



OTTAWA, November 23, 2018

FISC 2018 SP

STATEMENT OF REASONS

SCOPE RULING – CERTAIN FABRICATED INDUSTRIAL STEEL COMPONENTS

Liquid Natural Gas Modules including Pipe Rack Modules – Woodfibre LNG Limited

Pursuant to subsection 66(1) of the *Special Import Measures Act*, the Canada Border Services Agency made a scope ruling on November 23, 2018, that the fabricated industrial steel components (FISC) portion of Woodfibre LNG Limited's LNG modules including pipe rack modules are subject to the Canadian International Trade Tribunal's finding issued on May 25, 2017, in Inquiry No. NQ-2016-004, concerning the dumping of certain FISC from the People's Republic of China (China), the Republic of Korea (excluding those goods exported by Hanmaek Heavy Industries Co. Ltd.) and the Kingdom of Spain (excluding those goods exported by Cintasa, S.A.), and the subsidizing of FISC from China.

Cet *Énoncé des motifs* est également disponible en français.
This *Statement of Reasons* is also available in French.

TABLE OF CONTENTS

SUMMARY OF EVENTS.....	1
DESCRIPTION OF THE GOODS THAT ARE THE SUBJECT OF THE APPLICATION.....	2
THE CITT'S FINDING	3
BACKGROUND.....	3
DESCRIPTION OF THE SUBJECT GOODS.....	4
SCOPE PROCEEDING PROCESS.....	4
INTERESTED PARTIES	5
APPLICANT	5
CANADIAN INDUSTRY	5
IMPORTERS	6
EXPORTERS AND/OR FOREIGN PRODUCERS	6
POSITIONS OF THE PARTIES	7
CBSA ANALYSIS.....	10
SCOPE RULING	13
FUTURE ACTION.....	13
INFORMATION.....	14
APPENDIX 1 – REPRESENTATIONS.....	15
APPENDIX 2 – COMMENTS ON THE SEF	17
APPENDIX 3 – PRESCRIBED FACTORS IN SIMR.....	22

SUMMARY OF EVENTS

[1] On June 26, 2018, the Canada Border Services Agency (CBSA) received an application for a scope ruling from Woodfibre LNG Limited (Woodfibre) as to whether its liquefied natural gas (LNG) modules including pipe rack modules are subject to the Canadian International Trade Tribunal (CITT) injury finding issued on May 25, 2017, in Inquiry No. NQ-2016-004.

[2] The application for the scope ruling was complete and there was no basis under the *Special Import Measures Act* (SIMA) to reject the application. The applicant provided arguments and evidence in support of its position that its LNG modules including pipe rack modules are not subject to the CITT's finding.

[3] On July 26, 2018, pursuant to subsection 63(8) of the SIMA, the CBSA initiated a scope proceeding with respect to the goods that are the subject of the application.

[4] On August 3, 2018, counsel representing the Canadian Institute of Steel Construction (CISC) filed a submission requesting the CBSA to terminate the scope proceeding pursuant to subsection 66(3) of SIMA.

[5] In response, counsel representing the applicant, Woodfibre, filed a submission on August 9, 2018 objecting to the CISC's request for termination. Additional submissions were filed by each party in response to submissions made by the other party.

[6] The CBSA considered the submissions from both parties and decided not to terminate the scope proceeding. Details of these submissions and the CBSA's response are contained in **Appendix 1**.

[7] The administrative record for this scope proceeding closed on September 19, 2018.

[8] On October 15, 2018, the CBSA issued the *Statement of Essential Facts* (SEF) which contained its preliminary assessment that the FISC portion of Woodfibre's LNG modules including pipe rack modules are subject to the CITT's finding issued on May 25, 2017, in Inquiry No. NQ-2016-004.

[9] The CBSA received comments on the SEF from the CISC and Woodfibre on October 22, 2018. Responses to Woodfibre's comments on the SEF were received from the CISC on October 29, 2018.

[10] On the basis of the information on the record and the consideration of the relevant factors contained in section 54.6 of the *Special Import Measures Regulations* (SIMR) and any other relevant factors in accordance with subsection 66(6) of SIMA, on November 23, 2018, pursuant to paragraph 66(1) of the SIMA, the CBSA made a scope ruling that the FISC portion of Woodfibre's LNG modules including pipe rack modules are subject to the CITT's finding issued on May 25, 2017 in Inquiry No. NQ-2016-004.

DESCRIPTION OF THE GOODS THAT ARE THE SUBJECT OF THE APPLICATION

[11] The goods in question in this scope proceeding are LNG modules including pipe rack modules for purposes of the Woodfibre LNG Project. The Woodfibre LNG Project is an LNG processing and export facility that receives gas from a Fortis, BC pipeline, removes contaminants, and then cools the treated gas to -162°C to produce liquefied natural gas for export.

