



OTTAWA, March 7, 2017

## STATEMENT OF REASONS

Concerning the initiation of investigations into the dumping of

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

and the subsidizing of

**CERTAIN SILICON METAL  
ORIGINATING IN OR EXPORTED FROM  
THE FEDERATIVE REPUBLIC OF BRAZIL, THE REPUBLIC OF KAZAKHSTAN,  
MALAYSIA, THE KINGDOM OF NORWAY AND THE KINGDOM OF THAILAND**

## DECISION

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the Canada Border Services Agency initiated investigations on February 20, 2017 respecting the alleged injurious dumping of certain silicon metal originating in or exported from the Federative Republic of Brazil, the Republic of Kazakhstan, Lao People's Democratic Republic, Malaysia, the Kingdom of Norway, the Russian Federation and the Kingdom of Thailand, and the alleged injurious subsidizing of certain silicon metal originating in or exported from the Federative Republic of Brazil, the Republic of Kazakhstan, Malaysia, the Kingdom of Norway and the Kingdom of Thailand.

Cet Énoncé des motifs est également disponible en français.  
This *Statement of Reasons* is also available in French.

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## SUMMARY

[1] On December 30, 2016, the Canada Border Services Agency (CBSA) received a written complaint from Québec Silicon Limited Partnership and its affiliate QSIP Canada ULC (hereinafter, “the Complainant”), alleging that imports of certain silicon metal originating in or exported from the Federative Republic of Brazil (Brazil), the Republic of Kazakhstan (Kazakhstan), Lao People’s Democratic Republic (Laos), Malaysia, the Kingdom of Norway (Norway), the Russian Federation (Russia) and the Kingdom of Thailand (Thailand) (hereafter “the named countries”) are being dumped, and for the following subset of named countries, that certain silicon metal originating in or exported from Brazil, Kazakhstan, Malaysia, Norway and Thailand are being subsidized. The Complainant alleged that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[2] On January 20, 2017, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the Complainant that the complaint was properly documented. The CBSA also notified the governments of Brazil, Kazakhstan, Laos, Malaysia, Norway, Russia and Thailand that a properly documented complaint had been received. The governments of Brazil, Kazakhstan, Malaysia, Norway and Thailand were also provided with the non-confidential version of the subsidy portion of the complaint and were invited for consultations pursuant to Article 13.1 of the *Agreement on Subsidies and Countervailing Measures*, prior to the initiation of the subsidy investigation.

[3] On February 14, 2017, consultations were held between the Government of Canada and the Government of Brazil in Ottawa. During the consultations, the Government of Brazil made representations with respect to its views on the evidence presented in the non-confidential version of the subsidy portion of the complaint. The CBSA considered the representations made by the Government of Brazil in its analysis. No other governments requested consultations prior to the initiation of the subsidy investigation.

[4] The Complainant provided evidence to support the allegations that certain silicon metal from the named countries have been dumped and that certain silicon metal from Brazil, Kazakhstan, Malaysia, Norway and Thailand have been subsidized. The evidence also discloses a reasonable indication that the dumping and subsidizing have caused injury and are threatening to cause injury to the Canadian industry producing like goods.

[5] On February 20, 2017, pursuant to subsection 31(1) of SIMA, the CBSA initiated investigations respecting the dumping of certain silicon metal from the named countries and the subsidizing of certain silicon metal from Brazil, Kazakhstan, Malaysia, Norway and Thailand.

## **INTERESTED PARTIES**

### **Complainant**

[6] The Complainant accounts for all of the production of like goods in Canada.

[7] The contact information of the Complainant is as follows:

Québec Silicon Limited Partnership and QSIP Canada ULC  
6500 rue Yvon Trudeau  
Bécancour, Quebec  
G9H 2V8

[8] Québec Silicon Limited Partnership (QSLP) is a producer of silicon metal and QSIP Canada ULC (QSIP Canada) is responsible for sales. QSIP Canada is a wholly-owned subsidiary of Ferroglobe PLC (UK) (Ferroglobe). QSLP is 51% owned by QSIP Canada and 49% owned by Dow Corning Corporation.<sup>1</sup>

### **Exporters**

[9] The CBSA identified 27 potential exporters of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential exporters were asked to respond to the CBSA's Exporter Dumping Request for Information (RFI). The CBSA's Exporter Subsidy RFI was sent to the potential producers and exporters in Brazil, Kazakhstan, Malaysia, Norway and Thailand.

### **Importers**

[10] The CBSA identified 18 potential importers of the subject goods from CBSA import documentation and from information submitted in the complaint. All of the potential importers were asked to respond to the CBSA's Importer RFI.

### **Governments**

[11] Upon initiation of the investigations, the governments of Brazil, Kazakhstan, Malaysia, Norway and Thailand were sent the CBSA's Government Subsidy RFI requesting information concerning the alleged subsidy programs available to producers/exporters of subject goods located in each of their respective countries.

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<sup>1</sup> Exhibit 2, Silicon Metal (hereafter "Silicon Metal 2") Complaint (NC), paragraphs 3 and 4.

[12] For the purposes of these investigations, “Government of Brazil (GOB)”, “Government of Kazakhstan (GOK)”, “Government of Malaysia (GOM)”, “Government of Norway (GON)” and “Government of Thailand (GOT)” refer to all levels of government, i.e., federal, central, provincial/state, regional, municipal, city, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed. It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

## **PRODUCT INFORMATION**

### **Definition**

[13] For the purpose of these investigations, subject goods are defined as:

*Silicon metal containing at least 96.00% but less than 99.99% silicon by weight, and silicon metal containing between 89.00% and 96.00% silicon by weight that contains aluminum greater than 0.20% by weight, of all forms and sizes, originating in or exported from the Federative Republic of Brazil, the Republic of Kazakhstan, Lao People’s Democratic Republic, Malaysia, the Kingdom of Norway, the Russian Federation and the Kingdom of Thailand.*

### **Additional Product Information<sup>2</sup>**

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

[15] 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" x 1/2" to 4" x 1/4" for the metallurgical industry, 1" by 1" and smaller for the chemical industries and also in crushed powder form.

### **Production Process<sup>3</sup>**

[16] Silicon metal is produced by combining high purity quartzite (consisting principally of natural crystallized silica (SiO<sub>2</sub>)) with a carbonaceous reducing agent (such as low-ash coal, petroleum coke, charcoal or coal char) and a bulking agent (such as wood chips) in a submerged-arc electric furnace.

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<sup>2</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraphs 16-17.

<sup>3</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraphs 27-32.

[17] In the furnace, the raw materials are smelted at a very high temperature into molten silicon metal. Periodically, the molten silicon metal is tapped from the furnace and poured into large ladles.

