



Ottawa, Monday, November 17, 2003

Expiry Review No. RR-2002-005

IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on November 18, 1998, in Review No. RR-98-001, continuing, without amendment, its finding made on November 19, 1993, in Inquiry No. NQ-93-002, concerning:

**PREFORMED FIBREGLASS PIPE INSULATION WITH A VAPOUR BARRIER,
ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA**

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its order made on November 18, 1998, in Review No. RR-98-001, continuing, without amendment, its finding made on November 19, 1993, in Inquiry No. NQ-93-002, concerning preformed fibreglass pipe insulation with a vapour barrier, originating in or exported from the United States of America.

Pursuant to subparagraph 76.03(12)(a)(ii) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its order concerning the above-mentioned goods.

Patricia M. Close

Patricia M. Close
Presiding Member

James A. Ogilvy

James A. Ogilvy
Member

Meriel V.M. Bradford

Meriel V.M. Bradford
Member

Michel P. Granger

Michel P. Granger
Secretary



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**PREFORMED FIBREGLASS PIPE INSULATION WITH A VAPOUR BARRIER,
ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA**

Special Import Measures Act—Whether to rescind or continue, with or without amendment, the order made by the Canadian International Trade Tribunal on November 18, 1998, in Review No. RR-98-001, continuing, without amendment, its finding made on November 19, 1993, in Inquiry No. NQ-93-002.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	September 30 to October 3, 2003
Date of Order and Reasons:	November 17, 2003
Tribunal Members:	Patricia M. Close, Presiding Member James A. Ogilvy, Member Meriel V.M. Bradford, Member
Director of Research:	Rose Ritcey
Research Officer:	Josée St-Amand
Economist:	Ihn Uhm
Statistical Officers:	Shawn Jeffrey Marie-Josée Monette Rhonda Heintzman
Counsel for the Tribunal:	Michèle Hurteau
Assistant Registrar:	Gillian E. Burnett
Registrar Support Officer:	Ingrid Navas
Participants:	G.P. (Patt) MacPherson for Manson Insulation Inc.

(Domestic Producer)

C.J. Michael Flavell, Q.C.
Geoffrey C. Kubrick
J. Peter Jarosz
Yasir A. Naqvi
Josie Morello
Antonio Raviele
for Johns Manville

Allan H. Turnbull
Paul D. Burns
for Knauf Fiber Glass GmbH

Ronald C. Cheng
Benjamin P. Bedard
for Owens Corning

Chris Ishkanian
Steels Industrial Products Ltd.

(Importers/Exporters/Other Parties)

Witnesses:

Peter J. Kelly
President & C.E.O.
Manson Insulation Inc.

D.J. (Dave) Stagg
Controller
Manson Insulation Inc.

Jack Bittner
Business Manager
Pipe and Equipment Insulations
Performance Materials Division
Johns Manville

William Black III
Senior Vice President
Sales and Marketing
Knauf Fiber Glass GmbH

David J. Cox
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Equipment Insulations
Commercial & Industrial
Owens Corning

A. Joseph Relation
Senior Division Counsel
Operations
Owens Corning World Headquarters

Chris Ishkanian
Business Manager
Insulation
Steels Industrial Products Ltd.

Daniel Desbiens
Co-President
PolR Enterprises Incorporated

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The Glass-Cell Group

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ISO FAB Inc.

Mike Wildman
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**PREFORMED FIBREGLASS PIPE INSULATION WITH A VAPOUR BARRIER,
ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA**

TRIBUNAL: PATRICIA M. CLOSE, Presiding Member
JAMES A. OGILVY, Member
MERIEL V.M. BRADFORD, Member

STATEMENT OF REASONS

BACKGROUND

This is an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*,¹ of the order made by the Canadian International Trade Tribunal (the Tribunal) on November 18, 1998, in Review No. RR-98-001 (the order), continuing, without amendment, its finding made on November 19, 1993 (the finding), in Inquiry No. NQ-93-002, concerning preformed fibreglass pipe insulation with a vapour barrier (jacketed pipe insulation), originating in or exported from the United States of America (the subject goods).

On March 10, 2003, the Tribunal issued a notice of expiry review² to all known interested parties. As part of these proceedings, the Tribunal and the Canada Customs and Revenue Agency (CCRA) sent questionnaires to the Canadian producer, importers and exporters/foreign producers of jacketed pipe insulation. These questionnaires and the replies thereto formed part of the records of both the CCRA and the Tribunal.

On March 11, 2003, the Commissioner of the CCRA (the Commissioner) initiated an expiry review investigation to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping of the subject goods.

On July 8, 2003, the Commissioner concluded his investigation and determined, pursuant to subsection 76.03(7) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.

On July 9, 2003, the Tribunal began its inquiry, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order was likely to result in injury or retardation to the domestic industry. As part of this process, the Tribunal sent questionnaires on market characteristics to the domestic

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

2. C. Gaz. 2003.I.791.

producer, importers and purchasers of jacketed pipe insulation. The Tribunal also sent supplementary questionnaires to the domestic producer, importers and exporters/foreign producers, seeking additional information for the first quarters of 2002 and 2003, completing the CCRA's period of review, which was January 1, 2000, to December 31, 2002.

The record of these proceedings consists of: the testimony heard during the public and *in camera* hearings (collectively, the hearing) held in Ottawa, Ontario, from September 30 to October 3, 2003; all relevant documents, including the CCRA's protected *Expiry Review Report*, statement of reasons, index of background information and related documents; the protected and public replies to the expiry review questionnaires; the Tribunal's requests for information, which extended the quarterly information through to July 2003, and parties' replies provided in accordance with the Tribunal's directions; the order and finding; the notice of expiry review; and the public and protected pre-hearing staff reports prepared for Review No. RR-98-001, as well as those prepared for these proceedings. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.

The domestic producer, Manson Insulation Inc. (Manson), was represented by counsel at the hearing. It submitted evidence and made arguments in support of a continuation of the order.

Three U.S. producers/exporters of jacketed pipe insulation, Johns Manville, Knauf Fiber Glass GmbH (Knauf) and Owens Corning, were also represented by counsel at the hearing. An importer and distributor, Steels Industrial Products Ltd. (Steels), represented itself at the hearing. They submitted evidence and made arguments in support of a rescission of the order.

Three importers and distributors of jacketed pipe insulation, PolR Enterprises Incorporated (PolR), The Glass-Cell Group (Glass-Cell) and ISOFAB Inc. (ISOFAB), appeared as Tribunal witnesses during the hearing.

PRODUCT

Product Definition and Description

The subject goods are defined as preformed fibreglass pipe insulation with a vapour barrier, originating in or exported from the United States of America.

Preformed fibreglass insulation is produced with a vapour barrier (jacketed pipe insulation) or without a vapour barrier (plain pipe insulation); however, only jacketed pipe insulation was the subject of the original inquiry and is now the subject of the current review.

In the domestic market, jacketed pipe insulation has an inside diameter that ranges in size from 0.5 to 24.0 in. and has a wall thickness that starts at 0.5 in. and increases by increments of 0.5 in. to 4.0 in.

Production Process

Preformed fibreglass pipe insulation is made of fine fibreglass insulating wool, which is formed into a tubular shape of predetermined inside diameter and wall thickness. There are two production processes used to make the fibreglass insulating wool: the flame-attenuated process and the rotary process. Manson uses the flame-attenuated process, which involves melting glass marbles and blowing the resulting molten

glass into fibres. In the rotary process, the molten glass is held in a bowl that spins, and this action forces the glass through holes in the side of the bowl, where it is cooled by forced air and blown into fibre form.

