



OTTAWA, October 23, 2009

4214-27
AD1386

STATEMENT OF REASONS

Concerning the initiation of an investigation into the dumping of

**FACED RIGID CELLULAR POLYURETHANE-MODIFIED
POLYISOCYANURATE THERMAL INSULATION BOARD ORIGINATING IN
OR EXPORTED FROM THE UNITED STATES OF AMERICA**

DECISION

On October 8, 2009, pursuant to subsection 31(1) of the *Special Import Measures Act*, the President of the Canada Border Services Agency caused an investigation to be initiated respecting the alleged injurious dumping of faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States of America.

Cet énoncé des motifs est également disponible en français. Veuillez vous reporter à la section « Information ».

This Statement of Reasons is also available in French. Please refer to the “Information” section.

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SUMMARY

[1] On August 19, 2009, the Canada Border Services Agency (CBSA) received a complaint from IKO Sales Ltd. (IKO) concerning the alleged injurious dumping of faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board (polyiso insulation board) originating in or exported from the United States of America (United States).

[2] On September 9, 2009, pursuant to subsection 32(1) of the *Special Import Measures Act*¹ (SIMA), the CBSA informed the complainant that the complaint was properly documented. The CBSA also notified the Government of the United States.

[3] The complainant provided evidence that these products have been dumped. The evidence provided also discloses a reasonable indication that the dumping has caused injury or is threatening to cause injury to the Canadian industry producing these goods.

[4] On October 8, 2009, the President of the CBSA (President) caused an investigation to be initiated respecting the dumping of the goods pursuant to subsection 31(1) of SIMA.

BACKGROUND

[5] It should be noted that there was a prior dumping investigation involving this product. On April 11, 1997, the Canadian International Trade Tribunal (Tribunal) issued a finding of injurious dumping, in its Inquiry No. NQ-96-003, respecting faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States of America. On November 27, 2001, in the course of an expiry review investigation, the Canada Customs and Revenue Agency (now CBSA) issued a decision that the expiry of the finding was not likely to result in the continuation or resumption of dumping of the goods. In the circumstances, the Tribunal issued an order rescinding the finding on April 10, 2002. It is noted that at the time of that expiry review, IKO, which did not participate in the review, had just begun production in eastern Canada. Furthermore, while IKO is now also producing polyiso insulation board in the western market, there was no domestic production west of Ontario at the time that the previous finding was rescinded.

¹ R.S.C. 1985, c. S-15 [*SIMA*]

INTERESTED PARTIES

Complainant

[6] The complainant, IKO, is the largest Canadian manufacturer of polyiso insulation board. The complainant's address is:

IKO Sales Ltd.
602 – 1 Yorkdale Road
Toronto, Ontario
M6A 3A1

Other Canadian Producers

[7] The complainant identified two other domestic producers of polyiso board in Canada: Atlas Roofing Canada (ARC) and Johns Manville Canada (JMC). JMC operates a plant in Cornwall, Ontario, and ARC operates a plant in Toronto, Ontario.

Exporters

[8] The CBSA has identified 57 potential exporters of the subject goods from the CBSA's Customs Commercial System (CCS) import data and the complaint.

Importers

[9] The CBSA has identified 87 potential importers of the subject goods from CCS import data and the complaint.

PRODUCT INFORMATION

Definition

[10] For the purpose of this investigation, the subject goods are defined as:

Faced rigid cellular polyurethane-modified polyisocyanurate thermal insulation board originating in or exported from the United States of America.

Additional Product Information

[11] Polyiso insulation board is the primary insulation product for commercial wall and roof applications.

[12] Generally, polyiso insulation board has the same physical foam properties whether it is used for roofing or for wall applications. Differences between the two applications

usually relate only to thickness, type of facers (facing material bonded to both sides of the foam core) and board dimensions.

[13] Polyiso roof insulation board is generally offered in sizes of 3' x 4', 4' x 4' and 4' x 8' and can be produced in a range of thicknesses from 1" to 4". Custom sizes and thicknesses are also available. These boards are used mainly in the commercial construction sector. The product is also available in tapered boards which are used in pre-engineered slope insulated roof systems to provide positive drainage.

