UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
ELECTROLYTIC MANGANESE	)	731-TA-1124 and 1125
DIOXIDE FROM AUSTRALIA	)	(Preliminary)
AND CHINA	)	

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Wednesday,
September 12, 2007

Room No. 101
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The preliminary conference commenced, pursuant to Notice, at 9:30 a.m., at the United States International Trade Commission, ROBERT CARPENTER, Director of Investigations, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Staff:

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CYNTHIA TRAINOR, INVESTIGATOR
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR
GRACEMARY ROTH-ROFFY, ATTORNEY/ADVISOR
GERRY BENEDICK, ECONOMIST
DAVID BOYLAND, AUDITOR
ERIC LAND, INDUSTRY ANALYST

APPEARANCES: (Cont'd.)

In Support of the Imposition of Antidumping Duties:

On behalf of Tronox LLC:

FREDRICK R. STATER, Plant Manager, Tronox LLC
PAUL GUTWALD, General Manager, Electrolytic Division, Tronox LLC
RICHARD L. BOYCE, Econometrica International, Inc.

JACK A. LEVY, Esquire
MARK SCHAEFERMEIER, Esquire
JAMES A. EARL, Esquire
DLA Piper US LLP
Washington, D.C.

In Opposition to the Imposition of Antidumping Duties:

On behalf of Delta EMD Australia (Pty) Limited:

ASHLEY MOORE, General Manager-Sales and Supply Chain, Delta EMD Australia (Pty) Limited
JOHN REILLY, Nathan Associates, Inc.
WILLIAM STEVENS, Director-Materials, Panasonic Primary Battery Corporation of America
JAMES P. DURLING, Esquire, Vinson & Elkins LLP, Counsel to Panasonic Primary Battery Corporation of America

DAVID MALAMED, Esquire
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New York, New York

On behalf of Spectrum Brands, Inc.:

MATTHEW McGRATH, Esquire
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Washington, D.C.

I N D E X

I N D E X

P R O C E E D I N G S

(9:30 a.m.)

MR. CARPENTER: Good morning, and welcome to the United States International Trade Commission's conference in connection with the preliminary phase of antidumping investigation Nos. 731-TA-1124 and 1125 concerning imports of Electrolytic Manganese Dioxide From Australia and China.

My name is Robert Carpenter. I'm the Commission's Director of Investigations, and I will preside at this conference. Among those present from the Commission staff are, from my far right, Cynthia Trainor, the investigator; George Deyman, the supervisory investigator; on my left, Gracemary Roth-Roffy, the attorney/advisor; Gerry Benedick, the economist; David Boyland, the auditor; and Eric Land, the industry analyst.

I understand the parties are aware of the time allocations. I would remind speakers not to refer in your remarks to business proprietary information and to speak directly into the microphones. We also ask that you state your name and affiliation for the record before beginning your presentation.

Are there any questions?

(No response.)

MR. CARPENTER: If not, welcome, Mr. Levy. Please proceed with your opening statement.

MR. LEVY: Thank you, Mr. Carpenter. Good morning. It's good to be with you all. For the record, my name is Jack Levy from DLA Piper, counsel for Petitioner, Tronox LLC.

This is a relatively straightforward, simple case. What makes it so straightforward is that when you look at the facts, much of which of course are proprietary, I don't think there's any serious question that the U.S. industry has been, in the terminology of the antidumping statute, materially injured by reason of the subject imports.

This is also a relatively simple case for you to analyze because the Commission already knows a great deal about the product, the U.S. industry and the nature of the market.

Just four years ago, in 2003, Tronox's predecessor company, Kerr-McGee, filed a petition against EMD from six countries, including Australia and China. Several of you may recall the circumstances of that case. Low-priced EMD from Australia and other foreign sources took substantial volume away from Kerr-McGee, causing soaring inventory

levels and severe operating losses.

The company had no choice but to take the drastic step of idling its plant, furloughing its workforce and filing antidumping petitions in an effort to remedy the situation. The Commission issued a preliminary affirmative decision for five of the six targeted countries, but it also determined that Chinese import volumes were negligible, and the Commission rejected our argument that Chinese EMD posed an imminent threat to the U.S. industry.

Because the initiation of the 2000 case enabled Kerr-McGee to recapture its market position for 2004 and enabled it to restart the plant and because continuing those investigations would have provided no protection against Chinese imports, the company decided to withdraw its petitions in February of 2004.

Unfortunately, just as we had feared, Chinese EMD imports have flooded the U.S. market. In 2004, the start of the current period of investigation, Chinese imports increased by more than 2,000 percent compared to the prior year and has accounted for more than 45 percent of the total market volume of EMD imported into the United States in 2004. Since that time, the Chinese share of total EMD

imports has never dropped below 34 percent.

Taken together, Chinese and Australian EMD imports have grown over the period of investigation at the expense of U.S. producers. They have suppressed prices in an environment of rising material and energy costs.

In a moment you'll hear direct, candid testimony from two company officials at Tronox. Listening to their testimony and the data that support it, I don't think there's any serious question that the U.S. EMD industry has already been severely injured as a result of subject imports and that it continues to be threatened with future injury.

Thank you.

MR. CARPENTER: Thank you, Mr. Levy.

Mr. Malamed, if you would come forward, please?

MR. MALAMED: Good morning. For the record, I am David Malamed, Gide Loyrette Nouel. We are counsel to Delta.

We have, of course, studied the 2003 and the sunset review in 2000, and we seem actually to be frequently meeting the ITC and the DOC, and really what we'd like to express today is whether there is something wrong with the EMD market or whether there

is probably something to be said about Tronox in particular and the way they handled the evolution of the market; in particular, the segmentation that we see appearing on the U.S. market. It is something that we would like to show actually today to the Commission.

We would like in fact to show that Tronox is not directly competing with Delta products or, for that matter, Chinese imports here, and that is probably something that has not been stressed by Mr. Levy and Tronox because we have a very different situation than the 2003 market.

We have seen in fact a decrease in imports when we compare the current period of investigation as opposed to the 2003 period of investigation. The imports have decreased by 28 percent, obviously a situation which should have benefitted Tronox on any market.

We also have experienced an increased segmentation of the EMD market. That is something that will be confirmed by Panasonic and Spectrum, and you will see why the ability to adapt to a segmentation in that market has been absolutely key particularly to Delta to regain market share against the Chinese, not against Tronox.

What has not changed though clearly is that the U.S. market needs EMD imports if there is to be a battery, if they are to be a manufacturer of a battery in the United States. That is something that Mr. Reilly will show very clearly, and that's a fact we have to account for.

So what we'd like to demonstrate today on the one hand, we have a decline of imports, a serious decline of imports, about 28 percent, and on the other hand we have a company that repeatedly comes before the ITC and the DOC to seek protection, and we would like to demonstrate that sometimes you have to account for your own acts.

Thank you.

MR. CARPENTER: Thank you, Mr. Malamed.

Mr. Levy, could you please bring your panel forward at this time?

MR. SCHAEFERMEIER: Good morning. I am Martin Schaefermeier of DLA Piper, counsel for Tronox. Let me first introduce the other members of our team to you.

With me today is Paul Gutwald, general manager of the Electrolytic Division of Tronox. To my immediate left we have Rick Stater, plant manager of Tronox's EMD operations in Henderson, Nevada, and then

to my right is Dr. Richard Boyce of Econometrica International, and then my colleagues from DLA Piper, Jack Levy, who you have already heard from, and Jamie Earl to my far left.

Let me briefly preview for you the testimony of the industry witnesses. Rick Stater will be talking to you about electrolytic manganese dioxide, its production process, the basic cost structure for EMD production operations and Tronox's injured condition as a result of the low-priced subject imports.

Paul Gutwald will then tell you about the U.S. market for EMD, the typical sales process, how the subject imports compete in the U.S. market and how the imports have had a decidedly negative impact on Tronox.

Before I turn things over to the company witnesses, I want to give you a brief overview of our case. In these preliminary investigations, the evidence clearly shows that there is a reasonable indication of injury, of material injury, to the U.S. EMD industry and a threat of injury by reason of imports from Australia and China.

As Mr. Levy already explained, the Commission knows a great deal about the product, the

nature of the U.S. market and the U.S. EMD industry through its previous investigations and sunset reviews.

Many elements of our case have already been examined and established in the context of the prior investigations and sunset reviews. For example, most recently in 2003 the Commission has found that all electrolytic manganese dioxide constitutes a single like product, that Australian imports and the domestic like product are generally fungible, that the few customers for EMD in the U.S. market have considerable purchasing power and that domestic EMD producers and the number of import suppliers are qualified by major battery producers in the United States.

These facts continue to be present in the period that is at the focus of this investigation, but regardless of the Commission's prior experience with EMD we intend to cover all of the key elements of our case today, providing you with a complete factual record for analysis.

The facts in this case are clear. There has been an undeniably large increase in imports from Australia and China. Between 2004 and 2006, the volume of these imports increased by more than 48 percent and further increased during the interim

period.

In addition, in order to earn market share the Australian and Chinese imports have been priced very aggressively. During the investigation period, subject imports entered the United States at the lowest prices of any import suppliers and increased sharply in volume as compared to other import sources. Over the entire period of investigation, the subject imports' already large share of total EMD imports increased from 77 to 89 percent.

The effect of subject imports in the marketplace has been that Tronox has lost sales and revenues. The unfairly low prices offered by the subject imports have forced Tronox to reduce its bid prices in annual contract negotiations, leaving the company unable to recover greatly increased raw materials and other input costs. In addition, Tronox lost volume to the subject imports.

As the Tronox witnesses will testify, the U.S. industry has already been injured. Tronox is experiencing losses, and the continued viability of the company, of the EMD operations of the company, is very much threatened. Any additional lost sales or revenues would be devastating.

Without relief from the dumped imports, the

domestic industry will not be able to recapture or even maintain its production and shipment volumes and will not be able to raise its prices to a level where it can recover its increased input costs and return to financial health.

With that introduction, I would like to turn things over to Mr. Stater.

MR. STATER: Good morning. My name is Rick Stater, Tronox LLC, Henderson facility. I'm the plant manager of the EMD operation in Tronox LLC's Henderson operation. I've been employed by Tronox and its predecessor, Kerr-McGee Chemical, for more than 20 years.

I'd like to provide you this morning with some background information. First I'd like to briefly describe the electrolytic manganese dioxide and its uses. Secondly I would like to explain the production processes, and, third, I would like to briefly characterize the cost structure of EMD production. Finally, I would like to talk about the deterioration in Tronox's EMD business over the period of investigation.

Electrolytic manganese dioxide is the active ingredient in a dry cell battery. When you mix EMD with other material it's used to form the cathode

material in those batteries. In its simplest terms, the production of EMD is a process of taking manganese dioxide ore and converting it into a highly pure form of manganese dioxide using electrolytic technology.

The EMD production process is composed of three basic operations: ore handling, electrolysis and finishing. Let me describe each of these briefly. In the ore handling step, manganese ore is far and away the most important raw material in the production of EMD. I have brought with me a sample of the manganese dioxide ore that we use.

In the ore handling stage of production the manganese ore is first crushed and ground and then fed into a reduction process which converts the manganese dioxide into a manganese monoxide or reduced ore state. The reduced ore then undergoes a leaching process with sulfuric acid. The process generates manganese sulfate solution from which the impurities are removed. Again, here is a sample of the manganese sulfate solution.

During the electrolysis process, purified manganese sulfate solution is fed into electrolytic cells where manganese dioxide is electroplated on the anodes. The EMD plate material is then harvested from the anodes and processed. There is also a sample of

EMD plate.

During the finishing process, the EMD in plate form is crushed and neutralized. More than 99 percent of the U.S. market is for alkaline grade EMD, but, depending on the finishing process and the chemicals used in the neutralization step, lithium grade and zinc chloride grade can also be produced at the finishing stage.

Finally, the EMD is dried and screened to meet the customer's specifications, including particle size and moisture content. There's also a sample of the finished EMD powder.

The EMD production process that I have just described to you is common to nearly all EMD companies with one notable caveat. To our knowledge, some Chinese EMD producers consume manganese carbonate ore instead of manganese dioxide ore to produce EMD.

To be sure, carbonate ore has the benefit of being readily soluble in sulfuric acid without the need of reduction. The leaching process is also less efficient because the carbonate ore has a lower manganese content than the dioxide ore and contains greater impurity levels which need to be removed.

I want to make one point perfectly clear. Whether you start with a manganese carbonate ore or a

manganese dioxide ore, you get the same finished EMD product. All EMD, whether produced using carbonate or dioxide ore, is within the scope of this investigation.

The processes that I've just described to you entail substantial raw material costs and substantial energy costs. While the actual costs of any particular producer are proprietary, it would not be unusual to find that ore constitutes approximately one-quarter of the company's production cost, and energy constitutes another quarter of the production cost.

These are very rough percentages, but I wanted to make the point that these variable costs are significant, and one of the challenges we have had to face over the period of investigation has been the dramatic increase in both ore and energy costs.

EMD production is also a highly capital intensive manufacturing process with high fixed overhead costs. The company's profitability depends on using production assets as fully as possible in order to minimize per unit cost.

Just to give you an example, in 2003 when we lost our market position and our capacity utilization dropped the impact was so severe that we were forced

to idle the plant and furlough the workforce. Unfortunately, Tronox is again experiencing reduced operating rates due to lost sales, and this is having the expected impact on our financial performance.

Let me give you some general observations of Tronox's financial performance. You already have all the details in our proprietary questionnaire that we submitted. During this period, Tronox undertook substantial measures to reduce costs within our control. Unfortunately, despite these efforts, Tronox's operating rate went down, our inventories grew, and we are losing money. Subject imports are the problem.

A key economic factor that I'm sure the Commission will understand is that there has been a dramatic increase in raw materials and energy costs over the period of investigation. From January 2004 through June of 2007, manganese ore costs in the United States have increased by more than 20 percent.

During the same period, per unit natural gas costs have increased by more than 23 percent. Dumped EMD imports from Australia and China have prevented us from raising our prices enough to be able to recover these significant increased costs.

Let me make one final point in conclusion.

I was the person who had to manage the idling of our operations and the furlough of all of our employees in 2003. That was a very painful experience and it was a very painful process, which, as the Commission found, was caused by dumped imports.

I see what Chinese and Australian imports are doing to the market today, and I am saddened to see that the future of our EMD business is again in jeopardy. I know from my own personal experience that antidumping orders can make all the difference. I remember how the orders against Japanese and Greek EMD were extremely effective in the 1990s.

The folks at Henderson, Nevada, are hardworking Americans who are committed to the industry and to the Henderson community. We are confident that if the imports are fairly traded we can compete effectively, but there is no question that we need antidumping relief in order to survive.

Thank you. I turn this over to Paul Gutwald.

MR. GUTWALD: Good morning. I am Paul Gutwald. I am the general manager for Electrolytic Division of Tronox.

In my testimony today I'd like to first provide a background of the EMD market, discuss the

sales process and then talk about the impact that Chinese and Australian imports have had upon our business during the period of investigation.

Let me first start with an overview of the market. As you have heard, demand for EMD is closely driven in line by the demand for alkaline batteries. As a consequence, the industry is highly concentrated. There are four key customers that dominate the market: Duracell, Eveready, Rayovac and Panasonic. Because of their dominant position, these customers can leverage bids from competing suppliers and achieve a low price for the EMD import costs.

Conversely, there are only three EMD manufacturers in the U.S. One of those is a captive manufacturer. The result is that the U.S. producers represent only 50 percent of the merchant market, so there is no question, therefore, that imports play a major role in supplying the U.S. market.

In the past, imports have primarily come from Australia, Greece, Japan and South Africa. In recent years though imports from Greece and South Africa have all but disappeared, and they've been replaced now by imports from Australia and China.

Australian imports are produced by one company, Delta. In China there are literally dozens

of EMD manufacturers, but we believe there are two companies in particular, Shangten and Red Star, who are very aggressive and appear to be targeting the U.S. in particular. Taken together, these two countries represent over 90 percent of the imports into the U.S. market.

The last comment I'd like to make though is there is an oversupply of EMD into the world market. We understand that Delta is reportedly operating at a fraction of their capacity, and there is a report from the International Manganese Institute that suggests that the unutilized capacity in China alone is more than half the size of the entire U.S. merchant market.

With that background, let me talk a little bit about the sales process from Tronox's perspective. Sales to the battery manufacturers are made exclusively through an annual contract process. That's the way things work with our two major customers, Duracell and Eveready.

