



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2013-003

Silicon Metal

*Finding issued
Tuesday, November 19, 2013*

*Reasons issued
Wednesday, December 4, 2013*

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

**THE DUMPING AND SUBSIDIZING OF SILICON METAL ORIGINATING IN
OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight, and silicon metal containing between 89.00 percent and 96.00 percent silicon by weight that contains aluminum greater than 0.20 percent by weight, of all forms and sizes, originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

Further to the issuance by the President of the Canada Border Services Agency of final determinations dated October 21, 2013, that the aforementioned goods have been dumped and subsidized, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping and subsidizing of the aforementioned goods have not caused injury but are threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Jason W. Downey
Jason W. Downey
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: October 21 to 25, 2013

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STATEMENT OF REASONS

INTRODUCTION

1. The purpose of this inquiry¹ is to determine whether the dumping and subsidizing of silicon metal originating in or exported from the People's Republic of China (China) (the subject goods) have caused or are threatening to cause injury to the domestic silicon metal industry.

2. This inquiry stems from a complaint filed on March 1, 2013, by Québec Silicon Limited Partnership (QSLP) and its affiliate QSIP Canada ULC (QSIP Canada), and the subsequent decision of the President of the Canada Border Services Agency (CBSA) to initiate dumping and subsidizing investigations on April 22, 2013.

3. The CBSA's decision triggered a preliminary injury inquiry by the Tribunal. In this regard, the Tribunal, on June 21, 2013, determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury to the domestic industry.

4. On July 22, 2013, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional duties on the subject goods and the commencement of this inquiry. On October 21, 2013, the CBSA made final determinations of dumping and subsidizing.²

5. If the Tribunal determines that such dumping or subsidizing has caused or is threatening to cause injury to the domestic industry for silicon metal, then the CBSA will impose definitive anti-dumping and countervailing duties on imports of the subject goods.

6. The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2010, to December 31, 2012, and two interim periods, from January 1 to June 30, 2012 (interim 2012) and the corresponding period in 2013 (interim 2013). On this basis, Tribunal staff issued questionnaires to the sole domestic producer and to importers, purchasers, foreign producers, exporters and trading companies of silicon metal. Using the questionnaire replies, Statistics Canada import data and data from the CBSA, Tribunal staff prepared public and protected staff reports that were distributed, along with the questionnaire replies, to counsel of record for the entities that had filed notices to participate in the inquiry.³ Parties were then afforded the opportunity to file case briefs and evidence.

7. The parties that have actively participated in the inquiry are the corporate group comprised of QSLP and QSIP Canada (collectively referred to as QSLP/QSIP Canada), which produces and sells silicon metal in Canada, and Rio Tinto Alcan Inc. (RTA), the largest Canadian importer and end user of the subject

1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [SIMA].

2. Exhibit NQ-2013-003-04, Vol. 1 at 130.21.

3. All public exhibits were made available to the parties. Protected exhibits, including the protected staff report and the confidential portion of questionnaire replies, were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2013-001), replies to questionnaires, public and protected versions of the staff report and revisions, requests for information and replies thereto, witness statements, all other exhibits filed by the parties and the Tribunal throughout the inquiry, and the transcript of the hearing.

goods.⁴ Aleris Specification Alloy Products Canada Company, another Canadian importer and end user of the subject goods, filed a notice of participation but did not file a case brief, nor did it attend the hearing. The other participant in the inquiry was Unifor Québec, the union representing the employees of QSLP's facility in Bécancour, Quebec. Unifor Québec's Assistant Director, Mr. Joseph Gargiso, was called as a witness by QSLP/QSIP Canada and provided testimony in support of the domestic producer's position at the hearing.

8. Mr. Robert J. McHale, Director, Commodity Council, Global Alloying Materials, Alcoa Global Business Services (Alcoa), appeared as a Tribunal witness at the hearing.

9. From October 21 to 25, 2013, the Tribunal heard oral submissions supporting an injury finding from QSLP/QSIP Canada and opposing such a finding from RTA, as well as testimony from the witnesses called by these parties in public and *in camera* sessions.

RESULTS OF THE CBSA'S INVESTIGATIONS

10. The CBSA's period of investigation with respect to both dumping and subsidizing covered January 1 to December 31, 2012. On October 21, 2013, the CBSA determined that 100 percent of the subject goods imported into Canada in this period had been dumped at an estimated weighted average margin of dumping of 190.1 percent, when expressed as a percentage of the export price. The CBSA also determined that 100 percent of the subject goods imported into Canada in the same period had been subsidized at an estimated overall weighted average amount of subsidy of 21.1 percent, when expressed as a percentage of the export price.⁵

11. The CBSA concluded that the overall margin of dumping and amount of subsidy were not insignificant.⁶

PRODUCT

Product Definition

12. The CBSA defined the subject goods as follows:

silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight, and silicon metal containing between 89.00 percent and 96.00 percent silicon by weight that contains aluminum greater than 0.20 percent by weight, of all forms and sizes, originating in or exported from China.

Product Information⁷

13. The subject goods include all forms and sizes of silicon metal, including off-specification material, such as silicon metal with high percentages of elements, such as aluminum, calcium and iron.

14. Silicon is a chemical element, metallic in appearance, solid in mass, and steel gray in colour, that is commonly found in nature in combination with oxygen either as silica or in combination with both oxygen and a metal in silicate minerals. Although commonly referred to as metal, silicon exhibits characteristics of

4. QSLP/QSIP Canada and RTA filed case briefs with documentary evidence and witness statements in support of their respective positions.

5. Exhibit NQ-2013-003-04, Vol. 1 at 130.25.

6. *Ibid.* at 130.21.

7. Exhibit NQ-2013-003-01A, Vol. 1 at 23.

both metals and non-metals. Silicon metal is a polycrystalline material whose crystals have a diamond cubic structure at atmospheric pressure. It is usually sold in lump form typically ranging from 6 in. × 1/2 in. to 4 in. × 1/4 in. for the metallurgical industry, 1 in. × 1 in. and smaller for the chemical industries and in crushed powder form.

15. Silicon metal is principally used by primary and secondary aluminum producers as an alloying agent and by the chemical industry to produce a family of chemicals known as silicones. The main consumers of the product are aluminum producers, chemical producers and polysilicon producers.

16. Responses to Tribunal questionnaires indicate that, in Canada, the customer base is small and highly concentrated, and consists of aluminum producers (both primary and secondary) that are end users of the product, as well as several companies that purchase silicon metal for re-sale, acting as distributors. Importers are primarily end users of the subject goods, although there are some importers that resell their imports of silicon metal.⁸ There is no chemical or solar-grade polysilicon industry that uses silicon metal as an input in Canada.⁹

LEGAL FRAMEWORK

17. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

18. Accordingly, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry” for purposes of its injury analysis.

19. Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect) in this inquiry.

20. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.¹⁰ As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.¹¹

21. In conducting its analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the dumping and subsidizing.

8. Exhibit NQ-2013-003-06C, Vol. 1.1A at 16.

9. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 36.

10. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

11. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”.

LIKE GOODS AND CLASSES OF GOODS

22. In order for the Tribunal to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic industry that produces the like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.¹²

23. Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows:

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

24. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).¹³

25. In its preliminary injury inquiry, the Tribunal found that domestically produced silicon metal and the subject goods of the same description were like goods. The Tribunal also found that the subject goods and the like goods comprised a single class of goods.

26. During the present inquiry, the Tribunal did not receive any submissions challenging these findings and sees no reason to depart from them. The evidence indicates that the characteristics of domestically produced silicon metal closely resemble those of the subject goods. Indeed, domestically produced silicon metal and the subject goods are physically interchangeable and comparable in terms of product quality, chemical composition and availability of specifications to meet customers’ requirements.¹⁴

27. Moreover, domestically produced silicon metal competes directly with, has the same end uses as and may be substituted for the subject goods in the Canadian market.¹⁵ These facts were beyond dispute. The parties also agreed that the subject goods and like goods comprise a single class of goods, with there being no evidence on the record that would call into question the parties’ statements on this issue.

28. Accordingly, the Tribunal finds that domestically produced silicon metal and the subject goods, defined in the same manner, constitute like goods and that there is a single class of goods.

12. Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

13. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

14. Exhibit NQ-2013-003-06C, Tables 15, 16, Vol. 1.1A.

15. Exhibit NQ-2013-003-A-06 (protected) at paras. 16-39, Vol. 12; Exhibit NQ-2013-003-A-08 (protected) at paras. 8-37, 43-56, Vol. 12.

DOMESTIC INDUSTRY

29. Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

30. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.

31. The group of entities formed by QSLP/QSIP Canada is presented as constituting the domestic industry for the purposes of this inquiry. RTA stated that QSLP is the sole Canadian producer of silicon metal, but did not take issue with QSLP/QSIP Canada’s position that the corporate group formed by the two entities constitutes the domestic industry.

32. The only facility that produces silicon metal in Canada is located in Bécancour. Since there were ownership and organization structural changes with respect to this facility during the POI, it is useful to briefly discuss the history of the facility’s operations and describe the relationship between the entities that are currently responsible for the production and sales of silicon metal in Canada.

33. Prior to September 2010, the facility was owned by Bécancour Silicon, Inc. (BSI), a wholly owned subsidiary of Timminco Limited (Timminco). BSI was the entity responsible for the production and sales of silicon metal in Canada. In August 2010, BSI established QSLP and contributed to it the operating assets (three furnaces) that produce silicon metal in Canada. On October 1, 2010, BSI sold 49 percent of its ownership in QSLP to Dow Corning Corporation (Dow). From that point forward, QSLP was responsible solely for producing silicon metal for its two owners, BSI and Dow. In other words, QSLP performs a manufacturing function and does not sell silicon metal on the open markets.¹⁶

34. BSI retained the selling function for the share of QSLP’s production to which it was entitled until June 2012,¹⁷ when QSIP Canada purchased BSI’s 51 percent stake in QSLP. QSIP Canada’s acquisition of BSI’s interest in QSLP was part of a court-supervised process that resulted from Timminco’s filing for creditor protection under the *Companies’ Creditors Arrangement Act*¹⁸ in January 2012.

35. As of June 2012, QSIP Canada is responsible for all domestic sales of QSLP’s production and for sales to all export customers, except one.¹⁹ This customer was publicly identified as Wacker Chemie AG (Wacker) of Germany at the hearing.²⁰ Sales to Wacker are made through another entity, namely, QSIP Sales ULC (QSIP Sales).

16. Exhibit NQ-2013-003-11.01, Vol. 3 at 12.

17. The share of QSLP’s production that is transferred to Dow is consumed by Dow for its own end use and is therefore not sold on the open markets. Dow is entitled to receive 49 percent of QSLP’s production. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 158-59.

18. R.S.C. 1985, c. C-36.

19. Exhibit NQ-2013-003-A-01 at paras. 68-71, Vol. 11; Exhibit NQ-2013-003-11.01, Vol. 3 at 12.

20. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 22-23, 158-59.

