



Ottawa, Wednesday, November 18, 1998

Review No.: RR-98-001

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal 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(2) of the *Special Import Measures Act*, has conducted a review of its finding made on November 19, 1993, in Inquiry No. NQ-93-002.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the above-mentioned finding without amendment.

Pierre Gosselin

Pierre Gosselin  
Presiding Member

Peter F. Thalheimer

Peter F. Thalheimer  
Member

Richard Lafontaine

Richard Lafontaine  
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 finding made by the Canadian International Trade Tribunal on November 19, 1993, in Inquiry No. NQ-93-002.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: September 28 to 30, 1998  
Date of Order and Reasons: November 18, 1998  
Tribunal Members: Pierre Gosselin, Presiding Member  
Peter F. Thalheimer, Member  
Richard Lafontaine, Member  
Director of Research: Peter Welsh  
Research Manager: Richard Cossette  
Research Officer: Martin Giroux  
Economist: Ihn Ho Uhm  
Statistical Officer: Margaret Saumweber  
Statisticians: Lise Lacombe  
Joël J. Joyal  
Counsel for the Tribunal: John L. Syme  
Registration and Distribution Officer: Gillian E. Burnett

**Participants:**

G.P. (Patt) MacPherson  
for Manson Insulation Inc.

**(Domestic Manufacturer)**

C.J. Michael Flavell, Q.C.  
Geoffrey C. Kubrick  
Paul M. Lalonde  
Christopher J. Kent  
Rachelle Pitre  
Yasir Naqvi  
for Johns Manville International, Inc.

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

Ronald C. Cheng  
Gregory O. Somers  
Benjamin P. Bedard  
for Owens Corning

Richard C. Cole  
Burnaby Insulation Supplies Ltd.

Norman W. Wallace  
Wallace Construction Specialties Ltd.

**(Exporters/Importers/Other Parties)**

**Witnesses:**

Keith F. Eaman  
President  
Manson Insulation Inc.

William G. Edwards  
Vice-President, Finance  
Manson Insulation Inc.

Daniel Desbiens  
Co-President  
Nadeau Impro

Paul Pani  
President  
Multi-Glass Insulation Ltd.

Bill Haun  
President  
Crossroads C&I

David C. Skelly  
Group Marketing Manager  
Commercial/Industrial Division  
Johns Manville International, Inc.

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

David J. Cox  
Business Manager  
Pipe & Metal Building Insulations  
Mechanical Division  
Owens Corning

Norman W. Wallace  
President  
Wallace Construction Specialties Ltd.

Address all communications to:

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



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IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal 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**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member  
PETER F. THALHEIMER, Member  
RICHARD LAFONTAINE, Member

**STATEMENT OF REASONS**

**BACKGROUND**

This is a review, under subsection 76(2) of the *Special Import Measures Act*<sup>1</sup> (SIMA), of the finding made by the Canadian International Trade Tribunal (the Tribunal) in Inquiry No. NQ-93-002,<sup>2</sup> concerning preformed fibreglass pipe insulation with a vapour barrier originating in or exported from the United States of America.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the finding and issued a notice of review<sup>3</sup> on May 14, 1998. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent questionnaires to the Canadian producer, importers, purchasers and the three US producers of preformed fibreglass pipe insulation. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this review consists of all relevant documents, including the finding in Inquiry No. NQ-93-002, the notice of review, public and confidential replies to the questionnaires for the 1998 review, and the public and protected pre-hearing staff reports for the 1993 inquiry and the 1998 review. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, from September 28 to 30, 1998.

The domestic producer, Manson Insulation Inc. (Manson) was represented by counsel. Evidence was presented and arguments were made in support of continuing the finding.

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1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
  2. *Finding*, November 19, 1993, *Statement of Reasons*, December 6, 1993.
  3. *Canada Gazette* Part I, Vol. 132, No. 21, May 23, 1998, at 1173.

Owens Corning and Knauf Fiber Glass GmbH (Knauf), two US exporters and producers, were represented by counsel. Evidence was presented and arguments were made in support of rescinding the finding.

Johns Manville International, Inc. (Johns Manville), a US exporter and producer, was represented by counsel who presented evidence and arguments. It did not oppose a continuation of the finding.

During the review, the Tribunal issued decisions with respect to procedural and substantive issues, including the following: (1) the requests for information to which parties should be directed to respond;<sup>4</sup> and (2) documentation to be provided regarding a letter of intent whereby Johns Manville would acquire Manson.<sup>5</sup>

## **PRODUCT**

The goods under review are described as preformed fibreglass pipe insulation with a vapour barrier originating in or exported from the United States. Preformed fibreglass pipe insulation is produced with and without a vapour barrier. However, only preformed fibreglass pipe insulation with a vapour barrier (jacketed pipe insulation) is the subject of this review.

Jacketed pipe insulation is made of fine glass fibre insulating wool which is formed into a tubular shape of predetermined inside diameter and wall thickness. There are two production processes used to make fibreglass insulating wool: the flame attenuated process and the rotary process. The domestic industry uses the flame attenuated process which involves melting glass marbles and blowing the resulting molten glass into fibres which are 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 the thermo-setting resin gives it permanent rigidity. The preformed material is then covered with a vapour barrier (jacket), which is typically made of a metallized polyester film which is reinforced with fibreglass yarn and kraft paper.

Jacketed pipe insulation is produced and sold in size ranges of 0.5 to 24.0 in. inside diameter (the pipe size that it is to cover) and 0.5 in. to 4.0 in. wall thickness.

Jacketed pipe insulation is used to insulate non-residential piping systems, particularly in commercial and institutional construction requiring insulation for process control, energy conservation or personal protection. The vapour barrier 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**

In the 1993 inquiry, Manson was the sole domestic producer of jacketed pipe insulation. It continues to be the only domestic producer of jacketed pipe insulation.

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4. Letter dated August 25, 1998, to counsel and parties of record, Tribunal Exhibit RR-98-001-I-1C, Administrative Record, Vol. 9 at 8.

5. Letter dated July 30, 1998, to Mr. G.P. MacPherson, Tribunal Exhibit RR-98-001-26, Administrative Record, Vol. 1 at 166; and letter dated September 18, 1998, to Mr. G.P. MacPherson, Tribunal Exhibit RR-98-001-32, Administrative Record, Vol. 1 at 187.

Manson is a wholly owned subsidiary of 3176878 Canada Inc. Manson produces preformed fibreglass pipe insulation with and without a vapour barrier, as well as other insulation products, at its Brossard, Quebec, facility. Manson services the North American market from this location. In 1997, Manson's domestic and export sales of jacketed pipe insulation accounted for a significant proportion of its total sales.

Shortly before the finding, Manson had entered into a joint venture with CertainTeed Corp. (CertainTeed), a US producer of insulation products, including jacketed pipe insulation. The venture involved the establishment of CertainTeed Manson (CTM). Beginning in April 1993, CTM was responsible for marketing Manson and CertainTeed insulation products, including jacketed pipe insulation, in Canada and the United States. CertainTeed withdrew from the fibreglass pipe insulation business in 1995 and, in so doing, brought an end to the joint venture. Since that time, in both Canada and the United States, Manson has been selling all of its jacketed pipe insulation directly through regional distributors.

