



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## FINDING AND REASONS

Inquiry No. NQ-2009-005

Polyiso Insulation Board

*Finding issued  
Thursday, May 6, 2010*

*Reasons issued  
Friday, May 21, 2010*

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

**THE DUMPING OF FACED RIGID CELLULAR POLYURETHANE-MODIFIED  
POLYISOCYANURATE THERMAL INSULATION BOARD ORIGINATING IN  
OR EXPORTED FROM THE UNITED STATES OF AMERICA**

**FINDING**

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States of America, has caused injury or retardation or is threatening to cause injury to the domestic industry.

Further to the issuance by the President of the Canada Border Services Agency of a final determination dated April 6, 2010, that the aforementioned goods have been dumped, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods has not caused injury or retardation and is not threatening to cause injury to the domestic industry.

Stephen A. Leach

Stephen A. Leach  
Presiding Member

Diane Vincent

Diane Vincent  
Member

Pasquale Michaele Saroli

Pasquale Michaele Saroli  
Member

Dominique Laporte

Dominique Laporte  
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: April 7 to 9, 2010

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Wallace Construction Specialties Ltd.

Norman Wallace

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Exclusion Process**

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## STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry to determine whether the dumping of faced rigid cellular polyurethane-modified polyisocyanurate (polyiso) thermal insulation board originating in or exported from the United States of America (United States) (the subject goods) has caused injury or retardation or is threatening to cause injury to the domestic industry.
2. On October 8, 2009, the President of the Canada Border Services Agency (CBSA), following a complaint filed by IKO Sales Limited (IKO) of Toronto, Ontario, initiated an investigation into whether the subject goods had been dumped. The complaint was initially supported by one of two other companies that produce polyiso insulation board in Canada, Johns Manville Canada Inc. (JMC). During the course of the Tribunal's inquiry, JMC changed its position and filed submissions opposing a finding of injury or threat thereof. Polyiso insulation board is also produced in Canada by a third company, Atlas Roofing Corporation (Atlas), a U.S.-based company. Atlas did not indicate its position in this inquiry.
3. On October 9, 2009, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping of the subject goods had caused injury or retardation or was threatening to cause injury. On December 7, 2009, pursuant to subsection 37.1(1), the Tribunal made a preliminary determination of injury, stating that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury.
4. On January 6, 2010, the CBSA issued a preliminary determination of dumping with respect to the subject goods. As a result of its preliminary investigation, the CBSA was satisfied that the subject goods had been dumped, that the margins of dumping were not insignificant and that the volumes of dumped goods were not negligible.
5. On January 7, 2010, the Tribunal issued a notice of commencement of inquiry.<sup>2</sup> The Tribunal's period of inquiry (POI) covers the three full years from January 1, 2007, to December 31, 2009. As part of its inquiry, the Tribunal requested domestic producers, importers, purchasers and foreign producers of polyiso insulation board to complete questionnaires. From the replies to the questionnaires and other information on the record, the Tribunal's staff prepared public and protected pre-hearing staff reports.
6. On February 12, 2010, the Tribunal sent an order to IKO, JMC and Atlas directing them to provide, in their replies to their domestic producers' questionnaires, their "net delivered selling values" on a "delivered to the distributors" basis, as opposed to on an "ex-factory" basis. All three companies complied, with replies being received on time.
7. On April 6, 2010, the CBSA issued a final determination of dumping, which confirmed that the margins of dumping were not insignificant and that the volumes of dumped subject goods were not negligible.
8. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from April 7 to 9, 2010.
9. IKO filed a written submission, provided evidence and made arguments in support of an injury finding or, alternatively, a finding of threat of injury. It was represented by counsel and presented witnesses at the hearing.

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

2. C. Gaz. 2010.I.50.

10. A domestic producer and a number of importers and foreign producers filed submissions opposing a finding of injury. Johns Manville (JMUS) and JMC, Convoy Supply Ltd. (Convoy), Firestone Building Products Company (Firestone), Hunter Panels LLC (Hunter) and Carlisle Construction Materials Incorporated (previously known as Carlisle SynTec) (Carlisle) filed submissions, provided evidence and made arguments opposing a finding of injury. These companies were represented by counsel and presented witnesses at the hearing. Dow Chemical Canada ULC (Dow Canada)/The Dow Chemical Company (Dow) filed a submission and made arguments supporting its product exclusion requests. Dow was represented by counsel at the hearing. Wallace Construction Specialties Ltd. (Wallace) filed a submission, presented evidence and represented itself at the hearing. Wellons Canada Corp. (Wellons) did not appear at the hearing, but did file a submission supporting its product exclusion requests.

11. In its notice of commencement of inquiry, the Tribunal referred to the procedures for filing requests for specific product exclusions. The Tribunal received 13 such requests from 4 parties: Dow, Firestone, Hunter and Wellons. IKO opposed three of the product exclusion requests, specifically, the requests made by Firestone in respect of Firestone Resista™ polyiso insulation board (flat and tapered), Firestone ISO 95+™ GL tapered board and Firestone roofing systems.

12. The record of this inquiry consists of all Tribunal exhibits, including the public and protected record of the preliminary injury inquiry (PI-2009-004), public and protected replies to questionnaires, public and protected versions of the pre-hearing staff report, requests for information and replies thereto, documents with respect to the product exclusion process, witness statements, all other exhibits filed by parties and the Tribunal throughout the inquiry, and the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

13. The Tribunal issued its finding on May 6, 2010.

## RESULTS OF THE CBSA'S INVESTIGATION

14. On April 6, 2010, the CBSA determined that 97.8 percent of the subject goods released into Canada from October 1, 2008, to September 30, 2009, had been dumped at an overall weighted average margin of dumping of 21.9 percent, when expressed as a percentage of the export price. The CBSA concluded that the overall margin of dumping was not insignificant.<sup>3</sup>

15. The following table shows the U.S. producers' respective weighted average margins of dumping, expressed as a percentage of export prices, as calculated by the CBSA.<sup>4</sup>

<b>Margins of Dumping</b>	
<b>Exporters</b>	<b>Margins of Dumping</b>
Atlas Roofing Corporation	7.8%
Carlisle SynTec Inc.	15.9%
Construction Materials International, Inc.	0.0%
Dow Chemical Company	0.0%
Firestone Building Products Inc.	15.9%
Hunter Panels LLC	8.9%
Johns Manville	23.8%
All Other Exporters	168.9%

3. Tribunal Exhibit NQ-2009-005-04, Administrative Record, Vol. 1 at 104.9; Tribunal Exhibit NQ-2009-005-04D, Administrative Record, Vol. 1 at 104.40.

4. Tribunal Exhibit NQ-2009-005-04D, Administrative Record, Vol. 1 at 104.43.

## PRODUCT

### Product Definition

16. The subject goods are defined as follows:

Faced rigid cellular polyurethane-modified polyiso thermal insulation board originating in or exported from the United States.

### Product Description and Information

17. Polyiso insulation board is the primary insulation product for commercial wall and roof applications. Generally, polyiso insulation board has the same physical foam properties, whether it is used for roofing or for wall applications. Differences between the two applications usually relate only to thickness, type of facers (facing material bonded to both sides of the foam core) and board dimensions.

18. Polyiso roof insulation board is generally offered in sizes of 3 ft. x 4 ft., 4 ft. x 4 ft. and 4 ft. x 8 ft. and can be produced in a range of thicknesses from 1 in. to 4 in. Custom sizes and thicknesses are also available. These boards are used mainly in the commercial construction sector. The product is also available in tapered boards which are used in pre-engineered sloped insulated roofs to provide positive drainage.

19. Polyiso wall insulation board is generally offered in 4 ft. x 8 ft. and 4 ft. x 9 ft. sizes and can be produced in a range of thicknesses from 1 in. to 4 in. As with roofing boards, custom sizes and thicknesses are available. These boards are generally used for construction applications in both residential and non-residential wall systems.

### Production Process

20. The main ingredients in polyiso insulation board are aromatic polyester polyol (polyol), isocyanurate (MDI) and a blowing agent, which is usually pentane. Other ingredients include a facer material, fire retardant, a surfactant, and three different catalysts that are used to initiate and control the chemical reactions that take place in the manufacture of polyiso insulation board.<sup>5</sup> All the raw materials, except for the facer material, are liquids. They are delivered to the factory in rail cars, tank trucks or containers. Raw materials are transferred to storage tanks in the factory.

21. A mixture of the polyol, the fire retardant, the surfactant and the catalysts is made. The temperature and pressure of this mixture are carefully controlled. The pressure and temperature of MDI and pentane are carefully controlled. The polyol mixture, MDI and pentane are then combined under high pressure onto a "pour table". The mixture flows between two facers, which are on a continuously moving double belt laminator and bonded to the said facers. Facers are distinguished by their water vapour permeance and composition and vary depending on the construction application.

22. Upon exiting the laminator, the board is trimmed to the correct width and cut to the required length. The product is then packaged and placed in the warehouse for a period of two to four days for curing before shipment.

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5. Tribunal Exhibit NQ-2009-005-01A, Administrative Record, Vol. 1 at 23. In its statement of reasons, the CBSA indicated that all major North American producers use a comparable manufacturing technology and that the principal chemical inputs (MDI, polyol and blowing agent) are generally sourced from the same chemical suppliers.



## DOMESTIC PRODUCERS

23. There are three domestic producers of polyiso insulation board in Canada, namely, IKO, JMC and Atlas Roofing Canada (ARC). All three companies provided complete replies to the Tribunal's producers' questionnaire.

### IKO

24. IKO is located in Toronto, Ontario, and is a privately owned Canadian company. IKO and its related companies, the IKO Group, are involved in the manufacture, sale and distribution of a wide range of roofing products throughout Canada, as well as in the United States, Europe and other international markets.

