Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

**CANADIAN INTERNATIONAL TRADE TRIBUNAL**

# Appeals

## DECISION AND REASONS

Appeal EA-2020-001

Canadian Institute of Steel Construction

v.

President of the Canada Border Services Agency

*Decision and reasons issued*
*Friday, February 25, 2022*

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IN THE MATTER OF an appeal heard on June 1, 2021, pursuant to subsection 61(1.1) of the *Special Import Measures Act*;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated August 14, 2020, with respect to a request for a scope ruling pursuant to section 63 of the *Special Import Measures Act*.

**BETWEEN**

**CANADIAN INSTITUTE OF STEEL CONSTRUCTION** **Appellant**

**AND**

**THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY** **Respondent**

## DECISION

The appeal is dismissed.

Serge Fréchette

Serge Fréchette
Presiding Member

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| Place of Hearing: | Via videoconference |
| Date of Hearing: | June 1, 2021 |
| Tribunal Panel: | Serge Fréchette, Presiding Member |
| Tribunal Secretariat Staff: | Zackery Shaver, Counsel<br>Stephanie Blondeau, Registrar Officer |

**PARTICIPANTS:**

| **Appellant** | **Counsel/Representatives** |
|---|---|
| Canadian Institute of Steel Construction | Benjamin P. Bedard<br>Paul Conlin<br>Drew Tyler |
| **Respondent** | **Counsel/Representative** |
| President of the Canada Border Services Agency | Taylor Andreas |
| **Respondent** | **Counsel/Representatives** |
| Enerkem Inc. | Jean-Guillaume Shooner<br>Patrick Girard<br>Candice Cerone |

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## STATEMENT OF REASONS

## INTRODUCTION

[1] This appeal, filed by the Canadian Institute of Steel Construction (CISC) under subsection 61(1.1) of the *Special Import Measures Act*[1] (SIMA), concerns a scope ruling of the President of the Canada Border Services Agency (CBSA) made under subsection 66(1) of SIMA. In its scope ruling, the CBSA determined that certain imported fabricated structural steel and platework components, assembled into modules (also known as specialized prefabricated process units or SPPU), for use in the industrial production of methanol from recyclable residual materials, including wood residue (biomass), construction debris, and mixed plastics and fiber, at Enerkem Inc.'s (Enerkem) proposed methanol production facility, were not covered by the Tribunal's finding in *FISC*.[2]

[2] The product definition used in *FISC* is in relevant part as follows:

> *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).[3]
>
> [Emphasis added]

[3] The appeal concerns whether the goods in issue, as described below, are for use in structures for "petrochemical plants", which is one of the seven uses described in the product definition in *FISC*. The parties do not dispute that the SPPU in issue would be covered under the finding in *FISC* if the SPPU were for one of the uses described in the product definition.

[4] Accordingly, the only question before the Tribunal in this appeal is the meaning of the term "petrochemical plants" in the context of the finding in *FISC* and, consequently, whether the goods in issue are for use in structures for petrochemical plants.

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1 R.S.C., 1985, c. S-15.

2 *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) [*FISC*]. As amended in NQ-2016-004R.

3 At para. 28.

## PROCEDURAL HISTORY

[5] On December 20, 2019, the CBSA received an application for a scope ruling from Enerkem, pursuant to section 63 of SIMA. Enerkem's application concerned whether the goods in issue would be subject to the Tribunal's finding in *FISC*.

[6] On January 17, 2020, the CBSA initiated its scope proceeding. The appellant, the CISC, participated in the scope proceeding and made submissions at relevant phases of the proceedings. The CISC represented the interests of domestic producers of fabricated industrial steel components. It submitted that Enerkem's proposed methanol plant fell within the description of "petrochemical plants" and should therefore be covered by the Tribunal's finding in *FISC*.

[7] On August 14, 2020, the CBSA issued a notice of conclusion of scope proceedings and a statement of reasons.[4] Pursuant to subsection 66(1) of SIMA, the CBSA concluded that the fabricated industrial steel components that Enerkem proposed to import would not be subject to the Tribunal's finding in *FISC*.

[8] On January 8, 2021, the CISC filed its appeal of the scope ruling with the Tribunal, pursuant to subsection 61(1.1) of SIMA.

[9] The CBSA filed its respondent's brief on March 9, 2021.

[10] On March 18, 2021, Enerkem requested that the Tribunal grant it leave to intervene on the scope ruling. The CBSA consented to the intervention request, with the CISC opposing. The Tribunal granted leave to Enerkem on April 7, 2021, limiting its participation in the proceedings to providing an oral closing statement at the hearing.

