



OTTAWA, January 4, 2019

FISC 2018 SP-02

## STATEMENT OF REASONS

### SCOPE RULING – CERTAIN FABRICATED INDUSTRIAL STEEL COMPONENTS

#### **Well Pair Modules, Termination Modules and Metering Modules – Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd.**

Pursuant to subsection 66(1) of the *Special Import Measures Act*, the Canada Border Services Agency made a scope ruling on January 4, 2019, that the fabricated industrial steel components (FISC) portion of Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd.'s well pair modules, termination modules and metering 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.

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## SUMMARY OF EVENTS

- [1] On August 7, 2018, the Canada Border Services Agency (CBSA) received an application for a scope ruling from Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd. (SSCEM) as to whether its well pair modules, termination modules and metering 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 well pair modules, termination modules and metering modules are not subject to the CITT's finding.
- [3] On September 6, 2018, pursuant to subsection 63(8) of the SIMA, the CBSA initiated a scope proceeding with respect to the goods that were the subject of the application.
- [4] On September 17, 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, SSCEM, filed a submission on October 4, 2018 objecting to the CISC's request for termination.
- [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 October 31, 2018.
- [8] On November 26, 2018, the CBSA issued the *Statement of Essential Facts* (SEF) which contained its preliminary assessment that the fabricated industrial steel components (FISC) portion of SSCEM's well pair modules, termination modules and metering 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 on December 3, 2018. No responses to the comments on the SEF were received from interested parties.
- [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 Regulation* (SIMR) and other relevant factors, on January 4, 2019, pursuant to paragraph 66(1) of the SIMA, the CBSA made a scope ruling that the FISC portion of SSCEM's well pair modules, termination modules and metering 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 SSCEM's well pair modules, termination modules and metering modules for use in an oil sands project.

[12] An oil sands production facility uses steam-assisted gravity drainage (SAGD) technology that recovers bitumen from oil sands reservoirs. Steam injected into the reservoir heats the bitumen so that it flows more easily, allowing it to be pumped to the surface. The on-site processing facilities that perform the steam injection and bitumen recovery are referred to as SAGD well pad modules.

[13] A complete SAGD well pad module consists of multiple well pair modules, a termination module and a metering module.

[14] An SAGD well pad module consists of interconnected mechanical, electrical and hydraulic equipment that is designed and manufactured in modular form. Once connected on-site, a completed well pad functions as a discrete injection/recovery unit for one or more underground wells.

[15] Well pair modules transfer the injection steam from the central processing facility to the steam wells and pump out bitumen to the central processing facility. Well pair modules consist of piping, valves, controls, monitoring and other electrical equipment, support structures, walkways and other components.

[16] Termination modules are identical in design to well pair modules but are located at the end of a well pad assembly. Termination modules are distinguished by pipe drain and vent valves.

[17] Metering modules perform the functions of measuring bitumen and steam production rates, along with sampling and testing water to oil ratios for internal and regulatory reporting. Metering modules consist of instrumentation, electrical and mechanical components.

[18] In the remainder of the *Statement of Reasons*, well pair modules, termination modules and metering modules will be referred to as SAGD well pad modules.

[19] Materials and components for SSCEM's SAGD well pad modules are either fabricated at or transported to SSCEM's facility in Shanghai, China. The material and components are then further engineered, fabricated and assembled into SAGD well pad modules to meet detailed specifications provided by the client. Some materials and components, including FISC elements and non-FISC elements, are free-issued to SSCEM.<sup>1</sup>

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<sup>1</sup> 'Free Issue Materials' means, for the purpose of a contract, the project owner or Engineering, Procurement and Construction (EPC) firm issues certain materials free of charge to the modular yard solely for use in relation to the contract, but ownership is retained by the project owner or EPC firm.

[20] The client may send their own engineers to SSCEM's facility to inspect and assist with the module fabrication.

[21] The production of SAGD well pad modules involves a wide range of trades and professions including welders, electricians, pipe fitters, engineers and specialists from various disciplines.

