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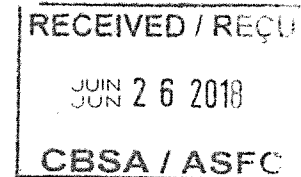
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June 25, 2018

Director General
Trade and Anti-Dumping Programs Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th Floor
Ottawa, ON, K1A 0L8



**Application for Scope Review - Woodfibre LNG Limited
FISC 2016 IN**

Please find enclosed a counsel authorization letter and scope ruling request for Woodfibre LNG Limited in the above noted matter. We have enclosed both a public and a confidential version (which is filed within a separate envelope).

Please note that the information contained in this remission application is commercially sensitive and confidential. Its release will cause significant financial harm to Woodfibre and its affiliates. This remission request and the information contained herein may not be disclosed in whole or in part in any manner.

Yours truly,

McCarthy Tétrault LLP

Robert A. Glasgow

RAG

Application for a Scope Review

Woodfibre LNG Limited

Certain Fabricated Industrial Steel Components

Statement of Application Letter

Director General

Trade and Anti-dumping Programs Directorate

Canada Border Services Agency


100 Metcalfe Street, 11th floor

Ottawa ON K1A 0L8

Woodfibre LNG Limited ("Woodfibre LNG") will be an importer of modules for the construction of an LNG facility. The modules contain both Fabricated Industrial Steel Components ("FISC") and non-FISC components.

This application under sections 62 of the *Special Import Measures Act* ("SIMA") requests a scope ruling for LNG modules originating in or exported from China. 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. Woodfibre LNG submits that as it is importing complex and complete modules, and not simple FISC, these modules are not within the scope of subject goods.

I, Byng Giraud, Country Manager & Vice President, Corporate Affairs Woodfibre LNG, certify that the information and evidence submitted in this application to the Canada Border Services Agency ("CBSA") is true, accurate and complete.

Signed: 

Identity of the Applicant

Woodfibre LNG, represented by:

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Woodfibre LNG is an intended importer of LNG modules. These will be constructed from a mix of FISC and non-FISC components which are inextricably linked into the entire module.

The Woodfibre LNG Project ("Project") is owned and operated by Woodfibre LNG, a privately held Canadian company based in Vancouver, British Columbia. Woodfibre LNG is the owner of the former Woodfibre pulp mill site, which is located about seven kilometres southwest of downtown Squamish, BC.

Applicable Measure

This request for a scope ruling relates to the decision of the Canadian International Trade Tribunal (“the Tribunal”) and the Final Determination of the Canada Border Services Agency regarding Certain Fabricated Industrial Steel Components , Dumping (China, Korea and Spain) & Countervailing (China) – CBSA Reference FISC 2016 IN, CITT reference number NQ 2016-004 (“the decisions”).¹ The decisions impose countervailing and anti-dumping duties (“duties”) on certain imported FISC.

In this measure, the 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, piperacks and apron feeders, whether assembled or partially assembled into modules, or unassembled, for use in structures for:

Oil and gas extraction, conveyance and processing (*inter alia*)...

Originating in or exported from the People’s Republic of China, the Republic of Korea, and the Kingdom of Spain.”

This scope ruling request seeks a determination as to whether or not LNG modules which include substantial non-FISC elements are subject to the decision, and would be subject to the duties imposed by the decision.

This application sets out the characteristics of the LNG modules Woodfibre LNG intends to import, to allow the CBSA to determine whether or not they are subject goods. It is important to note that this is not an importation of FISC. FISC forms one of the many components of the completed and distinct modules that contain both FISC and non-FISC components. Notably, while there is a fabricated structural steel structure that forms the framework for the processing units, this framework is irrevocably interconnected with the complex machinery that provides the modules with their essential characteristics and end use. The complexity of the fabrication and finished product, which is defined by its use and not by the FISC forming part of its structure, is such that the resulting modules should not be considered FISC.

¹ Canadian International Trade Tribunal; *Certain Fabricated Industrial Steel Components – Finding and Reasons*; NQ-2016-004; June 9 2017; http://www.citt.gc.ca/en/node/8089#_Toc487037636. Canadian Border Services Agency; *Certain Fabricated Steel Components – Notice of Final Determinations*; FISC 2016 IN; April 25 2017; <https://www.cbsa-asfc.gc.ca/sima-lmsi/j-e/fisc2016/fisc2016-nf-eng.html>

Goods for which the Ruling is Requested

Woodfibre LNG requests a scope ruling in relation to its LNG modules and piperack modules, to determine whether or not these LNG modules which include substantial non-FISC elements are governed by the decision on FISC and the duties it imposed on certain FISC imports.

