



Ottawa, Friday, April 11, 1997

Inquiry No.: NQ-96-003

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

**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, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue of a preliminary determination of dumping dated December 12, 1996, and of a final determination of dumping dated March 7, 1997, respecting the importation into Canada of faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States of America.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from the United States of America has caused material injury to the domestic industry, excluding:

- (i) the subject insulation board imported into British Columbia for use or consumption in British Columbia; and
- (ii) the subject insulation board in excess of 16 ft. in a single length imported by or on behalf of manufacturers of wood drying kilns for use in the manufacture of wood drying kilns for the lumber industry.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Raynald Guay
Raynald Guay
Member

Michel P. Granger
Michel P. Granger
Secretary

The Statement of Reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: March 10 to 13, 1997
Date of Finding: April 11, 1997
Tribunal Members: Charles A. Gracey, Presiding Member
Anthony T. Eyton, Member
Raynald Guay, Member
Director of Research: Selik Shainfarber
Research Manager: Richard Cossette
Researchers: W. Douglas Kemp
Shiu-Yeu Li
Economist: Simon Glance
Statistical Officers: Margaret Saumweber
Marcie Doran
Counsel for the Tribunal: David M. Attwater
Registration and Distribution Officer: Pierrette Hébert

Participants:

Lawson A.W. Hunter, Q.C.
Randall J. Hofley
Tamra A. Alexander
for Exeltherm Inc.

(Domestic Producer)

C.J. Michael Flavell, Q.C.
Geoffrey C. Kubrick
Paul M. Lalonde
Christopher J. Kent
Reginald Thompson
for NRG Barriers Inc.
Schuller International, Inc.

(Exporters)

Terrance A. Sweeney
Salvatore Mirandola
for Jim Walter International Corporation
The Celotex Corporation

(Exporters)

James M. Klotz
for Ontario Industrial Roofing Contractors' Association

(Importer)

Brenda C. Swick-Martin
for Salton Fabrication Ltd.

(Importer)

Simon Dann
BUILDmat Distribution Ltd.

(Importer)

Gary Fulford
Lexsuco Canada Limited

(Importer)

Ottawa, Monday, April 28, 1997

Inquiry No.: NQ-96-003

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

Special Import Measures Act - Whether the dumping of the above-mentioned goods has caused material injury or retardation or is threatening to cause material injury to the domestic industry.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States of America has caused material injury to the domestic industry, excluding: (i) the subject insulation board imported into British Columbia for use or consumption in British Columbia; and (ii) the subject insulation board in excess of 16 ft. in a single length imported by or on behalf of manufacturers of wood drying kilns for use in the manufacture of wood drying kilns for the lumber industry.

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Simon Dann
BUILDmat Distribution Ltd.

(Importer)

Gary Fulford
Lexsuco Canada Limited

(Importer)

Witnesses:

Jan G.M.M. Oosterwaal
President and Chief Executive Officer
Exeltherm Inc.

Tim Davis
Vice-President
Central and Western Regions
Exeltherm Inc.

Stéphane Lessard
Vice-President
Eastern Region
Exeltherm Inc.

Edward Armstrong
Manager - Canadian Operations
Carlisle SynTec Canada

Jean Guy Goguen
President
isox Maritime Limited

Simon Dann
BUILDmat Distribution Ltd.

Bartley E. Roggensack Jr.
Vice-President and General Manager
Schuller International, Inc.

John Clinton
Manager, Technical Marketing
NRG Barriers Inc.

Norman P. Toupin
Territory Manager
Jim Walter International Limited

Wayne E. Laughlin
Research Project Supervisor
Center for Applied Engineering, Inc.

Carleton T. Lum, III
Manager, Financial Operations
Jim Walter International Corporation

Gary Fulford
Lexsuco Canada Limited

Address all communications to:

Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7



Ottawa, Monday, April 28, 1997

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

TRIBUNAL: CHARLES A. GRACEY, Presiding Member
ANTHONY T. EYTON, Member
RAYNALD GUAY, Member

STATEMENT OF REASONS

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*¹ (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination of dumping² dated December 12, 1996, and of a final determination of dumping³ dated March 7, 1997, respecting the importation into Canada of faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board (polyiso insulation board) originating in or exported from the United States of America.

On December 13, 1996, the Tribunal issued a notice of commencement of inquiry.⁴ As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers, importers, purchasers and foreign manufacturers of polyiso insulation board. Respondents provided production, financial, import, sales, pricing, export and market information, as well as other information relating to polyiso insulation board, for the years from 1993 to 1996. From replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff and pricing reports.

Public and *in camera* hearings were held in Ottawa, Ontario, from March 10 to 13, 1997. The domestic producer, Exeltherm Inc. (Exeltherm), was represented by counsel at the hearing. Schuller International, Inc. (Schuller), NRG Barriers Inc. (a division of Schuller) (NRG), Jim Walter International Corporation (Jim Walter) and The Celotex Corporation (a sister company of Jim Walter) (Celotex) (exporters) and Salton Fabrication Ltd. (Salton) (importer) were also represented by counsel at the hearing. BUILDmat Distribution Ltd. (BUILDmat) and Lexsuco Canada Limited (Lexsuco) (importers) also participated at the hearing.

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
2. *Canada Gazette* Part I, Vol. 131, No. 2, January 11, 1997, at 100.
3. *Ibid.*, No. 12, March 22, 1997, at 931.
4. *Ibid.*, Vol. 130, No. 51, December 21, 1996, at 3587.

PRODUCT

The Deputy Minister's preliminary and final determinations of dumping define the subject goods as faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States of America.

Polyiso insulation board is a thermo-set, rigid, closed-cell polyisocyanurate foam insulation used in both new and retrofit wall and roofing applications. In the trade, commercial polyiso insulation board used in wall applications is referred to as "wall insulation," while residential polyiso insulation board used in wall applications is referred to as "sheathing." Since the disappearance of phenolic insulation board from the Canadian market, polyiso insulation board is the only thermo-set insulation used in Canada.

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

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 thicknesses ranging from 1 to 4 in. Custom sizes and thicknesses are also available. This board is used mainly in the commercial construction sector. It is also available as tapered board which is used in pre-engineered sloped insulated roofing systems to provide positive drainage.

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 thicknesses ranging from 0.5 to 4.0 in. As with roof insulation board, custom sizes and thicknesses are also available. This board is generally used for construction applications in both residential and non-residential wall systems.

The main ingredients in polyiso insulation board are aromatic polyester polyol (polyol), isocyanurate (iso) and a blowing agent. The "iso" product arrives in liquid form and is transferred to a holding tank where it is recirculated through a heat exchanger before being transferred to a processing tank. A second tank contains the polyol, blowing agent and a blend of catalysts. These chemicals are mixed and heated to ensure a correct blend and temperature and then transferred to a secondary processing tank.

The chemical mixtures of the two tanks are then pumped under pressure to a mixing unit. In mixing the contents of the two tanks under pressure, polymerization starts, and the heat generated by the reaction boils the foaming agent. The mixture is laid between two facers which are being continuously fed through a moving laminator. Once laid, the mixture expands, filling the space between the two facers, and, in solidifying, bonds to the facers. Various facers may be used, providing different specifications and allowing for different construction applications.

Upon exiting the laminator, the polyiso insulation 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.

RESULTS OF THE DEPUTY MINISTER'S INVESTIGATION

The Deputy Minister's investigation covered shipments of polyiso insulation board made from January 1 to June 30, 1996. Normal values were determined pursuant to section 15 of SIMA where there were profitable sales of like goods. Section 19 of SIMA (i.e. constructed cost) was used to determine normal values where domestic sales could not be used. For exporters that did not cooperate with the Department of National Revenue (Revenue Canada) by providing information required to determine normal values (i.e. A.B.C. Supply Co. Inc., Atlas Roofing Corporation, Homasote Company and some of the plants of

Apache Products), the normal value of the goods was estimated to be the export price of the goods, plus an advance representing the highest estimated margin of dumping found during the investigation, expressed as a percentage of the export price. Export prices were determined pursuant to section 24 of SIMA.

The Deputy Minister found that, during the period of investigation, 91 percent of the subject goods exported to Canada were dumped. The margins of dumping ranged from 0.01 to 72.28 percent, with an overall weighted average margin of dumping of 36 percent for all imported goods. Table 1 summarizes the results of the Deputy Minister's investigation.

TABLE 1			
RESULTS OF FINAL DETERMINATION OF DUMPING			
(January 1 to June 30, 1996)			
Exporter/Plant	Quantity of Goods Dumped (%)	Margin of Dumping (%)¹	Weighted Average Margin of Dumping (%)²
A.B.C. Supply Co. Inc.	100	54.5	54.5
Atlas Roofing Corporation	100	54.5	54.5
Firestone Building Products			
Denver, CO	59	0.5 to 32.6	6.3
Salt Lake City, UT	71	0.1 to 17.4	3.3
Springfield, MA	65	0.2 to 35.8	4.9
Homasote Company	100	54.5	54.5
Jim Walter and Apache Products			
Belvidere, IL	100	54.5	54.5
Linden, NJ	100	8.2 to 54.5	41.3
Riverside, CA	100	54.5	54.5
Jim Walter and Celotex			
Charleston, IL	83	1.1 to 45.2	14.9
Pennsauken, NJ	95	1.4 to 28.0	13.8
Tracy, CA	96	0.2 to 32.9	19.4
NRG			
Bremen, IN	36	0.4 to 17.2	1.1
Hazelton, PA	88	0.01 to 23.50	6.3
Kent, WA	80	0.4 to 15.6	6.5
Saco, ME	94	0.03 to 72.30	16.3

Source: Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, March 7, 1997, Tribunal Exhibit NQ-96-003-4, Administrative Record, Vol. 1 at 126.

