



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2011-003

Potassium Silicate Solids

*Determination issued  
Tuesday, March 6, 2012*

*Reasons issued  
Wednesday, March 21, 2012*

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

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

**PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping and subsidizing of potassium silicate (also known as silicic acid, potassium salt; potassium water glass; potash water glass; potassium silicate glass), of all grades and ratios in a soluble solid including chunks, flakes or powder forms, originating in or exported from the Islamic Republic of Pakistan, have caused injury or retardation or are threatening to cause injury.

This preliminary injury inquiry follows receipt by the Secretary, on January 6, 2012, of notification given pursuant to subparagraph 34(1)(a)(i) of the *Special Import Measures Act*, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines:

- that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused retardation; and
- that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury or are threatening to cause injury.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Diane Vincent  
Diane Vincent  
Member

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Member

Dominique Laporte  
Dominique Laporte  
Secretary

The statement of reasons will be issued within 15 days.

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## STATEMENT OF REASONS

### BACKGROUND

1. On January 6, 2012, following a complaint filed on November 16, 2011, by National Silicates Partnership (NSP), a private partnership between PQ Canada Company and NSL Potters Canada Company, the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of potassium silicate (also known as silicic acid, potassium salt; potassium water glass; potash water glass; potassium silicate glass), of all grades and ratios in a soluble solid including chunks, flakes or powder forms, originating in or exported from the Islamic Republic of Pakistan (Pakistan) (the subject goods).

2. On January 9, 2012, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.<sup>1</sup>

3. The complaint is opposed by Marquis Alliance Energy Group Inc. (Marquis Alliance), an importer of the subject goods and a Canadian producer of potassium silicate liquids, by Captain PQ Chemical Industries (PVT) Limited (Captain), an exporter of the subject goods, and by the Consulate General of the Islamic Republic of Pakistan (Consulate General of Pakistan).

4. On February 7, 2012, the Tribunal requested that NSP provide information, such as studies or business plans, upon which it relied in support of a statement in its public complaint as to the viability of production of potassium silicate solids in Canada. The requested documents were received on February 13, 2012.

5. On February 7, 2012, the Tribunal requested additional submissions from the parties on the issue of which domestically produced goods constitute like goods in relation to the subject goods. Specifically, the Tribunal requested that parties provide evidence and argument on whether potassium silicate liquids are like goods in relation to the subject goods. In addition, the Tribunal requested that parties provide the Tribunal with a list of known producers of potassium silicate liquids. Submissions on like goods were received from NSP, Marquis Alliance and Captain on February 15, 2012. NSP filed a reply submission on February 22, 2012.

6. On March 6, 2012, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>2</sup> the Tribunal determined that the evidence did not disclose a reasonable indication that the dumping and subsidizing of the subject goods had caused retardation; however, the Tribunal determined that the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury.

### CBSA'S DECISION TO INITIATE INVESTIGATIONS

7. In accordance with subsection 31(1) of *SIMA*, the CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury or were threatening to cause injury. Accordingly, the CBSA initiated investigations on January 6, 2012.

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1. C. Gaz. 2012.I.79.

2. R.S.C. 1985, c. S-15 [*SIMA*].

8. The CBSA's period of investigation (POI) with respect to the alleged dumping was from January 1, 2010, to September 30, 2011. The CBSA was of the view that all the subject goods had been dumped, with an estimated weighted average margin of dumping of 35.6 percent, expressed as a percentage of the export price of the subject goods.<sup>3</sup>

9. With respect to the alleged subsidizing, during the same POI, the CBSA was of the view that approximately 75 percent of the subject goods had been subsidized, with an estimated overall amount of subsidy equal to 4.1 percent of the export price of the subject goods.<sup>4</sup>

10. Further, the CBSA was of the opinion that the estimated weighted average margin of dumping and an estimated overall amount of subsidy were not insignificant and that the estimated volumes of dumped and subsidized goods were not negligible.<sup>5</sup>

