



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2016-004

Silicon Metal

*Determination issued
Friday, April 21, 2017*

*Reasons issued
Thursday, May 11, 2017*

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

SILICON METAL

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged injurious dumping of silicon metal containing at least 96.00% but less than 99.99% silicon by weight, and silicon metal containing between 89.00% and 96.00% silicon by weight that contains aluminum greater than 0.20% by weight, of all forms and sizes, originating in or exported from the Federative Republic of Brazil, the Republic of Kazakhstan, Lao People's Democratic Republic, Malaysia, the Kingdom of Norway, the Russian Federation and the Kingdom of Thailand, and subsidizing of the above-mentioned goods originating in or exported from the Federative Republic of Brazil, the Republic of Kazakhstan, Malaysia, the Kingdom of Norway and the Kingdom of Thailand, have caused injury or are threatening to cause injury to the domestic industry.

This preliminary injury inquiry follows the notification, on February 20, 2017, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that the evidence discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury or are threatening to cause injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Ann Penner
Ann Penner
Member

Serge Fréchette
Serge Fréchette
Member

The statement of reasons will be issued within 20 days.

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STATEMENT OF REASONS

INTRODUCTION

1. The mandate of the Canadian International Trade Tribunal (the Tribunal) in this preliminary injury inquiry is to determine whether there is a reasonable indication that the domestic industry has been injured and/or threatened with injury by the alleged dumping of certain silicon metal originating in or exported from the Federative Republic of Brazil (Brazil), the Republic of Kazakhstan (Kazakhstan), Lao People's Democratic Republic (Laos), Malaysia, the Kingdom of Norway (Norway), the Russian Federation (Russia) and the Kingdom of Thailand (Thailand) and the alleged subsidizing of the above-mentioned goods from Brazil, Kazakhstan, Malaysia, Norway and Thailand (the subject goods).

2. For the reasons that follow, the Tribunal has determined that the evidence discloses a reasonable indication that the subject goods have caused injury or are threatening to cause injury to the domestic industry.

BACKGROUND

3. On December 30, 2016, Québec Silicon Limited Partnership (QSLP) and QSIP Canada ULC (QSIP) (together, Québec Silicon) filed a complaint with the President of the Canada Border Services Agency (CBSA) regarding the alleged injurious dumping and subsidizing of the subject goods.

4. The CBSA defined the subject goods as 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, from the subject countries. It determined that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury. Accordingly, pursuant to subsection 31(1) of the *Special Import Measures Act*,¹ the CBSA initiated investigations on February 20, 2017.

5. In coming to its decision to initiate the investigation, the CBSA used information with respect to the volumes of dumped and subsidized goods for the period from January 1 to December 31, 2016.²

6. The CBSA estimated the margins of dumping,³ amounts of subsidy⁴ and volume of subject goods⁵ as follows:

Country	Margin of Dumping (as a percentage of export price)	Estimated Amount of Subsidy (as a percentage of export price)	Estimate of Import Share (based on volume)
Brazil	11.8%	8.1%	21.1%
Kazakhstan	7.9%	5.2%	4.1%
Laos	12.1%	-	19.4%

1. R.S.C., 1985, c. S-15 [*SIMA*].

2. Exhibit PI-2016-004-05, Vol. 1G, para. 34, Table 1, para. 61, Table 3, and para. 93, Table 4.

3. Exhibit PI-2016-004-05, Vol. 1G, para. 61, Table 3.

4. Exhibit PI-2016-004-05, Vol. 1G, para. 93, Table 4.

5. Exhibit PI-2016-004-05, Vol. 1G, Table 1.

Country	Margin of Dumping (as a percentage of export price)	Estimated Amount of Subsidy (as a percentage of export price)	Estimate of Import Share (based on volume)
Malaysia	17.5%	17.5%	3.4%
Norway	15.7%	8.9%	8.0%
Russia	14.5%	-	3.0%
Thailand	14.2%	14.3%	38.8%
All Other Countries	-	-	2.1%
Total	-	-	100

7. On February 21, 2017, the Tribunal issued a notice of commencement of preliminary injury inquiry.⁶

8. On March 21, 2017, the Tribunal received submissions from a number of parties opposed to the complaint: Companhia Ferroligas Minas Gerais (Minasligas), Dow Corning Corporation and Dow Corning Canada Inc. (together, Dow Corning), Elkem AS, the Government of Norway, the Government of the Republic of Kazakhstan, Ligas De Alumínio S/A (LIASA), the Ministry of Industry and Trade of the Russian Federation, the Ministry of Economic Development of the Russian Federation, Rima Industrial S/A (Rima), United Company Rusal Plc., Wacker Chemicals Norway AS and Wacker Chemie AG.

