



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## FINDING AND REASONS

Inquiry No. NQ-2017-001

Silicon Metal

*Finding issued  
Thursday, November 2, 2017*

*Reasons issued  
Friday, November 17, 2017*

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

**SILICON METAL ORIGINATING IN OR EXPORTED FROM THE FEDERATIVE  
REPUBLIC OF BRAZIL, THE REPUBLIC OF KAZAKHSTAN, LAO PEOPLE'S  
DEMOCRATIC REPUBLIC, MALAYSIA, THE KINGDOM OF NORWAY AND THE  
KINGDOM OF THAILAND**

**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 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 and the Kingdom of Thailand, and the 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 inquiry is pursuant to the issuance by the President of the Canada Border Services Agency, on July 5, 2017, of a preliminary determination of dumping with respect to the above-mentioned goods originating in or exported from the Federative Republic of Brazil, the Republic of Kazakhstan, Lao People's Democratic Republic, Malaysia, the Kingdom of Norway and the Kingdom of Thailand, and a preliminary determination of subsidizing with respect to certain silicon metal originating in or exported from the Federative Republic of Brazil, the Republic of Kazakhstan, Malaysia, the Kingdom of Norway and the Kingdom of Thailand.

On October 3, 2017, the President of the Canada Border Services Agency made a final determination of dumping in respect of the above-mentioned goods originating in or exported from the Federative Republic of Brazil (excluding those goods exported by Rima Industrial S.A.), the Republic of Kazakhstan, Lao People's Democratic Republic, Malaysia and the Kingdom of Thailand, and a final determination of subsidizing in respect of the above-mentioned goods originating in or exported from the Federative Republic of Brazil, the Republic of Kazakhstan, Malaysia and the Kingdom of Norway.

The Canadian International Trade Tribunal hereby finds, pursuant to subsection 43(1) of the *Special Import Measures Act*, that the dumping and/or subsidizing of the above-mentioned goods originating in or exported from the Federative Republic of Brazil, the Republic of Kazakhstan, Lao People's Democratic Republic, Malaysia, the Kingdom of Norway and the Kingdom of Thailand have not caused injury and are not threatening to cause injury to the domestic industry.

Ann Penner

Ann Penner

Member

Serge Fréchette

Serge Fréchette

Member

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: October 2, 3, 4, and 5, 2017  
  
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## STATEMENT OF REASONS

### INTRODUCTION

1. The mandate of the Canadian International Trade Tribunal (the Tribunal) in this inquiry<sup>1</sup> is to determine whether the dumping and subsidizing of silicon metal originating in or exported from the Federative Republic of Brazil (Brazil), the Republic of Kazakhstan (Kazakhstan) and Malaysia, the dumping of silicon metal originating in or exported from Lao People's Democratic Republic (Laos) and the Kingdom of Thailand (Thailand), and the subsidizing of silicon metal originating in or exported from the Kingdom of Norway (Norway) (the goods in issue) have caused or are threatening to cause injury to the domestic industry.

2. The Tribunal has determined, for the reasons that follow, that the domestic industry has not been materially injured by the above-mentioned dumped, subsidized, or dumped and subsidized goods. Further, there is no threat of material injury from any of the aforementioned dumped or subsidized goods.

### Background on Inquiry

3. This inquiry stems from a complaint filed on December 30, 2016, by Québec Silicon Limited Partnership (QSLP) and QSIP Canada ULC (QSIP) (together, Québec Silicon) and the subsequent decision of the President of the Canada Border Services Agency (CBSA), on February 20, 2017, to initiate dumping and subsidizing investigations.

4. The CBSA's investigations triggered the initiation of a preliminary injury inquiry by the Tribunal on February 21, 2017. On April 21, 2017, the Tribunal issued its determination that the evidence disclosed a reasonable indication that the dumping of the subject goods from Laos and the dumping and subsidizing of the subject goods from Brazil, Norway, Kazakhstan, Malaysia and Thailand had caused or were threatening to cause injury.<sup>2</sup>

5. On July 5, 2017, the CBSA issued its preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional anti-dumping and countervailing duties on the subject goods and the commencement of this injury inquiry.<sup>3</sup> The Tribunal issued a notice of commencement of inquiry on July 6, 2017.<sup>4</sup> On October 3, 2017, the CBSA made final determinations of dumping and subsidizing.<sup>5</sup>

6. The Tribunal's period of inquiry (POI) was from January 1, 2014, to December 31, 2016, as well as the interim period of January 1 to March 31, 2017. On July 6, 2017, the Tribunal sent questionnaires to domestic producers, importers, purchasers and foreign producers of silicon metal. Using the questionnaire replies and import data from the CBSA, staff of the Administrative Tribunals Support Service of Canada prepared public and protected versions of the investigation report. The public investigation report was

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

2. In its preliminary injury determination, the Tribunal also found that allegedly dumped goods from Russia had caused or were threatening to cause injury; however, on July 5, 2017, the CBSA terminated its investigation with regard to the goods from Russia because the volume of goods imported from that country during the CBSA's period of investigation was found to be negligible for the purposes of SIMA.

3. Exhibit NQ-2017-001-01, Vol. 1.

4. Exhibit NQ-2017-001-03, Vol. 1.

5. Exhibit NQ-2017-001-04, Vol. 1.



distributed, along with the public questionnaire replies, to parties who had filed notices of participation in the inquiry. A protected investigation report, containing information designated as confidential, was distributed to counsel who had signed the required declaration and undertaking. Parties filed case briefs, witness statements and other evidence in response.

7. Québec Silicon is the sole party in favour of a finding of injury or threat of injury.

8. The opposing parties are Alcoa Canada Co. (Alcoa), Rio Tinto Alcan (RTA), Rima Industrial S/A (Rima), Wacker Chemicals Norway AS and Wacker Chemie AG (together, Wacker), Ligas de Alumínio S/A (LIASA), Companhia Ferroligas Minas Gerais (Minasligas), Elkem AS (Elkem), and the Government of Norway. All of these parties filed briefs, and many also filed witness statements and presented witnesses who testified at the hearing.

9. Dow Corning Canada Inc. and Dow Corning Corporation (together, Dow Corning), the Government of Brazil, G.S. Energy Co., Ltd., and the Embassy of Kazakhstan filed notices of participation, but did not file briefs or witness statements, nor did they provide witnesses to testify at the hearing. The Government of Brazil and the Government of Kazakhstan were permitted to present the Tribunal with oral arguments on the final day of the hearing.

10. During the preliminary injury inquiry, parties raised issues with the methodologies and assumptions relied on by Québec Silicon to consolidate the financial information from QSLP and QSIP for the purposes of its complaint and the Tribunal's proceedings. Following a hearing on April 13, 2017, certain questions remained unresolved. The Tribunal, therefore, requested that Québec Silicon file detailed information in the present inquiry about how QSLP and QSIP's data were consolidated, including a full and complete explanation of how sales, inventories and internal transfers were reflected in the consolidated financial information and how certain costs were allocated to both entities.<sup>6</sup> Accordingly, Québec Silicon filed detailed documentation as part of its questionnaire response and a comprehensive summary of the methodologies and assumptions that were used to prepare its questionnaire response.<sup>7</sup>

11. The Tribunal carefully reviewed the documentation filed by Québec Silicon. In addition, following the distribution of the investigation report, the Tribunal held two teleconferences, on August 28 and August 31, 2017, to offer counsel an early opportunity to gain an understanding of the methodology used and assumptions relied on by Québec Silicon in its complaint and questionnaire response. The transcripts of these teleconferences were placed on the protected record.

12. On August 31, 2017, the Tribunal received two product exclusion requests from Elkem: one of these exclusion requests was for Silicon 98<sup>8</sup> and the other was for Silgrain.<sup>9</sup> Québec Silicon opposed both of these requests in a response filed on September 8, 2017. On September 18, 2017, Elkem replied to Québec Silicon's submissions. The witnesses of both Elkem and Québec Silicon addressed the two exclusion requests in their testimony at the hearing.

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6. *Silicon Metal* (21 April 2017), PI-2016-004 (CITT) at para. 39.

7. Exhibit NQ-2017-001-11; Exhibit NQ-2017-001-12 (protected); Exhibit NQ-2017-001-A/B-06 (protected), Vol. 12A.

8. "Silicon 98" (Si98) was described by parties as silicon metal having a minimum silicon purity of 98 percent and an iron content of between 1.2 percent and 1.5 percent, a maximum phosphor content of 50 parts per million, and a maximum calcium content of 0.05 percent.

9. "Silgrain" was described by parties as silicon metal with a minimum silicon purity of 99 percent, manganese content of less than 30 parts per million, barium content of a minimum 20 parts per million and produced in sizes less than one millimeter (in powder form).

13. On September 1, 2017, the parties submitted to the Tribunal requests for information (RFIs) directed at other parties. As some parties objected to certain RFIs, the Tribunal issued directions to the parties on September 7, 2017, indicating which RFIs required responses. The responses were received by September 18, 2017, and placed on the record of the proceedings.

14. On September 15, 2017, the Tribunal engaged Mr. Greg McEvoy to assist in its analysis of Québec Silicon's financial schedules, reconciliation documents, and other supporting documentation. The Tribunal subsequently qualified Mr. McEvoy as an expert in forensic accounting for the purposes of this inquiry.<sup>10</sup> Mr. McEvoy reviewed and analyzed the relevant documents and filed a confidential report. He also attended the hearing, and was subject to cross-examination by all parties.

15. The Tribunal held a hearing, which included public and *in camera* sessions, in Ottawa, Ontario from October 2 to 4, 2017; closing arguments were made on October 5, 2017.

16. As will be discussed below, the CBSA's final determination, on October 3, 2017, necessitated certain revisions to the investigation report. Accordingly, the Tribunal allowed the parties to make post-hearing submissions on the revised report. The Tribunal received written submissions on behalf of the Government of Norway and Elkem, and on behalf of Québec Silicon on October 11, 2017.

17. Mr. Jason W. Downey was the presiding member assigned to this injury inquiry. As such, he chaired the hearing and participated in subsequent deliberations. On November 1, 2017, Mr. Downey resigned his position due to his appointment as a member of the Tribunal administratif du travail in the province of Québec. He therefore ceased to be a member of the Tribunal as of that date. In accordance with subsection 9(3) of the *Canadian International Trade Tribunal Act*,<sup>11</sup> the two other assigned members, with the authorization of the acting Chairperson, completed the remaining work and disposed of the matter.

18. The Tribunal issued its finding on November 2, 2017.

## RESULTS OF THE CBSA'S INVESTIGATIONS

19. The CBSA's period of investigation for both its dumping and subsidizing investigations covered January 1, 2016, to December 31, 2016. As a result of the investigations, the CBSA made the following determinations on October 3, 2017:

### Dumped Goods<sup>12</sup>

Country	Margin of Dumping (% of export price)	Goods as a % of Total Imports	Volume of Dumped Goods as a % of Country Imports
Brazil	24.8%	21.4%	89.7%
Kazakhstan	42.6%	4.6%	100%
Laos	85.2%	19.1%	100%
Malaysia	85.2%	3.3%	100%

10. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 180.

11. R.S.C. 1985 (4th Supp.), c. 47.

12. Exhibit NQ-2017-001-04, Vol. 1 at 204.20.

Country	Margin of Dumping (% of export price)	Goods as a % of Total Imports	Volume of Dumped Goods as a % of Country Imports
Norway	1.2%	7.6%	100%
Thailand	51.0%	39.5%	100%

#### Subsidized Goods<sup>13</sup>

Country	Amount of Subsidy (% of export price)	Goods as a % of Total Imports	Subsidized Goods as a % of Total Imports
Brazil	6.5%	21.4%	100%
Kazakhstan	122.1%	4.6%	100%
Malaysia	10.6%	3.3%	100%
Norway	2.8%	7.6%	100%
Thailand	0.8%	39.5%	100%

20. In its final determination, the CBSA terminated the dumping investigation concerning goods from Rima, an exporter from Brazil, as Rima's goods were not dumped. It also terminated the dumping investigation in respect of silicon metal exported from Norway by Elkem as the margin of dumping was found to be insignificant. Finally, the CBSA terminated the subsidy investigation in respect of silicon metal exported from Thailand by SICA New Materials (Thailand) Co., Ltd. and originating in or exported from Thailand by all other exporters, as the amounts of subsidy were insignificant.<sup>14</sup>

21. As a consequence of the CBSA's determination, the Tribunal revised the investigation report to split out three groups of subject countries for the purposes of its analysis, as will be discussed more fully below in the section regarding cumulation.

