UNITED STATES
INTERNATIONAL TRADE COMMISSION

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

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Tuesday, October 21, 2014

Main Hearing Room (Room 101)

U.S. International Trade Commission

500 E Street, SW

Washington, DC

The meeting commenced pursuant to notice at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable Meredith M. Broadbent, Chairman, presiding

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

Chairman Meredith M. Broadbent (presiding)

Vice Chairman Dean A. Pinkert

Commissioner Irving A. Williamson

Commissioner David S. Johanson

Commissioner F. Scott Kieff

Commissioner Rhonda K. Schmidtlein

Staff:

Bill Bishop, Supervisory Hearings and Information Officer

Sharon Bellamy, Program Support Specialist

Mikayla Kelley, Intern

Cynthia Trainor, Investigator

Jennifer Catalano, International Tradee Analyst

Michele Breaux, Economist

Karl Von Schriltz, Attorney

James McClure, Supervisory Investigator

In Support of the Continuation of Antidumping Duties:

Tronox LLC ("Tronox")

Erachem Comilog, Inc. ("Erachem")

Carlos Helou, General Manager, Electrolytic, Tronox

Michael E. Manley, Executive Vice President of Global Operations, Erachem

Jack A. Levy, Jonathan M. Zielinski, Cassidy Levy Kent (USA)LLP

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P R O C E E D I N G S

CHAIRMAN BROADBENT: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation Numbers 731-1124 and 1125, involving electrolytic manganese dioxide, or EMD, from Australia and China.

The purpose of these review investigations is to determine whether revocation of the antidumping orders on EMD from Australia and China would be likely to lead to continuation or reoccurrence of material injury within a reasonably foreseeable time.

Documents concerning this hearing are available at the public distribution table. Please give all prepared testimony to the secretary. Do not place it on the public distribution table.

All witnesses must be sworn in by the secretary before presenting testimony. I understand that parties are aware of time allocations, but if you have any questions about time, please ask the secretary. Speakers are reminded not to refer to business proprietary information in their remarks or answers to questions. Please speak clearly into the microphone and state your name for the record so that the court reporter knows who is speaking.

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

confidential, you are requested to comply with Commission rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: No, Madam Chairman.

CHAIRMAN BROADBENT: Very well. Let us now proceed with opening remarks.

MR. BISHOP: Opening remarks on behalf of those in support of continuation of the orders will be by Jack A. Levy, Cassidy Levy Kent.

OPENING REMARKS BY JACK A. LEVY

MR. LEVY: Good morning, Commissioners. Jack Levy from Cassidy Levy Kent, Counsel for Tronox LLC, the Petitioner in the original investigation, as well as Erachem Comilog, Inc., a U.S. producer of EMD.

It's good to be with you this morning.

As Commissioners Williamson and Pinkert may recall, the original investigation of EMD from Australia and China was a fairly clean and simple case. Subject imports from Australia and China were significant in volume and took share from the U.S. industry. Subject imports pervasively undersold U.S. producers in all but one of 25 quarterly comparisons, and they were a cause of price suppression. The result of the cost price squeeze was operating losses for the industry as a whole, making the

situation unsustainable. So not surprisingly, the Commission issued a unanimous affirmative injury finding. After the orders were issued in October 2008, the effect was dramatic. Beginning in 2009, imports dropped to nearly zero, and U.S. producer prices rose significantly by well more than 25 percent, and the U.S. industry achieved sustainable operating profits that supported reinvestment. The question in this review, of course, is whether, if the orders are revoked, we would likely witness a recurrence of material injury to the domestic industry within a reasonable foreseeable time. The answer to this question is a resounding yes.

With respect to China, this is really a no-brainer. During the period of review, China's EMD capacity has grown, and its unutilized capacity alone represents more than 100 percent of the U.S. industry's entire production capacity. And since the U.S. is the highest priced market in the world, the Chinese have every reason to re-enter the U.S. market through pervasive under selling, just as they did before, at dumping margins of up to 149 percent.

