UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
SEAMLESS REFINED COPPER PIPE	)	731-TA-1174-1175
AND TUBE FROM CHINA AND	)	(Preliminary)
MEXICO	)	

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Wednesday,
October 21, 2009

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

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

APPEARANCES:

On behalf of the International Trade Commission:

CATHERINE DEFILIPPO, DIRECTOR OF INVESTIGATIONS
JAMES MCCLURE, SUPERVISORY INVESTIGATOR
ELIZABETH HAINES, INVESTIGATOR
CHARLES ST. CHARLES, ATTORNEY/ADVISOR
JAMES FETZER, ECONOMIST
MARY KLIR, AUDITOR
KARL TSUJI, INDUSTRY ANALYST

APPEARANCE: (Cont'd.)

In Support of the Imposition of Countervailing Duties:

On behalf of Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc.:

STEFFEN SIGLOCH, CEO,
KobeWieland Copper Products, LLC

JOHN HANSEN, President-Manufacturing Operations
Mueller Industries, Inc.

BART ARNDT, Vice President/Industrial Business Unit Manager, Mueller Industries, Inc.

RICHARD BOYCE, President,
Econometrica International, Inc.

JACK LEVY, Esquire
DLA Piper, LLC
Washington, D.C.

In Opposition to the Imposition of Countervailing Duties:

On behalf of Homewerks Worldwide, LLC., JMF Company, Dayco Industries, LLC. and Marubeni America Corp.:

RANDY ALTMANN, Senior Vice President, Sourcing and Marketing, Homewerks Worldwide

VINCE LINDEN, Supply Chain Consultant,
Homewerks Worldwide

MAX HANSEN, President and CEO,
JMF Company

JEAN-PHILIPPE KRAHMER, Sales Manager,
Marubeni America Corp.

WILLIAM SILVERMAN, Esquire
DOUGLAS J. HEFFNER, Esquire
RICHARD FERRIN, Esquire
Hunton & Williams, LLP
Washington, D.C.

APPEARANCES: (Continued)

In Opposition to the Imposition of Antidumping Duties:

On behalf of Golden Dragon Precise Copper Tube Group, Inc., GD Affiliates S. de R.> de C.V. and GD Copper U.S.A.:

KEITH WEIL, Executive Vice President,
GD North America

JIANQING YIN, Vice President,
GD Affiliates S. de R.L. de C.V.

KEVIN O'BRIEN, Esquire
DANIEL O'CONNOR, Esquire
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Baker & McKenzie, LLP
Washington, D.C.

On behalf of Shanghai Hailiang Copper Company:

DUANE W. LAYTON, Esquire
JEFFREY C. LOWE, Esquire
Mayer Brown LLP
Washington, D.C.

On behalf of IUSA, S.A. de C.V. and Nacional de Cobre, S.A. de C.V.:

EDWARD KERINS, JR., Executive Vice President
Cambridge-Lee Industries LLC

STEVEN KELLY, President
Copper & Brass International Corp.

JOHN RYAN, Esquire
Weil, Gotshal & Manges, LLP
Washington, D.C.

I N D E X

APPEARANCES: (Continued)

P R O C E E D I N G S

(9:30 a.m.)

Ms. DEFILIPPO: Good morning and welcome to the United States International Trade Commission's conference in connection with the preliminary phase of antidumping duty investigations Nos. 701-TA-1174-1175 concerning imports of seamless refined copper pipe and tube from China and Mexico. My name is Catherine DeFilippo; I am the Commission's Director of Investigations and I will preside at this conference. Among those present from the Commission staff are from my far right:

James McClure, supervisor investigator; Elizabeth Haines, investigator; Charles St.Charles, the attorney/advisor; James Fetzer, the economist; Mary Klir, the auditor; and Karl Tsuji, the industry analyst.

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

I would also like to ask if people in the

audience could please either turn off or silence your cell phones so we don't interrupt the testimony and questions.

Are there any questions?

(No response.)

Ms. DEFILIPPO: If not, Mr. Levy, welcome. Please proceed to the table and begin your opening statement when you're ready. Thank you.

MR. LEVY: Thank you, Ms. DeFilippo. Good morning. It's good to see all of you again. For the record, my name is Jack Levy of DLA Piper, counsel for the Petitioners: Cerro, KobeWieland and Mueller.

As you know, the Commission has never before considered a Title 7 case involving seamless refined copper pipe and tube, so let me say at the outset that this is an important industry with a rich history of innovation dating back nearly a century. Today, domestic producers operate plants located in communities across the United States; in states such as North Carolina, Tennessee, Utah, Missouri, Louisiana, Texas, Illinois, Arkansas, Mississippi, and Pennsylvania. More than 3,000 American workers are currently employed in this industry.

When you look at the facts of this case, much of which, of course, are proprietary, I don't

think there is any serious question that in the terminology of the antidumping statutes the domestic industry has been materially injured by reason of imports from China and Mexico.

From the beginning to the end of the period of investigation you can see a steady trend. Production is down, sales are down, capacity utilization is down, profits have plummeted and the size of the American workforce has been substantially reduced. We also believe it's equally apparent that subject imports are a leading cause of the problem.

During the period of investigation, imports from China and Mexico have consistently undersold domestic industry across a range of seamless copper tube products. The result has been an unmistakable downward pressure on U.S. market prices and, most notably, a steady loss in market share for U.S. producers.

Now, we would not be surprised if the Respondents in this proceeding make some noise this morning in opposition to the petition. They will likely point to a downturn in demand due to the recession and to substitution pressures from alternative products such aluminum and plastic. To be sure, demand in the U.S. market is down and

substitution pressures do exist. But these challenging factors only make the domestic industry even more vulnerable to unfair trade practices such as those being perpetrated by producers in China and Mexico.

So let me be clear: For whatever demand that does exist in the U.S. market the record facts will show that subject imports are competing head to head with domestic producers on the basis of price; that they are underselling domestic producers; and that the U.S. industry has lost market share to subject imports, and with new capacity being brought on line in Mexico and China, the threat of continued injury from subject imports is even greater.

In a moment you will hear direct candid testimony from company officials at KobeWieland, Mueller and Cerro. Their testimony will help inform your understanding of what is happening in this market and how subject imports are unquestionably a leading cause of the problem. Thank you.

Ms. DEFILIPPO: Thank you, Mr. Levy. We will now have the opening statement from those in opposition to the imposition of antidumping duties. Who gets the honors?

MR. SILVERMAN: We're going to take it easy,

so if we can decide?

MS. DEFILIPPO: Sure. Absolutely.

MR. SILVERMAN: If you'll just give us 30 seconds, I can take care of it.

MS. DEFILIPPO: You're very generous, Mr. Silverman.

MR. MCCLURE: I will taser you if you go over 30 seconds.

MR. SILVERMAN: Got it.

Ms. DEFILIPPO: Welcome, Mr. Silverman. Please proceed when you're ready.

MR. SILVERMAN: I'm William Silverman with the law firm of Hunton & Williams.

Now rarely does the Commission get a case like this. I've been here many times and I've never seen facts like this.

Number one, an unprecedented decline in demand due to a recession, particularly in housing and other manufacturing sectors. Number two, raw material prices have fluctuated greatly and as copper prices have gone up the tubing prices have gone up sharply; and number three, at the same time as Mr. Levy admits, and I'm sure he'll admit many times today, there is a massive substitution and a continuing substitution of their products by lower priced plastic, aluminum and

other products.

With these major causative factors, we can say in this case, even if there were no subject imports, the economic health of the domestic industry would be basically the same. These big and unprecedented economic forces determine the health of the domestic industry. The causal link to subject imports is not there.

Second, look at the absolute numbers, and avoid the Petitioners' clever emphasis on market share. Look at the domestic industry's decline in total pounds, in total pounds, and compare it to the modest increase in total pounds of subject imports.

As I said, this proves that even without any imports from the subject countries there would still be a sharp decline in the domestic industry's production and shipments, and look at the total pounds in the decline of non-subject imports, and compare it to the modest increase in subject imports. These amount will show, again, that this decline in non-subject imports greatly exceeded the modest increases in the quantity of subject imports. Displacement of non-subject imports is not causation under this statute.

And third, where there is no correlation

there is no causation. The Commission has recognized this principle in many cases. The data in this case show that lack of correlation between subject imports and the indices of economic health of the domestic industry. Where there is no correlation there is no causation. Thank you.

MR. RYAN: Good morning, I am John Ryan of Weil, Gotshal & Manges appearing on behalf of IUSA and Nacional de Cobre.

As you listen to Petitioners today, keep in mind some key facts. Demand for copper pipe and tube has declined precipitously since the beginning of 2006. This has been as a result of the spike in copper prices in July 2006, which caused a shift to plastic pipe in residential construction, and then as a result of the housing market crash and financial market meltdown in 2007 and 2008.

Despite this difficult market that fully explains the declines in domestic producers' production and shipments, the U.S. industry remains robustly profitable. Indeed in this economic climate there are few industries that would not gladly swap profit margins with the U.S. copper pipe industry. There is no reasonable indication that the domestic industry is materially injured, and in any event there

is no causal link between the subject imports and the declines in production and shipments about which the U.S. industry complains.

This case is all about a perceived threat of injury. In assessing threat the Commission must look at imports from Mexico separately from imports from China. Imports from Mexico declined since 2006 considerably both absolutely and relative to domestic production. Imports from China have followed the opposite trajectory. There is no way to cumulate threat of injury between these two countries.

There is no threat of injury from imports from Mexico. Imports from Mexico has declined, indicating no likelihood that they will increase in the imminent future. You will hear compelling testimony this afternoon why imports from Mexico will certainly decline in a much greater amount in the imminent future. These facts are verifiable. This is a case of in-sourcing, not out-sourcing of jobs and production.

This case should never have been brought against Mexico. It is without merit and a prime candidate for dismissal at the preliminary stage as there is clear and convincing evidence of no material injury by reason of subject imports and no threat of

injury by reason of imports from Mexico. The Commission should issue a negative preliminary determination. Thank you.

Ms. DEFILIPPO: Thank you, Mr. Ryan and Mr. Silverman. We will now turn to testimony for those in support of the imposition of the antidumping duties. Mr. Levy, if you and your panel would come up and start when you're ready. Thank you.

Feel free to move the other microphones around in front of you if that's helpful.

MR. LEVY: Good morning, Once, again, I am Jack Levy od DLA Piper, counsel for Petitioners.

Let me first introduce the other members of the panel to you. With me today are: Steffen Sigloch, CEO of KobeWieland Copper Products; to my left is John Hansen, President of Manufacturing Operations at Mueller Industries; next to him is Bart Arndt, the Vice President of Industrial of Cerro Flow Products; and also here today is Dr. Richard Boyce of Econometrica International.

Let me briefly preview for you the testimony of the industry witnesses. First, Steffen Sigloch will be talking to you about the product, seamless refined copper tubes, as well as the production process and the basic cost structure inherent in that

process. He will also briefly describe the impacts that subject imports have had on KobeWieland's business.

Next John Hansen will describe for you the types of producers that we see in the domestic industry and how copper tube is sold, including channels of distribution, and the pricing mechanisms that prevail in the U.S. market. He will also detail the various conditions of competition in the United States, including demand trends, substitution issues, and the impact of subject imports. He will recount for you from Mueller's perspective the injury that dumped Mexican and Chinese copper tube has inflicted on his company and the need for antidumping relief.

Finally, Bart Arndt of Cerro Flow Products will provide a more detailed account of the market environment in which his company competes for the particular focus on competition at the OEM accounts. He will also share with you some rather pointed examples of lost sales and lost revenue that Cerro has suffered as a direct result of underselling by subject imports.

Listening to their testimony, I think you'll get a clear sense that this industry is no dinosaur awaiting its inevitable distinction. Rather, this is

a dynamic industry characterized by innovations and products and production properties. However, exploiting advances requires investment dollars. You will hear that those dollars are being choked off by competition from subject imports traded at less than fair value.

Now, before I turn things over to the company witnesses I want to give you a brief overview of our case. This is a case where the product scope seamless refined copper tubes is quite well defined and very well understood in the marketplace. We expect that nearly all of the subject imports are classified under one of two HTS subheadings, either 7411-1130 or 7411-101090. We submit that there is a single domestic like product for this case, seamless refined copper tube that is co-extensive with the scope of the investigation.

On the issue of cumulation, we note that copper tube produced to a given specification is highly interchangeable, regardless of whether it's manufactured in the U.S. Mexico or China. As a result, producers compete with one other primarily on the basis of price. Subject imports are simultaneously present in the U.S. market and sales from China, Mexico and the domestic producers are indeed present

in the same geographic market, which is a national market.

Finally, subject imports share common or similar channels of distribution with one another and with domestic producers. So for all these reasons we believe that cumulation is required by statute.

As you will see, this is at bottom a straightforward case that you've seen many times before. It is a case where there is simply too much supply chasing too little demand, and as the Commission has observed countless times, structural over-supply has a tendency to result in injurious price effects.

In an environment in which U.S. demand is down due to the recession, the domestic industry is especially vulnerable, and in this difficult environment subject imports have been underselling domestic producers with the result being lost sales, lost revenues,and a significant loss of market share for the domestic industry.

As the industry witnesses will testify, the U.S. industry has already been severely injured, and as I will discuss later on, they are also threatened with continued future injury as a result of some shocking capacity expansions already underway in

Mexico and China. With that introduction, I would like to turn things over to Mr. Sigloch of KobeWieland Copper Products. Thank you.

MR. SIGLOCH: Good morning. My name is Steffen Sigloch. I am the CEO of KobeWieland Copper Products, LLC, and I have 21 years of experience in the copper fabricating industry. KobeWieland is a joint venture between Kobe Steel of Japan and Wieland Worker of Germany. We employ roughly 500 workers here in the United States. Our main facility is located in Pine Hall, North Carolina, and we also operate a plant in Wheeling, Illinois.

KobeWieland produces a broad range of copper tube products with a wide range as I mentioned from smooth tube to enhanced tubing, both on the inside and outside, also plumbing applications and commercial applications. It is also worth noting that our plant in Pine Hall employs two of the most prevalent production technologies for copper tube, high razor extrusion and cast and rolling. I'd like to begin by briefly describing seamless refined copper tube with reference to Exhibit 1.

Copper tube can be produced --

MR. SILVERMAN: Chairman, can we have a circular? We can't see those drawings from here.

Ms. DEFILIPPO: I believe there is some on the table. We'll pause for a minute until Respondents can pick up some of the handouts.

(Pause.)

Ms. DEFILIPPO: Please proceed. Thank you.

MR. SIGLOCH: Yes. Copper tube can be produced to standard ASTM specifications. These are often referred to as plumbing tube, and there are different specifications for different service conditions. Here are some examples.

There is hard tubing in straight links, and there is soft tubing typically in coils, in rare occasions in straight links. There are different designations for different wall thicknesses, K being the heaviest copper tube roll, L being thinner than that and M thinner and DWV, which stands for drain waste vent being the thinnest of these rolls. There is also OXY/MED for the transportation of gases, typically in hospitals but also for the transportation of the fluids like the above. There is ACR tubing for the transportation of refrigerant.

On the soft side you also have refrigeration service tubing, also for the transportation of refrigerant. Line sets would be insulate, one of the two lines would be a set of lines with one of the two

lines being insulated.

Let me show you some examples. Different tube types are marked with different color, either blue, green, red or even yellow for DWV, and we have samples in different dimensions. All of these tube types are available in different dimensions and different lengths. So there's a refrigeration service tube coil in 50-feet lengths, and one sample is cleaned and kept, which would be an OXY/MED tubing.

In addition, we sell copper tube to OEMs who delineate custom specifications. Here the ASTMs delineate general standards such as copper purity and testing methods, but the OEM may require some custom dimensions, tempers or packaging. These are often referred to as commercial tube or industrial tube.

As you can see here on the chart, common examples of commercial tube include straight length LWCP, which stands for level one coils, both smooth bore and with inner enhancement. Commercial tubes can also be with external enhancements and we also have some samples for commercial tubes, one sample being a hard straight length, and we have two samples in two different dimensions with inner grooves or inner enhancement, a 5/16 OD and a 3/8 OD. For the 3/8 OD the enhancement is roughly 50 to 60 percent through

the grooves on the inside enhancement of the surface.

From the manufacturer's perspective, the differences between all these products are minimal and are created by minor adjustments in the production process. For example, consider a 3/8 OD refrigeration service tube at 50 feet length. This is a standard plumbing tube produced to ASTM B2E. If an OEM calls for a 3/8 inch OD tube, we produce it the same way but don't cut it off at 50 feet and spool it into a level one coil instead, instead of the 50 feet pancake coil.

Next I want to briefly describe the production process by reference to Exhibits 5 through 7. For simplicity, I have broken the production process into three distinct phases: prefabrication, intermediate fabrication and finishing fabrication.

The first phase is prefabrication, and producers use the cast and roll method as well as high ratio and low ratio extrusion. These technologies all successfully coexist in the marketplace and the resulting products compete interchangeably, the resulting product being a multitude of roughly 2.2 inch OD with a .100 inch wall.

All processes essentially begin with melting the copper roll material and casting the liquid metal into a shape for hot working and cold working.

Regardless of which process you start with, the end result is what you see here, and we call this the mother tube.

The next phase is intermediate fabrication and involves several iterations of cold storing to achieve desired dimensions. This phase is common to all prefabrication technologies.

The final phase is finishing. As you can see here, the various types of products listed on the left all require some combination of finishing steps which may include annealing, cleaning, cutting to length, coiling, packaging, et cetera. By simply changing these finishing steps, we can easily produce a wide variety of products.

Again, one point I want to stress is that no matter which prefabrication technology a producer uses a finished product produced to a given specification will always be the same.

Next I should also mention that the production process entails a substantial amount of fixed costs. As a result, it is important for us to maintain a high capacity utilization in order to remain profitable. As you know, KobeWieland's experience competing with imports from China and Mexico is detailed in Exhibit 4 to 5 of the petition,

and this information is confidential. What I will say here today is that we have lost sales and have been forced to lower prices due to competition from subject imports.

One result of subject import competition has been lost sales, which has lowered our capacity utilization, which in turn raised our per unit costs. Another one of the injurious effects of imports has been to curtail investment in our production facility in North Carolina. Thankfully, KobeWieland has now completed the lion's share of its modernization plans at its Pine Hall facility, but it has been a long road, and I can say that subject imports are having an impact on the timing and scale of the modernization.

KobeWieland now has one of the most efficient modern production facilities in the world and we offer a wide range of copper tube products to our customers. There is no question that we can compete and support our customers if there is a level playing field in the market. But in our view, a level playing field will only be possible if Chinese and Mexican producers are subjected to the discipline of antidumping orders. Thank you for your time, and let me now turn things over to John Hansen of Mueller Industries.

MR. HANSEN: Good morning. My name is John Hansen. I'm President of Manufacturing Operations for the Standard Products Division of Mueller Industries. I've been with the company for 17 years, and I've worked in the copper tube and fittings industry for 25 years.

Mueller has produced copper tube in the United States for over 70 years and we operate two integrated copper tube mills in Fulton, Mississippi, and Wynn, Arkansas. We also have a subsidiary, Precision Tube Corporation, which is a redraw mill. Collectively, Mueller employs more than 400 American workers in our copper tube operations.

By way of introduction, I would like to explain that there are both integrated mills and converters in the copper tube industry. Integrated mills begin the production process with copper raw material in the form of cathode or ingot or scrap. Converters start their production with mother tubes in the case of redraw mills or finished tube coils in the case of line-set fabricators.

Let me briefly explain the way copper tube is sold. First, I should explain that there are various channels of distribution in the U.S. market. There are four basic channels of distribution: first,

from the mill to a master distributor who in turn resells to a wholesaler, or from the mill direct to a wholesaler, from a mill direct to a retailer, or from the mill direct to an original equipment manufacturer. Copper tube produced to standard specification, that is, plumbing tubes, is generally sold to distributors, wholesalers or retailers. These are spot sales.

Bidding is based on a published price sheet which is adjusted periodically to account for changes in copper cost and other market conditions. Petitioner's Exhibit 4 is an example of a price list for plumbing tube.

What generally happens is that a customer invites bidding for an estimated quantity of pounds to be delivered within a few days. Because tube producers publish price lists generally show the same list prices, competition takes place on the basis of a multiplier, which means that the sales price is the list price times the multiplier that is negotiated. For example, Jack's pointing out on the price list half-inch type K hard with a list price of $4.18 per foot. If the multiplier is .5, then the actual sales price to the customer is $2.09 per foot.

For copper tube produced to OEM specifications or commercial tube, the sales process

is different. There are generally annual contracts that specify forecasted volumes for a 12-month period. Because sales occur over an extended period and because copper prices tend to be volatile, pricing is based on the copper metal cost, which is a pass-through to the customer, plus a fabrication charge or fab charge that is intended to cover conversion costs plus an amount for profit. For these types of sales, competition occurs based on the fabrication charge, which is expressed on a dollar per pound basis.

I'd like to identify several of the key conditions of competition in the U.S. market. First, with regard to interchangeability, once copper tube is produced to a given specification, products from different sources are generally viewed as interchangeable in the marketplace. This is certainly true for products from China, Mexico and the United States and generally true for other sources of supply as well.

Imports have been targeting high volume products for sale in the U.S. market in order to increase their own capacity utilization, and what we are seeing is that they are making deeper inroads in terms of their reseller distribution networks in the United States.

With respect to sales of plumbing tube, Mueller has often tried to raise prices through its published price sheet, but imports from China and Mexico respond with very aggressive multipliers that depress market price levels.

With respect to sales of commercial tube, the OEMs have enormous market power and are able to use low-priced imports as leverage to negotiate lower prices from U.S. tube producers. Consumption of copper tube is tied to the business cycle, including construction activity in the United States. Obviously demand for copper tube has been below average in the recent period due to the recession. This is also an industry where substitution is a relevant issue.

Copper tubes are used in applications to take advantage of some combination of copper's various properties, including strength, electrical conductivity, thermal conductivity, ductility or ease of bending, corrosion resistance, chemical purity, for example, it's lead free, and resistance to fouling.

The applications for copper tube are varied but primarily one, conveyance of fluids, and two, thermal transfer. With respect to conveyance of fluid applications, we see the plastic tubing, both CPBC and PEX, are potential substitutes, particularly in

residential plumbing and new home construction. In commercial construction, stainless steel may be a cost-effective alternative at some relative price for copper and steel.