Negotiations usually begin in the fall of the year covering volumes for the following calendar year. The negotiation process typically involves a set of bids at a particular price. Customers will typically leverage alternative bids to try to negotiate a lower price.

Of course, in our case if we fail to lower that price we will in fact risk losing that volume. It's an important point because lost volume at any one customer can be enough to shut down our operation and our plant.

As Rick Stater has explained to you, the high fixed cost structure of our business, like any chemical industry, requires us to produce at high utilization rates so to the extent our customers provide us the opportunity to compete on business for a given volume the economics of the business require us to meet those offers and attain that margin business at any price.

It is my sense the mature market is highly unusual, and the customers are basically in a position to dictate the price. This reflects the fact that customers have concentrated market power. There seems to be a seemingly unlimited supply of foreign EMD, and producers in China and Australia have demonstrated a willingness to sell in the market at dumped prices.

On that line, I think if you consider the concentration in the industry and look at the import volumes there can be no question that this is an industry in which U.S. producers compete head-to-head with a number of customers and various cell sizes.

Tronox is qualified on both small and large cell sizes. Our major customers include Eveready and Duracell.

We also understand that EMD from Australia and China is routinely supplied into those large cells that account for a large part of the market. In addition, we have heard from customers and competitors that both Australian and Chinese EMD are suitable for use in the small cells. Now, we believe that we produce a first rate, high quality product. The reality is the subject imports are also of a high quality. As a result, EMD has increasingly become commoditized.

That's not to say that price is the only factor in customers considering an EMD. To be sure, there are costs with qualifying a customer, reconfiguring machinery required to operate that and use that EMD efficiently in that process.

I think it's fair to say though that EMDs from the U.S., China and Australia are highly substitutable, especially in the larger cells and especially considering EMDs can in fact be blended to achieve performance requirements where needed. As a result, price really has become the primary driver in the marketplace.

I think perhaps Delta said it best in their July 2007 summary of interim results. Let me read that. "While the performance, quality and reliability of supply of EMD remains important, battery producers continue to see cost savings to offset other increased production costs, and EMD supplied from China remains a lower priced alternative for use in most batteries."

In my opinion, I think Delta got it right. Battery producers are understandably attracted to cheap EMD. I would only add though in our view Delta's pricing has contributed to our U.S. market problems.

I'm going to say a few words now about the impact that the Chinese and Australian EMD has had on our business during the period of investigation. As Rick has stated, Tronox's costs have increased significantly over the period of investigation primarily due to higher ore and fuel cost.

When we approach our customers to seek higher price increases to offset these costs and achieve a profit for reinvestment, we are continually reminded of alternative, lower-priced options from foreign producers, particularly from China and Australia. In such cases we are effectively forced to choose between lowering our prices and losing revenues

or losing volume. In our case, we experience both.

A very important point is that we highly value our relationships with our customers, and this case is not targeted at them, but rather at dumped imports. We are committed to working in partnership with our customers, and they are committed to working with us we know in identifying and developing new products and value-added services to help them achieve a competitive advantage in the marketplace.

Unfortunately because of the growing import competition from China and Australia, we find ourselves caught in a cost/price squeeze, and we need to be able to raise prices and recover our volumes in order to recover the increasing costs from energy and ore. Moreover, the sales loss of subject imports has exacerbated the problem for us because lower capacity utilization has also increased our unit fixed cost, impacting our performance.

The situation is particularly frustrating for Tronox in working so hard at improving our production efficiencies and finding ways of reducing our costs or at least mitigating the impact to the bottom line. The import problem has gotten increasingly severe. We've had to cut operating rates. We're building inventories, and we are losing

money.

In our view, Chinese imports are the leading cause of the problem, and Delta has made a clear decision to follow suit, which has caused additional injury to the U.S. industry. I fear that Tronox, as Rick said, is at the brink of another contract year, not unlike 2003, when large volumes of Delta EMD displaced us and forced us to idle our plant and furlough our workers. Antidumping relief we believe is therefore critical to our EMD survival.

Finally let me say just a few words. Tronox will do whatever is necessary to defend our plant and support our workers. All we're asking is that subject imports be traded in the U.S. market at a fair value. We are confident operations can return to profitability and we can continue to employ our workforce if an antidumping remedy is in fact issued in this case.

I will now turn things over to Mr. Levy, who will make some concluding points.

MR. LEVY: Thank you very much. There really isn't that much more to add. Tronox's witnesses have painted a picture for you of an industry that is going through a very difficult period, and I think they've drawn the link that you

require by statute between subject imports and the problems that they're having to deal with.

Maybe the best use of my time is to try to return to some of the fundamental points underlying this case, and if I could bend your ear a little longer I'd like to make four basic points.

Point No. 1. It is perfectly clear that over the period of investigation Tronox has experienced reduced operating rates, increased inventories and operating losses. The trend is worsening. The financial data of the other U.S. producers are proprietary, but Tronox believes that its experience is so severe that its results are likely to predominate in any analysis of the U.S. industry as a whole.

Point No. 2. If you turn to Petitioner's Exhibit 1, here you will see that subject import volumes steadily increased during the period of investigation. Nonsubject imports, by contrast, have been small and actually did increase slightly from the beginning to the end of the period.

Point No. 3. Subject imports have caused a cost/price squeeze. As Mr. Stater told you, ore costs represent roughly a quarter of EMD production cost, and energy costs represent roughly another quarter of

costs. These costs have skyrocketed over the POI at the same time that subject imports, their pricing, have increased only modestly.

To illustrate this point, please turn to Petitioner's Exhibit 3. This chart shows percent increases in manganese ore import prices and natural gas prices, which we use as a surrogate for energy costs generally.

Please understand that these data are surrogates, not actual proprietary data, but I think the broad brush story is quite accurate. As you can see, both ore and gas prices have increased by more than 20 percent over the POI. This means that if all other EMD cost components are held constant, EMD costs would increase by more than 10 percent.

As you can see, subject import prices increased by little more than five percent over the period. This alone illustrates the squeeze, but add to this the fact that Tronox is losing EMD volume. Its capacity utilization is down, meaning its per unit costs are actually even higher. The bottom line is that the increase in subject EMD import pricing accounts for only a fraction of the total cost increases borne by the U.S. industry over the period of investigation.

But rather than rely on Tronox's testimony or much less mine, what I'd like to do, if you have the patience, is to work off of some materials from Delta's interim report for the first half of 2007. Please turn to Petitioner's Exhibit 4 and let us quote Delta.

"Global demand for alkaline grade EMD continues to be more than satisfied by existing production capacity, particularly with additional capacity in China. Consequently, pricing remains very competitive, and market selling prices have not afforded the recovery of higher ore costs and other cost increases.

"Reduced operating rates will result in the continued underrecovery of manufacturing overheads in Australia. The cost increases experienced over the past three years do not permit the group to trade profitably at current EMD selling prices and exchange rates. An oversupplied market and lower priced EMD from China have resulted in vigorous price competition and exposure to antidumping duties."

Such candor from a Respondent in an antidumping case is refreshing, if not stunning.

Finally, one concluding, overarching point. Most of the cases that come before the Commission are

in fact stories of too much supply chasing too little demand, and that is certainly the case here. Please turn to Petitioner's Exhibit 5, and here let us quote from the presentations of a Chinese EMD producer, Citic Dameng, before the International Manganese Institute:

"The entry of China's alkaline EMD into the world market, which is traditionally dominated by producers from developed countries, has structurally altered the dynamics of global EMD battery industries. Due to overexpanding capacity of EMD in China, the market situation will be more competitive in the current coming years.

"Continued strong growth of the alkaline grade EMD industry in China will unavoidably result in a huge surplus supply in the world market. The situation of global EMD business will be extremely competitive and increasingly severe in the coming years."

The Chinese have got it exactly right. The implications of this consistent pattern of global oversupply of EMD for the U.S. industry is obvious. Without the protection of antidumping orders, the U.S. industry is ominously shaping up to be as fragile as the industry that the Commission examined in 2003.

The only difference here is that the Commission has the opportunity to act before a U.S. plant needs to be closed and before its workers need to be furloughed.

Thank you.

MR. CARPENTER: Does that conclude your testimony, Mr. Levy?

MR. LEVY: Yes, it does. Thank you, Mr. Carpenter.

MR. CARPENTER: Okay. Thank you, gentlemen, and we will accept your Petitioner's exhibits into the record. They will be made an attachment to the transcript.

Any other points you'd like to make before we start the staff questions?

MR. SCHAEFERMEIER: Could we reserve the remaining time for rebuttal, please?

MR. CARPENTER: We do not do that in preliminary conferences. We have a straight 10 minutes for each side for rebuttal and closing statements.

Okay. We'll begin the questions with Cynthia Trainor, the investigator.

MS. TRAINOR: Cynthia Trainor, Office of Investigations. I have no questions for Petitioners

at this time.

MR. CARPENTER: Okay. Gracemary Roth-Roffy, the attorney/advisor?

MS. ROTH-ROFFY: Good morning.

MR. LEVY: Good morning.

MS. ROTH-ROFFY: I just have a few questions.

Mr. Stater, you talked about the difference in the process with the Chinese producers. How does the difference affect the interchangeability of the Chinese product with the Australian product and the domestic product?

MR. STATER: Well, I think I mentioned that they probably use a carbonate ore or could be using a carbonate ore.

With any process that you set up for chemical production you have to base your process on the feedstocks that you'll have, and then you design and manage that effectively. You should come up with the exact same end product as you would with the dioxide ore.

MS. ROTH-ROFFY: Thank you. The only other question I have right now is basically a question to be addressed in the briefs. Please make sure you address all the factors related to cumulation.

I may have more to add to your brief depending, of course, on the Respondents' panel. Thank you.

MR. CARPENTER: Gerry Benedick, the economist?

MR. BENEDICK: Good morning. I have some questions.

Mr. Stater, I'd like to first start asking you about the energy costs. You seem to indicate the energy costs are based or result from natural gas costs?

MR. STATER: That's correct.

MR. BENEDICK: And the natural gas prices that are shown in Exhibit 3 from the U.S. Energy Information Agency, does that reflect an increase in the natural gas costs that you experienced during this period?

MR. STATER: Yes, it does.

MR. BENEDICK: What about the other two U.S. producers?

MR. STATER: I cannot speak for them directly. I would assume that if they use the same process that we do, meaning a dioxide ore base, their roasting technology would also consume volumes of high-cost natural gas.

MR. BENEDICK: So they also use natural gas as their energy source?

MR. STATER: I believe they do.

MR. BENEDICK: Okay. The next couple questions are for Mr. Gutwald.

You mentioned the annual contract process using bid prices, and you mentioned Duracell and Energizer. What about Panasonic and Spectrum brands? Do they use the same process?

MR. GUTWALD: At this point in time that process I described was for Energizer and Duracell.

As we have not sold to those two customers in the recent period I can't comment on the current process, but my understanding is it is similar, but perhaps differences in calendar year and other elements associated with their business.

MR. BENEDICK: Okay. And the annual contract process you were referring to was for a calendar year?

MR. GUTWALD: That is correct.

MR. BENEDICK: Okay. You also talked about concentration of the buyers alluding to some monopsony power, but what about the concentration on the supply side? Don't we have here a monopsony facing a monopoly and so there is going to be some negotiation?

You all obviously have some leverage based on the fact that there are just a relatively few suppliers of EMD.

MR. GUTWALD: If I can respond, just to clarify, there are three producers of EMD: Tronox, Erachem and Eveready. Of course, Eveready is a captive producer, as you noted.

Tronox and Erachem represent only 50 percent of the market, so imports certainly do play a very important role in that other dynamic, and that's I think the fact that we've seen, quite frankly, is that we're competing head-to-head, given the concentration of the industry with those imports in those key customer accounts.

MR. BENEDICK: Okay. But on the supply side, even with imports, it seems that the supply is still relatively concentrated.

MR. GUTWALD: And perhaps that would be the case. I don't know the calculation of the index for concentration.

MR. BENEDICK: Okay. But I think the comment is there are only perhaps two suppliers, but when you consider the unlimited supply in the global market, I mean, literally there are dozens and dozens of EMD producers.

There are past producers from Australia, South Africa, Greece, Japan, elsewhere. I don't know if it's fair to say that, and perhaps you want to comment on that.

MR. LEVY: Yes. I would only add that if you look at global supply of EMD there is a structural oversupply, and even if both U.S. producers were to shut down tomorrow there's evidence to indicate that there would be a more than adequate residual supply for U.S. battery producers and so while the number of EMD suppliers in the marketplace may be finite, the amounts of available supply from non-U.S. sources is substantial.

MR. BENEDICK: Okay. Thank you for those responses.

This question I think should go to Mr. Gutwald again since you deal with sales. For purposes of comparing quarterly prices of the domestic and imported EMD in the U.S. market, is it appropriate to compare selling prices of the domestic EMD quoted on an FOB selling location basis with prices of the subject imported EMD imported by domestic end users valued on a CIF landed duty paid U.S. port of entry basis?

MR. GUTWALD: I think it's a fair comparison

given the end-use use of that material.

MR. BENEDICK: Okay. And this question again, Mr. Gutwald, and, Dr. Boyce, if you would have any comments.

Since January 2004, has the composition of U.S. demand for alkaline batteries shifted from C and D cell sizes to the A, AA, AAA sizes, and has this affected the composition of U.S. demand for EMD by types, grades or formulations?

Finally, have any such changes affected total U.S. demand for EMD and/or prices of EMD during this period?

MR. GUTWALD: Again, in terms of that again we're not the experts in terms of the demand.

You'll have to ask of course our customers, but it's our understanding, as you probably can observe, that the incredible growth of electronic digital devices has stimulated demand for the AA and the AAA, the smaller cell sizes. I think that's a fair conclusion and observation.

MR. BENEDICK: And this has occurred or continued to occur over the period of investigation?

MR. GUTWALD: Yes.

MR. BENEDICK: And how has this affected the composition of U.S. demand for EMD by the different

types of grades or formulations?

MR. GUTWALD: Again I can only speculate, but in our opinion it would seem to have driven up the increased demand for the smaller cell size batteries in this situation.

MR. BENEDICK: Okay. So has this increased total U.S. demand for EMD during this period?

MR. GUTWALD: I'm sorry?

MR. BENEDICK: Has this increased or decreased total U.S. demand for EMD during this period as a result of this composition change?

MR. GUTWALD: I can only speculate on that area, and I don't know that we have enough data to say that, but we can certainly perhaps get back with you in conference as to what we would expect to be the case.

MR. BENEDICK: Dr. Boyce?

MR. LEVY: Maybe you can comment on your sense of the market in terms of demand for EMD, the large cell sizes, what percent of the market you think that may represent in relation to small cell sizes in light of this trend.

MR. GUTWALD: Certainly. That's a good point.

I think for your point, I mean, it's fair to

say that electronics and digital devices have increased the demand for the smaller material, AA and AAA material. I think in the past the Cs and Ds have been a larger part of the alkaline market.

I believe over the period of investigation that trend has continued where it has become smaller perhaps, even as little as 50 percent of the market in question.

MR. BENEDICK: And in turn has that changed the demand or demand composition of the various formulations of EMD?

MR. GUTWALD: Again, I would think so, but we perhaps can't comment as we don't have that information.

MR. BENEDICK: Okay.

MR. GUTWALD: Do you want to add to that?

MR. LEVY: Yes. I would only say that sort of at bottom EMD is EMD. Tronox at its major customer account is qualified for all cell sizes. Large cells may represent perhaps half the market, small cells the other half of the market, but Tronox is bidding for volume in all cell sizes at its customer accounts and it's the same.

Maybe Stater can comment, but to the extent you're selling into large or small cell sizes are they

a different specification of your product, or is it the same identical specification?

MR. STATER: It's the same material that goes in Cs, Ds and AAs, AAAs.

MR. BENEDICK: Okay. Dr. Boyce?

MR. BOYCE: My understanding is that there is generally an upward trend in demand. From year to year though it is affected by events such as Katrina, so you have variations around the trend.

MR. BENEDICK: Fluctuations.

MR. BOYCE: As you heard the testimony, within that trend, there is also the shift between higher cell sizes or larger cell sizes and smaller, but I think you need to be careful not to overstate the degree of that shift. Then ultimately there is not much impact on the demand for any particular suppliers' product as a result of that shift.