In both cases, the resultant fibres are then gathered on a wire mesh conveyor belt to form a batt or sheet to which a thermo-setting resin is applied. The fibreglass sheet is wound into a cylindrical form on mandrels. The semi-finished product is conveyed through an oven where a thermo-setting resin gives it permanent rigidity. The pipe insulation is cut to 3-foot lengths.³ In the case of jacketed pipe insulation, the preformed material is then covered with a vapour barrier (jacket), which is attached using adhesive⁴ and is typically made of a metallized polyester film that is reinforced with fibreglass yarn and kraft paper. This last step is the essential production process that differentiates jacketed pipe insulation from plain pipe insulation.

Product Applications

Jacketed pipe insulation (as well as plain pipe insulation) is used to insulate piping systems in construction projects requiring insulation for process control, energy conservation or personal protection. The jacket provides protection against moisture gaining access to the insulation and piping materials. Jacketed pipe insulation accounts for a large proportion of all pipe insulation applications in commercial and institutional buildings.

DOMESTIC PRODUCER

Manson

Manson has been producing jacketed pipe insulation since its formation in 1986, when it purchased the manufacturing assets and inventory of a predecessor company to Johns Manville. It has remained the sole Canadian producer of jacketed pipe insulation. At its Brossard, Quebec, plant, Manson also produces plain pipe insulation and various fibreglass roll and board products. Manson is a subsidiary of 3176878 Canada Inc. The shareholders of Manson have an interest in two of its Canadian distributors, Crossroads C&I Distributors Inc. and Multi-Glass Insulation Ltd.⁵

In the United States, Manson wholly owns Manson Holdings (USA) Inc. and Manson Insulation Corp., which act as its sales agents.⁶ Until recently, Manson sold approximately half its output of jacketed pipe insulation in Canada and the other half, in the United States.⁷

FOREIGN PRODUCERS

Expiry review questionnaires were sent to four producers in the United States. Three of them, namely, Johns Manville, Owens Corning and Knauf, replied and provided information on jacketed pipe

3. In North America, the standard is 3 feet, while in other countries, the standard may be different (e.g. 1.2 metres). *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 43; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 212-13.

4. Tribunal Exhibit RR-2002-005-31, Administrative Record, Vol. 1 at 179.

5. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 17.

6. *Ibid.* at 15-16; Tribunal Exhibit RR-2002-005-13.01, Administrative Record, Vol. 3 at 168.

7. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 71-72, 129-31, 153-55; Manufacturer's Exhibit A-01, para. 16, Administrative Record, Vol. 11.

insulation. The fourth exporter, CertainTeed Corporation (CertainTeed), is no longer a producer of jacketed pipe insulation.

Johns Manville

Johns Manville manufactures and sells building material products, including thermal and acoustical fibreglass insulation, roofing materials, speciality insulation, engineered products, and polyester and glass substrates for use in the manufacture of flooring and roofing.

The first Johns Manville company was incorporated in 1929. Since 2001, Johns Manville has been a privately owned company controlled by Berkshire Hathaway Inc.

Johns Manville began manufacturing jacketed pipe insulation in 1958. Since the closure of its manufacturing facility in Corona, California, in 2001, Johns Manville has been producing jacketed pipe insulation at its plant in Defiance, Ohio.

On May 16, 2003, a fire at the Defiance plant destroyed all but one of the fibreglass pipe producing machines.⁸ At the time of the fire, Johns Manville considered itself to be the number one producer of pipe insulation in the United States and was perceived as the largest exporter of the subject goods to Canada.⁹ Since the fire, Johns Manville has been able to produce only a small fraction of its previous output for both markets and is now the small player, after the other U.S. producers and Manson.¹⁰

Owens Corning

Owens Corning, incorporated in 1938, serves both residential and industrial customers. It operates in two segments: Building Material Systems, which represented approximately 80 percent of the company's total sales in 2001, and Composite Solutions. In 2000, Owens Corning and certain of its subsidiaries filed voluntary petitions for protection under Chapter 11 of the *United States Bankruptcy Code* in the United States Bankruptcy Court for the District of Delaware.

Owens Corning has been producing jacketed pipe insulation since the mid-1960s. It manufactures product for sale to the North American market at its facility in Newark, Ohio. Owens Corning also manufactures jacketed and plain pipe insulation at two plants in the People's Republic of China (China).¹¹

Owens Corning has a minority shareholder interest of 40 percent in a Mexican company, Vitro-Fibras, S.A., but Owens Corning does not control Vitro-Fibras' actions nor does it benefit from them.

8. Exporter's Exhibit B-02, para. 11, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 212.

9. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 190-91, 216; *Protected Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-06 (protected), Administrative Record, Vol. 2A at 21-22, 67-68; Manufacturer's Exhibit A-01, para. 19, Administrative Record, Vol. 11.

10. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 191.

11. Before the fire, Owens Corning stated that it did not ship jacketed pipe insulation from "associated" companies to North America (Tribunal Exhibit RR-2002-005-25.04, Administrative Record, Vol. 5.2A at 97). However, at the hearing, Owens Corning stated that, since the fire, it has been importing into the United States products from "affiliates" located in the Republic of South Africa (South Africa) and China (*Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 308, 319-20).

Furthermore, Owens Corning does not import jacketed pipe insulation from this company to fill the supply shortage in the United States.¹²

Knauf

Knauf is a German limited liability company that was founded in 1978 when the Knauf family, which was well established in the European building market, bought an existing fibreglass production facility in Shelbyville, Indiana, from CertainTeed. Subsequently, it expanded to other facilities in the United States and now manufactures thermal and acoustical fibreglass insulation for residential, commercial, institutional and industrial applications. Knauf manufactures jacketed pipe insulation at its plant in Shelbyville.

IMPORTERS

The importers are the distributors of the subject goods in Canada. Expiry review questionnaires were sent to a sample of 14 importers in Canada, of which 6 responded. Alsip's Industrial Products Ltd., Burnaby Insulation Supplies Ltd., Nu-West Construction Products Inc. and PolR import from Knauf, while Isolation Dispro Inc. (Dispro) and Steels import from Johns Manville. The United States is by far the most significant source of jacketed pipe insulation for Canada, accounting for more than 90 percent of the imports, in terms of volume, during 2002. Other countries that export jacketed pipe insulation to Canada include Mexico, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and China.

PRODUCT DISTRIBUTION

The channels of distribution for the jacketed pipe insulation manufactured by Manson have not changed since 1998, and the company does not foresee any changes. Manson's products are brought into the market through six regional distributors that provide inventory and service at the local level to end users, such as contractors.

On the exporters' side, the goods are also sold to distributors in Canada, which, in turn, sell them to end users.¹³ The business relationship between a distributor and a manufacturer of jacketed pipe insulation is generally a long-term one. For the most part, distributors have tended to sell only one brand of jacketed pipe insulation, either Manson's or that of one of the three U.S. producers. One exception is PolR because, for many years, it has sold both imported jacketed pipe insulation from Knauf and product from Manson.¹⁴ More recently, in July 2003, Glass-Cell and ISOFAB merged;¹⁵ at the hearing, they testified that, in the future, they would have a primary and perhaps a secondary supplier.¹⁶

12. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 308-10.