[12] The units that make up Woodfibre's LNG facility are grouped into modules based on multiple factors, including the flow of the process, the function of the equipment, and transportation restrictions due to size or weight of the modules. The resulting facility layout and distribution of equipment on the modules and the number of modules is optimized to minimize the module footprint, weight and cost.¹

[13] A modularized system minimizes the facility footprint by assembling all of the components into a multi-level plant. Structural steel provides the framework upon which the components are arranged and interconnected.²

[14] The modules are built in a fabrication yard in the following sequence: structural steel framework, the addition of equipment, connection of the equipment with piping and the installation of electrical equipment, instrumentation and cabling. The interconnection of the module piping, electrical and instrumentation occurs at the project site. Each module is essentially a stand-alone unit, which has been fully tested for its functionality.³

[15] A pipe rack is a steel framed structure that is used to support the operation of the plant. The pipe rack modules connect various processing modules inside the production plant. It is used to transfer materials, products, fluids, utilities, electricity and data, between the LNG plant, utility areas, flares and storage/export facilities. In addition to integrated piping, pipe racks include the supporting instruments, power cables as well as the mechanical equipment like pumps and valves, etc., that are connected to the pipes. Pipe racks are also installed with other equipment, such as air coolers on top of the pipe racks.⁴

[16] According to Woodfibre's estimates, it is expected that FISC will make up approximately 40% by weight of these LNG modules including pipe rack modules.⁵

¹ Exhibit 2 (NC) – FISC 2018 SP Application; page 4.

² Exhibit 2 (NC) – FISC 2018 SP Application; page 4.

³ Exhibit 2 (NC) – FISC 2018 SP Application; page 4.

⁴ Exhibit 2 (NC) – FISC 2018 SP Application; page 15.

⁵ Exhibit 2 (NC) – FISC 2018 SP Application; page 5.

THE CITT'S FINDING

Background

[17] On September 12, 2016, following a complaint filed by Supermetal Structures Inc., Supreme Group LP, and Waiward Steel LP, the CBSA initiated investigations respecting the dumping of certain fabricated industrial steel components (FISC) originating in or exported from the People's Republic of China (China), the Republic of Korea (South Korea), the Kingdom of Spain (Spain), the United Arab Emirates and the United Kingdom of Great Britain and Northern Ireland and the subsidizing of certain FISC originating in or exported from China. On April 25, 2017, the CBSA made final determinations of dumping in respect of certain FISC from China, South Korea, and Spain, and subsidizing of certain FISC from China.

[18] On May 25, 2017, in Inquiry No. NQ-2016-004, the CITT found that the dumping of FISC originating in or exported from China, South Korea (excluding those goods exported by Hanmaek Heavy Industries Co., Ltd.) and Spain (excluding those goods exported by Cintasa, S.A.), and the subsidizing of FISC from China, caused injury to the domestic industry. The CITT also excluded from its finding goods imported within the 2017 calendar year by Andritz Hydro Canada Inc. from Sinohydro for the Muskrat Falls hydro project in the province of Newfoundland and Labrador.

Description of the Subject Goods

[19] For the purpose of this scope proceeding, the goods that are subject to the CITT finding (“subject goods”) are defined as:

Fabricated structural steel and plate-work components of buildings, process equipment, process enclosures, access structures, process structures, and structures for conveyancing and material handling, including steel beams, columns, braces, frames, railings, stairs, trusses, conveyor belt frame structures and galleries, bents, bins, chutes, hoppers, ductwork, process tanks, pipe racks and apron feeders, whether assembled or partially assembled into modules, or unassembled, for use in structures for:

1. oil and gas extraction, conveyance and processing;
2. mining extraction, conveyance, storage, and processing;
3. industrial power generation facilities;
4. petrochemical plants;
5. cement plants;
6. fertilizer plants; and
7. industrial metal smelters;

but excluding electrical transmission towers; rolled steel products not further worked; steel beams not further worked; oil pump jacks; solar, wind and tidal power generation structures; power generation facilities with a rated capacity below 100 megawatts; goods classified as “prefabricated buildings” under HS Code 9406.00.90.30; structural steel for use in manufacturing facilities used in applications other than those described above; and products covered by Certain Fasteners (RR-2014-001), Structural Tubing (RR-2013-001), Carbon Steel Plate (III) (RR-2012-001), Carbon Steel Plate (VII) (NQ-2013-005), and Steel Grating (NQ-2010-002); originating in or exported from the People’s Republic of China, the Republic of Korea (excluding those goods exported by Hanmaek Heavy Industries Co., Ltd.) and the Kingdom of Spain (excluding those goods exported by Cintasa, S.A.).

[20] For additional information on the subject goods, please refer to the CITT’s *Findings and Reasons* in Inquiry No. NQ-2016-004 and the CBSA’s *Statement of Reasons* respecting the FISC final determinations.

SCOPE PROCEEDING PROCESS

[21] At the initiation of the scope proceeding, a notice concerning the initiation of the scope proceeding and Requests for Information (RFIs) were sent to all known and potential interested parties. The RFIs solicited information needed to consider the factors, as listed in section 54.6 of the SIMR and any other factor relevant to the scope proceeding. The applicant was also invited to provide additional information relevant to the scope proceeding.

[22] Representations concerning terminating the scope proceeding were received from interested parties prior to the closing of the record on September 19, 2018. The CBSA considered the submissions from both parties and decided not to terminate the scope proceeding. Details of these representations and the CBSA's response are contained in **Appendix 1**.

[23] Subsequent to the publication of the Statement of Essential Facts, various comments and responses to comments were received from interested parties. The CBSA considered the comments and responses in making its scope ruling. Details of these comments and responses as well as the CBSA's responses are presented in **Appendix 2**.

