



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2018-003

Silicon Metal

*Order and reasons issued
Thursday, August 22, 2019*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on November 19, 2013, in Inquiry No. NQ-2013-003, concerning:

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

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of the finding made on November 19, 2013, in Inquiry No. NQ-2013-003, concerning the dumping and subsidizing of silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight, and silicon metal containing between 89.00 percent and 96.00 percent silicon by weight that contains aluminum greater than 0.20 percent by weight, of all forms and sizes, originating in or exported from the People's Republic of China.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding in respect of the aforementioned goods.

Jean Bédard
Jean Bédard
Presiding Member

Randolph W. Heggart
Randolph W. Heggart
Member

Susan D. Beaubien
Susan D. Beaubien
Member

Place of Hearing: Ottawa, Ontario
Dates of Hearing: June 10 to 12, 2019

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STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*¹ (*SIMA*). At issue is the review of the finding made by the Canadian International Trade Tribunal (the Tribunal) on November 19, 2013, in Inquiry No. NQ-2013-003, concerning the dumping and subsidizing of silicon metal originating in or exported from the People's Republic of China (the subject goods).
2. Under *SIMA*, findings of injury or threat of injury (and the associated consequent protection in the form of anti-dumping or countervailing duties) expire five years from the date of the finding or, if one or more orders continuing the finding have been made, the date of the last order made under paragraph 76.03(12)(b), unless the Tribunal initiates an expiry review before the expiry date. The finding in Inquiry No. NQ-2013-003 was therefore scheduled to expire on November 19, 2018.
3. On October 16, 2018, The Tribunal issued a notice that an expiry review would be initiated. This notice triggered the commencement of an investigation by the Canada Border Services Agency (CBSA) the next day. The purpose of the CBSA investigation was to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping and/or subsidizing.
4. On March 15, 2019, the CBSA determined that the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods. On March 18, 2019, pursuant to subsection 76.03(10) of *SIMA*, and further to the CBSA's determination, the Tribunal initiated the investigation phase of its expiry review.
5. In this review, the Tribunal must determine whether the expiry of the finding is likely to result in injury to the domestic industry. If the Tribunal finds a likelihood of injury, it must make an order continuing the finding. If there is no likelihood of injury to the domestic industry, the Tribunal makes an order rescinding the finding.
6. The period of review (POR) in this expiry review covers three calendar years, from January 1 2016, to December 31, 2018.
7. The Tribunal sent questionnaires to the only domestic producer (Québec Silicon) and to importers of silicon metal, as well as to foreign producers of the subject goods. In addition to receiving a reply to the domestic producer questionnaire, the Tribunal received 10 complete replies to the importers' questionnaire.² The Tribunal did not receive any replies to the foreign producers' questionnaire.
8. Using the questionnaire replies and other information on the record, staff of the Canadian International Trade Tribunal Secretariat prepared public and protected versions of an investigation report.

1. R.S.C., 1985, c. S-15.

2. The Tribunal also received incomplete replies from two importers who indicated that they imported negligible volumes of subject goods and/or goods meeting the product definition from non-subject countries during the POR. While both companies imported subject goods and/or goods meeting the product definition from non-subject countries during the POR, the Tribunal determined that the collection of their information was not vital to the review. Exhibit RR-2018-003-05, Vol. 1.1 at 12.

9. The domestic producer, namely, the corporate group formed by Québec Silicon Limited Partnership (QSLP) and QSIP Canada ULC (QSIP Canada) (collectively, Québec Silicon), filed written submissions in support of a continuation of the finding.
10. Unifor, a trade union representing, *inter alia*, workers employed by Québec Silicon, also filed written submissions urging the Tribunal to continue the finding.
11. Rio Tinto Alcan (RTA), an importer, domestic purchaser and user of silicon metal, filed submissions opposing the continuation of the finding.
12. Continuation of the finding was also opposed by Wacker Chemie AG and Wacker Chemicals Norway AS (collectively, Wacker). Wacker is a foreign producer of silicon metal that had previously imported silicon metal from the domestic producer prior to the finding. Wacker did not purchase silicon metal from the domestic producer during the POR.³ On May 30, 2019, together with the filing of its reply submission, Québec Silicon filed a motion requesting that the Tribunal strike Wacker's case brief and the statement of Wacker's proposed witness (Mr. Majumdar) from the record and declare that Wacker lacked standing to participate in this expiry review. The Tribunal dismissed the motion for the reasons set out later in this Statement of Reasons.
13. Québec Silicon, RTA and Wacker also filed responses to various requests for information filed by other parties and issued by the Tribunal.
14. Another user of silicon metal in Canada (Alcoa) also replied to a request for information issued by the Tribunal. Alcoa did not otherwise participate in the review.
15. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, on June 10-12, 2019. Québec Silicon, Unifor, RTA and Wacker called witnesses and were represented by counsel.
16. The Tribunal did not receive any requests for product exclusions.

PRODUCT

Product definition

17. The subject goods are defined as follows:⁴

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

Additional product information

18. The CBSA provided the following additional product information:⁵

3. *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 154-155.

4. Exhibit RR-2018-003-03A, Vol. 1 at 5.

5. *Ibid.*

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

Silicon is a chemical element, metallic in appearance, solid in mass, and steel gray in color, that is commonly found in nature in combination with oxygen either as silica or in combination with both oxygen and a metal in silicate minerals. Although commonly referred to as metal, silicon exhibits characteristics of 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" × 1/2" to 4" × 1/4" for the metallurgical industry, 1" by 1" and smaller for the chemical industries and also in crushed powder form.

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.

LEGAL FRAMEWORK

19. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in material injury or retardation to the domestic industry.⁶

20. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding in Inquiry No. NQ-2013-003, if it determines that its expiry is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that the expiry of the finding is likely to result in injury.

21. Before proceeding with its analysis of the likelihood of injury, the Tribunal must determine what constitutes "like goods". Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry".

22. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect).

LIKE GOODS AND CLASSES OF GOODS

23. In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to 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.⁷

24. 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

6. Subsection 2(1) of *SIMA* defines "injury" as "material injury to the domestic industry" and "retardation" as "material" retardation of the *establishment* of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this review.

7. 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.).

(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.

25. When goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors when deciding whether such goods are like goods. These factors include 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).⁸

26. In Inquiry No. NQ-2013-003, 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. The Tribunal also found that the subject goods and the like goods comprised a single class of goods.⁹ The Tribunal has not received evidence that would indicate that its previous determinations regarding these issues should be revisited. No party filed submissions challenging these findings in the present review and the Tribunal consequently sees no reason to depart from its previous conclusions concerning like goods and classes of goods.

DOMESTIC INDUSTRY

27. 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.

28. The Tribunal must therefore determine whether there is a likelihood 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.¹⁰

29. QSLP is the sole manufacturer of silicon metal in Canada. QSLP’s facility is located in Bécancour, Quebec.

30. QSIP Canada, an entity related to QSLP, sells silicon metal produced by QSLP in the Canadian market and on export markets. QSLP is owned by QSIP Canada (50.99 percent), Québec Silicon General Partnership Inc. (the General Partnership) (0.01 percent), and Dow Chemical Canada (Dow) (49 percent

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

9. NQ-2013-003 at para. 28. See also *Silicon Metal* (2 November 2017), NQ-2017-001 (CITT) [*Silicon Metal II*] at paras. 37 and 41.

10. 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 Docs. 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, 412, 419; *Argentina – Definitive Anti-dumping duties on poultry (Brazil)*, (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel, at para. 7.341.

through its wholly owned subsidiary DC Global Holdings S.r.a.l). The General Partnership manages QSLP by virtue of a power of attorney and is in turn 51 percent owned by QSIP Canada and 49 percent owned by Dow Switzerland Holding GmbH.¹¹

31. At the time of Inquiry No. NQ-2013-003, QSIP Canada was ultimately owned by Globe Specialty Metals Inc. (Globe).¹² Following the merger of Globe with Grupo FerroAtlántica in 2015, QSIP Canada is now wholly owned by the merged entity, Ferroglobe PLC (Ferroglobe). Consequently, Ferroglobe has majority ownership and control of QSLP and complete ownership and control of QSIP Canada. Ferroglobe is a major global producer of silicon metal and specialty metals.¹³

32. QSLP's production is split according to an arrangement between Ferroglobe and Dow. Dow is entitled to 49 percent of QSLP's production, although the amount taken by each partner varies year to year.¹⁴ The share of QSLP's production transferred to Dow is exported to the United States where it is consumed by Dow for its own internal use.¹⁵ Dow's share is transferred from QSLP to Dow directly without passing through QSIP Canada.¹⁶ QSIP Canada sells the remaining 51 percent or so of QSLP's production on the open market to domestic and export customers.¹⁷

33. In Inquiry No. NQ-2013-003 and in *Silicon Metal II*, the Tribunal found that QSLP and QSIP Canada were integrated into a single corporate group. The Tribunal also found that the integrated corporate group formed by QSLP and QSIP Canada (collectively, Québec Silicon), constituted the domestic industry.¹⁸ This finding has not been challenged in the present review, and the Tribunal's analysis in the present review proceeds on the same basis.

CROSS-CUMULATION

34. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods.