LNG Export Facility

The Woodfibre LNG processing and export facility receives feed gas from a FortisBC pipeline, , removes contaminants, and then cools the treated gas to -162°C , to produce liquefied natural gas ("LNG") for export. The production of LNG is a complex process requiring multiple process and utility units to be assembled and operated to achieve the required production.

LNG Facility Modularization

The processing units that make up an LNG facility can be either field constructed, where all of the materials are delivered and constructed at site, or can use modularized construction where the plant is built mostly off-site in discrete modules, which are then installed and connected at site. A modularized plant is advantageous for remote areas with limited access and plot space such as the Woodfibre LNG site. Modularization also reduces schedule and cost risk by assembling the units in the more controlled environment of a fabrication yard.

The LNG facility units 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.

Once completed at the fabrication yard, the complex modules are then transported via specialized heavy transport vessels to the LNG plant site where they are set in place and final connections are made.

LNG Modules

Woodfibre's LNG modules combine FISC and non-FISC elements. The process units are comprised of equipment, piping, electrical, and instrumentation that are arranged and connected to perform the processing required to meet the facility design basis. 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.

The modules are built in a fabrication yard in a sequence of: structural steel framework, the addition of equipment, connection of the equipment with piping, and continuing on to the installation of electrical equipment and cabling and 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.

The modules derive their complexity, as well as their size, from the sub-units listed, and the need to integrate them into a single product for delivery. It is Woodfibre LNG’s view that the resulting modules, as described, are sufficiently processed from the FISC products described in the definition, which accompanied the decisions that they should not be considered within its scope. It would be akin to assessing SIMA duties against the steel in an automobile – the nature of the item is the complex machine and not the base metal input.

The complexity of the LNG facility, and thus the fabrication of the processing units into completed modules, can be demonstrated by the extent of components included in the modules. Table 1 below summarizes the components (non-FISC elements) that go into the build-up of the LNG facility modules. It is estimated that [] man-hours are required to complete the fabrication of the modules.

Table 1 Module Equipment, Piping, and Cable

<p>Equipment</p> <p>Installed equipment includes the following:</p> <ul style="list-style-type: none"> ▪ [] air cooled exchangers with [] m² of total area ▪ [] compressors with motor size up to []; refrigerant compressors have a combined weight of [] tonnes ▪ [] pumps ▪ [] columns for processing feed gas with weight up [] tonnes ▪ [] heat exchangers with a weight up to [] tonnes ▪ [] vessels for storage and processing ▪ [] furnaces ▪ Numerous other small equipment such as filters, auxiliary packages, etc. ▪ [] electric motors
<p>Piping</p> <p>Installed piping and valves includes the following:</p> <ul style="list-style-type: none"> ▪ [] kilometers of installed pipe ▪ [] valves
<p>Instrumentation</p> <p>Instrumentation to monitor and control the operation of the plant:</p> <ul style="list-style-type: none"> ▪ [] instruments ▪ [] kilometers of instrument cabling
<p>Electrical</p> <p>Electrical installation includes the following for distribution of power:</p> <ul style="list-style-type: none"> ▪ [] kilometers of power cable ▪ [] low voltage switchgear & motor control centre ▪ [] step down transformers

Module Dimensions and Weights

The dimensions and weights of the modules under consideration are summarized in Table 2 below.

Table 2 LNG Modules for the Woodfibre LNG project

Module	Module Units	Module Weight (tonnes)	Module Dimension (m, length x width x height)
Mo1	Inlet Facility Mercury Removal Acid Gas Removal Gas Dehydration	[]	[]
Mo2	Heavy Hydrocarbon Removal Condensate Stabilization Liquefaction []	[]	[]
[]	[]	[]	[]
Mo4	Boil-off Gas System Flare Knockout Drum	[]	[]
Mo5	FST/LNG Carrier Loading Platform	[]	[]
Mo6	LNG Carrier Approach Trestle	[]	[]
Mo8	Thermal Oxidizer Utilities	[]	[]
Pre-assembled piperacks	[] Offsite piperacks [], process rack.	[]	[]

Detailed descriptions of the purposes and functions of the LNG facility units, grouped by module, are provided in the following sections.

Module Mo1

Inlet Facility

Pipeline feed gas is supplied to the facility inlet system and passes through a hot water heater. The feed gas is then let down in pressure to the required plant operating pressure via a pressure control valve. The heater and pressure letdown valve combine to provide a consistent supply pressure and temperature to the downstream Acid Gas Removal Unit ("AGRU"). A side stream on the inlet line is directed to the fuel gas system.