## PRODUCT

### Product Definition

22. 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.

### Product Information

23. 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.

13. Exhibit NQ-2017-001-04, Vol. 1 at 204.21.

14. Exhibit NQ-2017-001-04, Vol. 1.

24. Silicon is a chemical element, metallic in appearance, solid in mass, and steel gray in colour. It 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 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.

25. 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.

26. Responses to the Tribunal's questionnaires indicate that the customer base in Canada is small and highly concentrated, and consists of aluminum producers (both primary and secondary) that are end users of the product, as well as a small number of companies that purchase silicon metal for resale, acting as distributors. Importers are primarily end users of the subject goods. At the current time, there are no purchasers in Canada who use silicon metal in a chemical or polysilicon application.

## LEGAL FRAMEWORK

27. 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".

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

29. Given that the subject goods originated in or were exported from more than one country, the Tribunal must also determine whether it will conduct a single cumulated injury analysis or a separate analysis for each subject country. If the prerequisite conditions allowing the Tribunal to make a cumulative assessment are met,<sup>15</sup> the Tribunal will make its assessment of the effect on the domestic industry of the dumping and subsidizing of the subject goods from all the subject countries, or some of them as the case may be, on a cumulative basis.

30. In addition, as the CBSA has determined that certain subject goods have been dumped and subsidized, the Tribunal must also consider whether it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods in this inquiry.

31. 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.<sup>16</sup> As a domestic

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15. Subsection 42(3) of *SIMA*.

16. 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.

industry is already established, the Tribunal does not need to consider the question of retardation.<sup>17</sup> If the Tribunal reaches a negative conclusion on injury and threat of injury, it will not need to proceed with an examination of the two potential exclusions mentioned above.

32. In conducting its injury 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.

## LIKE GOODS AND CLASSES OF GOODS

### Like Goods

33. 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 producers of 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.<sup>18</sup>

34. 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.

35. 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).<sup>19</sup>

36. In the preliminary injury inquiry, the Tribunal found that domestically produced silicon metal of the same description as the subject goods were like goods in relation to the subject goods.<sup>20</sup>

37. The Tribunal did not receive any submissions challenging this finding; the Tribunal therefore sees no reason to depart from it. In fact, the evidence establishes that the characteristics of domestically produced silicon metal closely resemble those of the subject goods when produced to meet comparable specifications,<sup>21</sup> that the subject goods and domestically produced silicon metal are generally substitutable<sup>22</sup> and that they tend to compete for the same customers in the Canadian market.

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17. Subsection 2(1) of *SIMA* defines “retardation” as “material retardation of the establishment of a domestic industry”. In previous decisions, the Tribunal has consistently held that there could be no retardation if there was domestic production of like goods. *Potassium Silicate Solids* (6 March 2012), PI-2011-003 (CITT) at paras. 35, 37.

18. 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.).

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

20. *Silicon Metal* (20 July 2017), NQ-2017-001 (CITT) at 28.

21. Exhibit NQ-2017-001-07A (protected), Tables 15, 16, Vol. 2.1; almost all respondents noted that the product quality between Canadian and subject goods is comparable.

22. Exhibit NQ-2017-001-07A (protected), Table 11, Vol. 2.1.

## Classes of Goods

38. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.<sup>23</sup>

39. In its preliminary injury inquiry, the Tribunal found that the subject goods and the like goods comprised a single class of goods. During the present inquiry, Minasligas took issue with the fact that Québec Silicon’s complaint combined all types of silicon metal together as a single product. In particular, Minasligas suggested that production and usage is divided by market segment, and that specific products are produced for specific customers. Minasligas pointed to the fact that it is a producer of chemical-grade silicon. The Tribunal understands this line of argument to suggest that chemical-grade silicon metal should be considered as a separate class from aluminum grades for the primary and secondary aluminum markets.

40. The evidence, however, does not support the need for such a distinction for the purposes of the Tribunal’s analysis. While it is true that there appear to be three segments of the market globally, only the primary and secondary aluminum markets exist in Canada. Further, the Tribunal understands that there is downward substitutability: although a chemical user may not be able to use silicon metal that has been produced to the specifications of an aluminum producer, an aluminum producer could certainly use silicon metal produced to a higher standard, while perhaps making some adjustments to the levels of other constituents.<sup>24</sup>

41. Taken together with the evidence that the domestic goods are generally substitutable with the subject goods,<sup>25</sup> pricing is determined using similar methods and generally reflective of trends apparent in global and American price indices,<sup>26</sup> there are similar channels of distribution,<sup>27</sup> non-price factors between domestically produced like goods and the subject goods are comparable,<sup>28</sup> and in the context of an industry in which the majority of purchases (be they of subject goods or domestically produced like goods) are made by two customers, the Tribunal sees no justification to depart from its previous finding on classes of goods. Accordingly, the Tribunal finds that the domestically produced like goods and the subject goods comprise a single class.

## DOMESTIC INDUSTRY

42. 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.

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23. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; see also *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

24. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 209.

25. Exhibit NQ-2017-001-07A (protected), Table 11, Vol. 2.1.

26. Exhibit NQ-2017-001-06C, Table 9, Vol. 1.1A; Elkem’s Aid to Argument (protected), Tabs 6 and 7, Vol. 18.

27. Exhibit NQ-2017-001-06C, Table 14, Vol. 1.1A.

28. Exhibit NQ-2017-001-06C, Tables 15, 16, Vol. 1.1A.

43. 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.<sup>29</sup>

44. In the preliminary injury inquiry and in *Silicon Metal I*,<sup>30</sup> the Tribunal found that the domestic industry consisted of both QSLP and QSIP, as the Tribunal could not measure the impact of the subject goods on Québec Silicon's domestic production of like goods for sale on the Canadian market without considering them as a single entity.

45. Wacker objected to this approach. In its view, the domestic industry ought to be considered to be QSLP alone, as it is the only entity of the two that actually produces like goods; QSIP engages in no production and, in Wacker's view, is merely a selling arm. Minasligas made similar arguments in this regard.

46. The Tribunal described the legal structure of Québec Silicon in its reasons at the preliminary injury inquiry and need not repeat those facts here.<sup>31</sup> Notwithstanding the submissions of Wacker and Minasligas to the contrary, no new facts were brought forward to convince the Tribunal that its approach should change. Further, although the arguments of Wacker and Minasligas may have been more forcefully argued in the present inquiry, they are not new in that they were made during *Silicon Metal I* and the Tribunal's preliminary injury inquiry.

47. 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).<sup>32</sup> This understanding is consistent with the concept of injury, which is to be measured not only in terms of production but also in terms of sales and overall financial performance. Indeed, as the Tribunal noted in its statement of reasons in the preliminary injury inquiry, it can only assess the impact of the subject goods on this domestic producer at the point of sale to the market.

48. The fact that QSLP's sales function is performed by a different legal entity than its production function should not, in the Tribunal's view, prevent the entity that performs the production function from receiving protection from dumped and subsidized goods, to the extent that it is injured by them.

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29. The term "major proportion" means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A.); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); *China – Anti-dumping and countervailing duties on certain automobiles (US)*, (23 May 2014), WTO Doc. WT/DS440/R, Report of the Panel, at para. 7.207; *European Community – Definitive anti-dumping measures on certain iron or steel fasteners (China)*, (15 July 2011), WTO Docs. WT/DS397/AB/R, Report of the Appellate Body, at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping duties on poultry (Brazil)*, (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel, at paras. 7.341-7.344.

30. *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT) [*Silicon Metal I*].

31. *Silicon Metal* (21 April 2017), PI-2016-004 (CITT) at paras. 29-36.

32. *Silicon Metal I* at para. 40.

49. Accordingly, for the purposes of this injury inquiry, the domestic industry consists of both entities (i.e., QSLP and QSIP) that, together, comprise Québec Silicon.

## CUMULATION AND CROSS-CUMULATION

50. Subsection 42(3) of *SIMA* directs the Tribunal to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods if it is satisfied that the margin of dumping or the amount of subsidy in relation to the goods from each of those countries is not insignificant, the volume of dumped and subsidized goods from each subject country is not negligible,<sup>33</sup> and cumulation is appropriate taking into account conditions of competition between the goods of each country or between them and the like goods.

### Cumulation

51. This inquiry involves imports from Thailand and Laos that are dumped, imports from Norway that are subsidized, and imports from Brazil, Kazakhstan and Malaysia that are both dumped and subsidized. The Tribunal must therefore determine whether and how subject imports should be assessed cumulatively or separately.

52. The Tribunal remains cognizant of the panel and Appellate Body reports in *United States – Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India* on this issue.<sup>34</sup> In particular, the Tribunal notes the Appellate Body’s finding that “being subject to simultaneous countervailing duty investigations ‘is a necessary precondition for a cumulative assessment to be undertaken consistently with [Article 15.3 of the *WTO Agreement on Subsidies and Countervailing Measures*].”<sup>35</sup> The Tribunal is also cognizant of the more recent WTO panel finding in *Canada – CSWP (Taiwan)*<sup>36</sup> and considers this decision to confirm that it is permissible to cumulatively assess the effects of dumping and subsidizing of the same goods from a single country.

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33. Subsection 2(1) of *SIMA* defines “negligible” as meaning, “in respect of the volume of dumped goods of a country, (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods, except that (b) where the total volume of the dumped goods of three or more countries, each of whose exports of dumped goods into Canada is less than three per cent of the total volume of goods referred to in paragraph (a), is more than seven per cent of the total volume of goods referred to in paragraph (a), the volume of dumped goods of any of those countries is not negligible.”

34. WTO Appellate Body Report, WT/DS436/AB/R [*US – Carbon Steel (India)*]. In this dispute, India challenged the imposition of countervailing duties by the United States on imports of certain steel products from India, arguing that the U.S. International Trade Commission had acted inconsistently with Article 15.3 of the *SCM Agreement* by cumulating the effects of imports from five countries subject to countervailing duties (including India) with imports from six other countries that were subject to antidumping investigations only (India’s imports were both subsidized and dumped). India argued that, under the terms of Article 15.3 of the *SCM Agreement*, its imports should not have been cumulated with goods that were subject to a dumping investigation only.

35. *US – Carbon Steel (India)* at para. 4.589. The WTO Appellate Body agreed with the WTO Panel that Article 15.3 of the *SCM Agreement* “refers to imports ‘simultaneously subject to countervailing duty investigations’”, such that the authorization to cumulatively assess the effects of “such imports” requires that the imports be “subject to countervailing duty investigations”. Conversely, “the effects of imports other than such subsidized imports must not be incorporated in a cumulative assessment pursuant to Article 15.3”. *US – Carbon Steel (India)* at para. 4.579.

36. *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu* (21 December 2016), WTO Doc. WT/DS482/R.



53. The Tribunal is of the view that, read together, the above WTO reports do not permit a cumulative assessment of the effects of goods from a country that have been dumped and subsidized with the effects of goods from another country that are only dumped or only subsidized. Nevertheless, these WTO reports do permit the cumulative assessment of the effects of dumping and subsidizing of goods in certain limited circumstances, such as when a single country is both dumping and subsidizing, as was the situation with China in *Certain Fabricated Industrial Steel Components*, or in this case where multiple countries have been found to be both dumping and subsidizing.