25. IKO participates in the polyiso industry in Canada through three wholly owned subsidiaries: (1) Canroof Corporation Inc. (Canroof) which manufactures polyiso roof insulation board and polyiso wall insulation board at its factory in Brampton, Ontario. It started production in Brampton in 2000 to serve Eastern Canada (east of Manitoba); (2) IG Machine & Fibers Ltd. (IG Machine) which manufactures polyiso roof insulation board and polyiso wall insulation board at its factory in High River, Alberta. It started production in 2005 to serve Western Canada; and (3) IKO Industries Ltd., located in North York, Ontario, which purchases polyiso insulation board manufactured by Canroof and IG Machine and sells to distributors throughout Canada. These distributors in turn resell to roofing and building contractors.

26. In 2009, close to three quarters of IKO's domestic sales of polyiso insulation board were made in Eastern Canada. IKO is essentially the only domestic producer that sells polyiso insulation board in Western Canada. During the POI, IKO exported polyiso roof insulation board from its Brampton production facility to the northeastern part of the United States. IKO did not import the subject goods.

### JMC

27. JMC manufactures polyiso roof insulation board and polyiso wall insulation board in Cornwall, Ontario. It is a wholly owned subsidiary of JMUS, a U.S. company located in Denver, Colorado. In 1998, JMC purchased the assets of Exeltherm Inc.,<sup>6</sup> including the Cornwall plant.

28. JMC mainly serves Eastern Canada for both polyiso roof insulation board and polyiso wall insulation board, with close to 100 percent of JMC's domestic sales of polyiso insulation board being made in Eastern Canada in 2009. During the POI, JMC exported polyiso roof insulation board and polyiso wall insulation board to the United States. It did not import the subject goods.

### ARC

29. ARC is owned by Atlas, a U.S. company headquartered in Atlanta, Georgia. It is wholly owned by Hood Companies, Inc. of Hattiesburg, Mississippi. Atlas has six polyiso insulation board production facilities in the United States and one production facility in Toronto, Ontario. ARC began production of polyiso insulation board in Canada in 1999.

30. ARC serves Eastern Canada from its plant in Toronto, with close to 100 percent of its sales of polyiso insulation board made in Eastern Canada in 2009. During the POI, the Toronto plant exported polyiso roof insulation board and polyiso wall insulation board to the United States. It did not import the subject goods.

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6. Tribunal Exhibit NQ-2009-005-11.01, Administrative Record, Vol. 3 at 21.

## IMPORTERS

31. The Tribunal requested 11 importers of polyiso insulation board to complete importers' questionnaires. The Tribunal received completed questionnaires from 9 importers, including one unsolicited reply. These companies are: Beacon Roofing Supply Canada Company, of Montréal, Quebec; Brock White Canada Company, of Winnipeg, Manitoba; CanWel Building Materials Ltd., of Vancouver, British Columbia; Convoy, of Surrey, British Columbia; Dow Canada, of Calgary, Alberta; Everest Supply Inc., of Mississauga, Ontario; Patene Building Supplies Ltd., of Guelph, Ontario; Steels Industrial Products Ltd., of Surrey; and Wallace of Saskatoon, Saskatchewan. Of the three remaining firms, one filed an incomplete response that was not useable while the other two importers did not respond to the Tribunal's questionnaire.

## PURCHASERS

32. The Tribunal requested 29 companies to complete questionnaires on market characteristics. The Tribunal received a total of 22 useable replies, including 3 unsolicited questionnaires. A total of 18 purchasers identified themselves as wholesalers/distributors; 2 as contractors, 1 as an importer and 1 as a fabricator.

## FOREIGN PRODUCERS

33. The Tribunal requested 24 companies in the United States to complete foreign producers' questionnaires. The Tribunal received 9 replies, including 5 complete replies<sup>7</sup> and 4 replies from companies that indicated that they are not producers of polyiso insulation board.

### Atlas

34. All six of Atlas' polyiso insulation board production facilities in the United States are capable of producing the subject goods for the Canadian market; however, during the POI, only one plant, located in Denver, exported the subject goods to Canada. One hundred percent of Atlas's sales of polyiso insulation board to Canada were made in Western Canada.

### Dow

35. Dow is headquartered in Midland, Michigan. It has approximately 150 manufacturing sites in 35 countries around the world. Dow Chemical wholly owns Dow Canada, an importer-distributor of polyiso insulation board. Dow exports polyiso wall insulation board to both Eastern Canada and Western Canada from two U.S.-based polyiso production plants. For the most part, Dow's sales of polyiso insulation board to Canada were made in Western Canada.

### Firestone

36. Firestone is headquartered in Indianapolis, Indiana. Firestone has eight manufacturing plants in the United States that produce polyiso insulation board. During the POI, six plants exported polyiso roof insulation board to both Eastern and Western Canada, with the larger portion of sales to Eastern Canada.

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7. Atlas, Firestone, Hunter, JMUS and Dow.

## Hunter

37. Hunter is located in Carlisle, Pennsylvania, and is wholly owned by Carlisle Corporation, of Delaware. The company owns six plants throughout the United States, four of which exported polyiso roof insulation board to both Eastern and Western Canada, with a major portion of sales to Eastern Canada.

## JMUS

38. JMUS is located in Denver. It wholly owns JMC. JMUS has four manufacturing plants in the United States that produce polyiso insulation board. During the POI, three plants exported polyiso roof insulation board to Canada, mainly to Western Canada.<sup>8</sup>

## SALES, MARKETING AND DISTRIBUTION

39. In general, domestic and foreign producers sell polyiso insulation board to wholesalers/distributors of building and roofing supplies, which, in turn, sell to contractors and end users. Many wholesalers/distributors import the subject goods, as well as buy from domestic manufacturers.

40. The wholesalers/distributors sell polyiso insulation board two ways: (1) as a single product, and/or (2) as part of a complete roofing system.

41. Polyiso insulation board is one component of a complete roofing system that includes, among other things, a vapour barrier, insulation, cover board, roofing membrane, fasteners, adhesives and accessories. There are three types of commercial roofing systems available in Canada: (1) built-up roofing (BUR) systems; (2) modified bitumen roofing systems; and (3) single-ply roofing systems.<sup>9</sup> Not all manufacturers produce all the components of these systems.

42. Polyiso insulation board is usually purchased on the basis of the specific standards required for a given project. These standards relate to tested protection against various elements such as fire, mould and wind uplift. The same international standards and testing services for polyiso products are used in Canada and in the United States and warranties offered by manufacturers and Canadian associations are based on these standards and tests.

43. Factory Mutual Global (FM) and Underwriters' Laboratories of Canada, Inc. (ULC) are international organizations that provide testing services for configured roofing systems and assemblies of different components, as well as attestations that these meet certain minimum standards. For example, FM provides testing and rating for wind uplift, while ULC provides testing and rating for fire resistance. The

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8. Tribunal Exhibit NQ-2009-005-RI-02A (protected), Administrative Record, Vol. 10 at 6. *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 284-85.

9. Manufacturer's Exhibit A-05 at para. 7, Administrative Record, Vol. 11. BUR systems consist of alternating layers of roofing asphalt and roofing felt. Roofing asphalt is used between the layers of felt, both as the adhesion agent and as the waterproofing agent. Roofing felt is asphalt-coated sheets of heavy paper or fibreglass. Modified bitumen roofing systems are usually composed of two plies of fabric, such as polyester or fibreglass, which have been coated with chemically modified bitumen (to enhance the physical properties of the bitumen). The most common modifiers are atactic polypropylene and styrene butadiene styrene. Single-ply roofing systems are man-made membranes that are applied in a single ply over the entire roof. Individual sheets of the membrane are laid out on the roof and fused together by heat-sealing the seams between the sheets. These systems do not use bitumen. Single-ply membranes are typically made of one of three different chemical compounds: polyvinyl chloride, thermoplastic polyolefin or ethylene propylene diene monomer.

American Society for Testing and Materials also provides quality, characteristics and performance indicators which apply to polyiso insulation board, in respect of foam density, compressive strength, mould resistance, water absorption, dimensional stability and specification compliance.

44. Warranties on polyiso insulation board and/or complete roofing systems are offered by manufacturers of polyiso insulation board and by Canadian provincial roofing associations. Warranties and standards for roofing systems play an important role in the roofing industry, since customers see their roofing systems as an investment and want to be guaranteed a certain level of performance over a certain period of time. For these reasons, manufacturers spend considerable time and money to meet standards and to get provincial association approval.

45. Certain U.S. and Canadian manufacturers offer warranties on their polyiso insulation board, as well as full warranties on their own branded roofing systems, as a strategy to maintain or increase their market share and ensure customer satisfaction. For example, Soprema Inc. (Soprema), Firestone, JMUS and Carlisle offer full warranties on their roofing systems.<sup>10</sup> At times, certain manufacturers allow the use of other pre-approved components in their fully warranted systems; for example, JMC's polyiso is approved for use in the roofing systems of both Soprema and Carlisle,<sup>11</sup> and IKO's polyiso is approved for use in the roofing system of GenFlex, LLC, a manufacturer of single-ply systems.<sup>12</sup>

46. The following four provincial associations in Canada offer warranties on pre-approved and tested roofing systems: the Roofing Contractors Association of British Columbia, the Alberta Roofing Contractors Association, the Ontario Industrial Roofing Contractors Association and the Québec Master Roofers Association in Quebec.<sup>13</sup> In order to be approved for these warranties, certain FM and ULC standards must be met.<sup>14</sup> Roofing systems are evaluated for up to two years before they are approved by these associations. Polyiso insulation board, when incorporated as a component of an approved roofing system, is covered by the system warranty.<sup>15</sup>

47. The distributors determine how they market and sell their products. Some distributors specialize in the selling of fully warranted, branded systems, others carry a range of products from various manufacturers which are compatible, in terms of standards and warranties, when used together in a pre-approved system.<sup>16</sup>

## PRICING

48. Prices for polyiso insulation board are typically based on published price lists that are generally adjusted to reflect year-end rebates, volume rebates, currency allowances and/or surcharges.