INTERESTED PARTIES

Applicant

[24] The name and address of the applicant is as follows:

Woodfibre LNG Limited
Suite #1020, 1075 W Georgia St
Vancouver, BC
V6E 3C9

[25] Woodfibre, a privately held Canadian company, intends to import LNG modules including pipe rack modules for purposes of the Woodfibre LNG Project.⁶

[26] A copy of the non-confidential version of the scope ruling application filed by Woodfibre is available on the CBSA's Listings of Exhibits website at <http://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2018/fisc2018-ex-eng.html>.

Canadian Industry

[27] At the initiation of the scope proceeding, the CBSA identified 16 Canadian producers of like goods based on information collected during the original 2016 FISC investigation.

[28] The CBSA sent a Producer Request for Information (RFI) to all producers of like goods. The CBSA received submissions from five Canadian producers of FISC, namely, Supermetal Structures Inc., Supreme Group LP, Waiward Steel LP, Ocean Steel & Construction Ltd., and MacDougall Steel Erectors Inc.

⁶ Exhibit 2 (NC) – FISC 2018 SP Application; page 2.

[29] The CISC submitted a letter outlining its position as to whether the goods in question are subject to the CITT's finding and provided information and various documentary evidence in support of its position.⁷ The CISC is an industry association consisting of a broad range of stakeholders in the Canadian steel construction industry. Its members include Canadian producers of FISC.

Importers

[30] At the initiation of the scope proceeding, the CBSA identified 85 known and potential importers of subject goods based on information collected during the original 2016 FISC investigation.

[31] The CBSA sent an Importer RFI to all known and potential importers of subject goods. The CBSA received submissions from three importers of FISC, namely, Husky Oil Operations Limited, Shell Canada Limited and Suncor Energy Inc.

[32] The CBSA also received a submission from KBR Canada. However, it was received on October 1, 2018, after the closing of the record date of September 19, 2018. KBR Canada did not provide reasons for the late response and therefore this submission was not considered in the scope proceeding.

Exporters and/or Foreign Producers

[33] At the initiation of the scope proceeding, the CBSA identified 80 known and potential exporters and/or producers of subject goods based on information collected during the original 2016 FISC investigation.

[34] The CBSA sent an Exporter RFI to all known and potential exporters and/or producers. The CBSA received a submission from two exporters/producers of FISC, Shanghai Yanda Engineering Co., Ltd., located in China, and Allerton Steel Ltd., located in the United Kingdom. However, no comments were provided in regards to whether LNG modules including pipe rack modules are subject to the CITT's finding.

Requests for Extension

[35] Several parties requested an extension to respond to their respective RFIs. The CBSA reviewed each request; however, extensions were not granted to any of the parties because the reasons for making the requests did not constitute unforeseen circumstances or unusual burdens. The CBSA informed the parties that submissions received after the RFI response deadline would only be taken into consideration if time and resources allow. All responses received by the CBSA before the closing of the record were taken into consideration for purposes of making the scope ruling.

⁷ Exhibit 36 (NC) - Close of record documents submitted on behalf of the CISC

[36] Details pertaining to the arguments and information submitted by the applicant and other parties are provided below.

POSITIONS OF THE PARTIES

Parties Contending that the Goods in Question are Not Subject to the CITT finding

[37] The CBSA received responses to its RFI from interested parties contending that the goods in question are not subject to the CITT finding, namely Suncor Energy Inc. (“Suncor”), Husky Oil Operations Limited (“Husky”) and Shell Canada Limited (“Shell”).

[38] The details of the information and arguments submitted by each of these interested parties are available in the *Statement of Essential Facts* (SEF) issued on October 15, 2018. The information and arguments are summarized below:

- The product definition does not include complex modules
- Complex LNG modules are manufactured goods
- Complex LNG modules are not structural goods

The product definition does not include complex modules

[39] Parties argued that the product definition in the CITT’s finding in Inquiry No. NQ-2016-004 should be read as “simple modules” rather than “complex modules”.

[40] In addition, the parties argued that complex modules involve more than simple “assembly” of FISC. Complex modules “undergo manufacturing or production process” to become something new.

[41] Parties submitted that the drawings provided to the CBSA clearly show the modules’ functionality and that the modules require more than simply connecting FISC together into an “assembly”.

Complex LNG modules are manufactured goods

[42] Parties argued that the assembly of FISC and non-FISC elements in LNG modules including pipe rack modules is a manufacturing process which transforms the FISC into something new (i.e., the FISC would be manufactured into complex modules).

[43] Parties argued that complex modules are finished, manufactured goods, akin to industrial machines that serve a particular operating function and are commissioned and tested prior to export to Canada.

[44] Parties hold the position that complex modules have specific LNG functionality which defines the character of the completed and distinct modules.

Complex LNG modules are not structural goods

[45] Parties noted that in Appeal No. AP-99-063, the CITT made a distinction between “machines” and “structures” and that the CITT has recognized that structures do not include any “notion of machinery or equipment.”

[46] Parties concede that a simple module, constructed purely out of FISC fulfils this requirement for being “structural” but a complex module does not.

[47] Parties argued that complex modules are non-FISC, highly technical, fully integrated components with specific functionality and do not fulfill the requirement for being structural goods.