35. In its analysis in Inquiry No. NQ-2013-003, the Tribunal did not differentiate the effects resulting from the dumping of the subject goods from the effects resulting from the subsidizing of the same goods. The Tribunal explained that it was not possible to isolate the effects caused by the dumping of goods from those caused by the subsidizing of the same goods. Such effects cannot be distinguished or unravelled because they are so closely intertwined. It is impossible, for practical purposes, to allocate specific or discrete portions of injury to the dumping and subsidizing.¹⁹ The Tribunal has followed this same approach in *Silicon Metal II*, as well as in other inquiries and reviews.²⁰

11. Exhibit RR-2018-003-A-03, Vol. 11 at paras. 4-14; *Silicon Metal* (21 April 2017), PI-2016-004 (CITT) [*Silicon Metal II PI*] at paras. 29-35.

12. NQ-2013-003 at para. 39.

13. Exhibit RR-2018-003-15.01, Vol. 3 at 20.

14. Exhibit RR-2018-003-27.01, Vol. 7.1 at 4; NQ-2013-003 at paras. 33, 37 and footnote 17; *Silicon Metal II PI* at para. 36; Exhibit RR-2018-003-06 (protected), Vol. 2.1, Table 17.

15. Exhibit RR-2018-003-27.01, Vol. 7.1 at 4; NQ-2013-003 at para. 37 and footnote 17; *Silicon Metal II PI* at para. 36.

16. NQ-2013-003 at para. 37; Exhibit RR-2018-003-06 (protected), Vol. 2.1, Table 17.

17. Exhibit RR-2018-003-27.01, Vol. 7.1 at 6; *Silicon Metal II PI* at para. 36.

18. NQ-2013-003 at para. 42; *Silicon Metal II* at para. 49.

19. NQ-2013-003 at paras. 44-45.

20. *Silicon Metal II* at paras. 59-60; see also, e.g., *Seamless Casing* (28 November 2018), RR-2017-006 (CITT) at paras. 42-44.

36. The Tribunal was presented with no evidence or argument that warrants departing from this approach in the present expiry review. Therefore, in its analysis below, the Tribunal has cumulatively assessed the likely impact of the continuation or resumption of dumping and subsidizing of the subject goods on the domestic industry should the order be rescinded.

MOTION TO EXCLUDE WACKER FROM PARTICIPATING IN THE EXPIRY REVIEW

37. On May 30, 2019, together with the filing of its reply submission, Québec Silicon filed a motion pursuant to sections 23.1 and 24 of the *Canadian International Trade Tribunal Rules*²¹ (*Rules*), regarding the participation of Wacker in this expiry review. In its motion, Québec Silicon requested that the Tribunal issue an order striking Wacker's case brief and the statement of Wacker's proposed witness (Mr. Majumdar) from the record. Québec Silicon also asked the Tribunal to declare that Wacker lacks standing to participate in this expiry review.

38. RTA, Wacker and Unifor submitted comments on Québec Silicon's motion on June 3, 2019. Québec Silicon replied to these comments on June 4, 2019.

39. RTA objected to Québec Silicon's reply and argued that it should be disregarded by the Tribunal, as it was unsolicited. Notwithstanding RTA's argument, the Tribunal decided to place Québec Silicon's reply on the record and considered it in deciding the motion.

40. On June 6, 2019, the Tribunal issued an order dismissing Québec Silicon's motion. The Tribunal indicated that the reasons for its order would be incorporated within the statement of reasons with respect to the disposition of this expiry review. The reasons for the Tribunal's order are set out below.

Introduction

41. Québec Silicon sought to exclude Wacker as a party to the proceeding on the ground that Wacker is not an "interested party".

42. Section 2 of the *Rules* defines a "party", in a *SIMA* inquiry or expiry review, as "an interested party who has filed a notice of participation". In turn, an "interested party" is defined in the same provision as the complainant, a domestic producer, exporter or importer of the subject goods or association thereof, the government of a country mentioned in a preliminary determination, a trade union representing employees of the domestic industry or association thereof, or as:

- (e) any other person who, because their rights or pecuniary interests may be affected or for any other reason, is entitled to be heard by the Tribunal before the Tribunal disposes of the inquiry or the review, as the case may be, in accordance with that Act;

43. Wacker is neither a domestic producer nor a foreign producer or exporter of the subject goods. Wacker did not respond to any Tribunal questionnaire. The parties' disagreement was limited to the question whether Wacker falls within the scope of paragraph (e) above.

21. SOR/91-499.

Positions of the parties

44. Québec Silicon argued that Wacker had not demonstrated that its rights or pecuniary interests may be affected by the continuation of the finding. Québec Silicon recognized that paragraph (e) goes on to state that the entitlement to be heard by the Tribunal may be afforded to a person “for any other reason”. Québec Silicon argued that the definition of “interested party” requires the Tribunal to identify a positive and legitimate reason on which to base a person’s entitlement to participate and that there is no such reason in the present case. According to Québec Silicon, Wacker has no nexus with the Canadian market. It does not produce silicon metal in China, has no interest in exporting to Canada, has not completed a Tribunal questionnaire, and does not have a financial interest in these proceedings.

45. Québec Silicon also submitted that the general interest in trade matters expressed by Wacker in its brief and in Mr. Majumdar’s witness statement is not a proper basis to claim entitlement to participate as it would render meaningless any limitations imposed by the definition of “interested party”. According to Québec Silicon, the fact that Wacker participated in proceedings in other jurisdictions and participated in *Silicon Metal II* (which concerned silicon metal from, *inter alia*, Norway) does not provide a basis for its participation in the present inquiry.

46. Wacker opposed Québec Silicon’s motion. It submitted that its right to participate in this review is envisaged in paragraph (e). Wacker argued that the Tribunal has broad scope to hear from interested parties and notes that, in *Line Pipe*,²² the Tribunal stated that it would only deny a party standing in “exceptional” cases.

47. Wacker stated that it wished to present factual information and testimony from the perspective of an important user having first-hand experience of market dynamics in the European Union, the United States and China. Wacker further noted that it was an important importer of silicon metal from Canada at the time of Inquiry No. NQ-2013-003 and that its name is mentioned several times in the Tribunal’s statement of reasons in that inquiry. It further stated that its evidence would help the Tribunal reach a fully informed decision and that its participation is neither frivolous nor vexatious. Wacker further argued that it submitted useful information to the Tribunal which was not provided by Québec Silicon and which Canadian users of silicon metal cannot have or provide. Wacker argued that striking its submission and evidence from the record would deprive the Tribunal of evidence pertinent to its analysis of the relevant factors under the *Special Import Measures Regulations*²³ (*Regulations*).

48. RTA also opposed Québec Silicon’s motion. RTA argued that the *Rules* provide the Tribunal with broad discretion to determine that a person is entitled to participate in an expiry review. RTA noted that in *Line Pipe*, the Tribunal admitted parties solely based on their potential to provide evidence that “may be relevant or useful”. RTA noted that Wacker is one of the largest purchasers and consumers of silicon metal globally, and its submissions may therefore aid the Tribunal in obtaining the “best evidence available”. Wacker’s case brief and the witness statement of Mr. Majumdar provided evidence that directly addresses the factors that the Tribunal must consider in its analysis. It further argued that there is also a nexus based on Wacker’s role in Inquiry No. NQ-2013-003. In view of these considerations, RTA argued that Wacker’s participation would not be exceptional, frivolous, or vexatious.

22. *Carbon and Alloy Steel Line Pipe*, (order dated 19 January 2016), NQ-2015-002 (CITT) [*Line Pipe*].

23. SOR/84-927.

49. Unifor argued that the Tribunal should maintain an expansive definition of “interested party”. Paragraph (e) is a basket clause that gives the Tribunal discretion to extend participatory rights to parties who may have evidence that bears on the analysis of a given case, even though they might not be otherwise viewed as parties in the conventional sense. Unifor noted that until the recent addition of paragraph (d.1) to the *Rules*, the right of trade unions to participate in *SIMA* proceedings was grounded in paragraph (e).²⁴ However, Unifor agreed with Québec Silicon that there must be some proven nexus to Canada beyond a general interest in trade matters before paragraph (e) may be invoked. Unifor took no position as to whether Wacker meets these requirements.

Analysis

50. The *Rules* define “interested party” broadly; see in particular the use of the phrase “or for any other reason” in paragraph (e), quoted above. In *Line Pipe*, the Tribunal explained that:

24. [it] has discretionary authority to determine whether or not a person who files a notice of participation constitutes an “interested party”. It generally interprets its rules in a liberal manner and with a view to promoting fairness, access to justice and transparency.

...

27. Based on this discretionary authority, the Tribunal’s normal practice in injury inquiries under section 42 of *SIMA* is to accept participants and evidence liberally. . . . [P]ersons who file notices of participation are typically not required to establish the nature of their interest before the Tribunal accepts their participation.

28. As the gatekeeper for the inquiry, it is open to the Tribunal to question the participation of a person who does not appear to fall within any of the categories set out in rule 2 of the *Rules*. However, it would likely only go so far as to deny the participation of a person in exceptional circumstances, such as persons who clearly do not fall within the parameters of rule 2 or whose participation would be frivolous or vexatious. . . .

51. In *Line Pipe*, the Tribunal dismissed a request for an order denying the participation of two parties, Atlas and DFI, who were not involved in the production, importation or sale of the subject goods or of the like goods. The Tribunal was satisfied that Atlas and DFI met the “or for any other reason” condition in paragraph (e) of the *Rules* on the basis that they had indicated that they would provide submissions and evidence that the Tribunal considered may be relevant or useful to the issues in its inquiry. The Tribunal added that it is interested in obtaining the “best available evidence”, explaining that:

31. [t]he participation of a party that has relevant information may assist the Tribunal in testing the evidence provided by other parties and may help the Tribunal in arriving at a better, fully informed decision. The relevance and usefulness of Atlas’s and DFI’s participation and of the evidence to be provided by them will therefore be assessed by the Tribunal at the conclusion of the injury inquiry.