9. Other participants indicated that they also opposed the complaint but did not file submissions. They include Alcoa Canada Co., Rio Tinto Alcan Inc., the Embassy of Brazil, the Trade Mission of the Russian Federation, the Embassy of Kazakhstan, NAC Kazatomprom JSC, and MK Kazsilicon LLP.

10. On March 28, 2017, Québec Silicon replied to the submissions from opposing parties.

11. On April 21, 2017, pursuant to subsection 37.1(1) of *SIMA*, the Tribunal determined that there was a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.

TRIBUNAL'S HEARING AT THE PRELIMINARY INJURY INQUIRY STAGE

12. On March 31, 2017, Dow Corning filed a motion requesting an oral hearing, even though it conceded that hearings are rarely held at the preliminary injury inquiry stage. According to Dow Corning, there were contradictions on the record with respect to the financial information that Québec Silicon provided in its complaint vis-a-vis the Management Report it was given by QSLP in its capacity as joint venture partner. Dow Corning also raised concerns regarding how certain costs were allocated in Québec Silicon's income statement. As such, Dow Corning questioned how the Tribunal could rely upon such information when making a determination even at the preliminary inquiry stage. Dow Corning's motion was supported by several of the opposing parties.

13. Québec Silicon opposed Dow Corning's motion. In its view, a hearing was unnecessary as the Tribunal had sufficient and reliable evidence on which to base its decision at the preliminary inquiry stage. Québec Silicon noted that any differences between the financial information submitted to the Tribunal and that referenced by Dow Corning stemmed from the fact that the data submitted with the complaint was the consolidated data of both QSLP and QSIP, not that of QSLP alone.

6. C. Gaz. 2017.I.897.

14. Québec Silicon argued that this was the approach followed in *Silicon Metal I*,⁷ in which the Tribunal held that QSLP and QSIP Canada were integrated into a single corporate group that was responsible for the domestic production and sale of like goods, such that the group (i.e., the two companies considered together) constituted the domestic industry. Moreover, Québec Silicon submitted that it would be inappropriate to consider the financial data of QSLP alone because the sales of QSIP to the domestic market are not included in the QSLP data.

15. The Tribunal allowed Dow Corning's motion as it found that the issues raised were potentially significant and worthy of more rigorous examination than what would typically be undertaken by the Tribunal at the preliminary stage of an inquiry. Consequently, the Tribunal held a pre-hearing teleconference on Wednesday April 12, 2017, to discuss the scope of the issues to be addressed at the hearing.

16. The hearing was held in Ottawa on Thursday, April 13, 2017. It included public and *in camera* sessions, during which three witnesses appeared: Andrew Hughes on behalf of Globe Speciality Metals, Inc., a subsidiary of Ferroglobe PLC; Maria Spensieri on behalf of QSLP; and Craig Brown on behalf of Dow Corning.

ANALYSIS

Legislative Framework

17. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*. It requires the Tribunal to determine "whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."⁸

18. The "reasonable indication" standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.⁹ The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence in question need not be "conclusive, or probative on a balance of probabilities".¹⁰

19. The Tribunal has previously been satisfied that the threshold for the "reasonable indication" standard was met where:¹¹

- the alleged injury or threat of injury is substantiated by evidence that is sufficient in the sense that it is "relevant, accurate and adequate"; and
- in light of the evidence, the allegations stand up to a "somewhat probing examination", even if the theory of the case might not seem convincing or compelling.

20. The evidence in a preliminary injury inquiry will be significantly less detailed and comprehensive than the evidence in a final injury inquiry. Accordingly, the evidence will not be tested to the same extent. In some circumstances, the Tribunal can give the complainants the benefit of the doubt at this early stage and will read complaints generously, where necessary. However, the outcome of a preliminary injury inquiry

7. *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) [*Silicon Metal I*].

8. As a domestic industry is already established, the Tribunal need not consider the question of retardation.

9. *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 5.

10. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

11. *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) [*Reinforcing Bar*] at para. 15; *Silicon Metal I* at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.

must not be taken for granted.¹² Simple assertions are not sufficient.¹³ Complaints, as well as the cases of parties opposed, must be supported by positive and sufficient evidence. Such evidence must also be relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.¹⁴

21. This is particularly true when a case such as this comes in the wake of a positive finding against another country involving subject goods of the same description. Put very simply, just because the Tribunal found that the domestic industry had been threatened with injury in *Silicon Metal I* it does not mean that the Tribunal will automatically find injury or threat thereof in the present case (i.e., *Silicon Metal II*). Parties must also heed Tribunal warnings which may appear in previous or related cases.

Like Goods and Classes of Goods

22. In order to assess whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It may also consider whether the subject goods constitute one or more classes of goods.

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 determining the like goods and whether there is more than one class of goods,¹⁵ 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).¹⁶

25. Québec Silicon argued that “like goods” are those domestically produced goods that meet the product definition set out in the CBSA’s determination, and that there is a single class of goods, consistent with the Tribunal’s finding in *Silicon Metal I*.¹⁷

26. The opposing parties did not dispute that the domestic industry produces “like goods”. However, several suggested that there is more than one class of goods. In particular, Rima argued that there are

12. *Reinforcing Bar* at paras. 18-19.

13. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 [Anti-Dumping Agreement]* requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

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

15. In order to decide whether there is more than one class of goods, the Tribunal must determine whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If they do, they will be regarded as comprising one class of goods. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

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

17. *Silicon Metal* (19 November 2013), NQ-2013-001 (CITT) at para. 28.

“at least” two classes of silicon metal, on the basis that there are three distinct types of end users (namely, chemical producers, primary aluminum producers and secondary aluminum producers). It argued that silicon metal is supplied to these different customers at different prices, depending on the quality required by each group.

27. Wacker also emphasized these three different types of end users, but it was unclear whether it did so for the purpose of establishing the existence of separate classes, or whether it simply sought to ensure that the Tribunal was made aware of product mix issues which may affect pricing in the Tribunal’s assessment of injury. Rusal acknowledged that its submissions regarding the differential in price between different grades of silicon metal were not intended to suggest that there are different classes, but rather to ensure that the Tribunal is aware of these distinctions when comparing the prices of like and subject goods on the Canadian market.

28. The Tribunal finds that domestically produced silicon metal is like goods in relation to the subject goods. It also finds that there is one class of goods. The evidence suggests that all silicon metal (whether foreign or domestic) is produced in a similar process, with the same raw material inputs, sold in the same manner, and priced along the same spectrum. The fact that different grades or purity levels may attract higher or lower pricing is a factor that the Tribunal will remain cognizant of during the final injury inquiry, particularly in its consideration of benchmark products.

Domestic Industry

29. *SIMA* defines “domestic industry” as 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.

30. The complaint was filed by QSLP and QSIP as Québec Silicon. As such, it presented consolidated financial and other data of the two entities, and argued that Québec Silicon should be seen as the domestic industry in this investigation.

31. The opposing parties, including Dow Corning, took issue with the inclusion of QSIP as part of the domestic industry, on the basis that QSIP does not, itself, produce like goods, and thus argued that QSIP ought not to be considered a “producer” for the purposes of *SIMA*. While Dow Corning was not involved in *Silicon Metal I*, the arguments it raised regarding the composition of the domestic industry are the same as those raised by Rio Tinto Alcan (RTA) in the preliminary injury inquiry phase of *Silicon Metal I*.¹⁸

32. In its decision to initiate the investigations, the CBSA accepted that Québec Silicon accounts for all known domestic production of like goods.¹⁹ No evidence was presented to the Tribunal to convince it otherwise.

33. The Tribunal therefore finds that it must take QSLP and QSIP as one corporate entity for the purposes the present case; that entity (i.e., Québec Silicon) constitutes the domestic industry.

34. As the Tribunal has previously recognized, including in *Silicon Metal I*, a domestic producer may be structured as a corporate group. Further, the fact that the group has organized its production and sales functions into different legal entities does not deprive the corporate group of its right to seek recourse to

18. *Silicon Metal I* at para. 28.

19. Exhibit PI-2016-004-05, Vol. 1G at 34.

SIMA.²⁰ Accordingly, the Tribunal will assess whether there is a reasonable indication of injury or threat of injury to Québec Silicon's production of like goods for sale on the Canadian market.

35. QSLP is the sole manufacturer of like goods in Canada. QSIP operates the facility and is responsible for sales to the Canadian market. The Tribunal cannot, therefore, separate them when considering the impact of the subject goods on Québec Silicon's domestic production of like goods for sale on the Canadian market.