[48] Parties argued the Woodfibre’s LNG modules including pipe rack modules have specific LNG functionality which define the character of the completed and distinct modules.

[49] Parties stated that complex modules are defined by non-FISC elements which also comprise the majority of the value of the complex modules. Parties challenged the assertion by the Canadian producers that FISC remains FISC throughout the entire process.

Parties Contending that the Goods in Question are Subject to the CITT finding

[50] The CBSA received responses to its RFI from interested parties contending that the goods in question are subject to the CITT finding, namely Supermetal Structures Inc. (“Supermetal”), Supreme Group LP (“Supreme”), Waiward Steel LP (“Waiward”), Ocean Steel & Construction Ltd. (“Ocean”), MacDougall Steel Erectors Inc. (“MacDougall”). As well, a submission making the same contention was received from the Canadian Institute of Steel Construction (“CISC”).

[51] The details of the information and arguments submitted by each of these interested parties are available in the SEF. The information and arguments are summarized below:

- The product definition includes complex modules
- Complex LNG modules are not manufactured goods
- Non-FISC elements do not change FISC function

The product definition includes complex modules

[52] Parties argued the product definition in the CITT finding in Inquiry No. NQ-2016-004 does not differentiate between “simple” modules and “complex” modules.

[53] Parties argued that the product definition includes FISC regardless of whether it is “assembled or partially assembled into modules, or unassembled”.

[54] Parties argued that the Woodfibre LNG modules including pipe rack modules are no more complex than other modules that contain FISC produced by Canadian producers for oil and gas projects in Canada.

[55] With respect to the pipe rack modules the parties maintain that the pipe rack type modular assembly is expressly referred to in the product definition.

Complex LNG modules are not manufactured goods

[56] Parties argued that complex modules are intermediate construction of a facility in transportable units and that modules are connected using construction trades with various construction tools and machinery.

[57] Parties argued that complex modules fall into the category of assembly resulting from thoughtful construction planning and coordination of a process facility in a remote area. Parties argued that in order to speed up the construction of a project, items are assembled offsite and delivered to the project site in larger pieces/components/modules to be connected at the project site.

[58] Parties argued that modular assembly is the purchase of a construction service, not the purchase of a good. The project owner or the firm with the Engineering, Procurement and Construction contract (EPC) will provide free-issued materials including FISC and non-FISC components to the modular yard and therefore the project owner or the EPC already owns the goods.

[59] Parties argued a module cannot be characterized as a stand-alone good separate from its parts. Parties argued that different standards and codes apply to different parts of a module and the industrial facility after construction. Canadian regulatory requirements treat various parts of a module as distinct and separate.

[60] Parties argued that modules cannot be sold separately as a good with a stand-alone function. It does not have market value if not integrated with other components of a process facility.

[61] Parties argued that the characterization of a module as a finished good manufactured by the modular yard is inconsistent with how work is warranted. If there is an issue with FISC, the project owner or the EPC will have to address it with the FISC producer. If there is an issue with an equipment, the project owner or the EPC will have to address it with the equipment manufacturer. The project owner or the EPC is not going to the modular yard to address defects in the goods assembled into the module unless the defect is the modular yard's performance.

Non-FISC elements do not change the essential characteristic of FISC

[62] Parties argued that module construction is neither processing nor manufacturing. Rather, it is taking FISC, bolting and/or welding those FISC together, and attaching non-FISC elements to the FISC structure. Attaching non-FISC goods to the FISC structure does not process, manufacture or transform the FISC into something else.

[63] Parties argued that the FISC used in imported modules assembled in a foreign country would be the same FISC used if the FISC was assembled in a modular yard near the project site in Canada.

[64] Parties argued FISC assembled within a module, including complex modules, remains FISC and retains the characteristics of FISC. Parties argued the FISC assembled in complex modules remains readily identifiable as performing its function as a support structure and framework for non-FISC elements.

[65] Parties challenged the assertion by Woodfibre that FISC ceases to be FISC when a certain proportion of non-FISC elements attached reaches a certain level.

CBSA ANALYSIS

[66] In making a scope ruling pursuant to subsection 66(1) of SIMA, subsection 66(6) of SIMA provides that the CBSA shall take into account any prescribed factors as well as any other factor that is considered relevant in the circumstances. A copy of the factors prescribed in section 54.6 of the SIMR is found in **Appendix 3**.

[67] Accordingly, the CBSA considered the following factors in making its scope ruling:

- The physical characteristics of the goods;
- The uses of the goods;
- The technical specifications of the goods;
- The channels of distributions of the goods;
- The characteristics of modularization
- The description of the goods in the CITT finding; and
- The reasons for the CITT finding.

[68] The CBSA acknowledges that the Woodfibre LNG modules including pipe rack modules are complex modules as they contain both FISC that form the structural framework and non-FISC elements such as equipment, piping, instrumentation and cabling, etc. which provide the modules with LNG functional properties.

[69] Complex modules are produced by first assembling FISC into a simple module of structural steel framework, after which non-FISC elements are connected or attached. From a physical characteristic perspective, the FISC contained in a simple module and a complex module are fundamentally the same. They are produced from the same raw material inputs, according to the same technical standards or equivalent standards for Canada.⁸ The FISC in a complex module is not transformed when non-FISC elements are connected, rather it maintains its essential characteristics.