On July 20, 1998, Johns Manville and Manson announced the signature of a letter of intent which contemplated that Johns Manville would acquire Manson.<sup>6</sup> However, on September 22, 1998, Johns Manville announced that the proposed acquisition would not go forward, due to unresolved issues.<sup>7</sup>

## **IMPORTERS AND EXPORTERS**

During the period of review, there were 26 importers of the subject goods. Top importers since 1995 include: Glass-Cell Fabricators Ltd. (Glass-Cell), which has bought from Johns Manville and Owens Corning; Guildfords Limited, Isofab Inc. (Isofab) and O.C.P. Construction Supplies Inc., which have bought from Owens Corning; and Burnaby Insulation Supplies Ltd., Nu-West Construction Products Inc. and Alsip's Industrial Products Ltd., which have bought from Knauf. There is a high concentration of imports, with the top eight importers representing over 90 percent of total imports.

At the time of the finding, there were four producers of jacketed pipe insulation in the United States that exported to Canada, namely, Schuller International, Inc., Owens Corning, Knauf and CertainTeed. In May 1997, Schuller International, Inc. changed its name to Johns Manville International, Inc., and, in the second quarter of 1995, CertainTeed discontinued the manufacture of pipe insulation.

### **Johns Manville**

Johns Manville produces a wide range of insulation products, roofing products and specialty glass fibres for filtration and reinforcement applications. The production of jacketed pipe insulation dates back to 1958. Its two plants, located in Defiance, Ohio, and Corona, California, manufacture jacketed pipe insulation and preformed fibreglass pipe insulation without a vapour barrier (plain pipe insulation). Jacketed pipe insulation accounts for a small percentage of Johns Manville's total sales. The 140-year-old Denver-based company had sales of US\$1.65 billion in 1997. Johns Manville employs approximately 8,300 people and operates 50 manufacturing facilities in North America, Europe and the People's Republic of China (China).

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6. Letter dated July 20, 1998, from Mr. G.P. MacPherson, Tribunal Exhibit RR-98-001-25, Administrative Record, Vol. 1 at 162.

7. Letter dated September 22, 1998, from Mr. Geoffrey C. Kubrick, Tribunal Exhibit RR-98-001-26B, Administrative Record, Vol. 1 at 174.

## **Owens Corning**

Owens Corning, formed in 1938, is a producer of building materials and composite systems. It has been producing jacketed pipe insulation since the mid-1960s. Three plants, one located in Newark, Ohio, and two located in China,<sup>8</sup> produce jacketed pipe insulation which accounted for a very small percentage of Owens Corning's total sales. Owens Corning also produces plain pipe insulation. Owens Corning is a company with sales of US\$4.4 billion and more than 21,500 employees around the world and has manufacturing, sales and research facilities in more than 30 countries on six continents.

## **Knauf**

Knauf is a producer of thermal and acoustical fibreglass insulation products for residential, commercial, industrial, marine, original equipment producer and metal building applications. Knauf, formed in 1978, manufactures jacketed pipe insulation in two locations: Shelbyville, Indiana, and Lanett, Alabama. Jacketed pipe insulation accounted for a larger proportion of Knauf's sales than for those of the two other US producers. Knauf also produces plain pipe insulation. Knauf products are sold in the United States and are exported to Canada, Mexico and other countries in Latin America, Africa and the Middle East. The company employs about 1,000 people.

## **DISTRIBUTION**

The jacketed pipe insulation manufactured by Manson is distributed in Canada through regional distributors that market the product to insulation contractors and other users.

Suppliers of imported jacketed pipe insulation distribute the goods in different ways. The subject goods imported by Glass-Cell, which purchased them from Johns Manville and Owens Corning, are sold to distributors or directly to contractors. Other importers, which source from either Owens Corning or Knauf, are predominantly distributors that re-sell to contractors.

## **SUMMARY OF THE 1993 FINDING**

The Tribunal found that Manson, the sole domestic producer of jacketed pipe insulation, constituted the domestic industry and that its production of jacketed pipe insulation constituted like goods to the subject goods.

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 revenue. What was primarily in dispute was whether there was a causal link between the material injury and the dumping as found by the Deputy Minister of National Revenue.

The Tribunal examined a number of factors to determine the cause of the decline in prices for the jacketed pipe insulation in Canada and the loss of market share experienced by Manson. First, it examined the change in market conditions. The evidence was that, in the late 1980s, selling prices in the northeastern United States were substantially lower than those in Canada and that, in 1989 and 1990, some importers

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8. According to Owens Corning, no production from China is exported to North America. Tribunal Exhibit RR-98-001-23.3, Administrative Record, Vol. 5.2B at 5.

acquired goods from the United States at prices which were lower than those available to supplier-aligned distributors in Canada.

Much of the testimony focused on the re-entry into the Canadian market of a major supplier, Manville Canada, Inc. (Manville). This company sold its assets to Manson in 1986 and decided to re-enter the Canadian market in early 1991, when it began importing from the United States. Manville's re-entry was seen by the Tribunal as a crucial event, with the number of major suppliers increasing from three to four overnight. Manville re-entered the Canadian market by establishing its own Canadian distributor network. Manson suffered a severe loss of market share when Glass-Cell, its largest distributor, moved to Manville in February 1991. The Tribunal found that Glass-Cell left Manson because of Manville's lower prices.

On the matter of price erosion, the Tribunal noted that Manson's prices declined by over 30 percent between the first quarter of 1991 and the second quarter of 1993. When Manville re-entered the Canadian market, in February 1991, prices were already lower and, in the Tribunal's view, Manville's presence exacerbated these circumstances.

The evidence revealed that, during the entire period of inquiry, average import prices were lower than Manson's average prices. In the Tribunal's view, it was clear that Manson was caught in a decreasing price spiral which was driven by exporters that relentlessly lowered their prices to gain and/or retain market share.

An analysis of the prices of nine popular sizes of jacketed pipe insulation showed that, for most of the sizes, import prices were consistently lower than the domestic industry's prices during the period of inquiry. For these reasons, the Tribunal was convinced that the decline in prices was caused by dumped imports.

The evidence on lost projects demonstrated that Manson had lost business to imports at lower prices and that bidding on successive large contracts was a major factor in pushing prices down during the period of inquiry. The Tribunal believed that exporters were able to compete for these projects at such low prices only because their imports were dumped.

With respect to market share, the evidence indicated that Manson's share of the market decreased by 22 percent in 1991. The Tribunal found that jacketed pipe insulation was essentially a commodity product. As such, competition for sales was based almost exclusively on price. Given the significance of price in determining sales, the Tribunal was drawn inescapably to the view that lower-priced dumped imports contributed significantly to Manson's loss of market share.

The fact that Manson lost market share and was forced to lower prices in order to compete with dumped imports resulted in substantial annual declines in Manson's domestic sales revenues. Manson's revenues from domestic sales declined by 15 percent in 1991, 24 percent in 1992 and 9 percent in the first half of 1993.

## **POSITION OF PARTIES**

### **Party Supporting a Continuation of the Finding**

Counsel for Manson argued in support of a continuation of the Tribunal's 1993 finding. He submitted that, in the absence of the finding, the dumping of jacketed pipe insulation by the



three US producers is likely to resume and that the Canadian industry is likely to incur material injury as a result of such dumping.