[14] Polyiso wall insulation board is generally offered in 4' x 8' and 4' x 9' sizes and can be produced in thicknesses from 1" to 4". As with roofing boards, custom sizes and thicknesses are available. These boards are generally used for construction applications in both residential and non-residential wall systems.

Production Process²

[15] The main ingredients in polyiso insulation board are aromatic polyester polyol (polyol), isocyanurate (MDI) and a blowing agent, which is usually pentane. Other ingredients are a facer material, fire retardant, a surfactant, and three different catalysts that are used to initiate and control the chemical reactions that take place in the manufacture of polyiso board. All of the raw materials, except for the facer material, are liquids. They are delivered to the factory in rail cars, tank trucks, or containers. Raw materials are transferred from rail cars and tank trucks to storage tanks in the factory.

[16] The factory makes a mixture of the polyol, the fire retardant, the surfactant, and the catalysts. The temperature and pressure of this mixture are carefully controlled. The pressures and temperatures of the MDI and of the pentane are also, separately, carefully controlled. Then the polyol mixture, the MDI, and the pentane are combined under high pressure onto a "pour table". The mixture flows between two facers, which are on a continuously moving double belt laminator and bonded to the said facers. Facers are distinguished by their water vapour permeance and composition and vary depending on the construction application.

[17] Upon exiting the laminator, the board is trimmed to the correct width and cut to the required length. The product is then packaged and placed in the warehouse for a period of two to four days for curing before shipment.

[18] According to the complainant, all major North American producers use comparable manufacturing technology and the principal chemical inputs (PMDI, polyol and blowing agent) are generally sourced from the same chemical suppliers.

² IKO Complaint (NC), page 18

Classification of Imports

[19] Imports of the subject goods are usually classified in Section XVI of the Customs Tariff under the Harmonized System (HS) by the following tariff item:

3921.13.99.10 - Other plates, sheets, film, foil and strip, of plastics.
-Cellular
-Of polyurethanes
- Other
- Polyisocyanurate insulation.

[20] This HS code is for convenience of reference only. Refer to the product definition for authoritative details regarding the subject goods.

LIKE GOODS

[21] Subsection 2(1) of SIMA defines “like goods”, in relation to any other goods, as goods that are identical in all respects to the other goods, or in the absence of identical goods, goods for which the uses and other characteristics closely resemble those of the other goods.

[22] Polyiso insulation board produced by the complainant competes directly with and has the same end use as the subject goods imported from the United States. The goods produced in Canada and the United States are completely substitutable. Therefore, the CBSA has concluded that polyiso insulation board produced by the Canadian industry constitutes like goods to the subject goods.

[23] All of the various polyiso insulation boards are produced on the same machinery. Both roof insulation boards and wall insulation boards are made of foam cores that have substantially the same chemical composition, physical properties and appearance. The facers are not significantly different, but boards for roofing applications made with acrylic-fibreglass facers and boards for wall applications made with foil facers typically have a price premium over boards with fibreglass-reinforced paper because of differences in the cost of the facers. The polyiso insulation boards are distributed in the same manner, through the same channels of distribution. After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that the subject goods constitute only one class of goods.

CANADIAN INDUSTRY

[24] There are three producers of polyiso insulation board in Canada; IKO, JMC and ARC.

IKO³

[25] IKO and its related companies are involved in the manufacture, sale, and distribution of a wide range of roofing products in Canada, the United States, eastern and western Europe, and other international markets. IKO is a privately-owned Canadian company.

[26] Over the years, IKO has expanded its line of roofing products to include organic and fibreglass-based shingles, roofing felts, and APP (Atactic-Polypropylene) and SBS (Styrene-Butadiene-Styrene) modified bitumen roofing systems for commercial and industrial applications. As part of this focus IKO started manufacturing its own polyiso insulation board. In 2000, IKO opened a factory in Brampton, Ontario, to manufacture polyiso insulation board for the eastern Canadian market (from Ontario eastwards), and in 2005, IKO opened a factory in High River, Alberta, to serve the western Canadian market (from Manitoba westwards).

Other Canadian Producers

[27] As indicated earlier, JMC operates a plant in Cornwall, Ontario, and ARC operates a plant in Toronto, Ontario. The complainant states that these plants mainly serve eastern Canada and eastern United States.

