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Agence des services
frontaliers du Canada

OTTAWA, November 26, 2018

FISC 2018 SP-02

STATEMENT OF ESSENTIAL FACTS

SCOPE PROCEEDING – CERTAIN FABRICATED INDUSTRIAL STEEL COMPONENTS

**Well Pair Modules, Termination Modules and Metering Modules –
Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd**

*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 August 7, 2018, the CBSA received an application for a scope ruling from Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd. (SSCEM) as to whether its well pair modules, termination modules and metering 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 well pair modules, termination modules and metering modules are not subject to the CITT's finding.

[5] On September 6, 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 September 17, 2018, counsel representing the Canadian Institute of Steel Construction (CISC) filed a submission requesting the CBSA to terminate the scope proceeding pursuant to subsection 66(3) of SIMA and 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, SSCEM, filed a submission on October 4, 2018 objecting to the CISC's request for termination and supporting the position of Woodfibre LNG Limited in the *FISC 2018 SP* scope proceeding 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.¹

¹ FISC 2018 SP – Woodfibre LNG Limited (Liquefied Natural Gas Modules and Pipe Rack Modules)

[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 application for a scope ruling filed by SSCEM. 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 October 31, 2018.

[10] On the basis of the information on the record and the consideration of the relevant factors contained in section 54.6 of the SIMR and any other relevant factors, the CBSA's preliminary assessment is that the goods that are the subject of the application, namely the FISC portion of SSCEM's well pair modules, termination modules and metering 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 APPLICATION²

[11] The goods in question in this scope proceeding are well pair modules, termination modules and metering modules for use in an oil sands project.

[12] An oil sands production facility uses steam-assisted gravity drainage (SAGD) technology that recovers bitumen from oil sands reservoirs. Steam injected into the reservoir heats the bitumen so that it flows more easily, allowing it to be pumped to the surface. The on-site processing facilities that perform the steam injection and bitumen recovery are referred to as SAGD well pad modules.

[13] A complete SAGD well pad module consists of multiple well pair modules, a termination module and a metering module.³

[14] An SAGD well pad module consists of interconnected mechanical, electrical and hydraulic equipment that is designed and manufactured in modular form. Once connected on-site, a completed well pad functions as a discrete injection/recovery unit for one or more underground wells.

[15] Well pair modules transfer the injection steam from the central processing facility to the steam wells and pump out bitumen to the central processing facility. Well pair modules consist of piping, valves, controls, monitoring and other electrical equipment, support structures, walkways and other components.

² Exhibit 2 (NC) – FISC 2018 SP-2 - Application; paragraphs 13-46, pages 3-12.

³ Exhibit 2 (NC) – FISC 2018 SP-2 - Application; paragraph 16, page 4.

[16] Termination modules are identical in design to well pair modules but are located at the end of a well pad assembly. Termination modules are distinguished by pipe drain and vent valves.

[17] Metering modules perform the functions of measuring bitumen and steam production rates, along with sampling and testing water to oil ratios for internal and regulatory reporting. Metering modules consist of instrumentation, electrical and mechanical components.

[18] In the remainder of the *Statement of Essential Facts*, well pair modules, termination modules and metering modules will be referred to as SAGD well pad modules.

[19] Materials and components for SAGD modules are either fabricated at or transported to SSCEM's facility in Shanghai, China. The material and components are then further engineered, fabricated and assembled into SAGD modules to meet detailed specifications provided by the client. Some materials and components including FISC elements and non-FISC elements are free-issued to SSCEM.⁴

[20] The client may send their own engineers to SSCEM's facility to inspect and assist with the module fabrication.

[21] The production of SAGD modules involves a wide range of trades and professions including welders, electricians, pipe fitters, engineers and specialists from various disciplines.

[22] The FISC portion of the SAGD modules constitute the "skeleton" into which the interconnected mechanical and electronic components are installed and attached. The FISC elements are custom-engineered and fabricated to be part of the SAGD modules.

[23] Each of the SAGD modules is fully constructed, finished, painted (where specified) and functionally tested in the SSCEM facility prior to shipping.

[24] SAGD modules are shipped as complete, ready-to-function units, with the exception of certain minor protruding parts such as safety railings and stairs, spools, valves, instrumentation, electrical heat tracing cabinets that exceed the shipping envelope, and which are detached for shipping and re-installed at the project site.

[25] SAGD modules are specifically engineered to fall within the maximum size and weight restrictions for road transportation from ports in British Columbia to the project site in Alberta.