36. In short, the following entities were involved in the production and/or sales of silicon metal manufactured in Canada during the POI:

- January 1 to September 30, 2010: BSI produces and sells;
- October 1, 2010, to June 13, 2012: QSLP produces and BSI sells;
- June 13, 2012, to June 30, 2013: QSLP produces, and QSIP Canada and QSIP Sales sell.²¹

37. However, pursuant to the production partnership between BSI and Dow established in October 2010, Dow is entitled to 49 percent of QSLP's production. This allocation entitlement is transferred directly from QSLP to Dow and does not pass through either QSIP Canada or QSIP Sales.²² According to the evidence, Dow's share of QSLP's production is exported to the United States where it is used internally by Dow.²³ Therefore, the share of QSLP's production that is notionally available for sale on the open markets, including the domestic merchant market, by QSIP Canada or QSIP Sales amounts to 51 percent of QSLP's annual production.²⁴

38. The evidence indicates that QSLP, QSIP Canada and QSIP Sales are integrated into a single corporate group. QSLP is 50.99 percent owned by QSIP Canada and 49 percent owned by Dow, through its wholly owned subsidiary DC Global Holdings S.r.a.l. The remaining 0.01 percent is held by another related entity, Québec Silicon General Partnership Inc.²⁵

39. QSIP Canada and QSIP Sales are both ultimately owned by Globe Specialty Metals Inc. (Globe). As such, Globe has control over the share of QSLP's production that is not transferred to Dow and determines whether this share will be sold through QSIP Canada (either on the domestic merchant market or on the export markets) or QSIP Sales (to Wacker).²⁶ Globe, however, does not acquire silicon metal from QSLP. The 51 percent of QSLP's production that remains available for sale either on the domestic merchant market or on export markets is transferred from QSLP to QSIP Canada. QSIP Sales then sells a portion of this production to Wacker, as discussed above.²⁷

40. The Tribunal has previously found that the domestic industry can, in principle, and within the meaning ascribed to that term under subsection 2(1) of *SIMA*, be comprised of related entities respectively responsible for the production of like goods and their arm's-length sale at the first level of distribution in the marketplace. Therefore, to the extent that companies or entities forming a related group are involved in activities associated with the production, as well as the sale and marketing, of the like goods, as in the present case, the group may legitimately be considered a domestic producer for the purpose of the definition of "domestic industry" in subsection 2(1).²⁸

41. The Tribunal notes that QSLP/QSIP Canada has submitted that it is the corporate group that the two entities form, without the inclusion of QSIP Sales, that constitutes the domestic industry. Applying the above-referenced test and in view of the evidence, the Tribunal finds however that QSIP Sales is a related

21. Exhibit NQ-2013-003-06C, Vol. 1.1A at 17.

22. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 22-23, 158-59.

23. Exhibit NQ-2013-003-A-03 at para. 31, Vol. 11.

24. Exhibit NQ-2013-003-A-01 at paras. 71-72, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 159.

25. Exhibit NQ-2013-003-A-01 at paras. 47-48, Vol. 11.

26. *Ibid.* at para. 72; *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 159.

27. *Ibid.* at 169-70.

28. *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at paras. 32-33.

entity which is integrated in the same corporate group and is involved in activities associated with the sales of the like goods on export markets. Accordingly, and in order to capture all entities responsible for the production and sale of the like goods, the Tribunal considers it appropriate to include QSIP Sales in the corporate group constituting the domestic industry.

42. On the basis of the foregoing, the Tribunal finds that QSLP, QSIP Canada and QSIP Sales are integrated into a single corporate group that is responsible for the domestic production and the sales of like goods either on the domestic merchant market or on export markets. Together, they are clearly responsible for the production of the like goods and their arm's-length sales at the first level of distribution in the marketplace. As such, the Tribunal finds that QSLP, QSIP Canada and QSIP Sales, considered together, constitute the domestic industry as a whole for the purposes of this inquiry.

43. For ease of reference, the corporate group which constitutes the domestic industry in this case will hereinafter be referred to as "Québec Silicon".

CROSS-CUMULATION

44. With the CBSA having determined that the subject goods have been dumped and subsidized, the Tribunal must determine whether it will cross-cumulate the effects of the dumping and subsidizing of the subject goods in this inquiry. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. However, as noted in previous cases,²⁹ the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects, and it is not possible to isolate the effects caused by the dumping from those caused by the subsidizing. In reality, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively. For that reason, the Tribunal's practice is to cumulatively assess the effects of dumping and the effects of subsidizing.

45. The Tribunal is therefore of the view that a cumulative assessment of the effects on the domestic industry of the dumping and subsidizing of the subject goods is appropriate.

INJURY ANALYSIS

46. Subsection 37.1(1) of the *Special Import Measures Regulations*³⁰ prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market and their resultant impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

29. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76.

30. S.O.R./84-927 [*Regulations*].

Background

47. Even though the Tribunal will limit its analysis of the relevant factors regarding the existence of injury to the POI, and to the 12 to 18 months following the POI for the purposes of determining whether there is a threat of injury, the Tribunal finds it necessary to broadly outline some factual elements in the years preceding these periods because of the impact that they had on the state of the domestic industry during the relevant periods.

48. The parties agree that Québec Silicon (and its predecessor, BSI) has been an export-oriented producer since at least the early 2000s³¹ and has sold only a minor proportion of its production in the Canadian market since that time.³² The evidence also indicates that Chinese silicon metal has been present in the Canadian market since at least the early 2000s³³ and has been priced significantly below domestically produced silicon metal since at least 2005.³⁴ Since their appearance on the Canadian market, imports of Chinese silicon metal have increased their Canadian market share.³⁵

49. Starting in 2006, Timminco (the former owner of BSI), faced with financial pressures after several years of declining silicon metal sales in the Canadian market, undertook three important initiatives that it hoped would ensure its survival.³⁶ The first was to develop the production of solar-grade silicon metal, which the company hoped would consume a meaningful proportion of the silicon metal produced by BSI.³⁷ However, this initiative failed when the solar-grade polysilicon industry collapsed in 2009 due largely to the global recession.³⁸

50. The second and third initiatives consisted of BSI entering into a long-term supply agreement with Wacker and into a joint-venture agreement with Dow in 2010, both important and long-standing export customers,³⁹ with the hope that these arrangements would provide base load for the plant.⁴⁰ Under the Dow joint venture, BSI agreed to provide Dow with 49 percent of its production in exchange for cash and a line of credit.⁴¹ Under the Wacker contract, Wacker committed to buying significant quantities of silicon metal between 2010 and 2014.⁴² As a result of these two arrangements, the vast majority, first, of BSI's production and, then, of QSLP's production was committed to customers in export markets at the beginning of the POI.

51. Despite these initiatives, Timminco was unable to recover from its poor financial state, and it filed for bankruptcy in 2012. Following the bankruptcy proceedings, Globe acquired a majority interest in the QSLP plant.⁴³ As part of the acquisition, Globe negotiated the right to fulfill the supply obligations under

31. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 15, 39-40.

32. *Ibid.* at 39-40; Exhibit NQ-2013-003-C-04 (protected) at para. 77, Vol. 14.

33. Exhibit NQ-2013-003-A-05 at para. 7, Vol. 11; Exhibit NQ-2013-003-C-04 (protected) at para. 74, Vol. 14.

34. *Transcript of Public Hearing*, Vol. 3, 23 October 2013, at 203-204; *Transcript of In Camera Hearing*, Vol. 3, 23 October 2013, at 232-33; Exhibit NQ-2013-003-C-04 (protected) at para. 84, Vol. 14.

35. Exhibit NQ-2013-003-A-03 at para. 8, Vol. 11; Exhibit NQ-2013-003-A-05 at para. 9, Vol. 11.

36. Exhibit NQ-2013-003-A-05 at paras. 9-10, Vol. 11.

37. *Ibid.*

38. *Ibid.* at para. 11.

39. *Ibid.* at paras. 9, 12-13; *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 17-18.

40. *Ibid.*

41. *Ibid.* at 158; Exhibit NQ-2013-003-C-01 at paras. 205, 207, Vol. 13.

42. *Ibid.* at para. 194; Exhibit NQ-2013-003-C-11 at tab 6 at 220, Vol. 13B.

43. Exhibit NQ-2013-003-A-03 at para. 8, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 14.

the long-term supply agreement with Wacker with production from its U.S. facilities.⁴⁴ After the acquisition, Globe implemented a number of cost reduction initiatives at the QSLP plant. Moreover, it began a campaign to increase its sales in the Canadian market by approaching the large consumers of silicon metal in Canada.⁴⁵

52. On January 1, 2013, China eliminated its 15 percent export tax on silicon metal.⁴⁶

53. Following the filing of a complaint by QSLP/QSIP Canada on March 1, 2013, the CBSA initiated dumping and subsidizing investigations in respect of silicon metal from China on April 22, 2013.

54. There has been a lockout of the unionized employees at the QSLP plant since May 2013, with management personnel operating only one of the three furnaces at the facility since that time.⁴⁷ As a result, QSLP is only currently producing at partial capacity.⁴⁸

55. This inquiry is unusual in that the vast majority of the domestic industry's production was exported throughout the POI, with only a small share of the total domestic production sold on the domestic merchant market.⁴⁹ This means that, during the POI, Québec Silicon was a minor supplier in its own home market. This fact is highly relevant, given that the subject goods do not compete with the domestic industry's exports, with such exports being generally insulated from the effects of the dumping and subsidizing. At first blush, the subject goods could thus only have had an adverse impact on a small proportion of the domestic industry's total production.

56. The manner in which the Tribunal should assess the alleged injury to the domestic industry when a significant volume of the production of like goods is exported has been clearly addressed in previous cases.⁵⁰ Following the approach taken in these cases, the Tribunal will focus its injury analysis on the Canadian merchant market. However, the materiality of any injury caused by the dumping and subsidizing will be assessed against the domestic industry's production of like goods as a whole.

57. Accordingly, for the purposes of its injury analysis, the Tribunal will consider the volume of the dumped and subsidized goods, their effect on the price of like goods and their resultant impact on the performance of the domestic industry in the Canadian merchant market. To the extent that the Tribunal finds that there is a causal relationship between volume and domestic price effects of the subject goods and the negative performance of the domestic industry in the Canadian merchant market, it will then determine whether the injury attributable to the dumping and subsidizing of the subject goods in the Canadian merchant market is sufficient to be considered "material" within the meaning of *SIMA*. The Tribunal will consider the "materiality" of such injury in light of the fact that a substantial proportion of Québec Silicon's production was exported during the POI.

44. Exhibit NQ-2013-003-A-03 at para. 27, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 19-20.

45. Exhibit NQ-2013-003-A-03 at para. 11, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 18-20.

46. Exhibit NQ-2013-003-A-01 at para. 11, Vol. 11.

47. Exhibit NQ-2013-003-A-03 at paras. 34-36, Vol. 11.

48. Exhibit NQ-2013-003-07C (protected), Table 96, Vol. 2.1A.

49. *Ibid.*, Tables 34-36, 47; Exhibit NQ-2013-003-07D (protected), Table 56, Vol. 2.1A.

50. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) [*Hot-rolled Steel Sheet and Strip*] at 13; *Copper Rod* at paras. 50, 67.

RTA's Submission on the Relevance of Market Conditions for Downstream Products

58. Before conducting its injury analysis, the Tribunal also deems it necessary to address RTA's submission on the relevance of downstream market conditions in this inquiry, that is, the competitive pressures that RTA is facing in the relevant market for the products incorporating silicon metal as an input that it manufactures and sells. RTA submitted that it purchases silicon metal primarily for use in the production of foundry alloy products sold in the North American automotive market to customers located mostly in the southern part of the United States and Mexico. RTA argued that it needs to source low-priced silicon metal from China because its competitors in that market have access to low-priced Chinese material, and that its foundry alloy customers will not accept increases in price above ceilings set by those overseas foundry alloy suppliers that can source silicon metal from China.

