



OTTAWA, July 20, 2017

STATEMENT OF REASONS

Concerning the preliminary determinations with respect to 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 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**

and regarding the termination of the investigation with respect to
the dumping of

**CERTAIN SILICON METAL
ORIGINATING IN OR EXPORTED FROM THE RUSSIAN FEDERATION**

DECISION

Pursuant to subsection 38(1) of the *Special Import Measures Act* (SIMA), the Canada Border Services Agency (CBSA) made preliminary determinations on July 5, 2017 respecting 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 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.

On July 5, 2017, pursuant to paragraph 35(2)(a) of SIMA, the CBSA terminated the dumping investigation with respect to certain silicon metal originating in or exported from the Russian Federation.

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

TABLE OF CONTENTS

SUMMARY OF EVENTS	4
PERIOD OF INVESTIGATION	5
PROFITABILITY ANALYSIS PERIOD	5
INTERESTED PARTIES	6
COMPLAINANT	6
IMPORTERS	6
EXPORTERS	6
GOVERNMENTS	7
PRODUCT INFORMATION	8
DEFINITION	8
ADDITIONAL PRODUCT INFORMATION	8
PRODUCTION PROCESS	8
CLASSIFICATION OF IMPORTS	9
LIKE GOODS AND CLASS OF GOODS	9
THE CANADIAN INDUSTRY	10
IMPORTS INTO CANADA	10
REPRESENTATIONS	11
TERMINATION OF THE DUMPING INVESTIGATION WITH RESPECT TO RUSSIA	12
INVESTIGATION PROCESS	13
DUMPING INVESTIGATION	14
NORMAL VALUE	14
EXPORT PRICE	15
MARGIN OF DUMPING	15
PRELIMINARY RESULTS OF THE DUMPING INVESTIGATION BY COUNTRY AND EXPORTER	15
BRAZIL	15
KAZAKHSTAN	17
LAOS	20
MALAYSIA	20
NORWAY	20
THAILAND	21
OTHER EXPORTERS AND VENDORS	22
ALL OTHER EXPORTERS	23
SUMMARY OF PRELIMINARY RESULTS - DUMPING	25
SUBSIDY INVESTIGATION	26
PRELIMINARY RESULTS OF THE SUBSIDY INVESTIGATION	27
PRELIMINARY RESULTS OF THE SUBSIDY INVESTIGATION BY COUNTRY AND EXPORTER	28
BRAZIL	28
KAZAKHSTAN	30
MALAYSIA	31
NORWAY	32
THAILAND	32
SUMMARY OF PRELIMINARY RESULTS – SUBSIDY	34
DECISIONS	35

PROVISIONAL DUTY	35
FUTURE ACTION	36
THE CANADA BORDER SERVICES AGENCY.....	36
THE CANADIAN INTERNATIONAL TRADE TRIBUNAL	36
RETROACTIVE DUTY ON MASSIVE IMPORTATIONS.....	37
UNDERTAKINGS	37
PUBLICATION.....	38
INFORMATION	39
APPENDIX 1 – SUMMARY OF ESTIMATED MARGINS OF DUMPING, ESTIMATED AMOUNTS OF SUBSIDY AND PROVISIONAL DUTIES PAYABLE	40
APPENDIX 2 – SUMMARY OF PRELIMINARY FINDINGS FOR SUBSIDY PROGRAMS.....	42
BRAZIL	42
KAZAKHSTAN	56
MALAYSIA	63
NORWAY	64
THAILAND	69

SUMMARY OF EVENTS

[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 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 (ASCM), 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.¹ 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.

[6] Upon receiving notice of the initiation of the investigations, the Canadian International Trade Tribunal (CITT) commenced a preliminary injury inquiry, pursuant to subsection 34(2) of SIMA, into whether the evidence discloses a reasonable indication that the alleged dumping and subsidizing of the above-mentioned goods have caused injury or retardation or are threatening to cause injury to the Canadian industry producing the like goods.

¹ Exhibit 207 (NC) – Representations from the Government of Brazil.

[7] On April 21, 2017, pursuant to subsection 37.1(1) of SIMA, the CITT made a preliminary determination that there is evidence that discloses a reasonable indication that the alleged dumping and subsidizing of certain silicon metal from the named countries have caused injury or are threatening to cause injury to the domestic industry.

[8] On May 15, 2017, due to the complexity and novelty of the issues presented by the investigations, the CBSA extended the 90-day period for making the preliminary determinations or terminating all or part of the investigations to 135 days pursuant to subsection 39(1) of SIMA.

[9] On May 16, 2017, the CBSA initiated a section 20 inquiry with respect to the silicon metal sector in Kazakhstan.

[10] On July 5, 2017, pursuant to paragraph 35(2)(a) of SIMA, the CBSA terminated the dumping investigation with respect to certain silicon metal originating in or exported from Russia. The volume of subject goods imported during the period of investigation from Russia was found to be negligible for the purposes of SIMA.²

[11] On July 5, 2017, as a result of the CBSA's preliminary investigations and pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping of certain silicon metal originating in or exported from Brazil, Kazakhstan, Laos, Malaysia, Norway and Thailand, and of the subsidizing of certain silicon metal originating in or exported from Brazil, Kazakhstan, Malaysia, Norway and Thailand.

[12] On July 5, 2017, pursuant to subsection 8(1) of SIMA, provisional duty was imposed on imports of dumped and subsidized goods that are of the same description as any goods to which the preliminary determinations apply, and that are released during the period commencing on the day the preliminary determinations were made and ending on the earlier of the day on which the CBSA causes the investigation in respect of any goods to be terminated pursuant to subsection 41(1) of SIMA or the day the CITT makes an order or finding pursuant to subsection 43(1) of SIMA.

PERIOD OF INVESTIGATION

[13] The Period of Investigation (POI) for these investigations is January 1, 2016, to December 31, 2016.

PROFITABILITY ANALYSIS PERIOD

[14] The Profitability Analysis Period for the dumping investigation is October 1, 2015, to December 31, 2016.

² That is, less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods.

INTERESTED PARTIES

Complainant

[15] The Complainant accounts for all of the production of like goods in Canada. The name and address of the Complainant are as follows:

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

[16] 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.³

Importers

[17] At the initiation of the investigations, the CBSA identified 18 potential importers of the subject goods based on both information provided by the Complainant and CBSA import entry documentation. The CBSA sent an Importer Request for Information (RFI) to all potential importers of the goods. The CBSA received seven responses to the Importer RFI.

[18] In addition, on May 16, 2017, all potential importers were sent a Section 20 RFI in relation to their re-sales in Canada of imports of silicon metal from any non-named countries. No importers provided a response to the Section 20 RFI.⁴

Exporters

[19] At the initiation of the investigations, the CBSA identified 27 potential exporters/producers of the subject goods from information provided by the Complainant and CBSA import entry documentation. An Exporter Dumping RFI was sent to each of the potential exporters/producers. An Exporter Subsidy RFI was also sent to the potential exporters/producers located in Brazil, Kazakhstan, Malaysia, Norway and Thailand.

[20] In addition, on May 16, 2017, the CBSA sent a Section 20 RFI to all known exporters/producers in Kazakhstan. A response from one exporter in Kazakhstan was received on June 22, 2017.⁵

³ Exhibit 2 (NC) – Silicon Metal (hereafter “Silicon Metal 2”) Complaint, paragraphs 3 and 4.

⁴ Several importers indicated that they did not import silicon metal from any country other than the Named Countries.

⁵ Exhibits 329 (PRO) and 330 (NC) – Tau-Ken response to Section 20 RFI.

[21] Six exporters provided substantially complete responses to the Dumping RFI, namely one each in Brazil, Kazakhstan, Norway, Russia, Thailand and the United States. A vendor in Singapore also provided a substantially complete response to the Dumping RFI. Three producers of silicon metal also responded but they did not export subject goods during the POI. As a result, information provided by these three producers was not used for the purposes of the preliminary determination of dumping.

[22] Five exporters/producers provided substantially complete responses to the Subsidy RFIs; including two in Brazil and one each in Kazakhstan, Norway, and Thailand. Three additional producers provided responses to the Subsidy RFIs, but they did not export subject goods to Canada during the POI.⁶ As a result, information provided by these three producers was not used for the purposes of the preliminary determination of subsidizing.

[23] A vendor located in the United States provided a late and incomplete response to the Dumping RFI, which could not be used for the purposes of the preliminary determination.

Governments

[24] 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.

[25] At the initiation of the investigation, the CBSA sent a Government Subsidy RFI to each of the countries involved in the subsidy investigation. Substantially complete responses were received from the GOB, GOK, GON and GOT. A substantially complete response was not received from the GOM as of the date of the preliminary determination of subsidizing.

[26] As a result of the initiation of a section 20 inquiry on May 16, 2017, the CBSA also sent a Section 20 RFI to the GOK. A response to the Section 20 RFI was received from the GOK on June 22, 2017.⁷

⁶ Exhibits 77 (PRO) and 78 (NC); 79 (PRO) and 80 (NC) – Minasligas (Brazil) Dumping and Subsidy RFI responses; Exhibits 103 (PRO) and 104 (NC) – Wacker Chemicals (Norway) Subsidy RFI response; Exhibits 181 (PRO) and 182 (NC) – G.S. Energy (Thailand) Dumping and Subsidy RFI responses.

⁷ Exhibit 333 (NC) – GOK response to Section 20 RFI.

PRODUCT INFORMATION

Definition

[27] For the purpose of these investigations, the 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

[28] 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.⁸

[29] 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

[30] Silicon metal is produced by combining high purity quartzite (consisting principally of natural crystallized silica (SiO₂)) 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.

[31] 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.

[32] 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.

⁸ Exhibit 2 (NC) – Silicon Metal 2 Complaint, paragraphs 16-17.

[33] 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.

[34] 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.

[35] 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.⁹

Product Use

[36] 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.

[37] 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.¹⁰

Classification of Imports

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

2804.69.00.00

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

LIKE GOODS AND CLASS OF GOODS

[40] 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.

⁹ Exhibit 2 (NC) – Silicon Metal 2 Complaint, paragraphs 27-32.

¹⁰ Exhibit 2 (NC) – Silicon Metal 2 Complaint, paragraph 41.

[41] 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."¹¹ 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.¹²

[42] In its preliminary injury inquiry for this investigation, the CITT further reviewed the matter of like goods and classes of goods. On May 11, 2017, it issued its preliminary injury inquiry determination and reasons indicating that:

"domestically produced silicon metal is like goods in relation to the subject goods. It also finds that there is one class of goods. The evidence suggests that all silicon metal (whether foreign or domestic) is produced in a similar process, with the same raw material inputs, sold in the same manner, and priced along the same spectrum. The fact that different grades or purity levels may attract higher or lower pricing is a factor that the Tribunal will remain cognizant of during the final injury inquiry, particularly in its consideration of benchmark products."¹³

THE CANADIAN INDUSTRY

[43] As previously stated, the Complainant accounts for all of the known domestic production of like goods.

IMPORTS INTO CANADA

[44] During the preliminary phase of the investigations, the CBSA refined the estimated volume and value of imports based on information from CBSA import entry documentation and other information received from exporters and importers.

¹¹ Exhibit 2 (NC) – Silicon Metal 2 Complaint; Attachment 9 – Silicon Metal 1 CITT Finding and Reasons, NQ-2013-003.

¹² Exhibit 2 (NC) – Silicon Metal 2 Complaint, paragraph 74.

¹³ Canadian International Trade Tribunal Silicon Metal Dumping and Subsidizing Determination and Reasons (May 11, 2017), PI-2016-004, paragraph 28.

[45] The following table presents the CBSA's analysis of imports of silicon metal for purposes of the preliminary determinations:

Imports of Silicon Metal
(% of Volume)

Country	POI (January 1, 2016 to December 31, 2016)
Brazil	21.4%
Kazakhstan	4.6%
Laos	19.1%
Malaysia	3.3%
Norway	7.6%
Russia	2.7%
Thailand	39.5%
All Other Countries	1.8%
Total Imports	100.0%

REPRESENTATIONS

[46] On April 4, 2017, the CBSA received representations on behalf of the Government of Russia (GOR) expressing in principle its view that the dumping investigation was initiated by the CBSA in violation of Article 5.2 of the WTO Anti-Dumping Agreement. In particular, the GOR alleged the complaint filed by the Canadian industry lacked evidence of dumping of Russian produced subject goods, as well as lacking in a causal link between the imports from Russia and the alleged injury to the Canadian industry.

[47] Information before the CBSA met the threshold for initiating dumping and subsidy investigations, as required by subsection 31(1) of SIMA. The President of the Canada Border Services Agency initiated investigations into the alleged dumping and subsidizing of the subject goods after receiving a properly documented complaint. The information presented in the complaint, together with supplementary information available to the CBSA, substantiated the Complainant's allegations that certain silicon metal originating in or exported from Russia were dumped. The evidence also disclosed a reasonable indication the dumping has caused injury and were threatening to cause injury to the Canadian industry producing like goods.

[48] The GOR also alleged that the total imports from Russia amount to only 2.8% of the total imports to Canada and thus did not exceed the required *de minimis* level of 3%.¹⁴

¹⁴ Exhibit 147 (NC) – Representations from the Russian Ministry of Industry and Trade. Correspondence from the GOR was repeated on April 19, 2017 in Exhibit 269 (NC) and on May 23, 2017 in Exhibit 303 (NC).

[49] The issues raised concerning the volume of dumped goods and whether that volume is negligible is addressed by the CBSA later in this document.

[50] On April 27, 2017, the CBSA received further representations on behalf of the GOR, requesting the date and place of any public hearings regarding the dumping investigation to be sent to the Russian Ministry of Industry and Trade along with all non-confidential materials concerning the dumping investigation.¹⁵ The CBSA responded and provided all requested non-confidential materials.

[51] The CBSA's determination with respect to the dumping investigation against Russia are discussed later in this document.

[52] Representations from counsel for the Complainant were received on June 26, 2017.¹⁶

[53] The CBSA has noted these arguments and evidence submitted in the representations and will take them into consideration in the course of verifying information for the purposes of final decisions.

TERMINATION OF THE DUMPING INVESTIGATION WITH RESPECT TO RUSSIA

[54] There was one exporter of subject goods from Russia, which provided a response to the CBSA's Dumping RFI. The CBSA also had information available from CBSA import entry documentation. Based on the information available, exports of subject goods from Russia represented 2.7% of silicon metal imported into Canada during the POI.

Negligibility

[55] Pursuant to paragraph 35(2)(a) of SIMA, if, at any time before making a preliminary determination, the CBSA is satisfied that the volume of goods of a country is negligible, the CBSA is required to terminate the investigation with respect to those goods. Pursuant to subsection 2(1) of SIMA, the volume of goods of a country is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods.

[56] Accordingly, given that imports of subject goods during the POI from Russia were negligible, prior to making a preliminary determination, the CBSA terminated the dumping investigation with respect to certain silicon metal originating in or exported from Russia.