⁸ Canadian Standards Association, CSA S16 “Design of Steel Structures”.

[70] FISC provides the structural steel framework and support upon which non-FISC elements are attached. Based on the information on the administrative record, the CBSA understands that, with respect to simple modules, all of the non-FISC elements are connected at the project site; whereas for complex modules, most of the non-FISC elements are connected at the fabrication site. From the perspective of usage, the FISC in a simple module and the FISC contained in a complex module have the same uses in an industrial project/facility; that is, the FISC provides the structural steel framework. In other words, they serve the same purpose which is to provide the structural steel framework to which non-FISC elements are connected.

[71] As described in the CITT's *Finding and Reasons*:

“FISC is purchased as part of a larger effort to procure and construct a capital project. It may also be purchased to fulfill ongoing operational needs (typically in smaller quantities). FISC is a custom product; it is not sold through distributors or retailers. The purchaser of FISC may be the owner or developer of a project. More commonly, however, an engineering firm will be engaged to engineer the product, procure the supplies and construct the product. These firms are referred to as “EPCs” (Engineering, Procurement and Construction).

FISC is typically purchased on the basis of total price as the purchaser is buying a complete set of custom fabricated components that fit together into a custom structure which is unique. FISC is shipped either unassembled or partially assembled from the fabricating facility to the construction site. Once they are at the construction site, structural components are placed and connected by an erector. The erector may be either an independent company or an operation related to the fabricator. Delivery of individual components requires coordination between the fabricator and the erector. FISC may also be delivered to a modular yard, where it is assembled or partially assembled into modules and then shipped to the construction site.

Delivery schedules to a project site vary significantly based on the size and complexity of the project. Most often delivery begins 16 to 20 weeks from the date of contract and can occur over a few months or over one or two years, sometimes more. FISC, whether unassembled (referred to in the industry as “sticks”) or in modules, is produced and then delivered to the job site in a deliberate sequence by the fabricator in order to allow the erector to proceed efficiently.”⁹

[72] As can be seen from the CITT's *Finding and Reasons*, FISC, in stick form or in modules are procured in the same distribution channels and could involve one or more parties including EPCs, fabricators, modular yards and erectors.

⁹ Exhibit 33 (NC) – CITT Finding and Reasons – FISC, issued May 25, 2017, page 4-5, paragraphs 12-16.

[73] The Woodfibre LNG modules including pipe rack modules are complex modules. They will be delivered to the project site in a deliberate sequence by the fabricator in order to be connected/erected in accordance with the engineering designs. FISC projects, whether employing a “stick”, “simple” modules, or “complex” modules strategy, are executed in a planned and coordinated fashion, over a period of time. The outcome of the various strategies is a final assembled/constructed FISC industrial process facility.

[74] The characterization of modules as stand-alone, finished goods distinct from its parts is not consistent with the reality of the different standards and codes that apply to different parts of a module and the industrial facility after construction. Canadian regulatory requirements treat various parts of a module as distinct and separate.

[75] Although Woodfibre claims that each module is essentially a stand-alone unit with fully-tested functionality that is akin to an industrial machine, the modules must still be interconnected at the project site using construction trades with various construction tools and machinery. The final outcome of the integration of the complex modules is a FISC industrial process facility. As Woodfibre explained in its application, “the processing units that make up an LNG facility can be either field constructed, where all the materials are delivered and constructed at site, or can use modularized construction where the plant is built mostly off-site in discrete modules.”¹⁰

[76] Modularization of FISC with non-FISC elements can be performed in Canada or in foreign countries. Whether a certain proportion of modularization activities are performed in Canada or a foreign country does not alter the essential characteristics of the FISC. FISC provides the structural steel framework and support to which non-FISC elements are connected.

[77] As FISC projects are customized projects, a single module produced for a particular FISC project cannot be sold separately even if it has stand-alone functions. All of the modules designed for the specific FISC project must be integrated together as part of the FISC industrial process facility. Each module only functions as designed and intended when it is integrated into the complete process facility.

[78] The characterization of procuring complex modules as the purchasing of a manufactured good is inconsistent with how modularization actually occurs for industrial projects. Typically, the project owner or the EPC, is intimately involved in all the aspects of the project from design to procurement to modularization to installation. The project owner or the EPC, who already owns the goods, will provide free-issued materials, including FISC and non-FISC elements, to the modular yard for assembly/construction. In this regard, the CBSA views modular assembly as the purchase of a construction service; the project owner or the EPC is not purchasing a manufactured good.

¹⁰ Exhibit 2 (NC) – FISC 2018 SP Application; page 4.

[79] Further, the characterization of a module as a finished good manufactured by a modular yard is inconsistent with how the modules are warrantied. If there is an issue with either the FISC or the equipment, or there are defects in module construction, the owner of the FISC project or the EPC will have to address the issues separately with either the FISC producer, the equipment manufacturer, or the modular yard. Therefore, the owner or the EPC would have to address defects in the module with the modular yard. In this regard, the CBSA views modular assembly as the performance of construction service by a modular yard.

[80] In light of the above, the CBSA views modules, simple and complex, as intermediate construction of a process facility. In other words, modularization can be considered to be the production of a processing facility broken down into transportable units at a remote modular yard. The finished modules are transported and interconnected with other modules at the project site.