Mercury Removal

A mercury removal unit is installed to remove any mercury that may be present in the feed gas to protect the downstream units and meet the LNG product specifications. The mercury removal vessel is filled with a suitable non-regenerable sorbent.

The AGRU

Carbon Dioxide ("CO₂") present in the feed gas stream is removed in the AGRU to a level that will prevent freezing of the CO₂ in the downstream units as the gas is chilled to cryogenic temperatures. The separated carbon dioxide-rich gas stream is combusted in the thermal oxidizer.

The AGRU is an activated methyldiethanolamine (MDEA) system whereby acid gases are absorbed by the circulating fluid in the absorber column to produce a gas stream to the specified CO₂ limit. The circulated activated methyldiethanolamine ("aMDEA") is then regenerated in a fractionation column with the waste stream routed to the thermal oxidizer. The regenerated fluid is returned to the absorber column.

Gas Dehydration

The dehydration unit, which is based on molecular sieve technology, removes water from the feed gas to prevent freezing in the downstream liquefaction unit. The water saturated feed gas from the upstream AGRU is first cooled [] in [] exchanger; condensed water is removed in a separator vessel downstream of the exchanger. The wet feed gas then passes through the molecular sieve bed where the remaining water is adsorbed. Dry gas from the molecular sieve goes to the LNG liquefaction unit.

The saturated molecular sieve beds are regenerated with heated dry gas from the discharge of the molecular sieves. This regeneration dry gas is heated using hot water in a shell and tube exchanger. Upon exiting the molecular sieve bed the wet regeneration gas is cooled against an air cooler to condense some of the water. Wet regeneration gas is then recycled back to the feed gas stream at the

inlet of the AGRU via the regeneration gas compressor. The condensed water recovered in the dehydration unit is recycled as water make-up to the AGRU. The module Mo1 layout is depicted in Figure 1 below.

Figure 1:

Module Mo2

Heavy Hydrocarbon Removal and Condensate Stabilization

The Heavy Hydrocarbon Removal Unit removes C₅+ hydrocarbons from the feed gas to meet the LNG specification and avoid freezing of heavy hydrocarbons in the Main Cryogenic Heat Exchanger ("MCHE").

The dry, treated natural gas, which includes a recycled stream of boil-off gas ("BOG"), is [] routed to the Scrub Column. The Scrub Column is a distillation column designed with a bottoms reboiler and an overhead condenser. []

] Sub-cooled LNG from the MCHE flows to the facility LNG storage tanks. The Scrub Column bottoms liquid is a non-stabilized condensate that will be further processed in the Condensate Stabilization Unit.

The non-stabilized condensate from the Scrub Column is routed to the Condensate Stabilizer where the liquid is further processed to remove the lighter hydrocarbons in order to produce a stabilized product at atmospheric pressure. The Condensate Stabilizer is a distillation column with a bottoms reboiler and a partial condenser []. The Condensate Stabilizer overhead vapor is partially condensed and sent to the Condensate Stabilizer Reflux Drum where a portion of the natural gas liquid ("NGL") will be pumped and used as reflux for the Condensate Stabilizer, as needed. The vapor is sent to the fuel gas system. Excess NGL will be separately pumped and routed to the Warm Bundle of the MCHE before mixing with the natural gas stream. []

Liquefaction and Refrigeration Systems

Treated Gas from the top of the scrub column flows to the liquefaction unit. []

] The Mixed Refrigerant, consisting of [] provides the cooling/condensing duty for the MCHE. The MCHE consists of three spiral wound tube bundles (warm, middle, and cold) []

] The produced LNG from the MCHE is routed to the facility LNG storage tanks.

Fuel Gas System

The fuel gas system supplies the thermal oxidizer and hot water heater. The fuel gas is primarily BOG from the LNG storage and overheads from the condensate stabilization column, with feed gas and dry gas from dehydration available as backup sources. Start-up fuel gas is provided from the inlet feed gas. The fuel gas consumption in the plant is low due to the selection of electrical drive. Excess BOG is recycled into the feed gas stream for re-liquefaction.

The module Moz layout is depicted in Figure 2 below.

Figure 2

Module Mo4

Boil-Off Gas System

The BOG system handles the combination of boil-off vapor from the LNG storage tanks and from LNG Carrier loading. The BOG is compressed and cooled before being returned to the process as either fuel or feed gas. A portion of the BOG is used as fuel gas for the thermal oxidizer and hot water heater.. The remainder of BOG is recycled back to the process downstream of the feed gas dehydration.