[11] On June 1, 2021, the Tribunal held a hearing by videoconference. The hearing consisted of the closing arguments of the CISC, the CBSA and Enerkem, based upon the written record as presented.

## GOODS IN ISSUE

[12] The goods in issue in this appeal are approximately 107 SPPU that Enerkem proposes to import, to be used in the construction of a bio-methanol plant located in Montréal, Quebec. The plant will convert non-recyclable residual materials like wood bark, construction demolition wood, and mixed plastics and fibre into liquid methanol. The goods in issue are anticipated to originate in or to be exported from the People's Republic of China, the Republic of Korea, or the Kingdom of Spain.

## PRELIMINARY MATTERS

### Expert testimony

[13] On January 8, 2021, the CISC proposed to qualify Dr. Steven Bryant as an expert witness on the meaning of the term "petrochemical".[5] Dr. Bryant is a professor in the Department of Chemical

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4 *Scope Ruling – Certain Fabricated Industrial Steel Components* (14 August 2020), FISC 2020 SP (CBSA).

5 Exhibit EA-2020-001-03A at 77.

and Petroleum Engineering at the University of Calgary and the Canada Excellence Research Chair in Materials Engineering for Unconventional Oil Reservoirs.[6]

[14] At the hearing, the CBSA consented to the qualification of Dr. Bryant as an expert witness.[7] The CBSA added, however, that it did not view the evidence tendered by Dr. Bryant as relevant to the case at hand. Citing the Federal Court of Appeal's decisions in *Fluor*[8] and *MAAX Bath*,[9] counsel for the CBSA suggested that "further inquiry into the meaning of the words can only be justified if there's ambiguity" concerning the goods described in an order or finding of the Tribunal.[10] As the CBSA did not view the term to be ambiguous, it suggested that the finding should stand as is.

[15] The qualifications, independence and impartiality of Dr. Bryant were not challenged by the opposing parties. Having reviewed Dr. Bryant's credentials and affidavit, the Tribunal qualified him as an expert witness and accorded Dr. Bryant's testimony the weight that it deserves.

**Consideration of new evidence**

[16] It was unclear at the start of closing arguments whether the CBSA had proposed that the Tribunal lacked the authority to consider the evidence submitted by the CISC in the form of Dr. Bryant's expert testimony. It was equally unclear whether the CBSA argued that the Tribunal was restricted in its consideration of new evidence.

[17] Counsel for the CBSA later clarified that this was not the case and that it recognized that the Tribunal had the authority to consider new evidence. It stated that its argument in the present case centred on the fact that the Tribunal was not required to consider the evidence of Dr. Bryant, as there was no ambiguity with respect to the product definition.

[18] Although it is no longer required to make a pronouncement on this issue, the Tribunal will nevertheless confirm that it is of the view that its ability to consider new evidence in the context of an appeal under subsection 61(1.1) of SIMA is settled and consistent, by analogy, with the decisions of the Federal Court and Federal Court of Appeal in *Toyota Tsusho I* and *Toyota Tsusho II*[11] and the Tribunal's decision in *Robertson Inc*.[12]

[19] Whether and to what extent the Tribunal will consider Dr. Bryant's evidence in this case will be determined in its analysis found below.

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6 *Ibid*.

7 *Transcript of Public Hearing* at 34.

8 *Fluor Canada Ltd. v. Supreme Group LP* (28 February 2020), 2020 FCA 58 [*Fluor*] at para. 14.

9 *MAAX Bath Inc. v. Almag Aluminum Inc.* (24 February 2010), 2010 FCA 62 [*MAAX Bath*] at para. 35.

10 *Transcript of Public Hearing* at 35.

11 *Toyota Tsusho America, Inc. v. Canada (Canada Border Services Agency)* (22 January 2010), 2010 FC 78 [*Toyota Tsusho I*] at para. 24; *Toyota Tsusho America Inc. v. Canada (Border Services Agency)* (12 October 2010), 2010 FCA 262 [*Toyota Tsusho II*] at para. 3; see also *Toyota Tsusho America, Inc. v. President of the Canada Border Services Agency* (18 November 2011), AP-2010-063 (CITT) [*Toyota Tsusho III*] at paras. 25–29.

12 *Robertson Inc. v. President of the Canada Border Services Agency* (25 January 2016), EA-2014-003 (CITT) [*Robertson Inc.*] at para. 12.