Now, with respect to Australia, this is an admittedly closer call. The antidumping investigation caused Australian production to close down in 2008. But the mere absence of commercial production today does not

answer the question posed by the statute. As we will discuss, we believe it is likely, not certain but likely that Australian operations will resume in time for the 2016 contract negotiations, for EMD deliveries beginning in 2017. And the question for this Commission is whether this time frame constitutes a reasonably foreseeable time within the meaning of the statute. We respectfully submit that the answer is yes. Thank you.

MR. BISHOP: Madam Chairman, the panel in support of continuation of the antidumping duty orders have been seated. All witnesses have been sworn.

CHAIRMAN BROADBENT: Thank you. Welcome to the International Trade Commission. You may begin when you're ready.

MR. LEVY: Thank you very much. Again, Jack Levy for Cassidy Levy Kent.

I'm just going to briefly introduce our panel of witnesses. You will first hear from Mike Manley, who is executive vice-president of global operations at Erachem Comilog, which has EMD production facilities in New Johnsonville, Tennessee. Mr. Manley will provide an overview of EMD and its product characteristics. He will describe the economics of EMD production, supply and demand dynamics, the conditions in the U.S. market since the antidumping orders were imposed back in October 2008 and

the likely impact of revocation of the orders on Erachem's U.S. business.

Next, you will hear from Carlos Helou. Mr. Helou is general manager of Tronox's electrolytic division. Tronox has EMD production facilities in Henderson, Nevada, and he will focus primarily on his vision for the future of the EMD market and what continuation of the EMD orders means in terms of realization of that future.

I will then make some closing comments, but I know from past experience that what this Commission values most is hearing directly from industry witnesses.

So without any further ado, I will turn things over to Mr. Manley of Erachem Comilog.

STATEMENT OF MICHAEL E. MANLEY

MR. MANLEY: Good morning. My name is Mike Manley of Erachem Comilog, Incorporated.

As the executive vice-president of global operations, I am the senior most responsible company official in the United States with managerial responsibilities for our EMD business in New Johnsonville, Tennessee.

In my testimony this morning, I want to cover several subjects: The overview of EMD as Jack had mentioned, the economics of EMD production, supply and

demand dynamics, conditions in the U.S. market since the antidumping orders were imposed in October of 2008, and how our U.S. manufacturing business would be ruined if the antidumping orders are revoked.

First, to give you a little overview of EMD, EMD is an electrolytic manganese dioxide or MNO2. Manganese dioxide is a simple inorganic compound made from an abundant element. When processed by electrolytic deposition, it has a crystal structure with desirable electrochemical properties for energy storage. So long as the producer controls the impurities, the uniformity of crystal structure, and particle size in keeping within the specifications of a battery producer, EMD from all producers is generally interchangeable.

To put it another way, once product is qualified by a particular battery producer for a given application -- by the way, this qualification process can take as little as 24 weeks -- it's viewed as interchangeable. And EMDs from multiple suppliers are often blended together. Primary nonrechargeable alkaline batteries is the single biggest application for EMD. Rechargeable batteries are an important future application for EMD, but today, it represents only a minor portion of the total U.S. demand. EMD is used in a few niche applications here. There are potentially important nonelectrochemical applications for

EMD as well, but here again, today represents a minor portion of total U.S. demand.

I would like to say a few words about the economics of EMD production. Before you can run an EMD plant, you need to make substantial up front investments. In hearths, kilns, calciners, for roasting the ore, in wet chemistry equipment, solid/liquid separation equipment, power supply equipment, as well as anodes and cathodes made of costly metals and finishing equipment, including neutralization and milling equipment.

Continuous operation of an electrolysis line is optimal. You will take cells offline for harvesting and for maintenance, but otherwise these electrolytic cells, you want to keep them running in order to produce a very high-performance EMD. The takeaway from all of this is that due to the large capital investments and the costs to maintain those assets, producers need to maintain high operating rates in order to control fixed costs, fixed unit costs. This dynamic makes the United States' industry particularly vulnerable to the recurrence of dumped imports, particularly when you consider that the U.S. demand is down 15 to 20 percent since the original period of investigation.

