

UNITED STATES  
INTERNATIONAL TRADE COMMISSION

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

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 AUSTRALIA AND CHINA ) (Final)

Thursday,  
 July 24, 2008

Room 101  
 U. S. International  
 Trade Commission  
 500 E Street, S.W.  
 Washington, D.C.

The hearing commenced, pursuant to notice, at  
 9:30 a.m., before the Commissioners of the United States  
 International Trade Commission, the Honorable SHARA L.  
 ARANOFF, Chairman, Presiding.

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P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN ARANOFF: Good morning.

On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation No. 731-TA-1124 and 1125, Final, involving Electrolytic Manganese Dioxide from Australia and China.

The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury by reason of less than fair value imports of subject merchandise.

Schedules setting for the presentation of this hearing, notices of investigation, and transcript order forms are available at the public distribution table.

All prepared testimony should be given to the secretary. Please do not place testimony directly on the public distribution table.

All witnesses must be sworn in by the secretary before presenting testimony.

I understand that parties are aware of the time allocations. Any questions regarding time allocations should be directed to the secretary.

Finally, if you will be submitting documents that contain information you wish classified as business

1 confidential, your request should comply with Commission  
2 Rule 201.6.

3 Madame secretary, are there any preliminary  
4 matters?

5 MS. ABBOTT: Madame Chairman, all witnesses on  
6 today's panel have been sworn. There are no other  
7 preliminary matters.

8 CHAIRMAN ARANOFF: Thank you. Let us proceed to  
9 opening remarks.

10 MS. ABBOTT: Opening remarks on behalf of  
11 Petitioners will be by Jack A. Levy, Trade Law International  
12 Chartered.

13 MR. LEVY: Thank you and good morning,  
14 Commissioners, staff.

15 The U.S. EMD industry is in a state of full-blown  
16 crisis. In 2005 it was earning \$3.6 million on sales. Last  
17 year, domestic industry lost \$9.6 million.

18 Just to put this in perspective, that is an  
19 operating loss of 11.6 percent

20 When you look at the facts of this case, I don't  
21 think there's any serious question that the U.S. industry  
22 has been materially injured and that subject imports are the  
23 cause. The operating losses are severe. Shipment volumes  
24 are down. Costs are up. Prices have not been able to keep  
25 pace with those rising costs.

1           The evidence of a cost/price squeeze is palpable.  
2 Throughout the period of investigation imports from  
3 Australia and China competed head to head with U.S. EMD  
4 producers at the major customer accounts, and for the major  
5 battery cell sizes.

6           At these accounts subject imports consistently  
7 undersold domestic EMD producers, causing significant price  
8 suppression and depression.

9           In 2007, for example, when U.S. producers' costs  
10 of goods sold was up 5.8 percent unit sales values actually  
11 fell by 2.4 percent as a result of price competition from  
12 subject imports. In the first quarter of 2007, right before  
13 the petition was filed, the ratio of COGS to net sales was  
14 105.9 percent. This, as you know, is a textbook indicator  
15 of a cost/price squeeze.

16           Given the compelling factual record in this case,  
17 it's hardly surprising that none of the key parties have  
18 opted to testify today. None of the EMD purchasers are here  
19 today. Not Duracell, not Eveready, not Panasonic, and not  
20 Spectrum. Delta EMD Australia is not here today, and no  
21 Chinese producers are here today.

22           Now as you know, Delta's pre-hearing brief is  
23 limited to the critical circumstances issue. For the  
24 record, Petitioner has already withdrawn its allegation of  
25 critical circumstances before the Department of Commerce and

1 we have no interest in pursuing that remedy further.

2 Our interest is in obtaining anti-dumping orders  
3 against both China and Australia, and it is worth noting  
4 that in its brief Delta regards the imposition of an order  
5 against Australia as "of no consequence". They are not  
6 opposing that remedy.

7 You may also note that in its pre-hearing brief  
8 Spectrum seemed to be opposing the issuance of an order  
9 against Australia because Delta reportedly stopped producing  
10 EMD in March of 2008.

11 Now on this point, it's important to note that  
12 Delta produced and sold EMD in the U.S. market during every  
13 month of the period of investigation. So as a matter of law  
14 we believe Australia must be included in your present injury  
15 determination.

16 Furthermore, as we will discuss today, Tronox has  
17 reliable intelligence indicating that Delta's plant has not  
18 been permanently dismantled and that Delta stands ready to  
19 restart its operations if for some reason antidumping relief  
20 were denied in this case or if Delta were able to  
21 successfully defend itself in the ongoing Japanese  
22 antidumping investigation.

23 In a moment you will hear direct candid testimony  
24 from several company officials from Tronox. Listening to  
25 their testimony and the data that support it, I don't think

1 there's any serious question that the U.S. EMD industry has  
2 been severely injured as a result of subject imports and  
3 that it continues to be threatened with future injury.

4 Thank you.

5 CHAIRMAN ARANOFF: Thank you, Mr. Levy.

6 If you're ready, you can proceed directly with  
7 your panel presentation.

8 MR. LEVY: Thank you, Madame Chairman. I think  
9 we'll get started right away with the industry witnesses.

10 I'd like to introduce first, Rick Stater who is  
11 Plant Manager at Tronox LLC.

12 MR. STATER: Good morning. I'm Rick Stater, Plant  
13 Manager of the EMD operation for Tronox LLC located in  
14 Henderson, Nevada. I've been employed with Tronox and its  
15 predecessor Kerr-McGee for more than 25 years.

16 I would first like to provide you this morning  
17 with some background information to help you evaluate this  
18 case. First, I would like to describe EMD and its uses.  
19 Second, I would like to briefly explain the production  
20 process. Third, I would like to provide you with an  
21 overview of the cost structure for EMD production. Fourth,  
22 I would like to say a few words about Tronox's production  
23 efficiency and our commitment to product innovation.  
24 Finally, I'd like to briefly recount the history of our  
25 plant's vulnerability to unfair import competition and how

1 antidumping cases have a proven track record of providing  
2 effective relief.

3 Electrolytic Manganese Dioxide, or EMD, is an  
4 active ingredient in dry cell batteries. When you mix EMD  
5 with other materials it forms the cathode material in those  
6 batteries.

7 In its simplest terms, the production of EMD is a  
8 process of taking manganese ore, converting it into a highly  
9 pure form of manganese dioxide using electrolytic  
10 technology.

11 I have brought with me a sample of manganese ore  
12 and a sample of finished EMD if you'd like to look at them.

13 The EMD production process is composed of three  
14 basic operations -- ore processing, electrolysis, and  
15 finishing. The pre-hearing report does a good job of  
16 describing these processes, so let me describe each of these  
17 very briefly at the moment.

18 In the ore processing step, manganese ore is  
19 reduced, if it is necessary, and then dissolved in sulfuric  
20 acid. The process generates a manganese sulfate solution  
21 from which the impurities that are inherent with the ore  
22 body are removed.

23 Next, during the electrolysis process, purified  
24 manganese sulfate solution is fed into electrolytic cells  
25 where manganese dioxide is electroplated onto anodes. We

1 then take those plated material in the anodes and harvest it  
2 mechanically.

3 Finally, during the finishing process the EMD in  
4 plate form is ground and neutralized. EMD is then dried  
5 and screened to meet customer specification to include  
6 particle size, moisture content. Then we finally pack it  
7 out in bags.

8 The EMD production process that I've just  
9 described to you is very straight-forward and is common to  
10 nearly all EMD companies with one notable caveat. To our  
11 knowledge some Chinese EMD producers like the former Mitsui  
12 plant in Ireland, use a manganese carbonate ore instead of  
13 manganese dioxide ore, which is what I showed you here. But  
14 no matter which type of manganese ore you start with, if you  
15 run your process correctly you'll get the same high quality  
16 finished EMD.

17 The process I just described to you entails  
18 substantial variable cost including raw materials like  
19 manganese ore, process chemicals, labor and energy, as well  
20 as high fixed costs. If you refer to the pre-hearing report  
21 it shows the total variable cost for the entire U.S.  
22 industry represents roughly 60 percent of the total cost of  
23 goods sold. The other factory costs, that is to say fixed  
24 costs, represent the remaining 40 percent.

25 This breakdown is very much consistent with

1 Tronox's actual experience.

2 With respect to our variable costs, the costs for  
3 consumables have increased year over year from 2005 to 2006  
4 to 2007. I think every U.S. chemical producer has  
5 experienced this phenomena and this has been a real  
6 challenge for us because most of these costs are beyond our  
7 control.

8 EMD production is a capital-intensive  
9 manufacturing process with relatively high fixed overhead  
10 costs. our profitability, therefore, depends on our ability  
11 to run the process at full output in order to minimize per  
12 unit costs. As a result, Tronox is often forced to lower  
13 its prices in response to import competition in order to  
14 secure maximum production volume.

15 Now let me say a few words about Tronox's  
16 commitment to innovation and its efficiency.

17 First of all you will note that we are not located  
18 in the East, next to our customers. Rather we are located  
19 in Henderson, Nevada. Why Henderson? Well, Henderson is  
20 very strategic. We're very close to the Hoover Dam and  
21 hydropower allocation and we have a coveted access to  
22 reliable, low cost electrical power that is important to EMD  
23 production.

24 Tronox is very proud of the fact that we have been  
25 effective at reducing costs that are with our control. The

1 proprietary record will confirm that our efficiency and  
2 productivity program, Tronox remains committed to  
3 continually reducing its controllable costs and have  
4 exciting new initiatives in the pipeline that promise  
5 additional future savings.

6           Unfortunately, the roll-out of some of these  
7 programs has been retarded because of our operating loss  
8 situation. Once we can return to profitability, these  
9 projects can be completed.

10           Production efficiencies aside, our company has a  
11 proud history of being on the cutting edge of innovation in  
12 the EMD arena. Although not a major factor during the  
13 period of investigation, the development of our patented  
14 high drain technology illustrates that some of the beset and  
15 brightest minds in the area are employed in American  
16 industry.

17           Finally, because I've been at the plant for more  
18 than a quarter of a century, I wanted to briefly convey my  
19 historical perspective on the condition of competition in  
20 the U.S. EMD marketplace.

21           I was around in the late 1980s when dumped imports  
22 from Japan and Greece threatened the viability of our plant  
23 and the issuance of antidumping orders had the effect of  
24 restoring the plant's economic health for more than a  
25 decade.

1           In 2003 we were forced to idle our production and  
2 furlough our workforce because of aggressive import  
3 competition from various countries including Australia and  
4 China. You see, we were accumulating unacceptably large  
5 inventories of finished goods and experiencing severe  
6 operating losses.

7           The filing of a petition in August of 2003 had the  
8 effect of enabling us to return our lost contracts, quickly  
9 restart production, and we did this in less than one month,  
10 and then return to short term profitability. But without a  
11 possible remedy against China, Kerr-McGee decided to  
12 withdraw its petition.

13           Most recently in 2007 Chinese and Australian  
14 imports again threatened our facility. Without this case we  
15 would not be running today. I know from past experience  
16 these cases help, and that Tronox is positioned to remain a  
17 world leader in the production and development of EMD. We  
18 just need a level playing field. And there's no question  
19 that we need antidumping relief in order to survive.

20           Now let me turn things over to my colleague, Paul  
21 Gutwald.

22           MR. GUTWALD: Good morning. My name is Paul  
23 Gutwald, I am the General Manager for Tronox's electrolytic  
24 division.

25           In that capacity I am also responsible for our EMD

1 business including manufacturing, sales, marketing and  
2 profit and loss.

3 In this morning's testimony I would like to first  
4 start out with an overview of the EMD industry and then talk  
5 about the impact that Australian and Chinese imports have  
6 had upon our business and industry over the period of  
7 investigation. I'd like to conclude with my concerns about  
8 the future and how the importance of our case is critical to  
9 the success of our plant and our continued ability to be an  
10 innovator in the portable battery market.

11 With that background now let me provide an  
12 overview of the EMD industry and the key drivers impacting  
13 the behaviors.

14 As you know from the pre-hearing reports, the  
15 demand for EMD is closely aligned with the demand for  
16 alkaline batteries. From our experience and from our  
17 customers over the long run demand for batteries and EMD is  
18 expected to grow. It is punctuated by periods of dramatic  
19 demand during hurricanes, other events such as happened in  
20 2005.

21 As you also know from the pre-hearing report, our  
22 industry is highly concentrated. There were four battery  
23 manufacturers -- Duracell, Eveready, Panasonic and Rayovac  
24 -- that accounted for approximately 100 percent of all U.S.  
25 EMD demand during the period of investigation. At the same

1 time there are three U.S. EMD manufacturers -- Tronox,  
2 Erachem and Energizer, a captive manufacturer -- accounted  
3 for approximately 50 to 60 percent of U.S. supply during the  
4 period.

5 As a consequence, imports clearly play an  
6 important and significant role in this industry. As data  
7 will show, Australia and China have come to dominate the  
8 U.S. import market. Taken together, China and Australia  
9 account for approximately 90 percent of all imports and  
10 roughly 40 percent of all U.S. demand. As such,  
11 China/Australia do, in fact, matter very importantly in this  
12 industry.

13 The other key dominating feature in our experience  
14 is the growth imbalance between global supply and global  
15 demand. According to Citic Dameng, a Chinese/U.S. EMD  
16 producers, global capacity in 2007 was approximately 428,000  
17 short tons while global demand over this period was 359,000  
18 short tons. The amount of excess supply, roughly 70,000  
19 short tons, is huge. In fact this represents approximately  
20 70 percent of all U.S. demand for EMD.

21 Now because of this global over-supply situation  
22 and because Australian and Chinese suppliers have been more  
23 than willing to sell below their cost of production, the  
24 better producers have been able to exert maximum leverage.

25 Now we certainly don't fault our customers and

1 this case is not about them, but the impact on Tronox and  
2 the industry has been dramatic in the form of unacceptable  
3 and unsustainable operating losses that Jack talked about.

4 With that background, let me talk a little bit  
5 about our experiences in marketing over the period of  
6 investigation.

7 As in prior years, our contracts were negotiated  
8 on an annual basis. The negotiation process typically  
9 involved competing bids for specified volumes.

10 In our experience, we were competing with all  
11 forms of qualified EMD. Let me be very clear. I'm not  
12 suggesting that EMD is, technically speaking, a commodity  
13 product.

14 As you heard in the pre-hearing report, and we've  
15 experienced it ourselves, EMD first needs to be qualified  
16 for a particular use in a customer's battery and in the  
17 various battery sizes.

18 In the case of Tronox we only produce a single  
19 grade of EMD. This single grade of EMD is qualified in both  
20 the large cells as well as in the small cells. So what  
21 we've heard and what we experienced first-hand is that once  
22 an EMD is qualified for use in a particular battery, it can  
23 be easily substituted. And Tronox has experienced first-  
24 hand that we have competed head to head with Chinese and  
25 Australian EMD in all the various cell sizes, both small and

1 large, over the period of investigation.

2 As a consequence, it is perhaps not surprising  
3 that pricing then becomes a dominant factor in sourcing  
4 decisions. Indeed, the mere fact that different EMDs can in  
5 fact be blended I think further speaks of substitutability  
6 and the degree of fungibility of EMD from various sources.

7 With that background let me say a few words about  
8 the impact that Australian and Chinese EMD has had over the  
9 period of investigation.