54. As was stated in *Certain Fabricated Industrial Steel Components*,<sup>37</sup> the Tribunal relies on *R. v. Hape* for the principle that *domestic legislation should be presumed to conform to international law*. Given the WTO findings discussed above and the Tribunal's obligation to interpret and apply *SIMA* in a manner that is in conformity with Canada's international obligations (except where *SIMA* clearly conveys a contrary intent, which is not the case here), the Tribunal is of the view that assessing the effects of all subject imports cumulatively would not be appropriate.

55. Accordingly, the Tribunal will conduct three separate analyses: (1) of the subsidized goods from Norway, (2) of the dumped goods from Thailand and Laos, and (3) of the dumped and subsidized goods from Brazil, Malaysia and Kazakhstan. This type of cumulated analysis is consistent with the post-hearing submissions of Québec Silicon, and reflects the revisions made to the investigation report following the CBSA's final determination.<sup>38</sup>

56. The Tribunal finds that the conditions of competition between the goods from Thailand and Laos, and between those goods and the domestic like goods, are sufficient to warrant a cumulative assessment of the effects of the dumped goods from those countries. Contrary to the assertions of Rima, the fact that competition may be based, in part, on various non-price factors (including security of supply and diversity of supply), does not in and of itself suggest that silicon metal cannot aptly be characterized as a commodity. Rather, the evidence suggests that silicon metal is indeed a commodity product, subject to some unique circumstances as will be discussed more fully below, 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 in the same geographic markets and are sold through the same distribution channels, largely to the same potential customers, the two largest being RTA and Alcoa.

57. For the same reasons as those outlined above in respect of the goods from Thailand and Laos, the Tribunal finds that the conditions of competition between the goods from Brazil, Malaysia and Kazakhstan, and between those goods and the domestic like goods, are sufficient to warrant a cumulative assessment of the dumped and subsidized goods from those countries.

### Cross-cumulation

58. 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,<sup>39</sup> the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price

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37. *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at para. 70.

38. Exhibit NQ-2017-001-33.01, Vol. 1A.

39. 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; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 147.

effects and it is not possible to isolate the effects caused by the dumping from the effects 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.

59. In terms of its treatment of the dumped goods from Brazil, Malaysia and Kazakhstan, and the subsidized goods from those same countries, as these practices concern the same goods from each of these countries, the Tribunal finds that it is not necessary nor practicable to isolate the effects caused by the dumping from the effects caused by the subsidizing.

60. Therefore, the Tribunal will make a cross-cumulative assessment of the effects of the dumped and subsidized goods from Brazil, Malaysia and Kazakhstan.

## INJURY ANALYSIS

### Overview of the Domestic Market for Silicon Metal

61. This is the Tribunal's second injury inquiry involving silicon metal. The first, *Silicon Metal I*, involved dumped and subsidized silicon metal from China. In that case, the Tribunal found that the domestic industry had not suffered material injury from Chinese silicon metal, but that it was threatened with material injury.

62. In this inquiry, the Tribunal gathered an extensive amount of evidence about the nature of Canada's silicon metal market and the manner in which it has evolved since *Silicon Metal I*. This evidence provides a backdrop for the Tribunal's analyses of injury and threat thereof, particularly in regards to causation (i.e., the extent to which the domestic industry was injured or threatened with injury by the subject goods as opposed to other unrelated factors and market realities).

63. Silicon metal is a commodity product.<sup>40</sup> Akin to other commodities, prices for silicon metal in Canada are, in large part, influenced by global market trends. Between 2015 and mid-2016 global silicon metal prices dropped significantly due to a supply and demand imbalance, exchange rate movements and the falling prices of certain raw materials.<sup>41</sup> According to CRU, global supply for silicon metal exceeded demand in 2015 and 2016, driven primarily by slow economic growth and destocking of inventories.<sup>42</sup> This contributed to a massive decline in silicon metal prices between early 2015 and mid-2016 across North America, Europe and Asia.<sup>43</sup> Exchange rate movements and falling prices of carbon-based raw materials also contributed to the drop in prices.<sup>44</sup> These trends were confirmed by a number of witnesses at the hearing.<sup>45</sup> In addition, Mississippi Silicon opened a new production facility in the United States in 2015, which added significant capacity to the U.S. market and may have pushed down prices in the U.S. market even more.<sup>46</sup>

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40. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 252; Exhibit NQ-2017-001-A-07, Vol. 11 at para. 7; Exhibit NQ-2017-001-D-03, Vol. 13A at para. 25.

41. Exhibit NQ-2017-001-D-04, Vol. 14A, Tab 3 at 10.

42. Exhibit NQ-2017-001-D-04, Vol. 14A, Attachment 3 at 3, 8-9, 12.

43. Exhibit NQ-2017-001-D-04, Vol. 14A, Attachment 3 at 10, 12, 83.

44. Exhibit NQ-2017-001-D-04, Vol. 14A, Attachment 3 at 10, 12.

45. *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 81-82; *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 251-252, 304-305.

46. Exhibit NQ-2017-001-D-07, Vol. 13B, Tab 10; Exhibit Exhibit NQ-2017-001-D-02, Vol. 14 at para. 122.

64. Prices for silicon metal in Canada are also reflective of global and American pricing indices.<sup>47</sup> Canada does not have an index of its own given the relative size of its market, and while Canadian prices are not necessarily identical to those reflected in global and American indices, they tend to move in tandem with them.<sup>48</sup>

65. Nevertheless, while silicon metal may be priced in ways similar to other commodities, a vast majority of silicon metal produced in Canada is neither sold as a typical commodity, nor sold in ways that the Tribunal has seen in other cases involving commodity goods. In particular, silicon metal is not sold on the basis of the lowest price.<sup>49</sup> While price is certainly an important factor in purchasing decisions, other non-price-based considerations, including reliability and security of supply, are far more important than in respect of other commodity goods.<sup>50</sup> In Canada, silicon metal is typically sold directly to end users.<sup>51</sup> Trading houses, distributors and the like are not involved in the vast majority of transactions. Indeed, the vast majority of silicon metal is purchased on the merchant market by two companies: RTA and Alcoa.

66. Generally speaking, purchases by RTA and Alcoa are not made on a spot basis; rather, the majority of purchases are set out by way of contracts with a locked-in price.<sup>52</sup> In some cases, these contracts allow for limited adjustments to the purchase price, for example, with reference to various price indices in the United States and are subject to floor and ceiling prices.<sup>53</sup> These contracts are fixed in duration, usually covering either a 6- or 12-month period.<sup>54</sup> Negotiations for these contracts typically take place three months prior to the period they cover (for example, negotiations for purchases during the first half of 2017 would have generally taken place around October or November 2016).<sup>55</sup> In that sense, silicon metal is procured almost as though it is a capital good, in contrast to a typical commodity; it is bought and sold on the basis of clearly specified quantities, technical specifications, delivery schedules and payment terms, as opposed to price alone.

67. RTA and Alcoa have clearly defined procurement strategies in which they supplement their purchases of Canadian silicon metal with imports. Both deliberately avoid relying too heavily on a single source of supply, or putting all of their “eggs in one basket”.<sup>56</sup> Mr. Pickett, from RTA, testified that security and reliability of supply is RTA’s primary consideration in its efforts to maintain stable volumes of inventory and minimize the risk of supply disruptions or quality issues that could affect its foundry alloy production.<sup>57</sup> Mr. Borges testified that Alcoa engages in sourcing discussions with its metal sourcing council, based in part on pricing, but also factoring in diversification of supply and consistency of supply.<sup>58</sup>

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47. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 304-305. These indices are published regularly in leading market publications, such as Platts, CRU (Ryan’s Notes), Metal Bulletin and Metal Pages.

48. *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 264-267; Alcoa’s Aid to Argument (protected) at Tab 6, Vol. 18.

49. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 247, 286.

50. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 192-193.

51. Exhibit NQ-2017-001-07C (protected), Table 42, Vol. 2.1A.

52. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 269.

53. *Transcript of In Camera Hearing*, Vol. 1, 2 October 2017, at 65.

54. *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 134; Vol. 3, 4 October 2017, at 249-250.

55. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 269.

56. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 193; *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 242-243.

57. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 192-193.

58. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 242.

68. RTA and Alcoa made the security and reliability of supply of silicon metal the defining feature in their purchasing strategies in the wake of *Silicon Metal I*. After the Tribunal's finding in *Silicon Metal I*, they lost the Chinese sources of supply upon which they had previously relied.<sup>59</sup> RTA, for example, had developed its Chinese supply chain over a period of about 15 years, and thus needed to build new supply relationships "from scratch"; along the way, it encountered a number of challenges, including with respect to product quality, logistics and delays. RTA thus adopted a "bifurcated approach" to silicon metal sourcing, in which it divides the sourcing of silicon metal between Canadian-made silicon metal and imports, employing different pricing strategies in negotiations for each of these sources of supply.

69. For a time after *Silicon Metal I*, RTA and Alcoa were able to obtain imports from the United States, France, Spain and South Africa. However, these sources were no longer options following another major development in 2015: the merger of FerroAtlantica and Globe Metallurgical into Ferroglobe.<sup>60</sup> Witnesses testified that Ferroglobe's corporate practice precludes competition from foreign subsidiaries in markets where it owns a domestic producer. Consequently, suppliers falling under Ferroglobe's umbrella in the United States, South Africa, Spain and France stopped exporting to Canada, thus affecting the availability of secure and reliable supplies of silicon metal. At the same time, other reliable (non-Ferroglobe controlled) sources of supply became more limited, including those in Brazil (given a substantial drop in Brazilian production in 2014 and 2015), Iceland, and Russia.<sup>61</sup>

70. The domestic industry's role in the Canadian market has also changed significantly in the wake of *Silicon Metal I*. Québec Silicon has shifted its focus from export markets to the Canadian market, and has successfully held approximately half of the Canadian market even in spite of its lost sales allegations.<sup>62</sup> No doubt, some of these gains were made possible by the fact that Chinese silicon metal was no longer present in the domestic market in the quantities and at the prices it was at the time of *Silicon Metal I*. More importantly for this inquiry, these gains were made possible by RTA's and Alcoa's need for reliable and secure supply.

71. It is within this context that the Tribunal will conduct its injury analysis by, first, examining the volume of the three groups of subject goods; second, analyzing their price effects; and third, determining what impact the three groups of subject goods, in and of themselves, had on the financial state of the domestic industry in 2016 and Q1 2017 (i.e., the period for which the domestic industry has claimed that it suffered material injury).

## IMPORT VOLUMES

72. In its assessment of whether the subject goods have caused injury, paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to consider the volume of the dumped and subsidized goods and, in particular, 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.

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59. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 194-196.

60. *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 69; Vol. 3, 4 October 2017, at 252-253.

61. Exhibit NQ-2017-001-D-04 (protected), Vol. 14A at para. 45; *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 196-198; *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 253, 263-265; Exhibit NQ-2017-001-I-02/J-02 (protected), Tab 1 at 15, 54; *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 268-269, 273-274.

62. Exhibit NQ-2017-001-07C (protected), Table 37, Schedules 7, 8, Vol. 2.1A.

73. Québec Silicon submitted that imports of subject goods increased significantly from 2014 to 2016, in both absolute and relative terms. It also submitted that imports of subject goods represented an increasing share of total imports over the POI.

#### **Import Volume of Subsidized Goods from Norway**

74. Imports of subject goods from Norway were not consistent throughout the POI. In absolute terms, imports of subject goods from Norway dropped to zero in 2015, and increased in 2016 to a level slightly above 2014 volumes.<sup>63</sup>

75. The ratio of Norwegian subject imports relative to domestic production and to domestic sales of domestic production both decreased in 2015 and increased slightly in 2016.<sup>64</sup>

76. Therefore, the Tribunal finds that imports volumes from Norway did not significantly increase in either absolute or relative terms over the POI.