With evidence into the acceleration of this tendency, for example, portable lighting is becoming more

efficient due to the replacement of incandescent bulbs by LED bulbs, thus utilizing smaller battery cells, and they last longer. You probably have noticed over the years, you used to use the big D-sized cells or C-sized cells for most flashlights, and nowadays, you can use AA or AAA cells and get the same light output, and they last longer. This translates into a reduction in demand of EMD.

As far as the supply and demand dynamics, I will give you a brief overview of the key players in the U.S. market. On the production side of EMD, you have Erachem, Tronox, and Energizer. Erachem and Tronox produce for the merchant market, whereas Energizer is producing for captive production, which it consumes in its manufacturing process of batteries. However Energizer is also an important purchaser on the merchant market as well. In terms of production outside the United States, current major sources of supply include China, Japan, Greece, Spain, Colombia, and South Africa.

It is worth noting that the Delta South Africa plant today is winding down operations and Delta closed its Australian plant in 2008 in response to the U.S. antidumping investigation.

On the purchasing side, there are three major U.S. battery producing customers: Duracell, Energizer, and Spectrum. Spectrum produces the Rayovac brand. And as I

mentioned, Energizer is a captive EMD producer, but I should also point out that it closed one of its battery plants in 2013. Now, what remains to be seen is the extent to which this closure represents a decrease in Energizer demand versus delocalization of their production needs outside the U.S. I should also note that they've recently bought Chimest facility, which is a battery manufacturer in China.

So so far, the answer to this seems to be a little bit of both. Now, in our experience, battery producers generally prefer to have domestic supply from Erachem and Tronox for their base volumes. It's generally because domestic producers offer consistent quality, a reliable supply. Domestic suppliers have a better ability to deal with volume spikes that fall outside of the original forecasted volume, mainly due to a short of supply chain. Headquarters for three of the largest alkaline battery producers and decisionmaking remains centered in the U.S. as well.

At the same time, battery producers want to pay the minimum price necessary to keep U.S. EMD producers alive. Historically, during the original period of investigation, the battery producers were ruthless in using low priced imports as leverage to force U.S. EMD producer prices to unsustainable levels. The imposition of the

antidumping orders upset their game here. Today's market is characterized by healthy competition between U.S. producers and nondumped imports from countries other than China and Australia.

Additionally, Duracell has even recently imported some trial quantities from Colombia.

Now, I would like to take a few minutes to describe the dramatic improvement in U.S. market conditions since the antidumping orders were imposed in October of 2008. If you look at our questionnaire response data, you will see that the U.S. producer prices increased sharply in 2009 compared to 2008. Regarding the timing, the vote was September 12th, 2008, which was during the annual contract negotiation period. These annual contracts, which are not signed by the purchaser, they work to establish a price and a nonbinding volume target for the next calendar year.

At the time of the negotiations for the 2009 deliveries, the Department of Commerce had already published their dumping margins. 83.66 percent for Australia and 149.92 percent for China. And once the ITC vote was issued, the situation improved dramatically. Imports from sources like Japan and South Africa were still available to supply the U.S. market at nondumped prices. But they didn't give the battery producers much leverage to push down the U.S. EMD producer prices during the period of

review.

With the discipline of the antidumping orders in place, Erachem New Johnsonville operations has been profitable, and we've been able to reinvest into our future. Since the orders were imposed, we've been able to invest in capacity expansion, undertake significant repairs to the site, and improve efficiencies with debottlenecking at the plant.

Additionally, we've also taken the time to work to develop a new high-performance EMD called Z 100, and this Z 100 product has gained a share of the market over the period of review.

Now, despite our recent successes, I've got no doubt at all that all of this would come to an end if the antidumping orders are revoked. I can tell you, if the ITC votes to revoke the orders on December 2nd, it will certainly have a negative effect on prices for 2015, and things will just get worse from there. What would likely happen is we will get phone calls, just like the ones received back in the original period of investigation, saying we now have price offers that are 30 percent lower from China, if you want us to take the originally forecasted volumes you are going to need to reduce your price, otherwise, we will be buying less volume from you and more volume from China.

