmonton, Alberta to confirm that it meets the waste feedstock and greenhouse gas requirements in the European Union (EU) regulations per the EU *Renewable Energy Directive II* (REDII) and the EU *Renewable Transport Fuel Obligation* (RTFO). Enkema's planned facility in Varennes, Quebec will use the same proprietary technology as its existing Edmonton facility. The Edmonton, Alberta facility was able to obtain ISCC certification "because its methanol is renewable and not a petrochemical" and the certificate states that the facility inputs are organic municipal solid waste with an output that is considered bio-methanol.

[44] Enkema stated that under the EU's REDII and RTFO, any non-bio-methanol produced by the proposed Enkema facility would be considered circular methanol, a recycled carbon fuel. Under the REDII and RTFO, "circular methanol lowers levels of carbon in the fuels, to help attain the mandatory minimum levels of lower carbon fuels, contrary to fossil-derived methanol." The REDII regulation refers to non-bio-methanol recovered from non-recyclable plastics as circular methanol because it "recycles this carbon that would otherwise be burned or end up in the environment" and "displaces new fossil-based methanol in the market and is a more sustainable material [than] fossil methanol."

Parties Contending that the Goods in Question are Subject to the CITT finding

Canadian Institute of Steel Construction

[45] The Canadian Institute of Steel Construction (CISC) takes the position that the facility detailed in the application of Enkema is a petrochemical plant, one of the uses of FISC listed in the definition of subject goods in the CITT finding.¹⁸

¹⁸ Exhibit 21 (NC) FISC 2020 SP

[46] CISC's position is that "petrochemical" refers to a class or family of chemicals, not feedstock, and that Enerkem's proposed FISC facility will produce liquid methanol, which CISC states is a primary petrochemical, and therefore should fall under the end-use of petrochemical plants within the product definition.

[47] CISC noted that Enerkem's application states that the feedstock for its proposed facility includes "wood residue, mixed plastics and fiber, and sorting center rejects". CISC argued that the plastics to be used as feedstock for the Enerkem facility are produced from petrochemicals and are a petrochemical product.

[48] CISC argued that an industrial plant that takes a petrochemical product such as plastic and processes it into the petrochemical methanol is a "petrochemical plant" within the meaning of the product definition, and that to proceed otherwise would undermine the finding of the CITT, SIMA and the *Interpretation Act*.

[49] CISC argued that "petrochemical plants", as the term is used in the FISC product definition, must be interpreted in a broad, liberal and fair manner that fulfills SIMA's objective of protecting the domestic industry from dumped and subsidized FISC.

[50] CISC argued that the modern and contemporary usage of "petrochemical" refers to a family or class of chemicals, and includes those chemicals when produced from coal, natural gas, shale gas and biomass. CISC argued that this extends to the FISC product definition and the CBSA should determine that Enerkem's proposed methanol facility is a petrochemical plant for the purposes of the FISC product definition. In support of this argument, the CISC cited section 12 of the *Interpretation Act*, which states "every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." CISC stated that the CITT has recognized that section 12 of the *Interpretation Act* applies to anti-dumping and countervailing measures.

[51] CISC argued that the large-scale, highly engineered FISC that will be used in the Enerkem facility is the same FISC that would be used in a petrochemical plant using petroleum as its feedstock.

[52] Citing subsection 54.6(a) of SIMR, CISC argued that the CBSA's consideration and analysis of a petrochemical plant must focus on:

- the physical, commercial, and end-use characteristics of the final product (methanol), rather than the inputs;
- the physical characteristics, technical specifications, uses, and (presumably) distribution of Enerkem's methanol is identical to that of a facility that produces methanol from coal or natural gas; and,
- Enerkem's production process from syngas to methanol is understood to be identical to the production of methanol from coal or natural gas.

[53] In support of its arguments, the CISC included six public attachments with its letter to the CBSA, as follows¹⁹:

- CISC attachment 1, selected pages from the “Handbook of Petrochemical Processes” (Boca Raton: CRC Press, 2019);
- CISC attachment 2, information on methanol from the website of Ferrostaal Industrial Projects GmbH (Ferrostaal) of Essen, Germany, a major producer of petrochemicals, including methanol. CISC cites the following passages from the website of Ferrostaal: “methanol produced by Ferrostaal is one of the most important basic chemicals in the petrochemical industry. The organic chemical compound produced in our methanol plants is the simplest type of alcohol.
- CISC attachment 3, information on methanol from the website of US Methanol LLC of Charleston, West Virginia.²⁰
- CISC attachment 4, definition of petroleum from Merriam-Webster.
- CISC attachment 5, definition of petroleum from the Dictionary of Chemistry from the Oxford University Press.
- CISC attachment 6, definition, uses and production methods of methanol from the website of “The Essential Chemistry Industry”.