Notes:

1. Expressed as a percentage of the normal value for the dumped goods only.
2. Expressed as a percentage of the normal value for all imported goods.

POSITION OF PARTIES

Domestic Producer

Counsel for Exeltherm submitted that the subject goods, as defined by the Deputy Minister, represent a single class of goods for both wall and roofing applications, regardless of how the industry is organized on the demand side. In this regard, counsel noted that the margins of dumping were set in respect of polyiso insulation board and not in respect of product application. Furthermore, the polyiso insulation board used in wall applications has similar uses and characteristics as that used in roofing applications and, therefore, one is substitutable for the other.

Counsel for Exeltherm submitted that the principal cause of the injury suffered by Exeltherm was the dumping of the subject goods. Counsel submitted that, in considering the evidence in this case, the Tribunal should keep in mind that the importers and exporters participating in the Tribunal's inquiry represent less than half of all imports during the Deputy Minister's period of investigation.

Imports increased significantly from 1993 to 1996. As a result, Exeltherm lost sales of polyiso insulation board, as proved by the specific allegations made by Exeltherm being confirmed during the inquiry and going unchallenged during cross-examination. Together with lost sales of polyiso insulation board, Exeltherm lost sales of related products. In addition, there has been an erosion of prices in the market, also proved by Exeltherm's specific allegations being confirmed during the inquiry and largely unchallenged in cross-examination. Furthermore, Exeltherm made numerous attempts to raise prices, which, for the most part, did not hold. Exeltherm has lost profits for all these reasons.

In considering changes in market share held by domestic and imported goods, counsel for Exeltherm reviewed the rigid thermal insulation market in Canada. This includes the production of polyiso insulation and phenolic insulation. Domestic producers held approximately 40 percent of this market in 1993, which dropped significantly in 1994. The domestic share of the rigid thermal insulation market in Canada has remained at this lower level despite competitive advantages in such areas as service and delivery and despite lower prices as a result of competition from dumped imports.

Counsel for Exeltherm submitted that Exeltherm should not be viewed as a new entrant in the rigid thermal insulation market in Canada. Rather, it should be viewed as a continuation of Domtar Inc. (Domtar). Exeltherm bought Domtar's business, including the fixed assets, the goodwill and accounts receivable. Many of its technical, sales and marketing people were formerly employed by Domtar.

Exeltherm's production and capacity utilization have fallen short of its reasonable expectations. Furthermore, Exeltherm's capacity utilization is considerably lower than that of its US competitors. Higher levels of production and capacity utilization would reduce Exeltherm's unit fixed costs, increase bulk material purchases and reduce material costs. Reduced costs would enhance Exeltherm's ability to service distant markets.

It was submitted that the injury suffered by Exeltherm is a direct cause of the price competition from dumped imports. Polyiso insulation board from Canada and the United States is interchangeable. As a commodity product, it is easy for customers to change suppliers, particularly as very few term contracts are used in the market. Prices started to decline in 1993 as a result of a price war between Celotex and NRG. Prices rapidly declined in 1994 following Schuller's entry into the market and because Schuller sold polyiso insulation board directly to contractors, through its Canadian subsidiary Schuller International Canada Inc.

(Schuller Canada), using Atlas products. Exeltherm's sales to distributors fell, as sales of US imports to distributors rose. Given the commodity nature of the product, Exeltherm was required to match dumped prices to limit its lost sales. The responses to the purchaser's questionnaire indicate that Exeltherm was responding to, rather than initiating, the downward trend in prices.

As far as certain requests for exclusion were concerned, counsel for Exeltherm indicated that, in the event that the Tribunal made an injury finding, Exeltherm consented only to an exclusion for the subject goods in excess of 16 ft. in a single length imported by two particular companies for use in the manufacture of wood drying kilns by these two companies. With respect to other products, Exeltherm does not consent to an exclusion. The other products, or substitutable products, are available from domestic production. Although some of the products for which an exclusion was requested may have some specialty features, in counsel's submission, the consumer does not distinguish between the imported products and those available from domestic production.

As to the request for exclusion for the subject goods imported into Canada west of the Ontario/Manitoba border, counsel for Exeltherm submitted that Exeltherm serves Manitoba, Saskatchewan and Alberta and that it hopes to serve British Columbia, absent any dumping. As to the requests for exclusion for particular producers, counsel submitted that it is the Tribunal's practice to consider injury to the domestic industry by exporters en masse. The Tribunal has not excluded a particular producer in the past.

Importers and Exporters

Schuller and NRG

Counsel for Schuller and NRG submitted that the price of polyiso insulation board started to decline in 1994 after Exeltherm entered the market. From its inception, Exeltherm has experienced rapid growth in sales over a short period of time. To achieve such growth in a commodity market, Exeltherm was required to be extremely aggressive on price. Thus, it was Exeltherm, and not US exporters that already served the Canadian market, that drove prices down. As proof, counsel referred to the evidence and testimony of a number of persons who appeared before or filed information with the Tribunal attesting to Exeltherm's aggressive pricing.

Counsel for Schuller and NRG submitted that Exeltherm did not lose any sales as claimed. As Exeltherm had never made any sales to several of the firms that it claims to have lost, such claims must be viewed as a loss of additional sales. Furthermore, as Exeltherm has experienced rapid growth in both the volume and the value of its sales over the period of its short existence, it has gained considerably more sales than the additional sales that it claims to have lost. In fact, Exeltherm's sales volume of polyiso roof insulation board exceeded the reasonable expectations of its initial market projections.

It was submitted that, for Exeltherm to be successful in this case, it must establish that it was injured through price suppression. However, as far as its allegations of price suppression were concerned, counsel for Schuller and NRG submitted that, for many of the projects identified in the allegations, either Schuller's or NRG's bid price was higher than Exeltherm's price or Schuller or NRG did not bid on the particular project. In fact, counsel contended, the preponderance of evidence points to Exeltherm as the price leader.

Counsel for Schuller and NRG submitted that material injury implies injury of real importance or significance. After reviewing the financial information reported by Exeltherm, including its long-term debt, cost allocations and cost of goods manufactured, counsel suggested that Exeltherm was not suffering the injury that it claims and that any problems that it may be experiencing are not caused by dumped imports. As to what went wrong for Exeltherm in terms of its business plans and projections, counsel pointed to Exeltherm's failure to achieve targeted export sales and sales of laminated boards. In addition, the market for polyiso wall insulation board has been stagnant, contrary to expectations.

Counsel for Schuller and NRG argued that, for anti-dumping duties to be imposed from the date of the Tribunal's finding, the Tribunal must find that the domestic industry will suffer material injury in the future or that there is a threat of future injury. As such, counsel is opposed to the approach articulated by the Tribunal in Inquiry No. NQ-95-001,⁵ to the effect that anti-dumping duties will be imposed on imports of the subject goods solely on the basis of a finding of injury, without the Tribunal making a finding of future injury or threat of future injury. Counsel further submitted that, if the Tribunal were to consider threat of injury, the evidence would show that US imports do not threaten to cause injury to the domestic producers of polyiso insulation board.

It was submitted that none of the injury allegations made by Exeltherm relate to tapered, composite or vented products and that these products should be excluded from any injury finding. Moreover, based on prohibitively expensive freight costs relative to the value of the goods being shipped, Exeltherm cannot serve the market in the province of British Columbia.⁶ Consequently, counsel for Schuller and NRG also requested an exclusion from the finding for the subject goods imported into that province.

Jim Walter and Celotex

Counsel for Jim Walter and Celotex submitted that domestically produced polyiso insulation board constitutes two classes of like goods: polyiso wall insulation board and polyiso roof insulation board. In support of this proposition, a number of distinguishing features between wall insulation board and roof insulation board were noted: (1) they are sold through different distribution channels in the market; (2) roof insulation board, unlike wall insulation board, is often sold as part of a complete roofing system; (3) a different and patented technology, the "free rise" process, is available for making wall insulation board but not for making roof insulation board; and (4) roof insulation board is generally thicker than wall insulation board and, though wall insulation board may be substituted for roof insulation board, the opposite does not appear to be possible.

5. For a full explanation of the Tribunal's reasoning, see *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Originating In or Exported from the United States of America*, Finding, October 20, 1995, *Statement of Reasons*, November 6, 1995, at 8-10.

6. In support of the exclusion, counsel for Schuller and NRG referred to *Commercial Grade Sodium Carbonate, Commonly Known as Soda Ash, Originating in or Exported from the United States of America*, Anti-dumping Tribunal, Inquiry No. ADT-7-83, *Finding and Statement of Reasons*, July 7, 1983; and *Subsidized Grain Corn in All Forms, Excluding Seed Corn, Sweet Corn and Popping Corn, Originating in or Exported from the United States of America*, Canadian Import Tribunal, Inquiry No. CIT-7-86, *Finding*, March 6, 1987, *Statement of Reasons*, March 20, 1987.

Counsel for Jim Walter and Celotex further submitted that imports of wall insulation board have not injured domestic production of polyiso wall insulation board. There is more significant competition in the wall market from other undumped products such as polystyrene, mineral wool and fibreglass insulation. The presence of these undumped alternatives in the wall market creates a “competitive equilibrium” which affects the demand for and price of polyiso insulation board. Counsel also noted that a considerable volume of imports were either undumped or dumped at very low margins. Moreover, the evidence⁷ indicates that prices for wall insulation board have been relatively steady and, in some cases, have actually improved relative to prices for roof insulation board.

Counsel for Jim Walter and Celotex submitted that the fact that Exeltherm did not meet its business projections should not be seen as evidence of injury from dumping. Exeltherm was entering a commodity market where suppliers had established relationships with customers. Its projections for capacity utilization, gross profits and market shares were, therefore, unreasonable and unrealistic. Further, Exeltherm could only capture market share with low prices. As such, it must be held responsible, at least in part, for the price declines in the market. In addition, any injury from Exeltherm’s failure to penetrate the northeastern United States could not be blamed on dumping.