49. For the most part, purchasers negotiate prices with their suppliers on the basis of available market intelligence. In addition, purchasers may request quotations and use a competitive bidding process. The use of term contracts is not a common practice in this industry.

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10. *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 309-10, 368.

11. *Ibid.* at 262-63.

12. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 49.

13. *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 306.

14. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 15-16.

15. *Ibid.* at 54-55.

16. *Ibid.* at 16, 46; *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 308-10.

## ANALYSIS

50. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping of the subject goods has caused injury or retardation or is threatening to cause injury. “Injury” is defined in subsection 2(1) as “. . . material injury to a domestic industry”. “Domestic industry”, in turn, is described as “. . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, ‘domestic industry’ may be interpreted as meaning the rest of those domestic producers.”

51. The Tribunal must therefore first determine what constitutes “like goods”. It will then determine what constitutes the “domestic industry” for purposes of its injury analysis.

52. The Tribunal will then determine whether the dumping of the subject goods has caused injury to the domestic industry.

53. In conducting its injury analysis, the Tribunal will also examine other factors alleged to have had an impact on the domestic industry to ensure that any injury caused by such factors is not attributed to the effects of the dumping of the subject goods.

54. Should the Tribunal arrive at a finding of no injury, it will then determine whether there exists a threat of injury.<sup>17</sup>

55. If the Tribunal finds either injury or threat of injury, it must decide whether to grant requests for product exclusions from its finding.

56. Because a domestic industry is already established in the present case, the Tribunal will not consider the question of retardation.<sup>18</sup>

### Like Goods and Classes of Goods

57. Because the Tribunal must determine whether the dumping of the subject goods has caused or is threatening to cause injury to the domestic producers of like goods found to comprise the domestic industry, the Tribunal must first determine which domestically produced goods, if any, constitute like goods in relation to the subject goods.

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

. . .

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

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

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17. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury under subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

18. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”.

59. When goods are not identical in all respects to other goods, the Tribunal typically considers a number of factors to determine “likeness”, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.<sup>19</sup> Similarly, the Tribunal will also consider whether the subject goods constitute more than one class of goods.

60. On the basis of the evidence and arguments submitted in the preliminary injury inquiry, the Tribunal found that polyiso insulation board produced by the domestic industry was like goods in relation to the subject goods.<sup>20</sup> During this inquiry, the parties did not adduce any evidence or file submissions that disputed the Tribunal’s preliminary determination on this issue.

61. On the basis of the evidence before it, the Tribunal finds no reason to depart from its preliminary determination on this issue. Accordingly, the Tribunal confirms that polyiso insulation board produced by the domestic industry, which is of the same description as the subject goods, is like goods in relation to the subject goods.

62. With respect to the issue of classes of goods, Firestone, in the preliminary injury inquiry and again in the present inquiry, submitted that the Tribunal should conduct its injury analysis on the basis of separate markets, one for Western Canada and another for Eastern Canada.<sup>21</sup> In its preliminary injury inquiry,<sup>22</sup> the Tribunal found as follows:

30. . . . the subject goods are substantially the same, if not identical, regardless of whether they are destined for Eastern Canada or Western Canada. Similarly, domestically produced polyiso insulation board is substantially the same, if not identical, regardless of where it is produced in the country. The destination of the subject goods in Canada does not warrant the determination of a separate class of goods.

. . .

32. . . . the Tribunal . . . will therefore conduct its analysis on the basis of a national market.

63. For the purposes of this inquiry, the Tribunal confirms that this inquiry is properly conducted on the basis of a national market and sees no reason to depart from its earlier determination that polyiso insulation board produced in Canada constitutes a single class of goods.

### **Domestic Industry**

64. The Tribunal must now consider which domestic producers constitute the domestic industry. Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

. . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

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19. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at 8; *Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at 7; *Mattress Innerspring Units* (24 November 2009), NQ-2009-002 (CITT) at 6.

20. *Polyiso Insulation Board* (7 December 2009), PI-2009-004 (CITT) at paras. 26, 28.

21. Exporter’s Exhibit D-01 at paras. 13-25, Administrative Record, Vol. 13C.

22. *Polyiso Insulation Board* (7 December 2009), PI-2009-004 (CITT) at paras. 30, 32.

65. IKO submitted that JMC and ARC should be excluded from the ambit of the domestic industry because they are each closely related to exporters of the subject goods. JMC agreed with IKO's submission that it not be considered part of the domestic industry for the purposes of this inquiry.<sup>23</sup> ARC did not challenge IKO's submission; however, the information on the record indicates that ARC is a Canadian plant owned and operated by Atlas, an exporter of the subject goods.<sup>24</sup>

66. Accordingly, for the purposes of its injury analysis, the Tribunal finds that the domestic industry is comprised of IKO alone. Therefore, for the purposes of applying the factors prescribed by the *Special Import Measures Regulations*<sup>25</sup> for determining whether the dumping of the subject goods has caused or is threatening to cause injury to the domestic industry and to the production of like goods, references to like goods will be to those goods produced by IKO.

## INJURY

67. Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether the dumping has caused injury to the domestic industry, the Tribunal consider the volume of the dumped goods, their effect on the price of like goods and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider factors other than the dumping to ensure that any injury or threat thereof caused by those other factors is not attributed to the effect of the dumped imports.

### **“But For” Injury Analysis of the Impact of Dumped Imports on the Domestic Industry**

68. In order to assess the injury that it has allegedly suffered from dumped imports, IKO submitted that the Tribunal should conduct an analysis on the basis of an estimate of the prices and market shares that it would have achieved but for the dumping of the subject goods. IKO referred to this, in its submission, as the “but for” injury analysis.<sup>26</sup>

69. IKO argued that, with regard to each factor enumerated under subsection 37.1(1) of the *Regulations*, it would have been better off “but for” the dumping and further that, under the “but for” injury analysis, there is no need for a history of absolute losses to show injury and that a downward trend in a whole group of domestic industry performance indicators is not necessary to demonstrate injury.<sup>27</sup>

70. JMC argued that the position put forward by IKO is subject to a different burden of proof. The Tribunal does not share that view. Proving “what might have been” may on occasion be more difficult to demonstrate than “what actually occurred”, but this has nothing to do with burden of proof. The Tribunal concluded the following in *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate*:<sup>28</sup>

... In the Tribunal's view, the proposition that domestic list prices *could have been higher than they were, in the absence of the dumped imports* [i.e. “but for” the dumping], is, by its very nature, a *difficult proposition to evaluate*. Nonetheless, the Tribunal finds that the evidence in this case allows it to draw reasonable inferences on the matter.

[Emphasis added]

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23. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 89-90.

24. Tribunal Exhibit NQ-2009-005-11.02, Administrative Record, Vol. 3 at 46.

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

26. Manufacturer's Exhibit A-01 at para. 99, Administrative Record, Vol. 11.

27. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 12.

28. (17 May 1994), NQ-93-004 (CITT) at 18-19.

71. The Tribunal is of the view that the *Regulations* contemplate the possibility of a “but-for” injury analysis, as put forward by IKO. Subparagraph 37.1(1)(b)(iii), for example, specifically refers to the suppression of the price of like goods “. . . by preventing the price increases . . . that would otherwise likely have occurred” [emphasis added]. In this regard, the Tribunal is of the view that the reference, in paragraph 37.1(1)(d), to “any other factors that are relevant in the circumstances” also allows for the consideration of what would otherwise likely have occurred, but for the dumping, in respect of the other industry performance indicators listed in section 37.1 (e.g. the likely occurrence of increased sales from domestic production and increased market share as compared to what actually occurred in the presence of dumping).

72. The Tribunal will consider IKO’s “but for” injury analysis in greater detail in the context of the evidence before it in relation to subsection 37.1(1) of the *Regulations*.

### **Non-dumped Polyiso Insulation Board**

73. In its final determination of dumping, the CBSA determined that two companies, Dow and Construction Materials International, Inc. (Construction Materials), had overall weighted average margins of dumping of 0 percent and, hence, were not dumping.

74. Therefore, given that the CBSA has determined that these two companies have margins of dumping of 0 percent and, thus, have not dumped the subject goods in Canada, there is no potentially injurious dumping to offset or prevent, and, consequently, no possible cause of injury or threat of injury from these companies. That being the case, the Tribunal will conduct its injury analysis without considering any goods from Dow and Construction Materials.<sup>29</sup>

### **Injury Allegations**

75. The Tribunal will next consider the specific injury allegations submitted by IKO.

76. IKO submitted 10 specific injury allegations, arguing that these were a reasonable representation of the nature of the injury that it had suffered in terms of lost sales, price suppression and price depression.<sup>30</sup> In this regard, IKO submitted specific account allegations to demonstrate that it had lost sales to dumped imports from Firestone, Johns Manville (through Convoy) and Carlisle (through Convoy) and that it had suffered price depression from Firestone and Johns Manville (through Convoy) and price suppression from Firestone.

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29. According to Article VI(2) of GATT 1947, a contracting party may levy an anti-dumping duty on a dumped product only in order to prevent dumping. According to Article VI(6)(a), only dumped products can have the effect of causing or threatening to cause injury.

30. Tribunal Exhibit NQ-2009-005-11.03, Administrative Record, Vol. 3 at 81-83; Tribunal Exhibit NQ-2009-005-12.03 (protected), Administrative Record, Vol. 4B at 76-85; Manufacturer’s Exhibit A-01 at paras. 76-78, Administrative Record, Vol. 11; Manufacturer’s Exhibit A-02 (protected) at paras. 76-78, Administrative Record, Vol. 12; Manufacturer’s Exhibit A-11 at 11-14, Administrative Record, Vol. 11; Manufacturer’s Exhibit A-12 (protected) at 11-14, Administrative Record, Vol. 12. The Tribunal notes that IKO defined price suppression as the inability of its company to increase prices due to low-priced imports. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 190-91.