#### **Import Volume of Dumped Goods from Laos and Thailand**

77. Imports of the subject goods from Laos and Thailand decreased from 2014 to 2015, and increased significantly in 2016 to reach their highest point of the POI. However, the volume of imports decreased in Q1 2017 as compared to Q1 2016.<sup>65</sup>

78. Consistent with the import volume trends, the ratio of imports of the subject goods from Laos and Thailand relative to domestic production and the ratio of imports of the subject goods relative to domestic sales of domestic production decreased in 2015 and increased significantly in 2016. These ratios were lower in Q1 2017 as compared to Q1 2016.<sup>66</sup>

79. In light of these trends, the Tribunal finds that import volumes from Laos and Thailand increased significantly, but only in 2016.

#### **Import Volume of Dumped and Subsidized Goods from Brazil, Kazakhstan, and Malaysia**

80. Imports of the subject goods from Brazil,<sup>67</sup> Kazakhstan, and Malaysia increased significantly from 2014 to 2015. While imports decreased in 2016, they remained well above the 2014 volume. The volume of imports increased slightly in Q1 2017 as compared to Q1 2016.<sup>68</sup>

81. The ratio of imports from these subject countries relative to domestic production and domestic sales of domestic production increased significantly in 2015, but then decreased in 2016, albeit remaining above the 2014 level. The ratio of imports of the subject goods relative to domestic sales of domestic production was higher in Q1 2017 as compared to Q1 2016, while the ratio of imports of the subject goods relative to domestic production did not change.<sup>69</sup>

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63. Exhibit NQ-2017-001-06C, Table 27, Vol. 1.1A; Exhibit NQ-2017-001-07C (protected), Table 25, Vol. 2.1A; *Transcript of Public Hearing*, Vol. 4, 5 October 2017, at 504-505.

64. Exhibit NQ-2017-001-07C (protected), Table 31, Vol. 2.1A.

65. Exhibit NQ-2017-001-06C, Table 27, Vol. 1.1A; Exhibit NQ-2017-001-07C (protected), Table 25, Vol. 2.1A.

66. Exhibit NQ-2017-001-07C (protected), Table 31, Vol. 2.1A.

67. As the Tribunal has decided to conduct a cross-cumulated analysis with respect to the subject goods from Brazil, the Tribunal's analysis includes the small volume of subsidized subject goods exported by Rima.

68. Exhibit NQ-2017-001-06C, Table 27, Vol. 1.1A; Exhibit NQ-2017-001-07C (protected), Table 25, Vol. 2.1A.

69. Exhibit NQ-2017-001-07C (protected), Table 31, Vol. 2.1A.

82. On balance, the import volumes from these countries increased significantly over the POI.

## PRICE EFFECTS

83. 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 price increases for those like goods that would otherwise likely have occurred.

84. Québec Silicon alleged that the subject goods caused it injury by significantly undercutting and depressing the price of like goods. It submitted that, in 2016, its selling price dropped at a much quicker rate than the price indices and that, at the end of 2016 and in Q1 2017, its prices increased at a slower rate. It did not, however, allege that it experienced price suppression.

85. The parties opposed disputed that the subject goods had any significant price effects and pointed to the global downturn in silicon metal pricing as the reason for any price depression that the domestic industry may have experienced.

86. Parties opposed also cautioned the Tribunal about relying solely on annual data when assessing price effects given concerns about product mix, the time lag between negotiations and purchases, and the general instability that has existed in the Canadian market since 2013. They recommended a number of options for the Tribunal's analysis of price effects.

87. The Tribunal agrees that an analysis of annual unit values is not sufficient on its own given the nature of Canada's market for silicon metal as described above. It will, therefore, not only consider annual unit values, but also sales to common accounts, benchmark products and specific negotiations between Québec Silicon and its two major purchasers, RTA and Alcoa.<sup>70</sup> To that end, it will begin by reviewing the evidence regarding Québec Silicon's unit prices for like goods. It will then turn to the evidence regarding the three groups of subject countries to determine whether there was price undercutting and/or price depression. The Tribunal will not analyze price suppression given that the domestic industry made no claims in that regard.

## Prices of Domestic Like Goods

88. Québec Silicon's annual unit values fluctuated over the POI, increasing in 2015 but then dropping significantly by 19 percent in 2016.<sup>71</sup> Unit values also declined in Q1 2017 as compared to Q1 2016.<sup>72</sup>

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70. The Tribunal notes that it does not necessarily have data specific to common accounts, benchmark products, or negotiations for each of the three groupings of countries. For example, there were no reported sales of the subject goods from Laos and Thailand to common accounts in the investigation report (which is not surprising in light of the fact that this data is drawn from importers who responded to the Tribunal's questionnaire, whereas the two primary purchasers of silicon metal in Canada often purchase silicon metal directly from the exporter). The Tribunal's analysis is therefore based on the available evidence on the record, which, despite a few minor gaps, provided a sufficient basis for the Tribunal's conclusions.

71. Exhibit NQ-2017-001-07C (protected), Tables 50, 51, Vol. 2.1A; Exhibit NQ-2017-001-06C, Table 51, Vol. 1.1A.

72. Exhibit NQ-2017-001-07C (protected), Tables 50, 51, Vol. 2.1A; Exhibit NQ-2017-001-06C, Table 51, Vol. 1.1A.

Québec Silicon's average quarterly selling values, however, remained within the range of, or above, U.S. index pricing throughout the POI.<sup>73</sup>

89. The unit values of domestic sales of benchmark products from domestic production peaked in Q3 2015, but then gradually declined in most quarters during the POI. However, in two of the four benchmark product analyses, domestic unit values started to show some recovery in Q4 2016 and/or Q1 2017.<sup>74</sup>

90. Very similar patterns were evident in the common accounts data, where domestic unit values peaked in Q3 2015 and thereafter gradually declined on a quarterly basis, showing some signs of recovery starting in Q4 2016 and/or Q1 2017.<sup>75</sup>

91. In regard to Québec Silicon's specific negotiations with RTA and Alcoa, the evidence demonstrates that, in 2016, Québec Silicon dropped its price from the initial offer to the final transaction price in at least five instances where it ultimately won the contract.<sup>76</sup>

### **Price Effects of Subsidized Goods from Norway**

92. On an annual basis, the subject goods from Norway undercut the price of the domestic like goods in every period of the POI in which they were present, by a range of 1 to 26 percent.<sup>77</sup> However, there were no sales of benchmark products or sales to common accounts, as the majority of Norwegian subject goods were Silicon 98, a silicon metal with a higher iron content, a lower cost of production and more limited uses in Canada.<sup>78</sup> This, in combination with the very low volume of imports over the POI, leads the Tribunal to conclude that the price undercutting by the subject goods from Norway was not significant.

93. The Tribunal also finds that these imports could not have significantly depressed the price of like goods, given their very low volumes and the particular nature of the silicon metal imported from Norway (i.e., Silicon 98).

94. As such, the Tribunal finds that subsidized goods imported from Norway did not have any significant effect on the prices of like goods in Canada, whether through undercutting or depression during the POI.

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73. Exhibit NQ-2017-001-A-14 (protected) Vol. 12B at paras. 215-216; Exhibit NQ-2017-001-A/B-08 (protected), Vol. 12A, Tables 1, 2; Exhibit NQ-2017-001-D-04 (protected), Attachments 7, 12; RTA's Aid to Argument (protected) Vol. 18, Tab 2.

74. Exhibit NQ-2017-001-07C (protected), Tables 58, 59, 60, 61, Vol. 2.1A.

75. Exhibit NQ-2017-001-07C (protected), Tables 72, 73, Vol. 2.1A.

76. Exhibit NQ-2017-001-12.01 (protected), Vol. 4, Schedule 19; NQ-2017-001-A-08 (protected) Vol. 12A at paras. 31, 33, 34; Exhibit NQ-2017-001-A-10 (protected), Vol. 12A at paras. 21-25.

77. Exhibit NQ-2017-001-07C (protected), Table 49, Vol. 2.1A.

78. Exhibit NQ-2017-001-07C (protected), Table 25 and Schedule 15, Vol. 2.1A; *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 210; *Transcript of Public Hearing*, Vol. 4, 5 October 2017, at 505; Exhibit NQ-2017-001-25.01 (protected) Vol. 2.3 at 6.

### Price Effects of Dumped Goods from Laos and Thailand

95. The unit values of the subject goods from Laos and Thailand undercut the unit values of the domestic like goods in every year of the POI except for 2014.<sup>79</sup> Unit values of subject goods from Laos and Thailand also undercut the unit values of domestic like goods in the interim period of Q1 2017. Undercutting was in the range of 3 to 8 percent.

96. Price undercutting by the subject goods from Laos and Thailand is also evident when examining the benchmark products.<sup>80</sup> For instance, for benchmark product 2,<sup>81</sup> the subject goods undercut the price of the domestic like goods in every quarter of the POI for which benchmark data was collected.<sup>82</sup> The price differential between the subject goods from Laos and Thailand and the like goods ranged from 1 to 11 percent.<sup>83</sup> Therefore, the Tribunal finds that the price of imports from Laos and Thailand significantly undercut the price of like goods over the course of the POI, and especially during Q3 2015.

97. In regard to price depression, some of Québec Silicon's negotiation-specific claims involved allegations relating to Laos and Thailand.<sup>84</sup> In particular, Québec Silicon alleged that in December 2016 it was forced to reduce its price in negotiations with RTA to compete with imports "believed" to be primarily from Thailand (and potentially from Norway and Brazil). While these allegations, if proven, could suggest a correlation between the subject goods from Laos and Thailand and the falling prices of like goods, especially alongside the evidence regarding price undercutting, the Tribunal notes that correlation alone cannot be conflated with causation. As will be discussed more fully below, the Tribunal finds that any instances of price depression were not caused by the subject goods from Laos and Thailand in and of themselves. Instead, the decline in Québec Silicon's prices is attributed to factors unrelated to the subject goods, including global and North American pricing trends over the course of the POI.

### Price Effects of Dumped and Subsidized Goods from Brazil, Kazakhstan and Malaysia

98. On an annual basis, the unit values of the subject goods from Brazil, Kazakhstan, and Malaysia undercut the unit values of the domestic like goods in every period of the POI except for 2014.<sup>85</sup> Undercutting was in the range of 3 to 13 percent.

99. These subject goods also undercut domestic prices at the level of sales to common accounts in Q2-Q4 2016 and in Q1 2017.<sup>86</sup> Price undercutting by the subject goods from Brazil, Kazakhstan and Malaysia is also evident when examining the benchmark products.<sup>87</sup> For benchmark product 2, the price of the subject goods undercut the price of domestic goods in every quarter of the POI for which data was

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79. Exhibit NQ-2017-001-07C (protected), Table 49, Vol. 2.1A.

80. Exhibit NQ-2017-001-07C (protected), Tables 71, Vol. 2.1A.

81. Benchmark product 2 refers to silicon metal with an iron content of between 0.25 percent and 0.34 percent, and a maximum calcium content of 0.04 percent. This benchmark product accounted for the greatest percentage of the benchmark products in 2016, which was also the year of the significant increase in the import volumes from Laos and Thailand.

82. Exhibit NQ-2017-001-07C (protected), Tables, 59, 64, Vol. 2.1A.

83. Exhibit NQ-2017-001-07C (protected), Table 68, Vol. 2.1A.

84. Exhibit NQ-2017-001-A/B-01, Vol. 11 at paras. 156, 183-186; Exhibit NQ-2017-001-A/B-02 (protected), Vol. 12 at paras. 156, 183-186; Exhibit NQ-2017-001-06C, Table 1, Vol. 1.1A.