## LEGAL FRAMEWORK

[20] Subsection 2(1) of SIMA defines a "scope ruling" as a decision of the President of the CBSA under subsection 66(1) that determines whether goods are subject to either a countervailing duty order of the Governor in Council, an order or finding of the Tribunal, or an undertaking with respect to dumped or subsidized goods where the investigation was suspended under subparagraph 50(a)(iii). The scope ruling in issue concerns the subjectivity of goods to a finding of the Tribunal.

[21] Scope rulings are further elaborated in sections 63 to 70 of SIMA.

[22] Subsection 66(6) of SIMA provides that, "[i]n making a scope ruling, the President shall take into account any prescribed factors and any other factor that the President considers relevant."

[23] Section 54.6 of the *Special Import Measures Regulations*[13] prescribes the factors that may be considered in scope proceedings. In considering the question of whether the goods in issue are of the same description as the goods to which an order or finding of the Tribunal applies, the following factors are among those prescribed: the product description in the order or finding, the Tribunal's reasons for the order or finding, the physical characteristics of the goods, their technical specifications, their channels of distribution, and their uses.

[24] Subsection 61(1.1) of SIMA provides a right of appeal to the Tribunal concerning scope rulings made by the CBSA. Regarding the jurisdiction of the Tribunal to make orders or findings, subsection 61(3) provides as follows:

> On any appeal under subsection (1) or (1.1), the Tribunal may make such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken, and an order, finding or declaration of the Tribunal is final and conclusive subject to further appeal as provided in section 62.

## POSITIONS OF THE PARTIES

[25] The key issue in this appeal is whether the term "petrochemical plants" includes the production of chemicals, namely methanol, derived from sources other than fossil fuels, such as petroleum or natural gas.

### CISC's position

[26] With respect to the term "petrochemical plants", the CISC argues that the term is unambiguous and that the words should "be interpreted based on their ordinary meaning and within the context in which they are found."[14] It is the CISC's contention that referencing a more modern and contemporary usage of the term "petrochemical" would yield a different result to the interpretation adopted by the CBSA, which made reference to textbook definitions that were over 30 years old.[15] In line with contemporary usage, the CISC also suggests that the term "petrochemical plants", in the context under review, refers to the structure rather than the purpose of the plant.

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13 SOR/84-927.

14 *Transcript of Public Hearing* at 17.

15 Exhibit EA-2020-001-03A at paras. 46–50.

Accordingly, the source of the feedstock used to make the methanol should not be determinative of whether the SPPU used to construct it fall within the product definition or not.

[27] The CISC identifies methanol as being within the "family of chemicals" understood to be "petrochemicals", as the synthesis gas that is used to produce methanol is generally derived from natural gas.[16] This synthesis gas is used to produce methanol through a conversion process that uses heat and a catalyst to produce the methanol.[17] In this argument, the fact that synthesis gas can be produced from other sources, such as animal or residual waste, does not change the basic argument that methanol falls within the family of petrochemicals.[18]

[28] Describing the "family of chemicals"[19] that make up "petrochemicals", the CISC submits that the following chemicals, among many others, are currently considered "petrochemicals" within the chemical industry, regardless of their feedstock:

(1) ethylene, propylene, and butadiene (used to make plastics and synthetic rubber);

(2) benzene (used to make polymers, resins and plastics);

(3) methane and ethane (used to make polyethylene plastics)

(4) butane and propane (used as fuel); and

(5) formaldehyde and methanol.[20]

[29] Moreover, the CISC submits that the present case is analogous to the Tribunal's finding in *Toyota Tsusho III*, where it found the term "carbon steel" to be unambiguous while still accepting expert testimony with respect to the question of whether steel plate with an unusual boron content could be considered carbon steel. In much the same way, the CISC submits that Dr. Bryant's expert testimony should be considered when determining whether methanol is considered a petrochemical when it is produced without the use of petroleum or natural gas.[21]

[30] According to Dr. Bryant's affidavit, many petrochemicals can be derived using methods that do not make use of petroleum or natural gas (such as coal or oil shale) and conversely, many "industrial gases" derived primarily from oil and natural gas, such as carbon dioxide, helium and hydrogen, are not generally considered petrochemicals.[22] The CISC also submitted the following excerpt from the 2019 *Handbook of Petrochemical Processes* to support its assertion with respect to the chemical industry's acceptance of the meaning of the term "petrochemical":

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16 *Ibid.* at 81.

