



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2009-004

Polyiso Insulation Board

*Determination issued
Monday, December 7, 2009*

*Reasons issued
Tuesday, December 22, 2009*

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

**POLYISO INSULATION BOARD ORIGINATING IN OR EXPORTED FROM
THE UNITED STATES OF AMERICA**

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping of faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States of America has caused injury or retardation or is threatening to cause injury.

This preliminary injury inquiry follows the notification, on October 8, 2009, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping of the above-mentioned goods has caused injury.

Stephen A. Leach

Stephen A. Leach
Presiding Member

Diane Vincent

Diane Vincent
Member

Pasquale Michaele Saroli

Pasquale Michaele Saroli
Member

Dominique Laporte

Dominique Laporte
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The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On October 8, 2009, following a complaint filed on August 19, 2009, by IKO Sales Ltd. (IKO), the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping of faced rigid cellular polyurethane-modified polyisocyanurate (polyiso) thermal insulation board originating in or exported from the United States of America (the subject goods).
2. On October 9, 2009, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. The complaint is supported by one other domestic producer, Johns Manville Canada Inc. (Johns Manville). The only other known Canadian producer, Atlas Roofing Corporation (Atlas), has not indicated its position with respect to the complaint.
4. The complaint is opposed by Firestone Building Products Company (Firestone), a manufacturer of commercial roofing products headquartered in Indianapolis, Indiana.
5. On October 21, 2009, after reviewing the information on the record, which generally covered the period from January 1, 2006, to December 31, 2008, the Tribunal requested additional information to include the interim periods from January 1 to August 31, 2008, and from January 1 to August 31, 2009, (interim 2008 and interim 2009 respectively) from IKO, Johns Manville and Atlas.¹ Each company provided the requested information. Consequently, for the purposes of making its determination of whether there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury or retardation, or is threatening to cause injury, the Tribunal considered the period from January 1, 2006, to August 31, 2009, as the period of inquiry (POI) for the purpose of its preliminary injury inquiry.
6. On December 7, 2009, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,² the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury.

CBSA'S DECISION TO INITIATE AN INVESTIGATION

7. In accordance with subsection 31(1) of *SIMA*, the CBSA was of the opinion that there was evidence that the subject goods had been dumped, as well as evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury, or was threatening to cause injury, to the Canadian industry. Accordingly, the CBSA initiated an investigation on October 8, 2009.
8. In coming to its decision to initiate an investigation, the CBSA used information with respect to the volume of dumped goods for the period from September 1, 2008, to August 31, 2009.
9. The CBSA was of the view that the subject goods were dumped, with an estimated overall weighted average margin of dumping of 32.0 percent, when expressed as a percentage of the export price. The CBSA estimated that the subject goods accounted for 99.9 percent of polyiso insulation board imported

1. Administrative Record, Vol. 1A at 228-42.
2. R.S.C. 1985, c. S-15 [*SIMA*].

into Canada from September 1, 2008, to August 31, 2009. As a result, the CBSA was of the opinion that the estimated volume of dumped goods was not negligible and that the estimated overall weighted average margin of dumping was not insignificant.³

SUBMISSIONS ON INJURY

Domestic Producers in Support of the Complaint

10. IKO submitted that the dumping of the subject goods has caused and is threatening to cause injury to the domestic industry that produces like goods. In support of its allegations, IKO provided evidence that indicated that it has experienced lower sales volumes, lower prices, lower profits, lower employment and lower capacity utilization due to the dumping of the subject goods.

11. IKO submitted that imports of the subject goods increased over the period from 2006 to 2008 and, more importantly, accounted for an increasing share of a growing market. With respect to price depression, IKO indicated that a comparison of its list prices and net prices demonstrates that its average unit selling prices were generally depressed as a result of the dumped imports. IKO stated that, in the absence of dumping, the price of imports from the United States would have increased by an amount equal to the margin of dumping. IKO provided estimates of the percentage price increases that it could have realized and of the maximum shares of the market that it could have captured absent the dumping of the subject goods.

12. With respect to price suppression, IKO submitted that, due to the dumping of the subject goods, it was unable to increase its prices fast enough to cover increases in its unit costs of goods sold, which resulted in an inability to maintain its gross margins. IKO submitted that, but for the “under-pricing” of the subject goods, it would have been able to increase its sales volumes and/or its net prices. IKO, which does not sell directly to consumers, but rather through distributors, provided distributor-specific examples in support of its claims of price depression, price suppression and lost sales.

13. IKO provided information on its practical plant capacity and capacity utilization rates. It submitted that, notwithstanding some small improvements, its capacity utilization rate would have been higher and that it would have been able to hire more employees, absent the effects of the dumping.