[81] Finally, the CBSA notes that the product definition of subject goods contained in the CITT's finding specifically lists "modules" as being subject to the finding:

"Fabricated structural steel and plate-work components of ... whether *assembled* or *partially assembled* into *modules*, or *unassembled*, for use in structures for..."

[82] The product definition does not distinguish between "simple modules" or "complex modules" and is not limited to only "simple modules."

SCOPE RULING

[83] On the basis of the information on the administrative record and having considered the relevant factors contained in section 54.6 of the SIMR and any other relevant factors, on November 23, 2018, the CBSA made a scope ruling pursuant to subsection 66(1) of SIMA that the FISC portion of Woodfibre's LNG modules including pipe rack modules, are subject to the CITT's finding issued on May 25, 2017, in Inquiry No. NQ-2016-004.

FUTURE ACTION

[84] Pursuant to subsection 66(4) of SIMA, this scope ruling takes effect on November 23, 2018.

[85] Pursuant to section 69 of SIMA, this scope ruling is binding with respect to any determination or re-determination made in respect of any goods to which the scope ruling applies that are released on or after the date it is made.

[86] Pursuant to subsection 66(7) of SIMA, a scope ruling made under subsection 66(1) is final and conclusive, subject to further appeal. Pursuant to subsection 61(1.1) of SIMA, a scope ruling may be appealed to the CITT by any interested person as defined in subsection 52.3(1) of the SIMR. The notice of appeal must be filed in writing with the CBSA and the CITT within 90 days after the day the scope ruling was made. A decision made by the CITT may be further appealed to the Federal Court of Appeal.

INFORMATION

[87] This *Statement of Reasons* is available through the CBSA's website at the address below. For further information, please contact the officers identified as follows:

Mail: SIMA Registry and Disclosure Unit
Trade and Anti-dumping Programs Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th floor
Ottawa, Ontario K1A 0L8
Canada

Telephone: Nalong Manivong: 613-954-7268
Ansa Mohammad 613-960-6096

E-mail: simaregistry@cbsa-asfc.gc.ca

Website: www.cbsa-asfc.gc.ca/sima-lmsi/



Darryl Larson
Director
Anti-dumping and Countervailing Investigations
Trade and Anti-dumping Programs Directorate

APPENDIX 1 – REPRESENTATIONS

Termination of Scope Proceeding

CISC's Submission

On August 3, 2018, counsel for the CISC filed a submission requesting that the CBSA terminate the scope proceeding because the matter at issue in the Woodfibre application is currently subject to an application for judicial review before the Federal Court of Appeal (“FCA”) by LNG Canada Limited (“LNG Canada”).

Counsel argued Woodfibre’s application seeks the same relief that is being sought by LNG Canada before the FCA, namely a declaration that FISC contained within complex modules are not subject to the CITT’s finding in Inquiry No. NQ-2016-004.

Counsel noted that subsection 66(3) of SIMA and paragraph 54.5(d) of the SIMR provide that the President may terminate an investigation where circumstances referred to in paragraphs 54.3(b) to (d) of the SIMR — including the subject matter of the scope ruling application being before the FCA — arise after the initiation of a scope proceeding.

Applicant's Response

On August 9, 2018, counsel for Woodfibre filed a submission objecting to the CISC’s request for termination and argued that there is no conflict between the scope proceeding and the judicial review. Counsel argued the basis for the scope proceeding is to determine whether the particular goods set out in the scope ruling application are subject to the CITT’s finding in Inquiry No. NQ-2016-004, while the basis for the judicial review before the FCA is to determine whether the product definition is unclear and whether the CITT has the obligation to clarify the scope of the product definition generally with regard to the term *module*.

Counsel noted that Woodfibre was not involved in LNG Canada’s application for judicial review of the CITT’s finding before the FCA, nor was it a party to the CITT injury hearings.

CISC's Response

On August 10, 2018, counsel for the CISC filed a submission responding to Woodfibre’s objection and maintained the judicial review before the FCA seeks a finding on the subjectivity of goods. Counsel argued that the FCA proceeding is to determine whether the CITT erred by not ruling on the subjectivity of FISC within complex modules and, if so, that the FCA make the finding that FISC contained within complex modules are not subject goods, or in the alternative, that the issue be remanded to the CITT to make such a determination.

Applicant and CISC's Further Submissions

On August 14, 2018, counsel for Woodfibre filed a submission in response objecting to the CISC reply submission of August 10, 2018. Counsel largely reaffirmed its opposing arguments and requested that the scope proceeding continue.

On August 14, 2018, counsel for the CISC filed a submission in response reaffirming its previous arguments and requested that the CBSA terminate the scope proceeding pending resolution of the FCA.

CBSA Response

The CBSA considered the submissions from both parties and decided not to terminate the scope proceeding. The CBSA is of the view that the matter before the FCA is separate from the application for a scope ruling filed by Woodfibre. Further, pursuant to subsection 67(1) of SIMA, the CBSA shall review a scope ruling for the purpose of giving effect to a decision of the CITT, FCA or the Supreme Court of Canada.

APPENDIX 2 – COMMENTS ON THE SEF

Information Considered in Making the Preliminary Assessment

Comments

Counsel for the CISC noted that, in making the preliminary assessment of whether the goods in question are subject to the CITT finding, the CBSA's approach is consistent with SIMA and the SIMR.