17 *Ibid.* at 71–72, 81. Put simply, methane gas ($CH_4$), which is found in natural gas, is transformed through the addition of steam and heat to syngas, which consists of hydrogen molecules ($H_2$) and carbon monoxide (CO). This syngas is then converted to methanol ($CO+2H_2 \rightarrow CH_3OH$).

18 *Ibid.* at 139–140.

19 *Ibid.* at 78.

20 *Ibid.* at para. 43.

21 *Transcript of Public Hearing* at 18.

22 Exhibit EA-2020-001-03A at 79–80.

> "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 such as corn or sugar cane as well as other forms of biomass."[23]

[31] Additionally, the CISC refers to two webpages from Ferrostaal Metals GmbH and US Methanol LLC, which are methanol producers, to support its argument that methanol is considered a chemical within the "petrochemicals industry".[24]

[32] As an alternative argument, the CISC also suggests that Enerkem's project should fall within the scope of "petrochemical plants" because such a finding would affirm the larger objectives of SIMA and the finding in *FISC*. The CISC suggests that given a "fair, large and liberal construction and interpretation"[25] of the term "petrochemical plants", in compliance with the *Interpretation Act*[26] and pursuant to leading cases[27] on the matter, the Tribunal should consider "what the parties using those words against the relevant background would reasonably have been understood to mean."[28]

[33] The CISC identifies three relevant "parts" of the product definition, with the first part describing the structural steel and plate components, the second part identifying the industrial facilities to which the description applied, and the third part representing the applicable exclusions.[29] Subsequently, the CISC contrasts the large number of potential uses of structural steel and platework components with the broad industry sectors to which the order in *FISC* applies and, lastly, the very specific instances where an exclusion applies.

[34] Applying this framework to "petrochemical plants", the CISC submits that the term describes industrial chemical production facilities that produce chemicals commonly referred to as "petrochemicals" and that the "term 'petrochemical plants' was not intended as a technical term to differentiate chemical plants based on feedstocks."[30] As the structure of the methanol plant has the same physical appearance, use and characteristics as SPPU used in other chemical plants producing methanol, it follows that the SPPU Enerkem's proposed plant uses should fall within the scope of the product definition.[31]

**CBSA's position**

[35] The CBSA submits that, apart from the removal of two subject countries of origin, the product definition included in its preliminary determination was adopted for the purposes of the Tribunal's finding in *FISC* without further elaboration on the term "petrochemical plants".[32] Given the fact that no additional discussion was tendered in the context of the Tribunal's statement of

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23 *Transcript of Public Hearing* at 27.
24 Exhibit EA-2020-001-03A at para. 46.
25 *Ibid.* at 28.
26 R.S.C., 1985, c. I-21.
27 *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 [*Rizzo & Rizzo Shoes*] at 41, citing Elmer Driedger, *Construction of Statutes* (2nd ed. 1983) at 87; *Sattva Capital Corp. v. Creston Moly Corp.*, [2014] 2 SCR 633, 2014 SCC 53 [*Sattva Capital*] at paras. 46–48.
28 *Sattva Capital* at para. 48, citing *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*, [1998] 1 All ER 98 (HL) [*Investors Compensation Scheme*] at 115.
29 *Investors Compensation Scheme* at paras. 91–100.
30 Exhibit EA-2020-001-03A at para. 101.
31 *Ibid.* at para. 106.
32 *Ibid.* at paras. 24–27; *Transcript of Public Hearing* at 37.

reasons with respect to this provision, the CBSA relied on the discussion contained in its preliminary determination, which stated that a "petrochemical plant" required either petroleum or natural gas as its feedstock.[33]

[36] Citing the decision of the Federal Court of Appeal in *Fluor*, the CBSA submits that, while there exists a certain "division of labour" between the CBSA's investigation of a matter and the Tribunal's own investigatory mandate, there is a through line that can be traced between the original complaint investigated by the CBSA and the Tribunal's ultimate decision.[34]

[37] According to the CBSA, the record of the complaint proceedings included sufficient context for the intended meaning of the term "petrochemical plants" to be known and that, barring a finding that the term is ambiguous, no recourse to information outside of the record should be necessary. Many of the elements of the CBSA's preliminary determination were greatly influenced by the complaint concerning the dumping and subsidizing of fabricated industrial steel components, which formed the basis on which the CBSA opened its investigations into the goods in issue. The complaint was filed by two members of the CISC, and the CISC submitted its own letter supporting this complaint. Accordingly, the CBSA suggests that its scope ruling made use of a context-appropriate definition of "petrochemical plants" and alleges that the present appeal of the scope ruling amounts to an attempt to expand the product definition contained in *FISC*.[35]