[22] The FISC portion of the SAGD well pad modules constitute the "skeleton" into which the interconnected mechanical and electronic components are installed and attached. The FISC elements are custom-engineered and fabricated to be part of the SAGD well pad modules.

[23] Each of the SAGD well pad modules is fully constructed, finished, painted (where specified) and functionally tested in the SSCEM facility prior to shipping.

[24] SAGD well pad modules are shipped as complete, ready-to-function units, with the exception of certain minor protruding parts such as safety railings and stairs, spools, valves, instrumentation, electrical heat tracing cabinets that exceed the shipping envelope, and which are detached for shipping and re-installed at the project site.

[25] SAGD well pad modules are specifically engineered to fall within the maximum size and weight restrictions for road transportation from ports in British Columbia to the project site in Alberta.

[26] SAGD well pad modules are commonly-used technology in oil sands bitumen extraction and are designed to be easily set up and expanded using additional modules that are essentially identical across module types. Accordingly, the modules are essentially "plug and play" and can be installed in the existing facility relatively quickly, with no modification, and minimal additional assembly.

[27] The engineering and complete fabrication of the SAGD well pad modules at offsite facilities ensures standardization and consistency of function for specific types of modules.

## **THE CITT'S FINDING**

### **Background**

[28] 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.

[29] 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**

[30] 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.).

[31] 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.

## RELEVANT SCOPE RULINGS

### **FISC 2018 SP – Woodfibre LNG Limited’s Liquefied Natural Gas Modules Including Pipe Rack Modules**

[32] On June 26, 2018, the 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 CITT finding. The applicant argued the product definition in the CITT finding did not include complex modules. The applicant’s position was that complex LNG modules including pipe rack modules are manufactured finished goods and that the FISC portion loses its characteristics when further processed and combined with substantial amounts of non-FISC elements.

[33] On November 23, 2018, 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. The CBSA viewed modules, simple and complex, as intermediate construction of a process facility. Modularization of FISC with non-FISC elements performed in Canada or in foreign countries does not alter the characteristics of FISC. FISC in both simple and complex modules provides the structural steel framework and support to which non-FISC elements are connected. 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 how the modules are warranted. The CBSA also noted that the product definition of subject goods contained in the CITT’s finding specifically lists “modules”, that it does not distinguish between “simple modules” or “complex modules” and it is not limited to only “simple modules”.<sup>2</sup>

## SCOPE PROCEEDING PROCESS

[34] 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.

[35] Representations concerning terminating the scope proceeding were received from interested parties prior to the closing of the record on October 31, 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**.

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<sup>2</sup> FISC 2018 SP – *Statement of Reasons*, published on November 23, 2018: <http://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2018/fisc2018-sr-eng.html>

[36] On December 3, 2018, subsequent to the publication of the SEF, the CISC provided comments on the SEF. The CISC indicated that it agreed with the CBSA's preliminary assessment and 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 the SIMA and the SIMR.

## **INTERESTED PARTIES**

### **Applicant**

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

Shanghai Shuangyan Chemical Equipment Manufacturing Co., Ltd.  
No. 3111, West Huancheng Road,  
Fengpu Industrial Park,  
Shanghai, China

[38] SSCEM is a fabricator and exporter of the goods that are the subject of the scope ruling application and other complex modules.<sup>3</sup>

[39] The CBSA sent SSCEM an Exporter RFI at the initiation of the scope proceeding. In response, SSCEM directed the CBSA to the information it provided in its scope ruling application. A copy of the non-confidential version of the scope ruling application filed by SSCEM is available on the CBSA's Listings of Exhibits website at <http://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/fisc2018/fisc201802-ex-eng.html>

### **Canadian Industry**

[40] At the initiation of the scope proceeding, the CBSA identified 16 Canadian producers of like goods based on information from the scope proceeding with respect to Woodfibre's LNG modules including pipe rack modules (hereafter referred to as the FISC 2018 SP scope proceeding).

[41] The CBSA sent a Producer RFI to all producers of like goods. The CBSA received submissions from four Canadian producers of FISC, namely, Supermetal Structures Inc., Supreme Group LP, Waiward Steel LP, and Ocean Steel & Construction Ltd.