Flare Knockout Drums

Relief system headers from the process units and from the LNG storage tanks are routed to the flare knockout drums where any liquid in the streams is disengaged from the vapor stream prior to routing to the facility flares.

The module Mo4 layout is depicted in Figure 3 below.

Figure 3

Module Mo8

Thermal Oxidizer

The LNG Process train will include a Thermal Oxidizer for the disposal of the facility generated waste streams, including the acid gas from the AGRU.

Utility Systems

- Potable Water System
- Demineralized Water System
- Hot Water System
- Tempered Water System
- Instrument Air System
- Nitrogen

The module Mo8 layout is depicted in Figure 4 below.

Figure 4

[

]

The module Mo3 layout is depicted in Figure 5 below.

Figure 5

Mo5 FST/LNG Carrier Loading Platform

The Loading Platform supports all of the equipment and piping that are required for LNG loading operations and maintenance. The LNG Carrier platform equipment includes the following:

- LNG loading arms
- Piping, piping manifold and Emergency Shutdown ("EDS") valves
- Loading arm power pack and controls
- Gas and fire detection and firefighting provisions
- Provisions for telecommunications and ship to shore link equipment
- Ship approach/docking aid and display
- Ship/shore gangway
- A drain system to collect LNG spillage in case of an emergency

Mo6 LNG Carrier Approach Trestle

The trestle's main function will be to provide access to the LNG Carrier loading platform as well as conveyance of LNG and utilities. The trestle will carry loading lines from the floating storage tanks ("FST") to the LNG Carrier loading platform. The trestle will also support vapor recovery lines in

addition to utilities such as Nitrogen, firewater, control system signal and communication cables and power.

A preliminary rendering of the modules Mo5 and Mo6 is shown in [Figure 7 below.

Figure 7 below.

[]

Piperack modules

A piperack is a steel framed structure that is used to support the operation of the plant. The piperack modules connect various processing modules inside the production plant, interconnecting different areas of the plant. It is used to transfer materials, products, fluids, utilities, electricity and data, between the LNG plant, utilities areas, flares and storage/export facilities. In addition to integrated piping, piperacks include supporting instruments, power cables as well as the mechanical equipment like pumps and valves etc., that are connected to the pipes. For some LNG Plants, piperacks are also being installed with other equipment, such as Air Coolers on top of the piperack modules.