59. RTA further submitted that it is therefore necessary for it to source silicon metal at the lowest possible cost in order to avoid loss of market share and sales in the key market for downstream products. In essence, RTA argued that, as a result of existing competitive pressure, it has no choice but to reduce its costs in the production of foundry alloy products destined for the automotive market and that, to achieve such reductions, it must source silicon metal from China. RTA also filed evidence demonstrating the competitive pressure that it faces in the relevant market for downstream products and the adverse impact that a finding of injury or threat of injury would have on its business and operations.⁵¹ This state of affairs was essentially confirmed by RTA's witnesses at the hearing.

60. The Tribunal is not insensitive to RTA's arguments. It recognizes the difficulties and challenges that RTA may face in competing with certain foreign aluminum producers in the North American market as a result of a finding of injury or threat of injury. However, the broader impact of the application of anti-dumping or countervailing duties on Canadian consumers and downstream producers is not a factor that the Tribunal should consider in inquiries pursuant to section 42 of *SIMA*. In fact, in *Hot-rolled Steel Sheet and Strip*, the case to which RTA referred in support of its claim that the Tribunal had, in the past, examined downstream market conditions, the Tribunal stated that "... the price of derivative or downstream products is not relevant to this inquiry, since they are not like goods and their prices are determined in a different market subject to a different set of forces"⁵² [emphasis added].

61. Section 42 of *SIMA* does not allow the Tribunal to consider the potential impact of a finding of injury or threat of injury on Canadian importers or consumers of the subject goods. Rather, the Tribunal's role, under section 42, is to inquire into whether the dumping or subsidizing of the subject goods is causing or threatening to cause material injury to the domestic industry, which is comprised of the domestic producers of goods that are like the subject goods. This inquiry is based on an examination of the factors prescribed by the *Regulations*. These factors do not include the impact of the imposition of anti-dumping or countervailing duties on the competitiveness of producers of downstream products, which is extraneous to the issues properly under consideration in a section 42 inquiry. To act otherwise would place the Tribunal outside the scope of its legislative mandate.

62. That being said, the Tribunal may, subsequent to an inquiry under section 42 of *SIMA*, initiate a separate inquiry under section 45 if it is of the opinion that the imposition of anti-dumping or countervailing duties, in whole or in part, might not be in the public interest. At the conclusion of such an inquiry, the Tribunal could recommend a reduction or elimination of the anti-dumping or countervailing duties that would otherwise be applicable.

51. Exhibit NQ-2013-003-C-04 (protected) at paras. 21-27, Vol. 14; Exhibit NQ-2013-003-C-06 (protected) at paras. 10-68, Vol. 14A; Exhibit NQ-2013-003-C-08 (protected) at paras. 50-75, Vol. 14A.

52. *Hot-rolled Steel Sheet and Strip* at 12.

63. At the hearing, RTA submitted that its arguments on the consequence of the imposition of anti-dumping and countervailing duties were relevant to the issue of causation. RTA submitted that, even if the subject goods were no longer available as a result of a finding of injury or threat of injury, RTA could not afford to purchase higher-priced domestically produced silicon metal in light of the competitive pressure that it faces in the relevant market for downstream products. According to RTA, this indicates that a finding of injury or threat of injury would not provide relief to the domestic industry and that Québec Silicon's inability to supply silicon metal, in a meaningful way, to aluminum producers such as itself is therefore not caused by the presence of the subject goods.

64. The Tribunal is unable to accept this argument. The Tribunal's role in an inquiry pursuant to section 42 of *SIMA* is to re-establish fair market conditions if it finds that the dumping or subsidizing of the subject goods is causing or threatening to cause material injury to the domestic industry. Indeed, an object of *SIMA* is to protect the domestic industry from the effects of unfairly traded imports. The Tribunal does not have the authority under section 42 to deny a domestic industry the protection to which it is entitled under *SIMA* on the basis that downstream producers or other consumers need to procure dumped and subsidized goods in order to be competitive in markets for downstream products.

65. Finally, contrary to RTA's argument, the Tribunal, in an inquiry pursuant to section 42 of *SIMA*, need not be convinced that anti-dumping or countervailing duties imposed as a result of its order or finding will help to ensure the competitiveness and commercial viability of the domestic industry.

66. The Tribunal will now turn to an assessment of whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

Import Volume of Dumped and Subsidized Goods

67. Paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to consider the volume of the dumped and subsidized goods and, in particular, to consider whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods.

68. The absolute volume of total apparent imports of the subject goods rose by 1 percent from 2010 to 2011 before decreasing by 28 percent in 2012. However, in interim 2013, the absolute volume of total apparent imports of the subject goods rose considerably (by 41 percent) when compared to the same period in 2012.⁵³ The fluctuation between the 2012 and 2013 interim periods indicates a significant increase in the absolute volume of the subject goods.

69. The evidence suggests that the decrease in the volume of imports of the subject goods in 2012 was attributable, in part, to a lockout that disrupted RTA's operations. This lockout caused RTA to reduce production activities at one of its facilities and, as a result, to decrease its purchases of the subject goods during that year compared to its historical levels.⁵⁴ There is also evidence suggesting that 2012 was a year characterized by lower worldwide demand for silicon metal.⁵⁵ For this reason, the Tribunal does not consider 2012 to be a representative year by which to assess whether there was a significant increase in the absolute volume of the subject goods during the POI.

53. Exhibit NQ-2013-003-06C, Table 39, Vol. 1.1A; Exhibit NQ-2013-003-07C (protected), Table 38, Vol. 2.1A.

54. Exhibit NQ-2013-003-C-07 at paras. 40-44, 64, Vol. 13A; Exhibit NQ-2013-003-C-09 at para. 10, Vol. 13A.

55. *Transcript of Public Hearing*, Vol. 4, 24 October 2013, at 252-55.

70. The Tribunal finds that, in order to reach a conclusion as to the significance of the increase in the volume of imports of the subject goods in absolute terms, it is more appropriate to compare the likely volume of the subject goods imported in 2013, obtained by annualizing the data for interim 2013, with the volume of the subject goods imported in 2010 and 2011. This exercise reveals that, projected on an annual basis, the volume of the subject goods imported in 2013 would be slightly higher than the volumes imported in 2010 and 2011.⁵⁶ After having annualized the data available for interim 2013, the Tribunal estimates that the volume of the subject goods imported in 2013 would increase by 10 percent when compared to the volume of the subject goods imported in 2010, and by 9 percent when compared to the volume of the subject goods imported in 2011.

71. When expressed as a percentage of total domestic production of like goods, total imports of the subject goods increased by 1 percentage point from 2010 to 2011, before decreasing by 13 percentage points in 2012. However, when comparing interim 2013 to interim 2012, the ratio of total imports of the subject goods to total domestic production of like goods increased by 30 percentage points. Throughout the POI, the ratio of total imports of the subject goods to total domestic production of like goods was significant.⁵⁷

72. The domestic production of like goods for domestic sales decreased in every full year of the POI. However, from interim 2012 to interim 2013, it increased significantly.⁵⁸ Despite this recent increase, domestic production for sale in the domestic market represented a very small proportion of total domestic production in any given period of the POI.⁵⁹

73. When expressed as a percentage of domestic sales of the like goods, the volume of imports of the subject goods increased by more than fivefold from 2010 to 2011, then fell by nearly twofold from 2011 to 2012, and decreased even more significantly in interim 2013 compared to interim 2012 due to the increase in Québec Silicon's sales in the domestic market in that period. While it fluctuated in both directions, throughout the POI, the ratio of total imports of the subject goods to domestic sales of like goods remained very high. Indeed, the volume of the subject goods sold in the Canadian market significantly exceeded the volume of domestic sales of the like goods in any given period of the POI.⁶⁰

74. The size of the Canadian market shrank by 19 percent from 2010 to 2012. However, between interim 2012 and interim 2013, the size of the Canadian market increased by 11 percent. If considered on an annualized basis, the size of the Canadian market in 2013 would be 5 percent smaller than in 2010, but larger by 12 percent and 17 percent than the size of the Canadian market in 2011 and 2012 respectively.⁶¹

75. While the absolute increases of imports of the subject goods during the POI may not appear significant, when considered in the context of the moderately contracting Canadian apparent market, they translated into a relatively important increase in the market share held by the subject goods in interim 2013 compared to the market share that they held in interim 2012.⁶²

56. Exhibit NQ-2013-003-07C (protected), Table 38, Vol. 2.1A. The Tribunal annualized the data for interim 2013 by multiplying the volume of imports in that period by two.

57. *Ibid.*, Tables 34, 38.

58. *Ibid.*, Tables 34, 35.

59. *Ibid.*, Tables 34, 36.

60. *Ibid.*, Tables 38, 47.

61. Exhibit NQ-2013-003-06C, Tables 47, 48, Vol. 1.1A. The Tribunal annualized the data for interim 2013 by multiplying the size of the Canadian market in that period by two.

62. Exhibit NQ-2013-003-07C (protected), Tables 47, 49, Vol. 2.1A.

76. On the basis of the foregoing analysis, the Tribunal finds that, while, in absolute terms, the increase in the volume of the subject goods during the POI may not appear to have been substantial, when considered in light of the size of the Canadian market and the market share that was gained by imports of the subject goods during the POI, this increase is significant.

Price Effects of Dumped and Subsidized Goods

77. Paragraph 37.1(1)(b) of the *Regulations* directs the Tribunal to consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred.

78. QSLP/QSIP Canada has taken the position that demand for silicon metal is price sensitive and that the subject goods significantly undercut, depressed and suppressed the price of like goods during the POI. It submitted that the subject goods have been consistently priced substantially below the prices offered by Québec Silicon, regardless of whether average unit selling prices, average unit import prices, product-specific prices or prices to specific customers are considered. RTA disputed these assertions and submitted that the average unit price of domestically produced like goods sold in the Canadian market increased between 2010 and 2012 and that a similar trend could be observed for the prices of the subject goods. In addition, RTA argued that the Tribunal is not in a position to draw any conclusions with respect to price suppression on the basis that the data on the cost of goods sold, as submitted by QSLP/QSIP Canada, are not reliable.

Importance of Price

79. The evidence indicates that silicon metal is a commodity product that trades largely (though not exclusively) on the basis of price.⁶³ While aluminum producers, such as RTA and Alcoa, which are major purchasers of silicon metal, use a total cost of ownership model that includes consideration of factors other than price to make their sourcing decisions, price is the most important factor in their choice of supplier.⁶⁴ In fact, the price component of the total cost of ownership is, by far, the most significant factor and can amount to 80 to 90 percent of the total cost of ownership.⁶⁵ However, certain purchasers are prepared to pay a small premium to avoid the risks associated with offshore sourcing.⁶⁶

80. It is also not disputed that the subject goods are the price leaders in the global and Canadian markets.⁶⁷

Price Undercutting

81. Average pricing information contained on the record suggests, at first glance, that there was not significant price undercutting throughout the POI. In fact, the aggregate unit selling values of the subject goods were above the aggregate unit selling values of the like goods in 2011, 2012 and interim 2012. In those periods, domestically produced silicon metal was, on average, priced below the subject goods, within

63. Exhibit NQ-2013-003-A-07 at para. 6, Vol. 11; Exhibit NQ-2013-003-A-05 at para. 39, Vol. 11.

64. *Transcript of Public Hearing*, Vol. 4, 24 October 2013, at 237, 240; *ibid.*, Vol. 3, 23 October 2013, at 197-98.