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<sup>3</sup> Exhibit 82 (NC) – FISC 2018 SP-2 – Exporter RFI response - SSCEM



[42] 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. 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.<sup>4</sup>

### **Importers**

[43] At the initiation of the scope proceeding, the CBSA identified 56 known and potential importers of subject goods based on information from the FISC 2018 SP scope proceeding.

[44] 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, Fluor Canada Ltd., Shell Canada Limited and Suncor Energy Inc.

### **Exporters and/or Foreign Producers**

[45] At the initiation of the scope proceeding, the CBSA identified 134 known and potential exporters and/or producers of subject goods based on information from the FISC 2018 SP scope proceeding.

[46] The CBSA sent an Exporter RFI to all known and potential exporters and/or producers. No exporters or producers, other than SSCEM, provided information to the CBSA.

### **Requests for Extension**

[47] 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.

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<sup>4</sup> Exhibit 30 (NC) – Public Statement of the Canadian Institute of Steel Construction

[48] 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**

[49] In addition to the information and arguments contained in SSCEM's application, the CBSA received responses to its RFI from interested parties contending that the goods in question are not subject to the CITT finding, namely Fluor Canada Ltd. ("Fluor"), Shell Canada Limited and Suncor Energy Inc.

[50] The details of the information and arguments submitted by the applicant and each of these interested parties are available in the SEF issued on November 26, 2018. The information and arguments are summarized below:

- The product definition does not include complex modules
- Complex SAGD well pad modules are manufactured goods
- Complex SAGD well pad modules are not structural goods

#### ***The product definition does not include complex modules***

[51] Parties argued that the product definition in the CITT's finding in Inquiry No. NQ-2016-004 includes FISC assembled or partially assembled into modules and that this only covers FISC that is simply assembled with other FISC to form "FISC-only modules".

[52] Parties submitted that while some modules involve little more than connecting units of FISC together, SSCEM's SAGD well pad modules are fundamentally different products as they are finished, manufactured goods and, therefore, do not fall within the product definition.

[53] Parties maintained that SSCEM's SAGD well pad modules are not merely "assembled," but are engineered, manufactured and factory-tested to perform specified industrial tasks.

[54] Parties noted that SSCEM's SAGD well pad modules constitute large amounts of non-FISC elements which are integrated together with FISC to form complex, stand-alone industrial goods.

#### ***Complex SAGD well pad modules are manufactured goods***

[55] Parties argued that the SSCEM SAGD well pad modules are finished, commercial goods in their own right, which are commissioned and tested for performance prior to leaving the modular yard.

[56] Parties maintained that SSCEM's SAGD well pad modules are fundamentally different products from FISC, albeit they include FISC as a component or raw material. They indicated that SAGD well pad modules are finished, manufactured goods, akin to industrial machines, household appliances or motor vehicles.

[57] Parties hold the position that SSCEM's SAGD well pad modules are complex modules which have specific SAGD functionality and serve particular operating functions which defines the character of the completed and distinct modules.

[58] SSCEM submitted that the discrete functions of the well pair modules, termination modules and metering modules support their status as industrial machinery and not simply structural components.

***Complex SAGD well pad modules are not structural goods***

[59] Parties conceded that a simple module, constructed purely out of FISC fulfils the requirement for being "structural" but argued that a complex module does not.

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

[61] Parties argued that FISC incorporated into the SAGD well pad modules, at the time of importation, is permanently transformed and has "lost its identity" as FISC. The FISC is used to provide the complex module with structural integrity and structural support and the FISC is subsumed into the module as a whole.

[62] Parties stated that complex modules are defined by non-FISC elements, which comprise the majority of the value of the complex modules. A complex module that contains FISC as an input is a very distinct product from the FISC.

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

[63] 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., Supreme Group LP ("Supreme"), Waiward Steel LP and Ocean Steel & Construction Ltd. As well, a submission making the same contention was received from the Canadian Institute of Steel Construction (CISC).