Counsel for Jim Walter and Celotex contended that Exeltherm had adopted market practices that have alienated market players and resulted in increased costs, thereby contributing to its own injury.⁸ Moreover, counsel noted that, although the volume of imports increased in the fourth quarter of 1996, Exeltherm’s financial situation actually improved, suggesting that increased imports were not the problem.

In sum, counsel for Jim Walter and Celotex submitted that US imports had not caused injury to Exeltherm, nor did the evidence establish that US imports posed a threat of injury. However, in the event that the Tribunal finds that Exeltherm has been materially injured by dumped imports, counsel requested that certain products manufactured by Celotex be granted an exclusion from the finding. The request for exclusion encompassed numerous wall sheathing products: Thermax Sheathing, Thermax AgTherm, Thermax Light Duty, Thermax Metal Building Board, Thermax Heavy Duty, Thermax Heavy Duty Plus, CDN Sheathing and Quik-R Sheathing. Counsel submitted that these Celotex products have different characteristics than domestically produced goods, that they represent a very small percentage of the market and that they are priced higher than domestically produced wall insulation board. Counsel further noted that certain specialty products produced by Exeltherm are only available in minimum orders of two truckloads. Counsel also supported the exclusion for goods imported into British Columbia.

Salton

Counsel for Salton requested that, in the event of an injury finding, Salton be granted an exclusion for polyiso insulation board in excess of 16 ft. in a single length solely for use in the construction of drying kilns used in the lumber industry. Counsel indicated that Exeltherm had agreed to this exclusion.

7. *Protected Specific Allegations and Pricing Report*, February 5, 1997, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 56; and Tribunal Exhibit NQ-96-003-10.1F (protected), Administrative Record, Vol. 4A at 196.

8. Tribunal Exhibits NQ-96-003-10.1C and 10.1D (protected), Administrative Record, Vol. 4A at 177 and 180 respectively.

BUILDmat

BUILDmat's representative limited his arguments to those in respect of wall insulation board. He argued that Exeltherm led prices down and that price competition in this segment of the market is between Exeltherm and distributors that have had to cut their margins to stay competitive. Low prices in a commodity market explain how Exeltherm has obtained a dominant position in Ontario in such a short period of time. This, and other factors such as Exeltherm's minimum order requirement and debt load, can explain whatever injury that it may be suffering.

BUILDmat's representative submitted that an exclusion should be granted for many of the specialty products imported into Canada. With such a low demand for these products in the Canadian market and Exeltherm's minimum order requirement of two truckloads, these products will never be supplied from domestic production. Furthermore, these products can be significantly more expensive than those produced by Exeltherm.

BUILDmat's representative also requested an exclusion for polyiso insulation board in excess of 16 ft. in a single length imported by a customer of BUILDmat for use in the construction of drying kilns used in the lumber industry. This request for exclusion was identical to a request from Salton to which Exeltherm had already agreed.

Lexsuco

Lexsuco's representative submitted that any injury suffered by Exeltherm was self-inflicted. He stated that, over the past two years, there has been a steady decline in the Canadian market price for polyiso insulation board, which, he believed, was initiated by Exeltherm. He further submitted that this aggressive pricing by Exeltherm has forced Lexsuco to pressure its US suppliers to lower their pricing. Although these US suppliers had come down in price and he had, himself, shrunk Lexsuco's own margins, he submitted that Lexsuco still could not meet Exeltherm's price. As a result, he stated that Lexsuco has lost considerable sales volume, which, he believed, went to Exeltherm. Accordingly, the representative saw no justification for an injury finding to protect Exeltherm.

ANALYSIS

Pursuant to section 42 of SIMA, as amended by the *World Trade Organization Agreement Implementation Act*,⁹ the Tribunal is required to "make inquiry ... as to whether the dumping or subsidizing of goods [to which the preliminary determination applies] ... has caused injury or retardation or is threatening to cause injury." It was not alleged that the domestic industry has suffered retardation. As such, in making a finding under subsection 43(1) of SIMA, the Tribunal will first consider whether the domestic industry has suffered injury. Injury and threat of injury are distinct findings, and the Tribunal is of the view that it does not need to make a finding relating to both under subsection 43(1) of SIMA. Only where the Tribunal makes a finding of no injury will it consider threat of injury.¹⁰

9. S.C. 1994, c. 47.

10. For a full explanation of the Tribunal's reasoning, see *Caps, Lids and Jars*, *supra* note 5.

“Injury” is defined in section 2 of SIMA as “material injury to a domestic industry.” “Domestic industry” is defined, in part, 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.” Therefore, in arriving at its decision in the present inquiry, the Tribunal will first determine which domestically produced goods are “like goods” to the subject goods and then determine who are the domestic producers of those goods and, thus, which producers constitute the domestic industry. The Tribunal will then determine whether the domestic industry has suffered injury and, if so, whether a causal relationship exists between that injury and the dumping of the subject goods.

Like Goods

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

- (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.

The Deputy Minister described the subject goods as “faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States of America.” The evidence before the Tribunal is that the foam component of the subject goods and that of the domestically produced polyiso insulation board have substantially the same chemical composition and physical properties. These products are sold in similar thicknesses, have similar insulation values (R-values) and have the same end uses. Although there may be some differences between these products in the facer materials regularly used, there are considerable similarities, and both imported and domestically produced goods employ a facer of some kind.

All polyiso insulation board sold in Canada must meet or exceed the Canadian General Standards Board (CGSB) specification CGSB-51.26-M86, which specifies tolerances for physical properties such as compressive strength, thermal resistance, water vapour permeance, dimensional stability and water absorption. Compliance with established standards of organizations such as the CGSB and Underwriters’ Laboratories of Canada ensures the physical and technical interchangeability of polyiso insulation board regardless of the source of supply. Of the 22 respondents to the Tribunal’s purchaser’s questionnaire, 19 that have experience with polyiso insulation board from Canadian and US sources reported that the domestic and imported products were physically interchangeable. Therefore, the Tribunal finds that domestically produced polyiso insulation board constitutes “like goods” to the subject goods.

Counsel for Jim Walter and Celotex argued that polyiso insulation board is comprised of two classes of goods: polyiso wall insulation board and polyiso roof insulation board. If the Tribunal finds that there is more than one class of goods, it must conduct its injury inquiry with respect to each class of goods and make a separate finding for each class.¹¹ In this regard, counsel limited their arguments to polyiso wall insulation board, submitting that domestic production of that product has not been injured by dumping.

11. *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd.*, [1992] 2 F.C. 283.

In considering whether there is more than one class of goods, the Tribunal must determine whether the alleged separate classes of goods constitute “like goods” to each other. If the alleged separate classes of goods exhibit this relationship to each other, they will be regarded as comprising a single class of goods. In terms of the criteria set out for “like goods” under subsection 2(1) of SIMA, this examination typically, as in this case, involves goods that are not “identical in all respects.” Therefore, the Tribunal must consider whether the “uses and other characteristics” of the goods “closely resemble” each other. This involves a comparison of their physical characteristics, such as composition, properties, appearance and method of manufacturing, and their market characteristics, such as use, substitutability, pricing, channels of distribution and customer perceptions.¹²

Regardless of its intended application, the foam component of polyiso insulation board has substantially the same chemical composition, physical properties and appearance. Both wall insulation board and roof insulation board are, for the most part, manufactured using the same method and employing the same facilities and production employees. Although roof insulation board traditionally uses facers (e.g. black felt) that may be different from those usually used in wall insulation board (e.g. foil kraft), the Tribunal received evidence that certain roof and wall products can be, and sometimes are, used interchangeably.

The Tribunal notes that roof insulation board and wall insulation board may be distributed through different marketing channels. However, on balance, this difference is not sufficient for the Tribunal to find that there is more than one class of goods. The Tribunal also notes that one US producer employs a unique process for the production of polyiso wall insulation board, namely, the “free rise” process. However, with the exception of this one producer, all other Canadian and US producers employ the same process for both roof and wall products, namely, the “restrained rise” process. In any event, the Tribunal is not convinced from the evidence that insulation board produced by the “free rise” process is actually perceived by customers as different from insulation board produced by the “restrained rise” process.

Reviewing the evidence in its entirety, the Tribunal is satisfied that there is a single class of goods comprising polyiso insulation board.

Domestic Industry

Having determined that the like goods in this inquiry are domestically produced polyiso insulation board, the Tribunal must determine which producers constitute the domestic industry for purposes of assessing injury. The term “domestic industry” is defined in subsection 2(1) of SIMA, in part, 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.” In this case, there are four domestic producers of polyiso insulation board, with Exeltherm accounting for well in excess of three quarters of total domestic production. As Exeltherm constitutes a major proportion of total domestic production of polyiso insulation board, the Tribunal regards it as constituting the domestic industry for purposes of this inquiry.

12. See, for example, *Sarco Canada Limited v. The Anti-dumping Tribunal*, [1979] 1 F.C. 247.

Injury

Subsection 37.1(1) of the *Special Import Measures Regulations*¹³ (the Regulations) prescribes certain factors that the Tribunal may consider in determining whether a domestic industry has been injured by dumped or subsidized imports. These factors include the volume of dumped or subsidized goods and their effect on prices in the market for like goods and the consequent impact of these imports on a number of economic factors, such as actual or potential declines in output, sales, market share, profits and return on investment. Prior to considering such factors in its analysis of economic indicators in this inquiry, the Tribunal considers it useful to briefly discuss the evolution and structure of the polyiso insulation board market in Canada.