On that note, XEC, a Chinese EMD producer, is known to be running at a deficit of 8 million U.S. dollars, but it still has a habit of running full capacity flat out, despite insufficient demand, in order to be a jobs program. It's ruthless calls, like I just explained, that will ruin the economics of our business. If we maintain prices and lose volume, our capacity utilization goes down, our unit costs go up, and the operation becomes unprofitable. On the other hand, if we lower prices to match the dump import pricing, revenues still go down, and the operation again is unprofitable. At the end of the day, it becomes a lose-lose proposition for U.S. EMD producers.

If you vote to revoke the antidumping order in December, I can also guarantee you that the availability of low-priced imports from China would severely impact the negotiations that will take place at the end of '15 for the 2016 contract period. And by that time, even more Chinese producers would have come out of the woodwork to get requalified.

Now, I will turn to Australia and call your attention to Exhibit 4. The resumption of EMD shipments from Australia is admittedly less imminent, as Jack had stated. We do not foresee Australia EMD being a factor in the market before the 2016 negotiations for the 2017 contract period. But we do believe that the revival of

Australian operations in that time is quite possible. Indeed, we think it is likely that our business would be ruined if the antidumping order is revoked.

I can give you a few reasons for that. Australia is actually a better place to make EMD than China. It has an abundance of higher purity ore. Delta's former plant in New South Wales is conveniently located for taking ore from the mine at Grude Island at low transportation costs. Transporting finished EMD instead of ore halfway around the world is far easier and economical than Tronox's and Erachem's ore supply chain, because you're transporting water and impurities with ore. Whereas, when you are transporting finished product, it's pure EMD.

There is an abundance of reliable electric from coal, gas, and hydroelectric systems in Australia, something that Delta's South Africa plant was sorely lacking. And as I mentioned before, this reliable electricity and being able to operate the plant consistently is very important for product performance. There's plenty of cheap coal and natural gas for roasting operations in Australia, and there's an excellent transportation infrastructure.

Now, another Australian operation, Mason Minerals, has been slow to commercialize their proprietary

method for making EMD. But revocation of the order against Australia might well generate interest in investors that would bring their plans to fruition. Also, Delta still owns the Brownfield site in New South Wales and has the expensive capital, anodes, cathodes, busbars, in South Africa. They can certainly reposition that EMD production equipment in the time that to effect negotiations in late 2016 for delivery starting in 2017. I can say this from experience because Erachem started up its Greenfield plant, EMD plant in China, and that process took no more than 16 months from start to finish. So I know it would take Delta no more time than that to start up from the Brownfield site.

I also personally believe that a Japanese producer such as TOSO may want to seize the opportunity to expand the relationships with the U.S. battery producers by building a Greenfield plant, EMD plant in Australia. But the economics of these investments would only make sense if they can use Australia to access the U.S. market, which has the highest prices in the world.

Thank you, and at this time, I will turn things over to my counterpart, Carlos Helou, who can give you Tronox's perspective on the market and the vulnerability of U.S. producers to a recurrence of imports from China and Australia.

Thank you again, and I look forward to your questions later this morning.

STATEMENT OF CARLOS HELOU

MR. HELOU: When we started, I heard Mrs. Broadbent say that we should speak in the microphone and be clear. And I say this, because you can recognize that I have an accent, and therefore, I have what you can call a controlled handicap, which sometimes prohibits me from being very clear, and I would not mind being interrupted if it happens.

My name is Carlos Helou. I am the general manager of the electrolytic division of Tronox Corporation. We have our manufacturing operations in Anderson, Nevada, and we were petitioner in the original investigation. I started work with Tronox in 2012. Prior to this, I was cofounder and board member of the National Alliance for Advanced Transportation Batteries. Its mission was to establish a U.S.-based state-of-the-art manufacturing and technology in lithium ion batteries for automotive applications. I have a master's degree in nuclear physics, a Ph.D. in plasma physical chemistry, and an MBA in international business.

The reason why I was recruited by Tronox in 2012 is because of my background in rechargeable batteries and because, more specifically, Tronox wanted to be pioneer and

develop new applications for EMD.

As Mike was saying, our standard EMD that we use is truly as a cathode material for alkaline batteries that manufacturers like Duracell or Energizer or Panasonic produce. Every time you use your flash, you have a battery, and there is 60 percent chance this battery comes from us.

