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Services Agency

Agence des services
frontaliers du Canada

OTTAWA, October 15, 2018

FISC 2018 SP

STATEMENT OF ESSENTIAL FACTS

SCOPE PROCEEDING – CERTAIN FABRICATED INDUSTRIAL STEEL COMPONENTS

Liquid Natural Gas Modules including Pipe Rack Modules – Woodfibre LNG Limited

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

Canada

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BACKGROUND

[1] On September 12, 2016, following a complaint filed by Supermetal Structures Inc., Supreme Group LP, and Waiward Steel LP, the Canada Border Services Agency (CBSA) initiated investigations respecting the dumping of certain fabricated industrial steel components (FISC) originating in or exported from the People's Republic of China (China), the Republic of Korea (South Korea), the Kingdom of Spain (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.

[2] On May 25, 2017, in inquiry No. NQ-2016-004, the Canadian International Trade Tribunal (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.

[3] On June 26, 2018, the CBSA received an application for a scope ruling from Woodfibre LNG Limited (Woodfibre) as to whether its liquefied natural gas (LNG) modules including pipe rack modules are subject to the CITT injury finding issued on May 25, 2017, in Inquiry No. NQ-2016-004.

[4] The application for the scope ruling was complete and there was no basis under *Special Import Measures Act* (SIMA) to reject the application. The applicant provided arguments and evidence in support of its position that its LNG modules including pipe rack modules are not subject to the CITT's finding.

[5] On July 26, 2018, 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.

[6] On August 3, 2018, counsel representing the Canadian Institute of Steel Construction (CISC) filed a submission requesting the CBSA to terminate the scope proceeding pursuant to paragraph 54.3(b) of the *Special Import Measures Regulations* (SIMR) because the matter at issue in this scope proceeding is currently the subject of an Application for Judicial Review before the Federal Court of Appeal (FCA).

[7] In response, counsel representing the applicant, Woodfibre, filed a submission on August 9, 2018 objecting to the CISC's request for termination and arguing that the matter at issue in the scope proceeding is the subjectivity of the goods in question whereas the matter before the FCA is whether the CITT has an obligation to clarify the scope of the product definition. Additional submissions were filed by each party in response to submissions made by the other party.

[8] The CBSA considered the submissions from both parties and decided not to terminate the scope proceeding. The CBSA is of the view that the matter before the FCA is separate from the specific subjectivity application filed by Woodfibre. Further, pursuant to subsection 67(1) of SIMA, the CBSA shall review a scope ruling for the purpose of giving effect to a decision of the CITT, FCA or the Supreme Court of Canada.

[9] The administrative record for this scope proceeding closed on September 19, 2018.

[10] On the basis of the information available on the record and the consideration of the relevant factors contained in section 54.6 of the SIMR, the CBSA's preliminary assessment is that the goods that are the subject of the application, namely Woodfibre's LNG modules including pipe rack modules, are subject to the CITT's finding issued on May 25, 2017, in Inquiry No. NQ-2016-004.

DESCRIPTION OF THE GOODS THAT ARE THE SUBJECT OF THE APPLICATION

[11] The goods in question in this scope proceeding are LNG modules including pipe rack modules for purposes of the Woodfibre LNG Project. The Woodfibre LNG Project is an LNG processing and export facility that receives gas from a Fortis, BC pipeline, removes contaminants, and then cools the treated gas to -162°C to produce liquefied natural gas for export.

[12] The units that make up Woodfibre's LNG facility are grouped into modules based on multiple factors, including the flow of the process, the function of the equipment, and transportation restrictions due to size or weight of the modules. The resulting facility layout and distribution of equipment on the modules and the number of modules is optimized to minimize the module footprint, weight and cost.¹

[13] A modularized system minimizes the facility footprint by assembling all of the components into a multi-level plant. Structural steel provides the framework upon which the components are arranged and interconnected.²

[14] The modules are built in a fabrication yard in the following sequence: structural steel framework, the addition of equipment, connection of the equipment with piping and the installation of electrical equipment, instrumentation and cabling. The interconnection of the module piping, electrical and instrumentation occurs at the project site. Each module is essentially a stand-alone unit, which has been fully tested for its functionality.³

¹ Exhibit 2 (NC) – FISC 2018 SP Application; page 4.