14. Concerning the threat of injury, IKO submitted that, as long as dumped goods from the United States continue to enter the Canadian market, IKO will not be able to achieve its expected levels of sales volumes, prices, production, employment, capacity utilization and profitability.

15. Johns Manville indicated that it supported the complaint; however, it did not file a submission with the Tribunal.

Party Opposed to the Complaint

16. Firestone submitted that the complaint does not support a finding of material injury caused by the dumping of the subject goods because the evidence of injury is sparse or non-existent. Firestone stated that the complaint is simply an attempt by IKO to obtain a competitive advantage over its U.S. competitors and to increase its prices and, consequently, its profits.

3. Administrative Record, Vol. 1A at 255-56.

17. Firestone submitted that IKO has based its claim of price suppression solely on the price increases that it deems that it could have been able to achieve but for the dumped imports. Firestone also submitted that IKO provided only a few instances where it had to allegedly reduce its selling price in response to the dumped subject goods. Firestone argued that IKO's claim of price suppression is unfounded, since Firestone's prices in Canada are higher than those of IKO. Furthermore, Firestone stated that IKO's list prices and net prices do not provide evidence of price erosion and that, with respect to Western Canada, where IKO is the sole domestic producer, any price reduction would have been initiated by IKO, the price leader in that market.

ANALYSIS

Legislative Framework

18. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury.⁴ In making its determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.⁵

19. Subsection 2(1) of *SIMA* defines "injury" as "... material injury to a domestic industry". It also defines "domestic industry" as "... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, 'domestic industry' may be interpreted as meaning the rest of those domestic producers." Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before examining allegations of injury or threat of injury.

Like Goods and Classes of Goods

20. Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as follows:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

21. IKO submitted that the polyiso insulation board that it produces is like goods in relation to the subject goods because they have the same uses and physical characteristics. IKO pointed to, among other things, similar standard sizes (4 in. x 4 in. and 4 in. x 8 in.), compression strength (25 lbs./sq. in.) and insulation value (R-6/in.).⁶ IKO indicated that its polyiso insulation products⁷ are all produced on the same type of machinery as the subject goods. In IKO's view, all polyiso insulation board is distributed in the same manner and through the same channels of distribution.

4. Subsection 34(2) allows, as well, for a finding of a reasonable indication of "retardation", which according to subsection 2(1) of *SIMA* is defined as "... material retardation to the establishment of a domestic industry." Because a domestic industry for polyiso insulation board exists in Canada, "retardation" is not an issue in this preliminary injury inquiry.

5. S.O.R./84-927.

6. In its complaint, IKO provided product literature for the following U.S. manufacturing companies of polyiso insulation board: Johns Manville, Exhibit 5; Atlas, Exhibit 6; Firestone, Exhibit 7; Rmax, Exhibit 8; Hunter Panels, a division of Carlisle, Exhibit 9; Dow, Exhibit 10. Administrative Record, Vol. 1 at 125-214.

7. IKOTherm, Exhibit 2, IKOTherm III, Exhibit 3, Enerfoil, Exhibit 4, Administrative Record, Vol. 1 at 113-24.

22. Firestone submitted that the polyiso insulation board produced in Canada is not like goods in relation to the ISOGARD™ HD cover board that it produces in the United States. According to Firestone's submission, ISOGARD™ HD cover board is not insulation board and, therefore, is not properly included in the definition of the subject goods. Consequently, Firestone submitted that its product (and other cover board that it imported from the United States) should not form part of the Tribunal's analysis of whether the dumping of the subject goods has caused or is likely to cause injury to the like goods.

23. In support of its contention, Firestone argued that, in comparison to polyiso insulation board, ISOGARD™ HD cover board is made to different specifications and standards, has a different facer material that meets a mould-resistant standard, has a lower insulation value and attracts a significant price premium. According to Firestone's submission, the two products do not compete with each other.⁸

24. IKO submitted that Firestone has failed to provide sufficient evidence to the effect that ISOGARD™ HD cover board is not like goods in relation to the subject goods and that the proper manner in which to deal with Firestone's submission is in the context of product exclusion requests in the event that the inquiry pursuant to section 42 of *SIMA* results in a finding of injury.

25. In deciding the issues of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.⁹

26. After examining the evidence on file, the Tribunal is satisfied that polyiso insulation board produced by the domestic industry is substitutable for, competes directly with and has the same end use as the subject goods. The same type of machinery produces the various types of polyiso insulation board, which are all made of foam cores that have substantially the same chemical composition, physical properties and appearance. The distribution channels are also the same.

27. As to Firestone's contentions that ISOGARD™ HD cover board is not like goods and, therefore, is incorrectly captured by the definition of the subject goods and by the CBSA's investigation, the Tribunal is of the view that it is included in the definition of the subject goods and does not constitute a separate class of goods. The Tribunal agrees with IKO that any distinction between "insulation board" and "cover board" would be more appropriately dealt with in the context of a product exclusion request in the event that the inquiry pursuant to section 42 of *SIMA* resulted in a finding of injury.