¹⁵ Exhibit 301 (NC) – Representations from Russian Ministry of Industry and Trade.

¹⁶ Exhibit 331 (PRO) and 332 (NC) – Representations from counsel for the Complainant.

INVESTIGATION PROCESS

[57] Regarding the dumping investigation, information was requested from all known and potential exporters, producers, vendors and importers, concerning shipments of silicon metal released into Canada during the POI.

[58] Regarding the section 20 inquiry, information was requested from all known and potential exporters and producers of silicon metal in Kazakhstan and from the GOK. As the investigation already included appropriate countries to serve as potential “surrogates”, no additional producers in countries not named in this investigation were requested to provide information for purposes of determining normal values under paragraph 20(1)(c) of SIMA. Importers were requested to provide information respecting re-sales in Canada of like goods imported from a third country in order to gather information to determine normal values under paragraph 20(1)(d) of SIMA.

[59] Regarding the subsidy investigation, information related to potential actionable subsidies was requested from all known and potential exporters and producers in the named subsidy countries. Information was also requested from the governments of those countries, concerning financial contributions made to exporters or producers of silicon metal released into Canada during the subsidy POI.

[60] Several parties requested an extension to respond to their respective RFIs. The CBSA reviewed each request and granted extensions in instances where the reasons for making the request constituted unforeseen circumstances or unusual burdens. Where an extension request was denied, the CBSA informed the parties that it could not guarantee that submissions received after the RFI response deadline would be taken into consideration for purposes of the preliminary phase of the investigation.

[61] After reviewing the RFI responses, supplemental RFIs (SRFIs) were sent to several responding parties to clarify information provided in the responses and request any additional information.

[62] Onsite verifications were conducted with parties in Thailand and Singapore prior to the preliminary determinations of dumping and subsidizing. Any new information collected during the verification visits will be used for the CBSA’s final decisions

[63] Preliminary determinations are based on the information available to the CBSA at the time of the preliminary determinations. During the final phase of the investigations, additional information may be obtained and selected responding parties may be verified on-site, the results of which will be incorporated into the CBSA’s final decisions, which must be made by October 3, 2017.

DUMPING INVESTIGATION

[64] The following presents the preliminary results of the investigation into the dumping of silicon metal originating in or exported from Brazil, Kazakhstan, Laos, Malaysia, Norway, Russia and Thailand.

[65] The CBSA received a substantially complete response to the Dumping RFI from one exporter in Brazil and a response from one producer that did not export subject goods during the POI.¹⁷

[66] The CBSA received a substantially complete response to the Dumping RFI from one exporter in Kazakhstan.¹⁸ That exporter also responded to the Section 20 RFI.¹⁹

[67] The CBSA received a substantially complete response to the Dumping RFI from one exporter in Thailand and a response from one producer that did not export subject goods during the POI.²⁰

[68] The CBSA received a substantially complete response to the Dumping RFI from one exporter in Norway.²¹

[69] The CBSA received a substantially complete response to the Dumping RFI from one exporter in Russia.²²

[70] No exporters in Laos nor Malaysia provided a response to the Dumping RFI.

Normal value

[71] Normal values are generally estimated based on the domestic selling prices of like goods in the country of export, in accordance with the methodology of section 15 of SIMA, or on the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, plus a reasonable amount for profits, in accordance with the methodology of paragraph 19(b) of SIMA.

¹⁷ Exhibits 77 (PRO) and 78 (NC) – Minasligas response to Dumping RFI; Exhibits 116 (PRO) and 117 (NC) – RIMA response to Dumping RFI.

¹⁸ Exhibits 184 (PRO) and 185 (NC) – Tau-Ken Temir LLP response to Dumping RFI.

¹⁹ Exhibits 329 (PRO) and 330 (NC) – Tau-Ken Temir LLP response to Section 20 RFI.

²⁰ Exhibits 91 (PRO) and 92 (NC) – Sica New Materials response to Dumping RFI; Exhibits 181 (PRO) and 182 (NC) – G.S. Energy response to Dumping RFI.

²¹ Exhibits 87 (PRO) and 88 (NC) – Elkem AS response to Dumping RFI.

²² Exhibits 83 (PRO) and 84 (NC) – Rusal Group response to Dumping RFI.

[72] In the case of a country where, in the opinion of the CBSA, the government of that country has a monopoly or substantial monopoly of its export trade, and the government of that country substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market, the normal values are generally estimated on the basis of the methodology set out in section 20 of SIMA using either the selling prices or costs of like goods in a “surrogate” country.

Export Price

[73] The export price of goods sold to importers in Canada is generally estimated in accordance with the methodology of section 24 of SIMA based on the lesser of the adjusted exporter’s sale price for the goods or the adjusted importer’s purchase price. These prices are adjusted where necessary by deducting the costs, charges, expenses, duties and taxes resulting from the exportation of the goods as provided for in subparagraphs 24(a)(i) to 24(a)(iii) of SIMA.

Margin of Dumping

[74] The estimated margin of dumping by exporter is equal to the amount by which the total estimated normal value exceeds the total estimated export price of the goods, expressed as a percentage of the total estimated export price. All subject goods imported into Canada during the POI are included in the estimation of the margins of dumping of the goods. Where the total estimated normal value of the goods does not exceed the total estimated export price of the goods, the margin of dumping is zero.

Preliminary Results of the Dumping Investigation by Country and Exporter

Brazil

[75] Two producers in Brazil, namely, RIMA Industrial S.A. (RIMA) and Companhia Ferroligas Minas Gerais (Minasligas), provided responses to the CBSA’s Dumping RFI. Minasligas did not export subject goods to Canada during the POI. One exporter in the United States, Polymet Alloys Inc. (Polymet Alloys), exported subject goods originating in Brazil to Canada during the POI and provided a Dumping RFI response

RIMA Industrial S.A. (RIMA)

[76] RIMA has two production facilities which manufacture silicon metal, Capitão Enéas and Várzea da Palma, both located in the state of Minas Gerais. The company headquarters are situated in the municipality of Bocaiúva, also in the state of Minas Gerais. The Várzea da Palma facility produces several types of iron alloys in addition to silicon metal. Capitão Enéas produces only silicon metal.

[77] During the POI, RIMA exported subject goods to Canada from each of the two production facilities. RIMA provided substantially complete responses to the Dumping RFI and two SRFIs.²³ The CBSA will continue to collect and verify information from RIMA during the final phase of the investigation.

[78] RIMA had sufficient domestic sales of silicon metal during the PAP. Consequently, the methodology of section 15 of SIMA was used to estimate the normal values of the silicon metal grade exported to Canada.

[79] For subject goods exported from RIMA to Canada during the POI, export prices were estimated using the methodology of section 24 of SIMA, based on the exporter's selling price adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[80] For the preliminary determination, the total estimated normal value compared to the total estimated export price results in an estimated margin of dumping of 0% for RIMA, expressed as a percentage of the export price.

Polymet Alloys

[81] Polymet Alloys is a privately-held trading company based in Birmingham, Alabama. The company sells various ferrous and non-ferrous products, including silicon metal, to customers in both the United States and Canada.

[82] During the POI, Polymet Alloys exported subject goods from the United States to Canada that were produced by RIMA.²⁴ Polymet Alloys provided a substantially complete response to the CBSA's Dumping RFI.²⁵ The CBSA will continue to collect and verify information from Polymet Alloys during the final phase of the investigation.

[83] Polymet did not have sufficient domestic sales of like goods to enable the estimation of normal values using the methodology of section 15 of SIMA. As such, normal values were estimated using the methodology of paragraph 19(b) of SIMA, based on 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.

²³ Exhibits 116 (PRO) and 117 (NC); 246 (PRO) and 247 (NC); 341 (PRO) and 342 (NC) – RIMA response to Dumping RFI and SRFIs #1 and #2.

²⁴ Exhibit 90 (NC) – Polymet Alloys response to Dumping RFI, Question B20.

²⁵ Exhibit 89 (PRO) and 90 (NC) – Polymet Alloys response to Dumping RFI.

[84] As RIMA provided substantially complete responses to the Dumping RFI and two SRFIs, the CBSA was able to calculate the cost of production of the goods. An amount for administrative, selling and all other costs was estimated for both RIMA and Polymet Alloys. The amount for profits was estimated in accordance with subparagraph 11(1)(b)(ii) and subsection 11(2) of the *Special Import Measures Regulations* (SIMR), based on the weighted average profit made on Polymet Alloy's and RIMA's domestic sales of goods that are of the same general category as the goods sold to the importer in Canada.

[85] In situations where a good is shipped indirectly to Canada through a third country, the CBSA is required to determine the normal value of the good in both the country of origin and in the country of export in accordance with subsection 30(2) of SIMA. Where the normal value determined in the country of origin is higher than the normal value determined in the country of export, then both normal value and export price are to be determined as if the goods were shipped directly from the country of origin.

[86] In the case of the subject goods Polymet Alloys exported to Canada, two normal values were estimated: one for the country of export, which was the United States, and one for the country of origin, which was Brazil. A comparison of the two values revealed that the normal values estimated in the country of export were the higher of the two.

[87] For the subject goods exported by Polymet Alloys during the POI, the export price was estimated based on the methodology of section 24 of SIMA based on the exporter's selling price less all costs, charges and expenses resulting from the exportation of the goods.

[88] For the preliminary determination, the total estimated normal value compared to the total estimated export price results in an estimated margin of dumping of 0% for Polymet Alloys, expressed as a percentage of export price.

Companhia Ferroligas Minas Gerais (Minasligas)

[89] Minasligas, a producer of silicon metal which provided a response to the Dumping RFI, did not export subject goods to Canada during the POI.²⁶ As such, the information provided by Minasligas was not used for purposes of the preliminary determination.

Kazakhstan

[90] One producer in Kazakhstan, Tau-Ken Temir LLP (Tau-Ken), had exports of subject goods during the POI and provided a response to the CBSA's Dumping and Section 20 RFIs.

²⁶ Exhibits 77 (PRO) and 78 (NC) – Companhia Ferroligas Minas Gerais (Minasligas) response to Dumping RFI.

Section 20 Inquiry

[91] Section 20 is a provision of SIMA that may be applied to determine the normal value of goods in a dumping investigation where certain conditions prevail in the domestic market of the exporting country. In accordance with paragraph 20(1)(b) of SIMA, it is applied where, in the opinion of the CBSA, the government of that country has a monopoly or substantial monopoly of its export trade, it substantially determines domestic prices and there is sufficient reason to believe that the domestic prices are not substantially the same as they would be in a competitive market.

[92] For purposes of a dumping investigation, the CBSA proceeds on the presumption that section 20 of SIMA is not applicable to the sector under investigation absent sufficient information to the contrary. The CBSA may form an opinion where there is sufficient information that the conditions set forth in paragraph 20(1)(b) of SIMA exist in the sector under investigation.

[93] Subsequent to the initiation of the dumping investigation and based on the information on the administrative record, the CBSA had reason to believe that the GOK has a monopoly or a substantial monopoly of its export trade and that the domestic prices in the silicon metal sector in Kazakhstan are substantially determined by the government and were not substantially the same as they would be if they were determined in a competitive market.

[94] Accordingly, on May 16, 2017, the CBSA initiated a section 20 inquiry to examine the extent to which the conditions of paragraph 20(1)(b) of SIMA exist in the silicon metal sector in Kazakhstan.

[95] On the same date, the CBSA sent Section 20 RFIs to the GOK as well as to two silicon metal producers located in Kazakhstan, one of which had exported subject goods to Canada during the POI. At the initiation of the section 20 inquiry, it was decided that, in the eventuality that normal values were to be determined in accordance with section 20 of SIMA using either the selling prices or costs of like goods in a “surrogate” country, the appropriate countries to serve as potential “surrogates” were already included as part of this dumping investigation. Importers were also requested to provide information respecting re-sales in Canada of like goods imported from a third country in order to gather information to enable the determination of normal values under paragraph 20(1)(d) of SIMA.

[96] On June 22, 2017, the CBSA received a response to the Section 20 RFIs from the GOK and from Tau-Ken. The CBSA was unable to consider the information provided in those Section 20 RFI responses in time for the preliminary determination of July 5, 2017. Information provided by the GOK and Tau-Ken will be reviewed and analyzed during the final phase of the dumping investigation.

Preliminary Results of the Section 20 Inquiry

[97] Information on the administrative record for the investigation indicates that the GOK plays a significant role in the silicon metal sector in Kazakhstan. Further, the only known producer of silicon metal in Kazakhstan during the POI, Tau-Ken, is wholly owned by the GOK. The CBSA has reason to believe that the GOK directly or indirectly controls Tau-Ken, and thus, the silicon metal sector in Kazakhstan. Information on the record also indicates that the GOK has an export monopoly or a substantial monopoly of its export trade of silicon metal given that Tau-Ken was the only exporter of silicon metal originating from Kazakhstan.

[98] The CBSA has conducted a preliminary price analysis of silicon metal sold in other domestic markets and compared it to domestic selling prices of Tau-Ken in Kazakhstan. The analysis indicates that prices in Kazakhstan during the PAP were substantially different than prices in other countries, where prices are believed to be determined under competitive market conditions.²⁷

[99] For the purposes of the preliminary determination, it is the opinion of the CBSA that the conditions of paragraph 20(1)(b) of SIMA exist in the silicon metal sector in Kazakhstan.

[100] During the final phase of the dumping investigation, the CBSA will continue the section 20 inquiry and further verify and analyze information. The CBSA may reaffirm its opinion that the conditions of paragraph 20(1)(b) of SIMA exist in the silicon metal sector as part of the final phase of the investigation, or conclude that the determination of normal values may be made using domestic selling prices and costs provided by the exporter in Kazakhstan.

Tau-Ken

[101] Tau-Ken is both a producer and an exporter of the subject goods to Canada. Its only production facility and head office are located in Karaganda, Kazakhstan. During the POI, all of Tau-Ken's exports to Canada were made directly to an unrelated Canadian importer.

[102] In addition to silicon metal, Tau-Ken sells by-products produced as a result of manufacturing silicon metal. Tau-Ken is a wholly owned subsidiary of a domestic national mining company, Tau-Ken Samruk JSC (Samruk). Samruk, is in turn wholly owned by the national welfare fund Samruk-Kazyna which is itself 100% owned by the GOK.

[103] As previously noted, for the purposes of the preliminary determination, information on the administrative record indicates that the conditions of paragraph 20(1)(b) of SIMA exist in the silicon metal sector in Kazakhstan. As such, normal values were estimated for Tau-Ken using the methodologies of subparagraphs 20(1)(c)(i) and 20(1)(c)(ii) of SIMA.

²⁷ Exhibit 320 (PRO) – Section 20 Report - Initiation

[104] To estimate normal values in this manner, the CBSA relied upon information submitted by silicon metal producers/exporters in response to the CBSA's Dumping RFI, with Brazil, Norway, Russia and Thailand designated as the surrogate countries.