STANDING

[28] Pursuant to subsection 31(2) of SIMA, the following conditions must be met in order for an investigation to be initiated:

- (a) The complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- (b) The production of the domestic producers who support the complaint represents 25% or more of the total production of like goods by the domestic industry.

[29] The CBSA contacted JMC and ARC for the purpose of determining whether these producers support IKO's filing of the dumping complaint. ARC declined to provide an opinion on the matter.⁴ JMC, however, has indicated its support for IKO's complaint.⁵

[30] Based on an analysis of information provided in the complaint and additional information received from JMC and ARC, the CBSA is satisfied that the complaint is supported by domestic producers whose production represents more than 50% of the total

³ IKO Complaint (NC), pages 9 – 10

⁴ Information provided by ARC, October 5, 2009

⁵ Information provided by JMC, September 21, 2009

production of like goods by those domestic producers who express either support for or opposition to the complaint. Further, the domestic producers who support the complaint represent more than 25% of the total production of like goods by the domestic industry. The CBSA is satisfied that the standing requirements of subsection 31(2) of SIMA have been met.

CANADIAN MARKET

[31] The market for polyiso insulation board is primarily driven by the construction of new commercial and industrial buildings. While existing buildings need to have their roofs replaced and re-waterproofed every 10 to 30 years, this replacement does not usually extend to the insulation layer provided by polyiso insulation board.

[32] The Canadian market for polyiso insulation board is supplied by domestic production as well as imports. As noted earlier, domestic production is supplied by IKO (one plant in Brampton, Ontario, and one plant in High River, Alberta), ARC (one plant in Toronto, Ontario) and JMC (one plant in Cornwall, Ontario). Virtually all imports (>99%) of the subject goods are from the United States.

[33] Data on domestic production in Canada is not available from published sources. In order to estimate the apparent Canadian market, the complainant utilized its own production figures and estimated the volumes of production for ARC and JMC based on its own market intelligence. The complainant also estimated export volumes, based on assumptions of relatively low export volumes as a result of the appreciation of the value of the Canadian dollar during the past three years. In order to refine these figures, the CBSA requested JMC and ARC to provide production and sales data. Both ARC and JMC provided the requested information, which permitted the CBSA to revise data on the estimates provided by the complainant.

[34] In addition, the complainant estimated imports of polyiso insulation board for the years 2005 to 2008 based on information obtained from Statistics Canada. The CBSA has verified IKO's estimates of import volumes through an examination of CCS import data. The CCS data, which is summarized in the following table, confirms IKO's estimates of imports.

Table 1 Summary Imports of Polyiso Insulation Board into Canada from the United States 2005 to 2008

Year	Volume (KG)	Volume (BF)⁶	Values (CAN\$)	Unit Values (\$/BF)
2005	7,526,995	90,323,936	24,118,163	0.267
2006	9,429,813	113,157,753	27,753,755	0.245
2007	12,986,299	155,835,585	35,178,799	0.226
2008	13,156,511	157,878,135	38,003,156	0.241

[35] As is demonstrated in Table 1, both volumes and values of imports of polyiso insulation board have increased in each year of the period. It is also noteworthy that average unit values of imports from the United States have trended downward from 2005 through 2007, with only a slight upward movement in 2008.

[36] Based on IKO, ARC and JMC production volumes, and import data from CCS, the CBSA has estimated the size and value of the apparent Canadian market. The CBSA's analysis of the apparent Canadian market is based on confidential data for a small number of producers of polyiso insulation board. Accordingly, specific values and production volumes cannot be divulged.

[37] The CBSA's analysis reveals that the volume of the apparent Canadian market grew by approximately 22% during the period from 2006 through 2008. In addition, the estimates show that U.S. import volumes increased by approximately 42% from 2006 to 2008. The market share of U.S. imports in 2008 remains about five percentage points above the level in 2006, while the market share held by Canadian production is five percentage points lower in 2008 than in 2006.

EVIDENCE OF DUMPING

[38] The complainant alleges that polyiso insulation board from the United States is being injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds their export price to importers in Canada.

[39] In the polyiso insulation board industry, product varies in size from 1 to 4 inches in thickness. Throughout the analysis, the complainant used 2" polyiso insulation boards

⁶ Although the import statistics are collected in terms of kilograms, the standard measure of volume in the industry is a "board foot", which is a unit of polyiso insulation board one foot square by one inch thick. While polyiso insulation board products have slightly different densities and surface coverings, a reasonable rule of thumb for converting kilograms to board feet is 1 KG equals 12 board feet of polyiso insulation board.

as a benchmark representing most sizes. Estimates of normal value and export price are discussed below.