I should also note that Tronox has had a very long history of innovation in the EMD industry. In fact, more than 15 years ago, Tronox introduced what we call the HDMD, high drainage MD, that is used primarily in high discharge capacity, high discharge rate applications such as, for example, flash photography.

At the time of the petition, when the petition was filed in 2007, Tronox was really in dire straits. Indeed, imports from Australia and from China depressed the prices to a level that it was impossible to recover manufacturing costs. Without antidumping relief, Tronox would not have been able to continue its operations and to support its staff force, its workforce. Fortunately, the antidumping orders occurred in 2009, and we were able to increase prices that has covered our manufacturing cost.

What I will talk about today are really the future of EMD. And when I look at the future, to start with, I have to say that currently EMD demand in the U.S.

is down relative to the level that we knew when the petition was initiated. This is primarily due to the fact that we have less manufacturing plants in the U.S. to make alkaline batteries. And of course, obviously, this makes us really even more vulnerable to EMD imports. But this is true only in the short run. In the long run, there are tremendous opportunities for new applications of EMD that can revitalize this industry. And Tronox has been able to continue focusing on application and spend the time, the resources that it needs to specifically because of the antidumping duty in 2009. It has created a viable company.

I will talk about two categories of applications, one that is storage stationary and one that is water purification. In the storage stationary application, I think we are all aware of the importance that the -- the strategic importance that the government has placed on energy independence and renewable energy, in particular. When we are talking about renewable electricity, two things come to mind immediately, wind and solar. Those two are really key. But what we are probably less aware of are the problems that more and more reliance on those energy create. Unfortunately, today, our electric grid does not have any or has almost no storing capacity. Fossil plants are brought in or throttled back hourly to be able to meet demand. This is controllable. When it comes

to wind and solar, it is really controllable in a totally different way, and it is not easily controllable. If you have a very nice cold night without any wind, you cannot use solar and wind does not work neither. So we have to create a technology that would store electricity when it is generated and demand does not ask for it and then it is discharged in the grid when demand asks for it. And to store electricity, this is what rechargeable batteries are really for. Now, rechargeable batteries are a lot of chemistries that are really candidate to be a part of the storage. I think the most important element in storage capacity, in batteries for storage is cost. When you buy a car and the care has a battery, cost is important, but it's not the only element. This is why you choose a BMWi8 or you go to Toyota Camry. Cost is not important; some people are willing to pay the price because performance is behind it. In storage, it is not the case. You have to have the cheapest technology.

Now, as it happens, manganese is abundant. EMD is cheap, and it is not toxic. Therefore, EMD is really a candidate to be used in storage. Tronox has devoted substantial resources for the development in this technology. We are on a pilot stage, and we are working with partners in the development of this technology.

The second one I would like to talk about is

what I would call a bridge between energy and environment. I think we are all delighted of the really natural gas boom that we are living in the U.S., and this natural gas boom is driven really by the shale gas fracking industry. Unfortunately, the fracking industry requires a significant amount of water. Just to give you an idea, one well will require between 1 and 5 million gallons of water. A field is about 2,000 wells. The Marcellus or the Barnett shale is dozens of counties. So if you do the math, we are talking about billions of gallons of water. This is fine. Water exists, probably in the south it has more difficulties, but it's there. The issue when you do fracking is that you pump water into the soil and the water comes out, and it carries with it some impurities that you don't want to see, those being hydrocarbons, being PBPSB, whatever, PCBs.

Now, at one point in time, we need to remove those hydrocarbons from the water we need to frack. It turns out that EMD can be a part of the purification system to remove hydrocarbons from fracked water, from shale gas water. If EMD is successfully implemented and the environmental solution and it will have really paved the way to the continued development of shale gas, which is today -- we know the strategic importance of it.