52. In accordance with its reasoning in *Line Pipe*, the Tribunal concludes that Wacker is in a position to provide submissions and evidence that may be relevant or useful to the issues arising in the present expiry review. In particular, one of the prescribed factors for the Tribunal’s analysis in this expiry review relates to the conditions in the international market.²⁵ The Tribunal considers that the evidence already placed on the record by Wacker and its submissions are pertinent and could assist the Tribunal in developing a better understanding of the factual circumstances relevant to its analysis in the present review.

24. The reference to a trade union or association thereof was added by an amendment that took effect in April 2018.

25. Para. 37.2(2)(j) of the *Regulations*.

53. Likewise, the additional information that Wacker and its witness could place before the Tribunal may also assist the Tribunal in obtaining the “best evidence available” and in testing the evidence provided by the other parties, including Québec Silicon.

54. Furthermore, Wacker’s participation in this proceeding is neither frivolous nor vexatious. During the period of inquiry in Inquiry No. NQ-2013-003, Wacker was a customer of Québec Silicon, from whom it purchased silicon metal. Wacker was mentioned several times in the Tribunal’s analysis.²⁶ Wacker has also shown an ongoing interest in subsequent Tribunal proceedings related to silicon metal. It participated in the *Silicon Metal II* inquiry as a foreign producer and also participated in the expiry proceedings (LE-2018-003) where the Tribunal decided that the present expiry review was warranted.

55. For the foregoing reasons, the Tribunal dismissed Québec Silicon’s motion.

LIKELIHOOD OF INJURY ANALYSIS

Introduction

56. An expiry review is forward-looking.²⁷ It follows that evidence from the POR during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.²⁸

57. There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization.²⁹ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.³⁰

58. Subsection 37.2(2) of the *Special Import Measures Regulations*³¹ lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

RTA submissions on the relevance of market conditions for downstream products

59. RTA makes a number of arguments pertaining to downstream market conditions and the impact that the rescission or continuation of the finding would have on downstream producers. Referring to the competitive pressures that it is facing in the foundry aluminum alloys market, RTA witnesses testified that it needs to source at least part of its silicon metal needs from lower-priced sources of silicon metal, e.g. China,

26. NQ-2013-003 at paras. 35, 39, 50, 51, 98, 121-126, 129-130, 132, 134, 137, 153, 180-182.

27. *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

28. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) at para. 14 [*Thermoelectric Containers*], the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 21 [*Aluminum Extrusions*].

29. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

30. *Thermoelectric Containers; Aluminum Extrusions*.

31. SOR/84-927 [*Regulations*].

so that it can “blend its costs” in order to keep its production costs at a reasonable level.³² They add that RTA’s competitors have access to low-priced Chinese silicon metal.³³

60. Subsection 76.03(10) of *SIMA* directs the Tribunal to determine whether the expiry of the order or finding is likely to result in “injury” or retardation. As previously mentioned, Section 2 of *SIMA* defines “injury” as “material injury to the domestic industry” and defines “domestic industry” by reference to the domestic producers of the like goods. The impact on downstream users is not a factor that the Tribunal must consider pursuant to these provisions. Likewise, the factors that the Tribunal may consider pursuant to subsection 37.2(2) of the *SIMA Regulations* pertain to the likely impact of the expiry of the order or finding on the producers of the like goods. There is no mention of the impact on downstream users. In sum, the impact of the expiry of the finding or order on downstream users (i.e. aluminum and foundry alloys producers) is outside the scope of the Tribunal’s inquiry in the present expiry review.³⁴

Timeframe for the Tribunal’s analysis

61. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term. This is generally considered to be the period encompassing 12 to 24 months from the date of the order in the expiry review. However, the Tribunal has considered it appropriate to limit its analysis to a shorter timeframe in situations where the market was particularly volatile and/or the evidence beyond an 18-month period was limited.³⁵

62. Québec Silicon initially argued that the Tribunal’s analysis should be limited to the next 12 to 18 months, rather than the 12- to 24-month period normally considered in an expiry review. It pointed to current conditions in the Canadian and global silicon metal markets as justification for that approach. Later, Québec Silicon indicated that it was not taking a firm position on the relevant timeframe and was prepared to accept the longer time period as appropriate.³⁶

63. RTA submits that the 12- to-24 month timeframe normally considered by the Tribunal in expiry reviews is appropriate. It distinguishes the shorter timeframes used in *Hot-rolled Sheet* or in *Wood Slats*³⁷ because the type of volatility or limited evidence in those cases is not present in the present expiry review.

64. The evidence in the present review allows the Tribunal to conduct its analysis using the 12- to 24-month period that is typically applicable in the course of expiry reviews. Accordingly, and in light of the parties’ positions, the Tribunal sees no reason to depart from its usual approach of considering likely developments over the next 12 to 24 months.

32. Exhibit RR-2018-003-B-05, Vol. 13, paras. 57-59 at 19-20; *Transcript of Public Hearing*, 11 June 2019, Vol. 2, at 187, 216, 231.

33. Exhibit RR-2018-003-B-05, Vol. 13, para. 56, at 19.

34. See also NQ-2013-003 at paras. 60-61, 64.

35. *Flat Hot-rolled Steel Sheet* (16 August 2006), RR-2005-002 (CITT) at para. 37 [*Hot-rolled Sheet*]; *Wood Slats* (15 July 2009), RR-2008-003 (CITT) at para. 45 [*Wood Slats*].

36. *Transcript of Public Hearing*, Vol. 3, 12 June 2019, at 401.

37. *Flat Hot-rolled steel sheet; Wood Slats*.

Changes in market conditions

65. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry should the finding be rescinded, the Tribunal will first consider changes in international and domestic market conditions.³⁸

International market conditions

66. Silicon metal is sold in different grades. The maximum proportion of other elements (in particular iron, calcium and aluminum) present in the product determines the grade of the product.

67. Silicon metal is used as an alloying agent by aluminum producers, and by the chemical industry to produce silicones and polysilicons, the latter for use in photovoltaic cells for solar panels. The intended use does not significantly affect the production process for silicon metal. Production of a particular grade of silicon metal is not a function of the equipment or the production process used in any particular manufacturing plant. It instead depends on the raw materials used and the finishing process. Thus, any silicon production facility could potentially make silicon for any end use.³⁹

68. Global demand and global production of silicon metal increased significantly since the Tribunal's finding in Inquiry No. NQ-2013-003. As of 2018, global demand and production of silicon metal stood at approximately three million tonnes.⁴⁰ CRU projects global demand for silicon metal to continue growing modestly in 2019, and more significantly in 2020 and 2021.⁴¹

69. China's share of global silicon metal production has increased since the period of inquiry (POI) considered in Inquiry No. NQ-2013-003. China now accounts for approximately two thirds of global production of silicon metal.⁴² Chinese silicon metal exports peaked in 2018 and are projected to gradually decrease through 2023.⁴³

Domestic market conditions

70. There are two principal Canadian users of silicon metal in Canada, RTA and Alcoa. There are also a number of smaller customers and resellers. Domestically produced and imported silicon metal is mainly sold directly to the end users.

71. The total Canadian apparent market declined by 17 percent between 2016 and 2017 before increasing by 13 percent between 2017 and 2018.⁴⁴ The Canadian market currently stands at approximately 30,000 MT.⁴⁵ CRU forecasts the Canadian silicon metal market to grow steadily in each of 2019, 2020 and 2021.⁴⁶

38. See paragraph 37.2(2)(j) of the *Regulations*.

39. *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 88-89; *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 157, 165-166. Exhibit RR-2018-003-A-05, Vol. 12, para. 6, at 3.

40. Exhibit RR-2018-003-A-02 (protected), Vol. 12, at 55-56.

41. *Ibid.* at 56.

42. *Ibid.* at 55.

43. *Ibid.* at 65.

44. Exhibit RR-2018-003-05, Vol. 1.1, Table 9 at 24.

45. *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 20, 99.

46. Exhibit RR-2018-003-A-02 (protected), Vol. 12 at 57.

72. This projected growth can be linked to the projected growth in demand for downstream foundry aluminum alloy products. The latter growth is expected to be driven by increasing demand for lighter-weight vehicles, relocation of automotive plants to North America, together with changes in rules of origins and new rules prescribing the proportion of North American aluminum to be used in new car manufacturing as a result of the new *Canada-United States-Mexico Agreement*.⁴⁷

73. Silicon metal spot prices increased over the POR, peaking in 2018.⁴⁸ CRU projects spot price indices to decrease in 2019 before increasing sometime in 2020 and in 2021.⁴⁹

74. Whereas imports of the subject goods occupied a large part of the domestic market during the POI in Inquiry No. NQ-2013-003,⁵⁰ there were only negligible volumes of subject goods imported during the POR.⁵¹

75. Imports of non-subject goods held a greater proportion of the domestic market during the POR compared to the POI in Inquiry No. NQ-2013-003.⁵² In addition, at the time of Inquiry No. NQ-2013-003, the domestic producer (and sole domestic supplier), Québec Silicon, was exporting most of its non-captive production. Since that time, and as the Tribunal found in *Silicon Metal II*, Québec Silicon has increased its presence in the domestic market. Québec Silicon now supplies a significant portion of the Canadian market.⁵³

76. The Tribunal's finding in *Silicon Metal II* highlights the role of the finding in Inquiry No. NQ-2013-003 in stabilizing the Canadian silicon metal market. In *Silicon Metal II*, the Tribunal found that Québec Silicon's gains in the domestic market were made possible by the absence of Chinese silicon metal from the domestic market at quantities and price points existing at the time of Inquiry No. NQ-2013-003 and also by RTA and Alcoa's need for a reliable and secure supply.⁵⁴

77. RTA and Alcoa purchase the bulk of their requirements in silicon metal pursuant to agreements with Québec Silicon that set the volume and value of their purchases over the subsequent 6 or 12 months. Both RTA and Alcoa also make small occasional spot purchases.⁵⁵

47. Exhibit RR-2018-003-B-05, Vol. 13 at paras. 45-47, 51-52; Exhibit RR-2018-003-B-07 at 635, 640, 677-680; *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 186.