With respect to thermal transfer applications, we see that aluminum is a potential substitute, although its thermal conductivity is inherently inferior to copper and the redesign and retooling process for OEMs can be lengthy, often 18 months, and costly. The bottom line is that if the relative prices between copper tube and competing alternatives is great enough substitution occurs in some applications.

I spoke a bit about demand drivers in the U.S. market, but I should also mention that certain U.S. producers have shuttered capacity in recent years. Wolverine closed its tube mills in Mississippi, Alabama and Tennessee. National Copper closed its Michigan tube mill, and Linderme Tube closed its Ohio tube redraw mill. Together these mills represented more than 200 million pounds in capacity.

In principal, those of us left standing in the U.S. industry should find more than adequate demand in the U.S. for our product, but despite these

closures the capacity utilization of the remaining U.S. producers is declining due to lost market share to subject imports.

Finally, let me say a few words about the effect that imports have had on our business. Without getting into details, let me say that Mueller has been injured during the period of investigation. From 2006 to the present, we have experienced reductions in production, sales, capacity utilization, profits and workforce. Sadly, just last week Mueller Industries further reduced its workforce at our Fulton, Mississippi plant, and subject imports were a factor in this difficult decision.

In our proprietary submissions, we have detailed specific instances where we lost clearly millions of dollars in sales due to underselling by imports from IUSA in Mexico as well as Golden Dragon in China.

Mueller has a long and proud history as a market leader for copper products. Unfortunately, the growth of imports in the market at unfairly traded prices has undermined our ability to reinvest in new technology. We are bringing this case because we are afraid that without relief from dumped imports the future prospects for our company and its workers are

very much in jeopardy. Thank you for your kind attention. Let me turn the testimony over to Bart Arndt of Cerro Flow Products.

MR. ARNDT: Good morning. My name is Bart Arndt. I am Vice President of Industrial Products at Cerro Flow Products, Inc. I have been with Cerro for seven years and I have worked in the industry for 20 years. In my current capacity, I am responsible for all aspects of production, sales, profit and loss of commercial tubes.

Cerro, a 100-year-old company originated with the Leewind Metals Company and today employs more than 500 American workers. We operate four copper tube plants in Louisiana, Missouri, Illinois and Utah and also operate a separate casting facility in Missouri. The Utah facility is one of the most modern facilities in the world. We were the first to successfully employ cast and roll technology in the United States. Our other facilities use the more traditional billet extrusion press process.

Cerro produces a full range of copper tube products from three-sixteenth OD up to eight inch OD for the commercial and plumbing tube market. For ODs up to an inch and five-eighths we make these products using both the extrusion and cast and die processes.

In our experience, the processes are interchangeable for these ODs and the finished products are identical.

Because my area of expertise relates primarily to commercial tube, I will mainly focus on this area of the market. A good starting point is the trial and qualification process with the OEMs. Whereas ordinary plumbing tube is truly a commodity wholesale product, commercial tube is engineered to customer specifications. For tier 1 customers, such as large HVAC producers, companies like Carrier, Trane, Lennox, the trial process generally takes two to six months from start to final approval. In my experience, Cerro has never found itself in a position where it was not able to meet the customer's specifications. However, we have encountered several situations where an OEM simply told us not to bother with a qualification process because Cerro was not even close to meeting the cut-rate import prices from Mexico and China.

I can think of one case in particular where this happened. The customer said, "I know who you are, you're a good company, but you simply cannot get anywhere close to Chinese import prices." In this case we didn't even get a chance to qualify our product for the customer. This business opportunity

represented nearly tens of millions of pounds, or more than $100 million in annual sales for our company.

Having talked to you a little bit about qualifications, I wanted next to describe a little bit more the pricing for commercial tubes. We generally negotiate annual contracts with OEMs with a per pound fabrication charge or fab charge that is fixed for 12 months. The metal portion of the sale is a pass-through determined based on prevailing copper prices in the months preceding the sale. We call this the prior month average.

If we treat the metal cost as a pass-through, and you look at our conversion cost, the fact is that there are substantial fixed cost in the production processes such as the high capital expenditure underlying the prefabrication processes. For this reason it is important for us to have high capacity utilization in order to cover our fixed costs.

If we were already operating at high capacity utilizations a marginal pound of product sold would not be so critical. But in the environment of depressed demand due to recession that same marginal pound represents a much larger percentage of our production and has a much larger impact on our unit

fixed costs. Simply put, in the current environment every marginal pound of product is critical to our cost structure.

Unfortunately, what we have been experiencing is that imports from China and Mexico are coming in and destroying Cerro's market share. This has happened to us over and over throughout the period of investigation. To give you an example, we had a case just four weeks ago, had an account where the customer had sourced from both Cerro and Golden Dragon in China.

According to our customer, Golden Dragon has offered to reduce the current fab rate by more than 20 percent in order to displace Cerro and load up its new Mexican plant. Let me give you another example.

We have another customer that sources from Golden Dragon in China and from Cerro. We had to meet Golden Dragon's price for 2009. Recently, in the last three weeks, our redistributor for Hailiang has now entered the supply chain, undercutting Cerro by more than 20 percent. In a market where contracts are won or lost based on as little as a penny, it should come as no surprise that this customer stopped taking volume from Cerro at the same time that Hailiang's redistributor entered its bid.

Another example, we have a customer in the South that had once previously sourced 100 percent from Cerro. They approached us for a quote in 2008, but they ended up awarding in excess of 3.5 million pounds or approximately $11 million in business to IUSA in Mexico and imports from China. We lost the bid because of price.

Let me give you one final example. This is a customer we have out West. In 2006, we supplied 100 percent of the customer's requirements. In 2007 and 2008, we lost 50 percent of that volume to a redistributor for Golden Dragon of China solely because of price.

In 2009, the customer visited our plant, complimented us on our modern facility and product quality and stated that they wanted to try and source all of their volume with a domestic supplier. In the end, the customer based on available import pricing has resourced 75 percent of their volume with China import product.

These are just a few examples of lost sales and lost revenue that Cerro has suffered in competition with subject imports. Let me say that I was personally involved in the commissioning of our Cedar City, Utah, plant. This plant employs cast and

roll technology and in my opinion is the most modern automated plant in the world. If Cerro is unable to compete with this highly efficient tube mill, then the future prospects for the entire domestic industry is dismal.

Over the period of investigation our production is down, our sales are down, our capacity utilization is down, our profits are down, and our head count is down. The outlook is bad, and we have on hold all capital expenditure projects that are not absolutely necessary, and I know from my firsthand marketing experience is that imports from China and Mexico are a big part of the problem. I am convinced that unless the Chinese and Mexican copper tube producers are subject to antidumping orders the problem will even get worse. Thank you.

MR. LEVY: Jack Levy again from DLA Piper, counsel for Petitioners. There really isn't that much more to add. The industry witnesses here have painted a picture for you of an industry that's going through a very difficult period, and I think they've drawn the link you require by statute between subject imports and the problems they are having to deal with.

Maybe the best use of my time is to try to return to some of the fundamental points underlying

the case, and if I can bend your ear for a little bit longer I'd like to make three basic points.

Point number one, the domestic industry is unquestionably materially injured by every important metric, including production, sales, capacity utilization, profits, employment. The conditions of the domestic industry have deteriorated steadily throughout the period of investigation from '06 to '07, from '07 to '08, through to the present day. The current condition of the domestic industry is simply untenable.

Point number two, while a downturn in demand for copper tube is surely one contributing factor, there can be no serious question that subject imports are a leading cause of the problem. We see that evidence in the form of very specific instances of underselling, as detailed in Petitioners' lost sales and lost revenue allegations in Exhibit 45 of the petitions and as recounted for you here in part today. And when you review all the data on the record, we believe you will also see what Petitioners almost know to be true, that subject imports have taken substantial market share away from the domestic producers.

Point number three, as intolerable as the

current situation is, the domestic industry is threatened with additional injury in the future. As I explained earlier, this is a case characterized by too much supply chasing too little demand, and that supply/demand imbalance is motivating producers in the subject countries to dump their product onto the U.S. market.

So is the situation likely to improve? Can we expect to see some kind of equilibrium? Not at all. According to the February 2009 issue of the CRU Monitor, there are 18 major copper producers in China with a combined capacity of 978,000 tons per years and a capacity utilization of only 35 percent. This means that for 2009 China's unutilized capacity is approximately 1.4 billion pounds, which is even greater than total U.S. demand for copper tube. Let me say that again because it bears repeating. The unutilized capacity in China exceeds total demand in the United States.

Now let me also direct your attention to the CRU Group's expert assessment of capacity increases in both China and Mexico because I think it does a good job of highlighting the fact that structural oversupply in the copper tube market is only getting worse. "Incremental capacity increases have been

increasing in China both at existing producers and at new entrants. The wisdom of such actions at the present time are highly questionable in view of the excess capacity already existing and the limited short-term prospects for domestic and international market growth."

"CRU has already warned that the new commercial tube capacity being planned for Mexico by Lavado, IUSA and Heening Golden Dragon appeared totally unrealistic in view of the downturn in demand from the heating, ventilation, air conditioning and refrigeration industries. Given that the market outlook has deteriorated further, they now make even less sense."

And "There has been no sign that any of these Mexico projects has been put on hold or canceled due to market conditions. For Heening Golden Dragon, the rationale of extra local capacity to replace exports from China is very flimsy."

Just the other month, Golden Dragon officially commissioned its Mexico plant with a reported capacity of approximately 132 million pounds, and Lavado has also just commissioned its Mexico plant and is ramping up to approximately 110 million pounds of production by next year. IUSA for its part also

continues to press ahead with new production capacity in Mexico.

The situation is shocking. It makes no commercial sense, and it's clear that this is a threat to the survival of the domestic industry. Unless and until foreign producers in Mexico and China are subjected to the discipline of antidumping orders they will continue to sell into the U.S. market at prices less than fair value and continue to injure American producers and their workers.

Thank you for your time and the panel looks forward to your questions.

Ms. DEFILIPPO: Thank you, Mr. Levy, and than you for the panel members being here today. It's always very helpful having people in the industry here to present testimony and answer our questions, so we greatly appreciate that.

We will start the staff questions first with our investigator, Betsy Haines.

MS. HAINES: Betsy Haines, Office of Investigations. Thank you very much for the testimony. It was very thorough. You actually covered a couple of questions I had jotted down.

One question I have. You mentioned the two HTS numbers that you feel the majority of the imports

were coming in. There is a little bit that's not within the scope of those HTs numbers, and do you feel that we could use those official data under those two HTS numbers for our report? Is the product in those HTS numbers small enough that we could use the official stats or should we use questionnaire data?

MR. LEVY: No. I think that the two HTS numbers or the two HTS subheadings to which I referred consist exclusively or almost exclusively of subject imports, and there is very little by way of subject imports outside of those two HTS subheadings. So for the purpose of the preliminary determinations and your report we feel that that would be an adequate basis upon which to proceed with your analysis.

MS. HAINES: Okay. And another question I have. In the industry there are the firms that make the pipe, the billets themselves, and they are the firms that buy that, but end up using it to make product that's still within the scope. Those firms that are not creating the pipe in its original form, what percent of the U.S. production do you feel that subset of producers represents?

MR. LEVY: I don't know that we can find a precise number, but the feedback I've received from the Petitioners is it's less than 1 percent of the

total U.S. demand.

MS. HAINES: And I guess my final question. There was a minor tweaking of the scope that the Department of Commerce said, and do you feel that basically what we've included in our questionnaire is still fine, the data that we were requesting, because the tweaking of the scope didn't really affect what we were asking for.

MR. LEVY: Yes. The changes to the scope during the pre-initiation period were very minor. I would characterize them of the nature of clarifications rather than substantive changes, and they were designed to facilitate more effective Customs enforcement. So we don't see any material change between the scope at the time the questionnaires were sent out and the scope that we see as of today.

MS. HAINES: Great. Okay, that's all I have at the moment. Thank you.

Ms. DEFILIPPO: Thank you both. Next we'll turn to our attorney, Charles St. Charles.

MR. ST. CHARLES: Thank you. I understand when the same specification is met products compete. Are the specifications that the Mexican producers and the Chinese producers that they are regularly meeting

do those tend to be the same specifications or are there differences in the segments and the products where you find these two imports?

MR. LEVY: Let me give you my general understanding and then I'll invite the industry witnesses to elaborate.

Mr. Sigloch has described to you that there are standard specifications that are often characterized as plumbing tubes, and then there are OEM specifications or customs specifications characterized as commercial or industrial tube. What we've seen during the period of investigation is that Mexican producers have shipped to the United States both plumbing and commercial tube, and similarly Chinese producers have shipped to the United States both plumbing and commercial tube, and there is a meaningful overlap in product mix.

I'll allow some of them to elaborate as to sort of the extent to which those products are exactly the same or interchangeable.

MR. HANSEN: With respect to the plumbing tubes which are manufactured to ASTM standard specifications, generally speaking local plumbing codes require that copper tubes conform to these standards. No matter where the tube are made the same

standards apply for sales and use in the U.S.

MR. ARNDT: For commercial tube, it's tied to the ASTM, and the United States manufacturers as well as China as well as Mexico all build to the same standard. There may be some individual customer specifications, but they are very minor as compared to the ASTM which governs the production.

MR. ST. CHARLES: I noticed you moved the microphone to answer that. Is one of your facilities of our companies more concentrated in plumbing and one more concentrated in OEM -- I mean -- yes, OEM?

MR. HANSEN: Speaking for Mueller, both of our plumbing mills, both of our tube mills primarily manufacture plumbing tube. We are a very modest participant in the commercial tube market.

MR. ARNDT: Cerro produces both plumbing product and commercial product. My expertise is on the commercial side. John's expertise is on the plumbing side. That's why we kind of share the microphone.

MR. ST. CHARLES: Thank you. Back to my original question, to what extent are the Chinese imports plumbing versus OEM, and to what extent are the Mexican imports plumbing versus OEM?

MR. LEVY: I would like Mr. Sigloch to

comment a bit, but it's my understanding that during the period of investigation imports from China, again, are both plumbing and commercial. Probably we think weighted more toward the commercial side whereas imports from Mexico, again, are both plumbing and commercial, but perhaps weighted more to the plumbing side. So again, China probably weighted more OEM, less plumbing; Mexico weight more plumbing, less OEM, but we're seeing both products from both sources and they are all in the market at the same time.

I don't know, Mr. Sigloch, if you can comment.

MR. SIGLOCH: I would have stressed the same thing for China predominantly or to a larger extend commercial tubes, but also plumbing tubes, and it's the other way around for Mexico; the larger part is commercial tube, the smaller part -- the larger part is plumbing tube from Mexico and the smaller part is commercial tube.

And to your earlier question, we manufacture both products in the same plant.

MR. ST. CHARLES: Thank you. That's very helpful to me as was your earlier testimony. Thank you very much. Yes?

MR. ARNDT: I may want to add that when Jack

was talking earlier about the capacity in Mexico coming on line, most of that additional capacity that was referenced in that exhibit is associated to commercial tube.

MR. ST. CHARLES: So Mexico currently is more weight to plumbing, is adding capacity that would increase its ability to export commercial.

MR. ARNDT: That is correct.

MR. ST. CHARLES: Yes, thank you. I have no more questions.

Ms. DEFILIPPO: Thank you. We will next turn to Mr. Fetzer.

MR. FETZER: Thanks. Jim Fetzer, Office of Economics. I would like to thank all the witnesses for coming today and share knowledge on this industry. I don't think we've looked at this one before so it's really good to get your expertise on it.

To answer a few of my questions, which I appreciate. One thing I want to follow up on Charles's discussion somewhat. In terms of import competition, are there parts of the market that you see it more concentrated than others, and this would be in terms of either plumbing versus commercial but also, you know, different channels of distribution, or maybe places where there really isn't import

competition. Are there concentrations particularly where you have seen instances of lost sales and revenues?

MR. SIGLOCH: Maybe I can comment. The imports concentrate more on large customers, on high volume run off, so this is where we see more competition. On low volume run off, very small, specific sizes, we see less imports. This is the same on the commercial side as it is on the plumbing side.

MR. FETZER: Okay.

MR. BOYCE: If I could?

MR. FETZER: Sure.

MR. BOYCE: Richard Boyce, Econometrica International. The reason for them focusing on the high volume products is the same in this industry as many others. You build a new plant, you want to base load the plant so as to get a higher operating rate. The easiest way to do that is to go after customers who buy large volumes of products. That's what they do. It is important, particularly for the profitability of the U.S. firms, that they are losing the high volume products. They have to scramble around and put together the same number of pounds using many different customers, many different products. That's more costly.

MR. FETZER: Okay. Thanks. I appreciate that. In terms of the pricing, I mean, I find it very interesting how we have two different types of pricing, and there's a price list with the discount rate I guess on the spot sales, and then the fabrication charts with the metal charts on the contract. Is there a reason why, you know, the spot sales, why, you know, certain customer take spot sales? I guess pick that type of contract versus the other? Is it flexibility?

I mean, is that type of pricing dictated by the customers or is it dictated by the companies typically that are in the market? The type of application? If you could just comment that. I'm just trying to get a sense of why that, maybe the history of how it got to the point it is at and why that's sustained.

MR. BOYCE: I'll try to answer that. Could we have the price list put back up on the board? That price list has many cells. Each of those cells represents a dimension and some characteristic of an ASTM specified cube. In addition, there are different lengths. So a producer manufactures hundreds of SKUs, that is, a combination of diameter, wall thickness, length, temper and so on. The price list with a

multiplier is a very efficient way of conveying price information for hundreds of SKUs simply. Everybody has access to that price list.

Because of that, once they know what the multiplier is or the multipliers for the U.S. producer and the competing import they can, using a spreadsheet, figure out what will be the total bill for their needs, which may be 10,000 feet of half inch Type L, 5,000 feet of five-eighths inch Type K, and so on. It's an efficient way of transmitting price information when you have hundreds of products for standard classification product. That's it for the price list. Do you want me to go on on the OEM?

MR. FETZER: Sure.

MR. BOYCE: Okay. The OEM, on the other hand, is buying fewer products over, as was explained, say a contract that covers a used time. The price there is -- okay. The U.S. producer does not want to take the risk of the volatility of the copper price. The customer takes that risk and then can do with it what they want, you know, they can do hedging to minimize the risk to them, but fewer products, large volumes of fewer products and over a 12 month period. So a fixed fab charge for the entire 12 month period, and then a copper price which is typically dictated by

the average market price of copper for the month preceding when they take any particular amount of material.

MR. FETZER: Okay. Mr. Hansen, did you want to add to it?

MR. J. HANSEN: Yeah. There's a fundamental distinction that contributes to the difference in the pricing methods. Bear in mind, plumbing tubes are commodities. They're all manufactured to the same standards and they're interchangeable with one another. In contrast, the OEM specifications are unique to the design of their equipment. Although many of the tubes are very similar, for each OEM, the tube that they're buying is a component in a system. While they may have multiple suppliers, they need to be assured a ready supply of the products that are manufactured to their unique specifications. That's why they've chosen to go the contract route, to align their suppliers and have confidence that adequate suppliers will be available at the appropriate time and of the appropriate quality.

MR. FETZER: Thanks. So I guess, I mean, is it the buyer that decides this or the seller, or is it just -- I mean, I guess looking over the questionnaires there was some suggestion, I don't know

how prevalent this would be, that maybe some buyers prefer in some cases maybe, you know, in the spot market to get a metal chart plus a fabrication chart instead. I don't know the extent that's true, but, I mean, is that, you know, the seller is pretty much dictating, well, this is the type of pricing we have, or is the customer more dictating, or does it just depend on the interaction?

Maybe the range of products that are being offered, too. I guess in the spot market there could be cases where you're focusing on a few products and it could, you know, potentially work, but I could see how it wouldn't be workable if you were offering a lot of products.

MR. J. HANSEN: Yes. I think you've identified the main point. With the variety of SKUs in the plumbing market and with the distributors not having any certainty about what quantities will be required of which SKUs, it's much more convenient for them to deal with a list price. Bear in mind, they're resellers. Their concern is less their buy price than the margin between their buy price and their resale price. The OEMs, on the other hand, it's a component of the cost of production. So, I mean, they're bringing different attitudes, different mindsets and

different objectives to their purchasing decisions.

MR. FETZER: Go ahead.

MR. SIGLOCH: Maybe to answer who decides the method, I would say, especially in our case, it is 100 percent the customer, both on the plumbing side and the commercial side, making the decision I want to work with this method or with the other method. I do not know of a single instance where we told someone you need to buy off of a price list. They are familiar with this type system and use it.

MR. FETZER: Okay. I appreciate that. Is that the case also of your companies, Mr. Hansen and Mr. Arndt? Is that correct?

MR. BOYCE: That's correct.

MR. FETZER: Okay. Thank you. Mr. Hansen?

MR. J. HANSEN: Yes.

MR. FETZER: Okay. Thanks. There was some mention in the questionnaire responses about some customers preferring product made from a cast and roll type of production than extrusion. Are there issues with extrusion where that doesn't work out? Also, there was a comment that U.S. producers can't set the Canadian specifications for some reason. I think it had something to do with that. Does that play a role in the marketplace, particularly in terms of

interchangeability? I mean, would you think that a product produced through extrusion, is that interchangeable with a product produced through a cast and roll type of production process?

MR. ARNDT: Very simply, there's no difference.

MR. FETZER: There's no difference? Okay. Does everyone agree with that then?

MR. J. HANSEN: Yes.

MR. SIGLOCH: Well, some sizes you cannot produce with cast and roll methods, especially the very large sizes. You need to use an extrusion process. For all sizes that can produced with the method, there is no difference.

MR. FETZER: Okay. In terms of demand, you said demand has been down, particularly focusing on I believe the housing market. What's the best way to look at that in terms of a metric? What would you look at? Do you look at housing starts, residential real estate, or do you look at a series of factors, or what are the ones you focused on that we might take a look at to get a sense of what the changes in demand actually have been in this market?

MR. J. HANSEN: Certainly new home construction plays an important role in demand for

copper tubes, both for plumbing tubes and also for the bushel tubes that are used in air conditioning equipment, which also goes into new homes. In the case of copper plumbing tube, much of the demand today is derived from nonresidential construction rather than residential construction, the reason being that on the nonresidential market segment we've not seen the substitution of plastic for copper that we've seen in new residential construction. That market remains a copper market. So these two segments of construction activity, both residential and nonresidential, are both important drivers of demand for copper, plumbing and commercial tube.

MR. FETZER: Okay.

MR. SIGLOCH: Maybe one metric to add. We are following early in the year the weather. The warmer the weather the early part in the year, the better off the air conditioning season will be.