10 As Mr. Stater has explained, we've worked  
11 extremely hard trying to control, and actually have  
12 increased our controllable costs in real terms over the  
13 period of investigation. At the same time, though, we are  
14 forced, as the industry, with increased ore and natural gas  
15 prices over the period of investigation. Unfortunately,  
16 subject imports had a significant price-suppressing effect,  
17 running us from covering our costs and earning a profit.

18 By 2007 the writing was on the wall. Despite year  
19 to year cost increases, subject import competition undid any  
20 effort and increasing prices would be futile. In fact in  
21 2007 we reduced prices due to subject competition from China  
22 and Australia.

23 In short, Tronox, like the U.S. EMD industry, is  
24 caught in an untenable cost/price squeeze.

25 In 2007, moreover, due to import competition, we

1 lost significant volumes and were forced to further cut  
2 production, thereby increasing our unit costs and  
3 exasperating our financial performance.

4 By the time we filed our complaint we were faced  
5 with imminent closure of our plant. Now thankfully the  
6 filing of this case has had an improving impact upon our  
7 business in 2008. Unfortunately, it's not enough Industry  
8 continues to experience significant and unsustainable  
9 operating losses in 2008.

10 Tronox remains optimistic of antidumping relief.  
11 we can effectively compete on a level playing field. But I  
12 must say without antidumping protection, the outlook of our  
13 plant in the industry remains bleak. In particular, Tronox  
14 and the entire U.S. domestic industry is challenged with  
15 unprecedented increases in our ore costs as contracting year  
16 2008 expires.

17 For example, spot prices for manganese ore have  
18 increased by over \$15 per DMTU. Taken together this  
19 represents approximately a 45 cent per pound increase in the  
20 cost of making EMD. Without the discipline of antidumping  
21 orders, our prospects for passing these costs through are  
22 remote. If the Commission votes in the affirmative and  
23 orders are implemented, our prospects dramatically improve.  
24 We feel that for the first time in over three years we can  
25 approach our customers in 2009 with an eye towards

1 possibility.

2           Of course though, if we cannot return to  
3 profitability in 2009, then Tronox will have no choice but  
4 to evaluate the unfairly traded imports that continue to  
5 cause us material injury. If necessary, Tronox will further  
6 pursue trade remedies in order to ensure that all EMD  
7 imports, including future imports in Delta, South Africa,  
8 are indeed traded at fair value.

9           Having mentioned Delta, I would like to talk about  
10 the Australian situation from our perspective. We firmly  
11 believe that Delta's current strategy is to idle its  
12 Australian plant pending the result of investigations here  
13 in the U.S. and also in Japan. Even watching Delta very  
14 closely, we firmly believe that they can and will restart  
15 the plant if orders are not issued. Simply put, from our  
16 perspective an order against Australia is as important as an  
17 order against China.

18           Let me just convey my sense of optimism for the  
19 future. As Mr. Stater has explained to you, our company has  
20 long been a pioneer in the portable battery market and we  
21 are committed to continuing to lead and help innovate in  
22 this area. The need for high-performing batteries has never  
23 been greater and we believe with antidumping remedies  
24 American technology can and will remain a vanguard in this  
25 important area.

1           Furthermore, Tronox stands willing to continue to  
2 invest in this industry as we have done countless times in  
3 the past. Then, as now, we only need fair pricing to  
4 support reinvestment economics.

5           In closing I'd like to again reemphasize Tronox's  
6 commitment to EMD and the industry. I am confident we can  
7 return to profitability, continue to employ our workforce,  
8 and continue to help lead and innovate in the portable  
9 battery market. We only need a fair and level playing field  
10 which we believe can be secured with antidumping relief.

11           With that, let me now turn to Mr. Derby who will  
12 speak more about the case.

13           MR. DERBY: Thank you, Paul.

14           Good morning. My name is Joseph Derby. During  
15 the first half of the period of investigation I was Vice  
16 President of Electrolytica and Specialty Chemicals at Tronox  
17 and its predecessor Kerr-McGee. At Kerr-McGee I worked in  
18 EMD research, sales and marketing and business management  
19 over a 20 year period.

20           I left Tronox in 2006 and I'm currently an  
21 independent business consultant and an adjunct faculty  
22 member at Oklahoma City University.

23           I'm here today so that I can be a resource to you  
24 and answer any questions you may have about Tronox's  
25 marketing experience during my tenure, the first half of the

1 period of investigation.

2 I intend to limit my prepared remarks to two  
3 areas. First, I want to expand on Mr. Gutwald's concerns  
4 that Delta stands ready to restart its Australian plant.

5 Second, I want to share with you the untold story  
6 of Tronox's marketing experience at Panasonic and Spectrum.

7 As Mr. Gutwald just explained, Tronox does not  
8 believe that Delta has permanently dismantled its plant.  
9 What we think is really going on here is that Delta has  
10 simply idled its production and it's awaiting the results of  
11 this antidumping investigation and a Japanese antidumping  
12 investigation.

13 If the results of either case are favorable for  
14 Delta, Tronox believes that Delta will just resume  
15 production and dumping at the expense of domestic producers.

16 What I wanted to say on this point is that in my  
17 experience it is entirely feasible for an EMD producer to  
18 quickly restart EMD operation within a matter of weeks.

19 In 2003 imports forced Kerr-McGee to idle its  
20 Henderson plant and furlough its workforce. Then, after a  
21 petition was filed and market conditions improved, we were  
22 able to quickly resume production. In fact we were  
23 producing EMD within four weeks of signing a new contract  
24 with Duracell.

25 Mr. Stater's available to provide technical

1 insight into this accomplishment, but from a businessman's  
2 perspective the take-away is clear. Delta can quickly  
3 resume production if it wants to.

4 Finally, I wanted to say a few words about our  
5 actual experience about the Panasonic and Spectrum accounts.  
6 In this area we think it is important to set the record  
7 straight. The notion that we arrogantly made little or no  
8 effort to compete at Panasonic or Spectrum is just plain  
9 wrong. At Panasonic our EMD material has been qualified  
10 across all cell sizes for at least ten years. Although we  
11 did not sell to Panasonic in recent years, that does not  
12 mean that sales efforts were not attempted. On the  
13 contrary, relationships were maintained and numerous  
14 attempts were made to resume business both prior to and  
15 during the period of investigation.

16 But in 2005 when I approached Panasonic's  
17 purchasing manager, Bill Stevens, to explore sales for 2006,  
18 I got a very candid message. According to Bill, there's a  
19 good chance that Panasonic would be shut down by year's end.

20 Similarly, in 2007, I am told that Mr. Gutwald  
21 contacted Bill Stevens to explore sales for 2008 and Tronox  
22 got the same message. Sure enough, Panasonic permanently  
23 closed its doors in March of 2008.

24 So as far as Panasonic is concerned, the record is  
25 clear that Tronox made an understandable business decision

1 to focus its marketing on other, more dependable customers.

2 Now I've read Spectrum's case brief and I must say  
3 that I'm surprised by their characterization of our  
4 relationship. Going back to the 1980s Rayovac, Spectrum's  
5 predecessor, was once Kerr-McGee's largest customer and  
6 although our supply relationship changed over time, we  
7 always remained on good terms and continued to supply them  
8 intermittently in the 1990s.

9 In 2002 we produced EMD to their specifications,  
10 shipped truckload quantities for requalification trials, and  
11 our expectation was that we would be supplying substantial  
12 quantities to them in 2003. But those orders never  
13 materialized. It was at this time that Rayovac merged with  
14 Varda and we soon received clear feedback that we would need  
15 to meet cut-rate Chinese pricing in order to win volume in  
16 this account.

17 Since that time Spectrum has claimed that our  
18 material is too corrosive and abrasive and they have shown  
19 little interest in further qualification trials.

20 However, Tronox did not abandon sales efforts at  
21 Spectrum. In 2005 at the start of the current period of  
22 investigation, I made several attempt to meet with Bertrand  
23 Sheely in Germany, but he was always unavailable to see me.  
24 I did, however, remind him in phone discussions that Tronox  
25 remained interested in supplying EMD to Spectrum, but he

1 never would give me a call to initiate any business  
2 discussions.

3 Our take-away was that as long as Spectrum had  
4 access to cheap EMD from subject countries, any effort to  
5 requalify our material would be futile. Or put another way,  
6 why would Spectrum want to go through the time and effort to  
7 requalify Tronox's materials if Spectrum could already get  
8 qualified EMD from China and Australia at less than fair  
9 value?

10 That's all I have to say on this point, but I will  
11 be happy to answer any questions at the conclusion of our  
12 presentation.

13 I'll turn things over to Mr. Levy for concluding  
14 remarks.

15 MR. LEVY: Thank you.

16 There really isn't that much more to add.  
17 Tronox's witnesses have painted for you the picture of an  
18 industry that is going through an extraordinarily difficult  
19 period, and I think they've drawn the link that you require  
20 by statute between subject imports and the problems that  
21 they're having to deal with.

22 You also have before you a very thorough pre-  
23 hearing report which I believe corroborates everything  
24 they've said here today.

25 I want to thank the staff for their work in this

1 investigation and in particular the pre-hearing report. It  
2 is an extraordinary effort.

3 We have only one substantive objection to the data  
4 tabulated in that report, and it relates to the apparent  
5 domestic consumption data summarized at Table 4-7. We  
6 respectfully submit that these data are flawed and seriously  
7 distorted due to significant gaps in questionnaire responses  
8 and the outrageous lack of cooperation on the part of a  
9 certain company whose identity is confidential.

10 Fortunately for all of us, the pre-hearing report  
11 also contains data regarding actual EMD usage by all the  
12 major battery producers, nearly 100 percent coverage. Those  
13 reported data provide a very reliable picture of actual  
14 domestic consumption and market share trends during the  
15 entire period of investigation.

16 This is, to be sure, an unusual case in that the  
17 staff has been able to survey all of the major purchasers.  
18 As a result, you have before you a robust data set that is  
19 highly reliable and informative.

20 We would therefore ask you to rely primarily on  
21 these actual EMD usage data to analyze demand and market  
22 share trends during the period of investigation.

23 Now maybe the best use of my remaining time is to  
24 try to return to some of the fundamental points underlying  
25 this case. If I could bend your ear a little longer, I want

1 to make four points. Point number one, it is perfectly  
2 clear that over the period of investigation the U.S.  
3 industry is severely injured. I don't think anyone can  
4 seriously take issue with that conclusion.

5 Point two, subject imports competed head to head  
6 with domestic EMD at the major customer accounts during the  
7 period of investigation, and subject imports consistently  
8 undersold U.S. producers of 24 of the 25 quarters for which  
9 a comparison was available.

10 Point three, subject imports were unfairly traded  
11 and the preliminary dumping rates calculated by the Commerce  
12 Department are shockingly high. 120.59 percent for  
13 Australia. And 236.81 percent for China.

14 Point four, subject imports caused the cost/price  
15 squeeze. In fact the magnitude of the problem is quite  
16 evident from the data in Table 6-5 of the pre-hearing report  
17 which shows COGS as a percent of net sales increasing from  
18 87.5 percent in 2005 to 105.9 percent right before the  
19 petition was filed in Q1 of '978.

20 These points we think are all rather obvious.

21 One critical issue that I want to stress here is  
22 that we urgently need an order against not only China, but  
23 also Australia. Tronox has told you that they are  
24 mistrusting of Delta's claim that it stopped production in  
25 March of 2008 and that this is somehow a permanent shutdown.

1 As Tronox has told you from its own experience in 2003, it's  
2 entirely feasible for an EMD plant to restart production in  
3 the space of only four weeks if a company wants to.

4 We are very concerned that Delta would indeed  
5 restart its operations if for some reason we fail to get an  
6 order against Australia, or if Delta were to successfully  
7 defend itself in the ongoing Japanese antidumping  
8 investigations.

9 With respect to the Japanese investigation, we  
10 have heard Delta continues to spend resources actively  
11 defending its interests in that case.

12 Now I ask you, why is Delta spending time and  
13 money defending itself in Japan if as it claims its  
14 Australian plant is permanently closed? It makes no sense.

15 Finally, we have gone through the trouble of  
16 collecting satellite reconnaissance that corroborates our  
17 suspicions that Delta's Australia plant is fully operational  
18 and may still in fact be operating at some low level.

19 Now at Exhibit 3 of the materials we've  
20 distributed here today, which all of this is a reprint of  
21 what's in our case brief, but Exhibit 3 of the materials  
22 we've distributed here today, you see an image of Delta's  
23 plant from December of 2007. During this time, of course,  
24 the plant was running. You can see all the infrastructure  
25 is there. The cell house, the leaching circuit,

1 administrative buildings, the product packing building.  
2 There are cars here in the parking lot. Within this red  
3 circle, and this is important, you can actually see exhaust  
4 coming from the leach plant, right over here.

5 Now turn to Exhibit 4 of our material. This is an  
6 image of Delta's plant from May 19, 2008, two months after  
7 Delta's purported shutdown. What do we see here?

8 Again, all the infrastructure is apparently  
9 intact. Cell room, leaching circuit, packing building,  
10 administrative building and such. Again, there are cars in  
11 the parking lot. And interestingly enough, there is  
12 actually a truck here pulling out of the lot and given the  
13 angle of the turn it seems to be pulling away from the  
14 product packing building. Finally, in this red circle,  
15 right here, you can see exhaust coming from the leach plant.

16 The resolution's not great, but the image can be  
17 discerned.

18 I'm sure Mr. Stater can tell you from a technical  
19 standpoint, as the saying goes, where there's smoke there's  
20 production.

21 So on the Delta issue let me just say that it  
22 would be a colossal mistake for the Commission to take Delta  
23 at its word and conclude that there's no longer EMD  
24 production or capacity in Australia.

25 In closing, what I'd like to do if you have the

1 patience is to highlight some quotes from Delta and from the  
2 Chinese which are also quoted in our pre-hearing brief.  
3 They corroborate entirely what we have told you today.

4           If you turn to Exhibit 1 of the materials we've  
5 distributed, according to Delta, "Global demand for alkaline  
6 grade EMD continues to be more than satisfied by existing  
7 production capacity, particularly with additional capacity  
8 in China. Consequently, pricing remains very competitive  
9 and market selling prices have not afforded the recovery of  
10 higher ore costs and other cost increases. The response of  
11 battery manufacturers has been to suppress the price of EMD,  
12 taking advantage of the global supply of EMD and their  
13 strong purchasing power in the negotiation with EMD  
14 suppliers."

15           Now please turn to Exhibit 2 of our material.  
16 According to Citic Dameng, a Chinese EMD producers, "The  
17 entry of China's alkaline EMD into the world market which is  
18 traditionally dominated by producers from developed  
19 countries has structurally altered the dynamics of global  
20 EMD battery industries. The global EMD market remained  
21 over-supplied in 2007 and pricing was very competitive. The  
22 market selling prices have not afforded the recovery of  
23 higher ore costs and other input cost increases. The  
24 situation of the global EMD business will be extremely  
25 competitive and increasingly severe in the coming years."

1           These Respondents got it exactly right. The  
2 implications of this consistent pattern of global over-  
3 supply of EMD for the U.S. industry is obvious. The  
4 Commission has before it ample evidence to support an  
5 affirmative injury vote as to both China and Australia. The  
6 domestic industry is injured and subject imports are the  
7 cause.