[18] Certain impurities, called “slag” – consisting mainly of calcium, aluminum and silicon oxides – are inherent to the production of silicon metal and therefore end up in the ladle with the molten silicon metal. When the molten silicon metal is tapped from the furnace and exposed to oxygen, the slag and molten silicon metal, which have different densities, tend to separate in the ladle. As the slag and molten silicon metal separate, impurities are removed from the silicon metal.

[19] At this point in the process, oxygen can be used to remove additional impurities (aluminum and calcium) from the molten silicon metal, before it is allowed to cool. Oxygen is introduced into the molten silicon metal in gaseous form by means of a porous plug in the base of the ladle.

[20] The molten silicon metal is next poured into molds or onto areas of the plant floor sectioned off using beds of silicon metal fines or sand. Once all of the molten silicon metal has been tapped (drained) from the ladle, the slag is then removed and placed in a slag pot.

[21] After the silicon metal has cooled, it is pre-crushed by lifting and dropping the cooled metal onto the floor using a front-end loader or by using a pre-crushing jack hammer. The purpose of such pre-crushing is to yield pieces suitable for transporting to the silicon metal crushing and sizing equipment, which typically is located in a separate area of the plant. At this point, the silicon metal can be stored.

### **Product Use**

[22] Silicon metal is used in three main segments: chemical, primary aluminum and secondary aluminum. 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.

[23] In Canada, silicon metal is used mainly in the primary and secondary aluminum industries. There are no large chemical industry users of silicon metal in Canada.<sup>4</sup>

### **Classification of Imports**

[24] The subject goods are normally classified under the following Harmonized System (HS) classification number:

2804.69.00.00

[25] The HS classification number identified is for convenience of reference only. Refer to the product definition for authoritative details regarding the subject goods.

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<sup>4</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraph 41.



## **LIKE GOODS AND SINGLE CLASS OF GOODS**

[26] Subsection 2(1) of SIMA defines “like goods” in relation to any other goods as goods that are identical in all respects to the other goods, or in the absence of any identical goods, goods the uses and other characteristics of which closely resemble those of the other goods. In considering the issue of like goods, the Canadian International Trade Tribunal (CITT) typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfill the same customer needs as the subject goods.

[27] In a previous inquiry involving silicon metal from the People’s Republic of China (China), the CITT determined that “domestically produced silicon metal and the subject goods, defined in the same manner, constitute like goods and that there is a single class of goods.”<sup>5</sup> According to the Complainant, the like goods and subject goods are commodity products that compete with one another in the Canadian market place, and are fully interchangeable.<sup>6</sup>

[28] Since the CITT’s finding on Silicon Metal from China there has been no substantial change to the industry. As such, the CBSA is of the opinion that all domestically produced silicon metal are “like goods” to the “subject goods” and form a single class of goods for the purposes of these investigations.

## **THE CANADIAN INDUSTRY**

[29] The complaint includes data on domestic production and on domestic sales of silicon metal for domestic consumption. As previously stated, the Complainant accounts for all of known domestic production of like goods.

### **Standing**

[30] Subsection 31(2) of SIMA requires that the following conditions for standing be met in order to initiate an investigation:

- the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- the production of the domestic producers who support the complaint represents 25% or more of the total production of like goods by the domestic industry.

[31] Since the Complainant is the only known producer of silicon metal in Canada, the CBSA is satisfied that the standing requirements pursuant to subsection 31(2) of SIMA have been met.

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<sup>5</sup> Exhibit 2, Silicon Metal 2 Complaint (NC); Attachment 9 – Silicon Metal 1 CITT Finding and Reasons, NQ-2013-003.

<sup>6</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraph 74.

## CANADIAN MARKET

[32] The Complainant is the only Canadian producer of silicon metal.

[33] The CBSA conducted its analysis of imports of the goods based on actual import documentation and based on commercial intelligence provided in the complaint. The CBSA findings supported the trend detailed by the Complainant.

[34] Detailed information regarding the volume and value of imports of silicon metal and domestic production cannot be divulged for confidentiality reasons. The CBSA, however, has prepared the following tables to show the import share of silicon metal in Canada in addition to the share of the Canadian apparent market, as estimated by the CBSA.

**Table 1**

### **CBSA'S ESTIMATE OF IMPORT SHARE (BASED ON VOLUME)**

<b>Country</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016 (Period of Investigation)</b>
Brazil	14.7%	7.4%	7.9%	21.1%
Kazakhstan	0.0%	0.0%	5.2%	4.1%
Laos	0.5%	7.6%	18.6%	19.4%
Malaysia	0.0%	3.4%	34.2%	3.4%
Norway	2.7%	22.1%	0.0%	8.0%
Russia	2.1%	3.5%	4.0%	3.0%
Thailand	8.2%	27.5%	13.5%	38.8%
<b>Total Imports from Named Countries</b>	<b>28.3%</b>	<b>71.5%</b>	<b>83.4%</b>	<b>97.8%</b>
China	60.3%	0.1%	0.0%	0.0%
United States	2.9%	6.6%	6.1%	2.0%
Other Countries	8.5%	21.7%	10.5%	0.1%
<b>Total Imports</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\*Some percent totals may not add to 100% due to rounding.



Table 2

**CBSA'S ESTIMATE OF THE APPARENT CANADIAN MARKET  
(BASED ON VOLUME)**

Source	2013	2014	2015	2016 (Period of Investigation)
<b>Canadian Producer</b>	<b>18.3%</b>	<b>43.6%</b>	<b>55.0%</b>	<b>44.1%</b>
<b>Imports from Named Countries</b>				
Brazil	12.0%	4.2%	3.6%	11.8%
Kazakhstan	0.0%	0.0%	2.3%	2.3%
Laos	0.4%	4.3%	8.4%	10.8%
Malaysia	0.0%	1.9%	15.4%	1.9%
Norway	2.2%	12.5%	0.0%	4.5%
Russia	1.7%	2.0%	1.8%	1.7%
Thailand	6.7%	15.5%	6.1%	21.7%
<b>Total Imports from Named Countries</b>	<b>23.1%</b>	<b>40.3%</b>	<b>37.5%</b>	<b>54.7%</b>
Imports – China	49.3%	0.1%	0.0%	0.0%
Imports – United States	2.4%	3.7%	2.7%	1.1%
Imports – Other Countries	6.9%	12.3%	4.7%	0.1%
<b>Total Imports</b>	<b>81.7%</b>	<b>56.4%</b>	<b>44.9%</b>	<b>55.9%</b>
<b>Total Market Volume %</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\*Some percent totals may not add to 100% due to rounding.

[35] Of note is the substantive increase in the Canadian producer's market share from 2013 to 2014. In fact this is the second complaint which has been filed by the Complainant in respect of silicon metal since 2013. The first complaint concerned the same goods originating in or exported from China and resulted in the imposition of both anti-dumping and countervailing duties which are still in force today.

[36] The effects of the first Silicon Metal investigation explain the significant increase in the Complainant's market share from 2013 to 2014.