[40] The normal value of goods sold to importers in Canada is generally based on the domestic selling prices of like goods in the country of export pursuant to section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits, pursuant to paragraph 19(b) of SIMA.

[41] The export price of goods sold to importers in Canada is generally based on the lesser of the adjusted exporter's sale price for the goods or the adjusted importer's purchase price, pursuant to section 24 of SIMA. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods, as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

Estimated Normal Value

[42] The complainant provided estimates of normal values based on the two methods identified above; domestic selling prices in the United States and the "cost plus" approach.

[43] The price-based normal values were estimated based on the complainant's market intelligence, and included documentation of specific prices at which polyiso insulation board was offered for sale in the U.S. market. The complainant also estimated normal values on a "cost plus" approach based on its own cost of production, general selling and administrative expenses and profit, as both of its plants are comparable with those of the producers of the subject goods in the United States.

[44] The CBSA considers the complainant's estimated normal values to be reasonable. For purpose of its analysis, the CBSA estimated the average normal value for each of the years 2005 to 2008, based on an average of invoice prices and distributor-specific examples of price offerings as found in the complaint. The CBSA chose this data as it is representative of pricing in the United States during the period and most closely represents the principles of section 15 of SIMA.

Estimated Export Price

[45] The complainant estimated export prices based on two sources of data: Statistics Canada and market intelligence quotes to Canadian distributors. The complainant conducted research and analysis on Statistics Canada import data of polyiso insulation board from 2005 to 2008. Quantity in kilograms reported by Statistics Canada was converted to board feet at the rate of 12 board feet per kilogram, in accordance with a standard conversion table provided in the complaint. The complainant was then able to estimate export prices based on the weighted average value for duty per board foot. There is a specific HS classification number for polyiso insulation board, which provided

the complainant with the opportunity to obtain import data specifically for the subject goods.

[46] The complainant also gathered market intelligence to estimate exporters' selling prices to Canada and summarized the data in a report in the complaint. The report provided specific allegations with respect to the pricing of polyiso insulation board to Canadian customers by U.S. exporters or with respect to specific accounts.

[47] The CBSA reviewed its CCS import data to confirm the complainant's estimates of export prices for the subject goods. The CBSA's estimated export prices confirm the complainant's estimates of export prices for the subject goods. As such, the CBSA considers the complainant's estimates of export prices to be reasonable.

[48] For purposes of its analysis, the CBSA used its CCS import data to estimate export prices. The CBSA's review included all importations under HS classification number 3921.13.99.10 during the period September 1, 2008 to August 31, 2009.

Estimated Margin of Dumping

[49] The CBSA estimated the margin of dumping by comparing its estimated total normal value with the estimated total export price obtained from CCS import data for all importations during the period September 1, 2008 to August 31, 2009.

[50] Based on this analysis, it is estimated that the subject goods from the United States were dumped. The overall weighted average margin of dumping is estimated to be 32%, expressed as a percentage of export price.

NEGLIGIBILITY AND INSIGNIFICANCE

[51] Under section 35 of SIMA, if, at any time before the President makes a preliminary determination, the President is satisfied that the margin of dumping of the goods of a country is insignificant or the actual and potential volume of dumped goods of a country is negligible, the President must terminate the investigation with respect to that country. Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price is defined as insignificant and a volume of dumped goods is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the dumped goods. The CBSA performed "negligibility" and "insignificance" tests based on the available data, as shown below. The estimates made at the time of initiation indicate that the volume of dumped goods from the United States is not considered negligible and that the margin of dumping is not regarded as insignificant.

***Imports of Polyiso Insulation
September 1, 2008 to August 31, 2009***⁷

Country	Imports (board feet)	% of Total Imports	Estimated Weighted Average Margin of Dumping (% Export Price)
United States	140,536,821	99.9%	32%
Other Countries	6,424	0.1%	not applicable
Total Imports	140,543,245	100%	--

EVIDENCE OF INJURY

[52] The complainant has alleged that the subject goods from the United States have been dumped into Canada and that the dumping has caused or is threatening to cause injury to the Canadian industry.