Another application and maybe the last one that

I will talk about is natural gas pipelines pressure testing. We have in the U.S. thousands and thousands of miles of natural gas pipelines that go across the country, either in rural America or under cities. Unfortunately, in 2007, an accident occurred in the periphery of Los Angeles where a leak became an explosion that has unfortunately burned a few people and probably destroyed about 35 houses. A lawsuit of $1.7 billion has settled the issue. But this brought up the realization that if you have thousands of miles of natural gas pipelines, probably you need from time to time to check for leaks. Now, if you want to check for leaks, this is generally easy when you think about it. You need to take water, put it in the pipeline, put some pressure on it, and watch where it comes out, and where it comes out, you can see the leak, so there is no problem with it. You don't even need a lot of water, because you can segment your pipeline into miles, and every mile you push the water, and then you take the water and put it in another mile.

The issue really is that those pipelines have been put in place 20, 30, 40, 50, 60 years ago, and they have seen natural gas during all this period. And therefore, there is a deposition on the surface of hydrocarbons such as benzene and so on. So when you collect the water, you cannot just throw it back, discharge

it, and throw it in the soil. The Environmental Protection Agency requires, for example for benzene, that the limit -- the concentration of benzene in the water that can be discharged in soil has to be less than 100 ppb, part per billion. And we know that what comes out of those is a much higher effluent applied.

So Tronox really today is in the vanguard of developing a proprietary technology, EMD-based technology to be able to purify this water to the level that the EPA would accept to be discharged in the soil. And of course, if we are successful, the EMD market is going to grow for this application, and we believe that in Henderson we are extremely well positioned to really scale up our manufacturing. In Henderson, our plant is absolutely huge. It's probably 10 times what we need because there are other things we produced in that place. So we have the space to do it. We have the infrastructure to do it. And also, we have the cheap electricity that the Hoover Dam brings us. All what we need to do is add cells. So if you think about it, we can really scale up our plant to any level we want. We have no limitation. In general, the limitations are electricity and how can you expand the space. But in our case, it does not exist. We can bring up to scale very, very quickly.

In the meantime, Tronox needs to earn

sustainable profits if we want to continue investing in developing technology. All that I talked about is very interesting, and I feel lucky and privileged to be a part of the technology development that we are working on. But to be realistic, we are several years ahead -- several years for this to be really commercialized, to find actually its commercial scale. So during those many years, we need to continue focusing, investing our resources to continue developing those technologies. And therefore, we need to have sustainable profit to be able to survive in the country we work in.

If prices are driven down by dumped imports from China and Australia, if they come back to the U.S., there is no doubt in my mind that Tronox will not be able to continue, because we won't be able to support our manufacturing, and therefore, we are going to lose really the potential for technology development and the work that we have done up until now in focusing on those applications.

I really guarantee that on the 2nd of December, if it comes out that the order has been revoked, I can see it clearly. On the 3rd of December, I will have my biggest customer call and say Carlos, we need to talk. Then he will say -- he will not say I'm going to reduce the price, because in our business, it doesn't matter. Volume and

price are interchangeable. The price is always a function of volume, because we have to work at capacity. Volume for us is extremely important because of fixed cost. So he's going to say we're going to maintain the price, but you know, we're going to reduce the volume because we have access now to Chinese product that is cheap and therefore we're going to reduce the volume unless you want us to respect the volume, in which case price is going to go down. On that day, because I have nothing to lose, I will be able to tell him what I've been wanting to tell him for three years and I could not. So I will say yes, I will call my plant manager and I will go on the 4th of December to Henderson and I will say Rick, we need to shut the plant slowly in the next three months because we have to finish the inventory that we have, and please do not tell the operators this before Christmas. I can guarantee you that this is exactly what is going to happen. We know that. We have gone through it before.

And I don't want you only to make this decision based upon Tronox's health or sustainability because I think there is much more than Tronox in what we are talking about. If the U.S. wants to lead in the area of energy independence, renewable energy, environmental solutions, then companies like Tronox need to continue investing resources in the development of technologies in those

areas. And to do so, we need to have a profit, we need to sustain at the company to continue this work.

If Tronox is not a part of the solution, then unfortunately, it will have the reverse effect where the energy dependence is going to be on Asian or Australia EMD, and I don't think this is what we want.

So I really -- I am a little bit passionate about it. I am a businessman, but before, I was a scientist, and I'm still a scientist, and I am emotional, and I know that what I am telling you is reality, this is what is going to happen, and I want to thank you for giving me the attention that I needed, and I am wig to respond to any questions that you have.