² Exhibit 2 (NC) – FISC 2018 SP Application; page 4.

³ Exhibit 2 (NC) – FISC 2018 SP Application; page 4.

[15] A pipe rack is a steel framed structure that is used to support the operation of the plant. The pipe rack modules connect various processing modules inside the production plant. It is used to transfer materials, products, fluids, utilities, electricity and data, between the LNG plant, utility areas, flares and storage/export facilities. In addition to integrated piping, pipe racks include the supporting instruments, power cables as well as the mechanical equipment like pumps and valves, etc., that are connected to the pipes. Pipe racks are also installed with other equipment, such as air coolers on top of the pipe racks.⁴

[16] According to Woodfibre's estimates, it is expected that FISC will make up approximately 40% by weight of these LNG modules including pipe rack modules.⁵

[17] Woodfibre requested the CBSA to consider whether its LNG modules including the pipe rack modules are subject to the CITT finding issued on May 25, 2017, in Inquiry No. NQ-2016-004, concerning certain FISC.

⁴ Exhibit 2 (NC) – FISC 2018 SP Application; page 15.

⁵ Exhibit 2 (NC) – FISC 2018 SP Application; page 5.

DESCRIPTION OF THE SUBJECT GOODS

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

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

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

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

For additional information on the subject goods, please refer to the CITT’s *Findings and Reasons* in inquiry No. NQ-2016-004 and the CBSA’s *Statement of Reasons* respecting the FISC final determinations.

INTERESTED PARTIES

Applicant

[19] The name and address of the applicant is as follows:

Woodfibre LNG Limited
Suite #1020, 1075 W Georgia St
Vancouver, BC
V6E 3C9

[20] Woodfibre, a privately held Canadian company, intends to import LNG modules including pipe rack modules for purposes of the Woodfibre LNG Project.⁶

[21] A copy of the non-confidential version of the scope ruling application filed by Woodfibre is available on the CBSA's Listings of Exhibits website at <http://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2018/fisc2018-ex-eng.html>.

Canadian Industry

[22] At the initiation of the scope proceeding, the CBSA identified 16 Canadian producers of like goods based on information collected during the original 2016 FISC investigation.

[23] The CBSA sent a Producer Request for Information (RFI) to all producers of like goods. The CBSA received submissions from five Canadian producers of FISC, namely, Supermetal Structures Inc., Supreme Group LP, Waiward Steel LP, Ocean Steel & Construction Ltd., and MacDougall Steel Erectors Inc.

[24] The CISC submitted a letter outlining its position and provided information and various documentary evidence to support its position.

Importers

[25] At the initiation of the scope proceeding, the CBSA identified 85 known and potential importers of subject goods based on information collected during the original 2016 FISC investigation.

[26] The CBSA sent an Importer RFI to all known and potential importers of subject goods. The CBSA received submissions from three importers of FISC, namely, Husky Oil Operations Limited, Shell Canada Limited and Suncor Energy Inc.

⁶ Exhibit 2 (NC) – FISC 2018 SP Application; page 2.

Exporters and/or Foreign Producers

[27] At the initiation of the scope proceeding, the CBSA identified 80 known and potential exporters and/or producers of subject goods based on information collected during the original 2016 FISC investigation.

[28] The CBSA sent an Exporter RFI to all known and potential exporters and/or producers. The CBSA received a submission from one exporter/producer of FISC. However, no comments were provided in regards to whether LNG modules including pipe rack modules are subject to the CITT's finding.

Requests for Extension

[29] Several parties requested an extension to respond to their respective RFIs. The CBSA reviewed each request; however, extensions were not granted to any of the parties because the reasons for making the requests did not constitute unforeseen circumstances or unusual burdens. The CBSA informed the parties that submissions received after the RFI response deadline would only be taken into consideration if time and resources allow. All responses received by the CBSA before the closing of the record were taken into consideration for purposes of making its preliminary assessment.

[30] Details pertaining to the arguments and information submitted by the applicant and other parties are provided below.