[38] To round out its argument, the CBSA returned to the complaint in the dumping and subsidizing inquiry, where the CISC acknowledged that, for the purposes of the complaint, "like goods" only included goods that fell within the seven "end-uses" identified in the product definition, even if the goods shared many of the same characteristics of SPPU used in other applications.[36]

[39] More specifically, the complaint identified "petrochemical plants" in the following way:

> 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]. This includes petrochemical based plastics, kerosene, propane and other similar goods.[37]

[40] The CBSA argues that this initial definition or description of "petrochemical plants" has remained consistent throughout the proceedings and was supported by evidence that suggested imported SPPU used in petrochemical plants had caused and threatened to cause significant injury to the domestic industry. As far as the CBSA is aware, no evidence was tendered that would suggest that imported SPPU of the kind used in Enerkem's facilities posed a present or future threat to the domestic industry.[38] Accordingly, the CBSA submits that Enerkem's proposed plant does not fall within the scope of the product definition.

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33 Exhibit EA-2020-001-05 at paras. 30–31.
34 *Transcript of Public Hearing* at 37.
35 *Ibid.* at 37–38.
36 Exhibit EA-2020-001-05 at 250–251.
37 *Ibid.* at 251.
38 *Ibid.* at 246.

### Enerkem's position

[41] Whereas Enerkem's involvement with the present appeal of the scope ruling was limited due to its late request to intervene in the matter, its application for scope review,[39] its correspondence with the Tribunal[40] and its oral argument[41] all provide context as to why it believes the SPPU it plans to use in its proposed methanol plant should not be considered to fall within the scope.

[42] In its closing argument, Enerkem supported the CBSA's positions and submissions on the record with respect to the SPPU falling outside the scope of the Tribunal's finding.[42]

[43] First, with respect to its own argument, Enerkem highlighted that the context under which "petrochemical plants" were enumerated centred on concerns that SPPU would be dumped into Canada's oil and gas sector following the collapse of oil and gas prices, which led to delays and cancellations of new oil and gas projects around the globe.[43]

[44] Second, Enerkem suggested that, while the chemistry of methanol may be the same, it was possible to carbon-date methanol, making differentiation possible.[44] Enerkem would also be able to certify its product as a renewable fuel, which would give its methanol commercial and regulatory advantages over methanol produced from oil or natural gas.[45]

## ANALYSIS

[45] The Tribunal agrees with the parties that the sole issue raised in this appeal is whether the subject goods are to be used in a "petrochemical plant" and consequently subject to the finding in *FISC*.[46] More specifically, the Tribunal must determine whether the term "petrochemical" includes the production of chemicals, namely methanol, derived from sources other than fossil fuels, such as petroleum or natural gas.

[46] The wording of a product definition is itself determinative; however, relevant elements of the record, usually from the statement of reasons, may provide guidance in interpreting it. The Tribunal may not, however, amend the scope of a finding, either by narrowing or expanding it.[47]

[47] Whether in considering the ordinary or contextual meaning of the term "petrochemical plants" as it appears in the product definition of *FISC*, a helpful starting point remains a textual analysis of the term.[48] The Tribunal has made use of the following dictionary definitions and considers them relevant to its analysis.

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39 Exhibit EA-2020-001-03A at 67.
40 Exhibit EA-2020-001-08; Exhibit EA-2020-001-12.
41 *Transcript of Public Hearing* at 55–64.
42 *Ibid.* at 55–56.
43 *Ibid.* at 57–58.
44 *Ibid.* at 60.
45 *Ibid.*
46 *Ibid*. at 7; Exhibit EA-2020-001-05 at paras. 7–9.
47 *Robertson Inc.* at para. 21.
48 None of the parties made submissions concerning whether the subject goods were intended to be used in a "plant" for the purposes of the definition. Accordingly, the Tribunal sees no need as such to examine the meaning of that word.