[54] In its response to the CBSA’s request for additional information on petrochemicals, CISC further explained why the SPPU should be considered a petrochemical plant and reiterated many of the points made in its original RFI response.²¹

[55] In its response to the request for additional information, CISC referred to the Handbook of Petrochemical Processes which states, “the term petrochemicals is often used in an expanded form to include chemicals produced from other fossil fuels such as coal or natural gas, oil shale, and renewable resources.” Furthermore, CISC states, “...modern usage of the term ‘petrochemical’ refers to a family of chemicals and methanol is broadly classified by the petrochemical industry as a ‘petrochemical’ regardless of feedstock. For example, the website for Ferrostaal, a methanol producer, identifies methanol as a petrochemical, while also noting that it can be obtained from ‘fossil and renewable raw materials.’ The website for US Methanol takes a similar position. Further, the Handbook of Petrochemical Processes identifies methanol as a primary petrochemical while also endorsing the modern interpretation of ‘petrochemical’.”

[56] CISC argued that based on the above, the proposed Enerkem facility is within the scope of a petrochemical plant.

L.A. Brayer Industries Ltd.

[57] L.A. Brayer Industries Ltd. (L.A. Brayer) is a Canadian fabricator of like goods to the CITT’s finding on FISC. L.A. Brayer is located in Edmonton, Alberta.

¹⁹ Exhibit 21 (NC) FISC 2020 SP

²⁰ <https://www.usmeoh.com/>

²¹ Exhibit 42 (NC) FISC 2020 SP

[58] L.A. Brayer is of the opinion that the product in the application is the same as the product in the FISC product definition of the CITT.²² L.A. Brayer argued that the applicant incorrectly based its arguments of subjectivity on the waste material to be used in the proposed facility. L.A. Brayer argued that the product definition for FISC is based on uses in specific structures, not materials used in a production process in a structure.

[59] In its response to the CBSA's request for additional information on petrochemicals, L.A. Brayer submitted that, "The types of modular structures in question...are no different than structures for the petrochemical industry." Additionally, L.A. Brayer stated that, "The technical definition of methanol and its derivation should be deemed irrelevant since I believe the ruling uses these classifications in a broader sense."²³

Ocean Steel & Construction Ltd.

[60] Ocean Steel & Construction Ltd. (Ocean) is a Canadian producer/fabricator of like goods to the CITT's finding on FISC. Ocean is located in Saint John, New Brunswick. Ocean supported the 2016 FISC complaint.

[61] Ocean stated its position that it disagrees with the applicant, and that the proposed biofuel facility should be considered a "petrochemical plant".²⁴ Ocean argued that Enerkem's facility will convert plastics, a petrochemical product, into methanol, a petrochemical, and that a plant that converts a petrochemical product into a petrochemical is a petrochemical plant.

[62] Ocean stated that it supports the position of CISC in this matter.

Supreme Group LP

[63] Supreme Group LP (Supreme) is a Canadian producer/fabricator of like goods to the CITT's finding on FISC. Supreme is located in Acheson, Alberta and was one of the complainants in the 2016 FISC investigations.

[64] Supreme stated its position that it disagrees with the applicant, and that Enerkem's proposed facility is a petrochemical facility.²⁵ Supreme argued that petrochemical plants refine various feedstock into a variety of petrochemical classes, that the two most common are olefins and aromatics, and that Enerkem's proposed facility will produce the olefin derivative methanol.

[65] Supreme stated that it supports the position of CISC in this matter.

²² Exhibit 22 (NC) FISC 2020 SP

²³ Exhibit 41 (NC) FISC 2020 SP

²⁴ Exhibit 20 (NC) FISC 2020 SP

²⁵ Exhibit 18 (NC) FISC 2020 SP

Supermetal Structures Inc.

[66] Supermetal Structures Inc. (Supermetal) is a Canadian producer/fabricator of like goods to the CITT's finding on FISC. Supermetal is located in Levis, Quebec and was one of the complainants in the 2016 FISC investigations.