POSITIONS OF THE PARTIES

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

Applicant - Woodfibre

[31] Woodfibre concedes that the product definition contemplates assembly in modules. However, Woodfibre argues that the product definition should be properly read as "simple modules" that are assembled from FISC rather than "complex modules" that undergo manufacturing or production processes to become something new – machinery for use in an LNG plant.⁷

[32] Woodfibre noted that the term "assembly" has been defined by the CITT, in Appeal No. AP-95-084, as a "means to fit together the parts of a [machine]" and as "a number of component parts fitted together to form a single device or unit."⁸

⁷ Exhibit 2 (NC) – FISC 2018 SP Application; page 21.

⁸ Exhibit 2 (NC) – FISC 2018 SP Application; page 21.

[33] Woodfibre also noted that in *Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip*, RR-2015-002, the CITT found that:⁹

“production requires a change beyond mere finishing which results in the substantial transformation of the original good into a new and significantly different set of goods. Although production often involves significant value added, this is not, in and by itself, an essential element of the test of what constitutes production for the CITT. The CITT looks at the totality of the process to determine whether substantial transformation has occurred.”

[34] Further, Woodfibre recalled that in *Photovoltaic Modules and Laminates*, NQ-2014-003, the CITT made a distinction between “production” and “assembly” as follows:¹⁰

“... OEM production is more than a mere assembly or finishing service. The manufacturing process involves the application of capital, labour, highly specialized equipment, product testing and certification.

[35] Woodfibre submits that its LNG modules including pipe rack modules are complex modules that would involve more than simple assembly but rather would undergo production (i.e., the FISC would be manufactured into complex modules).

[36] Woodfibre further adds that in Appeal No. AP-99-063, the CITT made a distinction between “machines” and “structures” and that the CITT has recognized that structures do not include any “notion of machinery or equipment.” Woodfibre concedes that a simple module, constructed purely out of FISC fulfils this requirement for being “structural” but a complex module does not.¹¹

[37] Woodfibre holds the position that these complex modules have specific LNG functionality which defines the character of the completed and distinct modules and not the structure of the modules.¹²

[38] Given the arguments and facts outlined above, Woodfibre is of the view that its LNG modules including pipe rack modules are complex modules and therefore not subject to the CITT’s finding.

[39] On September 19, 2018, counsel for Woodfibre provided comments in response to the RFI submissions filed with the CBSA.¹³

⁹ Exhibit 2 (NC) – FISC 2018 SP Application; page 21-22.

¹⁰ Exhibit 2 (NC) – FISC 2018 SP Application; page 22.

¹¹ Exhibit 2 (NC) – FISC 2018 SP Application; page 23.

¹² Exhibit 2 (NC) – FISC 2018 SP Application; page 23.

¹³ Exhibit 34 (NC) – Response to RFI Submissions from Woodfibre.

[40] Woodfibre emphasized that the LNG modules including pipe rack modules exhibit full functionality and the operation of these modules are commissioned and tested prior to their export to Canada. Woodfibre noted that the Canadian producer responses do not provide supporting evidence that the complex modules are not manufactured goods.

[41] Woodfibre challenged the assertion by the Canadian producers that FISC remains FISC throughout the entire process. Woodfibre indicated that there is no evidence on the record that asserts the essential characteristic of these modules is defined by their FISC components. Woodfibre stated that complex modules are defined by non-FISC elements which also comprise the majority of the value of the complex modules. Further, Woodfibre submitted that the drawings provided to the CBSA clearly show the modules' functionality and require more than simply connecting FISC together into an assembly.

[42] Woodfibre objected to the claim that Canadian producers can create modules and noted that this fact is irrelevant for determining the subjectivity of LNG modules including pipe rack modules. Woodfibre also disputed the accuracy of the claim that Canadian producers have produced effectively identical modules to the Woodfibre LNG modules including pipe rack modules.

Husky Oil Operations Limited¹⁴

[43] Husky Oil Operations Limited (Husky) is an importer of modules from China.

[44] Husky is of the view that the Woodfibre LNG modules including pipe rack modules are not subject to the CITT's finding.

[45] Husky stated in its response that it supports the position of Woodfibre.

Shell Canada Limited¹⁵

[46] Shell Canada Limited (Shell) is a joint-venture partner in LNG Canada Development Inc. (LNGC). LNGC has proposed to design, build and operate a LNG plant and marine export terminal facility near Kitimat, BC.