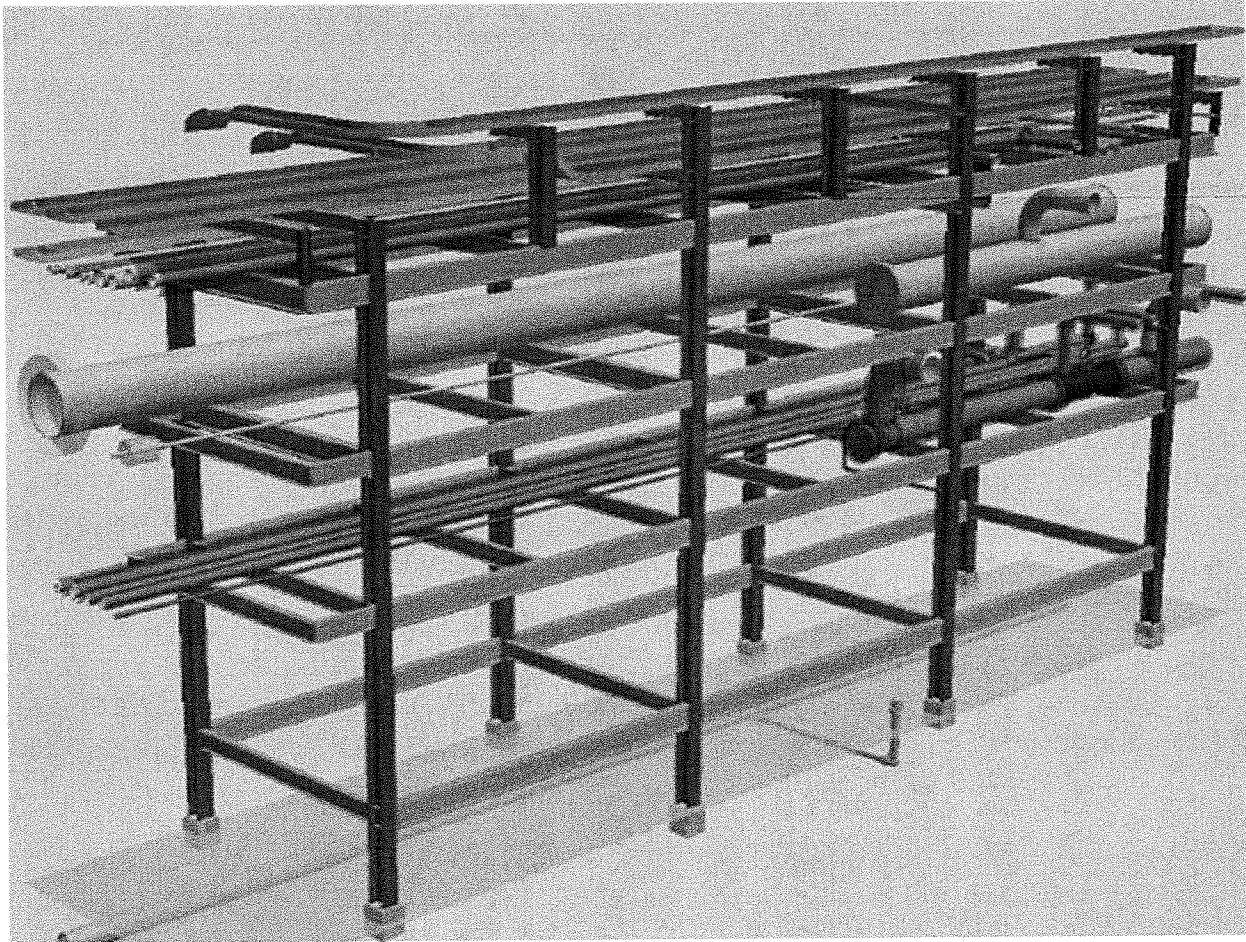


Figure 8: Typical piperack (not Woodfibre LNG-specific design):

Module Design and Drawings

While the designs for the modules are not final, current expectations are that FISC will make up 40% by weight of these LNG modules for which we request this scope ruling. As discussed above, these modules also have specific LNG functionality which defines the character of the completed and distinct module. Modules which have these characteristics were referred to as “complex modules” at the proceedings before the Tribunal. During that hearing, the Tribunal held that it could not determine the subjectivity of those modules, and held that the CBSA should make that determination, including under this scope ruling process, once further particulars (such as drawings) could be provided

Drawings of Woodfibre LNG’s current LNG module designs can be found in the preceding sections.

All the LNG modules contain both FISC and non-FISC elements. The decision of the Tribunal is clear that the term “whether assembled or partially assembled into modules” includes modules that are made exclusively of the subject goods. However, the Tribunal has not provided any definitive statement as to whether the FISC contained within complex modules would somehow still be

segregated from the module and assessed SIMA duties. As detailed below, such an approach is unheard of in Canada, and violates many of the fundamental underpinnings of Canadian customs and property law.

However, out of an abundance of caution, Woodfibre LNG makes this request for a scope ruling to determine how complex manufactured goods are to be assessed duty (whether SIMA or otherwise). Given the nature of the Project, Woodfibre LNG must know whether or not the LNG modules will incur anti-dumping and countervailing duties before entering into contracts for their purchase, which necessarily must occur well before the time of import.

Producers/exporters

Country of production

Woodfibre LNG has approached, through its Pre-Notice to Proceed (“Pre-NTP”) contractor KBR, Inc. (NYSE: KBR), module fabrication yards around the world to manufacture its LNG modules. Woodfibre LNG is seeking to determine whether or not it must include anti-dumping and countervailing duties in its cost calculations when assessing bids from yards [].

Due to the high potential cost of duties and the uncertainty over their application to LNG modules, Woodfibre LNG has not yet completed a transaction to purchase these modules. Woodfibre LNG will make the decision whether to complete a transaction to purchase these modules when informed by the results of the scope proceedings and having a complete knowledge of possible duty application to the modules. No other importer is involved in the procurement of these LNG modules.

HS Classification

As Woodfibre LNG is only at a preliminary stage of procurement, final HS classification numbers are not yet available. Based on current designs Woodfibre LNG expects, pending confirmation from its Engineering, Procurement, and Construction (“EPC”) contractor, that the most likely classifications of imported LNG modules will be under tariff item No. 8419.60.00.00 - Machinery; for liquefying air or gas, not used for domestic purposes OR 8479.89.49.00 Other machines and mechanical appliances. This preliminary suggested classification has been neither reviewed nor approved by the CBSA.

Other Parties

There are no other parties to this application.

Woodfibre LNG’s contractor for its LNG modules is:

KBR, Inc.
601 Jefferson Street,
Houston, TX,
77002 USA

The LNG modules Woodfibre LNG intends to import are custom-designed and manufactured to meet the specific needs of the Woodfibre LNG Project. Other potential Canadian importers of LNG modules will have different designs and manufacturing processes.