[67] Supermetal noted that it has been qualified on the bidders' list of Enerkem and has been invited to provide proposals for their structures.

[68] Supermetal stated its position that it disagrees with the applicant, and that Enerkem's proposed facility is a petrochemical facility.²⁶ Supermetal argued that the term petrochemical should be interpreted in a broad sense and that methanol is broadly understood to be a petrochemical, and that since Enerkem's proposed facility will produce methanol it should be considered a petrochemical plant.

[69] Supermetal argued that it would undermine the purpose of SIMA to determine that an industrial plant producing a petrochemical is not a petrochemical plant because it synthesizes the petrochemical using a novel process or because it uses petrochemical and non-petrochemical inputs.

[70] Supermetal stated that it supports the position of CISC in this matter.

Walters Inc.

[71] Walters Inc. (Walters) is a Canadian producer/fabricator of like goods to the CITT's finding on FISC. Walters is located in Hamilton, Ontario. Walters supported the 2016 FISC complaint.

[72] Walters argued that the term "petrochemical plant" should be interpreted broadly as an industrial plant that produces products that are commonly known as petrochemicals. Walters argued that Enerkem will produce methanol which is a petrochemical, falling within the category of a petrochemical in the FISC product definition.²⁷

[73] Walters argued that the proposed Enerkem facility will use plastics, a petrochemical product, and convert the plastic to methanol, another petrochemical product, and that a plant that converts a petrochemical product into another petrochemical product is a petrochemical plant.

[74] Walters stated that it supports the position of CISC in this matter.

²⁶ Exhibit 19 (NC) FISC 2020 SP

²⁷ Exhibit 17 (NC) FISC 2020 SP

Other Parties

Advanced Biofuels Canada

[75] Advanced Biofuels Canada (ABFC) provided a response to the CBSA's request for additional information on petrochemicals. ABFC described itself as "the national voice for producers, distributors, and technology developers of advanced biofuels in Canada" and "represents industry's interests in the design and deployment of carbon pricing schemes, fuel quality standards, international standards setting, and programs and tax policies to support advanced biofuels production and use."²⁸ ABFC indicated that the applicant, Enerkem, is a member.

[76] In its response to the CBSA request for additional information, ABFC defined petrochemicals as "a chemical substance derived from petroleum products (e.g. crude oil, oil sands bitumen), or natural gas."²⁹

[77] ABFC made several comments on the relationship between methanol and petrochemicals, notably as follows:³⁰

- "Methanol that is derived from non-petroleum and/or non-natural gas and/or non-sequestered carbon sources is not a petrochemical. Because the carbon source for producing the methanol is either biological (biomass-based) and/or recycled/re-used, methanol produced in this manner is properly categorized as a 'renewable chemical'."
- "Process technologies...are not critical to the distinction of methanol that is a 'renewable chemical' or 'petrochemical'. To be a 'renewable chemical', the producer must be able to establish that the carbon molecule source is either: (a) biogenic (where the carbon emission from combustion would be 'recycled' back into the biomass growth cycle through photosynthesis); or (b) recycled/re-used waste (where the carbon emission from combustion would displace (offset) release of fossil carbon emissions from use of methanol derived from a petrochemical or natural gas source."
- Methanol is a petrochemical if derived from crude oil or "if derived from another fossil carbon molecular source that releases sequestered carbon."
- "Methanol derived from... non-sequestered carbon sources is not a petrochemical."

[78] In response to whether methanol would be considered a petrochemical if plastic was an input to the production of methanol, ABFC offered the following comments:

"The key criteria would be the source of the plastic. If the plastic source is not a 'waste', we would characterize the methanol as a 'petrochemical' since its combustion/use would release carbon that was sequestered in petroleum or natural gas. This would include plastic residues that are co-produced in a manufacturing process that dedicates plastic

²⁸ Exhibit 44 (NC) FISC 2020 SP

²⁹ Exhibit 44 (NC) FISC 2020 SP

³⁰ *IBID.*

material to a methanol production facility. If the plastic source is a 'waste'..., then this methanol should be properly termed a 'renewable chemical'. This would include non-sortable and non-useable plastic waste fractions from municipal solid waste (MSW) collection, and/or industrial manufacturing."

Natural Resources Canada

[79] Natural Resources Canada (NRCan) provided a response to the CBSA's request for additional information on petrochemicals.