⁴ 'Free Issue Materials' means where for the purpose of a contract the project owner or EPC issues certain materials free of charge to the modular yard solely for use in relation to the contract, but ownership is retained by the project owner or EPC.

[26] SAGD modules are commonly-used technology in oil sands bitumen extraction and are designed to be easily set up and expanded using additional modules that are essentially identical across module types. Accordingly, the modules are essentially “plug and play” and can be installed in the existing facility relatively quickly, with no modification, and minimal additional assembly.

[27] The engineering and complete fabrication of the SAGD modules at offsite facilities ensures standardization and consistency of function for specific types of modules.

DESCRIPTION OF THE SUBJECT GOODS

[28] 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.).

[29] 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.

RELEVANT SCOPE RULINGS

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

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

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

INTERESTED PARTIES

Applicant

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

Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd.
No. 3111, West Huancheng Road,
Fengpu Industrial Park,
Shanghai, China

[33] SSCEM is a fabricator and exporter of the goods that are the subject of the scope ruling application and other complex modules.⁵

[34] The CBSA sent SSCEM an Exporter RFI at the initiation of the scope proceeding. In response, SSCEM directed the CBSA to the information it provided in its scope ruling application. A copy of the non-confidential version of the scope ruling application filed by SSCEM is available on the CBSA’s Listings of Exhibits website at <http://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2018/fisc201802-ex-eng.html>

⁵ Exhibit 82 (NC) – FISC 2018 SP-2 – Exporter RFI response - SSCEM

Canadian Industry

[35] At the initiation of the scope proceeding, the CBSA identified 16 Canadian producers of like goods based on information from the FISC 2018 SP scope proceeding.

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

[37] The CISC submitted a letter outlining its position as to whether the goods in question are subject to the CITT's finding and provided information and various documentary evidence to support its position. The CISC is an industry association consisting of a broad range of stakeholders in the Canadian steel construction industry. Its members include Canadian producers of FISC.⁶

Importers

[38] At the initiation of the scope proceeding, the CBSA identified 56 known and potential importers of subject goods based on information collected from the FISC 2018 SP scope proceeding

[39] 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, Fluor Canada Ltd., Shell Canada Limited and Suncor Energy Inc.

Exporters and/or Foreign Producers

[40] At the initiation of the scope proceeding, the CBSA identified 134 known and potential exporters and/or producers of subject goods based on information from the FISC 2018 SP scope proceeding.

[41] The CBSA sent an Exporter RFI to all known and potential exporters and/or producers. No exporters or producers, other than SSCEM, provided information to the CBSA.

⁶ Exhibit 30 (NC) – Public Statement of the Canadian Institute of Steel Construction

Requests for Extension

[42] 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.

[43] 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 - SSCEM

[44] SSCEM noted that modularization is a manufacturing technique that reduces the cost, time and risk to construct facilities in remote or high-cost locations, by producing structures or large equipment in lower-cost production centres for shipment to the project site.⁷

[45] SSCEM noted that there is no standard or industry definition of the term “module”; however, it defined a module as a pre-manufactured industrial component that can perform a stand-alone function or act as a part of a larger structure and/or facility.⁸

[46] SSCEM submits that its SAGD modules bear little resemblance to the mere support structures that are contemplated by the product definition. It maintains that the SAGD modules are complex, highly-engineered, functioning pieces of equipment that are more accurately characterized as machines, equipment packages, buildings or discrete industrial processes.⁹

[47] SSCEM acknowledges that the product definition includes “FISC assembled or partially assembled in modules” and that FISC simply assembled with other FISC to form a “FISC module” falls within the subject goods definition.¹⁰

[48] SSCEM argued that its SAGD modules constitute large amounts of non-FISC material integrated together with elements of FISC to form complex, stand-alone industrial goods.¹¹

⁷ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraph 50, page 13.

⁸ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraph 51, page 13.

⁹ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraphs 52-53, pages 13-14.

¹⁰ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraphs 54-55, page 14.

¹¹ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraph 56, page 14.