13. In the past, Johns Manville sold the subject goods to a single master distributor, Glass-Cell, which, in turn, sold the subject goods to other Canadian distributors. During the period of review, Johns Manville began to sell jacketed pipe insulation directly to distributors other than Glass-Cell, namely, Dispro and Steels (Tribunal Exhibit RR-2002-005-22.15, Administrative Record, Vol. 5.1 at 250; Tribunal Exhibit RR-2002-005-19.06, Administrative Record, Vol. 5 at 175-76).

14. Tribunal Exhibit RR-2002-005-19.09, Administrative Record, Vol. 5 at 272-73; *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 364-65.

15. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 392.

16. *Ibid.* at 392-95.

SUMMARY OF FINDING AND ORDER

Inquiry No. NQ-93-002

Manson was the sole domestic producer of jacketed pipe insulation.

In its statement of reasons, the Tribunal stated that Manson had clearly suffered material injury in the form of price suppression, decreased market share, lost projects and declines in revenues. The issue to be determined was whether there was a causal link between the material injury and the dumping. The Tribunal first examined the changes in market conditions.

In early 1991, prices in the Canadian market were depressed and significant price competition existed among the three major suppliers: the domestic producer, Manson, and two U.S. exporters, Knauf and Owens Corning.¹⁷ In February 1991, Manville Canada, Inc. (Manville Canada), which had left the Canadian marketplace in 1986 when it sold its Brossard production facility to Manson, returned to the domestic market by establishing a distribution network and importing the subject goods from its parent company, Schuller International, Inc. (Schuller),¹⁸ in the United States.¹⁹

Thus, with the re-entry of Schuller through its distributor Manville Canada, the number of major suppliers of jacketed pipe insulation in the domestic market increased from three to four. In a bid to minimize their loss of market share, the previous suppliers had little choice but to reduce their prices.

The evidence revealed that, throughout the inquiry period, exporters reduced their prices to a much greater extent than did Manson and that average import prices were lower than Manson's prices. In the Tribunal's view, it was clear that Manson had not led prices down, but rather that it had been caught in a decreasing price spiral, driven by exporters that relentlessly lowered their prices and increased their margins of dumping in order to gain or retain market share. For these reasons, the Tribunal was convinced that dumped imports had caused the decline in Manson's prices.

In the Tribunal's view, Manville Canada's commitment to keep its distributors price competitive was the cornerstone of its appeal to potential distributors. In this regard, the Tribunal noted that Glass-Cell, the largest distributor for Manson, had moved to Manville Canada in February 1991. The Tribunal found that jacketed pipe insulation was a commodity product and that competition was based almost exclusively on price. Given the significance of price in determining sales, the Tribunal concluded that lower-priced dumped imports had contributed significantly to Manson's severe loss of market share.

With respect to future injury, the Tribunal noted that nothing suggested that the players in the market would succeed in increasing prices. The Tribunal was of the view that it was likely that, in the absence of a finding of injury, dumped imports would continue to enter Canada and keep prices at suppressed levels.

Schuller, Manville Canada and Owens Corning requested exclusions in the event of a finding of injury by the Tribunal, but the exclusions were not granted.

17. There was a fourth supplier, CertainTeed, a U.S. exporter.

18. Schuller was a predecessor of Johns Manville. It was the parent company of Manville Canada.

19. Under the terms of the sales agreement with Manson, Manville Canada and its U.S. parent, Schuller, had been prohibited from competing with Manson in Canada for a period of five years.

Expiry Review No. RR-98-001

Manson argued in support of a continuation of the finding, while both Owens Corning and Knauf presented arguments in support of a rescission of the finding. Schuller's successor, Johns Manville International, Inc.²⁰ (Manville), did not oppose a continuation of the finding.²¹

The Tribunal noted that the marketplace for jacketed pipe insulation in Canada had decreased by more than two million linear feet between 1992 and 1997, but that imports from the United States continued to hold a significant share of the declining market. The finding affected each of the three major U.S. suppliers in different ways: Manville increased its market share; Knauf maintained its share; and Owens Corning experienced a substantial decline.

With respect to forecasts of construction activity, the Tribunal concluded that, based on data on actual U.S. construction, a downturn in non-residential construction had begun in the United States, which would lead to lower demand for jacketed pipe insulation. It rejected the submissions of U.S. producers that their production facilities were close to being fully utilized and that they had little excess capacity to increase exports to Canada. The Tribunal pointed out that even a small percentage of available U.S. capacity represented a significant percentage of the Canadian market. It also noted that production of plain pipe insulation accounted for a portion of U.S. capacity utilization and that this could easily be switched to the production of the more profitable jacketed pipe insulation.

The Tribunal stated that, given the commodity nature of jacketed pipe insulation, it had no doubt that any effort by U.S. producers (in particular Owens Corning) to increase market share would happen through lower prices.

Having regard to the foregoing, the Tribunal was convinced that, absent the finding, there was a likelihood of resumed dumping of the subject goods in Canada.

With respect to likelihood of material injury, the Tribunal noted that the finding had had a favourable impact on Manson's operations, as its market share and capacity utilization had increased and its sales of jacketed pipe insulation had become profitable. Nonetheless, Manson still faced financial difficulties, including a heavy debt load.

The Tribunal was of the view that Manson would not be able to withstand a price war if the finding were rescinded and that, by lowering its prices to maintain market share, the company would experience a drastic negative effect on its margin and profits. Consequently, the Tribunal was persuaded that resumed dumping of the subject goods would likely cause material injury to the domestic producer.

Accordingly, the Tribunal determined that the finding should be continued.

Owens Corning requested that it be granted a producer exclusion if the Tribunal were to decide to continue the finding. The exclusion was not granted.

20. In May 1997, Schuller changed its name to Johns Manville International, Inc.

21. On July 20, 1998, Manville and Manson announced the signature of a letter of intent which contemplated that Manville would acquire Manson. However, on September 22, 1998, Manville announced that the proposed acquisition would not go forward, due to unresolved issues.

POSITIONS OF PARTIES

Domestic Industry

Manson submitted that the dumping of the subject goods in the Canadian market would resume once Johns Manville started to produce them at its Phenix City, Alabama, facility on November 1, 2003. Johns Manville will dump in order to re-establish its dominant position in the Canadian market. This dumping would reduce prices in the marketplace, margins, operating income and cash flow and delay major capital investments.

As well, Manson claimed that the recent 20 percent increase in the price of jacketed pipe insulation in the United States, as a result of the fire, has made substitutes more attractive. Further, imports of jacketed pipe insulation into the United States from offshore sources, including Europe and Asia, have also increased in the aftermath of the fire. Finally, Manson contended that, given the present supply shortage, there is now an opportunity and a financial incentive for U.S. producers to switch some of their production of plain pipe insulation to jacketed pipe insulation.

In Manson's view, therefore, the above trends mean that, before very long, the market will see a reversal from inadequate supply to oversupply, which will lead to falling prices for jacketed pipe insulation. Even those distributors that have special relationships with producers will look to price if they become uncompetitive in the marketplace or in bidding for long-term contracts. Moreover, major distributors that made commitments or that took advantage of the shortage of jacketed pipe insulation following the fire at the Johns Manville facility will need to dispose of those inventories.

In this climate, Manson submitted, Knauf will strive to maintain or improve its market performance in the Canadian market, while Owens Corning will try to gain market share for jacketed pipe insulation in Canada, to redress its relative recent underperformance. Manson also submitted that Owens Corning would take advantage of its interest in a Mexican producer of jacketed pipe insulation to improve its share of the Canadian and U.S. markets. Therefore, in Manson's view, it can be clearly seen from this evidence that the three U.S. producers have an incentive and an interest in improving their positions in the Canadian market.