48. Exhibit RR-2018-003-A-04 (protected), Vol. 12 at 34; Exhibit RR-2018-003-C-02, Vol. 14 at 82, 91; Exhibit RR-2018-003-26.01, Vol. 8.1 at 202.

49. Exhibit RR-2018-003-A-04 (protected), Vol. 12 at 34; Exhibit RR-2018-003-C-02, Vol. 14 at 91; Exhibit RR-2018-003-26.01, Vol. 8.1 at 202.

50. Exhibit RR-2018-003-11D (protected), Vol. 2.3, Table 32, at 3.

51. Exhibit RR-2018-003-05, Vol. 1.1, Table 5, at 14; Exhibit RR-2018-003-03-03A, Vol. 1 at 10.

52. Exhibit RR-2018-003-06 (protected), Vol. 2.1, Table 10, at 25; Exhibit RR-2018-003-11D (protected), Vol. 2.3, Table 32, at 3.

53. Exhibit RR-2018-003-06, Vol. 2.1, Table 10, at 25.

54. *Silicon Metal II* at para. 70.

55. Exhibit RR-2018-003-A-03 (protected), Vol. 12 at para. 22; *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 24-25, 93. Québec Silicon and RTA have a three-year "terms and conditions" contract that sets out terms and conditions without prescribing sales volumes or prices. *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 190-191.

78. RTA and Alcoa's purchasing strategies play a key role in shaping the Canadian silicon metal market. In Inquiry No. NQ-2013-003, the Tribunal found that silicon metal is a commodity product that trades largely (though not exclusively) on the basis of price.⁵⁶

79. Likewise, in *Silicon Metal II*, the Tribunal found that silicon metal is a commodity product and that Canadian prices for silicon metal are, in large part, influenced by global market trends. In addition, the Tribunal concluded that Canadian prices were not necessarily identical to those reflected by global and American indices, but tended to move in tandem with them. The Tribunal also found that the vast majority of silicon metal produced in Canada is not sold as a typical commodity as it is not sold on the basis of the lowest price. Although price was an important factor in purchasing decisions, other non-price-based considerations, including reliability and security of supply, were far more important drivers of silicon metal purchasing decisions as compared to other commodity goods.⁵⁷

80. As such, in *Silicon Metal II*, the Tribunal found that RTA and Alcoa made the security and reliability of supply the critical feature of their purchasing strategies in the wake of the finding in Inquiry No. NQ-2013-003.⁵⁸ The Tribunal found that RTA and Alcoa had clearly defined procurement strategies in which they supplemented their purchases of Canadian silicon metal with imports. It also found that both RTA and Alcoa deliberately avoided overly relying on a single source of supply.⁵⁹

81. RTA's procurement process has remained largely unchanged subsequent to *Silicon Metal II*. RTA's procurement policy is based on a "Total Cost of Ownership" strategy and emphasizes security, reliability and diversity of supply. Price is a relevant factor, but not the primary or only factor for RTA; the dominant factor is security of supply.⁶⁰

82. Witnesses for RTA testified that in making its procurement decisions,⁶¹ RTA considers the following factors, aside from price: the quality of the silicon metal being procured; the reliability of the supply source; the cost effectiveness of the supply chain; the reputation of the supplier; the supplier's adherence to RTA's ethics policies; the supplier's appetite to do business with Rio Tinto⁶² over the long term; and the supplier's financial health.

83. In addition, the witnesses explained that RTA applies a "bifurcated" procurement strategy. It employs different strategies for the sourcing of domestic and imported silicon metal. In particular, the Tribunal was told that RTA uses different pricing baselines in negotiations for each of these sources of supply.⁶³

56. NQ-2013-003 at para. 79.

57. *Silicon Metal II* at paras. 63-65.

58. *Ibid.* at para. 68.

59. *Ibid.* at para. 67.

60. *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 171-172.

61. *Ibid.* at 171-173, 233.

62. In this instance, with respect to the supplier's appetite to do business, the witnesses referred to Rio Tinto rather than to RTA.

63. *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 180-181.

84. RTA's witnesses emphasized the importance for RTA of maintaining Québec Silicon as a reliable local supplier that can supply high-quality silicon metal in a just-in-time fashion.⁶⁴ They stated that RTA will continue to procure silicon metal from Québec Silicon in the event that the finding is rescinded.

85. Alcoa's procurement strategy has evolved in recent years. Since 2016, Alcoa has consolidated all of its purchasing of silicon metal for its worldwide foundry operations. Product quality, reliability of the supply chain and diversity of supply options remain key considerations in Alcoa's procurement decisions. However, where potential suppliers are similarly qualified in terms of product quality and reliability of supply, and taking diversity of supply into account, Alcoa's policy is that "all else being equal, price would be the final factor taken into account."⁶⁵

Likely performance of the domestic industry if the finding is continued

86. The Tribunal will examine the likely performance of the domestic industry were the finding continued, taking into account that industry's recent performance.⁶⁶ For the purposes of this analysis, the Tribunal will consider whether there are any relevant factors other than the dumping and/or subsidizing of the subject goods that would affect or be likely to affect the domestic industry's performance in the near to medium term.⁶⁷

87. The Investigation Report data shows that, during the POR (calendar years 2016 to 2018), some performance indicators pertaining to the domestic industry's domestic sales evidenced somewhat declining trends. These coincided with movements in the domestic market. Other performance indicators improved over the POR. Québec Silicon's performance with respect to export sales improved over the course of the POR. Because the domestic industry consists of a single producer, most of the evidence before the Tribunal is confidential and cannot be disclosed. The Tribunal will therefore describe the relevant trends in general terms. The domestic producer's production for domestic sales declined by 11 percent in 2017 when compared to 2016 and by 7 percent in 2018 when compared to 2017. On the other hand, production for export sales and total production increased in each year of the POR: production for export sales increased by 17 percent in 2017 and by 20 percent in 2018; total production increased by 4 percent in 2017 and by 9 percent in 2018.⁶⁸

88. Domestic sales of domestically produced goods declined by 13 percent in 2017 (at the same time as the total apparent market contracted by 17 percent⁶⁹) before increasing by 9 percent in 2018, when the market grew by 13 percent.⁷⁰ Québec Silicon's market share, which, as noted above, increased considerably when compared to the POI, remained relatively stable during the course of the POR, with minor year-on-year shifts.⁷¹ Prices of domestic sales decreased by 1 percent in 2017 and increased by 22 percent in

64. *Ibid.* at 178.

65. Exhibit RR-2018-003-RI-05, Vol. 9 at 1-4.

66. See paragraph 37.2(2)(c) of the *Regulations. Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 85. In *Thermoelectric Containers*, the Tribunal stated the requirement in an expiry review is that the Tribunal draw logical conclusions from the relevant information before it, and that information will often appropriately include the performance of the domestic and foreign industries during the POR, when anti-dumping and countervailing duties were in place. See also *Aluminum Extrusions*.

67. See paragraph 37.2(2)(k) of the *Regulations*.

68. Exhibit RR-2018-003-05, Vol. 1.1, Table 31, at 46.

69. *Ibid.*, Table 8, at 24.

70. *Ibid.*, Table 9, at 24, and Table 31, at 46.

71. Exhibit RR-2018-003-06 (protected), Vol. 2.1, Table 10, at 25.

2018.⁷² The volume of inventories increased by 69 percent in 2017 compared to 2016 and decreased by 8 percent in 2018 compared to 2017.⁷³ Export sales volumes increased by 19 percent in 2017 and by 20 percent in 2018.⁷⁴

89. Practical plant capacity increased by 9 percent in 2017 and by 2 percent in 2018.⁷⁵ Capacity utilization decreased by 5 percent in 2017 and increased by 7 percent in 2018.⁷⁶ The number of direct and indirect employees was essentially stable during the POR, although the number of hours worked increased by 2 percent each year of the POR,⁷⁷ and total wages increased by 6 percent and 8 percent in 2017 and 2018 respectively.⁷⁸ Productivity also increased.⁷⁹

90. The domestic industry was able to make investments during the POR. Québec Silicon reported that it projects making further investments in 2019 and 2020, over and above annual maintenance; it plans on increasing the capacity of its facility and on improving it.⁸⁰

91. The data pertaining to the domestic producer's financial performance is confidential. Mr. Watson of Ferroglobe did, however, publicly testify that Québec Silicon was able to stay profitable in 2018.⁸¹

92. The Tribunal now turns to the likely performance of the domestic industry if the finding is continued. As noted above, CRU predicts that the Canadian market will be growing steadily in 2019-2021.⁸² After a decline in 2019, spot prices on the US market are projected to increase in 2020 and 2021.⁸³

93. Québec Silicon's sales in the domestic market over the next 12 to 24 months are largely dependent on its annual or biannual sales agreements with its two major Canadian customers, RTA and Alcoa.