[49] SSCEM argued that its SAGD modules are not merely “assembled,” but are engineered, manufactured and factory-tested to perform specified industrial tasks.¹²

[50] SSCEM argued that the FISC components do not in any way define or dominate the goods, but are merely inputs to the larger whole, and are substantially transformed into the final good.¹³

[51] SSCEM provided a copy of exclusion requests submitted to the CITT in Inquiry No. NQ-2016-004 by Suncor Energy Inc. and Fluor Canada Ltd. with respect to a broad range of complex modules which incorporate FISC as a raw material input, and the domestic industry’s consent to these exclusion requests from the public record of the CITT. SSCEM submits that the domestic industry’s consent to these exclusion requests are “persuasive evidence that the complainants accept the interpretation of the scope of the subject goods as set out in its application.”¹⁴

[52] SSCEM argued that the discrete functions of the well pair, termination and metering modules support their status as industrial machinery and not simply structural components or readily-disaggregated parts.¹⁵

[53] SSCEM argued that its SAGD well modules are fundamentally different products from FISC, albeit they include FISC as a component or raw material. The SAGD modules are finished, manufactured goods, akin to industrial machines, household appliances or motor vehicles. The isolation of goods permanently incorporated into finished imported goods for the purpose of applying duty is unprecedented in SIMA.¹⁶

[54] SSCEM directed the CBSA to its decision on Subjectivity Appeal No. SG-1, July 21, 2017, in which the CBSA held that steel grating in question remained subject goods because at the time of importation it was not “incorporated into” structures.¹⁷ SSCEM reasoned that FISC incorporated into the SAGD modules, at the time of importation, is permanently transformed and has “lost its identity” as FISC.¹⁸

¹² Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraph 56, page 14.

¹³ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraph 56, page 14.

¹⁴ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraph 60, page 15.

¹⁵ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraph 61-63, pages 15-16.

¹⁶ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraph 64, page 16.

¹⁷ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraphs 65-66, pages 16-17.

¹⁸ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraph 67, page 17.

[55] SSCEM argued that separately accounting for FISC and non-FISC elements in complex modules is illogical. The FISC incorporated into SAGD modules may not have been produced in a country named in the product definition. It argued that it is conceivable that other modules could incorporate FISC from Canadian producers who initially filed the anti-dumping and countervailing complaint with the CBSA. It pointed out that during the injury Inquiry No. NQ-2016-004, the domestic producers submitted that it was feasible for Canadian producers to supply FISC to Chinese manufacturers of complex modules.¹⁹

Fluor Canada Ltd.²⁰

[56] Fluor Canada Ltd. (Fluor) is an engineering, procurement and construction company that imports complex modules into Canada.

[57] Fluor is of the view that SSCEM's SAGD modules are not subject to the CITT's finding.

[58] Fluor indicated that modularization is the production of a processing facility broken down into transportable units at a remote modular yard. The finished modules are transported and interconnected with other modules at the project site. Further, Fluor described a module as a single part of a processing facility, which has been tested and pre-commissioned for its functionality as part of that processing facility to the maximum extent that is possibly allowed in the modular yard.

[59] Fluor argued that modularization is a complex production process and the resulting modules produced from this process have different qualities and characteristics than the FISC and non-FISC elements used in the production of the module. A module is a commercial good in its own right, and has been tested for performance prior to leaving the modular yard.

[60] According to Fluor, complex modules are fabricated through the integration of FISC and non-FISC elements. While the assembly of FISC is an aspect of the module fabrication process, modularization involves the installation of working systems and the pre-commissioning and testing of functional activities.

[61] Fluor explained that a module is one step short of the final processing project and is much closer to the final processing project than FISC. Modules may perform a variety of functions and integrate FISC and non-FISC elements in many different ways. FISC is only a component of the modules and is most often an extremely small component in terms of value.

[62] Fluor argued that the production of a module is much more complex than FISC production. There are specific manufacturing processes required for the integration of non-FISC elements and a variety of skilled workers who are qualified in their respective disciplines are required.

¹⁹ Exhibit 2 (NC) – FISC 2018 SP-02 Application; paragraphs 68-70, page 17.

²⁰ Exhibit 21 (NC) – Response from Fluor Canada Ltd.

[63] Fluor maintained that in regards to complex modules, the FISC and non-FISC elements are integrated to produce a single product. A complex module that contains FISC as an input is a very distinct product from the FISC.

[64] Fluor holds the position that all of the inputs of the module, including the FISC, function together to operate as a single part of a processing facility. Saying that the FISC element of a module remains distinct would be like saying that the lumber of a house remains distinct from the house after construction of the house is complete. The FISC is used to provide the module with structural integrity and structural support and the FISC is subsumed into the module as a whole.

Shell Canada Limited²¹

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

[66] Shell is of the view that SSCEM's SAGD modules are not subject to the CITT's finding. Shell indicated that it has nothing to add to SSCEM's position.

[67] Shell indicated that LNGC has submitted information and comments to the CITT, the Federal Court of Appeal and the Department of Finance in regards to the CITT's finding and its own project in Kitimat.