MR. FETZER: Okay. So housing starts, also nonresidential housing I guess, and --

MALE VOICE: And construction.

MR. FETZER: Construction. Okay. Sorry.

MR. SIGLOCH: The replacement market is also a driving factor on the commercial tube side and the replacement market is driven by weather so that's why

we're tracking this as well.

MR. FETZER: How big is the replacement market?

MR. SIGLOCH: Depending. Now, if you look at residential or if you look at commercial, you range between 50 percent and maybe 65 percent replacement market. Thirty-five to 65.

MR. FETZER: So with some of the replacements it's, you know, an existing house, or an air conditioning system, or something where you need to replace the copper pipe. There was also evidence in our questionnaires about a business cycle along seasonal terms, I think, along the lines of, you know, the weather. Has that changed much since 2006? Has that changed demand or is it pretty much a similar type of cycle?

MR. SIGLOCH: The weather has not changed much. No.

MR. FETZER: Mr. Hansen?

MR. J. HANSEN: Seasonality is a feature of the demand because it's a feature of the construction market. Typically residential construction peaks in the spring and early summer months, and, to a lesser extent, so does commercial construction. That's a factor of the weather in the northern tier of states.

The winter weather discourages construction starts. So that's a fairly predictable pattern within the overall business cycle, which obviously is governed by macroeconomic events.

MR. FETZER: Okay. I appreciate that. In the questionnaire we asked about cost share in end use, how much copper tube is actually used in the final product. We got a variety of answers. Some cases it got very high numbers saying the copper tube is a high percentage, in other cases, very low. Is that because there's different applications? Well, sometimes people are misinterpreting the question. I mean, I would think that it would tend to be on the lower side. If you're looking at the value of a house, the copper tubing is going to be on the lower side, or even an air conditioning unit. Maybe I'm mistaken, but if you could just give me some sense of that. Does it vary a lot through particular end uses, the cost of the copper tubing in the final product, or is it generally let's say on the low side or the high side, or does it vary a lot given a different application?

MR. SIGLOCH: Maybe for a very large air conditioning unit you talk about the highest absolute number of pounds, so you might go as high as 5,000,

6,000 pounds of copper in a single chiller unit. With a window unit you'll go in the only range of 10 pounds, 15 pounds of copper. So this is the range you will see almost every air conditioning unit in between of sizes. In percentage, I would not be able to give you an estimate at this point. We would have to do this postconference submit.

MR. FETZER: Okay. Mr. Hansen?

MR. J. HANSEN: With respect to residential applications for copper plumbing tube, the plumbing tube itself is a relatively small component of the total cost of a house, perhaps a few hundred dollars on a $100,000 house, so it's a relatively small component of the total cost of the house. It can be a fairly significant portion of the cost of the plumbing system.

MR. FETZER: Okay. I appreciate that. Yeah, and anything during postconference. I mean, I don't need exact estimates, just a general sense of is it really big, is it really small, the type of characterization, Mr. Hansen, to provide.

MR. BOYCE: I think it's fair to say that for the applications it's very small.

MR. FETZER: Very small. Thank you. There was also some mention in the questionnaire responses

about availability issues at different points in time for different companies. Could you just comment maybe how it's affected the market? Is it something where maybe some companies had problems but other companies could pick up the slack, or has there been general availability, you know, points in time where availability has been an issue where that may have also say be a factor in the marketplace in terms of shifts to purchases of the subject imports?

MR. J. HANSEN: Speaking with respect to plumbing tube, there has been abundant capacity for copper plumbing tube in the U.S. market for as long as I've been associated with the industry. There have been times during the period of investigation when there were spikes in demand. For example, in the first half of 2006 copper prices were skyrocketing and many wholesalers chose to increase their inventories in anticipation of further increases in price and concerns about the availability of supply. In that situation we saw lead times to respond to tube orders grow from the normal five to seven days to four to six weeks.

It took maybe six months to clear that backlog of orders and restore order response times to the customary five to seven days. That was not a case

of the end use requirements or demand for the product changing, but rather, reflected the desire on the part of wholesalers to carry more inventory. Obviously there was a flip side to that. In the second half of the year, producers saw much reduced demand as wholesalers were working their inventories back down towards customary levels. It is not an unusual occurrence. Because of the volatility of the price of copper, very often distributors will choose to increase or lower their inventories depending upon their expectations for future prices.

MR. FETZER: Thanks. I appreciate that. Any other comments? There was also mention in the questionnaires about a move to lighter wall and smaller diameter pipe in the market. Has that affected your operations at all in terms of your sales or is it true, I guess? Have you seen that?

MR. ARNDT: For the commercial side of the market there has been an air conditioner efficiency change from SEER 10 to SEER 13, and as that took place, they started migrating to enhanced type tubes, such as you've seen with the ridges in the inside of the tube, that were smaller diameters. In those cases you had more feet built up into the unit, but it had less pounds.

MR. FETZER: Has this reduced your shipments, I mean, the pipes are smaller?

MR. ARNDT: No. I would say overall if you looked from a pound standpoint, I would say it's pretty much the same.

MR. FETZER: Mr. Boyce?

MR. BOYCE: I think that was that the tubes are smaller and they have different characteristics but the total pounds didn't change.

MR. FETZER: Okay.

MR. LEVY: And just to try to clarify a bit more, when there was this migration from SEER 10 to -- SEER 30?

MALE VOICE: Thirteen.

MR. LEVY: Thirteen, I'm sorry, energy efficiency, it essentially dictated changes either to the internal surface of the tube, or the thickness of the tube wall, or both, and so, as a result, what we saw on the whole was thinner tubes with more inner surface enhancement or inner grooves and more feet being sold because of that demand, but the overall pounds remaining roughly the same.

MR. FETZER: Okay. I appreciate that. I guess one more question on substitutability. I mean, you've seen the substitutability because of the

increase in copper prices. Is that something that could be reversed? I mean, I think if prices come down, is it something people could shift back, or once they move over to PEX or something else, is it difficult to shift back or is it something you can move back quickly, back and forth pretty easily? Mr. Hansen?

MR. J. HANSEN: PEX began to be produced in the U.S. market in the very late 1990s and through 2006 gained share at the expense of copper in residential plumbing systems because it offered both lower cost and there was less skill required in the installation. I think that migration was largely driven by the very high volume corporate builders who during the period of the U.S. building boom were building in some cases tens of thousands of home in a year, and very small differences in the cost per home of the plumbing system drove big dollars of savings to the corporate builders' bottom line.

In today's environment corporate builders are much less active. A greater proportion of the homes are being built by custom builders who are more inclined to use traditional materials, like copper. So although I can't offer data on the subject, my impression is that most of the migration that did

occur to plastic occurred during that period, roughly 2000 to 2006, and since that time, there's been a stabilization in the relative shares of copper and plastic in new residential construction. Whether that will remain stable or copper will regain share I think will depend to a large degree on the future relationship between the price of copper and the price of the alternative plastic materials.

MR. FETZER: Okay. So the substitution we've seen since 2006 really hasn't been that type of substitution, it's been something else?

MR. J. HANSEN: Again, I don't think that there's good data on the extent of the change in the relative shares of copper and plastic tubes from 2006 to 2009, so I'm reporting my impressions of what's taken place in the market.

MR. FETZER: Okay. Mr. Boyce, did you want to add something?

MR. BOYCE: The point is that during the POI there has been very little substitution in the standard plumbing space for plastic for copper tube. In direct answer to your question about if relative prices change are say in the heat exchange space can the substitution be reversed, my understanding is yes, simply based on relative prices because there are

manufacturing issues involved in assembling aluminum-based heat exchangers with other parts of an air conditioning unit, that's one, and secondly, that the antimicrobial properties of copper, which are being understood better, make copper a superior product over aluminum in any air conditioning system where, for example, Legionnaire's Disease conditions could exist.

MR. FETZER: Okay. I appreciate that. Any other comments on that? That's all the questions that I have. Thanks for your responses.

MS. DEFILIPPO: Thank you, Mr. Fetzer. Ms. Klir, do you have any questions for this panel?

MS. KLIR: Yes, I do. This is Mary Klir from the Office of Investigations. I have three requests for the postconference briefs and that's all, so I'll go through those. The first one, for each petitioning firm, please discuss the major capital expenditures and R&D expenses during the period of investigation. Please refer to the capital expenditures and R&D data provided in your questionnaire responses and include the timeframes of such expenditures. My second request, also for each firm, please discuss what you believe is a reasonable operating profit margin for this product and when your firm last achieved such an operating profit margin.

Okay. My last request is for counsel. Please look at the operating margins reported by each petitioning firm during the period of investigation and discuss the key factors behind reported differences in financial performance, particularly at the end of the POI. For example, any differences in cost structure, product mix, spot versus contract sales, customer base, et cetera. Any light you could shed on that would be helpful. Thank you very much. That's all I have. Thank you for your testimony.

MS. DEFILIPPO: Thank you, Ms. Klir. Mr. Tsuji, do you have any questions?

MR. TSUJI: Yes. Thank you. I just have a few technical questions. First of all, is there a distinction between pipe and tube in the copper industry? I know it is a product distinction in the steel industry. Or in the copper industry are the two terms synonymous and interchangeable?

MR. J. HANSEN: Generally speaking, the term pipe in our industry is referred to threaded pipes. Tubes, on the other hand, are smooth and are joined by soldering or brazing techniques. So within the industry, that's the distinction that we make between tube and pipe. Almost all the products that we're talking about are tube, not pipe.

MR. TSUJI: Okay. Thank you. Anyone else want to comment on that?

MR. ARNDT: I concur.

MR. TSUJI: Thank you. Can you describe some of these attachments that were listed in the scope, particularly thins.

MR. SIGLOCH: Thins on the outside enhancement is more or less a continuous reverse rifle, so it's like a threaded pipe. So you roll form a thin out of the wall of the copper and you usually have in the range of 15 to maybe 50 thins per inch, so you have numerous threads that are going in parallel.

MR. TSUJI: Okay. Thank you for that clarification. And then during the testimony of the Petitioners witnesses I heard the terms cast and dye and cast and roll. Is there a distinction between those two production processes or are they synonymous terms?

MR. SIGLOCH: I do not know the terminology cast and dye. I thought it might have been just a mispronunciation of what should have been cast and roll.

MR. ARNDT: I concur. I meant cast and roll. My error.

MR. SIGLOCH: This is not a typical term.

MR. TSUJI: Okay. Thank you. Final question. Do the mills put any kind of hallmark or other symbol on their product to distinguish their product from another producer's product?

MR. J. HANSEN: With respect to plumbing tube, the ASTM specification requires that the manufacturer's name both appears in ink mark and also be engraved in the tube. SO, yes, all the plumbing tube is identified as to manufacturer if it's made in conformance to the specification.

MR. SIGLOCH: And for commercial tubes, when required by the customer we identify it on which machine, on which day, by which shift it is produced.

MR. TSUJI: Okay. Do the imported tubes also show these same markings or have there been mismarking issues?

MR. ARNDT: For commercial tube there's not a standard that mandates that you mark your tubing as the manufacturer. I would say that the customers readily know what they've ordered from what customers, so there's a lot of material traceability but there's not a standard that's mandated that the customer must identify on the commercial side.

MR. J. HANSEN: Again, with respect to plumbing tube, country of origin marking is required.

We have found samples of tube in the marketplace that was not marked. I think that's a relatively rare exception.

MR. TSUJI: Okay. Thank you very much.

MS. DEFILIPPO: Thank you, Karl. Mr. McClure?

MR. MCCLURE: Jim McClure, Office of Investigations. Fair warning. I'm using this mic because it's going to be infected after I talk into it. Don't get near it. With respect to the spike in the copper prices that occurred and then you talk about it working its way through, how long did it take to fully work its way through and get back to, for want of a better term, a normal approach to the raw material?

MR. J. HANSEN: It's hard to answer that with precision. I would say that we probably experienced the flip side of that spike in demand, the subsequent trough in demand, as the inventory worked its way through the system for probably a period of 90 to 120 days.

MR. MCCLURE: Okay. But in short, it was not a factor for say 2007, 2008 and --

MR. J. HANSEN: No. I believe by the end of 2006 that generally speaking the inventories in the

channel were restored to normal levels for the volume of activity.

MR. MCCLURE: I raise that only because it was raised in the opening statements as a factor. With respect to the Mexican additions to capacity, now, you state those two facilities were recently commissioned. How recent is that, and how soon after commissioning do they really become active in the market?

MR. ARNDT: We've seen samples coming in from those mills here very recently. We know of orders in the marketplace for those samples coming in that are triple in quantities from those mills. Exactly which one, I can't really attest to. In regards to what's their status of them coming on line, it's my understanding that Golden Dragon's mill is on line, and IUSA's mill is near to being on line and Lavado's mill is on line.

MR. MCCLURE: Okay. So I'm just trying to get a sense of is that the early part of 2009 or after the period we're examining right now? I'm just trying to get a sense of that.

MR. LEVY: I believe that for Golden Dragon the plant was commissioned about a month or two ago. Can you answer as to Lavado?

MR. SIGLOCH: First samples appeared about two months ago in the marketplace. Commissioning with a public announcement was made about two months ago. There's an open house next month. But almost all of these new mills are represented here, so maybe we shouldn't be the ones speculating and they should be answering this question.

MR. MCCLURE: I plan to ask them about that, but I just wanted to get a sense of your knowledge of the market. With respect to the raw material, do any of the countries here seated, the U.S., Mexico, China, have an advantage with respect to copper availability?

MR. J. HANSEN: Copper is a globally traded commodity.

MR. MCCLURE: Right.

MR. J. HANSEN: It's available in all markets. China does not produce enough copper to satisfy its requirements and imports substantial quantities of copper for domestic consumption and for reexport. The United States was historically an exporter of copper, but the terms of trade have reversed in the last decade or so and now we're now a net importer of copper.

MR. MCCLURE: And this is in again Mexico?

MR. J. HANSEN: Mexico is a producer of

copper. I'm not familiar with their terms of trade. I couldn't say whether they're a net exporter or a net importer. I would expect a net exporter, but I don't know that for a fact.

MR. MCCLURE: Okay.

MR. BOYCE: Mexico certainly does import copper from I think Chile.

MR. LEVY: And just to clarify one point. To our knowledge, none of the major producers in the subject countries or the United States are vertically integrated such that they are mining and electroplating their own copper cathode.

MR. MCCLURE: Okay. Now, one last thing. This will be for counsel on both sides. Our old friend Bratsk, what can you tell me about nonsubject sources of seamless copper?

MR. LEVY: Well, my understanding is the progression of cases from Gerald Metals, to Bratsk to Mittal Steel clarifies that in cases involving commodity products like this where competitive nonsubject imports are a significant factor in the market you obviously need to give consideration to these nonattribution issues as part of the causation analysis. The replacement benefit test is not what we're planning to brief, obviously. What, as we

understand it, you're required to examine is simply that you're not erroneously attributing to subject imports injury caused by nonsubject imports.

I think it's fair to say that Canada and Malaysia are the relevant nonsubject sources that require some analysis in this case. We will address this issue in detail in our postconference brief by reference to specific instances where we can evidence that subject imports and not imports generally are the cause of the problem. Thank you for raising that issue.

MR. MCCLURE: Okay. Thank you. That's all I have. Please remember to stay away from this microphone.

MS. DEFILIPPO: Thank you. The benefit of going last is that everyone's asked really good questions. The disadvantage is I try to stay on top of crossing them all off of my list of things I've jotted down. So I'll in advance say I apologize if I reask something. I think these are slightly different, but if you've already answered, I apologize. To follow along with what Mr. McClure was just asking, and I guess I'll make this as a request just to include this perhaps in your discussion in your postconference brief, would be to the extent that

you have information on where you have competed with nonsubject imports, are you competing with them in both the commercial and in the plumbing?

Are you competing with them in the same channels of distribution? That sort of discussion, if you could touch on that in your postconference brief, that would be helpful. I know in response to Mr. Fetzer you talked about the overall market being more sales into the commercial side. Is that true for the U.S. producers in terms of the balance of their sales in general, overall more go into commercial or does it depend on each company if different?

MR. SIGLOCH: Each company is different. Some might have a stronger focus on commercial, some stronger on plumbing. Overall in the market it might be right now slightly larger on the commercial side than it is on the plumbing side.

MS. DEFILIPPO: Thank you. In terms of that, there is this plumbing market and there is this commercial market. In terms of the actual production of the products that we're looking at, are there differences when you're making a tube for a residential versus a commercial? I guess what I'm getting at is if you're currently producing residential, how difficult is it for you to produce

pipe for the commercial OEM market?

MR. SIGLOCH: Depends very much which commercial product you look at. We have machinery where we manufacture every day both products and it's a matter of changing a set up at the machines, the die that makes the dimension. So going from the plumbing product to almost the most complicated air conditioning tubing is a matter of a few minutes.

MS. DEFILIPPO: Others have any comment, or is that true for you too?

MR. ARNDT: That is correct. On the prefabrication it's the same, on the fabrication it's the same. It's only on the very end, on the finishing, there is minor tweaks on the equipment.

MS. DEFILIPPO: Thank you. Going back to the pricing and the sample price sheet, which is thankfully still up, Mr. Fetzer had asked some questions, and I just wanted to make sure I understood. Someone made a comment that everyone has access to a given price list and then they know the multiplier, they can easily put it into a spreadsheet and figure it out. Are the multipliers different on a customer by customer basis or is there one set multiplier for all customers at a given time?

MR. JOHN HANSEN: Generally speaking,

manufacturers will quote different multipliers based on the size, the aggregate size, of the order. A full truckload of product would get a lower multiplier, that is a lower net price, than an order for 2,000 pounds of product.

MS. DEFILIPPO: But when you say that, would that be different, like all different sizes of copper tubing but the aggregate order, is that what you meant by?

MR. JOHN HANSEN: Yes, the aggregate weight of the order generally determines what multiplier will be quoted.

MS. DEFILIPPO: And how are the multipliers set? Are you saying, this is your multiplier, or am I as a customer sitting down with you and negotiating different levels, negotiating what the multiplier will ultimately be?

MR. JOHN HANSEN: Most wholesale distributors will solicit multiple quotations from multiple vendors and compare. The manufacturers may or may not then get feedback from the customers about whether they're priced right, whether they're priced high. They're almost never told that they're too low. But based on that information, the credibility of the information, the manufacturers will either choose to

adjust their quote to meet a lower price, an alleged lower price, or will choose to stick with their original quote and take their chances on whether or not they get the order.

MR. LEVY: One point that I will add, and there's an exhibit in the petition to this effect, one phenomenon we've seen during the period of investigation is that at least one Chinese producer is telegraphing for standard specification plumbing tube its total price such that you can essentially discern what the multiplier is, and it is a rock bottom multiplier and it effectively sets the market for a vast majority of wholesale accounts. So it's having a price effect on the market far beyond actual sales and specific customer sales, it's fundamentally changing the dynamics of the negotiation.

MS. DEFILIPPO: And in the price list/multiplier issue, do you tend to, well I guess since '06, the time period we're looking at, have you tended to keep those same price lists and work with the multiplier being different or have you revised price lists and kept multipliers the same or is it a little bit of both?

MR. JOHN HANSEN: It's some of both. In this very, very competitive industry pricing is

extremely dynamic. Price lists tend to be adjusted upward or downward more often than conformance to changes in the price of copper, and the price of copper of course has been extremely volatile particularly over these last four or five years. But the competition over multipliers takes place thousands a time every day when customers are stopping an order.

MS. DEFILIPPO: Mr. Arndt, you discussed earlier and I think your testimony or maybe it was an answer to a question, customers that shifted a percentage of their purchases to other suppliers, and I was wondering do you know whether your customers tend to dual source for a given specific product or do they generally prefer to use one producer's product?

MR. ARNDT: There is a mix. Some customers will single source if they have a very good relationship with the supplier and have a reliability, degree of comparability with the liability on the supply. There are some customers that have a mandated dual sourcing type scenario. There may be some applications about one manufacturer has not produced a specific type of product within that mix and so it forces the customer to go out on the outside and buy from another, so there's a mixture in there.

MS. DEFILIPPO: And another question for

you. I believe in your testimony you discussed qualification procedures and indicated that there were some accounts with customers where you actually had gotten it to where you weren't even able to kind of get in to qualify your product, did I understand that correctly?

MR. ARNDT: That is correct.

MS. DEFILIPPO: So would you say that over the period, have there been changes to, have you seen that with other customers where the qualification process has either shortened or gone away completely?

MR. ARNDT: It's historically remained the same. We build to specifications, but each manufacturer has a little bit different equipment which they're using that equipment to process and build their air conditioners. So even though you build to a specification there may be some minor tweaks that you need to do with your manufacturing process to "doll" the tubing in for their application. But generally speaking it's about a two to six-month qualification period.

MS. DEFILIPPO: And I'm going to stay with you for what I think is my last question. You referred to tier 1 customers in your testimony, I always cringe a little because defining tiers is often

difficult, how many tiers are there in this industry?

MR. ARNDT: I would say that there's predominantly three. Tier 1s are your very large manufacturers that, you know, they're building the air conditioning units that are at your house and your apartment. Tier 2s are generally subcontractors to those major manufacturers. Tier 3s are predominantly other types of industries, that's the water heaters or faucet manufacturers and those types of customers.

MS. DEFILIPPO: And in terms of your sales to the different tiers, have you competed against the Chinese and the Mexicans in all the tiers that you're selling to?

MR. ARNDT: Yes, but specifically they've gone directly after the tier 1s because that is where the largest volume is. So by going after a very small set of specifications they can go and capture a very large percentage of the volume of the tier 1 customers.

MS. DEFILIPPO: I guess I have one more, sorry. And tying that back to sort of the qualification process, do you have any knowledge of any Chinese or Mexican firms that have tried to qualify at the tier 1 accounts that have not been able to do so? And if you want to provide any in the

postconference brief that would be fine too.

MR. ARNDT: We'll provide it in the brief.

MS. DEFILIPPO: That concludes my questions. Do staff have any other questions that have arisen while I've been talking?

(No response.)

MS. DEFILIPPO: I'd like to thank the panel again for coming and providing both testimony and answers to all our questions, it's been very helpful. And we will now take a break to 11:30.

(Whereupon, a brief recess was taken.)

MS. DEFILIPPO: Still morning. Good morning. Is it afternoon? Good morning. Thank you all for convening at the table. We have a very large panel so I say welcome to all of you and we will now hear testimony for those in opposition to the imposition of antidumping duties, and I believe we will start first with Mr. Silverman.