94. With the finding in place, the evidence shows that, despite yearly variations,⁸⁴ RTA will continue to source large volumes of silicon metal from Québec Silicon in accordance with its procurement strategy.⁸⁵

95. There is less certainty concerning the volumes of silicon metal that Alcoa would procure from Québec Silicon, should the finding be continued.⁸⁶ Adding to this uncertainty is the fact that one of Alcoa's plants is, as of the date of closing the record in this inquiry, on lockout.⁸⁷

72. Exhibit RR-2018-003-05, Vol. 1.1, Table 21, at 30.

73. *Ibid.*, Table 31, at 46.

74. *Ibid.*

75. *Ibid.*

76. *Ibid.*

77. *Ibid.*

78. *Ibid.*

79. *Ibid.*

80. Exhibit RR-2018-003-A-05, para. 46, at 10.

81. *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 30.

82. Exhibit RR-2018-003-A-02 (protected), Vol. 12 at 57.

83. Exhibit RR-2018-003-A-04 (protected), Vol. 12 at 34.

84. *Transcript of In Camera Hearing*, 11 June 2019, Vol. 2, at 101, 113; Exhibit RR-2018-003-B-06 (protected), Vol. 14 at para. 31-32; Exhibit RR-2018-003-RI-02D (protected), Vol. 10 at 1.

85. See also the Tribunal's conclusion, *infra*, para. 107, concerning RTA's arguments concerning certain alleged risks associated with its procurement from Québec Silicon.

86. Exhibit RR-2018-003-RI-05A (protected), Vol. 10.

87. Exhibit RR-2018-003-RI-05, Vol. 9 at 3.

96. Parties opposed to a continuation of the finding argued that a number of other factors will negatively impact Québec Silicon's performance, and/or will limit the volumes of silicon metal that Québec Silicon can supply to RTA and Alcoa, regardless of the outcome of this expiry review. The Tribunal's finding in *Silicon Metal II* was cited in support of these arguments.

97. To begin, the Tribunal notes that the domestic producer's situation has evolved since the Tribunal's findings in Inquiry No. NQ-2013-003 and in *Silicon Metal II*. Some circumstances that may have been relevant in the past are no longer pertinent, such as the lockout existing at the time of the 2013 Inquiry, which was resolved shortly after the issuance of the finding. For this reason, the factors of self-injury identified in the Tribunal's findings in Inquiry No. NQ-2013-003 and in *Silicon Metal II* must now be considered in light of the facts before the Tribunal in the present review.⁸⁸

98. The Tribunal has examined the arguments of the opposing parties. It finds that the evidence does not demonstrate that the other factors relied upon by the opposing parties are likely to have a significant negative impact on the domestic industry over the near to medium term.

99. In sharp contrast to the situation prevailing at the time of Inquiry No. NQ-2013-003, Québec Silicon has, assisted by the measures put in place as a result of the finding, refocused its business on the domestic market and now holds a significant share of that market.

100. In addition, Québec Silicon continues to export close to 50 percent of its production to Dow. The commitment to sell part of its production to Dow has guaranteed a volume of export sales to Québec Silicon. These export sales have not prevented Québec Silicon from increasing its market share in the domestic market or from being profitable during at least part of the POR.⁸⁹ For these reasons, the Tribunal does not regard the commitment to sell almost half of Québec Silicon's production to Dow as a relevant factor when assessing the likelihood of injury.

101. RTA makes an argument concerning the volume of Québec Silicon production available to the Canadian market and its ability to supply its Canadian customers' needs in light of its exports.⁹⁰ Having reviewed RTA's detailed calculations to that effect,⁹¹ the Tribunal is not persuaded by the arguments raised by RTA and does not believe that Québec Silicon will be unable to supply the Canadian market and its Canadian customers' needs in the near to medium term. This finding is supported by the uncertainty surrounding Québec Silicon's export sales to customers other than Dow going forward,⁹² Québec Silicon's witnesses' confirmation that domestic demand increases would be prioritized over exports,⁹³ and other confidential information on the record.⁹⁴

102. The opposing parties further argue that Québec Silicon's customer base lacks diversification. They point out that Québec Silicon has been directed by its corporate parent (Ferroglobe) to rely primarily on the small Canadian market, which is focused on aluminum (rather than the larger, faster-growing and more

88. See the factors of self-inflicted injury identified by the Tribunal in Inquiry No. NQ-2013-003, paras. 113-138, and *Silicon Metal II*, paras. 118-145 and 190-193.

89. *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 30.

90. Exhibit RR-2018-003-B-01, Vol. 13, paras. 148-149, at 60-61; *Transcript of the Public Hearing*, 12 June 2019, Vol. 3, at 357-359; Exhibit RR-2018-003-B-03, Vol. 13, para. 74, at 25.

91. RTA Protected Aid to Argument, Vol. 18, tab 14.

92. *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 34-36 and 83-84.

93. Exhibit RR-2018-003-A-03, Vol. 11, para. 60, at 15.

94. *Transcript of In Camera Hearing*, Vol. 1, 10 June 2019, at 2-3.

lucrative solar and chemical market segments), and is prevented from exporting to the domestic markets of other Ferroglobe business units.

103. Ferroglobe's corporate strategy favours satisfying local demand with local production.⁹⁵ Aside from its sales to Dow, Québec Silicon's focus is on the Canadian market,⁹⁶ which is limited to aluminum-grade silicon metal.⁹⁷ However, Québec Silicon produces not only aluminum-grade silicon metal, but also chemical grade silicon metal, notably for Dow.⁹⁸

104. Moreover, in 2018 and 2019, Québec Silicon has been able to export to the domestic market of other Ferroglobe units as a result of the recent idling of Ferroglobe's facility in Niagara Falls, New York.⁹⁹ This shows that opportunities may arise for Québec Silicon to export to the domestic markets of other Ferroglobe companies. In any event, Québec Silicon exports a significant part of its total production. The evidence indicates that, on the whole, export performance is unlikely to represent a significant factor negatively affecting Québec Silicon's performance in the near to medium term.

105. The opposing parties also argue that Québec Silicon, as a member of the Ferroglobe group, must focus on maximizing profits for the group at large, as opposed to its own bottom line. They contend that Québec Silicon has a limited ability to take decisions regarding Canadian operations, including raw materials procurement and profit maximization. However, Mr. Crespy of Québec Silicon testified that Québec Silicon's decisions (including the sourcing of raw materials) are made with a view to maximize *its* own profits.¹⁰⁰

106. RTA argued that sourcing from Québec Silicon presents security of supply and reputational risks for RTA due to certain developments concerning Ferroglobe.¹⁰¹ At the hearing, Ms. Verdini of RTA also expressed concerns about Ferroglobe's overall financial health.¹⁰²

107. The Tribunal notes, however, that these alleged issues have not yet caused RTA to refrain from procuring silicon metal from Québec Silicon or to change its procurement strategy. Moreover, the concerns expressed by RTA may not even materialize. In the event that RTA's concerns did materialize, the Tribunal is not convinced that RTA would reduce its orders from Québec Silicon, much less sever its business relationship with Québec Silicon completely.¹⁰³ Such a scenario is not only speculative, it contradicts RTA's own evidence stressing the importance of having a local supplier to enhance security and reliability of supply, all of which are considered essential aspects of RTA's procurement strategy.

108. Finally, the evidence on record clearly shows that the limitations placed on RTA's and Alcoa's sourcing from Québec Silicon are directly attributable to their respective procurement strategies being

95. *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 16, 33.

96. *Ibid.*

97. *Ibid.* at 90-91.

98. *Ibid.* at 16.

99. *Ibid.* at 33-36.

100. Exhibit RR-2018-003-A-05, Vol. 11, para. 31, p. 8; *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 17-18, 91, 98; *Transcript of In Camera Hearing*, Vol. 1, 10 June 2019, at 11-12, 31-33; Exhibit RR-2018-003-A-06 (protected), Vol. 12, paras. 33-34, p. 8.

101. Exhibit RR-2018-003-B-04 (protected), Vol. 14, paras. 77-81; *Transcript of In Camera Hearing*, Vol. 1, 10 June 2019, 124-125.

102. *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 181.

103. See, in particular, *Transcript of In Camera Hearing*, Vol. 2, 11 June 2019, at 125-126.

underpinned by the requirement for a diversified supplier base. This factor is independent of the finding and will be present whether or not the finding is in place. Notwithstanding these limitations, Québec Silicon was able to hold a significant share of the domestic market during the POR. The evidence on the record does not indicate a likelihood that this situation would change substantially in the near to medium term.

109. Accordingly, on the basis of the Tribunal's assessment of the evidence on record and the preceding reasons, the Tribunal finds that the domestic industry's performance – particularly in terms of sales and profitability – is likely to remain substantially the same as during the POR or decline slightly if the finding is continued.