In addressing the question of a likelihood of resumed dumping, counsel for Manson argued that several factors indicate that dumping is likely if the finding is rescinded. Counsel quoted the 1993 statement of reasons, in which the Tribunal observed that the weighted average margin of dumping increased progressively from 28 percent in the first period of investigation to 45 percent in the last period of investigation. Counsel argued that margins of that magnitude were extremely rare for goods from the United States. Counsel argued that this dumping started when independent Canadian importers began to acquire the subject goods from US distributors at prices lower than those available to distributors in Canada. Manson and the US exporters then reacted to that competition by also lowering their prices. Counsel also noted that Manson suffered a severe loss of market share when Glass-Cell, its largest distributor, moved to Manville in February 1991. With Manville's commitment to keep its distributors competitive, every supplier reduced prices in the interest of defending its market share and keeping its Canadian distributors competitive. Counsel argued that not a single US supplier opted out of the price war once it had started.

Counsel for Manson argued that competition for the subject goods has been strong in the Canadian market. Competition comes from US producers through their distributors. Jacketed pipe insulation is a commodity product marketed on the basis of price. As such, there is customer resistance to price increases. Counsel noted that the industry had announced price increases totalling roughly 25 to 30 percent over the past five years, but that actual price increases had not been of that order. Also, plain pipe insulation has continued to flow into Canada from the United States even though it is far less profitable than jacketed pipe insulation.

Counsel for Manson submitted that, although Johns Manville did not oppose a continuation of the finding, it is not a disinterested player in the Canadian market. In counsel's view, the evidence suggests that Johns Manville will continue to do whatever is required to maintain and strengthen its position within the Canadian market, including reducing its prices to increase its market share.

Counsel for Manson noted that there are considerable differences in prices for jacketed pipe insulation in the different regions in the United States. He argued that, on average, US pricing for certain benchmark products in the first quarter of 1998 was lower than Canadian pricing for the same products by percentages ranging from the low teens to 20 percent. He further argued that many regional prices in the United States are necessarily lower than US average prices. Given the foregoing, counsel concluded that the normal value prices are being undersold every day by every US producer within the US market. US producers have supported their distributors at the regional level and would compete at whatever price was necessary to defend their position in the market. In counsel's view, US producers would adopt the same behaviour in Canada and would sell at these low prices if the finding were rescinded.

Counsel for Manson noted that US non-residential construction activity has been expanding since 1993 and that it peaked sometime in 1997. This growth has increased capacity utilization in the US industry, in some cases close to its limit. However, counsel argued that some forecasts for the coming years suggest a softening of non-residential construction activity. This view was confirmed recently by an authoritative report completed in July by the F.W. Dodge Market Analysis Group (Dodge), a professional organization specializing in that market.<sup>9</sup> Counsel also submitted monthly data on the value of construction put in place in

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

the United States from January 1992 to March 1998.<sup>10</sup> Counsel argued that the actual activity, not the starts, in the construction of non-residential buildings in the United States had already turned down in early 1997.

Since the demand for fibreglass pipe insulation is derived from non-residential construction activity, counsel for Manson argued that the US producers' rates of capacity utilization will decrease. Counsel also submitted that US plant capacity used in the production of plain pipe insulation is also large in comparison with the size of the Canadian market. This capacity could be used more profitably to produce more subject goods for export to Canada. In light of the fact that a single percentage point of available US capacity of fibreglass pipe insulation represents roughly 15 percentage points of the Canadian market, the spare US capacity would be more than sufficient to displace and to do fatal injury to Manson's production. Moreover, counsel argued that capacity is easy to add and that no well-financed producer gives up market share for lack of plant capacity.

Turning to the likelihood of material injury caused by a resumption of dumping, counsel for Manson argued that, with jacketed pipe insulation being a commodity product, increases in Canadian market share will only come from undercutting the price for the subject goods, which will cause price declines in Canada at a time when Manson is extremely vulnerable. In counsel's view, a minimum 10 percent drop in prices can be expected if the finding is rescinded, and this decline in pricing would be materially injurious to Manson. Counsel bases this opinion on the anticipated level of price competition and the aggressive actions by US competitors eager to re-capture Canadian market share.

Counsel for Manson submitted that, before 1995, Manson had been unable to take advantage of the anti-dumping protection afforded by the finding. The favourable impact of the finding was delayed by the large inventory of dumped goods in the country at the time of the finding, the inventory of low-priced Canadian products already in the hands of distributors and certain projects to which Manson, CTM or distributors had committed themselves in advance at low prices.

Counsel for Manson argued that, while the US market had expanded in the last few years, growth in non-residential construction in Canada was not as strong. However, the market outlook for jacketed pipe insulation in Canada, after years of stagnation, is now excellent. Important projects are in progress in Toronto, Ontario, Calgary, Alberta, Ottawa, Ontario, and elsewhere. Counsel submitted that growth has been slow to arrive, but that it will continue in the remaining months of 1998 and for the next few years.

However, without a continuation of the finding, Manson is vulnerable to renewed dumping. Counsel for Manson made reference to the testimony of the witness for Johns Manville, in which he states that, if the finding were rescinded, Johns Manville would expect, absent the finding, a small decline in volume sold and a larger decline in the value of sales, as other US producers seek to re-establish themselves in the Canadian market. In counsel's view, a larger decline in the value of sales implies a price reduction, which means that there would be both price erosion and volume erosion. These would result in a substantial loss of sales and profitability to Manson and would cause it material injury.

### **Parties Supporting a Rescission of the Finding**

Counsel for Knauf and counsel for Owens Corning argued in favour of a rescission of the finding.

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10. Manufacturer's Exhibit A-16, Administrative Record, Vol. 11.

In addressing the likelihood of resumed dumping, counsel for Owens Corning referred to Article 11 of the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*,<sup>11</sup> which states that an anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract the dumping which is causing injury and that an anti-dumping duty shall be terminated unless the authorities determine that the removal of the duty is likely to lead to a continuation or recurrence of the dumping and injury.

Counsel for Knauf and counsel for Owens Corning submitted that there is no likelihood of resumed dumping. If the Tribunal finds otherwise, counsel submitted that there is no likelihood of material injury to the domestic industry and that, therefore, the finding should be rescinded. In the alternative, if the finding is continued, counsel requested that imports of the subject goods from Owens Corning be excluded from the order.

Counsel for Knauf and counsel for Owens Corning submitted that several factors lead to the conclusion that there is no likelihood of a resumption of dumping. Substantial ongoing growth in the US economy over the last several years, combined with significant increases in non-residential construction activity, has produced high levels of demand for jacketed pipe insulation in the United States, which has translated into high rates of capacity utilization. In the first quarter of 1998, some US producers had their customers on allocation. It was submitted that the majority of US production is destined for sale in the US market and that Canada represents a very minor market for the subject goods. Counsel submitted that the anti-dumping duties paid by Knauf and Owens Corning in respect of jacketed pipe insulation imports declined in 1994 and 1995 and have since declined to insignificant levels.

Counsel for Knauf and counsel for Owens Corning argued that the outlook for the US market remains strong. A modest downturn is expected, but construction activity will remain at near record levels, and sales of the subject goods will stay at near record levels even with the downturn. Knauf believes that the growth in demand generated by industrial energy conservation will significantly mute the effect of any downturn in non-residential construction. Counsel submitted that the growth in US demand for the subject goods will be sufficient to absorb industry production capacity. Counsel argued that the recent and anticipated performance of the US industry clearly indicates that the US producers do not need to dump in Canada and have no economic incentive to dump in Canada and that there is no likelihood of resumed dumping if the finding is rescinded.