MR. SILVERMAN: I am William Silverman from the law firm of Hunting & Williams. Our panel will begin with Randy Altmann.

MR. ALTMANN: Good morning. My name is Randy Altmann, I am Senior Vice President for Sourcing and Marketing at Homewerks Worldwide LLC. Previously to that I worked for 18 years at Home Depot as a buyer

of plumbing product which includes the category of copper tube that we've been talking about today. Homewerks is a supplier of residential plumbing products for the retail market. We started business in 2006 and supply large retail plumbing outlets with a variety of plumbing products typically used for the repair and remodel of existing houses and homes.

This is distinct from the wholesale plumbing market, which consists of wholesalers that supply building contractors with plumbing products primarily for the new construction market. The retail and the wholesale plumbing markets in turn are very different than the industrial market for tubing. For the plumbing market it is important that you understand the different ways that retail and the wholesale segments are positioned.

In the plumbing wholesale segment, the domestic producers by far dominate the supply of over 90 percent of U.S. consumption of copper tubes in new homes construction. This is the most important market segment for domestic producers of category. For plumbing wholesale market domestic tube has even on occasion been speced as part of an engineering drawing for a home, so for the most part a contractor who is going to be building a home, if he is using copper

product, automatically will go to copper that is made domestically.

On the retail side, there has been much more openness to supporting an import type of product, and for years it has not been uncommon to see, whether it's a coil tube or a stick tube, product made in various countries, including Mexico, including China, including Chile, as well as domestic product on the shelves of the typical Home Depot or Lowe's type of store. As it relates to retail I'd like to tell you how our company has successfully competed and gotten into this market as a fairly new company in the last three or four years, the period in which this conversation is going.

Contrary to what you heard, we compete on the basis of a superior product range and services, not necessarily lower price. Homewerks offers over 80 different copper tube items to retail customer, any of these items or product the domestic producers either choose to not manufacturer or choose not to sell into that retail segment. Homewerks as a company has developed smaller case pack sizes domestic manufacturers ship in. Compared to domestic suppliers, Homewerks was the first to offer security tagging and consumer friendly labeling and packaging

on the product that you see on the shelf of a retail customer.

Homewerks also maintains finished good inventory to ensure that all of our orders are shipped complete and on time in three days, requirement one of the retail industry as opposed to domestic manufacturers. Finally, and maybe most importantly, Homewerks offers a transparent, understandable pricing formula to the retail customer. Given the volatility in copper prices, retailers want predictability and understandability of where their costs come from their vendors.

Domestic producers issue a price list that you've heard them refer to that changes whenever they choose to change it. They provide a discount offset price list to the customer. When the price list changes, which happened yesterday as a matter of fact, they do not explain to the customer why it changed, only that market conditions make that change up, down, wherever that list price will go. By contrast, Homewerks offers its largest customers a formula based pricing system.

The price has two components, one of which is published metal price, PEX, LME, whatever. The other is a fixed fabrication price. This practice of

metal plus fabrication pricing is the same as is used on the industrial side of the industry and is used by domestic manufacturers. We believe that providing this metal plus pricing option to our customer, which they asked for, is a compelling reason why we get business at the retail market.

Petitioners also claim that the market share has been taken away, they don't necessarily tell the complete story. As we said earlier, the Petitioners dominate the market for copper in the wholesale housing market while the imports are more common and have been more common on the retail side. We feel that the domestic producers' market share in these two segments has maintained fairly consistently over the last few years. What has changed is obviously the huge demand in housing, which has caused the major change and decrease in that market segment.

So overall the demand for the plumbing in new homes has fallen along with the new start that happened. Moreover, commodity copper prices as you've heard have risen so high that contractors are increasingly turning to low-cost alternatives to copper pipe, PEC, CPVC, you've heard them mentioned. Once the customer converts to that untraditional material that customer does not go back to copper

regardless of what happens to copper price.

If your home is built with PVC piping or copper, you're going to have to repair that with PVC or copper, you aren't going to mix the two materials. So as a customer at retail, you're very much locked into what your house is built out of. In the retail markets, sales for remodeling and repair are certainly down, but nowhere near as dramatic as the decrease in housing prices. So therefore you end up with the retail market becoming a larger percentage of that business, they were using more imports before so imports now become a larger percentage of the business.

We've heard argument from the Petitioners that imports have gained market share because of price. Homewerks simply don't think this is true. If it were, we would be getting a much larger share of the retail market than we currently get and the major retailers have just finished in the last two months what they call a line review where they've invited all the people to come in and quote, the net change was less than a 3 percent shift in the product that was bought import source versus domestic source. So for all these reasons we really do not think that there is material injury or threatening with material injury

from either Chinese, Mexican or any other source for copper. I thank you for your time.

MR. KRAHMER: Good morning. My name is J.P. Krahmer. I'm the sales manager for copper tubing from Marubeni America Corporation. Marubeni America Corporation, or MAC, is the principal U.S. operating subsidiary of Marubeni Corporation, one of the major Japanese trading companies. We've long been a supplier of inner grooved, or enhanced, copper tubing to the U.S. HVAC industry. By far KobeWieland is the major U.S. producer with whom we compete.

This morning I've been hearing complaints by the U.S. producers that they lost significant volume to Chinese producers based on low prices. This morning I'm here to tell you why for Marubeni that simply is not true. First, Marubeni for many years has supplied inner groove tubing from Japanese sources. In 2007 we began to switch our source of supply from Japan to China. Today we purchase most of our inner groove copper tubing from China from the Hailiang Group.

The customers to whom we've sold our Japanese produced inner groove products are the same customers to whom we currently sell our Chinese produced inner groove products. Therefore, to the

extent that our imports from China have increased, the increases have come at the expense of the product that we purchased from Japan. Secondly, we only have a few U.S. customers. For one customer in particular we received an increased share of that customer's requirements for our inner grooved copper tube product coming from China.

However, that was not due to low prices. Rather, that customer awarded us that increased share of their business because their U.S. producer, KobeWieland, had a major quality issue involving the copper supplied to that customer. And it was due to this quality problem that we ended up getting considerably more of this particular customer's business. Third, substitute products have played a huge role in the decline of domestic production.

For the commercial market, the substitute products that are taking market share away from the inner groove copper tubes are microchannel coil technology and aluminum tubes. Briefly a little bit on microchannel technology. Microchannel coil design is constructed of parallel flow aluminum tubes that are mechanically brazed to aluminum thins. Microchannel coils are smaller and use less refrigerant than standard or inner groove tube. This

is a significant new technology that will be making significant inroads in the U.S. HVAC market.

We have been told by one of our main customers that their overall purchase of copper tubing from all sources will be reduced by close to 15 percent due to this new technology. In addition, a growing gap between copper and aluminum prices has driven customers to substitute aluminum tubing for copper tubing. When a new construction boom hit, consumers and builders alike were more interested in the cost of the air conditioning equipment as opposed to the quality.

That's why aluminum was so attractive, because aluminum significantly underprices copper tubing. Today, roughly aluminum might be around $1 a pound, copper close to $3 a pound. Some manufacturers took note of this and started producing condensing coils made entirely of aluminum. That brought the cost of an AC system down, making it more palatable to consumers and builders alike.

I'd also like to point out that we lose customers to other manufacturers. For one of our major customers we were 100 percent supplier of our Japanese produced product. However, when we qualified our Chinese produced product we retained only one

third of our supply to that same customer. The remaining two thirds went to a Malaysian producer, of which there is one, not to U.S. sources. I can say the Malaysian producer, since they've been in the market, they've been very aggressive and they are downward price leader.

Finally, I heard today that the U.S. producers claim that they're suffering. Our major competition is KobeWieland, who has just finished as you heard earlier a $71 million expansion by putting in state-of-the-art technology which was described by Mr. Sigloch this morning. In KobeWieland's own statement they declare, and I quote, that this was made to make it "internationally competitive." KobeWieland may claim that it is threatened by imports, but this major investment contradicts KobeWieland's presentation to the Commission this morning. Thank you.

MR. MAX HANSEN: My name is Max Hansen. I've been President and CEO of JMF corporation for 16 years. Our headquarters are in Bettendorf, Iowa, and we have been reselling rough plumbing products throughout the United States for more than 60 years. For a majority of our 60 years we have been buying and selling copper tube using both the standard products

and commercial products and are familiar with the pricing issues that the Commission was so interested in earlier today.

Also I could say that currently we sell both copper tube and the major substitute product for plumbing tube, which is PEC. So we sell both those types of competing products throughout the United States. And so for decades we've been sourcing our plumbing tube from the United States. Four of our five most recent U.S. manufacturers, four of those are either out of business or their production is no longer available to us, so that's the reason why we had to seek import sources to stay in business.

Since 2002 we have been manufacturing line set using copper tube as its primary component. Line sets in short are copper tube lines used to connect air conditioning and heat pump systems. The markets we sell in have changed over the past decade as a result of economic conditions, substitute products, and manufacturing technology used to produce the products we sell.

Copper tube demand for plumbing applications is subject to fluctuations in demand for new home and commercial building construction. New home construction peaked in 2005 and has declined

significantly. New construction may remain low for many years. Demand for copper tubing will also vary depending on price changes in underlying copper metal prices or raw materials. For many years, and I think there's a handout in here, for many years including the early part of this decade, copper raw material prices, the price of cathodes sold internationally were relatively steady, between 70 cents and $1 a pound.

Prices steadily increased in 2004 and 2005 to over $2 a pound. In May 2006 copper prices reached $4 a pound, and prices have since remained very high and very volatile. When a financial crisis hit in 2008, copper prices dipped to as low as $1.26 but quickly rebounded and have today risen to levels near $3 a pound. The runup in prices that was unprecedented opened the door to lower priced substitute products for copper tubing, particularly PEX plastic tubing for residential and some commercial plumbing tube systems.

PEX was developed in the 1960s and has been the preferred choice in Europe for many years, achieving as much as 90 percent market share competing with copper tube in Europe. PEX was introduced in the U.S. in the late 1980s but only began seeing

significant growth as a copper substitute as a result of the runup in copper tube prices in the last few years. Nearly everyone predicts that the U.S. is on a similar conversion process from copper tube to PEX that will proceed unabated.

Commercial industrial copper tube users are accelerating their conversion to aluminum as a growing number are convinced that the spread between the two metals will remain significantly above historical levels. Given all of these problems, most importantly the compound and significant price increases forced on all sellers and consumers of copper tube, it's no wonder that the U.S. producers' volume has been going down, but their problems are not the fault of importers.

In my case, Mueller and Cerro will not sell me because JMF is a competitor. I'm able to buy some of my products from Kobe, but they are also a competitor. Without the availability of import copper tubing the U.S. producers will maintain their very tight grip on U.S. copper tube market. More importantly I need sources for the products that I have been selling for about 50 years in order to survive and maintain the jobs that I employ while providing many long term customers higher levels or

service, better options, and better solutions than the U.S. producers of copper tube can provide.

Let me just explain how my company has succeeded in the market. First, I regularly ship copper tube in one or two days, versus the historical standard of three to five weeks for the domestic producers. Second, regarding line sets, since 2002 I have consistently shipped within two weeks and every order has been 100 percent fill rate, as opposed to my competition the domestic producers whose shipments vary anywhere from two weeks to fourteen weeks.

Third, in addition to the fill rates I produce custom length line sets for reassembled line sets and performance and services that the U.S. producers will not or cannot do. Fourth, I could ship copper tubing in smaller order sizes than the U.S. producers because I'm able and willing to add other product categories for my customers' benefit. Finally, for retail markets I have been willing to provide a broad product selection for approximately 40 years to those retail customers that the U.S. producers have been unable or disinterested in making and selling.

Regardless of this outcome, the market will continue to shrink even with additional duties and

eliminating companies like JMF from fairly competing and providing superior customer service. Conversion from copper to substitute products will continue unabated as long as copper cost and factory margins encourage customers to seek alternative solutions. I thank the Commission for the opportunity to testify and will be glad to answer any questions.

MR. O'BRIEN: Thank you. I'm Kevin O'Brien. We represent the Golden Dragon companies. With me on my left is Mr. Keith Weil, the Executive Vice President of Golden Dragon U.S.A., and on his left is my partner at Baker & McKenzie, Daniel O'Connor. I will just flag the three items that Mr. Weil will speak to in greater detail this morning. The first is the issue of market segmentation. You've heard a fair amount of it already but it's a critical feature of this overall case.

The market for plumbing products is dramatically different, fundamentally different from that of commercial products, whether viewed by pricing practices, the products themselves, the physical characteristics and uses, or by the participants. Golden Dragon, for example, is in the commercial market, it is not in the plumbing market. So any factors or activities occurring in that market simply

don't include Golden Dragon, and there are many instances where that's true.

The second issue is substitutability. The very, very high copper prices have forced inroads of substituted products in a very substantial way. Aluminum is now a very large share of the commercial market, and plastic is also a large and growing share of the plumbing market. That is going to continue, that is unlikely to stop at least as long as the copper prices remain high. And then finally Mr. Weil will address Golden Dragon's presence in the U.S. market and the competition that it sees.

MR. WEIL: Good morning. My name is Keith Weil and I work for GD U.S.A. where I am the Executive Vice President responsible for all sales and marketing activities. Thank you for the opportunity to speak to you today about our industry. I began to work for Golden Dragon October 1st of this year. Before joining Golden Dragon I had worked for Wolverine Tube, Inc., a U.S. manufacturer of copper tube, for eight years.

At Wolverine I was the Senior Vice President for the Tube group for the first six years, responsible for all tube operations, then I was the Senior Vice President for international operations and

strategic development. I left the day to day activities Wolverine a little over two years ago. At the outset I would like to address what I understand to be the products covered by the present complaint.

The U.S. copper tube market comprises two distinct markets, the market for what is known as industrial, commercial tubing, and the market for plumbing tubing. The raw materials, the finishing processes, the customers, and the channel of distribution are very different between the two markets. The pricing methodology is also very different between the two markets.

The industrial market consists of copper tubes used primarily in air conditioners and refrigeration services for residential or industrial use. Because of its heat transfer properties copper is the best material for tubing used in air conditioning systems. In contrast, the plumbing market consists of tubes used in residential and commercial plumbing applications. Plumbing does not require the same sophisticated heat transfer capabilities and is generally only used as a means of conveying water or refrigerant from one location to another.

I am aware of the following specific

differences between the industrial and plumbing markets. First, industrial tube used in the most demanding applications are made from pure copper cathodes, which are the copper sheets, the typical output of a copper producer. Plumbing tube, however, may be and generally is made from varying mixtures of scrap copper and copper cathode.

Second, many types of industrial tubing are subject to further processing than plumbing tubing. This is a question that was asked a moment ago. For example, the inside of industrial tubing, and we'll pass this around in a moment, is rifled for heat transfer purposes. That's a separate and distinct process using distinct pieces of equipment. The piece of technical tube, which is enhanced, goes into the large chillers, that was addressed before, is rifled on the inside but it also has some very sophisticated patterns on the outside. Those are also separate and distinct processes in finishing this tube.

Third, pricing practices differ fundamentally between the two markets. In the industrial market copper tube is many times sold through annual contracts which set only the fabrication price, which is the price to convert the raw material into tube. The price for the copper

component floats with the market and is a passthrough from the tube manufacturer to the OEM. In some cases hedging is applied to attempt to fix the price of copper, but nevertheless the goal is to make it a passthrough from the producer to the OEM.

The contracts may agree to peg the price of copper to an international metamarket such as the London Metal Exchange or the New York Mercantile Exchange to the comex. The total price of the order, thus is the fabrication price plus the metal price, this is a critical distinction because the fabrication cost may be as little as 15 percent of the overall combined cost of the copper tube, the remaining 85 percent of the price is the cost of the copper material which is effectively a worldwide price.

This percentage will of course vary according to the world price of copper. In contrast, in the plumbing market both the fabrication price and the copper price are included in the price that manufacturers quote to buyers. These prices are quoted on an order by order basis, and though they may fluctuate over the long term as the price of copper goes up and down, plumbing markets do not carry the direct day to day relationship to the price of copper that industrial markets do.

Fourth, industrial tube and pipe is generally made to tighter tolerances and smaller sizes which require additional draws. This is because the application of industrial tube in heat exchanging coils is highly demanding. The tube is subject to tight bends and expansion of the tube into tube sheet. Most industrial tube is made to custom specifications. In contrast, much of the plumbing tube market is produced and sold in straight, hard lengths to standard specifications.

Fifth, the plumbing and industrial market are different customers and different channels of distribution. Plumbing tube is sold to wholesalers, retailers, and distributors who in turn sell it to thousands of different end users. Industrial tube, however, is generally sold to OEMs such as Carrier, Trane, York and many others. I urge the Commission to consider these characteristics in assessing the effects of imports on the domestic market.

In the past several years I have seen OEM customers in the industrial market switch from the use of aluminum tube in the air conditioner condensers and evaporators to the use of aluminum tubes in these components. For example I understand more than two large OEMs have moved substantial and increasing

percentage of their business to aluminum. Also I'm aware that many end users in the plumbing tube have switched from copper pipe to plastic pipes such as cross-linked polyethelene, PEX, which has been discussed.

I believe that the substitutes for tube have developed for the following reasons. First, the price of copper has increased dramatically in recent years. Copper prices were stable for many years, mainly below $1 a pound. In 2004 to 2005 prices rose steadily but gradually to about $2 a pound. In 2006 prices increased very steeply to over $3.50 a pound. Since 2006 prices have gone through cycles of sharp rises and drops, between a high of over $4 a pound down to a low of approximately $1.50 a pound. At the end of the third quarter of this year the price was approximately $2.65.

The price of copper is the most important variable by far in the overall use and production of copper tube. While the price of aluminum also varied, aluminum is generally priced 30 percent or more, as was discussed today, below the price of copper on a per pound basis. Moreover it is important to understand that aluminum is much less dense than copper and the industrial tube is sold by the pound

but used by the foot.

And I've got just two examples to pass around, you get an idea of certainly the weight difference and you can see it can be a direct replacement. Many times the aluminum tube is rifled, that example is smooth, but it's rifled just like the aluminum tube. This means that the equivalent length in copper tube is much heavier than aluminum, it is obvious that aluminum tube is much lighter, and when you are selling by the pound an already cheaper aluminum tube, the cost savings are apparent.

In sum, a dramatic increase in whatever commodity will always generate a search for alternatives. The switch to aluminum requires certain tradeoffs for air conditioning manufacturers, such as heat transfer, copper is a better heat transfer agent than aluminum. But they are tough tradeoffs that the OEMs are willing to make given the price of copper. Second, plastic pipe has been used in indoor plumbing applications because there is no concern of heat transfer complications in these situations.

PEX was developed in the 1960s and was first widely used in plumbing application in Europe and was introduced into the U.S. in the 1980s, but its use has expanded greatly in the past five to ten years.

Additionally, PEX pipe installation does not require the same technical skill of copper pipe installation and therefore can be less expensive to install. This fact together with the increased price of copper have led to a significant increase in the use of PEX pipe in residential construction.

Fourth, some air conditioning manufacturers have begun to use products called aluminum microchannel, that was described in more detail, in air conditioners. It's a flat, rectangular tube with channels and is a significant departure from the copper tube normally used in air conditioning, and it's being subject to increased use in the market currently.

Golden Dragon does not currently manufacture tube for the U.S. plumbing market. Plumbing is a major market segment for the Petitioners, so there is no competition with Golden Dragon in this segment. As I have already discussed, these markets are different products and finishing processes, and different customers and channels of distribution, and there is very little crossover between the two markets. Golden Dragon competes in the industrial segment only.

Next regards to Golden Dragon's presence in the U.S. market. Because Golden Dragon did not have a

U.S. operations and because Wolverine Tube had a well established distribution and service network in the United States, Wolverine began acting as Golden Dragon's exclusive U.S. representative shortly after Golden Dragon began selling in the U.S. This arrangement in fact meshed very well with Wolverine's decision to take capacity offline because Golden Dragon produced a line of tubing for the industrial market that was similar to the tubes Wolverine produced.

In fact I question whether the U.S. producers would be capable of meeting the demands of the U.S. market if tubing from international sources were eliminated. I am confident that after examining the questionnaire responses in this case the Commission will find that imports from China or Mexico are not the lowest priced products in the industrial market and are not the cause of injury to U.S. producers.

MR. LOWE: Good afternoon. My name is Jeffrey C. Lowe. I am with the law firm of Mayer Brown. I am here together with my colleague Duane Layton on behalf of Hailiang Copper Company. Hailiang is a producer in China of seamless, refined copper pipe and tube products. Hailiang was unable to

provide a company representative to testify today.

It is also unfortunate that the petition was filed on a date corresponding with the extended week-long holiday in China. Hailiang did willingly respond to the Commissioner's questionnaire in this proceeding however, and has authorized us to appear and defend against the numerous unfounded allegations contained in the petition. The Petitioners claim to be suffering material injury or the threat of material injury. Whether that is true or not is far from certain.

What should become certain, however, is that any problems being experienced by the domestic copper tube industry were not caused by Hailiang. Hailiang's exports to the United States have not increased significantly, nor has Hailiang or its U.S. importers undersold the domestic industry or otherwise negatively impacted the price of copper tube in this country.

In the first place, as far as Hailiang is concerned the United States is a relatively insignificant market. As its export data demonstrates, Hailiang focuses much more on its Chinese home market and other export markets rather than the United States where demand for copper tubing

has declined more significantly due to the ongoing B procession, product substitution, and other nonprice factors we've heard about already today.

Hailiang projects that its marketing focus will remain essentially unchanged in the future. As far as the U.S. copper pipe and tube market is concerned, that market consists of two separate and distinct segments as we've also already heard. One, the heating, ventilation, and air conditioning, or HVAC, segment referred to as the commercial segment, and two, the plumbing segment, which is sometimes referred to as the water tube market.

The Petitioners may attempt to downplay the distinctions between these two market segments. As today's testimony makes clear however, along with the confidential record evidence, the existence of these two market segments impacts copper tube's methods of production and the bases on which prices are set. At the same time demand is down sharply in both segments. The resulting loss of market share for all copper tube producers will not be regained when the current recession ends.

The HVAC market, or commercial market, segment includes both industrial or original equipment manufacturers, OEM, and HVAC after market consumers.

Hailiang originally focused on the U.S. HVAC market, including OEM and after market, and maintains that market emphasis today. For instance, Marubeni is a major U.S. customer of Hailiang. As Mr. Krahmer testified Marubeni now relies on Hailiang for most of its copper tubing needs in the HVAC market. This reflects a shift by Marubeni away from Japanese copper tubes in favor of Hailiang.