Likely import volume of dumped and subsidized goods

110. Pursuant to paragraph 37.2(2)(a) of the *Regulations*, the Tribunal may consider the likely volume of the dumped or subsidized goods if the order or finding is allowed to expire. In particular, the Tribunal may consider whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

111. The Tribunal's assessment of the likely volumes of dumped and subsidized imports encompasses a range of factors, which include the following: the likely performance of the foreign industry; the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods; evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions; and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.¹⁰⁴

Excess capacity in China and likely performance of the producers of the subject goods

112. The evidence before the Tribunal shows that Chinese producers account for a very high proportion of total global production and global production capacity.¹⁰⁵ Chinese production of silicon metal is now greater than it was at the time of Inquiry No. NQ-2013-003, when subject imports held a large share of the Canadian market.¹⁰⁶

113. The Chinese producers' *excess* production capacity is massive, and overall Chinese production capacity is growing.¹⁰⁷ According to CRU figures, Chinese excess capacity is more than 100 times the size of the entire Canadian silicon metal market.¹⁰⁸ The vast proportion of Chinese capacity is non-captive.¹⁰⁹

114. Furthermore, China's producers rely heavily on exports to mitigate the oversupply of silicon metal in the Chinese market. Chinese exports have increased significantly since the issuance of the finding¹¹⁰ and are now roughly equal to 26 times the Canadian market.¹¹¹ The massive Chinese excess capacity will continue to create significant pressure on Chinese producers to seek export sales.

104. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

105. Exhibit RR-2018-003-A-02 (protected), Vol. 12 at 60-61, 78-87.

106. *Ibid.* at 55; Exhibit RR-2018-003-11D (protected), Vol. 2.3 at 3.

107. Exhibit RR-2018-003-19.15 (protected), Vol. 6 at 43; Exhibit RR-2018-003-A-02 (protected), Vol. 12 at 67.

108. Exhibit RR-2018-003-A-02 (protected), Vol. 12 at 60-61, 78-87.

109. Exhibit RR-2018-003-A-06 (protected), Vol. 12 at para. 28.

110. Exhibit RR-2018-003-19.15 (protected), Vol. 6 at 48.

111. *Ibid.* at 47; *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 20, 99; Exhibit RR-2018-003-06 (protected), Vol. 2.1, Table 8, at 17.

115. The opposing parties argue that the CRU Chinese production figure cited by Québec Silicon does not accurately reflect actual production capacity in China. They argue this figure represents nameplate capacity by including furnaces that have been dismantled or closed for extended periods of time.

116. Mr. Majumdar of Wacker testified that while new production facilities are being built in China, many old production facilities are no longer in use or will be shut down.¹¹² Moreover, new production facilities are located in the landlocked province of Xinjiang and are focused on the production of chemical-grade silicon likely earmarked for domestic consumption or for the Middle East due to low transportation costs.¹¹³

117. The opposing parties assert that the production of silicon metal is seasonal in many Chinese provinces.¹¹⁴ In addition, they claim that a large share of Chinese production capacity is for captive use.¹¹⁵

118. The opposing parties also refer to public statements by Ferroglobe expressing a positive outlook on Chinese exports and trends in China.¹¹⁶

119. RTA and Wacker make a number of arguments concerning the projected trends for Chinese demand, Chinese production, the proportion of Chinese production intended for export and the volume of Chinese exports.¹¹⁷ They also submit that Chinese silicon metal production will grow at slower rates due to Chinese government policies aimed at curbing the expansion of power-intensive and polluting industries and promoting value-added manufacturing.¹¹⁸

120. Québec Silicon's witnesses acknowledge that Chinese production may be overstated. Possible reasons for this overstatement include seasonal variations in power availability, shortages of raw materials and electrodes, and more stringent enforcement of environmental regulations.¹¹⁹ Despite these considerations, Québec Silicon submits that Chinese excess capacity remains massive. In addition, a reduction of the Chinese VAT rate applicable to the manufacturing sector and the construction and transport sectors will incentivize production and exports.¹²⁰

121. Québec Silicon also submits that the Chinese economy and Chinese demand for silicon metal are slowing down compared to previous periods¹²¹ due to a number of factors. Québec Silicon acknowledges

112. *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 136.

113. Exhibit RR-2018-003-B-03, Vol. 13, para. 44, at 15-16.

114. Exhibit RR-2018-003-C-01, Vol. 13, para. 15, at 10.

115. *Ibid.*, para. 17, at 13.

116. *Ibid.*, para. 24, at 15-16; Exhibit RR-2018-003-C-02 (protected), Vol. 14, para. 24, at 15-16 and at 238.

117. Exhibit RR-2018-003-B-02 (protected), Vol. 14, paras. 63-64 and 159-161, at 29, 65-67; Exhibit RR-2018-003-C-02 (protected), Vol. 14, paras. 25-33, at 16-18; Exhibit RR-2018-003-B-04 (protected), Vol. 14, paras. 48-51, at 20-21; Exhibit RR-2018-003-19.15 (protected), Vol. 6, at 55.

118. Exhibit RR-2018-003-B-01, Vol. 13, paras. 55-60, at 25-27; Exhibit RR-2018-003-C-01, Vol. 13, para. 37, at 21; Exhibit RR-2018-003-B-04 (protected), Vol. 14, paras. 42-44, at 17-18; Exhibit RR-2018-003-B-02 (protected), Vol. 14, paras. 55-62, 159, at 25-28, 65; Exhibit RR-2018-003-19.15 (protected), Vol. 6 at 42.

119. Exhibit RR-2018-003-A-03, Vol. 11, para. 27, at 7.

120. Exhibit RR-2018-003-A-01, Vol. 11, paras. 128-129, at 37.

121. *Ibid.*, para. 104 at 31; Exhibit RR-2018-003-A-02 (protected), Vol. 12, at 58-59.

that Chinese exports are projected to decrease in the coming years but argues that this decrease is inconsequential when compared to the size of the Canadian market.¹²²

122. The Tribunal's analysis focuses on considerations that will be relevant during the next 12 to 24 months.

123. CRU forecasts that demand for silicon metal in the Chinese market will increase significantly in each of 2019, 2020 and 2021.¹²³ CRU projects that the excess of Chinese production over Chinese demand, the volume of Chinese exports and the share of Chinese exports as a proportion of total Chinese production will all gradually decrease going forward.¹²⁴ However, these trends must be measured against a projected increase in production. The expected decline in Chinese exports will be relatively modest over the next 12 to 24 months.¹²⁵

124. Chinese demand is, and is projected to remain, well below Chinese production over the next 12 to 24 months.¹²⁶ Thus, the Chinese market will not achieve a balance over the next 12 to 24 months. Projected Chinese demand will remain vastly below current Chinese production capacity. Moreover, even though Chinese exports are predicted to decline, they will continue to dwarf the Canadian market. Finally, and most importantly, it cannot be disputed that total Chinese production capacity, and Chinese excess production capacity, are tens if not hundreds of times larger than the entire Canadian market. This remains the case even if CRU's figures for Chinese production capacity overstate actual Chinese production capacity (as acknowledged by CRU¹²⁷).

125. In light of the ongoing and massive excess Chinese production capacity, it is clear that the producers of the subject goods have the capacity to export massive volumes of silicon metal to Canada over the next 12 to 24 months, should the finding be rescinded.

126. The opposing parties argue that demand in other markets may be served by Chinese exports. China's principal export markets are Japan, Korea and Chinese Taipei, but Chinese suppliers also export to other markets such as India, Thailand, Malaysia, Middle East, African countries, Turkey, Mexico and Argentina, which are also open to Chinese imports. The opposing parties submit that overall demand in these markets will remain high and can absorb a high percentage of Chinese exports that might otherwise be exported to Canada.

127. The evidence relied upon by the opposing parties¹²⁸ does not suggest that these other markets will sufficiently absorb the massive excess Chinese capacity to a degree that will reduce the incentive for Chinese producers to export to other available markets, such as Canada.

128. CRU's projection for the two principal export markets for Chinese producers of the subject goods, Japan and Korea, shows total demand for these two markets decreasing in 2019 and rebounding in 2020 and 2021. However, this rebound will still leave demand at levels below the demand experienced in 2018.¹²⁹

122. Exhibit RR-2018-003-A-01, Vol. 11, para. 124 at 36.

123. Exhibit RR-2018-003-A-02 (protected), Vol. 12, at 56.

124. *Ibid.* at 55-56; Exhibit RR-2018-003-19.15 (protected), Vol. 6, at 47.

125. Exhibit RR-2018-003-A-02 (protected), Vol. 12, at 65.

126. *Ibid.* at 55-56.

127. Exhibit RR-2018-003-19.15 (protected), Vol. 6, at 43.

128. Exhibit RR-2018-003-C-02 (protected), Vol. 14, paras. 44 and 45, at 24, 53 and 60.

129. Demand for other markets is projected to increase but not to the extent that would enable those markets to absorb a significant portion of the excess production capacity from China. Thus, even taking into account demand within these markets, large volumes of Chinese exports will remain available for export to Canada.¹³⁰ Moreover, silicon metal production capacity in countries other than China is also increasing.¹³¹ This additional capacity could supply some of the increase in demand in other markets traditionally supplied by China.

130. There is a further consideration. The record includes evidence that Chinese producers of ferrosilicon could invest to convert their production facilities in order to produce silicon metal.¹³² The data on record is, however, insufficient for the Tribunal to assess whether substantial amounts of additional production capacity could result in Chinese producers switching production from ferrosilicon to silicon metal.

Potential for diversion

131. The United States and the European Union have anti-dumping duties in place on silicon metal from China. Australia has imposed anti-dumping and countervailing duties against silicon metal from China.¹³³

132. In contrast, Canada would remain an open market if the finding were to expire. Thus, the anti-dumping and countervailing measures imposed by the United States, the European Union and Australia heighten the risk of diversion to the Canadian market should the finding be rescinded. Evidence before the Tribunal shows that Chinese silicon metal occupies a significant market share in markets where no anti-dumping or countervailing duties have been imposed.¹³⁴

Likely absolute and relative volumes

133. Although the subject goods did command a large market share prior to the Tribunal's finding in Inquiry No. NQ-2013-003,¹³⁵ the volume of imports of subject goods during the POR was negligible.