[48] According to *The Concise Oxford Dictionary*, the common dictionary definition of the term "petrochemical" is "a substance industrially obtained from petroleum or natural gas".[49] The *Merriam-Webster Dictionary* defines "petrochemical" as "a chemical isolated or derived from petroleum or natural gas".[50] When used as an adjective the term "petrochemical" means "relating or denoting substances obtained by the refining and processing of petroleum or natural gas".[51]

[49] These definitions clearly make the link between the chemical that is produced and the type of feedstock that is used in its production. In the present appeal, there is no dispute that the output product of the plant will be methanol, a chemical product.[52] There is also no dispute that the methanol in question will be produced from feedstock other than petroleum or natural gas. In this particular case, the methanol is to be produced from synthesis gas converted from non-recyclable residual materials such as wood bark residue, construction and demolition wood, mixed plastics and fibre, and sorting centre rejects.[53]

[50] Since the methanol will not be obtained from, isolated or derived from petroleum or natural gas, it would not constitute a "petrochemical" within the meaning of the term as reflected in the common dictionary definitions noted above.

[51] It is also clear from the statement of Dr. Bryant that in modern industrial settings methanol can be produced from materials other than petroleum and natural gas, including residual waste and other renewable materials.[54] That is not contested. Moreover, the Tribunal accepts Dr. Bryant's testimony that methanol produced from *any* source is chemically identical and could be used for any purpose that requires the chemical.[55] The Tribunal also acknowledges Dr. Bryant's assessment that the choice of feedstock may affect marketing considerations for the sale of methanol,[56] even if it would not necessarily affect the physical properties of the chemical itself.[57]

[52] In the Tribunal's view, the evidence tendered by the CISC that "petrochemicals" are "often used in an *expanded* form" [emphasis added][58] to include chemicals produced from materials other than fossil fuels, such as *alternative and renewable sources*, does not confirm that this is the general or even predominant understanding of the term. Rather, it suggests that the term "petrochemical" is also often interpreted more narrowly and would not include renewable sources.

[53] Contrary to the CISC's argument that a broader and more generous interpretation of the term "petrochemical" is warranted based on statutory and contract interpretation principles,[59] the Tribunal

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49 10th ed., *s.v.* "petrochemical".

50 Online, "petrochemical", accessed 10 September 2021.

51 *The Concise Oxford Dictionary*, 10th ed., *s.v.* "petrochemical".

52 Exhibit EA-2020-001-03A at 81.

53 *Ibid.* at 69.

54 *Ibid.* at 81.

55 *Ibid.* at 79–80.

56 It should be noted that there may also be economic, regulatory and environmental reasons why the feedstock of a given chemical is preferred over another, although this was not discussed at length in the proceedings.

57 Using the example of paper or facial tissues made from virgin wood pulp as opposed to recycled paper, Dr. Bryant suggested that the properties and performance of the products may be identical, but consumers may express a preference for one over the other for a variety of reasons; Exhibit EA-2020-001-03A at 80.

58 Exhibit EA-2020-001-03A at 17.

59 *Rizzo & Rizzo Shoes*; *Villani v. Canada (Attorney General)*, [2002] 1 F.C. 130; *Yellow Cab Co. Ltd. v. Canada (Minister of National Revenue)*, 2002 FCA 294 (CanLII); *Bartsch v. The Queen*, 2001 CanLII 449 (T.C.C.).

concludes that it is not clear that the product description requires this type of liberal interpretation. The CBSA has jurisdiction under subparagraph 38(1)(a)(ii) of SIMA for "specifying the goods to which a preliminary determination applies". From this preliminary identification of the goods, the ultimate scope of the product description specified in the Tribunal's finding pursuant to subsection 43(1) may only get smaller as countries, exporters or specific products may be excluded. However, the scope of the product description may not be expanded. This is the background to the interpretive exercise in this case.

[54] Based upon the evidence and argument presented by the parties,[60] it is evident that the term "petrochemical plants" as it was used in the product definition of *FISC* was made consciously and with regard to the feedstock used, namely petroleum and natural gas. This was the meaning given to this term in the initial complaint and is how it appeared to be interpreted during the inquiry into the dumping and subsidizing complaint.

[55] Having considered the submissions and evidence submitted by the CISC as set out above, the Tribunal concludes that the term "petrochemical plants" as it is used in the finding in *FISC* does not refer to a plant that produces methanol from recyclable residual materials of the description set out in Enerkem's proposal. Consequently, the Tribunal finds that the goods in issue that are to be imported for use in Enerkem's plant are not covered by the finding in *FISC.*

[56] Accordingly, the Tribunal denies the CISC's appeal.

Serge Fréchette

Serge Fréchette
Presiding Member

60 The Tribunal takes notice of the evidence and argument included in the parties' submissions, as well as the oral submissions made by the parties on June 1, 2021.