[53] SIMA refers to injury caused to the production of like goods in Canada. The CBSA has accepted that polyiso insulation board produced in Canada by the complainant are like goods to those imported from the United States. The CBSA's injury analysis focuses on the impact of the allegedly dumped goods on the complainant's production of like goods in Canada.

[54] The complainant alleges that the dumping of these goods is harming Canadian production by causing lower sales volumes, prices, profits, employment and capacity utilization than it would have achieved absent the dumping. It is noted that the injury factors are considered in the context of a growing market.

[55] In order to assess its past and future injury, the complainant conducted a study to estimate the impact on its financial performance if there had been no dumping of polyiso insulation board in the Canadian market in each year from 2006 to 2008. The study included an injury contribution analysis in order to demonstrate the market share, prices and financial position the company would have realized "but for" the dumping.

[56] The complainant contends that, but for the dumped imports, the market share of imports would have been considerably lower, prices in the Canadian market for polyiso insulation board would certainly have been significantly higher and financial results would have been substantially better than they actually were.

⁷ Source: CCS import data

[57] Furthermore, the complainant contends that the threat of future injury is demonstrated by its inability to achieve the levels of sales volumes, prices, production, employment, capacity utilization and profitability from its two plants due to the dumping of polyiso insulation board from the United States into the Canadian market.

[58] In the following analysis of injury, the CBSA cannot release specific quantitative data, as it relates to only one Canadian company and would result in the disclosure of confidential information. The information is, therefore, presented without reference to specific numbers.

Reduced Market Share

[59] The complainant contends that its market share would have been considerably higher if there had been no dumping during the period 2006 to 2008. The import volumes estimated by the complainant show that imports of polyiso insulation board from the United States increased from 107,995 MBF in 2006 to 153,045 MBF in 2008, representing an increase of 41.8% during this time period.⁸ Imports from the United States represent virtually all of the imports of polyiso insulation board.

[60] As indicated earlier in the Canadian Market section, the overall Canadian market for polyiso insulation board in Canada expanded approximately 22% during the period from 2006 to 2008. During this period the market share of U.S. imports increased five percentage points while the market share held by Canadian production decreased five percentage points. The complainant argues that its share of the Canadian market would have been much higher if not for the dumping and that this failure to further penetrate an expanding market represents significant injury to the domestic industry.

[61] With a level playing field, the complainant estimates that the Canadian industry as a whole would have a much larger market share, as local producers would have a significant transportation cost advantage in selling to local customers, since polyiso insulation board is a freight-sensitive commodity product.⁹ The complainant further contends that it could easily supply the additional production given its current production capacity.¹⁰

Lost Sales

[62] The complainant provided specific details involving the nature of lost sales it has experienced. Specific details as to the nature of the lost sales cannot be disclosed as it would result in the release of confidential information provided by the complainant.

⁸ IKO Complaint (NC), Table 15, page 53

⁹ IKO Complaint (NC), page 77

¹⁰ IKO Complaint (NC), page 78

Lower Prices / Price Erosion

[63] The complainant sells polyiso insulation board in eastern and western Canada, which are two distinct markets due to differences in transportation costs, production costs, competitors and distributors. To demonstrate the impact of the allegedly dumped imports on its pricing, the complainant presented a detailed analysis of prices to document the downward pressure on net prices. The complainant also provided anecdotal distributor-specific examples of price erosion and suppression due to injurious price offerings.¹¹

[64] The complainant estimated the minimum selling price increases that the company would have been able to achieve in eastern and western Canada in the years 2006, 2007 and 2008 in the absence of the alleged dumping. The estimates were based on the assumption that the Canadian product would have to be priced somewhat lower than the imports to gain a price advantage, and recognizing the possibility of greater intra-industry competition in eastern Canada. The complainant contends that domestic producers would have been able to increase prices above the suppressed levels experienced in 2006 to 2008 and still capture market share from higher priced imports.¹²

[65] The complainant's analysis offers reasonable support for the complainant's argument that its prices were suppressed/eroded as a result of the alleged dumped imports.