8           The threat in the future is, if anything, worse  
9 than the present. The U.S. industry desperately needs this  
10 relief in order to compete on a level playing field and  
11 support its workers.

12           Thank you, and with that we look forward to your  
13 questions.

14           CHAIRMAN ARANOFF: Thank you very much, Mr. Levy,  
15 and thank you to all the witnesses who have made the time to  
16 join us today. We appreciate your taking the time away from  
17 your business. It's so helpful for us to hear directly from  
18 people in the industry in deciding these cases, so we're  
19 very appreciative.

20           We are going to start the questioning this morning  
21 with Vice Chairman Pearson.

22           VICE CHAIRMAN PEARSON: Thank you, Madame  
23 Chairman. Permit me to offer my welcome also. It's good to  
24 have you here. You're raised a number of issues that will  
25 be interesting to explore, but permit me to take a somewhat

1 disciplined approach and just begin with a discussion of  
2 apparent consumption.

3           Why do the various participants who have submitted  
4 information to us have such different views of what's  
5 happening to the consumption of EMD in the U.S. market? I  
6 know that Mr. Levy you indicated you thought the data in our  
7 staff report are incorrect, but what we've heard from some  
8 other participants would be consistent with what we have in  
9 the staff report.

10           Understanding that some of that is confidential,  
11 is there anything that you can tell us?

12           MR. LEVY: Let me try to respond to that because  
13 you're correct, there is a diversity of perspective on what  
14 is happening with demand, for example. And as we have  
15 indicated, there are questions regarding the reasonableness  
16 of the ADC Chart at Table 4-7.

17           With respect to demand, Mr. Gutwald testified that  
18 demand for EMD is tied very much to demand for alkaline  
19 batteries produced in the United States. It is generally  
20 the view that over time demand for alkaline batteries is  
21 growing. Large cells, demand for large cells is generally  
22 triggered by upticks in natural disasters like hurricanes  
23 and such. 2005, which was the year of Hurricane Katrina,  
24 there was indeed an uptick in demand for EMD in that cell  
25 size.

1           The smaller cell sizes, as I understand it,  
2 demand, and this is perhaps the most dynamic area, demand is  
3 driven by growing demand for portable electronic devices.

4           The issue here is that what EMD suppliers do not  
5 fully understand, and I'm not sure that even U.S. batter  
6 producers fully understand, is the extent to which that  
7 growth is being met by imports of small cell batteries from  
8 China or elsewhere, or whether it's being met by U.S.-  
9 produced batteries.

10           So on the demand from, certainly from the  
11 perspective of an EMD supplier, there's less than full  
12 information as to the link between demand for batteries on  
13 the one hand and demand for U.S.-produced batteries on the  
14 other. So I think that partially explains some of the  
15 confusion with respect to demand trends as a whole.

16           With respect to market share trends I think our  
17 pre-hearing brief explains in a little more detail why we  
18 are distrustful of these data, and fundamentally it's  
19 because the datasets are incomplete. What the staff was  
20 forced to do was to use as a plug other data sources as  
21 surrogates, which by their very nature invite the prospect  
22 of distortion.

23           But let me just emphasize again, this is a very  
24 unique case because there are demands for U.S. battery  
25 producers, and what you have before you and what the staff

1 has tabulated for you is a table. Of course it is  
2 proprietary, but I believe it is at page 2-8 of the public  
3 version and the proprietary version of the report. This  
4 table reports combined EMD usage of U.S. battery producers.

5 So what you have in this table for the period of  
6 investigation is the actual consumption of EMD by  
7 essentially 100 percent of U.S. batter producers, the  
8 customers, during the period of investigation and you can  
9 see what the trends are by source, and you can understand  
10 demand in terms of actual, not apparent, actual U.S.  
11 consumption and what the market share trends are.

12 So despite the diversity of opinion as to what's  
13 going on with demand and market share and debates about  
14 whether the traditional ADC chart is probative of what's  
15 going on, let us be clear, you have before you definitive  
16 and complete data that answer this question for you.

17 The industry to be sure is in the dark, but you,  
18 Mr. Vice Chairman, have better information than anyone in  
19 the industry.

20 VICE CHAIRMAN PEARSON: I would note that the  
21 trend is similar, regardless of whether one looks at the  
22 table on page 2-8 or whether one looks at the apparent  
23 consumption data that are available in the public version.

24 Have you had an opportunity to discuss this  
25 difference on data with our staff?

1 MR. LEVY: Not at length, but I think your  
2 observation is correct. 2005 was a little bit of a blip  
3 because of Hurricane Katrina, and what you see fundamentally  
4 over the range of the POI is that demand is more or less  
5 flat. It's wobbling around, but the medium and long-term  
6 prospects are one of growth in the opinion of Tronox.

7 VICE CHAIRMAN PEARSON: There may be a certain  
8 flatness to the trend, but it looks to me like it's a  
9 downward leaning flatness, if you will.

10 My experience with our staff is that they are  
11 quite interested in putting together data for us that are as  
12 comprehensive, thoughtful and accurate as possible. I have  
13 not spoken to them about this, but I would guess they may  
14 have some thoughts on whether the data that they've  
15 presented here in the C tables, why they think it's better  
16 than other data. I have little doubt that they do think  
17 it's better or they would have used other data.

18 Madame Chairman, would it be in order for me to  
19 raise this question with our staff? It seems to me not an  
20 irrelevant issue for our hearing today.

21 CHAIRMAN ARANOFF: That's fine, as long as they  
22 think they can say something on the public record.

23 VICE CHAIRMAN PEARSON: Staff, are you able to say  
24 something about this issue on the record that would provide  
25 any clarification for us now? And if not now, obviously we

1 can get into it prior to the vote. It's not my intention to  
2 put you on the spot, it's just that I'm curious about this.

3 MS. TRAINOR: I'm concerned about getting into  
4 confidential information that I briefly discussed with Mr.  
5 Levy. I'd be happy to discuss the issue with any and all of  
6 the Commission off the public record.

7 VICE CHAIRMAN PEARSON: That's fine. I just  
8 wanted to raise it because if you had something to say at  
9 the moment I'd be glad to hear it. Otherwise, I'll be glad  
10 to hear it later.

11 MS. TRAINOR: However, I do stand by what the  
12 staff has done in terms of compiling their data. It's  
13 consistent with precedents set in many other reports. I  
14 believe the data is as good as we would have gotten  
15 elsewhere.

16 VICE CHAIRMAN PEARSON: So you see no difficulties  
17 with my statement that the staff normally make a good effort  
18 to give us the best possible report. You would see that as  
19 being correct in this case.

20 MS. TRAINOR: Yes. And actually, I did the  
21 calculations very quickly but the results, as I believe you  
22 stated, are very similar if you use the usage or if you use  
23 the questionnaire data in calculating apparent consumption  
24 versus actual usage. The trends are the same.

25 VICE CHAIRMAN PEARSON: Thank you very much.

1           MR. LEVY: Mr. Vice Chairman, if I might add, just  
2 to clarify, it is our position that the staff used the best  
3 information reasonably available to it in compiling the ADC  
4 charts based on shipment data. However, our position is  
5 that because of the lack of cooperation on the part of a  
6 party, their ability to do their job was materially impeded.  
7 So therefore, we rely primarily, and we suggest that you do  
8 the same, on actual usage data during the period.

9           Thank you.

10          VICE CHAIRMAN PEARSON: Thank you. I'm sure we'll  
11 learn more about this as we, from what we might learn from  
12 you in the post-hearing brief, and then as we prepare to  
13 vote on this case.

14                 Do you have a sense of how much of the possible  
15 decline, the decline shown in the C tables in apparent  
16 consumption, how much of that might be due to the shifting  
17 of battery production from the United States to other  
18 countries?

19          MR. GUTWALD: Again, we're not the experts in any  
20 sense of that word, but --

21          VICE CHAIRMAN PEARSON: Of course, but you do sell  
22 to customers and you might hear from them --

23          MR. GUTWALD: I just want to echo that at least  
24 from our customers' feedback and perspective, what we heard  
25 over the period is that in some cases demand was off but in

1 some cases it was slightly down. So our perspective and  
2 experience from our customers is that demand was effectively  
3 flat.

4 What might have happened for 2005, which would be  
5 supported by our customers' comments, as you know in 2004  
6 and 2005 there was very high hurricane activity. So --

7 VICE CHAIRMAN PEARSON: What kind of activity?

8 MR. GUTWALD: Hurricane. Excuse me. So that it  
9 has the potential, as you can imagine, to create a surge in  
10 demand. Mr. Derby can speak years back how that has created  
11 surges of demand which may have I guess overstated the  
12 consumption in 2005 from the inherent growth. That does  
13 happen.

14 Mr. Derby, do you want to comment from your  
15 experience?

16 MR. DERBY: Yes, that is correct.

17 If you look at the difference in the battery sizes  
18 on the table, the D size batteries are typically used for  
19 hurricanes or people to have flashlights, or even bigger  
20 batteries for lanterns. When you have a situation like what  
21 happened with Katrina, the demand was just tremendous in  
22 '05. Battery companies plan for hurricanes. They stock  
23 materials. But in the case of '05 it far exceeded their  
24 plans.

25 I can also say from last winter in Oklahoma when

1 our power went out for a week, I used a lot of batteries.

2 (Laughter.)

3 VICE CHAIRMAN PEARSON: Thank you. I don't think  
4 it's run by batteries, but my light has changed, so --

5 (Laughter.)

6 VICE CHAIRMAN PEARSON: -- Madame Chairman, back  
7 to you.

8 CHAIRMAN ARANOFF: Thank you.

9 Commissioner Okun.

10 COMMISSIONER OKUN: Thank you, Madame Chairman. I  
11 join my colleagues in welcoming all of you here today. I  
12 appreciate your willingness to testify and to answer our  
13 questions. It's very helpful.

14 Mr. Levy, I want to start with a couple of legal  
15 questions for you, and certainly questions that I hope  
16 you'll address post-hearing as well to expand on them.

17 I understand the argument you're making with  
18 respect to the Australian production, that you believe it  
19 can be restarted quickly, and I have some questions about  
20 that that I think I'll direct to Mr. Derby.

21 As a legal matter, if when we get to vote day I  
22 look at the record evidence and think that the evidence  
23 supports the production has been shut down and is not likely  
24 to restart in a year, it will take a while to get up, as a  
25 legal matter do you think that first, does it affect my

1 decision on whether to cumulate Australia with China if I  
2 believe there is no longer any production as of that date.

3 And second, for purposes of present material  
4 injury, how should I take into account looking at the line  
5 of cases, I think Spectrum cited one case. There is  
6 another, they cited the Salmon case from 1995. There have  
7 been others afterwards to talk about the Commission needing  
8 to consider changed circumstances which occur before vote  
9 day.

10 So walk me through your legal arguments on those  
11 two points.

12 MR. LEVY: Sure. We will of course address this  
13 in detail in our post-hearing submission.

14 You know as a factual matter our position is  
15 clear, there was production and sale of EMD during every  
16 month of the period of investigation on the part of Delta,  
17 and that capacity, if not production, remains intact.

18 If you were to conclude on vote day that, and we  
19 view this to be counter-factual, but if you were to conclude  
20 on vote day that there was no longer a plant there, that it  
21 is now a bulldozer had gone through, we still believe you  
22 would have the authority to issue an order against Australia  
23 and to cumulate Australia based upon the facts in the record  
24 for the period of investigation.

25 I will elaborate on that and the legal points in

1 our brief, but I want to be clear that this remedy vis-a-vis  
2 Australia is viewed by Tronox as essential to the  
3 effectiveness of the case.

4 COMMISSIONER OKUN: And so I'm clear on some of  
5 the things I'd like you to address, and again you can note  
6 this as well. Tell me how you view and whether you think of  
7 any subsequent cases and law, post 1995 Uruguay Round,  
8 changes what the Court said where it talks about whether the  
9 imposition of remedial duties is warranted to afford  
10 perspective relief to the domestic industry which would  
11 otherwise experience further injury due to the continued  
12 importation of unfairly traded merchandise.

13 The footnote in the case goes on to talk about the  
14 antidumping duty laws as being, of course, prospective in  
15 nature not penal and therefore you can't punish something  
16 that happened in the past if it's not continuing, would not  
17 be prospective relief.

18 What do you think that means in a case like this?

19 MR. LEVY: We will deal with that as thoroughly as  
20 we can in the post-hearing submission. But I would point  
21 out that under the worst case scenario which is one that you  
22 issue an order against Australia and there's no production  
23 in Australia, how is that punitive as to anyone? It would  
24 simply be a nullity --

25 COMMISSIONER OKUN: How is it prospective, I guess

1 that's my question. That's what I think is curious about  
2 the, not curious, but the case law talks about that. In  
3 other words, if there is no production, there is no  
4 prospective relief, right? That's what I'm trying to  
5 understand what you think the Court means by that. Again,  
6 it's not saying there weren't imports during the period of  
7 investigation, there clearly are.

8 MR. LEVY: We will do our best to address that  
9 concern in our post-hearing submission. Again, with an eye  
10 to sort of thinking about this from a policy perspective.  
11 How can it be that in every case a Respondent can throw up  
12 their hands and say we've idled our plant, so don't impose  
13 an order, and what kind of perspective remedy does that  
14 provide for domestic industry if that is taken at face  
15 value?

16 COMMISSIONER OKUN: On that point I think the  
17 Commission obviously shouldn't take anything at face value  
18 in conducting our analysis, and we will be looking at the  
19 evidentiary evidence on the record. Again, I agree with  
20 you, if someone could just say yes, we plan to shut down,  
21 that shouldn't be sufficient. Although you might want to  
22 look at some of the cases. There have been cases of what  
23 the Commission got prior to record closing was that there  
24 was going to be a plant shutdown without any other  
25 information.

1           On the evidentiary side, just a couple of things I  
2 wanted to clarify. The satellite image that you show for  
3 the May date, and I believe you cite a satellite imaging  
4 Ikonos Satellite images. Can you help me understand when  
5 you pulled this up, that satellite imaging is taken on that  
6 day? In other words, it's not like a Google map. I have a  
7 2008 navigation, but it's not a day satellite, they shot  
8 that in whatever, it may have been shot in January and it's  
9 going to show up on my navigation. I may drive to the wrong  
10 place because it's not a current map; as opposed to this  
11 satellite image which, is it taken on that day and can you  
12 provide some verification of that?

13           MR. LEVY: Yes. Just to confirm, this is an image  
14 that we've captured by the Ikonos Satellite on May 19, 2008,  
15 in daylight. It was subsequently made available to us some  
16 weeks later when the satellite downloaded the data to a base  
17 station, and it was processed and made available to us. But  
18 this is actual activity on May 19, 2008, with cars in the  
19 parking lot, a truck pulling out, and exhaust from the leach  
20 plant.

21           COMMISSIONER OKUN: That's helpful to me. If you  
22 can just make sure in your post-hearing that you have that  
23 for a factual matter so we understand it was downloaded and  
24 current as of that day.

25           Mr. Derby, if I could turn to you with regard to

1 the map. You had stated in your testimony, you give the  
2 example of Kerr-McGee and talked about the feasibility of  
3 restarting in a very short amount of time.

4 Help me understand, I haven't toured a plant, I  
5 actually would have liked to have gone to one of these  
6 plants. I've been here a long time, have toured a lot of  
7 plants, but not an EMD factory yet.