Counsel for Owens Corning argued that there has not been any attempt on the part of the company to circumvent the finding by exporting plain pipe insulation to Canada. Further, counsel argued that there is no dumping of these goods.

Counsel for Knauf and counsel for Owens Corning submitted that, if the Tribunal determines that there is a likelihood of resumed dumping, such dumping will not cause material injury. The outlook for the Canadian economy and the future of the pipe insulation market in Canada, in particular, look bright. Counsel argued that Canadian market conditions for the subject goods have changed dramatically since the finding. Domestic and import shares of that market changed during the period. The pricing of jacketed pipe insulation in Canada has increased, and the financial condition of the domestic producer has improved.

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11. Signed at Marrakesh on April 15, 1994 (in force for Canada on January 1, 1996).

In response to opposing counsel's argument concerning the fact that the benefits of the finding were delayed, counsel for Knauf argued that Manson extended the price protection to both its own customers and those of US exporters. Counsel argued that Manson also gave price protection to secure new business on new projects.

Counsel for Knauf suggested that the fact that Manson distributors did not get every major project reflects a normal competitive dynamic. Since that happened while the finding was in place, it is a clear demonstration that the US producers of the subject goods can compete at undumped prices.

In response to opposing counsel's argument with regard to regional price disparities in the US market, counsel for Owens Corning argued that price differences existed prior to the finding. In response to the argument that some US regional prices are low enough to constitute dumped prices in Canada, counsel argued that exporters have not dumped in Canada in the last few years.

Counsel for Knauf submitted that Manson is faced with many challenges, including its substantial debt load, its annual cash requirements to meet its loan payments and to keep the plant operational, its inability to obtain investment to produce its own glass marbles and its limited latitude to increase profits. All of these factors, in counsel's view, are unrelated to the likelihood of injury caused by any resumption of dumping.

### **Party not Opposed to a Continuation of the Finding**

Counsel for Johns Manville argued that there were two essential points that led it not to oppose a continuation of the finding. First, since the finding has been in place, Johns Manville's sales have increased, its prices have been good and the market has been steady. The administrative burden of complying with the finding is there, but it can be met. Second, Johns Manville is convinced, for a number of reasons, of Manson's vulnerability. They added that a rescission of the finding might result in the extinction of Manson as a competitor.

Counsel for Johns Manville argued that, in the event of a rescission of the finding, there would be more vigorous competition. Jacketed pipe insulation is a commodity product, and this means that an increase in market share can be obtained only by decreasing prices. Johns Manville did not know by how much prices will decrease, but it believed that prices would not have to decrease by a large percentage to have a severe impact on Manson.

Counsel for Johns Manville argued that the increase of Owens Corning's sales of plain pipe insulation to Isofab indicates that there are certain limits on the ability of Owens Corning to compete in the jacketed pipe insulation market at undumped prices.

### **ANALYSIS**

Section 76 of SIMA provides that, on completion of a review, the Tribunal shall rescind or continue, with or without amendment, the order or finding. In making its decision, the Tribunal considers two fundamental issues. It first determines whether there is a likelihood of resumed dumping. If the Tribunal finds that there is a likelihood of resumed dumping, it then determines whether such dumping is likely to cause material injury to the domestic industry.

## Likelihood of Resumed Dumping

In assessing the likelihood of a resumption of dumping, the Tribunal may consider a range of factors to understand what market conditions are likely to be for jacketed pipe insulation, absent the finding. In this case, the factors include changes that have taken place in the domestic market since the finding, the extent of US imports into the Canadian market and whether such imports were dumped, the market performance of US suppliers since the finding, and current and anticipated market conditions in the US market, including capacity and utilization rates.

There have been changes to the Canadian distribution network since the finding. One major change is the way in which Manson has been marketing its goods in both Canada and the United States since 1995, as a result of the discontinuance of the joint venture that it had with CertainTeed. Since that time, Manson has been selling all of its jacketed pipe insulation directly through regional distributors. The Tribunal heard evidence from certain distributors that there have been some shifts in supplier-distributor alliances across the various regions since the finding.<sup>12</sup> However, there was no evidence to suggest that these changes in distribution had any significant disruptive effect in the marketplace or on the manner in which jacketed pipe insulation was marketed.

Thus, with the finding in place, there has been relative stability in the Canadian marketplace. Unlike the period preceding the finding, where Manson had lost its major distributor, Glass-Cell, Manson now has a well-established distributor in Ontario, namely, Multi-Glass Insulation Ltd. (Multi-Glass). Another effect of the finding has been to alter the level at which price competition is occurring. Such competition now takes place primarily at the distribution level, as US exporters have had to adhere to certain price levels to their Canadian customers because of specific normal values. Indeed, the evidence was that, while there has been strong price competition taking place in Canada since the finding, it has not been supported by the US exporters, but by distributors making price concessions on the basis of their own profit margins.<sup>13</sup> One western distributor noted that the finding has eliminated the significant pricing pressures which had been experienced in the years prior to the finding.<sup>14</sup>

The Tribunal notes that very little dumping has taken place since the finding.<sup>15</sup> In the Tribunal's view, this fact is not necessarily an indicator of future behaviour on the part of US exporters in this case. As indicated by the testimony, it has made sense for US exporters to sell at prices at or above normal values and retain the profits rather than sell at dumped prices and pay anti-dumping duties to the Canadian government.<sup>16</sup>

The apparent Canadian market for jacketed pipe insulation decreased by more than two million linear feet between 1992 and 1997.<sup>17</sup> Although US imports are down since the finding, in terms of both volume and market share, they continue to hold a significant share of the Canadian market.<sup>18</sup>

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12. Manufacturer's Exhibits A-8, para. 4 and 5, and A-12, para. 2, Administrative Record, Vol. 11.

13. Manufacturer's Exhibit A-8, para. 11, 12 and 16, Administrative Record, Vol. 11.

14. Manufacturer's Exhibit A-12, para. 12, Administrative Record, Vol. 11.

15. *Public Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-5, Administrative Record, Vol. 1 at 105.

16. *Transcript of In Camera Hearing*, Vol. 2, September 29, 1998, at 222-23.

17. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 68 and 70.

18. The actual share is protected information to avoid disclosure of the share of the single domestic producer. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 29.

During the period that the finding has been in place, there have been shifts in the market share of the three US suppliers in the Canadian market. In this regard, the Tribunal has examined the performance of each of the US suppliers since the finding and, more particularly, over the period of review, which covers 1995 through the first quarter of 1998. The finding has affected each of the US suppliers in different ways. It is clear from the data filed and the testimony of the three US suppliers that Johns Manville has competed quite successfully in Canada. It has increased its volume of sales and its market share since 1995.<sup>19</sup> Although Knauf's volume is down slightly since 1995, it has more or less maintained its market position.<sup>20</sup>

Unlike Johns Manville and Knauf, Owens Corning has had difficulty competing in the Canadian market for the subject goods while the finding has been in place. The Tribunal notes that Owens Corning's sales of jacketed pipe insulation have steadily declined since the finding and that its share of the Canadian market for jacketed pipe insulation, in volume terms, has decreased by well over one half.<sup>21</sup> In the Tribunal's view, part of Owens Corning's strategy to maintain a presence in the Canadian market, while the finding has been in place, has been to export to Canada increasingly greater volumes of plain pipe insulation to its Quebec-based distributor, Isofab.<sup>22</sup> The Tribunal notes that Isofab affixed a vapour barrier to much of this product. These exports, in and of themselves, are in no sense problematic;<sup>23</sup> however, the Tribunal is of the view that their existence is helpful in assessing Owens Corning's evidence with respect to capacity utilization and its plans for the Canadian market.