85. Exhibit NQ-2017-001-07C (protected), Table 49, Vol. 2.1A.

86. Exhibit NQ-2017-001-07C (protected), Tables 72, 73, Vol. 2.1A.

87. Exhibit NQ-2017-001-07C (protected), Table 71, Vol. 2.1A.



collected, with the exception of Q1 2016.<sup>88</sup> The price differential between the subject goods from Brazil, Kazakhstan, and Malaysia and the like goods ranged from 1 percent to 26 percent.<sup>89</sup> The greatest degree of undercutting occurred in 2016 (i.e., the period in which Québec Silicon claims to have experienced injury).

100. Therefore, the Tribunal finds that the prices of imports from these countries significantly undercut the prices of the like goods.

101. With respect to price depression, Québec Silicon alleged that in December 2016 it was forced to reduce its price in negotiations with RTA to compete with imports that it “believed” were potentially from Brazil.<sup>90</sup> However, as will be discussed below, the Tribunal finds that these negotiation-specific allegations of price depression do not amount to significant price depression caused by the subject goods from Brazil, Kazakhstan and Malaysia, but rather were attributable to other factors, such as global pricing trends.

## RESULTING IMPACT ON THE DOMESTIC INDUSTRY

102. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting 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.<sup>91</sup> Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume and the price effects of the dumped and subsidized goods and the resultant impact on the domestic industry.<sup>92</sup>

103. In determining whether the dumped and subsidized goods have caused material injury to the domestic industry, the Tribunal must also consider whether any factors other than the dumped and/or subsidized goods have caused injury, with the injury caused by such other factors not to be attributed to the subject goods.<sup>93</sup> In other words, the Tribunal must consider the impact of the subject goods vis-à-vis the impact of other unrelated factors when determining the cause of the domestic industry’s injury or threat thereof.

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88. Exhibit NQ-2017-001-07C (protected), Table 64, Vol. 2.1A.

89. Exhibit NQ-2017-001-07C (protected), Table 68, Vol. 2.1A.

90. Exhibit NQ-2017-001-A/B-01, Vol. 11 at para. 185; Exhibit NQ-2017-001-A/B-02 (protected), Vol. 12 at para. 185.

91. 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, (iii) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iv) 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 program.

92. With respect to the magnitude of the margin of dumping, or the amount of subsidy, in the Tribunal’s view, the magnitude of these are not necessarily measures of the level of any injurious effects that may have occurred during the POI and do not add anything to the Tribunal’s analysis of the relative pricing. Any negative effects on cash flow, actual or potential decline in return on investment or the ability to raise capital were not discussed in detail in the submissions or at the hearing. The Tribunal finds that the price depression experienced by Québec Silicon would most likely have had a negative effect on all of these factors. However, as discussed in detail in these reasons, this price depression was not caused by the subject goods from any of the three groups of subject countries examined by the Tribunal.

93. Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury. 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.

104. Québec Silicon submitted that the subject goods caused it material injury, primarily in the form of lost sales and lost revenue. It also claimed that it was unable to sell growing inventories because of the greater volume of subject goods in the market.<sup>94</sup> Québec Silicon alleged that the adverse impact from the subject goods was most significant in 2016 and Q1 2017.

105. Parties opposed pointed to factors other than the subject goods as the reason for any injury the domestic producers may have experienced. These factors included the significant drop in silicon metal prices in 2015 and 2016, Québec Silicon's high input costs, certain Ferroglobe practices and behaviours, exchange rate fluctuations, and furnace shutdowns.

106. The Tribunal assessed Québec Silicon's performance over the POI by examining its production, capacity utilization, employment, wages, investments, sales, market share, growth, inventories and profitability to determine whether or not it was materially injured. At the same time, the Tribunal assessed whether any injury experienced by Québec Silicon was caused by the subject goods from each group of countries or whether other unrelated factors were the cause of any such injury. For the sake of judicial economy, the Tribunal will discuss the manner in which factors other than the subject goods from Laos and Thailand or from Brazil, Kazakhstan and Malaysia impacted the domestic industry, as they apply equally to both groups of countries, and their impacts on the domestic industry were the same over the POI.

### **Resulting Impact of Subsidized Goods from Norway**

107. As noted above, the volume of imports from Norway was low and did not increase significantly over the POI. Also, Norway's market share remained relatively low but steady throughout the POI, with the exception of 2015 when there were no imports.<sup>95</sup> Further, recalling that the Tribunal found that the subject goods from Norway did not significantly undercut or depress the price of the domestic like goods, the Tribunal concludes that the subject goods from Norway could not have had a material impact on the state of the domestic industry.

### **Resulting Impact of the Dumped Goods from Laos and Thailand and of the Dumped and Subsidized Goods from Brazil, Kazakhstan and Malaysia**

#### Production

108. Québec Silicon's total production levels remained steady during the POI. While total production levels were essentially the same in 2014 and 2015, they grew by 5 percent in 2016.<sup>96</sup> Production was up slightly in Q1 2017 as compared to Q1 2016. Production for domestic sales was also up.<sup>97</sup> Therefore, the Tribunal finds that subject goods from these two groups of countries did not adversely impact Québec Silicon's output during the POI.

#### Capacity Utilization, Employment and Productivity

109. Québec Silicon's capacity utilization rate remained high and stable throughout the POI.<sup>98</sup> Employment, hours worked, and wages increased in 2015 as compared to 2014, while productivity

94. Exhibit NQ-2017-001-07C (protected), Table 78, Vol. 2.1A; *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 14-15.

95. Exhibit NQ-2017-001-07C (protected), Table 36, Vol. 2.1A.

96. Exhibit NQ-2017-001-07C (protected), Tables 78, 79, Vol. 2.1A.

97. Exhibit NQ-2017-001-07C (protected), Tables 78, 79, Vol. 2.1A.

98. Exhibit NQ-2017-001-07C (protected), Table 78, Vol. 2.1A.

decreased slightly. These same indicators decreased only slightly in 2016 as compared to 2015, except for productivity, which increased beyond 2014 levels.<sup>99</sup> Thus, no adverse impact can be attributed to the subject goods in these areas.

### Investments

110. Québec Silicon undertook significant investments in 2015 to upgrade one of its furnaces.<sup>100</sup> Investment levels then decreased substantially in 2016.<sup>101</sup> However, the Tribunal heard that Québec Silicon plans to upgrade another furnace in 2017.<sup>102</sup> In that regard, the Tribunal attributes the decrease in investment in 2016 to the timing of ongoing maintenance and improvement projects and not to the subject goods.

### Sales, Market Share and Growth

111. Québec Silicon's performance in terms of sales and market share were mixed over the POI.

112. Domestic sales volumes from domestic production increased by 29 percent in 2015, a year in which the apparent market grew by 9 percent.<sup>103</sup> Québec Silicon's market share increased by 8 percentage points in 2015. Thus, Québec Silicon performed very well in 2015.

113. In 2016, the situation changed: domestic sales volumes from domestic production grew by 1 percent, whereas the total apparent market increased by 17 percent.<sup>104</sup> As a result, Québec Silicon's market share dropped by 7 percentage points in 2016, albeit to a level still slightly above its market share in 2014.<sup>105</sup> However, Québec Silicon's specific allegations of lost sales to subject goods correspond to only a very small fraction of the total apparent market in 2016.<sup>106</sup>

114. Domestic sales from domestic production were down in Q1 2017 compared to Q1 2016.<sup>107</sup> The apparent market was also lower in Q1 2017 as compared to Q1 2016.<sup>108</sup> However, Québec Silicon's market share improved very slightly during this time.<sup>109</sup>

115. At the same time, the market share of Brazil, Kazakhstan and Malaysia increased 14 percentage points in 2015 and then dropped by 9 percentage points in 2016.<sup>110</sup> In other words, their cumulative market share increased when Québec Silicon was performing well in 2015, but dropped even as the total apparent market grew in 2016. Thus, there is no correlation between Québec Silicon's reduced market share in 2016 and the imports from this group of subject countries.

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99. Exhibit NQ-2017-001-07C (protected), Table 78, Vol. 2.1A.

100. *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 109.

101. Exhibit NQ-2017-001-07C (protected), Table 78, Vol. 2.1A.

102. Exhibit NQ-2017-001-07C (protected), Table 78, Vol. 2.1A; *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 109-110.

103. Exhibit NQ-2017-001-07C (protected), Tables 33, 35, Vol. 2.1A; Exhibit NQ-2017-001-06C, Table 35, Vol. 1.1A.

104. Exhibit NQ-2017-001-07C (protected), Tables 33, 35, Vol. 2.1A; Exhibit NQ-2017-001-06C, Table 35, Vol. 1.1A.

105. Exhibit NQ-2017-001-07C (protected), Table 36, Vol. 2.1A.

106. Exhibit NQ-2017-001-07C (protected), Table 32, Vol. 2.1A; Exhibit NQ-2017-001-A/B-10 at paras. 32-34, 36; Exhibit NQ-2017-001-12.01 (protected), Vol. 4 at 27-29.

107. Exhibit NQ-2017-001-07C (protected), Tables 33, 35, 78, Vol. 2.1A; Exhibit NQ-2017-001-06C, Table 35, Vol. 1.1A.

108. Exhibit NQ-2017-001-07C (protected), Table 33, Vol. 2.1A.

109. Exhibit NQ-2017-001-07C (protected), Table 36, Vol. 2.1A.

110. Exhibit NQ-2017-001-07C (protected), Table 36, Vol. 2.1A.

116. The market share of Laos and Thailand increased by 18 percentage points in 2016.<sup>111</sup> This correlates with the drop in Québec Silicon's market share in 2016 and with the significant increase in the import volumes from Laos and Thailand in 2016.

117. The market share of imports from the United States and other non-subject countries decreased by 19 percentage points from 2014 to 2016, whereas the market share of these two groups of subject countries gained 18 percentage points over that same period (while Norway's market share remained the same).<sup>112</sup> Therefore, these subject goods filled a void created by the departure of non-subject goods on an almost one-to-one basis.

118. Putting this evidence together, the Tribunal finds that much of the in-roads made by the imports from these two groups of subject countries in the Canadian market were at the expense of silicon metal from non-subject countries rather than the domestic industry.

119. Parties opposed argued that the reasons the domestic industry did not expand its sales volumes at the same rate as imports in 2016 had nothing to do with the subject goods themselves. Instead, they suggested that Québec Silicon could not make gains in the market because of its corporate structure and business practices.

120. The Tribunal agrees. Evidence demonstrates that Québec Silicon's inability to fully supply the domestic market was the direct result of its commitments to sell 49 percent of its production to Dow Corning for export to the United States.<sup>113</sup> In addition, there is at least one significant (confidential) example of a lost sale from 2016 that can be linked to Québec Silicon's own behaviour and therefore cannot be attributed to the subject goods.<sup>114</sup> This example also partially explains the fluctuation in Québec Silicon's sales volume to individual customers over the POI as well as its increased inventories at the end of 2016, as will be discussed below.

121. Parties opposed also argued that Québec Silicon was unable to take advantage of the expanding market in 2016, in part, because of the imperative that RTA and Alcoa placed on a diversified supply base, particularly in the wake of *Silicon Metal I* and the Ferrolobe merger.

122. Once again, the Tribunal finds that the evidence supports their claims. During the hearing, witnesses for RTA and Alcoa repeatedly stressed the importance of secure and diverse sources of supply and highlighted the risks of having only one supplier.<sup>115</sup> For example, Mr. Borges of Alcoa testified that "[b]eing sole-sourced means that eventually you could be without a source in the event of supply disruption. . . . [W]e have commitment [*sic*] to customers, and we need to make sure that we have constant availability of product to be able to produce our foundry alloys to our customers."<sup>116</sup> In addition, Mr. Pickett of RTA indicated that "it is not a prudent or responsible business strategy to be commercially bound to a sole supplier with limited capacity for the procurement of a critical production input. Any supply disruption due to unexpected lockouts, shutdowns or decision . . . to allocate volumes elsewhere would be

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111. Exhibit NQ-2017-001-07C (protected), Table 36, Vol. 2.1A.