[47] Shell is of the view that the Woodfibre LNG modules including pipe rack modules are not subject to the CITT's finding.

[48] LNGC indicated that it has submitted information and comments to the CITT, the Federal Court of Appeal and the Department of Finance in regards to the finding and its own project in Kitimat. Shell submits that it has nothing to add to Woodfibre's position.

¹⁴ Exhibit 23 (NC) – Response from Husky Oil Operations Limited.

¹⁵ Exhibit 25 (NC) – Response from Shell Canada Limited.

Suncor Energy Inc.¹⁶

[49] Suncor Energy Inc. and its subsidiaries (Suncor) is the operator of the Fort Hills Energy L.P. Suncor imports similar complex modules for use in the oil sands mining and refining operations.

[50] Suncor is of the view that the Woodfibre LNG modules including pipe rack modules are not subject to the CITT's finding.

[51] Suncor submits that these modules are not considered "structural goods" but rather non-FISC, highly technical, fully integrated components with specific functionality that is primary to the essential character of the module. These modules contain steel and structural components but also specialized equipment.

[52] Suncor submits that while some modules involve little more than connecting units of FISC together, many types of modules are fundamentally different products. They are finished, manufactured goods, akin to industrial machines that serve a particular operating function.

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

Supermetal Structures Inc.¹⁷

[53] Supermetal Structures Inc. (Supermetal) is a Canadian producer/fabricator of like goods. Supermetal is located in Levis, Quebec and was one of the complainants in the 2016 FISC investigation.

[54] Supermetal is of the view that the Woodfibre LNG modules including pipe rack modules are subject to the CITT's finding.

[55] Supermetal is of the opinion that FISC incorporated in the proposed Woodfibre LNG modules including pipe rack modules falls within the product definition as the definition does not differentiate between "FISC-only" and "complex" modules. Further, Supermetal emphasized that FISC remains FISC regardless "of whether it is assembled or partially assembled into modules, or unassembled, for use in structures for ...".

[56] Supermetal is of the position that LNG modules including pipe rack modules, although complex, are intermediate construction of a process facility and are not considered manufactured goods. A module cannot be sold separately as a good with a stand-alone function and it does not have market value if not attached with other components of a process facility.

¹⁶ Exhibit 24 (NC) – Response from Suncor Energy Inc.

¹⁷ Exhibit 27 (NC) – Response from Supermetal Structures Inc.

[57] Supermetal argues that FISC incorporated in the Woodfibre LNG modules including pipe rack modules remain FISC and do not lose their identity. Supermetal also noted that there is no transformation of the FISC into a manufactured good. Similar to its own experiences with past projects, Supermetal submits that these modules would fall into the category of assembly resulting from thoughtful construction planning and coordination of a production facility in a remote area.

[58] Further, with respect to the pipe rack module for the Woodfibre project, Supermetal maintains that the pipe rack type modular assembly is expressly referred to in the product definition.

Supreme Group LP¹⁸

[59] Supreme Group LP (Supreme) is a Canadian producer/fabricator of like goods. Supreme is located in Acheson, Alberta and was one of the complainants in the 2016 FISC investigation.

[60] Supreme is of the view that the Woodfibre LNG modules including pipe rack modules are subject to the CITT's finding.

[61] Supreme disagrees with the notion put forth by Woodfibre that the LNG modules including pipe rack modules are more complex than any other modules assembled for oil and gas projects completed in Canada including the complex modules for Suncor Fort Hills and NorthWest Redwater projects in Alberta. Supreme notes that many of the complex modules were assembled at a module yard adjacent to Supreme's FISC production facility in Acheson. Supreme argues that if FISC within complex modules for oil and gas extraction in Alberta is subject to the CITT's finding, then so is the FISC within LNG modules.

[62] Supreme holds the position that modules, including LNG modules, are not manufactured goods. Supreme argues that modules are intermediate construction of a facility in transportable units and that modules are assembled using construction trades with various tools and machinery.