[64] 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 SAGD well pad modules are not manufactured goods
- Non-FISC elements do not change FISC function

***The product definition includes complex modules***

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

[66] Parties maintained that the product definition includes FISC “whether assembled or partially assembled into modules, or unassembled”.

[67] Parties submitted that SSCEM’s well pad modules are no more complex than other SAGD well pad modules that contain FISC produced by Canadian producers for oil and gas projects in Canada.

***Complex SAGD well pad modules are not manufactured goods***

[68] Parties hold the position 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.

[69] 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.

[70] Parties submitted 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.

[71] Parties maintained that 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.

[72] Parties noted 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.

[73] 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*

[74] 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.

[75] Parties maintained 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.

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

[77] Parties hold the position that FISC remains FISC regardless of the quantity and value of non-FISC elements that are attached within the module.

### **CBSA ANALYSIS**

[78] As previously indicated, the CISC was the only party to provide comments on the SEF. The CISC commented that it agreed with the CBSA's preliminary assessment and 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. As there is no need to address these comments, the following analysis is consistent with the CBSA's analysis in the SEF.

[79] 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 2**.

[80] 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;
- The reasons for the CITT finding; and
- Previous CBSA scope ruling regarding certain FISC.

[81] The CBSA acknowledges that the SSCEM SAGD well pad modules are complex modules as they contain both FISC that form the structural framework and non-FISC elements such as equipment, piping, instrumentation and controls, etc. which provide the modules with specific SAGD functional properties.

[82] Complex modules are produced by first assembling FISC into a simple module of structural steel framework, after which non-FISC elements are connected. 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. The FISC in a complex module is not transformed when non-FISC elements are connected, rather it maintains its essential characteristics, that is, to provide the structural framework and support in a processing facility.

[83] FISC provides the structural steel framework and support to which non-FISC elements are attached. 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 process 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. This has been acknowledged by SSCEM and all other parties.

[84] 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.”<sup>5</sup>

[85] 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.

[86] 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. Further, as noted by Supreme in its submission, the SSCEM SAGD well pad modules are not different from or more complex than the SAGD well pad modules produced by steel fabricators and modular assembly facilities for various facilities in Canada including Nexen Long Lake, Cenovus Cristina Lake and Suncor Energy Firebag.<sup>6</sup>

[87] SSCEM SAGD well pad 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 industrial process facility.

[88] The characterization of modules as stand-alone, finished goods distinct from their 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.

[89] Certain parties claim that each module is essentially a stand-alone unit, a commercial good in its own right with fully-tested functionality and is akin to an industrial machine. However, the CBSA notes that the well pair modules, termination modules and metering modules must still be interconnected at the project site using construction trades with construction tools and machinery. The final outcome of the integrated SAGD well pad modules is an industrial process facility.

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

<sup>6</sup> Exhibit 25 (NC) - Response from Supreme Group LP.

[90] According to SSCEM, SAGD well pad modules are commonly-used technology in oil sands bitumen extraction and are designed to be easily set up and expanded using additional modules that are essentially identical across module types and can be installed in the existing facility relatively quickly, with no modification, and minimal additional assembly. However, SSCEM later indicated that the engineering and complete fabrication of the modules at offsite facilities ensures standardization and consistency of function for specific types of modules. In this regard, the complex modules are customized, designed and produced for the particular FISC project.

[91] 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 into an SAGD well pad module to form an industrial process facility. Each unit only functions as designed and intended when it is integrated into the complete industrial process facility.

[92] 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. As indicated by SSCEM, 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.

[93] 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 project 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, respectively. Therefore, the project owner or EPC would need 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.

[94] As indicated in Fluor's submission, modularization is 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.<sup>7</sup>

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<sup>7</sup> Exhibit 21 (NC) - Response from Fluor Canada Ltd.



[95] In light of the above, and as stated in the CBSA's *Statement of Reasons* with respect to the FISC 2018 SP Woodfibre LNG Limited scope ruling, 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 process 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.