112. Exhibit NQ-2017-001-07C (protected), Table 36, Vol. 2.1A.

113. Exhibit NQ-2017-001-A/B-01, Vol. 11 at para. 73; *Silicon Metal* (21 April 2017), PI-2016-004 (CITT) at para. 36; Exhibit NQ-2017-001-07C (protected), Tables 33, 78, Vol. 2.1A.

114. *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 300-301; Exhibit NQ-2017-001-A/B-02 (protected), Vol. 12 at para. 156.

115. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 192-194, 242-243.

116. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 243.

catastrophic . . .”<sup>117</sup> In other words, they were clear that purchasers are unwilling to sole-source because of the risks associated with doing so.

123. The Tribunal, therefore, accepts that RTA and Alcoa had to look beyond Québec Silicon alone and towards the subject countries for supply. As Ferroglobe effectively precludes suppliers in its group of companies from exporting silicon metal to Canada,<sup>118</sup> a number of non-subject countries, namely, the United States, France, South Africa and Spain, were no longer reliable sources of supply for Canadian purchasers.<sup>119</sup> Furthermore, the Tribunal recognizes that it was difficult for RTA and Alcoa to find viable suppliers of silicon metal due to reliability concerns and limitations in the available capacity worldwide. Indeed, Mr. Pickett testified that trade restrictions against China, the large amount of captive production for the chemical industry, a preference to sell silicon metal for the higher-priced chemical and solar applications, and the number of Ferroglobe-owned production facilities worldwide were some of the key difficulties faced by RTA in diversifying its supply.<sup>120</sup> In addition, Mr. Borges indicated that silicon metal from Russia could only be used to satisfy a very small percentage of Alcoa’s demand and that Iceland was also a limited option.<sup>121</sup>

124. In order to avoid the risk of supply disruptions, Mr. Borges of Alcoa testified that they were willing to lock into fixed-price contracts for up to 6 or 12 months with Québec Silicon, even though these contracts have, on occasion, been to their detriment.<sup>122</sup> RTA also purchases silicon metal under term contracts for this reason.<sup>123</sup>

125. On the basis of their evidence and testimony, the Tribunal finds that RTA and Alcoa rationally looked to the subject countries, at least in part, out of necessity to purchase sufficient quantities of silicon metal for their production needs as Québec Silicon’s capacity did not allow it to satisfy demand in the Canadian market.<sup>124</sup> Moreover, in light of Ferroglobe’s practice of limiting imports from its subsidiaries to ensure that they do not compete amongst one another, a certain amount of imports were necessary to fulfill demand. Any resulting impact on the domestic industry’s sales performance cannot, therefore, be attributed to the subject goods.

### Inventories

126. Québec Silicon held more inventories at the end of 2016 than it did at the end of 2014 or 2015. Importers also held higher inventories at the end of 2016, although not to the same extent as Québec Silicon.<sup>125</sup>

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117. Exhibit NQ-2017-001-D-03, Vol. 13A at para. 36.

118. *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 69.

119. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 252-253; Exhibit NQ-2017-001-06C, Table 1, Vol. 1.1A; *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 253-254.

120. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 196-198.

121. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 253, 264-265.

122. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 250, 275; *Transcript of In Camera Hearing*, Vol. 3, 4 October 2017, at 311-312.

123. Exhibit NQ-2017-001-21.09 (protected), Vol. 6.2 at 74; *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 134; *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 281.

124. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 194-198; *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 252-255; Exhibit NQ-2017-001-07C (protected), Tables 33, 78, Vol. 2.1A.

125. Exhibit NQ-2017-001-07C (protected), Table 84, Vol. 2.1A.

127. Parties opposed argued that the buildup in Québec Silicon's inventories was caused by other unrelated factors, the nature of which are confidential.<sup>126</sup>

128. The Tribunal finds their arguments persuasive. Indeed, there is a confidential example of a lost sale from 2016 that contributed to the buildup of Québec Silicon's inventories in 2016.<sup>127</sup> The evidence shows that this lost sale is attributable to Québec Silicon's own behaviour, and not to the subject goods. On the basis of the foregoing, the Tribunal cannot conclude that the subject goods caused injury to Québec Silicon in terms of its growing inventories of like goods.

#### Profitability

129. As noted above, the Tribunal qualified Mr. McEvoy as an expert witness in forensic accounting to inform its analysis of the methodology used and assumptions relied on by Québec Silicon in its financial schedules, reconciliation documents and other supporting documentation.

130. Mr. McEvoy testified that, from an accounting perspective, he had no reason to believe that the methodology used by Québec Silicon in responding to the Producer's Questionnaire was not appropriate, that the assumptions made by Québec Silicon were not reasonable, or that the information presented was not accurate.<sup>128</sup> Mr. McEvoy's report noted two areas that warranted additional clarification. The first was the impact of "fines" on COGS and COGM. The second was the allocation of QSIP's COGS and general, sales and administrative expenses between domestic and export sales as presented by Québec Silicon, an issue that was fully addressed by Ms. Spensieri's testimony.<sup>129</sup> While some questions remained with respect to the first issue,<sup>130</sup> the Tribunal does not believe these questions have a material impact on the financial data in the investigation report.

131. As such, the Tribunal assessed Québec Silicon's financial performance using the data in the investigation report. The extent of any negative financial performance, along with concerns relating to Québec Silicon's financial performance that were outside the scope of Mr. McEvoy's review, such as the cost of raw materials, will be addressed below.

132. In 2015, Québec Silicon fared well and saw improvements in its net sales value, gross margin and net income relative to 2014. In 2016, however, Québec Silicon's financial performance deteriorated, showing substantial declines in net sales value, gross margin and net income. This downward financial trend is also apparent when the data from Q1 2017 is compared to data from the same period in 2016.<sup>131</sup>

133. Nevertheless, the Tribunal finds that these declines cannot be attributed to the subject goods.

134. As noted above in the section on price effects, Québec Silicon's selling prices decreased in 2016. It attributed the falling prices (and corresponding drops in profitability) to the subject goods. The evidence

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126. *Transcript of In Camera Hearing*, Vol. 1, 2 October 2017, at 107-109.

127. *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 300-301; Exhibit NQ-2017-001-A/B-02 (protected), Vol. 12 at para. 156.

128. Exhibit NQ-2017-001-30A (protected), Vol. 2 at para. 16; Exhibit NQ-2017-001-030, Vol. 1; *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 183.

129. *Transcript of In Camera Hearing*, Vol. 1, 2 October 2017, at 12-15; *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 228.

130. *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 224, 237-238.

131. Exhibit NQ-2017-001-07C (protected), Table 75, Vol. 2.1A.

indicates otherwise. The Tribunal finds that the overriding cause for the falling prices was the erosion of global and North American silicon prices and deteriorating market fundamentals in late 2015 and in 2016. In that regard, the Tribunal found the evidence and testimony from RTA and Alcoa to be credible, informative and persuasive, as their witnesses left no doubts as to why and how certain purchasing decisions were made in the Canadian market over the POI.

135. Evidence on the confidential record confirms that RTA's negotiations with Québec Silicon were consistent with its bifurcated negotiation strategy, in which it uses the U.S. Midwest price as a reference for purchases in North America in general and Canada in particular.<sup>132</sup> In other words, evidence demonstrates that RTA's negotiations with Québec Silicon during this period were not influenced by import prices. Indeed, there are numerous examples on the record of RTA accepting Québec Silicon's initial price when the offer was in line with RTA's procurement strategy and North American price indices.<sup>133</sup>

136. With respect to Québec Silicon's negotiations with Alcoa, the evidence on the confidential record establishes that trends in global prices, including offers from non-subject countries, were the main drivers of these negotiations.<sup>134</sup> There is one allegation of price depression that was linked to offers of low-priced subject goods from Brazil, Kazakhstan and Malaysia, and that example involves just one of these subject countries.<sup>135</sup> This is not a sufficient basis for a finding of significant price depression or material injury caused by this group.

137. With respect to Québec Silicon's prices, which dropped at a much quicker rate than the price indices at the end of 2016 and lagged behind the growth of other indices in 2017, the Tribunal finds that this can be explained by the time lag between Québec Silicon's pricing negotiations with its customers and actual purchases being made.<sup>136</sup> When parties lock into a contract they are, in effect, making predictions as to whether the prices will go up or down over the course of the next 6 or 12 months. Unless they have an indexed contract, parties will continue to pay the previously negotiated price until the next round of negotiations occur, at which time the price indices may have changed significantly. The next round of negotiations will reflect the changes that occurred in the interim 6 or 12 month period taking into account predicted changes to prices. This gives the appearance that pricing in Canada is not in line with the index pricing and is lagging behind it when, in fact, there are simply fewer negotiations in Canada and therefore fewer price adjustments. Similarly, any price increases, as reflected in a price index, will not necessarily be reflected in Québec Silicon's pricing until the next round of negotiations. Accordingly, domestic prices may appear to recover more slowly than price indices.

138. On the basis of the foregoing, the Tribunal finds that there is no causal relationship between Québec Silicon's falling prices and the imports from Laos, Thailand, Brazil, Kazakhstan, and Malaysia. Consequently, the Tribunal cannot establish a causal link between these subject countries and Québec Silicon's profitability woes.

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132. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 221, 223-224; *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 263, 271; Exhibit NQ-2017-001-D-04 (protected) Vol. 14A at paras. 66-69.

133. Exhibit NQ-2017-001-D-04A, Vol. 14A.

134. Exhibit NQ-2017-001-C-03, Vol. 13 at para. 47; Exhibit NQ-2017-001-C-04 (protected), Vol. 14 at paras. 28, 41-48; *Transcript of In Camera Hearing*, Vol. 3, 4 October 2017, at 315, 319; Alcoa's Protected Aid to Argument, Vol. 18, Tab 8.

135. *Transcript of In Camera Hearing*, Vol. 3, 4 October 2017, at 315.

136. *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 115-116.

139. Québec Silicon's place within Ferroglobe's corporate operations must also be seen as a major contributor to its poor financial results in 2016 and Q1 2017. Witnesses for Québec Silicon were clear, forthcoming and credible about the fact that Québec Silicon is a small player within a much bigger enterprise.<sup>137</sup> As such, Québec Silicon has been (and remains) severely limited in its ability to make decisions and take actions for its own benefit exclusively, as opposed to the benefit of the broader Ferroglobe group of companies.

140. Most notably in that regard, the Tribunal heard a great deal of testimony about the coal that Québec Silicon sources from an affiliated company, a decision that was taken at the Ferroglobe level.<sup>138</sup> Testimony and evidence demonstrate that Québec Silicon paid (and continues to pay) a relatively high price for its coal at a time when the cost of raw materials (and coal in particular) was on the decline around the world.<sup>139</sup> In contrast to many other silicon metal producers, therefore, Québec Silicon's place within Ferroglobe prevented it from benefiting from the lower cost of coal.<sup>140</sup>

141. As a justification for buying this particular coal, the Tribunal heard from Québec Silicon's witnesses that there are certain advantages to using this high purity coal in the quantities that it does, and that these advantages justify the higher cost.<sup>141</sup>

142. The Tribunal finds, however, that while this purchasing strategy may have had an overall benefit for the Ferroglobe group of companies,<sup>142</sup> it hurt Québec Silicon's margins and profits by forcing it to pay more for coal (the single largest material component of silicon metal) than it otherwise could have had it sourced from another provider.<sup>143</sup> Indeed, there is limited evidence that the stated advantages were achieved by Québec Silicon throughout the POI.<sup>144</sup> Even RTA and Alcoa did not require Québec Silicon to use this type of coal and did not find that the quality of silicon metal it produced had any benefits over comparable silicon metal made from cheaper coal.<sup>145</sup> The impact of these sourcing decisions on Québec Silicon's bottom line cannot, therefore, be attributed to the presence of subject goods in the market; Québec Silicon admitted that it could have chosen to pursue different options and/or sources for coal, but did not.<sup>146</sup>

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137. *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 161; *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 174-175.