Thus, the U.S. industry supplying the HVAC market, consisting mainly of KobeWieland, did not lose market share to Hailiang as a result of Marubeni's purchasing shift. That market share was lost by Japanese exporters of nonsubject copper tube products. Moreover, the aluminum tubing products that are gaining increasing acceptance among HVAC consumers compete directly with Hailiang just as they do the domestic industry. The price of copper has been a driving factor in this market shift.

As copper prices began increasing near the outset of the POI, relatively cheaper aluminum tubing became more attractive. Technological advances have also increased aluminum's viability for supplying HVAC tubing applications. Once again, the U.S. industry has lost market share not to Hailiang or other Chinese or Mexican copper tube imports but to market dynamics

and product substitutions.

Hailiang markets less to the U.S. plumbing market segment but is still subject to the same product substitution and market demand pressures faced by U.S. producers. To stress, the plumbing market consists of two distinct segments, wholesale and retail. The distributor witnesses, or the importers, have discussed in detail some of the plumbing market dynamics.

The Petitioners completely dominate the wholesale plumbing segment, which supplies new home construction, and it is the wholesale market that has suffered most significantly in extreme downturn in new housing during much of the POI. Demand for copper tube at the retail plumbing level, though down, has declined much less. Again, the domestic industry has lost market share purely as a result of this downturn in demand, not due to imports.

To conclude, the domestic industry's problems, if any, have resulted from market conditions unrelated to Hailiang's subject imports or those of other Chinese or Mexican producers. Likewise, there is no basis for finding a reasonable indication that subject imports are threatening the domestic industry with material injury. For one, nonsubject imports

declined across the POI by more than subject imports increased.

Moreover, both with regard to Hailiang and subject products generally imports declined by almost 23 percent during the first half of 2009. No matter how Petitioners twist it, this is not the stuff a threat of material injury finding is based upon. That concludes my prepared remarks, and we will be happy to answer any questions that the staff may have.

MR. RYAN: Good afternoon. This is John Ryan, I am from Weil, Gotshal & Manges. We're here on behalf of IUSA and de Cobre, I'm accompanied by my colleagues Joseph Johnson and Matthew Simpson. And you'll be hearing from the Mexican producers who also represent the importation as well, you've heard from the Chinese producers and importers, so here we go.

MR. KERINS: Good afternoon, Ms. DeFilippo and other members of the Commission staff. I appreciate this opportunity to explain or discuss with you the role of imports of copper pipe from Mexico in the U.S. My name is Ed Kerins, I am Executive Vice President of Cambridge-Lee Industries, a producer and distributor of copper pipe and tube located in Redding, Pennsylvania. Cambridge-Lee was founded in 1963, is wholly owned by IUSA, a producer and exporter

of copper pipe and tube from Mexico.

Cambridge-Lee also purchased Redding Tube's production facilities in 1996 and we distributed IUSA copper pipe and tube produced at IUSA's two plants in Mexico and in Pennsylvania. My company manufactures copper plumbing tube and industrial tube, or commercial tube. Plumbing tube is for water distribution, industrial tube is for refrigeration and other applications.

Let me briefly explain some of the important aspects of the U.S. copper pipe market that are relevant to the Commission's investigation. Beginning with the demand side of the market, demand has dropped across the board thanks to a significant jump in the price of copper. Raw material costs account for roughly 75 to 80 percent of the industry total cost of goods sold. Since 2003 the market has seen significant increases in the price of copper, the main raw material in copper tube, as well as increased volatility in copper prices.

The price of copper reached an all time high in May of 2006, going from $1.50 average in 2005 to an average of $3.75 in May 2006. The average for the entire year 2006 was $2.81, almost double the cost in 2005. This caused most residential construction in

the U.S. to shift to plastic tube. Although the price of copper has declined since then, residential builders have continued to use plastic pipe predominantly in the new residential construction market. This has hurt demand for copper pipe in the U.S. for domestic and foreign producers alike.

Some companies like Mueller for example produce these competitive plastic pipe products and have increased their own sales of these products. We have also seen the demand for copper pipe drop as a result of the crash in U.S. residential and commercial construction in 2007 and 2008. Again, this decline in demand has hurt both domestic and foreign producers. Turning to the supply side of the market, the domestic industry is the largest source of supply in the U.S. market and Mueller is the largest player.

IUSA produces pipe and tube in both Mexico and the United States. From 2006 to July 2009, IUSA was the largest exporter of copper pipe from Mexico. Due to the declining demand in the U.S. market IUSA decided in July of 2009 to consolidate our production of copper plumbing pipe, which is our primary product, at our Cambridge-Lee plant in Redding, Pennsylvania. Starting in August 2009, we ramped up production of plumbing pipe at Redding and dramatically cut back on

the volume of exports from Mexico. This made sense from both a production cost efficiency perspective as well as being able to take advantage of Federal economic stimulus money dedicated to products made exclusively in the U.S.

At Redding we can use either scrap or cathode as our raw material. While we can use both in Mexico, our supply of scrap in Mexico is very limited while it's available more readily in the United States. The cost of raw material because of this in Mexico is higher because we have to buy all cathode. I'd like to speak briefly now about the Mexican imports. Even before the consolidation of production of plumbing pipe at Redding, the volume IUSA's exports to the United States declined since 2006 as a result of the decrease in demand in the U.S. market.

As IUSA is the largest supplier from Mexico to the United States, overall imports from Mexico reflect this decline in export volume. Once IUSA did shift production of its major product to Cambridge-Lee's Redding, Pennsylvania facilities, imports from Mexico dropped significantly and are expected to remain low. As the company responsible for approximately 75 percent of Mexico's exports to the United States, this production shift has drastically

reduced the overall volume of imports from Mexico.

I should also note that our pressing ahead with our Pastaje, Mexico facility, our new inner groove mill that everybody's talking about, is unlikely to affect the U.S. market. We've already missed a deadline for supplying U.S. purchases in 2010, or we've missed the time to qualify. As I've already mentioned, prices for IUSA whether it produces copper pipe in Mexico or the U.S. are driven by raw material costs. The same is true for the copper pipe market generally.

As a result of this pricing behavior, IUSA's share of the U.S. market has been fairly constant, but considering the increase in imports from other sources our market share has actually declined and of course dropped off significantly since our production shift to Redding this summer. There is also no evidence that Mexican imports have had any negative effect on prices of copper pipe in the U.S. market. Indeed, the decline in our export volume even before the consolidation of plumbing pipe at Redding shows that IUSA has not undercut other suppliers' prices.

Overall the impact of imports from Mexico on the U.S. market is minimal. Despite a dramatic drop in demand for copper pipe and tube in the U.S. market,

it is IUSA's understanding that the U.S. copper pipe industry has remained profitable, albeit at reduced levels of production. It has been the drop in demand and changes in the price of copper that have dictated the reduced production volumes. IUSA has confronted the same situation and we have also cut production. Further, IUSA's insourcing of production into the U.S. has had and will continue to have a large positive anticipated impact on Cambridge-Lee's production, employment, shipments, and profitability.

In short, there is no reasonable indication that any injury to U.S. copper pipe industry is attributable to imports. It's all demand driven, as Mueller's own annual report notes, and related to the price of copper that affects all producers equally. Finally, there is also no threat of injury from Mexican imports. It is our understanding the primary focus of this case is Mueller's concern that there is a threat of injury if imports from sources other than Mexico continue to increase.

But what the Commission must consider is that Mueller company itself has a major production facility in China and is now bringing this case, which really concerns imports from China. IUSA and its responsible supply of copper pipe from Mexico are

being dragged into a mess that Mueller itself at least in part created. Quite simply there is no threat to the U.S. industry by reasons of imports from Mexico or IUSA in particular.

The Commission needs to look at imports from Mexico separate and distinct from imports from China. The volume of imports from Mexico is down significantly since 2006, whereas imports from China are increasing. Import volumes from two countries moving in opposite directions make it impractical and unfair to cumulate and put imports from Mexico and China together when determining whether imports threaten to cause injury.

When you look at the facts before you it becomes clear that Mexican imports pose no threat to the U.S. industry. Inventories of these products are very small relative to sales, and IUSA has never been a company to undercut prices to make sales. There is also certainty that the volume of exports from Mexico will drop dramatically in the imminent future thanks to IUSA's production shift to Redding, Pennsylvania.

We will submit confidential data with the postconference brief that shows the magnitude and importance of this shift in both the U.S. production volumes and for imports from Mexico. Indeed, if there

is a way for the Commission to make a determination that IUSA will have a very positive effect on the U.S. copper pipe industry that would be the appropriate determination in this case. But because you have only to determine whether exports from Mexico threaten injury, the staff assembled here today should tell the Commissioners that this case against Mexico should end at this preliminary stage, there is no basis to continue the investigation. Thank you, and I'll be pleased to take any questions.

MR. KELLY: Good afternoon, Ms. DeFilippo and members of the Commission staff. My name is Steve Kelly, I am President of Copper and Brass International or CBI. CBI is a subsidiary of Nacional NCobre, commonly referred to as NCobre. NCobre produces copper pipe and tube in Mexico and markets it in the United States through CBI. I appreciate this opportunity to discuss with you NCobre's operations in the U.S. and Mexico and explain our company's role in the U.S. copper pipe and tube market.

NCobre was started in 1950 as a joint venture between Anacond American Brass and Nacional NCobre. NCobre produces copper based products including seat strip, bike tube bar, and wire. It also owns facilities that manufacture aluminum

products. CBI began operations in 1986 as a subsidiary of NCobre. Since operations began CBI's primary responsibility has been to sell copper based products produced by NCobre into the U.S. and Canada.

Copper pipe and tube represent a small percentage of what our overall business is. We focus on supply of specialty, made-to-order products. In my time here today I'd like to briefly explain to you how the U.S. market of copper pipe and tube operates from NCobre's perspective. We agree with the picture set out by Mr. Kerins at Cambridge-Lee, with the three main points being: number one overall demand has declined, number two the price of copper drives the price of copper tubes, and number three substitution of plastic in water distribution in new residential has affected copper sales.

Beginning in November 2008 our market saw a significant contraction due to reacting to the credit freeze resulting in economic downturn. November 2008 sales were 36 percent less than October 2008 sales. Reducing housing and commercial building impacted demand for copper based products used by this industry. The trend has continued through 2009. As for supply of our products, many of our products covered in this investigation that NCobre produces in

Mexico and supplies to the U.S. market are products that are simply not available in the United States. U.S. producers either do not have the capability or interest in producing several of these products.

I have named these products in what I've outlined, but I'm going to give them to you again. Military specification tube used into the ship building business, military ship building. Heat exchanges for petrochem applications, sugar tubes for producing sugar, wave guide tubes for the cellular communications, and heavy wall copper tubes often used in heat exchange applications and electronic applications.

As evidence of the lack of availability of certain products, Kobe Weil and Mueller purchase copper based products from CBI. When several of our customers learned about this inquiry, they have told us that they cannot get these products of seamless copper pipe from U.S. suppliers. The way the scope of this petition is written, supply of all these products would be affected without available U.S. sourcing. We'll provide information about these products in our postconference brief.

As the market of copper tubes has eroded, NCobre's sales have declined. Rather than trying to

keep production capacity in operation, NCobre shut down a major production mill in November of 2008. There are no plans to reopen this facility in the future because demand for our product can be handled in just one of our facilities. NCobre's business model is to ship directly to its customers in the United States from manufacturing facilities or our warehouse facilities in Mexico. This is consistent with our emphasis on particular products not supplied by other producers.

As demand volume in the U.S. market, NCobre's sales volume has declined as well. NCobre has in fact decided to keep the United States at a level where we can maintain price levels and not erode the prices in the United States. From 2006 through 2009 we have seen flat or declining sales in seamless copper tube. In that same time period NCobre sales of copper tube in the United States had decreased about 30 percent. There is no credibility to the NCobre has caused any effect on the price of seamless copper tube in the United States nor on the prices of seamless copper tube sold by the companies you heard from this morning.

The main companies that determine the price in the U.S. market are Mueller and Cerro. They're

identical price sheets that you've seen this morning are distributed regularly depending on copper prices and volatility in the market situation. Management from these companies determine the multiplier reduction in the price list for daily pricing. This changes significantly depending on copper pricing, but also based on efforts to increase sales volume.

After volume, NCobre is not the largest supplier in the market, we are very small relative to the company that brought this case. I mentioned that NCobre concentrates on particular products that other suppliers cannot or do not care to produce. The overall volumes show that our sales prove to be inconsequential to U.S. suppliers. NCobre's exports are not sold in the United States at prices that have a negative effect on the domestic producers. On the contrary we have refused many orders due to our inability to compete with U.S. domestic pricing.

With regard to relative prices, I want to emphasize the one key fact that is not addressed in this Commission's questionnaire is that it is well known in the industry that Mueller and other domestic suppliers practice significant rebates for their customers in copper water tube. This rebate practice of domestic producers makes it difficult for us to

compete. The Commission's questionnaire did not collect any information about these net prices of these important discounts and rebates. In order to make a proper price comparison the Commission should do so.

The U.S. producers are doing well despite the declining demand in copper products. The United States maintains an advantage in several areas that affect imports, including the advantage of well placed warehouses that make domestic products more available and the technological support from U.S. companies and the availability of engineers that are not encumbered by the language barrier. The petition that was filed seems most concerned about the perceived threat of injury and not actual injury. And if there is any threat of injury it certainly is not coming from my company or imports from Mexico.

If the Commission finds that increasing imports from China pose a threat of injury to the U.S. industry, I believe that it would be unjust and contrary to commercial reality to include exports from Mexico in that finding. NCobre is a reliable, responsible supplier to customers in the United States and Mexico. NCobre sell quality copper product and has built a business in supplying a volume of copper

tube products that no producer in the U.S. can make. These facts must be looked at separately from what is going on in China, and the Commission should issue a separate determination with regard to imports from Mexico.

NCobre is hopeful that sales will increase in 2010. If it does, we can hope for an increase in our sales volume to our historical negligible market share. But such an increase will also prove the same opportunities for Mueller, Cerro Flow, and KobeWieland. By the way, these companies have been able to make profits despite some of the negative developments regarding demand since 2006. There is no threat of injury to the United States producers.

In any event any perceived threat to the U.S. is certainly not coming from Mexico. The Commission should find that this case is all about the threat of injury and the Commission should find that there is no threat of injury caused by imports from Mexico. If my time is right I have just a couple seconds to, there's three points that were mentioned, three companies that have closed in the United States, Wolverine, National Copper, and Linderme, each have their own story.

As you heard a little bit ago Wolverine had

joined in with Golden Dragon, they're a distributor, they became a distributor and they stopped being a manufacturer. That was the start of the end for them. National Copper had a successful business plan, they worked strong until the day they closed. People did not know they were closing. The articles that were published show that it was the changing copper price, improper hedging, that put them out of business. And then Linderme tubing just had an antiquated mill and they did not do any updating, they couldn't compete with either domestic suppliers or other importers. I'd be happy to answer any questions.

MR. SILVERMAN: Madam Chairman, is this one of those rare cases where we didn't use all the time? How much time is left?

MR. MCCLURE: Three, two, and three.

MS. DEFILIPPO: Tempting.

MR. SILVERMAN: I would like to make a comment. Sitting here after many, many steel cases and chemical cases, food cases, I've never seen one like this, where the domestic industry in its, at least the one publicly traded company, gives us tremendous ammunition. They talk about in their submissions to the SEC about declining demand and substitutions. And I've never seen a case, although

the Commission collects data on substitute products, where the substitute products dwarf everything that's being debated here today.

And how do they get around that, their admissions to the SEC, their admissions to their testimony today in which you heard from everybody here, how do they get around it? If you read the petition carefully and you listen to their testimony, their clever tactic is, but don't worry about, it's the market share, they used it four or five times in their testimony, it's also in their petition.

That's a smoke screen because if you look at the absolute numbers the causal link evaporates. Let me just use a general number, this is not a APO number, let's assume their shipments were down by 100 pounds during the period of investigation, that's a lot, 100 pounds they went down. Imports increased from 2 to 3 pounds. Well that's a 50 percent increase of imports. But if their claim is a volume impact from subject imports when the numbers in their presentations show that they went down 100 pounds in my example, that's not a causal impact that's recognized by this statute.

The same thing is true when you talk about the price impact. The market share of these imports

is very small. If their theory of this case were true, my goodness, you would think that they would have captured enormous market share. It hasn't happened because the buy America preferences, because the market segments, whatever the reason, it's not there, their theory doesn't work. This is not fitting their theory.

And so I'm trying to get some perspective on this, and I hope the Commission will look beyond market share and look at the actual absolute numbers because it undermines their case completely if the statute has any standards about material causality. Any import is not cause.

MR. RYAN: I'd take our extra minute to read you guys something, if I would be allowed to use it. I'd take my extra two minutes, whatever I've got left over, to read a piece that's consistent with what you've heard from Mr. Silverman surprisingly.

MR. MCCLURE: You have three.

MR. RYAN: I have three. Wow, no that's great. So, you know, Mueller Company has publicly cited so they have a fiduciary obligation in their annual reports to tell the shareholders what's going on. And in every period of course they publish 10-Qs and 10-Ks and annual reports, and their most recent

annual report is the paragraph that describes what's going on in the market.

"During later half of 2008 general economic conditions in the U.S. deteriorated significantly in the housing market and have led to a financial distress for many financial institutions." I'll take a break and tell you, listen for the word "imports," you won't hear it. "So the financial distress experienced by those institutions has led to significantly reduce the availability in credit. These factors as well as declining consumer confidence have led to significantly reduced housing construction in virtually all U.S. markets, which significantly affects sales volume in many of the company's business units."

"Per the U.S. Census Bureau during the fourth quarter of 2008 new housing starts were approximately 0.2 million, which was a 44 percent decrease from the same period in 2007. This condition has continued to worsen in 2009 as January new housing starts decreased 57 percent from the same period in 2008." And then it mentions something in the U.K. market that's not relevant, but going on, "Should these market conditions continue for a prolonged period of time it could adversely affect the company's

results of operations in future periods."

This is exactly the story we're telling you, and this is in Mueller's annual report. Similar words fill up in their most recent 10-Q, so it's not like we're making something up. You know, if this company has a fiduciary obligation to tell its shareholders what's going on where is the mention of imports impacting their company or threatening injury?

MR. O'BRIEN: Just for a very brief comment with our time. We just wanted to correct or clarify that Wolverine is still a domestic producer, if there was any misimpression. They produce in Shawnee, Oklahoma, copper tube. Thanks.

MS. DEFILIPPO: Everybody's gone? Thank you very much. I'd like to first thank the panel, all of you for coming. It is very helpful having people here that know the industry, and we don't get it as often on the Respondent's side so I thank you all for taking time out of your day to be here. With that I will turn to Betsy Haines for any questions she may have.

MS. HAINES: Thank you. Betsy Haines, Office of Investigations. It's very helpful testimony. Thank you. I want to ask to you all the question I asked the Petitioners earlier about the HTS numbers and whether you feel we should be using

questionnaire data versus official statistics for the report?

MR. RYAN: For Mexico I'd like to have an opportunity to answer that in the posthearing brief, I'd like to compare the two data sources and I can give you a more thoughtful answer.

MS. HAINES: That's fine.

MR. O'BRIEN: We have the same position, and we'll also comment on the amended scopes that have been coming in.

MS. HAINES: Okay, that's fine too.

MR. O'BRIEN: Those amendments raise issues as well.

MS. HAINES: Okay.

MR. LAYTON: Hailiang will do the same thing.

MS. HAINES: Okay, thank you. Also in your posthearing brief, and you gave us a lot of great information about the industries in both countries, but as anything else that you can put in the briefs, especially China about, you know, how large the industry is in China, just as much information as possible would be appreciated. And I guess that's all I have at the moment. Thank you.

MS. DEFILIPPO: Mr. St. Charles.

MR. ST. CHARLES: Thank you for your testimony, it's very helpful. I haven't heard anything objecting to the Petitioner's definition of the like product. Counsel, am I correct in assuming that at least for the prelim you agree?

MR. O'BRIEN: At least for today we will accept the single like product. It is, I think if we've done our job right, it is clear that there are two very very different segments in the market, but we are not arguing multiple like products.

MR. ST. CHARLES: You're arguing that that affects the manner in which competition occurs in the market but not.

MR. O'BRIEN: Exactly.

MR. ST. CHARLES: Thank you.

MR. RYAN: Could I answer that?

MR. ST. CHARLES: Yes.

MR. RYAN: We're actually carefully thinking about that issue because a lot of the testimony you actually heard from everybody makes a pretty careful division between plumbing and industrial or commercial, however, you want to call the AC units. A large number of the factors that you heard about which I'm sure raises this question go directly to the Commission's standard like product analysis, but we

think at bare minimum it's a condition of competition that needs to be carefully considered. But I don't think I can commit to not opposing the like product issue until we've had a chance to more carefully analyze a lot of the import data and questionnaire responses that we just got yesterday.

MR. ST. CHARLES: Okay, thank you. Mr. Silverman, of course you're aware that the statute instructs the Commission to consider the volume of subject imports both in absolute and relative terms. So I'm just curious how you think market share would be irrelevant?

MR. SILVERMAN: This is Bill Silverman. I'm not saying it's irrelevant, I'm not suggesting to take any section out of the statute, but under the conditions of competition and the data in this case I think you have to look at the absolute numbers. And when it says "relative," relative to other imports, relative to the whole market?

MR. ST. CHARLES: No, it says relative to domestic consumption or production.

MR. SILVERMAN: No, relative to domestic production or consumption, that's fine, I'm not saying you write it out of the statute, I'm just saying that the way this petition has been presented, the way the

testimony has been presented, they would prefer you didn't look at the absolute numbers because absolute numbers disprove the causal link. Even in my little example of going from 2 pounds to 3 pounds, that could be an increase in market share, but if the market is a million pounds where does it get you? And all I'm saying is let's get to the reality and stop using ratios. I'm not saying that you can't look at the ratios but the reality will be apparent when you look at the absolute numbers.

MR. ST. CHARLES: And I'm not saying the Commission won't look at the absolute numbers.

MR. SILVERMAN: Good.

MR. ST. CHARLES: You also referred to buy American preferences. Could you elaborate on to what extent such preferences are a factor in the market?

MR. SILVERMAN: One of our witnesses has reference to that in his testimony, I think he's the better person.