Market Structure

- Domestic Industry

As noted above, in addition to Exeltherm, which accounts for more than three quarters of Canadian production of polyiso insulation board, there are three known smaller Canadian producers of polyiso insulation board, namely: isox Maritime Limited (isox Maritime), Cocagne, New Brunswick; Polytherm Isolation Inc., Saint-Côme, Quebec; and Enerlab Inc., Boucherville, Quebec. These smaller producers are essentially regional suppliers of specialty products, such as tapered and composite polyiso insulation board, that compete only to a limited extent with large suppliers such as Exeltherm.¹⁴

Prior to 1994, Canadian demand for high thermal insulation was largely satisfied by two products, thermo-set, rigid phenolic foam insulation board and fibreglass insulation. Phenolic insulation board was produced by both Domtar and Owens Corning Fibreglass (Owens), while fibreglass insulation was produced by Owens. In 1994, Owens closed its phenolic insulation board plant and also sold the marketing rights for its fibreglass roofing products to Schuller. In the same year, Domtar also left the phenolic foam insulation business and sold its phenolic foam insulation plant in Cornwall, Ontario.¹⁵

Exeltherm was incorporated in July 1994 to purchase Domtar's Cornwall plant and convert it for the production and sale of polyiso insulation board. Exeltherm started out as a joint venture between a management/employee group, represented by Exeltherm Holdings Inc., and Domtar. On December 28, 1995, Exeltherm purchased the shares held by Domtar, and the company is currently owned, directly and indirectly, by its management and employees. Exeltherm has produced polyiso insulation board since July 1, 1994, and does not produce any other products.

According to the evidence, in 1993-94, the phenolic foam insulation board industry, in both Canada and the United States, declined rapidly and essentially disappeared.¹⁶ This was, apparently, largely due to product liability concerns amid indications in the United States that phenolic foam roof insulation could

13. SOR/95-26, December 20, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 80.

14. Manufacturer's Exhibit A-6 (protected) at 2, Administrative Record, Vol. 14.

15. *Public Pre-Hearing Staff Report*, February 5, 1997, Tribunal Exhibit NQ-96-003-6, Administrative Record, Vol. 1A at 10.

16. Manufacturer's Exhibit A-4 (protected) at 5, Administrative Record, Vol. 14.

accelerate corrosion of steel roof decks and affect their structural integrity. These same concerns also arose in the Canadian market, resulting in plant closures and product liability actions.¹⁷

Against this background, with the commencement of production of polyiso insulation board in the second half of 1994, Exeltherm (then called Techni-Therm) believed that it would secure a large portion of Domtar's previous phenolic insulation market share. Exeltherm acquired not only Domtar's physical phenolic insulation business assets, accounts receivable and goodwill but also its related management, production and sales staff.¹⁸ Exeltherm also expected to capture some of Owens' phenolic insulation business.

In addition, Exeltherm envisaged a partial displacement of the fibreglass roof insulation market in Canada by polyiso insulation, some market share gains in the single-ply roofing segment in Canada and increased sales from a certain assumed annual rate of growth in the foam plastic insulation industry. Exeltherm also expected to capture a small portion of the market in the northeastern United States. Details of these projections are contained in Exeltherm's business plan.¹⁹

- Importers and Exporters

Revenue Canada identified 8 exporters and some 80 importers of the subject goods over the investigation period. However, there exists a relatively high concentration of imports, with the top 3 importers, Convoy Supply Limited (Convoy), Schuller Canada²⁰ and the Roofmart chain, representing an estimated 30 percent of total imports in 1995. Similarly, the top 2 exporters, Atlas and NRG, represented well over half of total shipments to Canada during the period of investigation.²¹

US producers have had a long-standing interest in the Canadian polyiso insulation board market. Indeed, US producers, such as NRG, Celotex and Firestone Building Products, were selling polyiso insulation board through distributors in the Canadian market well before the entry of Exeltherm. According to the evidence, with the demise of phenolic insulation board, US interest in the Canadian polyiso insulation board market has intensified, with numerous US producers competing for market share since 1994.²²

In particular, Schuller entered the Canadian market in 1994, following the Owens transaction, selling primarily product manufactured by Atlas. According to the evidence, the Atlas product, as sold in Canada by Schuller Canada and other importers, was the single largest source of US polyiso insulation board supplied to Canada from 1994 until the summer of 1996.²³ At that time, Schuller acquired NRG, and its relationship with Atlas ended.²⁴

17. *Public Pre-Hearing Staff Report*, February 5, 1997, Tribunal Exhibit NQ-96-003-6, Administrative Record, Vol. 1A at 10-11.

18. Manufacturer's Exhibit A-22 (protected) at 4, Administrative Record, Vol. 14.

19. *Business Plan, Techni-Therm (1994) Inc., January 1994*, Tribunal Exhibit NQ-96-003-10.1 (protected), Administrative Record, Vol. 4A at 44-96.

20. Revenue Canada deemed Schuller Canada's customers to be the importers of the subject goods.

21. *Protected Pre-Hearing Staff Report*, revised February 20, 1997, Tribunal Exhibit NQ-96-003-7B (protected), Administrative Record, Vol. 2 at 95 and 106-8.

22. *Ibid.* at 108.

23. *Ibid.*

24. Exporter's Exhibit C-3 at 2, Administrative Record, Vol. 15.

- Marketing, Pricing Practices and Distribution

The commercial side of the polyiso insulation board business has two levels of trade. The first level is represented by “single source” suppliers and distributors/retailers. The second level of trade is represented by roofing and wall contractors, which purchase either from distributors or directly from the manufacturer. In certain instances, brokers or sales agents are used by manufacturers to market commercial polyiso insulation board to the first level of trade. Exeltherm presently sells its commercial roofing products, which comprise the vast majority of its sales, directly to contractors in Manitoba, Ontario and Quebec. In the rest of Canada, it sells its roofing products to distributors. As for its commercial wall products, for the most part, Exeltherm sells these through distributors/retailers across Canada.²⁵

According to Exeltherm, it initially intended to sell its commercial polyiso roof insulation board and its polyiso wall insulation board through distributors in all Canadian provinces, with the exception of direct sales to roofing contractors in Ontario.²⁶ The Ontario exception was a continuation of the Domtar practice, whereby Domtar had always sold directly to contractors in that province.²⁷ However, things did not develop as planned, and Exeltherm began selling directly to roofing contractors in Manitoba and, in 1996, in Quebec. Witnesses for Exeltherm testified that the company had to go directly to roofers because the availability of low-priced US product to distributors had eroded margins at this trade level to the point where these sales had become non-sustainable.²⁸ Accordingly, Exeltherm was compelled to bypass this trade level with a view to improving its margins by direct sales to roofing contractors.

As with its commercial wall products, on the residential side of its polyiso insulation board business, Exeltherm sells virtually all of its sheathing products through building supply distributors located across Canada.

Most of the US producers of polyiso insulation board market their products in Canada through distributors. In many cases, these distributors are also the importers of the goods. The one notable exception was Schuller, which initially entered the Canadian market by selling directly to roofing contractors through its Canadian subsidiary, Schuller Canada. However, following Schuller’s recent acquisition of NRG in the summer of 1996, Schuller’s sales to Canada are through NRG which, in turn, are exclusively through distributors.²⁹

Single source suppliers sell “private label” polyiso insulation board roofing systems, or components thereof, directly to roofing contractors or through distributors/retailers. Given the generic nature of polyiso insulation board, single source suppliers of roofing systems purchase polyiso insulation board from any one of a number of manufacturers for incorporation into their brand-name roofing systems. A single source supplier provides a system warranty for its roofing system, regardless of the origin of the polyiso insulation board. Thus, all other things being equal, price can and, according to the evidence, does become a principal factor in a single source supplier’s choice of polyiso insulation board.³⁰

25. Manufacturer’s Exhibit A-4 (protected) at 4, Administrative Record, Vol. 14.

26. Manufacturer’s Exhibit A-22 (protected) at 3, Administrative Record, Vol. 14.

27. *Ibid.* at 4.

28. Manufacturer’s Exhibit A-24 (protected) at 2, Administrative Record, Vol. 14.

29. Exporters’ Exhibits C-3 at 2 and B-3 at 6, Administrative Record, Vol. 15.

30. Manufacturer’s Exhibit A-2 (protected) at 3, Administrative Record, Vol. 14.

The market for polyiso insulation board in Canada is dominated by single project sales for both new and replacement commercial roofs. Term contracts for either roof sales or wall sales are seldom used in the industry.³¹ The market is, therefore, not characterized by fixed or long-standing supplier-customer relationships. On the contrary, the evidence shows that relationships are highly transitory, and purchasers readily switch between suppliers, often on the basis of the latest and lowest price quotation.

Delivery costs are an important element of the purchase price of the goods, given that polyiso insulation board is a relatively light but bulky product to ship. This creates primary and secondary economic shipping “rings” for manufacturers. According to the evidence, the primary economic shipping ring for both Canadian and US manufacturers is about 600 to 700 miles from the plant.³² The farther outside this radius, the more freight costs affect a manufacturer’s ability to compete, especially against suppliers in closer proximity to the relevant point of sale.

According to the evidence, Exeltherm establishes list prices for polyiso insulation board.³³ However, the evidence shows that, over the period of inquiry, Exeltherm’s actual market prices were at a significant and increasing discount to list prices.³⁴ The use of price lists appears to be less common in the case of suppliers of US product.³⁵ For both Exeltherm and the US suppliers, the evidence indicates that prices are set on the basis of prevailing competitive conditions.³⁶

Moreover, as noted earlier, sales are usually made on the basis of verbal quotations. Typically, purchasers solicit quotations from more than one supplier. The various quotations will often be used by the purchasers to reduce competing quotations in a process referred to by witnesses as “price peddling.”³⁷ As part of this process, whether a sale is to a contractor or to a distributor/wholesaler, purchasers will often come back for quotations from a given polyiso insulation board supplier more than once, although, given the verbal nature of the process, this may not be evident on the final bid documents. Occasionally, contractors may seek further price reductions from a chosen supplier, even after the sale has been awarded.³⁸

Analysis of Economic Indicators

In determining whether the domestic industry has suffered injury, the Tribunal reviewed the key economic indicators over the period from January 1, 1993, to September 30, 1996, inclusive (hereinafter referred to as the Tribunal’s period of inquiry), as updated by more current information filed by parties during the course of the inquiry, such as that pertaining to Exeltherm’s financial data for the period ending December 31, 1996. Table 2 summarizes some of the key economic indicators over the period of inquiry. For reasons of confidentiality, only the index values of most indicators can be presented.