As to its likely performance, Manson stated that, with the Tribunal's order in place, its production, capacity utilization and employment had been high, but that, should the order be rescinded, its prices and market share would be lower. This decline would in turn have an impact on its profits and inevitably delay major capital investments. Manson requested that the order be continued and that the producer and product exclusions requested by Johns Manville not be granted.

Exporters/Importers/Others

The exporters argued that the domestic industry has not been injured nor will it be injured in the foreseeable future and requested that the order be rescinded. Should the Tribunal continue the order, however, Johns Manville requested that, given the unique circumstances resulting from the fire at its Defiance plant, a producer exclusion be granted. In the alternative, Johns Manville requested product exclusions and that the continuation of the order be limited to those subject goods that Manson actually manufactures and that are a significant source of income to Manson. The other exporters did not support Johns Manville's request for a producer exclusion. Owens Corning supported Johns Manville's request for product exclusions. Knauf requested that its products, which are similar to the products for which Johns Manville requested an exclusion, also be granted an exclusion.

As a preliminary argument, Johns Manville contended that, in determining whether resumed dumping is likely to cause material injury to the domestic industry, the Tribunal has, in the past, focussed its attention on the immediate or short-term future. Johns Manville submitted that it is not within the Tribunal's purview to speculate about what might happen in 2006 or 2007. Johns Manville argued that the Tribunal must rely on its case law and consider the immediate foreseeable future, not the distant future. Knauf argued that, in its view, "foreseeable future" meant 18 to 24 months, and it commended to the Tribunal the cases brought forward by Johns Manville on this issue.²² Knauf contended that the Tribunal could not look meaningfully beyond the 24-month period and that, even if the Tribunal were to look beyond that time frame, the economic forecast suggests that the demand for the subject goods in Canada and the United States will be growing. Owens Corning also argued that the time period that the Tribunal normally considers in reviews is 18 to 24 months, and it adopted the submissions made by Johns Manville. Owens Corning also submitted that, essentially, the continuation of an order is an exceptional decision that must be supported by the evidence.

The exporters argued that the dramatic change in circumstances caused by the fire that destroyed Johns Manville's pipe insulation plant has resulted in a tight supply of jacketed pipe insulation, which led to the three exporters and Manson putting their distributors on allocation. They contended that this situation is anticipated to continue into the foreseeable future. Johns Manville expects to start the production of jacketed pipe insulation at its Phenix City plant in November 2003, but, even once the plant is fully operational, the capacity of the new facility will be below the capacity of the Defiance plant prior to the fire. Although Knauf and Owens Corning are operating at full capacity, the exporters argued, there is now insufficient capacity in the United States to meet the demands of the U.S. market.

The exporters argued that the number of non-residential building permits for the institutional and commercial markets has increased and that this will mean an increased demand for jacketed pipe insulation in both Canada and the United States into 2004 and 2005. According to the exporters, the economic indicators have been showing a significant improvement in the United States. Consequently, the turnaround in the U.S. economy, coupled with the significant decline in U.S. capacity, will result in further shortages or tight conditions of supply for the subject goods in the foreseeable future. In fact, the exporters and Manson implemented significant price increases in Canada and the United States in 2003, and further price increases are anticipated. The exporters contended that Manson's sales of jacketed pipe insulation were robust in Canada and the United States in 2002 and that its volumes have increased. They argued that Manson would not be injured in the foreseeable future because prices and volumes have increased and that Manson is producing at full capacity. They submitted that Manson has made good profits and is expected to continue to do so in the foreseeable future. In Johns Manville's submission, Manson's immediate future is very bright, in that all indicators suggest continued higher prices and limited supply in the United States and Canada.

With respect to imports from Mexico and China, Johns Manville suggested that they would not displace the domestic product, as there are issues relating to quality and range, technical specification, availability of supply and freight costs that limit the importation of goods from these countries. It further argued that there was no evidence of switching to alternative products in the marketplace and that the witnesses, including Tribunal witnesses, indicated that fibreglass is the preferred pipe insulation material.

22. *Certain Prepared Baby Foods* (28 April 2003), RR-2002-002 (CITT) [*Baby Foods*]; *Certain Solder Joint Pressure Pipe Fittings* (16 October 1998), RR-97-008 (CITT) [*Pipe Fittings*].

Steels echoed the exporters' submissions. It argued that prices for jacketed pipe insulation from countries such as Mexico, China and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu have been lower than the current normal values for the subject goods. Steels submitted that, in the past, Manson had lowered its prices to match this non-subject competition, which proved that the Canadian market is influenced by factors other than imports of the subject goods. It also sought an exclusion for the British Columbian and Albertan markets.

ANALYSIS

As noted earlier, on July 8, 2003, the Commissioner determined that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the order concerning the subject goods was likely to result in the continuation or resumption of dumping. Consequently, the Tribunal is required, pursuant to subsection 76.03(10), to determine whether the expiry of the order is likely to result in injury or retardation to the domestic industry.

Like Goods

Subsection 2(1) of *SIMA* defines "like goods", in relation to 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.

In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the goods fulfil the same customer needs.

Domestic jacketed pipe insulation is manufactured using the flame-attenuated process, which was also used by Johns Manville at its Defiance facility. The other two U.S. manufacturers, Knauf and Owens Corning, use the rotary process. While there are two different methods of manufacturing jacketed pipe insulation, the evidence indicates that the domestic industry's jacketed pipe insulation is produced according to standards that are similar to those of all the subject goods. Further, the evidence shows that the physical and market characteristics of the domestic industry's jacketed pipe insulation are similar to those of all the subject goods, that they compete directly in the same markets and that they fulfil the same customer needs as the subject goods. Based on the foregoing, the Tribunal finds that the jacketed pipe insulation produced by the domestic industry constitutes like goods to the subject goods, regardless of the production process.

Domestic Industry

Having determined that domestically produced jacketed pipe insulation is "like goods" to the subject goods of the same description, the Tribunal must next determine which producers constitute the domestic industry for the purposes of assessing injury. The term "domestic industry" is defined under 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".

The evidence shows that Manson is the only domestic producer of the like goods and that its production constitutes 100 percent of the total domestic production. The Tribunal, therefore, finds that Manson constitutes the domestic industry.

Likelihood of Injury

Subsection 37.2(2) of the *Special Import Measures Regulations*²³ lists a number of factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the Commissioner has determined that there is a likelihood of continued or resumed dumping if the order is allowed to expire. The Tribunal reviewed these factors and considered several to be relevant to the circumstances of this expiry review and, hence, it examined the likely volumes of dumped imports, the likely prices of dumped imports, the likely impact of dumped imports on the domestic industry and other relevant factors. Several factors listed in subsection 37.2(2), such as the domestic industry's recent performance and changes in market conditions internationally, e.g. the supply shortages in the United States caused by the fire and the forecast of increased demand in that country, are discussed under the titles of factors noted above.

In making its assessment of the likelihood of injury, consistent with previous cases, the Tribunal is of the view that the focus must be on circumstances that can reasonably be expected to exist in the near to medium term as opposed to more remote circumstances.²⁴ The Tribunal finds that the evidence regarding capacity, market conditions and the economic outlook for the United States and Canada in the near to medium term to be more persuasive than the evidence that refers to 2006 and beyond. Although the period chosen by the Tribunal takes into account the particular circumstances and facts of a case, the Tribunal usually considers appropriate, as it does in this case, to examine a period of 18 to 24 months from the expiration of the finding or order.