[80] In its response to the request for additional information, NRCan defined petrochemicals as "a chemical product produced from petroleum, particularly by refining. The definition can be expanded to include products derived from natural gas liquids and oil refinery streams."³¹ Additionally, NRCan stated that petrochemicals are defined by most federal government departments and provincial governments based on the North American Industry Classification System (NAICS).³² Citing NAICS 32511, the NAICS defines petrochemical companies as "establishments primarily engaged in converting feedstocks derived from petroleum, or from petroleum and natural gas liquids into petrochemicals."³³ NRCan further stated that, "NAICS code 32519 is used to capture the non-petrochemical sub-classes of methanol (i.e. the methanol not derived from petroleum or natural gas liquids)."

[81] In its response to the request for additional information, NRCan explained the relationship between methanol and petrochemicals in the context of the Enerkem facility. NRCan stated, "For industrial purposes, when methanol is produced by other means, such as from biomass or municipal solid waste, it would consequently not be considered a 'petrochemical'."³⁴ NRCan stated, "The feedstock used to produce methanol is the primary distinction of whether methanol is considered a petrochemical or another subcategory chemical product." and that "...methanol is not considered a petrochemical if it is derived from refuse or any other organic feedstock."

[82] In response to whether methanol would be considered a petrochemical if plastic was an input to the production of methanol, NRCan stated that, "Methanol is not considered a petrochemical if it is derived in part from plastic waste."³⁵ Additionally, NRCan noted that "Although plastics can be produced from petroleum or natural gas liquids feedstocks, they do not themselves fall within the category of 'petroleum or natural gas liquids feedstocks.' Therefore, methanol produced from the gasification and distillation of plastics is not considered a petrochemical. Rather, it would be classified under NAICS code 32519, which captures methanol production from non-petrochemical sources."³⁶

³¹ Exhibit 51 (NC) FISC 2020 SP

³² *IBID.*

³³ Exhibit 51 (NC) FISC 2020 SP, and NAICS 32511 at <https://www.ic.gc.ca/eic/site/chemicals-chimiques.nsf/eng/bt01204.html>

³⁴ Exhibit 51 (NC) FISC 2020 SP

³⁵ *IBID.*

³⁶ *IBID.*

[83] CISC provided comments on NRCan's response to the request for additional information, arguing that:³⁷

- "...NAICS category 32511 – 'Petrochemicals' makes no mention of methanol, despite listing many other chemicals, and methanol being universally recognized as a petrochemical product when derived from petroleum. Rather, methanol is only listed under NAICS 32519 – 'Other basic organic chemicals'. This demonstrates that the NAICS is not an authority for the determination of 'petrochemical' or 'petrochemical plants' within the meaning of the FISC product definition. Rather, it is a system for the uniform categorizing of businesses for statistical purposes across the three North American Countries forming NAFTA/CUSMA."
- "...several Department of Natural Resources statements are not substantiated or are made without consideration of the matter before the CBSA. For example, it states, "As commonly understood, a petrochemical is a chemical product produced from petroleum, natural gas or a natural gas liquid". However, it cites no authority and provides no additional explanation for its general claim on what is 'commonly understood'."
- "...contemporary usage of "petrochemical" includes chemicals, such as methanol, that are produced from biomass, coal and natural gas, not just petroleum. It is unreasonable to accept that methanol produced from natural gas, rather than petroleum, is a petrochemical, but that methanol produced from coal or biomass is not."
- "Just as chemicals produced from natural gas became accepted as "petrochemicals" despite not being produced from petroleum, contemporary usage of "petrochemical" has expanded to include products previously classified as "petrochemicals" (because they were previously produced from petroleum or natural gas) but that are now produced from coal and biomass."
- "...the questions were posed [by the CBSA] to the Department of Natural Resources without the appropriate context of the matter before the CBSA and this may have affected how the department formulated its answers."
- "The response relies upon NAICS categorizations, which were intended for statistical purposes and are not authoritative in this matter."
- "The CBSA should not rely upon the Department of Natural Resources' response in this scope ruling."