[105] During the POI, Tau-Ken exported several grades of silicon metal to Canada. Based on the information supplied by the producers located in countries identified above, the CBSA was able to estimate normal values using the methodology of subparagraph 20(1)(c)(i) using domestic sales information for the majority of the grades exported to Canada by Tau-Ken.

[106] For one particular grade exported to Canada by Tau-Ken, domestic sales information was not available from the surrogate producer data. As a result, the normal value for that grade was estimated using the available cost and profit information of surrogate producers using the methodology of subparagraph 20(1)(c)(ii).

[107] For subject goods exported by Tau-Ken to Canada during the POI, export prices were estimated using the methodology of section 24 of SIMA, based on the exporter's selling price adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[108] The total estimated normal value compared to the total estimated export price results in an estimated margin of dumping of 12.0% for Tau-Ken, expressed as a percentage of the export price.

Laos

[109] As the exporters in Laos did not provide a complete response to the Dumping RFI, the normal values and export prices were estimated based on the methodologies explained in the section below entitled "All Other Exporters".

[110] Based on these methodologies, the estimated margins of dumping for the exporters in Laos are equal to 135.3%, expressed as a percentage of export price.

Malaysia

[111] As the exporters in Malaysia did not provide a complete response to the Dumping RFI, the normal values and export prices were estimated based on the methodologies explained in the section below entitled "All Other Exporters."

[112] Based on these methodologies, the estimated margins of dumping for the exporters in Malaysia are equal to 135.3%, expressed as a percentage of export price.

Norway

[113] One producer in Norway, namely, Elkem AS (Elkem), had exports of subject goods to Canada during the POI and provided a response to the CBSA's Dumping RFI. There were no other exporters of silicon metal originating in or exported from Norway during the POI.

Elkem

[114] Elkem's head office is located in Oslo and it has three production facilities capable of producing silicon metal which are located in Salten, Thamshavn, and Bremanger, Norway. During the POI, all subject goods exported to Canada were produced and shipped directly from Norway to Canada.

[115] Elkem provided substantially complete responses to the Dumping RFI and two SRFIs.²⁸ The CBSA will continue to collect and verify information from Elkem during the final phase of the investigation.

[116] Elkem did not have sufficient domestic sales of like goods to enable the estimation of normal values using the methodology of section 15 of SIMA. As such, normal values were estimated using the methodology of paragraph 19(b) of SIMA, based on the aggregate of the cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[117] The amount for profits was estimated in accordance with subparagraph 11(1)(b)(ii) of the SIMR based on the weighted average profit made on domestic sales of goods that are of the same general category as the subject goods exported to Canada.

[118] For subject goods exported from Elkem to Canada during the POI, export prices were estimated using the methodology of section 24 of SIMA, based on the exporter's selling price adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[119] For the preliminary determination, the total estimated normal value compared to the total estimated export price results in an estimated margin of dumping of 4.2% for Elkem, expressed as a percentage of the export price.

Thailand

[120] Two producers in Thailand, namely, Sica New Materials Co., Ltd. (Sica) and G.S. Energy Co., Ltd. (G.S. Energy) provided responses to the Dumping RFI. G.S Energy did not export subject goods to Canada during the POI.

Sica

[121] Sica is a producer and exporter of subject goods to Canada. Its head office is located in Taiwan and its production facility is located in Kanchanaburi, Thailand.

²⁸ Exhibits 87 (PRO) and 88 (NC); 244 (PRO) and 245 (NC); 294 (PRO) and 295 (NC) – Elkem responses to Dumping RFI and SRFIs #1 and #2.

[122] During the POI, subject goods exported to Canada were shipped directly from Sica's facility in Thailand to Canada. Sica provided substantially complete responses to the Dumping RFI and two SRFIs.²⁹ An on-site verification of Sica in Thailand was conducted in June 2017. The CBSA will continue to collect and verify information from Sica during the final phase of the investigation.

[123] Sica did not have any domestic sales of like goods to enable the estimation of normal values using the methodology of section 15 of SIMA. As such, normal values were estimated using the methodology of paragraph 19(b) of SIMA, based on the aggregate of the cost of production, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[124] The amount for profits could not be estimated using the methodology of section 11 of the SIMR. The amount for profits was estimated based on the weighted average profit made on domestic sales of silicon metal by other exporters who provided substantially complete responses in the investigation. The CBSA will continue to collect and analyze information for this purpose during the final phase of the investigation.

[125] For subject goods exported from Sica to Canada during the POI, export prices were estimated using the methodology of section 24 of SIMA, based on the exporter's selling price adjusted by deducting the costs, charges and expenses incurred in preparing the goods for shipment to Canada and resulting from the exportation and shipment of the goods.

[126] For the preliminary determination, the total estimated normal value compared to the total estimated export price results in an estimated margin of dumping of 70.1% for Sica, expressed as a percentage of the export price.

G.S. Energy

[127] G.S. Energy is a producer of silicon metal and did not export any subject goods to Canada during the POI. As such, the response to the Dumping RFI provided by G.S. Energy was not used for purposes of the preliminary determination.³⁰

Other Exporters and Vendors

[128] One vendor in Singapore, Rio Tinto Procurement (Singapore) Pte Ltd. also provided a response to the Dumping RFI.

²⁹ Exhibits 91 (PRO) and 92 (NC); 215 (PRO) and 216 (NC); 284 (PRO) and 285 (NC) – Sica responses to Dumping RFI and SRFIs #1 and #2.

³⁰ Exhibit 181 (PRO) and 182 (NC) – G.S. Energy response to Dumping RFI.

Rio Tinto Procurement (Singapore) Pte Ltd.

[129] Rio Tinto Procurement (Singapore) Pte Ltd. (RTPS) is located in Singapore and was a vendor of subject goods during the POI. RTPS sold subject goods that were procured from unrelated sources in several of the named countries.

[130] RTPS is a subsidiary of the Rio Tinto Group and provides global category management services to its associated companies under the Rio Tinto Group. During the POI, all subject goods sourced by RTPS were sold to its related importer in Canada, Rio Tinto Alcan Inc. (RTA).³¹

[131] RTPS provided substantially complete responses to the Dumping RFI and two SRFIs.³² An on-site verification of RTPS' information was conducted in June 2017. The CBSA will continue to collect and verify information from RTPS during the final phase of the investigation.

[132] For purposes of the preliminary determination, RTPS is considered a vendor, not an exporter for the subject goods exported to Canada during the POI.

All Other Exporters

[133] At the initiation of the investigation, all known and potential exporters were sent a Dumping RFI in order to solicit information required for purposes of determining normal values and export prices of subject goods in accordance with the provisions of SIMA. As such, all exporters were given the opportunity to participate in the investigation. In the RFI, the exporters were notified that failure to submit all required information and documentation, including non-confidential versions, or failure to permit verification of any information, may result in the normal values of the subject goods exported by their company being based on the facts available. It was further stated that such a decision would be less favourable to their company than if complete and verifiable information were made available.

[134] For exporters who did not provide sufficient information in response to the Dumping RFI, normal values and export prices were estimated on the basis of facts available. In establishing the methodologies for determining these estimates, the CBSA examined all information on the record, including information from the complaint, information provided by exporters, publically available information and customs documentation.

³¹ Exhibit 57 (NC) – Rio Tinto Alcan response to Importer RFI, Question A5(a); Exhibit 108 (NC) – Rio Tinto Procurement (Singapore) Pte Ltd. response to Exporter Dumping RFI, Question A3.

³² Exhibits 107 (PRO) and 108 (NC); 217 (PRO) and 218 (NC); 282 (PRO) and 283 (NC) – Rio Tinto Procurement (Singapore) Pte Ltd. response to Exporter Dumping RFI and SRFIs #1 and #2.

[135] The CBSA considered that the normal values and export prices estimated for the responding exporters, rather than the information provided in the complaint, was the best information on which to base the methodology for estimating normal values. The CBSA examined the difference between the estimated normal value and estimated export price of each individual transaction for the responding exporters in order to obtain an appropriate amount for the normal value methodology. The transactions were also examined to ensure that anomalies were not considered; however, there were no such anomalies.

[136] The CBSA considered that the highest amount by which the estimated normal value exceeded the estimated export price found on an individual transaction (expressed as a percentage of the export price) was an appropriate basis for estimating normal values. This method of estimating normal values was based on information on the record and limits the advantage that an exporter may gain from not providing necessary information requested in a dumping investigation as compared to an exporter that did provide the necessary information.

[137] Therefore, for the purposes of the preliminary determination, the estimated normal values were based on the estimated export price, plus an amount equal to 135.3% of that estimated export price.

[138] CBSA considered that the information submitted on the CBSA customs entry documentation was the best information on which to estimate the export price of the goods as it reflects actual import data. This information is more comprehensive than what was available in the complaint.

[139] Based on the above methodologies, the estimated margin of dumping for the subject goods exported to Canada by all other exporters is 135.3%, expressed as a percentage of the export price.

Summary of Preliminary Results - Dumping

[140] A summary of the preliminary results of the dumping investigation respecting all subject goods released into Canada during the POI are as follows:

Summary of Preliminary Results - Dumping Period of Investigation (January 1, 2016 to December 31, 2016)

Country	Estimated Margin of Dumping*	Estimated Volume of Subject Goods as Percentage of Total Imports
Brazil	119.9%	21.4%
Kazakhstan	51.1%	4.6%
Laos	135.3%	19.1%
Malaysia	135.3%	3.3%
Norway	4.2%	7.6%
Russia	N/A	2.7%
Thailand	70.3%	39.5%

* Expressed as a percentage of the export price

[141] Under section 35 of SIMA, if at any time before making a preliminary determination the CBSA is satisfied that the actual and potential volume of goods of a country is negligible, the CBSA is required to terminate the investigation with respect to goods of that country.

[142] Pursuant to subsection 2(1) of SIMA, the volume of goods of a country is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods.

[143] As noted in the table above, the total volume of goods from Russia is less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods. As such, the CBSA is satisfied that the actual and potential volume of goods from Russia is negligible and on July 5, 2017, prior to the preliminary determination, pursuant to paragraph 35(2)(a) of SIMA, the CBSA terminated the dumping investigation with respect to certain silicon metal originating in or exported from Russia.

[144] The volumes of subject goods from Brazil, Kazakhstan, Laos, Malaysia, Norway and Thailand are above 3% of the total volume of goods released into Canada from all countries. Based on the definition above, the volumes of subject goods from these countries are therefore not negligible.

[145] If, in making a preliminary determination, the CBSA determines that the margin of dumping of the goods of a country is insignificant pursuant to section 38 of SIMA, the investigation will continue in respect of those goods but provisional duties will not be imposed on goods of the same description imported during the provisional period.

[146] Pursuant to subsection 2(1) of SIMA, a margin of dumping of less than 2% of the export price of the goods is defined as insignificant. In this case, the margins of dumping, estimated for Brazil, Kazakhstan, Laos, Malaysia, Norway and Thailand, are greater than the threshold of 2% and are therefore not considered insignificant.

[147] A summary of the estimated margins of dumping and provisional duties by exporter are presented in a summary table in **Appendix 1**.

SUBSIDY INVESTIGATION

[148] In accordance with section 2 of SIMA, a subsidy exists if 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.

[149] Pursuant to subsection 2(1.6) of SIMA, there is a financial contribution by a government of a country other than Canada 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) 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.

[150] Where subsidies exist they may be subject to countervailing measures if they are specific in nature. According to subsection 2(7.2) of SIMA a subsidy is considered to be specific when it is limited, in a legislative, regulatory or administrative instrument, or other public document, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy; or is a prohibited subsidy.

[151] A “prohibited subsidy” is either an export subsidy or a subsidy or portion of a subsidy that is contingent, in whole or in part, on the use of goods that are produced or that originate in the country of export. An export subsidy is a subsidy or portion of a subsidy contingent, in whole or in part, on export performance. An “enterprise” is defined as including a group of enterprises, an industry and a group of industries. These terms are all defined in section 2 of SIMA.

[152] Notwithstanding that a subsidy is not specific in law, under subsection 2(7.3) of SIMA a subsidy may also be considered specific 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.

[153] 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 subject to countervailing measures if the persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods under investigation have benefited from the subsidy.

[154] Financial contributions provided by state-owned enterprises (SOEs) may also be considered to be provided by the government for purposes of this investigation. A 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 some combination thereof.

Preliminary Results of the Subsidy Investigation

[155] The following presents the preliminary results of the investigation into the subsidizing of silicon metal originating in or exported from Brazil, Kazakhstan, Malaysia, Norway and Thailand.

[156] At the initiation of the investigation, the CBSA sent Subsidy RFIs to the governments of the countries under investigation as well as all known exporters/producers of silicon metal in those countries. Information was requested in order to establish whether there had been financial contributions made by any level of government, including SOEs possessing, exercising or vested with government authority and, if so, to establish if a benefit has been conferred on persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of silicon metal; and whether any resulting subsidy was specific in nature.

[157] The respective governments were also requested to forward the RFIs to all subordinate levels of government that had jurisdiction over the exporters. The exporters/producers were requested to forward a portion of the RFI to their input suppliers, who were asked to respond to questions pertaining to their legal characterization as SOEs.

[158] In conducting its investigation, the CBSA requested information respecting the various programs, as listed in **Appendix 2**. During the preliminary phase of the investigation, the CBSA identified additional potential programs in respect of some countries.

[159] The governments and the exporters/producers were also notified that failure to submit all required information and documentation, including non-confidential versions, failure to comply with all instructions contained in the RFI, failure to permit verification of any information or failure to provide documentation requested during the verification visits may result in the amount of subsidy and the assessment of countervailing duties on subject goods being based on facts available to the CBSA. Further, they were notified that a determination on the basis of facts available could be less favourable to their firm than if complete, verifiable information was made available.

[160] All governments, with the exception of the Government of Malaysia (GOM), provided a substantially complete response to the CBSA's government Subsidy RFI.

[161] The CBSA also received responses to the Subsidy RFI from five exporters/producers. The programs used by the responding exporters are listed in **Appendix 2**.

[162] The CBSA will continue to analyze the companies' information during the final phase of the investigation. The CBSA may also consider any other potential subsidy programs that have not yet been identified.

[163] Estimated amounts of subsidy relating to each of the exporters that provided a response to the RFI are presented in a summary table in **Appendix 1** while the estimated amount of subsidy for each country can be found in a summary table at the end of this section.

Preliminary Results of the Subsidy Investigation by Country and Exporter

Brazil

[164] Two exporters/producers in Brazil, namely, Ligas de Alumínio SA (Liasa) and RIMA Industrial S.A. (RIMA) provided responses to the CBSA's Subsidy RFI and also provided responses to three SRFIs related to the subsidy investigation. Companhia Ferroligas Minas Gerais (Minasligas), also provided a response to the Subsidy RFI but did not export subject goods to Canada during the POI.