134. As explained below, should the finding expire, both the volume and market share of subject imports would increase significantly.

135. RTA argued, and its witnesses testified, that were the finding rescinded, RTA would not abandon its Canadian supply chain. Instead, it would import silicon metal from China in order to diversify its sources of supply.¹³⁶ Another reason would be for RTA to "blend its costs", i.e. reduce its overall silicon metal

129. Exhibit RR-2018-003-A-02 (protected), Vol. 12, at 56.

130. Québec Silicon's Protected Aid to Argument, Vol. 18 at 41.

131. Exhibit RR-2018-003-19.15 (protected), Vol. 6 at 43-44.

132. *Transcript of Public Hearing*, Vol. 1, 10 June 2019, at 90, 97; Exhibit RR-2018-003-A-02 (protected), Vol. 12 at 237.

133. Exhibit RR-2018-003-05, Vol. 1.1, Table 2.

134. Québec Silicon Aid to Argument, Vol. 18 at 25; Exhibit RR-2018-003-C-02 (protected), Vol. 14 at 136; Exhibit RR-2018-003-A-02, Vol. 12 at 77.

135. NQ-2013-003 at para. 166; Exhibit RR-2018-003-11D (protected), Vol. 2.3, Table 32, at 3.

136. *Transcript of Public Hearing*, 11 June 2019, Vol. 2, at 188, 231-232. According to RTA's witnesses, there is limited available global supply of silicon metal. In addition, some of the silicon metal producers are captive, are owned by Ferroglobe (which generally refrains from selling in the domestic markets of its entities, e.g. Québec Silicon), have proven to be unreliable suppliers or present reputational risks such that RTA cannot source silicon metal from them. *Transcript of Public Hearing*, 11 June 2019, Vol. 2, at 174-178; Exhibit RR-2018-003-B-04 (protected), Vol. 14 at paras. 96-97; *Transcript of In Camera Hearing*, 11 June 2019, Vol. 2, at 62-63.

costs. RTA's witnesses testified that Chinese imports would displace non-subject imports, not the domestic like goods.¹³⁷

136. RTA's procurement model suggests that it would continue procuring silicon metal from Québec Silicon should the finding expire. RTA would continue to purchase volumes from Québec Silicon because of proximity and the well-established supply relationship. For this reason, RTA's procurement strategy likely places an upper limit on the volume of the subject goods that would be imported into Canada should the finding expire. However, RTA's evidence clearly shows that it would indeed import subject goods should the finding expire.

137. Ms. Verdini asserted that RTA would face reputational risk if it sourced silicon metal from the Chinese province of Xinjiang, having regard to reports concerning events occurring in Xinjiang.¹³⁸

138. However, as just noted, RTA witnesses have also testified that RTA would import silicon metal from China should the finding be rescinded. Ms. Verdini acknowledged that there are other regions of China producing silicon metal that could supply the needs of RTA.¹³⁹ For this reason, the Tribunal does not consider that the situation in Xinjiang has a material impact on the volume of subject goods that RTA could procure from China were the finding to expire.

139. The evidence before the Tribunal¹⁴⁰ leads the Tribunal to conclude that Alcoa is highly likely to import significant quantities of silicon metal from China should the finding expire.

140. Both RTA and Alcoa are multinational corporations. As such, they possess the ability and resources to easily resume sourcing silicon metal from China if the finding were rescinded.¹⁴¹

141. Although RTA and Alcoa claim that they would have to qualify Chinese suppliers before they would import the subject goods, the process to qualify and approve a Chinese can unfold quickly, sometimes within months.¹⁴² Consequently, taking into account the procurement models of RTA and Alcoa, imports of the subject goods would likely resume by at least mid-2020.

Conclusion on likely volumes of subject goods if the finding is rescinded

142. Were the finding rescinded, the resumption or continuation of dumping would likely lead to a significant increase in the volumes of subject imports (in both absolute and relative terms) over the next 12 to 24 months. This is underscored by the fact that Chinese silicon metal was absent from the Canadian market during the POR. Future volume increases would be driven by the low prices of the subject

137. *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 188, 230-232; Exhibit RR-2018-003-B-05, Vol. 13, para. 37 at 13.

138. *Transcript of Public Hearing*, Vol. 2, 11 June 2019, at 182-183.

139. *Ibid.* at 230; see also *Transcript of in camera Hearing*, Vol. 2, at 115.

140. Exhibit RR-2018-003-RI-05, Vol. 9 at 1 and 4.

141. Exhibit 2018-003-RI-05A (protected), Vol. 10 at 4; *Transcript of In Camera Hearing*, Vol. 2, 11 June 2019, at 74, 103.

142. Exhibit RR-2018-003-RI-05A (protected), Vol. 10 at 4; *Transcript of Public Hearing*, 11 June 2019, Vol. 2, at 228.

imports.¹⁴³ These gains would come at the expense of both non-subject imports, and like goods, despite the fact that RTA's procurement strategy is likely to guarantee some volume for the domestic industry.

Likely price effects of dumped and subsidized goods

143. The Tribunal must consider whether, if the finding is allowed to expire, the dumping or subsidizing of subject goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred.¹⁴⁴ In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from price effects that would likely be caused by other factors.

144. There were no significant volumes of subject imports during the POR. As such, there is no usable data for the Tribunal to perform an analysis concerning their price effects during the POR. Moreover, given the negligible volumes involved, any price effects would be insignificant.

Price undercutting

145. There is evidence of price undercutting by non-subject imports during the POR. Average sales prices of non-subject imports (whether of US origin, or sourced in other countries) were significantly below the prices of the domestic like goods in all years of the POR.¹⁴⁵ This evidence suggests that the subject goods would need to compete with the prices of both the domestic like goods and of non-subject imports in order to gain sales if the finding were to be rescinded.

146. Moreover, evidence submitted by the domestic producer shows that average Chinese FOB export prices and Chinese domestic prices are significantly lower as compared to pricing in all other markets.¹⁴⁶ They are also significantly lower than the prices of the domestic like goods, even when accounting for freight.¹⁴⁷

143. See next section concerning the likely price effects of the subject imports.

144. Paragraph 37.2(2)(b) of the *Regulations*.

145. Exhibit RR-2018-003-06 (protected), Vol. 2.1, Tables 20-25.

146. Exhibit RR-2018-003-A-04 (protected), Vol. 12 at 30. Québec Silicon also refers to three quotes from Chinese producers/suppliers at prices that were significantly below market (CRU spot price) at the time; Exhibit RR-2018-003-A-04 (protected), Vol. 12, para. 61, at 15-16.

147. Compare Exhibit RR-2018-003-06 (protected), Vol. 6, Table 20, at 35, and Exhibit RR-2018-003-A-04 (protected), Vol. 12 at 29-30, and Exhibit RR-2018-003-A08 (protected), Vol. 12 at 140; Québec Silicon's Aid to Argument (protected), Vol. 18 at 49.

147. Chinese export prices are expected to increase over the next 12 to 24 months, at a faster rate than those in other markets.¹⁴⁸ However, Chinese prices are not expected to converge with prices from other sources for several years, well beyond the 12 to 24 months considered by the Tribunal.¹⁴⁹

148. Finally, RTA acknowledges that the subject goods are low-priced. In fact, the low prices of subject goods form part of the rationale advanced by RTA for opposing the continuation of the finding. RTA's witnesses have stated that, should the finding expire, RTA would source silicon metal from China in order to, *inter alia*, blend its costs.¹⁵⁰

149. In light of the foregoing, the Tribunal concludes that subject imports are likely to significantly undercut the prices of the domestic like goods if the finding expires.

Price depression

150. The Tribunal has already concluded that the subject goods are likely to re-enter the Canadian market in significantly increased volumes at prices that will significantly undercut the prices of the domestic like goods. Such undercutting is consequently likely to cause price depression for the domestic industry. In their questionnaire responses, several importers expressed the view that if the finding were rescinded, Canadian silicon metal prices would substantially decrease.¹⁵¹

151. Mr. Watson testified that during their latest rounds of negotiations, Alcoa sought to include a clause in its contract with Québec Silicon providing that all prices would be renegotiated, should the Tribunal rescind the finding at the outcome of the present expiry review.¹⁵² This factor, and other information on the record,¹⁵³ indicates that rescission of the order would trigger pressure on Québec Silicon to lower its sales prices to Alcoa.

152. With respect to sales made to RTA, Québec Silicon's prices would be insulated (to some extent) from the price effects of subject imports. RTA operates a bifurcated procurement strategy whereby the points of reference for price negotiations are different for domestic and imported silicon metal. RTA is prepared to pay a domestic premium to secure product from Québec Silicon.¹⁵⁴ This would likely mitigate the effect that lower-priced subject imports would have on the price of the like goods if the finding is rescinded.

153. That said, while it is not possible to accurately calculate the value of the domestic premium enjoyed by Québec Silicon in its dealings with RTA, there necessarily comes a point where the price differential between the subject goods and the domestic like goods would exert pressure on Québec Silicon to lower its prices. This is particularly likely to occur in a situation of diminishing sales and/or depressed prices vis-à-vis

148. Exhibit RR-2018-003-B-08 (protected), Vol. 14 at 49; Exhibit RR-2018-003-C-02 (protected), Vol. 14 at 331.

149. Exhibit RR-2018-003-B-08 (protected), Vol. 14 at 49.

150. *Transcript of Public Hearing*, 11 June 2019, Vol. 2, at 187, 215-216, 231; Exhibit RR-2018-003-B-05, Vol. 13, paras. 56-57, at 21-22.