## **EVIDENCE OF DUMPING**

[37] The Complainant alleged that subject goods from Brazil, Kazakhstan, Laos, Malaysia, Norway, Russia and Thailand have been injuriously dumped into Canada. Dumping occurs when the normal value of the goods exceeds the export price to importers in Canada.

[38] Normal values are generally based on the domestic selling price of like goods in the country of export where competitive market conditions exist or as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[39] The export price of goods sold to importers in Canada is generally the lesser of the exporter's selling price and the importer's purchase price, less all costs, charges and expenses resulting from the exportation of the goods.

[40] Estimates of normal values and export prices by both the Complainant and the CBSA are discussed below.

### **Normal Value**

[41] The Complainant submitted that they were unable to estimate normal values on the basis of domestic prices, using the methodology of section 15 of SIMA, because there is no domestic pricing information available on a country specific basis.<sup>7</sup> Accordingly, for each named country, the Complainant estimated normal values on the basis of the methodology of paragraph 19(b) of SIMA, by estimating the costs of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[42] The Complainant used cost information published by the independent commodity market reporting publication CRU<sup>8</sup>, to estimate production costs for Brazil, Norway and Thailand. The Complainant calculated an average production cost based on 2015 and 2016 annual costs for three producers located in Brazil. Similarly, an average cost was calculated based on 2015 and 2016 annual costs for two producers located in Norway. Respecting Thailand, only 2015 cost information was used based on one producer because the producer did not produce silicon metal in 2016.<sup>9</sup>

[43] The Complainant alleged that the CRU's published cost information consistently understates costs by a material degree. An average underestimation factor was calculated based on the difference between the CRU reported costs and the actual costs incurred by the Complainant and its affiliates in 2014 and 2015.<sup>10</sup> In their normal value estimates, the Complainant increased the CRU production costs for Brazil, Norway and Thailand by the same factor.

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<sup>7</sup> Exhibit 2 – Silicon Metal 2 Complaint (NC); paragraph 81.

<sup>8</sup> Exhibit 2 – Silicon Metal 2 Complaint (NC); paragraph 84, Table 1.

<sup>9</sup> Exhibit 2 – Silicon Metal 2 Complaint (NC); paragraph 85.

<sup>10</sup> Exhibit 2 – Silicon Metal 2 Complaint (NC); paragraph 87.

[44] As CRU did not report production cost information for Laos and Malaysia, the Complainant used the estimated production cost for Thailand to estimate the same for Laos and Malaysia due to the geographic proximity of the three countries. Although, the cost of electricity in Thailand is high, this cost is still an accurate representation for Malaysia and Laos, as the electricity costs in both countries are also high.<sup>11</sup>

[45] Similarly, since Russian production costs were not reported in CRU, the Complainant used the estimated production cost for Norway to estimate Russian production costs given the geographic proximity.

[46] The Complainant averaged the estimated production costs of Brazil, Norway and Thailand to estimate the production cost for Kazakhstan. Although according to geographic proximity, Thailand is closest to Kazakhstan, in order to account for the high electricity costs in Thailand, an average of the other reported named countries was used to represent production costs.<sup>12</sup>

[47] The Complainant estimated general, selling and administrative expenses (GS&A), financial expenses and an amount for profits for Brazil based on the publicly available 2015 financial statements of three Brazilian silicon producers, i.e. Ligas do Alumínio, Rima and Minasligas.<sup>13</sup>

[48] The Complainant estimated GS&A, financial expenses and an amount for profits for Kazakhstan based on the 2015 financial statement of Tau-Ken Temir LLP, a silicon producer in Kazakhstan.<sup>14</sup>

[49] The estimated GS&A, financial expenses and an amount for profits for Norway were based on the 2015 financial statement of Elkem, a silicon producer in Norway.<sup>15</sup>

[50] The estimated GS&A, financial expenses and an amount for profits for Russia were based on the 2015 financial statement of UC Rusal, the only silicon producer in Russia.<sup>16</sup>

[51] The estimated GS&A, financial expenses and an amount for profits for Thailand were based on 2015 financial statements of G.S. Energy, a silicon producer in Thailand.<sup>17</sup>

[52] Respecting Laos and Malaysia, the Complainant was unable to find financial information for producers in these two countries. Instead, the Complainant used the same information as for Thailand.<sup>18</sup>

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<sup>11</sup> Exhibit 2– Silicon Metal 2 Complaint (NC); paragraphs 90, 93 & 94.

<sup>12</sup> Exhibit 2– Silicon Metal 2 Complaint (NC); paragraphs 90, 93 & 94.

<sup>13</sup> Exhibit 2 – SM2 Complaint (NC); paragraphs 96.

<sup>14</sup> Exhibit 2 – SM2 Complaint (NC); paragraphs 97.

<sup>15</sup> Exhibit 2 – SM2 Complaint (NC); paragraphs 100.

<sup>16</sup> Exhibit 2 – SM2 Complaint (NC); paragraphs 101.

<sup>17</sup> Exhibit 2 – SM2 Complaint (NC); paragraphs 102.

<sup>18</sup> Exhibit 2 – SM2 Complaint (NC); paragraphs 96 – 102.

[53] The CBSA estimated normal values for the period of January 1, 2016 to December 31, 2016. The CBSA found the Complainant's approach of using CRU published cost information to estimate production costs to be reasonable in estimating paragraph 19(b) normal values.

[54] For Brazil and Norway, the CBSA used the CRU cost information from 2016 for estimating normal values. As CRU did not publish 2016 production cost information for Thailand, the CBSA used the available 2015 CRU costs. The CBSA did not adjust the reported costs by the Complainant's underestimation factor, given that there was insufficient evidence to support the increase.

[55] In estimating the production costs for Kazakhstan, Laos, Malaysia, and Russia, similar to the Complainant, the CBSA used the estimated production costs for Thailand to estimate the production costs for Laos and Malaysia, used the estimated production costs for Norway to estimate production costs for Russia, and averaged the estimated production costs for Brazil, Norway and Thailand to estimate the production costs for Kazakhstan.

[56] The CBSA found the Complainant's estimates of the GS&A, financial expenses and the amounts for profits for Kazakhstan, Laos, Malaysia, Norway, Russia and Thailand to be reasonable, and used these amounts in estimating normal values.

[57] Respecting Brazil the CBSA found the Complainant's estimated GS&A and the amount for profits for Liasa de Alumínio and Minasligas to be much higher than those reported by silicon metal producers in other named countries. A further review of the CRU publication revealed that both producers had extremely low production volume for 2015.<sup>19</sup> In order to provide a more conservative estimate of paragraph 19 (b) normal values, the CBSA did not include Liasa de Alumínio and Minasligas' financial information and only used Rima's 2015 financial information to estimate the GS&A, financial expenses and the amount for profits for Brazil.