MR. ALTMANN: Specifically, and I was referring to domestic housing starts, there are housing companies, there are specialty builders who specify as part of the engineering drawings like they will specify a certain brand of fixture inside the house, they will specify copper tubing as the type of

product to plumb with, they will specify American tubing as part, you know, of that copper. It has occurred and continues to occur. It's not by any means the majority of the market, but it does occur in the marketplace where it is spec'd out by the builder or by the engineering people.

MR. SILVERMAN: Mr. Kerins has something on that point.

MR. KERINS: Excuse me. It goes beyond that. The federal stimulus, the TARP money, requires U.S. made product, any products that go into any construction have to be made in the U.S. if they're available in the U.S. So Mexican copper tube could not go into a building like this if it was being built on the stimulus money, it's part of the statute.

MR. RYAN: Which is, in Mr. Kerins's direct testimony, was one of the factors that IUSA considered in shifting its production to Redding, Pennsylvania from its plant in Mexico. It was one of the factors in addition of production efficiency.

MR. KERINS: And I might also add to that to answer again, in some competitive situations in I guess healthy competition, if a domestic producer add to that argument they tend to get the business, so that's just part of the competitive thing that goes on

out there.

MR. ST. CHARLES: Okay, thank you. I'd also like to hear at least in your postconference brief whether any domestic producer should or should not be excluded from the domestic industry under the related party provision, which as counsel knows also includes producers who import. It seems there has been discussions of Wolverine and Cambridge-Lee in particular that seemed to raise those issues.

MR. KERINS: We'll certainly address that.

MR. ST. CHARLES: Thank you. This is just curiosity, why is tube rifled?

MR. KRAHMER: It increases the surface area as well as the turbulence of the refrigerant that flows through the tube. Those factors combined increase the heat transfer efficiency of the tube as compared to smooth bore or the same tube without the internal fins or ridging.

MR. ST. CHARLES: And is that an expensive process? Does it amount to a significant share of the price of the finished product or the cost of the finished product?

MR. KRAHMER: Yes, there is a significant difference in price between inner groove or enhanced tubing and smooth tubing.

MR. ST. CHARLES: My understanding is that plastic tube has been around for a while, has become very important in the residential housing plumbing system and that the real substitution issue that's occurring today that is a new trend is the aluminum and the more high tech aluminum. Is my understanding correct?

MR. WEIL: Well, the use of aluminum at least that I reference is in the air conditioning systems as a direct replacement for the copper or the rifled copper. There's people who know much more about the plumbing market here than I do, so if there's an incursion in aluminum into plumbing I'm not aware.

MR. ST. CHARLES: And my question is, I suppose, for the plastic, do we have a departure from the share of the market that is reflected by plastic as opposed to copper?

MR. KERINS: Yes, our customers tell us that they are buying, well over the last several years they have increased their purchases of plastic considerably and decreased their purchases of copper. To give you a little reference point, if we were going to compete with a piece of half-inch copper compared to a piece of half-inch PEX, copper would have to be $1 a pound

on a per foot basis to compete, roughly numbers the way we do our calculation. And copper now is $2.80 a pound, so there's a huge difference in price per foot, and that's what switched them over. And the installation is you just put a tool on it and crimp it, you're done.

MR. LAYTON: Yes, excuse me. Yes, plastic may have been around for a long time but there has been a change in the marketplace occasioned by the dramatic increase in the price of copper. That's opened up a huge opportunity for plastic to come in and replace that copper. I think I was talking to these gentlemen before the conference, I mean at one time in the not too distant past copper would have accounted for close to 100 percent I believe of the plumbing business. Now it maybe at best is 50, 55, 60 percent. What happened? Well, PEX and aluminum.

MR. MAX HANSEN: I just might add to that too, it really is the elephant in the room. With prices going up so high even some distributors because of thefts of copper because I think many people are aware that brass and copper is a major theft item around the country, we've had wholesalers say, I'm going to get out of the copper business, it's too expensive, I'm just going to go PEX. And remember PEX

is a very labor efficient and the price difference is really really significant. And the conversion cannot be underestimated. I'm not the expert on market share but it is the major major issue going on in plumbing now. And it's, with radiant heating and with plumbing systems, PEX is the product of choice today.

MR. ALTMANN: The other thing contributing to that has been the plumbing codes or your building codes locally, PEX and plastic tubing has not had universal appeal and has not been code approved until recently. California in particular, which is a very large state obviously with a lot of buildings, was one of the last major areas that's approved the use of PEX or plastic pipe in nonmobile homes, regular home construction. So obviously if the local plumbing codes have upgraded and changed from specifying copper to allowing other materials, that move has also happened because of the price issue.

MR. ST. CHARLES: Thank you. Thank you, everyone. I have no more questions.

MS. DEFILIPPO: Thank you, Mr. St. Charles. We'll next have questions from Mr. Fetzer.

MR. FETZER: Thanks. Tim Fetzer, Office of Economics. Thanks for coming out, it's rare that we see I guess either side come out this far on the table

close to us, so it's good to have this many folks from the industry here help us understand this new product. I'm just going to, a lot of my questions are going to kind of go through some of the things I asked this morning just to sort of see where, you know, where we're at on different issues. In terms of the cost share question I asked this morning, I believe Petitioners said generally the cost share of copper tubing is on the low side if you're looking at the final product, it might be higher if you're looking, you know, further upstream. Would that characterization be correct?

MR. RYAN: Can I just clarify the question, because it kind of came up in the context of your questionnaire as well?

MR. FETZER: Sure.

MR. RYAN: When you're saying it's a percentage of copper tubing, the share of the price of copper tubing as a percentage of the finished product into which it goes like an AC unit or a house, is that what you mean?

MR. FETZER: Yes, into the finished product, yes. I mean, and obviously if it's house versus AC unit you're going to come up with different answers.

MR. RYAN: Yeah, but I just wanted to

clarify the question because it's sometimes not obvious to people that don't think about things that way.

MR. FETZER: Okay.

MR. WEIL: In an air conditioner it's going to depend. If it's on a residential air conditioner it will be on the low side. If you get into large chillers like we've mentioned before it'll increase. But it is a enabling technology because it is a heat transfer characteristic in the product.

MR. FETZER: Okay.

MR. KERINS: On the new residential side, we used to track the number of housing starts and how many pounds of copper tubing the industry shipped and try to get a relative number on how many pounds per housing start. Up until about the mid 2000s when the copper spiked, there was a fairly constant number that we could kind of look at, but then as soon as the switch went to PEX there's no correlation anymore, we can't, whether it's 50 percent or 30 percent of the new residential, I don't know the real number. But it's very difficult to correlate housing starts to how many pounds to a housing start anymore where I used to have a pretty good number on it. That's residential housing, only plumbing, not commercial at all.

MR. FETZER: Okay. Mr. Ryan?

MR. RYAN: The 30 or 50 percents are market shares rather than percentage of the cost of a finished house that would be attributable to copper pipe.

MR. WEIL: I think it may be also important to add, although like in a residential air conditioner it's kind of a huge component, any component that all of a sudden tripled or quadrupled in value has a huge impact and is certainly getting the attention of the manufacturer looking for alternatives as to what to do.

MR. FETZER: Okay, I appreciate that.

MR. MAX HANSEN: Possibly a different spin on your answer, if you look at the retail marketing segment, five years ago you could not go into a Home Depot or a Lowe's store and buy PEX product, it was not available, they weren't selling it in the after market for repair to the customer because the house wasn't there that needed repair. Now you go into most markets and you will find 8 or 16 foot of product tubing, repair parts, the sorts of things that you would go to those stores to buy, that has now gone into those stores which obviously reflects the use of that product going into the market initially,

plastics, specifically PEX.

MR. FETZER: Okay, thanks. I appreciate that. Moving on to demand, in terms of the substitutability I think the Petitioners agreed there is substitutability but I think they characterize it as sort of a lot of it happening by 2006 and not as much after. What I think I've heard from the panel this afternoon is that a lot of it's continuing. But how would you characterize it let's say, you know, before 2006 and after 2006, was a lot of it beforehand? I'm just looking at Mr. Silverman's chart, it looks like a lot of the increase in the copper prices, you know, came during 2006 and it's kind of been at that type of level since then, which would I guess suggest that a lot of those happened up to that point.

MR. MAX HANSEN: Well I might respond to that. First of all, and I'm not an expert on the code issues, but when PEX became acceptable in the national plumbing code as well as the state and local codes, which is a big issue because in the last two or three years it's accepted everywhere, I don't know whether there's any holdouts, but the state of California up until two or three years ago you couldn't do that and there were some political, you know, some winks and

nods in there. But the transition to PEX, it mirrors identical with a spike in pricing.

You know, I sell both products, and there was a panic when the copper went up and they went in there, but every wholesaler has to look at, how am I going to survive, do I have this $6 a pound copper when it hit $4 and had margins on it, or can I do this thing at a third of the price? And you can use less trained labor, it's all mechanical assembly, and it's just cheaper in labor and all that. Because of housing starts coming down, the recession, and people getting nervous about pricing, that's a fairly major item for builders because builders are starting seeing the crunch in that.

So the substitution because of the major spread in prices as well as the code approval issues were so dynamic, and then you could research it how many of the companies that are in the PEX business now really were formed and got in the business or how many people, when did companies like JMF then add PEX to our product? So there's a lot of factors that come around that timeframe.

MR. KERINS: I want to make sure we answered your question. You said is it currently going on or is it increasing? I want to make sure we got that.

MR. FETZER: I wanted to get a sense of how much of this substitution occurred before, during 2006 and since. I mean, I get the sense from your answer it has something to do with the recent code changes.

MR. M. HANSEN: So in short, the short answer is that the last three years has been an accelerated pace because copper was never at a sustained high price that it is today, and I think the industry and the consumers and the plumbing wholesalers that are our joint customers are convinced how the spread is going to be up there for an extended period of time, that copper isn't going to come back down, and so I think they've pretty much figured that this is a long-term substitute advantage that PEX has over copper.

MR. KERINS: Okay. We can supply some post-conference information on that briefly. We belong to an association that the Petitioners belong to that reports industry shipments of copper plumbing tube monthly in the U.S. production, and from June to July of 2006 it dropped almost 40 percent in a month. It was a huge drop, and it coincided with the rise in copper at $3.75 in May of 2006. A lot of people switched to plastic.

They had homes on the drawing board. It was

time to get those developments going. When they went to buy their copper in July, they said no way, so they went and switched to plastic even though the job was going to be copper originally. There was a lot of -- I don't want to use the word wholesale, but there was a lot of wholesale plumbing contractor side to go from copper tubing to PEX because of the cost of the product itself.

MR. FETZER: Okay. Again, was that in 2006 mostly when that happened?

MR. KERINS: Yes, yes. The number we'll give you, which are Copper Development Association number which the Petitioners have access to shows the industry shipments dropping precipitously in the middle of 2006, and that continues.

MR. FETZER: Okay. I'm sorry.

MR. KERINS: It continues.

MR. FETZER: But plastic has been there for some time. And it's not only PEX. It's CPVC.

MR. KERINS: Yes, CPVC has been around longer, but PEX is easier to install.

MR. FETZER: Okay.

MR. KERINS: And that's going to be the issue in convincing people to go back partly because of ease of installation. You don't need the skilled

labor that you have.

MS. DEFILIPPO: Can I just jump in and ask one question? It's a dumb question. Can someone just say what is PEX? Is it PVC? I mean, I haven't heard that term before, so before we proceed on, if someone could just give a really brief explanation?

MR. M. HANSEN: Let me try to do that. PEX is defined as I think cross-linked polyethylene tubing, and what it is polyethylene tubing that's cured using one of three processes, and one of them is EB process, another one is a saline solution, and then it's types PEX A, B and C, so it's plastic tubing that sold in straight lengths or coils. The plumbing system is a mechanical system, so they use brass or plastic fittings to connect the runs of plastic tubing.

Then, there are a combination of either plastic or brass products that are part of the system in a plumbing system, so it's immediately interchangeable, and it's just a mechanical assembly, so people who aren't experienced in soldering or braising products are very comfortable doing it. I hope that was helpful.

MS. DEFILIPPO: Thank you. That's very helpful. Thank you very much.

MR. FETZER: Any other thoughts on the timing of substitution? Yes?

MR. LAYTON: In talking with these industry official, I mean, what I've heard them say is they believe the United States is headed in the direction of Europe where in the plumbing space, Europe is now 90 percent plastic, and I've heard numerous gentlemen here on this panel state that's where you think the United States is going. I'm not trying to put words in your mouth at all. I'm just repeating what I heard you say if you want to amplify anybody.

MR. ALTMANN: I think that generally what we're seeing both in the current construction market and then at retail and the aftermarket, both because of price and especially in the aftermarket because of the ease of use, if you've ever had to do any repairs in your house, if you've ever gone behind the walls to fix something and had to take a settling torch or a torch and light a fire and put it behind the drywall, and just the thought of that probably gets you to want to call the plumber versus PEX which it's a plastic pipe.

It's flexible. You don't often even need to put a fitting in. You just string it out, but otherwise you can either crimp it in or sometimes just

snap it in place. It's a much more consumer-friendly product for the aftermarket. Ultimately, we're in the business of supplying customers what customers want to buy, you know, the market doesn't dictate what the customer wants. The customer dictates what they find easiest to use.

MR. M. HANSEN: Let me help out a little bit. As I said earlier in my testimony, we've been in business about 60 years, and maybe we're a good case study for what the market did, you know, we prefer copper. I mean, that's what we are. We love to sell copper, and it wasn't until about 2006 when customers said hey look, I need to buy copper tube, but I also need to buy PEX because some people want copper and some PEX.

I was forced to get in the PEX business to retain my customers because they want vendors that give them both copper and PEX, and so it hasn't been until the last six months or a year, and we're a major player, we're a national known company.

It's only been the last six months or probably the last six months that we got the full product offering you need to have, which is all of the fittings and manifolds and other technical products that are part of this system that replaces the

plumbing system, so the fact we're a national company and the fact that the customers that were converting, the wholesalers that demanded a source for PEX, they really forced us into that, so hopefully that's helpful.

MR. FETZER: Thanks. That's very helpful. Mr. Altmann, during your testimony I believe you said that in terms of substitution it won't go back if the price of copper falls again. Can you elaborate on that in terms of why?

MR. ALTMANN: Again, a couple of different perspectives. Certainly, and I think that during my talk I mentioned if your house is made with PEX, and you now have to do some repair on it at retail, and you go to your Home Depot or Lowe's store, you have no choice. You're going to maintain that material because that's what in your house. From an industrial standpoint, you look at how a new house is built, you have trades that are involved. You have electricians, you have plumbers.

The plumbers aren't the ones who are plumbing the house. It's their apprentices who are coming up through the ranks, and those journeymen or journeywomen when they are young learn how to solder a pipe, and that's how they build a house, and that's

what they do. Now they're using plastic pipe. They're using crimping tools. They're using a whole different technique for how they build.

As those kids become the plumbers of the next generation, they are much more familiar, much like my daughter is much more familiar with shopping on the internet. These now new plumbers, yes they can still solder, but they really don't want to. They really don't have to, so they will start to also convert, and that will become more and more common as it goes forward.

They're not going to go back to a technique that takes more time and more work and quite frankly costs them more money because when you're in the trades, time is what you have to sell, so they're not going to go backwards what they are learning as part of their skill sets.

MR. FETZER: Okay. Thanks. Any other thoughts on that, Mr. Kelly?

MR. KELLY: Yes. My understanding is if you are a major builder, and you have several projects going on, as Jim said you can have several crews that are not very qualified people, not highly skilled people, and then just have one person to go to each one of these sites to verify that everything was done

properly, so that saves a lot of costs. You only have one higher-priced, highly-qualified person and basically apprentices in each one of these other locations that their work is going to be inspected prior to the release of the house.

MR. FETZER: Thanks.

MR. KELLY: And that was testimony by Randy, not Jim.

MR. FETZER: In terms of demand, I think demand housing starts, I think the Petitioners, I asked them this morning what would be a good thing to look at, housing starts, the weather, I think non-residential construction. Those are the ones that I remember. Anything else that we should look at?

MR. KERINS: Like I testified a little bit ago, the housing starts are a very difficult thing to follow now because of the substitution of plastic.

MR. FETZER: Yes.

MR. KERINS: If you want to save 50 percent if new residential is plastic, then you could cut it in have and see how much copper goes into an individual home, but I don't have a real good estimate on it anymore, and non-residential is primarily copper, so if you separate the two, you get an idea on the non-residential side but not on the residential

side.

MR. M. HANSEN: I might comment. For the HVAC equipment side that ELEMS are involved in, it seems to me we've had cool summers, and that meets into that because what happens is in hot weather, air conditioning systems work many, many more hours, over heat, over load, and that replacement market, you talk to equipment manufacturers that use copper and aluminum, they want the hottest summers there could be, and the last two or three years it's been a cooling the middle west we're at. It's been a very, very cool summer, and the experts that sell this stuff say that's not good for business.

MR. WEIL: You want it to be hot early in the northeast because the penetration of air conditioners is always great up there. It helps sell air conditioners, but the replacement market is also important. My estimation is replacement market is more 60, 70 percent of that business, but also the economy factors into it because okay, now you're air conditioning is failing. Do I put a new one on? Do I get it fixed, and there could be a cost tradeoff there, and you might opt when money is tight to get it fixed rather than to replace it, and normal times you might just go out and replace it.

MR. O'CONNOR: If I could just make a comment here? This is Dan O'Connor, one of the attorneys for Golden Dragon. Mueller's annual report and 10K as I mentioned today, they're useful sources of information. They stress the drop in demand, and they relate it to overall economy, the recession. The recession is leading to these drastically reduced housing starts and all construction is way off. They relate the contracting market to drop in demand, and they relate that directly to the recession.

MR. FETZER: If I could, Jim, just for a second?

MR. WEIL: Sure.

VOICE: When you say 60 to 70 percent is in the replacement market, is that just copper, or is that copper and plastic combined?

MR. WEIL: Okay. When I'm speaking, I am speaking about there's no plastic in the air conditioning market.

VOICE: Okay.

MR. WEIL: The air conditioning market would be copper, and the substitute for that is Imundo.

VOICE: Okay. Okay. You were speaking just in the A/C market?

MR. WEIL: Right. And then I'm speaking of

the total demand for air conditioning units as to what's driving that demand between new construction and replacement.

VOICE: Okay. Thank you.

MR. FETZER: In terms of this replacement market, I mean it sounds like it's pretty big. Should we be looking at things like stocks, like housing in place or something? I mean, do you guys look at that, or do you just focus on sort of the changes in housing starts, changes in residential or non-residential construction? Am I making sense here?

MR. KERINS: In the plumbing tube business, we don't try to forecast what's going to happen next month. We try to turn our inventories as fast as we can and try to be competitive, and there's no sitting here saying well, in December or February of next year we should build our inventories because things are going to come back because we have to react faster than that. We can't plan that far ahead, not in the plumbing tube market.

MR. FETZER: Okay. In terms of the pricing, I mean from the Petitioners this morning, discussions here, there's two different ways of pricing: With the discounts off the price list and using the metal charge and the fabrication charge, and the Petitioners

this morning said that generally the customer would dictate which of those would be used, although generally the price list is used I believe in the plumbing market. Anyway, I just wanted to see if there were any thoughts on that in terms of what drives that decision in terms of what form would be used?

MR. KERINS: Well, I can tell you from our perspective none of our plumbing tube customers buy at a fab plus metal like the commercial market. All of our plumbing customers buy off of a price sheet with a multiplier. The limited amount of commercial tube that we do sell is all sold at a fab plus call mix, so the customer dictates it because of the market he's in. If he's plumbing wholesaler, he's not buying a fab plus metal. If he's a manufacturer, he's not buying off the price sheet.

MR. FETZER: And is there a reason for that? Is that to insulate from changes in copper prices or --

MR. KERINS: No. Excuse me. The manufacturers, for example, of the air conditioning, they want to lock in their fabrication price for the following year so they can price their products in the marketplace. The plumbing tube wholesalers, all they

want to do is buy better than the buy across the street, so it's an auction almost. Sometimes it's an auction sometimes in plumbing.

MR. M. HANSEN: Since I'm a customer and competitor, let me answer that because I think that maybe we owe it to help clear that out. In fact, on the plumbing tube side, the pricing, which is always of serious interest and argument among the customers, but like today, I think yesterday Mueller announced a new list price, and within 24 hours the whole industry adopted that list price, so everybody understands that one of them takes a leave, and maybe that's okay for competitive reasons, and everybody uses the same list price, so everybody's got the same list price, and then all of the tube mills publish.

Generally, now there's two prices. They publish their truckload multiplier and then a little higher multiplier. There's two prices out there, total transparency in the market, but there is a tool consistency with these folks in here, and then I think what even the manufacturers would say is that of course they have a right to sell a price and try to make a good margin, and then the marketplace either accepts it or they don't.

There's a lot of consistency in the list

price and then in the multipliers being used, so I hope that helps you understand that, and it's always a combination of the metal cost and the margins that the factories think that they need in the copper, too.

MR. FETZER: When you say consistency, you mean with the metal fabrication prices?

MR. M. HANSEN: No. The consistency is that all the wholesalers if I'm competing with the manufactures, the wholesalers will say okay, are you on the same list, and then what's your multiplier.

MR. FETZER: Okay.

MR. M. HANSEN: So I'm saying the industry collectively puts out the structure, and then we compete for the business.

MR. FETZER: Okay.

MR. LAYTON: But I understood, Jim, your question to be when the other panel testified, and if I'm getting this wrong, the other panel will clarify in their post-conference, they acted like hey, it's whatever the customer wants in any of these segments. We're not wedded to these price lists even in plumbing is what I thought we heard. I thought that was your question.

MR. FETZER: Well, I mean, I got the sense that there were tendencies in the different markets

certainly, but at the end of the day, I mean, looking at the questionnaires there was some concern some customers wanted a different type of pricing than what's traditional in that type of market, and they weren't able to get it, and the question is well, gee if that happens, is it because it works? Generally, it sounds like what's used generally works for most customers. I mean, I don't want to --

MR. LAYTON: But the customers are very distinct between the wholesale segment and the olian segment, so in the industrial segment, there is no option. It's fab plus metal. That metal is going to float unless we put a hedge in to help you fix the metal. That's how it works. There's no choice. That's what's going to happen, and I think traditionally on the other side having the price list with a discount it's a vast majority there may be some new emerging changes like that, but the vast there's no choice do you want to go A or B. This is how it works in the wholesale market.

MR. FETZER: Okay.