151. Exhibit RR-2018-003-18.11B, Vol. 5, at 9; Exhibit RR-2018-003-18.19A, at 8; Exhibit RR-2018-003-18.20, Vol. 5, at 6.

152. Exhibit RR-2018-003-A-03, Vol. 11, para. 46, at 12.

153. Exhibit RR-2018-003-RI-5A (protected), Vol. 10.

154. Exhibit RR-2018-003-B-03, Vol. 13, paras. 109-110, 124, 130-131, at 39, 45, 47; *Transcript of Public Hearing*, 11 June 2019, Vol. 2, at 215-216; see also *Silicon Metal II* at para. 135.

Québec Silicon's other large Canadian customer. RTA's witnesses explained that RTA is under pressure to remain competitive against foreign aluminum producers. As such, it is reasonable to expect that RTA would be alert to opportunities that would facilitate a lowering of costs associated with the acquisition of silicon metal.

154. In light of the foregoing, the Tribunal concludes that the rescission of the finding is likely to significantly depress the prices of the domestic like goods.

Price suppression

155. As discussed above, the domestic producer would face pressure to reduce its prices if the finding were rescinded. In these circumstances, it is unlikely that Québec Silicon would be able to raise prices to meet any increased costs during the next 12 to 24 months. However, the evidence on record does not allow the Tribunal to draw a conclusion that costs increases are likely to happen over the next 12 to 24 months.

156. Accordingly, to the extent that the domestic producer is faced with increased costs, rescission of the finding would likely result in price suppression, but the evidence does not allow the Tribunal to find that such price suppression would be significant.

Likely impact on the domestic industry if the finding is rescinded

157. The Tribunal will now assess the likely impact of the above volumes and prices on the domestic industry if the finding is rescinded.¹⁵⁵ In its analysis, the Tribunal takes into consideration the likely performance of the domestic industry were the finding continued, as discussed above. It also distinguishes the likely impact of the dumped or subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry.¹⁵⁶

158. In cases where a significant volume of like goods is exported, as is the case here, the Tribunal's approach has been to focus its injury analysis on the Canadian merchant market. However, the Tribunal assesses the materiality of any injury caused by the dumped and/or subsidized goods in the overall context of the domestic industry's production of like goods.¹⁵⁷

159. Québec Silicon submits that its performance would be significantly impaired if the finding is rescinded. Production and sales would be severely impacted. Québec Silicon could not continue to make necessary investments in upgrades, its growth would stagnate, and recently achieved efficiencies would diminish. Further investments would also be jeopardized. Production would be impacted, and Québec Silicon would be forced to make temporary and even permanent layoffs.

160. The opposing parties argue that Québec Silicon will not be injured if the finding is rescinded. RTA argues that Québec Silicon's performance has significantly improved, to the point that it is now "thriving".

155. See paragraphs 37.2(2)(e) and (g) of the *Regulations*.

156. See paragraph 37.2(2)(k) of the *Regulations*.

157. NQ-2013-003 at para. 56, referring to *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 13; *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at paras. 50, 67.

161. Wacker argues that Québec Silicon's financial situation and performance have significantly improved since the finding in Inquiry No. NQ-2013-003. Wacker contends that Québec Silicon is no longer vulnerable, and unlikely to be injured, especially having regard to its continued export orientation.

162. The Tribunal has concluded above that the expiry of the finding is likely to cause a significant increase in the volume of subject goods arriving in Canada. The subject goods would likely undercut and depress the prices of domestic like goods.

163. The expected volumes of Québec Silicon's sales to Alcoa are uncertain, regardless of whether the finding is continued or rescinded.¹⁵⁸ However, rescission of the finding would place Québec Silicon in a more vulnerable situation with respect to this customer. The evidence before the Tribunal indicates that Québec Silicon would have to either decrease its prices or suffer a significant loss of sales volume to Alcoa.¹⁵⁹

164. Given the restrictions that RTA places on the volumes that it purchases from any given supplier and the small number of buyers in the domestic market, Québec Silicon would not be able to compensate any loss of sales volume and/or market share with one domestic customer by increasing its volume of sales to the other domestic customer.

165. RTA's witnesses have testified that RTA would continue purchasing silicon metal from Québec Silicon should the finding be rescinded. It is unlikely that Chinese imports would completely replace the domestic like goods in respect of sales made to RTA.

166. That being said, RTA has not committed to procuring any specific volume of silicon metal from Québec Silicon. It could, while maintaining Québec Silicon as an important supplier, significantly reduce the volume of its orders placed with Québec Silicon.

167. The Tribunal has concluded that the subject goods are likely to undercut the prices of the domestic like goods and has noted RTA's representations that it is facing pressure to minimize costs as it competes with other aluminum producers.

168. In light of these considerations, the Tribunal considers that the rescission of the finding is likely to have a depressing effect on Québec Silicon's sales prices to RTA and/or lead to a substantial reduction of the volume of silicon metal sold to RTA, as compared to the volumes sold during the POR and to the volumes that would be expected to be sold if the finding remained in place.¹⁶⁰

158. Exhibit RR-2018-003-RI-05A (protected), Vol. 10.

159. *Ibid.*

160. As noted above, the Tribunal is mandated with considering the impact of the expiry of the finding on the domestic producer of the like goods, not on downstream users of such goods. RTA argues that its future and Québec Silicon's futures are intertwined: if RTA's production volumes increase as a result of becoming more competitive, its need for silicon metal will also increase. However, as discussed at paragraph 166, the Tribunal believes that if the finding is rescinded, RTA could, while maintaining Québec Silicon as an important supplier, significantly reduce the volume of its orders placed with Québec Silicon. Given the importance of RTA as a customer of Québec Silicon, any such significant reduction is likely to contribute in a meaningful way to the injury caused by the subject goods.

169. For the reasons discussed above, if the finding is rescinded, the greater availability of low-priced Chinese silicon metal for import into Canada would, with respect to both its domestic customers, put pressure on the domestic producer to reduce prices or lose significant volumes of sales to imports of the subject goods. Consequently, the rescission of the finding would likely result, in and of itself, in a significant decrease in domestic sales and/or sales prices. In light of the timing of negotiations and orders, it is uncertain whether the rescission of the finding would impact sales prices and volumes for 2019. It would, however, impact sales prices and volumes in 2020 and 2021.

170. The expiry of the finding would thus have a negative impact on the domestic industry's sales volume and/or value, with a corresponding decline in output, capacity utilization, and market share. Employment would suffer, with possible layoffs. Wages would initially be protected by the existing collective agreement. Upon renewal in 2021, however, the rescission of the finding would have a negative impact on potential increases and may lead to demands for concessions. Planned investments during the next 12 to 24 months would be jeopardized.

171. As sales prices and/or volumes would decrease, profitability would also be impacted. In this respect, Mr. Watson submits calculations reflecting what Québec Silicon's 2018 financial results would have been under conditions of significantly decreased Canadian market prices and order volumes. These calculations show a significantly decreased profitability for 2018.¹⁶¹

172. The Tribunal has carefully considered the alternative scenario posited by Mr. Watson as well as alternative scenarios reflecting the Tribunal's best estimates of Québec Silicon's likely volumes (based on the evidence before it) and likely prices in the event that the finding were rescinded. In all the scenarios considered, Québec Silicon's profitability, in terms of its gross margin and net income before taxes, is materially negatively impacted compared to its actual 2018 results. The scenarios also indicate a material negative impact compared to what Québec Silicon's future results would be with the finding in place. Indeed, the impact is material not only with respect to domestic sales, but also with respect to overall sales (domestic and export operations). On this basis, the Tribunal is satisfied that the rescission of the finding would lead to a significant decrease in Québec Silicon's profitability, whether with respect to domestic production for domestic sales alone or the company's operations as a whole.¹⁶²

173. In sum, the Tribunal has considered the impact of the rescission of the finding with regard to the entirety of Québec Silicon's operations. It concludes that the injury caused by subject imports would be material when considered in relation to the domestic industry's domestic sales and when considered in relation to its operations as a whole. As discussed above, no other factors are materially injuring the domestic industry or projected to materially injure it in the next 12 to 24 months.

174. On the basis of the foregoing analysis, the Tribunal finds that the rescission of the finding would, in and of itself, cause material injury to the domestic industry.

161. Exhibit RR-2018-003-A-04 (protected), Vol. 12, Table 2 at paras. 67-68.

162. The Tribunal's analysis takes into account Québec Silicon's exports, including those to a US customer of Ferroglobe which had traditionally been supplied by Ferroglobe's Niagara Falls, NY, plant. This plant was idled in late 2018, and Québec Silicon is not guaranteed to continue selling to this customer in the next 12 to 24 months. The likely injury to the domestic industry is material whether or not the exports sales to that customer continue. Exhibit RR-2018-003-C-02 (protected), Vol. 14, at 312-315; *Transcript of Public Hearing*, at 34-36 and 83-84.

DETERMINATION

175. Pursuant to paragraph 76.03(12)(b) of *SIMA*, and for the reasons stated above, the Tribunal continues its finding in respect of the subject goods.

Jean Bédard

Jean Bédard
Presiding Member

Randolph W. Heggart

Randolph W. Heggart
Member

Susan D. Beaubien

Susan D. Beaubien
Member