36. QSLP sells all of its production to its joint venture partners, QSIP and Dow Corning, at a full cost plus fixed margin price.²¹ The amount taken by each partner varies somewhat year to year but, in general, Dow Corning takes 49 percent and QSIP takes 51 percent of QSLP's production. Dow Corning's share of production is exported to the United States²² and then used internally. QSIP's share of production is sold to third parties in both domestic and export markets. As indicated by Mr. Hughes, QSIP is the only entity that sells domestically produced silicon metal in the Canadian market.²³

37. While the Tribunal considers Québec Silicon to be the domestic producer for the purposes of this inquiry, it also finds that the complaint left a number of issues unresolved about the manner in which sales are made between QSLP, QSIP and Dow Corning. Furthermore, issues remain about the manner in which QSLP and QSIP developed the consolidated financial statements for Québec Silicon, the domestic producer in this case. During the Tribunal's hearing on April 13, 2017, counsel for RTA referred to the means by which the data of QSIP and QSLP were consolidated as being akin to a "black box" given that little information was provided in Québec Silicon's complaint about related-party sales.²⁴

38. Consequently, Québec Silicon will need to explain better the contents of, and methodologies behind, its financial information.

39. Although the Tribunal appreciates why this information might not have been provided with the already lengthy complaint, the Tribunal expects Québec Silicon to file detailed information in the final injury inquiry in regard to how the data of these two entities were consolidated. The detailed information will need to include full and complete explanations of how sales, inventories and internal transfers are reflected in the consolidated financial information and how the various types of costs that were discussed at the hearing, and in particular highlighted during the arguments of counsel to Elkem, are allocated.

40. Likewise, Québec Silicon must provide more compelling explanations about some figures that were not easily reconcilable between what was provided to the Tribunal in support of the complaint and what was provided to Dow Corning for the purpose of partnership reporting. While these differences may be a function of how the numbers were presented, or could have resulted from the format that was adopted by the Tribunal for the domestic producers' questionnaire in the final injury inquiry for *Silicon Metal I* (which understandably differs from that used for the purposes of internal reporting), their presence is troubling to say the least.

41. The fact that the Tribunal has serious questions about how the statements were consolidated and how certain costs were accounted does not mean, however, that the complaint failed to meet the reasonable indication threshold. While the Tribunal must be satisfied that the information discloses a reasonable

20. *Carbon Steel Welded Pipe*, (11 December 2012), NQ-2012-003 (CITT).

21. *Transcript of Public Hearing*, Vol. 1, 13 April 2017, at 12-13.

22. *Transcript of Public Hearing*, Vol. 1, 13 April 2017, at 50.

23. *Transcript of Public Hearing*, Vol. 1, 13 April 2017, at 13.

24. *Transcript of In Camera Hearing*, Vol. 1, 13 April 2017, at 19.

indication of injury or threat of injury, and that the information is reasonably reliable, it need not take a “leave no stone unturned” approach to preliminary injury inquiries.

42. Indeed, parties opposed, and Dow Corning in particular, provided neither compelling nor sufficient evidence to convince the Tribunal that the complaint fell short of the mark. Notwithstanding the special position Dow Corning holds as joint venture partner, which presumably gives it access to information that the parties in *Silicon Metal I* may not have had, it failed to bring any evidence, or elicit any evidence from the witnesses at the hearing, to demonstrate that the financial information of Québec Silicon was inaccurate or unreliable, as alleged in its motion for a hearing.

43. In fact, following a forcefully argued motion to hold a hearing and the stated necessity to demonstrate how Québec Silicon’s evidence may have been flawed, Dow Corning presented but one witness, to which it put very few questions, in what amounted to a mere tepid indication of discrepancy.

44. It did nothing more than point to the existence of a Management Report containing figures that differed from the financial information provided by Québec Silicon in its complaint, and implied that Québec Silicon’s injury claims ought to be viewed with scepticism on that basis alone. Such deviations were adequately explained by Québec Silicon as stemming from the fact that the Management Report and the complaint financial statements were produced for entirely different purposes: the Management Report contains QSLP’s data only and was intended to inform Dow Corning of the partnership’s internal operations, whereas the financial statements provided in the complaint are the consolidation of QSLP and QSIP data.

45. Nevertheless, at the next stage of the inquiry, Québec Silicon must be prepared to provide greater clarity on how the allegedly dissonant values can be reconciled, as any discrepancies could have a direct bearing on the Tribunal’s ability to make a finding on reliable and accurate financial evidence.