You are very familiar with industries in chemistry, in the chemical industries, where, for example, a new entrant is best suited towards the lower demanding application. In this case that would be say lantern batteries.

After some period of time they can meet the demand for more sophisticated or more demanding applications, in this case AAA cells, but the

producers we are talking about here are capable of meeting the specifications across the board.

MR. BENEDICK: Okay. Thank you.

Again, this is for Mr. Stater, Mr. Gutwald and Dr. Boyce if you could comment, please. In the United States, what types of other batteries compete with batteries produced with EMD, and how does any such downstream competition among batteries affect the U.S. demand for EMD and in particular the price for EMD?

MR. GUTWALD: Well, it's our understanding, as you probably know, is that there is, of course, a variety of markets and materials that can be used or technologies for energy charging, whether it's alkaline or increasingly the rechargeable batteries.

Now, it's our understanding from looking at market research reports to the best of our knowledge the alkaline battery growth continues to be increasing. I think that's shown in reports by our customers.

In the longer term that trend, of course, may be mitigated, but we understand that demand for alkaline batteries does remain positive over the period of investigation especially.

MR. BENEDICK: Okay. Thank you. Next

question.

What are the drivers for U.S. demand for EMD and then for batteries?

MR. GUTWALD: Again, I think as you probably have gone to Wal-Mart or other places like that, you can clearly see that digital electronics, electronic devices, CD players, et cetera, have really driven the demand up for alkaline batteries.

We understand from our customers that it's anywhere from three to four percent per year growth in the battery segment and so in turn since alkaline batteries is dominated by EMD we anticipate and would assume that would reflect in the demand for EMD material.

MR. BENEDICK: Okay. The batteries then for these electronic devices, do they have more demanding requirements than for like a C or D cell size that would be used in I guess like a radio or a flashlight?

MR. GUTWALD: Again, we're not battery experts so I can only speculate at this point in time, but again the requirements for battery drainage would be the same, I would assume. Of course, the compaction and size would be the primary difference.

I think as Jack has said, our material that we make goes into As, AAA, Cs or Ds. There is no

difference per se. We don't make a different grade for those particular lines.

MR. BENEDICK: You do make different grades or different --

MR. GUTWALD: We do not.

MR. BENEDICK: You do not. Okay. Do you make what's called a high drain?

MR. GUTWALD: Yes, we do. In fact, that's something we developed back in the late 1990s and which we have patent protection on. Unfortunately we have not seen any commercial success on that over the period of investigation.

MR. BENEDICK: Would that kind of EMD be intended to be used in batteries for the more demanding applications?

MR. GUTWALD: Again as we mentioned, there has been no commercial success, but longer term as demands continue there's certainly a targeted intention for us to look into using that proprietary product, but as of now we have not had any success and so we're competing right now on the grades in those application areas.

MR. BENEDICK: Okay. Why and to what extent is EMD from two or more suppliers blended by U.S. battery producers?

MR. GUTWALD: Again, we don't have any formal knowledge of that. We'd have to ask our customers, but it's our understanding that in the 2003 testimony that in previous years customers do in fact have facilities to blend material and so that can be a way to blend performances and to obtain desired performance properties for different EMDs.

MR. BENEDICK: When they blend material do they blend material of the same or similar grade and formulation?

MR. GUTWALD: Again, I haven't any understanding or insight.

MR. BENEDICK: You don't know. Okay. Are U.S. EMD inventories of U.S. producers available for sale, or are they committed to customers?

MR. GUTWALD: Well, we typically have contractual relationships that we do target in making sure we have inventories as contracts require, but obviously any material that we have available can be used and sold as demand dictates.

MR. BENEDICK: So, for instance, inventories that would have been reported in questionnaire responses, a portion of those are committed and a portion of those are available for sale? If you don't want to respond to that in the public --

MR. GUTWALD: Please. That would be great.

MR. BENEDICK: If you'd rather do it in the postconference brief that would be great. To the extent that some are committed and some share is available for sale, if you could give the approximate percentage that would be helpful.

MR. GUTWALD: Sure. The only comment I'd like to make is that over the period of investigation our inventories have gone up, whether they've been committed or not, so that's the challenge for us, quite frankly.

MR. BENEDICK: Okay. If they've gone up, it would be interesting to note if that share available for sale has stayed the same or has gone up.

MR. GUTWALD: We'll address that.

MR. BENEDICK: Okay. Just a final question, and again you may or may not have direct information on this.

Since January 2004, has there been any shifting of U.S. battery production, those that use the subject EMD, to offshore locations?

MR. GUTWALD: Again, I can only talk about our current customers. To our knowledge, that has not happened with the customers and locations that we supply to.

MR. BENEDICK: Okay. And that has not happened as far as you know?

MR. GUTWALD: With our customers to the best of our knowledge.

MR. BENEDICK: Okay. Thank you. I have no further questions.

MR. CARPENTER: David Boyland, the Commission's auditor?

MR. BOYLAND: Good morning. Thank you for your testimony.

First question. On Tronox's annual report at page 1 the company discusses, among other things, including the project cornerstone and electronic electrolytic business growth.

What areas is the company looking at in terms of growth?

MR. GUTWALD: I can take those in more detail off-line.

MR. BOYLAND: Okay. Is there any seasonality in the production of EMD?

MR. STATER: No. Our process is designed, as most electrolytic process are. You want a steady state operation to give you the highest quality of the product you can make and the greatest efficiency and utilization of your assets, so we run pretty steady

straight throughout the year.

MR. BOYLAND: Okay. Now, in your testimony earlier you indicated about a quarter of the production cost would be energy. Out of that quarter, could you give me an approximation of what percentage would be electricity versus natural gas?

MR. STATER: I would prefer to do that off-line, but we can do that.

MR. BOYLAND: Okay. That's fine. Thank you.

Are there surcharges involved in the sales price itself?

MR. GUTWALD: Can we comment about surcharges?

MR. BOYLAND: For energy specifically.

MR. GUTWALD: Our current contracts again are based on a bid process, and we do not have any inflaters for those surcharges. That's correct. You're talking about energy surcharges?

MR. BOYLAND: Well, actually energy as well, but raw material I'm assuming you wouldn't have any.

MR. GUTWALD: No.

MR. BOYLAND: Okay. Based on my reading, there weren't any operational changes as a result of the spin-off from Kerr-McGee into Tronox?

MR. STATER: No. We operate the same as before.

MR. BOYLAND: And marketing as well? No changes?

In Tronox's 10-K at page 33 the company states with respect to 2006 manganese dioxide volume, "Manganese dioxide sales declined primarily due to a decrease in volume of 17.4 percent, which is the result of record volumes in 2005 brought about by Hurricane Katrina." I'm assuming is that a correct statement?

MR. GUTWALD: That statement was made in the report. That is correct.

MR. BOYLAND: In terms of your profitability, I'm presuming that your profitability also would have been impacted by higher volumes, et cetera, throughput.

Is that correct that when I look at 2005 compared to 2006 some of the difference could be attributed to the lower volume in 2006, lower throughput, et cetera?

MR. GUTWALD: Yes, and also rising costs, which have certainly --

MR. BOYLAND: Okay. So all of those things would be relevant?

MR. GUTWALD: That's correct.

MR. BOYLAND: Okay. I have no further questions. Thank you.

MR. CARPENTER: Eric Land, industry analyst?

MR. LAND: Thank you for your testimony. I am particularly interested in product and production processes.

If you could provide in your posthearing brief extremely detailed information on the product characteristics, the process, including any information you may have on the processes for the carbonate product, I would really appreciate that.

In looking at the materials we had for the previous cases, there was discussion of the different grades of EMD and how it can be combined. Anything you do have on how it can be combined also, if you can supply that.

Is there any use of EMD in some of the tiny batteries we see out there now say for hearing aids, cameras, whatever else?

MR. GUTWALD: It's my understanding that EMD can in fact be used for those button or coin cell types.

MR. LAND: Is that a growth area?

MR. GUTWALD: Given the small size of the

amount of EMD in there, it really is, quite frankly, immaterial.

MR. LAND: Okay.

MR. GUTWALD: But again you'll have to ask the industry experts about that question.

MR. LAND: Got it. Okay. Let's see. Mr. Gutwald, you had mentioned earlier and you had read a quote from a report that said that the Chinese EMD was certified for most cells.

MR. GUTWALD: Just to clarify, it was in reference to Delta's report that Jack had talked about, and the other data source that we have is from customer feedback that has suggested that in cases the Chinese material can in fact be substituted and is interchangeable with EMD.

MR. LAND: Are there any specific areas where it can't be substituted?

MR. GUTWALD: Again, I regret that we're not the subject matter experts in regard to battery formulation, but again when you look at the amount of concentration that we are competing head-to-head, and our material goes into Cs, Ds, As and AAAs.

MR. LAND: Okay. One last thing. You had mentioned various global suppliers. Anything you may have in terms of the global industry where it's

prospering, where it's not, any kind of production information for other countries.

Also, you mentioned some market research reports. If there's anything at all you can supply in confidence as an appendix to your postconference submission, we'd appreciate that.

That's all I have. I'm sorry. Can I just add, because I'm going to be leaving in a few minutes, if the Respondents can address the exact same things in any kind of postconference submission I'd appreciate it. Thank you.

MR. CARPENTER: George Deyman, supervisory investigator?

MR. DEYMAN: Good morning. I'm George Deyman, Office of Investigations. I have a number of questions.

You ought to know that we believe that we know the answers to some of these questions. However, it's important that we ask them in public so that they go onto the record of the investigation.

My first several questions relate to the product. Natural manganese dioxide and chemical manganese dioxide are excluded from the scope of these investigations. Has either natural manganese dioxide or chemical manganese dioxide been produced in the

United States at any time since January 2004?

MR. STATER: I don't know that I can answer that question. I'm not aware of any that's been produced. The three production processes that I do know of, we all produce electrolytic manganese dioxide.

MR. DEYMAN: All right. What is high drain EMD, and what are the chief factors that characterize high drain EMD as opposed to other types of EMD?

MR. STATER: The high drain, as Paul has mentioned, is a patented process that we came up with, and in that patent it describes the performance characteristics of that product.

Battery manufacturers are looking for a supplier, we hope they are looking for a supplier, that can handle the next generation of electronic devices which have a higher drain capacity or higher power utilization requirement, and that's what that market is for.

MR. DEYMAN: As you mentioned, you have an exclusive patent for the high drain product. Have you licensed any other firms to produce that product?

If not, if there are any firms in this investigation, in these investigations, that characterized their EMD as high drain would you submit

that that is simply a misnomer?

MR. GUTWALD: Yes. To the best of our knowledge, we have not licensed this technology to anyone. We understand there are some producers in China in particular who have marketed high drain, but we have patent protection on that. We are the only ones licensed with the rights to manufacture that product.

MR. DEYMAN: There are reportedly relatively small amounts of lithium grade EMD consumed in the U.S. market. Is this type of EMD used in different batteries from those that use the alkaline grade EMD?

MR. GUTWALD: Yes. Lithium EMD I think can be used in two primary areas. One is in the rechargeable battery, which is a completely different market and chemistry, and it also can be used in some primary battery applications such as in military and other special purpose areas.

MR. DEYMAN: Okay. Now, what are lithium ion batteries? Do they contain lithium grade EMD, or do they contain any EMD?

MR. GUTWALD: Again, lithium ion batteries I think refers to a broad canvas of technologies that involve lithium, maybe cobalt and nickel. Some cases it could be manganese based.

I think that's a broad canvas and a statement that probably warrants segmentation. Again, we need to get clarification, but it's my understanding in my sense it's a broad canvas of technologies.

MR. DEYMAN: Sure.

MR. GUTWALD: Things like laptops, things of that nature, which I guess I would characterize as rechargeables and a different technology and chemistry associated with that, which may include EMD.

MR. STATER: One area that you may be referring to is using a lithium hydroxide you can neutralize EMD and make a lithiated EMD, which has been used in other battery applications.

MR. DEYMAN: Okay. That's helpful.

The pricing data that we requested in our questionnaires are all for alkaline grade EMD in powder form. Is there any EMD in the U.S. market that is not in powder form, to your knowledge?

MR. STATER: Not to my knowledge.

MR. DEYMAN: Okay. Our auditor earlier mentioned your 10-K form on page 33, which is a public document, that indicated that the volume of your EMD sales declined by 17.4 percent in 2006, resulting from "record volumes in 2005 brought about by Hurricane

Katrina."

Was the decline in battery consumption in 2006 after Hurricane Katrina the primary reason for your decrease in sales of EMD, and to what extent were subject imports a factor in your decrease in that year?

MR. GUTWALD: That's a very good question. If you look at the exhibit, you can see that while our volumes went down subject imports I do believe went up over the period of investigation, so we can make that conclusion.

MR. DEYMAN: All right. Your 10-K form also indicates on page 34 that you incurred an $11.4 million environmental provision for your Henderson, Nevada, plant in which EMD is produced in 2005.

What share, if any, of the environmental expenditures was allocated to EMD?

MR. GUTWALD: If you look at our public disclosure there Tronox has an environmental charge associated primarily with perchlorate. I want to be very clear though. That is due to operations that over the past 60 years have long since been discontinued, so none of those charges have been assigned or attributed or costed into the EMD.

The information that we gave you only

reflects normal charges a responsible EMD manufacturer would in fact incur, waste disposal, tailings, things like that. So the answer I guess is none.

MR. DEYMAN: Very good. Now I have some questions relating to imports.

The average unit values of U.S. imports of EMD from Australia have been consistently higher than the average unit values of EMD from China. Is there anything different about the EMD from Australia that would command higher unit values and/or higher prices than imports of EMD from China?

MR. GUTWALD: Again in our experience, as we said, we believe EMD is EMD. It is interchangeable, substitutable.

It has become, quite frankly, a commodity so from our perspective we didn't understand the huge disparity between Chinese prices and even our own, let alone the imports from Australia.

MR. SCHAEFERMEIER: We should also refer back to the statements by Delta in its interim report that they are directly competing with Chinese product.

MR. DEYMAN: Right. Are nonsubject imports of EMD, especially those from Japan, Greece and South Africa, similar in quality to EMD from Australia, China or that produced in the United States?

MR. GUTWALD: That is our understanding.

MR. DEYMAN: Okay. There are no differences in quality at all, or do you think there are some minor differences?

MR. GUTWALD: Again, from our experience we would not anticipate any differences. In fact, if you look at the prior period of investigation the imports from Japan and Greece were higher.

Those have been replaced, we understand, with imports from China and Australia, suggesting a high degree of interchangeability and substitutability.

MR. DEYMAN: Right. The Chinese Government reportedly recently announced the withdrawal of a 13 percent value added tax on EMD exported from China effective July 1 of this year.

Was the tax limited to EMD, or was it also applicable to other products? I'll follow. Why was the tax withdrawn? Answer this portion for now, and then I might follow up.

MR. LEVY: Yes. Our understanding is that the Chinese Government has imposed a tax on the exportation of EMD effective from the summer of this year.

Actually, to be precise I don't believe it's

the imposition of a tax. I believe it's the elimination of a tax rebate. To our knowledge, the elimination of tax rebates applies to a broad range of commodities in a number of sectors at various percent rates, and it is designed to have an aggregate effect on the Chinese economy.

Beyond that, we don't have much insight into what the future holds in store in terms of Chinese economic policy.

MR. DEYMAN: Thank you. Any additional information that you might have on the withdrawal of the value-added tax would be helpful in your postconference brief if you have anything.

If you haven't already provided the Commission staff with the following information, could you do so in your postconference brief? Number one is at which customers are you qualified to sell EMD in the United States?

Number two, how much EMD have you sold in quantity and value to each of your major customers in the United States in each year since 2004? Number three, are there any customers at which you are currently trying to qualify your EMD in the United States?

And, finally, how transferable is

qualification among facilities in different geographic locations? For example, if you're qualified to sell EMD to a U.S. producer of batteries does that also mean that you're qualified to sell to any of that producer's foreign battery facilities? Maybe that question you can answer in public now.

MR. GUTWALD: Again, it's our understanding that each production facility might be unique, but in general it's our understanding that if we're qualified at one particular site and process that that would extend towards other sites, but again there would be a qualification period and some confirmation of selling to a new site overseas.

MR. DEYMAN: Page 26 of the petition states that, "The global supply of EMD far exceeds the global demand."