65. *Ibid.*, Vol. 4, 24 October 2013, at 265.

66. *Ibid.* at 278, 284-85; *Transcript of In Camera Hearing*, Vol. 3, 23 October 2013, at 251-53; Exhibit NQ-2013-003-C-10 (protected) at para. 51, Vol. 14B.

67. *Transcript of Public Hearing*, Vol. 3, 23 October 2013, at 216-17; *Transcript of In Camera Hearing*, Vol. 4, 24 October 2013, at 299, 329-30.

a range of 6 percent in 2011 and interim 2012 to 12 percent in the full year 2012. However, the average unit selling prices of the subject goods slightly undercut those of the like goods in 2010 and interim 2013 (by 3 and 5 percent respectively).⁶⁸

82. Average unit selling prices may not, however, be the most reliable indicator of price undercutting in the Canadian apparent market. In this respect, QSLP/QSIP Canada argued that there was significant price deterioration that occurred within and over 2011 and 2012 and that the bulk of the imports of the subject goods occurred when the market prices were at their highest point during those years, whereas domestic sales of domestically produced silicon metal occurred when the prices were at their lowest point. Simply put, QSLP/QSIP Canada submitted that the average pricing data for 2011 and 2012 were skewed by virtue of these timing differences between import transactions and domestic sales.⁶⁹

83. The Tribunal finds this explanation credible in view of the evidence that was given at the hearing according to which the prices of the subject goods during the POI were generally below those of the like goods by significant margins.⁷⁰ The evidence also indicates that Québec Silicon has consistently been told that it cannot compete with Chinese pricing and has had to lower its price offers in order to try to meet the pricing of the subject goods.⁷¹ As such, the prices of the subject goods were used as leverage to obtain price concessions from Québec Silicon. Overall, this evidence is indicative of significant price undercutting throughout the POI.

84. The Tribunal also examined pricing information for benchmark products, which is segregated by market segments (distributors or end users), in order to assess whether the subject goods significantly undercut the price of the like goods during the POI. This analysis allows for a comparison of the prices of like goods and the subject goods on a product-specific basis.

85. The Tribunal staff collected pricing data for three benchmark products⁷² on a quarterly basis for the last eight quarters of the POI, i.e. from the third quarter of 2011 to the second quarter of 2013.⁷³ However, a comparison of selling prices of like goods and the subject goods was only possible for benchmark product Nos. 2 and 3.⁷⁴

68. Exhibit NQ-2013-003-07D (protected), Table 53, Vol. 2.1A.

69. Exhibit NQ-2013-003-A-01 at paras. 144-45, Vol. 11; Exhibit NQ-2013-003-A-02 (protected) at paras. 144-45, Vol. 12 (and documentary evidence therein referred to).

70. Exhibit NQ-2013-003-C-04 (protected) at 84, Vol. 14; *Transcript of In Camera Hearing*, Vol. 3, 23 October 2013, at 233, 236, 262.

71. Exhibit NQ-2013-003-A-05 at paras. 3, 18, 33, Vol. 11; Exhibit NQ-2013-003-A-07 at paras. 9, 13, Vol. 11; Exhibit NQ-2013-003-A-06 (protected) at paras. 3, 18, 33, Vol. 12; Exhibit NQ-2013-003-A-08 (protected) at paras. 9, 13, Vol. 12.

72. The three benchmark products for which the information was collected are the following: silicon metal with a maximum iron content of 0.24 percent and maximum calcium content of 0.02 percent (benchmark product No. 1); silicon metal with an iron content of between 0.25 percent and 0.34 percent and a maximum calcium content of 0.04 percent (benchmark product No. 2); and silicon metal with an iron content of between 0.35 percent and 0.55 percent and a maximum calcium content of 0.3 percent (benchmark product No. 3).

73. Exhibit NQ-2013-003-07C (protected), Tables 62-66, 68-71, 74-76, Vol. 2.1A; Exhibit NQ-2013-003-07D (protected), Tables 67, 72, 73, Vol. 2.1A.

74. The two benchmark products that could be compared were benchmark product No. 2 (for end users, only in the first and second quarters of 2013) and benchmark product No. 3 (for distributors, in the first, second and fourth quarters of 2012 and in the first quarter of 2013, and for end users, for all quarters of the period except the third quarter of 2012).

86. For benchmark product No. 2, comparison was only possible in two quarters, with the subject goods priced 10 percent below the like goods.⁷⁵

87. Benchmark product No. 3 offers more individual points of comparison in more periods. With respect to sales to distributors, it was possible to compare the pricing in four quarters. In all these time periods, the price of the subject goods undercut that of the like goods by 1 to 10 percent. With respect to sales to, and purchases by, end users, the data could be compared in seven quarters. In all instances except one (where the subject goods were priced 1 percent higher than the like goods), the price of the subject goods undercut the price of the like goods by 2 to 15 percent.⁷⁶ In sum, in the 13 instances where a comparison was possible for benchmark product Nos. 2 and 3, the price of the subject goods undercut that of the domestically produced silicon metal on 12 occasions.

88. Therefore, on balance, the Tribunal finds that the subject goods undercut the price of like goods by a significant degree during the POI.

Price Depression

89. The data provided by the parties in response to the Tribunal's questionnaires provide limited evidence of price depression during the POI. In fact, significant price depression is only apparent in the average unit selling values in the Canadian apparent market during interim 2013, when the weighted average unit selling prices of the like goods decreased by 13 percent. With respect to the other periods of the POI, the weighted average unit selling price of domestically produced silicon metal increased by 3 percent in 2011, but marginally decreased by 2 percent in 2012.⁷⁷ Thus, average pricing data do not establish that the subject goods significantly depressed the price of like goods during the POI.

90. There is also little cogent evidence of price depression in specific transactions. QSLP/QSIP Canada provided six price depression allegations in its questionnaire response. Indeed, there was only one instance where QSLP/QSIP Canada provided both an offered price and a final transaction price. In that instance, the final transaction price allegedly paid to the domestic producer was between US\$190 and US\$210 lower than the initial price offered. However, this transaction apparently occurred in 2009 (i.e. prior to the POI), and no data were provided for volumes sold.⁷⁸

91. As discussed above, the evidence suggests that, in order to compete and secure a sale, Québec Silicon would have had to offer depressed prices. The fact that Québec Silicon did not secure substantial sales with major Canadian purchasers during the POI suggests that it was not able to lower its price offers sufficiently so as to bridge the gap between its prices and those of the subject goods.

92. Given, however, the dearth of domestic pricing data on the record, the Tribunal cannot conclude that the subject goods significantly depressed the price of like goods during the POI.

75. *Ibid.*, Table 67.

76. *Ibid.*, Table 72.

77. Exhibit NQ-2013-003-06D, Table 54, Vol. 1.1A; Exhibit NQ-2013-003-07D (protected), Table 53, Vol. 2.1A.

78. Exhibit NQ-2013-003-12.01 (protected), Vol. 4 at 252-61; Exhibit NQ-2013-003-12.01 (protected), Vol. 4A at 19-21.

Price Suppression

93. In order to assess whether the price of the subject goods suppressed the price of like goods, the Tribunal compared the changes in Québec Silicon's unit cost of the like goods sold in the Canadian apparent market to the weighted average unit selling prices of the like goods in that market.⁷⁹

94. This comparison shows that the only period of the POI where there was a noteworthy increase in the unit cost of the like goods sold in the Canadian apparent market compared to the prior period was in 2012, when it increased by 43 percent.⁸⁰ There was no concurrent increase in the average unit selling prices of the like goods. However, the average unit selling value of imports of the subject goods in the Canadian apparent market increased by 4 percent during the same period,⁸¹ which, in theory, could have allowed Québec Silicon to raise its price in order to offset, at least in part, the apparent increase in its cost of goods sold. There is also some evidence of price suppression in interim 2013.⁸²

95. However, the Tribunal has reason to believe that the reported data on Québec Silicon's cost of goods sold, including the substantial 43 percent increase in 2013, are not reliable. At the hearing, the witnesses for QSLP/QSIP Canada acknowledged that the data on the cost of the like goods sold in the Canadian apparent market, as provided in its questionnaire response, were based on assumptions and did not reflect reality.⁸³ With the Tribunal being unable to ascribe much weight to these data, there is an insufficient basis upon which to conclude that the domestic industry suffered significant price suppression in 2012 or in any other period during the POI.

96. On the basis of the foregoing, the Tribunal finds that the evidence does not establish the existence of significant price suppression during the POI.

Resultant Impact on the Domestic Industry

97. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped or subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.⁸⁴ In addition, paragraph 37.1(3)(b) directs the Tribunal to consider whether any factors other than the dumping or subsidizing of the subject goods have caused injury.⁸⁵ The Tribunal must ultimately determine whether any resultant impact of

79. Exhibit NQ-2013-003-07D (protected), Tables 53, 82, Vol. 2.1A.

80. *Ibid.*, Table 82.

81. Exhibit NQ-2013-003-06D, Tables 53, 54, Vol. 1.1A.

82. Exhibit NQ-2013-003-07D (protected), Tables 53, 54, 82, Vol. 2.1A.

83. *Transcript of In Camera Hearing*, Vol. 2, 22 October 2013, at 126-30.

84. Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.

85. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.

the subject goods on the state of the domestic industry, separate and apart from the impact of other factors, constitutes material injury. The extent, timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is “material”.⁸⁶

98. QSLP/QSIP Canada submitted that the dumping and subsidizing of the subject goods have caused material injury in the form of reduced volumes, sales, market share and gross margins, as well as in the form of operating losses with consequent adverse impact on its overall profitability and financial performance. RTA submitted that, if the domestic industry had suffered injury, the injury was not material within the meaning of *SIMA*, or was self-inflicted, and was the direct result of factors other than the dumping and subsidizing of the subject goods. Other factors cited by RTA include the domestic producer’s decisions to enter into a long-term supply contract at fixed prices with Wacker and a joint venture with Dow entitling the latter to a 49 percent share of QSLP’s output at a cost plus price, its previous owner’s failed investments in solar-grade silicon production, the global recession, its environmental and pension liabilities, its uncompetitive production costs, its credit issues, its production and supply issues, and its labour disputes.

99. A review of the evidence on key economic indicators reveals that, overall, Québec Silicon did not perform well during the POI. In particular, its total production sold in the domestic merchant market decreased, and it lost market share. There was also deterioration in Québec Silicon’s financial performance following the reductions in revenues and profit margins that it sustained.

Production

100. The total domestic production of like goods decreased by 1 percent from 2010 to 2012. It then decreased by 21 percent in interim 2013 compared to interim 2012. With respect to domestic production of like goods for sale in the domestic market, the output decreased substantially from 2010 to 2012, but increased dramatically in interim 2013, when compared to interim 2012.⁸⁷ The Tribunal notes, however, that provisional duties were imposed on the subject goods during interim 2013.