Cumulation and Cross-cumulation

46. Where there is dumping or subsidizing of goods from multiple countries, the Tribunal consistently considers evidence in regard to the factors set out in subsection 42(3) of *SIMA*, even though there is no equivalent to subsection 42(3) in a preliminary injury inquiry. In other words, the Tribunal typically assesses the cumulative impact of the subject goods on the domestic industry on the basis of whether the import volumes from each country are negligible, whether the margins of dumping or amounts of subsidy for each country are insignificant and the conditions of competition between the goods from each country and between them and the like goods.

47. Québec Silicon submitted that the effect of the injury caused by imports from the subject countries must be assessed on a cumulative basis and that the effects of both dumping and subsidizing should be cross-cumulated.

48. By contrast, Wacker and Minasligas argued that the effect of imports subject to a countervailing duty investigation cannot be considered together with goods that are subject only to an anti-dumping investigation (and not a simultaneous countervailing duty investigation), on the basis of the Appellate Body’s finding in *United States – Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products From India*.²⁵

25. (8 December 2014), WTO Doc. WT/DS436/AB/R, Report of the Appellate Body [*Indian Flat Products*].

49. Wacker also proposed that import and market share trends are indicative of different conditions of competition between the subject imports. It pointed to the fact that import volumes from Norway have historically been small and have developed differently from the import volumes of the other subject countries. In a similar vein, the Ministry of National Economy of the Republic of Kazakhstan submitted that a cumulative assessment is not appropriate because of substantial variations in the market participation rates and import trends of the Kazakhstan producers versus other subject producers.

50. Citing the approach that was followed in respect of imports from the United Arab Emirates in *FISC*,²⁶ Elkem and the Government of Norway suggested that imports from Norway should be decumulated given their small volumes. Elkem and the Government of Norway also suggested that Norwegian subject goods do not actually compete with the like goods and are not interchangeable with the like goods based on their technical specifications and that Elkem's sales focus in Canada is quite limited. Rusal, the Russian Ministry of Economic Development and the Ministry of Industry and Trade also argued that subject goods from Russia should be decumulated based on their small volumes, consistent with the approach taken in *FISC*.

51. In reply, Québec Silicon argued that *Indian Flat Products* was not properly decided and reiterated that the Tribunal should conduct a single analysis encapsulating imports from all subject countries.

52. Applying the evidence in this case to the factors of subsection 42(3) of *SIMA*, the Tribunal finds that the margins of dumping²⁷ and amounts of subsidy,²⁸ as determined by the CBSA at this preliminary stage, are not insignificant, as defined in *SIMA*. Further, the volumes imported from the subject countries are not negligible.²⁹

53. Regarding the conditions of competition,³⁰ the evidence at this stage suggests that silicon metal is a commodity product and that the subject goods are largely interchangeable amongst themselves and with the like goods. The evidence also suggests that the subject goods and the like goods compete directly in the same geographic markets and are distributed through the same channels, to the same potential customers.³¹

54. In regard to arguments made by Elkem and the Government of Norway, the evidence indicates that the domestic industry appears to produce, or is at least capable of producing, a similar product in relation to the Norwegian goods.³² Moreover, there has been no indication at this stage that producers in subject countries do not make products in competition with subject goods from Norway. Furthermore, Elkem's sales in Canada do not demonstrate that it operates within a discrete niche of the market.³³

55. On the basis of the foregoing, the Tribunal finds that it is appropriate to conduct an assessment of the cumulative effect of the subject goods from all sources for the purposes of this preliminary injury inquiry.

26. *Certain Fabricated Industrial Steel Components* (25 November 2016), PI-2016-003 (CITT) [*FISC*]

27. Exhibit PI-2016-004-05, Vol. 1G at 43.

28. Exhibit PI-2016-004-05, Vol. 1G at 49.

29. Exhibit PI-2016-004-05, Vol. 1G, Table 1; Exhibit PI-2016-004-03.02 (protected), Vol. 2A at 178.

30. In assessing the conditions of competition, the Tribunal has previously taken into consideration such factors as the degree to which the subject goods from each country are (in relation to each other and in relation to the like goods) interchangeable, are present in the same geographic markets at the same time, are distributed through the same channels or use the same means of transportation. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 16.