### **Export Price**

[58] The export price of goods sold to an importer in Canada is generally determined in accordance with section 24 of SIMA as being an amount equal to the lesser of the exporter's sale price for the goods and the price at which the importer has purchased or agreed to purchase the goods adjusted by deducting all costs, charges, expenses, and duties and taxes resulting from the exportation of the goods.

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<sup>19</sup> Exhibit 1 – SM2 Complaint (PRO); Attachment 6 (PRO), CRU Silicon Cost Data Service November 2016 report, page 51, 53.

[59] The export prices estimated by the Complainant were based on publicly available import data obtained from Statistics Canada under HS code 2804.69.00.00 for the period from November 2015 to October 2016. The Complainant estimated an average export price for each named country based on the weighted average declared value for duty per metric tonne (MT) for the 12-month period.<sup>20</sup>

[60] The CBSA estimated export prices for each named country based on the value for duty as declared on the customs entry documentation and reports generated through the Facility for Information Retrieval Management (FIRM) for each individual shipment imported from January 1, 2016 to December 31, 2016. The CBSA reviewed customs entry documentation for subject goods entering Canada and adjusted the FIRM data to correct any errors respecting the quantity and value for duty.

### **Estimated Margins of Dumping**

[61] The CBSA estimated the margins of dumping by comparing the weighted average estimated normal values with the weighted average estimated export prices for each of the named countries. Based on this analysis, it is estimated that the subject goods imported into Canada from each of the named countries were dumped. The estimated margins of dumping for each country are listed in the table below.

**TABLE 3**

#### **ESTIMATED MARGIN OF DUMPING**

<b>Country</b>	<b>Estimated Margin of Dumping as % Export Price</b>
Brazil	11.8%
Kazakhstan	7.9%
Laos	12.1%
Malaysia	17.5%
Norway	15.7%
Russia	14.5%
Thailand	14.2%

<sup>20</sup> Exhibit 1 – Silicon Metal 2 Complaint (PRO); Attachment 10 (PRO) – Complainant’s Estimate of Apparent Canadian Market Table for Silicon Metal; Attachment 11 (PRO) – Dumping Calculations Estimated by Complainant.



## **EVIDENCE OF SUBSIDIZING**

[62] In accordance with section 2 of SIMA, a subsidy exists where there is a financial contribution by a government of a country other than Canada that confers a benefit on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods. A subsidy also exists in respect of any form of income or price support within the meaning of Article XVI of the *General Agreement on Tariffs and Trade*, 1994, being part of Annex 1A to the World Trade Organization (WTO) Agreement that confers a benefit.

[63] Pursuant to subsection 2(1.6) of SIMA, a financial contribution exists where:

- a) practices of the government involve the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities;
- b) amounts that would otherwise be owing and due to the government are exempted or deducted or amounts that are owing and due to the government are forgiven or not collected;
- c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or
- d) the government permits or directs a non-governmental body to do anything referred to in any of paragraphs (a) to (c) above where the right or obligation to do the thing is normally vested in the government and the manner in which the non-governmental body does the thing does not differ in a meaningful way from the manner in which the government would do it.

[64] A state-owned enterprise (SOE) may be considered to constitute “government” for the purposes of subsection 2(1.6) of SIMA if it possesses, exercises, or is vested with, governmental authority. Without limiting the generality of the foregoing, the CBSA may consider the following factors as indicative of whether the SOE meets this standard: 1) the SOE is granted or vested with authority by statute; 2) the SOE is performing a government function; 3) the SOE is meaningfully controlled by the government; or 4) some combination thereof.

[65] If a subsidy is found to exist, it may be subject to countervailing measures if it is specific. A subsidy is considered to be specific when it is limited, in law or in fact, to a particular enterprise or is a prohibited subsidy. An “enterprise” is defined under SIMA as also including a “group of enterprises, an industry and a group of industries.” Any subsidy which is contingent, in whole or in part, on export performance or on the use of goods that are produced or that originate in the country of export is considered to be a prohibited subsidy and is, therefore, specific according to subsection 2(7.2) of SIMA for the purposes of a subsidy investigation.



[66] In accordance with subsection 2(7.3) of SIMA, notwithstanding that a subsidy is not specific in law, a subsidy may also be considered specific in fact, having regard as to whether:

- a) there is exclusive use of the subsidy by a limited number of enterprises;
- b) there is predominant use of the subsidy by a particular enterprise;
- c) disproportionately large amounts of the subsidy are granted to a limited number of enterprises; and
- d) the manner in which discretion is exercised by the granting authority indicates that the subsidy is not generally available.

[67] For purposes of a subsidy investigation, the CBSA refers to a subsidy that has been found to be specific as an “actionable subsidy,” meaning that it is countervailable.

[68] The Complainant alleged that subject goods originating in or exported from Brazil, Kazakhstan, Malaysia, Norway and Thailand have been subsidized and that exporters of subject goods from those countries have benefitted from actionable subsidies provided by various levels of their respective governments.

[69] In its analysis of the Complainant’s allegations, the CBSA reviewed the information submitted in the complaint as well as other publicly available reference material to determine whether the programs listed could constitute financial contributions in accordance with subsections 2(1) and 2(1.6) of SIMA. These programs were further examined to establish whether they could also be considered specific under subsections 2(7.2) or 2(7.3) of SIMA.

[70] A country-by-country summary of the programs to be investigated follows below.

#### **Programs Being Investigated – Brazil**

[71] The Complainant identified 12-subsidy programs or categories of programs which may have conferred benefits to the producers/exporters of subject goods in Brazil, and that have in turn resulted in the actionable subsidizing of exports of subject goods to Canada. As the Complainant had identified multiple sub-programs, and some of the programs identified were not properly named to reflect the nature of the subsidy, the CBSA found that there were a total of 16 subsidy programs identified in the complaint.

[72] The CBSA reviewed the documentation submitted in the complaint along with information available through its own research, including Brazil's latest subsidy notification to the WTO<sup>21</sup>, and financial reports published by Brazilian development banks and agencies. The CBSA also researched the evidence found in the CBSA's previous subsidy investigations involving Brazil<sup>22</sup>, as well as previous US Department of Commerce (USDOC) countervailing investigations from Brazil.<sup>23</sup> The reference material examined by the CBSA provided support for the Complainant's allegations that the subject goods from Brazil have been subsidized.

[73] The CBSA found that the 16 subsidy programs identified were all available to silicon metal producers/exporters in Brazil. The CBSA's analysis also revealed that the alleged subsidy programs constitute a potential financial contribution by the GOB and a benefit thereby conferred onto the recipient in accordance with the definition of "subsidy" in subsection 2(1) of SIMA. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA.

[74] As a result, the CBSA will investigate all of the programs identified by the Complainant. Please refer to **Appendix 1** for a list of the subsidy programs to be investigated by the CBSA.

