



OTTAWA, August 14, 2020

**FISC 2020 SP**

# **STATEMENT OF REASONS**

## **SCOPE RULING – CERTAIN FABRICATED INDUSTRIAL STEEL COMPONENTS**

### **Specialized Prefabricated Process Units Enerkem Inc.**

Pursuant to subsection 66(1) of the *Special Import Measures Act*, the Canada Border Services Agency (CBSA) made a scope ruling on August 14, 2020, that the fabricated industrial steel components (FISC) portion of Enerkem Inc.'s specialized prefabricated process units as described in its application to the CBSA are not subject to the Canadian International Trade Tribunal's finding, as revised on June 26, 2020, in Inquiry No. NQ-2016-004R, concerning the dumping of certain FISC from the People's Republic of China (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.), and the subsidizing of FISC from China.

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

---

## TABLE OF CONTENTS

<b>SUMMARY OF EVENTS</b> .....	<b>1</b>
<b>DESCRIPTION OF THE GOODS THAT ARE THE SUBJECT OF THE APPLICATION</b> .....	<b>2</b>
<b>THE CITT’S FINDING</b> .....	<b>3</b>
BACKGROUND.....	3
DESCRIPTION OF THE SUBJECT GOODS .....	3
<b>RELEVANT SCOPE RULINGS</b> .....	<b>6</b>
FISC 2018 SP-02 – SHANGHAI SHUANGYAN’S CHEMICAL EQUIPMENT AND METERING MODULES .....	6
FISC 2018 SP-01 – WOODFIBRE’S LIQUEFIED NATURAL GAS MODULES INCLUDING PIPE RACK MODULES.....	6
<b>SCOPE PROCEEDING PROCESS</b> .....	<b>7</b>
<b>INTERESTED PARTIES</b> .....	<b>7</b>
APPLICANT.....	7
CANADIAN INDUSTRY .....	8
IMPORTERS.....	8
EXPORTERS AND/OR FOREIGN PRODUCERS .....	9
OTHER PARTIES.....	9
<b>POSITIONS OF THE PARTIES</b> .....	<b>9</b>
<b>CBSA ANALYSIS</b> .....	<b>11</b>
<b>SCOPE RULING</b> .....	<b>15</b>
<b>FUTURE ACTION</b> .....	<b>15</b>
<b>INFORMATION</b> .....	<b>16</b>
<b>APPENDIX 1 – REPRESENTATIONS</b> .....	<b>17</b>
<b>APPENDIX 2 – PRESCRIBED FACTORS IN THE SIMR</b> .....	<b>20</b>

## **SUMMARY OF EVENTS**

[1] On December 20, 2019, the CBSA received an application for a scope ruling from Enerkem Inc. (Enerkem) of Montreal, Quebec, whether its specialized prefabricated process units (SPPU) are subject to the Canadian International Trade Tribunal's (CITT) finding issued on May 25, 2017, in Inquiry No. NQ-2016-004, concerning the dumping of certain fabricated industrial steel components (FISC) from the People's Republic of China (China), the Republic of Korea (South Korea) (excluding those goods exported by Hanmaek Heavy Industries Co. Ltd.) and the Kingdom of Spain (Spain) (excluding those goods exported by Cintasa, S.A.), and the subsidizing of certain FISC from China.

[2] 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.

[3] 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.

[4] 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.

[5] 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.

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

[7] On July 6, 2020, the CBSA issued the *Statement of Essential Facts* (SEF) which contained its preliminary assessment that the SPPU units, as detailed in the application by Enerkem, are not subject to the CITT's finding issued on June 26, 2020, in Inquiry No. NQ-2016-004R.

[8] The CBSA received comments on the SEF from the Canadian Institute of Steel Construction (CISC) on July 13, 2020. On July 20, 2020, Enerkem submitted a reply to the comments on the SEF to the CBSA.

[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) and other relevant factors, on August 14, 2020, pursuant to paragraph 66(1) of the SIMA, the CBSA made a scope ruling that the SPPU units are not subject to the CITT's finding, as revised on June 26, 2020, in Inquiry No. NQ 2016-004R.