31. Exhibit PI-2016-004-03.01 (protected), Vol. 2 at 218.

32. Exhibit PI-2016-004-09.01A (protected) at para. 3, Vol. 4A.

33. Exhibit PI-2016-004-03.01 (protected), Vol. 2 at 41.

56. However, during the final injury inquiry, and keeping in mind *Indian Flat Products* and the recent WTO panel decision in *Canada-Welded Pipe from Taiwan*,³⁴ the Tribunal intends to assess the impact of the subject goods that are both dumped and subsidized separately from the impact of the subject goods that are dumped and not subsidized (namely, subject goods from Laos and Russia).

57. The Tribunal will now examine whether the evidence discloses a reasonable indication of injury or threat of injury, taking into account the factors prescribed in section 37.1 of the *Regulations*.

Volume of Dumped and Subsidized Goods

58. Québec Silicon estimated that the volume of imports of subject goods has been significant and has increased steadily since 2014, both in absolute terms and relative to the production and consumption of like goods in the Canadian market.³⁵

59. The CBSA's analysis confirmed that as of 2016, imports of subject goods comprised 97.8 percent of total imports. This is a substantial increase since 2013, when the subject goods accounted for 28.3 percent of all imports.³⁶ This volume is substantial, and, to a certain extent, correlates with a dramatic decline in the volume of imports from China following the Tribunal's finding in *Silicon Metal I*, which fell from 60 percent in 2013 to 0.1 percent in 2014 and 0 percent by 2015,³⁷ suggesting that at least some of the volume imported from subject countries replaced volumes that would otherwise have originated in China. Furthermore, in the year following the imposition of duties in *Silicon Metal I*, the subject countries share of the import market grew 43.2 percentage points and nearly 70 percentage points by the end of 2016.

60. While this initial influx of subject goods may have replaced silicon metal from China, there is a reasonable indication that the subject goods have captured more than just the market share that was previously held by Chinese goods. According to the CBSA's estimates, the size of the Canadian market for silicon metal increased by about 15 percent in 2016; however, in that same year, the volume of subject imports increased by about 67 percent.³⁸ In 2016, the subject goods also captured an additional 17.2 percentage points of market share.³⁹

61. On the basis of the above, the Tribunal finds that the evidence discloses a reasonable indication that there has been a significant increase in imports of the subject goods, both in absolute terms and relative to the production of like goods.

Effect on the Price of Like Goods

62. Québec Silicon submitted that the subject goods undercut and depressed prices of like goods. It did not allege that subject goods suppressed domestic prices.

34. *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu*, DS482 (21 December 2016), WTO Doc. WT/DS482/R, Panel Report. The Tribunal is of the view that this finding, and the Appellate Body's findings in *Indian Flat Products*, must be applied in the final injury inquiry stage; however, it is not convinced that the same must be done during the preliminary injury inquiry stage of the proceedings.

35. Exhibit PI-2016-004-03.01, Vol. 1 at 40.

36. Exhibit PI-2016-004-05, Vol. 1G at 38.

37. Exhibit PI-2016-004-05, Vol. 1G at 38.

38. Exhibit PI-2016-004-03.02 (protected), Vol. 2A at 179, Table 4. The Tribunal notes that this data is based on the period from January to October 2016.

39. Exhibit PI-2016-004-03.02 (protected), Vol. 2A at 180, Table 5.

63. The parties opposed argued that the complainants did not provide appropriate, accurate or complete evidence in order for the Tribunal to assess the price impact of the subject goods on the like goods. They attributed any declines in the prices of like goods to the fact that global prices for silicon metal fell over the period of inquiry.

64. In regard to Québec Silicon's allegations of price undercutting, the Tribunal finds that the subject goods consistently and significantly undercut the price of like goods at least at the aggregate level, in every year of the period of inquiry. More specifically in 2013, 2015 and 2016, the lowest-priced silicon metal available on the Canadian market (including all other imports) was that imported from the subject countries.⁴⁰ This supports Québec Silicon's arguments that the subject goods were the price leaders on the market.

65. Québec Silicon's average selling prices increased between 2013 and 2015. However, the data provided in the complaint, covering the period from January to October 2016, indicates that prices declined in 2016, falling slightly below 2014 levels.⁴¹ Furthermore, the data provided in Québec Silicon's reply confirms that this decline continued into Q4 2016.⁴² The Tribunal considers that this is reasonable evidence of significant price depression, albeit limited to 2016.

66. The Tribunal thereby finds sufficient evidence to support a reasonable indication of significant price undercutting and price depression.