#### **Programs Being Investigated – Kazakhstan**

[75] The Complainant identified two subsidy programs or categories of programs which may have conferred benefits to the producers/exporters of subject goods in Kazakhstan, and that have in turn resulted in the actionable subsidizing of exports of subject goods to Canada from Kazakhstan.

[76] The CBSA reviewed the documentation submitted in the complaint along with information available through its own research, including Kazakhstan's latest subsidy notification to the WTO. The reference material examined by the CBSA provided support for the Complainant's allegations that the subject goods from Kazakhstan have been subsidized.

[77] The CBSA found that the two subsidy programs identified by the Complainant were all available to silicon metal producers/exporters in Kazakhstan. The CBSA's analysis also revealed that the alleged subsidy programs constitute a potential financial contribution by the GOK and a benefit thereby conferred onto the recipient in accordance with the definition of "subsidy" in subsection 2(1) of SIMA. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA.

[78] As a result, the CBSA will investigate each of the programs identified by the Complainant. Please refer to **Appendix 1** for a list of the subsidy programs to be investigated by the CBSA.

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<sup>21</sup> New and Full Notification submitted by the Delegation of Brazil to the WTO: G/SCM/N/253/BRA.

<sup>22</sup> CBSA's subsidy investigations respecting certain *copper rod* and certain *stainless steel round bar* from Brazil.

<sup>23</sup> Exhibit 2, Silicon Metal 2 Complaint (NC); Attachments 56 and 57 (NC) – USDOC's decision memorandum of *certain cold-rolled steel flat products* from Brazil for the preliminary and final determinations.

### **Programs Being Investigated – Malaysia**

[79] The Complainant identified five subsidy programs or categories of programs which may have conferred benefits to the producers/exporters of subject goods in Malaysia, and that have in turn resulted in the actionable subsidizing of exports of subject goods to Canada.

[80] The CBSA reviewed the documentation submitted in the complaint along with information available through its own research, including previous USDOC countervailing investigations involving Malaysia. The reference material examined by the CBSA provided support for the Complainant's allegations that the subject goods from Malaysia have been subsidized.

[81] The CBSA found that the five subsidy programs identified by the Complainant were all available to silicon metal producers/exporters in Malaysia. The CBSA's analysis also revealed that the alleged subsidy programs constitute a potential financial contribution by the GOM and a benefit thereby conferred onto the recipient in accordance with the definition of "subsidy" in subsection 2(1) of SIMA. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA.

[82] As a result, the CBSA will investigate all of the programs identified by the Complainant. Please refer to **Appendix 1** for a list of the subsidy programs to be investigated by the CBSA.

### **Programs Being Investigated – Norway**

[83] The Complainant identified five subsidy programs or categories of programs which may have conferred benefits to the producers/exporters of subject goods in Norway, and that have in turn resulted in the actionable subsidizing of exports of subject goods to Canada.

[84] The CBSA reviewed the documentation submitted in the complaint along with information available through its own research, including Norway's latest subsidy notification to the WTO. The reference material examined by the CBSA provided support for the Complainant's allegations that the subject goods from Norway have been subsidized.

[85] The CBSA found that the five subsidy programs identified by the Complainant were all available to silicon metal producers/exporters in Norway. The CBSA's analysis also revealed that the alleged subsidy programs constitute a potential financial contribution by the GON and a benefit thereby conferred onto the recipient in accordance with the definition of "subsidy" in subsection 2(1) of SIMA. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA.

[86] As a result, the CBSA will investigate all of the programs identified by the Complainant. Please refer to **Appendix 1** for a list of the subsidy programs to be investigated by the CBSA.

## **Programs Being Investigated – Thailand**

[87] The Complainant identified four subsidy programs or categories of programs which may have conferred benefits to the producers/exporters of subject goods in Thailand, and that have in turn resulted in the actionable subsidizing of exports of subject goods to Canada.

[88] The CBSA reviewed the documentation submitted in the complaint along with information available through its own research, including the CBSA's previous subsidy investigations involving Thailand, and the USDOC's previous countervailing investigations from Thailand. The reference material examined by the CBSA provided support for the Complainant's allegations that the subject goods from Thailand have been subsidized.

[89] The CBSA found that the four subsidy programs identified by the Complainant were all available to silicon metal producers/exporters in Thailand. The CBSA's analysis also revealed that the alleged subsidy programs constitute a potential financial contribution by the GOT and a benefit thereby conferred onto the recipient in accordance with the definition of "subsidy" in subsection 2(1) of SIMA. In addition, the programs were further examined and were considered to be potentially specific either in law or in fact within the meaning of subsections 2(7.2) and 2(7.3) of SIMA.

[90] As a result, the CBSA will investigate all of the programs identified by the Complainant. Please refer to **Appendix 1** for a list of the subsidy programs to be investigated by the CBSA.

## **Estimated Amount of Subsidy**

[91] The Complainant was unable to estimate the amounts of subsidy on a program basis for the subject goods imported from Brazil, Kazakhstan, Malaysia, Norway and Thailand. However, the Complainant estimated the amounts of subsidy by calculating the difference between the estimated costs of production for the subject goods and their corresponding export prices. The Complainant stated that the difference between the export price and the production cost of the subject goods for each country demonstrates that they are being sold to Canada at prices substantially below their cost of production, indicating a significant amount of subsidy.<sup>24</sup>

[92] The CBSA estimated the amount of subsidy conferred on the producers of the subject goods from Brazil, Kazakhstan, Malaysia, Norway and Thailand by comparing the estimated full costs of the subject goods with their weighted average export prices, as estimated above in the evidence of dumping section.

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<sup>24</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraph 119.

[93] The CBSA's analysis of the information indicates that subject goods imported into Canada during the period of January 1, 2016 to December 31, 2016, were subsidized. The estimated amounts of subsidy found for each of these countries are summarized in the table below:

**TABLE 4**  
**ESTIMATED AMOUNT OF SUBSIDY**

<b>Country</b>	<b>Estimated Amount of Subsidy as a % of Export Price</b>
Brazil	8.1%
Kazakhstan	5.2%
Malaysia	17.5%
Norway	8.9%
Thailand	14.3%

### **EVIDENCE OF INJURY**

[94] The Complainant alleged that the subject goods have been dumped and subsidized and that such dumping and subsidizing have caused material injury to the domestic industry producing like goods.

[95] SIMA refers to material injury caused to the domestic producers of like goods in Canada. The CBSA has concluded that silicon metal produced by the domestic industry is like goods to the subject goods from the named countries.

[96] In support of their allegations, the Complainant provided evidence of lost sales and market share; price undercutting and erosion and negative financial results.