Does this mean that if antidumping duties are placed on EMD from Australia and China as a result of these investigations that imports from nonsubject countries will simply replace the imports from Australia and China?

MR. LEVY: Let me try to answer that question in part today, and then we'd like to provide a more complete set of answers on the Bratsk issues in our postconference submission.

First with respect to the largest nonsubject supplier during the period of investigation, Tronox believes, looking at its shipment volumes and its average unit values, that it does not represent a serious threat of replacement and subject import volumes and prices.

We will provide a more complete explanation in our postconference brief, but in looking at the Bratsk question I think this is an unusual case for one particular reason. This is a case where one of the targeted countries, Australia, has a single EMD producer, Delta, and one of the other major producers in the world is the sole producer in South Africa, and it is Delta.

The Commission has the unique opportunity to ask Delta if orders are imposed against the subject countries will you replace subject import volume at those shipment levels and at those prices or not? If the answer is no, then you have very direct evidence on the Bratsk issue.

If the answer is yes then we will happily come back to you in three weeks with a petition alleging threat of injury by reason of imports from South Africa and so I would put it to the Commission to ask that question because Delta is in the best

position to provide you with a complete answer.

MR. DEYMAN: Very well. Thank you.

It's our understanding that JMC in Japan and possibly Mitsui in Japan and Mitsui Denman in Ireland no longer produce EMD. Is that correct, to your knowledge?

MR. STATER: We do know that the Denman facility in Ireland did shut down. Whether or not it could be restarted and back into production I can't answer. Also there has been some movement on the Mitsui operations in Japan.

MR. DEYMAN: If those three fairly significant producers in the past are no longer producing does worldwide capacity to produce EMD still exceed consumption?

MR. STATER: Yes.

MR. LEVY: Yes. Sorry. Just to answer the question, Irish capacity is now off-line. The plant has been shut down. Reports are that Mitsui in Japan has ceased operations, and, yes, these developments result in a reduction of global capacity.

Our understanding based on data presented to the International Manganese Institute is that increases in Chinese alkaline grade EMD capacity is far outstripping those reductions. What you see is a

movement of production to China and an increase of capacity in China that far outstrips decreases elsewhere.

MR. SCHAEFERMEIER: The one point I'd like to add is that these presentations also show that the Chinese additional capacity is not solely to supply the Chinese domestic market, but specifically targeted for export sales and particularly in alkaline grade operations.

MR. DEYMAN: All right. The Japanese Government is reportedly conducting antidumping investigations on EMD from Australia, China, South Africa and Spain, and the European Commission is reportedly conducting an antidumping investigation on EMD from South Africa. What is the status of those investigations?

MR. LEVY: With respect to the antidumping action in Japan, our understanding is that it has been initiated and that final results are expected sometime in the April/May timeframe of 2008. Beyond that we have no further information at this time.

With respect to the antidumping action in Europe against imports from South Africa, our understanding is that preliminary dumping results were to be announced in September of this year.

We have not yet read reports of those results, although that doesn't mean that they have not yet been issued. We've been preoccupied in the last week. Beyond that again we have no further information as to the developments in those markets or in those proceedings.

MR. DEYMAN: Is there any production of EMD in Spain? That's one of the countries that Japan is apparently looking at. I was not aware of any EMD production in Spain, but am just curious.

MR. STATER: Yes. The facility in Spain is called Cegasa, C-E-G-A-S-A.

MR. DEYMAN: Okay. So any information that you can provide in your postconference brief on the pending antidumping actions in the European Union and Japan would be helpful.

With that, I have no further questions. Thank you.

MR. CARPENTER: Are there any further questions from staff? Mr. Benedick?

MR. BENEDICK: I have one follow-up question for Mr. Stater. I believe you said that the same EMD formulation is used in C, D, AA, AAA batteries?

MR. STATER: Yes. As Paul Gutwald mentioned, we are qualified in all those applications.

MR. BENEDICK: Okay. Do you have to qualify for each of those applications?

MR. STATER: Well, you qualify generally for the facility that you're supplying.

In the make-up of a battery there's a lot of other elements that go into that battery besides EMD, so they may formulate the construction of the battery based on the supply of the battery, the supply of EMD as well, so we have to make sure that we're qualified for those applications.

MR. BENEDICK: Right, but when you qualify for a facility that's producing let's say C and D cells is that a single formulation that you're qualifying for for those two cells?

MR. STATER: Yes. Yes.

MR. BENEDICK: If you qualify for a facility that's producing the A, AA, AAA, is that the same formulation that you qualified for for the C and D?

MR. STATER: For us that's the same material exactly. No change.

MR. BENEDICK: Okay. Thank you. No further questions.

MR. CARPENTER: Thank you very much, panel, for your testimony and your responses to our questions. We appreciate your coming here today.

At this point, we'll take a brief recess until 11 a.m. by the clock back there, and we'll begin with the Respondents' presentation. Thank you.

(Whereupon, a short recess was taken.)

MR. CARPENTER: Could we resume the conference now, please?

Mr. Malamed, please proceed whenever you're ready.

MR. MALAMED: Thank you, Mr. Carpenter. What I'd like to do is to present our panel so that you can see a little bit about our case. First, Mr. Reilly of Nathan Associates will outline for us Delta in the EMD market and go over some figures and data that we'd like to show the Commission today.

Then we're going to hear from Ashley Moore with Delta, and his official title is General Manager of Sales and Supply Chain. Of course, Ashley's testimony is going to be extremely valuable to understand the relationship between Delta and its customers in the U.S.

We're after that going to hear from, I'm sorry, William Stevens of Panasonic. Mr. Stevens is Director of Materials and of course will give us clear insight of the relationship with suppliers, particularly Delta and other suppliers. And I wasn't

sure that Jim, who is counsel to Panasonic, is not going to testify today, but he's sitting at our table.

Finally, last but not least, Matt McGrath will represent Spectrum today and is going to refer testimony on behalf of his client, who unfortunately could not attend the meeting today due to family reasons, but Mark Conti, Spectrum's, Matt's client, has also clear insight of what's going on in the market on the customer side. So with no further ado, I'll turn the mic to John for his presentation. Thank you.

MR. REILLY: Thank you. Good morning, and as always, it's a pleasure to be here. For the record, I'm John Reilly of Nathan Associates appearing on behalf of Delta EMD, and today I have three topics. My first topic is the key economic characteristics of EMD that are relevant to this investigation. I will next demonstrate the very, very substantial dependency of the U.S. battery producers on significant volumes of imported EMD.

Finally, I will compare recent EMD import volumes with those that prevailed during the 2003 investigation and demonstrate that the increase of subject imports trumpeted by the Petitioners is entirely an artifact of timing. Among the key

economic characteristics the most important to understand is that EMD is a differentiated product and not a commodity.

Unlike a commodity, EMD is not sold principally on the basis of price. Now, because of that in economist's terms EMD from different manufacturers are imperfect substitutes. Now, the important nonprice characteristics include product quality, and quality features include grain size, uniformity, freedom from impurities, abrasiveness, compliance with customer specifications including pH moisture levels and so forth.

Other nonprice economic characteristics including packaging, security of supply, on time delivery and seller flexibility and adjusting to changing customer requirements. Now, as regards quality suppliers must qualify their EMD for each battery formulation, and this product can take up to a year or more.

Qualification is also plant specific. That is, if you qualify EMD from one manufacturer for Plant A of a battery producer that EMD is qualified only for Plant A, and the qualification is not transferable among EMD producers. To elaborate on a point that was brought up this morning, EMD from Delta in Australia

if qualified with a certain U.S. producer, Delta would not be capable of automatically transferring that qualification to a plant in another location such as South Africa.

Now, these important nonprice economic characteristics of EMD significantly limit the potential role of price alone in selecting EMD suppliers. The disparity of average unit values of imports was mentioned in this morning's earlier session, and I would think that significant disparity among the three principal suppliers in average import values would make the case that this is not a commodity.

Where there's a commodity these values would converge and range across a very, very, very narrow range. Qualification standards for EMD employed in *AA* and *AAA* batteries are more stringent than standards for EMD employed in *C* and *D* batteries. EMD from China, for example, is qualified only for use in the manufacture of *C* and *D* cell batteries, and therefore does not compete with EMD sold by the two U.S. merchant producers for use in *AA* and *AAA* batteries.

In the same vane, EMD sold by Delta to Duracell competes only with Chinese EMD for use in *C* and *D* batteries at one plant and not with EMD

purchased from Tronox for use in the production of *AA* and *AAA* batteries. Delta to its knowledge also sells EMD to Energizer only for *C* and *D* battery applications.

Moreover, and as the industry witnesses here will explain in more detail, Tronox has not recently attempted even to make offers to Panasonic and Spectrum preferring to sell EMD for *AA* and *AAA* batteries to Duracell and Energizer, which of course buy in much larger volumes. Let me comment on some statements that were made this morning.

Tronox stated that its EMD is qualified for use in *C* and *D* cell batteries at the major customers, and they're talking about Energizer and Duracell, but it's also true as they mentioned and I will elaborate on later, that there is a substantial import requirement.

Now, since the products from China and from Australia are not qualified for *AA* batteries it's only logical that the major U.S. battery manufacturers are taking the domestic product and applying it to their higher value in growing *AA* and *AAA* battery manufacturing and using the imported product as the residual to fill in after the domestic supply essentially has been exhausted.

In a few minutes I'll get into the balance between domestic supply and demand in an aggregate sense. Now, the product and customer specialization virtually eliminates any opportunities for significant competition between Tronox and Delta and between Tronox and Chinese suppliers. U.S. batter producers' EMD requirements significantly exceed the domestic producers' aggregate production capability.

Since the trend in U.S. consumption has been generally stable or slightly upward since the 2003 antidumping proceeding it's appropriate to use data from that case to illustrate the point. If you turn to Table I of my conference exhibit we can move forward. For the period of investigation in the 2003 case annual EMD consumption exceeded 114,000 short tons during the peak year and averaged roughly 100,000 tons per year across the entire period of investigation.

The petition in this case indicates the total EMD capacity domestically is about 68,000 tons a year, and that's the same amount that was reported in the 2003 proceeding. Now, based on the average annual and peak demand figures from the 2003 case and U.S. EMD capacity of roughly 68,000 tons a year U.S. battery producers would face a domestic supply

shortfall averaging about 32,000 tons annually and ranging up to as much as 46,000 tons a year assuming peak demand of around 114,000 tons.

Now, given the industry specialization and the product specialization that I just discussed, and qualification issues and other nonprice economic characteristics the average supply shortfall likely averages more than 32,000 tons a year due to demand and supply friction. Now, please turn to Table II.

For the present period of investigation total EMD imports have averaged about 34,000 tons per year, and that's within 10 percent of the 32,000 ton supply shortfall that I noted, and peaked at about 39,000 tons, which is well below the potential peak gap of 46,000 tons a year based on the 2000 case. During 2006 subject imports accounted for about 82 percent of the total EMD import supply and that figure rose to 89 percent during the first half of 2007.

Now, in view of these relationships and the fact that the volume of imports across the period of investigation for the present case have been generally quite well balanced with demand it supports the notion that the strategy of the major U.S. battery producers, Energizer and Duracell, is of necessity applying the products that they buy from the domestic producers to

their *AA* and *AAA* production and applying the products that are imported from China and Australia to *C* and *D* sales.

Given that kind of situation, again, where's the competition? Now, as far as the Spectrum and Panasonic are concerned the industry representatives who will speak this morning will show that indeed there is no competition there either. Now, in view of the significant shortfall in U.S. EMD production capacity relative to demand any significant reduction in the availability of subject EMD at reasonable prices will force U.S. battery producers to seek product from qualified third-country suppliers.

Alternatively, the lack of accessible third-country EMD import supplies could force some U.S. battery manufacturers to shift a portion of their battery production for the U.S. market to offshore locations. Neither of these potential outcomes bodes well for Tronox. Now, my final topic is the issue of EMD import volumes, and in this sense I'd like to correct the record relative to what was said this morning.

The import picture in the present investigation actually is sharply different from that which prevailed during the 2003 proceeding, and Table

III illustrates this. Over the 2000 to 2003 period the average annual EMD import volume was 47,000 tons per year. The average import volume for 2004 to 2007, and that includes 2007 data annualized, is only 34,000 tons or 28 percent less than during the 2003 investigation.

The peak annual import volume for the 2004 to 2007 period, which was 39,000 tons, is 16,000 less than the peak annual import volume for the 2000 to 2003 investigations, and that figure was 55,000 tons. Indeed, the peak imports for the current period of investigation is actually 8,000 tons less than the average for the 2000 to 2003 period.

Given that U.S. EMD demand has not declined since the 2003 investigation, it may have increased moderately, the sharp import volume reduction between the two periods constitutes rather a favorable development for the domestic industry. Now, I'd like to direct your attention to Chart 1, which is the final page of the handout.

Now, it's important to note that the increase of subject imports is really a matter of timing rather than a matter of some trend development. Between 2003 and 2004 subject imports plummeted from 33,000 tons to 21,000 tons. Now, the imports

subsequently recovered to 29,000 tons in 2005, 32,000 in 2006 and to an annual rate of 33,000 tons during the first half of this year.

Between 2003 and 2006 nonsubject imports declined from 21,000 tons to only 7,000 tons. That's about a 64 percent drop. The nonsubject import decline represented principally Mitsui, Ireland's exit from the EMD business and a cessation of imports from South Africa.

Now, masked by this aggregate nonsubject import decline was an increase of imports from Japan from 24,000 tons in 2003 to 71,000 tons in 2006 by which time Japan had effectively become the sole supplier of nonsubject imports.

So basically there are there suppliers of EMD imports in any significant volume to the U.S. market. The recovery of subject imports after 2004 reflected the U.S. data reproducers need to replace nonsubject imports from Ireland and Greece. In short, the increase of subject imports has been both benign and absolutely necessary for the performance of the domestic industry in its present form. Thank you for your attention.

MR. MOORE: Thanks, John. Good morning. My name is Ashley Moore. I'm the General Manager of

Sales and Supply Chain with Delta EMD Australia. I'd like to speak this morning on a few key points.

I'd like to talk firstly about the evolution of the battery in the EMD market since 2003, I'd like to talk about the absence of competition between the subject imports and the EMD sold by Tronox, as well I'd like to talk about Delta as a responsible industry participant trying to meet our customers' requirements.

First, about the evolution of the battery in the EMD market since 2003. As noted earlier, EMD is entirely dependent on the battery market. There's basically no other outlet for EMD but to be used in dry cell batteries. The situation in the market today however is substantially different than it was in 2003. Steady improvement in the range of five to 10 percent per year in performance, particularly of *AA* and *AAA* batteries, has led to an increased sophistication and segmentation of the battery market.

Improved performance has led to the requirement for redesign and chemical reformulation of batteries and more stringent requirements on raw materials, again, particularly into *AA* and *AAA* cells. Each manufacturer has approached this differently with respect to the EMD materials they use. The increased

EMD performance requirements coupled with the unique formulations applied by each battery manufacturer have reduced the interchangeability in the EMD market.

Because of this reduced interchangeability EMD is less than ever a commodity. Secondly, I'd like to talk about the fact that the subject imports do not compete with the Petitioner. Commodity products are freely interchangeable and are purchased principally on price considerations.

However, today EMD cells are increasingly dependent on the qualification and certification of EMD suppliers at each battery producer, at each of their facilities, as well as in each of their cell designs.

Price is secondary to the capacity of the EMD supplier to meet the battery producers' qualification requirements and other nonprice considerations such as capacity to supply the required volumes, support on a global basis, reliability of supply, on time delivery, consistency in quality, the ability to manage and adapt to short-term EMD demand fluctuations, the quality of packaging, changes in customer chemistry requirements related to battery redesigns and so on.

Qualification is a lengthy process requiring

a year or more and varies not only from one battery manufacturer to another, but also by the type of battery and the specific battery design. Purchasing EMD is anything but shop and go. Indeed, battery makers have different manufacturing processes requiring different performance and handling characteristics, and these are required to be adjusted as an overall part of the qualification process.

For example, one grade of EMD which works fine in one customer's *AA*, *AAA* cell formulation may provide inferior results in terms of either handling, or tool wear, or battery performance in another customer's *AA*, *AAA* cell design. In 2003, the EMD market was more homogeneous.

Since that time, however, the market has experienced progressive and continuous improvement in performance, specifically focused on the *AA* and *AAA* segment. While in 2003 most EMD producers, apart from perhaps the Chinese, could participate in all segments of the battery industry this is no longer the case today.