8 Help me understand what's going on and what that  
9 would mean in terms of restarting production. In other  
10 words, inside those covered buildings I assume there's a lot  
11 that has to do with the production.

12 MR. DERBY: Yes. Inside the covered building  
13 which is labeled the cell house, that's where the  
14 electrolytic plating of the EMD would occur. Backwards from  
15 that in the leaching is where the manganese solution is  
16 prepared and purified. That's fed to the cell house, then  
17 the manganese is plated on to the electrodes in the form of  
18 EMD.

19 COMMISSIONER OKUN: When one is looking at a  
20 facility like this, where is the big money in terms of what  
21 cost the most? In other words, if you're looking at this,  
22 where are the big costs?

23 MR. DERBY: I think the cell house is the biggest.  
24 The type of electrodes that are in it, typically they're all  
25 titanium, quite expensive materials that the EMD is plated

1 onto. The electricity connections and bus bars and the  
2 controls, it's the most critical part of the operation.

3 COMMISSIONER OKUN: Okay, so you have to have that  
4 in there.

5 MR. DERBY: Yes.

6 COMMISSIONER OKUN: So in looking at this if I  
7 don't know what's inside that cell house and if things were  
8 gone from that cell house, would that be expensive then? If  
9 you had to reacquire what was in a cell house, would it then  
10 be feasible to restart quickly? Is it just a matter of --

11 MR. DERBY: No. If you had to reacquire what was  
12 in it, it would not be. As long as what was in it was still  
13 there, you could readily start it back up, like what we did.

14 COMMISSIONER OKUN: So that was the Kerr-McGee  
15 experience.

16 MR. DERBY: Yes.

17 COMMISSIONER OKUN: Nothing had been physically  
18 removed from any of, not this facility, but the Kerr-McGee  
19 facility. Therefore shutting it down doesn't, is just a  
20 matter of turning things back on.

21 MR. DERBY: That's correct. It was idled.

22 COMMISSIONER OKUN: I think Mr. Stater wanted to  
23 add something.

24 MR. STATER: I would add one thing. As Joe is  
25 saying, you can literally turn off the power to an

1 electrolytic cell like you'd turn it off to a light bulb.  
2 As long as that bulb's still there, you turn it back on and  
3 it starts running.

4 You may have to empty the solution out of that  
5 cell to a tank so that you don't have corrosive actions  
6 taking place in the tank, but the minute you put it back in,  
7 you turn it on and you're back to producing.

8 COMMISSIONER OKUN: In terms of the restarting of  
9 this particular facility, if it were to be another producer  
10 besides Delta in Australia, and I don't know if you have any  
11 information on whether there's someone who might be likely  
12 to buy this. What you're talking about would be it's easy  
13 if that company were to move to this facility, as opposed to  
14 moving, how much more difficult and how much more costly if  
15 you were moving all this to another place.

16 MR. DERBY: It would be easy for them to come in  
17 and restart it, but moving it to another place would take  
18 quite a long time. It would be a much more difficult  
19 enterprise. It would be like building another plant, and  
20 that would take a year or something like that.

21 COMMISSIONER OKUN: My light's come on, but thank  
22 you very much. It's helpful to have a better understanding  
23 of that. Thank you.

24 MR. LEVY: Commissioner, could I add just one  
25 point?

1 COMMISSIONER OKUN: Yes.

2 MR. LEVY: I would just refer you to Exhibit 5 of  
3 our pre-hearing brief which is material from a company  
4 called Hightech Energy which in December of 2007 disclosed,  
5 and again this is an Australian company, that it has  
6 conceptual designs for EMD plants including one in  
7 Australia, and that those plans are being progressed now.  
8 So when one speculates as to whether in the alternative this  
9 plant or its assets might be attractive to another buyer,  
10 you need not look very far to find where such a candidate  
11 might be.

12 COMMISSIONER OKUN: If you have any other  
13 information post the announcement from Delta that these may  
14 have expressed an interest. The same thing, obviously,  
15 gain, just looking for whatever information is available on  
16 the record for us to consider.

17 Thank you very much, Madame Chairman.

18 CHAIRMAN ARANOFF: Thank you.

19 Commissioner Lane?

20 COMMISSIONER LANE: Good morning. Thank you all  
21 for coming.

22 Mr. Levy, you anticipated one of the questions I  
23 had which was I was just going to ask you if anybody had  
24 gone over to Australia to check out whether or not Delta had  
25 closed its operation. So you really have one-upped me there

1 by showing the satellite images which is pretty impressive.

2 Are you going to give us an update in your post-  
3 hearing submission to show us where we are now as to whether  
4 or not the Delta appears to be still in existence over  
5 there?

6 I'm not asking that you do that, I'm just asking  
7 if you are.

8 MR. LEVY: The answer is that we have a contract  
9 that entitles us to one more capture, and we are endeavoring  
10 to do that.

11 The issue is that there's quite a lag between the  
12 request for an image, the capturing of an image, and then  
13 the download of that image to a base station.

14 The alternative is always to commission sort of an  
15 overflight by a plane sort of like they did in the Cuban  
16 Missile Crisis, but that is quite costly an exercise.

17 And I would respectfully submit that if this is a  
18 central factual issue of concern to the Commission, that  
19 what would be warranted here would be an on-site  
20 verification by the Commission staff.

21 COMMISSIONER LANE: Or perhaps a Commissioner, is  
22 that what you're suggesting?

23 (Laughter.)

24 MR. LEVY: We have no objection to that,  
25 Commissioner.

1 COMMISSIONER LANE: Thank you.

2 I want to go back to the 2003 case. In our  
3 preliminary investigation in 2003, based on data through  
4 2002, the Commission found that imports of EMD from China  
5 were negligible, at less than three percent.

6 The Commission also determined that EMD from China  
7 would not eminently account for more than three percent of  
8 the total volume of EMD imports into the United States.

9 The Commission cited one, little excess capacity  
10 in China; concentration on the home market; quality of  
11 Chinese EMD; and the difficulties of the qualification  
12 process; and exports to other markets; and the high cost of  
13 expanding production facilities as indications that EMD from  
14 China would not likely rise to above three percent.

15 However, by the beginning of the POI in this case  
16 or within three years, we are looking at a very different  
17 picture for the volumes and percentages of imports from  
18 China.

19 Do you think there was a data problem in 2003 or  
20 was the Commission misled? Or was there a significant  
21 change in the focus of the Chinese industry? And why do you  
22 think the level of Chinese imports looks so different in  
23 2005 through 2007 than they did in 2002?

24 MR. LEVY: thank you for that question.

25 I distinctly remember sitting in this room in 2003

1 at the ITC staff conference when in 2003 Chinese import  
2 volumes were only 607 short tons. I remember Chinese  
3 witnesses swearing that they had neither the capacity nor  
4 the will to ship more volume in the future. Then Kerr-McGee  
5 knew this to be a lie based on their marketing experience at  
6 the customer accounts. They knew from their conversations  
7 that substantial Chinese volumes were waiting in the wings  
8 to supplant them.

9 Sure enough, as you indicate Madame Commissioner,  
10 in 2004 imports from China rose. They didn't rise, they  
11 skyrocketed to 12,486 short tons. The margin of the  
12 increase is nearly 2000 percent over the prior year.

13 So indeed, Kerr-McGee's concerns about Chinese EMD  
14 were well founded and the threat of injury that they alleged  
15 was quite real.

16 So I do believe, respectfully, that the staff and  
17 the Commission was misled by Chinese responses in 2003, and  
18 that the presence you see during the period of investigation  
19 is real, and what the data portends, the problem will only  
20 be aggravated going forward.

21 COMMISSIONER LANE: So do you think that since  
22 that earlier case the Chinese capacity has actually  
23 increased or do you think that we just have more information  
24 about it now?

25 MR. LEVY: In my experience I think both have

1 happened, quite frankly. I think from our data, and Mr.  
2 Derby can comment, there has always been that capacity in  
3 China. What's more even compelling in my opinion, over that  
4 time period they have added more capacity than there is for  
5 the entire U.S. industry in the last four years. So I think  
6 they were willing to do it, they were capable of doing it,  
7 they've continued to do it and I think the threat continues  
8 to be more imminent as we go forward without some type of  
9 relief.

10 COMMISSIONER LANE: Thank you.

11 Mr. Levy, you have withdrawn your allegations of  
12 critical circumstances at Commerce. What is the status of  
13 Commerce's determination of critical circumstances, and does  
14 that withdrawal of the allegation automatically remove  
15 critical circumstances as an issue in this case?

16 MR. LEVY: Thank you for the question on critical  
17 circumstances.

18 If you refer to Exhibit 5 of our materials that we  
19 distributed today, this simply summarizes official import  
20 statistics from the ITC data web. If you look at this you  
21 can understand why we initially alleged critical  
22 circumstances. In the period shortly after the filing of  
23 the petition there appeared to be a surge in imports from  
24 Australia to the tune of 140.5 percent. But over time as  
25 more data became available, the import patterns persuaded us

1 that the allegation was no longer supported by the facts;  
2 that there is a very high bar for critical circumstances set  
3 under the statute; and to be clear, we have no interest in  
4 over-reaching where Tronox's credibility is on the line. We  
5 may very well be back here alleging threat of injury from  
6 South Africa, and Tronox needs its credibility before this  
7 Commission.

8 What we have therefore done is to withdraw our  
9 allegation before the Commerce Department. Our expectation  
10 is that one way or another the Commerce Department's final  
11 determination will be negative as to critical circumstances,  
12 and under those circumstances you are not required to render  
13 a vote.

14 In the unforeseen event that the Commerce  
15 Department final determination of critical circumstances is  
16 affirmative when it is released on August 11th, we will  
17 brief the issue before the Commission and our position will  
18 be that on the merits, critical circumstances as a remedy is  
19 not warranted. We would be prepared to take that step in  
20 our post-hearing submission if warranted.

21 COMMISSIONER LANE: Thank you.

22 Now I want to go to the issue of whether or not  
23 this is a commodity product. Staff report at pages 112  
24 indicates that Tronox contends that EMD has become a  
25 commodity like product. The Respondents when they were here

1 challenged that.

2 In your pre-hearing brief you argue that EMD for  
3 different sources are highly substitutable and the key  
4 factor in purchasing decisions is price. This is all  
5 related to a substitutability analysis which is different  
6 than your Bratsk argument as to whether EMD is a commodity  
7 product. In fact on page 34 of your pre-hearing brief you  
8 specifically state that EMD is not a commodity product for  
9 purposes of a Bratsk analysis.

10 Could you please explain your view of the  
11 differences between an analysis of substitutability for  
12 purposes of determining when there is an overlap of  
13 competition between products and when a product is a  
14 commodity product for Bratsk purposes?

15 MR. LEVY: The answer I think needs to be a little  
16 nuanced and we will do our best to address that in our  
17 post-hearing submission.

18 What I would simply say is that Mr. Gutwald's  
19 testimony is that EMD inherently is not a fungible or  
20 commodity product within the meaning of Bratsk insofar as it  
21 first needs to be qualified before it can be substituted  
22 with competing sources of EMD. That is the factual reality  
23 and one that we stand behind. I will do my best to  
24 interpret that in the context of Bratsk.

25 Like the Commission, we continue to struggle to

1 find reason in the Bratsk line of case law and we will do  
2 our best to bring that to bear in our post-hearing  
3 submission.

4 COMMISSIONER LANE: Thank you.

5 Thank you, Madame Chair.

6 CHAIRMAN ARANOFF: Commissioner Williamson?

7 COMMISSIONER WILLIAMSON: Thank you, Madame  
8 Chairman. I too want to thank the witnesses for their  
9 testimony and coming here today.

10 Mr. Derby, you talked about the question of  
11 qualification when you were talking about the situation with  
12 Spectrum. How much trouble, roughly how expensive is it to  
13 do this qualification? And how time consuming is it?

14 MR. DERBY: It can be quite time consuming and  
15 we've spent quite a bit of time working on qualification. I  
16 should say requalification with Spectrum. It really depends  
17 on the battery company and how quickly they want to move  
18 with it.

19 We've had experiences where we've had EMD  
20 qualified very very quickly, in a matter of a few months,  
21 and also experiences where it can be a matter of 12 months.  
22 It depends on to what extent they want to do testing, how  
23 much work needs to be done. If it's a new formulation by  
24 the battery company, it probably will take longer. I think  
25 in our experience with Rayovac, it was actually a new type

1 of a formulation they were doing and it took longer and we  
2 spent a lot of time and resources working on that.

3 It requires a technical team of PhD chemists and  
4 marketing people working together with their similar people  
5 in their company to accomplish a qualification.

6 COMMISSIONER WILLIAMSON: Is it more burdensome or  
7 more expensive, let's say, for the battery maker or for the  
8 EMD supplier?

9 MR. DERBY: I think --

10 COMMISSIONER WILLIAMSON: Roughly.

11 MR. DERBY: It's probably a bit more for the  
12 battery maker, because they have to make batteries from the  
13 materials and then follow them through quite a long period  
14 of time of testing. They have to do shelf life tests and  
15 quite a bit more testing than what we would do with just  
16 helping them understand our product.

17 But it's certainly not inexpensive for the  
18 supplier because it ties up our technical resources with  
19 them very closely.

20 COMMISSIONER WILLIAMSON: Thank you.

21 I'm not sure who this would be for. Do you think  
22 rechargeable and other high tech batteries will increasingly  
23 substitute for batteries using EMD? And are there other  
24 factors that will likely affect domestic and global demand  
25 in EMD?

1 MR. GUTWALD: Perhaps we can tag team this here.  
2 I know Mr. Derby has experience in the rechargeable market,  
3 as we also make a product for that segment.

4 I guess my answer to you is we're not the experts  
5 so I can only speculate at this time.

6 It appears to us that in the short term that is  
7 not the case. That Americans apparently continue to have a  
8 preference for the disposable nature of primary batteries.  
9 But that's not to say that increasing trends may in fact  
10 point otherwise. I guess it depends a lot on consumer  
11 tastes and the technologies.

12 There clearly is a price differential between  
13 rechargeable fragile batteries and primary batteries. So I  
14 guess the jury is still out.

15 But our experience in the period of investigation  
16 is that that really was not a key driver in any sense of the  
17 word. In fact --

18 COMMISSIONER WILLIAMSON: Your experience in what?

19 MR. GUTWALD: During the period of investigation  
20 that definitely was not a driver in terms of overall demand.

21 MR. DERBY: The battery companies have told us  
22 that growth rate has dropped down from the very high growth  
23 in the 1990s where there's double digit growth for alkaline  
24 batteries, now it's in the three to five percent range.  
25 That's what they base their forecasts on annually.

1           The rechargeables are a different market and they  
2     require people to do something, you have to recharge your  
3     batteries and plan ahead to do that. We're a throw-away  
4     type society and when people want batteries or need to use  
5     like a flashlight or something, they'll always be using  
6     alkaline batteries.

7           COMMISSIONER WILLIAMSON: By the way, do the  
8     throw-aways, does the charge last longer with them than with  
9     the rechargeables, or significantly longer?

10          MR. DERBY: It would depend on the device and  
11     exactly what you'd be talking about.

12          COMMISSIONER WILLIAMSON: I'm trying to figure out  
13     for personal experience.

14          To what extent if any do patents and patent  
15     license agreements affect competition in the U.S. market for  
16     EMD?