Suncor Energy Inc.²²

[68] 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 its oil sands mining and refining operations.

[69] Suncor is of the view that SSCEM's SAGD modules are not subject to the CITT's finding.

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

[71] 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.

²¹ Exhibit 22 (NC) – Response from Shell Canada Limited.

²² Exhibit 27 (NC) – Response from Suncor Energy Inc.

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

Supermetal Structures Inc.²³

[72] 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.

[73] Supermetal is of the view that SSCEM's SAGD modules are subject to the CITT's finding.

[74] Supermetal is of the opinion that FISC incorporated in SSCEM's SAGD 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..." as described in the product definition.

[75] Supermetal is of the position that SSCEM's SAGD modules, although complex, are intermediate construction of a process facility and are not considered "new" commercial goods as claimed by SSCEM. 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.

[76] Supermetal argued that FISC incorporated in SSCEM's SAGD modules remains FISC and does not lose its identity. Based on the design of the SAGD modules, Supermetal noted that there is no transformation of the FISC into a manufactured good. Similar to its own experiences with past projects in the mining, oil and gas industry, 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.

Supreme Group LP²⁴

[77] 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.

[78] Supreme is of the view that SSCEM's SAGD modules are subject to the CITT's finding.

[79] Supreme submits that the product definition is clear in that it includes FISC and FISC assembled or partially assembled into modules. Supreme also noted that the product definition does not distinguish between "complex" modules and other modules.

²³ Exhibit 24 (NC) – Response from Supermetal Structures Inc.

²⁴ Exhibit 25 (NC) – Response from Supreme Group LP.

[80] Supreme maintained that SAGD technology is well established in Alberta’s energy sector and that SSCEM’s SAGD modules are not different from or more complex than the SADG modules produced by steel fabricators and modular assembly facilities for various facilities in Canada including Nexen Long Lake, Cenovus Cristina Lake and Suncor Energy Firebag.

[81] Supreme holds the position that modules, including SAGD 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 construction tools and machinery.

[82] 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 non-FISC elements are attached.

[83] 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. Supreme notes that SSCEM does not explain how FISC ceases to be FISC when a “substantial” quantity of non-FISC elements are attached.

Waiward Steel LP²⁵

[84] 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.

[85] Waiward is of the view that SSCEM’s SAGD modules are subject to the CITT’s finding.

[86] 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. Waiward does not see how FISC “assembled into modules” ceases to be FISC “assembled into modules” when non-FISC goods are attached to the FISC.

[87] Waiward submits that modules, including SSCEM’s SAGD modules, are not manufactured goods but rather intermediate construction of a facility in transportable units. Modules are assembled using construction trades with various construction tools and equipment.

[88] 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.

²⁵ Exhibit 26 (NC) – Response from Waiward Steel LP.

Ocean Steel & Construction Ltd.²⁶

[89] 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.

[90] Ocean is of the view that SSCEM's SAGD modules are subject to the CITT's finding.

[91] 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 non-FISC elements.

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

[93] Finally, Ocean submits that the product definition is clear and includes FISC whether unassembled, assembled or partially assembled, into modules.

Canadian Institute of Steel Construction²⁷

[94] The CISC is an association representing Canada's steel construction industry. The CISC is of the view that SSCEM's SAGD modules are subject to the CITT's finding.

[95] The CISC noted, based on the description on SSCEM's website, that SSCEM appears to be a constructor and installer of mechanical systems among other business services. This is consistent with the CISC's position that modularization is the intermediary construction of a production facility and not manufacturing.

[96] The CISC disagreed with SSCEM's argument that the product definition applies differently to FISC within a "FISC-only module" and FISC within a "complex module". The CISC argued that this idea was raised by opposing parties during the CITT hearing in Inquiry No. NQ-2016-004, and that this position was never accepted by the CISC or the domestic producers. Rather, the CISC maintained that the product definition includes all modules, from "FISC-only" to "complex."

²⁶ Exhibit 23 (NC) – Response from Ocean Steel & Construction Ltd.

²⁷ Exhibit 30 (NC) – Public Statement of the Canadian Institute of Steel Construction

[97] The CISC clarified that modularization may involve the partial assembly of FISC into modules prior to being shipped to the project site for final construction or it may involve installing or attaching various non-FISC elements to the module structure. The CISC argued that modularization is the same whether it is performed in Canada or in a foreign country.