Delta sees the U.S. EMD market in 2007 segmented along the following lines. We'd say that there are high EMD volume to large *AA*, *AAA* battery brands, there's lower EMD volume to smaller *AA*, *AAA*

brands and then there's a more generic EMD to *C* and *D* cells. I'd say that the segments have been acknowledged by the Petitioners earlier this morning in terms of the breakdown.

As noted in prior proceedings and again this morning the business is capital intensive and requires high plant volume loadings to cover the fixed costs. As such, total sales volume is a key consideration for any EMD producer. As well, EMD plants by their design typically run most efficiently with no changes in product grade or product characteristics.

This unfortunately is not a match for the more segmented nature of the EMD market today. Now, I'd like to make some comments as well. I think the Petitioner, Tronox, seems to compete solely and by choice in that first segment, the high volume *AA*, *AAA* battery brands. They're trying to fill their plant with a single product as we heard.

In the second segment, the lower volume *AA*, *AAA* brands, Tronox does not wish to compete due to the requirement to tailor their products to suit those lower volume customers' processes and formulations. Indeed, it's our understanding that they've long since stopped calling on these customers.

In the *C* and *D* battery area it's Delta's

understanding that Tronox' counter to the claims this morning doesn't even offer a product into the *C* and *D* segment. The EMD sold by Delta into the U.S.A. goes only into the lower volume *AA*, *AAA* battery segment as well as the *C* and *D* battery segment. To the best of my knowledge, Delta hasn't supplied any EMD to the high volume *AA*, *AAA* battery brands in the last few years, and we understand that this is also the case for Chinese EMD.

Because of this subject imports cannot have had any significant affect on Tronox' volume or their pricing. In a nutshell, in the U.S. market Delta competes with the Chinese not with Tronox. Delta is not qualified today to supply the market segments where Tronox is present, the high volume *AA*, *AAA* battery brands.

Tronox does not wish to compete on the market segments where subject imports are present, the lower volume *AA*, *AAA* battery brands, as well as the *C* and *D* batteries. However, it's important to note that nonsubject imports from Japan, which in 2006 and into the period of investigation supplied U.S. major battery producers significant volumes, participated in the higher volume *AA*, *AAA* battery brand segment and that is in direct competition with the Complainant,

Tronox.

Finally, I'd like to talk about Delta and our responsible actions in the marketplace. Rather than attempting to force EMD into the U.S. market through aggressive pricing policies Delta has been adjusting our production and shipment volumes in an orderly fashion to remain in line with customers' changing demands.

In the years since the 2003 claim we've lost sales to the Chinese competitors. We recognized that there was an imbalance between our production and sales volume. We also recognized the specific requirements of the segment Delta was operating in and made a conscious effort to meet the customers' expectations in terms of customer service, packaging and technical support.

We chose in particular not to seek sales at very low pricing, but rather to provide our customers with significantly higher value for money through product and service improvements. In addition, we've adjusted our production to bring our inventory level back to a normal level.

As a result of those efforts I'm happy to report that Delta's regained some business, added significant customer, over its Chinese competitors on

the strengths of superior product, packaging, delivery quality, as well as customer service not just price. The official U.S. statistics show that EMD imports from Australia decreased in 2006 but have increased during the first half of 2007.

The decrease reflected the reduction of business being replaced by Chinese competitor while the increase in 2007 reflects our success in regaining that business. None of our 2007 gain has been at the expense of Tronox. Finally, I note that battery manufacturers are sourcing to an increasing degree on a global basis.

Given the level of U.S. demand of EMD and the limited U.S. production capacity should duties be imposed at the levels suggested by the Petitioner, U.S. battery makers will have one of two choices: import from nonsubject suppliers, which would not benefit the Petitioner, or seek to relocate their battery manufacturing units to regions of the world with unencumbity (ph) in the supply, which would also not benefit the Petitioner. Thank you.

MR. MALAMED: All right. Now, Mr. Stevens from Panasonic.

MR. STEVENS: Good morning, my name is William Stevens and I am the Director of Materials at

Panasonic Primary Battery Corporation of America. As such I am the executive principality responsible for obtaining our needs for electrolytic manganese dioxide or EMD for our battery manufacturing operations in the United States.

I have been purchasing EMD for 17 years, and I believe I am quite knowledgeable about the market demands and dynamics for this product. The Petitioners have made it seem as if the arrival of imports in the U.S. market is some unfair or unnatural development. To the contrary, imports of EMD are needed in this market.

As the Commission well knows from its prior investigations of the industry, U.S. capacity of EMD simply cannot meet the total demand of the U.S. for alkaline battery producers, which are Duracell, Energizer, Rayovac and Panasonic. Based on Panasonic's estimates the U.S. suppliers can meet approximately two-thirds of the demand, so imports are not a burden in the market.

Imports are essential in this market if we want to maintain alkaline battery production in this country. Moreover, as Panasonic has adjusted its requirements of EMD the U.S. EMD suppliers have not adjusted in turn. Tronox makes it seem as if all EMD

is the same and the only thing that matters is price. Of course we care about price, but it's simply not correct to say that all EMD is the same. It is not.

At the outset the EMD supplier must meet our battery standards for performance. In other words, how long will the battery last? Manufacturing performance is the second most important and relates to how efficient the EMD is in our equipment with minimal tool wear and corrosion to our equipment.

To meet our specification and performance EMD supplier must provide EMD with specific characteristics. These are particle size, pH, moisture. These are some of the key specific physical characteristics. In addition, there are different requirements of EMD related to battery size. *C* and *D* sizes can use different grades of EMD versus *AA* and *AAA* sizes.

Another key factor is the type of equipment used to make a battery. Different battery manufacturers use different technology to manufacture batteries. This means in some cases an EMD used by one company may not be useable in another without some changes in the EMD.

In my view Tronox, formerly operating as part of Kerr McGee, has not been cooperative or

competitive since 2000. Tronox' high drain EMD did not perform as well as other suppliers of EMD. Tronox' EMD caused a higher rate of corrosion and tool wear as compared to other suppliers of EMD on our manufacturing process.

Tronox was also charging a higher price for its EMD that could not match the current supplier's EMD performance in high drain. In 2001 I met with Tronox to discuss what we could do to continue doing business with their company. Their basic reply was take it or leave it. Moreover, Tronox has not cooperated in quoting Panasonic on EMD since 2003.

I guess we are not large enough to warrant their attention. 2005 I requested a quote from Joe Derby, Sales Manager for Tronox, for a small volume of EMD. He indicated he would get back to me, but I never received any response to my request. In my experience Tronox is a very arrogant, uncooperative and unflexible company.

Since the last investigation of this product Chinese suppliers have become a more important factor in the market. Starting in 2004 it appeared that total global demand was beginning to reach the capacity of EMD suppliers in the U.S., Australia and Japan combined. The Chinese companies became a more

important supply source in reaction to this market need.

Petitioners have made it seem as if the Australian and Chinese suppliers are competing in a market only based on price. This is simply not a fair characterization. Although the Chinese have become a very important supply source in the U.S. market the competitive dynamics have recently changed.

The VAT tax rebate on Chinese EMD has been eliminated, and effective July 2007 prices have seen a change of about 10 percent higher based on the repeal of that VAT rebate. Finally, all U.S. battery manufacturers are struggling with the rising costs of materials while trying to compete against imported alkaline batteries.

Tronox must find a way to become competitive in a global market and not force its potential customers themselves to go offshore. We have seen this same story over and over again: a domestic industry thinks the dumping law will solve its problems. If the duties are imposed all that happens is the U.S. will have another downstream product that itself has to be imported and is no longer made in the U.S.A.

If this happens Panasonic will move its

manufacturing facility offshore and 400 U.S. employees will lose their jobs. In my opinion, Tronox is shooting itself in the foot by yelling wolf one more time. Thank you.

MR. MCGRATH: Good morning, Mr. Chairman and members of the Commission staff. I think I'm the last in the group of witnesses. I'm happy to appear here today. I'm sorry that our witness cannot be here. I am Matthew McGrath of Barnes, Richardson & Colburn, and we're counsel to Spectrum Brands who manufactures and sells consumer batteries best known to consumers under the tradename Rayovac.

I regret that Mark Conti, who is a Division Vice President of Batteries Purchasing at Spectrum, was unable to be here. Mark and his wife are expecting a baby today, in fact, a far more important task than any of us I think will probably be able to accomplish today. Not that we don't like being here, but he does have some important activity he's involved in, so he's asked that I deliver this statement.

He appeared before the Commission staff in 2003 as well. He is the most knowledgeable person by far within the organization on sourcing of EMD for battery manufacturing, so the following is his statement. I will do my best to address questions and

answers, and what I can't respond to I'll certainly make sure that we provide in a posthearing submission.

I'm Mark Conti, Division Vice President of Batteries Purchasing for Spectrum Brands, and in this capacity I'm responsible for Spectrum's worldwide purchases of electrolytic manganese dioxide for use in our global battery manufacturing plants. I've been in the procurement field for approximately 19 years, and in this or comparable positions at Spectrum for about nine years.

Spectrum is a publicly traded company with global battery headquarters located in Madison, Wisconsin. We've been producing and selling batteries and other products in the U.S. under the Rayovac brand name since the early 1900s. Spectrum uses EMD in the U.S. in connection with the production of alkaline batteries.

In 2003 we opposed a petition filed by Kerr McGee, predecessor to Tronox, against imports of EMD from Australia, China, Greece, Ireland, Japan and South Africa. Some circumstances have changed since then, but the underlying interest of Petitioner is apparently the same and Spectrum's position on that is the same.

Spectrum urges the Commission to reject this

petition and avoid needless disruption of a stable market for the following reasons. First, as was the case in 2003 Tronox appears only to seek protection from imports due to either a loss or a pending lapse of a supply arrangement with a major EMD purchaser.

Second, and very importantly, Tronox now and historically has made almost no effort to supply EMD to Spectrum, a similar story that you've just heard from Panasonic. Third, Tronox' EMD suffers from certain uncorrected production performance issues that have not been addressed.

Fourth, we agree with all of the testimony that you've just heard from Respondents that EMD is not a fungible commodity, and we think it's important to review the qualification process in detail to explain why. Fifth, there are certain U.S. patent rights with respect to Tronox' EMD that also acts as a deterrent for Spectrum to be purchasing that EMD.

Sixth, Tronox does not have global EMD supply capability. This is an important factor in the current market with global battery manufacturing. Therefore, the imposition of antidumping duties will not resolve Tronox' situation. I will examine each one of these in more detail and be available for questioning after that.

First, we believe that Tronox' current contract with a major EMD purchaser in the U.S. has either lapsed or is about to. Back in 2003 Kerr McGee faced the same situation.

In August of 2003, as in August of 2007, they initiated a trade action against various foreign EMD producers, and as a result of the threat of that action after a preliminary affirmative determination Kerr McGee obtained a contract for calendar year 2004 which allowed them to, "recapture certain volume positions," as they indicate in their petition.

The company then withdrew its antidumping petition. Faced with a similar situation now, and again when purchasers are in the midst of negotiating contracts now for the 2008 calendar year, Petitioner has turned yet again to the U.S. government for protection. The other domestic supplier who does sell product to Spectrum has not joined this petition.

The petition is we believe likely a strategic move in a contract negotiation to which Spectrum is not a party. Secondly, Tronox, at no point from January 2004 through June 2007 have they pursued a contract to supply EMD to Spectrum. Only once during this entire period did Tronox even try contacting Spectrum to propose a meeting.

In October of 2005 Mr. Joe Derby of Kerr McGee attempted to contact a member of the German VARTA organization, part of Spectrum, to set up a meeting to discuss EMD supply but never followed-up on that meeting, nor did anyone else. There have been no offers since.

Moreover, Tronox has refused to even offer EMD for the LR-14, LR-20, which is the designation used by Spectrum for the size *C* and *D* batteries, to its customers, certainly not to Spectrum, during the period in question to the best of our knowledge.

The *C* and *D* sizes are two of the four alkaline battery cell sizes that Spectrum manufactures in the United States and overseas, and we can only assume that if Tronox even attempted to solicit Spectrum business at this point they would be unwilling or unable to supply all of the EMD for use in connection with half of Spectrum's alkaline cell sizes.

Finally, in 2001 when Kerr McGee was actually attempting to solicit Spectrum's business and qualify its EMD product it refused to modify particle size distribution in its EMD to meet Spectrum's performance standards stating that it could not modify its processes for just that one customer. Spectrum

can only assume that if Tronox attempted to solicit our business at this point they would be unwilling to modify their product again to meet specifications.

We don't know since they haven't offered. Third, and connected with this, the EMD offered by Tronox suffers from certain production performance issues. Spectrum does not have a policy of favoring imported EMD over domestic. The core issue is how well the EMD fits with Spectrum's product performance, with its manufacturability and with service standards.

As previously mentioned, Tronox does not even offer an EMD grade that's appropriate for use in Spectrum's *C* and *D* sizes. Tronox only offers EMD grade for use in Spectrum's designation LR-3 and 6, which is the *AA* and *AAA* sizes. Furthermore, this *AA*, *AAA* standard alkaline grade Tronox EMD is, based on past experience, more abrasive and more corrosive in use in Spectrum tooling than that of its competitors.

Each of these issues, abrasion and corrosion, causes a different problem with different parts of tooling and machinery and increases the cost to Spectrum of manufacturing batteries. Each producer's EMD has its own pH level. When pH levels are lower true life is reduced, battery production costs increase.

IN testing the Tronox product Spectrum has incurred significantly more tool wear than with other producers of EMD. Similarly, abrasion is the result of specific crystallinity in a given EMD which causes accelerated wearing of cathode dyes and ultimately leads to out of specification cathode pellets.

This requires frequent tooling changes and substantially increases the cost to the battery manufacturer. Other producers of EMD may also be corrosive or abrasive to varying degrees, but these producers have made the effort to eliminate those problems and meet Spectrum's needs over time exhibiting flexibility and customer attention that Tronox obviously lacks.

Fourth, EMD is not a fungible commodity. Tronox' argument hinges on substitutability. We agree here at the table that it's hardly a fungible commodity that they attempt to depict. The Commission has looked at this in the past, and it bears repeating here. Battery manufacturers experience significant difficulty in changing EMDs because there are always process and product performance issues that require significant engineering efforts.

In addition, the dynamic market for batteries demands that formulas and designs of

batteries be changed frequently. The process of qualification I think is good to take a closer look at. We will submit in more detail with our posthearing submission a lengthy description of what's involved, but let me summarize that here.

It involves a manufacturer's EMD being chemically analyzed, tested in small trials and then tested in two levels of limited production runs of increasing scope and duration. The objective is to determine whether the EMD is of the correct character to produce a long life battery and to determine the costs that are associated with that specific EMD when it is in production. Each EMD is qualified in each plant for each type of battery that is produced by Spectrum.

After preliminary laboratory analysis the qualification process involves typically the following four steps: 1) a pilot line is run, a small run of batteries, followed by testing of that line; 2) a plant trial, a slightly larger run is done, followed by testing again in consultation with the EMD provider; 3) a limited first plant run, which is a short-term production, followed by testing of that and then a second longer term production run again followed by testing. Four different stages.

The testing involved at each step of the process is extensive, and each step can take several months to complete to ensure that the battery process, the production process, can accommodate the EMD change and that the battery consumers are not adversely affected by the material changes.

Even if the battery consumer does not notice a particular change in the formula it is a formula that is specified for purposes of manufacturing the type of battery and it may require a change any time there's a slight change in the design, so qualification has to be gone through repeatedly.

One note on the Chinese EMD since the question was raised. The Chinese product is probably the least suitable for exchanging fungibility with EMD produced in other areas. While Spectrum currently purchases EMD from China we cannot exclusively use EMD in any of the alkaline batteries that we manufacture for a couple of specific technical reasons.

Not only has Spectrum managed to qualify only a few Chinese suppliers in the first place so we can't assume that this allegedly vast number of producers out there is available to supply Spectrum or any of the other major battery manufacturers, but the EMD sourced from these qualified suppliers is blended

in order to meet the necessary technical parameters.

The basic reason for that technically is that the Chinese in the production of the EMD add particulates in order to affect and improve the yield, but the particulates in turn have an affect on performance of the finished battery, so that has to be addressed through limited use.