The overriding factor that the Tribunal considers relevant to its assessment of the likelihood of injury in this expiry review is the fire on May 16, 2003, at Johns Manville's plant in Defiance. In order to analyze the effects of the fire on markets in Canada and the United States, the Tribunal finds it useful to examine the "pre-fire" and "post-fire" situations in the two countries.

Pre-fire Situation in Canada and the United States

Manson's total production of jacketed pipe insulation increased by 18 percent from 2000 to 2001 and by a further 9 percent in 2002. In the first quarter of 2003, however, Manson's production fell by 5 percent compared to the equivalent period in 2002.²⁵ The company was able to increase its share of the relatively flat domestic market by a significant percentage from 2000 to the first quarter of 2003.²⁶ Further, Manson's export sales to the United States increased by almost 12 percent between 2000 and 2002 and accounted for approximately one half of Manson's total production.²⁷ For the past five years, Manson has been operating at full capacity.²⁸ Manson was able to implement a price increase of 3 percent before the fire

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

24. See, for example, *Baby Foods* at 8 and *Pipe Fittings* at 10.

25. *Public Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-05, Administrative Record, Vol. 1A at 16.

26. *Protected Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-06 (protected), Administrative Record, Vol. 2A at 21-22.

27. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 71-72, 129-31, 153-55; Manufacturer's Exhibit A-01, para. 16, Administrative Record, Vol. 11; *Protected Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-06 (protected), Administrative Record, Vol. 2A at 21, 30, 72.

28. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 77-78, 130; *Protected Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-06 (protected), Administrative Record, Vol. 2A at 46; Manufacturer's Exhibit A-01, para. 16, Administrative Record, Vol. 11.

on its sales of jacketed pipe insulation in Canada.²⁹ The company has been profitable for the last several years.³⁰ On average, in 2001 and 2002, Manson's prices in Canada were slightly lower than those of its U.S. competitors.³¹

In the United States, the total apparent market for jacketed pipe insulation grew by 3 percent in 2001, only to decline by 4 percent the following year.³² The production capacity utilization rate for jacketed pipe insulation fell steadily over the period, to reach a low of 81 percent in the first quarter of 2003.³³ Nonetheless, prices in the United States increased by 3 percent early in 2003³⁴ and by an additional 5 percent at about the time of the fire.³⁵ Manson increased its price in the United States by 3 percent before the fire.³⁶

In summary, even before the fire at Johns Manville's Defiance plant on May 16, 2003, Manson had increased its production of jacketed pipe insulation, had captured a larger share of the Canadian market, had enjoyed several years of full capacity utilization, had been profitable and had implemented a price increase. Similarly, in the United States, the industry had introduced two price increases in 2003 and was beginning to enjoy a rebound in demand from the depressed levels of 2002.

Post-fire Situation in Canada and the United States

The May 16, 2003, fire substantially destroyed Johns Manville's Defiance production facility,³⁷ leaving only one machine capable of manufacturing jacketed pipe insulation.³⁸ Witnesses at the hearing generally agreed that Johns Manville had been the largest manufacturer of jacketed pipe insulation in the United States,³⁹ as well as the largest exporter of the subject goods to Canada.⁴⁰ Accordingly, it is evident that the fire eliminated a very significant proportion of the U.S. industry's production capacity for the subject goods and the major source of exports of the subject goods to Canada.⁴¹

29. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 97, 167.

30. *Ibid.* at 75-77; *Protected Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-06 (protected), Administrative Record, Vol. 2A at 39, 41.

31. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 140-42; *Protected Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-06 (protected), Administrative Record, Vol. 2A at 32.

32. *Public Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-05, Administrative Record, Vol. 1A at 67.

33. *Ibid.* at 70.

34. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 167-68, 248.

35. All three U.S. manufacturers put through a price increase of 5 percent just before the fire in May 2003. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 180-81, 248; *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 278.

36. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 167-68.

37. Tribunal Exhibit RR-2002-005-27.08, Administrative Record, Vol. 7 at 91.

38. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 212; Exporter's Exhibit B-02, para. 11, Administrative Record, Vol. 13.

39. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 143; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 190-91, 227.

40. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 192, 215-16.

41. Tribunal Exhibit RR-2002-005-11.11 (protected), Administrative Record, Vol. 2.2 at 116; Tribunal Exhibit RR-2002-005-28.05 (protected), Administrative Record, Vol. 8 at 66-67; Tribunal Exhibit RR-2002-005-22.16, Administrative Record, Vol. 5.1 at 261.

The Tribunal heard extensive testimony at the hearing about the actions of manufacturers and distributors as they endeavoured to respond to the markedly altered market circumstances brought about by the fire.

In the immediate aftermath of the fire, Johns Manville put its customers in both Canada and the United States on allocation⁴² because it was able to provide jacketed pipe insulation only in the limited range of sizes produced by its one machine at the Defiance plant or existing in its pre-fire inventory. Its exports of the subject goods to Canada fell substantially by midsummer.⁴³ Johns Manville also attempted to meet its distributors' needs in the United States by importing jacketed pipe insulation from offshore sources.⁴⁴ In addition, Johns Manville tried to service its customers in both Canada and the United States by promoting the limited range of alternative products that it manufactures.⁴⁵

For its part, Knauf responded to the supply shortage by putting its customers in both Canada and the United States on allocation, by increasing its production to full capacity and by temporarily ceasing production of certain less popular sizes.⁴⁶ The company also began importing pipe insulation in three different sizes from a sister company in England.⁴⁷ The imported product is insulation in four-foot lengths that is shipped plain and then jacketed at Knauf's plant in the United States before being sent to its U.S. customers. Knauf does not sell this product in Canada because the price would be prohibitive for its Canadian clients.⁴⁸ Knauf also offered an alternative product to its clients, namely, a pipe and tank wrap.⁴⁹ It managed to keep its exports of the subject goods to Canada steady through to midsummer.⁵⁰

Owens Corning also placed its customers in both Canada and the United States on allocation⁵¹ and temporarily stopped manufacturing some sizes of jacketed pipe insulation.⁵² As a result of improving its efficiency, the company was able to increase its effective capacity utilization and hence its output.⁵³ Its exports to Canada of the subject goods actually increased somewhat from May to July 2003.⁵⁴ As noted earlier, in order to reduce the supply shortage, Owens Corning began importing products from South Africa and China, but those imports are remaining in the United States.⁵⁵ Owens Corning told the Tribunal that it

42. Tribunal Exhibit RR-2002-005-27.08, Administrative Record, Vol. 7 at 92; Exporter's Exhibit B-02, para. 3, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 188-89; *Transcript of In Camera Hearing*, Vol. 2, 1 October 2003 at 160-64.

43. Tribunal Exhibit RR-2002-005-RI-02C (protected), Administrative Record, Vol. 10.

44. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 212-13; Tribunal Exhibit RR-2002-005-RI-02A (protected), Administrative Record, Vol. 10.

45. For example, Steels, a distributor for Johns Manville, mentioned that the company was trying to sell a cut-to-size tank wrap for pipes greater than 6 in. See *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 341-42.

46. Exporter's Exhibit C-01, para. 28, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 228, 235-36, 246-48.

47. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 246.

48. *Ibid.* at 252-53.

49. *Ibid.* at 246.