The Science and Engineering Directorate of the CBSA

[84] The Science and Engineering Directorate of the CBSA conducted its own research using available publications into the nature of petrochemicals and found the following:

- Petrochemicals are "chemicals derived from petroleum; feedstocks for the manufacture of a variety of plastics and synthetic rubber."³⁸

³⁷ *IBID.*

³⁸ Illustrated Petroleum Reference Dictionary, 2nd Ed., 1982

- “There is no universal agreement on the meaning of the word ‘petrochemicals’”; however, “in this chapter it is taken to cover the bulk organic chemicals including polymers, which are primarily derived from crude oil and natural gas...”³⁹
- Petrochemicals are “chemicals manufactured from components of crude oil and/or natural gas.”⁴⁰
- “At one time, methanol was manufactured entirely from the destructive distillation of wood”.⁴¹
- The facility proposed in the FISC 2020 SP application is such that “...the final process does not require the presence of petroleum and is not a direct by-product of the petroleum industry.”⁴²

[85] CISC provided comments on the CBSA’s research, arguing that:⁴³

- “The CBSA’s Science and Engineering Directorate response to CBSA questions were made without the context of the matter before the CBSA and the existing submissions before the CBSA.”
- “...the response of the Directorate relies upon dated academic sources that do not reflect modern usage of the term ‘petrochemical’. The four sources cited by the Directorate are from 1979, 1982, 1983 and 1991. As such, the response must be treated with caution.”
- “Nevertheless, the sources cited by the Directorate support the conclusion that contemporary usage of the term ‘petrochemical’ has evolved. The response cites the Illustrated Petroleum Reference Dictionary, 2nd Ed., 1982, which defines ‘petrochemicals’ as ‘chemicals derived from petroleum; feedstocks for the manufacture of a variety of plastics and synthetic rubber’ (emphasis added). Based on this 1982 definition, methanol (or other chemicals) derived from natural gas are not ‘petrochemicals’. Similarly, Elsevier’s The Petroleum Handbook, 6th Ed., 1983, defines ‘Unconventional Raw Materials’ as feedstocks other than crude oil, including ‘coal, natural gas, tar sands, shale and biomass’ (emphasis added). In other words, in 1983, petroleum feedstock was viewed as distinct from other feedstocks, and the category of ‘other’ feedstocks included both natural gas and biomass.”

³⁹ The Petroleum Handbook, 6th ed., Elsevier, 1983, Chapter 10 - Petrochemicals

⁴⁰ *Gasohol for Energy Production*, Nicholas P. Cheremisinoff, 1979

⁴¹ *IBID.*

⁴² Exhibit 52 (NC) FISC 2020 SP

⁴³ Exhibit 53 (NC) FISC 2020 SP

- “...it is also clear from the Directorate’s response that the meaning of “petrochemicals” has evolved and was evolving in the early 1980s. While Elsevier’s The Petroleum Handbook classified petroleum in one silo and both biomass and natural gas together in another silo, when it came to petrochemicals the author recognized that the term “petrochemical” was unstructured and that at that time it may include chemicals derived from petroleum and the “unconventional raw material” natural gas. As cited in the Directorate’s response, Elsevier stated “There is no universal agreement on the meaning of the word ‘petrochemicals’, but in this chapter it is taken to cover the bulk organic chemicals including polymers, which are primarily derived from crude oil and natural gas [...]”.”
- “...in the early 1980s there were differing views on what was a “petrochemical”. On the one hand, the Illustrated Petroleum Reference Dictionary took the view that petrochemicals were exclusively derived from petroleum. On the other, Elsevier recognized a distinction between petroleum and natural gas as categories of feedstocks, but also took the position that “petrochemical” is undefined and should be broadened (at that time) to include chemicals traditionally considered as “petrochemicals” even if produced from natural gas.”
- “...there remains no “universal agreement” on the meaning of “petrochemical”.”
- “...just as the term “petrochemical” evolved to include traditional “petrochemicals” that were produced from natural gas, it has evolved further to include traditional “petrochemicals” produced from other “unconventional raw material”, such as coal and biomass.
- “The evolving nature of the term “petrochemical” is implicitly acknowledged by the Directorate’s statement that the sources it cites “may be incomplete due to the novelty of [Energem’s] process”.”
- “...the Directorate acknowledges that industry may have a differing view than that expressed in their response. In response to Question 3, the Directorate states, ‘I am unaware if methanol, formed by non-petrochemical sources, could be considered a “petrochemical” by scientists or industry’. In response to question 6, the Directorate acknowledges that the Energem process is novel and industry may have differing views on how to categorize it.”