31. Refer, for example, to Tribunal Exhibits NQ-96-003-22.1-22.5A (protected), Administrative Record, Vol. 6.1 at 1-52.

32. *Transcript of Public Hearing*, Vol. 1, March 10, 1997, at 60-61 and 107-8, and Vol. 3, March 12, 1997, at 487.

33. *Protected Specific Allegations and Pricing Report*, February 5, 1997, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 29.

34. *Ibid.* at 54-55.

35. *Ibid.* at 29.

36. *Ibid.*

37. *Ibid.* at 29-30.

38. *Ibid.* at 30.

TABLE 2

ECONOMIC INDICATORS

(January 1, 1993, to September 30, 1996)

	1993	1994	1995	<u>Jan. 1 - Sept. 30</u>	
				1995	1996
Production -Exeltherm¹ (1994=100)	N/A	100	184	130	189
Total US Imports² (1994=100)	57	100	136	102	106
Apparent Market (MBF³)					
Volume	78,815	146,643	218,895	160,728	184,977
% Change	-	86	49	-	15
Market Share¹ (% Volume)-(1994=100) ¹					
Exeltherm's Sales	0	100	167	160	193
Sales of US Imports	114	100	91	92	87
Average Net Delivered Selling Prices¹ (1994=100)					
Exeltherm	N/A	100	97	97	93
Importers ⁴	104	100	91	92	84
Gross Margins - % of sales - (polyiso insulation board)¹ (1994=100)					
Exeltherm	N/A	100	113	100	138
Capacity Utilization Rate¹ (1994=100)					
Exeltherm	N/A	100	88	84	104

N/A = Not applicable.

Notes:

1. Represents indexed values, using 1994 as the base year, calculated separately for Exeltherm and imports.
2. There were no known imports from other countries over the period of inquiry.
3. MBF= thousand board feet. One board foot has an area of one square foot by a thickness of one inch.
4. Average for questionnaire respondents only.

Source: *Protected Pre-Hearing Staff Report*, February 5, 1997, and revised February 20, 1997, Tribunal Exhibits NQ-96-003-7 and 7B (protected), Administrative Record, Vol. 2 at 33-109.

- Apparent Market

The apparent market for polyiso insulation board expanded significantly over the period of inquiry. In volume terms, it almost tripled from 1993 to 1995 and grew by a further 15 percent in the nine-month period ending September 1996 over the corresponding 1995 period. Based on actual sales data, Exeltherm's

share of the domestic market grew in 1995 over 1994 and showed some additional growth in the first nine months of 1996 over the corresponding period in 1995.

As to total imports from the United States, volumes increased strongly from 1993 to 1996. However, given the substantial expansion of the total market, the market share held by US imports actually declined over the 1993-96 period. Despite this overall decline in market share by US imports, the evidence shows that certain US suppliers, such as Schuller and Atlas, actually experienced market share gains over this period.³⁹

It should be noted that Exeltherm's 1994 domestic market share, as indexed in Table 2, reflects only a half year of sales in 1994, as it began producing polyiso insulation board only in July 1994. This inflates Exeltherm's apparent rate of market share growth, when comparing its 1995 market share, based on a full year's sales, to its 1994 market share. When this factor is taken into account, the data show that Exeltherm's market share has only increased somewhat over the period of inquiry.⁴⁰

In evaluating the movement of market shares over the period of inquiry, the Tribunal considers it relevant to take into account the evidence that, in the pre-1994 period, phenolic foam insulation board was competing with polyiso insulation board in the Canadian rigid insulation board market. The United States was dominant in polyiso insulation board, while the Canadian producers, Domtar and Owens, were dominant in phenolic foam insulation board.⁴¹ With the demise of phenolic insulation board, a void in Canadian production was created, which Exeltherm sought to fill by converting the Domtar facility to the production of polyiso insulation board.

However, right from its inception, Exeltherm only managed to capture a portion of the total market for rigid insulation board that had been previously supplied from Canadian production, as US imports also moved quickly to fill the void.⁴² Indeed, the volume of US polyiso insulation board imports increased by 65 percent in the year in which Exeltherm entered the marketplace and by a further 36 percent in 1995.⁴³ Although Exeltherm has been able to increase sales volumes because of a quickly expanding market, it has not been able to re-capture the previous Canadian position in the rigid insulation board market that it had anticipated in its initial business plans⁴⁴ or make any significant gains in market share beyond the initial level captured.

- Production and Capacity Utilization

While Exeltherm's polyiso insulation board production increased over the period of inquiry, its capacity utilization remained at low levels, both in absolute terms and in relation to some of its

39. *Protected Pre-Hearing Staff Report*, revised February 20, 1997, Tribunal Exhibit NQ-96-003-7B (protected), Administrative Record, Vol. 2 at 108.

40. *Ibid.*

41. Manufacturer's Exhibit A-22 (protected) at 4, Administrative Record, Vol. 14.

42. *Ibid.* at 4-5.

43. *Protected Pre-Hearing Staff Report*, revised February 20, 1997, Tribunal Exhibit NQ-96-003-7B (protected), Administrative Record, Vol. 2 at 108.

44. *Business Plan, Techni-Therm (1994) Inc., January 1994*, Tribunal Exhibit NQ-96-003-10.1 (protected), Administrative Record, Vol. 4A at 44-96.

US competitors.⁴⁵ Moreover, both total production and capacity utilization were below the target levels established by Exeltherm in its initial business plans.⁴⁶

According to the evidence, one of the reasons for the shortfall in production and capacity utilization is that Exeltherm's expected sales to the market in the northeastern United States have not materialized. A witness for Exeltherm testified that the company's plans for the US market had had to be put on hold because of the difficulties that it was having in its home market with dumped US imports.⁴⁷ According to the witness, if Exeltherm had been operating at higher production and capacity utilization rates, it would have been able to increase bulk material purchases, reduce unit fixed costs and extend its competitive economic ring of operation.⁴⁸

- Pricing Trends

Over the Tribunal's period of inquiry, average net delivered selling prices fell for both Exeltherm and suppliers of US polyiso insulation board, despite the fact that there was robust demand for the product. In fact, Exeltherm's average net delivered selling price dropped by 7 percent from January 1, 1994, to September 30, 1996, with the importers' average selling price dropping by 16 percent over the same period.⁴⁹ Because such average prices may be affected by product mix, the Tribunal also looked to specific trends in bellwether items.

In this regard, US imports' and Exeltherm's average prices for selected high-volume roofing products⁵⁰ reveal a similar pattern of decline to the overall average pricing, with US import prices falling farther (17 percent) than Exeltherm's prices (11 percent). Price declines on specific roofing products ranged from 10 to 21 percent for US products and from 5 to 14 percent for Exeltherm products, over the period of inquiry.⁵¹ During the same period, Exeltherm's prices for wall insulation board present a more mixed pattern and somewhat firmer pricing, although prices did drop for two out of its three bellwether items.⁵²

45. *Protected Pre-Hearing Staff Report*, February 5, 1997, Tribunal Exhibit NQ-96-003-7 (protected), Administrative Record, Vol. 2 at 60; and Tribunal Exhibits NQ-96-003-31.1-31.5 (protected), Administrative Record, Vol. 6.4 at 1-30.

46. *Business Plan, Techni-Therm (1994) Inc., January 1994*, Tribunal Exhibit NQ-96-003-10.1 (protected), Administrative Record, Vol. 4A at 44-96.

47. *Transcript of Public Hearing*, Vol. 1, March 10, 1997, at 244-45.

48. Manufacturer's Exhibits A-2 (protected) at 8 and A-4 (protected) at 10, Administrative Record, Vol. 14; *Transcript of Public Hearing*, Vol. 1, March 10, 1997, at 312-13; and *Transcript of In Camera Hearing*, Vol. 2, March 11, 1997, at 205-6.

49. Derived from value and volume data found in *Protected Pre-Hearing Staff Report*, revised February 20, 1997, Tribunal Exhibit NQ-96-003-7B (protected), Administrative Record, Vol. 2 at 108-9.

50. The four high-volume roofing products examined by the Tribunal were flat products with thicknesses of 1.4 in., 1.5 in., 2.0 in. and 2.5 in., with felt or fibreglass facers or equivalent, of standard density.

51. Weighted average prices for the four high-volume roofing products were calculated separately for Exeltherm and for all responding importers. Prices for Exeltherm and US importers are listed in the *Protected Specific Allegations and Pricing Report*, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 58. These prices were weighted by the volume information provided by Exeltherm and importers in their questionnaire responses.

52. *Protected Specific Allegations and Pricing Report*, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 56.