MR. LEVY: Thank you, Carlos. I think I will make some remarks to finish our panel presentation, and then we, of course, look forward to your questions. Maybe first I will pick up where Mr. Helou left off. He was talking about future applications for EMD and the strategic importance of EMD for American energy independence, renewable energy environmental solutions. If there's not a U.S. industry left to pioneer these applications and to support those strategies, in effect, we will be outsourcing to Asia a reliance on EMD to support America's national strategies.

And on that point, I want to call your attention

to our Exhibit Number 3. It's just a picture, but a picture sometimes is worth a thousand words. What you see in this photograph is the world's largest EMD producer, Xiangtan of China and what you see is a photograph of how Xiangtan rolls. The largest plant in the world, and they dump their waste into the river behind the plant. Contrast that with Tronox that wins green awards from the city of Las Vegas for recycling all of their water material.

It would be a perverse and horrific result if the future of America's energy strategy depends on these dirty suppliers. There is a path forward for American EMD to pioneer these applications to support renewable energy, to support environmental solutions, doing it on U.S. soil with U.S. workers in a clean way that respects the environment. The alternative is just to outsource the pollution to China, and that is not what good policy involves. It's a bit outside the boundaries of the statute, I understand, but I think it's helpful sometimes to have a broader strategic perspective on what these votes may mean.

Turning back to the actual statutory framework, sunset reviews are a little strange, because you're asked to make predictions about what's likely to happen in the future. We're all human beings, and none of us have crystal balls. So it's natural to look to past precedent,

to past data to inform our understanding of what the future portends.

And so on that point, let's take a brief trip down memory lane and turn first to Exhibit Number 1 and just a little bit of history. There actually was -- there were several EMD cases over the last several decades, but one of which was filed in 2003 and alleged threat of imports from China. And at the time that petition was filed, there was no present injury argument that could be asserted as to China, because the imports at China were at the time negligible. So the question for the ITC at the preliminary phase in September of 2003 was whether imports from China were imminently nonnegligible, now that's a higher standard than reasonably foreseeable time. The ITC was looking for imminence. But from the industry's perspective, the writing was on the wall. But looking backward at the data, it was harder for the ITC to see ahead to the future. That Commission at that time looked backward at the data and essentially said too speculative, and they issued a negative determination. That negative determination made the rest of the case of limited business value, and the predecessor to Tronox, Kerr-McGee, withdrew those petitions.

Not surprisingly to U.S. producers, imports from China proceeded to surge and exceeded more than -- it looks

about more than 15 percent of U.S. consumption at its peek. U.S. demand in this period was generally in the 100,000 short-ton range. And of course, the new case was filed, the orders were issued against China, and now we have seen virtually zero imports from China, according to the official HDS statistics. So now, today, with the benefit of hindsight, we know that Chinese imports can surge and surge quickly in significant volumes, and I think that there is no need to doubt what would happen if the orders were revoked. Chinese volumes would resume at significant levels. The under selling that we found to be pervasive in the original investigation would resume, and it would yet again cause material injury to the U.S. industry. It is, again, I think very important to note that unutilized capacity in China exceeds the total capacity of the U.S. industry. So looking to the U.S. market, the highest prices in the world, it's a no-brainer that Chinese production would saturate the U.S. market. There are several producers that were qualified in the U.S. before. New ones could get qualified very quickly. You heard from Mr. Manley, in less than 24 months. I'm sorry, 24 weeks. I stand corrected.

So again, when you look at the Chinese situation, I think the data are clear, and what is likely is quite palpable.

But turning next to Exhibit 2, a little bit of history relating to imports from Australia. Here, you have to go way back in time to the 1988-'89 time frame where the U.S. industry as it then existed filed a case against EMD from Greece and Japan, and orders issued in April of 1989. That portended an environment in which U.S. marketplace would be inflated. There were real U.S. market opportunities to be exploited, not only by U.S. producers but by nonsubject producers in other countries.