CBSA’S PRELIMINARY ASSESSMENT

[86] In making a scope ruling under subsection 66(1) of SIMA, subsection 66(6) provides that the CBSA shall take into account any prescribed factors as well as any other factor that is considered relevant in the circumstances. A copy of the factors prescribed in section 54.6 of the SIMR is found in the **Appendix**.

[87] Accordingly, the CBSA considered the following factors in making its preliminary assessment:

- The physical characteristics of the goods;
- The uses of the goods;
- The technical specifications of the goods;
- The channels of distributions of the goods;

- The characteristics of modularization;
- The description of the goods in the CITT finding; and
- The reasons for the CITT finding.

[88] The CBSA notes the product definition of subject goods contained in the CITT's finding specifically lists the following uses:

1. oil and gas extraction, conveyance and processing;
2. mining extraction, conveyance, storage, and processing;
3. industrial power generation facilities;
4. petrochemical plants;
5. cement plants;
6. fertilizer plants; and
7. industrial metal smelters;

[89] The goods in question in this scope proceeding are SPPU for use in converting RDF to methanol, as detailed by Enerkem in its application. The application of Enerkem confirms that the goods subject to the application contain FISC when it states "the total FISC value for the plant represents 7% of the entire project value".⁴⁴ Enerkem's position is that these goods, even though they contain FISC, are not subject to the CITT's finding because they are not for use in structures for any of the industries listed in the definition of subject goods in the finding. Other parties, including CISC, Supermetal, Walters, Ocean, Supreme, and L.A. Brayer disagree and hold the position that the goods subject to Enerkem's application are subject to the CITT finding because they are FISC for use in a petrochemical plant.

[90] As indicated by the applicant and not contested by any parties, the FISC detailed in the application of Enerkem are not for use in oil and gas extraction, conveyance and processing; mining extraction, conveyance, storage and processing; industrial power generation; cement plants; fertilizer plants or industrial metal smelters. The question before the CBSA is whether the goods subject to the scope proceeding are for use in a petrochemical plant, i.e. whether or not the facility detailed in the application is a petrochemical plant?

Definitions of petrochemicals

[91] The parties to the proceeding offered varying definitions of petrochemicals and methanol.

⁴⁴ Exhibit 2 (NC) FISC 2020 SP

[92] The applicant defined a petrochemical as “any chemical that is derived from fossil sources including crude oil, coal and natural gas”⁴⁵. Similarly, Advanced Biofuels Canada defined a petrochemical as “a chemical substance derived from petroleum products (e.g. crude oil, oilsands bitumen), or natural gas”, and stated that “methanol derived from non-petroleum and/or non-natural gas and/or non-sequestered carbon sources is not a petrochemical.”⁴⁶ Likewise, NRCan defined petrochemical as “a chemical product produced from petroleum, particularly by refining”, and further explained that “[t]he definition can be expanded to include products derived from natural gas liquids and oil refinery streams.”⁴⁷

[93] On the other hand, CISC defined petrochemicals as a class or family of chemicals⁴⁸ where methanol (the chemical produced by the facility detailed in the application) is a primary petrochemical⁴⁹, citing the Handbook of Petrochemical Processes which states that “the term petrochemicals is often used in an expanded form to include chemicals produced from other fossil fuels such as coal or natural gas, oil shale, and renewable resources”⁵⁰ and arguing that “whether the carbon for methanol production is sourced from recent biomass or ancient biomass (petroleum), the original source of the carbon is biomass.”⁵¹ The position of CISC is supported by Supermetal, Walters, Ocean, and Supreme.

[94] Although several parties provided their own definition of petrochemicals, the following definitions of petrochemicals were provided from sources that were cited by the parties to the proceeding:

- Handbook of Petrochemical Processes, 2019:
 - “petrochemicals in the strictest sense are chemical products derived from petroleum”⁵²
 - “the term petrochemicals is often used in an expanded form to include chemicals produced from other fossil fuels such as coal or natural gas, oil shale, and renewable resources”⁵³
 - Table 1.5 of the Handbook of Petrochemical Processes lists the primary feedstock for the petrochemical methyl alcohol (methanol) as methane with an alternative feedstock of coal.⁵⁴
- Illustrated Petroleum Reference Dictionary, 2nd Ed., 1982:
 - “petrochemicals are ‘chemicals derived from petroleum’”⁵⁵