There are Canadian producers of FISC who were party to the proceedings at the Tribunal and during the initial investigation. However, as we previously indicated, for the purpose of this application, Woodfibre LNG does not intend to import any loose FISC or FISC-only modules. To ensure complete procedural compliance, we have included a list of these parties below.

- Canadian Institute of Steel Construction, Suite 200, 3760 14th Avenue, Markham, Ontario L3R 3T7
- Ocean Steel and Construction Ltd., 400 Chelsey Drive, Saint John, New Brunswick, E2K 5L6
- Supermetal Structures Inc., 1955, 5e Rue, Lévis, Quebec, G6W 5M6
- Supreme Group LP, 10457-184 Street, Edmonton, Alberta, T5S 1G1
- Waiward Steel LP, 10030-34 Street NW, Edmonton, Alberta, T6B 2Y5
- Walters Inc., 1318 Rymal Road East, Hamilton, Ontario, L8W 3N1
- International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Suite 8, 205 Chatelain Drive, St. Albert, Alberta, T8N 5A4.

Other Information

Timing of process

Woodfibre LNG Project ownership has already invested more than \$100 million (CAD) directly into Canada (not including employee compensation and other administration costs). The Project team has done all that it can internally to reduce project costs without compromising LNG plant efficiency and safety.

Woodfibre LNG is nearing a critical point in the Project's development: proceeding with an EPC contract (2018 Q4), and cannot make that decision without knowing the estimated overall project costs.

The previous section of this scope review application, and its related diagrams, provide detail on the composition and characteristics of Woodfibre's LNG modules, in order to enable clarification of the question of whether LNG modules fall under the scope of the decisions. While Woodfibre's LNG modules will certainly differ in specific composition, size and purpose from those presented by LNG Canada *et al* at the original enquiry, the overarching concept is the same.

Due to the high potential cost of duties and the uncertainty over their application to LNG modules, Woodfibre LNG has not yet completed a transaction to buy these modules. Woodfibre LNG will make the decision whether to complete a transaction to purchase these modules when informed by the results of the scope proceedings and having a complete knowledge of possible duty application to the modules.

The complex modules being used by Woodfibre LNG are not commodity products – there is no existing “production run” that can be used for the purpose of this analysis. As such, waiting to make a scope ruling application until the actual modules have been produced will effectively render this process meaningless – any produced modules will arrive in Canada long before any decision in this process could be completed.

As such, Woodfibre LNG respectfully submits that the CBSA should accept this application despite the fact that the complex modules have yet to be produced. While there may be some modifications to the final modules to be shipped, such changes are likely to be of a minor technical and not of a fundamental nature.

Applicant's Position

LNG modules are not subject goods under the FISC decisions

In late January 2017 WoodfibreLNG first became peripherally aware of an inquiry being conducted by the Tribunal into the dumping and subsidization of FISC originating in or exported from the Kingdom of Spain, the People's Republic of China, and the Republic of Korea. Over the months following, Woodfibre LNG came to understand that the inquiry could have potentially significant negative implications for the Project, concerns that have since been realized.

Initially, the FISC Inquiry did not raise any concerns since it was Woodfibre LNG's belief at the time that the FISC incorporated into these complex modules would not be subject to any FISC anti-dumping or countervailing duty order – much the same way one would expect that soda containing dumped sugar would not be subject to the existing SIMA anti-dumping duties on sugar when imported from the United States into Canada.

However, Woodfibre LNG has since become aware that the CBSA may view the FISC incorporated into the complex modules when they are manufactured abroad as being subject to the duties imposed under a SIMA order. This would be highly unusual. Woodfibre LNG is unaware of any SIMA order that would apply anti-dumping and/or countervailing duties to the components of an imported product rather than the imported product itself.

During the Inquiry process the Tribunal was presented with evidence and argument regarding complex modules and their characteristics. The parties supplemented this evidence and argument with *viva voce* evidence provided by witnesses who appeared before the Tribunal. These witnesses included individuals from LNG Canada and one of the largest EPC firms in Canada, Fluor Canada Inc. As indicated in their Tribunal testimony, these witnesses have decades of experience in the engineering, procurement, and construction of LNG and similar facilities. They provided first person accounts of the construction methods of complex modules and how the modules derive their character not from the FISC incorporated into them, but rather from the machinery, equipment and connections which form the integrated components and characteristics of the complex modules.

The Tribunal's decision was released on May 25, 2017, with reasons following on June 9. Woodfibre LNG reviewed the decision carefully to determine if it would resolve the situation by either interpreting the subject goods definition such that the FISC within complex modules was not subject, or by granting the broad product exclusion requested by Fluor. Woodfibre LNG was disappointed in both regards.