[63] Supreme maintains that FISC is not transformed into another good when assembled into a module, including a complex module. Supreme explains that FISC retains its essential characteristics when assembled into modules and does not lose these characteristics when piping, electrical panels and machinery are attached. In this regards, FISC is the support framework that forms the skeleton of a structure.

[64] Supreme notes that Woodfibre does not explain how FISC ceases to be FISC when a "substantial" quantity of other goods are attached nor does Woodfibre explain the transformation process of FISC, which continues to be readily identifiable.

¹⁸ Exhibit 28 (NC) – Response from Supreme Group LP.

[65] Supreme does not see how FISC “assembled into modules” ceases to be FISC “assembled into modules” when the proportion of non-FISC goods attached reaches a certain proportion by value or weight.

[66] Finally, Supreme submits that the product definition is clear in that it includes FISC and FISC assembled or partially assembled into modules.

Waiward Steel LP¹⁹

[67] Waiward Steel LP (Waiward) is a Canadian producer/fabricator of like goods. Waiward is located in Edmonton, Alberta and was one of the complainants in the 2016 FISC investigation.

[68] Waiward is of the view that the Woodfibre LNG modules including pipe rack modules are subject to the CITT’s finding.

[69] According to Waiward, the product definition clearly applies to the FISC in fully assembled or partially assembled modules and does not distinguish between “complex” modules and “less complex” modules.

[70] Waiward maintains that LNG modules are no more complex than other modules that contain FISC produced by Waiward and other Canadian producers for oil and gas projects in Canada.

[71] Waiward submits that modules, including LNG modules, are not manufactured goods but rather intermediate construction of a facility in transportable units.

[72] Finally, Waiward argues that FISC is not transformed into another good when assembled into a module, including a complex module. FISC maintains its essential characteristics when assembled into a module; forming the skeleton of a structure. FISC is the support framework and integrates processing equipment.

Ocean Steel & Construction Ltd.²⁰

[73] Ocean Steel & Construction Ltd. (Ocean) is a Canadian producer/fabricator of like goods. Ocean is located in Saint John, New Brunswick. Ocean supported the 2016 FISC complaint.

[74] Ocean is of the view that Woodfibre’s LNG modules including pipe rack modules are subject to the CITT’s finding.

¹⁹ Exhibit 30 (NC) – Response from Waiward Steel LP.

²⁰ Exhibit 29 (NC) – Response from Ocean Steel & Construction Ltd.

[75] Ocean holds the position that modules are not manufactured goods. Ocean explains that in order to speed up the construction of a project, items are assembled offsite and delivered to the project site in larger pieces/components/modules to be connected. The FISC used in modules offsite are the same FISC used if assembly was done on site. Ocean argues that offsite assembly of FISC with other items into “a module” does not transform the FISC into something different. The FISC remains readily identifiable, performing its function as a support structure for equipment.

[76] Ocean notes that it has provided FISC for modules in Atlantic Canada, Saskatchewan and Alberta and that FISC in the LNG modules are not different than the FISC used in past projects produced by Ocean.

[77] Finally, Ocean submits that FISC whether arriving on the Woodfibre project site in unassembled, assembled or partially assembled states should all still be considered within the scope of the product definition.

MacDougall Steel Erectors Inc.²¹

[78] MacDougall Steel Erectors Inc. (MacDougall) is a Canadian producer/fabricator of like goods. MacDougall is located in Borden-Carleton, Prince Edward Island. MacDougall supported the 2016 FISC complaint.

[79] MacDougall is of the view that Woodfibre’s LNG modules including pipe rack modules are subject to the CITT’s finding.

[80] MacDougall maintains that the product definition includes FISC within modules and it does not differentiate between “FISC-only” modules and “complex” modules.

[81] MacDougall also holds the position that modules are not manufactured goods. They are intermediate construction of process facilities.

[82] Finally, MacDougall submits that FISC assembled within modules, including the LNG modules and pipe rack modules, are not transformed into something other than FISC. The FISC retains the characteristics of FISC.

Canadian Institute of Steel Construction²²

[83] CISC is an association representing Canada’s steel construction industry. CISC is of the view that Woodfibre’s LNG modules including pipe rack modules are subject to the CITT’s finding.

²¹ Exhibit 26 (NC) – Response from MacDougall Steel Erectors Inc.