So I wanted to make the point at the very least that the product that is being imported from China can qualify for uses but can only qualify in a limited fashion. A fifth point is that an additional restraint on the market from the standpoint of Spectrum is that Duracell holds certain U.S. patents with respect to specific claims for batteries and battery electrodes with high power EMD that's based on example data from Tronox EMD material.

Because these intellectual property rights are out there Spectrum would have to bear additional costs of analysis and potential intellectual property claims were it to switch to using Tronox EMD.

Finally, Tronox does not have global EMD supply capabilities. This is very important. Quality, reliability and capacity are critical, and Spectrum cannot rely solely on U.S. produced EMD.

When entering supply contracts for EMD

Spectrum is focused not only on supply to support its U.S. manufacturing facility but must consider global supply for its non-U.S. alkaline battery manufacturing facilities in Germany and China as well as its zinc carbon manufacturing facilities in Guatemala, Brazil and Colombia.

To achieve its quality and capacity goals Spectrum, like the other battery manufacturers, also purchases EMD from foreign sources including Australia, China, Greece and Japan. If a U.S. supplier cannot provide EMD for Spectrum's non-U.S. facilities that will be a factor in considering whether to establish and how extensive a strategic relationship they can establish.

In addition, the figures in Petitioners' and Respondents' questionnaire answers demonstrate I think as you've already heard that U.S. EMD manufacturers would be incapable of fulfilling 100 percent of U.S. demand for EMD. In summary, there's no reason to continue this investigation.

This has been initiated as the result of one company's problems that are unrelated to the imports. All factors suggest that the subject imports had no adverse consequences for the industry, and any increase in import volume that might appear in the

data is not due to price suppression, it's due to a slight growth in demand, and shifting to nonsubject imports, qualification, product performance, reliability are far more important to Spectrum and to others in the marketplace.

Finally, I wanted to note that Spectrum feels that essentially it's caught in the crossfire in this petition. Tronox is not even a viable supplier of EMD to Spectrum and has made no effort to become one over the years. In this morning's testimony I only heard the words Duracell and Eveready being uttered from Tronox' witnesses.

Spectrum is especially vulnerable and will end up paying the price for any disruption that's caused by this effort to force a different EMD purchaser to the negotiating table. This, we feel is an abuse of the antidumping law, and the Commission can prevent that by voting in the negative. Thank you very much. I will be available to answer questions.

MR. CARPENTER: Thank you very much, panel, for your testimony.

Mr. Reilly, we will include your exhibits as an attachment to the transcript.

At this point we'll begin the questions with Cynthia Trainor.

MS. TRAINOR: Cynthia Trainor, Office of Investigations. I'd like to thank the panel for their testimony. I have a question, but it's a procedural question rather than a specific question regarding imports. Well, I guess it is tangentially regarding imports. In these particular investigations there appears to be a fairly blurry line between an importer and a purchaser.

To that end, we find ourselves in a position where we have large blocks of subject imports coming in through freight forwarders or Customs brokers. However, foreign producers and Customs documents identify certain companies as consignees and importers where the foreign producers identify them as importers in the Customs documents as consignee.

I would like the legal representation present, both for importers and the domestic producers and any other interested party lawyers in the audience, to provide me or to provide the Commission with their best advice as to how to capture the imports of these companies identified by foreign producers and Customs documents as consignees should this investigation go to a final. I have no further questions beyond that.

MR. MCGRATH: If I could just comment, I

think it is a problem, it's a challenge that comes up in any of your investigations especially when you're looking at purchasers who buy imports. I know that's always an issue, making sure you don't double count that. In some cases an importer will also be the consignee on the entry documents.

IN other cases the consignee will show up in the entry document as Spectrum perhaps and someone else as the importer of record. What we try to do is sort those out at least with respect to what Spectrum knows we purchase from import sources.

MS. TRAINOR: The particular issue in this case is the large volume of subject imports that are identified importer of record as freight forwarders and Customs brokers. The Commission does not normally send questionnaires to freight forwarders and Customs brokers. Therefore, we're having difficulty in obtaining that supposedly import data. I have no further questions.

MR. MOORE: I'd just like to say that Delta will be very cooperative in working in a cooperative form to make sure those documents satisfy your needs. Anything else I think we need to leave until later.

MS. TRAINOR: Thank you.

MR. CARPENTER: Gracemary Roth-Roffy?

MS. ROTH-ROFFY: Thank you for your testimony. I just have a few questions. For the record, do you agree that the Commission should define the domestic like product as a single like product of all EMD? Is there a position on that?

MR. MALAMED: I'm sorry. Would you mind rephrasing the question?

MS. ROTH-ROFFY: Basically, do you agree that the Commission should define a single domestic like product as all EMD? What's the definition of like product? Do you agree with the Petitioners' definition of like product? You could address it in your brief if you'd like.

MR. MALAMED: Yes. We'd like to review your question in the brief. Thank you.

MS. ROTH-ROFFY: Okay. Thank you. Also, in your brief please address fully the factors the Commission generally considers with respect to cumulation, and also, given the fact that Mr. Levy has indicated he's going to be addressing Bratsk in his brief I would also appreciate it if you did so as well. Thank you. I have no other questions at this time.

MR. CARPENTER: Mr. Benedick?

MR. BENEDICK: Yes. I'd like to begin

asking a question of Mr. McGrath, and this would be for Spectrum, and they could answer in postconference brief given that Mr. Conti is not here. You had mentioned that Spectrum qualified Chinese product that was high in particulates and therefore couldn't be used by itself in batteries but needed to be blended with EMD from other sources.

Why would a company qualify a product that can't be used for the purpose it was intended, and what role does price play in that?

MR. MCGRATH: Well, a part of that, it's not the presence of the particulates in the finished product that they would purchase, it's the use of the particulates in the production process. I mean, I know I'm trying to sound like a production expert here, but this is as it's been explained to me is the use of those particulates in order to increase the yield, the resulting product then has some performance deficiencies that need to be addressed.

The company does qualify and use Chinese product. I mean, part of the reason you would buy Chinese product, as I noted Spectrum has Chinese battery manufacturing capability as well, so there is a strategic sourcing question that comes into play. Part of it is that they need the source for the *C* and

D product, which is not being offered from domestic source.

MR. BENEDICK: They could source it from Japan, from South Africa, from elsewhere. Why did they go with the Chinese and get a product that has to be blended with other EMD presumably that has better characteristics, and then what role does price play in that sourcing?

MR. MCGRATH: I will be happy to respond to that. As we've noted price has been a moveable object here, and especially recently the Chinese price has gone up because of developments in the market. I'm sure that price and other factors come into play. I will get a response from Mark and submit that.

MR. BENEDICK: Thank you. Okay.

This next question would be for Mr. Stevens, and, again, for Mr. McGrath. Feel free, Mr. McGrath, especially, and you, too, Mr. Stevens, if you want to also comment in your postconference. Are different formulations of EMD demanded by the battery producers for each cell size of the batteries they produce?

MR. STEVENS: In our case, that's correct. I think you've heard previous comments on this, that there is a different formulation that may relate to particle size or other such characteristics when

you're utilizing the EMD for your *AA* and *AAA* size versus what you may require for *C* and *D* size. So there are some requirements for different formulation.

MR. MCGRATH: We'd be happy to provide that. That's my understanding as well, and the reason why the offering from Tronox that with some work could have met the *AA*s and *AAA*s requirements of Spectrum just is not identical to the *C* and *D*, and they were not offering a *C* and *D* specification. So we'll try to provide that.

MR. BENEDICK: Well, why does it seem then that the EMD products that both of your companies require are more differentiated than what appears to be for I guess Duracell and Energizer based on what Tronox said earlier?

MR. STEVENS: Okay. The best way to explain that is as I mentioned in my statement each manufacturer of batteries uses a different type of technology in order to produce a battery. Our technology is completely different than the technology that Duracell uses or Energizer in order to make a battery.

One of the key factors is the manufacture of the cathode. We use a completely different way in which we make a cathode than Duracell or Energizer

does, so that impacts the type of tooling that you use and how well the material can be formed into a tablet, which is a combination of various items other than EMD.

That's the reason why there may be characteristics of the EMD that's useable with one company that we can't use.

MR. BENEDICK: Okay.

MR. STEVENS: Again, as we've both mentioned, tool wear, abrasion, is a bigger impact with our company. I can't speak for Spectrum, I don't know their specific technology, but I do know that their technology has a similar issue. That's a reason why you have to have a different characteristic.

MR. BENEDICK: Thank you.

MR. MCGRATH: If I could add, it's not a matter of a difference in quality. I don't think you've raised that question. I just wanted to clarify that it's not a quality difference, it's a manufacturability. I've heard that word from our client many times, manufacturability difference. It's how they deal with the product in their own production line.

Also, remembering that what we heard this morning was that Tronox can supply across the board

the *A*s and the *C*s and *D*s, but I'm sure that if you were hearing a story from Duracell and Eveready, I mean, you would probably hear something similar to us. There are different formulations, different specifications for each, and there are going to be differences from that perspective.

I think from the Tronox perspective that's part of why Spectrum is here and why they want to state a position, that they feel that Tronox' view of Spectrum is that it's all the same, take it or leave it, and all the specifications are the same, and that's not the way Spectrum makes its product.

MR. STEVENS: Let me add one more additional comment to that is that as I mentioned earlier, again, is the process that's used from one company versus another is different, and in some cases contaminants that are in the material may still allow that company to use that particular EMD that has some of these specific contaminants in it.

In our case, those specific contaminants in our process are not allowed, otherwise it causes another problem which is an impact not on tool wear but on the actual quality of our battery. In the cases of different qualification processes, which our qualification process is identical based on what he's

told us today and it takes a long time to qualify an EMD, you do not want to put yourself through that extensive process without having a reliable source of the material. And if it contains a contaminant that we cannot allow, then we can't qualify that EMD.

MR. BENEDICK: Mr. Reilly had commented that there were high volume A, AA, AAA and low volume. And I presume you and Spectrum would be considered the low volume in that category?

MR. STEVENS: In Tronox's opinion, I think so, yes.

MR. BENEDICK: Okay. Would you hazard a guess as to how you would rank the U.S. battery producers in terms of highest EMD volume user to lowest?

MR. STEVENS: I would rank our company as number four.

MR. BENEDICK: Number four.

MR. STEVENS: So you have Duracell, Energizer, Rayovac or Spectrum.

MR. BENEDICK: Would Duracell be number one in your opinion?

MR. STEVENS: Duracell and in my opinion would be number one, Energizer number two, Spectrum three and we're four.

MR. BENEDICK: Okay.

MR. STEVENS: Total requirements.

MR. McGRATH: I think that's commonly agreed ranking in the industry, yes.

MR. BENEDICK: Mr. Reilly?

MR. REILLY: Yes, in defense of Spectrum and Panasonic I would note that Panasonic is a division of Matsushita which is a rather large company around the world. And Spectrum also is a global producer. So in a global sense they're a little bit bigger than we're letting on here. In the United States market they are rather small.

MR. BENEDICK: Thank you.

Again this question would be directed towards Mr. Stevens and Mr. McGrath. Since January 2004 has the composition of U.S. demand for alkaline batteries shifted from C and D cell sizes to the A, AA, AAA sizes? Has this affected the composition of U.S. demand for EMD by the types, grades or formulations? And have any such changes affected total U.S. demand for EMD and/or prices of EMD during the period?

MR. STEVENS: Yes, it has initially. The demand for AA and AAA size batteries in the U.S. market has grown significantly. It's the key element.

C and D size batteries have either remained flat or are on the decrease. That's part A to the question.

Also that because of the devices that use batteries, the change in the type of devices, in other words C and D size devices such as a radio and so forth have now changed and more and more smaller devices are out such as iPods and other such items that require a smaller size battery.

In addition to that, the performance of the requirements of the materials that go into making a AA and AAA batter have changed in order to generate longer last, long life in these higher, I hate to use the word, but I will, high drain products that require a battery to perform at a longer time under high usage. So that impacts not only EMD but other materials. But it does impact EMD in order to get a better type of EMD to perform in these smaller size batteries.

MR. BENEDICK: So the EMD formulation has been evolving as the need for batteries with better performance criteria are required?

MR. STEVENS: Yes. And the EMD formulation can continue to change as we see additional need for battery performance.

MR. BENEDICK: Okay. And how has in your

estimation according to Tronox's testimony that they produce a single formulation for both C, D and A, AA and AAA as opposed to what you just said here, a change in the market?

MR. STEVENS: Well, seeing as Tronox doesn't talk to us anymore I can't really give you a firm answer. I can only tell you that in the past, Tronox when we did do business with their company had pushed I guess is the right word, they had this special high performing EMD that exceeded all other EMD suppliers' capabilities for the smaller sizes in the same time they performed EMD. But if I recall in the comments made by Tronox that they abandoned that. So evidently, and our testing of that material proved it did not exceed, in fact it did not perform as well as another U.S. supplier of EMD for this special characteristic.

MR. BENEDICK: For this high drain characteristic?

MR. STEVENS: Yes. So maybe since then they've changed their ways and gone back to producing we'll call it a flat EMD that can be used across all sizes.

MR. BENEDICK: Okay. Mr. McGrath?

MR. McGRATH: I think also there was a, if

I'm not mistaken, a fair amount of discussion on that issue four years ago and the investment that was put into the high drain product and what its impact was on the financial condition of the company. And I think that was looked at in some detail. It's worth revisiting.

The other, just a comment on your earlier question about the change in the make-up between the C's and D's and the A's, the smaller sizes, our client has explained that the smaller sizes certainly have grown dramatically in terms of the total battery production, the C's and D's have declined. The impact on total demand for EMD has kind of, has kept in balance, it hasn't changed that much because the stuff that's declining is being replaced by a more rapid growth of the other, of the smaller size batteries, so there is still that increase in demand.

And on the issue of the single formulation all I can say about that is I think that if you talk to Duracell and Energizer about whether it's a single simple formulation for their C's and D's as well as for their A's you'll probably hear a similar story to ours, it's not one single formulation, it's an individual spec and it goes through a qualification process, as I've described.

MR. BENEDICK: Now, we're talked about Tronox because they testified here but we haven't talked about Erachem who's not been here. Do they produce a high drain EMD?

MR. STEVENS: We stopped using Erachem I think in 2004 or late 2005. But at that time Erachem was producing two types of EMD and they did specify at that time they had a high drain EMD and then another type of EMD. And at that time prior to discontinuing their use, we were using their high drain -- we'll use the word high drain -- high drain or better performing EMD in the smaller sizes and we were using their other EMD for the C and D size. So we were purchasing two different formulations of EMD from Erachem.

And as far as I know today they still produce two types of EMD -- well, let me retract that. They eliminated their EMD that they were using for C and D and they've now gone to one type of EMD I believe.

MR. BENEDICK: Do you still purchase from Erachem now?

MR. STEVENS: I do not purchase any from Erachem>

MR. BENEDICK: Why is that?

MR. STEVENS: The reason was is in 2003 -

2004 time frame we had a serious contamination problem with their material. And they acknowledged that they had a problem with that material. And they were making some efforts to correct it. So we had reduced our purchases of EMD from them at that time.

Then in the long-term after additional purchases from other suppliers which included at that time Mitsui Ireland before they closed, so we were still under a dual source factor. But then they were unable to correct the problem as it related to our process. So we had to discontinue the business with Erachem.

MR. BENEDICK: Okay.

MR. STEVENS: And I have spoken with Erachem since that time frame within the last year, I will say, and Erachem acknowledged to me at that time that they still had not been able to correct the problem for our needs. So we did not pursue it.

MR. BENEDICK: Okay, thank you.

Mr. McGrath?

MR. McGRATH: Spectrum has been working with Erachem, has purchased from Erachem. And the details of which sizes are in our questionnaire response so we can --

MR. BENEDICK: Thank you, Mr. McGrath.

MR. McGRATH: But there is a different profile there. Erachem has worked with Spectrum on meeting special needs on production and Tronox has not.

MR. BENEDICK: Thank you.

The next question again for both gentlemen. In the United States what types of other batteries compete with batteries produced with EMD? And how does any such downstream competition among batteries affect U.S. demand for EMD and, in particular, price of EMD?

MR. STEVENS: I don't believe in the U.S. that there is any other demand for EMD that would impact this process. The biggest demand for EMD in the U.S. is for alkaline grade batteries. Lithium grade, as I heard you mention before, is a very low volume in a different type of EMD. There are no other items --

MR. BENEDICK: So there are no other types of batters that would compete with the batteries that use EMD?