## **DESCRIPTION OF THE GOODS THAT ARE THE SUBJECT OF THE APPLICATION**

[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
- 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

## **THE CITT’S FINDING**

### **Background**

[18] On September 12, 2016, following a complaint filed by Supermetal Structures Inc. (Supermetal), Supreme Group LP (Supreme), and Waiward Steel LP, the CBSA initiated investigations respecting the dumping of certain FISC originating in or exported from China, South Korea, Spain, the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland and the subsidizing of certain FISC originating in or exported from China. On April 25, 2017, the CBSA made final determinations of dumping in respect of certain FISC from China, South Korea, and Spain, and subsidizing of certain FISC from China.

[19] On May 25, 2017, in Inquiry No. NQ-2016-004, the CITT found that the dumping of 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. The CITT also 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.

[20] On February 28, 2020, as a result of applications for judicial review filed with the 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.<sup>1</sup>

### **Description of the Subject Goods**

[21] For the purpose of this scope proceeding, the goods that are subject to the CITT finding (“subject goods”), as revised on June 26, 2020, are defined as:

---

<sup>1</sup> <https://decisions.citt-tcce.gc.ca/citt-tcce/a/en/item/481179/index.do>

*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.

[22] For additional information on the subject goods, please refer to the CITT's *Findings and Reasons* in Inquiry No. NQ-2016-004<sup>2</sup> and Inquiry No. NQ-2016-004R<sup>3</sup>, and the CBSA's *Statement of Reasons* (SOR) respecting the FISC final determinations.

---

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

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

## **RELEVANT SCOPE RULINGS**

### **FISC 2018 SP-02 – Shanghai Shuangyan’s Chemical Equipment and Metering Modules**

[23] 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.

[24] 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.

[25] 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.

[26] 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.<sup>4</sup> 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.

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

[27] 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.

[28] 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.

---

<sup>4</sup> <https://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2018/fisc201802-sr-eng.html>

[29] 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.<sup>5</sup> 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.

## **SCOPE PROCEEDING PROCESS**

[30] At the initiation of the scope proceeding, a notice concerning the initiation of the scope proceeding and Requests for Information (RFIs) were sent to all known and potentially interested parties. The RFIs solicited information needed to consider the factors, as listed in section 54.6 of the SIMR and any other factor relevant to the scope proceeding. The applicant was also invited to provide additional information relevant to the scope proceeding.

[31] 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 were: 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.

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

[33] On July 6, 2020, the CBSA made its preliminary assessment in the scope proceeding as detailed in the SEF for the scope proceeding issued on that date. Subsequent to the publication of the SEF, various comments and responses to comments were received from interested parties. The CBSA considered the comments and responses in making its scope ruling. Details of these comments and responses, as well as the CBSA's responses, are presented in **Appendix 1**.

## **INTERESTED PARTIES**

### **Applicant**

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

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

---

<sup>5</sup> <https://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2018/fisc2018-sr-eng.html>

[35] 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.

[36] 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>.

[37] The CBSA also received a response from Enerkem to the CBSA's request for additional information sent on February 28, 2020.<sup>6</sup>

### **Canadian Industry**

[38] 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.

[39] The CBSA sent a Producer RFI at initiation 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. (L.A. Brayer), Ocean Steel & Construction Ltd. (Ocean Steel), Supermetal, Supreme, and Walters Inc. (Walters). The CBSA also received a response to the Producer RFI from the CISC, an industry association consisting of a broad range of stakeholders in the Canadian steel construction industry. Its members include Canadian producers of FISC.

[40] The CBSA also received a response from CISC<sup>7</sup> and L.A. Brayer<sup>8</sup> to the CBSA's request for additional information sent on February 28, 2020.

### **Importers**

[41] 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.

[42] 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.

---

<sup>6</sup> Exhibit 43 (NC) FISC 2020 SP

<sup>7</sup> Exhibit 42 (NC) FISC 2020 SP

<sup>8</sup> Exhibit 41 (NC) FISC 2020 SP

## **Exporters and/or Foreign Producers**

[43] 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.

[44] 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.

## **Other Parties**

[45] The CBSA received responses from Advanced Biofuels Canada (ABC)<sup>9</sup> and Natural Resources Canada (NRCan)<sup>10</sup> to the CBSA's request for additional information sent on February 28, 2020.

## **POSITIONS OF THE PARTIES**

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

[46] The details of the information and arguments submitted by Enerkem that the goods in question are not subject to the CITT finding are available in the SEF issued on July 6, 2020. The information and arguments are summarized below:

- The SPPU does not fall under one of the seven uses of FISC listed in the CITT finding
- The Enerkem plant should not be considered a petrochemical plant

### ***The SPPU does not fall under one of the seven uses of FISC listed in the CITT finding***

[47] Enerkem took 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.