²² Exhibit 36 (NC) – Close of record documents submitted on behalf of the CISC.

[84] CISC disagreed with Woodfibre's characterization of modules as a finished "good". CISC is of the position that a module is a small portion of a facility that is constructed into a transportable unit.

[85] CISC further argued that there is no primary nor secondary market for a single module. In the primary market, additional construction is required and all the modules must be integrated together at the project site in order for the modules to have any market value. In the secondary market, each module would be disassembled with the FISC being sold for scrap and the mechanical equipment being sold separately.

[86] CISC contested Woodfibre's characterization of modules as analogous to a car. It argued that a car is a complete functioning unit, whereas, a module is only useful and functioning to the extent that it is connected with other modules in an integrated industrial project.

[87] CISC disputed the suggestion that Woodfibre is buying a good when it procures modules. It argued that this characterization is inconsistent with how modularization actually occurs for industrial projects. Typically, the owner or the EPC, is intimately involved in all the aspects of the project from design to procurement to modularization to installation. Modular assembly is the purchase of a construction service, not the purchase of a good. The owner or the EPC will provide free-issued materials including FISC and non-FISC components to the module yard and therefore the owner or the EPC already owns the goods.

[88] CISC disagreed with Woodfibre's characterization that a module is stand-alone good separate from its parts. It argued that different standards and codes apply to different parts of a module and industrial facility after construction. Canadian regulatory requirements treat various parts of a module as distinct and separate.

[89] CISC argued that the characterization of a module as a finished good manufactured by the module yard is inconsistent with how work is warrantied. If there is an issue with FISC, the owner or the EPC will have to address it with the FISC producer. If there is an issue with an equipment, the owner or the EPC will have to address it with the equipment manufacture. The owner or the EPC is not going to the module yard to address defects in the goods assembled into the module unless the defect is the module yard's performance.

[90] CISC disagreed with Woodfibre's description of module construction as the "processing" of FISC. It argued that module construction is neither processing nor manufacturing. Rather, it is taking FISC, bolting and/or welding those FISC together, and attaching non-FISC goods to the FISC structure. Attaching non-FISC goods to the FISC structure does not process, manufacture or transform the FISC into something else.

[91] CISC noted that the CBSA concluded in its final determination that FISC within a cold box module and a complete conveyor system satisfied the product definition.

CBSA'S PRELIMINARY ASSESSMENT

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

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

- The physical characteristics of the goods;
- The uses of the goods;
- The technical specifications of the goods;
- The channels of distributions of the goods;
- The description of the goods in the CITT finding; and
- The reasons for the CITT finding.

[94] The CBSA acknowledges that the Woodfibre LNG modules including pipe rack modules are complex modules as they contain both FISC that form the structural framework and non-FISC elements such as equipment, piping, instrumentation and cabling, etc. which provide the modules with LNG functional properties.

[95] Complex modules are produced by first assembling FISC into a simple module of structural steel framework, after which non-FISC elements are connected or attached. From a physical characteristic perspective, the FISC contained in a simple module and a complex module are fundamentally the same. They are produced from the same raw material inputs, according to the same technical standards or equivalent standards for Canada.²³ The FISC in a complex module is not transformed when non-FISC elements are connected, rather it maintains its essential characteristics.

[96] FISC provides the structural steel framework and support upon which non-FISC elements are attached. Based on the information on the administrative record, the CBSA understands that, with respect to simple modules, all of the non-FISC elements are connected at the project site; whereas in complex modules, most of the non-FISC elements are connected at the fabrication site. From the perspective of usage, the FISC in a simple module and the FISC contained in a complex module have the same uses in an industrial project/facility; that is, the FISC provides the structural steel framework. In other words, they serve the same purpose to provide the structural steel framework to which non-FISC elements are connected.

²³ Canadian Standards Association, CSA S16 "Design of Steel Structures".

[97] As described in the CITT's *Finding and Reasons*:

“FISC is purchased as part of a larger effort to procure and construct a capital project. It may also be purchased to fulfill ongoing operational needs (typically in smaller quantities). FISC is a custom product; it is not sold through distributors or retailers. The purchaser of FISC may be the owner or developer of a project. More commonly, however, an engineering firm will be engaged to engineer the product, procure the supplies and construct the product. These firms are referred to as “EPCs” (Engineering, Procurement and Construction).