Like the other US producers, Owens Corning introduced evidence as to its relatively high rates of capacity utilization.<sup>24</sup> It also indicated that it had recently taken steps which are indicative of its high rate of capacity utilization.<sup>25</sup> Owens Corning maintained that, in light of the relatively strong prices prevailing in the United States and the fact that it was operating at or near maximum capacity, if the finding were rescinded, it would have no reason to resume dumping low-priced product in the Canadian market.

However, in the Tribunal's view, Owens Corning's position is difficult to reconcile with its actions. As noted, while the finding has been in place, Owens Corning has sold increasingly greater amounts of plain pipe insulation into the Canadian market. The evidence before the Tribunal is that, within both the United States and Canada, sales of plain pipe insulation were less profitable per unit of plant capacity than sales of jacketed pipe insulation.<sup>26</sup> If Owens Corning is at or near capacity, then it is hard to understand why it would continue to export plain pipe insulation to Canada, instead of maximizing sales of jacketed pipe insulation in the United States and Canada. The fact that Owens Corning has continued to supply plain pipe insulation to

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19. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 29.

20. *Ibid.*

21. *Ibid.*; and *Protected Pre-Hearing Staff Report* from Inquiry No. NQ-93-002, revised October 13, 1993, Tribunal Exhibit RR-98-001-9C (protected), Administrative Record, Vol. 2.1 at 213.

22. Tribunal Exhibit RR-98-001-RI-4 (protected), Administrative Record, Vol. 10C at 2.

23. As was established by counsel for Owens Corning through cross-examination, none of the witnesses before the Tribunal had any evidence to suggest that the exports were dumped.

24. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 64 and 65; and Tribunal Exhibit RR-98-001-24.3A (protected), Administrative Record, Vol. 6.2 at 44.

25. *Transcript of In Camera Hearing*, Vol. 2, September 29, 1998, at 240-41.

26. Manufacturer's Exhibit A-1, para. 24 and 26, Administrative Record, Vol. 11; and *Transcript of In Camera Hearing*, Vol. 1, September 28, 1998, at 15-16, and Vol. 2, September 29, 1998, at 170.

the Canadian market indicates to the Tribunal that Owens Corning currently has capacity which it could switch from plain to jacketed production. Finally, it raises a question concerning Owens Corning's claim that it would not return to Canada with low-priced product if the finding were rescinded. If the returns on plain pipe insulation are acceptable to Owens Corning, it is likely, in the Tribunal's view, that Owens Corning would be prepared to accept lower margins on jacketed pipe insulation.

In order to determine if there would be production capacity to increase shipments of jacketed pipe insulation to Canada, the Tribunal also looked at developments that have taken place in the US market since the finding and at the evidence and testimony on anticipated demand and supply conditions in that market. The Tribunal notes that market conditions in the United States have been very favourable in recent years. In volume terms, the US market for jacketed pipe insulation recorded an average annual growth of 8 percent over the 1995-97 period and increased by a further 8 percent in the first quarter of 1998, as compared to the corresponding 1997 period.<sup>27</sup>

The US industry's total capacity<sup>28</sup> increased by 5 percent between 1995 and 1997 and increased by a further 2 percent in the first quarter of 1998.<sup>29</sup> Production of jacketed pipe insulation increased by 8 percent between 1995 and 1997 and increased by a further 13 percent in the first quarter of 1998 over the corresponding 1997 period.<sup>30</sup> The US industry operated at high rates of capacity utilization between 1995 and 1997 and at near full capacity in the first quarter of 1998.<sup>31</sup>

US exporters maintained that there was little to no excess capacity currently available to increase exports of the subject goods to Canada. There are several factors that lead the Tribunal to conclude otherwise. Even though US production facilities are close to being fully utilized, the Tribunal is of the view that capacity in the United States which could be used to produce the subject goods for the Canadian market is currently available and that this capacity is likely to increase in the near to medium term.

The Tribunal notes that the US market, in general terms, is roughly 10 to 12 times greater than the Canadian market.<sup>32</sup> Therefore, even a very small percentage of available US capacity represents a significant percentage of the Canadian market. The data show that there was a small amount of available capacity in 1997 and in the first quarter of 1998.<sup>33</sup> The Tribunal also notes that a portion of the total utilization of production capacity consists of plain pipe insulation, that this portion is large in relation to the Canadian market and that the production of plain pipe insulation can easily be switched to the production of more

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27. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 60 and 62.

28. Total capacity includes both plain pipe insulation and jacketed pipe insulation which are produced on common manufacturing equipment.

29. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 64 and 65; and Tribunal Exhibit RR-98-001-24.3A (protected), Administrative Record, Vol. 6.2 at 44.

30. *Ibid.*

31. *Ibid.*

32. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 29 and 62.

33. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 64 and 65; and Tribunal Exhibit RR-98-001-24.3A (protected), Administrative Record, Vol. 6.2 at 44.

profitable jacketed pipe insulation,<sup>34</sup> should the opportunity present itself. The Tribunal further notes that Johns Manville is anticipating adding to its capacity next year.<sup>35</sup> Finally, while the US producers have increased manufacturing efficiency in recent years, there continues to be room for further gains in efficiencies.<sup>36</sup>

From 1995 to 1997, exports of jacketed pipe insulation to Canada represented 97 percent of total exports of these goods by the US producers. This percentage grew in the first quarter of 1998, to represent close to the totality of US exports.<sup>37</sup> The virtual absence of export markets other than Canada is undoubtedly due to the proportionally high cost of shipping jacketed pipe insulation over long distances.<sup>38</sup> What it also means to the Tribunal is that US producers do not have any reasonable export opportunities for jacketed pipe insulation other than Canada.

The Tribunal also considered how future US demand for jacketed pipe insulation might affect the availability of jacketed pipe insulation for sale to Canada. A number of forecasts were filed by the domestic producer and the US exporters in regard to future market conditions for the United States and their impact on the demand for jacketed pipe insulation.

There was a consensus among the parties that non-residential construction is the primary indicator of the derived demand for fibreglass pipe insulation.<sup>39</sup> There was also a consensus among witnesses that, because the installation of fibreglass pipe insulation normally occurs in the latter stages of a project, there is a lag of up to one year after building permits are issued in the demand for fibreglass pipe insulation.<sup>40</sup>

Many forecasts of US non-residential construction activity were advanced and discussed during the hearing. These forecasts included Cahners Economics, the Royal Bank of Canada, the US Department of Commerce and Dodge.<sup>41</sup> Parties seemed to agree that, for US non-residential construction, Dodge is the most authoritative source.<sup>42</sup> Dodge forecasts that, after increasing by 16 percent in 1997, the contract value of non-residential construction will remain stable in 1998 and then decline by 3 percent in 1999 and a further 8 percent in the year 2000.<sup>43</sup>

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34. Manufacturer's Exhibit A-1, para. 24 and 26, Administrative Record, Vol. 11; and *Transcript of In Camera Hearing*, Vol. 1, September 28, 1998, at 15-16, and Vol. 2, September 29, 1998, at 170.