17          MR. DERBY: I don't think there's much impact on  
18     patent or patent license agreements on EMD competition for  
19     alkaline battery grade materials.

20          COMMISSIONER WILLIAMSON: Pretty standard  
21     technology at this point?

22          MR. DERBY: Yes. The technology's been around  
23     for, at the Henderson plant over 50 years they've made EMD.  
24     So it's quite advanced.

25          COMMISSIONER WILLIAMSON: Mr. Stater, you did

1 discuss the efforts of Tronox to improve battery production,  
2 technology and all. I was just wondering, is innovation  
3 more likely to come from the battery manufacturers or from  
4 EMD suppliers?

5 MR. GUTWALD: If I could comment, and Rick, you  
6 can chime in.

7 Back in the late 1990s Tronox undertook the  
8 development of a high power discharge battery. That was,  
9 quite frankly, directed at the coming advent of digital  
10 devices like photography and so forth. So really the EMD is  
11 the engine, so to speak, of the battery.

12 Having said that, nothing can be done without  
13 close cooperation with our customers. Quite frankly, that  
14 high drain technology, which is a patent, which by the way  
15 Delta continues to challenge us on, is increasingly --

16 COMMISSIONER WILLIAMSON: Your microphone, sir.

17 MR. GUTWALD: I'm sorry, excuse me.

18 Just to comment again, that high drain technology  
19 which is patented by Tronox, that was developed in  
20 cooperation with our customers. So since EMD really is the  
21 engine of a battery, quite frankly, neither one or the other  
22 can do it independently. So innovation is going to be a  
23 very important part of the process.

24 I think Tronox, quite frankly, from our patents  
25 and work with our customers, has demonstrated a pioneering

1 commitment towards that. We continue to explore other uses  
2 for EMD to further improve the performance of primary  
3 batteries in today's market.

4 COMMISSIONER WILLIAMSON: Thank you.

5 Some battery producers reportedly blend EMD from  
6 different sources. Do you believe this practice will  
7 continue or will it decline as EMD quality improves?

8 MR. GUTWALD: In my opinion, as Jack, Mr. Levy  
9 said, once an EMD is in fact qualified, it is substitutable.  
10 So I guess by definition it's not a technical issue, per se,  
11 for blending, but more of a commercial issue. In that  
12 regard, I think pricing probably will dictate whether or not  
13 blending and the fungibility of EMD in fact changes or not.

14 COMMISSIONER WILLIAMSON: What trend would you say  
15 about the Chinese producers in general? Are they, is the  
16 product becoming higher quality, or --

17 MR. GUTWALD: It's been our experience, obviously,  
18 that the Chinese have added more capacity. As I mentioned,  
19 they've added something like 70,000 tons in the last three  
20 or four years. So the material has been of sufficient  
21 quality obviously to be competing with us head to head in  
22 all these various sizes. So from our perspective, the  
23 quality is sufficient right now to be a viable alternative  
24 for the material produced elsewhere.

25 COMMISSIONER WILLIAMSON: But you can't say

1 whether or not you think that more and more of their  
2 manufacturers are going to be using higher and higher  
3 quality EMD?

4 MR. GUTWALD: Again, I can only speculate on the  
5 trends, how they continue to add capacity, how they've  
6 continued to grow as we've heard from 2003 go present areas,  
7 and would fully expect that trend to continue. They have  
8 the capability and technology.

9 MR. DERBY: I think their quality has improved  
10 through the years and they have worked themselves in close  
11 conjunction with the battery industry. I think we should  
12 expect their quality to continue to improve. They have  
13 improved it substantially over certainly the last seven  
14 years, and I would expect it would continue on the  
15 improvement side.

16 COMMISSIONER WILLIAMSON: Thinking about  
17 consumption of batteries in the United States in the future,  
18 if a manufacturer say manufactures a product overseas, it  
19 includes the batter with the product, it's probably maybe a  
20 foreign battery, so is there something like original  
21 equipment batteries, might you say? Is that a factor in  
22 terms of consumption?

23 MR. GUTWALD: Again, I can only speculate because  
24 we're not the experts, but as my son buys many devices you  
25 can see, as you well know, that the OAM batteries appears to

1 be coming increasingly from overseas. But having said that,  
2 given the cost of logistics any more, one wonders whether  
3 that strategy in fact is justified, the economics of doing  
4 that going forward.

5 COMMISSIONER WILLIAMSON: In what sense? The cost  
6 of the battery?

7 MR. GUTWALD: The cost of transportation. For  
8 example, we understand one of our customers is really  
9 looking at sourcing in third countries because the cost of  
10 transportation of materials is so high. It does almost  
11 suggest that locational advantage does make sense, and hence  
12 producing batteries in the U.S. may override the OAM import  
13 with the device itself.

14 COMMISSIONER WILLIAMSON: In other words, you  
15 would put the batter in when you get it here, the product  
16 here, or --

17 MR. GUTWALD: Certainly. To your point I think it  
18 would be fair to say that more and more devices do come with  
19 batteries from overseas, and that probably has impacted  
20 slightly perhaps the consumption. But long term, who knows  
21 how that strategy will play out.

22 COMMISSIONER WILLIAMSON: Thank you for those  
23 answers.

24 CHAIRMAN ARANOFF: Commissioner Pinkert?

25 COMMISSIONER PINKERT: Thank you, Madame Chairman,

1 and I'd like to join my colleagues in thanking the panel for  
2 coming here and giving us the benefit of your experience and  
3 your knowledge today.

4 I'd like to begin with a question for Mr. Levy  
5 about the legal analysis that we should apply with respect  
6 to cumulation in the present injury context. And I note  
7 that one of the issues that we have looked at in the past is  
8 simultaneous presence in the market. Simultaneously present  
9 with respect to various products and with respect to the  
10 domestic like product.

11 I'm wondering, given the testimony or given the  
12 information that we have about Delta, how do we do the  
13 simultaneous presence analysis for purposes of cumulation in  
14 a present injury context?

15 MR. LEVY: What I would propose you do and what we  
16 set out in our pre-hearing brief and we can perhaps lay out  
17 in a more transparent matrix in our post-hearing brief, is  
18 that for the entirety of the period of investigation from  
19 January of 2005 through March of 2008, you look at EMD from  
20 Australia, EMD from China, and EMD sourced from the United  
21 States at each of the customer accounts in each of the  
22 battery cell sizes and you ask essentially a binary  
23 question, was material sold into that segment? I think what  
24 you'll find is that for many, in fact the lion's share of  
25 all of those segments as I just described them, that you

1 will see a presence during the period of investigation by  
2 Australia, by China, and by U.S. producers, that at the  
3 major customer accounts they are competing head to head  
4 during the period of investigation. I think that in the  
5 most transparent and obvious of ways corroborates our  
6 explanation that there is head to head competition.

7 COMMISSIONER PINKERT: Thank you.

8 Turning to broader injury issues, why should the  
9 Commission not conclude that the problems experienced by the  
10 domestic industry are the result of the apparent consumption  
11 trends rather than the trends with respect to subject  
12 imports?

13 MR. LEVY: I'm sorry. I'd ask you to restate the  
14 question. I'm not sure I understand.

15 COMMISSIONER PINKERT: In other words, are the  
16 problems the result of apparent consumption and a trend in  
17 apparent consumption? Or are the problems the result of  
18 subject imports? Or would you say the problems are a result  
19 of both?

20 MR. LEVY: I will ask Mr. Gutwald to elaborate on  
21 his experience, but I think the record substantiates the  
22 view that the heart of this case is the conclusion that  
23 subject imports caused a cost/price squeeze. And that also  
24 during the period there was a loss in shipment volume which  
25 was not driven by a dramatic change in demand, but again

1 driven by a loss of market share to subject imports, thus  
2 aggravating the cost structure of the U.S. producers as  
3 capacity utilization went down, their per unit costs went  
4 up.

5 But let me be perfectly clear. Regardless of what  
6 you conclude in terms of demand and market share trends, the  
7 trends are on the whole not very dramatic. The heart of  
8 this case is a cost/price squeeze case.

9 MR. GUTWALD: Just to echo, as you heard in our  
10 testimony, our costs have gone up as the industry has gone  
11 up. And when we sought to get a price increase to cover  
12 those costs, we were denied that. In fact we actually  
13 reduced our pricing in 2007 which we believe was due to the  
14 alternative availability of subject imports at a much lower  
15 price and below cost.

16 So I hear what you're saying about, in my opinion  
17 it really was both. It really was a cost/price squeeze and  
18 in our case we certainly experienced a loss of market share  
19 which we do believe was attributed to subject imports.

20 COMMISSIONER PINKERT: Let me follow up on that  
21 one. I understand your point, but the question with respect  
22 to the cost/price squeeze might be well, was it imports that  
23 prevented you from increasing prices to meet the cost, or  
24 was it something else in the U.S. market?

25 MR. GUTWALD: Again, I can only comment on our

1 experiences and perhaps Mr. Derby can comment about the  
2 earlier period of investigation. But in several instances  
3 we were made notice that there were lower cost alternative  
4 off-shore than what we offered for. So given that it's a  
5 zero sum game, we really had not option in that case, or we  
6 did lose volume. We also did reduce pricing.

7 So I would contend that it really was both.

8 MR. BOYCE: I think your question is, did the  
9 decline in apparent domestic consumption over the POI injure  
10 the U.S. industry, or were there other explanations for the  
11 dramatic fall in profitability that Mr. Levy spoke of  
12 between say 2005 and 2007.

13 Whether you look at ADC as measured by the  
14 shipments data, the logged shipments data, or the usage data  
15 is quite modest. It was not a collapse in demand, it was a  
16 modest decline from a point which was above trends back to  
17 essentially trend. So given that there is this normal build  
18 up and work down of inventories related to these blips in  
19 demand because of earthquakes and hurricanes and what have  
20 you, that modest decline in demand was nothing unusual over  
21 the history.

22 Also domestic producers do not have capacity  
23 adequate to supply the entire U.S. demand, so the role of  
24 imports is important. All the evidence is that it was the,  
25 summarized by those charts over there, it was the excess

1 global supply and the willingness of foreign producers to  
2 sell at less than fair value, and the willingness of the  
3 battery producers to exploit that situation to depress  
4 prices.

5 The decline in demand was modest and of little or  
6 no importance.

7 COMMISSIONER PINKERT: Thank you.

8 Turning to Mr. Derby, I noticed that in your  
9 testimony in connection with Spectrum, you used the word  
10 requalify. You were concerned that perhaps the  
11 opportunities to requalify had not been made available.

12 What I'm wondering is, are you saying that the  
13 product had failed to qualify and therefore there needed to  
14 be opportunities to requalify?

15 MR. DERBY: No, I think what happened, at the time  
16 it was Rayovac, for years previous to that we had supplied,  
17 and they had gone to other suppliers for that, the  
18 qualification or the requalification type period, there's a  
19 new group of purchasing people that had come in and before  
20 having the Kerr-McGee material be used again in an ongoing  
21 basis, they wanted to requalify it for their ISO purposes or  
22 what not. Their quality program.

23 COMMISSIONER PINKERT: So you're saying there was  
24 never a failure to qualify with respect to Spectrum.

25 MR. DERBY: I think how it was left in 2003 is we

1 provided material to their specifications and we never had  
2 any formal feedback from them whether or not it was  
3 qualified or unqualified. They went elsewhere.

4 COMMISSIONER PINKERT: And concerning the issue of  
5 who you might have contacted within Spectrum to try to  
6 qualify or requalify the product, were there any contacts  
7 with Spectrum people in the United States?

8 MR. DERBY: Yes. The corporate head of purchasing  
9 I believe was Brian McKay that I contacted. This was when  
10 Spectrum purchased Rayovac. They had new responsibilities  
11 that were delved out on purchasing, and he directed me to  
12 the person in Germany.

13 COMMISSIONER PINKERT: Thank you.

14 Thank you, Madame Chairman.

15 CHAIRMAN ARANOFF: I drew the short straw today  
16 and got to ask questions last.

17 Let me start with a question about raw material  
18 costs. In your brief, you indicate that your current  
19 contract for ore is going to expire during the current year.  
20 To the extent that you can answer in a public forum, can you  
21 tell us what the term of that contract was, how long it was,  
22 and to what extent you think it has shielded you from higher  
23 prices for ore?

24 MR. GUTWALD: Again, I would prefer to talk about  
25 that perhaps in a private, post-conference briefing. But I

1 think it's fair to say that this had some impact on us. We  
2 did see some flow-through, will see some flow-through in the  
3 2008 time period.

4 CHAIRMAN ARANOFF: Are you negotiating a new ore  
5 contract?

6 MR. GUTWALD: That is correct. Typically the  
7 contracts are on an annual basis, if that helps.

8 CHAIRMAN ARANOFF: They're annual, not longer than  
9 that.

10 MR. GUTWALD: That's correct.

11 CHAIRMAN ARANOFF: If you can maybe provide us  
12 confidentially with some historical information so we can  
13 get a sense of what your ore price has been over the period,  
14 and to the extent you know what you expect it to be for the  
15 next year.

16 Are they calendar year contracts?

17 MR. GUTWALD: Yes they are, typically.

18 CHAIRMAN ARANOFF: So you're already negotiating  
19 for 2009.

20 MR. GUTWALD: That is correct.

21 CHAIRMAN ARANOFF: Okay.

22 Thank you.

23 I want to go back to the issue of the status of  
24 the Delta plant in Australia, because obviously that's a big  
25 sticking point for all of us from a factual as well as a

1 legal standpoint.

2 Like Commissioner Okun, I've never toured an EMD  
3 plant, but I have been to other plants that were in the  
4 process of being decommissioned. Sometimes people are still  
5 working there for a long time because they're doing things  
6 like environmental cleanup and things like that.

7 If you decommission an EMD plant, do you have to,  
8 is there environmental cleanup involved?

9 MR. STATER: That would probably depend on what  
10 your long term plans were as to what clean up is required.

11 On the point of shutting down the plant, you  
12 basically are going to empty out those devices such as the  
13 electrolytic cells to a storage tank so that you don't cause  
14 damage to the electrodes that are in the cells.

15 So there would be a short time when you'd be  
16 moving solutions and cleaning out solids that build up in  
17 that circuit. But once you've got them over to the tank,  
18 then it can literally sit there until you're ready to  
19 restart. So there's no real cleanup required in that  
20 regard.

21 If you are indeed going to shut down, dismantle,  
22 unassemble the unit, then that would take a little longer.

23 CHAIRMAN ARANOFF: A little longer like a couple  
24 of months, a couple of years?

25 MR. STATER: That I've never done in a manganese

1 plant. I've been able to shut it down and restart it in 30  
2 days, but hopefully I don't have to do a dismantlement.

3 CHAIRMAN ARANOFF: Does the amount of time that it  
4 takes to restart a plant that's been completely shut down  
5 change depending on how long the plant has been shut down?  
6 So if you shut it down for a month or two you can bring it  
7 back up in 30 days, if you shut it down for six months, does  
8 something change?

9 MR. STATER: We were down for approximately six  
10 months in 2003 and did start back up in less than 30 days.

11 I don't think the time line is critical in that  
12 regard. It's more critical as to how you shut it down so  
13 that you provide yourself the opportunity for a quick  
14 restart. Make sure that you do have things in place. That  
15 would be critical for the shutdown.