67. While Québec Silicon did not allege price suppression, the Tribunal notes that there is no evidence to justify a finding in this regard. Indeed, the evidence suggests that Québec Silicon's costs for raw materials from an affiliate company were not impacted by market fluctuations even as raw material costs fell on a global level. The fact that Québec Silicon's raw material costs were not affected in the face of declining global costs goes beyond the issue of price suppression. It raises the possibility of whether the arrangement that Québec Silicon had with an affiliate company caused a type of self-injury, and will thus be of interest to the Tribunal during the final injury inquiry.

Resultant Impact on the Domestic Industry

68. As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal must consider the impact of the dumped and 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.⁴³

69. In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping of the subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped and subsidized goods on the domestic industry. The standard is whether there is a reasonable indication that the dumping and subsidizing of the

40. Exhibit PI-2016-004-03.02 (protected), Vol. 2A at 215, Table 10.

41. Exhibit PI-2016-004-03.01 (protected), Vol. 2 at 43, Table 4.

42. Exhibit PI-2016-004-09.01 (protected) at tab 2, Vol. 4A.

43. 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.

subject goods has, *in and of itself*,⁴⁴ caused injury. The Tribunal must further consider, pursuant to paragraph 37.1(3)(b) of the *Regulations*, whether the reasonable indication of injury is attributable to factors other than the dumping and subsidizing of subject goods.

70. Québec Silicon submitted that the domestic industry was significantly injured by the subject goods. That injury was most pronounced in 2016, and took the form of lost sales, lost market share and negative financial results.

71. Parties opposed alleged that any injury suffered by Québec Silicon should be attributed to factors other than the subject goods, including high production costs, including costs for key raw materials, production outages in the first half of 2016, normal customer behaviour in seeking more than one source of supply, declining participation or performance in export markets, contraction in demand, and globally declining prices for silicon metal driven by falling input costs and exchange rate fluctuations.

72. The evidence indicates that Québec Silicon's market share more than doubled between 2013 and 2014, following the Tribunal's finding in *Silicon Metal I*. It continued to rise in 2015, but then fell by 11 percentage points in 2016. While Québec Silicon lost market share in 2016, the subject goods increased their share of the market from 37.5 percent in 2015 to 54.7 percent in 2016.⁴⁵ This increase is significant, particularly considering that, at the time of the Tribunal's finding in *Silicon Metal I*, the subject goods accounted for little more than 20 percent of the Canadian market.

73. In large part, these increases in market share, by both the subject goods and the domestic industry from 2013 to present, likely stem from the fact that Chinese silicon metal essentially disappeared from the market. That said, it is possible that the domestic industry's market share would be higher had it not been for the presence of dumped and subsidized subject goods, which, at least in 2016, appear to have gained at the expense of the domestic industry.

74. Québec Silicon's domestic sales volumes contracted by approximately 1 percent in 2016, following a rise of nearly one quarter in 2015. Although Québec Silicon increased its production volume for the domestic market in 2016, the rate of growth decelerated compared to 2015. Production for sales in export markets declined during the first three quarters of 2016, compared to the same period in 2015.⁴⁶ While all this may suggest that the other factors raised by the opposing parties had an impact on sales and production volumes, it should also be noted that the timing of the decline in domestic sales volume and slowdown in production for the domestic market correlates with a dramatic increase in imports of the subject goods: a fact that cannot be ignored.

75. Québec Silicon's complaint demonstrates that, after achieving positive net incomes in both 2014 and 2015, Québec Silicon experienced lower profits in 2016. This decline, however, must be considered in the context of the Tribunal's concerns about how Québec Silicon has arrived at its consolidated financial statements. These concerns do not justify a refusal to proceed at this stage, as noted above; however, they are such that the Tribunal will scrutinize the data even more closely than it has already done.

44. *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.

45. Exhibit PI-2016-004-05, Vol. 1G at 39.

46. Exhibit PI-2016-004-03.01 (protected), Vol. 2A at 99-100, Confidential Attachment 30; Exhibit PI-2016-003-09.01 (protected), Vol. 4A, Attachment 2.