#### **Lost Sales and Market Share**

[97] The Complainant alleged that dumped and subsidized imports of subject goods have captured market share at the expense of the Canadian industry by offering silicon metal at low prices that are injurious to the domestic industry. The Complainant noted that from 2015 to October 2016, imports from named countries increased while domestic sales volume decreased.<sup>25</sup>

[98] The Complainant noted that, based on their estimated apparent Canadian market, the market share of named countries rose while their market share dropped. The Complainant also documented numerous specific examples of lost sales to specific accounts due to low-priced subject imports from the named countries.

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<sup>25</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraphs 129 and 131.



[99] The CBSA finds that the named countries have increased their market share from 2015 to 2016, and that the increase has been at the expense of the domestic industry. The CBSA finds that the Complainant's claims of lost sales are supported and linked to the imports of the allegedly dumped and subsidized goods from the named countries. Based on the evidence, the CBSA finds that the Complainant's injury allegations with respect to lost sales and market share are well supported and sufficiently linked to allegedly dumped and subsidized imports from the named countries.

### **Price Undercutting and Erosion**

[100] The Complainant stated that the alleged dumped and subsidized goods from the named countries have captured sales and market share by leveraging low pricing and subsequently undercutting the Complainant's pricing. As a result, the price undercutting by producers in the named countries has caused the domestic industry to discount pricing in order to obtain orders, resulting in substantial lost revenue.

[101] The Complainant submitted evidence showing that the average selling prices from the named countries, during 2016, are substantially lower than those of the Complainant and specific evidence of price undercutting and erosion by producers from the named countries. The Complainant also documented instances where their prices were lowered in order to retain sales in response to imports from the named countries.

[102] Based on the evidence<sup>26</sup>, the CBSA finds that the Complainant's claims of price undercutting and erosion are well supported and sufficiently linked to allegedly dumped and subsidized imports from the named countries.

### **Financial Results**

[103] The Complainant alleged that the injurious impact of the dumped and subsidized goods is demonstrated in their deteriorating financial performance. The Complainant provided their financial statements to support their allegation.<sup>27</sup>

[104] The CBSA agrees that the Complainant has had poor financial performance as the named countries have continued to increase their market share. Based on the evidence, the CBSA finds that the Complainant's financial results can be reasonably attributed to the lost sales, price undercutting and price erosion resulting from the allegedly dumped and subsidized goods.

### **CBSA's Conclusion – Injury**

[105] There is a reasonable indication that material injury has occurred to the domestic silicon metal industry. The nature of the injury incurred by the Complainant is well-documented in terms of lost sales and market share, price undercutting and erosion, and negative financial results.

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<sup>26</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraphs 141 – 145.

<sup>27</sup> Exhibit 1, Silicon Metal 2 Complaint (PRO); Attachment 30 (PRO) – Complainant's Financial Statements.



## **THREAT OF INJURY**

[106] The complaint contains reasonable evidence regarding the threat of injury due to the increasing import volumes of subject goods. The Complainant submitted that massive excess capacity in the named countries, soft market conditions, and relatively high prices in the Canadian market demonstrates that there is a reasonable indication that subject goods threaten the domestic industry with injury. Without protection, the Complainant believes that they are threatened with further injury, which includes a negative impact on employment and capital investment.

### **Market Conditions in the Named Countries**

[107] The Complainant submitted that the market conditions in the named countries are generally weak and slowing. Despite this, the Complainant stated that the named countries are projected to increase production, while maintaining significant excess capacity.

[108] Due to domestic market demand for silicon metal in the named countries being generally below production levels, there is a continuing incentive for silicon metal producers to rely upon export markets.

[109] Based on the evidence, the CBSA finds that the global market outlook for silicon metal is generally weak and is pressured by an increasing supply imbalance occurring in the named countries. Furthermore, the evidence<sup>28</sup> demonstrates that current market conditions in the named countries are likely to lead silicon metal producers to turn to export markets, thereby threatening injury to the Canadian domestic industry.

### **Canadian Market Conditions and Likely Volume of Subject Goods**

[110] Canada's economy is expected to experience slow growth through 2017. Similarly, silicon metal demand in Canada is forecasted to have slow growth over the next few years.<sup>29</sup>

[111] As a commodity product, relative pricing of silicon metal in different international markets is a key factor when considering the likely volume of allegedly dumped and subsidized goods from the named countries. As Canada's prices for silicon metal are generally higher relative to other regions in the world, the Complainant submitted that silicon metal producers from the named countries are likely to continue to export significant volumes of silicon metal to Canada in the near term.

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<sup>28</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraphs 172 – 175; 177 – 180; 192 – 195; 205 – 208; 213 – 217; 221 – 229; 232 – 240; and 243 – 251.

<sup>29</sup> Exhibit 1, Silicon Metal 2 Complaint (PRO); Attachment 32 (PRO) – CRU Silicon Metal Market Outlook, page 23, Table 1.4.

[112] The volume of imports from the named countries increased significantly from 2015 to 2016. In 2016, named country imports accounted for an estimated 98% of total imports and 55% of the apparent Canadian market.<sup>30</sup> Over the same period, the Complainant's share of the Canadian market decreased from 55% to 44%.<sup>31</sup>

[113] Based on the evidence, the CBSA finds the allegation that the volume of subject goods imported into the Canadian market will continue to increase is well supported.

### **Negative Impact on Employment and Capital Investments**

[114] During the Period of Investigation (POI), the Complainant managed to maintain production and employment at the expense of the production facility's margins and profit. However, the Complainant submitted that the facility cannot sustain employment if unfairly traded imports from the named countries continue to penetrate the Canadian market.<sup>32</sup>

[115] Since 2012, the Complainant has heavily invested in its Canadian production facility for improvement, upgrades in furnaces, other machinery and equipment. Investments are also planned through 2018 for annual maintenance, expansion and improvement of the facility. These are mandatory capital expenditures necessary to maintain an efficient production facility. However, the Complainant submits that such expenditures also require the facility to generate profitable sales otherwise it will not be possible to maintain the base level capital expenditures required.<sup>33</sup>

[116] Based on the evidence, the CBSA finds the allegation that the continued importation of subject goods into the Canadian market will have a negative impact on employment and capital investments is well supported.

### **Likely Prices of Subject Goods**

[117] The Complainant stated that the prices of subject goods from the named countries have, on average, been consistently lower than those of the Complainant. The attractiveness of these prices to Canadian importers is a clear indication that injurious dumping and subsidizing will continue in the absence of measures to prevent it.

[118] The Complainant provided comparative market pricing for silicon metal in different regions in support of their concern for future injury.<sup>34</sup>

[119] Based on the evidence, the CBSA finds the allegation that the price of the subject goods imported into the Canadian market will continue to be consistently lower than those of the Complainant is well supported.

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<sup>30</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraphs 259 and 260.

<sup>31</sup> See Tables 1 and 2 of this *Statement of Reasons*.

<sup>32</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraph 164.

<sup>33</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraphs 166-169.

<sup>34</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraph 264, Table 18.