28. Accordingly, the Tribunal finds that the subject goods constitute a single class of goods and that polyiso insulation board produced in Canada is like goods in relation to the subject goods.

29. Firestone also submitted that the Tribunal should conduct its injury analysis on a regional market basis, in accordance with subsection 2(1.1) of *SIMA*, pursuant to what Firestone argued are two separate classes of goods: one class for Eastern Canada, the other for Western Canada.¹⁰ IKO opposed this view, advancing the position that *SIMA* and Tribunal case law do not recognize the determination of classes of goods along regional market lines. IKO argued that subsection 2(1.1) is not applicable to instances where a complainant alleges injury to the domestic industry as a whole.¹¹

8. Administrative Record, Vol. 3 at paras. 11-20.

9. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

10. Administrative Record, Vol. 3 at paras. 21-35; see, in particular, para. 22.

11. *Ibid.* at paras. 21-22.

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

31. The Tribunal notes that a position similar to the one advanced by Firestone with respect to regional markets was raised in *Unprocessed Grain Corn*¹² and rejected by the Tribunal because “. . . the regional market provisions [of *SIMA*] are not intended to raise the threshold for a determination of injury where a dumping . . . complaint is brought on the basis of a national market, even if separate regional markets could be identified within the national market. In [*Unprocessed Grain Corn*] the domestic industry has not sought to use the regional market provisions, and the Tribunal will not impose them. Therefore, the Tribunal will conduct its analysis on the basis of a national market.”¹³

32. In this instance, the Tribunal will take a similar approach and will therefore conduct its analysis on the basis of a national market.

Domestic Industry

33. In its decision to initiate the investigation, the CBSA identified three producers of polyiso insulation board in Canada, namely, IKO, Johns Manville and Atlas, and noted that Johns Manville supported the complaint, while Atlas declined to provide an opinion on the matter.

34. In its complaint, IKO noted that Johns Manville and Atlas are related to U.S. manufacturers of polyiso insulation board and that the two companies are themselves importers of *significant* quantities of the subject goods into Canada.¹⁴

35. As indicated above, subsection 2(1) of *SIMA* confers on the Tribunal the discretion to interpret the term “domestic industry” as meaning only the domestic producers that are not related to an exporter or importer of dumped goods or that are not importers of such goods. At this preliminary stage, the Tribunal will interpret “domestic industry” as including the domestic producers, whether or not they imported the subject goods. However, in the event that the CBSA issues a preliminary determination of dumping, the Tribunal will gather information from domestic producers about their imports of the subject goods and may revisit this issue when it conducts its inquiry pursuant to section 42.

36. On the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that IKO, Johns Manville and Atlas constitute the domestic industry and that their production accounts for a major proportion of the total domestic production of like goods.

Volume of Dumped Goods

37. The Tribunal used import data received from the CBSA, for the period from January 2006 to August 2009, to estimate the volume of imports of the subject goods. According to the CBSA, the subject goods are classified under one tariff item, and virtually all the imports came from the United States.

12. (18 April 2006), NQ-2005-001 (CITT), [*Unprocessed Grain Corn*] at paras. 71-74.

13. *Unprocessed Grain Corn* at para. 74.

14. Administrative Record, Vol. 1 at 20.

38. The Tribunal notes that the volume of imports of the subject goods increased by 47 percent between 2006 and 2008. When comparing interim 2008 and interim 2009, imports declined by approximately 39 percent.

39. The Tribunal notes that the volume of imports of the subject goods relative to the volume of domestic production increased by 13 percentage points between 2006 and 2008, increasing from 33 percent to 49 percent in 2007 before declining to 46 percent in 2008. Comparing the two interim periods, this indicator declined from 60 percent in interim 2008 to 44 percent in interim 2009.

40. The volume of imports of the subject goods relative to the total volume of sales of the domestic industry increased by 12 percentage points between 2006 and 2008, increasing from 38 percent in 2006 to 57 percent in 2007 before declining to 50 percent in 2008. This indicator declined from 67 percent in interim 2008 to 50 percent in interim 2009.

41. Based on the evidence on the record, the preliminary import data indicate that the subject goods represented close to 100 percent of all imports of polyiso insulation board into Canada. With the exception of a decline in interim 2009 compared to interim 2008, the volume of imports of the subject goods showed a steady growth in absolute terms. Imports of the subject goods also increased relative to the production and consumption of polyiso insulation board over the POI.

Effect on the Price of Like Goods

42. The Tribunal reviewed the pricing evidence on the record and compared the average unit value of sales of the like goods with estimates of the average unit value of sales of the subject goods.¹⁵ In every period, the estimated average unit value of sales of the subject goods was lower than that of sales of the like goods. The evidence indicates that the estimated average unit value of sales of the subject goods was between 13 percent and 20 percent lower than that of sales of the like goods over the POI.