Sales and Market Share

101. The volume of Québec Silicon’s sales of like goods in the domestic market fell dramatically (a decline of 80 percent) in 2011 compared to 2010. It then increased by 34 percent in 2012.⁸⁸ However, the total volume of sales of like goods in the domestic market remained substantially lower in 2012 compared to the volume sold in 2010.⁸⁹

102. Québec Silicon’s market share decreased at a faster rate than that of importers of the subject goods (9 percentage points v. 6 percentage points) from 2010 to 2012.⁹⁰ During this period, the domestic market shrank by 19 percentage points.⁹¹ In interim 2013, Québec Silicon increased its market share by 9 percentage points compared to the market share that it held in interim 2012. In comparison, during this

86. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, “[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration* or *to such an extent* as to constitute ‘material injury’ within the meaning of *SIMA*” [emphasis added].

87. Exhibit NQ-2013-003-07C (protected), Tables 34, 35, Vol. 2.1A; Exhibit NQ-2013-003-06C, Table 35, Vol. 1.1A.

88. *Ibid.*, Table 48.

89. Exhibit NQ-2013-003-07C (protected), Table 47, Vol. 2.1A.

90. *Ibid.*, Table 49.

91. Exhibit NQ-2013-003-06C, Table 47, Vol. 1.1A.

period, importers of the subject goods were much more successful in making inroads in the domestic market, as they increased their market share by 16 percentage points. In interim 2013, the market share held by imports from non-subject countries decreased by 24 percentage points. This evidence indicates that, in the most recent period of the POI, the subject goods played an important role in displacing imports from non-subject countries.⁹²

Financial Performance and Profitability

103. Québec Silicon's financial results were poor throughout the POI. Revenues, or total net sales value, from domestic sales of like goods decreased dramatically in 2011 compared to 2010. There was a slight improvement in 2012 over 2011, but Québec Silicon's revenues in 2012 were substantially below those in 2010. However, net sales value increased markedly in interim 2013 compared to interim 2012.⁹³

104. Québec Silicon's gross margins declined considerably between 2010 and 2012. Thus, Québec Silicon incurred significant losses at the gross margin level during the POI. It also experienced substantial net losses before tax during this period, especially between 2010 and 2012.⁹⁴

Employment

105. Direct employment decreased somewhat from 2010 to 2012, and further decreased from interim 2012 to interim 2013. Total employment (direct and indirect combined) followed a similar trend during the POI.⁹⁵

Productivity, Capacity Utilization and Investment

106. There is little evidence that the subject goods have adversely affected Québec Silicon's productivity, capacity utilization and investment. From 2010 to 2012, Québec Silicon was able to increase its productivity, on the basis of both the number of tonnes produced per employee and the number of tonnes produced per hour worked.⁹⁶ In interim 2013, the number of tonnes produced per hour worked increased, while the number of tonnes produced per employee decreased compared to interim 2012. It is reasonable to assume that the decreases during this last period are at least partly attributable to the current lockout at the Bécancour facility.

107. Practical plant capacity was fairly constant over the POI, with capacity utilization for silicon metal remaining relatively stable, except for interim 2013 compared to interim 2012.⁹⁷ The Tribunal is of the view that the decrease in capacity utilization in interim 2013 may be partly attributable to the current lockout situation. The evidence indicates that the domestic industry's historical capacity utilization rates are among the highest in the world.⁹⁸

92. Exhibit NQ-2013-003-07C (protected), Table 49, Vol. 2.1A.

93. Exhibit NQ-2013-003-07D (protected), Table 82, Vol. 2.1A.

94. *Ibid.*

95. Exhibit NQ-2013-003-07C (protected), Table 94, Vol. 2.1A; Exhibit NQ-2013-003-06C, Table 94, Vol. 1.1A.

96. Exhibit NQ-2013-003-07C (protected), Table 95, Vol. 2.1A.

97. *Ibid.*, Table 96.

98. *Transcript of Public Hearing*, Vol. 5, 25 October 2013, at 361-62; Exhibit NQ-2013-003-C-04 (protected) at para. 70, Vol. 14.

108. In terms of investment, the evidence indicates that total investments reported by QSLP/QSIP Canada increased in 2011 compared to 2010, and again in 2012 compared to 2011. However, investments are projected to decline in 2013 compared to 2012.⁹⁹

Causation Analysis

109. In view of the background information set out at the outset of the Tribunal's injury analysis and the numerous factors other than dumping and subsidizing cited by RTA to explain the recent performance of Québec Silicon, a key issue in this inquiry is whether there is a causal link between the dumping and subsidizing of the subject goods and Québec Silicon's difficulties during the POI. The Tribunal cannot assume that the mere presence and availability of the subject goods in the Canadian market resulted in material injury to the domestic industry.

110. In *Oil Country Tubular Goods*,¹⁰⁰ the Tribunal described its task as "... assess[ing] whether the dumping and subsidizing of the subject [goods] have in and of themselves caused material injury to the domestic ... industry."¹⁰¹ As previously mentioned, subsection 37.1(3) of the *Regulations* requires the Tribunal to consider whether any factors other than the dumping or subsidizing of the goods have caused injury. In doing so, the Tribunal "... must separate and distinguish the adverse effects of the dumping and subsidizing of goods from any adverse effects caused by other factors and determine whether the impact of the former constitutes material injury."¹⁰²

111. In other words, once the Tribunal has considered and assessed the adverse effects caused by other factors, it must determine whether the dumping and subsidizing of the subject goods have, *in and of themselves*, caused material injury to the domestic industry. The question is whether, despite the losses suffered by the domestic industry that may be attributable to other factors, the dumping and subsidizing of the subject goods are a *cause* of material injury.

112. In order to determine whether that is the case in this inquiry, the Tribunal must therefore first consider whether, and to what extent, any factors other than the dumping and subsidizing of the subject goods have injured the domestic industry. As argued by RTA, there are other factors under subparagraph 37.1(3)(b)(vii) of the *Regulations* that are highly relevant in the circumstances of this case.

113. The background information on the events leading up to the CBSA initiating dumping and subsidizing investigations is germane to this analysis. On the one hand, the evidence establishes that the domestic industry has been export oriented since at least the early 2000s. Therefore, export sales have accounted for the lion's share of Québec Silicon's (and its predecessors') production for many years.

114. This situation did not happen suddenly during the POI. The domestic industry has been selling a minor proportion of its total production in the domestic merchant market for a considerable period of time. It is reasonable to assume that this situation was a reflection of the respective commercial interests of those participating in the Canadian market for silicon metal throughout the last decade and had an impact on sourcing decisions by purchasers of silicon metal.

99. Exhibit NQ-2013-003-07C (protected), Table 97, Vol. 2.1A.

100. (23 March 2010), NQ-2009-004 (CITT).

101. *Oil Country Tubular Goods* at para. 216.

102. *Ibid.* at para. 213.

115. On the other hand, the evidence clearly indicates that there was a significant difference between the price of Chinese and domestically produced silicon metal in the years preceding the POI.¹⁰³ It is also reasonable to assume that the difficulties encountered by the domestic producer with respect to competing and securing sales in the domestic market at that time were, at least in part, associated with the availability and presence of low-priced silicon metal from China in the Canadian marketplace. It is important to bear in mind, however, that there is no determination that such imports were dumped or subsidized at the time. Thus, it is impossible to conclude that, in the early to mid-2000s, imports from China increased their share in the Canadian market due to dumping and subsidizing.

116. Notwithstanding the absence of dumping and subsidizing determinations by the CBSA at that time, on the basis of the evidence of the low prices for Chinese silicon metal back then, the Tribunal is convinced that its availability at such prices had a major influence on the sourcing decisions made by large Canadian purchasers and importers such as RTA and Alcoa.¹⁰⁴ There is also no doubt that these firms were familiar with Chinese material and comfortable with the use of Chinese silicon metal at the beginning of the POI.

117. The preponderance of the evidence indicates that, confronted with stiff competition from Chinese exporters and reduced sales in the domestic market between 2005 and 2009, the domestic producer's then owner, Timminco, chose to shift its business model to the production of solar-grade silicon in an effort to sustain the viability of the facility. Rather than producing silicon metal primarily for aluminum producers, it appears that, in 2006, Timminco decided that the facility's production would be primarily dedicated to servicing the chemical and solar-grade polysilicon industries, which use refined silicon metal as an input. In fact, there is little evidence that, between 2006 and 2009, Québec Silicon's previous owner made efforts to sell to Canadian customers or to otherwise resist inroads made by Chinese silicon metal into the Canadian marketplace.¹⁰⁵

118. This strategic decision had a profound impact on the domestic industry and significant adverse effects on the domestic producer's performance in the domestic merchant market during the POI. In this regard, the evidence establishes that the major Canadian purchasers of silicon metal were made aware of the facility's new production focus, prompting RTA and Alcoa to understand from this development that the domestic producer was no longer interested in being, or otherwise available as, a meaningful supplier.¹⁰⁶

119. The evidence indicates that, from that point forward, the perceived reliability and importance of the domestic producer diminished, resulting in its relegation to the status of secondary supplier of silicon metal and a source called upon to fulfill *ad hoc* requirements. In the Tribunal's view, Timminco's solar-grade silicon initiative compelled important Canadian purchasers of silicon metal to seek out other sources of supply, which factored importantly in their decisions to limit their business with the domestic producer after 2006.

120. However, the solar-grade silicon initiative was a commercial failure, and this resulted in serious adverse financial consequences for Timminco. By 2009, the solar-grade polysilicon market had collapsed, which prevented Timminco from recouping significant expenditures incurred and investment made in connection with this venture. As a result of a drastic reduction in demand for and price of solar-grade

103. *Transcript of Public Hearing*, Vol. 3, 23 October 2013, at 203-204; *Transcript of In Camera Hearing*, Vol. 3, 23 October 2013, at 232-33.

104. *Transcript of Public Hearing*, Vol. 4, 24 October 2013, at 297-98; *ibid.*, Vol. 3, 23 October 2013, at 203-204; *ibid.*, Vol. 1, 21 October 2013, at 45-46.

105. Exhibit NQ-2013-003-A-06 (protected) at paras. 17-38, Vol. 12.

106. *Transcript of Public Hearing*, Vol. 4, 24 October 2013, at 246-48, 298-300; *ibid.*, Vol. 3, 23 October 2013, at 206-207.

silicon, many of Timminco's customers cancelled or renegotiated their contracts for the supply of solar-grade silicon and even demanded repayment of substantial deposits that they had provided to Timminco under these contracts. Timminco suspended production of solar-grade silicon in 2010. For this reason, at the beginning of the POI, Timminco faced severe liquidity problems, and its lenders insisted that it quickly find ways to generate revenues.¹⁰⁷

121. As a result, in 2010, BSI, which owned the QSLP plant at the time, entered into a long-term supply agreement with Wacker. The Tribunal finds that this contract was a direct consequence of pressures exercised by Timminco's lenders. It is admitted by QSLP/QSIP Canada's witnesses that this was the best deal that was possible at the time to generate a revenue stream and respond to requests from the banks.¹⁰⁸

122. QSLP/QSIP Canada submitted that it was the virtual loss of the Canadian market to the low-priced imports from China that forced the domestic producer to turn to export markets in order to generate cash flow. Simply put, QSLP/QSIP Canada claimed that the Wacker contract was part of a defensive strategy to alleviate the adverse impact of the low-priced imports from China in the Canadian market.¹⁰⁹ In essence, QSLP/QSIP Canada's witnesses stated that BSI had no choice but to enter into the contract with Wacker due to its inability to compete with the subject goods.¹¹⁰

123. The Tribunal is unable to accept this argument. Other than the assertions of the witnesses, there is no cogent evidence indicating that it was the presence of the subject goods that caused Québec Silicon's predecessor to enter into the contract with Wacker. Rather, the preponderance of the evidence indicates that the deterioration of Timminco's financial situation as a result of the failed solar-grade silicon initiative, the global financial crisis and recession in 2008-2009, and the ensuing pressure from its lenders were the determinative factors that forced BSI to enter into this long-term contract with a longstanding export customer.¹¹¹ In short, there is no documentary evidence that suggests that competition from the subject goods on the domestic market was the driving factor for the negotiation of the Wacker contract.