## **SUBMISSIONS ON RETARDATION, INJURY AND THREAT OF INJURY**

### **Complainant**

11. NSP submitted that the dumping and subsidizing of the subject goods had caused retardation of the establishment of production of potassium silicate solids in Canada, injury to the production of potassium silicate solids and threat of injury to the domestic industry of potassium silicate solids. In support of its allegations, NSP provided evidence of increased volumes of the subject goods and alleged price undercutting, price depression and price suppression, lost sales, loss of market share, reduced production and capacity utilization, a potential reduction in employment, and reduced return on investments, profitability and gross margins due to the dumping and subsidizing of the subject goods. NSP submitted that it also experienced significant lost sales and market share, price depression, price suppression, reduced capacity utilization, reduced employment and productivity, and a decline in return on investments with respect to derivative products, namely, potassium silicate liquids and drilling fluids. NSP stated that all injury to its derivative products has a direct negative impact on the production of potassium silicate solids.

12. NSP submitted that the dumping and subsidizing of the subject goods threatened to cause injury. In this regard, NSP alleged that the rapid increase in the volume of dumped and subsidized imports at unchanged price levels since 2008 posed an imminent threat of injury in the form of price suppression and possible price erosion, loss of market share and sales, and reduced production, profitability and employment to levels below what would be achieved in the absence of dumped and subsidized imports. NSP also stated that not being able to establish a domestic industry for potassium silicate solids is another threat of injury.

### **Parties Opposed to the Complaint**

13. Captain and Marquis Alliance stated there is no reasonable indication of retardation, as there is a lack of evidence of any delay or cessation of the establishment of a domestic industry, and that NSP has failed to provide a link between the alleged dumped and subsidized imports and retardation of the establishment of a domestic industry.

14. As Captain and Marquis Alliance claimed that the production of like goods in Canada has not been established, they argued that NSP's claims of injury and threat of injury are premature. Captain submitted further that imports of the subject goods have not increased suddenly and that increased imports in 2010

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3. Tribunal Exhibit PI-2011-003-05, Administrative Record, Vol. 1C at 271.

4. *Ibid.* at 275.

5. *Ibid.* at 271, 275.

were primarily the result of the merger between Marquis Drilling Fluids (Marquis) and Alliance Energy Services (Alliance) to form Marquis Alliance in November 2009.<sup>6</sup> Captain and Marquis Alliance noted further that imports have since decreased, as the type and quantity of drilling using drilling fluids made from potassium silicate have declined in Canada. Captain also stated that it prices its product responsibly and profitably and has never used dumping or price suppression to gain market share.

15. The Consulate General of Pakistan submitted that many of the issues raised as injury in the complaint relate to typical difficulties faced by a new entrant into an established market. The Consulate General of Pakistan also submitted that Pakistan has at least two competitive advantages: low costs of labour and the availability of raw materials/natural resources. Moreover, it contends that Pakistan, as a developing country, should receive special treatment, since its economy has already suffered heavily due to natural catastrophes in the recent past and to terrorism.

## ANALYSIS

### Legislative Framework

16. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine whether there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury. In making its determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.<sup>7</sup>

17. Subsection 2(1) of *SIMA* defines "retardation" as "... material retardation to the establishment of a domestic industry" and defines "injury" as "... material injury to a domestic industry". It also defines "domestic industry" as "... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, 'domestic industry' may be interpreted as meaning the rest of those domestic producers." Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before examining allegations of injury, retardation or threat of injury.

### Like Goods and Classes of Goods

18. The CBSA has defined the subject goods as potassium silicate (also known as silicic acid, potassium salt; potassium water glass; potash water glass; potassium silicate glass), of all grades and ratios in a soluble solid including chunks, flakes or powder forms, originating in or exported from Pakistan, and the Tribunal must conduct its preliminary injury inquiry on the basis of this product description.

19. In assessing whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused retardation or injury or are threatening to cause injury to domestic producers of like goods, the Tribunal may consider whether the subject goods constitute one or more classes of goods and must define the scope of the like goods in relation to the subject goods.

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6. See Tribunal Exhibit PI-2011-003-13.03, Administrative Record, Vol. 3 at para. 37. See, also, Tribunal Exhibit PI-2011-003-02.01, Administrative Record, Vol. 1 at 36.