The discrepancy between Exeltherm's list prices and its actual average selling prices for its bellwether roofing products for the key Ontario market widened considerably over the period of inquiry, i.e. Exeltherm sold at increasingly greater discounts off list prices during this period.⁵³

Finally, Exeltherm's prices have been falling as raw material costs have been rising. More particularly, during the period covering July 1994 to March 1996, the price of MDI and polyol, which represent the lion's share of the total material costs to produce polyiso insulation board, increased by 22 and 16 percent respectively.⁵⁴

- Financial Performance

Exeltherm reported net losses on sales of polyiso insulation board for fiscal years 1994 and 1995 and for the nine-month period ending September 30, 1996. However, net losses declined over the period and were marginal for the nine months ending September 30, 1996.⁵⁵ According to evidence presented at the hearing, preliminary results for Exeltherm's 1996 fiscal year ending December 31, 1996, show sales of polyiso insulation board to be slightly profitable.⁵⁶

Gross margins achieved on sales of polyiso insulation board remained fairly constant over 1994 and 1995 and, based on preliminary full year figures, appear to show some improvement for 1996.⁵⁷ During the period of inquiry, Exeltherm's cost of goods sold expressed as a percentage of net sales declined by 3 percentage points, while total expenses expressed as a percentage of net sales remained relatively constant.⁵⁸ This suggests that the slight improvements in Exeltherm's financial performance over the period of inquiry are due to improvements in its cost structure, keeping in mind that average unit selling prices have been declining.

Counsel for the US exporters raised a number of arguments regarding Exeltherm's financial statements. These included: (1) the manner in which Exeltherm had written down certain assets and long-term debt; (2) the existence of certain apparent inventory discrepancies; (3) matters relating to the calculation of general selling and administrative expenses and factory overhead; (4) the allocation methodology and ratios used by Exeltherm in charging expenses to polyiso insulation board; (5) the manner of accounting for potential warranty claims; and (6) the appropriateness of certain management fees.

The Tribunal examined each of the arguments raised and finds that, for the most part, while accounting methodologies may be a subject for debate, Exeltherm has been fully transparent in its financial reporting and that it made its best efforts to provide a reasonable financial statement of its polyiso insulation

53. *Protected Specific Allegations and Pricing Report*, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 55.

54. *Protected Pre-Hearing Staff Report*, February 5, 1997, Tribunal Exhibit NQ-96-003-7 (protected), Administrative Record, Vol. 2 at 54-55.

55. *Ibid.* at 56.

56. Manufacturer's Exhibit A-37 (protected), Administrative Record, Vol. 14.

57. *Protected Pre-Hearing Staff Report*, February 5, 1997, Tribunal Exhibit NQ-96-003-7 (protected), Administrative Record, Vol. 2 at 56; and Manufacturer's Exhibit A-37 (protected), Administrative Record, Vol. 14.

58. *Protected Pre-Hearing Staff Report*, February 5, 1997, Tribunal Exhibit NQ-96-003-7 (protected), Administrative Record, Vol. 2 at 56.

board business. Moreover, while certain data were revised following questions by counsel, there is nothing which indicates any fundamental misstatement of facts.

The Tribunal notes that the crux of Exeltherm's case of injury on financial performance is that the dumping has resulted in margins which are substantially lower than those expected in the business plans that it prepared for its bankers in 1994 and which are lower than those found in related industries.⁵⁹ The Tribunal further notes that, although there was some improvement in gross margins in 1996, Exeltherm's gross margins are still at injuriously low levels by any reasonable measure.

Indeed, its gross margins over the entire period are not only well below its projections and comparable industry benchmarks but also well below actual or targeted gross margins for some of its US competitors such as NRG⁶⁰ and the Jim Walter organization.⁶¹

The low gross margins reported by Exeltherm would be expected to produce unsatisfactory net income or losses as, in fact, Exeltherm has reported. This picture of financial under-performance and injury, particularly reflected at the gross margin level, remains convincing to the Tribunal, notwithstanding the arguments raised by counsel for the US exporters.

- Summary

To sum up, Exeltherm saw its prices decline over the period of inquiry, despite an increase in raw material costs and strong increases in demand for polyiso insulation board. Although it has increased its production and sales of polyiso insulation board since 1994, its market share and plant loading have fallen short of expectations and its gross margins are at injuriously low levels. In the Tribunal's opinion, the extent of the injury suffered by the domestic industry, particularly as reflected in Exeltherm's financial performance, is material.

Causation

Dumping Effects

The Tribunal must next consider whether there is a causal link between the material injury suffered by the domestic industry and the dumped imports. Subsection 37.1(3) of the Regulations prescribes factors that the Tribunal may consider in examining this issue. The Tribunal must also examine other factors to ensure that injury caused by such factors is not attributed to the dumped imports. In considering the issue of causation in this inquiry, the Tribunal examined, in particular, the nature of the product, market share developments in the polyiso insulation board and the broader rigid insulation markets and pricing trends. In addition, the Tribunal examined the evidence relating to specific allegations of lost sales, price suppression and price erosion at certain accounts.

59. Manufacturer's Exhibit A-4 (protected) at 10, Administrative Record, Vol. 14; and Manufacturer's Exhibits A-3 at 10 and A-3A, Administrative Record, Vol. 13.

60. Manufacturer's Exhibit A-28 (protected) at 4, Administrative Record, Vol. 14; and Tribunal Exhibit NQ-96-003-I-2C (protected - single copy), Administrative Record, Vol. 12A at 0.23.8 - 0.23.20.

61. Refers to the manufacturing and distribution arms of Jim Walter. *Transcript of In Camera Hearing*, Vol. 3, March 12, 1997, at 301.

The Tribunal notes that the evidence clearly indicates that the overwhelming majority of polyiso insulation board sold in the Canadian market is sold on a commodity-type basis. This was confirmed by the written and oral testimony of witnesses for the domestic industry and witnesses for the importers and exporters.⁶² Respondents to the Tribunal's questionnaires also described the commodity nature of the product.

Indeed, the Tribunal finds little to indicate any strong product differentiation between the high-volume core products sold by Exeltherm and those sold by suppliers of US products in the Canadian market. These core products can generally be described as polyiso insulation board ranging from 0.5 to 4.0 in. in nominal thickness, with typical facers such as felt, fibreglass, foil kraft, foil kraft foil or equivalent facers. These products comprise a very significant portion of total Canadian demand for polyiso insulation board. The Tribunal recognizes that US producers have tried to differentiate some of their products which possess certain specialty features provided, for the most part, by the facer used on the insulation board. However, according to the evidence, these products constitute only a small portion of total US imports and an even smaller portion of the Canadian market.⁶³ Moreover, the evidence indicates that Exeltherm's products can be and have been substituted for many of these US products. This suggests that, as a number of witnesses stated, from a purchaser's or an end user's perspective, any technical or physical differences which may exist can be compensated for and, therefore, are not critical to the purchasing decision.⁶⁴ Moreover, the foam component of the insulation board has substantially the same physical properties. In any event, the presence of small quantities of specialty products in the Canadian market does not alter the overall picture for the Tribunal, which is that of a commodity market.

In a commodity market, one of the principal factors governing buying and selling decisions is price. According to the evidence, the polyiso insulation board market strongly exhibits this typical characteristic of a commodity market. In this connection, the Tribunal notes that, in the survey conducted by Tribunal staff regarding market characteristics, about half of all purchasers that responded indicated price as the single most important factor in choosing a supplier, and about 90 percent identified price as one of the three most important factors.⁶⁵ This evidence was confirmed by numerous witnesses, including a witness for Carlisle, a major Canadian distributor of membrane-based roofing systems,⁶⁶ a witness for Isox Maritime, a small Canadian producer of polyiso insulation board,⁶⁷ as well as several witnesses representing importers and US exporters,⁶⁸ all of whom attested to the importance of price in making or not making a sale.

The importance of price in the polyiso insulation board market is reinforced by the highly fluid nature of the relationships between buyers and suppliers. As discussed earlier in these reasons, most sales of polyiso insulation board are done on a one-time project-specific basis, there exists little or no customer loyalty and

62. Manufacturer's Exhibits A-4 (protected) at 6, A-10 (protected) at 2 and A-12 (protected) at 2-3, Administrative Record, Vol. 14; and *Transcript of Public Hearing*, Vol. 3, March 12, 1997, at 516-17, 557, 603 and 653.

63. Manufacturer's Exhibits A-22 (protected) at 1-2 and A-24 (protected) at 2, Administrative Record, Vol. 14; and Tribunal Exhibit NQ-96-003-I-4G (protected - single copy), Vol. 12A at 87-88.

64. Manufacturer's Exhibits A-22 (protected) at 1 and A-26 (protected) at 4, Administrative Record, Vol. 14; and Tribunal Exhibits NQ-96-003-27.1-27.24 and NQ-96-003-28.1-28.24 (protected), Administrative Record, Vol. 5.3 at 26-225 and Vol. 6.3 at 1-79 respectively.

65. Tribunal Exhibits NQ-96-003-27.1-27.24, Administrative Record, Vol. 5.3 at 26-225.

66. Manufacturer's Exhibit A-12 (protected) at 3, Administrative Record, Vol. 14.

67. Manufacturer's Exhibit A-10 (protected) at 2, Administrative Record, Vol. 14.

68. *Transcript of Public Hearing*, Vol. 3, March 12, 1997, at 516, 604 and 653.

“price peddling” is common.⁶⁹ In addition, several major distributors carry both domestic and imported products and have a history of switching between suppliers.⁷⁰

In a commodity market, competitors have to match prices or be faced with potentially substantial losses in sales and market share. In this case, the evidence shows that both US import and domestic prices fell substantially over the period of inquiry.⁷¹ Exeltherm readily admits that, to maintain its market share, under the prevailing market conditions, it has had no choice but to drop its prices. Similarly, the evidence shows that US producers have chosen to defend their market share by tailoring their prices to prevailing Canadian competitive conditions. In this connection, the Tribunal notes, for example, the testimony of a witness for a major supplier of US product regarding the setting of “target” prices for Canada and the approval process for adjusting these prices for competitive situations.⁷²

Indeed, the evidence also shows that a certain US producer, which was an important supplier to the Canadian market over the period of inquiry, undertook a strategy of aggressive pricing by accepting lower margins on its Canadian sales than on its US sales in order to meet what it considered to be intense competition in the Canadian marketplace.⁷³ The evidence also shows that another important US producer was willing to accept low margins in the hope that the market would improve and that the low margins would ultimately eliminate some competitors from the market.⁷⁴ This evidence amply illustrates to the Tribunal the ferocity of the price competition which existed in the Canadian polyiso insulation board market over the period of inquiry.