[48] 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.

---

<sup>9</sup> Exhibit 44 (NC) FISC 2020 SP

<sup>10</sup> Exhibit 51 (NC) FISC 2020 SP

***The Enerkem plant should not be considered a petrochemical plant***

[49] 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.

[50] In its response to the CBSA's request for additional information, Enerkem further defined petrochemicals noting that they are not derived from the renewable methanol which is produced from the SPPU. Submissions from ABC and NRCan shared similar definitions of petrochemicals.

[51] Enerkem also noted that it obtained international certification for an existing SPPU plant in Edmonton, Alberta which will share the same proprietary technology in Enerkem's planned facility in Verennes, Quebec. The certification states that the facility inputs are organic municipal solid waste with an output that is considered bio-methanol.

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

[52] The CBSA received responses to its RFI from interested parties contending that the goods in question are subject to the CITT finding, namely: L.A. Brayer, Ocean Steel, Supermetal, Supreme, Walters, and the CISC.

[53] The details of the information and arguments submitted by each of these interested parties are available in the SEF issued on July 6, 2020. The information and arguments are summarized below:

- The steel used in the SPPU would be considered subject in the seven uses of FISC listed in the CITT Finding
- The Enerkem facility utilizing the SPPUs should be considered a petrochemical plant

***The steel used in the SPPU would be considered subject in the seven uses of FISC listed in the CITT Finding***

[54] Parties argued that the structural steel elements of the SPPU would be considered subject to the FISC CITT finding if they were intended for any of the seven uses listed in the finding.

***The Enerkem facility utilizing the SPPUs should be considered a petrochemical plant***

[55] Parties argued that the facility proposed in Enerkem's application should be considered a petrochemical plant and therefore subject to the CITT finding.

[56] Parties argued that the modular structures used in Enerkem's proposed facility are no different than structures used in the petrochemical industry.

[57] Parties argued that the methanol produced in the Enerkem facility should be considered a petrochemical. Sources were cited comprising of definitions of petrochemicals, with one definition including renewable materials as petrochemicals.

[58] Parties noted that plastics form a portion of the inputs included to produce methanol at the proposed Enerkem facility. As such, parties argued that since plastics are a petrochemical product, the methanol output should also be considered a petrochemical.

[59] Parties argued that petrochemical plants should be interpreted in a more broad sense to include such plants as the proposed Enerkem facility.

## **CBSA ANALYSIS**

[60] As summarized in **Appendix 1**, representations were received from the CISC and Enerkem regarding the CBSA's preliminary assessment in the SEF. After considering the comments and arguments raised by the interested parties, the CBSA maintains its preliminary assessment.

[61] 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 **Appendix 2**.

[62] Accordingly, the CBSA considered the following factors in making its scope ruling:

- 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.

[63] 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;

[64] 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”.<sup>11</sup> 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.

[65] 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***

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

[67] The applicant defined a petrochemical as “any chemical that is derived from fossil sources including crude oil, coal and natural gas”<sup>12</sup>. Similarly, ABC 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.”<sup>13</sup> 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.”<sup>14</sup>

---

<sup>11</sup> Exhibit 2 (NC) FISC 2020 SP

<sup>12</sup> Exhibit 43 (NC) FISC 2020 SP

<sup>13</sup> Exhibit 44 (NC) FISC 2020 SP

<sup>14</sup> Exhibit 51 (NC) FISC 2020 SP

[68] On the other hand, CISC defined petrochemicals as a class or family of chemicals<sup>15</sup> where methanol (the chemical produced by the facility detailed in the application) is a primary petrochemical<sup>16</sup>, 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”<sup>17</sup> 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.”<sup>18</sup> The position of CISC is supported by Supermetal, Walters, Ocean, and Supreme.