7. S.O.R./84-927 [*Regulations*].

20. Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows:

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

21. On February 7, 2012, the Tribunal requested parties to file submissions on the scope of domestically produced goods that constitute like goods in relation to the subject goods. On February 15, 2012, the Tribunal received three submissions on like goods and classes of goods from NSP, Captain and Marquis Alliance, respectively, and one reply submission from NSP on February 22, 2012.

22. NSP submitted that the domestically produced potassium silicate solids are identical or similar to the subject goods and, therefore, are like goods in relation to the subject goods. NSP stated that, while it is true that potassium silicate solids can be used as ingredients in potassium silicate liquids, it does not mean that both products are like goods. NSP submitted further that potassium silicate solids constitute a single class of goods.

23. Captain and Marquis Alliance submitted that potassium silicate liquids are not like goods in relation to the subject goods and that only potassium silicate solids are like goods in relation to potassium silicate solids. On the issue of classes of goods, Captain and Marquis Alliance stated that potassium silicate solids comprise three classes of goods, on the basis of their respective forms (e.g. powder, flakes and glass/chunks), since the dissolver equipment for the production of potassium silicate liquids, at least in their case, is designed for specific forms of potassium silicate solids and are not interchangeable.

24. On the issues of “like goods” and “classes of goods”, the CBSA opined as follows in its statement of reasons:

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

[26] After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that subject and like goods constitute only one class of goods.<sup>8</sup>

25. In determining the like goods and whether there is one or more classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses, and whether the goods fulfill the same customer needs).<sup>9</sup>

26. On the issue of classes of goods, the Tribunal received submissions from Captain and Marquis Alliance indicating that the subject goods and like goods should be considered as being comprised of three classes of goods. In this regard, Captain and Marquis Alliance submitted that potassium silicate solids in powder, flake and glass/chunk forms are not substitutable one for the other. In its reply submission, NSP stated that it is capable of using potassium silicate solids in the form of chunks and flakes in its dissolver to

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8. Tribunal Exhibit PI-2011-003-05, Administrative Record, Vol. 1C at 267.

9. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.



manufacture potassium silicate liquids. Moreover, NSP submitted that Marquis Alliance did not provide any evidence to support its assertions that the various forms of potassium silicate solids were not substitutable one for the other.

27. On the basis of the evidence on the record relating to the issue of classes of goods, the Tribunal determines that potassium silicate solids, whether in the form of chunks, flakes or powder, constitute a single class of goods. Indeed, the evidence suggests that NSP is capable of producing all three forms of potassium silicate solids and that they are sold through the same channels of distribution, have the same end uses and fulfill the same customer needs, that is, the production of potassium silicate liquids.

28. Turning to the issue of like goods, the Tribunal notes that all three parties filed supplemental submissions on this issue clearly indicating agreement that potassium silicate liquids are not like goods in relation to the subject goods, i.e. potassium silicate solids. The evidence provides no reason for the Tribunal to believe otherwise. Thus, the Tribunal finds that domestically produced potassium silicate solids are like goods in relation to the subject goods.

29. On the basis of the foregoing, the Tribunal finds that the subject goods comprise a single class of goods and that domestically produced potassium silicate solids are the like goods in relation to the subject goods.

### **Domestic Industry**

30. In its decision to initiate the investigations, the CBSA indicated that NSP accounted for the major proportion of known domestic production of the like goods.<sup>10</sup> The CBSA and NSP stated that there were no other known producers of the like goods in Canada.<sup>11</sup>

31. Accordingly, the Tribunal finds that NSP accounts for a major proportion of domestic production of the like goods. More specifically, the Tribunal finds that NSP, as the only known domestic producer of the like goods, constitutes the domestic industry.

### **Retardation**

32. NSP submitted that there has been retardation in relation to the establishment of a domestic industry for potassium silicate solids. NSP stated that production of potassium silicate solids commenced in the fourth quarter of 2010. NSP characterized its domestic production of potassium silicate solids as stop and start, in light of the test runs conducted and interruptions to domestic production in the third and fourth quarters of 2011, for the modification of the equipment used to manufacture potassium silicate solids.