124. Moreover, while QSLP/QSIP Canada's witnesses asserted that the company's preferred option would have been to secure a long-term supply agreement with a major Canadian purchaser, but that none was interested, there is insufficient evidence that corroborates this statement. On balance, the Tribunal finds that Québec Silicon chose to formalize its relationship with Wacker into a long-term contract for reasons largely unrelated to the presence of the subject goods in the Canadian market.

125. The terms of the Wacker contract, especially its provisions concerning pricing, turned out to be quite unfavourable to the company, in part due to exchange rates fluctuations.¹¹² In fact, the evidence indicates that, in exchange for the long-term purchase commitment by Wacker, BSI agreed to supply a substantial volume of silicon metal to this customer over a five-year term, on the basis of fixed prices and an annual pricing adjustment mechanism that was established at a time when silicon metal prices were relatively low. As a result, BSI was unable to take advantage of rising market prices in subsequent years due to its high volume long-term contract with Wacker. Moreover, the prices for the Wacker contract were denominated in euros, which resulted in further losses for BSI when the value of the euro depreciated relative to the U.S. and Canadian dollars between 2010 and 2013.¹¹³

107. *Ibid.*, Vol. 1, 21 October 2013, at 53-60, 88-89.

108. *Ibid.* at 17-18, 34, 102-103.

109. *Ibid.*, Vol. 5, 25 October 2013, at 317-19.

110. *Ibid.*, Vol. 1, 21 October 2013, at 17-18; Exhibit NQ-2013-003-A-04 (protected) at paras. 8, 21, Vol. 12; Exhibit NQ-2013-003-A-06 (protected) at paras. 13-14, Vol. 12.

111. Exhibit NQ-2013-003-C-01 at para. 196, Vol. 13 (and documentary evidence therein referred to).

112. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 156-57.

113. Exhibit NQ-2013-003-C-01 at paras. 197-202, Vol. 13 (and documentary evidence therein referred to).

126. This unfortunate turn of events, which adversely affected the revenues generated by the sale of a large proportion of BSI's production to Wacker during the POI, cannot be attributed to the dumping and subsidizing of the subject goods. Thus, the Tribunal finds that BSI's decision to commit large volumes of the like goods for export sales to Wacker at pricing levels that were not sustainable was self-injurious.

127. The same conclusion can be reached with respect to the supply arrangement with Dow. Indeed, it is also in 2010, at the time when Timminco was cash-strapped as a result of its failed solar-grade silicon initiative, that BSI sold 49 percent of its ownership in QSLP to Dow. In exchange for a production allocation representing almost half of QSLP's production and an equivalent stake in the company, Dow agreed to pay a substantial amount in cash and to provide Timminco, BSI's ultimate owner, with a line of credit.¹¹⁴ Given the weak financial positions of Timminco and BSI, and Timminco's desperate need for financing at that time, it is reasonable to conclude that the production and supply arrangement with Dow was also a direct result of the liquidity pressures that BSI's parent company was facing from its lenders. Indeed, during the hearing, a witness for QSLP/QSIP Canada even acknowledged that Timminco's liquidity problem was "... the only reason why [it] would sell half the plant at the time when prices were going up."¹¹⁵ Accordingly, the evidence does not establish that it was the presence of the subject goods that caused BSI to enter into the arrangement with Dow.

128. While this arrangement provided necessary "plant load" for the QSLP facility, ensured that the facility would keep operating, guaranteed sales and revenues for almost half of the facility's production, and relieved liquidity pressures on the company, as of October 2010, Dow, which had been a longstanding export customer of BSI, was no longer an arm's length customer. Pursuant to the terms of the transaction, Dow became entitled to acquire a significant proportion of domestically produced silicon metal at very advantageous prices that were no longer established by market forces. As a result, from that point forward, little profit could be generated on those sales representing 49 percent of the production of the QSLP facility.¹¹⁶

129. In summary, going back to 2006, Québec Silicon's predecessor strategically positioned itself to supply customers *other* than the major purchasers in the Canadian merchant market. It embarked on the solar-grade silicon initiative which it expected would consume a large proportion of the silicon metal produced by BSI. This initiative appears to have conveyed very negative messages to potential Canadian purchasers as to BSI's interest in being a serious and reliable silicon metal supply option for them. When this initiative failed, BSI, which had been export-oriented for a long time,¹¹⁷ continued to rely on export markets to find a home for its production and to generate revenues. In particular, BSI sought to solve the serious financial difficulties that its parent company Timminco faced through deals that it reached with Wacker and Dow at the beginning of the POI. By 2010, BSI sold a very small proportion of its production in the domestic merchant market which, by then, had almost been overtaken by imports from China.

130. Notwithstanding all these efforts deployed to save the viability of the company, Timminco was ultimately unsuccessful and filed for bankruptcy in January 2012. The Tribunal finds that the negative consequences suffered by BSI as a result of the Wacker contract or the Dow joint venture agreement during the POI cannot be attributed to the subject goods. These developments were a direct consequence of the

114. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 141-44, 158; Exhibit NQ-2013-003-C-01 at para. 207, Vol. 13.

115. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 141.

116. Exhibit NQ-2013-003-A-06 (protected) at para. 12, Vol. 12; Exhibit NQ-2013-003-A-04 (protected) at paras. 30-33, Vol. 12.

117. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 15, 41.

pressures imposed by lenders on Timminco as a result of its misguided foray into the production of solar-grade silicon. According to the evidence, Timminco caused itself significant financial damage in this business venture, leading lenders to dictate the conditions under which BSI had to operate during the better part of the POI, that is, between 2010 and June 2012.

131. Given the uncertainty surrounding BSI's viability and future as a reliable domestic producer, and its focus on export sales at the time, the Tribunal is not surprised that the major purchasers in Canada were reluctant to do business with BSI. On balance, the Tribunal is satisfied with the evidence before it that, between 2010 and 2012, there were important non-price related reasons for Canadian purchasers not sourcing their silicon metal requirements from the domestic producer.¹¹⁸

132. In particular, given the large volumes of production committed to Wacker and Dow, the Tribunal finds that the concerns of other domestic purchasers about BSI's ability to reliably supply their requirements, and their reticence to enter into comprehensive supply arrangements with the Canadian producer, are not entirely unreasonable,¹¹⁹ this notwithstanding QSLP/QSIP Canada's claim that it had ample supply throughout the POI to satisfy Canadian demand.

133. In view of the foregoing analysis, including the impact of factors other than dumping and subsidizing on the performance of the domestic industry, the Tribunal is unable to find that the subject goods were a cause of material injury between 2010 and June 2012.

134. The question that remains is whether the subject goods were a cause of material injury after Globe's acquisition of BSI's majority stake in QSLP in June 2012. In this regard, the Tribunal is mindful that Globe conducted a due diligence analysis in which it considered all the relevant circumstances bearing upon the deal (including the presence of low-priced imports from China in Canada and the terms and conditions of the Wacker and Dow arrangements) and was completely aware, when it made its acquisition, of the commercial conditions within which BSI was then operating.

135. The Tribunal is convinced that Globe must have considered all those elements when deciding to make the acquisition at the price that it paid. The Tribunal cannot totally ignore the fact that, by acquiring a majority stake in the production facility in full knowledge of the market conditions in which it operated, Globe, in essence, accepted the past (including the facility's export orientation and struggle to effect sales in the Canadian merchant market) as a prologue to the new start that it envisaged.

136. Since that time, the evidence demonstrates that Globe's objective has been to re-establish Québec Silicon as an important supplier in the Canadian market. The evidence also establishes that Québec Silicon made considerable efforts to secure supply arrangements with the main Canadian purchasers and to recapture market share.¹²⁰

137. Furthermore, Globe implemented cost saving initiatives and, in an effort to establish supply relationships with major Canadian purchasers, sought to re-position Québec Silicon in such a way as to reassure potential purchasers of its renewed commitment to the Canadian market. To this end, Globe renegotiated BSI's arrangement with Wacker and obtained the right to supply Wacker with silicon metal manufactured at its facilities in the United States. This was done to free up production capacity for the

118. Exhibit NQ-2013-003-C-03 at para. 55, Vol. 13.

119. Exhibit NQ-2013-003-C-10 (protected) at paras. 30, 35, Vol. 14B.

120. Exhibit NQ-2013-003-A-04 (protected) at paras. 4, 11, Vol. 12; Exhibit NQ-2013-003-A-08 (protected) at paras. 3-36, Vol. 12.

Canadian market that might not have been otherwise available as a consequence of capacity limitations and the amount of said capacity dedicated to supplying export customers.¹²¹ As a result, the Tribunal finds that Globe “wiped the slate clean” at some time in 2012 and started anew with a business model geared towards improving Québec Silicon’s performance on the domestic merchant market.

138. During the period that followed Globe’s acquisition, Québec Silicon also tried to negotiate a comprehensive supply arrangement with RTA. The evidence is very clear that price was the major consideration, which explains why an agreement could not be reached. The evidence also clearly demonstrates that RTA used the price of the subject goods as the benchmark for its discussions with Québec Silicon,¹²² making it clear that Québec Silicon had to bridge the gap between its prices and those of the subject goods. That RTA sought to leverage lower prices from Québec Silicon by reference to the price of the subject goods was corroborated by RTA itself, when it indicated that it needed to purchase low-cost silicon metal from China to remain competitive with other producers in the downstream markets for the products that it manufactures.¹²³

139. In this context, the evidence indicates that, since June 2012, RTA has purchased the subject goods over the like goods because of the former’s lower prices.¹²⁴ In fact, RTA stated that Globe and Québec Silicon are “. . . unable to meet the pricing required by RTA for them to become primary suppliers”¹²⁵ In this regard, there is no evidence suggesting that RTA or other Canadian purchasers had notable non-price-related reasons for not purchasing from Québec Silicon after Globe’s acquisition of the company.

140. The Tribunal therefore finds that Québec Silicon has been unable to make significant inroads in the domestic merchant market since June 2012 due to the availability and pricing of the subject goods. Simply put, the evidence demonstrates that, despite its best efforts, Québec Silicon is unable to compete with the unfair prices offered by Chinese exporters of silicon metal, which rendered it unable to secure significant sales with major Canadian purchasers.

141. On the basis of this evidence, the Tribunal cannot therefore totally exclude that there is a causal relationship between the subject goods and some of the losses suffered by Québec Silicon during the POI, even after having been careful not to attribute to the dumping and subsidizing of the subject goods any negative effect resulting from other factors. These factors do not negate the injury suffered by Québec Silicon after its acquisition by Globe in June 2012.