77. Firestone submitted that all IKO's allegations against its company lacked specificity and, accordingly, could not be considered reliable. According to Firestone, these injury allegations were not supported by required evidence of lost sales, price depression or price suppression due to the dumping. They involved products that IKO did not produce, or the information contained therein was weak, as Firestone demonstrated during the hearing.<sup>31</sup>

78. On the allegations against Johns Manville (through Convoy), Convoy submitted that it was unable to identify the projects or the products at issue and that, for some allegations, the competitor's prices offered, as stated by IKO, were unrealistically low. Regarding the injury allegation against Carlisle (through Convoy), Carlisle demonstrated during the hearing that the injury allegation was incorrect.<sup>32</sup>

79. In the Tribunal's view, the information provided in all 10 injury allegations was vague, imprecise and/or inaccurate. For the most part, the allegations were contradicted by positive evidence of parties opposed. For the lost sales allegations against Firestone, IKO acknowledged that the transaction volumes reported in 2 of the allegations were estimates and that the customer involved was in fact a prospective customer for IKO.<sup>33</sup> In addition, the Tribunal notes that it was another domestic producer that won the largest portion of the contract.<sup>34</sup> For another allegation, IKO stated that it did not have any information in writing in terms of the type of product or warranty requirements. IKO conceded that some of these injury allegations were not based on direct knowledge.<sup>35</sup>

80. In conclusion, the Tribunal finds that the evidence relating to IKO's injury allegations of lost sales, price depression and price suppression is not persuasive, especially when assessed against the evidence of parties opposed. Accordingly, the Tribunal did not ascribe any weight to the injury allegations presented by IKO.

### **Volume of Imports of Dumped Goods**

81. Paragraph 37.1(1)(a) of the *Regulations* requires that the Tribunal consider the volume of the dumped goods and, in particular, whether there has been a significant increase in the volume of imports of the dumped goods, either in absolute terms or relative to the production or consumption of the like goods.

82. IKO submitted that apparent imports declined by 24 percent from 2008 to 2009 after having increased by 4 percent from 2007 to 2008. According to Statistics Canada, the volume of imports of the subject goods increased by 2 percent from 2007 to 2008 and, during the last quarter of 2009, increased abruptly by 77 percent compared to the same quarter in 2008.<sup>36</sup>

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31. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 129-42; *Transcript of In Camera Hearing*, Vol. 2, 8 April 2010, at 203-207; Exporter's Exhibit D-01 at paras. 51-59, Administrative Record, Vol. 13C; Exporter's Exhibit D-02 (protected) at paras. 51-59, Administrative Record, Vol. 14.

32. *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 415-17; Manufacturer's Exhibit A-11 at para. 35, Administrative Record, Vol. 11; Importer's Exhibit I-02 at paras. 26-31, Administrative Record, Vol. 13C; Importer's Exhibit I-01 (protected) at paras. 26-31, Administrative Record, Vol. 14; Exporter's Exhibit F-01 at paras. 30-31, Administrative Record, Vol. 13C.

33. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 129-35.

34. *Transcript of In Camera Hearing*, Vol. 2, 8 April 2010, at 203-205.

35. *Transcript of In Camera Hearing*, Vol. 1, 7 April 2010, at 48.

36. Manufacturer's Exhibit A-01 at para. 64, 67, Administrative Record, Vol. 11.

83. Parties opposed argued that the evidence before the Tribunal does not support a conclusion of a significant increase in imports of the subject goods over the POI, either in absolute terms or relative to the production and consumption of the like goods. Parties opposed submitted that the evidence on the record clearly indicates that, over the POI, the volume of imports of the subject goods declined in absolute terms and relative to both production and consumption of the like goods.

84. The United States is essentially the only source of imported polyiso insulation board into Canada. The evidence on the record indicates that, in absolute terms, the volume of imports of the dumped subject goods increased by 4 percent from 2007 to 2008 and decreased by 25 percent from 2008 to 2009, for an overall decline of 22 percent from 2007 to 2009.<sup>37</sup>

85. The ratio of dumped import volume relative to the production of the like goods produced by IKO declined by 62 percentage points during the POI. This result is due to a substantial decline in the volume of dumped imports while the domestic production of like goods increased during the POI. Looking at the domestic producers as a whole, the Tribunal notes that the ratio of dumped import volumes relative to total Canadian production declined by 12 percentage points, from 46 percent in 2007 to 34 percent in 2009.<sup>38</sup>

86. The *Regulations* also require the Tribunal to consider whether the volume of dumped goods increased relative to the consumption of the like goods, i.e. the volume of domestic sales of like goods.

87. The Tribunal observes similar trends when comparing the volume of dumped imports to the domestic consumption of the like goods. The ratio of imports of the dumped subject goods to domestic sales of like goods decreased by 68 percentage points from 2007 to 2009. For domestic producers as a whole, the ratio of imports of the dumped subject goods to total domestic sales decreased by 17 percentage points, from 53 percent in 2007 to 36 percent in 2009.<sup>39</sup>

88. On the basis of the foregoing, the Tribunal finds that there was a significant decline in the absolute volume of dumped imports of the subject goods, as well as a significant decrease relative to the production and consumption of like goods over the POI.

### **Effects of Dumped Imports on Prices**

89. Paragraph 37.1(1)(b) of the *Regulations* requires that the Tribunal consider the effect of the dumped goods on the price of like goods and, in particular, whether the dumped goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing price increases for those like goods that would otherwise likely have occurred.

90. Before proceeding to an analysis of the effects of dumped imports on the price of like goods, the Tribunal will address IKO's concerns regarding the reliability of the pricing data presented in the Tribunal's pre-hearing staff report.

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37. *Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-06, Administrative Record, Vol. 1.1 at 40.

38. *Ibid.* at 39, 40; *Protected Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-07 (protected), Vol. 2.1 at 39.

39. *Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-06, Administrative Record, Vol. 1.1 at 40, 42; *Protected Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-07 (protected), Administrative Record, Vol. 2.1 at 42..

91. IKO submitted that, in its view, the pricing data did not accurately reflect its understanding of the market prices of polyiso insulation board in Canada. In this regard, IKO stated that its own estimate of freight costs was based on a rigorous analysis, while the estimates of the other domestic producers may not all be accurate reflections of the actual delivered cost of domestic product to distributors and that, to the extent that these estimates are too low, the price comparisons with imports will be biased. In addition, IKO was surprised that the average delivered prices of the subject imports in Canada, as reported in the pre-hearing staff report, were above the average selling prices of the domestic producers as a whole in 2008 and 2009.<sup>40</sup> In order to get a better understanding of the implied freight costs included in the average purchase costs reported by importers, IKO subtracted the unit value for duty reported by Statistics Canada under classification No. 3921.13.99.10 from the unit purchase values reported for the common accounts and the benchmark products presented in the pre-hearing staff report. IKO stated that, for the most part, its calculated “implicit” average freight costs were higher than IKO’s own estimated average freight costs for the same period.<sup>41</sup> IKO, therefore, argued that the delivered pricing data provided by the importers were unreliable.

92. IKO cited product mix, regional mix and customer mix issues, misreporting by respondents and methodological problems as additional reasons why, in its view, the average delivered prices in the pre-hearing staff report were unreliable.

93. Parties opposed submitted that IKO did not present any supporting evidence to doubt the veracity of the data provided by the other domestic producers of polyiso insulation board and importers of the subject goods. In addition, IKO provided no evidence or facts to support its contention that the methodology used by the Tribunal’s staff to collect and compile the pricing data was flawed. Parties opposed further submitted that, contrary to IKO’s submission, the pricing data in the pre-hearing staff report were those provided by the actual industry players that manufacture, import and sell polyiso insulation board in Canada and that the benchmark product unit values were an accurate “apples to apples” comparison of net delivered prices.<sup>42</sup>

94. The Tribunal notes that the approach of gathering and compiling data in this case was no different from that used in previous injury inquiries conducted by the Tribunal. The product-specific data provided by questionnaire respondents in this case, as in all cases before the Tribunal, have been attested to be complete and correct to the best knowledge and belief of the respondents. The Tribunal’s staff, through extensive follow-up with all questionnaire respondents, assessed the accuracy, reasonableness and veracity of the data provided.

95. In the Tribunal’s view, IKO did not provide persuasive arguments, positive evidence or credible alternative pricing analyses in support of its assertion that the pricing data presented in the Tribunal’s pre-hearing staff report were unreliable. Indeed, in the Tribunal’s view, IKO’s analysis of Statistics Canada’s data is less reliable than the data provided in the pre-hearing staff report because the tariff codes for polyiso insulation board include an unknown volume of non-subject goods. In addition, overall average export prices, which include a broad range of export prices for polyiso insulation board, as evidenced by the results of the CBSA’s dumping investigation, provide a weaker basis for the determination of an implied cost element, such as the residual freight factor calculated by IKO. Furthermore, there is no positive evidence to support the claim that the questionnaire responses provided by the other domestic producers and importers regarding their own actual prices were unreliable and should, therefore, be given less weight by

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40. Manufacturer’s Exhibit A-01 at paras. 70, 74, Administrative Record, Vol. 11.

41. *Ibid.* at para. 75, Administrative Record, Vol. 11.

42. Exporter’s Exhibit D-01 at paras. 40, 45-48, Administrative Record, Vol. 13C; Exporter’s Exhibit F-01 at paras. 20, 25-29, Administrative Record, Vol. 13C.

the Tribunal. In short, the Tribunal is of the view that the best evidence available regarding pricing information is that obtained through the Tribunal's questionnaire process from actual importers and domestic producers of the subject goods, which is then confirmed or supplemented by testimony provided at the hearing.