16 CHAIRMAN ARANOFF: So this is not a case where the  
17 equipment, if it's not operated over some period of time,  
18 then requires some kind of overhaul before you can put it  
19 back into operation?

20 MR. STATER: You may have some overhaul to make  
21 sure the pumps and motors and things of that nature are  
22 rotated from time to time, so that the bearings don't fail  
23 and things of this nature, but that's very minor.

24 CHAIRMAN ARANOFF: Just because we've had some  
25 other cases where, for example, you've got to completely

1 reline a furnace if a certain period of time passes, or  
2 something, so there's a substantial outlay. Nothing like  
3 that.

4 MR. STATER: No, you wouldn't have to do that.

5 CHAIRMAN ARANOFF: I appreciate that.

6 To the extent that you know, I wanted to ask you  
7 some questions about the Delta plant in South Africa. One  
8 of the things that I'm curious about is, assuming that  
9 they're telling the truth and they say that global over-  
10 capacity and a number of other things have led them to close  
11 down the plant in Australia, is there anything, comparing  
12 the two plants. If you were going to close one of them,  
13 would the Australian one be the one you were going to close?  
14 Is it older, is it smaller, is it less efficient than the  
15 one in South Africa?

16 MR. LEVY: Let me just state first of all that  
17 we've seen South African material before. There have been  
18 periods in the not so recent past when much more than 20  
19 million pounds of South African EMD have been in the U.S.  
20 market in a 12 month period. So I would ask Mr. Derby to  
21 comment on any perceived differences in quality or  
22 marketability of Australian versus South African EMD, but I  
23 would simply say that to our knowledge the South African  
24 plant, like the Australian plant, is a world class  
25 operation.

1           MR. DERBY: I agree with what Mr. Levy is saying.  
2 South African EMD has come into the U.S. in very large  
3 quantities and the major battery makers have all been able  
4 to use it.

5           CHAIRMAN ARANOFF: So as far as you're aware, if  
6 over-supply were truly the motive for Delta to pick a plant  
7 to close down, you're not aware of any difference between  
8 the Australian plant and the South African plant that would  
9 drive which one they would pick.

10          MR. LEVY: The only speculation that I would make  
11 is that the South African company is the parent. I think as  
12 the Commission has seen, sometimes businesses make decisions  
13 to close their subsidiaries rather than their parent company  
14 as a matter of corporate culture, rather than hard business  
15 decisionmaking. Other than that, I would have nothing to  
16 add.

17          CHAIRMAN ARANOFF: Okay. I appreciate that.

18                 Switching gears a little bit. Tronox's Form 10K  
19 for fiscal year 2006 indicates that you incurred an  
20 environmental cost of \$11.4 million for the Henderson plant.

21                 Can you tell us what share, if any, of that was  
22 allocated to EMD?

23          MR. GUTWALD: Certainly. As the ITC verified at  
24 the Henderson plant, I guess about a month ago,  
25 environmental costs in our operating EMD costs are only

1 those associated with the manufacture of EMD. Any of the  
2 costs associated with remediation are elsewhere in our  
3 Tronox financial statements. So in short, there is none of  
4 that in the EMD costs that you are seeing.

5 CHAIRMAN ARANOFF: Thank you.

6 A question on the price situation. In your brief  
7 you're asserting there's price suppression based on the  
8 existence of a cost/price squeeze and rising input costs.  
9 And the way the statute is worded, that's sort of part one  
10 when you're trying to show price suppression. That prices  
11 aren't rising as fast as costs. But the second part is that  
12 prices are basically lower than they otherwise would have  
13 been.

14 It's the otherwise would have been part that I  
15 want to ask you about.

16 Normally the best circumstances for making a price  
17 suppression argument are that demand is rising and therefore  
18 you would expect that producers could pass along their cost  
19 increases to their customers in the form of price increases.

20 We've got a situation here where it's not exactly  
21 clear what demand is doing during this period, but growing a  
22 lot is not what it's doing.

23 So what is it about the market that suggests that  
24 but for subject imports you'd be able to raise your prices  
25 to cover your costs?

1           MR. LEVY: I might ask Dr. Boyce to answer that  
2 question, if he might.

3           MR. BOYCE: The but for question is the crux of  
4 your decision. As I said briefly a while ago, testimony is  
5 that but for the willingness of the Chinese and Australian  
6 producers to lower their prices under the strong pressure of  
7 the battery manufacturing customers, Delta would have been  
8 profitable, they would have covered their costs, the  
9 statement was that they were not able to recover their costs  
10 because of the battery manufacturer.

11           The Chinese statement is that they were not able  
12 to cover their costs because of the battery manufacturers.  
13 There are wonderful quotes in the questionnaire responses  
14 from foreign EMD producers about the way the battery  
15 producing customers exploit their market power.

16           But for the existence of the foreign producers and  
17 their willingness to sell below their cost of production,  
18 the price level in this market would have been higher.  
19 Everybody would have been covering their costs, and we  
20 believe that Tronox and Erachem would have had profits in  
21 '07, not losses of \$9 million.

22           I think putting the pieces together, the but for  
23 question is very clear. but for the foreign producers'  
24 willingness to sell at a less than fair value, prices would  
25 have been higher, costs would have been covered, the

1 domestic industry's situation would have been one of  
2 profitability.

3 As I said, very little change in demand.

4 CHAIRMAN ARANOFF: Thank you, I appreciate those  
5 answers. If there is anything else you want to add post-  
6 hearing to help me get through this issue of price  
7 suppression, that would be really helpful.

8 I will turn to Vice Chairman Pearson.

9 VICE CHAIRMAN PEARSON: Thank you, Madame  
10 Chairman.

11 I'd like to follow up briefly on a question that  
12 was raised by Commissioner Pinkert. Let's assume for the  
13 moment that the apparent consumption data that are included  
14 in the public staff report are sufficiently accurate. In  
15 some cases we would consider a 14 percent decline in  
16 apparent consumption to be quite significant. If I  
17 understood correctly, Mr. Levy, you were arguing that we  
18 shouldn't be too concerned about it here in terms of the  
19 effect of the apparent consumption decline on the domestic  
20 producer.

21 Help me understand that better.

22 MR. LEVY: If we were to take these data at Table  
23 4-7 at face value what you need to understand in 2005 is  
24 that that was a year where demand was above trend, and that  
25 was driven by an unusually high level of hurricane activity

1 in the United States. I think that was the year of  
2 Hurricane Katrina, for example, so that was really above the  
3 norm.

4 The trend is more in line with the numbers you see  
5 for 2006 and 2007. What you see is a modest decline in  
6 demand from 2006 of 88,667 short tons, to 85,501 short tons  
7 in 2007.

8 Again, looking at these data and taking them at  
9 face value, what you see is a very slight dip in demand from  
10 '06 to '07.

11 VICE CHAIRMAN PEARSON: It's still 6.9 percent  
12 which in some industries, in some investigations, would  
13 consider that to be meaningful.

14 MR. LEVY: Perhaps. But in this industry going  
15 from '06 to '07, costs are going up by 5.8 percent. The  
16 U.S. industry wanted to cover its increased costs and in  
17 fact it found that it had to lower prices by 2.4 percent  
18 because of underselling by subject imports.

19 The causal link is relatively clear. A modest  
20 decrease in demand year over year is not a primary  
21 explanation for what is going on in the least.

22 VICE CHAIRMAN PEARSON: Any other comments?

23 MR. BOYCE: If I can make a comment on this?

24 VICE CHAIRMAN PEARSON: Sure.

25 MR. BOYCE: One of the things you need to

1 understand is that there is quite a pipeline in the EMD.  
2 There are inventories in various spots. And the shipments  
3 data suffer especially as they were constructed in this  
4 case. They were not all shipments data. Suffer from these  
5 problems of increasing and decreasing inventories far more  
6 than the usage data.

7 I respectfully suggest that if you want to look at  
8 market trends you're much better off, or ADC trends, are  
9 much better off looking at these data.

10 The so-called ADC based on shipments data as  
11 compiled, admittedly using the best information available,  
12 are seriously flawed.

13 VICE CHAIRMAN PEARSON: Do you have any concern  
14 that even more EMD battery production could leave the United  
15 States? I'm asking basically those of you who are in the  
16 business. You know your customers, you sell product to  
17 them. You have at least some sense of the competitive  
18 position that they operate in in a globalized market place.

19 It's not obvious to me that it's most cost  
20 effective to produce batteries in the United States. could  
21 we envision a situation in which much more battery  
22 production does shift overseas?

23 MR. GUTWALD: Again, I'm not the expert obviously,  
24 so I can only speculate. There has been some off-shoring.  
25 But the comment I guess I'd like to make is based on the

1 investigation of the costs of producing EMD by overseas  
2 manufacturers is understated.

3 So who's to say that if they do in fact go off  
4 shore and the cost of manufacturing the batteries in turn  
5 will not be similarly inflated going forward.

6 I guess my point is I think quite frankly we have  
7 a very competitive advantage in this industry being in the  
8 United States, being located with the manufacturers. So  
9 yes, I guess from my perspective I see it could happen, but  
10 I don't see EMD being the driving factor, especially since  
11 EMD is such a small part, quite frankly, of the entire cost  
12 to sell a manufacturer a battery.

13 The last comment, it's my understanding that  
14 several companies including one of our customers have looked  
15 at the strategy of outsourcing. They've recognized that the  
16 cost to transport materials in many cases can outweigh the  
17 comparative advantage of producing low cost country  
18 sourcing, so I think those two factors, quite frankly, would  
19 suggest at least in our industry, I think it might be a risk  
20 but certainly not one that is imminent, from my point of  
21 view.

22 VICE CHAIRMAN PEARSON: Okay.

23 So it's unlikely that we'll hear soon from battery  
24 producers saying my gosh, my costs have gone up because  
25 there's now an order in place on EMD and I'm sorry, but I've

1 got to head overseas and manufacture this?

2 MR. GUTWALD: I'm sure they're going to say that.  
3 It's an interesting condition of competition.

4 VICE CHAIRMAN PEARSON: If we do see a situation  
5 in which domestic production of batteries declines, is  
6 Tronox in a position to expand exports?

7 MR. GUTWALD: Absolutely. In fact we have worked  
8 with our customers in the past and do ship material to our  
9 overseas customers' sites.

10 VICE CHAIRMAN PEARSON: Export shipments are not  
11 part of the public information so I won't say anything about  
12 them other than that they don't strike me as being terribly  
13 large relative to domestic production.

14 MR. GUTWALD: Again, given the supply and demand  
15 situation where the U.S. provides, we sell as much as we  
16 possibly can, we supply as much as U.S. battery  
17 manufacturers can consume. At this point it probably  
18 doesn't make sense for us to export unless there's a reason  
19 for it. Our customers meet their requirements.

20 VICE CHAIRMAN PEARSON: But as a practical matter  
21 you produce a high enough quality product so there may well  
22 be a demand for it in a global marketplace, even if there  
23 continues to be some unfair pricing on the part of the  
24 Chinese for certain market segments.

25 MR. GUTWALD: That is certainly true.

1           VICE CHAIRMAN PEARSON: Mr. Levy, let me ask you a  
2 question about causation. this isn't just a perfect case in  
3 terms of causation as we see the numbers. Subject import  
4 volume we have as trending downward. Domestic EMD prices  
5 have risen. And yet at the same time while those generally  
6 favorable trends are in place, the domestic industry  
7 performance has gotten worse. Financial performance.

8           When we try to understand causation and see what's  
9 happening by reason of the subject imports, it doesn't just  
10 jump up and grab me that it's entirely obvious that all of  
11 the difficulties of the domestic industry are related to the  
12 subject imports.

13           Could you elaborate please?

14           MR. LEVY: Again, I think what is going on in the  
15 market during the period of investigation is actually very  
16 simple and is effectively what Delta and the Chinese  
17 producers told you in their own words.

18           But to paraphrase, you have a situation of a vast  
19 over-supply of qualified EMD for sale, available for sale in  
20 the U.S. market from subject sources and from U.S.  
21 producers. In principle, U.S. producers should be sold out  
22 in supplying, meeting probably 60 percent of U.S. demand for  
23 EMD, but they can't even do that.

24           What you see during the period of investigation is  
25 that costs that are largely outside the control of U.S.

1 chemical producers have gone up from '05 to '06 to '07,  
2 steadily. In an environment where costs are going up, and  
3 going up dramatically, you have a situation where from '05  
4 to '06 U.S. producer prices don't go up enough. And they  
5 actually go down.

6 I think the factual record, much of which is  
7 proprietary, is clear that you can see at the customer  
8 account level what are the U.S. producers offering in terms  
9 of volume and price? What are the subject producers  
10 offering in terms of volume and price? They are  
11 underselling. That is suppressing, and in 2007 depressing  
12 the prices that they are able to charge their customers.  
13 That is the cause of their financial losses during the  
14 period of investigation.

15 VICE CHAIRMAN PEARSON: But in cases where we are  
16 dealing with underselling and price pressure, that way, we  
17 very often see lost sales and revenues that are confirmed on  
18 our record, and here as you know, we have a relatively low  
19 level of confirmed lost sales. We have an abundance of  
20 allegations of lost sales and revenues, but quite a low  
21 level of confirmations of those.

22 Could you comment on that? How should we  
23 interpret that? What you're saying would make more sense to  
24 me if we had those confirmations of lost sales and lost  
25 revenue.

1           MR. LEVY: We will try to put a final point on  
2 this in our post-hearing brief. But I think if you look at  
3 the activity at the customer account level, when you see a  
4 U.S. producer coming in at a price and then being forced to  
5 lower its price because of competing import offers, and then  
6 the customer says yes, but that's not lost revenue, you see.  
7 You need to look at the facts and not the label that the  
8 purchaser puts on it.

9           VICE CHAIRMAN PEARSON: When you provide that  
10 elaboration, please also include a discussion of competition  
11 among domestic producers for sales because that also may be  
12 an issue worthy of note.

13           MR. LEVY: Certainly.

14           VICE CHAIRMAN PEARSON: Thank you, Madame  
15 Chairman.

16           CHAIRMAN ARANOFF: Thank you.

17           Commissioner Okun?

18           COMMISSIONER OKUN: Thank you.

19           I wanted to explore a little bit more about the  
20 bid process negotiations and how that impacts the prices. I  
21 know you've had a chance to explain some of those but I just  
22 want to make sure I understand it in connection with the  
23 argument about the cost/price squeeze and suppression and  
24 what's really going on with the prices.

25           So again, help me, with regard to the argument

1 about if we're looking at this record, we see this  
2 suppression/depression. Then as imports go lower, why we  
3 haven't seen more of an up-tick, why you're still arguing  
4 suppression there? Help me understand where we are in the  
5 bid process and what you would expect going forward so maybe  
6 I can look at the record and then understand what I have  
7 before me. If that's helpful.

8 MR. GUTWALD: Let me take a stab at this, and Mr.  
9 Derby has been more in this. I'll elaborate.

10 In terms of a bid process, typically negotiations  
11 will start now and commence through the fourth quarter and  
12 finalize with an agreement for the following year's supply  
13 period.

14 I think the case in point was last year at this  
15 time when we did file the case there was certainly a  
16 dramatic change in terms of their willingness to talk about  
17 volumes, to talk also about the pricing. To be quite  
18 honest, we firmly believe that has been a reason why in the  
19 Q1 interim period you have seen prices go up.