142. The Tribunal also notes that Québec Silicon has received purchase orders from the major Canadian purchasers since the imposition of the provisional duties by the CBSA on July 22, 2013. This suggests that it is the price of the subject goods that prevented Québec Silicon from securing meaningful sales in Canada since Québec Silicon’s decision to re-orient its business strategy in the latter part of 2012 toward supplying the Canadian market.

121. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 19-20.

122. Exhibit NQ-2013-003-A-08 (protected) at paras. 8-15, Vol. 12; Exhibit NQ-2013-003-C-10 (protected) at paras. 49-60, Vol. 14B; Exhibit NQ-2013-003-A-20 (protected) at paras. 21-32, Vol. 12A; *Transcript of Public Hearing*, Vol. 4, 24 October 2013, at 267-69; *Transcript of In Camera Hearing*, Vol. 4, 24 October 2013, at 276-79, 321-25.

123. Exhibit NQ-2013-003-C-03 at para. 53, Vol. 13; Exhibit NQ-2013-003-C-10 (protected) at paras. 33-38, Vol. 14B.

124. Exhibit NQ-2013-003-C-03 at para. 52-55, Vol. 13; *Transcript of Public Hearing*, Vol. 4, 24 October 2013, at 281-82.

125. Exhibit NQ-2013-003-C-01 at para. 101, Vol. 13.

143. *SIMA*, of course, also requires the Tribunal to determine whether any adverse impact of the subject goods on the state of the domestic industry, separate and apart from the impact of other factors, constitutes *material* injury. On this issue, it is difficult to quantify the magnitude of the injury that may have been suffered by Québec Silicon in the domestic merchant market due to the subject goods in the period that followed Globe's acquisition.

144. The Tribunal notes that this period is very limited when considering the POI in its entirety and all the events unrelated to the dumping and subsidizing of the subject goods that took place between January 2010 and June 2012. Therefore, the timing and limited duration of the losses suffered by Québec Silicon that are attributable to the effects of the subject goods are not indicative of injury that is material in degree.

145. The materiality of any injury caused by the dumping and subsidizing in the domestic merchant market must also be assessed against the domestic industry's production of like goods as a whole. In this respect, it is important to bear in mind that, throughout the POI, Québec Silicon was overwhelmingly export-oriented, with only a minor proportion of its production destined for the domestic merchant market. This means that the subject goods can only have adversely affected a minor proportion of the total sales from domestic production made by Québec Silicon during the POI.

146. The Tribunal is of the view that, even if it is reasonable to assume that Québec Silicon would have made additional sales to Canadian purchasers during the period between Globe's acquisition and the end of the POI but for the availability and presence of the subject goods, the allocation of Québec Silicon's sales between the domestic merchant market and export markets would unlikely have changed dramatically during this period. It may be that such sales could have marginally improved the financial position of Québec Silicon but, on balance, the Tribunal considers that this would have been immaterial to Québec Silicon's overall situation at the time.

147. The above suggests that the dumping and subsidizing of the subject goods have adversely affected the domestic industry, but only for a limited duration and to a limited extent, considering that the bulk of Québec Silicon's production was exported and, thus, insulated from the adverse effects of dumping and subsidizing throughout the POI. It follows that, when assessed against total production of like goods as required by the statute, any injury suffered by Québec Silicon from the presence of the subject goods on the domestic merchant market after June 2012 fails to meet the threshold of materiality.

148. Therefore, the Tribunal concludes that, to the extent that the subject goods have had an adverse impact on the domestic industry, it is not sufficient to constitute material injury.

MASSIVE IMPORTATION

149. In its brief, QSLP/QSIP Canada submitted that the conditions existed for a finding of massive importation pursuant to paragraphs 42(1)(b) and (c) of *SIMA*. However, it withdrew its request for a finding of massive importation at the hearing. Therefore, the Tribunal finds that it is not necessary to examine this issue. In any event, a finding of material injury to the domestic industry is a condition precedent to a finding of massive importation¹²⁶ and, therefore, there is no basis for a finding of massive importation in this case.

126. *SIMA*, paras. 42(1)(b) and (c). See, also, *Waterproof Footwear and Waterproof Footwear Bottoms* (7 January 2003), NQ-2002-002 (CITT) at 17.

THREAT OF INJURY ANALYSIS

150. Having found that the dumping and subsidizing of the subject goods have not caused material injury to the domestic industry, the Tribunal must still consider whether they are threatening to cause material injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.¹²⁷ Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent. Further, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2) of the *Regulations*, and whether any factors other than the dumping and subsidizing of the goods are threatening to cause injury.

151. QSLP/QSIP Canada submitted that there is an imminent and foreseeable threat of continuing and worsening material injury from the subject goods if anti-dumping and countervailing duties are not imposed. QSLP/QSIP Canada pointed to a decrease in global demand for silicon metal, significant Chinese overproduction, high Chinese inventories, the export orientation and massive excess capacity of Chinese producers, the elimination of the Chinese export tax, the very high anti-dumping and countervailing duty rates, and the fact that Chinese producers can easily shift production from ferrosilicon to silicon metal as evidence of a threat of material injury.¹²⁸ Finally, QSLP/QSIP Canada argued that, if no duties are imposed, the company would be forced to close its production facility and lay off its employees.¹²⁹

152. RTA opposed a threat of injury finding on the following grounds: there is unlikely to be a substantial increase in the volume of imports of silicon metal from China into Canada within the next 12-24 months; the silicon metal that RTA currently purchases from QSLP/QSIP Canada would not be subject to price depression/suppression by imports from China; worldwide demand and spot prices in certain markets for silicon metal are expected to increase;¹³⁰ the domestic industry's financial position has improved; and anti-dumping duties in other countries are unlikely to increase the volume of imports from China into Canada.¹³¹

127. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (a) the nature of the subsidy in question and the effects it is likely to have on trade; (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (f) inventories of the goods; (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (h) any other factors that are relevant in the circumstances."

128. Exhibit NQ-2013-003-A-01 at paras. 203-87, Vol. 11.

129. *Transcript of Public Hearing*, Vol. 5, 25 October 2013, at 337-38.

130. *Ibid.* at 391.

131. Exhibit NQ-2013-003-C-01 at paras. 307-308, Vol. 13.

153. In addition, at the hearing, RTA argued that all of QSLP/QSIP Canada's claims of threat of injury are purely speculative.¹³² In its view, QSLP/QSIP Canada did not provide documentary evidence indicating that its production facility would close indefinitely or regarding the future of the Wacker contract.¹³³ Finally, RTA argued that, contrary to the claims made by QSLP/QSIP Canada, Globe was unlikely to shut down the plant, given its recent purchase of the plant for a significant amount of money, its long-term view of the Canadian producer and Dow's investment and interest in the plant.¹³⁴

Time Frame

154. In assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding. The Tribunal is not necessarily bound by this time frame, as each case is unique. Given the circumstances of this case, the Tribunal considers it appropriate to focus on the next 12 to 18 months.

Nature of the Subsidies

155. While the CBSA received sufficient information, in making its final determination, to find that 6 of the 91 identified subsidy programs were actionable subsidies, this information was insufficient to determine whether any of the programs were prohibited subsidies.¹³⁵ Due to this limited evidence, the Tribunal is unable to reach a conclusion regarding the effect that the nature of the subsidies is likely to have on the trade of silicon metal beyond noting that, according to economic theory, subsidies are likely to have a distortive effect on trade.

Likely Volumes

156. Paragraphs 37.1(2)(b) and (c) of the *Regulations* require the Tribunal to consider the volume of the subject goods imported into Canada during the POI and the disposable capacity of the producers of those goods in its determination of whether a substantial increase in imports of the subject goods is likely. In addition, the Tribunal will consider demand forecasts, the potential for product shifting, and production levels and inventories of the subject goods in making its determination.

Import Volumes During the POI

157. As discussed in the injury analysis above, the Tribunal found only a small absolute increase in the volume of the subject goods imported during the POI. However, the Tribunal found that a moderate reduction in the size of the Canadian apparent market had resulted in the subject goods gaining a relatively important increase in market share between 2010 and interim 2013. On the basis of these findings, the Tribunal concluded that the increase in the volume of the subject goods was significant when considered in light of the size of the Canadian market and the market share that has been gained by imports of the subject goods.

132. *Transcript of Public Hearing*, Vol. 5, 25 October 2013, at 390.

133. *Ibid.* at 388-89.

134. *Ibid.* at 392-93.

135. Exhibit NQ-2013-003-04A, Vol. 1 at 130.71-130.79, 130.84.

Disposable Capacity

158. The evidence indicates that Chinese producers had the capacity to produce approximately 4 million tonnes of silicon metal in 2012.¹³⁶ The Canadian apparent market for silicon metal was 21,300 tonnes in 2012.¹³⁷ As such, the capacity of Chinese producers was 188 times the size of the Canadian market.

159. However, the average capacity utilization rate for Chinese silicon metal producers was 28 percent in December 2012.¹³⁸ This translates into a production of approximately 1.1 million tonnes in that year, which is still 52 times the size of the Canadian market. This indicates that Chinese producers have significant excess capacity.

160. Moreover, the evidence on the record indicates that Chinese production capacity has more than tripled since 2008¹³⁹ and is expected to significantly increase over the next decade.¹⁴⁰ In addition, China's *excess* production capacity is nearly 10 times greater than it was in 2008.¹⁴¹ Thus, there is significant freely disposable capacity in China.

Production

161. A recent publication on metals indicates that Chinese production of the subject goods has and will substantially exceed Chinese demand for those goods.¹⁴² Indeed, Chinese production is almost double Chinese demand,¹⁴³ and this ratio is unlikely to change significantly, as excess Chinese production is expected to outpace growth in Chinese demand over the next 12 to 18 months.¹⁴⁴

162. Even though Chinese demand for silicon metal is also expected to increase, the significant excess Chinese production and production capacity are likely to place significant pressure on Chinese producers to maximize exports. This suggests that the exporters of the subject goods will have the means and motive to significantly increase shipments to Canada.

Demand Forecast

163. The most recent forecast data indicate that the compound annual growth rates for Chinese and world demand for silicon metal are expected to be approximately 11 percent and 7 percent, respectively, between 2013 and 2015.¹⁴⁵ However, Canadian demand during this period is forecasted to be flat or to increase only slightly due, in part, to the absence of a chemical industry, which is expected to be an important driver of growth in other markets.¹⁴⁶

136. Exhibit NQ-2013-003-A-15 at para. 81, Vol. 11B.

137. Exhibit NQ-2013-003-06C, Table 47, Vol. 1.1A.

138. Exhibit NQ-2013-003-A-11 at tab 20 at 3, Vol. 11A.

139. Exhibit NQ-2013-003-A-15 at paras. 82-83, Vol. 11B.

140. Exhibit NQ-2013-003-A-01 at para. 241, Vol. 11; Exhibit NQ-2013-003-A-15 at para. 83, Vol. 11B.

141. Exhibit NQ-2013-003-A-15 at para. 84, Vol. 11B.

142. Exhibit NQ-2013-003-C-14 (protected), Vol. 8A at 3-4.

143. *Ibid.* at 3-4; Exhibit NQ-2013-003-A-15 at para 94, Vol. 11B.

144. Exhibit NQ-2013-003-C-14 (protected), Vol. 8A at 3-4.

145. *Ibid.* at 3.