96. Consequently, in order to assess the effects of the dumped imports on the price of like goods, the Tribunal will rely on the pricing information available in the public and protected versions of the pre-hearing staff report and the testimony provided at the hearing.

#### Price Undercutting, Price Depression and Price Suppression

97. IKO argued that price is a primary factor in the purchasing decision of a commodity-type product such as polyiso insulation board. As mentioned earlier, IKO was surprised that the average delivered prices of the dumped subject imports in Canada were above the average selling prices of all three domestic producers in 2008 and 2009. IKO also submitted that the pricing data for the Canadian market and the benchmark products were not consistent with IKO's understanding of the market. In this respect, IKO submitted that it faced intense price competition from imports throughout the POI.

98. Parties opposed to a finding of injury submitted that the evidence on the record did not support the contention that the price of the dumped subject goods had any actual or potential negative price effects on the price of the like goods produced by IKO. Parties opposed submitted that there was little or no evidence to support a claim of price depression or price suppression, since the data clearly demonstrated that there was no "significant" price undercutting by the subject goods. Furthermore, parties opposed submitted that the average unit values of the dumped subject goods increased by 10 percent between 2007 and 2009, whereas the average unit values of the polyiso insulation board produced by the domestic industry as a whole decreased by 3 percent during the same period. They submitted that the lowest prices over the POI were consistently those of the domestic producers as a whole. In their view, it was domestically produced polyiso insulation board that undercut the price of the subject goods. For the benchmark products, parties opposed argued that the vast majority of the points of comparison indicated that the prices of the domestically produced polyiso insulation board were lower than or equal to the prices of the dumped subject goods. Parties opposed submitted that the evidence demonstrates that the domestic producers were the price leaders in the Canadian market and that any injury claimed was self-inflicted. They further submitted that, in order to gain market share, IKO started a price war which, in turn, caused the price depression that it is now alleging.<sup>43</sup>

99. The Tribunal notes that all parties acknowledged the commodity nature of polyiso insulation board and the fact that pricing is an important consideration in a purchasing decision.<sup>44</sup> In this respect, in response to the Tribunal's purchasers' questionnaire on market characteristics, 21 out of 22 respondents indicated that the lowest price was a very important or somewhat important factor considered in purchasing decisions. However, it is clear that there are certain non-price factors that also have an important influence on a purchasing decision, including after-sales services and warranties, the advantages associated with single-source roofing systems, compliance with standards, specifications and building codes, and the

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43. Exporter's Exhibit D-01 at paras. 38, 40, 46, 49, 62, Administrative Record, Vol. 13C; Exporter's Exhibit F-01 at paras. 5, 8, 19, 22, 33, 35, Administrative Record, Vol. 13C; Manufacturer's Exhibit C-01 at paras. 9-11, 13, Administrative Record, Vol. 13; Manufacturer's Exhibit C-02 (protected) at para. 11, Administrative Record, Vol. 14.

44. *Pre-hearing Staff Report*, revised 3 March 2010, Tribunal Exhibit NQ-2009-005-06A, Administrative Record, Vol. 1.1 at 138; *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 42; *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 438.

manufacturer's reputation and reliability. The overwhelming majority of questionnaire respondents indicated that these factors were either very important or somewhat important.<sup>45</sup> The Tribunal notes that a major distributor that sells both domestic and imported polyiso insulation board indicated that it would take a price change of 11 to 15 percent for it to change suppliers.<sup>46</sup> In the Tribunal's view, this is uncharacteristic of commodity-type products, where much lower changes in price are typically sufficient to cause switches in sources of supply.

100. Turning to price undercutting and price depression, the Tribunal reviewed the pricing evidence on the record from a macro perspective. In 2007, the average unit purchase value of the dumped subject goods was lower than the individual average unit selling values of all three domestic producers. This situation reversed over the POI. In 2008 and 2009, the average unit purchase value of the dumped subject goods was higher than the average unit selling values of the domestic producers as a whole. The Tribunal notes that intra-industry competition was very strong throughout the POI. In this respect, one domestic producer in particular almost always priced lower than the other two domestic producers.<sup>47</sup>

101. In addition to its macro consideration of average market prices, the Tribunal examined micro pricing data evidence with respect to seven benchmark products for price undercutting and price depression. This evidence provides a comprehensive<sup>48</sup> "apples to apples" price comparison between the dumped subject goods, the like goods and the other domestically produced polyiso insulation board. Quarterly data were collected for 2008 and 2009, resulting in a total of 56 points of comparison.

102. A review of all data points shows that the average unit values of sales by the domestic producers as a whole were lower than those of purchases of the dumped subject goods in 47 of the 56 points of comparison. Furthermore, in more than two thirds of these 47 points of comparison, the unit values of sales from domestic production were in excess of 10 percent lower than the unit values of the dumped subject goods. With respect to IKO, a review of data points shows that its average unit values were lower than those of purchases of the dumped subject goods in 44 of the 56 points of comparison. Furthermore, for about two thirds of these 44 points of comparison, IKO's unit values of sales were in excess of 10 percent lower than the unit values of the dumped subject goods.<sup>49</sup> The benchmark pricing data indicate that there was intense intra-industry competition between the three domestic producers.<sup>50</sup>

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45. *Pre-hearing Staff Report*, revised 3 March 2010, Tribunal Exhibit NQ-2009-005-06A, Administrative Record, Vol. 1.1 at 138.

46. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 95-96; Tribunal Exhibit NQ-2009-005-20.07, Administrative Record, Vol. 5.2 at 162.

47. *Protected Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-07 (protected), Administrative Record, Vol. 2.1 at 44.

48. The reported total volumes for the benchmark products compared to the total volume of polyiso insulation board sold in 2008 and 2009 represent close to 60 percent of total market sales during these periods. Volume of sales of benchmark products from domestic production represented approximately 60 percent of the total sales from domestic production, while the purchase of dumped benchmark products represented close to 50 percent of the total purchases of dumped imports. The Tribunal is therefore satisfied that the pricing activity relating to these benchmark products is indicative of what was occurring generally in the marketplace.

49. *Protected Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-07 (protected), Administrative Record, Vol. 2.1 at 61-62; *Protected Pre-hearing Staff Report*, revised 3 March 2010, Tribunal Exhibit NQ-2009-005-07A (protected), Administrative Record, Vol. 2.1 at 146; *Protected Pre-hearing Staff Report*, revised 8 March 2010, Tribunal Exhibit NQ-2009-005-07B (protected), Administrative Record, Vol. 2.1 at 158.

50. That any pricing pressures on IKO emanated largely from the other two domestic producers is supported by the fact that, in 51 of the 56 quarterly points of comparison, IKO's unit values were higher than those of its domestically based competitors.

103. As discussed previously, the Tribunal examined the specific injury allegations submitted by IKO on price depression and price suppression. Based on its examination, the Tribunal was unable to ascribe any weight to them.

104. With regard to price suppression, the Tribunal examined IKO's cost of goods manufactured compared to selling prices for its domestic sales. The evidence did not indicate price suppression during the POI.

105. In the Tribunal's view, the evidence on the record in support of the domestic industry's claims of significant price undercutting, price depression or price suppression by the dumped subject goods is not persuasive. In particular, as previously noted, the evidence relating to IKO's injury allegations is not convincing when assessed against the replies by parties opposed. Moreover, the data do not show evidence of a causal link between the prices of the domestic industry and the presence of the dumped subject goods in the Canadian market. Finally, the failure of the domestic industry in many instances to avail itself of the significant space to price up to higher import prices is also inconsistent with alleged price suppression. Accordingly, the Tribunal finds that imports of the dumped subject goods have not significantly undercut, depressed or suppressed the prices of like goods.

### **Impact of Dumped Imports on the Domestic Industry**

106. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the impact of the dumped goods on the domestic industry.

107. The record indicates that IKO's overall performance over the POI was robust and profitable. It experienced increases in all the following performance indicators over the POI: sales volume, market share, productivity, net revenue, production, gross margins and capacity utilization.<sup>51</sup>

108. Paragraph 37.1(1)(c) of the *Regulations* prescribes that the Tribunal consider certain other factors, in addition to those discussed above, in its assessment of the impact of the dumped goods on the domestic industry. These factors include any actual or potential decline in return on investment, negative effects on cash flow, inventories, wages, employment, growth or the ability to raise capital, and the magnitude of the margin of dumping in respect of the dumped goods.

109. The Tribunal notes the assertions made by IKO regarding return on investment.<sup>52</sup> However, there is little or no positive evidence on the record regarding these other factors, other than the information gathered for the pre-hearing staff report. The Tribunal is of the view that the limited evidence on the record does not demonstrate injury in relation to these factors caused by the dumped subject goods.

110. Paragraph 37.1(1)(c)(ii.1) of the *Regulations* also prescribes that the Tribunal consider in its assessment "the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods . . ." As noted above, the CBSA determined that the weighted average margin of dumping, expressed as a percentage of the export price, was 21.9 percent. The Tribunal is of the view that a margin of dumping of this magnitude could be significant for a price-sensitive product such as polyiso insulation board. However, the positive evidence submitted to the Tribunal and the analysis of the prescribed factors that it has to consider for the purposes of determining whether the dumping of the subject

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51. *Protected Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-07 (protected), Administrative Record, Vol. 2.1 at 39, 42, 72, 100, 117.

52. Manufacturer's Exhibit A-01 at paras. 98, 229, Administrative Record, Vol. 11.

goods has caused injury to the domestic industry do not support the contention that the domestic industry has been injured by the effects of the dumped imports, even at high margins of dumping. As noted, IKO's industry performance indicators were essentially stable or trending upwards.