[165] The Government of Brazil (GOB) also provided substantially complete responses to the government Subsidy RFI and one SRFI.³³ For purposes of the preliminary determination, sufficient information has been furnished by the GOB and the two exporters/producers located in Brazil to enable the CBSA to estimate amounts of subsidy for all exporters of silicon metal originating in or exported from Brazil that were released into Canada during the POI.

Liasa

[166] Liasa is a producer and exporter of subject goods to Canada. Liasa has one production facility which manufactures silicon metal. The facility and head office are located in the state of Minas Gerais, Brazil.

[167] Liasa provided complete responses to the Subsidy RFI and three SRFIs.³⁴

[168] For purposes of the preliminary determination, Liasa was found to have benefitted from two subsidy programs during the POI.

[169] The estimated amount of subsidy for Liasa is 10.4%, expressed as a percentage of the export price.

RIMA

[170] RIMA provided substantially complete responses to the Subsidy RFI and two SRFIs.

[171] For purposes of the preliminary determination, RIMA was found to have benefitted from six subsidy programs during the POI.

[172] The estimated amount of subsidy for RIMA is 5.7%, expressed as a percentage of the export price.

Companhia Ferroligas Minas Gerais (Minasligas)

[173] Minasligas provided a response to the Subsidy RFI and did not have any exports to Canada during the POI. As such, its information was not used for purposes of the preliminary determination.³⁵

³³ Exhibits 81 (PRO) and 82 (NC); Exhibits 266 (PRO) and 267 (NC) – Government of Brazil responses to Subsidy RFI and SRFI #1.

³⁴ Exhibits 99 (PRO) and 100 (NC); Exhibits 240 (PRO) and 241 (NC); Exhibits 288 (PRO) and 289 (NC); Exhibits 311 (PRO) and 312 (NC).

³⁵ Exhibits 79 (PRO) and 80 (NC) – Minasligas response to Subsidy RFI.

Polymet Alloys Inc. and Other Exporters of subject goods from Brazil released into Canada during the POI

[174] Based on the information on the record, 100% of the subject goods originating in or exported from Brazil during the POI were manufactured by the two cooperating exporters in Brazil, namely, Liasa and RIMA. As such, the amounts of subsidy estimated for the two exporters are applicable to the other exporters, located outside of Brazil, who exported subject goods to Canada that were produced by Liasa or RIMA.

[175] The estimated amount of subsidy for Polymet Alloys Inc. is 5.6%, expressed as a percentage of the export price.

[176] The estimated amount of subsidy for the other exporters of subject goods from Brazil that were released into Canada during the POI is 6.9%, expressed as a percentage of the export price.

[177] The estimated overall weighted average amount of subsidy for Brazil is 9.5%, expressed as the percentage of the export price.

Kazakhstan

[178] One producer/exporter in Kazakhstan, namely, Tau-Ken Temir LLP (Tau-Ken) provided a response to the CBSA's Subsidy RFI. Responses to the Subsidy RFI were also received from four companies who supplied raw material inputs to Tau-Ken during the POI and are associated/related to them through government ownership and control.

[179] The GOK also provided a substantially complete response to the Subsidy RFI. For purposes of the preliminary determination, individual amounts of subsidy have been estimated for Tau-Ken, since sufficient information has been furnished by the GOK and the company to enable the necessary calculations.

Tau-Ken

[180] Tau-Ken provided substantially complete responses to the Subsidy RFI and one SRFI.

[181] At the initiation of the investigation, the CBSA identified two subsidy programs.

[182] After a review of the information submitted by Tau-Ken, Program 1 has now been found to represent a broad category of benefits, such that the CBSA has identified additional potential subsidy programs available in the Saryarka Special Economic Zone.

[183] Furthermore, a review of the information submitted by the parties listed above also led to the identification of new potential subsidy programs being used by Tau-Ken during the POI. The revised list of potential subsidy programs and incentives for purposes of the preliminary determination are detailed in **Appendix 2**.

[184] For purposes of the preliminary determination, Tau-Ken was found to have benefitted from six subsidy programs during the POI.

[185] The estimated amount of subsidy for Tau-Ken is 15.4%, expressed as a percentage of the export price.

Other Exporters – Kazakhstan

[186] For all other exporters of subject goods originating in or exported from Kazakhstan that did not provide sufficient information, the CBSA estimated an amount of subsidy on the basis of the following methodology:

- 1) the amount of subsidy for each of the 6 programs, as found at the preliminary determination, for the producer/exporter Tau-Ken located in Kazakhstan that provided a substantially complete response to the Subsidy RFI, plus;
- 2) the simple average of the amount of subsidy for the 6 programs listed in (1), applied to each of the remaining 4 potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the preliminary determination.

[187] Using the above methodology, the amount of subsidy for all other exporters is 23.5%, expressed as a percentage of the export price.

[188] The estimated overall weighted average amount of subsidy for Kazakhstan is equal to 18.0%, expressed as the percentage of the export price.

Malaysia

[189] No exporters in Malaysia participated in the subsidy investigation.

[190] The Government of Malaysia (GOM) provided a response to the Subsidy RFI which was considered incomplete. The CBSA sent a letter to the GOM, identifying numerous deficiencies and stating that their response was incomplete and could therefore not be considered for purposes of the preliminary determination.³⁶

All Exporters – Malaysia

[191] Given that no exporters in Malaysia provided a response to the Subsidy RFI, the CBSA estimated an amount of subsidy for all exporters in Malaysia based on the methodology used at the initiation. Refer to the Statement of Reasons for the initiation of the investigation for additional information. The estimated amount of subsidy for all exporters in Malaysia is 17.5%, expressed as the percentage of the export price.

³⁶ Exhibit 296 (PRO) – Letter from CBSA to Government of Malaysia.

Norway

[192] Two producers in Norway, namely, Elkem AS (Elkem) and Wacker Chemicals (Wacker), provided responses to the Subsidy RFI. Wacker did not export subject goods to Canada during the POI.

[193] The Government of Norway (GON) provided substantially complete responses to the government Subsidy RFI and one SRFI.³⁷ For purposes of the preliminary determination, an amount of subsidy has been estimated for Elkem, since sufficient information has been furnished by the GON and the exporter to enable the necessary calculations. There were no other exporters of silicon metal originating in or exported from Norway during the POI.

Elkem

[194] Elkem provided substantially complete responses to the Subsidy RFI and one SRFI.

[195] For purposes of the preliminary determination, Elkem was found to have benefitted from six subsidy programs during the POI.

[196] The estimated amount of subsidy for Elkem is 3.0%, expressed as a percentage of the export price.

Wacker

[197] Wacker is a producer of silicon metal that did not export any subject goods during the POI. As such, the company's information was not used for purposes of the preliminary determination.

[198] The estimated overall weighted average amount of subsidy for Norway is 3.0%, expressed as the percentage of the export price.

Thailand

[199] Two producers in Thailand, namely G.S. Energy Co., Ltd. (G.S. Energy) and Sica New Materials Co., Ltd. (Sica), provided responses to the Subsidy RFI but only Sica exported subject goods during the POI.

[200] The Government of Thailand (GOT) provided substantially complete responses to the Subsidy RFI and one SRFI. For purposes of the preliminary determination, an amount of subsidy has been estimated for Sica, as sufficient information has been furnished by the GOT and the exporter to enable the necessary calculations.

³⁷ Exhibits 97 (PRO) and 98 (NC); 264 (PRO) and 265 (NC) – Government of Norway response to Subsidy RFI and SRFI #1.

[201] An on-site verification of the information provided by the GOT was conducted in June 2017. Any new information collected during the verification visits will be used for the CBSA's final decisions

Sica New Materials Co., Ltd. (Sica)

[202] Sica provided substantially complete responses to the Subsidy RFI and two SRFIs. An on-site verification of Sica's information was conducted in June 2017.

[203] For purposes of the preliminary determination, Sica was found to have benefitted from one subsidy program during the POI.

[204] The estimated amount of subsidy for Sica is 3.8%, expressed as a percentage of the export price.

G.S. Energy Co., Ltd. (GS Energy)

[205] GS Energy provided a response to the Subsidy RFI and did not export subject goods during the POI, therefore, its information was not used for purposes of the preliminary determination.

Other Exporters – Thailand

[206] For all other exporters in Thailand that did not provide sufficient information, the CBSA estimated an amount of subsidy on the basis of the following methodology:

- 1) the amount of subsidy for the one program, as found at the preliminary determination, for the sole exporter (Sica) located in Thailand that provided a substantially complete response to the subsidy RFI, plus:
- 2) the amount of subsidy for the program referenced in (1), applied to each of the remaining 3 potentially actionable subsidy programs for which sufficient information is not available or has not been provided at the preliminary determination.

[207] Using the above methodology, the estimated amount of subsidy for all other exporters is 10.1%, expressed as the percentage of the export price.

[208] The estimated overall weighted average amount of subsidy for Thailand is equal to 3.8%, expressed as the percentage of the export price.

Summary of Preliminary Results – Subsidy

[209] A summary of the preliminary results of the subsidy investigation respecting all subject goods released into Canada during the POI follows:

Summary of Results - Subsidy
Period of Investigation (January 1, 2016 to December 31, 2016)

Country	Estimated Subsidized Goods as Percentage of Country Imports	Estimated Amount of Subsidy*	Estimated Volume of Country Imports as Percentage of Total Imports
Brazil	100%	9.5%	21.4%
Kazakhstan	100%	18.0%	4.6%
Malaysia	100%	17.5%	3.3%
Norway	100%	3.0%	7.6%
Thailand	100%	3.8%	39.5%

* Expressed as a percentage of the export price

[210] Under section 35 of SIMA, if, at any time before making a preliminary determination, the CBSA is satisfied that the actual and potential volume of goods of a country is negligible, the CBSA is required to terminate the investigation with respect to goods of that country.

[211] Pursuant to subsection 2(1) of SIMA, the volume of goods of a country is considered negligible if it accounts for less than 3% of the total volume of goods that are released into Canada from all countries that are of the same description as the goods.

[212] The volume of subject goods from each country is above 3% of the total volume of goods released into Canada from all countries. Based on the definition above, the volume of subject goods from each country is therefore not negligible.

[213] If, in making a preliminary determination, the CBSA determines that the amount of subsidy on the goods of a country is insignificant pursuant to section 38 of SIMA, the investigation will continue in respect of those goods but provisional duties will not be imposed on goods of the same description imported during the provisional period.

[214] Pursuant to subsection 2(1) of SIMA, an amount of subsidy of less than 1% of the export price of the goods is defined as insignificant. In this case, the estimated amount of subsidy for each country is not insignificant.

DECISIONS

[215] On July 5, 2017, pursuant to paragraph 35(2)(a) of SIMA, the CBSA terminated the dumping investigation respecting certain silicon metal originating in or exported from the Russian Federation.

[216] On the same day, pursuant to subsection 38(1) of SIMA, the CBSA made preliminary determinations of dumping respecting certain silicon metal originating in or exported from Brazil, Kazakhstan, Laos, Malaysia, Norway and Thailand; and, subsidizing respecting certain silicon metal originating in or exported from Brazil, Kazakhstan, Malaysia, Norway and Thailand.

PROVISIONAL DUTY

[217] Pursuant to subsection 8(1) of SIMA, provisional duty payable by the importer in Canada will be applied to dumped and subsidized imports of silicon metal that are released during the period commencing on the day the preliminary determinations are made and ending on the earlier of the day on which the CBSA causes the investigation in respect of any goods to be terminated, in accordance with subsection 41(1), or the day on which the CITT makes an order or finding. The CBSA considers that the imposition of provisional duty is needed to prevent injury. As noted in the CITT's preliminary determination, there is evidence that discloses a reasonable indication that the dumping and subsidizing of silicon metal have caused injury or are threatening to cause injury to the domestic industry.

[218] Imports of certain silicon metal originating in or exported from Brazil, Kazakhstan, Laos, Malaysia, Norway and Thailand released by the CBSA on or after July 5, 2017, will be subject to provisional duties equal to the estimated margin of dumping and estimated amount of subsidy, where applicable, expressed as a percentage of the export price of the goods per exporter. **Appendix 1** contains the estimated margins of dumping, estimated amounts of subsidy and the rates of provisional duty.

[219] As previously noted, Elkem was the only exporter of the subject goods from Norway during the POI. In the event that goods from an exporter, other than Elkem, are released from customs during the provisional period, provisional anti-dumping duty will be 135.3% of the export price of the goods from Norway. An explanation of how this amount was estimated is contained in **Appendix 1**.

[220] As previously noted, the CBSA was able to estimate an amount of subsidy for all exporters of the subject goods originating in or exported from Brazil and Norway that were released into Canada during the POI. In the event that goods from an exporter, other than those who exported during the POI, are released from customs during the provisional period, provisional countervailing duty will be 20.5% of the export price of the goods from Brazil and 3.9% of the export price of the goods from Norway. An explanation of how these amounts were estimated is contained in **Appendix 1**.

[221] Importers are required to pay provisional duty in cash or by certified cheque. Alternatively, they may post security equal to the amount payable. Importers should contact their CBSA regional office if they require further information on the payment of provisional duty or the posting of security. If the importers of such goods do not indicate the required SIMA code or do not correctly describe the goods in the import documents, an administrative monetary penalty could be imposed. The imported goods are also subject to the *Customs Act*. As a result, failure to pay duties within the specified time will result in the application of the provisions of the *Customs Act* regarding interest.

FUTURE ACTION

The Canada Border Services Agency

[222] The CBSA will continue its investigations of the dumping and subsidizing and will make final decisions by October 3, 2017.

[223] If the margins of dumping or amounts of subsidy are insignificant, the CBSA will terminate the investigations in respect of those goods and any provisional duty paid or security posted will be refunded to importers, as appropriate. If the CBSA is satisfied that the goods were dumped and/or subsidized, final determinations will be made.

The Canadian International Trade Tribunal

[224] The CITT has begun its inquiry into the question of injury to the Canadian industry. The CITT is expected to issue its finding by November 2, 2017.

[225] If the CITT finds that the dumping has not caused injury, retardation or is not threatening to cause injury, the proceedings will be terminated and all provisional anti-dumping duty collected or security posted will be refunded.

[226] If the CITT makes a finding that the dumping has caused injury, retardation or is threatening to cause injury, anti-dumping duty in an amount equal to the margin of dumping will be levied, collected and paid on imports of silicon metal that are of the same description as goods described in the CITT's finding.

[227] If the CITT finds that the subsidizing has not caused injury, retardation or is not threatening to cause injury, the proceedings will be terminated and all provisional countervailing duty collected or security posted will be refunded.

[228] If the CITT makes a finding that the subsidizing has caused injury, retardation or is threatening to cause injury, countervailing duties in the amount equal to the amount of subsidy on the imported goods will be levied, collected and paid on imports of silicon metal that are of the same description as goods described in the CITT's finding.