20 Now by no means have they been sufficient to cover  
21 the cost increases that we have seen over this time period.

22 So our expectation is that if an order is in fact  
23 issued, that we will continue to have a more candid  
24 dialogue. We have seen a willingness to have a frank  
25 discussion and an eye towards sustainability in terms of

1 pricing to make sure that the domestic industry can in fact  
2 supply the domestic value manufacturers

3 COMMISSIONER OKUN: I think you'd said this  
4 earlier, but just so it's clear in my mind, the reason that  
5 even in those negotiations out of Petitioner's file, that  
6 you weren't able to increase your prices enough, in your  
7 view, is because, well, is why?

8 MR. GUTWALD: Again, in my opinion, in my opinion,  
9 my experience, it would have been there still were  
10 alternatives of availability, and there certainly was some  
11 unclear whether or not this order should have taken place  
12 and there would be sufficient discipline in the markets for  
13 us to achieve the required prices without fully compromising  
14 our volumes for the 2008 time period.

15 COMMISSIONER OKUN: When you say alternatives in  
16 the market, are you talking about non-subject alternatives  
17 or just the fact the domestics were competing, or --

18 MR. GUTWALD: Subject to import of the Australian  
19 and Chinese material.

20 COMMISSIONER OKUN: Subject imports still being  
21 available --

22 MR. GUTWALD: Correct. As you recall, the plant  
23 was not shut down until March of 2008, so it's my  
24 understanding that that Australian supplier was certainly a  
25 viable alternative throughout the 2008 negotiation process

1 last year at this time.

2 COMMISSIONER OKUN: During last year's negotiation  
3 process, the non-subject imports, were they part of the  
4 discussions?

5 MR. GUTWALD: Not to my knowledge. Nothing  
6 material. Again, yeah.

7 COMMISSIONER OKUN: Mr. Derby do you want to  
8 expand on that?

9 MR. DERBY: My experience in trying to raise  
10 prices was not very good. We'd ask for a price increase and  
11 the message would come back very clearly that well you can  
12 do that but we're going to go elsewhere for the material.  
13 Than China or Australia because you won't be competitive and  
14 we can replace you. It's just as simple as that.

15 That's the competition and the competition is  
16 willing to sell to whatever level they need to to keep their  
17 tons moving.

18 MR. LEVY: I would only add, this is an industry  
19 where one lost contract in one calendar year is enough to  
20 shut down a plant. The purchasers are so concentrated and  
21 wield so much market power that failure to win contract  
22 volume at a single customer account will shut down a plant.

23 COMMISSIONER OKUN: I know for purposes of post-  
24 hearing you will be looking at the question, I think it was  
25 Commissioner Lane had asked you, to look again at commodity

1 for purposes of Bratsk analysis as to substitutability.

2 Help me understand. In the prelim for purposes of  
3 my Bratsk analysis I had not found this to be a commodity  
4 product because of what looked like an extensive  
5 qualification process. And I'm not listening, trying to  
6 understand, has there been a change in the qualification  
7 process that you think affects the commodity nature of this  
8 product? Whether it's due to blending or anything else.  
9 I'm just trying to kind of sort out what's in the record  
10 about qualifications and what I've heard you say to see what  
11 that means.

12 MR. LEVY: I don't think there has been a  
13 fundamental change in terms of what qualification means and  
14 the barrier that it poses to sort of entry into the market.  
15 But I think what the record does support is the view that if  
16 there is a viable, dirt cheap alternative in the marketplace  
17 in meaningful volumes, a motivated purchaser, that is to say  
18 a battery producer, can make qualification happen and happen  
19 very quickly. When they are less motivated, it may take  
20 longer. And when they are uninterested, as was the case  
21 with Spectrum and its relationship with Tronox, it may never  
22 materialize.

23 COMMISSIONER OKUN: So you're arguing or saying  
24 that it doesn't matter if anyone is currently qualified if  
25 the prices are right. That therefore, someone is going to

1 be able to qualify any of this for any of the uses?

2 MR. LEVY: Let's imagine that a new country pops  
3 up and in Brazil there is a large volume of EMD that is  
4 suddenly on-line and is sort of a would-be supplier. If it  
5 is clear that that is of a quality that is adequate, such as  
6 to qualify in the United States, and the pricing looks  
7 right. A motivated battery producer may be very well able  
8 to accelerate that qualification process and make that  
9 volume available for competition in the U.S. market. But  
10 there is a meaningful lag in terms of time, and there is a  
11 barrier to entry in terms of cost of going through that  
12 process. This is not a commodity like crude oil that is  
13 traded on the market and it's plug and play. And as it may  
14 very well be a whole contract year before volumes that would  
15 be available become actual qualified sources that are  
16 substitutable in the U.S. marketplace.

17 COMMISSIONER OKUN: Okay. I appreciate that  
18 further elaboration on that.

19 I know in your brief you had covered captive  
20 production and agreed with the Commission's preliminary  
21 determination that the captive production provision is not  
22 met. I just wondered whether you think there's anything  
23 about the merchant market in terms of the condition of  
24 competition that the Commission should place emphasis on in  
25 its analysis.

1           MR. LEVY: No. The data for the merchant market  
2 and the data for the U.S. industry as a whole are by and  
3 large very similar, and there's no reason in our view why  
4 you need to focus on the merchant market data in this case.

5           COMMISSIONER OKUN: Okay.

6           I think with that I've covered my questions. If I  
7 find one, I'll come back in another round, but thank you  
8 very much for all those answers.

9           CHAIRMAN ARANOFF: Commissioner Lane?

10          COMMISSIONER LANE: I think the question of  
11 decline in the domestic consumption is important, and  
12 although the trend may be down, it looks like the magnitude  
13 of that trend is significantly different when comparing your  
14 Table C in your pre-hearing brief and staff's report.

15          I would like some clarification regarding your  
16 Table C numbers related to the U.S.-produced EMD. Please  
17 compare the U.S.-produced EMD shown on Table C, page 28 of  
18 your brief, to the U.S. shipments shown on Table C1 of the  
19 staff report.

20          The numbers are very similar in 2006 and 2007.  
21 However, there are significant differences in 2005 and the  
22 first quarter of 2008.

23          Is there any reason that there should be a  
24 significant difference in 2005 when comparing U.S. produced  
25 EMD on your Table C and Table C-1 of the staff report?

1           MR. LEVY: Because the data in Table C are  
2 entirely proprietary, I will endeavor to answer that  
3 completely in our posthearing submission.

4           I would suggest that because the END usage data  
5 are aggregated for U.S. batteries producers, that this may  
6 be a very good candidate for disclosure in any final public  
7 version of the Staff Report. And I think that that may  
8 actually bring greater transparency to the analysis.

9           But, yes, we will be happy to address your  
10 question in our posthearing submission.

11           COMMISSIONER LANE: Okay, thank you. I'd like for  
12 you to also look at Table 5-1 of the Prehearing Report, All  
13 of that data is also business proprietary, but it's titled:  
14 U.S. EMD Producers Net Delivered Purchase Prices of  
15 Manganese Ore, by specific types.

16           I would like for you to explain to me, in your  
17 posthearing, the obvious differences in some of those  
18 prices.

19           MR LEVY: Certainly, we'd be happy to do that.

20           COMMISSIONER LANE: Okay, thank you.

21           Now I'd like to talk to you about your energy  
22 costs. I assume that you use natural gas in oil reduction  
23 on the electricity for machinery as well as electrolysis,  
24 however you say that.

25           What percentage of total energy costs for EMD

1 production would be typically natural gas and what  
2 percentage would be electricity?

3 MR. STATER: Well, a lot of the natural gas is for  
4 running a steam plant to make steam, which is used to heat  
5 the electrolyte cells.

6 What we've done in the last few years, couple  
7 years, is to install an electric method of generating steam  
8 as opposed to natural gas because of our low-cost  
9 electricity.

10 That is not a normal process where you would use  
11 electricity to generate steam, but this one worked and it  
12 worked well. It has been able to reduce our natural-gas  
13 consumption and the cost of our electricity is considerably  
14 lower than the equivalent amount of natural gas that we  
15 would have had to consume for that purpose.

16 As far as the split of power consumption, as I  
17 said, natural gas goes into steam production. It also goes  
18 into reduction. Probably the ratio would be 75 percent for  
19 steam and 25 percent for reduction.

20 Then the electricity, the predominant use of that  
21 is in the electrolysis process, or electrolytic as it is  
22 referred to, where you're actually producing your EMD.  
23 That's a major power draw for power.

24 COMMISSIONER LANE: Could you tell me where you  
25 get your electricity from and how you purchase it?

1           MR. STATER: Our electricity comes from the hydro-  
2 electric system of the Hoover Dam, and also from another dam  
3 system called the Parker-Davis Dam. We get about roughly 50  
4 percent, 50 percent of our power from those two sides, half  
5 from each.

6           It's paid for through contracts that run for  
7 upwards of twenty years with the Colorado River Commission.  
8 They are the distributor of hydro-electric power for the  
9 State of Nevada. Several industries are customers of theirs  
10 as well as the state agencies themselves.

11           COMMISSIONER LANE: Okay. And your natural gas,  
12 do you buy it through a marketer or producer? Do you use  
13 transportation? How do you actually buy your natural gas?

14           MR. STATER: We contract that through a normal  
15 suppliers such as Shell Oil or British Petroleum, or  
16 whomever. And we do annual or multiple-year contracts  
17 depending on what we can arrange.

18           The gas comes in through that company, but it then  
19 is distributed throughout the valley by a company called  
20 Southwest Gas, which is the actual controller of the  
21 pipelines within the valley, and so you have a double cost.  
22 You pay for gas plus you pay for distribution.

23           COMMISSIONER LANE: Okay, thank you.

24           Now do you know how Erachem gets its electricity?  
25 Does it get it from the PBA Authority?

1           MR. STATER: I believe it may, but I don't know  
2 that for a fact. I don't know how they operate their  
3 operation.

4           COMMISSIONER LANE: Okay. You talked about this.  
5 It was either in your brief or in the prehearing report  
6 about your hedging strategy. Would you explain that a  
7 little bit more, please?

8           MR. STATER: Certainly. We basically engage in a  
9 hedging strategy as a company, and so the result of this is  
10 for our pigment division as well as our electrolytic  
11 division. So any of those hedges then would flow through  
12 accordingly to the business entity that those hedges were  
13 placed in.

14           So, during that period of investigation, we did  
15 engage in some hedging, and as a financial hedge as opposed  
16 to another type of hedge, the objective being to mitigate  
17 and moderate any rises in interest and energy costs during  
18 the time period.

19           COMMISSIONER LANE: Okay, thank you.

20           I don't think we've talked about the issue of  
21 inventories, but the level of inventories appear to be  
22 growing. That is a factor.

23           How is EMD packaged after production while it is  
24 awaiting delivery? Does that packaging change, if the EMD  
25 is being delivered or held in inventory?

1           MR. STATER: Well, the electrolytic process is a  
2 continuous process. You don't want to ever shut it down, if  
3 at all possible.

4           So you're continually producing product and  
5 storing it and shipping it accordance with whatever sales  
6 programs you have in place. That inventory will fluctuate  
7 up and down. The time line is not made today and shipped  
8 tomorrow, obviously, because of the time line in making  
9 product, it is an electrolytic process.

10           It takes weeks, not days, for the product to be  
11 made. So you do have a surging up and down in production  
12 volume. And given the high-fixed cost nature of our  
13 business, it's imperative of us to maintain high  
14 utilization.

15           So, during that period, we did in fact produce,  
16 though certainly not at full capacity during that time  
17 period, reflecting reduced demand.

18           COMMISSIONER LANE: Considering the fact that you  
19 tend to contract for sales over a twelve-month period, it is  
20 unusual to see build-up of inventories that amount to over  
21 two months of deliveries?

22           MR. STATER: Yes, there is some seasonality to  
23 your point. We, typically, try to maintain a level-loaded  
24 production schedule.

25           So there might be periods of time, depending upon

1 seasonal demand such as hurricanes where inventories could  
2 in fact grow.

3 But the inventories that are in our case, of the  
4 seven months were certainly well beyond any type of  
5 seasonality. It reflected, quite frankly, the reduced  
6 demand that we experienced over that time period.

7 COMMISSIONER LANE: Okay. At what level of  
8 inventory would you start cutting back your production?

9 MR. STATER: Again, it depends upon a number of  
10 factors. Perhaps there isn't any one metric that I can  
11 refer to other than the outlook and expectations that we  
12 with that material within a given time period.

13 That's why, quite frankly, last year in the first  
14 quarter of 2007, we did not see any light in the tunnel. We  
15 did not see alternatives for that.

16 We were forced to clear back productions  
17 specifically during that period, which increased our unit  
18 costs even though we had some months of inventory.

19 COMMISSIONER LANE: Okay, thank you.

20 Thank you, Madame Chairman.

21 CHAIRMAN ARANOFF: Commissioner Williamson?

22 COMMISSIONER WILLIAMSON: Thank you, Madame  
23 Chairman.

24 This may have to be for posthearing, but I was  
25 wondering: Do you have any additional information regarding

1 high-tech energy and their potential EMD production facility  
2 in Australia? I know the question was raised earlier.

3 MR LEVY: Well, I noticed that some material is  
4 referenced in Exhibit 5 of our prehearing brief. We do have  
5 other intelligence, which we'd be happy to share in our  
6 posthearing submission.

7 COMMISSIONER WILLIAMSON: Thank you.

8 MR. GUTWALD: In fact, if I might make just one  
9 comment. Back, I believe, in 2003, we were looking for a  
10 plant. We were approached, I believe, by them, expressing  
11 interest in buying our facility.

12 So I think there might be a similar pattern here  
13 where they have looked at acquiring a facility and taking  
14 advantage perhaps of situations like this.

15 COMMISSIONER WILLIAMSON: Okay. So they're in  
16 another line of business and this would be expanding into  
17 this?

18 MR. GUTWALD: I don't think so. Quite frankly,  
19 it's unclear to us. We're not the experts.

20 We have provided some information to you in the  
21 posthearing brief that outlines what public information that  
22 we have regarding what the nature of their business is. I  
23 can't speculate.

24 COMMISSIONER WILLIAMSON: Okay, thank you.

25 Initially, Mr. Stater, Mr. Derby was talking about

1 that the fact that I guess Delta is defending itself in the  
2 case in Japan.

3 And you're saying that that's because they were  
4 interested in maybe coming back into that market, if they  
5 win that case.

6 Why aren't they defending themselves here, if you  
7 contend that they're waiting to get back into this market,  
8 too?

9 MR LEVY: Frankly, we don't have an explanation  
10 for the differences in Delta's behavior. It could be driven  
11 by exchange rates. It could be driven by other factors.

12 But it is clear to us in conversations with folks  
13 who are our eyes and ears in Japan that as recently as only  
14 a few weeks ago, Delta was actively engaged in defending  
15 itself in the Japanese anti-dumping investigation of EMD  
16 from a number of sources, including Australia.

17 Frankly, it mystifies us that they would spend  
18 time and money doing that if they had no interest in  
19 supplying the Japanese market from their Australian  
20 platform. I mean, just as a business matter, why did you  
21 spend time and money?

