



Ottawa, Friday, June 13, 1997

Public Interest Investigation No.: PB-97-001

TRIBUNAL'S CONSIDERATION OF THE PUBLIC INTEREST QUESTION

IMPOSITION OF ANTI-DUMPING DUTIES ON IMPORTS OF FACED RIGID CELLULAR POLYURETHANE-MODIFIED POLYISOCYANURATE THERMAL INSULATION BOARD ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA

BACKGROUND

On April 11, 1997, pursuant to subsection 43(1) of the *Special Import Measures Act*¹ (SIMA), the Canadian International Trade Tribunal (the Tribunal) found that the dumping in Canada of faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board (polyiso insulation board) originating in or exported from the United States of America had 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.

During the inquiry, the Ontario Industrial Roofing Contractors' Association, Arrow Construction Products Limited (Arrow), Lexsuco Canada Limited and Lexcan Industrial Supply Limited (Lexsuco), Siplast Canada Inc. (Siplast), Prospex Roofing Products Inc. and Steels Industrial Products Ltd. requested an opportunity to make public interest submissions pursuant to subsection 45(2) of SIMA. By letter dated March 27, 1997, the Tribunal advised counsel and interested persons that, in the event of an injury finding, it would consider the question of public interest and enclosed for information purposes its "Guidelines for Public Interest Investigations" dated February 1995.

On April 15, 1997, the Tribunal sent a notice to counsel and interested persons outlining the schedule for submissions regarding public interest representations. Interested persons wishing to make representations in support of a public interest investigation were requested to file their representations on or before May 9, 1997. Interested persons wishing to respond to such representations were requested to file their responses on or before May 23, 1997. The Tribunal advised that, following consideration of the representations, it would take a view as to whether the representations demonstrated that there was a public interest concern worthy of further investigation.

Arrow, BUILDmat Distribution Ltd. (BUILDmat), Lexsuco, Siplast, SPAR-Marathon Roofing Supplies, a division of Spar Roofing & Metal Supplies Limited (SPAR), Tremco Roofing Division (Tremco) and Schuller International, Inc. (Schuller) filed submissions in support of a public interest investigation. Exeltherm Inc. (Exeltherm) filed a submission which opposed a public interest investigation.

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.

SUMMARY OF SUBMISSIONS

Arrow opposed the imposition of anti-dumping duties on the grounds that it runs counter to the intent of current free trade agreements and that prices have increased significantly from the single remaining domestic source of supply.

BUILDmat submitted that the imposition of anti-dumping duties would create a substantial net economic loss. This loss would result from limiting distributors' choice of preferred products and suppliers and a loss of access to competitively priced polyiso insulation board with subsequent declines in sales, income and employment. Reduced competition would also negatively impact construction contractors that would fail to obtain truly competitive pricing.

Lexsuco argued that anti-dumping duties, if left at their current levels, would do far more damage to the overall Canadian economy than would the benefits of protection from dumping. It was submitted that the costs to the Canadian economy would stem from the effective elimination of competition in the market for polyiso insulation board, resulting in reduced employment, curtailed growth and investment and higher prices for users of insulation. Additional costs to the overall economy would be a consequence of lost sales of domestically manufactured related roofing products, which are generally sold with polyiso insulation board as part of a roofing package. Lexsuco thus submitted that anti-dumping duties be reduced to the level of the lowest margin found by the Department of National Revenue (Revenue Canada) for any exporter.

Siplast reiterated other interested persons' claims that the imposition of the current rate of anti-dumping duties would result in higher prices for polyiso insulation board, create an effective monopoly and cause job losses for traditional competitors of Exeltherm. Siplast also argued that the imposition of anti-dumping duties conferred an advantage to Exeltherm's associated suppliers of complementary roofing system components.

SPAR's submissions on the public interest also claimed that the imposition of anti-dumping duties would create a monopoly on industrial roofing sales and higher prices to consumers. Given that Exeltherm will continue to offer the lowest prices for polyiso insulation board in Canada, it will also capture sales of related roofing products. The loss of sales of polyiso insulation board and related accessories by distributors will result in reduced employment, downsizing or closing of businesses, or curtailed growth. SPAR therefore requested an elimination of anti-dumping duties on polyiso insulation board.

Tremco submitted that the imposition of anti-dumping duties would create a virtual monopoly for its competitor, Exeltherm, with consumers paying more for their roofing requirements than necessary. Furthermore, purchasing polyiso insulation board from Exeltherm may jeopardize Tremco's sunk up-front costs incurred in identifying, specifying and qualifying for a roofing contract, leading to lost opportunities and profits by revealing project specific details.