[69] 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”<sup>19</sup>
  - “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”<sup>20</sup>
  - 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.<sup>21</sup>
- Illustrated Petroleum Reference Dictionary, 2nd Ed., 1982:
  - “petrochemicals are ‘chemicals derived from petroleum’”<sup>22</sup>
- 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 [...]”<sup>23</sup>
- Gasohol for Energy Production, Nicholas P. Cheremisinoff, 1979:
  - “petrochemicals are ‘chemicals manufactured from components of crude oil and/or natural gas’”<sup>24</sup>
- The Handbook of Petrochemicals and Processes, G. Margaret Wells, 1991:

---

<sup>15</sup> Exhibit 21 (NC) FISC 2020 SP

<sup>16</sup> *IBID.*

<sup>17</sup> Exhibit 21 (NC) FISC 2020 SP, and James G. Speight, Handbook of Petrochemical Processes (Boca Raton: CRC Press, 2019)

<sup>18</sup> Exhibit 42 (NC) FISC 2020 SP

<sup>19</sup> James G. Speight, Handbook of Petrochemical Processes (Boca Raton: CRC Press, 2019), and Exhibit 21 (NC) FISC 2020 SP

<sup>20</sup> *IBID.*

<sup>21</sup> *IBID.*

<sup>22</sup> Illustrated Petroleum Reference Dictionary, 2nd Ed., 1982, and Exhibit 52 (NC) FISC 2020 SP

<sup>23</sup> The Petroleum Handbook, 6th Ed., Elsevier, 1983, Chapter 10 – Petrochemicals, and Exhibit 52 (NC) FISC 2020 SP

<sup>24</sup> Gasohol for Energy Production, Nicholas P. Cheremisinoff, 1979, and Exhibit 52 (NC) FISC 2020 SP

- “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.”<sup>25</sup>

[70] 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.<sup>26</sup>

[71] Since methanol is the output of the proposed Enerkem facility, several parties provided their views on methanol and its relationship with petrochemicals. Enerkem, ABC, and NRCan presented positions that the methanol produced from the Enerkem 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.

[72] 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. Enerkem, ABC, 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 Enerkem facility is such that the methanol produced by the facility is not primarily derived from plastic.

### ***Original Intent of CBSA’s Product Definition***

[73] The product definition limits subject goods to those for use in structures for seven types of industries, one of which is “petrochemical plants”. The product definition specifically refers to plants that are “petrochemical” plants, not methanol chemical plants or chemical plants in general.

---

<sup>25</sup> The Handbook of Petrochemicals and Processes, G. Margaret Wells, 1991, and Exhibit 52 (NC) FISC 2020 SP

<sup>26</sup> James G. Speight, Handbook of Petrochemical Processes (Boca Raton: CRC Press, 2019), and Exhibit 21 (NC) FISC 2020 SP

[74] 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].”<sup>27</sup> This statement is also contained in the “additional product information” section of the CBSA’s SOR for its final determinations 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 final determinations 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.

[75] 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 by the CBSA is the explanation of petrochemical plants that was provided by the complainants in the complaint and repeated in the CBSA Final Determinations SOR on FISC.

### **SCOPE RULING**

[76] On the basis of the information on the administrative record and having considered the relevant factors contained in section 54.6 of the SIMR and other relevant factors, on August 14, 2020, the CBSA made a scope ruling pursuant to subsection 66(1) of SIMA that the SPPU units for use in converting RDF to methanol, as detailed in the application of Enerkem, are not subject to the CITT’s finding, as revised on June 26, 2020, in Inquiry No. NQ-2016-004R.

### **FUTURE ACTION**

[77] Pursuant to subsection 66(4) of SIMA, this scope ruling takes effect on August 14, 2020.

[78] Pursuant to section 69 of SIMA, this scope ruling is binding with respect to any determination or re-determination made in respect of any goods to which the scope ruling applies that are released on or after the date it is made.

[79] Pursuant to subsection 66(7) of SIMA, a scope ruling made under subsection 66(1) is final and conclusive, subject to further appeal. Pursuant to subsection 61(1.1) of SIMA, a scope ruling may be appealed to the CITT by any interested person as defined in subsection 52.3(1) of the SIMR. The notice of appeal must be filed in writing with the CBSA and the CITT within 90 days after the day the scope ruling was made. A decision made by the CITT may be further appealed to the FCA.

---

<sup>27</sup> Exhibit 2 (NC) FISC 2016 IN

## **INFORMATION**

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

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

**Telephone:** Jody Grantham 613-954-7405

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

**Website:** [www.cbsa-asfc.gc.ca/sima-lmsi/](http://www.cbsa-asfc.gc.ca/sima-lmsi/)



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

## **APPENDIX 1 – REPRESENTATIONS**

### ***Burden of proof***

#### **CISC’s Submission<sup>28</sup>**

CISC argued that the applicant in a scope proceeding bears the burden of proof, and the burden of proof is upon Enerkem to establish that FISC for its proposed facility does not fall within the FISC product definition.