Despite the considerable amount of evidence before it, the Tribunal declined to make a decision on whether the FISC contained in complex modules would be subject to the anti-dumping and countervailing duties. While the Tribunal admitted it had the authority to make the determination as to whether this FISC was within the subject goods definition, it did not do so. Instead, the Tribunal determined that it could not make a proper determination without there being actual imports of the

complex modules, despite the extensive evidentiary record before the Tribunal on the composition and characteristics of the complex modules.

Woodfibre LNG submits that the requisite level of evidence has been provided above, and that the CBSA may make such a determination at this stage.

The FISC undergoes substantial transformation and production abroad – not assembly

Woodfibre LNG concedes that the product definition contemplates assembly into modules. However, this is properly read as being only simple modules that are assembled from FISC, and not complex modules that undergo manufacturing or production processes to become something new – machinery for use in an LNG plant. To find otherwise would essentially open the floodgates of trade remedies to a myriad of situations where components parts of complex machines become dutiable.

Such an interpretation would also be inconsistent with current CBSA practice. For example, a piston may be installed in an engine, which then may be installed in a vehicle. The piston remains a distinct unit, as does the engine, as does the vehicle. In the ordinary course, if someone were to import a vehicle containing a piston subject to anti-dumping duties, then usually no duty would be payable as the item imported is a vehicle, and not a piston.

Similarly, if an importer were to import a soda containing pure cane sugar from the United States, they would not be subject to an anti-dumping duty on the sugar therein,² because the sugar has been subject to production into the soda.³ The sugar is “still there” and can still be extracted using a variety of processes, but it is still not subject to the finding.

It is therefore important to have regard to the difference between assembly and production, especially with regard to the complex modules. Assembly has been previously defined by the Tribunal as being a “means to fit together the parts of [a machine]”,⁴ and as “a number of component parts fitted together to form a single device or unit”.⁵

This is different from “production” or “manufacturing” as defined by the Tribunal in *Flat Hot-Rolled Carbon*, where the Tribunal found that “production” requires a substantial transformation:

In other words, “production” requires a change beyond mere finishing which results in the substantial transformation of the original good into a new and significantly different set of goods. Although production often involves significant value added, this is not, in and by itself,

² Most recently considered in the expiry review of the finding, *Refined Sugar*, 2015 CarswellNat 7132, RR-2014-006 (CITT).

³ *Photovoltaic Modules*, *supra* note 7, at para. 49.

⁴ *Marr’s Leisure Products Inc. v. Canada (Deputy Minister of National Revenue – MNR)*, AP-95-084, [1996] CITT No. 94 at para 14.

⁵ *Fenwick Automotive Products Limited v. President of the Canada Border Services Agency*, AP-2006-063, [2009] CITT No. 14 at para 54.

an essential element of the test of what constitutes production for the Tribunal. The Tribunal looks at the totality of the process to determine whether substantial transformation has occurred.⁶

Therefore the Tribunal has created a distinction between “production” of something and “assembly” between these two cases. The Tribunal then made this distinction explicit in *Photovoltaic Modules and Laminates* where it contrasted the two concepts directly:

The Tribunal is also satisfied that OEM production is more than a mere assembly or finishing service. The manufacturing process involves the application of capital, labour, highly specialized equipment, product testing and certification. As noted by Mr. Vadim Lyubchenko in his testimony, OEM production “... is assembling, but it is not just assembling. We have to meet a requirement of a big company... we have to meet their quality requirement. It means we need to make some research in the beginning in order to meet this requirement. It is not just blind assembling. It is manufacturing.”⁷

Woodfibre LNG respectfully submits that the CBSA must therefore ask whether the FISC within the complex modules has been *assembled* into modules, or if it has been *manufactured* into complex modules – have those modules undergone production. The question is whether the actions taken to modularize FISC are radical enough that the FISC contained within a Complex Module is no longer a simple assembly, but rather is something else. Is it effectively two plates of steel welded to one another, or is it more akin to a piston in a car, sugar in a soda, or drywall in a pre-fabricated home?⁸

Woodfibre LNG respectfully submits that this is the case. Consider the modules described by Woodfibre LNG above. The Woodfibre LNG modules include myriad of complex and specialized machinery. For example, Module Mo1 has a specialized and specific purpose. It is essentially a complete and ready-made machine imported to complete a specific task within the LNG process using high-value equipment worked into the module itself. The tasks performed by the module, mercury and water removal and de-gassing, are critical and specific to the LNG process.