⁴⁵ Exhibit 43 (NC) FISC 2020 SP

⁴⁶ Exhibit 44 (NC) FISC 2020 SP

⁴⁷ Exhibit 51 (NC) FISC 2020 SP

⁴⁸ Exhibit 21 (NC) FISC 2020 SP

⁴⁹ *IBID.*

⁵⁰ Exhibit 21 (NC) FISC 2020 SP, and James G. Speight, Handbook of Petrochemical Processes (Boca Raton: CRC Press, 2019)

⁵¹ Exhibit 42 (NC) FISC 2020 SP

⁵² James G. Speight, Handbook of Petrochemical Processes (Boca Raton: CRC Press, 2019), and Exhibit 21 (NC) FISC 2020 SP

⁵³ *IBID.*

⁵⁴ *IBID.*

⁵⁵ Illustrated Petroleum Reference Dictionary, 2nd Ed., 1982, and Exhibit 52 (NC) FISC 2020 SP

- The Petroleum Handbook, 6th Ed., Elsevier, 1983, Chapter 10 – Petrochemicals
 - “There is no universal agreement on the meaning of the word ‘petrochemicals’, but in this chapter it is taken to cover the bulk organic chemicals including polymers, which are primarily derived from crude oil and natural gas...”⁵⁶
- Gasohol for Energy Production, Nicholas P. Cheremisinoff, 1979:
 - “petrochemicals are ‘chemicals manufactured from components of crude oil and/or natural gas’”⁵⁷
- The Handbook of Petrochemicals and Processes, G. Margaret Wells, 1991:
 - “Although the distillation of wood was the original source of methyl alcohol, around 97% of production is now based on natural gas, naphtha or refinery light gas. The discovery of new gas deposits and the increasing use of naphtha as a petrochemical have made natural gas the dominating raw material source.”⁵⁸

[95] As can be seen above, there were many different views and definitions of petrochemicals. The majority of the cited definitions of petrochemicals do not include renewable resources. The only cited definition of petrochemicals to include renewable resources refers to renewable resources as an “expanded definition” of petrochemicals, i.e. not a “regular” definition.⁵⁹

[96] Since methanol is the output of the proposed Enkern facility, several parties provided their views on methanol and its relationship with petrochemicals. Enkern, ABFC, and NRCan presented positions that the methanol produced from the Enkern facility would not be a petrochemical while CISC, Supermetal, Walters, Ocean, and Supreme all opposed this view. None of the cited definitions of methanol supplied by parties stated that methanol is always a petrochemical.

[97] Lastly CISC, Supermetal, Walters, Ocean, and Supreme argued that plastic is produced from petrochemicals, and therefore a facility that processes a petrochemical product into methanol is a petrochemical plant. Enkern, ABFC, and NRCan all opposed this view with main points mentioning that “methanol is not considered a petrochemical if it is derived in part from plastic waste.” and that plastic inputs “...do not themselves fall within the category of ‘petroleum or natural gas liquids feedstocks’.” Although plastic, a product of a petrochemical process, constitutes a portion of the materials to be used by the proposed facility to produce methanol, in its form as plastic, it is no longer oil or natural gas. Additionally, the portion of plastic to be used by the proposed Enkern facility is such that the methanol produced by the facility is not primarily derived from plastic.

⁵⁶ The Petroleum Handbook, 6th Ed., Elsevier, 1983, Chapter 10 – Petrochemicals, and Exhibit 52 (NC) FISC 2020 SP

⁵⁷ Gasohol for Energy Production, Nicholas P. Cheremisinoff, 1979, and Exhibit 52 (NC) FISC 2020 SP

⁵⁸ The Handbook of Petrochemicals and Processes, G. Margaret Wells, 1991, and Exhibit 52 (NC) FISC 2020 SP

⁵⁹ James G. Speight, Handbook of Petrochemical Processes (Boca Raton: CRC Press, 2019), and Exhibit 21 (NC) FISC 2020 SP

Original Intent of CBSA's Product Definition

[98] The complaint in the 2016 FISC investigations states: "FISC used in petrochemical plants includes the structural steel frameworks and plate components designed to support the production and processes of chemicals and material derived from processing oil and natural [gas]." ⁶⁰ This statement is also contained in the "additional product information" section of the CBSA's SOR for its final determinations (FD) on FISC. This statement by the complainants and the CBSA stipulates that petrochemical plants in the context of the CBSA's FISC investigations are plants that produce chemicals and materials from oil and natural gas. Based on that statement in the complaint and in the CBSA's FD SOR on FISC, and since the output for the production facility listed in the application is not derived from processing oil or natural gas, the facility listed in the application is not a petrochemical plant in the context of the CITT's finding on FISC.