## **Diversion of Exports from Foreign Trade Remedies**

[120] The Complainant submitted that producers from the named countries are seeking markets free of dumping and countervailing measures such as Canada. This threatens injury to domestic producers.

[121] The Complainant provided reference to findings by the United States and the European Union against Russia as evidence that Russia has a propensity to dump silicon metal.<sup>35</sup>

[122] Based on the evidence, the CBSA finds the allegation that the subject goods imported into the Canadian market will continue given the diversion caused by trade measures in other countries is well supported.

## **Likely Impact on the Domestic Industry**

[123] According to the Complainant, the impact of the subject goods in the Canadian market has forced them to sell its silicon metal at below cost. The Complainant stated that the trend will impact its 2017 business.<sup>36</sup> The Complainant also documented specific examples of lost sales to specific accounts due to low-priced subject imports from the named countries.

[124] The Complainant submitted that successful penetration of silicon metal imports in Canada from the named countries was caused by price undercutting and provided evidence to support that producers from the named countries are likely to continue to offer for sale subject goods at prices well below the Complainant.

## **CBSA's Conclusion – Threat of Injury**

[125] The complaint contained reasonable evidence regarding the threat of injury due to increasing import volumes of subject goods from the named countries. The alleged dumped and subsidized imports, which have substantially undercut domestic pricing, threaten to cause the Canadian producer declines in production, sales, market share, prices, financial performance, employment and to inhibit their ability to make capital investments.

## **CAUSAL LINK – DUMPING/SUBSIDIZING AND INJURY**

[126] The CBSA finds that the Complainant has sufficiently linked the injury they have suffered to the alleged dumping and subsidizing of subject goods imported into Canada. The injury includes lost sales and market share, price undercutting and erosion, and negative financial results.

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<sup>35</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraphs 266, 267 and 269.

<sup>36</sup> Exhibit 2, Silicon Metal 2 Complaint (NC), paragraph 273.

[127] This injury relates directly to the price advantage that the alleged dumping and subsidizing have produced between the subject goods imported from the named countries and the like goods produced in Canada. Evidence has been provided by the Complainant to establish this link in the form of price quotes, market data and sales and financial information related to their production and sales of like goods in Canada.

[128] The CBSA also finds that the Complainant provided sufficient evidence that there is a reasonable indication that continued alleged dumping and subsidizing of subject goods imported into Canada threaten to cause injury to the Canadian industry producing these goods.

## **CONCLUSION**

[129] Based on information provided in the complaint, other available information, and the CBSA's internal import documentation, the CBSA is of the opinion that there is evidence that certain silicon metal originating in or exported from Brazil, Kazakhstan, Laos, Malaysia, Norway, Russia and Thailand have been dumped, and that certain silicon metal originating in or exported from Brazil, Kazakhstan, Malaysia, Norway and Thailand have been subsidized, and there is a reasonable indication that such dumping and subsidizing have caused and are threatening to cause injury to the Canadian industry. As a result, pursuant to subsection 31(1) of SIMA, dumping and subsidy investigations were initiated on February 20, 2017.

## **SCOPE OF THE INVESTIGATIONS**

[130] The CBSA is conducting investigations to determine whether the subject goods have been dumped and/or subsidized.

[131] The CBSA has requested information from all potential exporters and importers to determine whether or not subject goods imported into Canada during the POI of January 1, 2016 to December 31, 2016, were dumped. The information requested will be used to determine the normal values, export prices and margins of dumping, if any.

[132] The CBSA has also requested information from all potential producers/exporters in Brazil, Kazakhstan, Malaysia, Norway and Thailand and the governments of these countries to determine whether or not subject goods imported into Canada during the POI of January 1, 2016 to December 31, 2016, were subsidized. The information requested will be used to determine the amounts of subsidy, if any.

[133] All parties have been clearly advised of the CBSA's information requirements and the time frames for providing their responses.

## **FUTURE ACTION**

[134] The CITT will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of the goods have caused or are threatening to cause injury to the Canadian industry. The CITT must make its decision on or before the 60<sup>th</sup> day after the date of the initiation of the investigations. If the CITT concludes that the evidence does not disclose a reasonable indication of injury to the Canadian industry, the investigations will be terminated.

[135] If the CITT finds that the evidence discloses a reasonable indication of injury to the Canadian industry and the CBSA's preliminary investigations reveal that the goods have been dumped and/or subsidized, the CBSA will make preliminary determinations of dumping and/or subsidizing within 90 days after the date of the initiation of the investigations, by May 23, 2017. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigations.

[136] Under section 35 of SIMA, if, at any time before making preliminary determinations, the CBSA is satisfied that the volume of goods of a country is negligible, the investigation(s) will be terminated with respect to goods of that country.

[137] Imports of subject goods released by the CBSA on and after the date of preliminary determinations of dumping and/or subsidizing, other than preliminary determinations in which a determination was made that the margin of dumping or the amount of subsidy is insignificant, may be subject to provisional duty in an amount not greater than the estimated margin of dumping or the estimated amount of subsidy on the imported goods.

[138] Should the CBSA make preliminary determinations of dumping and/or subsidizing, the investigations will be continued for the purpose of making final decisions within 90 days after the date of the preliminary determinations.

[139] After the preliminary determinations, if, in respect of goods of any country, the CBSA's investigations reveal that imports of the subject goods have not been dumped or subsidized, or that the margin of dumping or amount of subsidy is insignificant, the investigation(s) will be terminated.

[140] If final determinations of dumping and/or subsidizing are made, the CITT will continue its inquiry and hold public hearings into the question of material injury to the Canadian industry. The CITT is required to make a finding with respect to the goods to which the final determinations of dumping and/or subsidizing apply, not later than 120 days after the CBSA's preliminary determinations.

[141] In the event of an injury finding by the CITT, imports of subject goods released by the CBSA after that date will be subject to anti-dumping duty equal to the applicable margin of dumping and countervailing duty equal to the amount of subsidy on the imported goods. Should both anti-dumping and countervailing duties be applicable to subject goods, the amount of any anti-dumping duty may be reduced by the amount that is attributable to an export subsidy.



## **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[142] When the CITT conducts an inquiry concerning injury to the Canadian industry, it may consider if dumped and/or subsidized goods that were imported close to or after the initiation of investigations constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry.

[143] Should the CITT issue such a finding, anti-dumping and countervailing duties may be imposed retroactively on subject goods imported into Canada and released by the CBSA during the period of 90 days preceding the day of the CBSA making preliminary determinations of dumping and/or subsidizing.

[144] In respect of importations of subsidized goods that have caused injury, however, this provision is only applicable where the CBSA has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy, as explained in the previous “Evidence of Subsidizing” section. In such a case, the amount of countervailing duty applied on a retroactive basis will be equal to the amount of subsidy on the goods that is a prohibited subsidy.