35. Tribunal Exhibit RR-98-001-24.2 (protected), Administrative Record, Vol. 6.2 at 18.

36. *Transcript of In Camera Hearing*, Vol. 2, September 29, 1998, at 177.

37. *Public Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-5, Administrative Record, Vol. 1 at 145.

38. *Transcript of Public Hearing*, Vol. 2, September 29, 1998, at 225.

39. Manufacturer's Exhibit A-1, para. 11, Administrative Record, Vol. 11; and Exporter's Exhibit C-1, para. 20, Administrative Record, Vol. 13.

40. Manufacturer's Exhibit A-1, para. 11, Administrative Record, Vol. 11; and Exporter's Exhibit C-1, para. 49, Administrative Record, Vol. 13.

41. Exporter's Exhibit C-1, para. 17-19, 44-49 and 51, Administrative Record, Vol. 13; Exporter's Exhibits C-4 and C-5 (protected), Administrative Record, Vol. 14; and *Public Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-5, Administrative Record, Vol. 1 at 148.

42. Manufacturer's Exhibit A-1, para. 22, Administrative Record, Vol. 11; and *Transcript of Public Hearing*, Vol. 2, September 29, 1998, at 173.

43. Exporter's Exhibit B-4, Administrative Record, Vol. 13.



Counsel for the exporters argued that, given a one-year time lag, even if Dodge accurately predicts that non-residential construction will decline by the estimated percentages, the impact of that moderate decline will not likely affect the demand for jacketed pipe insulation until the year 2000 and beyond. Knauf added that forecasts of economic activity that far into the future are much less reliable than those which are confined to a shorter period of time.<sup>44</sup>

Knauf submitted that forecasts of non-residential construction activity are a significant indicator, but not the only indicator, of the anticipated demand for pipe insulation in the United States.<sup>45</sup> Non-residential construction estimates, such as those by Dodge and Cahners Economics, would not include the “derived” demand for pipe insulation that is likely to result from increased energy conservation efforts in industrial process and pipe applications.<sup>46</sup> During the hearing, the witness for Knauf provided an estimate of the likely increase in demand for fibreglass pipe insulation resulting from energy conservation measures.<sup>47</sup>

Finally, counsel for Manson argued that the value of actual construction already put in place<sup>48</sup> is a much more direct indicator of the demand for jacketed pipe insulation. These data show a pattern of decline beginning in early 1997.

The Tribunal is of the view that forecasts, even from such authoritative sources as Dodge, while somewhat helpful, have limitations. Forecasts are, by their nature, uncertain, in that they represent projections of what may happen. Typically, they are based on a series of economic assumptions about levels of activity within a given sector and within the economy as a whole. As can be readily observed from the dramatic increase in economic volatility experienced in Canada and around the world in recent months and the resulting changes in expectations for economic growth, accurately projecting what may or may not occur is a difficult task. Planned projects can be delayed or cancelled. In addition to the various forecasts introduced into evidence, the Tribunal has before it data regarding actual construction put in place in the United States. In the Tribunal’s view, these data, based on events which have actually occurred, also show that forecasts of construction activity do not always materialize.

The data relating to actual construction put in place for the United States suggest that a downturn in non-residential construction has already begun in the United States. Further, the Tribunal is not persuaded that energy conservation measures will have a meaningful incremental impact on the demand for jacketed pipe insulation. The Tribunal notes that the witness for Knauf has not seen any tangible benefits resulting from energy conservation moves to date.<sup>49</sup> To sum up, the Tribunal is of the view that, on balance, US demand for jacketed pipe insulation is likely to decrease in the near to medium term and that current available capacity is likely to increase over this period.

The foregoing discussion concerning what has occurred while the finding has been in place, capacity utilization and certain macro-economic indicators provide a context in which to better understand and assess what the behaviour of US exporters is likely to be if the finding is rescinded. However, before moving to that discussion, the Tribunal considers it important to understand the nature of the product under review.

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44. Exporter’s Exhibit C-1, para. 49, Administrative Record, Vol. 13.

45. Exporter’s Exhibit C-1, para. 50, Administrative Record, Vol. 13.

46. Exporter’s Exhibit C-1, para. 51, Administrative Record, Vol. 13.

47. *Transcript of Public Hearing*, Vol. 2, September 29, 1998, at 276-77.

48. Manufacturer’s Exhibit A-16, Administrative Record, Vol. 11.

49. *Transcript of Public Hearing*, Vol. 2, September 29, 1998, at 267-68.

In its 1993 finding, the Tribunal noted that jacketed pipe insulation had the characteristics of a commodity product, in that the products of different suppliers, for a given size, were fully interchangeable. It also noted the highly price-sensitive nature of the market for jacketed pipe insulation where contracts were won or lost by narrow price margins.

This situation remains unchanged today. There was evidence by the Canadian distributors that contracts continue to be won or lost by narrow margins.<sup>50</sup> There was no convincing evidence during the hearing of any meaningful product differentiation nor of differences in quality, delivery or other non-price factors between the various suppliers. Finally, there exists little or no brand loyalty. The only loyalty that appears to exist is between the producer and its distributor, as long as the producer supports its distributor with competitive prices. Without the finding, US producers will once again be in a position to support their distributors in Canada, and the Tribunal is convinced that intense price competition will ensue.

Turning now to the question of what the behaviour of the US producers might be, absent the finding, the Tribunal looked at the publicly announced corporate strategy of these companies. In this regard, the Tribunal notes that the following statements were made by Johns Manville in its 1997 Annual Report:

Our strategy is to continue to grow our business through innovative products, superior customer service and an increasing focus on commercial/industrial insulation markets where we are industry leaders.... Our strategy is also to target productivity gains and cost reductions to minimize the impact of pricing pressures. However, we will aggressively defend our market share positions.<sup>51</sup>

Similar comments were made in the Owens Corning 1997 Annual Report:

1997 was a challenging and financially disappointing year for our Company.... Despite record sales driving a 14 percent increase in revenues, net income for the year fell to \$47 million ... This earnings decline was primarily attributable to the adverse impact of the pricing pressures during the year, as well as the \$104 million after-tax charge for restructuring and other actions during the fourth quarter ... In a severely competitive pricing environment, we made a conscious decision not to relinquish our leadership share position.<sup>52</sup>

While the witness for Owens Corning submitted that the foregoing actions referred to non-subject goods and that the Chairman of Owens Corning was not stating overall corporate philosophy,<sup>53</sup> the Tribunal still considers that it is indicative of a broad strategy, regardless of the product. More generally, these statements by the two firms clearly indicate a strategy to fight to maintain or re-capture market share positions. In this regard, the Tribunal notes that there has been relative market share stability in the US market for jacketed pipe insulation, with little movement in the shares held by each producer over the recent years.<sup>54</sup>

There is other evidence supporting the view that US producers protect their market positions in all markets and do so by supporting their distributors at the regional level. The evidence indicated that there are distinct prices for jacketed pipe insulation in distinct regions of the United States. Indeed, there was evidence

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50. *Transcript of Public Hearing*, Vol. 1, September 28, 1998, at 125 and 163.