[229] For purposes of the preliminary determination of dumping or subsidizing, the CBSA has responsibility for determining whether the actual and potential volume of goods is negligible. After a preliminary determination of dumping or subsidizing, the CITT assumes this responsibility. In accordance with subsection 42(4.1) of SIMA, the CITT is required to terminate its inquiry in respect of any goods if the CITT determines that the volume of dumped or subsidized goods from a country is negligible.

RETROACTIVE DUTY ON MASSIVE IMPORTATIONS

[230] Under certain circumstances, anti-dumping and/or countervailing duty can be imposed retroactively on subject goods imported into Canada. When the CITT conducts its inquiry on material injury to the Canadian industry, it may consider if dumped and/or subsidized goods that were imported close to or after the initiation of the investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the CITT issue a finding that there were recent massive importations of dumped and/or subsidized goods that caused injury, imports of subject goods released by the CBSA in the 90 days preceding the day of the preliminary determination could be subject to anti-dumping and/or countervailing duty.

[231] In respect of importations of subsidized goods that have caused injury, 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. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy. An export subsidy is a prohibited subsidy according to subsection 2(1) of SIMA.

UNDERTAKINGS

[232] After a preliminary determination of dumping by the CBSA, 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.

[233] Similarly, after a preliminary determination of subsidizing by the CBSA, 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.

[234] In view of the time needed for consideration of undertakings, written undertaking proposals should be made as early as possible and no later than 60 days after the preliminary determinations of dumping and subsidizing. Further details regarding undertakings can be found in the CBSA's Memorandum D14-1-9, available online at: www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-9-eng.html.

[235] 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.

[236] 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

[237] A notice of these preliminary determinations of dumping and subsidizing will be published in the *Canada Gazette* pursuant to paragraph 38(3)(a) of SIMA.

[238] A notice of the termination of the dumping investigation with respect to Russia will be published in the *Canada Gazette* pursuant to subparagraph 35(2)(b)(ii) of SIMA.

INFORMATION

[239] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on 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, 11th floor
Ottawa, Ontario K1A 0L8
Canada

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

Fax: 613-948-4844

E-mail: simaregistry@cbsa-asfc.gc.ca

Web site: www.cbsa-asfc.gc.ca/sima-lmsi



Doug Band
Director General
Trade and Anti-dumping Programs Directorate

ATTACHMENTS

1. **Appendix 1: Summary of Estimated Margins of Dumping, Estimated Amounts of Subsidy and Provisional Duties Payable**
2. **Appendix 2: Summary of Preliminary Findings for Subsidy Programs**

APPENDIX 1 – SUMMARY OF ESTIMATED MARGINS OF DUMPING, ESTIMATED AMOUNTS OF SUBSIDY AND PROVISIONAL DUTIES PAYABLE

The following table lists the estimated margins of dumping, the estimated amounts of subsidy, and the provisional duty by exporter as a result of the decisions mentioned above. Imports of subject goods released from the Canada Border Services Agency on or after July 5, 2017, will be subject to provisional duties at the rates specified below.

Exporters	Estimated Margin of Dumping*	Estimated Amount of Subsidy*	Provisional Duty Payable*
Ligas de Aluminio S.A. (Liasa)	135.3%	10.4%	145.7%
RIMA Industrial S.A. (RIMA)	0%	5.7%	5.7%
Polymet Alloys Inc. (Polymet Alloys – USA)	0%	5.6%	5.6%
Other Exporters during POI – Brazil	135.3%	6.9%	N/A
All Other Exporters – Brazil**	N/A	N/A	155.8%
Total – Brazil	119.9%	9.5%	N/A
Tau-Ken Temir LLP (Tau-Ken)	12.0%	15.4%	27.4%
All Other Exporters – Kazakhstan	135.3%	23.5%	158.8%
Total – Kazakhstan	51.1%	18.0%	N/A
All Exporters - Laos	135.3%	N/A	135.3%
Total – Laos	135.3%	N/A	N/A
All Exporters – Malaysia	135.3%	17.5%	152.8%
Total – Malaysia	135.3%	17.5%	N/A
Elkem AS	4.2%	3.0%	7.2%
All Other Exporters – Norway***	N/A	N/A	139.2%
Total – Norway	4.2%	3.0%	N/A
Sica New Materials Co., Ltd. (Sica)	70.1%	3.8%	73.9%
All Other Exporters – Thailand	135.3%	10.1%	145.4%
Total – Thailand	70.3%	3.8%	N/A

* As a percentage of export price.

**** This is the provisional duty rate that will apply to subject goods from an exporter, other than those who exported during the POI, which are released from customs during the provisional period and includes a provisional anti-dumping duty rate of 135.3% and a provisional countervailing duty rate of 20.5%. The provisional anti-dumping duty is based on the margin of dumping estimated for exporters that did not provide sufficient information in response to the Dumping RFI, and the provisional countervailing duty is based on the amount of subsidy estimated using the following methodology. The sum of:**

- 1) the highest estimated amount of subsidy (expressed as a percentage of export price) for each of the six subsidy programs found for the exporters (Liasa and RIMA) located in Brazil, plus;**
- 2) the simple average of the estimated amounts of subsidy (expressed as a percentage of the export price) for the six programs referenced in (1), applied to each of the three potentially actionable subsidy programs (see Appendix 2 for details).**

***** This is the provisional duty rate that will apply to subject goods from an exporter, other than the exporter that exported during the POI, which are released from customs during the provisional period and includes a provisional anti-dumping duty rate of 135.3% and a provisional countervailing duty rate of 3.9%. The provisional anti-dumping duty is based on the margin of dumping estimated for exporters that did not provide sufficient information in response to the Dumping RFI, and the provisional countervailing duty is based on the amount of subsidy estimated using the following methodology. The sum of:**

- 1) the highest estimated amount of subsidy (expressed as a percentage of export price) for each of the six subsidy programs found for the exporter (Elkem) located in Norway, plus;**
- 2) the average of the estimated amounts of subsidy (expressed as a percentage of export price) for the six programs referenced in (1), applied to each of the three potentially actionable subsidy programs (see Appendix 2 for details).**

APPENDIX 2 – SUMMARY OF PRELIMINARY FINDINGS FOR SUBSIDY PROGRAMS

This Appendix consists of descriptions of the subsidy programs which the responding companies benefited from during the course of the Period of Investigation (POI), other potentially actionable subsidy programs identified by the CBSA, programs that were not used by the exporters in the POI and programs found not to exist.

The CBSA has used the best information available to describe the potentially actionable subsidy programs that were not used by the responding exporters in the current investigation. This includes using information obtained from CBSA research on potential subsidy programs in the named countries and information provided by the responding exporters and related suppliers and descriptions of programs in the complaint.

BRAZIL

Subsidy Programs Used by the Responding Exporters

Program 2: *Income Tax Exemption under the Superintendência de Desenvolvimento do Nordeste (SUDENE) Program in the Northeast region*

The Superintendence for the Development of the Northeast (SUDENE) program was created in 1959, through Law No. 3,692. It was extinguished in 2001 and substituted by the ADA (Agency for the Development of the Amazon Region) and ADENE (Agency for the Development of Northeast) and recreated by Supplementary Law No. 125, in 2007.³⁸

SUDENE provides assistance to the economically disadvantaged Northeast Region by means of income tax reductions.³⁹ The objective is to reduce economic and social imbalances between Brazilian regions by means of compensatory mechanisms for the development of the Northeast Region.

The program provides assistance to the economically disadvantaged Northeast Region by means of deductions equal to 75% reduction of the corporate income tax.

Both cooperative exporters qualified for benefits under this program during the POI.

For the purposes of the preliminary determination, this program constitutes a financial contribution, pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

³⁸ Exhibit 82 (NC) – GOB response to RFI to Program 1 (SUDENE), Question E.1, page 32.

³⁹ Exhibit 82 (NC) – GOB response to RFI to Program 1 (SUDENE), Question SQ.1, page 34.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

Program 3: Special Regime for Reinstatement of Taxes for Exporters (REINTEGRA)

REINTEGRA was established August 2, 2011 in Provisional Measure No. 540, which was converted into Law No. 12,546, on December 14, 2011. The law expired in December 2013, but was reinstituted by Provisional Measure No. 651, of July 9, 2014, and converted into Law No. 13,043 on November 13, 2014.⁴⁰

REINTEGRA aims to partially return the remaining residual tax in the supply chain of exported goods.

After making an export sale, the legal entity obtains tax credits that can be used to offset debts related to taxes administered by the Federal Revenue of Brazil – RFB (except social security contributions) or receive reimbursements in cash.⁴¹ During the POI, the subsidy was calculated at 0.1% of the value of a company's exports.

Both cooperative exporters from Brazil received benefits under this program during the POI.

For the purposes of the preliminary determination, this program is considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption. The information available also indicates that this program may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation

Program 4: Excessive Credit or Refund of State Tax on Circulation of Goods and Services (ICMS) and Tax on Industrialized Goods (IPI)

Both ICMS and IPI function as part of an indirect, value-added tax (VAT) regime in Brazil, established under the Constitution of the Federative Republic of Brazil (CFRB). The CFRB, establishes in Title VI, Chapter I, the general rules for The National Tax System. ICMS was established under CFRB Article 155 and Complementary Law 87/1996, while IPI was established under CFRB Article 153.⁴²

⁴⁰ Exhibit 82 (NC) – GOB response to RFI to Program 3 (REINTEGRA), Question SQ.1(c), page 48.

⁴¹ Exhibit 82 (NC) – GOB response to RFI to Program 3 (REINTEGRA), page 49.

⁴² Exhibit 82 (NC) – GOB response to RFI to Program 4 (Excessive Relief of ICMS and IPI), Question D10, page 21.

IPI Tax

Regulated through Laws 5,172 on October 25, 1966 and 4,502 on November 30, 1964 and Decree 7,212 on June 15, 2010,⁴³ the IPI tax is a Brazilian Federal tax that applies to all national or foreign industrialized (i.e. manufactured) products. The IPI tax rates are product-specific, and generally range between 0% and 20%, although they can reach up to 300%.

The IPI tax is linked to the price or value of the industrialized product on which it is imposed. In the case of domestic products, the taxable base is the transaction value. In the case of imported products, the taxable base is the customs value plus the import duties and charges paid. In the case of industrialized products acquired in auction, the taxable base is the price of the auctioned product.⁴⁴

ICMS Tax

The specific application of this tax varies from state to state. The State of Minas Gerais (where the two Brazilian exporters are located) in compliance with the provisions of Complementary Law No. 87/1996, instituted ICMS into Law No. 6,763 / 1975.⁴⁵

This is a tax on operations related to the circulation of goods and to the rendering of interstate and inter Municipal transportation services and communication services.⁴⁶

ICMS is charged on the circulation of goods, including on imports from abroad. However, ICMS will not be levied on goods exported.⁴⁷

Information obtained during the preliminary phase of the investigation indicates that one of the exporters in Brazil was exempted from paying these taxes on purchases of equipment.

For the purposes of the preliminary determination, this program is a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the preliminary determination, this program was considered to be specific, by virtue of there being exclusive use of the subsidy by a limited number of enterprises, pursuant to paragraph 2(7.3)(a) of SIMA.

⁴³ Exhibit 82 (NC) – GOB response to RFI to Program 4 (Excessive Relief of ICMS and IPI), page 57.

⁴⁴ Exhibit 82 (NC) – GOB response to RFI to Program 4 (IPI), pages 57-58.

⁴⁵ Exhibit 82 (NC) – GOB response to RFI to Program 4 (Excessive Relief of ICMS and IPI), pages 63 and 67.

⁴⁶ Exhibit 82 (NC) – GOB response to RFI to Program 4 (ICMS), page 61.

⁴⁷ Exhibit 82 (NC) – GOB response to RFI to Program 4 (ICMS), page 67.

Program 5: Integrated Drawback Regime

Drawback was established in 1966. The enacting legislation is in Article 78 of Law No. 37, published on November 18, 1966.⁴⁸

Drawback essentially allows a manufacturing company to purchase raw materials, parts and components without paying import duty and indirect taxes, whether importing or buying from domestic suppliers, with the condition being the finished product is exported. In Brazil, companies have one year to fulfill this obligation to export. The period can be extended for an extra year. Drawback cannot be applied to capital goods.⁴⁹

There are three schemes under the Integrated Drawback Regime: suspension, exemption and refund. Ninety-five per cent of drawback transactions are made under the suspension scheme.⁵⁰

Suspension Drawback

Suspension Drawback is regulated under Law No. 11.945, effective March 25, 2009. This type of Drawback allows companies to import or purchase from domestic suppliers, without paying import duties or indirect taxes, raw materials, parts and components that will be used in manufacturing goods that will be exported. Only imports made under Suspension Drawback may be relieved of “Tax on Circulation of Goods and Services” (ICMS).⁵¹

Both cooperative exporters from Brazil used the Suspension Drawback regime during the POI.

For the purposes of the preliminary determination, it was determined that the Integrated Drawback Program as it relates to the exemption of duties and taxes on purchases of carbon electrodes used in the production of subject goods is a subsidy. The definition of a subsidy in section 2 of SIMA provides that a subsidy:

“does not include the amount of any duty or internal tax imposed by the government of the country of origin or country of export on:

- (i) goods that, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of remission, refund or drawback,*
- (ii) energy, fuel, oil and catalysts that are used or consumed in the production of exported goods and that have been exempted or have been or will be relieved by means of remission, refund or drawback, or*
- (iii) goods incorporated into exported goods and that have been exempted or have been or will be relieved by means of remission, refund or drawback...”*

⁴⁸ Exhibit 82 (NC) – GOB response to RFI to Program 5 (Integrated Drawback), Question SQ.1(c), page 74.

⁴⁹ Exhibit 82 (NC) – GOB response to RFI to Program 5 (Integrated Drawback), Question E.5page 84.

⁵⁰ Exhibit 82 (NC) – GOB response to RFI to Program 5 (Integrated Drawback), page 73.

⁵¹ Exhibit 82 (NC) – GOB response to RFI to Program 5 (Integrated Drawback), Question SQ.1(c), page 74.

The CBSA concluded that this program, as it relates to carbon electrodes, does not fall under one of the exemptions noted above. Further consideration will be given to whether carbon electrodes may qualify for exemption under (ii) or (iii) during the final phase of the investigation.

For the purposes of the preliminary determination, this program is considered a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, in that amounts that would otherwise be owing and due to the government are reduced and/or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption. The information available also indicates that this program may be considered a specific subsidy under paragraph 2(7.2)(b) of SIMA as it may be contingent upon export performance and, therefore, may constitute a prohibited subsidy as defined in subsection 2(1) of SIMA. This will be further analyzed in the final phase of the investigation.

Program 11: Exemption from payment of *Imposto Predial e Territorial Urbano* (IPTU)

IPTU in the municipality of Várzea de Palma is authorized under municipal law No. 2.232, dated December 16, 2015.⁵²

The IPTU is a municipal property tax on urban property and land. The basis of calculation of the tax is the real value (sale value) of the real estate.⁵³ The subsidy is described as a “fiscal incentive” whereby the purpose is to give stimulus to a company in order to maintain activity and hiring, guaranteeing employability of the citizens of Várzea de Palma, and stability of the local economy.⁵⁴

During the POI, one of the exporters from Brazil, which is located in a qualifying municipality, benefited from an exemption of property tax payment.