138. *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 144-146, 150, 161-162; *Transcript of In Camera Hearing*, Vol. 1, 2 October 2017, at 22-25, 142-143.

139. *Silicon Metal* (21 April 2017), PI-2016-004 (CITT) at para. 67; *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 251-252; *Transcript of In Camera Hearing*, Vol. 1, 2 October 2017, at 22-23; Exhibit NQ-2017-001-D-04 (protected), Vol. 14A, Attachment 3 at 10, 12, Attachment 18.

140. See, for example, Exhibit NQ-2017-001-M-04 (protected), Vol. 14D at paras. 13-17.

141. Exhibit NQ-2017-001-A-24, Vol. 12C at paras. 5-9; *Transcript of In Camera Hearing*, Vol. 1, 2 October 2017, at 22-25; *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 171-174, 210-211.

142. *Transcript of In Camera Hearing*, Vol. 1, 2 October 2017, at 23-25; *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 173-174, 175-178.

143. *Silicon Metal* (21 April 2017), PI-2016-004 (CITT) at para. 67; *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 150; *Transcript of In Camera Hearing*, Vol. 3, 4 October 2017, at 344-345; Exhibit NQ-2017-001-D-04, Vol. 14A, Attachment 18; Exhibit NQ-2017-001-M-04, Vol. 14D at paras. 10-13, Tabs B, C; Exhibit NQ-2017-001-07C, Tables 74, 75. Vol. 2.1A; Elkem's Aid to Argument (protected), Vol. 18, Tabs 4B and 4C at 10.

144. Exhibit NQ-2017-001-A-30, Vol. 12C.

145. *Transcript of Public Hearing*, Vol. 2, 3 October 2017, at 231-232; *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 257.

146. *Transcript of In Camera Hearing*, Vol. 1, 2 October 2017, at 25; *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 143, 170.



143. Parties opposed pointed to numerous other unrelated factors to explain Québec Silicon's declining financial performance over the POI, including exchange rate fluctuations and furnace shutdowns. However, as the Tribunal has already concluded that the root causes of Québec Silicon's injury over the POI were factors unrelated to the subject goods, it will not discuss these other factors in detail.<sup>147</sup>

## Conclusion

144. To the extent that Québec Silicon was injured during the POI, this injury is not attributable to the subject goods. Any injury suffered by Québec Silicon was due to unrelated factors, including the global pricing downturn, Ferroglobe's strategic decision with respect to imports from non-subject affiliates, and Québec Silicon's high raw material costs.

145. Nevertheless, had the Tribunal found that the subject goods caused injury to Québec Silicon, the Tribunal would have found that the injury attributable to the subject goods was not material in light of the impact of the other factors discussed above.

## THREAT OF INJURY ANALYSIS

146. Having found that none of the subject goods caused injury to the domestic industry, the Tribunal must now consider whether they are threatening to cause material injury.

147. 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.<sup>148</sup> 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. That is, there must be a high probability of change to a situation in which the subject goods threaten to cause material injury in the very near future, in the absence of measures.

148. 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

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147. For example, the Tribunal is of the view that exchange rate fluctuations over the POI and the cost of shutdowns in Q2 2016 would have also contributed to Québec Silicon's poor financial results. See *Elkem's Aid to Argument* (protected), Vol. 18, Tabs 4B and 4C at 11; *Transcript of In Camera Hearing*, Vol. 1, 2 October 2017, at 21, 23, 96-97.

148. 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."

the factors listed in subsection 37.1(2), and whether any factors other than the dumping and subsidizing of the goods are threatening to cause injury.

149. In its reasons in the preliminary injury inquiry, the Tribunal warned against relying solely upon production capacities and a general export orientation of producers from the subject countries to argue in favour of a finding of threat of injury.<sup>149</sup> This is particularly true in the context of this case because the above-noted unrelated factors existed during the POI, when the subject goods were found not to cause injury.

150. During closing arguments, counsel offered different views as to the type of change of circumstances necessary to underpin a finding of threat. Counsel from Québec Silicon submitted that a continuation or a progression of existing circumstances can be sufficient to support a threat finding. He recalled, in *Softwood Lumber VI*,<sup>150</sup> that a WTO panel found that there is no requirement for a relevant change in circumstances to be identified as a single or specific event, but rather may result from a series of events, or developments in the situation of the industry and/or concerning the dumped or subsidized imports, which lead to the conclusion that injury which has not yet occurred can be predicted to occur imminently. Counsel for Québec Silicon also referred to an excerpt from the Tribunal's decision in *Rebar*<sup>151</sup> in which the Tribunal held that "the continued and sustained presence of low-priced subject imports" would have a depressing effect on Canadian production and, through the combination of this and other factors, concluded that the subject goods in that case presented a threat.

151. The Tribunal notes that, in *Rebar*, it found that there was a causal relationship between the subject goods and the injury experienced by the domestic industry, even though such injury did not rise to a level of materiality during the POI. In such circumstances, it can readily be understood that such injury could become, at some point in the future, material.

152. However, those are not the circumstances with which the Tribunal is confronted in the present injury inquiry. As discussed at length above, the Tribunal concluded that, during the POI, there was no causal relationship between the subject goods and the injury alleged by Québec Silicon because the injury was caused by other unrelated factors. The Tribunal must consider the impact of those other factors in its threat of injury analysis. As such, in the context of this case, it is logical that any change in circumstance would also need to establish that the other factors which caused injury to Québec Silicon during the POI are likely to change in the next 12 to 18 months before the Tribunal could conclude that the subject goods are threatening, in and of themselves, to cause material injury to Québec Silicon in the very near future.

### Time Frame

153. 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, depending on the unique circumstances of each case.

154. In this case, Québec Silicon argued that a 12-18 month period is appropriate given that production is largely based on orders placed months in advance, and that the largest customers negotiate for the majority of their silicon metal requirements twice a year.

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149. *Silicon Metal* (21 April 2017), PI-2016-004 (CITT) at para. 83.

150. *US – Softwood Lumber VI* (22 March 2004), WTO Doc. WT/DS277/R at para. 7.57.

151. *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at para. 249.

155. The Tribunal agrees and will assess the threat of injury on that basis.

### Positions of the Parties

156. Québec Silicon submitted that a substantial increase in the volumes of subject goods is likely because:

- Canada remains an attractive destination for subject goods because of its higher domestic prices;
- The subject countries have weak or generally unstable economies, as illustrated by slow GDP growth rates;
- Purchasers in Canada have become accustomed to the substantial volumes of subject goods imported during the POI and their dominant role in the market;
- Global demand and demand in each of the subject countries is insufficient to absorb current supply;
- Subject countries have excess silicon metal capacity and low utilization rates;
- Producers in the subject countries are export-oriented, and some have precarious financial situations (namely, Thailand and Brazil);
- Goods from Brazil, Norway and Kazakhstan may be diverted from the United States in the event of a positive finding of injury in the current US ITC investigation.

157. Opposing parties argued that there is no threat of injury or that any threat of injury is not related to the subject goods. In particular, they pointed to the following unrelated factors:

- Québec Silicon failed to take into account that much of the increased future global demand is expected to come from the chemical-grade sector,<sup>152</sup> which is described by CRU as a “key driver of consumption growth” and for which there are currently no purchasers in Canada;
- The global silicon metal market is one in which most countries are either net producers of silicon metal or net importers of silicon metal, and, as discussed further below, in several of these markets demand growth is expected to be higher than in Canada;<sup>153</sup>
- Growth will not be as slow as Québec Silicon suggests; in fact, companies such as Rima suggest that growth rates of 0.7% in 2017 and 1.6% in 2018 (for Brazil) still reflect economic growth, as opposed to a contraction in the economy;
- Québec Silicon’s claims regarding excess capacity in the subject countries are exaggerated, as it appeared to rely on “nameplate” capacity rather than effective capacity.<sup>154</sup> Moreover, RTA suggested that, owing to a significant degree of vertical integration within the silicon metal industry particularly in the chemical sector, non-captive supply is produced by only a handful of companies;<sup>155</sup>
- Many of the producers in the subject countries operated at near maximum effective capacity over the course of the POI, so there is unlikely to be any “ramping up” of production;

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152. Exhibit NQ-2017-001-D-02 (protected) at paras. 59-60, Figures 3 and 4, Vol. 14.

153. Exhibit NQ-2017-001-C-02, Table 3, Vol. 14.

154. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 65. CRU (March 2017) estimates that effective capacity is approximately 9-11% lower than stated or nameplate capacity.

155. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 2.8 at 73.

- It is doubtful that producers in certain countries (namely, OCI Speciality in Malaysia and G.S. Energy in Thailand) will resume production in the imminent future.

### **Tribunal's Analysis**

158. The Tribunal will begin its analysis with a consideration of global market conditions as they apply to Canada and all of the subject countries equally. It will then conduct three separate assessments of threat, even though parties presented evidence and arguments that often cut across all of the subject countries: (1) subsidized goods from Norway, (2) dumped goods from Thailand and Laos, and (3) dumped and subsidized goods from Brazil, Kazakhstan and Malaysia.

### **Factors Common to All Countries: Global Market Conditions**

159. The global silicon metal market is one in which most countries are either net producers of silicon metal or net importers of silicon metal. In other words, a number of large markets have a perennial need for silicon metal (e.g., the United States, Europe, Asia other than China, South America other than Brazil, Africa and the Middle East), while other countries tend to produce in excess of their domestic demand for silicon metal in order to supply those in perennial need of supply. Estimates suggest that approximately 60 percent of global supply is met with imports, and if China is excluded, that estimate rises to roughly 85 percent.<sup>156</sup> For this reason, the Tribunal is of the view that an examination of individual subject countries in isolation provides an incomplete picture of global supply and demand trends.

160. Supply and demand factors associated with each of the groupings of countries are examined below; however, the Tribunal also considers that global market conditions are a reasonable indicator of whether volumes produced in excess of a given country's demand are likely to enter Canada in the foreseeable future and, further, the prices at which those goods are likely to enter, if at all.

161. Trends during the POI indicate that the gap between global supply and demand is narrowing.<sup>157</sup> Worldwide demand for silicon metal is forecast to grow at a modest but steady rate over the next 12 to 18 months and beyond, consistent with historical long-term trends in the silicon metal industry.<sup>158</sup> According to CRU, this growth in global demand will be supported by stronger economic performance in emerging markets, an increase in worldwide auto production after 2018, and significant increases in solar-related consumption.<sup>159</sup>

162. In terms of global supply, world production is predicted to grow in-step with global demand.<sup>160</sup> Production gains are forecast in the Americas and in the EU; however, these gains are likely to be offset by production declines in Asia (with the exception of China) and South Africa.<sup>161</sup>

163. Although prices of silicon metal trended downward between 2015 and 2016, forecasts indicate that rising global demand will support a gradual increase in silicon prices in the next 12-18 months, with some acceleration of these price gains anticipated for 2019 and beyond.<sup>162</sup> Since Q3 2016, prices have risen in all major markets, and spot prices in the United States have risen more than 15 percent since September 2016.<sup>163</sup>

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156. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 81.

157. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 92.

158. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 11, 13.

159. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 11-12.

160. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 13, 15.

161. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 53.

162. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 92.

163. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 93.

164. Global demand and supply trends suggest there will not be any significant oversupply on the market and that prices should recover from the lows seen in 2016. Given that Canadian prices tend to move in the same direction as other markets, the Tribunal anticipates that, if anything, the effect of these changes on the domestic industry will be largely positive.

#### Threat from Norway

165. Norway has the capability to produce large quantities of silicon metal. Elkem alone has more than sufficient capacity to flood the Canadian market for silicon metal.<sup>164</sup> Wacker's capacity is also significant.<sup>165</sup> However, both Norwegian producers had this capacity throughout the POI and, as indicated above, the volume of imports from Norway during the POI was not significant.