43. The Tribunal notes that the average unit value of sales of the like goods declined by approximately 10 percent between 2006 and 2008. The estimated average unit value of sales of the subject goods declined by approximately 4 percent. Notwithstanding the greater decline in the average unit value of sales of the like goods, the average unit value of sales of the subject goods remained below the average unit value of sales of the like goods.

44. Comparing interim 2009 with interim 2008, the average unit value of sales of the like goods increased by 11 percent. The estimated average unit value of sales of the subject goods increased by 10 percent in interim 2009. The Tribunal notes that, even with similar percentage increases in the average unit values of both the sales of the like goods and the sales of the subject goods, the average unit value of sales of the subject goods remained approximately 15 percent lower than the average unit value of sales of the like goods during interim 2009.

45. The Tribunal observes that adjusting the average unit selling price of the subject goods upwards to account for the margin of dumping and transportation costs would yield unit prices that are significantly higher than the average unit selling price of the like goods. The Tribunal therefore considers it reasonable to conclude that the domestic industry could have achieved higher prices and domestic market share but for the

15. The average unit value of sales of the like goods was submitted in response to the requests for supplemental information. The average unit value of sales of the subject goods was estimated by adding transportation costs, as estimated by IKO, to the average unit value for duty of the subject goods. According to IKO's submissions, sales of polyiso insulation board in Canada are made primarily to distributors. Therefore, the addition of transportation costs to the value for duty of imports is representative of the net delivered sales value of the subject imports at the distributor trade level.

adverse price effects of the dumping of the subject goods. This conclusion is reinforced by the fact that polyiso insulation board is essentially a commodity product for which price is the primary factor in purchasing decisions.

46. Further, while the Tribunal recognizes that there may be instances where some of the subject goods may command a price that is higher than the average unit value of the like goods, the evidence also indicates that the estimated average unit value of sales of the subject goods was below that of the like goods and may have prevented IKO from increasing its prices.

47. Based on the foregoing, the Tribunal is of the view that, for the purpose of this preliminary injury inquiry, the evidence discloses a reasonable indication that imports of the subject goods caused price suppression and price depression.

Impact on the Domestic Industry

48. The Tribunal notes that the evidence on the record of this preliminary injury inquiry shows a reduction in domestic production and a decline in domestic sales between 2006 and 2007 and again in interim 2009 compared to interim 2008.

49. The Tribunal's examination of the evidence indicates that the Canadian apparent market for polyiso insulation board grew by approximately 23 percent over the period from 2006 to 2008. However, domestic producers lost approximately 9 percentage points of market share to imports of the subject goods between 2006 and 2007, before recapturing some of this lost market share in 2008. The net result was a loss of 5 percentage points of market share over the 2006 to 2008 period. In other words, the domestic industry did not benefit from its share of market growth between 2006 and 2008. In interim 2009, the apparent market declined by approximately 26 percent when compared to interim 2008.

50. The Tribunal also examined IKO's financial results, as well as the estimates that it provided that indicated what its financial performance would have been in the absence of dumped imports from the United States. In the Tribunal's view, the evidence indicates that it is likely that the presence of the subject goods had a negative impact on IKO by depressing its net prices and sales volumes of like goods below what would have prevailed had the subject goods not been dumped. Based on the evidence on the record, the Tribunal concludes that IKO's suppressed and declined prices and lost sales had a negative impact on its financial performance.

51. Moreover, it is reasonable to assume that, but for the adverse price effects of the subject goods, the domestic industry would have realized better performance in terms of capacity utilization, employment, return on investment and other related performance indicators.

52. Based on the foregoing, the Tribunal is of the view that the evidence on the record of this preliminary injury inquiry provides a reasonable indication that the price effects of the dumping of the subject goods had a negative impact on the state of the domestic industry and caused injury to the domestic industry.

Other Factors

53. IKO identified several other potential causes of injury. These included declining export sales, increasing costs of raw materials, changes in production costs, rising exchange rates, intra-industry competition and changes in market demand for polyiso insulation board.

54. Firestone did not address each of the other potential causes of injury raised by IKO, but stated generally, that they contributed to IKO's injury.

55. The Tribunal is of the view that other factors may have had an impact on the domestic industry, such as the demand for and relative price points of substitute goods. However, the evidence on the record regarding the impact of these other factors is insufficient to negate the Tribunal's conclusion that the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury. It is only in the context of an inquiry pursuant to section 42 of *SIMA* that the Tribunal will be in a position to fully probe these other factors and their relative importance.

CONCLUSION

56. Based on the above analysis, the Tribunal is of the view that the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Diane Vincent
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