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

⁵² Exhibit 82 (NC) – GOB RFI response to Program 11 (IPTU), Question SQ.3 and SQ.5, pages 135-136; Attachments E11(a) and E11(b).

⁵³ Exhibit 82 (NC) – GOB RFI response to Program 11 (IPTU), Question D9, pages 20-21.

⁵⁴ Exhibit 82 (NC) – GOB RFI response to Program 11 (IPTU), Question E9, page 134.

Program 17: Taxes exempted from Free Trade Zone of Manaus

While not identified at the initiation of the investigation, this program was reported during the course of the preliminary investigation phase by one of the Brazilian exporters during the POI.

The nature of the subsidy concerns the exemption of taxes by virtue of location in a free trade zone.

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

Subsidy Programs that Require Further Examination

The following programs are also included in the current investigation. Questions concerning these programs were included in the Subsidy RFIs sent to the GOB and to all known producers/exporters of silicon metal in Brazil. For the purposes of the preliminary determination of subsidizing, sufficient information was not available to make a determination in respect of these potentially actionable subsidy programs. The CBSA will continue to investigate these programs in the final phase of the investigation.

Program 6: Reduction of tariff rates on imported capital goods under the Ex-Tarifário program

The current framework for Ex-Tarifário was established in light of the institution of the Brazilian Chamber of Foreign Trade (CAMEX) in 2001. The current authority rests under CAMEX Resolution No. 66/2014, which repealed the previous CAMEX Resolution No. 17/2012.⁵⁵

Ex-Tarifário is a special tariff regime which aims to reduce costs to companies located in Brazil. The program reduces import tariffs on certain Capital Goods (BK) and Informatics and Telecommunications Goods (BIT) where there is no equivalent production in Brazil.⁵⁶

⁵⁵ Exhibit 82 (NC) – GOB response to RFI to Program 6 (Ex-Tarifário), SQ.1(e), page 89; Attachments E06SQ03_3 and E06SQ03_4.

⁵⁶ Exhibit 82 (NC) – GOB response to RFI to Program 6 (Ex-Tarifário), page 88.

Although the creation of an Ex-Tarifário needs to be requested by a company or industrial association located in Brazil, an approved tariff reduction relates not to the applicant but to the good itself. This means that any importer that seeks to import a good whose description corresponds to an Ex-Tarifário can make use of this reduction once it comes into force.

The result is an exception under the Common Tariff List with a tariff rate of 2% or 0%, substantially lower in comparison to that applicable to BK and BIT codes, which are usually 14%. The effective duration of the reduction in the tariff rate is about two years.

The CBSA will continue to investigate whether any exporter in Brazil received benefits under Ex-Tarifário during the POI in relation to subject goods.

This program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

This program may be considered to be a specific subsidy under paragraph 2(7.3)(c) of SIMA where it is determined that disproportionately large amounts of the subsidy are granted to a limited number of enterprises.

Program 14: Financing Program for Production and Commercialization of Machinery and Equipment (FINAME) under the BNDES

The Brazilian Development Bank (BNDES) operates under national legislation which encompasses Presidential Decree No. 4418/2002 (as amended),⁵⁷ BNDES by-laws, as well as rules that govern the provision of credit established by the Central Bank. The daily operation of financial instruments is regulated internally by norms settled by BNDES' Board of Executive Directors.⁵⁸

BNDES is the Brazilian financial institution responsible for the medium and long-term investment credit policy of the GOB. Founded in 1952, BNDES also finances machinery and equipment purchases. BNDES' activities are aimed at financing investments in the Brazilian economy that improve the standard of living in Brazil. BNDES is a 100% state-owned company under private law.⁵⁹

⁵⁷ BrazilGovNews Weblink to Federal Legislation: http://www.planalto.gov.br/ccivil_03/decreto/2002/D4418.htm.

⁵⁸ Exhibit 82 (NC) – GOB response to RFI to Programs 13 and 14 (BNDES), Question SQ.2, page 156.

⁵⁹ Exhibit 82 (NC) – GOB response to RFI to Programs 13 and 14 (BNDES), page 161;
http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes_cn/Galerias/Download/AF_DEPCO_english.pdf

There are several regimes under the BNDES banner that were identified by the GOB:

- FINAME ⁶⁰
- Exim ⁶¹ (Pre and Post Shipment Financing)
- Automatic ⁶²

The FINAME was set up in 1966. Its purpose is to provide financing for the acquisition of machines and equipment.

BNDES Exim was established in 1991. Its purpose is to provide support to competitive Brazilian companies in the international market of goods and services.

The BNDES Automatic was established in 1993. Its purpose is to provide loans to support investment projects of a value lower than R\$ 20 million.

BNDES operates in every sector of the economy, focusing on industrial restructuring, infrastructure expansion and revamping, safeguarding the environment, and accomplishing and improving agriculture and services.

BNDES directly finances the purchase of new domestic and imported machinery and equipment, as well as leasing domestic equipment, works of infrastructure and working capital when associated with an investment project of a total value above R\$ 20 million. The financed company has the option of acting directly with BNDES or through an on-lending agent bank. In some cases, the financing may also be mixed between direct financing by BNDES and indirect financing through an agent bank. ⁶³

The CBSA will continue to investigate whether any exporter in Brazil received benefits under FINAME during the POI in relation to subject goods.

Preferential loans and loan guarantees constitute a financial contribution, pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds or liabilities, and confers a benefit to the recipient equal to the difference between the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency and the amount of interest paid on the preferential loan.

FINAME under BNDES is potentially a specific subsidy under paragraph 2(7.3)(c) of SIMA where it is determined that disproportionately large amounts of the subsidy are granted to a limited number of enterprises.

⁶⁰ Exhibit 82 (NC) – GOB response to Program 14 (FINAME), Attachment E13SQ3_1.

⁶¹ Exhibit 82 (NC) – GOB response to Program 13 (Exim), Attachment E13SQ3_2 and Attachment E13SQ3_3 – Pre and Post-Shipment.

⁶² Exhibit 82 (NC) – GOB response to Program 13 (Automatic), Attachment E13SQ3_4.

⁶³ Exhibit 82 (NC) – GOB response to RFI to Programs 13 and 14, page 153.

Program 16: Goods/Services provided by the Government of Brazil at less than fair market value – Electricity

Under this potentially actionable subsidy program, there are two government-owned, related institutions which may be supplying electricity to producers of silicon metal at less than fair market value (FMV).

Eletrobras (Centrais Elétricas Brasileiras S.A.) is an open capital company controlled by the GOB, which operates in the areas of generation, transmission and distribution of electricity.

The company controls 14 subsidiaries - Eletrobras Furnas, Eletrobras Chesf, Eletrobras Eletronorte, Eletrobras Eletrosul, Eletrobras Eletronuclear, Eletrobras CGTEE, Eletrobras Amazonas Geração e Transmissão, Eletrobras Distribuição Amazonas, Eletrobras Distribuição Roraima, Eletrobras Distribuição Alagoas, Eletrobras Distribuição Piauí, Eletrobras Distribuição Rondônia, Eletroacre and CELG Distribuição (CELG-D), a holding company (Eletrobras Eletropar), a research center (Cepel) and it also holds 50% of Itaipu Binacional.

Furnas is a mixed economy, private capital company whose main shareholder is Eletrobras. Furnas operates in three segments of the electricity industry chain:

- Generation;
- Transmission; and
- Marketing.

Sales are to distribution companies and customers in the “open market.” Furnas does not provide distribution, an activity consisting of supply of power to end consumers (households, industries, commerce, etc.).

According to the present regulatory framework (Law No. 10,848, dated March 15, 2004), there are two trading environments in the Brazilian energy market:

1. The Regulated Trading Environment (ACR) encompasses the distribution companies and what are known as the “captive” consumers, serviced only by local distributors, with electricity supply tariffs and conditions regulated by the National Electricity Agency (ANEEL);
2. The Free Trading Environment (ACL) encompasses what are known as the “free” consumers, empowered to buy energy from any supplier, other than the distribution companies, and the trading agents, which may purchase energy from any supplier and sell it to any purchaser, except captive consumers.

Under the ACR, distribution companies need to purchase energy from generators through public auctions under capped prices set by government, while under the ACL, free consumers (non-captive) and generators can freely negotiate their own bilateral contracts.

State-owned generators, in commercializing their energy in ACL, had to do so through public auctions, until the advent of Law No. 13,360 of November 17, 2016. Until then, state-owned generation companies could only sell electricity in the open market through auctions.

The contracts that formalize trade relations among the agents have the obligation to be registered in the Electric Energy Trading Chamber (CCEE) whether held in ACR or ACL. In ACL the quantities and prices traded are not disclosed.⁶⁴

Goods and services provided by the GOB at less than fair market value constitute a financial contribution pursuant to paragraph 2(1.6)(c) of SIMA as they involve the provision of goods or services, other than general governmental infrastructure.

The program is potentially a specific subsidy under paragraph 2(7.3)(c) of SIMA where it is determined that disproportionately large amounts of the subsidy are granted to a limited number of enterprises.

Subsidy Programs that were Not Used by the Exporters

The CBSA has determined that these programs were not used by the exporters in Brazil.

Program 1: Income Tax Exemption under the *Superintendência do Desenvolvimento da Amazônia* (SUDAM) program in the North region

SUDAM was created in 1966 by Law No. 5,173. It was extinguished in 2001 and substituted by the ADA (Agency for the Development of the Amazon Region) and ADENE (Agency for the Development of Northeast) and recreated by Supplementary Law No. 124, of 2007.⁶⁵

The program operates similarly to Program 2 (SUDENE) discussed above. The benefit is a 75% reduction of the corporate income tax and non-refundable, calculated on the profit for enterprises that fit in the economic sectors deemed priority to the regional development in the area of operation of SUDAM.⁶⁶

The area covered by SUDAM is denominated “Legal Amazonia,” or the Amazon Region.⁶⁷ Neither of the exporters of subject goods are eligible for this program given their geographic location.

This program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

⁶⁴ Exhibit 82 (NC) – GOB response to RFI to Program 16 (Electricity at less than FMV), pages 174-178.

⁶⁵ Exhibit 82 (NC) – GOB response to RFI to Program 1 (SUDAM), Question E.1, page 32.

⁶⁶ Exhibit 82 (NC) – GOB response to RFI to Program 1 (SUDAM), Question SQ.1(c), page 25.

⁶⁷ Exhibit 82 (NC) – GOB response to RFI to Program 1 (SUDAM), Question SQ.1(b), page 24.

This program is potentially a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

Program 7: Special Regime for the Acquisition of Capital Goods by Export Companies (RECAP)

RECAP was established in November 2005, under Article 132 of Law 11,196/2005.⁶⁸

The GOB stated that RECAP aims to encourage investment on production and improving exports by correcting the distortions that generate a cost on the capital goods of predominantly exporting companies.

RECAP provides for the suspension of the PIS/PASEP, COFINS, PIS/PASEP (Importation) and COFINS (Importation) contributions with respect to purchases of new machinery, tools, instruments and equipment for incorporation into the tangible fixed assets.

The GOB also confirmed that applications may be made by legal persons registered as “predominantly exporting companies.”⁶⁹

Recipients of RECAP is public information and neither exporter of subject goods from Brazil during the POI are a listed recipient.⁷⁰

This program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

This program may be specific under section 7.2(b) as a prohibited subsidy that it is contingent, in whole or in part, on export performance.

Program 8: Project for Export Financing (PROEX)

PROEX is regulated under Law No. 10,184, effective February 12, 2001.⁷¹

Other legislative authorities in relation to the program include National Monetary Council (CMN) Resolution No. 2,575, effective December 17, 1998 and 4,063, effective April 12, 2012, respectively; and Brazilian Chamber of Foreign Trade (CAMEX) Resolution No. 126, effective December 26, 2013 and Decree No. 7,710, effective April 3, 2012.

⁶⁸ Exhibit 82 (NC) – GOB response to RFI to Program 7 (RECAP), Question SQ.1(e), page 102.

⁶⁹ Exhibit 82 (NC) – GOB response to RFI to Program 7 (RECAP), Question SQ.1, pages 101-102.

⁷⁰ <http://idg.receita.fazenda.gov.br/acesso-rapido/legislacao/pessoas-juridicas-habilitadas-e-coabilitadas/reacao-das-pjs-in-605-2006.pdf>.

⁷¹ Exhibit 82 (NC) – GOB response to RFI to Program 8 (PROEX), SQ.1, page 110; Attachment E08SQ01(a).

CAMEX establishes the main guidelines and parameters applicable to PROEX, while CMN is responsible for defining the financial conditions of the operations. In addition, the Export Financing and Guarantee Committee (COFIG), a committee subordinate to CAMEX, is responsible for the implementation of the guidelines defined by CAMEX and CMN, while Banco do Brasil is the National Treasury's financial agent for PROEX, responsible for the operation of the program.⁷²

PROEX was designed by the Federal Government to provide Brazilian exporters with credit facilities at conditions similar to those prevailing in international markets. PROEX is funded exclusively with resources from the Brazilian National Treasury pursuant to the federal budget.

PROEX provides financial assistance to Brazilian exports in two categories:

1. Direct financing (PROEX-Financing); and
2. Interest rate support (PROEX-Equalization).

Under the direct financing category, credit is provided to a buyer or supplier of Brazilian services and goods. The interest rate for these loans is to be compatible with those available in the international market.⁷³

Neither Brazilian exporter that sold subject goods during the POI has received actionable benefits under this program.

Preferential loans and loan guarantees constitute a financial contribution, pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds or liabilities, and confers a benefit to the recipient equal to the difference between the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency and the amount of interest paid on the preferential loan.

This program may be specific under section 7.2(b) as a prohibited subsidy that it is contingent, in whole or in part, on export performance.

Program 9: Export Guarantee Fund (FGE)

This program is authorized under Law No. 11,281/2006.⁷⁴

Note that the Seguro de Crédito à Exportação (SCE – Export Credit Insurance) initially investigated as Program 15 operates under the FGE; as such these are not separate programs as originally investigated and are now treated as one under Program 9.

⁷² Exhibit 82 (NC) – GOB response to RFI to Program 8 (PROEX), SQ.1, page 110.

⁷³ Exhibit 82 (NC) – GOB response to RFI to Program 8 (PROEX), pages 109-110.

⁷⁴ Exhibit 82 (NC) – GOB response to RFI to Program 9 (FGE), SQ.1(c), page 120.

SCE under the FGE guarantees exports of domestic goods and services in operations with repayment period longer than two years. For micro, small and medium Enterprises, the FGE also provides export guarantees for operations shorter than two years. Other operations for below two years are served by the private insurance market.