22 As to why they don't do more in this case, perhaps  
23 it's because they know they're guilty as charged.

24 COMMISSIONER WILLIAMSON: Okay, thank you.

25 To what extent, if any, did China's July 2007

1 elimination of its 13 percent export tax rebate on EMD  
2 affect exports of EMD from China to the U.S.?

3 MR. GUTWALD: Again, I can only speculate, but we  
4 don't have any information to that effect. So we have no  
5 knowledge, quite frankly.

6 COMMISSIONER WILLIAMSON: Do you think it could  
7 have resulted in the increase in prices of the Chinese  
8 product?

9 MR LEVY: I would make just two points. One is  
10 that, by and large, this is an industry that works on a  
11 calendar-year contract basis.

12 So anything that changes in terms of the total  
13 costs of delivering Chinese product into the United States,  
14 it is the view of Tronox that that was baked into the cake  
15 for all of 2007.

16 In terms of 2008 behavior, to the extent  
17 circumstances improved, it is our position that the driving  
18 explanation for that improvement is the pendency of the  
19 investigation. But we do not have the ability to disprove  
20 that other factors may have contributed to Chinese price  
21 levels for the 2008 bidding.

22 COMMISSIONER WILLIAMSON: Okay, thank you.

23 We will probably have to do this mostly in our  
24 post hearing, but I would like you to discuss the differing  
25 performance of the domestic producers, particularly those

1 producing for the emerging markets. This may be mostly for  
2 the posthearing.

3 MR LEVY: Let's see, the record indicates that  
4 global capacity was well above global demand over the period  
5 of investigation.

6 COMMISSIONER WILLIAMSON: Have producers simply  
7 built too much capacity, or was the demand unusually  
8 depressed during this period, and does this excess global  
9 supply still exist now?

10 MR LEVY: Yes, as we've mentioned in our  
11 testimony, from all indications, and from our customer  
12 feedback, demand for EMD and alkaline batteries continues to  
13 grow on a global basis. That, I think, is not debatable.

14 At the same time, over this period, we have seen  
15 massive increases in capacity, primarily in China. This  
16 capacity, in my opinion, has well outstripped any growth in  
17 demand.

18 Because I think as I've seen one report from  
19 International Manganese Institute where the last four years,  
20 China has added more capacity than roughly 70 percent of the  
21 entire U.S. industry.

22 In my opinion, I think the amount of capacity  
23 additions have been made by China has well outstripped any  
24 type of organic demand, which, by all accounts, is a healthy  
25 growth rate for EMD and alkaline batteries.

1           COMMISSIONER WILLIAMSON: Has this been sort of a  
2 past thing, or is the capacity continuing to grow, according  
3 to the information that you may have?

4           Has this been sort of a past thing, or has the  
5 capacity continued to grow, according to the information  
6 that you have?

7           MR LEVY: The information that we have is capacity  
8 continues to grow. We cannot speculate on the future. But,  
9 certainly, the trend would seem to suggest that China has  
10 continued capacity. I don't know at what rate.

11           I would doubt at the same rate that it has been  
12 over this last five-to-ten year period, but there seems to  
13 be continuing additions as we speak.

14           As such, we would clearly expect then that the  
15 gross over supply would continue relative to any organic  
16 growth in demand on a global basis.

17           COMMISSIONER WILLIAMSON: Is this capacity growth  
18 outstripping the production of batteries in China?

19           MR LEVY: I would think so.

20           Again, the numbers I think, at the top of my head,  
21 but I'll have to go back and confirm. But I think what I  
22 heard somewhere is that capacity in China is some 270,000  
23 short tons, which is well beyond any type of organic  
24 requirements and/or growth rates that would exist in Japan.

25           I'll have to confirm that number with you in a

1 posthearing brief.

2 COMMISSIONER WILLIAMSON: Okay, thank you.

3 I have no further questions for the panel right  
4 now.

5 CHAIRMAN ARANOFF: Commissioner Pinkert?

6 COMMISSIONER PINKERT: Thank you, Madame Chairman.

7 I believe that Mr. Gutwald, you just testified, in  
8 response to a question from Commissioner Williamson, that  
9 there has been a massive increase in capacity in China.

10 That prompts me to ask Mr. Levy the question: Of  
11 whether, for purposes of a threat analysis, we should be  
12 accumulating China and Australia, if in fact we do a threat  
13 analysis?

14 MR LEVY: I have to thank about that. This is in  
15 our judgment, a present-injury case.

16 It is the case that China is even more of a threat  
17 in the future than it is during the period of investigation  
18 because supply continues to grow at a rate far in excess of  
19 any organic demand.

20 The production capacity in Australia has remained  
21 and, in our view, will remain flat. But with respect to  
22 accumulation considerations, in the context of threat, I  
23 would address in our posthearing submission.

24 COMMISSIONER PINKERT: Thank you. I would  
25 appreciate that.

1 Another issue for the posthearing submission has  
2 to do with the testimony of Mr. Derby earlier. You talked  
3 about context in the United States with Spectrum or having  
4 to do with Spectrum.

5 Is there any way that, in the posthearing  
6 submission, we could get some documentation on those  
7 contexts?

8 MR. DERBY: Yes.

9 COMMISSIONER PINKERT: Thank you. I'd appreciate  
10 that.

11 Staying with Spectrum for a moment, they argued  
12 that Chinese EMD is not directly substitutable for EMD from  
13 other countries for physical reasons.

14 Do you have any response to that argument?

15 MR. DERBY: Could you repeat the question please?

16 COMMISSIONER PINKERT: Yes. The argument is that  
17 the Chinese EMD is not directly substitutable for EMD from  
18 other countries because of physical differences.

19 Maybe the questions hinges on the meaning of the  
20 term: directly. But can you respond to that argument,  
21 either nor or in the posthearing?

22 MR. DERBY: We will endeavor to give you a  
23 complete response in the posthearing brief.

24 But I will simply say if you look at the major  
25 customer accounts, and you look at the data in the propriety

1 record, what you see is that, in fact, subject EMD is being  
2 substituted with domestic EMD.

3 Again, at the major customer accounts and all the  
4 major battery-cell sizes. So Spectrum's claims are really  
5 at odds with what's going on in the industry as a whole.

6 It has been our view that any perceived  
7 differences by Spectrum are largely a function of its  
8 unwillingness to make adjustments to accommodate other EMDs  
9 that, in fact, may involve costs for adjustment.

10 COMMISSIONER PINKERT: So the differences are only  
11 perceived, or are you saying that there are differences but  
12 they can be easily accommodated?

13 MR LEVY: Well, I guess what we would say is that:  
14 To the extent there are differences that need to be  
15 addressed at a technical level pursuant to qualification.

16 These are issues that in fact the largest  
17 companies have successfully addressed such that EMDs is  
18 interchangeable once qualified.

19 Spectrum's claimed inability to overcome these  
20 issues, why they are unable I think is a question best  
21 directed to Spectrum.

22 COMMISSIONER PINKERT: Thank you.

23 Well, in the posthearing, if you could give us  
24 some specific information about the perceived differences in  
25 product, and why they're readily accommodated by the

1 purchaser, that would be very helpful. Thank you.

2 With that, I have no further questions, Madame  
3 Chairman. But I would like to thank the panel.

4 CHAIRMAN ARANOFF: I have just a few things to  
5 clean up.

6 In a lot of cases, we have parties argue to us  
7 that the data in the last part of the last full year of data  
8 that we have that we shouldn't put a lot of reliance on  
9 because, for example, import trends started declining, and  
10 that can be attributed to the filing of the petition.

11 From reading your brief, I get the impression that  
12 you're not arguing that in this case. That you don't see  
13 any infirmity in the 2007 import data, for example.

14 MR LEVY: No, I think because this is an industry  
15 that deals on a calendar-year contract basis, 2007 was  
16 already baked in the cake when this petition was filed.

17 You, of course, are correct, Madame Chairman, that  
18 the statute authorizes you to take postpetition behavior in  
19 the market with a grain of salt under certain circumstances.

20 With respect to the first quarter of 2008, it is  
21 our position that market conditions changed, and that there  
22 was some improvement precisely because of the pendency of  
23 this investigation.

24 The improvement was not enough, but on some level  
25 it is something that, if you were to determine that the

1 triggering factors were present with respect to Bratsk, it  
2 is nonetheless probative of the fact that some measure of  
3 improvement, some remedial effect can be observed if anti-  
4 dumping orders issue.

5 In fact, you're already seen some of that that  
6 improvement in the first quarter of 2008.

7 CHAIRMAN ARANOFF: Okay. And with respect to 2007,  
8 your response for the volume of imports is that that was a  
9 done deal before the petition was filed.

10 And that would be the same thing you would say  
11 with respect to the prices. When we look at our  
12 underselling data, there's nothing about the filing of the  
13 case that could have caused price adjustments during that  
14 period?

15 MR LEVY: That is our understanding.

16 CHAIRMAN ARANOFF: Okay, thank you.

17 Once more, I just want to follow-up.

18 A number of my colleagues have already asked you  
19 about the propriety of using the purchaser data for looking  
20 at demand, as opposed to what we would usually rely on: the  
21 shipment data. I am not sure that any of them asked you  
22 this.

23 So, as a follow-up, when you respond posthearing,  
24 if you are aware of any other cases in which the Commission  
25 has used purchaser data as a proxy for apparent consumption

1 data, it would be helpful to know that?

2 Okay, tell the Court Reporter that he's not able.

3 MR LEVY: I would be happy to try to do that.

4 As I indicated, this is an unusual case and you  
5 have such a finite number of purchases. You survey four and  
6 you're got essentially 100 percent of demand. But we will  
7 try to find similar cases where both: you have a finite  
8 number of purchases that were surveyed in this way at the  
9 same time where there substantive concerns about the  
10 completeness of the reported shipment data.

11 If such a case can be found, we'd be happy to  
12 share with you.

13 CHAIRMAN ARANOFF: I can think cases where we've  
14 looked at purchasing pricing data as opposed to importer  
15 pricing data.

16 MR LEVY: Yes.

17 CHAIRMAN ARANOFF: The circumstances may be a  
18 little bit different, the reasons why we did that.

19 Delta tells us that imports that they've made  
20 since the filing of the petition, because they were pursuant  
21 to these government contracts, they argue that their U.S.  
22 inventory is already committed to customers under  
23 preexisting contracts.

24 Would it be your position that that inventory is  
25 presently competing with domestic product for sales, or

1 would you agree that that competition already took place in  
2 the past?

3 MR LEVY: I guess since these contracts are on a  
4 calendar basis, our expectation is that any material that  
5 was already allotted for a contract, then would have  
6 competed with the past.

7 Going forward, if it is available and not  
8 contracted, then, by definition, it would be a source of  
9 competition.

10 CHAIRMAN ARANOFF: Okay. Has it ever been the  
11 case in this industry that a producer has a product that's  
12 produced and committed to a customer but, for one reason or  
13 another, it ends up being sold on the open market?

14 MR LEVY: I can only speculate but I can see no  
15 reason why that could not be the case. I wouldn't  
16 understand why that would be the case in this situation.

17 CHAIRMAN ARANOFF: You've never had a situation  
18 where you've produced a quantity for a customer pursuant to  
19 a contract, and they've not taken it, and you've ended up  
20 selling it on the spot market?

21 MR LEVY: I'm sorry, that's not correct.

22 We have had those situations where the material  
23 contracts, since there is some variability in terms of the  
24 requirements, where we have over committed or have produced  
25 material, and then had the opportunity to relocate or sell

1 that inventory elsewhere.

2 Thank you for clarifying that.

3 CHAIRMAN ARANOFF: Okay. I appreciate your  
4 answer.

5 With that, I believe I've completed my questions.

6 Vice Chairman Pearson?

7 VICE CHAIRMAN PEARSON: Thank you, Madame  
8 Chairman.

9 I think I have just one. Mr. Levy, we have in  
10 this investigation quite clear statements on the record by  
11 Delta with which you disagree rather sharply. This is in  
12 regard to their operation or lack thereof in Australia.

13 Are you alleging false and fraudulent statements  
14 on the part of Delta? If so, should we take an adverse  
15 inference against them?

16 MR LEVY: What we have said today is the  
17 information and belief of Tronox, which is limited to  
18 information that is their company proprietary information  
19 and other information on the public record.

20 Just to be clear, we are not, today, speaking to  
21 any of the content of what Delta may have said in its  
22 proprietary submissions, as we cannot today in this forum.

23 Again, for the record, Tronox is quite mistrustful  
24 of Delta's representations on this front. If it were to  
25 prove necessary for the Commission to verify this, we would

1 invite you to do so.

2 We are not, however, alleging fraud or anything of  
3 the sort. We are simply saying that the market intelligence  
4 of the domestic industry is at odds with what Delta has  
5 represented.

6 VICE CHAIRMAN PEARSON: Okay, thank you.

7 And let me talk you all for your participation  
8 here today. It's been a most interesting morning.

9 Madame Chairman, I have no further questions.

10 CHAIRMAN ARANOFF: Commissioner Okun?

11 COMMISSIONER OKUN: I have no further questions  
12 for the panel. I just want to thank you very much and we  
13 look forward to your posthearing submissions. Thank you.

14 CHAIRMAN ARANOFF: I have no further questions.

15 Any further questions from the dais?

16 COMMISSIONER LANE: I have no further questions.

17 And I would also like to thank the panel.

18 CHAIRMAN ARANOFF: Okay. Does the Staff have any  
19 questions for this panel?

20 MR. DEYMAN: George Deyman, Office of  
21 Investigations. The Staff has no questions.

22 CHAIRMAN ARANOFF: That was a little anti-  
23 climactic.

24 Well, on behalf of all of us then, we want to  
25 thank you very much for your time this morning and your

1 willingness to answer our questions. We look forward to  
2 many further answers from you in your posthearing  
3 submission.

4 Mr. Levy, whenever you're ready, you can go ahead  
5 with your closing statement.

6 MR LEVY: Thank you, Madame Chairman.

7 As no party is here today opposing the issuance of  
8 orders against China and Australia, I will spare you a  
9 closing statement.

10 Suffice it to say that, in our view, you have  
11 before you ample evidence to support an affirmative injury  
12 vote as to both China and Australia.

13 As you've seen, the domestic industry is injured  
14 severely, in our view, that imports have caused. And if the  
15 threat in the future is of anything more severe, we will  
16 endeavor to answer all of your questions to the best of our  
17 ability in the posthearing submission.

18 And I want to thank you very much for your time  
19 this morning.

20 CHAIRMAN ARANOFF: All right. There is only one  
21 short thing left to say and that is that posthearing briefs,  
22 statements responsive to questions and request of the  
23 Commission, and corrections to the transcript must be filed  
24 by August 12, 2008.

25 The closing of the record and final release of

1 data to the parties, September 8, 2008; and final comments  
2 are due on September 10, 2008.

3 With that, I believe we have completed our work  
4 this morning and this hearing is now adjourned.

5 (Whereupon, at 12:12 p.m., the hearing in the  
6 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 & 1125 (Final)

**HEARING DATE:** July 24, 2008

**LOCATION:** Washington, D.C.

**NATURE OF HEARING:** Hearing

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:** July 24, 2008

**SIGNED:** LaShonne Robinson  
Signature of the Contractor or the  
Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 600  
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).

**SIGNED:** Carlos E. Gamez  
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

**SIGNED:** Mona McClellan  
Signature of Court Reporter