50. Tribunal Exhibit RR-2002-005-RI-03C (protected) at 2, Administrative Record, Vol. 10.

51. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 306-7.

52. Tribunal Exhibit RR-2002-005-22.16, Administrative Record, Vol. 5.1 at 265.

53. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 299-300, 324-25.

54. Tribunal Exhibit RR-2002-005-RI-04A (protected) at 2, Administrative Record, Vol. 10.

55. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 308, 319-20.

does not plan to send them to Canada because the selling price would be prohibitive when normal value calculations are involved.⁵⁶

Following the fire, Manson temporarily abandoned production of certain sizes of jacketed pipe insulation and put its customers on allocation in both Canada and the United States.⁵⁷ Further, in the months following the fire, between May and July 2003, Manson decreased its sales of jacketed pipe insulation to the United States by approximately one quarter,⁵⁸ which allowed it to sell more of its output in Canada.⁵⁹ At the same time, exports to Canada from the United States fell by close to 50 percent,⁶⁰ with imports from non-subject countries, particularly Mexico, also increasing, but still only partially filling the void.⁶¹ Accordingly, between May and July 2003, Manson increased its share of the domestic market significantly.⁶²

In July 2003, Manson implemented a 5 percent price increase in both Canada and the United States.⁶³ The Tribunal notes that the three U.S. producers and Manson also responded to the shortage in the U.S. market by implementing a further price increase of 8 percent (12 percent in certain geographic regions) in the United States in July-August 2003. The three U.S. producers applied a similar price increase of 8 percent in Canada.⁶⁴ Manson, however, did not implement the additional 8 percent price increase in Canada.⁶⁵

Based on the testimony of witnesses at the hearing, the supply shortage of jacketed pipe insulation appears to have occurred to a different degree in various regions of Canada, with markets in Quebec and Ontario being tighter than those in Western Canada.⁶⁶

Likely Volumes of Dumped Imports

While the Commissioner has already determined that there is a likelihood of resumed or continued dumping if the order is rescinded, nevertheless the likely volumes of dumped imports, either in absolute terms or relative to the production or consumption of like goods, are often relevant to the Tribunal's

56. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 320.

57. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 92-96.

58. Tribunal Exhibit RR-2002-005-RI-01A (protected) at 6, Administrative Record, Vol. 10.

59. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 129-31, 153-55.

60. Tribunal Exhibit RR-2002-005-RI-02C (protected), Administrative Record, Vol. 10; Tribunal Exhibit RR-2002-005-RI-04A (protected) at 2, Administrative Record, Vol. 10; Tribunal Exhibit RR-2002-005-RI-03C (protected) at 2, Administrative Record, Vol. 10.

61. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 148-50, 175-76; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 202-3, 249, 251-52.

62. Tribunal Exhibit RR-2002-005-RI-01A (protected) at 6, Administrative Record, Vol. 10; Tribunal Exhibit RR-2002-005-RI-02C (protected), Administrative Record, Vol. 10; Tribunal Exhibit RR-2002-005-RI-04A (protected) at 2, Administrative Record, Vol. 10; Tribunal Exhibit RR-2002-005-RI-03C (protected) at 2, Administrative Record, Vol. 10.

63. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 97, 167-68; Exporter's Exhibit D-02, para. 21, Attachment 3, Administrative Record, Vol. 13.

64. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 167-68; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 180-81, 267-68; *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 278-79; Tribunal Exhibit RR-2002-005-22.16, Administrative Record, Vol. 5.1 at 268.

65. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 101-2, 157-58.

66. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 341-42, 387-88.

assessment of whether or not the dumped imports will likely injure the domestic industry. This is one of the factors that the Tribunal may address under subsection 37.2(2) of the *Regulations*.

The post-fire situation in the U.S. market has been characterized by substantial shortages of the subject goods. As a first step in rebuilding its capacity, Johns Manville has located a new pipe insulation manufacturing facility in Phenix City, where semi-automated pipe insulation equipment is being installed.⁶⁷ Johns Manville is targeting November 1, 2003, as the start-up date and hopes to be fully operational within a few months of that date. Its witness stated that, even with the new facility's capacity, Johns Manville would be operating at less than half the capacity of the Defiance plant before the fire.⁶⁸

After this admittedly temporary step, Johns Manville is looking to a more comprehensive and long-term solution, with a state-of-the-art rotary technology plant to be built at an as yet undetermined location.⁶⁹ The witness for Johns Manville testified that this plant would not be producing jacketed pipe insulation earlier than 18 months from mid-2004,⁷⁰ which would not be before early 2006.

Neither of the other two U.S. manufacturers has made any firm commitments to add production capacity for jacketed pipe insulation.⁷¹

The total U.S. market production of jacketed pipe insulation in 2002 was 57.6 million pounds.⁷² As to the magnitude of the supply shortage in the United States, the Tribunal refers to the testimony of the witness for Owens Corning, who estimated that the shortage of jacketed pipe insulation in the United States following the fire at Johns Manville's plant was 9.0 million pounds and would likely stay at that level until around May 2004, when Johns Manville completes its ramp-up of production at the Phenix City facility. After that period, the shortage could be between 3.0 and 8.0 million pounds until the end of 2005 or early 2006, depending on the volume that Johns Manville would be able to provide in the market.⁷³

In terms of the duration of the supply shortage in the U.S. market, Knauf believes that supply allocation will certainly continue through the first six months of 2004 and may even continue for the whole year, depending on Johns Manville's success in bringing its capacity on line.⁷⁴

In the Tribunal's view, it is evident that, when Johns Manville's Phenix City plant comes on line, the tight market situation in the United States will be mitigated to a certain extent. However, the Tribunal is not convinced that the output from this facility will entirely eliminate the supply shortfall in the U.S. market. The fire has created a shortage of jacketed pipe insulation in the U.S. market that will continue, at least in some measure, until Johns Manville's more comprehensive and long-term solution is fully operational,

67. Manufacturer's Exhibit A-08, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 206.

68. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 182; *Transcript of Public Argument*, 3 October 2003 at 57-58.

69. Manufacturer's Exhibit A-07, Administrative Record, Vol. 11; *Transcript of In Camera Hearing*, Vol. 2, 1 October 2003 at 187-91.

70. Exporter's Exhibit B-06 (protected), Administrative Record, Vol. 14.

71. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 262-63; *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 292-93.

72. *Public Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-05, Administrative Record, Vol. 1A at 70, 73.

73. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 280-82.

74. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 235-36.

some 18 to 24 months from mid-2004. In other words, for the foreseeable future, the market situation in the United States will be one of undersupply.

This situation of undersupply will be exacerbated by an increase in demand. As previously noted, jacketed pipe insulation is mostly used to insulate piping systems in commercial and institutional buildings. It tends to be installed towards the end of construction projects and, accordingly, there is a lag of 6 to 18 months between the issuance of construction permits and the need for jacketed pipe insulation.⁷⁵ Demand for jacketed pipe insulation is a “derived demand” that is driven in large measure by non-residential construction activities, which, in turn, depend largely on the general health of the national economy.