Essentially SCE under FGE constitutes insurance provided by the GOB against commercial, political and extraordinary risks, in export operations where the private market has no appetite, in accordance with Organization for Economic Cooperation and Development OECD Arrangement on Officially Supported Export Credits.

Although not a member of the (OECD), Brazil follows the pricing model approved in the Arrangement on Officially Supported Export Credits.

The Brazilian Guarantees and Fund Managements Agency (ABGF) was established in 2012. The Agency started its operations in 2014 and since then has been hired by the Ministry of Finance to provide the necessary services for the issuing of insurance policies (e.g. risk assessment, legal opinions and project analysis).

ABGF is responsible for the structuring, management and monitoring of the SCE operations. The granting of SCE coverage is underwritten by the Secretariat for International Affairs (SAIN) of the Ministry of Finance. The FGE is financed with resources from the federal budget and with proceeds and financial gains from the fund's own activities and financial operations.⁷⁵

Neither exporter of subject goods located in Brazil received actionable benefits under this program in relation to the POI.

Preferential loans and loan guarantees constitute a financial contribution, pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds or liabilities, and confer a benefit to the recipient equal to the difference between the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency and the amount of interest paid on the preferential loan.

This program may be specific under section 7.2(b) as a prohibited subsidy that it is contingent, in whole or in part, on export performance.

⁷⁵ Exhibit 82 (NC) – GOB response to RFI to Program 9 (FGE), SQ.1, pages 120-121.

Program 12: Financial Assistance provided by *Fundo Constitucional de Financiamento do Nordeste* (FNE) under the *Banco do Nordeste do Brasil* (BNB)

The Northeast Constitutional Financing Fund (FNE) is established under Law No. 7827/1989, which regulated the creation of constitutional financing funds, among which the FNE, defines the purpose of these funds as “to contribute to the economic and social development of the North, Northeast and Central West regions, through federal financial institutions of a regional nature, by means of the execution of financing programs for the productive sectors, in accordance with the respective regional development plans” (Article 2).⁷⁶

The resources of the FNE are intended as repayable loans for rural and urban enterprises of “productive sectors.” The financing area covers the northeastern region of Brazil and the northern part of the states of Espírito Santo and Minas Gerais. Receipt of funds is not contingent upon the exportation of the goods.

Access to financing is based on the presentation of a proposal submitted by the rural producer or company and the criteria defined in the Regional Programming of the FNE and the rules of the credit process, which follows regulations applicable to the national financial system.

Eligibility for the granting of financing is established in the annual programming of the FNE in the credit programs approved for each year, as well as in the standard banking criteria for registration, credit limit, proposal or project analysis, availability of guarantees, etc.⁷⁷

Neither exporter of subject goods located in Brazil received actionable benefits under this program in relation to the POI.

Preferential loans and loan guarantees constitute a financial contribution, pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds or liabilities, and confer a benefit to the recipient equal to the difference between the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency and the amount of interest paid on the preferential loan.

This program is potentially a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

⁷⁶ Exhibit 82 (NC) – GOB response to RFI to Program 12 (FNE), Question SQ.1(a) and (b), page 141.

⁷⁷ Exhibit 82 (NC) – GOB response to RFI to Program 12 (FNE), Question SQ.1 (h) and (i), page 143.

Program 13: Preferential pre-shipment and post-shipment loans provided by the Brazilian Development Bank (BNDES)

See information on BNDES loans and “Exim” under Program 14 above.

Neither exporter of subject goods located in Brazil received actionable benefits under this program in relation to the POI.

Preferential loans and loan guarantees constitute a financial contribution, pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds or liabilities, and confer a benefit to the recipient equal to the difference between the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency and the amount of interest paid on the preferential loan.

This program is specific under section 2(7.2)(b) as it is a prohibited subsidy given that it is contingent, in whole or in part, on export performance.

Identified Program Found Not to be a Subsidy

Program 10: Program to Induce Industrial Modernization in the State of Minas Gerais (PROIM)

This program is no longer in force in Brazil.

KAZAKHSTAN

Subsidy Programs Used by the Responding Exporter

Overview of Saryarka SEZ Benefits

The Saryarka SEZ was established by Decree of the President of the Republic of Kazakhstan No. 181 - On establishment of the special economic zone “Saryarka,” which was approved on November 24, 2011.⁷⁸ The Saryarka SEZ was established in order to attract investments aimed at developing competitive industries, to contribute to regional development, and to create jobs.⁷⁹ According to the regulations attached to the decree, the priority activities for the SEZ includes the development of the metallurgical industry and the metalworking industry, in particular the production of finished products.⁸⁰ According to the GOK, 10 companies were located in the Saryarka SEZ during the POI.⁸¹

⁷⁸ Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.1.(e), page 21.

⁷⁹ Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.1.(b), page 21.

⁸⁰ Exhibit 149 (NC) – GOK response to RFI, Attachment 7, page 2.

⁸¹ Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.10., page 27.

The benefits provided by the GOK to companies located in the Saryarka SEZ are in the form of preferential tax treatment respecting a number of different types of taxes including land and property taxes and fees, value-added tax (VAT), customs duty and income tax.

Program 2: Exemption of Land Tax in Saryarka SEZ

The benefit under this program, the exemption of land tax, is provided for in Article 151-7 of the Code of the Republic of Kazakhstan No. 99-IV – On Taxes and Other Obligatory Payments into the Budget (Tax Code).⁸² Under that article, organizations in certain manufacturing industries operating in the Saryarka SEZ are entitled to use a zero rate in calculating land tax.

For the purposes of the preliminary determination, this program constitutes a financial contribution, pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

Program 4: Exemption from Property Tax in Saryarka SEZ

The benefit under this program, the exemption of property tax, is provided for in Article 151-7 of the Tax Code.⁸³ Under that article, organizations in certain manufacturing industries operating in the Saryarka SEZ are entitled to use a zero rate in calculating property tax.

For the purposes of the preliminary determination, this program constitutes a financial contribution, pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

⁸² Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.2., page 22.

⁸³ Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.2., page 22.

Program 5: Exemption from VAT on Imported Purchases of Machinery in Saryarka SEZ

According to Tau-Ken, VAT was exempted on equipment that it imported in accordance with the Saryarka SEZ exemptions; however, no specific reference was made to the legislation governing that exemption.⁸⁴

The benefit in the form of the exemption of VAT, appears to be provided for in Article 244-2 of the Tax Code, as this was one of the articles cited by the GOK in reference to benefits available in the Saryarka SEZ.⁸⁵ Under that article, organizations in the territory of a SEZ are entitled to use a zero rate in calculating VAT on goods fully consumed when performing an activity within the aims of that SEZ. Further information will be sought from the interested parties to confirm that this is the article that applies to equipment and machinery as well as goods.

For the purposes of the preliminary determination, this program constitutes a financial contribution, pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

Program 8: Quartz provided by the GOK at Prices below Fair Market Value

While not identified at the initiation of the investigation, this program was identified during the course of the preliminary investigation based on a review of the information submitted by exporter Tau-Ken, as well as information submitted by its associated/related suppliers.

The nature of the subsidy relates to Tau-Ken's purchases of quartz, a raw material input used in the production of silicon metal, from an SOE at prices less than fair market value.

An amount of subsidy for this program for the purposes of the preliminary determination was estimated by comparing prices paid to the SOE for quartz purchased during the POI with prices paid to a private non-SOE for quartz purchased during the same period. According to information provided by Tau-Ken, the quartz from both sources are close in quality.⁸⁶

⁸⁴ Exhibit 314 (NC) – Tau-Ken response to SRFI #1, Question S22.

⁸⁵ Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.2., page 22.

⁸⁶ Exhibit 314 (NC) – Tau-Ken response to SRFI #1, Question S8(b).

For the purposes of the preliminary determination, this program constitutes a financial contribution, pursuant to paragraph 2(1.6)(c) of SIMA, i.e., the government provides goods other than general governmental infrastructure, and confers a benefit to the recipient equal to the difference between the fair market value of the goods in the territory of the government providing the subsidy, and the price at which the goods were provided by that government.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.3)(a) of SIMA as there is exclusive use of the subsidy by a limited number of enterprises.

Program 9: Loans at Preferential Interest Rates provided by the GOK

While not identified at the initiation of the investigation, this program was identified during the course of the preliminary investigation phase based on a review of the information submitted by Tau-Ken.

The nature of the subsidy relates to a loan with a preferential interest rate provided to Tau-Ken by its parent company which is wholly owned by the GOK.⁸⁷

An amount of subsidy for this program for the purposes of the preliminary determination was estimated by comparing the amount of interest paid by the producer at the preferential rate during the POI with the amount of interest that could have been charged during that period using the central bank base rates established by the National Bank of Kazakhstan.⁸⁸

For the purposes of the preliminary determination, this program constitutes a financial contribution, pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds or liabilities, and confers a benefit to the recipient equal to the difference between the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency and the amount of interest paid on the preferential loan.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.3)(a) of SIMA as there is exclusive use of the subsidy by a limited number of enterprises.

Program 10: Grants in the form of Capital Contributions provided by the GOK

While not identified at the initiation of the investigation, this program was identified during the course of the preliminary investigation phase based on a review of the information submitted by Tau-Ken.

⁸⁷ Exhibit 314 (NC) – Tau-Ken response to SRFI #1, Question S15.

⁸⁸ Exhibit 149 (NC) – GOK response to RFI, Attachment 3.

The nature of the subsidy relates to a capital contribution provided to Tau-Ken by its parent company which is wholly owned by the GOK. An amount of subsidy for this program for the purposes of the preliminary determination was estimated based on the total amount of the capital contribution provided to and fully used by Tau-Ken during the POI.⁸⁹

For the purposes of the preliminary determination, this program constitutes a financial contribution, pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds or liabilities, and confers a benefit to the recipient equal to the difference between the amount of interest that would be payable, by the recipient of the preferential loan, on a non-guaranteed commercial loan in the same currency and the amount of interest paid on the preferential loan.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.3)(a) of SIMA as there is exclusive use of the subsidy by a limited number of enterprises.

Subsidy Programs that Require Further Examination

The following programs are also included in the current investigation. Questions concerning these programs were included in the Subsidy RFIs sent to the GOK and to all known exporters of the subject goods in Kazakhstan. For the purposes of the preliminary determination of subsidizing, sufficient information was not available to make a determination in respect of these potentially actionable subsidy programs. The CBSA will continue to investigate these programs in the final phase of the investigation.

Program 1: Exemption of Corporate Income Tax in Saryarka SEZ

The benefit under this program, the exemption of corporate income tax, is provided for in Article 151-7 of the Tax Code.⁹⁰ Under that article, organizations in certain manufacturing industries operating in the Saryarka SEZ are entitled to reduce the amount of corporate income tax calculated in accordance with Article 139 of the Tax Code by 100 percent.

This program constitutes a financial contribution, pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

This program is a potentially specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

⁸⁹ Exhibit 314 (NC) – Tau-Ken Response to SRFI #1, Question S11.

⁹⁰ Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.2., page 22.

Program 3: Exemption of Land Use Fee in Saryarka SEZ

The Saryarka SEZ was established by Decree of the President of the Republic of Kazakhstan No. 181 - On establishment of the special economic zone “Saryarka”, which was approved on November 24, 2011.⁹¹ The Saryarka SEZ was established in order to attract investments aimed at developing competitive industries, to contribute to regional development, and to create jobs.⁹² According to the regulations attached to the decree, the priority activities for the SEZ include the development of the metallurgical industry and the metalworking industry, in particular the production of finished products.⁹³ According to the GOK, 10 companies were located in the Saryarka SEZ during the POI.⁹⁴

The benefits provided by the GOK to companies located in the Saryarka SEZ are in the form of preferential tax treatment respecting a number of different types of taxes including: land and property taxes and fees; value-added tax (VAT); customs duty; and income tax.

The benefit under this program, the exemption of Land Use Fee, is provided for in Article 151-7 of the Tax Code.⁹⁵ Under that article, organizations in certain manufacturing industries operating in the Saryarka SEZ are entitled to use a zero rate in calculating the land use fee.

This program constitutes a financial contribution, pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confer a benefit to the recipient equal to the amount of the reduction/exemption.

This program is a potentially specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

Program 6: Exemption from Customs Duties on Imported Purchases of Machinery in Saryarka SEZ

According to information supplied by Tau-Ken, duties were not assessed on certain importations of machinery in accordance with local customs regulations as the item were not available domestically.⁹⁶ However, Tau-Ken did not identify the relevant legislative, regulatory or administrative instrument or other public document. Without this information, the CBSA was unable to assess whether the amount exempted under this program would be considered to be specific or generally available.

⁹¹ Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.1.(c), page 21.

⁹² Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.1.(b), page 21.

⁹³ Exhibit 149 (NC) – GOK response to RFI, Attachment 7, page 2.

⁹⁴ Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.10., page 27.

⁹⁵ Exhibit 149 (NC) – GOK response to RFI, Part E – Section I, Question SQ.2., page 22.

⁹⁶ Exhibit 314 (NC) – Tau-Ken response to SRFI #1, Question S20(a).

As a result, the CBSA issued an SRFI ⁹⁷ to the GOK requesting information in relation to this potentially actionable program. Information provided by the GOK in response⁹⁸ to the SRFI will be considered during the final phase of the investigation. Further information will also be sought from both the GOK and Tau-Ken during verification activities that will be undertaken during the final phase of the investigation.

For purposes of the preliminary determination, an amount of subsidy in relation to this program was not estimated and was not attributed to Tau-Ken. Should the CBSA find that this program is actionable during the final phase of the investigation, details regarding the nature of the financial contribution, the benefit and its specificity will be made available at the conclusion of the investigation.

Program 7: Preferential Electricity Rates provided by the GOK

Under this potentially actionable subsidy program, the complaint indicated that Tau-Ken received electricity at prices less than fair market value on its purchases of electricity.

The CBSA requires further information and clarification respecting how the price of electricity is established for its analysis regarding whether a benefit is conferred and whether such a benefit would be considered specific.

Preliminary information provided by the GOK indicates that prices for electricity are established independently by electricity companies in accordance with relevant laws and are subject to ceiling (maximum) prices that apply to all electricity companies based on production and marketing costs as well as profit margins.⁹⁹ However, information provided by the GOK also indicates that consumers can apply for a “temporary decreasing coefficient” to obtain a temporary discount on the price of electricity paid, subject to approval by the GOK.¹⁰⁰ While the GOK has indicated that any consumer can apply for the discount under the sole condition that the consumer will increase its amount of energy consumption,¹⁰¹ the CBSA requires further clarification and information with respect to the approval, calculation, duration, and use of the discount by consumers.

Additional information relating to electricity pricing in Kazakhstan was requested by the CBSA in an SRFI¹⁰² sent to the GOK. Information provided by the GOK in response to the SRFI will be considered during the final phase of the investigation.¹⁰³ Additional information will also be sought with respect to electricity pricing and possible benchmarks during verification activities that will be undertaken during the final phase of the investigation.