MR. M. HANSEN: In commercial tube pricing, pricing is very transparent because you have a fabrication cost and then metal, everybody knows it every day. In the plumbing tube market, it is not

transparent because the two components are rolled into one price, and the customer doesn't know what the metal price is in a day and what the margin is. There are people that would like more transparency, but that's a separate issue though.

MR. ALTMANN: And the retail market is very different and changing. Historically, you have an industry where the domestic supplier, and I'm going back 10 years plus would not sell to retails directly because they wanted to protect their distribution. That has evolved, so they now sell direct, but they still use the list price basis, so basically yesterday morning or afternoon the Home Depot buyer woke up and had a seven percent price increase.

Copper didn't go up seven percent the day before. It's just that's when the price increase went in with no notice. What we took to the market by going through a metals plus auction, and it is the buyer's choice. They can buy. We have one major account who chooses to buy. We've bid for three months' of business based off of price. The other one wants to go to it's the first of the month, here's the average for the last month, and we see where that price has one based off comets, and we know what that fab price is going to be.

We were the first to bring that to retail. Now there are two other people in our industry who also offer that option to retail. To our knowledge, the domestics have not followed that option with the retail customer, and the work specifically requested in the last line review by one of the retail customers to quote metal plus if you could, and the domestics chose not to do that.

MR. FETZER: Okay. I appreciate that. Thanks. Back to the plumbing commercial if I dare, I think a lot of testimony is that they're different, and even the Petitioners said pricing is different, but I'm trying to get a sense of in terms of what we're looking at. I think what I'm hearing, and certainly we need to look at the different factors there, but I've heard there's also a lot of things in common like the changes in demand are across the board.

There hasn't been a lot of distinctions made there that I remember at least, and maybe I missed something, but just let me finish. To the extent we're looking at, is there a particular part of the plumbing commercial side where imports are concentrated, and then in terms of import competition with the U.S., is there a part of the market where

that's concentrated that we should be focusing on? I'm just trying to get a sense of what the importance of this difference is. There is a difference out there it seems, but how is it important to the Commission's analysis in terms of --

MR. RYAN: Could I? The first part of your question went to it looked like they were heading both in the same direction with regard to demand, and that may be true of the final products being largely driven by housing starts or commercial construction which also sets the demand for A/C units, so what you heard that differentiates the two is that although the substitution of substitute products, some in the A/C units with aluminum, you've seen a dramatic increase in substitution of PEX in the plumbing market.

That's going to affect the first piece, that thing you were talking about that differentiates between markets in how you would think about the demand factor. That doesn't answer your question though.

MR. FETZER: Thanks for not answering my question.

MR, O'BRIEN: Well, just one other general note is that you have different participants in different segments, so when you get broad allegations

that we're losing sales to this or that company, it doesn't relate to the particular segment that the referred-to company is in, then it's just plain wrong. In our case, for example, Golden Dragon, does not complete in the plumbing portion of the market, which is a very large portion, so in terms of testing the integrity of the allegations, it's important to know what segment.

MR. FETZER: Certainly.

MR. RYAN: I actually could answer your question instead of just dodging the question.

MR. FETZER: Go for it.

MR. RYAN: Okay. So for Mexican imports, and particularly from IUSA, you heard testimony that their core product is plumbing. Their core product that they produced in Mexico was a plumbing product accounting for most of their sales of exports to the United States. That product that was accounting for most Mexican exports given that IUSA told you something about their understanding of what their percentage was of Mexican exports and you've got questionnaire data that tell you that more precisely, that all was shifted to Reading, Pennsylvania.

So if you're thinking about Mexican exports, you're going to be thinking about the plumbing market

and the shift in production from IUSA Mexico to Reading, Pennsylvania, and, you know, if you're thinking about demand conditions and all that, that's accounting for a big chunk. I mean, if you're talking about concentration of imports, that's a big chunk of the exports and the story IUSA told you this morning.

MR. KERINS: Our experience in the marketplace, there are some Chinese plumbing tube imports coming into this country. Obviously, it's not from these guys or these guys, but maybe these guys a little bit, but there is some coming in the country, but plumbing tubes, imports from China are a very small, small portion of the imports. It's mostly commercial too, just the flip side of Mexico.

MR. FERRIN: This is Richard Ferrin, Hunton & Williams. I believe that Mr. Altmann mentioned earlier in his testimony that there's a difference in the demand for the plumbing wholesale market versus the plumbing retain market. The plumbing wholesale market, the demand has gone down much more rapidly than in the plumbing retail market.

The plumbing wholesale market is the part of the market that's dominated by the domestic industry where the retail market were mixed between domestic and imports, so that could affect the overall picture

of imports versus domestics based on changes in demand rather than changes in work shifts and percent.

MR. RYAN: I'm glad you asked the question because the concentration of the Mexican exports in plumbing as compared to the Chinese exports in industrial, it's actually another great reason that the Commission should not cumulate with regard to threat, so we'll brief that further. I mean, it's an additional reason that we shouldn't be cumulated with Chinese exporters.

VOICE: Thank you.

MR. FETZER: Mr. Layton?

MR. LAYTON: Yes. Duane Layton. It's certainly true of Hailiang, and I think it tends to be true of all of the imports, and it came up a little with the other panel as I understand it from listening to these folks, the industrial segment of the market, particularly the OEM, the Carriers, the Tranes, building these various air-conditioning and chillers and other units, the imports have played in that market for quite some time.

It's certainly the major focus of Hailiang. Hailiang's participation in plumbing is minuscule relative to its other exports to the United States. As someone said, the domestics through no fault of

imports find themselves in that part of the market that's been hit the hardest by the economic downturn and the conversion to the plastics, and that is the wholesale plumbing.

MR. LAYTON: They happen to be in the bullseye.

MR. FETZER: Okay. Thanks. I appreciate that. I guess where my overall question was, can you make statements as to is the U.S. more into plumbing than commercial, or they pretty deep into both? I mean, is it just that we need to look at these things differently? I understand some companies are concentrating on the plumbing side, the commercial side, on both sides, both on the import side, on sub-import side and domestic side, but it's not that we should be focusing more on one in terms of import competition or the other, or is it? I guess, that's my sort of bottom line-question.

MR. KERINS: No. I agree. I mean, like I said, just about everything we import into the United States or Mexico from our parent company is plumbing tube, and if you look at Mexico and compare it to China, it's the total opposite of what's coming into this country. We will supply post-conference data that show how much plumbing tube we bought into the

country versus how much commercial tube we brought into the country.

You can separate the tube and our numbers, and we're also going to show you how our imports is tubing from Mexico our plumbing tube have drastically dropped because of our change in production strategy.

MR. FETZER: Okay. Other thoughts on that? Okay. Mr. Kelly, you made a comment earlier on products that weren't available in the U.S. Can you give us a sense, and this could be in a post-conference brief, what we're talking about in terms of size and what share of imports they might have made up just to get a sense of how important those are in terms of --

MR. KELLY: In terms of volume?

MR. FETZER: Yes.

MR. KELLY: It's relatively small, but my portion of the market is relatively small.

MR. FETZER: Okay.

MR. KELLY: I mean, in the scope of this inquiry, we're probably only one to two percent, so this particular part of that's probably a fraction of that, but it's important, and we have major concerns that would eliminate our ability to sell this product into the United States, and it's required in the

United States.

MR. FETZER: And you also made a comment about rebates and that we may not be capturing them in our questionnaire. I don't have it in front me, but I believe we do ask for net values net of any rebates for the price data, so I'm just trying to get a sense, and again, you can answer this I guess in post-conference, is what we might be missing as a result of that. I believe we do. I don't have it in front of me, so I guess Mr. Ryan's going to check and see.

MR. RYAN: Yes. Usually, I mean the Commission's practice is that you normally ask for prices net of rebates, but I think in this particular case given Mr. Kelly from NCobre is concerned that wasn't fully captured, that Mueller is particularly aggressive. Price use of discounts in rebates that wouldn't be reflected in the prices that may have been reported.

We just wanted to make the Commission aware of that practice from the largest player in the United States and make sure that was highlights. I'll take a quick look, and before we leave, I'll let you know exactly.

MR. FETZER: Okay. We can also followup I guess and make sure that even if we ask for it and may

not get it, but that was understood hopefully.

MR. M. HANSEN: Mr. Fetzer, if I could add to that? I think also in the retail channel and some of the other channels, there are a lot of other allowances that are a way for the retailer or the customer to really negotiate lower, and that's real net prices. Randy can address some of that, but when you have advertising allowances and effective allowances and those kind of things, those are just the retails guys are pretty sharp in how they negotiate, so in addition to those rebates, there are some allowances, and maybe Randy wants to comment.

MR. ALTMANN: Certainly, in a past life, the list of things that you negotiate, the obvious thing is the price, co-op starts getting into payment terms, whether that's cash discount and/or how many days you have to pay, which at retail stretches now into 90 days. Okay. So what's the value of money and how does that get factored in? You get into paying for service in the stores.

You get into the cost of the displays in the stores. To put an item in the Home Depot store or a Lowe's store today costs about a half a million dollars to lot that item in and pay for displays. That's not going to be reflected in the cost of the

product, but obviously it is the overall cost of the product. If you want to take a dead med approach, but I think the challenge is do you see all of that?

Do you see the value of all of that when you see your numbers, which is just a purchase order less these discounts? There are a lot of hidden costs at least on the retail side.

MR. FETZER: Okay.

MR. RYAN: Just to answer your question.

MR. FETZER: Yes.

MR. RYAN: The question I did ask exactly is if it normally does his prices net of rebates, but it didn't then. I mean, there's maybe more you could collect. We were just concerned that if Mueller didn't report prices as precisely requested that there could be an appearance that we were underselling just because of discounts or rebates weren't fully captured. Our understanding and our commercial reality is that we're selling, we're not underselling, but if the data come back and show us underselling, that's going to be the first thing that we're thinking how did it comparison not to be an appropriate competitive.

MR. FETZER: I appreciate that, and we can follow up with them to make sure they included those.

MR. LAYTON: On behalf of Hailiang, I want to echo that concern. We would encourage you to do anything you can to ask the Petitioners, especially Mueller and Cerro, to make sure that they reported their prices net of what it calls beck-end discounts granted to some of their largest customer buying groups, and if you want the names of those buying groups, we might be able to provide them to you.

MR. ALTMANN: Even related to the rebate question, I think you should validate what rebate calculation they were giving you. There was discussion in some of the presentations about the various codes for drawing plumbing. There's a K pipe and an L pipe and the ASTM standard for that, say that to be a K pipe, it must be drawn at a certain wall thickness. That wall thickness is a variable.

It's plus or minus I don't know, five mil or 6 mil in terms of the thickness of the wall. The rebate can be calculated based off of what the maximum, and this is usually how it works, it would be based off what is that maximum weight of the pipe based off of a thick draw. The reality is then the rebate is paid off of what the actual draw was, which is usually the thin draw.

That is why the Canada issue where you

couldn't sell it to meet he Canadian standards came in because the Canadian Standard said we only want one thickness. When you look at rebates, you have here's the weight of the product based off the sheet price, and here it the actual weight of the product based off of the way that tube was drawn, so you have two different ways to calculate the rebates. I'm not sure which versions or how you see those numbers reflected.

MR. FETZER: Actually, that leads me to another question. Again, looking at the questionnaires, and there was some information that pipe might not be sold on the actual thickness or weight, but that on a sort of theoretical weight or some tolerance level, is that a common thing in the industry? I mean, is there any tendencies either on domestic production or for imports from different countries or is it sort of a company-specific thing?

MR. KERINS: On plumbing tube, this wouldn't apply to commercial tube, on plumbing tube there is a plus or minus tolerance on a wall thicken according to ASTM, and naturally since we're selling the product by the foot, we try to design our manufacturing to make it on the minus side so we're not giving copper away. It's still within spec, but you try to get it below the middle ground. You don't want to run it heavy

because you give the copper away. The Canadian spec requires everything to be at a minimum, which is higher than the minimum allowed in the U.S.

MR. FETZER: Okay. I appreciate that.

MR. LAYTON: And again, that's only true in the plumbing market. You're selling it by the pound in the industrial market, so they're paying for the weight that we say.

MR. FETZER: Okay. Thanks. There was comment earlier about being able to sell quicker I guess from inventory for the Chinese imports at least. I don't know if it was also true for the Mexican imports, and in looking at the questionnaires again, there was also some comments about delay from China too, so how does that all play in? Do imports, whether from China or Mexico, is it availability or I guess lead time is what I'm looking for.

Are lead time really lower, or does it really depend on the mix when the product comes over from overseas? Anyone want to comment on that? Are lead times generally lower for imports?

MR. KERINS: On the plumbing tube side we inventory product in the U.S. made both in Mexico and the United States because plumbing wholesalers can't wait three or four weeks for a delivery. I'll let

these other guys comment on the commercial side. Our inventories are co-mingled, so if I bring in 100 pieces of half inch from Mexico, and I have a 100 pieces of half inch made in Reading in a warehouse, they end up on the same rack, so I can't tell when I'm shipping a product where it was made, and in most cases, it really doesn't matter unless we have stimulus money. That's why we made the change.

MR. FETZER: But do domestic producers also sell from an inventory?

MR. KERINS: Yes, yes.

MR. FETZER: Okay.

MR. M. HANSEN: Let me comment on that and maybe help you out since I import products. Lead times from China are typically six weeks to 90 days depending on how consistent you can take orders from them, and then of course we commit our money up front, and then so what we do in our business, I need some for manufacturing, so I've got the typical manufacturing supply chain, which that presents common sense issues.

If you don't have enough, you've got a bit of a problem, and then on the plumbing tube because your comment may have addressed mine, on my plumbing tube, I try to have inventory because when I get an

order, how I try to compete is out-service the copper tube mills, so we have a standard that no longer than 48 hours I want to ship that copper tube order, and usually we ship in one day, but within two days, we ship out 98 percent of our copper tube orders, so I bring an inventory until it's ready to ship because I can't compete price-wise, so I got to compete service-wise, so I hope that answers some of the questions.

MR. FETZER: Okay.

MR. KRAHMER: May I answer that, please? If you're in a groove doing half product coming from China the lead time is a minimum of eight weeks.

MR. FETZER: Thank you.

MR. LAYTON: And Hailiang, and this where I'm going to come up a little short because we don't have a company official here, but I do know they have two warehouse facilities that they sell out of, and they try for business reasons to sell as much as they can out of the warehouse as opposed to what might be called a direct shipment from China to the customer.

MR. FETZER: Anybody else? That's it. Thanks for your patience and your responses. It's been very helpful, especially since this is a new product for us to figure out what's going on in this industry.

MR. RYAN: That's always more fun than the 25th steel pipe review case.

MS. DEFILIPPO: Thank you, Mr. Fetzer. Ms. Klir? Mr. Tsuji, any questions?

MR. TSUJI: Yes. Just two questions. First of all, Buy America preferences were mentioned, but I'm curious what is the share of copper tubing, either the shipments or the market that is subject to Buy America provisions? Anybody?

MR. KERINS: On the plumbing tube side, it has to be 100 percent U.S. produced copper tube. If you read the statute, there's one paragraph in there that says any component that goes into a structure, a building, there's a bunch of different definitions in there, that is funded by stimulus TARP money is required to use all U.S.-made products. That includes steel pipe and copper tubing.

MR. TSUJI: Okay.

MR. LAYTON: Excuse me. But Toll Brothers is building over here in Vienna, if it's not getting TARP money, they can use whatever they want.

MR. TSUJI: That's correct.

MR. FERRIN: By the way, this is Richard Ferrin. One point that was made by Mr. Altmann earlier in this regard was that they're talking about

Buy America preference. Sometimes you're talking about situations where the contractor will specify American not because it's required by law but for a variety of reasons other than the statute.

MR. TSUJI: Yes. So is there an overall rough percentage TARP and stimulus provisions aside, as to the share of the domestic market for copper tubing that would be kind of subject to these Buy America provisions?

MR. KERINS: I don't think you can calculate that. Like they said, the residential market has gone a lot to plastic anyway, and I don't think you're getting any TARP money to build a house, so it will be some kind of non-residential commercial/industrial construction that would be affected, and I don't have a number for that.

MR. TSUJI: Okay. Fair enough. Thank you. Second question. This is the same one that I had asked of the Petitioners' witnesses, and that is has there been any instances of mismarking of imported copper tubing either with regards to the technical standards, specifications or the country of origin?

MR. KERINS: I think there was some testimony from the Petitioner, and occasionally we do receive a product where they didn't put the proper ink

mark on it or something. They forgot to turn the machine on or didn't turn it on long enough. We have the same thing come out of a domestic mill. Sometimes you have an operator make an error, but it's not an intentional thing.

It's because the operator made an error. We had people accuse us because our name is IUSA that we put that on the tube because it's close to USA, but that's the name of the company. We make sure the I is on there, too.

MR. TSUJI: Okay. Thank you very much.

MS. DEFILIPPO: Thank you, Karl. Mr. McClure?

MR. MCCLURE: Just a couple of questions. You mentioned California recently coming on stream with the use of the plastic. If one of you could give us a timeline of when the various states or the national building codes changed just to a date where virtually all the states made it legitimate to use it in the houses? That would be useful, and I assume with that before our POI or during when the ship became essentially total.

MR. SILVERMAN: This is Bill Silverman. Do you have an answer? Announce your name, please.

MR. LINDEN: Sorry. This is Vince Linden,

Homewerks Worldwide. I'm a supply chain analyst. California passed the code in January of this year, and it became effective on August 1. I can't speak to other states, but that was our example, and that's when it became effective was August 1, 2009.

MR. MCCLURE: Okay. To the extent you have some idea on the others, it might be useful. One thing again with regard to our old friend, Bratsk, whatever you want to say about that feel free to do so and do you concur with what Petitioner said that Malaysia --

MR. RYAN: I'd love to say something about that. The whole line of cases that ended up in Bratsk and now Mittal actually started with a requirement in the SAA that injury from causes other than imports may not be attributed to the subject imports. It's not limited just to nonattribution among nonsubject imports and subject imports. If you look at the line of federal circuit cases that started with Gerald Metals, went through Bratsk and now you're dealing with Mittal, it's really about there was a particular concern about attributing causes among nonsubject imports and subject imports.

That's your direct question, but in this case, the more fundamental requirement that's in the

SAA, which has got to have at least the authority of a federal circuit decision, is that you can't attribute injury from other causes like declines in demand, like in copper prices and all the other causes that Mueller itself is putting in its annual report. You can't attribute those causes to the subject imports, and that's the fundamental requirement in the SAA, which is about as close as statute as you can get.

It's a requirement in the W. Teal agreements which is why it's in the SAA and particularly with regard to the threat case, which this case is all about, it's even more important, which is also in the SAA that you need even more care, that the injury not be attributed. Special care is a word that's in the W Teal agreement, again why it's in the SAA. I was actually going to read that to you in my closing, but I'm glad you brought that up, that's one of my minutes, and now I can say something else.

MR. MCCLURE: Sorry I did that. Anyway, any information any of you have, any of counsel have with regard to nonsubject sources would naturally be appreciated. One thing I would say in conclusion, I thought airline pricing was confusing, but this is just bad. Anyway, that's all I have to say.

MS. DeFILIPPO: Thank you, Jim. And the

pacing of Mr. Fetzer's question paid off, because I was crossing off many of my questions, so I don't really have too many.

One, I wanted to go to something you said I think in response to one of Mr. Fetzer's last questions, actually ended up confusing me. So you mentioned that you sometimes commingle the imports with the domestic products. Correct?

MR. KERINS: That's correct.

MS. DeFILIPPO: Earlier, when you talked about your marketing and production strategy, you talked about producing, shifting to the production in Redding as opposed to bringing in the Mexican imports to take advantage I believe of the stimulus bill.

Those two things seem a little at odds with me. If you're commingling and you're not paying attention to that we're not discerning based on country of origin, how then are you still satisfying the stimulus has to be U.S.?

MR. KERINS: Well, up until August of this year, when we started shifting production to Reading, we were commingling. I have instructed all of our distribution centers when they're shipping out product, to ship out the Mexican-made product first, so we purge all of that out of our system.

So by probably next month some time, our inventory will be 100 percent U.S. Except for the few items that we have to make in Mexico, which is a very small part of the market.

MR. RYAN: If I could just clarify. The stimulus money was one of the, one of the factors. I mean, with the decline in demand, with the consolidation of production to improve production efficiency, and then the company tells us that the plant in Reading is the place to do that. So those two factors are at least equally important.

MS. DeFILIPPO: That actually took away one of my other questions. But Mr. Kerins, one last one for you. In your Mexico plant, do you produce for commercial use for either the Mexican home market or for other markets?

MR. KERINS: Yes. We have a small market share in heavy wall, level wall, and smooth-bore coil. We do not make any of the enhanced surface tube. That new plant that's been talked about in Mexico that we're building, because we're behind a deadline, we have missed what's called the mating season. So the tier-one and tier-two players in the U.S. that buy inter-groove tube, we are not going to be able to participate in that market in 2010. It's too late for

us to get qualified.

MS. DeFILIPPO: Actually, that leads into one of my questions that I had for Mr. Weil, which was you did mention, although I don't think he referred to it as the mating season, but -- it's more interesting -- he missed the qualification period.

And I guess my question is, is there a certain time period by which you have to qualify in order to supply the tier one? And if so, is that the same draw, the tier one?

MR. KERINS: It can vary by customer to customer, but it is typical that this is the season, currently that we're in, that contracts are being signed for next year, or for multiple years.

Also, Ms. DeFilippo, I'd like to add on a statement I made to Mr. Fetzer in regard to the enhanced copper tubing coming from China. I stated that the lead time is a minimum of eight weeks.

However, we do maintain inventory here in the United States for our customers, so we're able to ship same day, next day.

MS. DeFILIPPO: Thank you for that clarification.

Mr. Weil, for an OEM to change from copper to aluminum -- and we heard some on the plumbing side,

and I have both copper and plastic in my house, and I don't do any of the changing -- but I know that it would appear to be for an OEM who is making an air conditioning unit.

So if they were going to shift from using copper to plastic, would they need to make changes to the design of the product?

MR. WEIL: Copper to aluminum.

MS. DeFILIPPO: Sorry, copper to aluminum. I'm sorry, it's been a long day.

MR. WEIL: Yes, it is a design change. Because of the heat transfer, characteristics are not the same. Sometimes coil looks differently. Likely it will be larger. So when the coil is larger you may have more refrigerant in the units, the compressor could change, the seal could change. So it's not a decision they make lightly, nor is it a decision that they go back from easily.

So it's not a direct substitute putting aluminum tube in for a copper tube.