Lower Profits

[66] The complainant started producing polyiso insulation board in eastern Canada in 2000 in order to provide a full line of components for its commercial roofing systems. When IKO started production in western Canada in 2005, it expected to establish a profitable business to serve a market that was too expensive to supply from eastern Canada because of relatively high transportation costs. While business in eastern Canada initially met profit expectations, the complainant claims that increasing competition from allegedly dumped imports has affected profit margins in both eastern and western markets.

[67] IKO argues that the injury caused by the allegedly dumped goods has translated into a decline in its financial performance. The decline in its financial position, which allegedly ensued from downward pressure on prices, was documented by the confidential financial statements submitted with the complaint.

[68] The CBSA's review of the complainant's financial statements offer reasonable support for IKO's argument that price suppression and price erosion have resulted in downward pressure on profits.

¹¹ IKO Complaint (NC), Exhibit #18

¹² IKO Complaint (NC), pages 75 – 79

[69] The complainant's estimates of financial performance, but for the dumping, are based on its assessments of the prices it would have received and the market share it would have captured in the absence of dumping based on the years 2006 to 2008. IKO presented a detailed analysis for eastern and western markets, and for the company as a whole. The CBSA agrees with IKO's conclusions that both its eastern and western production facilities would have experienced improved financial performance absent the alleged dumping.

Underutilized Production Capacity

[70] IKO provided details in its complaint relating to the capacity utilization of its two plants. Both the Brampton and High River plants are of similar capacity and capable of operating four shifts per day, seven days a week. The complainant argues that it has been operating at significantly lower utilization rates as a result of the alleged dumping, details of which cannot be disclosed as it would result in the release of confidential information.

[71] IKO argues that this situation is unacceptable given that its plants are operating at lower utilization rates, and the company has not been able to capture any additional market share during a period in which the apparent Canadian market grew by approximately 22%. Further, this indicates that the substantial increase in subject imports is certainly not attributable to a lack of capacity among Canadian producers to supply a growing market.

Lower Employment

[72] The complainant provided information in its complaint regarding the impact that the alleged dumping has had on its employment levels, details of which cannot be disclosed as it would result in the release of confidential information. It is evident however that employment would be higher if the complainant was operating at a significantly higher rate of capacity utilization.

Other Factors

[73] The complainant also addresses several other potential injury factors that are unrelated to dumping, such as, exports, raw material costs, changes in production costs, rising exchange rates, intra-industry competition and changes in demand for polyiso board insulation.¹³ The CBSA is satisfied that the additional factors identified by the complainant do not negate the injury related to the alleged dumping.

Threat of Injury

[74] IKO predicts that the injury factors above will continue to have an impact on the domestic market for polyiso insulation board if the alleged dumping persists. IKO argues

¹³ IKO Complaint (NC), pages 86 – 96

that this situation will be exacerbated given the current global recession and its impact on the construction sector in the United States.¹⁴ It further argues that there is ample export capacity in the U.S. industry that is willing and able to supply the Canadian market at dumped prices since Canada is the only alternative export market for polyiso insulation board. At the same time, IKO is operating its two plants in a highly efficient and low cost manner and cannot achieve the typical level of production and profitability.

[75] The CBSA estimates that given current market and import trends, as well as the U.S. pricing of the subject goods on the Canadian market, the threat of injury argument advanced by the complainant is reasonable.

CONCLUSION

[76] Based on the information provided in the complaint, other available information and the CCS import data, there is evidence that polyiso insulation board from the United States has been dumped and there is a reasonable indication that such dumping has caused or is threatening to cause injury to the Canadian industry. As such, a dumping investigation was initiated on October 8, 2009.

SCOPE OF THE INVESTIGATION

[77] The CBSA will conduct an investigation to determine whether the subject goods have been dumped.

[78] The CBSA has requested information relating to the subject goods imported into Canada originating in or exported from the United States during the period of October 1, 2008 to September 30, 2009, the selected period of investigation. The information requested from identified possible exporters and importers will be used to estimate normal values and export prices and ultimately to determine whether the subject goods have been dumped.

[79] All parties have been clearly advised of the CBSA's information requirements and the time frames for providing their responses.

FUTURE ACTION

[80] The Tribunal will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the alleged dumping of the goods has caused or is threatening to cause injury to the Canadian industry. The Tribunal must make its decision within 60 days after the date of the initiation of the investigation. If the Tribunal concludes that the evidence does not disclose a reasonable indication of injury to the Canadian industry, the investigation will be terminated.