[99] In the absence of a sufficiently authoritative definition of petrochemicals that includes the type of facility and its raw materials listed in the application, the definition of a petrochemical plant accepted in the *Statement of Essential Facts* (SEF) is the explanation of petrochemical plants that was provided by the complainants in the complaint and repeated in the CBSA FD SOR on FISC.

Preliminary Assessment

[100] On the basis of the information on the administrative record and the consideration of the relevant factors contained in section 54.6 of the SIMR and other relevant factors, the CBSA's preliminary assessment in this scope proceeding is that the SPPU for use in converting RDF to methanol, as detailed in the application of Enerkem, are not subject to the CITT's finding issued on May 25, 2017, in Inquiry No. NQ-2016-004, concerning the dumping of certain FISC from China, South Korea (excluding those goods exported by Hanmaek Heavy Industries Co. Ltd.) and Spain (excluding those goods exported by Cintasa, S.A.), and the subsidizing of FISC from China.

Product Exclusions

[101] On June 26, 2020, the CITT re-determined its finding on remand from the FCA to contain several exclusions in addition to its initial finding made on May 25, 2017.

[102] As the CBSA's preliminary assessment in this scope proceeding is that the facility listed in the application is not a petrochemical plant in the context of the CITT's finding on FISC and thus not subject to the finding, it was not necessary for an analysis of the facility listed in the application as it relates to product exclusions.

⁶⁰ Exhibit 2 (NC) FISC 2016 IN

FUTURE ACTION

[103] Comments on the SEF and responses to the comments on the SEF may be submitted by interested parties. Please note that the CBSA will not accept new factual information.

[104] Interested persons may submit comments on the SEF by noon, July 13, 2020, and responses to the comments on the SEF by noon, July 20, 2020.

[105] It is expected that the scope proceeding will be concluded by August 14, 2020.

INFORMATION

[106] This SEF is available through the CBSA's website at the address below. For further information, please contact the officers identified as follows:

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

Telephone: Jody Grantham 613-954-7405

E-mail: simaregistry@cbsa-asfc.gc.ca
Website: www.cbsa-asfc.gc.ca/sima-lmsi/



Darryl Larson
Director
Anti-dumping and Countervailing Investigations
Trade and Anti-dumping Programs Directorate

APPENDIX – PRESCRIBED FACTORS IN SIMR

The SIMR section 54.6 provides the following:

54.6 For the purpose of subsection 66(6) of the Act, the President may take the following factors into account in making a scope ruling:

- (a) in all cases,
 - (i) the physical characteristics of the goods in respect of which the scope proceeding has been initiated, including their composition,
 - (ii) their technical specifications,
 - (iii) their uses,
 - (iv) their packaging, including any other goods contained in the packaging, along with the promotional material and documentation concerning the goods in respect of which the scope proceeding has been initiated, and
 - (v) their channels of distribution;
- (b) for a ruling as to whether goods in respect of which the scope proceeding has been initiated are of the same description as goods to which an order of the Governor in Council or an order or finding of the Tribunal applies,
 - (i) the description of the goods referred to in that order or that order or finding,
 - (ii) in the case of an order or finding of the Tribunal, the reasons for the order or finding, and
 - (iii) any relevant decision by the Tribunal, the Federal Court of Appeal, the Supreme Court of Canada, or a panel under Part I.1 or II of the Act;
- (c) for a ruling as to whether goods in respect of which the scope proceeding has been initiated are of the same description as goods to which an undertaking applies,
 - (i) the description of the goods referred to in the preliminary determination of dumping or subsidizing and in the undertaking, and
 - (ii) the reasons for the preliminary determination; and
- (d) if the basis for a ruling referred to in paragraph (b) or (c) is whether goods in respect of which the scope proceeding has been initiated originate in a country that is subject to the applicable order, finding or undertaking or originate in a third country,
 - (i) the production activities undertaken in the third country in respect of the goods and undertaken in the subject country in respect of goods from which the goods are produced,
 - (ii) the nature of the goods when they were exported from the third country and of goods from which the goods are produced when they were exported from the subject country, and
 - (iii) the costs of production of the goods incurred in the third country.