FISC is typically purchased on the basis of total price as the purchaser is buying a complete set of custom fabricated components that fit together into a custom structure which is unique. FISC is shipped either unassembled or partially assembled from the fabricating facility to the construction site. Once they are at the construction site, structural components are placed and connected by an erector. The erector may be either an independent company or an operation related to the fabricator. Delivery of individual components requires coordination between the fabricator and the erector. FISC may also be delivered to a modular yard, where it is assembled or partially assembled into modules and then shipped to the construction site.

Delivery schedules to a project site vary significantly based on the size and complexity of the project. Most often delivery begins 16 to 20 weeks from the date of contract and can occur over a few months or over one or two years, sometimes more. FISC, whether unassembled (referred to in the industry as “sticks”) or in modules, is produced and then delivered to the job site in a deliberate sequence by the fabricator in order to allow the erector to proceed efficiently.”²⁴

[98] As can be seen from the CITT's *Finding and Reasons*, FISC, in stick form or in modules are procured and sold in the same distribution channels and involve one or more parties including fabricators, EPCs, modular yards and erectors, depending on whether non-FISC elements are connected at the fabricator site or modular yard or project site. Further, as mentioned previously, Supreme, one of the producers of FISC in Canada, stated in its response that it has also produced modules for oil and gas projects in Canada, specifically, Suncor Fort Hills and NorthWest Redwater projects in Alberta, with similar complexities as the LNG modules including pipe rack modules which Woodfibre intends to import for the LNG Project.

²⁴ Exhibit 33 (NC) – CITT Finding and Reasons – FISC, issued May 25, 2017, page 4-5, paragraphs 12-16.

[99] The Woodfibre LNG modules including pipe rack modules are complex modules. They will be delivered to the project site in a deliberate sequence by the fabricator in order to be connected/erected in accordance with the engineering designs. Although each module is essentially a stand-alone unit with fully-tested functionality and is akin to an industrial machine as claimed by Woodfibre, the modules must still be interconnected at the project site using construction trades with tools and machinery. Further, as FISC projects are customized projects, a single module produced for a particular FISC project cannot be sold separately even if it has stand-alone functions. All of the modules designed for the specific FISC project must be constructed together as part of the entire process facility. In this regard, the CBSA views modules, simple and complex, as intermediate construction of a process facility. That is, complex modules are not considered to be manufactured goods.

[100] With respect to “LNG modules” and “pipe rack modules,” the product definition refers to “Fabricated structural steel and plate-work components of ... whether *assembled* or *partially assembled* into *modules*, or *unassembled*, for use in structures for...” The product definition does not distinguish between “simple modules” or “complex modules”. Further, it is not limited to “simple modules”.

[101] On the basis of the information on the administrative record and the consideration of the relevant factors contained in section 54.6 of the SIMR, the CBSA’s preliminary assessment in this scope proceeding is that the FISC portion of the Woodfibre LNG modules including pipe rack modules are subject to the CITT’s finding issued on May 25, 2017, in Inquiry No. NQ-2016-004, concerning the dumping of certain FISC from China, South Korea (excluding those goods exported by Hanmaek Heavy Industries Co. Ltd.) and Spain (excluding those goods exported by Cintasa, S.A.), and the subsidizing of FISC from China.

FUTURE ACTION

[102] Comments on the *Statement of Essential Facts* (SEF) and responses to the comments on the SEF may be submitted by interested parties. Please note that the CBSA will not accept new factual information.

[103] Interested persons may submit comments on the SEF by noon, October 22, 2018, and responses to the comments on the SEF by noon, October 29, 2018.

[104] It is expected that the scope proceeding will be concluded by November 23, 2018.

INFORMATION

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

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

Telephone: Nalong Manivong: 613-954-7268
Kevin Lambertsen: 613-954-0689

E-mail: simaregistry@cbsa-asfc.gc.ca

Website: www.cbsa-asfc.gc.ca/sima-lmsi/



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

APPENDIX – PRESCRIBED FACTORS IN SIMR

The SIMR section 54.6 provides the following:

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

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