Counsel for Woodfibre argued that the factors focused on by the CBSA to establish that complex modules are not manufactured goods are irrelevant, specifically that the complex modules must be used in conjunction with other goods and are custom built for a particular project.

Counsel for Woodfibre further noted that the SEF contains irrelevant facts that should not be relied upon, specifically regarding the claim of the capability of Canadian producers to produce modules with similar complexities as the Woodfibre LNG modules because it conflates the issue with the CITT exclusion process.

Response to Comments

Counsel for the CISC argued that Woodfibre did not challenge the following conclusions made in the SEF and therefore does not contest these conclusions:

- “Complex modules are produced by first assembling FISC into a simple module of structural steel framework, after which non-FISC elements are connected or attached.”
- “From a physical characteristic perspective, the FISC contained in a simple module and a complex module are fundamentally the same.”
- “From the perspective of usage, the FISC in a simple module and the FISC contained in a complex module have the same uses in an industrial project/facility; that is, the FISC provides the structural steel framework. In other words, they serve the same purpose to provide the structural steel framework to which non-FISC elements are connected.”

CBSA Response

The CBSA considered the information on the administrative record, the relevant factors contained in section 54.6 of the SIMR, and any other relevant factors in making its preliminary assessment and the scope ruling. The CBSA's analysis and consideration of these factors is detailed in the section of this *Statement of Reasons* titled “CBSA's Analysis”.

Approach Used in Making the Preliminary Assessment

Comments

Counsel for Woodfibre maintained its position that the FISC in a complex module is no longer FISC because it has been irrevocably interworked into a complex module. It is no longer practicable to separate the FISC back out of the module for other uses. It is also nearly impossible to extract the non-FISC elements from the FISC. In that sense, counsel argued that FISC has ceased to be FISC.

Counsel for Woodfibre argued that the CBSA has reversed the question. The principle is not to begin from the product definition and work forward to see if the FISC has changed character but rather it is to begin with the item being imported and then ask whether the item possesses the essential character of goods that are subject to the CITT finding. Counsel maintained that the essential character of what is being imported is an “industrial machine”, which is not subject to the CITT finding.

Counsel for Woodfibre raised the decision in *Steel Grating* (RR-2015-001) in which the CITT held that grating would cease to be within the subject goods definition, “after it is incorporated into a complex industrial structure”. This decision was considered by the CBSA in Subjectivity Appeal No. SG-1, July 21, 2017, in which the CBSA determined that fabricated steel grating were subject goods even though the steel gratings were imported for use in accompanying steel structures, as at the time of importation the gratings were in their own separate containers and were not physically attached, joined or wrought into a structure. Counsel for Woodfibre argued that this is exactly the opposite of the present case. The FISC is fully incorporated into a larger item, which is imported as a larger good, with a single tariff code, and used for a single purpose.

Response to Comments

Counsel for the CISC commented that while removing non-FISC elements may not be as simple as dis-assembling a tent, it is not “nearly impossible” and can be done without destroying the FISC or non-FISC elements. Counsel argued that the fact that a weld may need to be cut with a torch or saw does not mean that the assembly of the FISC into a module means that the “FISC has ceased to be”, as is alleged by Woodfibre. Furthermore, counsel argued that the fact that it may not be commercially reasonable to remove FISC from within a module is immaterial, as FISC, by its very nature, is custom made for a specific project.

Counsel for the CISC noted that the CBSA asked, and answered, the question posed by Woodfibre in its cover letter and scope ruling application:

- “This application is intended to determine whether the LNG modules to be imported by Woodfibre LNG, or any components thereof, are subject goods under FISC 2016 IN”
- “The question is whether the action taken to modularize FISC are radical enough that the FISC contained within a Complex Modules is no longer a simply assembly, but rather something else.”

Counsel for the CISC commented that there is nothing within SIMA, the common law, or the World Trade Organization Agreements that requires a trade remedy product definition to conform to the established system for classifying goods under the *Customs Tariff and General Rules for the Interpretation of the Harmonized System* regime. Further, there is no prohibition on a trade remedy applying to a good incorporated within another good.

Counsel for the CISC noted that trade remedies in other jurisdictions apply to a good within a good. For example, both the European Union and the United States have imposed trade remedies against biodiesel, including only the biodiesel within a mixture of petrochemicals and biodiesel. Further, the US trade remedy against aluminum extrusions applies to extrusions within curtain wall modules.

Counsel for the CISC submitted that the *Steel Grating* case does not stand for the proposition that a steel good integrated into a structure loses its identity; it stands for the proposition that a steel good may lose its identity at some point and that such a determination is within the purview of the CBSA and not the Tribunal. Further, counsel for the CISC argued that just because the CBSA found that grating fell within the scope of the *Steel Grating* finding, in part, because it was unattached, does not stand for the principle that any good subject to a CITT finding necessarily falls outside the scope of that finding because it is attached to a non-subject good at the time of importation.

CBSA Response

The CBSA submits that the *Customs Tariff* and the principles identified in the *General Interpretive Rules* are not determinative of the issue of whether or not goods constitute subject goods.