MR. STEVENS: No other types in the U.S., correct. Absolutely.

MR. McGRATH: That's also Spectrum's belief too.

MR. BENEDICK: Okay. What are the drivers for U.S. demand for batteries? Is there any aggregate economic activity like real GDP growth or growth in any particular sector in the economy? Or is it driven more like this morning you were talking about Katrina and weather events that would increase the demand for batteries?

MR. STEVENS: The factor of hurricanes and disasters can have a spike change in the demand of primarily C and D size batteries when this happens. But in addition what happens in the market, the market in the U.S. is always growing in demand for alkaline grade batteries because all of the devices that we use we're a highly disposable market where you want to go to the market and you want to buy some batteries, throw them in your device and go on, they wear out and put some more in there. And that increases that demand always for the market.

In addition to that, the other spike that you can see is forest fires and such things like that increases a spike demand when you have a high rise of forest fires because the U.S. Government also utilizes alkaline battery manufacturers to supply then with product, you have such as the big forest fires the use of smaller size, AA and AAA, batteries will increase.

And the industry has to be prepared, whoever may have the government contract has to be prepared to have an inventory to supply that quick need.

MR. BENEDICK: What drives the low term or the trend growth for EMD and for batteries?

MR. REILLY: Perhaps I can take a crack at that. It appears at present that the drivers for AA and AAA batteries are somewhat different from the drivers for C and D batteries. And I'm now talking on a long-term trend basis as opposed to variation around the trend.

MR. BENEDICK: Right.

MR. REILLY: Clearly for the AA and AAA batteries the demand for those batteries is derived from the demand for the devices that those batteries go into. And we all know what those devices are: remotes, small electronic devices, some MP3 players, some cameras and so forth. That demand in turn which is the result of growth in demand for consumer products, specifically electronic consumer products, which is related to a combination of innovation, and that is a highly innovative industry where new products are introduced frequently, and also the general growth in the wealth of the population. But the trend rates for the growth of AA and AAA batteries

is going to be higher than the trend rate for GDP because of the say the secular factors at work.

As far as the C and D batteries are concerned there is a trend rate of decline for demand in those batteries in the United States and in many developed countries principally because of the declining use of those batteries in certain devices that are being substituted for by devices capable of using the smaller sizes. Remember the old portable radio, for example, versus current technology.

In addition, the use of C and D batteries in lights and for lighting is declining because new forms of lighting devices are coming on to the market that can use the smaller size batteries and actually provide an intense light and actually last longer. So basically what you have affecting C and D batteries in the developed countries is principally a trend rate or a secular change in demand related to product innovation.

MR. BENEDICK: Thank you, Mr. Reilly.

Mr. McGrath, did you want to?

MR. McGRATH: Spectrum agrees with the fundamental premise that the main driver in the battery business is the electronics, consumer electronics. That's an indicia that they would be

looking at. But also that the segmentation that John just talked about is critically important since the change in demand for the C's and D's is going hand in hand with this change in demand for the AAA's and AA's. And they're two very different drivers for those two things.

So I think we probably have an analysis of the distinctions that we can submit.

MR. BENEDICK: That would be helpful, thank you.

MR. REILLY: Mr. Benedick?

MR. BENEDICK: Yes?

MR. REILLY: I would add that, and this is in response to a question that you asked this morning, that in my opinion the cross-elasticity of demand between AA, AAA and C, D is actually quite low as regards the price of the batteries because the drivers are other.

MR. BENEDICK: Thank you.

Again this question would be for Mr. Stevens and Mr. McGrath. Since January 2004 has there been any shifting of U.S. battery production, and those are batteries that use the subject EMD, to offshore locations?

MR. STEVENS: In the case of Panasonic we

have not shifted anything offshore at this time.

MR. BENEDICK: You say "at this time," is there some anticipation you might?

MR. STEVENS: There's no anticipation because, as John mentioned earlier, Panasonic as a company we are very highly global in alkaline battery. We have production facilities throughout the world. So we can adjust or flex our production other places.

MR. BENEDICK: Has that occurred?

MR. STEVENS: No, it has not.

MR. BENEDICK: Okay.

MR. STEVENS: Right now. That was my comment though that if, in my closing comment that if indeed we cannot survive in the U.S. market Panasonic will move its total production offshore if we continue with this issue we have in our costs. We will simply move it to our other facilities and close down our U.S. facilities.

MR. BENEDICK: The other facilities being in operation right now?

MR. STEVENS: Currently in operation throughout the world.

MR. BENEDICK: Okay.

MR. STEVENS: Actually Panasonic is the largest producer of alkaline grade batteries right

now.

MR. BENEDICK: In the world?

MR. STEVENS: Worldwide.

MR. BENEDICK: Okay.

MR. STEVENS: Okay. But when you segment it into --

MR. BENEDICK: The U.S.

MR. STEVENS: -- groups, we're small, and we're definitely small in the U.S. in this market.

MR. BENEDICK: Okay. Mr. McGrath?

MR. McGRATH: There have been changes in the make-up of what batteries are produced in what location for what market. I have to get the details confidentially but I do know, for instance, that some production that was taking place in the United States for the German market or European market may have shifted to another production site. And some production that was taking place elsewhere around the world for the U.S. market shifted to the U.S. There may have been like a net, an even exchange. But I'll have to get the details.

MR. BENEDICK: That would be helpful and sort of an explanation of why it shifted also would be helpful. And again this would just be during the period of investigation.

And a final question I have again is for Mr. Stevens and Mr. McGrath. Do your firms use price offers of different EMD suppliers as leverage to get lower prices from one or more suppliers?

MR. STEVENS: I do not use that. I do not use that technique.

As Jim explained earlier in the process that because the qualification of EMD is a very lengthy process that we try to maintain what we call a long-term relationship with all of our suppliers not just EMD suppliers. And we normally enter into an annual price negotiation with our existing supplier. We do not do an annual bid system where we may go out and re-bid across all suppliers of a material. We maintain a current relationship. What we may do is we may shift volume between our sources of EMD where based on what their quotation may be for the pricing we may shift volume from this supplier to this supplier back and forth. But we also make our suppliers aware what that volume would be and make a commitment to our supplier.

MR. BENEDICK: But when you shift like that you are looking at prices quoted by one supplier versus of another do you use that information to tell the higher priced one, well, if you want the volume

you had last year?

MR. STEVENS: No. What we do is we talk with the supplier and we generally my best way to answer that is is I tell the supplier I want you to give me based on this volume a quotation. And I want your best quotation.

If that quotation comes back and it is not as competitive as my other supplier then that's their price. And we don't go back and say, okay, well you're close but you're not close enough, you need to come down a little more. Normally I, that's not the way that we conduct it within our facility.

MR. BENEDICK: Thank you.

MR. STEVENS: So we set it and that's it.

MR. BENEDICK: Mr. McGrath?

MR. McGRATH: I will get information for you on that. But very similar, there are limited number of suppliers, limited number of purchasers and what counts is whether the party that Spectrum is negotiating with is qualified for that formulation.

MR. BENEDICK: I understand.

MR. McGRATH: So the discussion about all of the elements will include price. And I think suppliers may be aware of who out there might also be qualified.

MR. BENEDICK: Yes, but they won't know the price curve?

MR. McGRATH: -- it's not like a bid, just a flat out bid situation where I'll take the lowest price.

MR. BENEDICK: No, I understand. Well, the question is again did you use the price as a leverage with one supplier versus another, not you but Spectrum?

MR. McGRATH: I know that's what you heard this morning that it was, that prices were used as leverage. I will get a statement from our client as to how they participate in that negotiating process.

MR. BENEDICK: That would be helpful. Thank you.

And I have no further questions.

MR. CARPENTER: Mr. Boyland?

MR. BOYLAND: Good afternoon. Thank you for your testimony.

Mr. Stevens, just sort of a general question regarding the manner in which you inventory the EMD. Does the company get or expect their suppliers to supply the EMD on a just-in-time basis or how does the supplier, how is the supplier expected to supply the EMD?

MR. STEVENS: Generally we use probably three different ways. But what we do is we give our suppliers a forecast of what our demand is. And in some cases we use other techniques for inventory control which I would prefer to take or respond to offline.

MR. BOYLAND: Okay.

MR. STEVENS: And not in the current domain.

MR. BOYLAND: It's a general question but essentially you're not, it's not just-in-time, you have a forecast they're expected to follow?

MR. STEVENS: Yes, we have forecasts. We give our suppliers that forecast of what the demand is and expect them to have that material available for us. And it's a rolling forecast, so we give it to them every month because we know demand will change month to month. And that's the basics that we go with.

MR. BOYLAND: Okay. All right, thank you. I have no further questions.

MR. CARPENTER: Mr. Deyman?

MR. DEYMAN: George Deyman, Office of Investigations.

We've certainly heard two different stories here today. The Petitioners apparently claim that EMD

is EMD and you all are saying something completely different talking about particulates and contaminants and testing and qualification and manufacturability differences and so forth and so on. I hope that you will continue to address that topic in your post-conference briefs because currently we have two clearly conflicting sets of testimony. And I'll get back to this topic in a moment but first I have some questions for Delta.

Delta is reportedly involved in anti-dumping investigations on EMD in the European Union and in Japan. So any information that you can provide in your post-conference briefs on those investigations would be helpful.

Now, the investigation in the European Union reportedly concerns Delta's operations in South Africa. Suppose that either or both the European Union and Japan placed anti-dumping duties or other restraints on EMD from South Africa, to what extent would Delta in South Africa in turn export EMD to the United States, especially given the investigations that are being conducted here right now?

MR. MOORE: Before I answer that, number one, and first and foremost Delta does not intend to dump, dump their materials. As far as our business

strategies I'd prefer to address that in a post-conference document.

MR. DEYMAN: That would be fine. If you could also indicate whether the product from South Africa is qualified at the various battery producers here in the United States that would be helpful.

MR. MOORE: We'll also do that.

MR. DEYMAN: Okay. Or is undergoing qualification?

MR. MOORE: Understood.

MR. DEYMAN: In the previous investigations on EMD in 2003 imports from Australia during the 2000 to 2002 period ranged between about 23,000 short tons per year to about 28,000 short tons. Currently, during 2004 to 2006 the imports from Australia ranged only from 9,000 short tons to about 17,000 short tons per year, a huge decrease from the earlier investigations, as you pointed out I believe. Why did the imports decrease? Were they simply displaced by imports from China?

MR. MOORE: I believe that's the case, yes, as well as possibly displacement by other EMD sources.

MR. DEYMAN: Now, but the imports from Australia did virtually double in 2005 over 2004. And they were higher in 2006 than in 2004. What caused

the big change, the increase in 2005 especially? Did you get a new contract or a new customer or what happened?

MR. MOORE: As I understand the question I think I need to do a little bit more homework to check specific figures but we'll address that in the post-conference brief.

MR. DEYMAN: Okay. The average unit values of the imports from Australia have been consistently higher than the average unit values of EMD from China. Is there anything different about the EMD from Australia that would command higher unit values or prices than the product from China?

MR. MOORE: I could put my sales and marketing hat on and give you the sales pitch but I think it comes down to the fact that they are different materials, they have different performance properties, we have a different total value solution in terms of our packaging, our supply, our customer service, our technical support. And so I think it's a combination of all of those factors which clearly explain I think the differences.

MR. DEYMAN: Anything further that you could say about similarities or differences between your product and the product from China would be helpful in

your post-conference brief.

MR. MOORE: Understood. Thank you.

MR. DEYMAN: Are non-subject imports from, say, Japan, Greece and South Africa similar in quality to EMD from Australia, China and the United States?

MR. MOORE: I could speak more appropriately to material from South Africa given that that's part of the Delta Group. I can provide feedback that I've heard from customers regarding the other sources. But there is a difference in the performance and the properties of EMD from Delta South Africa and Delta Australia. Indeed, we do not today have complete cross-qualification so EMD produced in Australia that is approved in a given cell format at a given customer at a given location we do not have a mirror qualification for a similar product from South Africa because the EMDs are different product and perform differently.

Occasionally the specifications look very similar but the performance properties that we gain feedback from from the customer in terms of its handling, its corrosion and tool wear and the ultimate battery discharge performance is different. And so customers are paying or not to make the same qualifications.

Regarding non-subject imports from Japan and Greece, we understand they have a wide range of qualifications. But again I think they supply different markets and so those qualifications I don't see are met or I can't link one versus the other. They clearly would share similar production technology given that they're within the same company but beyond that that would be just speculation.

MR. DEYMAN: Okay. There's some information on the record of these investigations that there is no market for EMD in Australia. Is it correct that there is no home market and no battery production in Australia?

MR. MOORE: To the best of my knowledge there's no battery production in Australia. We've had I think inquiries for sample volumes but I think that's more from academic investigations than commercial battery manufacturing.

MR. DEYMAN: For that matter is EMD used in anything other than batteries? Probably not to any large extent, but do you know of any other uses for EMD in the United States?

MR. MOORE: In the United States, I don't believe so. I know of, for example, some scrap sales from damaged material perhaps going into brick

colorants and other things like that but that's just so small it's not worthy talking about.

MR. DEYMAN: Perhaps the Petitioners could address that also in their post-conference briefs.

There is a company in Australia called Hi-Tech-Energy Ltd. What can you tell us about their efforts to produce or supply EMD in Australia?

MR. MOORE: Well, I don't have a detailed knowledge of their operations given that they're a different company. I would say that our market intelligence suggests that they do not have an operational facility and that they're not an active producer.

MR. DEYMAN: If you haven't already provided the Commission staff with the following information, please do so in your post-conference briefs:

1) At which U.S. customers are you qualified to sell EMD?

2) How much EMD have you sold in quantity, I think we're using short tons, and value to each of your major U.S. customers in each year since 2004?

3) Are there any U.S. customers at which you are currently trying to qualify your EMD?

And 4) I think you answered this but how transferable is qualification among facilities in

different geographic locations?

MR. MOORE: Do you mean customer facilities or?

MR. DEYMAN: Customer facilities.

MR. MOORE: Understood.

MR. DEYMAN: Right.

Now, the next questions I have I guess could be answered by either Delta or the two battery producers on the panel. What has been the trend in imports of dry cell batteries that use EMD? Is there any displacement of U.S. battery production by imports over the past three years or so?

MR. REILLY: John Reilly. There are import data available from census and we will provide that data for you so that you can see what the trend of import growth is in the alkaline battery segment. And I suppose that can be matched up with the EMD trends and so forth and you'll get some indication.

MR. McGRATH: We'll provide the data at least with respect to what we see for Spectrum. There's been some growth in imports from our experience but also growth in demand. What effect that has on the total picture would have to be looked at more closely. It's not, but it's not a displacement, entirely a displacement issue, there may

be some product displacement. Overall there's a growth.

MR. DEYMAN: All right. Is EMD used in rechargeable batteries? And has there been any displacement, if it's not used in rechargeable batteries is there any displacement of regular batteries by rechargeable batteries that is significant?

MR. STEVENS: I'll try to answer you. To my knowledge a rechargeable battery does not use EMD. I think they use a different technology. Now that's my basic knowledge.

We are not producing rechargeable so I can't give you a definitive answer. What I can tell you is is that the market demand for rechargeable batteries is on the decrease versus alkaline batteries. For some reason the American market would rather use a disposable item than a rechargeable. So we've seen the rechargeable demand decline.

MR. REILLY: John Reilly. There is information about this issue in a number of questionnaires. And we will compile it and comment on it in our post-hearing submission.

MR. DEYMAN: All right. If you'll bear with me I just have a few more questions.

With regard to the dispute over whether EMD is EMD or EMD is a very different product depending on who produces it and so forth, Mr. Stevens, you said something interesting. You said that Tronox could go back to a flat EMD that can be used across all sizes. What does that mean? Is there a flat EMD that can be used in any battery?

MR. STEVENS: I think that was the comment of Tronox because they only produce one type of EMD.

MR. DEYMAN: But I believe you mentioned earlier something about that you tried their high-drain EMD --

MR. STEVENS: Yes.

MR. DEYMAN: -- and it didn't work out and so forth and you suspected that, well, maybe they could go back to a flat EMD that could be used across all sizes?

MR. STEVENS: Yes. I think yes. Without mixing words, that's basically correct what I said. But I don't believe it's flat. But I do believe that you can use a specific EMD across all sizes depending on what your requirement is.