166. Norwegian capacity levels are forecast to remain steady over the next 12 to 18 months, with the potential for a modest increase in 2019,<sup>166</sup> when Wacker completes a recently announced expansion.<sup>167</sup> This new capacity is expected to be entirely captive, as is the rest of Wacker's production, which is used in downstream operations in Germany.<sup>168</sup>

167. With all of Wacker's production being captive, only Elkem's production could potentially be exported to Canada. However, as Mr. Ovesen indicated, Elkem's key export market is the EU.<sup>169</sup> Although the EU's demand for silicon metal is forecast to drop in 2017, an increase in demand is expected thereafter, stemming in part from gains in chemical- and solar-related silicon demand.<sup>170</sup> Furthermore, the utilization rates of Norwegian producers, including Elkem, have been high throughout the POI, and there is no evidence suggesting that this will change in the foreseeable future.<sup>171</sup>

168. Québec Silicon urged the Tribunal to consider how market dynamics might change depending on the results of the current U.S. anti-dumping investigation against several countries, including Norway. However, for the Tribunal to find that goods from Norway are likely to be diverted from the United States to Canada in the next 12-18 months, it would have to presuppose that a positive injury finding will indeed be made. The Tribunal is not willing to make any assumptions, as to do so falls squarely in the realm of speculation.

169. For the reasons above, the Tribunal finds that imports from Norway are unlikely to significantly increase in the next 12-18 months.

170. However, even if some of Elkem's production were to be exported to Canada in the next 12 to 18 months, the very small volume of these imports would not have a significant impact on the domestic industry's prices or financial results. As discussed above, imports from Elkem have occurred only in very limited quantities and are of Silicon 98, a product that Québec Silicon does not make and that attracts a lower price than like goods by virtue of being off-grade.

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164. Exhibit NQ-2017-001-07C (protected), Schedule 15, Vol. 2.1A.

165. Exhibit NQ-2017-001-07C (protected), Schedule 16, Vol. 2.1A.

166. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 2.4 at 65.

167. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 2.5 at 68.

168. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 72.

169. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 314.

170. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 35-36.

171. Exhibit NQ-2017-001-07C (protected), Schedules 15, 16, Vol. 2.1A.

171. Given that the volumes and price effects are unlikely to change significantly and have not, to date, caused material injury, the Tribunal finds that the subject goods from Norway do not threaten the domestic industry with material injury in the future.

#### Threat from Laos and Thailand

172. Together, the production capacity of producers from Laos and Thailand is significant.<sup>172</sup> However, notwithstanding this capacity, and despite further increases in the practical plant capacity of Thai producers, their collective production volumes did not increase during the POI.<sup>173</sup> Moreover, no changes to practical plant capacities in Thailand or Laos are forecast to occur in the next 12 to 18 months.<sup>174</sup>

173. In its questionnaire, Laos Silicon indicated that it halted all production in September 2016 because production had become unprofitable given global silicon metal prices. Laos Silicon stipulated that it plans to restart one of its furnaces, presumably sometime “soon”,<sup>175</sup> and expressed an intention to continue to supply silicon metal to the Canadian market.

174. In regard to Thailand, G.S. Energy of Thailand also halted production during the POI, although Mr. Perkins indicated that it had resumed production by the time of the hearing.<sup>176</sup> The other Thai producer, Sica, currently has a supply relationship with a Canadian purchaser.<sup>177</sup> It is expected that Sica will export certain volumes of silicon metal to Canada in the next 12 to 18 months even in the face of anti-dumping duties.<sup>178</sup> That said, any volumes from Sica are likely to be constrained by the fact that Sica has existing volume commitments elsewhere in the world.<sup>179</sup>

175. More importantly, any future exports from Sica have to be put in the context of the purchasing strategies of RTA and Alcoa. As noted above, while they seek a diversified supply of silicon metal, both earmark a certain proportion of their needs to be supplied by Québec Silicon. Mr. Borges of Alcoa testified that it has historically procured 60 to 70 percent of its silicon metal from Québec Silicon, and will continue to purchase large volumes from Québec Silicon in the future.<sup>180</sup>

176. Québec Silicon suggested that the Laotian economy, which is largely agrarian, lacks a foundation for sustainable growth. It pointed out that poverty in Laos is high, and that most GDP growth has been based on capital-intensive investments in the energy sector. The Tribunal does not, however, accept that these arguments are relevant to an analysis of threat of injury by the subject goods. These are conditions that existed prior to, and throughout, the POI. They are not indicative of any change that would suggest injurious imports in the future where such imports have not been injurious in the past.

177. While GDP estimates suggest that growth in Laos in the next 12-18 months will not be as robust as during the POI, the Tribunal is not willing to assume that soft conditions in the domestic market will automatically lead to an uptick in silicon metal production for export to Canada. Looking specifically at the

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172. Exhibit NQ-2017-001-07C (protected), Tables 87, 89, Vol. 2.1A.

173. Exhibit NQ-2017-001-07C (protected), Table 89, Vol. 2.1A.

174. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 2.5 at 68.

175. Exhibit NQ-2017-001-17.02, Vol. 5.1 at 42.

176. *Transcript of Public Hearing*, Vol. 1, 2 October 2017, at 24.

177. *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 268.

178. *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 275, 297.

179. *Transcript of In Camera Hearing*, Vol. 2, 3 October 2017, at 274.

180. *Transcript of Public Hearing*, Vol. 3, 4 October 2017, at 275-276.

market for silicon metal in Asia, consumption is forecast to increase at a greater rate than Canadian consumption, and indeed global consumption, over the next 12-18 months.<sup>181</sup>

178. Further, although the rate of consumption growth in Thailand has slowed since its 2014 high, steady increases are forecast for the next 12 to 18 months and beyond.<sup>182</sup>

179. In addition, there are no anti-dumping or countervailing measures on silicon metal from Thailand or Laos in other jurisdictions that would lead to the conclusion that their goods are likely to be exported to Canada.

180. On the basis of the above, there is no reason to believe that the volume of imports from either of these countries will increase significantly in the next 12-18 months.

181. Furthermore, consistent with the trends that were seen over the POI, where the prices of imports from these regions trended up or down in tandem with conditions in the global market, and taking into account that silicon metal prices are expected to gradually increase over the next 12 to 18 months, together with the testimony of purchasers that they do not leverage import prices in negotiations with Québec Silicon, the Tribunal has no reason to believe that imports from Thailand or Laos will exert any significant price pressures on the domestic industry in the next 12-18 months.

182. Given that the volumes and price effects are unlikely to change significantly and did not cause material injury during the POI, the Tribunal finds that the dumped goods from Laos and Thailand are not threatening to cause material injury to the domestic industry in the next 12-18 months.

#### Threat from Brazil, Kazakhstan, and Malaysia

183. As indicated above, the volumes of dumped and subsidized goods from Brazil, Kazakhstan and Malaysia increased significantly over the POI.

184. That does not, however, indicate that volumes are likely to rise in the coming 12-18 months even though producers from these countries have significant production capacity, particularly Brazil.<sup>183</sup> Brazil's production capacity has fallen since 2014, and is expected to stay at its current level until at least 2019.<sup>184</sup> Over one third of this Brazilian capacity is captive by Dow Corning, meaning that it is not likely to be available for sale to Canadian purchasers.<sup>185</sup> Likewise, much of Malaysia's production capacity is captive, given that the only active Malaysian producer is also owned by a chemical company.<sup>186</sup> No changes are anticipated to Kazakhstan's or Malaysia's production capacity in the next 12-18 months.<sup>187</sup>

185. In terms of demand, as indicated above, global demand is expected to increase in the short term. This holds true for Brazil, in particular as domestic demand in Brazil is expected to climb steadily over the next 12 to 18 months, with growth rates forecast to be 14.7 percent in 2017, 7.7 percent in 2018 and

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181. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 1.4 at 34, Table 1.11 at 47 and Table 1.14 at 50.

182. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 1.11 at 46-47.

183. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 2.1 at 59 and Table 2.5 at 67-68.

184. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 2.4 at 65 and Table 2.5 at 67.

185. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 10, 92, Table 2.4 at 65 and Table 2.5 at 67.

186. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 2.8 at 73.

187. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 2.1 at 59 and Table 2.2 at 68.

6 percent in 2019.<sup>188</sup> This increase in demand is driven, in part, by anticipated recovery in the Brazilian automotive sector. In contrast, Canada's demand for silicon metal is expected to grow by 1.6 or 1.7 per cent per year over the same period.<sup>189</sup> Demand for silicon metal in Malaysia is also expected to increase, spurred by a rise in solar-related silicon consumption.<sup>190</sup> Although the Tribunal does not have projections for demand in Kazakhstan, there are steady demand growth rates for Asia generally, in both the chemical and aluminum sectors.<sup>191</sup>

186. Also, there is no evidence of anti-dumping or countervailing measures on silicon metal from these countries in other jurisdictions.

187. On this basis, the Tribunal finds that it is unlikely that the import volumes will substantially increase in the next 12-18 months.

188. Moreover, the prices of dumped and subsidized goods from Brazil, Malaysia and Kazakhstan are likely to follow the upward trend in the global market in the next 12 to 18 months, just as they have followed upward and downward trends throughout the POI. Although some undercutting could still occur, the extent of the undercutting is likely to be less significant than it was during the POI given that market forces will pull prices upward. Therefore, it is unlikely that the prices of these subject goods will have a significant effect on the price of like goods.

189. Given that the volumes and price effects are unlikely to change significantly and they have not caused material injury to date, the Tribunal finds that the dumped and subsidized goods from Brazil, Kazakhstan and Malaysia are not threatening to cause material injury to the domestic industry in the next 12-18 months.

### Other Factors

190. Aside from the positive changes to conditions expected in the global market, the same unrelated factors that the Tribunal concluded were responsible for the injury to the domestic industry will continue to exist 12 to 18 months in the future.

191. There is no evidence to suggest that Québec Silicon's relationship with Ferroglobe will change. Given that Ferroglobe operates on a multinational "all-for-one and one-for-all" basis and makes decisions that benefit the corporate group over individual companies, nothing suggests that Québec Silicon will make decisions differently than it has or presently does. By continuing to pay relatively high costs for raw materials from a Ferroglobe affiliate, Québec Silicon will remain unable to price its goods at a level that enables it to maximize its profits even if silicon metal prices do rise.

192. In that regard, the Tribunal would point out that the purpose of *SIMA* is to protect the domestic industry from injury (or threat thereof) caused by imports of dumped or subsidized goods, not other forms of injury. In this case, the domestic industry constitutes Québec Silicon, not Ferroglobe or other Ferroglobe affiliates. While Ferroglobe's choice to make decisions for the benefit of the Ferroglobe group as a whole may be completely rational from a business point of view, any negative impact experienced by Québec Silicon as a result is a form of self-injury, a circumstance which does not attract the protection of *SIMA*.

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188. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 1.4 at 34.

189. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 1.4 at 34.

190. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1 at 12, 47, Table 1.11.

191. Exhibit NQ-2017-001-I-02/J-02 (protected), Vol. 14C, Tab 1, Table 1.11 at 47.



193. Further, there is no evidence that RTA and Alcoa intend to change their procurement strategies of blending domestic purchases with imports to ensure a secure and reliable supply. Indeed, witnesses for RTA and Alcoa were perfectly clear that they will continue to buy large volumes from Québec Silicon while at the same time diversifying their supply with imports over the next 12 to 18 months.

## CONCLUSION

194. Therefore, the Tribunal finds that the dumping and/or subsidizing of the subject goods have not caused injury and are not threatening to cause material injury.

## EXCLUSIONS

195. As the Tribunal has found that there is no injury or threat of injury attributable to the dumping and/or subsidizing of the subject goods, it is unnecessary to consider whether exclusions should be granted.

Ann Penner

Ann Penner

Member

Serge Fréchette

Serge Fréchette

Member