[96] SSCEM argued that the domestic industry's consent to exclusions from the CITT's finding for a broad range of complex modules which incorporate FISC is persuasive evidence of their acceptance of the interpretation of the scope of the subject goods as set out in the scope ruling application. The CBSA notes that the domestic producers consented to the product exclusion requests for certain FISC that fell within the scope of the product definition. The CBSA also notes that SIMA authorizes the CITT to exclude only goods which are subject goods. It is the CBSA's position that the CITT's exclusion does not indicate that the FISC contained in complex modules are not subject goods; rather FISC contained in complex modules are subject goods and an exclusion was granted with respect to certain FISC for use in a particular project.

[97] In its application, SSCEM applied the reasoning outlined in Subjectivity Appeal No. SG-1, July 21, 2017, in which the CBSA maintained that fabricated steel grating were subject even though the steel gratings were imported for use in accompanying steel structures, at the time of importation the gratings were in their own separate containers, and were not physically attached, joined or wrought into a structure. SSCEM argued that FISC incorporated into the SAGD well pad modules, at the time of importation, is permanently transformed and has "lost its identity" as FISC. It further argued that the isolation of goods permanently incorporated into imported finished goods for the purpose of applying duty is unprecedented in SIMA.

[98] The CBSA notes that the decision 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. Further, there is no prohibition on a trade remedy applying to a good incorporated within another good. The CBSA must consider the relevant factors contained in section 54.6 of the SIMR and any other relevant factors in accordance with subsection 66(6) of SIMA in assessing the subjectivity of the SAGD well pad modules.

[99] Parties supporting the applicant argued that FISC elements in complex modules account for a small portion of the value of the complex module and do not in any way define or dominate the complex module. The CBSA is of the view that the proportion of non-FISC elements contained in a module dictates whether it is considered to be a simple module versus a complex module.

[100] As stated in the CBSA's *Statement of Reasons* with respect to the FISC 2018 SP Woodfibre LNG Limited scope ruling, the product definition does not distinguish between "simple modules" or "complex modules". Further, it is not limited to "simple modules". Also, in that proceeding, the CBSA made a scope ruling that the FISC portion of Woodfibre's liquefied natural gas modules including pipe rack modules, which are considered to be complex modules, are subject to the CITT's finding.

### **SCOPE RULING**

[101] 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 other relevant factors, on January 4, 2019, the CBSA made a scope ruling pursuant to subsection 66(1) of SIMA that the FISC portion of SSCEM's well pair modules, termination modules and metering modules are subject to the CITT's finding issued on May 25, 2017, in Inquiry No. NQ-2016-004.

### **FUTURE ACTION**

[102] Pursuant to subsection 66(4) of SIMA, this scope ruling takes effect on January 4, 2019.

[103] 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.

[104] 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

[105] 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, 11<sup>th</sup> floor  
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**Telephone:** Nalong Manivong: 613-954-7268  
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**Website:** [www.cbsa-asfc.gc.ca/sima-lmsi/](http://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 September 17, 2018, counsel for the CISC filed a submission requesting the CBSA to terminate the scope proceeding because the matter at issue in SSCEM's application is currently subject to application for judicial review before the Federal Court of Appeal ("FCA") by Fluor Canada Ltd (Fluor), LNG Canada Limited (LNG Canada), Fort Hills Energy LP (Fort Hills) and Suncor Energy Inc. (Suncor).

Counsel argued SSCEM's application seeks the same relief that is being sought by Fluor, LNG Canada, Fort Hills and Suncor 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 Fort Hills and Suncor's application for judicial review seeks an order from the FCA granting an exclusion for certain FISC integrated with other goods.

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 Reply Submission**

On October 4, 2018, counsel for SSCEM filed a submission objecting to the CISC's request for termination. Counsel argued that there is no conflict between the scope proceeding and the judicial review, and that 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 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 the CBSA is not precluded from making subjectivity determinations at the time of import of FISC in modules, nor is it precluded from collecting duties on imported FISC in modules during the pendency of the appeal before the FCA. Consequently, counsel noted the CBSA should not be precluded from conducting scope rulings in this context.

#### **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 SSCEM. 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, the FCA or the Supreme Court of Canada.

## **APPENDIX 2 – PRESCRIBED FACTORS IN THE 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.