## **UNDERTAKINGS**

[145] After a preliminary determination of dumping by the CBSA, other than a preliminary determination according to which the margin of dumping of the goods is insignificant, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury caused by the dumping is eliminated. An acceptable undertaking must account for all or substantially all of the exports to Canada of the dumped goods.

[146] Similarly, after the CBSA has rendered a preliminary determination of subsidizing according to which the amount of subsidy on the goods is not insignificant, a foreign government may submit a written undertaking to eliminate the subsidy on the goods exported or to eliminate the injurious effect of the subsidy, by limiting the amount of the subsidy or the quantity of goods exported to Canada. Alternatively, exporters with the written consent of their government may undertake to revise their selling prices so that the amount of the subsidy or the injurious effect of the subsidy is eliminated.

[147] Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone and fax numbers, mailing address and e-mail address to one of the officers identified in the “Information” section of this document.

[148] If undertakings were to be accepted, the investigations and the collection of provisional duties would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA’s investigations be completed and that the CITT complete its injury inquiry.



## **PUBLICATION**

[149] Notice of the initiation of these investigations is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

## **INFORMATION**

[150] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping and subsidizing. Written submissions should be forwarded to the attention of the SIMA Registry and Disclosure Unit.

[151] To be given consideration in this phase of these investigations, all information should be received by the CBSA by July 10, 2017.

[152] Any information submitted to the CBSA by interested parties concerning these investigations is considered to be public information unless clearly marked “confidential”. Where the submission by an interested party is confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

[153] Confidential information submitted to the CBSA will be disclosed on written request to independent counsel for parties to these proceedings, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the CITT, any court in Canada, or a WTO/NAFTA dispute settlement panel. Additional information respecting the Directorate’s policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA’s website.

[154] The schedule of investigations and a complete listing of all exhibits and information are available at: [www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html). The exhibits listing will be updated as new exhibits and information are made available.

[155] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also available through the CBSA's website at the address below. For further information, please contact the officers identified as follows:

**Mail:** SIMA Registry and Disclosure Unit  
Trade and Anti-dumping Programs Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11<sup>th</sup> floor  
Ottawa, Ontario K1A 0L8  
Canada

**Telephone:** Andrew Manera 613-946-2052  
Jason Huang 613-954-7388

**Fax:** 613-948-4844

**E-mail:** [simaregistry@cbsa-asfc.gc.ca](mailto:simaregistry@cbsa-asfc.gc.ca)

**Website:** [www.cbsa-asfc.gc.ca/sima-lmsi](http://www.cbsa-asfc.gc.ca/sima-lmsi)



Brent McRoberts  
Director General  
Trade and Anti-dumping Programs Directorate

ATTACHMENT

1. Appendix – Description of Identified Programs and Incentives

## **APPENDIX – DESCRIPTION OF IDENTIFIED PROGRAMS AND INCENTIVES**

Evidence provided by the Complainant and obtained by the Canada Border Services Agency suggests that the governments of the Federative Republic of Brazil (Brazil), the Republic of Kazakhstan (Kazakhstan), Malaysia, the Kingdom of Norway (Norway) and the Kingdom of Thailand (Thailand) may have provided support to exporters/producers of subject goods in the following manner.

### **BRAZIL**

- Program 1: Income Tax Exemption under the *Superintendência do Desenvolvimento da Amazônia* (SUDAM) program in the North region
- Program 2: Income Tax Exemption under the *Superintendência de Desenvolvimento do Nordeste* (SUDENE) Program in the Northeast region
- Program 3: Special Regime for Reinstatement of Taxes for Exporters (REINTEGRA)
- Program 4: Excessive Credit or Refund of State Tax on Circulation of Goods and Services (ICMS) and Tax on Industrialized Goods (IPI)
- Program 5: Integrated Drawback Regime
- Program 6: Reduction of tariff rates on imported capital goods under the Ex-Tarifario program
- Program 7: Special Regime for the Acquisition of Capital Goods by Export Companies (RECAP)
- Program 8: Project for Export Financing (PROEX)
- Program 9: Export Guarantee Fund (FGE)
- Program 10: Program to Induce Industrial Modernization in the State of Minas Gerais (PROIM)
- Program 11: Exemption from payment of *Imposto Predial e Territorial Urbano* (IPTU)
- Program 12: Financial Assistance provided by *Fundo Constitucional de Financiamento do Nordeste* (FNE) under the *Banco do Nordeste do Brasil* (BNB)
- Program 13: Preferential pre-shipment and post-shipment loans provided by the *Brazilian Development Bank* (BNDES)
- Program 14: Financing Program for Production and Commercialization of Machinery and Equipment (FINAME) under the BNDES
- Program 15: Export Credit Insurance (ECI) provided by the *Brazilian Guarantees and Fund Managements Agency* (ABGF)
- Program 16: Goods/Services provided by the Government of Brazil less than fair market value – Electricity

### **KAZAKHSTAN**

- Program 1: Benefits in Saryarka Special Economic Zone (SEZ)
- Program 2: Electricity Subsidies Received by Tau-Ken Temir (Tau-Ken)

## **MALAYSIA**

- Program 1: Economic Transformation Program (ETP) Benefits
- Program 2: Incentives for Investments under Malaysian Investment Development Authority (MIDA)
- Program 3: Drawback on Import Duty, Sales Tax and Excise Duty
- Program 4: Double Deduction for the Promotion of Exports
- Program 5: Double Deduction for Insurance Premium

## **NORWAY**

- Program 1: Assistance to Research and Development Schemes
- Program 2: Assistance to Disadvantaged Regions
- Program 3: Assistance to Export Promotion
- Program 4: Exemption from Electricity Tax for Energy Intensive Industries
- Program 5: Grants to Elkem

## **THAILAND**

- Program 1: Investment Promotion Incentives
- Program 2: Benefits under the Industrial Estate Authority of Thailand (IEAT)
- Program 3: Benefits under the Electricity Generating Authority of Thailand (EGAT) through the Provincial Electricity Authority (PEA)
- Program 4: Duty Drawback for Raw materials

### ***Determination of Subsidy and Specificity***

Available information indicates that the programs identified above may constitute a financial contribution pursuant to subsection 2(1.6) of the *Special Import Measures Act (SIMA)*. The available information indicates that financial contributions may exist due to: the direct transfer of funds or liabilities or the contingent transfer of funds or liabilities from the governments of Brazil, Kazakhstan, Malaysia, Norway and Thailand; amounts that would otherwise be owing and due to these governments are reduced or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption; and these governments may provide goods or services, other than general governmental infrastructure.

Further, the benefits provided may be limited to certain types of enterprises or limited to enterprises located in certain geographic areas and may be considered specific pursuant to paragraph 2(7.2)(a) of SIMA. Other programs may be considered specific pursuant to subsection 2(7.3) of SIMA in that the manner in which discretion is exercised by the granting authority indicates that the subsidy may not be generally available.