MR. KELLY: We saw the same migration in radiators for automotives. Historically, it's been 100 percent copper. And if you look at it today, it's probably 75 percent aluminum, 25 percent copper. And it's not going back. It's actually more market share

is being taken over by aluminum.

MS. DeFILIPPO: Is aluminum lower-priced and more stable? Is that a fair statement?

MR. KELLY: Yes.

MR. KERINS: Let me also add, one of the Petitioners this morning stated, made a statement about the anti-microbial properties of copper, as compared to aluminum. And yes, it's true, copper naturally has very high anti-microbial properties.

But speaking of substitutability, there are many coatings that have, anti-microbial coatings that have been developed and applied to aluminum that are very, very effective.

MR. WEIL: I'll also point out that on a copper coil, there's a lot of aluminum. All the fins that are put on it to enhance the heat transfer are all aluminum, and traditionally have been.

MS. DeFILIPPO: Thank you. And one last question, Mr. Weil. I agree with Mr. McClure, this is interesting and confusing of how the prices are done. I don't know, at least in one way there's so many differences in sort of the different markets.

But in terms of how the pricing mechanism works, I understand it to be that the fabrication price is what's negotiated between a supplier and a

consumer for the next, or for a given year, is that right?

MR. WEIL: That's correct.

MS. DeFILIPPO: And is that set for the whole year at a certain level? Or can it vary once it's --

MR. WEIL: It's generally set. Could there be some variables based on currency or transportation? Yes, within certain fixed windows. But generally, it is set.

MS. DeFILIPPO: And then the metal aspect portion of the price changes according to the published copper price.

MR. WEIL: And the agreed-to mechanism. It could be prior-month's average, could be current average, could be a particular date. As long as you agree, and the copper manufacturer is trying to, you know, make it transparent. So he is placing, or he's getting a copper order fixing price for that amount of copper that he is selling for that, for that period of time.

MR. KRAHMER: Or the OEMs could request, through the manufacturer, to lock in the price of copper for a portion of their requirements for the year, if they know what it is ahead of time.

MR. WEIL: Hedging.

MR. KRAHMER: Hedging.

MS. DeFILIPPO: Okay. So if I'm --

MR. WEIL: It's a much more complicated conversation if we go down that path.

MS. DeFILIPPO: I'm not going to go down that path at this time. But, how often, then, does the price change? With every shipment, potentially? Or every month? It sounds like copper prices are all over the place.

MR. WEIL: Well, as far as the copper price?

MS. DeFILIPPO: But as far as then translating down into the price for the tube.

MR. WEIL: It's generally, if you're going on prior-month average or current-month's average, it would be changing once a month.

MS. DeFILIPPO: Okay, that's helpful. Actually, I did have one last thing to clarify. Someone over in this zone I think stated that the multiplier was published, also. And I thought I heard something different this morning, that it was the price, there was a list price that was published, but then the multipliers were negotiated between producers and customers. And so I just wanted to clarify whether there is a published multiplier; and if there

is, if there's still room for negotiation off of that.

MR. HANSEN: Hopefully I'll clear this up. But what happens is, is we all agree and understand the new list price. They just, they increased it I think, what, it's five or seven percent. I just looked at my Blackberry today, so I haven't even called the office. But what I got off my Blackberry emails or copies of emails, the manufacturers have distributed into the marketplace. And for example, I even got confirmation that Mueller's multiplier off this new list is a 3584 or thereabouts.

And so, but that's what happens. When the prices go out, within 24 hours, everybody, customers, competitors, everybody knows what these, in today's market, what these two multipliers are. And they want some consistency as the price people are going to pay, depending on is it a big order or a little order.

Now, if it's a 7,000-pound order, then maybe that's where the customer says well, or the customer says I'm not going to pay that, and they may call up a manufacturer and say well, I want to buy at two and a half less than that. And I won't buy it unless you agree to discount from this structure you put out in the marketplace. I hope that helps you.

MS. DeFILIPPO: That's actually very

helpful. You mentioned a couple times Mueller, and I think a couple times putting out a new price increase. Is it always Mueller that leads the market in that regard?

MR. HANSEN: Well, it's usually Mueller, but Mueller and Cerro. And I'm sure that if they respond, they'd say well, somebody's got to bring some rationale into that business. But Mueller is almost always the leader, and Cerro, and then Kobe will follow that. But within 24 hours everybody -- and Howe, another domestic player, and our friends in Reading, Pennsylvania. They all, you know, that brings some consistency so, you know, customers can shop everybody.

MR. RYAN: And just to point out that before you started your questioning, Mr. Kelly actually testified to exactly that point; that it was his experience that Mueller and Cerro are working, you know, in the way he testified.

MR. KELLY: If I could add to that.

MS. DeFILIPPO: Sure.

MR. KELLY: If you break down the pricing, you know, we talked about two different ways of pricing in the market. There's fabrication in metal, and then we go to the list price and multipliers.

Well, when it comes to the mill's perspective on how they view this list price and multiplier, it comes down to a fabrication charge over metal. It doesn't look that way to anybody else, and that's why some people are asking for transparency. It doesn't make sense.

If you break down some of the products, you know, take half-inch L, for instance, you might find a fabrication charge of 10 or 15 cents, depending on the multiplier that's out there. You can't produce that product for that price. That's what makes it very difficult for importers to come in. It's very difficult to understand. Because you might think that one customer might come buy a full truckload of that one product, and you're going to lose terribly.

But the reality of it is people will buy 15, 20, 25 items in one truckload, and the balance comes out to something that the mill would consider reasonable. But that list price and multiplier really is broken down by the mill. The mill looks at what the fabrication is over copper. That's where the profitability comes in, or lack of.

MS. DeFILIPPO: Okay, thank you. The last thing I have is a request for Mr. Silverman, in your post-conference brief. Mr. Ryan made arguments, if

the Commission were to make a determination on threat that there should not be accumulation of imports from China and Mexico. So if you would care to address that in your brief, that would be helpful.

MR. SILVERMAN: We shall.

MS. DeFILIPPO: Thank you. Any other questions from staff? Mr. McClure?

MR. McCLURE: One thing. With respect to the Mexican industry, I believe Lavado was mentioned as one of the companies who was building, or just commissioned a new facility. Is that correct?

MR. RYAN: Lavado is separately represented.

MR. McCLURE: I understand that.

MR. RYAN: My understanding is they are going to file something with the Commission that addresses the, the circumstances of the, of the Lavado, whatever they're doing in Mexico. They have a Lavado mill in Mexico.

So we have our own information separately from these companies. But I think Lavado should most likely speak for itself, rather than letting us try to speak for them. Our understanding is that, based on everything we know, that it poses no real and imminent threat to the U.S. market. But I think they've got better, I was going to say it's their company that's

got better factual detail. And I hope they will give you a full story in whatever they submit, a post-conference submission that's due next Monday.

MR. McCLURE: I will look forward to that. I asked you, Mr. Ryan, because you always seem to know everything about the operations in the country you represent.

MR. RYAN: I'm very thorough. Thank you.

MR. O'BRIEN: Mr. McClure, I'll just mention Golden Dragon also has a facility in Mexico that we'll also address in the post-conference brief.

MS. DeFILIPPO: That's great, thank you. And with that, I will say thank you very much to this panel. It's been very useful having you all here today, and I appreciate your time and your answering all of our questions.

We'll take a five-minute break to let both sides get prepared for their closing statements. So we'll start back up around 10 of 2.

(Whereupon, a brief recess was taken.)

MS. DeFILIPPO: If I could, before we start, as an administrative matter, the packet that has conference exhibits put forward by Hunton and Williams, it was requested to be included as an exhibit to the transcript. So I will do that and mark

it up Exhibit 1. Thank you.

Mr. Levy.

MR. LEVY: Thank you, and good afternoon. I think in closing we'd like to respond to at least some of the points we heard from Respondents today, and then make a few general remarks in closing. I hope we won't take the full 10 minutes.

Generally, what we heard from Respondents is what we often hear: It ain't us. And of course, that's what we heard today.

Let me respond to some of the points, though. You've heard a lot today about the perceived dichotomy between plumbing tube and commercial tube. And to be sure, it is a relevant condition of competition, because there are differences in the way it's sold, and who is consuming it.

I have not heard from Respondents an argument today that plumbing and commercial are separate like products. I hope they don't change their tune in their post-conference brief. But in case they do, let me just emphasize that we are talking here about a continuum of products with no clear dividing line in terms of physical characteristics. These products share common manufacturing facilities, common production processes,

common production employees.

Some may perceive vast differences in terms of a tube produced for an OEM and a tube produced to a standard specification. But as you heard from Mr. Arndt from Cerro Flow Products, from the producer's perspective it's simply a matter of tweaking certain aspects of the finishing process to meet those final specifications.

You know, I would ask you to look at two of the samples that we shared with you today. One is a plumbing tube, and one is a commercial tube. I'm not even sure you could tell the difference from where you're sitting. Where is the clear dividing line? There is none. This is a single like product.

You heard a lot from Respondents as well about demand and substitution, and we own up to the fact that they are relevant conditions of competition. Respondents say first, here is Mueller's SEC disclosure. And it says that we're in a recession. Ah-ha. The fact is we are in a recession. There's no secret there. Demand is down, and that is a condition of competition.

And similarly, there are substitution pressures in the U.S. market. Our interpretation of market conditions is that with respect to residential

plumbing, the lion's share, or I should say the rate of substitution has substantially diminished during the period of investigation. You've heard differing views from Respondent, but that certainly is our interpretation.

To be sure, when relative prices between copper and aluminum change, there may be increased demand or decreased demand for aluminum alternatives in the OEM segment.

But the fact remains that whatever residual demand remains in the U.S. market during the period of investigation, the Commission has an obligation to look at that demand and see what's going on. And what's going on in terms of absolute loss of sales by the domestics, and relative loss of market share. And we believe that both bespeak causation of injury by reason of subject imports.

Third, I think someone sitting around here testified today that Wolverine closed several of its U.S. mills in favor of importing product from China. If that doesn't bespeak causation, I don't know what does.

Fourth, we heard some claims from some of the Respondents that they are better on service than domestics; that the domestics have terrible lag time.

Well, first, we dispute those facts. And the facts and the truth of the matter are detailed in our questionnaire responses. But fundamentally, I would ask if they are so much better on service to their customers, then why are their prices lower?

Next, we heard some interesting testimony from IUSA. And IUSA testified today that they're moving production back to the United States for a number of reasons. And my first reaction was well, that's interesting news. They made that decision right before we filed the petition? We hadn't heard about that.

But then I wonder, why are they opposing the petition if they are moving their production back to the United States? And I think the answer is that they are hoping that if no remedy is provided in this case, they're moving right back to Mexico.

Also, IUSA made no mention of Golden Dragon's new capacity, Lavado's new capacity, de Cobre's substantial existing capacity or its new plant in Pesteje, Mexico. And so I would encourage you to look closely at these factors in relation to Mexico.

Also, we heard arguments that Mexico should be decumulated. And we'll address this again carefully in our brief, but just to recite four key

factors.

First, the degree of fungibility. IUSA testified today that they commingle their Mexican and U.S. product on the same rack. If that is not fungibility, I don't know what is. We know that there's a presence of sales in the same geographic market, that there are similar common channels of distribution. We know that subject imports are simultaneously present in the same market. So in short, decumulation has no merit in this case.

And finally, there were some concerns raised that the U.S. producers' questionnaire responses may not have reported net sales values, net of rebates. We understand the instructions of the Commission. We understand that these net values need to be net of all rebates.

Concerns that there is somehow a secret, secret rebate that we've ignored are simply unfounded. And we look forward to working with you, both in follow-up questions and in verification, to satisfy you that we have no agenda in distorting the data that we're reporting to the Commission.

So let me just recap with a few key points. I must say I was a bit surprised to hear a suggestion from Respondents today that maybe Petitioners are not

presently injured, and that it's only a threat of injury.

Well, from our perspective there's no question that we've seen measurable decreases in production, sales, capacity, utilization, profits, head counts. The trend is bad, and it's worsening throughout the period of investigation.

It's also readily apparent that while subject imports may not be the only cause of injury, they are a leading cause of material injury. This is a case where the record evidence reveals very specific instances of lost sales and lost revenue due to subject import under-selling. Not third-country sources; subject import under-selling. Both in absolute terms and in relative terms, we are seeing this injury.

We would be shocked and amazed, in fact, if many of our lost sales and lost revenue allegations were not readily corroborated by our customers. Because from our perspective, these cases are so very clear and so very material.

And let us not forget that because subject import data are so easy to track under the HPS subheadings, we know exactly what's going on from a market-share perspective.

As I've said before, this is a simple case of too much supply facing too little demand. Unutilized capacity in China exceeds total U.S. market demand, and the capacity expansions now underway in Mexico simply defy commercial logic.

In this environment of structural supply-demand imbalance, producers in the subject countries simply cannot resist their drive to engage in unfair trade. Under these circumstances, I simply cannot see how one would seriously disagree with the basic conclusion that there is at least a reasonable indication of material injury caused by subject imports in this case.

The injury has been caused by China and Mexico. They are the subject of this petition. And the threat in the future is, if anything, worse than the present.

Thank you very much for your time and attention.

MS. DeFILIPPO: Thank you, Mr. Levy. We will now move to closing statements for those in opposition to Petitioners' anti-dumping duties. Are you going to split it up?

MR. LEVY: How did you guess? I get the five minutes, and I thank you for ceding me one, Mr.

McClure. And these guys are taking five minutes, which I think they've agreed to divide amongst themselves however they say they did.

MS. DeFILIPPO: Mr. O'Brien, how will you divide? Do you want us to indicate to you when you're -- okay. So you've got three?

MR. O'BRIEN: Yes.

MS. DeFILIPPO: Mr. Layton, two?

MR. LAYTON: I'm going to need about two, yes.

MS. DeFILIPPO: Okay. And are you starting?

MR. O'BRIEN: I am.

MS. DeFILIPPO: All right, then, proceed, Mr. O'Brien.

MR. O'BRIEN: Yes, thank you, Ms. DeFilippo. And thank you to all of you for sitting here and listening. I hope it was useful.

Just a couple of very quick comments. While the pricing may have sounded complicated in some respects at the first intake, the factors really are rather simple in terms of what is affecting the domestic industry.

Everybody agrees that a sharp decline in the housing market, very tight financial markets, and the general downturn as being the overriding and

overwhelming factor that has reduced volume for all, for all companies, not just the domestic, not just the domestic companies.

Golden Dragon's data you will see also has reduced sales to the United States in this year. That's not surprising. It's all a reflection of the general economic downturn.

And while Petitioners may want to run away from their 10-Q and other financial statements, those documents do matter. They are the documents in which the Petitioners tell the public and their shareholders what is and what is not important to their company.

So yesterday, October 20, Mueller issues a consolidated statement of income for its third quarter, and there are a number of interesting factors of it in that document, which issued yesterday.

One interesting fact is that its net income for the third quarter of 2009 of $18.7 million was identical to its net income a year before, $18.7 million, 50 cents per share. There is no decline from 09/08.

But then the Chairman, Mr. Carp, is quoted in this statement. And he says, "Our cost control initiatives have helped to mitigate the impact of weak demand in the residential and commercial construction

sections. We expect challenging market conditions will continue into next year."

Well, that's what's important. That's what he's telling the public and the shareholders. Nowhere in this document are imports mentioned at all.

In the 10-Q, the annual statement, imports are mentioned as, in the sense that their customers are moving offshore and importing the downstream product. There is no mention of unfair or under-priced imports coming in. So that has to be taken into consideration.

Then the other point on the Golden Dragon factory in Mexico, we will, we will explain that in the post-hearing brief. But the plan is that there will be, is to replace production, our exports in China, with shipments from Mexico, so there would not be any increase, net increase. Thank you.

MR. LAYTON: Thank you. On behalf of Shanghai Hailiang Copper Company, my name is Duane Layton. I'm a partner at Mayer Brown.

If this were a Federal District Court, the Judge would grant summary judgment against the Petitioners. Even if you take all the facts alleged by Petitioner as true, you don't have sufficient evidence of material injury or threat of material

injury to the domestic industry as a result of subject imports.

You may have an industry that is not making as much money as it would like, although they seem to be doing quite well, thank you very much. You may have an industry that is vulnerable to all kinds of things. But none of this, or at least very little of this, is due to subject imports.

I'll tell you what's hurting this industry. How about copper prices that went from less than a buck a point to four dollars a point in only three years? Now, that's important here, because those high prices for copper opened the door for substitute products like pax and aluminum that you could drive a truck through. And that's exactly what happened.

Copper used to be close to about 100 percent, or north of 95 percent, of the plumbing market in this country. Now, as you heard earlier, I think it's probably around 50 to 60 percent of the industry, at most, of the plumbing segment.

Well, what happened to it? Well, pax and aluminum, that's what happened. And let's not forget the greatest economic downturn in this country in 80 years.

Now, you may say, you know, yeah, yeah,

sure, Layton, tell us something we don't know; every case we deal with now comes in the context of this historic recession. But stop a second. I mean, this case isn't about fasteners or piston inserts or something that's been hurt by the downturn, but not fundamentally crushed. But this case, this case is about copper tubing used mainly in residential and commercial construction.

Ladies and gentlemen, that's the epicenter of this economic recession. Housing in this country is probably down 70 percent. I don't have time to go through all the facts that are relevant here, but let me just address this one point, and we'll discuss other points in our post-conference submission.

The material injury standard has to mean something. I don't just mean some words in a court case or committee report; I mean something real that makes sense. Otherwise we find ourselves essentially applying a strict liability standard. That's what Petitioners are doing in this case. They've got imports, times are bad, thank you very much, we win. You know, game, set, match.

Now that's not what the statute is intended to mean, it's not what was meant by Congress.

MR. McCLURE: Time.

MR. RYAN: Thank you. This is John Ryan, Weil, Gotshal and Manges, on behalf of IUSA and de Cobre. And although I get to speak last today, the Commission of course gets the final word, so I hope I can help influence that in these next five minutes.

You heard a lot about excess capacity. The Petitioners' case really seems to be all about excess capacity. And I'd like to just turn back to what I,, if I misquote Mr. Hansen we can look back at the transcript and see exactly what he said. But he said in his testimony that there has been abundant capacity for as long as I have been associated with the industry.

Excess capacity is not a new phenomenon, and it's not brought on by the subject imports. Yet despite this longstanding condition of the industry, the industry remains highly profitable. And I have to commend the staff for many, many great questions, but in particular Ms. Klir. I loved that question, it was great. How much is enough? What's normal for this industry? Should this industry be making super-normal profits compared to other industries, if you look at the questionnaire responses, and why are there some differences among the firms. And I think that's a great point for the Commission to carefully

investigate. And we'll be looking forward to briefing that in our confidential post-hearing brief.

Some of the other points, if I could find the right page of my outline here. Another key point that I alluded to before was the non-attribution standard, but I already covered that in response to some questions earlier. And as well as Mueller's own admissions on what the real causes of the problems are.

So in this case, I'd like to then turn to something that Mr. Levy brought up, and we got questions from, as well. Is there a separate like product? Well, we'll think carefully about that. But there are many reasons there could be a separate like product between plumbing pipe and commercial tube.

But whether there's a separate like product or not, all of the factors that would go into that are certainly more than sufficient reason not to accumulate imports from Mexico with imports from China. Although Mr. Levy said, you know, there's fungibility in, well, Cambridge-Lee actually commingled its inventory, that's plumbing pipe.

Our issue isn't that plumbing pipe from Mexico is not substitutable with plumbing pipe from the United States. The issue is, is that the Chinese

imports are all in the commercial market, industrial market, and most of the Mexican imports are in the plumbing market. And you should look carefully at the differences in pricing you've all heard about, the differences in channels of distribution, the differences in end uses, not to mention the differences in our import volumes.

So I think there's all, we will argue potentially that even on a current injury basis, there's pretty sound reason not to cumulate imports in these two countries. But certainly, when you look at the discretionary threat standard, that these imports should not be cumulated. All the factors the Commission always considers in deciding whether it's practicable to cumulate for the basis of threat of injury are met. And we'll tick each one off when we get to our post-conference brief.

The new plants in Mexico appear to be the only thing that the Respondent, or the Petitioners could point to. And you've got a clear record already from the use of the plant, which we'll further substantiate in our post-hearing brief, that that poses no threat. We hope Nevada will come forward and carefully explain what the circumstances of their plant is, and you'll hear from Golden Dragon.

But there's no, the threat has to be real and imminent. It can't be well, they're building some plants, and potentially somewhere down the road they might start making some sales in the United States. That's not the standard. It has to be real and imminent. It can't be speculative, it can't be based on conjecture.

With regard to the use of the plant, we know with certainty there's not going to be any sales of any significance in 2010. The mating season, which I love that term, has already gone by. You know, it's far enough into the future that it can't be considered real and imminent. And whether imports will take place at any point is speculative.

So what we have is clear evidence, solid evidence that imports will diminish dramatically, and have, starting in August of 2009, because of the shift in production from the largest, by far the largest exporter, from Mexico to Cambridge-Lee. Whether Cambridge-Lee is part of the industry, we'll address the related parties, related-party statutory provision.

But in any event, it directly affects the volume of exports from Mexico in 2010, in 2011, in any period that could be considered real and imminent.

That volume is going to be substantially, considerably, any big words that you want to use, less than it has been in the past.

And we appreciate the attention. You guys did a great job. We hope we did, too.

MS. DeFILIPPO: Thank you very much. We have two seconds, Mr. Ryan, in case you have anything left. Just kidding.

MR. RYAN: Thank you.

MS. DeFILIPPO: On behalf of the Commission and its staff, I would like to thank the witnesses who came here today, as well as counsel, for helping us gain a better knowledge of this product and the conditions of competition in this industry.

Before concluding, please let me mention a few dates to keep in mind. The deadline for the submission of corrections to the transcript and for submission of post-conference briefs in the investigation is Monday, October 26. If briefs contain business proprietary information, a public version is due on October 27.

The Commission has tentatively scheduled its vote on these investigations for November 13. It will report its determinations to the Secretary of Commerce on November 16. Commissioners' opinions will be

transmitted to Commerce on November 23.

Thank you very much for coming. This conference is adjourned.

(Whereupon, at 2:14 p.m., the preliminary conference in the above-entitled matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Seamless Refined Copper Pipe and Tube from China & Mexico

INVESTIGATION NO.: 731-TA-1174-1175

HEARING DATE: October 21, 2009

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary Conference

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

DATE: October 21, 2009

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: Rebecca McCrary
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: Kyle Johnson
Signature of Court Reporter