33. NSP also submitted that it made a substantial commitment to the establishment of a domestic industry for potassium silicate solids.<sup>12</sup> NSP submitted that it has purchased machinery and modernized existing facilities in order to manufacture the like goods in a more cost-efficient manner.

34. While not disputing that NSP has made a commitment to the establishment of a domestic industry for potassium silicate solids, Captain and Marquis Alliance submitted that there is no indication of retardation, as there is no evidence of any delay or cessation to the establishment of said industry.

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10. Tribunal Exhibit PI-2011-003-05, Administrative Record, Vol. 1C at 268.

11. *Ibid.* at 264; Tribunal Exhibit PI-2011-003-02.01, Administrative Record, Vol. 1 at 52-53.

12. Tribunal Exhibit PI-2011-003-03.01 (protected), Administrative Record, Vol. 2 at 14-15, 121-23.

35. The existence of an established domestic industry is largely a question of fact. The Tribunal notes that *SIMA* views retardation and injury (or threat of injury) as two distinct and mutually exclusive concepts. In the Tribunal's view, retardation is possible *only* if there is no established domestic industry, whereas injury or threat of injury is possible *only* in the case of an already established domestic industry. The Tribunal is of the view that the commencement of domestic production is proof of the establishment of a domestic industry. In previous decisions,<sup>13</sup> the Tribunal has consistently held that there could be no retardation if there was domestic production of like goods.<sup>14</sup>

36. On the basis of the evidence submitted by NSP, production commenced in late 2010. Since then, monthly production volumes achieved through 2011 have varied, but, in the aggregate, this production constitutes a significant proportion of the estimated domestic market.

37. Accordingly, on the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that, because there is production of like goods in Canada, there is therefore no reasonable indication that the dumping and subsidizing of the subject goods have caused retardation to the establishment of a domestic industry.

### **Volume of Dumped and Subsidized Goods**

38. NSP submitted that imports of the subject goods increased significantly between 2006 and 2010, in both relative and absolute terms. During those years, imports were at their highest levels in 2010. NSP stated that the presence of the dumped and subsidized goods impeded NSP's participation in the market for potassium silicate solids. In terms of share of imports, NSP submitted that the increase in dumped and subsidized imports from Pakistan displaced the share of imports from the United States.

39. Captain submitted that imports of the subject goods have not shown any sudden increase and that increased imports in 2010 were primarily the result of the merger of Marquis and Alliance in November 2009. Captain noted that imports have declined since 2010, as the number of oil and gas drilling sites using drilling fluids made from potassium silicate has declined in Canada.

40. Import data compiled by the CBSA show similar trends to the data provided by NSP. These data show that virtually all potassium silicate solids entering Canada originates in either Pakistan or the United States. Between 2009 and 2010, total imports increased by 88 percent, mainly due to imports of the subject goods. Indeed, imports from Pakistan more than tripled between 2009 and 2010. Then, on an annualized basis for all of 2011, imports declined significantly compared to 2010. Between 2008 and interim 2011,<sup>15</sup> the share of total imports of the subject goods increased from 38 percent to 61 percent.<sup>16</sup>

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13. See, for example, *Fibreglass Pipe Insulation* (19 November 1993), NQ-93-002 (CITT) at 22; *Oil and Gas Well Casing* (4 July 2001), RR-2000-001 (CITT) at 11; *Fresh Garlic* (21 March 1997), NQ-96-002 (CITT) at 18.

14. In assessing evidence of alleged retardation to the establishment of a domestic industry, the Tribunal is cognizant of the fact that new industries in the start-up phase of commercial production can be especially vulnerable to the retardation of viable commercial production by reason of their typically higher front-end costs of production. Indeed, the special situation of start-ups is already recognized in *SIMA*, albeit in a different context. Specifically, section 23.1 of *SIMA* and subsection 13.1(2) of the *Regulations* recognize the potential need for special accommodations in the calculation of normal values for producers in the initial stages of commercial production. This is not the situation here, however, given evidence indicating that NSP's production in Canada of like goods far exceeds domestic consumption.