The CBSA notes that the product definition of subject goods contained in the CITT’s finding specifically lists “modules” as being subject to the finding:

“Fabricated structural steel and plate-work components of ... whether *assembled* or *partially assembled* into *modules*, or *unassembled*, for use in structures for...”

Interpretation of the Term “Module”

Comments

Counsel for Woodfibre disagreed with the CBSA’s interpretation in the SEF of the term “module” as referring to all modules including simple and complex modules because the product definition simply states “modules.” Counsel for Woodfibre noted that because the term “module” is vague and not defined, the term “module” must therefore be interpreted in the context of the Canadian trade remedy and customs law in which the term resides. Counsel for Woodfibre submits that the term “module” must be interpreted by attributing its meaning to modules that derive their essential character from FISC.

Counsel for Woodfibre argued that such interpretation would render many importers non-compliant with trade remedy laws; such as importers of sodas which contain refined sugar or importers of furniture which contain fasteners as refined sugar and fasteners are goods subject to SIMA duties.

Counsel for Woodfibre requested the CBSA to provide guidance regarding compliance and importation procedures for complex modules.

Response to Comments

Counsel for the CISC commented that Woodfibre failed to articulate how or why the interpretation of modules to include both “simple” and “complex” modules is improper. Counsel for the CISC submits that the CBSA’s conclusion in the SEF that “modules” includes all types of modules is correct.

Counsel for the CISC commented that applying the CITT finding to FISC within a module will not result in “regulatory chaos” as suggested by Woodfibre. Every SIMA trade remedy product definition must be applied based on its terms. In this case, the finding specifically includes FISC within modules. In the case of *Refined Sugar*, a soft drink is a finished good, the refined sugar is presumably transformed, and the product definition does not specifically extend to refined sugar in soft drinks.

CBSA Response

The section of this *Statement of Reasons* titled “CBSA’s Analysis” details the CBSA’s analysis, including its interpretation of the term “module”.

Exporters who cooperated during the original 2016 FISC investigation have been provided with instructions on how to obtain normal values and export prices for each shipment of FISC exported to Canada.

Importers are advised to consult with the SIMA Compliance Unit for information regarding the potential SIMA duty liability and how to account for the goods subject to SIMA.

Submission Filed on the Close of Record Date

Comments

Counsel for Woodfibre requested that the CBSA strike the submission filed by the CISC from the record because it was submitted on the day of the closing of the record. Counsel argued that the submission was an RFI response in disguise and did not allow the applicant to review and provide comments on the allegations and facts raised by the CISC.

Response to Comments

Counsel for the CISC commented that Woodfibre and the CISC had the same opportunity to file materials that they respectively thought were relevant. Counsel for the CISC argued that parties routinely file information close in time to the close of the record and there is nothing inherently “unfair” in this process.

Counsel noted parties are given an opportunity to file submissions and make representations about any document placed on the record. The opportunity to “provide comments” on the record is provided for at the “Comments on the SEF” stage and counsel noted that Woodfibre did not provide comments on the SEF regarding the CISC’s submission on the day of the closing of the record.

CBSA Response

The CBSA will endeavor to consider all information received before the closing of the record, where time and resources permit. In this case, the CISC filed a response to the RFI and the CBSA was able to take this information into consideration. The CBSA was also able to consider Woodfibre’s response to RFI submissions, which was filed on the close of record date.

All interested parties have the opportunity to provide comments on the SEF, including the information relied on by the CBSA in making its preliminary assessment.

APPENDIX 3 – PRESCRIBED FACTORS IN SIMR

The SIMR section 54.6 provides the following:

54.6 For the purpose of subsection 66(6) of the Act, the President may take the following factors into account in making a scope ruling:

- (a)** in all cases,
 - (i)** the physical characteristics of the goods in respect of which the scope proceeding has been initiated, including their composition,
 - (ii)** their technical specifications,
 - (iii)** their uses,
 - (iv)** their packaging, including any other goods contained in the packaging, along with the promotional material and documentation concerning the goods in respect of which the scope proceeding has been initiated, and
 - (v)** their channels of distribution;
- (b)** for a ruling as to whether goods in respect of which the scope proceeding has been initiated are of the same description as goods to which an order of the Governor in Council or an order or finding of the Tribunal applies,
 - (i)** the description of the goods referred to in that order or that order or finding,
 - (ii)** in the case of an order or finding of the Tribunal, the reasons for the order or finding, and
 - (iii)** any relevant decision by the Tribunal, the Federal Court of Appeal, the Supreme Court of Canada, or a panel under Part I.1 or II of the Act;
- (c)** for a ruling as to whether goods in respect of which the scope proceeding has been initiated are of the same description as goods to which an undertaking applies,
 - (i)** the description of the goods referred to in the preliminary determination of dumping or subsidizing and in the undertaking, and
 - (ii)** the reasons for the preliminary determination; and
- (d)** if the basis for a ruling referred to in paragraph (b) or (c) is whether goods in respect of which the scope proceeding has been initiated originate in a country that is subject to the applicable order, finding or undertaking or originate in a third country,
 - (i)** the production activities undertaken in the third country in respect of the goods and undertaken in the subject country in respect of goods from which the goods are produced,
 - (ii)** the nature of the goods when they were exported from the third country and of goods from which the goods are produced when they were exported from the subject country, and
 - (iii)** the costs of production of the goods incurred in the third country.