The best way I could try to answer that would be an example would be on AA, AAA sizes and C and D you may have a manufacturing process that you're

producing two types of AA batteries, a value AA battery and then we'll call it a high-end AA battery. In the case of that you could use the same EMD for C and D and AA for your value brand and then a different EMD for what you may want to call your high-end brand. So you technically could use one EMD across all your sizes. And it's my opinion that that's what Tronox is claiming, they only make one kind of EMD and you can use it. I don't know if we could use their EMD for that but.

MR. DEYMAN: Let's say a company like Tronox is not qualified to sell to you for a particular battery that you produce. In order for them to quali -- how can I put this? Can any large producer of EMD make any, make themselves qualified for any company's batteries by simply tweaking their production process or not? In other words are there some types of EMD that a company like Tronox simply can't produce, not matter what they do they can't produce it, it's not good enough?

MR. STEVENS: I believe that's not the case. I believe that any company that wants to cooperate with a specific maker of alkaline batteries can tweak their product in order to be used with that company. So in the case for us is if Tronox wanted to approach

us and say we are willing to work with you and tweak our product for your needs we could buy from that EMD supplier.

The same goes for any supplier, as long as there's a cooperative effort between the two companies with that to happen. Because our experience says we have done this with our other suppliers of EMD, their cooperative abilities to work with us to develop that. In the case of Tronox there's no cooperation.

MR. McGRATH: Mr. Deyman, I could also add the question I think is going in the direction of trying to determine if it's possible to have a secret magic formula where you can just make one EMD and the buyers, the battery makers will find that particular EMD, whatever your formulation is, to be fine for all of its uses, for the C's and D's and for the A's. Spectrum is not aware of that sort of magic formulation. And it goes through the laborious process of qualifying for each of the sizes. Doesn't know of any one formula that someone can provide that satisfies all their needs.

The bigger question, as Mr. Stevens said, is is the supplier who's making this and has relatively limited number of people to sell it to are they willing to modify their product, work with us, try to

get it to fit what our needs are. And in Spectrum's case the answer is Tronox has not been. Others have, Erachem has and Delta has and various other suppliers. So it's not so much can it theoretically be the case that one EMD will serve all purposes, the reality is it doesn't. So that's our answer.

MR. MOORE: I'd just like to add some comments to this. I think Delta's experience is exactly as outlined by Spectrum and Panasonic: there is no magic bullet, there is no one-size-fits-all C and D shoe for all of the different batteries. Part of this is because all of the battery manufacturers have a different manufacturing process sensitive to different aspects of the raw materials that go through their process. But they also have different markets that they're trying to satisfy with their batteries, that means different performance properties again impacting on the choice and selection of raw materials.

I would say that Delta is or one of the things Delta prides itself on is having a very closely integrated product development process with each of our key customers, identifying what needs to be modified, what needs to be approved to assist our customers in achieving their technical and commercial

goals with their batteries. And that takes time, that takes a lot of effort and it's strongly associated with the qualification process. As you start in at the beginning of these cell designs you are automatically once you get through qualified. It's much more difficult if you come in afterwards. But that's a very integrated and ongoing process.

MR. DEYMAN: Thank you.

Mr. Stevens and Mr. McGrath, could your firms in the post-conference briefs supply us with the following information:

To what extent do you blend EMD from different sources?

2) Which suppliers are qualified to sell EMD to your companies?

3) Of those suppliers that are qualified, from which ones have you obtained EMD in each year since 2004, quantity and value?

We're just talking about a few suppliers here. I know this is sensitive information, but hopefully you will be able to provide that.

4) Are there any suppliers that you are currently trying to qualify?

And I'm going to ask for this next one, and this is probably highly sensitive information, but it

would be very helpful if you could provide it. What sizes of batteries do you produce that use EMD? For each size batteries, could you tell us which sources are qualified to supply EMD for those batteries? And why are only those firms qualified to do it? And for each battery size that you produce approximately how much EMD in short tons was used let's say in 2006 from each of the suppliers?

And hopefully this information is readily available. And you can make estimates if necessary. I said "approximately." We're just trying to get an idea here.

MR. STEVENS: Quick question. When you said how much EMD is used as it pertains to a AA? How much is used in a AAA?

MR. DEYMAN: Right. In your AA.

MR. STEVENS: How much in your -- okay.

MR. DEYMAN: In your AA batteries, did you use whatever, 5,000 tons of, whatever the number might be. And I haven't looked at the questionnaires so I don't know anything so I'm not giving anything away. But how much did you use and of that, say, 5,000 tons, 3,000 tons was from company X and 2,000 was from company Y and those are the only two companies that are qualified to sell to you for the AA battery, for

example.

MR. McGRATH: Mr. Deyman, if I could, we will provide that. In fact, a lot of it is already on the record from our submission because we tried to break down the pricing information that we submitted on sizes so you can get that. So what we'll do is put it together and also the additional information.

I think it's also for it to be useful for you to be able to use it in an analysis you need the same information from Duracell and Eveready. And that knowing who's qualified to supply them, how much they've supplied, how much has been received is probably the two of us together here combined for a small part, numbers three and four of the market, and those two are a much bigger part.

MR. DEYMAN: I understand that. And you anticipated my next question.

My next question is, is there anybody from Duracell or Eveready present here today? I'm not going to ask you to come up or to say anything or even to identify yourself but I'd like you to raise your hand if there is someone from one of those two companies here?

The staff would like to briefly speak with you after the conference but you don't have to but we

would like you to come forward if possible afterwards. So I note that someone raised their hand. I don't know which of the two companies. Duracell. Someone from Duracell is here, all right. And no one from Eveready, just for the record.

And I have no further questions. Thank you.

MR. CARPENTER: We thank you very much, panel, for your testimony and your responses to our questions. At this point we will take a final break and we will resume the conference at 1:00 o'clock with the closing statements.

(Recess.)

MR. CARPENTER: Could we resume the conference at this point, please? And if the Petitioners would come forward for their closing statements. Thank you.

Welcome back, Mr. Levy.

MR. LEVY: Thank you and good afternoon.

In closing I think we'd like to respond to perhaps four of the points we heard from Respondents this morning and then make a few general remarks in closing. I don't think we'll take the full ten minutes.

The first really set of points that we heard from Respondent is sort of the assertion that EMD is a

highly differentiated product, that non-price factors predominant, that price as a factor is secondary, and that the market is highly segmented by cell size.

Tronox wishes this were true. As Tronox has told you, to be sure price is not the only factor that a customer will consider but it's also fair to say that EMDs from the U.S., China and Australia are highly substitutable, especially in the larger cells which still comprise the lion's share of the EMD market. And especially considering that EMDs from different sources can be blended. Our view is that price is the major driver in the marketplace.

In 2003 the ITC staff concluded that there is "at least a moderate degree of substitution" between EMDs of various sources. We believe that this is at least as true today. Tronox has told you that it is qualified at its two major customer accounts, Eveready and Duracell, and that for each of its respective customers, Eveready and Duracell, it meets their technical specifications and performance parameters for all applications for all cell sizes, AA, AAA, C and D. And the specifications for its product has not changed throughout the period of investigation.

Every year Tronox competes for volume in all

cell sizes, small cells and large cells, at its customers. And, indeed, during the period it has sold small cells and large cells at customers.

You know, it may very well be the case that certain battery producers may have certain specifications for certain cells that leads to preferences, one EMD over another, and price, that may be a gloss on the price factor for them. I think what we heard from Rayovac is that it may be that they actually prefer the Chinese material over the Tronox material. I think that's interesting. But I think the conclusion is inescapable that there is more than reasonable overlap in competition between EMD from the United States, from Australia and China, and that price matters and it matters a great deal.

As a result, we can see over the period of investigation that imports have caused injury, subject imports have caused injury in two important respects: that Tronox is being injured in the form of lost volume in all cell sizes, and particularly in the large cell space; and it is being injured in the form of lost revenue in the price area and the price effects are felt across all cell sizes. And I think that perhaps is the bottom line from Tronox's perspective.

The second point that we heard from Respondents, Mr. Reilly referred to his exhibit to Table 2 and I guess he made the point that there is a balance between supply and demand in the marketplace. But I think that the data he reports in Table 2 tell another story. According to Mr. Reilly when imports exceed 32,000 short tons they begin to eat into the market position of U.S. producers. And what we see is that for all but 2004 the numbers are indeed in excess of 32,000 short tons and the numbers are increasing.

The third point that we heard today from Respondents is in reference to what is Chart 1, I think it's page 4 of Mr. Reilly's exhibits, the chart of U.S. imports of EMD. And it looks at a longer period going back to 2000 and up through the present through 2007. And essentially the message is this Petitioner is not as bad as the last Petitioner. And I think that's true. In the last Petitioner you had a plant that was closed, you had workers who were furloughed. But this Petitioner is one in which the U.S. industry is again on the brink of the same set of conditions and is already severely injured.

If you look at the increase in imports from 2005, 2006, increase in subject imports and you compare that to statements from Tronox that they're

losing volume in the same year, I don't see how you can concur with Mr. Reilly's assessment that imports in the market are a "favorable development." By our way of thinking all points to the contrary.

And for the fourth point we heard from two of the smaller U.S. battery producers, Panasonic and Rayovac, and they expressed certain frustration with the case. First, Tronox's view is that it would love to supply to these customers, it would love to compete. But it is not in a position to compete in an environment where by their own admission they are entertaining bids, quotations, and they are shifting volume based on those quotations. If they were to match Chinese prices or even Australian prices they would be selling below their own costs of production, and that is a non-starter.

In the last case Rayovac stated that it made no sense for them to invest time and effort working with then Kerr-McGee to qualify them in certain cell sizes. And our view is that we hope that with the issuance of anti-dumping orders they will become more motivated to work with us. Our sense is that that's unlikely to change without the anti-dumping remedy.

Finally let me just sort of recap with a few points. I don't think I've heard from anyone today

any dispute that Tronox or the U.S. industry generally is injured. They have suffered lost shipment volumes, reduced production and capacity utilization, a rise in inventory levels and operating losses, and the trend is worsening. And we would assert that the existence of causation is unusually easy to discern in this case because the universe of market participants is so finite and EMD from different sources is in fact highly substitutable.

You've heard a lot of noise from Respondents' testimony today on a number of points. But I think there's sort of a certain honesty in the statements of Delta and the Chinese that are located at Petitioners' Exhibits 4 and 5. As the Chinese have told you in their own words, this is a simple case of too much supply chasing too little demand. And as the Commission has observed countless times, structural oversupply results in injurious price effects. And as Delta has told you in its own words, producers are experiencing a cost/price squeeze in the EMD marketplace. China is clearly dumping most aggressively but Delta has also made a conscious decision to follow suit. It is by its own admission selling below its costs, leading to what Delta refers to as "exposure to anti-dumping duties."

I cannot see how you could possibly disagree with the basic conclusion that there is a reasonable indication of material injury in this case. The injury has been caused by imports that are the subject of Tronox's petition. And the threat in the future is, if anything, worst than the present.

Thank you very much.

MR. CARPENTER: Thank you, Mr. Levy.

Mr. Malamed?

MR. McGRATH: Moving chairs around here. If I could I'd just ask my colleagues to indulge a few seconds. I hadn't planned to say anything but I will just take a few, 30 seconds, to address the one point respecting Rayovac and Spectrum.

The point that Mr. Levy just made about hearing that we heard that Rayovac may in fact prefer Chinese material over Tronox and also saying that Tronox would love to supply and compete, this is, I have to say it's the complete opposite of Spectrum's experience. First of all, there isn't a preference for the Chinese material over the Tronox material. The Tronox material is not there, it's not in the market, it's not offered. Tronox hasn't been trying to satisfy the problems that I raised in my direct testimony. And I can't let that go by without at

least mentioning it.

The final comment that Mr. Levy had indicated that with the anti-dumping duty we hope that Spectrum will become more motivated to work with Tronox. Well, we certainly would love Tronox to be more motivated to work with Spectrum to try to involve themselves rather than just simply declaring that they will not because they believe that the Chinese product is somehow there. I will put into our post-hearing statement more detail on the Chinese. But the Chinese involvement with supply to Rayovac has been very limited. Qualification is not an easy thing to get. And it's an entire product that Tronox has expressed no interest in supplying in the C and D sizes.

So with that I will turn it over to Mr. Malamed and Mr. Reilly.

MR. MALAMED: If I may because I have a disability to multiply here today, maybe leave John to rebut specifically on charts 2 and chart 3 which is what I think you wanted John on the imports.

MR. REILLY: Okay. My purpose is to very briefly respond to a number of things that Mr. Levy said about the trend rate of imports during the current period of investigation and what it signified.

I noted that the domestic industry based on

the data I presented required 32,000 tons per year of product from import sources based on an average market of 100,000 tons per year, and that the trend rate of imports during the period of investigation for the current case is 34,000 tons which is within 10 percent of the 32,000 ton number.

I also noted that there's friction in the marketplace due to the relationships of different suppliers with different customers. And related to that, the changing balance of competition among the major battery manufacturers and their take of EMD and also the second set of battery manufacturers.

So to my mind and in my opinion an average import volume of 34,000 tons per year versus my calculated 32,000 tons a year is very, very close. And there is no master accountant sitting on top of an EMD pile that's allocating on a day by day basis to keep this product in such balance that the domestic producers will by right operate at 100 percent capacity at all time. That is simple nonsense and the concept is extremely silly.

My other point about the 2000, I'm sorry, the 2004 to 2007 period being better than the 2000 to 2003 period is simply that the import environment is in fact extremely different in the present case. And

that is a significant development relative to the 2003 case which the Petitioners in fact have discussed rather extensively.

In addition, I used that information to illustrate that the import increase, the substantial import increase that the Petitioners were complaining of, subject import increase actually is a question purely of timing and a question of exit from the market and replacement of imports supplied by domestic producers. That part of my presentation apparently they didn't see fit to rebut. I don't see how they could have.

And on a final note, a question was asked as to whether there's any use of EMD other than in alkaline batteries. Well, based on today's case and cases in the past I believe that Tronox has discovered a new use, it's called anti-dumping investigations. Thank you.

MR. MALAMED: All right, I am going to briefly conclude because my colleagues have taken most of the time. But what we would like to say obviously, Mr. Deyman, you've heard two stories today and also we would like to dispel the notion that that just was simple and you had to roll over the 273 figures, move on to 277 exactly the same situation, dumping, and

that's the end of the story. We want to change exactly that story. In fact, we believe that the way this was represented to you as being correct in the reversal from what my colleagues just said that the lion's share of battery markets are C and D cells. We do actually dispute that fact, it is now the AA and AAA batteries.

So that's the type of facts that we believe are in fact imposed by Tronox on the Commission and the U.S. Government to actually try to solve their own problems in negotiating prices and volumes with their own customers. Actually it is not the duty of the U.S. Government to assess and to fix those kind of problems. There is a problem of interchangeability between Delta's EMD and Chinese EMD because they are competing on the same market, mostly the C and D share cells and some of the low, what they call the low volume, the Panasonic and Spectrum AA, AAA. And that is the reality of the market today.

You've heard more than enough today, the inability, unwillingness of Tronox to try to address the valuation of the market and the segmentation that obviously exists. And that's I think what we're discussing today. Yes, there may be injury on the U.S. market but certainly the causation is not Delta,

it's Tronox that has inflicted injury. Thank you.

MR. CARPENTER: Thank you, gentlemen.

On behalf of the Commission and the staff, I want to thank the witnesses who appeared today, as well as counsel, for sharing your insights with us and helping us develop the record in these investigations, we really appreciate it. Before concluding, let me mention a few dates to keep in mind. The deadline for the submission of corrections to the transcript and for briefs in the investigations is Monday, September 17. If briefs contain business proprietary information, a public version is due on September 18. The Commission has tentatively scheduled its vote on the investigations for Friday, October 5 at 11:00 a.m. It will report its determinations to the Secretary of Commerce on October 9. Commissioners' opinions will be transmitted to Commerce on October 165.

Thank you for coming. This conference is adjourned.

(Whereupon, at 1:20 p.m., the preliminary conference in the above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Electrolytic Manganese Dioxide from Australia and China

INVESTIGATION NOS.: 731-TA-1124, 731-TA-1125 (Preliminary)

HEARING DATE: September 12, 2007

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary conference

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: September 12, 2007

SIGNED: LaShonne Robinson
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Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

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Signature of Court Reporter