146. Exhibit NQ-2013-003-C-04 (protected) at para. 69, Vol. 14; Exhibit NQ-2013-003-C-03 at para. 69, Vol. 13.

Product Shifting

164. The limited evidence on the record regarding the potential for product shifting indicates that ferrosilicon furnaces can be converted to manufacture silicon metal within a relatively short period of time and at a comparatively moderate cost.¹⁴⁷ However, there is insufficient evidence for the Tribunal to conclude that product shifting is likely to be a source of significantly increased volumes of the subject goods in the next 12 to 18 months.

Inventories

165. The most recent issue of a major publication on metals reported increases in the inventories of Chinese silicon metal in late 2012 due to speculative inventory building and the shifting of exports from late 2012 to early 2013 in expectation of the elimination of the 15 percent Chinese export tax.¹⁴⁸ This same publication also reports that sizeable inventories of silicon metal remain in China in 2013 and predicts that this material will likely only be released when prices reach certain levels.¹⁴⁹

Conclusion on Likely Volumes

166. In the Tribunal's view, the evidence indicates that significant Chinese overproduction, significant excess capacity and sizeable inventories will likely exert significant pressure on Chinese producers to export. However, given the small absolute increase in the volume of imports of the subject goods during the POI, the large share of the Canadian market already captured by the subject goods and relatively flat demand in Canada compared to the rest of the world, it is unclear that there will be a substantial increase in the absolute volume of the subject goods imported into Canada in the next 12 to 18 months.

167. While the likely increase in the volume of imports of the subject goods may not be significant, the Tribunal is of the view that, in the context of the relatively small Canadian market for silicon metal and the small market share currently held by Québec Silicon, even a small increase in volumes is likely to have a disruptive effect on the domestic industry.

Likely Price Effects

168. In assessing the potential impact of the subject goods on the prices of like goods, the Tribunal will consider the prices of the subject goods during the POI, the price forecasts for the subject goods, the magnitude of the margin of dumping and amount of subsidy in respect of the subject goods, and the imposition of anti-dumping or countervailing duties against the subject goods by other countries.

Price of the Subject Goods During the POI

169. The evidence on the record clearly indicates that Chinese silicon metal has been the world low price leader for a long time.¹⁵⁰ Chinese prices have been and currently are considerably below those of Québec Silicon.¹⁵¹ As discussed in its analysis of pricing data above, the Tribunal found that the prices of the subject goods undercut those of the like goods by a relatively significant degree during the POI. The Tribunal finds that this trend is likely to continue over the next 12 to 18 months.

147. Exhibit NQ-2013-003-C-14 (protected), Vol. 8A at 42.

148. *Ibid.* at 55.

149. *Ibid.*

150. *Transcript of Public Hearing*, Vol. 5, 25 October 2013, at 334; Exhibit NQ-2013-003-15.14 (protected), Vol. 6A at 81; *Transcript of Public Hearing*, Vol. 3, 23 October 2013, at 204, 216-17.

151. Exhibit NQ-2013-003-C-04 (protected) at 84, Vol. 14; *Transcript of In Camera Hearing*, Vol. 3, 23 October 2013, at 233, 262.

170. Aggressive pricing appears to be central to the strategy of Chinese exporters. They compete on the basis of price in order to gain market shares in export markets. Indeed, the Tribunal heard testimony indicating that Chinese producers are willing to pass on any price savings that they gain in order to reduce their prices. Witnesses indicated that Chinese producers reduced their prices when China eliminated its 15 percent export tax.¹⁵² This has further increased the gap between Chinese and Canadian prices for silicon metal.¹⁵³ Even though market reports indicate that Chinese prices are likely to increase faster than Western prices,¹⁵⁴ the Tribunal is of the view that Chinese prices are likely to continue to undercut prices of domestic like goods when one considers the magnitude of the existing price gap.

Magnitude of Dumping Margin and Amount of Subsidy

171. On October 21, 2013, the CBSA issued its final determinations of dumping and subsidizing with respect to the subject goods. It found the margin of dumping to be 190.1 percent and the amount of subsidy to be 21.1 percent of the export price.¹⁵⁵ The combined total of these rates is substantial and would likely have a significant impact on prices and volumes of the subject goods in the Canadian market.

Anti-dumping and Countervailing Measures in Other Countries

172. The European Union and the United States have had anti-dumping duties in place on Chinese silicon metal since 1990 and 1991 respectively. The United States has determined the countrywide margin of dumping to be 139.47 percent,¹⁵⁶ and the European Union, 19 percent.¹⁵⁷ In contrast to these markets, Canada would remain an open market if no duties were imposed. Given Chinese producers' need to export, Canada would remain an attractive market in which to make shipments at distorted prices.

Conclusion on Likely Price Effects

173. On balance, the Tribunal concludes from the evidence on the record that, while purchasers of silicon metal may consider other factors in their purchasing decisions, price is still the most significant factor.¹⁵⁸ The Tribunal also heard testimony that, in some cases, Chinese prices have been used during negotiations to encourage Québec Silicon to reduce its prices;¹⁵⁹ in other cases, Québec Silicon has been refused the opportunity to quote on an order due to its inability to come close to the Chinese price.¹⁶⁰ Moreover, RTA has made it abundantly clear that, in the absence of an injury or threat of injury finding, it will continue to purchase the subject goods in the near future, unless Québec Silicon is prepared to meet or come close to Chinese prices.¹⁶¹

174. The Tribunal is convinced by this evidence that, as an essential condition for securing new orders, Québec Silicon will continue to have to depress its price in order to reduce or eliminate a price differential that is wholly or substantially attributable to the effects of the dumping and subsidizing of the subject goods.

152. *Ibid.* at 244, 284; *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 179.

153. *Ibid.* at 122-23.

154. Exhibit NQ-2013-003-C-14 (protected), Vol. 8A at 5.

155. Exhibit NQ-2013-003-04, Vol. 1 at 130.25.

156. Exhibit NQ-2013-003-A-11, at tab 5 at 30, Vol. 11A.

157. *Ibid.* at tab 27 at 6.

158. Exhibit NQ-2013-003-06C, Table 13, Vol. 1.1A; *Transcript of Public Hearing*, Vol. 4, 24 October 2013, at 237, 265.

159. *Transcript of In Camera Hearing*, Vol. 3, 23 October 2013, at 258-59.

160. Exhibit NQ-2013-003-A-07 at paras. 9-10, 15, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 131.

161. *Ibid.*, Vol. 4, 24 October 2013, at 281-82; Exhibit NQ-2013-003-C-03 at paras. 53-54, Vol. 13.

In the Tribunal's view, the low Chinese prices are thus likely to result in price undercutting, and the Canadian purchasers' demand that Québec Silicon reduce or eliminate the price differential with Chinese prices is nothing short of a demand for significant price depression.

175. Therefore, the Tribunal finds that, even if the volumes of the subject goods were not to increase significantly, it is likely that they will significantly undercut and depress the price of the domestically produced like goods in the next 12 to 18 months.

Likely Performance of the Domestic Industry

176. At the hearing, witnesses for RTA made it abundantly clear that the same unrestricted access to low-priced Chinese silicon metal as that enjoyed by Russian and Middle Eastern foundry alloy producers is necessary in order for it to compete with those producers in the U.S. and Mexican automotive markets¹⁶² and in order to meet RTA's profitability requirements.¹⁶³ The Tribunal's witness, Mr. McHale of Alcoa, made similar statements.¹⁶⁴

177. Thus, the evidence is unequivocal; the subject goods are the lowest-priced material available, and the major Canadian purchasers need to procure silicon metal at the lowest possible price. They have no intention of purchasing increased volumes of the like goods in the absence of anti-dumping and countervailing duties. As a result, Québec Silicon is unlikely to even have a chance to compete for additional sales in the Canadian market and improve its market share going forward.

178. On the basis of this evidence, the Tribunal is convinced that Québec Silicon cannot compete with low Chinese prices for silicon metal.¹⁶⁵ Therefore, Québec Silicon is likely to continue to lose sales in the domestic market and may lose whatever little market share that it currently holds. Given that Québec Silicon already holds such a small share of the Canadian market, any further reduction in its market share is likely to be dramatic.

179. In summary, the Tribunal finds that the adverse effects sustained by the domestic industry due to the presence of the subject goods during the latter part of the POI are likely to continue and even worsen in the next 12 to 18 months. In the Tribunal's view, the foregoing analysis demonstrates that, in the absence of anti-dumping and countervailing duties, the subject goods will result in significant price undercutting or depression and cause material injury in the form of lost sales, reduced market share and decreased production levels.

180. In this regard, the Tribunal notes that, in its injury analysis, it found that the subject goods had not caused material injury, primarily due to the limited duration and limited extent of the injury attributable to the subject goods, resulting from the fact that the lion's share of Québec Silicon's production was exported during the POI. The Tribunal had doubts regarding Québec Silicon's ability and willingness to supply the demand in the Canadian market for a significant portion of the POI, considering the long-term contract with Wacker and the joint venture with Dow pursuant to which the domestic producer had committed the vast majority of its production for export.¹⁶⁶

162. *Transcript of Public Hearing*, Vol. 4, 24 October 2013, at 246-47, 261; Exhibit NQ-2013-003-C-03 at para. 42, Vol. 13.

163. *Transcript of In Camera Hearing*, Vol. 4, 24 October 2013, at 295-96.

164. *Ibid.*, Vol. 3, 23 October 2013, at 264.

165. Exhibit NQ-2013-003-A-05 at 4-8, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 29-31, 116, 121.

166. *Ibid.* at 40.

181. However, during the hearing, the Tribunal heard testimony which puts into doubt the continued existence of the Wacker contract.¹⁶⁷ Mr. Alan Kestenbaum of Globe testified that Globe and Wacker were unable to reach an agreement on price for 2013 deliveries. He also testified that, according to the terms of the contract, if the parties are unable to reach an agreement on price again for 2014 deliveries and neither party exercises its put and call options, the contract will terminate.¹⁶⁸

182. The Tribunal also heard that, whatever the outcome of current negotiations, Globe negotiated the right to supply Wacker from its U.S. facilities, thereby freeing up significant Canadian production for sale on the Canadian market, if that market were available.¹⁶⁹ Thus, the Tribunal is convinced that any concerns regarding Québec Silicon's ability to supply the Canadian market as a result of its contract with Wacker no longer exist and that Québec Silicon is likely to have a sufficient volume of production available to meet Canadian demand for silicon metal.¹⁷⁰

183. This constitutes a change in circumstances between the circumstances and market conditions that existed during the POI and those that are likely to arise in the near future. Given Québec Silicon's renewed willingness and capacity to produce for the domestic market, the Tribunal is of the view that the dumped and subsidized subject goods are likely to cause material injury to the domestic industry.

184. Therefore, on balance, the Tribunal finds that the circumstances in which the dumping and subsidizing of the subject goods would cause injury are clearly foreseen and imminent.

CONCLUSION

185. For the foregoing reasons, the Tribunal finds that the dumping and subsidizing of the subject goods have not caused injury but are threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Jason W. Downey
Jason W. Downey
Member

167. *Transcript of In Camera Hearing*, Vol. 1, 21 October 2013, at 3.

168. *Transcript of Public Hearing*, Vol. 1, 21 October 2013, at 107.

169. *Ibid.* at 19-20.

170. *Ibid.*, Vol. 3, 23 October 2013, at 219-20.