#### **CBSA Response**

The CBSA made its decision based on information in the FISC complaint, the SOR of the FISC final determinations, the CITT finding, and information submitted by parties in the scope proceeding.

### ***Interpretation of “petrochemical plants”***

#### **CISC’s Submission<sup>29</sup>**

CISC argued that in the SEF the CBSA erred in its interpretation of the term “petrochemical plants” by not considering its meaning in the context of the FISC product definition and SIMA.

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 argued that section 12 should apply to the CBSA’s interpretation of petrochemical plants in this case.

CISC stated that the seven industrial categories listed in the FISC product definition are not technical specifications of end uses and should be interpreted broadly.

CISC argued “it was not the intention that an industrial chemical facility producing methanol from natural gas would be included within the product definition, but an industrial facility producing methanol using the same production process [...] and having the similar uses of structural steel, is not covered based solely on its use of biomass as a production feedstock.”

---

<sup>28</sup> Exhibit 56 (NC) FISC 2020 SP

<sup>29</sup> Exhibit 56 (NC) FISC 2020 SP

CISC argued the structural steel to be used in Enerkem's proposed facility has "the same physical characteristics as FISC used in a petrochemical plant, the same technical specifications as FISC used in a petrochemical plant, the same use of FISC as that in a petrochemical plant, and the same channels of distribution as FISC used in a petrochemical plant. The only difference between FISC used in a petrochemical plant that converts natural gas to methanol and an industrial production facility that produces methanol from biomass is the production input and particular equipment used to process the input into syngas."

CISC referred to section 54.6(a) of SIMR and argued it does not list inputs as a relevant consideration in a scope ruling application and is instead concerned with the final product.

CISC argued the CBSA "misinterpreted the term 'includes' as it was used in the FISC complaint and the CBSA's Statement of Reasons for Final Determination." CISC argued that the CBSA erred "as it treated a non-exhaustive definition as exhaustive."

CISC cited the *2019 Handbook of Petrochemical Processes* which states "in the setting of modern industry, 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 sources."

CISC argued that responses from NRCan and the CBSA's Science and Technology Directorate to the CBSA's questionnaires on petrochemicals "should be treated cautiously" because they were not asked whether the facility proposed by Enerkem "would be considered a petrochemical plant within the context of the FISC definition".

### **Enerkem's Reply Submission<sup>30</sup>**

Counsel for Enerkem replied that the intention of the FISC complaint was to target petrochemicals derived from oil and natural gas rather than from renewable resources, and that the complaint did not indicate that a chemical product derived from biomass was intended to be included in the definition of petrochemical.

Counsel for Enerkem replied that the CBSA has the exclusive jurisdiction to determine the definition of subject goods and did not err in using the "regular definition" of petrochemicals in its analysis.

Counsel for Enerkem replied that the CISC erred when it stated that "petrochemical plants describes a type of structure, not the inputs processed by the facility" arguing that "if such were the case, the complainants would not have put such an emphasis on the oil and natural gas sector."

---

<sup>30</sup> Exhibit 57 (NC) FISC 2020 SP

Counsel for Enerkem replied that the CBSA correctly applied section 54.6 of SIMR because methanol produced by biomass is distinguishable from methanol produced with oil or natural gas because the input materials are different and the output, uses and target market are different.

### **CBSA Response**

The CITT finding on FISC limits subject goods to those for use in structures for seven types of industries, one of which is “petrochemical plants”. The product definition specifically refers to plants that are “petrochemical” plants (e.g. not methanol chemical plants or chemical plants in general). The CBSA interpreted the term “petrochemical” based on information in the FISC complaint, the SOR of the FISC final determinations, the CITT finding, and information submitted by parties in the scope proceeding.

There is no final and authoritative definition of “petrochemicals” on the record that includes methanol derived from non-petroleum biomass. While the 2019 Handbook of Petrochemical Processes cited by CISC states “in the setting of modern industry, 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 sources”, that statement includes the caveat “expanded form” (i.e. expanded, not regular definition of petrochemicals). While methanol can be a petrochemical, there is no conclusive evidence on the record that it is always a petrochemical.

The FISC complaint and the CBSA’s SOR for Final Determinations state that “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].” There is not sufficient evidence on the record to determine that petrochemical plants include plants that produce methanol from the type of raw materials to be used in the proposed facility detailed in Enerkem’s application.

## **APPENDIX 2 – PRESCRIBED FACTORS IN THE 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.