This observation is further supported by specific allegations describing lost sales, price erosion and price suppression which Exeltherm provided to illustrate the injury that it claims to have suffered from dumped imports.⁷⁵ A number of these allegations were investigated by Tribunal staff through purchaser’s and importer’s questionnaires.⁷⁶ This investigation clearly reveals that Exeltherm has lost business to lower-priced US products. It also reveals that Exeltherm has won business after lowering its prices from initial bids because of lower competing bids from suppliers of US product. Indeed, in almost all cases, the contract or sale was awarded to the lowest-priced bidder, underscoring the importance of price in choosing suppliers.⁷⁷

69. *Protected Specific Allegations and Pricing Report*, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 29-30; and Manufacturer’s Exhibit A-4 (protected) at 6, Administrative Record, Vol. 14.

70. *Protected Specific Allegations and Pricing Report*, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 50-51.

71. *Ibid.* at 52-58.

72. *Transcript of In Camera Hearing*, Vol. 3, March 12, 1997, at 281-83 and 290-92.

73. Protected responses to interrogatories. The exhibit, volume and page numbers are withheld to preserve the anonymity of the parties. Discussion of this evidence is also found in *Transcript of In Camera Hearing*, Vol. 3, March 12, 1997, at 312-16.

74. *Ibid.* at 316.

75. Tribunal Exhibit NQ-96-003-10.1 (protected), Administrative Record, Vol. 4 at 29-88.

76. *Protected Specific Allegations and Pricing Report*, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 16-61.

77. *Ibid.*

The Tribunal notes that a number of the specific injury allegations made by Exeltherm were challenged by opposing counsel through cross-examination and/or the submission of evidence.⁷⁸ In some instances, opposing counsel were able to show that Exeltherm's allegations were inaccurate or incorrect in some respect. After taking this into account, the Tribunal finds, nonetheless, that the evidence pertaining to these allegations, on the whole, substantiates that there is price competition between the domestic product and imported product at specific projects and at specific accounts and that this competition is exerting downward pressure on prices in the polyiso insulation board market.

The Tribunal also conducted a price study of bellwether products.⁷⁹ This study indicates that US product supplied through Schuller, in most cases and for most times over the period of inquiry, was sold not only below Exeltherm's prices but at the lowest average prices for any supplier to the Canadian market that responded to the Tribunal's requests for information.⁸⁰

Finally, the foregoing evidence on the aggressiveness of US pricing is corroborated by the testimony of several witnesses. For example, the witness for Carlisle, which, for much of the period of inquiry, sourced its polyiso insulation board requirements from US imports, described Schuller as the most aggressive bidder in Canada over the 1993-95 period.⁸¹ Another witness, who appeared at the hearing on behalf of a major US producer, also described Schuller as the price leader in Canada in 1995, with Exeltherm and Atlas jockeying for price leadership in 1996.⁸²

The Tribunal notes that the evidence shows that Exeltherm tried a number of times over the period of inquiry to raise prices through price increase announcements to recoup some of the increases in input costs, but was largely unsuccessful.⁸³ Having said that, the evidence presented leaves no doubt in the mind of the Tribunal that Exeltherm was competing aggressively with major US suppliers and lowering its prices where necessary in an attempt to make sales. It would also seem from the evidence that, at various times and in various situations, either Exeltherm or one or more of the many US suppliers to the Canadian market were taking turns offering the lowest prices to purchasers and users.⁸⁴

However, this does not resolve the question of who is acting and who is reacting; who is leading the market on pricing and who is following the market. Such questions are extremely difficult to answer, especially in a commodity-type market such as this one, where there are literally thousands of yearly transactions that are made, in large part, on the basis of verbal quotations and agreements. However, even if Exeltherm was pricing aggressively, the Tribunal is of the view that it was entitled to follow that strategy to defend its market share and, beyond that, to try to increase its sales. Suppliers of US product are, of course,

78. There were several allegations made by Exeltherm that did not involve any of the participants at the hearing, and these allegations stand uncontradicted.

79. *Protected Specific Allegations and Pricing Report*, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 52-57.

80. This study was hampered by the fact that certain major importers of US product, such as the Roofmart chain, which sourced their supplies from a number of different US producers over the period of inquiry, were sent Tribunal questionnaires, but decided not to complete them or otherwise cooperate with the Tribunal.

81. Manufacturer's Exhibit A-12 (protected) at 3-4, Administrative Record, Vol. 14.

82. The exhibit, volume and page numbers are withheld to preserve the anonymity of the witness.

83. Manufacturer's Exhibits A-6 (protected) at 6 and A-8 (protected) at 6, Administrative Record, Vol. 14.

84. For example, information filed by Groupe Bédard Ltée points to aggressive pricing by Exeltherm. Tribunal Exhibit NQ-96-003-19.7 (protected), Administrative Record, Vol. 6 at 114 and 115.

entitled to do the same, but only up to a point - the point at which they “cross the line” by selling at dumped prices in Canada in a way which causes injury to domestic production.⁸⁵ In the Tribunal’s opinion, the preponderance of evidence presented in this case supports the conclusion that suppliers of US product have “crossed the line” and, through their price strategies, including price undercutting, have caused injury to domestic production.

The Tribunal notes that, absent the dumping, Exeltherm claims that it would have been able to increase its market share to levels approaching those levels projected in its business plans. Production and sales volumes would have been correspondingly much higher, especially in light of the explosive growth in market demand for polyiso insulation board which transpired, but which was not envisaged in its business plans. Increased sales would also have enabled the company to increase plant loading, thereby contributing to increased manufacturing efficiencies, lower unit costs and enhanced competitiveness.⁸⁶

In addition, absent the dumped imports, Exeltherm submits that it would have been able to achieve higher prices for its products and, hence, better operating margins. According to Exeltherm’s estimates, it has lost several millions of dollars in sales revenues and profits as a direct result of the effects of dumping on its polyiso insulation board business and the sale of related products.⁸⁷ The Tribunal notes that the precise effects of dumping, in this case, as in most cases, are difficult to establish on a quantitative basis. However, the Tribunal is satisfied from the evidence that the dumping of US imports of polyiso insulation board has adversely affected Exeltherm’s production, capacity utilization, sales volumes and values, gross margins and overall profitability, to a degree that is material in magnitude.

The Tribunal notes that a number of parties that participated in the inquiry focused their arguments almost exclusively on the wall segment of the polyiso insulation board market. As has been noted, the Tribunal considers the roof and wall segments of the market to constitute a single class of goods, with the wall segment comprising a small proportion of the total polyiso insulation board market. However, given the arguments made, the Tribunal is inclined to make some additional observations regarding this particular market segment.

More particularly, the evidence shows that, although Exeltherm’s wall business is much smaller than its roof business, it still comprises an important part of its product offerings.⁸⁸ The witnesses for Exeltherm described the company’s ongoing efforts to expand this segment of its business.⁸⁹ Despite these efforts, sales have fallen well short of expectations.⁹⁰ Indeed, the evidence shows that, as a percentage of total sales of polyiso insulation board, Exeltherm’s wall sales are disproportionately small compared to those of most US producers.⁹¹

Exeltherm also submitted evidence to show that it was unable to sell or to increase sales volumes to many building supply distributor accounts of polyiso wall insulation products.⁹² An examination of this

85. This same principle was enunciated in *Commercial Grade Sodium Carbonate*, *supra* note 6.

86. Manufacturer’s Exhibit A-2 (protected) at 7, Administrative Record, Vol. 14.

87. Manufacturer’s Exhibit A-4 (protected) at 7-9, Administrative Record, Vol. 14.

88. Tribunal Exhibit NQ-96-003-10.1D (protected), Administrative Record, Vol. 4A at 180.

89. Manufacturer’s Exhibit A-22 (protected) at 3, Administrative Record, Vol. 14.

90. *Transcript of Public Hearing*, Vol. 1, March 10, 1997, at 175.

91. *Ibid.*

92. *Protected Specific Allegations and Pricing Report*, Tribunal Exhibit NQ-96-003-41 (protected), Administrative Record, Vol. 2A at 26-27.

evidence reveals that these accounts were, indeed, sourcing US polyiso insulation board in lieu of domestic product.⁹³ As noted earlier, the Tribunal is satisfied that Exeltherm's product is substitutable for US insulation board and that any physical or technical differences in product offerings are generally not recognized by customers.

The Tribunal acknowledges that there is more competition from non-subject product alternatives in the wall segment, such as polystyrene, mineral wool and fibreglass, than there is in the roof segment of the market. It follows that prices for wall insulation board may be affected by these alternatives, as well as by the dumped subject goods. However, once polyiso insulation board is specified on a wall project by the architect or the consultant, the domestic and imported products compete directly against each other.⁹⁴ Likewise, where polyiso insulation board is being purchased by building suppliers to be stocked along with other insulation products, polyiso insulation board offered from domestic supply only competes against polyiso insulation board offered by suppliers of imported US product.⁹⁵

Given the interchangeability of the domestic and imported polyiso insulation board and the importance of price, the Tribunal considers that Exeltherm has suffered adverse effects from dumping in the wall segment of its business and that this has contributed to the material injury that it has experienced on its total polyiso insulation board business.