Similarly, Module Mo2 also has specific tasks for which the module is built. The module is the critical liquefaction and refrigeration system for the LNG process. Without the specialized systems that are irrevocably part of the module itself, the LNG plant does not function. Woodfibre LNG is not importing FISC, Woodfibre is importing machinery that is critical for LNG production.

These are only two examples but represent a common theme. FISC itself is primarily a structural commodity.⁹ The inherent and essential characteristics of the modules are not structure, but rather functionality as machines involved in the production of LNG. These complex modules will not be

⁶ *Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip*, RR-2015-002 at paras. 40-41.

⁷ *Photovoltaic Modules and Laminates*, NQ-2014-003 at para. 49.

⁸ We note that these examples are largely theoretical. Nowhere in Canadian jurisprudence has there been a single case noted where a component of a greater whole has been isolated and subject to anti-dumping duties.

⁹ CBSA Preliminary Determination, *Certain Fabricated Industrial Steel Components*, at para. 17.

imported as structural components, nor will they be used primarily as structural components, and therefore cannot be regarded as such.

The Tribunal has an extensive history of drawing important distinctions between “machines” and “structures”. The Tribunal has recognized that structures do not include any “notion of machinery or equipment”.¹⁰ A simple module, constructed purely out of FISC pieces fulfills these requirements to be “structural”. This is simply not the case for a complex module.

At the Tribunal proceedings for the FISC Order, various parties made detailed submissions regarding the functionality and identity of complex modules. Importantly, these witnesses detailed the intricate requirements needed for their manufacture¹¹ and the integrated manner in which they are purchased and tested.¹²

Furthermore, according to those witnesses it is not the structure of the modules that defines them or their suitability – it is their functionality. As such, once complete, each of the complex modules is tested and certified as operational prior to being shipped from the modularization yard to the destination site.¹³ The module is treated effectively as a single functional unit – the modules are completely defined by their functionality and must be completed, tested, commissioned, and ready to be “hooked up” to the other modules prior to being shipped.¹⁴ As delineated by Ben Molz of Fluor Canada when cross examined on whether modules were delivered complete:

In a process plant, there are multiple mini process plants within that, and, for example, on an LNG train, where you are using very large modules, you will have 14, 15 distinct processes within that overall process, so each one of those, wherever possible, are put into on VLM, and then that is tested, serviced, its – electrical components are run, everything within that one item.¹⁵

This was reiterated by Paolo Merlo of LNG Canada:

One thing I would like to say about our modules, the way we design our modules is they are like islands of particular functionality. When we want to build a module, we define what are the components that define a certain functionality in the plant, and then we would like to design,

¹⁰ *GL&V/Black Clawson-Kennedy v. Canada (Deputy Minister of National Revenue – M.N.R.)*, Appeal No. AP-99-063, [2000] CITT No. 82 at para 47.

¹¹ NQ-2016-004-H-05 Public Statement of Sarah Lindon, at paras. 10-20.

¹² Public Testimony of Paolo Merlo, Public Transcript Vol 5, at 501:4-501:19; 504:12-18.

¹³ Public Testimony of Sarah Lindon, Public Transcript Vol. 5, at 470:8-11.

¹⁴ Public Testimony of Paolo Merlo, Public Transcript Vol. 5, at 504:12-16.

¹⁵ Public Testimony of Ben Molz, Public Transcript Vol. 5, at 470:24-471:6.

build them and test them in a way that by the time they finish, they leave the yard, they are 100 percent completed and functionality tested.¹⁶

Conclusion

In sum, the complex modules to be used by Woodfibre LNG bear all of the hallmarks of a manufactured good, and not a simple assembly. The complex modules are highly technical integrated units, designed for the purpose of operating an LNG production facility, that are rigorously tested for LNG production functionality prior to shipment, and which are defined not by their structure but by that very LNG production functionality.

Not only do the non-FISC components define the essential character of the complex modules, those non-FISC components also comprise the majority of the value of the complex modules. The FISC within the modules comprises only a fraction of the value of the modules. As such, from both the perspective of functionality, and the perspective of value, the non-FISC components define the module as a whole.

Given these factors, Woodfibre LNG submits that the only avenue open to the CBSA is to find that the complex modules, including the FISC within them, are outside of the scope of the subject goods definition in FISC 2016 IN.

¹⁶ Public Testimony of Paolo Merlo, Public Transcript Vol. 5, at 501:8-15 – no cross examination was undertaken or evidence tendered to contradict the testimony of Mr. Merlo that the units were delivered fully tested, commissioned, and ready for operation.