⁹⁷ Exhibit 304 (PRO) – SRFI #1 sent to the GOK.

⁹⁸ Exhibit 318 (NC) – GOK response to SRFI #1.

⁹⁹ Exhibit 149 (NC) – GOK response to RFI, Part E, Question E.25., page 36.

¹⁰⁰ Exhibit 149 (NC) – GOK response to RFI, Part E – Section II, General Response, pages 29 and 30.

¹⁰¹ Exhibit 149 (NC) – GOK response to RFI, Part E – Section II, General Response, pages 29 and 30.

¹⁰² Exhibit 304 (PRO) – SRFI #1 sent to the GOK.

¹⁰³ Exhibit 318 (NC) – GOK response to SRFI #1.

For purposes of the preliminary determination, an amount of subsidy in relation to this program was not estimated and was not attributed to Tau-Ken. Should the CBSA find that this program is actionable during the final phase of the investigation, details regarding the nature of the financial contribution, the benefit and its specificity will be made available at the conclusion of the investigation.

MALAYSIA

As noted in the body of this document, the Government of Malaysia (GOM) did not submit a complete response to the subsidy RFI, which limited the CBSA's ability to conduct an analysis of the programs for the preliminary determination. Further, no exporter in the Malaysia submitted a complete response to the subsidy RFI.

This appendix consists of a listing of 5 potentially actionable subsidy programs which were reviewed by the CBSA in the current subsidy investigation. Descriptions of the following Malaysian subsidy programs, and references to source information, can be found in the non-confidential version of the complaint.

Potentially Actionable Subsidy Programs Identified by the CBSA

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

Available information indicates that the programs identified above may constitute a financial contribution pursuant to subsection 2(1.6) of the 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 Malaysia; and amounts that would otherwise be owing and due to the government is reduced or exempted, and would confer a benefit to the recipient equal to the amount of the reduction/exemption; and the government 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.

NORWAY

Subsidy Programs Used by the Responding Exporter

Program 2: Assistance to Research and Development Schemes – Industrial R&D Programs and Projects

This program was established in accordance with the Norwegian Public Support Act (Act No. 117 of 27 November 1992 relating to state aid). Pursuant to the European Economic Area (EEA) Agreement, grants are given in accordance with the European Union (EU) General Block Exemption Regulation, Article 25.¹⁰⁴

The objective of this program is to stimulate research and development (R&D) activity in businesses and industry, particularly R&D activities that promote innovation and sustainable value creation.

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds, or liabilities, or the contingent transfer of funds or liabilities, and confers a benefit to the recipient equal to these amounts.

For the purposes of the preliminary determination, this program was considered to be specific, due to the manner in which discretion is exercised by the granting authority, indicating that the subsidy is not generally available, pursuant to paragraph 2(7.3)(d) of SIMA.

Program 9: Electricity Tax

Electricity tax is imposed by the GON pursuant to annual decisions of the Norwegian Parliament and the Act on Excise Duties of May 19, 1933. Electricity consumption is taxed in three categories:

- (1) Residential rate;
- (2) Industrial rate;
- (3) Exempted.

The electricity tax is established under Section 3-12 of the Excise Tax Regulations.

The nature of the subsidy concerns the exemption of taxes for large users of electricity where the electricity is an input in the production process.

¹⁰⁴ Exhibit 33 (NC) – GON response to Program 2 (Industrial R&D Programs and Projects).

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case specific to industries that are large users of electricity.

Program 10: Norwegian Energy Fund Scheme (Energifondet)

The national legal basis for the Energy fund scheme derives from the amendment of the Energy Act of 05-04-2001.¹⁰⁵ The Energy Fund scheme provides support in the form of grants for investment aid and support to environmental studies.

The objective of this program is to promote an environmentally friendly change in the use and production of energy in Norway, and to support the market diffusion of new technologies within the field of renewable energy production and energy efficiency.

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds, or liabilities, or the contingent transfer of funds or liabilities and confers a benefit to the recipient equal to these amounts.

For the purposes of the preliminary determination, this program was considered to be specific, due to the manner in which discretion is exercised by the granting authority, indicating that the subsidy is not generally available, pursuant to paragraph 2(7.3)(d) of SIMA.

Program 11: SkatteFUNN

The program operates according to the Norwegian Tax Act, sections 16-40 of 1999-03-26.¹⁰⁶ The program is a tax credit for R&D costs that comes in the form of a deduction from the company's payable corporate tax.

The SkatteFUNN scheme is a government program designed to stimulate R&D in Norwegian trade and industry.

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

¹⁰⁵ Exhibit 33 (NC) – GON response to Program 10 (Energifondet); Attachment 1-Public Exhibit Program 5(a)-01 - The Energy Act.

¹⁰⁶ Exhibit 33 (NC) – GON response to Program 11 (SkatteFUNN); Attachment 1-Public Program Exhibit 5(b)-01 - law & reg.

For the purposes of the preliminary determination, this program was considered to be specific, due to disproportionately large amounts of the subsidy being granted to a limited number of enterprises, pursuant to paragraph 2(7.3)(c) of SIMA.

Program 12: CO₂ Compensation Scheme

The legislation under which this subsidy is granted is Regulation No. 1,160 from September 2013 on CO₂ compensation for industries. It is scheduled for termination at the end of 2020.

Norway participates in the European Union Greenhouse Gas Emission Trading System (ETS) with the purpose of promoting reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. Consequently, all industries that are dependent on large volumes of electricity in their production processes face increased production costs as a result of the ETS. The CO₂ Compensation scheme compensates for the additional cost incurred by industries with a consumption of electricity over an annual threshold of 10 GWh.

Throughout the duration of the program, the level of compensation is to be reduced by predetermined coefficients that are used to calculate the amount of compensation for specified periods.

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds, or liabilities, or the contingent transfer of funds or liabilities and confers a benefit to the recipient equal to these amounts.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being an enterprise consuming over 10 GWh of electricity annually.

Program 17: Aid Scheme for the Promotion of Environment-Friendly Technology

This program is authorized pursuant to the following legal instruments:

- Act no 130 of December 19, 2003;
- The Annual State Budget approved by parliament;
- Rules from the Ministry of Trade, Industry and Fisheries related to the Environment-Friendly Technology Program, dated June 20, 2016.

The objective of this program is wealth creation in Norwegian industry through developing more environmentally-friendly technology. This program provides support in the form of grants where aid is necessary to realize a project.

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(a) of SIMA, i.e., practices of the government involve the direct transfer of funds, or liabilities, or the contingent transfer of funds or liabilities and confers a benefit to the recipient equal to these amounts.

For the purposes of the preliminary determination, this program was considered to be specific, due to the manner in which discretion is exercised by the granting authority, indicating that the subsidy is not generally available, pursuant to paragraph 2(7.3)(d) of SIMA.

Subsidy Programs that Require Further Examination

The following programs are also included in the current investigation. Questions concerning these programs were included in the Subsidy RFIs sent to the Government of Norway and to all known producers/exporters of silicon metal in Norway. For the purposes of the preliminary determination of subsidizing, sufficient information was not available to make a determination in respect of these potentially actionable subsidy programs. The CBSA will continue to investigate these programs in the final phase of the investigation.

Program 3: Assistance to Disadvantaged Regions – Regional Investment Grant and Risk Loans

The purpose of the program is to create jobs and contribute to the development of permanent and profitable businesses in areas with special employment problems or a low level of economic activity. Under this program, support is provided in the form of grants and loans.

Program 6: Assistance to Disadvantaged Regions – Research, Development and Innovation Scheme for Regional Development

This program is authorized pursuant to the following legal instruments:

- Act No. 130 of December 19, 2003;
- Regulation on regional aid funds (FOR-2013-12-11-1574);
- Regulation No. 807 of June 2003 on the regional aid map and regional transport aid.

The policy objective of the program is to stimulate research and innovation within the assisted area. The assistance comes in the form of a grant that covers costs eligible under the notion of “soft-aid.” Specifically, eligible costs must be one-off in nature and for up-to-date knowledge in various fields or establishing network co-operation, and R&D projects.

Program 14: Cultural Heritage Fund

This program was disclosed by Elkem during the preliminary phase of the investigation but the GON has not yet provided the legislative authority under which it operates.

This program provides financial support for the rehabilitation of sites with special value for cultural heritage, pursuant to regulations governing the Cultural Heritage Fund (Norsk Kulturminnefond). Sufficient information on this program has not been provided and will continue to be investigated by the CBSA.

Subsidy Programs that were Not Used by the Exporter

The CBSA has determined that these programs were not used by the exporter in Norway.

Program 1: Assistance to Research and Development Schemes – R&D Contracts

This program is administered by Innovation Norway, a government institution, and its policy objective is wealth creation in Norwegian industry through developing new products and production methods that will contribute to new industry expertise.

The exporter did not avail themselves of this program.

Program 4: Assistance to Disadvantaged Regions – Industrial Development Corporation of Norway (SIVA)

SIVA's objective is to facilitate establishments and development of enterprises and business, and knowledge communities across Norway.

The exporter, Elkem, did not avail themselves of this program.

Program 5: Assistance to Disadvantaged Regions – SME-aid for Regional Development

Aid is directed toward small and medium sized (SME) enterprises within the assisted area.

The exporter, Elkem, did not avail themselves of this program.

Program 7: Assistance to Export Promotion – Export Development Programme for SMEs (International Market Advisory)

The purpose of the program is business development and export promotion of SMEs, with a focus on small, highly knowledgeable and technology-based entrepreneurial enterprises with high export potential.

The exporter, Elkem, did not avail themselves of this program.

Identified Programs Found Not to be Subsidies

Program 8: Assistance to Export Promotion – Export Credit Financing Scheme Provided by Eksportfinans ASA

The Norwegian Government established Export Credit Norway to manage the outstanding loans that were provided through the Norwegian organization, Eksportfinans.

This program was terminated 2011.

Program 13: Business Sector's NOx Fund Related to Reduce Emission

The Business Sector's NOx fund is not provided by the GON. It is funded exclusively through private sector contributions. Therefore, it is not a subsidy as it does not constitute a financial contribution from the GON.

Program 15: Sorlandet kompetansefond ("SKF") R&D Grants

SKF is a private foundation and not a government program. It is funded directly by the foundation. Therefore, it is not a subsidy as it does not constitute a financial contribution from the GON.

Program 16: European Union Horizon 2020

European Horizon 2020 is a program created by the European Union to support, foster, and fund research, technological development and innovation.

Horizon 2020 is a European Union program. Therefore, it is not a subsidy as it does not constitute a financial contribution from the GON.

THAILAND

Subsidy Programs Used by the Responding Exporter

Program 1: Investment Promotion Incentives

The program offers incentives to encourage and facilitate investments in Thailand such as reduction or exemption of import duties on machinery, raw materials and corporate income tax.

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption.

For the purposes of the preliminary determination, this program is considered to be a specific subsidy under paragraph 2(7.2)(a) of SIMA as it is limited pursuant to an instrument or document to a specific number of enterprises, within the authority of the jurisdiction, in this case being located in a specific geographic location of its jurisdiction.

Programs that Require Further Examination

The following programs are also included in the current investigation. Questions concerning these programs were included in the Subsidy RFIs sent to the Government of Thailand and to all known exporters of the subject goods in Thailand. Without a response to the Subsidy RFI from the other exporters in Thailand, the CBSA does not have sufficient information to determine that any of these programs do not constitute actionable subsidy programs. The CBSA will continue to investigate these programs in the final phase of the investigation.

Program 2: Benefits under the Industrial Estate Authority of Thailand (IEAT)

Certain benefits are afforded to companies operating in specified zones. The legal basis for IEAT privileges are specified in the Industrial estate *Authority of Thailand Act*. These benefits may include:

- (a) Exemption from import duties, VAT and excise tax on machinery, equipment, tools and supplies;
- (b) Exemption from import duties, VAT and excise tax on raw materials;
- (c) Reduced standards of quality control for goods imported into the IEAT free zone for producing, mixing, assembling, packing or processing of the goods for export;
- (d) Reduced VAT on sales within the zone; and
- (e) Preferential duty rates on goods manufactured in the zone and exported from Thailand.¹⁰⁷

Producer G.S. Energy is located in the Ratchaburi Industrial Estate and may be entitled to these privileges.

For the purposes of the preliminary determination, this program constitutes a financial contribution pursuant to paragraph 2(1.6)(b) of SIMA, i.e., amounts that would otherwise be owing and due to the government are reduced and/or exempted, and confers a benefit to the recipient equal to the amount of the reduction/exemption. The tax refund is a specific subsidy given its exclusive use by companies in the Ratchaburi Industrial Estate pursuant to paragraph 2(7.3)(a) of SIMA and as a prohibited subsidy, given the contingency on exports pursuant to paragraph 2(7.2)(b) of SIMA

¹⁰⁷ Exhibit 2 (NC) – Silicon Metal 2 Complaint, paragraph 421 (NC); Attachment 109 (NC) – Thai Tax Booklet 2015.

Program 3: Benefits under the Electricity Generating Authority of Thailand (EGAT) through the Provincial Electricity Authority (PEA)

The Government of Thailand regulates electricity sales through the Electricity Generating Authority of Thailand (EGAT) Act. EGAT works through other utilities authorities, including the government enterprise PEA, in selling electricity to energy consumers.

Through privileges granted by PEA, one of the silicon metal producers in Thailand may have received a 10% discount in their electricity cost by virtue of being in the Ratchaburi Industrial Estate,¹⁰⁸ as per information available through the Estate website.¹⁰⁹

The provision of electricity at preferential rates constitutes a financial contribution by the Government of Thailand under paragraph 2(1.6)(b) of SIMA. Silicon metal producers may receive a benefit in the amount of the discount received. The discount is specific by its limitation to enterprises located within the Industrial Estate, pursuant to paragraph 2(7.3)(a) of SIMA.

Program 4: Duty Drawback for Raw materials

Producers in Thailand may be able to avail themselves of benefits under the Thai Customs Act (No.9) B.E. 2482 in relation to duty drawback with respect to raw materials. Benefits may include:

- (a) Duty drawback on raw materials which are clearly incorporated into exported goods;
- (b) Duty drawback on raw materials used directly in the manufacturing process of exported goods but not obviously seen;
- (c) Duty drawback on raw materials required in the manufacturing process.

Where excessive relief is found, the drawback program constitutes a financial contribution by the Government of Thailand as revenue foregone pursuant to paragraph 2(1.6)(b) of SIMA. Silicon metal producers may benefit in the amount of the excessive relief received. The tax refund is a prohibited subsidy by its contingency on exports and is therefore specific pursuant to paragraph 2(7.2)(b) of SIMA.

¹⁰⁸ Exhibit 2 (NC) – Silicon Metal 2 Complaint, paragraph 426.

¹⁰⁹ Exhibit 2 (NC) – Silicon Metal 2 Complaint; Attachment 111 (NC) – Mahachai Land Development Website, page 3.