Counsel for Schuller submitted that, although Schuller had obtained normal values that would allow it to compete in the Canadian market, it had concerns with respect to the magnitude of the anti-dumping duties to be applied to all goods for which Revenue Canada has not determined specific normal values. It has been Schuller's experience that, as a result of errors and/or omissions, goods with normal values could attract anti-dumping duties which, although potentially refunded, impose a financial burden on small businesses and taxpayers.

In reply to the representations of the other parties, counsel for Exeltherm took the position that there was no evidence of a sufficiently compelling public interest concern to warrant an investigation, as the issues raised by the other parties are the natural and intended consequences of the imposition of anti-dumping duties.

Counsel for Exeltherm submitted that there are a number of factors in the Canadian market which will limit Exeltherm's ability to raise prices substantially: current or potential competition from the three other Canadian manufacturers; significant competition from US manufacturers of polyiso insulation board; incentive for US manufacturers to start up production in Canada; and existing alternatives to polyiso insulation board in roof applications becoming more attractive as the price of polyiso insulation board rises.

With regard to the allegation that the imposition of anti-dumping duties will prevent distributors from obtaining polyiso insulation board at price levels which will permit them to compete with Exeltherm, counsel for Exeltherm responded that distributors do not have a right to compete against Exeltherm using dumped goods and that distributors will continue to have access to ample supplies of polyiso insulation board from some US manufacturers and from the four Canadian manufacturers.

In reply to the submissions that the impact of the anti-dumping duties on employment by distributors of the subject goods outweighs any resulting advantage to Exeltherm, counsel for Exeltherm submitted that Exeltherm has increased its employment, and increased employment may occur at all three of the other Canadian manufacturers.

In response to the allegations that the anti-dumping duties will permit Exeltherm to become a monopoly supplier of polyiso insulation board in Canada, counsel for Exeltherm argued that there are three other Canadian manufacturers and that there are US manufacturers now competing with Exeltherm. Also, aggressive pricing pressure such as "price peddling" by contractors is commonplace in the market for polyiso insulation board, keeping prices low and competitive.

Counsel for Exeltherm noted that the Tribunal did not receive any submissions from building contractors, from a consumer interest group, such as associations representing residential or commercial building owners, or from large retailers/buying groups representing the users of polyiso insulation board for wall applications. Counsel noted that six of the seven submissions made to the Tribunal in support of a public interest investigation came from relatively small Canadian distributors of the subject goods, with the seventh submission coming from Schuller, a U.S. manufacturer of the subject goods.

PUBLIC INTEREST CONSIDERATIONS

Subsection 45(1) of SIMA provides that where, after making a finding of material injury, the Tribunal is of the opinion that the imposition of anti-dumping duties, in whole or in part, would not or might not be in the public interest, it shall report its opinion to the Minister of Finance with a statement of the facts and reasons that caused it to be of that opinion.

The Tribunal notes that the primary purpose of SIMA is to protect Canadian producers from injury caused by imports of dumped or subsidized goods. In order for the Tribunal to proceed to a public interest investigation after making a finding of material injury, the Tribunal must be satisfied that there exist compelling or special circumstances that necessitate a consideration of the public interest.

In considering the public interest question, the Tribunal has reviewed carefully the representations and submissions summarized above, as well as the evidence and testimony adduced during the inquiry under section 42 of SIMA. The Tribunal has also reviewed the domestic market for polyiso insulation board.

Polyiso insulation board is used in both new and retrofit wall and roofing applications. For commercial applications, there are 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. For residential applications, the domestic and US producers sell virtually all of their products through building supply distributors located across Canada.

Evidence before the Tribunal indicates that the market for polyiso insulation board strongly exhibits the characteristics of a commodity market, with price being one of the principal factors governing purchasing decisions. This market is characterized by purchasers readily switching between suppliers, often on the basis of the latest and lowest price quotation.

Delivery costs can be an important element of the purchase price of polyiso insulation board because of its relatively light but bulky nature. Shipments beyond 600 to 700 miles from the producing plant generate freight costs which increasingly affect a manufacturer’s ability to compete against a supplier that is located closer to the relevant point of sale.

Based on the submissions received, the Tribunal’s view is that the most relevant arguments for a public interest investigation relate to the questions of whether the application of anti-dumping duties would significantly reduce the number of suppliers of polyiso insulation board, curtail effective price competition in the domestic market for polyiso insulation board and lead to higher prices to insulation consumers.