[98] The CISC disagreed with SSCEM's characterization of modules as a manufactured or stand-alone "good". The CISC is of the position that a module is a small portion of a facility that is constructed into a transportable unit. Each unit only functions as designed and intended when it is integrated and constructed into the final facility.

[99] The 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.

[100] The CISC disputed the suggestion that SSCEM 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 project owner or the Engineering, Procurement and Construction (EPC) firm, 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 project owner or the EPC will provide free-issued materials including FISC and non-FISC components to the modular yard and therefore the project owner or the EPC already owns the goods.

[101] The CISC disagreed with SSCEM's characterization that a module is a 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.

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

[103] The CISC disagreed with SSCEM'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 nor transform the FISC into something else.

[104] The 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.

[105] The CISC conceded that the domestic producers consented to the product exclusion request made by the opposing parties to exclude some FISC that fell within the scope of the product definition from the CITT's finding. However, the CISC maintained that it is of the position that FISC within all modules is within the scope of the product definition and that the CITT rejected the product exclusion requests because the parties seeking the exclusions maintained that FISC covered in the exclusion requests were outside the scope of the product definition.

CBSA'S PRELIMINARY ASSESSMENT

[106] 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**.

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

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

[108] The CBSA acknowledges that SSCEM's SAGD modules are complex modules as they contain both FISC that form the structural framework and non-FISC elements such as equipment, piping, instrumentation and controls, etc. which provide the modules with specific SAGD functional properties.

[109] Complex modules are produced by first assembling FISC into a simple module of structural steel framework, after which non-FISC elements are connected. 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.²⁸ The FISC in a complex module is not transformed when non-FISC elements are connected, rather it maintains its essential characteristics, that is, to provide the structural framework and support in a FISC processing facility.

²⁸ Canadian Standards Association, CSA S16 "Design of Steel Structures".

[110] FISC provides the structural steel framework and support upon which non-FISC elements are attached. The CBSA understands that, with respect to simple modules, all of the non-FISC elements are connected at the project site; whereas for 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, which is to provide the structural steel framework to which non-FISC elements are connected. This has been acknowledged by SSCEM and all other parties.

[111] 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.”²⁹

[112] As can be seen from the CITT's *Finding and Reasons*, FISC, in stick form or in modules are procured in the same distribution channels and could involve one or more parties including EPCs, fabricators, modular yards and erectors.

²⁹ Exhibit 33 (NC) – CITT Finding and Reasons – FISC, issued May 25, 2017, page 4-5, paragraphs 12-16.

[113] Modularization of FISC with non-FISC elements can be performed in Canada or in foreign countries. Whether a certain proportion of modularization activities are performed in Canada or a foreign country does not alter the essential characteristics of the FISC. Further, as mentioned previously by Supreme, SSCEM's SAGD modules are not different from or more complex than the SADG modules produced by steel fabricators and modular assembly facilities for various facilities in Canada including Nexen Long Lake, Cenovus Cristina Lake and Suncor Energy Firebag.

[114] SSCEM's SAGD 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. FISC projects, whether employing a "stick", "simple" modules, or "complex" modules strategy, are executed in a planned and coordinated fashion, over a period of time. The outcome of the various strategies is a final assembled/constructed FISC industrial process facility.

[115] The characterization of modules as stand-alone, finished goods distinct from their parts is not consistent with the reality of the different standards and codes that apply to different parts of a module and the industrial facility after construction. Canadian regulatory requirements treat various parts of a module as distinct and separate.

[116] Certain parties claim that each module is essentially a stand-alone unit, a commercial good in its own right with fully-tested functionality and is akin to an industrial machine. However, the CBSA notes that the well pair modules, termination modules and metering modules must still be interconnected at the project site using construction trades with construction tools and machinery. The final outcome of the integrated SAGD well pad module is a FISC industrial process facility.

[117] According to SSCEM, SAGD modules are commonly-used technology in oil sands bitumen extraction and are designed to be easily set up and expanded using additional modules that are essentially identical across module types and can be installed in the existing facility relatively quickly, with no modification, and minimal additional assembly. However, it later indicated that the engineering and complete fabrication of the modules at offsite facilities ensures standardization and consistency of function for specific types of modules. In this regard, the complex modules are customized for the particular FISC project.

[118] 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 integrated together into an SAGD well pad module to form a FISC industrial process facility. Each unit only functions as designed and intended when it is integrated into the complete process facility.