111. On the basis of a review of the positive evidence and data on the record, the Tribunal finds that the positive and improving financial performance experienced by IKO over the POI, together with its increased share of the market, does not demonstrate injury to the domestic industry caused by the dumped imports.

112. IKO recognized that it experienced positive levels and trends in its performance during the POI.<sup>53</sup> It contended that the actual levels and trends of these indicators are not the main basis of IKO's claim of material injury from dumping. IKO submitted that its "but for" injury analysis provided assessments of how much better off it would have been if there had been no dumping of polyiso board in the Canadian market in each year of the POI.

113. IKO asserted that, in the absence of the dumped imports, its prices in the Canadian market for polyiso insulation board would certainly have been significantly higher and that the market share of imports would have been considerably lower, thereby providing the domestic producers as a whole with the opportunity to increase prices, sales volumes and market share. It alleged that this, in turn, would have resulted in improved financial results for domestic producers as a whole, and for IKO in particular, on the basis of its pro-rated share of increased sales volumes. IKO asserted that the alleged gains that it would have made are sufficient to demonstrate injury, the materiality of which could be examined by the Tribunal in accordance with the requirements of *SIMA*.<sup>54</sup>

114. The Tribunal will now consider the methodology provided by IKO and the assumptions that it has used to conduct a "but for" injury analysis, together with the arguments presented by opposing parties.

IKO's submission on the "but for" injury analysis

115. The "but for" injury analysis conducted by IKO assessed the extent to which the domestic industry would have been materially better off during the POI had there been no dumping of the subject goods. The analysis compared IKO's actual performance in the presence of dumping with an estimate of what its performance would have been in the absence of dumping. IKO submitted that the difference between these two past states, one actual and one estimated, provides an assessment of the extent to which IKO's performance has been constrained by the dumping of the subject goods.<sup>55</sup> IKO submitted that a "but for" injury analysis allows the Tribunal to assess the injury that is directly caused by the dumping, because, by its very nature, a "but for" injury analysis holds all other factors constant. Therefore, to the extent that other factors, such as declining market demand, competition from substitute products, changes in exchange rates and rising input costs, have caused some injury to the domestic industry, that injury is already contained in the industry's actual historical results used as the basis for comparison. Therefore, IKO submitted that the "but for" injury analysis measures only the effects of removing the dumping and attributes only those effects to the dumping.<sup>56</sup>

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53. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 12.

54. *Ibid.* at 12-13.

55. *Ibid.* at 12.

56. Manufacturer's Exhibit A-11 at para. 13, Administrative Record, Vol. 11.

116. IKO's analysis started with a calculation of the weighted average margin of dumping for those exporters that cooperated with the CBSA's dumping investigation (the cooperating exporters). On the basis of the CBSA's final determination of dumping, this weighted average margin of dumping was 19.4 percent.<sup>57</sup>

117. IKO then reduced this weighted average margin of dumping by 10 percent to adjust for freight costs to Canada and then by a further 25 percent to reflect intra-industry competition amongst domestic producers. IKO submitted that these adjustments to the weighted average margin of dumping for the cooperating exporters implied an achievable domestic selling price increase of 13.1 percent.<sup>58</sup>

118. In terms of available market share in the absence of dumping, IKO submitted that domestic producers could reasonably have achieved an 85 percent share of the domestic market for polyiso insulation board. It based this assumption on three factors: (1) only up to a maximum of 15 percent of the market demands a sole source, full roofing system, including both single- and multi-ply systems, leaving 85 percent of the apparent market accessible to the lowest-priced supplier of polyiso insulation board; (2) Exeltherm Inc., the sole domestic producer of polyiso insulation board in Inquiry No. NQ-96-003, was able to achieve about an 85 percent share of the market without dumped imports, after the Tribunal's finding in 1997; and (3) domestic producers currently hold about 80 to 85 percent of the market in Eastern Canada.<sup>59</sup>

119. Finally, IKO's analysis incorporated an elasticity of demand of -0.4 as a downward adjustment to the size of the apparent market for polyiso insulation board in response to the anticipated/expected higher selling prices in the absence of dumping.<sup>60</sup> IKO then assumed that it would have attained its pro-rata share of this additional market volume (as a result of the market share held by domestic producers increasing from their actual levels to the assumed 85 percent achievable in the absence of dumping) in both Eastern Canada and Western Canada.

120. On the basis of the above three assumptions, IKO calculated what its financial performance (e.g. sales revenues, gross margin and net income) would have been over the POI had the increased selling prices and higher sales volumes been realized. For 2009, IKO concluded that its financial results would have been substantially better, with net sales revenues being approximately one third higher and net margin more than doubling, but for the dumping.<sup>61</sup>

#### Opposing parties submissions on the "but for" injury analysis

121. JMC and Firestone challenged several of the assumptions used by IKO to estimate the magnitude of the injury that it allegedly suffered due to the presence of the dumped subject goods. JMC argued that the potential price increase of 13.1 percent was too high because IKO did not take into account that there were exporters with margins of dumping that were much lower than this average, including the two exporters that

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57. The margins of each of the cooperating exporters were weighted by their respective share of U.S. exports to Canada. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 13.

58. This percentage is based on the margins of dumping reported in the CBSA's final determination of dumping. Initially, IKO calculated a price increase of 13.5 percent on the basis of the preliminary margins of dumping but later revised its calculation to 13.1 percent to reflect the final margins of dumping calculated and issued by the CBSA on April 6, 2010. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 88-89; *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 13-14; Manufacturer's Exhibit A-01 at para. 111, Administrative Record, Vol. 11.

59. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 41-43.

60. Manufacturer's Exhibit A-01 at para. 123, Administrative Record, Vol. 11. Although questionnaire respondents reported, on average, a 6 percent increase in volume in response to a 10 percent decrease in price, IKO believed that percentage to be too high and used a value of 4 percent.

61. Manufacturer's Exhibit A-02 (protected) at 47, Administrative Record, Vol. 12.



were found not to be dumping.<sup>62</sup> JMC noted that JMUS's margin of dumping includes goods produced in Canada and trans-shipped through the United States, which attracted a margin of dumping of 168.9 percent. Taking this sale out of its average margin of dumping calculations would also have an impact on JMUS's weighted average margin of dumping.<sup>63</sup> JMC also noted the evidence of Ms. Kelly Kams regarding intra-industry competition and the price differentials that would induce purchasers to switch suppliers.<sup>64</sup> According to JMC, this level of intra-industry competition makes the 13.1 percent potential price increase asserted by IKO unrealistic. Parties opposed also argued that the ability to increase prices by 13.1 percent would also be constrained by product shifting to extruded polystyrene and expanded extruded polystyrene.<sup>65</sup>

122. In response, IKO submitted that, even if potential prices had gone up by only the amount of the smallest margin of dumping, the resulting potential selling price increase would still have led to a very substantial improvement in IKO's profitability.<sup>66</sup> To calculate this potential increase in profitability, IKO continued to assume that it would have achieved its pro-rata share of the increased sales volumes resulting from domestic producers increasing their market share to 85 percent, a significant increase in terms of percentage points during POI.

123. With respect to IKO's assumption that only 15 percent of the apparent market would not have been accessible to domestic producers, JMC argued that the evidence of Mr. Ali Nanji, among others, respecting market requirements for provincial or full manufacturer warranties in Western Canada, indicated that a much larger proportion of the Canadian market would not have been accessible to IKO.<sup>67</sup>

124. Firestone noted the testimony of Mr. Saul Koschitzky who stated that single-ply roofing systems represent about 30 percent of the total market.<sup>68</sup> IKO submitted that it "... does not manufacture any single-ply roofing systems ...",<sup>69</sup> but that it does participate, to some extent, in this market segment by supplying polyiso insulation board for use in systems which use other manufacturers' single-ply membranes.<sup>70</sup> On the basis of this evidence, Firestone argued that domestic producers would be locked out of about 25 percent of the market. Therefore, the domestic producers, as a whole, would only have access to an insignificant additional market share of 2 percentage points,<sup>71</sup> with IKO gaining only its pro-rata share of this volume. Using all the other assumptions made by IKO, including the price increase of 13.1 percent and the elasticity of demand of -0.4, Firestone argued that the net result would be an even lower net income than IKO actually realized in 2009.<sup>72</sup>

125. JMC also questioned the validity of the elasticity of demand used by IKO. JMC noted that the responses to the Tribunal's questionnaires used by IKO to estimate an elasticity factor were merely opinions and that a more appropriate weighting of these responses would have been on the basis of polyiso volumes

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62. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 69.

63. *Ibid.* at 74.

64. *Ibid.* at 71; *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 250-51.

65. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 72-73.

66. Manufacturer's Exhibit A-12 (protected) at para. 52, Administrative Record, Vol. 12.

67. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 70-71.

68. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 110-11.

69. Tribunal Exhibit NQ-2009-005-22 (single copy), public record of Preliminary Injury Inquiry No. PI-2009-004, IKO's complaint at para. 84.

70. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 225-27; *Transcript of In Camera Hearing*, Vol. 1, 7 April 2010, at 144-45.

71. With domestic producers locked out of 25 percent of the apparent market, the maximum achievable market share in the absence of dumping would be 75 percent.

72. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 103-105.

purchased by each respondent rather than just the number of respondents. Notwithstanding the weighting scheme used by IKO, it ultimately substituted its own opinion, without any supporting evidence, to come up with an elasticity of demand of -0.4 rather than accept the responses to the Tribunal's questionnaires.<sup>73</sup>

### Tribunal's Analysis

#### – National Market

126. As noted above, IKO's estimate of the injury due to dumping began with an analysis of what domestic prices would have been in the absence of dumping. IKO calculated a weighted average margin of dumping for cooperating exporters of 19.4 percent, on the basis of the individual exporter margins of dumping reported by the CBSA in its final determination of dumping.<sup>74</sup> IKO's analysis assumed that the prices of all exports of the subject goods would increase by this amount, raising the ceiling to a level to which domestic producers could price their polyiso insulation board.