15. Interim 2011 represents the period from January to September.

16. Tribunal Exhibit PI-2011-003-05, Administrative Record, Vol. 1C at 269.

41. Imports from the United States increased by slightly more than 20 percent from 2009 to 2010 and then fell in 2011 (annualized) to approximately one third of the level realized in 2010. From 2008 to interim 2011, imports from the United States declined from 62 percent to 39 percent. Imports from other countries were marginal in 2009 and 2010.<sup>17</sup>

42. The decline in the presence of imports from the United States coincided with the start of domestic production of like goods.

43. Pursuant to paragraph 37.1(1)(a) of the *Regulations*, the Tribunal considered imports of the subject goods relative to the domestic production of like goods. On the basis of the information available, the Tribunal compared the imports of the subject goods from Pakistan to NSP's production data, for the period 2009 to September 2011.<sup>18</sup> As domestic production volumes increased during the period, the ratios of imports of the subject goods to domestic production of like goods declined significantly and rapidly.

44. The Tribunal also considered the ratio of imports of the subject goods to domestic consumption of potassium silicate solids. The Tribunal used total imports of potassium silicate solids as reported by the CBSA for the years 2009, 2010 and the first three quarters of 2011, as a proxy for domestic consumption. The ratio of imports of the subject goods from Pakistan to domestic consumption of potassium silicate solids almost doubled between 2009 and September 2011.<sup>19</sup> In the Tribunal's opinion, the increase in the ratio of imports during the aforementioned period was significant.

45. In sum, until NSP commenced production in late 2010, imports represented 100 percent of the domestic market. As production in Canada increased through 2011, the ratio of the subject imports to domestic production declined, and the ratio of the subject imports to consumption rose commensurately.

46. In light of the above, the Tribunal finds that the evidence discloses a reasonable indication that, between 2009 and interim 2011, the volume of imports of the subject goods increased in absolute terms, that the imports of the subject goods were significant relative to the domestic production of potassium silicate solids and that imports of the subject goods relative to the consumption of potassium silicate solids increased and were at significant levels in 2009, 2010 and interim 2011.

### **Effects on the Price of Like Goods**

47. NSP submitted that imports of the subject goods caused price undercutting, price depression and price suppression to domestically produced potassium silicate solids.

48. NSP submitted that Captain, the main exporter of the subject goods to Canada, sells significantly below the cost of production, including an amount for general, selling and administrative expenses and a reasonable amount for profit. NSP alleged that, on the basis of its examination of export unit values, Captain did not increase its prices between 2008 and 2011. NSP submitted that these prices are having a suppressing effect on domestic prices. Consequently, it has been unable to recover its start-up costs. In this regard, NSP provided confidential injury allegations that it was unable to implement a price increase for potassium silicate solids. NSP also provided a price comparison between landed prices for potassium silicate solids imported from Pakistan and domestically produced potassium silicate solids. These landed prices were alleged to be lower than those for the like goods.

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17. *Ibid.*

18. Tribunal Exhibit PI-2011-003-03-01 (protected), Administrative Record, Vol. 2 at 49, 50; Tribunal Exhibit PI-2011-003-03-02 (protected), Administrative Record, Vol. 2D at 56.

19. Tribunal Exhibit PI-2011-003-05, Administrative Record, Vol. 1C at 269.

49. In support of its allegations of price undercutting and price depression, NSP described an instance where it had to reduce the imputed price of potassium silicate solids in order to maintain sales of derivative products.

50. Captain stated that it prices its product responsibly and profitably, never using dumping or price suppression to obtain market share.

51. The Tribunal notes that NSP provided no data on domestic sales of potassium silicate solids and, therefore, could not compare the average unit net selling value of the like goods with the unit value of the subject imports. However, the Tribunal observes that, for every period between 2009 and interim 2011, export unit values of the subject goods were significantly lower than the export unit values of imports from the United States.

52. On the basis of the foregoing, the Tribunal finds that the evidence in this preliminary injury inquiry discloses a reasonable indication that the dumping and subsidizing of the subject goods have resulted in price undercutting, price depression and price suppression.