[119] The characterization of procuring complex modules as the purchasing of a manufactured good is inconsistent with how modularization actually occurs for industrial projects. Typically, the project owner or the EPC, is intimately involved in all the aspects of the project from design to procurement to modularization to installation. As indicated by SSCEM, the project owner or the EPC, who already owns the goods, will provide free-issued materials, including FISC and non-FISC elements, to the modular yard for assembly/construction. In this regard, the CBSA views modular assembly as the purchase of a construction service; the project owner or the EPC is not purchasing a manufactured good.

[120] Further, the characterization of a module as a finished good manufactured by a modular yard is inconsistent with how the modules are warrantied. If there is an issue with either the FISC or the equipment, or there are defects in module construction, the project owner of the FISC project or the EPC will have to address the issues separately with either the FISC producer, the equipment manufacturer, or the modular yard. Therefore, the project owner or EPC would need to address defects in the module with the modular yard. In this regard, the CBSA views modular assembly as the performance of construction service by a modular yard.

[121] As stated in Fluor's submission, modularization is the production of a processing facility broken down into transportable units at a remote modular yard. The finished modules are transported and interconnected with other modules at the project site.

[122] In light of the above, and as stated in the CBSA's *Statement of Reasons* with respect to FISC 2018 SP Woodfibre LNG Limited scope ruling, the CBSA views modules, simple and complex, as intermediate construction of a process facility.

[123] SSCEM argued that the domestic industry's consent to exclusions from the CITT's finding for a broad range of complex modules which incorporate FISC is persuasive evidence of their acceptance of the interpretation of the scope of the subject goods as set out in the scope ruling application. The CBSA notes that the domestic producers consented to the product exclusion requests for certain FISC that fell within the scope of the product definition. The CBSA also notes that SIMA authorizes the CITT to exclude only goods which are subject goods. It is the CBSA's position that the CITT's exclusion does not indicate that the FISC contained in complex modules are not subject goods; rather FISC contained in complex modules are subject goods and an exclusion was granted with respect to certain FISC for use in a particular project.

[124] In its application, SSCEM applied the reasoning outlined in Subjectivity Appeal No. SG-1, July 21, 2017, in which the CBSA maintained that fabricated steel grating were subject even though the steel gratings were imported for use in accompanying steel structures, at the time of importation the gratings were in their own separate containers, and were not physically attached, joined or wrought into a structure. SSCEM argued that FISC incorporated into the SAGD modules, at the time of importation, is permanently transformed and has "lost its identity" as FISC. It further argued that the isolation of goods permanently incorporated into imported finished goods for the purpose of applying duty is unprecedented in SIMA.

[125] The CBSA notes that the decision that grating fell within the scope of the *Steel Grating* finding, in part, because it was unattached, does not stand for the principle that any good subject to a CITT finding necessarily falls outside the scope of that finding because it is attached to a non-subject good at the time of importation. Further, there is no prohibition on a trade remedy applying to a good incorporated within another good. The CBSA must consider the relevant factors contained in section 54.6 of the SIMR and any other relevant factors in accordance with subsection 66(6) of SIMA in assessing the subjectivity of the well pad modules.

[126] Parties supporting the applicant argued that FISC elements in complex modules account for a small portion of the value of the complex module and do not in any way define or dominate the complex modules. As discussed previously, the proportion of non-FISC elements contained in a module dictates whether it is considered to be a simple module versus a complex module.

[127] As stated in the CBSA's *Statement of Reasons* with respect to the FISC 2018 SP Woodfibre LNG Limited scope ruling, the product definition does not distinguish between "simple modules" or "complex modules". Further, it is not limited to "simple modules". Also, in that proceeding, the CBSA made a scope ruling that the FISC portion of the liquefied natural gas (LNG) modules including pipe rack modules are subject to the CITT's finding.

[128] The CBSA notes the product definition of subject goods contained in the CITT's finding specifically lists modules as being subject to the finding:

"Fabricated structural steel and plate-work components of ... whether *assembled* or *partially assembled* into *modules*, or *unassembled*, for use in structures for..."

[129] On the basis of the information on the administrative record and the consideration of the relevant factors contained in section 54.6 of the SIMR and any other relevant factors, the CBSA's preliminary assessment in this scope proceeding is that the FISC portion of SSCEM's well pair modules, termination modules and metering 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

[130] 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.

[131] Interested persons may submit comments on the SEF by noon, December 3, 2018, and responses to the comments on the SEF by noon, December 10, 2018.

[132] It is expected that the scope proceeding will be concluded by January 4, 2019.

INFORMATION

[133] 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
Ansa Mohammad 613-960-6096

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

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

Walid Ben Tamayj

for/ 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.