127. As noted by JMC and Firestone, a more detailed examination of the CBSA's final determination of the margins of dumping by exporter reveals significant differences amongst the exporters that cooperated with the CBSA's investigation.<sup>75</sup> In this respect, the Tribunal considers the actual normal values calculated by the CBSA, rather than the weighted average margins of dumping, to be a better indicator of what prices for the subject goods would have been in the domestic market in the absence of dumping.

128. In this regard, the Tribunal notes that two exporters were found not to have been dumping during the CBSA's period of investigation. These exporters would therefore not be required to increase their prices at all in the absence of dumping.

129. The Tribunal is of the view that the individual normal values reported for the various exporters, adjusted upward to account for transportation costs, represent a credible indication of what non-dumped selling price levels of the subject goods in the domestic market would likely have been. The Tribunal observes that some of the largest exporters, with the highest margins of dumping expressed as a percentage of the export price, in fact had the lowest normal values. Even after adding a reasonable amount for transportation costs<sup>76</sup> to these normal values, these exporters would remain within the 5 to 10 percent price differential that IKO recognized as being required to induce purchasers to switch from one supplier to another.<sup>77</sup> Consequently, the Tribunal is of the opinion that a significant proportion of the dumped subject goods that entered Canada during the CBSA's period of investigation would have remained price competitive even at non-dumped price levels.

130. Parties opposed also argued that the level of intra-industry competition would be greater than that assumed by IKO.<sup>78</sup> Indeed, the previous discussion on benchmark products clearly indicates that domestic price competition is very strong.<sup>79</sup> The Tribunal is of the view that, even in the absence of dumping, the

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73. *Ibid.* at 69-70.

74. Tribunal Exhibit NQ-2009-005-04D, Administrative Record, Vol. 1 at 104.43.

75. Tribunal Exhibit NQ-2009-005-05A (protected), Administrative Record, Vol. 2 at 17.16.

76. *Transcript of In Camera Hearing*, Vol. 1, 7 April 2010, at 23; *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 17.

77. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 90-91, 198-99, 213-14.

78. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 93; *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 289-90.

79. *Protected Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-07 (protected), Administrative Record, Vol. 2.1 at 61, 62; *Protected Pre-hearing Staff Report*, revised 3 March 2010, Tribunal Exhibit NQ-2009-005-07A (protected), Administrative Record, Vol. 2.1 at 146; *Protected Pre-hearing Staff Report*, revised 8 March 2010, Tribunal Exhibit NQ-2009-005-07B (protected), Administrative Record, Vol. 2.1 at 158.

price competition faced by IKO from the other domestic producers would have severely constrained its ability to increase prices during the POI. Indeed, one domestic producer's prices were at or below IKO's average selling prices throughout the POI.<sup>80</sup>

131. For the foregoing reasons, the Tribunal is convinced that IKO would only have been able to achieve a small proportion, if any, of the 13.1 percent price increase that it assumed in its injury analysis.

132. Given the levels of the weighted average normal values of exporters accounting for a large proportion of exports to Canada, the Tribunal is of the view that these exporters would likely have remained price-competitive suppliers of the subject goods even had they entered the domestic market at non-dumped prices. That being the case, and taking into consideration sales of single-ply roofing systems, specialty products, the demand for warranted complete roofing systems and products approved under FM and UL certifications, it then follows that the market share of imports that would actually have been available to domestic producers as a whole, would have been substantially smaller than that estimated by IKO in its "but for" injury analysis. In the Tribunal's view, IKO's pro-rata share of this small incremental volume would not have materially changed its financial performance.

133. IKO's other key assumption concerns the price responsiveness of domestic demand for polyiso insulation board. As noted by JMC and Convoy, the elasticity value of -0.4 used by IKO in its analysis was unsupported by empirical studies.<sup>81</sup> The Tribunal agrees with parties opposed that the price responsiveness of demand for polyiso insulation board may be greater than that assumed by IKO. In this respect, greater price responsiveness for polyiso insulation board is evidenced by IKO's description of the period in 2005 when a switch to polystyrene board occurred. At that time, there was a spike in the cost of MDI used in the production of polyiso, which forced an increase in the price of polyiso insulation board. This price increase disrupted the relative market shares of polyiso and polystyrene insulation board from its traditional 50-50 split.<sup>82</sup> The evidence indicates that, in 2005, the use of MDI, which is directly related to the volume of polyiso insulation board produced, declined by almost one third in North America.<sup>83</sup>

134. The greater the price responsiveness of demand for polyiso insulation board, the smaller the incremental volume available to IKO, with a consequent reduction in sales revenue effects and alleged injurious effects. Notwithstanding the actual level of price responsiveness of demand for polyiso insulation board, in the Tribunal's opinion, the limited achievable increase in domestic selling prices that may have occurred in the absence of dumping and the small incremental volume of sales that would be available to domestic producers render a conclusion of the magnitude of the elasticity of demand for polyiso insulation board inconsequential.

135. In view of the foregoing, the Tribunal finds that any price increase and the share of any incremental volume that IKO could reasonably be expected to have captured in the absence of dumping would yield a less than material effect to its net margin.

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80. *Protected Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-07 (protected), Administrative Record, Vol. 2.1 at 44.

81. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 92-96; *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 69-70.

82. Manufacturer's Exhibit A-01 at para. 188, Administrative Record, Vol. 11.

83. Tribunal Exhibit NQ-2009-005-12.01A (protected), Administrative Record, Vol. 4 at 48.

136. The Tribunal notes that IKO formulated its complaint on the basis of a national market for polyiso insulation board. However, in view of IKO's evidence on the different market conditions in the eastern and western segments of the national market, the Tribunal also felt compelled to consider the effects of the dumping in these two sub-markets.

– Eastern Sub-market

137. The Tribunal notes that all three domestic producers participated actively in Eastern Canada. In 2009, essentially all of JMC's and Atlas's domestic sales were made in Eastern Canada, and close to three quarters of IKO's domestic sales were made in Eastern Canada.<sup>84</sup>

138. The Tribunal's examination of the average unit values for the benchmark products indicates that, in Eastern Canada, there are significant competitive price pressures amongst the three domestic producers. As previously indicated, the weighted average unit selling values data for the benchmark products indicate that, for 47 of the 56 quarterly points of comparison, the unit values of sales from domestic production were lower than those of purchases of the dumped subject goods and that, in more than two thirds of these 47 points of comparison, the unit values of sales from domestic production were in excess of 10 percent lower than the purchase unit values of the dumped subject goods.<sup>85</sup> The generally lower price levels of sales from domestic production are indicative of the intense competition amongst domestic producers. The Tribunal is of the view that this is consistent with the evidence on the record that indicates that IKO pursued an "aggressive pricing strategy" in an effort to increase its share of the market.

139. In the Tribunal's view, the failure of the domestic producers, in what was generally agreed to be a very transparent industry, to avail themselves of the significant space to price up to the level of the subject imports in the eastern segment of the Canadian market, suggests that the price pressures felt by IKO were largely the result of intra-industry competition rather than the result of the dumped subject goods. In support of the Tribunal's view, IKO conceded that, for a commodity product like polyiso insulation board, one would reasonably expect competing prices to converge around a specific price point, with wide divergences being indicative of other competitive dynamics.<sup>86</sup> As it has done in the past, the Tribunal will not attribute to the dumping any injury that clearly results from intra-industry competition.

140. On the basis of the foregoing, the Tribunal is of the opinion that the share of the incremental volume that IKO could reasonably have been expected to capture and any potential increases in prices in Eastern Canada, would not have lead to a material improvement in IKO's financial performance.

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84. Tribunal Exhibit NQ-2009-005-12.01D (protected), Administrative Record, Vol. 4 at 131.7-131.8; Tribunal Exhibit NQ-2009-005-12.02D (protected), Administrative Record, Vol. 4 at 32-33; Tribunal Exhibit NQ-2009-005-12.03D (protected), Administrative Record, Vol. 4B at 360-61.

85. *Protected Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-07 (protected), Administrative Record, Vol. 2.1 at 61-62; *Protected Pre-hearing Staff Report*, revised 3 March 2010, Tribunal Exhibit NQ-2009-005-07A (protected), Administrative Record, Vol. 2.1 at 146; *Protected Pre-hearing Staff Report*, revised 8 March 2010, Tribunal Exhibit NQ-2009-005-07B (protected), Administrative Record, Vol. 2.1 at 158.

86. *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 38-43.

### Western Sub-market

141. IKO is the only domestic producer in Western Canada. The Tribunal notes that, in Western Canada, its sales volumes, gross margins and net income improved markedly over the POI.<sup>87</sup> In some cases, the improvements in Western Canada were more significant and occurred more rapidly than its performance in Eastern Canada, where domestic competition was intense.

142. Given that, in 2008 and 2009, the large majority of dumped imports were sold in Western Canada, the Tribunal will compare IKO's actual unit prices during the POI with normal values of non-dumped goods and assess if IKO's relative performance could have improved materially during the POI.

143. The Tribunal notes that IKO's prices in Western Canada declined over the POI, along with the unit cost of manufacturing these goods. The evidence on the record indicates that IKO's costs of goods manufactured decreased between 2007 and 2008. The Tribunal is of the view that the decline in IKO's unit prices, for the most part, reflected a decline in its costs rather than the result of pricing pressures from dumped imports, which explains the reduction in IKO's net sales value (on an FOB basis).