51. Tribunal Exhibit RR-98-001-23.2, Administrative Record, Vol. 5.2 at 91.

52. Tribunal Exhibit RR-98-001-23.3, Administrative Record, Vol. 5.2B at 16.

53. *Transcript of Public Hearing*, Vol. 2, September 29, 1998, at 294-96.

54. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 62.

of large price differences among the various regions.<sup>55</sup> For example, prices along the eastern seaboard are the lowest in the United States, while, in other regions of the United States, prices are higher than the national average.<sup>56</sup> Thus, there is no price equilibrium per se, and pricing is dependent on the prevailing competitive market conditions in a given region.

In Canada, since the finding has been in place, there has been relative price stability. Given that one US supplier, Owens Corning, has lost market share competing at current prices, the Tribunal is convinced that the rescission of the finding is likely to result in an attempt to achieve a re-alignment of market shares in Canada, with Owens Corning seeking to re-capture its previous market position in Canada. Independent distributors, which have been all but absent since the application of anti-dumping duties, will again be in a position to export and compete for contracts in Canada, adding further instability to the Canadian market. Given that the product is a commodity and that there is already intense price competition in Canada at the distributor level, the Tribunal has no doubt that any drive to increase market share will only happen through lower prices.

The Tribunal recognizes that, while some circumstances have changed since the finding, some remain unchanged. For example, jacketed pipe insulation is still very price sensitive, and there remains strong price competition at the distributor level. In fact, the Tribunal is of the view that the Canadian market could well find itself in a situation that occurred prior to the finding, where prices in Canada declined significantly over a relatively short period of time, as a result of aggressive pricing on small volumes of sales from US imports. Indeed, at that time, the price decline that had been triggered initially by independent distributors was exacerbated with the entry of a new major supplier, Manville, sourcing from US imports.

The Tribunal notes that all exporters have been making sales to Canada above normal values by varying percentages in recent years<sup>57</sup> and that some normal values were recently reduced.<sup>58</sup> However, there was also testimony that, if the recent decrease in the value of the Canadian dollar in relation to the US dollar holds, this would more or less nullify the decrease in normal values.<sup>59</sup> Having regard to all of the foregoing, the Tribunal is persuaded that, absent the finding, there will likely be significant price declines, which will put prices below normal values.

In conclusion, given its view that US producers now have sufficient available capacity to increase their exports to Canada and are likely to have more jacketed pipe insulation available for sale to Canada in the near to medium term, given the absence of export markets, other than Canada, for the US producers, given the strategy of US producers to maintain or re-capture their market share positions and given the commodity nature and high price sensitivity of jacketed pipe insulation, the Tribunal is convinced that there is a likelihood of resumed dumping of jacketed pipe insulation in Canada.

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55. *Transcript of Public Hearing*, Vol. 2, September 29, 1998, at 220.

56. *Transcript of In Camera Hearing*, Vol. 1, September 28, 1998, at 105-106.

57. *Transcript of In Camera Hearing*, Vol. 2, September 29, 1998, at 190-91, 222-23 and 255.

58. *Transcript of In Camera Hearing*, Vol. 2, September 29, 1998. Page number is withheld to protect confidentiality.

59. *Transcript of In Camera Hearing*, Vol. 2, September 29, 1998. Page number is withheld to protect confidentiality.

## Likelihood of Material Injury

In considering the question of material injury to the domestic industry in a review, the Tribunal normally examines a range of factors, including the recent and likely performance of the domestic industry, the likely volume and prices of dumped imports and their impact on the domestic industry, and market conditions in the exporting country and in Canada. In addition, before reaching its decision, the Tribunal normally examines factors unrelated to dumping that may have affected or might affect the performance of the domestic industry.

The evidence indicates that, while the finding has had a favourable impact on Manson's operations, the benefits were delayed due to such factors as a large inventory of dumped US imports in Canada before the finding and price commitments due to existing contracts.<sup>60</sup> Manson states that the finding did enable it to recover some of the market share lost to the dumped imports in 1992-93 and has permitted it to price its goods at close to US market levels.<sup>61</sup> Between 1995 and 1997, it increased its market share, its rated capacity increased by 17 percent, and it operated at high rates of capacity utilization.<sup>62</sup> Moreover, its sales of jacketed pipe insulation were very profitable.<sup>63</sup>

Opposing parties argued that Manson had not taken full advantage of the finding, in that Manson was slow to increase prices, had gone beyond protecting prices on existing business and had, in fact, extended price protection to new business. The Tribunal notes that, by 1995, these factors had played out and that Manson has since been doing very well on domestic sales of jacketed pipe insulation.

The Tribunal notes that Manson has been faced with financial difficulties since the finding, but does not consider that these difficulties result from US imports since the finding has been in place, imports which have not been dumped. These difficulties include the heavy debt load, Manson's cash requirements to meet its loan payments and to keep the plant operational, the relatively high cost of raw materials, notably the cost of glass marbles, and its limited room to generate higher profits.<sup>64</sup>

A considerable amount of evidence was filed and discussed in regard to the recent and anticipated market demand in Canada for non-residential construction and its possible impact on the demand for jacketed pipe insulation. Manson submitted that the level of non-residential construction in Canada has been disappointing since the finding. In fact, the construction slump has been so long in Canada that the domestic pipe covering demand has barely recovered to the level of 1992.<sup>65</sup> However, the market outlook for

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60. Manufacturer's Exhibit A-1, para. 7, Administrative Record, Vol. 11.

61. Manufacturer's Exhibit A-1, para. 8, Administrative Record, Vol. 11.

62. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 29 and 38.

63. *Protected Pre-Hearing Staff Report*, July 29, 1998, Tribunal Exhibit RR-98-001-6 (protected), Administrative Record, Vol. 2 at 33. Manson suffered a setback in terms of sales and profitability in the first quarter of 1998 when the ice storm shut down production for a number of days. Manufacturer's Exhibits A-4 (protected), para. 12, and A-7 (protected), para.14, Administrative Record, Vol. 12. However, most of these losses were covered by insurance. *Transcript of Public Hearing*, Vol. 1, September 28, 1998, at 82.

64. Manufacturer's Exhibit A-7 (protected) at 1-3, Administrative Record, Vol. 12; and *in camera* testimony of the witnesses for Manson, *Transcript of In Camera Hearing*, Vol. 1, September 28, 1998, at various pages.

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

fibreglass pipe covering in Canada is now judged to be excellent.<sup>66</sup> Building permits turned up strongly in 1997, and that strength continued into the early months of this year. Important projects are in progress in Toronto, Calgary, Ottawa and elsewhere.<sup>67</sup>

For its part, Owens Corning, citing forecasts from the Royal Bank of Canada, the Bank of Nova Scotia and the Canadian Imperial Bank of Commerce, argued that the value of non-residential construction in Canada is expected to continue a trend of growth. Owens Corning also noted that one of Manson's distributors, Multi-Glass, has stated that the Canadian market outlook for the next five years appears excellent and that a witness for Manson expressed a similar view on the current market outlook. Knauf, in addition to arguing similar points, submitted that energy conservation measures undertaken in Canada should add to the positive picture for jacketed pipe insulation in Canada described by a witness for Manson.<sup>68</sup>

The Tribunal notes that some witnesses tempered their views of the anticipated demand for jacketed pipe insulation somewhat during the hearing<sup>69</sup> on the basis of recent developments in Canada and in the global economy. While, on balance, forecasts of non-residential construction might well mean an increase in demand for jacketed pipe insulation over the next year or two, any increase in demand in Canada does not change its view on the likelihood of intense price competition, should the finding be rescinded. In addition, should the demand for jacketed pipe insulation grow, Canada would then become an increasingly attractive market for the US producers.