In its Q4 2002 Report, F.W. Dodge, a well-known source of information on the U.S. construction industry, projected a modest decline in non-residential construction activity in the United States in 2003, followed by an upswing beginning in 2004.⁷⁶ Submissions made by parties to the CCRA prior to the fire also refer to rising demand for jacketed pipe insulation in the United States over the coming years.⁷⁷ Further, witnesses generally agreed that the outlook for non-residential construction activity in the United States was positive over the next few years.⁷⁸ Although there were differences of opinion about the strength and timing of the rebound, the Tribunal heard no claims that non-residential construction activity in the United States was likely to experience a decrease over the next 18 to 24 months. As to the Canadian market, the trend in non-residential construction activity is similarly positive and the growth in non-residential construction building permits in the first half of 2003 should, in turn, stimulate demand for jacketed pipe insulation in Canada by late 2004.⁷⁹ The Tribunal concludes, therefore, that U.S. producers will not have the capacity during this period to increase their volumes of exports to Canada beyond levels that existed before the fire. In fact, as previously noted, the volume of imports of the subject goods has declined by some 50 percent since the fire, and the Tribunal does not rule out the scenario of its decreasing further in the future.

Manson argued that imports from non-subject countries and alternative products (e.g. jacketed mineral wool, tank wrap or foam)⁸⁰ will find a permanent place in the U.S. and Canadian markets because distributors and customers will get used to the new suppliers, as they will to the alternative products. Manson submitted that alternative products are, at present, being used more extensively in the marketplace. In Manson’s view, this will lessen the demand for U.S. and Canadian jacketed pipe insulation, hence increasing the possibility of oversupply in the market once Johns Manville restores its full capacity.

75. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 27, 29-30; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 197, 230-31.

76. Tribunal Exhibit RR-2002-005-26.03 (protected), Administrative Record, Vol. 6.2A at 240-45.

77. *Ibid.* at 226-29; Tribunal Exhibit RR-2002-005-27.02, Administrative Record, Vol. 7 at 24-25; Tribunal Exhibit RR-2002-005-26.04 (protected), Administrative Record, Vol. 6.2B at 43-44.

78. Tribunal Exhibit RR-2002-005-26.04 (protected), Administrative Record, Vol. 6.2B at 43-44; Exporter’s Exhibit C-01, para. 20, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 194-97.

79. Exporter’s Exhibit C-01, para. 25, Administrative Record, Vol. 13; Exporter’s Exhibit D-02, paras. 18-20, Attachments 1 and 2, Administrative Record, Vol. 13.

80. Manufacturer’s Exhibit A-09, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 84-85; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 216, 232-33, 239-40, 245-46; *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 341-42.

The Tribunal acknowledges that imports into Canada from non-subject countries, especially from Mexico, have increased substantially in the months since the fire.⁸¹ Similarly, each of the three U.S. manufacturers stated that it had begun importing pipe insulation (both jacketed and plain) to meet U.S. customer demand.⁸² At the same time, the Tribunal also heard extensive testimony at the hearing about the logistical problems of importing pipe insulation, concerns over quality, differences in product specifications and freight costs.⁸³ In view of the evidence, the Tribunal concludes that the increase in imports is temporary in both markets and does not think it likely that imports will continue to play a significant role in either the U.S. or the Canadian market once Johns Manville's capacity is restored.

Similarly, the Tribunal recognizes that the exigencies of the market have led end users to consider a wide range of alternative products. Based on the evidence heard, the Tribunal is again of the opinion that this is a temporary situation. The witness for Johns Manville stated that "pound for pound and dollar for dollar", fibreglass is still the best insulation product.⁸⁴ Knauf and Owens Corning echoed this opinion.⁸⁵ The witness for Owens Corning stated that, even though there are some trends towards alternative products, the demand for fibreglass pipe insulation is not going away and that, as soon as equilibrium is restored, the demand for fibreglass products will be back.⁸⁶ In view of the witnesses' evidence on the attributes of fibreglass, the Tribunal concurs with this conclusion and believes it unlikely that alternative products will retain their place in the market in the longer run.

The Tribunal did not hear any evidence with respect to what the U.S. manufacturers plan for their remaining limited production of plain pipe insulation. Accordingly, the Tribunal has no basis on which to speculate to what extent, if any, manufacturers might increase their output of jacketed pipe insulation at the expense of plain pipe insulation.

Finally, the Tribunal notes that Manson argued that the longer Johns Manville is absent from the market, the more the market will "bond" with non-Manville products.⁸⁷ Should this, in fact, turn out to be the case, the Tribunal sees no reason why Manson will not be a major beneficiary of such an outcome. Previous Johns Manville product users will have several years to get used to Manson as the supplier of their jacketed pipe insulation.

Given the circumstances and facts cited above, the Tribunal is of the view that, should the order be rescinded, the U.S. manufacturers will not dump the subject goods in the Canadian market in significant volumes in the reasonably foreseeable future.

81. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 148-50, 175-76; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 202-3, 249, 251-52.

82. Johns Manville imports jacketed pipe insulation (see *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 212-13). Knauf imports plain pipe insulation for jacketing in the United States (see *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 246, 253). Owens Corning did not specify whether the imported pipe insulation is plain or jacketed (see *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 308).

83. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 34; *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 208, 212-13, 249-50; *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 314-16.

84. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 213-14.

85. *Ibid.* at 240-41; *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 288, 290.

86. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 288, 311.

87. Manufacturer's Exhibit A-1, para. 26, Administrative Record, Vol. 11.

Likely Prices of Dumped Imports

As to the likely prices of dumped imports in the event that the order is rescinded, the Tribunal has already noted that, in 2003, even before the May 16, 2003, fire, prices for jacketed pipe insulation had risen in both Canada and the United States. In the Tribunal's opinion, the fact that prices were increasing in 2003, prior to the fire, indicates the tightening market situation that existed, in keeping with the growth in demand for the jacketed pipe insulation and the growth in non-residential construction activity. If non-residential construction activity continues to grow in Canada and the United States as forecast, even without the effect of the fire, the Tribunal is of the opinion that prices for jacketed pipe insulation will not decrease to any great extent, if at all, over the next 18 to 24 months.

The supply shortages created by the fire, however, make a scenario of falling prices even less likely in the foreseeable future. Witnesses for the U.S. producers testified that, when supply is low, as was the case after the fire, price increases are easier to achieve.⁸⁸ As noted earlier, due to the supply shortage, U.S. producers implemented domestic price increases of 8 percent (12 percent in certain geographic regions) in July-August 2003. Further, Owens Corning has already announced a price increase for January 2004 by an amount of between 10 and 15 percent, depending on the geographic region in the United States.⁸⁹ Similarly, in Canada, Owens Corning plans a 10 percent price increase for January 2004.⁹⁰

As to Manson's argument that prices will fall in the near to medium term because of oversupply, the Tribunal has already determined that, in the foreseeable future, the market is likely to be characterized by shortage rather than oversupply. The Tribunal sees no other factors on the horizon to suggest that prices of dumped imports will be significantly lower in the next 18 to 24 months and, in fact, all the evidence suggests that they are more likely to continue to increase. The Tribunal would add that, in the unlikely event that prices of dumped imports were to fall over this time period, previous price increases in both the Canadian and U.S. markets would provide a cushion for such a decrease.

In summary, the Tribunal concludes that prices of dumped imports will not fall significantly over the next 18 to 24 months.

Likely Effects of Dumped Imports on the Domestic Industry

According to Manson, maintaining high volumes and high capacity utilization is important to offsetting fixed costs and, hence, to achieving profitability in the production of jacketed pipe insulation.⁹¹ In its response to the Tribunal's questionnaire on market characteristics, Manson indicated that, all other things being equal, a reduction of 10 percent in its production volume would result in a proportionately much greater decrease in its operating income.⁹²

The Tribunal does not question the relationship between capacity utilization and profitability when it comes to manufacturing jacketed pipe insulation. What the Tribunal has difficulty in accepting is the

88. *Transcript of Public Hearing*, Vol. 2, 1 October 2003 at 248; *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 278-79.

89. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 278-79.

90. *Ibid.* at 278-79.

91. *Transcript of In Camera Hearing*, Vol. 2, 1 October 2003 at 113-14.

92. Tribunal Exhibit RR-2002-005-17.01 (protected), Administrative Record, Vol. 4.1 at 5.

likelihood that Manson will experience a meaningful decrease in production volumes or in the utilization of existing capacity over the next 18 to 24 months should the order be rescinded.

Even before the fire, Manson had been operating at full capacity for several years and had made substantial gains with respect to its share of the domestic market, due to increased market demand over the last several years and the solid performance of its distributors in their respective regions.⁹³ As the Tribunal has already concluded, a rescission of the order is not likely to result in the influx of significant volumes of the dumped subject goods; therefore, the likelihood that Manson will not be able to continue to operate at full capacity in the foreseeable future, as a result of the dumped subject goods, is indeed remote.

As to the likely effects of the dumped subject goods on Manson's prices for jacketed pipe insulation in the domestic market, the Tribunal is similarly sceptical that a rescission of the order would have negative consequences. First, the Tribunal notes that the Canadian market seems no longer driven by price to the extent that it was at the time of the original inquiry in 1993, when the Tribunal found that jacketed pipe insulation was a commodity product and that competition was based almost exclusively on price. The responses to the Tribunal's questionnaires on market characteristics in this expiry review indicate that other factors, such as "reliability of supply" and "product quality", are now ranked as more important than "lowest price" in the purchasing decisions of distributors of jacketed pipe insulation.⁹⁴ The Tribunal acknowledges the testimony of the witness for Steels, who stated that the price of jacketed pipe insulation still plays a role in the purchasing decision and that "[i]f price from somebody we would prefer to do business with is at such an inflated price that we are not able to compete, then there is not much point in trying to pursue that relationship."⁹⁵ On balance, however, the Tribunal considers that the importance of these other factors should keep prices up in the market, as well as keep imports from displacing Canadian supply.

Although the Tribunal considers it unlikely that the dumped subject goods would have a negative effect on the domestic industry, it nevertheless examined Manson's vulnerability to such injury.

First, the Tribunal notes that Manson's circumstances have improved substantially since the last review. Its own witness characterized Manson as having achieved "reasonable rates of return",⁹⁶ as having been profitable, with the exception of one year, in every year of the last four or five years⁹⁷ and as facing prices for subject goods in 2001 and 2002 that were slightly above its prices for jacketed pipe insulation.⁹⁸ Manson's financial statements further corroborate the view of a company with better prospects.

To date, Manson has benefited appreciably from the impact of the fire on markets in both Canada and the United States. Not only has the company increased its hold on the domestic market but it has also been able to implement an additional 5 percent price increase on its sales of jacketed pipe insulation in Canada. In the United States, Manson has successfully implemented both the 5 percent price increase and

93. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 72, 129-31; *Protected Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-06 (protected), Administrative Record, Vol. 2A at 22.

94. *Public Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-05, Administrative Record, Vol. 1A at 52; Exporter's Exhibit B-02, para. 21, Administrative Record, Vol. 13.

95. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 343-44.

96. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 68-69.

97. *Ibid.* at 76-77; *Protected Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-06 (protected), Administrative Record, Vol. 2A at 39, 41.

98. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 140-42.

the subsequent 8 to 12 percent price increases introduced by the three U.S. manufacturers.⁹⁹ Moreover, the short supply situation has allowed it to shift substantial sales from the United States to the more profitable Canadian market.¹⁰⁰

Further, because of the supply shortage in the United States created by the fire, a U.S. corporation has engaged Manson to jacket, on its behalf, plain pipe insulation imported from Europe, for sale in the United States.¹⁰¹ When asked by the Tribunal whether this opportunity, which had not been part of Manson's planned activities for the year, was a profitable enterprise, a witness for Manson responded that "it certainly [was]".¹⁰² This activity will likely continue as long as the U.S. market remains undersupplied, i.e. into the foreseeable future.

Accordingly, when the Tribunal assesses Manson's vulnerability to the likely effects of any dumped imports of jacketed pipe insulation, it can only conclude that, in the foreseeable future, the company's financial prospects are solid and that it is not likely to be materially injured by the likely resumption or continuation of dumping.

A witness for Manson testified that the order had provided price stability in the Canadian market, which had helped Manson in predicting cash flow and in securing the financing necessary to become profitable.¹⁰³ However, even if the order were rescinded, the Tribunal is not persuaded that the dumped subject goods would undermine either Manson's operating income or its ability to raise funds in the capital market for future investments.

In summary, the Tribunal does not consider that a rescission of the order would have materially negative effects on Manson and sees no reason why the company should not continue to run profitably at full or nearly full capacity in the foreseeable future.

Likely Effects of Other Factors

Another factor on which the Tribunal heard evidence of what could potentially have an impact on Manson's performance over the next 18 to 24 months is the value of the Canadian dollar. A witness for Manson testified that the appreciation in the value of the Canadian dollar over the last year had made it more attractive for Manson to sell jacketed pipe insulation in Canada.¹⁰⁴ Moreover, the rise in the value of the Canadian dollar was cited by Manson as one reason that it did not follow the U.S. producers in implementing the 8 to 12 percent midsummer price increase in Canada.¹⁰⁵ If the Canadian dollar continues to appreciate, Manson may find it more difficult to obtain the same degree of price increases as its U.S. competitors in Canada. In this regard, the Tribunal notes the testimony of the witness from Glass-Cell, who acknowledged that the appreciation in the value of the Canadian dollar over the past 12 months had enabled

99. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 167-68.

100. *Ibid.* at 153-55; *Protected Pre-hearing Staff Report* (20 August 2003), Tribunal Exhibit RR-2002-005-06 (protected), Administrative Record, Vol. 2A at 39, 41.

101. *Transcript of Public Hearing*, Vol. 1, 30 September 2003 at 108-9.

102. *Ibid.* at 137-39.

103. *Ibid.* at 68-69.

104. *Ibid.* at 153-55.

105. *Ibid.* at 157.

it to offset to its customers, at least in part, price increases implemented by Johns Manville, its U.S. supplier of the subject goods.¹⁰⁶

The Tribunal does not consider, however, that future movements in the value of the Canadian dollar, whatever direction they may take, will detract in any material fashion from the essentially positive market outlook facing Manson.

CONCLUSION

The Tribunal concludes that there is no likelihood of injury to the domestic production of jacketed pipe insulation resulting from the continuation or resumption of dumping of the subject goods.

REQUESTS FOR EXCLUSION

In light of the foregoing, the Tribunal need not address the requests for exclusion.

DECISION

Based on the foregoing analysis and rationale, the Tribunal, pursuant to subparagraph 76.03(12)(a)(ii) of *SIMA*, hereby rescinds its order made on November 18, 1998, in Review No. RR-98-001, continuing, without amendment, its finding made on November 19, 1993, in Inquiry No. NQ-93-002, concerning preformed fibreglass pipe insulation with a vapour barrier, originating in or exported from the United States.

Patricia M. Close
Patricia M. Close
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V.M. Bradford
Meriel V.M. Bradford
Member

106. *Transcript of Public Hearing*, Vol. 3, 2 October 2003 at 401-2.