¹⁴ IKO Complaint (NC), page 96

[81] If the Tribunal finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the ongoing CBSA investigation reveals that the goods have been dumped, the CBSA will make a preliminary determination of dumping within 90 days after the date of the initiation of the investigation, by January 6, 2010. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigation.

[82] If, in respect of the named country, the CBSA's investigation reveals that imports of the subject goods have not been dumped, that the margin of dumping is insignificant or that the actual and potential volume of dumped goods is negligible, the investigation will be terminated.

[83] Imports of subject goods released by the CBSA on and after the date of a preliminary determination of dumping may be subject to provisional duty in an amount not greater than the estimated margin of dumping on the imported goods.

[84] Should the CBSA make a preliminary determination of dumping, the investigation will be continued for the purpose of making a final decision within 90 days after the date of the preliminary determination. If a preliminary determination of dumping is made, the Tribunal will initiate an inquiry to determine whether the dumping of the goods has caused injury or retardation or is threatening to cause injury.

[85] If a final determination of dumping is made, the Tribunal will continue its inquiry and hold public hearings into the question of material injury to the Canadian industry. The Tribunal is required to make a finding with respect to the goods to which the final determination of dumping applies, not later than 120 days after the CBSA's preliminary determination.

[86] In the event of an injury finding by the Tribunal, imports of subject goods released from the CBSA after that date will be subject to anti-dumping duty equal to the applicable margin of dumping on the imported goods.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[87] When the Tribunal conducts an inquiry concerning injury to the Canadian industry, it may consider if dumped goods that were imported close to or after the initiation of an investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry.

[88] Should the Tribunal issue such a finding, anti-dumping duties may be imposed retroactively on subject goods imported into Canada and released by the CBSA during the period of 90 days preceding the date of the CBSA making a preliminary determination of dumping.

UNDERTAKINGS

[89] After a preliminary determination of dumping by the CBSA, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods.

[90] Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone and fax numbers, mailing address and e-mail address, if available, to one of the officers identified in the “Information” section of this document.

[91] If an undertaking were to be accepted, the investigation and the collection of provisional duty would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA’s investigation be completed and that the Tribunal complete its injury inquiry.

PUBLICATION

[92] Notice of the initiation of this investigation is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

INFORMATION

[93] Interested parties are invited to file written submissions presenting facts, arguments and evidence that they feel are relevant to the alleged dumping. Written submissions should be forwarded to the attention of one of the officers identified below.

[94] To be given consideration in this phase of the investigation, all information should be received by the CBSA by November 16, 2009.

[95] Any information submitted to the CBSA by interested parties concerning this investigation is considered to be public information unless clearly marked “confidential”. Where the submission made by an interested party is designated confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

[96] Confidential information submitted to the President will be disclosed on written request to independent counsel for parties to these proceedings, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the Tribunal, any court in Canada or a dispute settlement panel under the WTO Agreement or the North American Free Trade Agreement. Additional information

respecting the policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA's Web site.

[97] The investigation schedules and a complete listing of all exhibits and information are available at www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html. The exhibits listing will be updated as new exhibits and information are made available.

[98] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site at the address below. For further information, please contact the officers identified as follows:

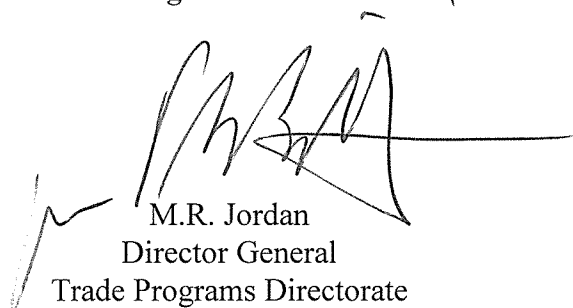
Mail SIMA Registry and Disclosure Unit
 Anti-dumping and Countervailing Program
 Trade Programs Directorate
 Canada Border Services Agency
 100 Metcalfe Street, 11th Floor
 Ottawa, Ontario K1A 0L8
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Telephone Ron McTiernan 613-954-7271
 Wayne Tian 613-946-2574

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M.R. Jordan
Director General
Trade Programs Directorate