Having considered the effects of the finding, Manson's current financial situation and the current and likely market demand for jacketed pipe insulation, the Tribunal turns to the central question of whether resumed dumping is likely to cause material injury to Manson's production of jacketed pipe insulation.

The three US producers and Manson will be affected by declining prices, but in much different ways. US producers, given their considerable resources, are well placed to wage a price war. If Manson reacts the same way in which it did in the early 1990s when faced with competition from dumped imports, it is likely to lower its prices to maintain its market share position. This would have a drastic negative effect on Manson's margins and level of profitability on sales of jacketed pipe insulation. Even if Manson chooses not to meet the prices of dumped imports and loses market share, there will be a similar negative effect on Manson's financial performance.

Manson has quantified the impact of a 10 percent reduction in the price structure in the Canadian market in terms of a reduction in its bottom line profit.<sup>70</sup> The Tribunal is of the view that a likely price decline of 10 percent is conservative, but that such a decline will result in a substantial reduction in Manson's net income and that this constitutes material injury. Moreover, the eventual decline in prices over the near term, given the Tribunal's view that US producers will aggressively attempt to re-capture or maintain market share and given the high degree of price competitiveness at the distributor level, could well cause prices in Canada to decline much more than Manson's estimate. Resumed dumping would also thwart any attempts by

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66. Manufacturer's Exhibits A-1, para. 21, and A-10, para. 19, Administrative Record, Vol. 11.

67. Manufacturer's Exhibit A-1, para. 21, Administrative Record, Vol. 11.

68. Exporter's Exhibit C-1, para. 69, Administrative Record, Vol. 13.

69. *Transcript of Public Hearing*, Vol. 1, September 28, 1998, at 70, 89 and 141.

70. Manufacturer's Exhibit A-7 (protected), para. 10 and 11, Administrative Record, Vol. 12.

Manson to implement cost-saving measures. Consequently, the Tribunal is persuaded that a resumption of dumping of jacketed pipe insulation is likely to cause material injury to the domestic industry.

### **REQUEST FOR EXCLUSION**

In argument, counsel for Owens Corning requested that, if the Tribunal were to decide to continue the finding, Owens Corning be granted an exclusion. Counsel submitted that, in considering Owens Corning's request, the Tribunal should examine, separately, each exporter's propensity to resume dumping the subject goods, including that of Owens Corning.

The Tribunal's authority to exclude an exporter or importer from an order continuing a finding comes from subsection 76(4) of SIMA, which provides that, on completion of a review, the Tribunal is required to make "an order rescinding the order or finding or continuing it with or without amendment, as the circumstances require." The decision to grant or deny an exclusion in the context of a review under section 76 of SIMA is within the Tribunal's discretion and is fact-specific in nature.<sup>71</sup> Moreover, the Tribunal has stated that an exclusion will only be granted in exceptional circumstances<sup>72</sup> and that the circumstances in which it would exclude one or more exporters must be adequately demonstrated.<sup>73</sup> In considering whether to grant an exclusion, the Tribunal and its predecessors have considered several factors to be relevant, including: (1) whether the goods for which an exclusion is sought are readily substitutable for and compete directly with goods which the domestic industry produces;<sup>74</sup> (2) whether the exporter sells into a segment of the market not normally served by the domestic industry;<sup>75</sup> (3) whether the exporter's sales represent only a

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71. *Hitachi Limited v. The Anti-dumping Tribunal*, [1979] 1 S.C.R. 93; *Hetex Garn A.G. v. Anti-dumping Tribunal*, [1978] 2 F.C. 507; *Sacilor Aciéries v. The Anti-dumping Tribunal* (1985), 9 C.E.R. 210 (F.C.A.), Court File No. A-1806-83, June 27, 1985; and *Certain Dumped Integral Horsepower Induction Motors, One Horsepower (1 HP) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions, Originating in or Exported from the United States of America*, Secretariat File No. CDA-90-1904-01, *Decision of the Panel*, September 11, 1991, 4 T.C.T. 7065.

72. See, for example, *Certain Oil and Gas Well Casing Made of Carbon Steel Originating in or Exported from the Republic of Korea and the United States of America*, Canadian International Trade Tribunal, Review No. RR-95-001, *Order and Statement of Reasons*, July 5, 1996; and *Certain Flat Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States (Injury)*, Secretariat File No. CDA-93-1904-07, *Decision and Reasons of the Panel*, May 18, 1994.

73. See, for example, *Aluminum Coil Stock and Steel Head and Bottom Rails, for Use in the Production of Horizontal Venetian Blinds, Originating in or Exported from Sweden*, Canadian International Trade Tribunal, Inquiry No. NQ-91-004, *Finding*, February 7, 1992, *Statement of Reasons*, February 24, 1992.

74. See, for example, *The Dumping in Canada of Refined Sugar Originating in or Exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the Republic of Korea, and the Subsidizing of Refined Sugar Originating in or Exported from the European Union*, Canadian International Trade Tribunal, Inquiry No. NQ-95-002, *Findings*, November 6, 1995, *Statement of Reasons*, November 21, 1995.

75. See, for example, *Commercial Grade Sodium Carbonate, Commonly Known as Soda Ash, Originating in or Exported from the United States of America*, Anti-dumping Tribunal, Inquiry No. ADT-7-83, *Finding and Statement of Reasons*, July 7, 1983.

small portion of the subject goods from the subject country;<sup>76</sup> (4) the nature of the exporter's participation in the domestic market;<sup>77</sup> and (5) whether the domestic industry has consented to the exclusion.

The Tribunal is not persuaded that Owens Corning should be granted an exclusion. The Tribunal bases its decision on the following factors:

- the jacketed pipe insulation exported by Owens Corning is readily substitutable for and competes directly with goods which the domestic industry produces;
- Owens Corning sells jacketed pipe insulation into a segment of the market that is served by the domestic industry;
- Owens Corning's sales of jacketed pipe insulation do not represent a "small portion" of the subject goods exported to Canada from the United States; and
- the domestic industry did not consent to the exclusion.

## CONCLUSION

For the foregoing reasons, the Tribunal concludes that there is a likelihood of resumed dumping of preformed fibreglass pipe insulation with a vapour barrier originating in or exported from the United States of America and that such resumed dumping is likely to cause material injury to the domestic industry. The Tribunal, therefore, continues the finding without amendment.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

Peter F. Thalheimer  
Peter F. Thalheimer  
Member

Richard Lafontaine  
Richard Lafontaine  
Member

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76. See, for example, *Finished Artificial Graphite Electrodes and Connecting Pins Originating in or Exported from Belgium, Japan, Sweden and the United States of America*, Canadian Import Tribunal, Inquiry No. CIT-4-86, *Finding*, November 26, 1986, *Statement of Reasons*, December 11, 1986.

77. See, for example, *Cutting and Creasing Steel Rules Originating in or Exported from the United States of America*, Anti-dumping Tribunal, Inquiry No. ADT-1-82, *Finding and Statement of Reasons*, April 8, 1982.