### **Impact on the Domestic Industry**

53. NSP submitted that it has suffered lost sales, a loss of market share, and reduced production, profitability, gross margins, employment, return on investments and capacity utilization due to the presence of the dumped and subsidized goods.

54. NSP stated that it was unable to sell potassium silicate solids to Marquis Alliance in 2011 and that, as long as dumped and subsidized goods are available to its customers, it will not be able to sell domestically manufactured potassium silicate solids. NSP acknowledged that it would not lose sales of potassium silicate solids per se; however, NSP would not be able to begin to make such sales to Canadian purchasers.

55. NSP submitted that imports of the subject goods increased their market share significantly relative to imports from the United States. Imports of the subject goods maintained their dominant market position into 2011, after NSP began its production of the like goods. NSP stated that, if domestic customers do not buy its potassium silicate solids or its derivative product, it will have no reason to continue production of the like goods in Canada.

56. In support of its submissions on profitability, NSP provided an income statement for domestic sales of potassium silicate products for its plants in Etobicoke, Ontario, and Whitecourt, Alberta, for the first nine months of 2011.

57. NSP submitted that the subject goods would also have a negative impact on its employment, return on investments and capacity utilization. NSP calculated the capacity utilization rates on the basis of the assumption that its imports of potassium silicate solids from the United States between 2006 and 2010 had been produced in Canada. NSP submitted that these calculated capacity utilization rates show the negative effect of the dumped and subsidized goods. For interim 2011, capacity utilization remained low despite the production of potassium silicate solids established in Canada.

58. To support its submission on the impact of the dumped and subsidized goods on the domestic industry, NSP provided data on the number of jobs at risk if the production of potassium silicate solids were terminated. It also provided the cost of capital investments made in order to establish production of potassium silicate solids in Canada. NSP stated that the presence of the dumped and subsidized goods will prevent NSP from realizing the benefits of these capital investments.

59. Captain and Marquis Alliance submitted that the Canadian market for potassium silicate solids has been in decline due to changes in drilling types and reduced drilling activity in the oil and gas industry. According to Captain, the market for potassium silicate solids and its derivative products declined by 91 percent between 2005 and 2011.

60. On the basis of the evidence before it, the Tribunal observes that NSP's performance following its entry into the production of potassium silicate solids may have been below what it otherwise might have expected. The nexus between NSP's performance and the dumped and subsidized imports is an issue that will need to be addressed further during an inquiry under section 42 of *SIMA*, if the CBSA concludes, in its preliminary determination, that the subject goods have been dumped and/or subsidized.

61. Having regard to the foregoing, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

#### **Other Factors**

62. NSP stated it does not believe that other factors are responsible for the injury or threat of injury that it is alleging. NSP acknowledges that the state of the North American economy and weather conditions in Western Canada affect the number of oil and gas wells drilled during a drilling season. However, NSP asserted that, but for the dumping and subsidizing of the subject goods, it would have had an opportunity to sell domestically produced potassium silicate solids to oil and gas service companies.

63. As noted above, Captain and Marquis Alliance submit that the Canadian market for potassium silicate solids and its derivative products declined significantly between 2005 and 2011 due to the number and types of wells being drilled. In addition, Captain questioned the business logic of locating the production of potassium silicate solids in Etobicoke rather than closer to both the sources of raw material and the market for NSP's products.

64. The Tribunal is of the view that, while the state of the North American economy and the weather conditions in Western Canada may impact the domestic industry of like goods, this does not negate the Tribunal's conclusion that, overall, the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury. It is only in the context of an inquiry under section 42 of *SIMA* that the Tribunal will be in a position to fully explore whether the domestic industry has been injured by factors unrelated to the dumped and subsidized goods.

**CONCLUSION**

65. On the basis of the foregoing analysis, the Tribunal determines that the evidence does not disclose a reasonable indication that the dumping and subsidizing of the subject goods have caused retardation. However, the Tribunal determines that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Diane Vincent  
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Member

Pasquale Michael Saroli  
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