Factors Other Than Dumping

In making their cases, counsel for the US exporters argued that any injury suffered by Exeltherm was caused by factors other than dumping. The other factors raised included: (1) Exeltherm's decision to switch from selling through distributors in Ontario and Quebec to selling directly to roofing contractors; (2) its inability to develop export markets; (3) its limited product range; (4) the relatively high cost of its raw materials; (5) its high debt load; and (6) the fact that it "shot itself in the foot" by underpricing the market, thereby "leaving money on the table." The Tribunal has considered these other factors and finds that they do not explain the injury suffered by Exeltherm, to any meaningful degree, for the reasons stated briefly below.

As far as the decision to sell directly to roofing contractors is concerned, this may well have angered or frustrated certain customers that had previously been Exeltherm's distributors, but that now found themselves in competition with Exeltherm. However, Exeltherm has stated that it had little choice but to sell directly to roofers because dumped US imports left no room for both manufacturer and distributor markups. In any event, the evidence shows that the practice of direct selling is not new. Prior to Exeltherm, Domtar had always sold directly to roofing contractors in Ontario.⁹⁶ Moreover, other suppliers, such as Schuller Canada, have sold directly to contractors without the use of distributors. Finally, the Tribunal notes that Exeltherm has been able to continue to sell to many distributors despite simultaneously selling to roofers.⁹⁷

As to Exeltherm's lack of export sales to the United States, the Tribunal is satisfied from the evidence that this result should be attributed not to any mistakes or disinterest on the part of Exeltherm, but

93. *Ibid.* at 50-51.

94. *Transcript of Public Hearing*, Vol. 1, March 10, 1997, at 334-35, and Vol. 3, March 12, 1997, at 616 and 617.

95. *Transcript of Public Hearing*, Vol. 1, March 10, 1997, at 336, and Vol. 3, March 12, 1997, at 617 and 618.

96. Manufacturer's Exhibit A-22 (protected) at 4, Administrative Record, Vol. 14.

97. *Ibid.*

rather to the difficulties faced by Exeltherm since 1994 because of dumped US imports in its home market.⁹⁸ Regarding Exeltherm's product range, the evidence indicates that Exeltherm has supplied or is able to produce the vast majority of products demanded by Canadian customers.⁹⁹ As for Exeltherm's raw material costs, although these costs may be somewhat higher than those of one of its US competitors, there is little to suggest that these costs are unreasonably high or uncompetitive with US producers' costs generally.¹⁰⁰

Regarding debt load, the Tribunal has looked at the ratio of Exeltherm's total debt to total company sales¹⁰¹ and does not consider the debt load to be unusual or the associated carrying costs to be excessive.

Finally, as to the argument about Exeltherm "leaving money on the table," there is nothing to indicate that Exeltherm's market intelligence was any better or worse than anyone else's. Exeltherm, like all suppliers, bid on the basis of the best information available to it, having regard to the intense competitive conditions which existed. If Exeltherm sometimes came in at prices that were lower than necessary to win business and, thereby, "left money on the table," this must, in large part, be attributed to the price instability and uncertainty caused by dumping and not to other factors, in the Tribunal's opinion.

Therefore, the Tribunal concludes that factors other than dumping had a negligible impact on the injury suffered by Exeltherm.

Threat of Injury

As noted earlier, the Tribunal is of the view that it need not address threat of injury, where, as in this case, injury has been found. Nevertheless, in view of the arguments made and the evidence submitted in this case on threat of injury, the Tribunal feels that it may be helpful to provide some brief comments in this regard.

The Tribunal notes that important importers and exporters of the subject goods did not cooperate with Revenue Canada or with the Tribunal.¹⁰² Some of these exporters, which have large margins of dumping against them, appear to have withdrawn from the market in conjunction with the initiation of the dumping investigation. The Tribunal is of the view that, absent an injury finding, such exporters will return and compete for market share as aggressively in the future as they have done in the past.

Furthermore, the evidence available shows that US producers are not operating at full capacity utilization rates;¹⁰³ that new US capacity has recently come on stream or is under construction;¹⁰⁴ and that existing US facilities, like Canadian facilities, can be geared up relatively quickly to higher production levels,

98. Manufacturer's Exhibits A-2 (protected) at 8 and A-4 at 10, Administrative Record, Vol. 14.

99. Manufacturer's Exhibit A-22 (protected) at 3, Administrative Record, Vol. 14.

100. Manufacturer's Exhibits A-22 (protected) at 6 and A-28 (protected) at 6, Administrative Record, Vol. 14.

101. Manufacturer's Exhibit A-28 (protected) at 6, Administrative Record, Vol. 14.

102. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, March 7, 1997, Tribunal Exhibit NQ-96-003-4, Administrative Record, Vol. 1 at 19; and *Protected Pre-Hearing Staff Report*, February 5, 1997, Tribunal Exhibit NQ-96-003-7 (protected), Administrative Record, Vol. 2 at 46.

103. Tribunal Exhibits NQ-96-003-31.1-31.5 (protected), Administrative Record, Vol. 6.4 at 1-30.

104. Manufacturer's Exhibit A-4 (protected) at 11-12, Administrative Record, Vol. 14.

given the relatively low fixed costs associated with the production of polyiso insulation board.¹⁰⁵ Moreover, considerable US capacity hangs ominously over Exeltherm's principal Canadian market zones of Ontario and Quebec since it is clustered near the Canadian border, especially in the northeastern United States, within easy shipping distance of many Canadian customers.¹⁰⁶

REQUESTS FOR EXCLUSION

Counsel for a number of the parties requested various exclusions in the event that the Tribunal made an injury finding. As mentioned above, counsel for Salton and BUILDmat's representative requested an exclusion for polyiso insulation board in excess of 16 ft. in a single length for use in the construction of wood drying kilns used in the lumber industry. With certain qualifications, including limits on who may import and use the insulation, counsel for Exeltherm consented to that exclusion. As the Tribunal wants to avoid creating competitive advantages for particular manufacturers of wood drying kilns, it is of the view that the exclusion consented to by Exeltherm should be broadened to apply to imports of these goods by or on behalf of all manufacturers of wood drying kilns, for use in the manufacture of wood drying kilns for the lumber industry.

Counsel for Schuller and NRG and for Jim Walter and Celotex requested an exclusion for polyiso insulation board imported into the province of British Columbia. Although Exeltherm was opposed to this exclusion, the Tribunal is satisfied that an exclusion for the subject goods imported into British Columbia for use in that province is warranted. The evidence shows that very few sales of domestic product have occurred in British Columbia.¹⁰⁷ The evidence also shows that transportation costs from points in Ontario to British Columbia, relative to the value of the goods shipped, are very high.¹⁰⁸ In light of this, it is apparent, as acknowledged by a witness for Exeltherm, that British Columbia is not a natural market for the company.¹⁰⁹ On the basis of the evidence, the Tribunal is satisfied that, even with increased plant efficiencies and absent dumping, Exeltherm is not in a position to competitively serve this market from its single plant in Cornwall.

The Tribunal also received requests for exclusion for numerous polyiso insulation products, including wall insulation, tapered board, composite board and various "specialty products."¹¹⁰ However, the Tribunal is not satisfied that an exclusion for such products is warranted. As noted in these reasons, although there may be some technical differences between certain domestic and imported products primarily associated with the facer, these differences can be compensated for and are often not recognized by purchasers and end users. In this connection, the Tribunal notes that, in the vast majority of the responses to the Tribunal's importer's and purchaser's questionnaires, there is no indication of any inflexible demand for

105. Exporter's Exhibit D-4 (protected), paragraph 10, Administrative Record, Vol. 16A; and *Transcript of In Camera Hearing*, Vol. 3, March 12, 1997, at 360-61.

106. Tribunal Exhibit NQ-96-003-I-2C (protected - single copy), Administrative Record, Vol. 12A at 0.23.27.

107. *Protected Pre-Hearing Staff Report*, revised February 20, 1997, Tribunal Exhibit NQ-96-003-7C (protected), Administrative Record, Vol. 2 at 111.

108. *Transcript of Public Hearing*, Vol. 1, March 10, 1997, at 329.

109. *Transcript of In Camera Hearing*, Vol. 2, March 11, 1997, at 206.

110. In addition to the products specified by counsel for Jim Walter and Celotex, counsel for Schuller and NRG requested an exclusion for "iso-vent" insulation, certain composite insulation board, tapered insulation board, polyiso wall insulation with a foil facer and all polyiso insulation products manufactured by Schuller and NRG. Siplast Canada Inc. requested an exclusion for "Stucco - Shield II" and "Atlas AC III," manufactured by Atlas.

specific US products. This lends support to Exeltherm's position that products manufactured by Exeltherm are substitutable for the products for which exclusions are sought.¹¹¹

Further, Exeltherm has stated that, where customer demand warrants, it can manufacture polyiso insulation board with any facer available in the market¹¹² in lengths up to 40 ft. without major modifications to facilities.¹¹³ The company has also stated that wall insulation is an important part of its business which it hopes to increase. Finally, the evidence shows that Exeltherm has manufactured certain composite board and has recently begun to manufacture tapered board, adding to existing tapered board production by another Canadian producer.

CONCLUSION

For the foregoing reasons, in accordance with subsection 43(1) of SIMA, the Tribunal finds that the dumping in Canada of faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States has caused material injury to the domestic industry, excluding:

- (i) the subject insulation board imported into British Columbia for use or consumption in British Columbia; and
- (ii) the subject insulation board in excess of 16 ft. in a single length imported by or on behalf of manufacturers of wood drying kilns for use in the manufacture of wood drying kilns for the lumber industry.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Raynald Guay
Raynald Guay
Member

111. *Transcript of Public Hearing*, Vol. 1, March 10, 1997, at 307-8.

112. Manufacturer's Exhibit A-22 (protected) at 1, Administrative Record, Vol. 14.

113. *Transcript of Public Hearing*, Vol. 1, March 10, 1997, at 151.