76. In particular, the Tribunal will be looking for answers as to why Québec Silicon employed the very same methodology to calculate cost of goods sold as it did in *Silicon Metal I*, even though the Tribunal then concluded that it “did not reflect reality”.⁴⁷ Neither the complaint nor the witnesses at the hearing provided a compelling explanation to the Tribunal. Ms. Spensieri simply noted that, at the time of *Silicon Metal I*, the proportion of domestic sales was so low that the per-unit costs were highly sensitive to changes in inventory and that this is no longer the case.⁴⁸

77. Likewise, when asked whether the data in the QSLP Management Report could be reconciled with the data in the financial reports submitted to the Tribunal, Mr. Hughes’ response was that the statements can be reconciled, but not with the data that the Tribunal has on record. He explained that, in order to do so, one would need the full-period QSLP Management Report and the full-period QSIP Canada Statements.⁴⁹ The Tribunal notes that the QSIP statements are not on the record of these proceedings, but expects that Québec Silicon will provide these during the injury inquiry so that the Tribunal is able to fully satisfy itself as to the veracity of this reconciliation process.

78. Furthermore, the Tribunal will consider whether and how other factors raised by the parties opposed may in fact have had an impact on the domestic industry. For the purposes of this preliminary injury inquiry, there is insufficient evidence regarding the impact of such other factors to negate the Tribunal’s conclusion that the overall evidence on the record discloses a reasonable indication that the dumping and subsidizing of the subject goods caused injury. The Tribunal anticipates, however, that the parties will present more evidence in this regard so that the Tribunal will be in a position to fully explore the relative importance of these other factors when considering the issue of causality.

79. Finally, materiality is a key issue that will need to be explored in greater depth at the injury inquiry. As just under half of QSLP’s production is allocated to Dow Corning for its internal use, this portion of QSLP’s production is essentially insulated from competition with the subject goods on the Canadian market. The Tribunal, therefore, needs a better understanding of when and how sales between QSLP and Dow Corning are made so that it can determine how best to allocate the amount of domestic production that is sold within Canada, and thus subject to unfair competition from the subject goods.

THREAT OF INJURY ANALYSIS

80. As there is a reasonable indication that the subject goods have caused injury, the Tribunal does not need to consider whether there is a reasonable indication that the dumping or subsidizing of the subject goods from the cumulated countries is threatening to cause injury.

81. To set the stage for the final inquiry, however, the Tribunal would caution Québec Silicon that its complaint contains superficial information regarding the market conditions in each of the subject countries, as well as the domestic demand, production, capacity and export orientation of producers in the subject countries.

82. Parties opposed highlighted a number of potentially important flaws in the evidence submitted by Québec Silicon. In particular, parties opposed pointed out that production in Norway by Wacker is primarily for captive use and that Norwegian exports have been overwhelmingly to Europe. In respect of Brazil, the parties opposed submitted that a significant proportion of Brazilian capacity is for the captive production of

47. *Transcript of Public Hearing*, Vol. 1, 13 April 2017, at 44-45.

48. *Transcript of Public Hearing*, Vol. 1, 13 April 2017, at 22.

49. *Transcript of Public Hearing*, Vol. 1, 13 April 2017, at 22.

Dow Corning, and, furthermore, that Brazilian exports and production capacity have been and are predicted to continue declining. With regard to Russia, opposing parties argued that domestic consumption has increased substantially and is predicted to continue rising, while exports are declining, including exports to Canada which are at a historic low. Certain Malaysian and Thai producers are no longer in business, although demand in these regions is predicted to increase. As was the case with Norway, for producers in Brazil, Russia, Malaysia and Thailand, the key market appears to be the European Union. Furthermore, Rima submitted that the evidence of injury is inadequate because it points only to current market factors, rather than indicating a foreseeable change in the imminent future.⁵⁰

83. In accordance with subsection 2(1.5) of *SIMA*, the dumping or subsidizing of goods shall not be found to be threatening to cause injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent. Moreover, in keeping with the Tribunal's obligation to base its decisions on positive evidence and consistent with Article 3.8 of the *Anti-Dumping Agreement*, which requires the application of anti-dumping measures in relation to threat to be considered and decided with "special care", the Tribunal notes that pointing simply to production capacities and a general export orientation of the subject countries is not sufficient for a finding of threat of injury in a final injury inquiry.

84. In order to support a threat finding, Québec Silicon must provide evidence that allows the Tribunal to make the necessary linkages between the subject goods and the alleged impacts of the subject goods on the domestic industry. Moreover, Québec Silicon must prove that the threat posed by the subject goods meets the clear and imminent threshold established by subsection 2(1.5) of *SIMA*.

CONCLUSION

85. The Tribunal therefore determines that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic industry.

Jason W. Downey
Jason W. Downey
Presiding Member

Ann Penner
Ann Penner
Member

Serge Fréchette
Serge Fréchette
Member

50. As one example, Rima notes that the complaint referenced foreign trade restrictions that have been in existence since 2008.