144. Similarly to what it observed nationally, even in the absence of dumping in Western Canada, the Tribunal is of the view that IKO could not have benefitted from a 13.1 percent price increase in 2009 or from any significant increase of market share. In this regard, the Tribunal notes that certain major exporters of the subject goods to Western Canada had relatively low unit normal values, as calculated by the CBSA. After adjusting the normal values to reflect an amount for freight comparable to IKO's freight costs,<sup>88</sup> and comparing this estimated non-dumped "delivered price" with IKO's actual delivered price in Western Canada in 2009,<sup>89</sup> the Tribunal believes that IKO would not have been able to increase its prices or gain significant additional market share. Consequently, in the absence of dumping in Western Canada, there is no evidence to support IKO's contention that it would have had a better financial performance in 2009.

145. On the basis of the foregoing, the Tribunal finds that the share of the incremental volume that IKO could reasonably be expected to capture and any potential increases in prices in Western Canada would not lead to a material improvement in IKO's financial performance.

### **Factors Other Than Dumping**

146. Subsection 37.1(3) of the *Regulations* directs the Tribunal to consider factors other than the dumping to ensure that any injury or threat of injury caused by those factors is not attributed to the effects of the dumped goods.

147. The Tribunal notes that IKO, in its submission, listed non-dumping factors and agreed that their impact on the domestic industry should not be attributed to the dumped goods. The list of non-dumping factors identified by IKO included, among others contraction in demand, complete roofing systems and warranties, export performance, and building specifications and code requirements.<sup>90</sup>

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87. Manufacturer's Exhibit A-08A (protected) at 5, Administrative Record, Vol. 12.

88. *Transcript of In Camera Hearing*, Vol. 1, 7 April 2010, at 23, *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 17.

89. Manufacturer's Exhibit A-08A (protected) at 5, Administrative Record, Vol. 12; *Transcript of In Camera Hearing*, Vol. 1, 7 April 2010, at 23.

90. Manufacturer's Exhibit A-01 at paras. 140-46, 157-62, 193-203, Administrative Record, Vol. 11.

148. Parties opposed made submissions outlining several factors, other than the dumping of the subject goods, to which they attributed the injury experienced by IKO. These factors included intra-industry competition, the recession, IKO's lack of presence in the single-ply roofing system market, warranty and distribution issues, and size and location of plants.<sup>91</sup>

149. The Tribunal's analysis of the effects of the dumped imports and its consideration of the estimate of the injury submitted by IKO, through its "but-for" injury analysis, have addressed the impact of most of these other factors. The Tribunal agrees with IKO that the analysis of its performance in the absence of dumping intrinsically excludes the effects of these other factors. Therefore, in considering the magnitude of injury using this approach, as well as the standard approach on the basis of the factors explicitly prescribed under subsection 37.1(1) of the *Regulations*, the Tribunal is satisfied that it has not attributed the effects of the other non-dumping factors to the injury caused by the dumped imports.

### Conclusion on Injury

150. Injury is defined in *SIMA* as material injury. In the Tribunal's view, the injury incurred by the domestic industry, as determined by the Tribunal's review of the evidence, is not material. The Tribunal recognizes that the presence of dumped imports during the POI caused a certain level of competition in the domestic market and that, but for the dumping, IKO could have made some additional sales. The increase in sales would however likely have been limited and would not have occurred at significantly higher prices. Therefore, this effect on IKO's volumes, market share, prices and total sales revenue is not material.

### THREAT OF INJURY

151. Having found that the dumping of the subject goods has not caused injury, the Tribunal must now consider whether it is threatening to cause injury. Subsection 37.1(2) of the *Regulations* prescribes factors to be taken into account for the purposes of the Tribunal's analysis concerning threat of injury. Subsection 2(1.5) of *SIMA* provides that a finding of threat of injury cannot be made unless the circumstances in which the dumping of the goods would cause injury are clearly foreseen and imminent.

152. In conducting its analysis of threat of injury, the Tribunal typically considers a time frame of 18 to 24 months from the date of its finding. However, in the present case, the Tribunal's focus will be on the period remaining in 2010 and on 2011.

153. IKO argued that there is unused practical plant capacity in the United States due to the recession in the last half of 2008 and in 2009 and that exporters could easily supply the entire Canadian market with this unused capacity. IKO submitted that, while production lines cannot be easily converted to the production of polyiso insulation board, U.S. plants that do not presently manufacture for the Canadian market could start to do so, which increases the threat of material injury. IKO submitted that, due to the proximity of the Canadian market, U.S. exporters will likely continue to dump the subject goods in Canada.<sup>92</sup>

154. Parties opposed countered that, notwithstanding the decrease in capacity utilization in 2009 in the United States, there was no diversion of additional sales of the subject goods to Canada. In fact, they noted that sales of the subject goods to Canada declined by 24 percent in that year and that the share of the market held by the subject imports declined during the POI, from 35 to 27 percent. Parties opposed also argued that

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91. Manufacturer's Exhibit, C-01, at para. 39, Administrative Record, Vol. 13; Exporter's Exhibit, D-01, at paras. 96, 103-104, 111-14, Administrative Record, Vol. 13C; *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 466-67; *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 86-87, 93-94.

92. Manufacturer's Exhibit A-01 at paras. 209, 213-15, Administrative Record, Vol. 11.

imports of the subject goods have not been entering Canada at prices that have a depressing or suppressing effect on Canadian prices, but rather that the prices have been increasing and were consistently higher than Canadian prices over the last two years of the POI. Parties opposed noted that IKO did not file any evidence relating to future economic conditions to support a finding of threat of injury. They claimed that there was no evidence to demonstrate that the market will decline and that there was in fact evidence that markets in Canada and the United States would likely improve.<sup>93</sup>

155. The Tribunal examined whether there is a likelihood of a substantial increase of dumped imports in Canada in the near to medium term. In this regard, the Tribunal first notes that, in 2009, imports of the dumped subject goods declined by 25 percent compared to 2008. Over the entire POI, imports of the dumped subject goods declined by 22 percent. Second, the evidence is clear that there was a drop in capacity utilization in the United States in 2009 due to the recession.<sup>94</sup> However, this situation did not lead to a diversion of additional exports to Canada.<sup>95</sup> Third, the Tribunal heard testimony that the demand for polyiso insulation board in the United States should increase in 2010 and that the capacity utilization levels in the United States should come back to typical levels in the near future.<sup>96</sup> In this regard, the witness for Hunter testified that, currently, a market transformation is taking place in the United States. This change has been triggered by new energy conservation regulations which specify higher thermal insulation requirements for roofs and walls. The witness for Hunter indicated that this, in turn, is expected to lead to a higher demand for polyiso insulation board in the United States, as it constitutes an important component of roof and wall insulation.<sup>97</sup> Finally, the evidence on record does not suggest that there are significant U.S. inventories of the subject goods that could be diverted to Canada. The evidence suggests that manufacturers produce polyiso insulation board to meet demand and, thus, avoid accumulating large inventories.<sup>98</sup> Taking into account these factors, the Tribunal is of the view that a substantial increase of dumped imports in Canada in the near to medium term is not likely, especially as the economic recovery in the United States begins to take hold.<sup>99</sup>

156. With respect to the potential for product shifting, given the specialized processes and facilities involved in the production of polyiso insulation board, the Tribunal accepts IKO's submission that the production lines for other products cannot be easily converted to the production of polyiso insulation board and, therefore, considers that there is no significant scope for shifting production from other goods to the production of polyiso insulation board.

157. The testimony of the witnesses at the hearing and the allegations submitted by IKO do not provide any credible support for their submission that the prices of the subject goods are likely to have a significant suppressive or depressive effect on the domestic industry in the near term. In this regard, the average market price and benchmark prices of the dumped subject goods over the POI were most often higher than those of the like goods. Given this evidence, the Tribunal is of the opinion that there are no grounds to conclude that import prices will undercut or suppress Canadian prices in the near to medium term.

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93. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 86-88; *Transcript of Public Argument*, Vol. 1, 9 April 2010, at 163-64; *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 468-69.

94. Manufacturer's Exhibit C-01 at 8, Administrative Record, Vol. 13; *Protected Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-07 (protected), Vol. 2.1 at 77.

95. *Pre-hearing Staff Report*, 25 February 2010, Tribunal Exhibit NQ-2009-005-06, Administrative Record, Vol. 1.1 at 40.

96. *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 471.

97. *Ibid.* at 467-69.

98. Foreign producer's questionnaire replies to questions 27 and 28 found under collective Tribunal Exhibit NQ-2009-05-18 (protected), Administrative Record, Vol. 6.1.

99. *Transcript of Public Hearing*, Vol. 2, 8 April 2010, at 468-71.

158. There is also no evidence to suggest that there are clearly foreseen and imminent negative effects of continued dumped imports on existing development and production efforts. To the contrary, as indicated previously, the production of the like goods by IKO increased during the POI and is expected to remain strong in the near term.<sup>100</sup>

159. With respect to the magnitude of the margin of dumping determined by the CBSA, the Tribunal acknowledges that a weighted average margin of dumping of 21.9 percent is not insignificant. The Tribunal notes that the individual margins varied by U.S. producer from a low of 0 percent margin of dumping to a high of 168.9 percent for the non-cooperative exporters. Notwithstanding this, the evidence on the record with respect to the normal values of individual companies indicates that a large volume of the imports of the subject goods will continue to enter the Canadian market at competitive prices; and some at non-dumped prices.

160. Finally, the Tribunal is not aware of evidence of the imposition of anti-dumping measures on polyiso insulation board by any other country.

161. In summary, the Tribunal finds that the evidence does not support a conclusion that the dumping of the subject goods poses a clearly foreseen and imminent threat of injury to the domestic industry. Accordingly, the Tribunal finds that the dumping of the subject goods is not threatening to cause injury to the domestic industry.

## CONCLUSION

162. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping of the subject goods has not caused injury and is not threatening to cause injury to the domestic industry.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

Diane Vincent  
Diane Vincent  
Member

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Member

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100. *Transcript of Public Hearing*, Vol. 1, 7 April 2010, at 87-88.