In the Tribunal’s view, there will continue to be numerous suppliers of polyiso insulation board from both domestic and US locations even with the anti-dumping duties in place. In Canada, in addition to Exeltherm, the dominant manufacturer, there are three other manufacturers of polyiso insulation board. While the three manufacturers are presently small suppliers, under the protection of an injury finding there will be scope for them to increase production and sales. Evidence before the Tribunal indicates that existing Canadian facilities are operating well below full capacity and can be geared up relatively quickly to higher production levels, given the relatively low fixed costs associated with the production of polyiso insulation board.

The supply of polyiso insulation board is also likely to continue from US manufacturers that were found to have a relatively low weighted average margin of dumping. In particular, Firestone Building Products (Firestone) and NRG Barriers Inc. (NRG) each have 3 production locations which have a weighted average margin of dumping of less than 7 percent. Firestone was a large supplier to Canada during the period reviewed. NRG was a large supplier and is likely to be an even larger supplier in the post-finding period as a subsidiary of Schuller. These production locations are spread across the northern part of the United States, which would enable them to service important Canadian markets at competitive prices with or without the injury finding in place. As in Canada, the US producers are generally operating at below full capacity of their plants and production of polyiso insulation board can be increased quickly, given its relatively low fixed production costs.

In addition to shipments of polyiso insulation board from the above Canadian and US firms, there are some US manufacturers of the subject goods that did not cooperate with Revenue Canada in providing the required data for the period of investigation. These manufacturers were assigned the highest weighted average margin of dumping, as prescribed by the legislation. These firms, which include A.B.C. Supply Co. Inc. and Atlas Roofing Corporation, may request normal values based on actual sales and find that it would be profitable to export polyiso insulation board to Canada. As well, companies that have not shipped to the Canadian market in the past few years, but that did ship during an earlier period, may reconsider the possibility of exporting to Canada.

In the Tribunal's view, prices in the domestic market for polyiso insulation board are likely to rise as a result of the Tribunal's injury finding. Indeed, this is a natural consequence of an injury finding. However, two factors will tend to limit the amount of any price increase which may occur. First, price increases for polyiso insulation board may lead to increased supply or to new entries into the domestic market, given the number and location of current and potential suppliers, together with the scope to expand production relatively quickly. Second, price increases for polyiso insulation board will make product alternatives more competitive in the market. There is already competition from non-subject product alternatives in the wall segment, such as polystyrene, mineral wool and fibreglass. For roof applications, as the price of polyiso insulation board rises, existing alternatives will become more price competitive. The Tribunal has no doubt that these factors will limit the level of any price increases by the manufacturers and importers of polyiso insulation board.

The Tribunal notes that the imposition of anti-dumping duties is intended to "level the playing field" for the domestic industry by eliminating the unfair advantages gained by those selling dumped goods in the Canadian market. Without the injury finding and the imposition of anti-dumping duties, Exeltherm would almost surely have been forced to reduce its workforce. With the anti-dumping duties in place, Exeltherm would normally be expected to benefit in terms of increased sales and employment. The Tribunal would also expect that the commercial interests of those that had previously sold dumped goods may be affected through, for example, reductions in their sales and employment and, accordingly, they may be required to make adjustments to the new market conditions. The fact that competing commercial interests are so affected does not, in and of itself, raise a compelling public interest consideration, in the Tribunal's estimation. For such considerations to be present, the Tribunal must see clear and compelling evidence of effects or potential effects that extend beyond narrow commercial interests into the broader public domain. For the reasons stated above, the Tribunal does not consider that such evidence has been presented in this case and notes further, in this regard, the absence of submissions from any major downstream interests.

In summary, the Tribunal finds it reasonable to believe that the application of anti-dumping duties will not curtail effective price competition in the domestic market for polyiso insulation board. There are three domestic manufacturers in addition to Exeltherm. Some US producers have a relatively low weighted average margin of dumping and are located relatively close to major markets in Canada. Some US producers may decide to re-enter the Canadian market after obtaining revised normal values. In both countries, the supply of polyiso insulation board can be increased relatively quickly in response to higher prices. The commodity nature of the market for polyiso insulation board means that purchaser decisions are very price sensitive. Effective price competition for polyiso insulation board, therefore, should continue in Canada between domestic and US producers, albeit at a higher price level.

For the above reasons, the Tribunal is not convinced that a compelling public interest exists which would warrant further investigation. Accordingly, a report will not be issued to the Minister of Finance.

Charles A. Gracey
Charles A. Gracey
Presiding Member

Anthony T. Eyton
Anthony T. Eyton
Member

Raynald Guay
Raynald Guay
Member