At the time there was nothing in Australia, and out of nowhere, the predecessor to the Delta plant, BHP, proceeded to develop a Greenfield site, and in the space of 20 months from the imposition of those antidumping orders, they were able to actually land EMD shipments on U.S. soil. And what you see here is in the years to follow, Australia proceeds to be more than -- at its height, more than roughly 30 percent of the U.S. market, very significant volumes. And the rate of increase is steep and sharp.

So again, if we look historically at what happened in Australia, when there was a U.S. market opportunity to be exploited, Australian production came out of nowhere and in 20 months found itself on U.S. soil. And that history, I think, is very informative and makes the prospect of a resurgence of Australian production and Australian shipments to the United States more than just

speculation. There's a track record grounded in past data to inform that judgment.

Just to reiterate and highlight, turning back to Exhibit 4, some of the key points that Mr. Manley cited in his testimony, Australia is the ideal location for producing EMD. It has local ore of the highest grade. Top quality, reliable electricity, which is essential for running the electrolytic cell room and cheap electricity at that with a hydroelectric grid, cheap and abundant coal and natural gas and an excellent transportation infrastructure. If you're going to make EMD, this is the place to make it. And you also heard today in witness testimony that Delta's South African assets are for sale. So Delta still owns the brownfield site in Australia. That's for sale. And they are discontinuing operations in South Africa because of their electricity problems, among others. And all the key equipment, the calciners, the rectifiers, cathodes, anodes, busbars, it's all for sale.

I would ask, Mr. Helou, you had a chance to look at Delta's assets. If you wanted to buy the entire EMD assets in Australia and South Africa all in, do you have any guess as to what that would cost if you were, say, TOSO and wanted to buy it?

MR. HELOU: Probably 7, $8 million.

MR. LEVY: So that's to buy it all, 7, $8

million dollars. If you bought just what you needed, it would be a fraction of that. So from a capital investment perspective, the barrier to entry is low. Needless to say, Delta itself may assess the situation if the order against Australia were revoked but the order against China maintained, look at the U.S. market opportunity and say wow, there's a compelling case to redeploy what's left of our assets in South Africa, restart our brownfield site in Australia, not only to exploit the high market prices in the U.S., but also looking a few years down the road and thinking about what Mr. Helou talked about. All of these exciting new applications for EMD relating to energy storage, relating to environmental development -- and here again, Mr. Helou, maybe you can just jump in and turn on your microphone and just comment on your -- and please, give us a sober assessment, but give us your assessment of what that might represent in terms of additional demand for EMD in the U.S. market should you succeed at developing these applications.

MR. HELOU: Relative to storage and when I consider only the two partners that we are working with, the two companies, partners we are working with, we estimate that in -- beyond the process after building the plant, after they run the pilot and when the four lines would be running, which probably would take about five

years because they need to sign some contracts, then the requirement will be in the order of about 25,000 tons of EMD for storage for those two particular partners that we are working with. For the pipeline industry, to be able to pressure test the pipeline and to take out the benzene before discharging, we estimate that it will be around 6- to 8,000 tons of EMD.

Now, for the fracking industry, the numbers are all over the place really, and it depends also -- it's a bit cultural. The way the Barnett shale is looked at in the south is different than how you look at it in the east. But I would say that the numbers talk between, I would say, 20-, 25,000 to 40,000 metric ton of EMD required if all the technologys really come to term, are adopted, and are implemented.

MR. LEVY: So thank you, Mr. Helou. I think the case is simply if an order is maintained against China but revoked as to Australia, the combination of high U.S. market prices today, existing U.S. demand, and the prospect of substantially higher U.S. demand over the medium term makes for a very strong case for resumption of operations in Australia. Whether it's reutilizing the Delta assets, which are currently unutilized and spread over Australia and South Africa, either by Delta or by another interested buyer like TOSO, TOSO has its own challenges in Japan

dealing with electricity costs, or by other interested investors. You've heard testimony that Mesa Minerals has been eager to commercialize their technology. This may create an opportunity for them.

Now, all of this, I think, makes for a likelihood of resumption of production, but also, as you've heard in testimony, this is not going to happen overnight. You've heard both witnesses say if you vote in the negative as to China, the phone is going to ring the next day because Chinese EMD will be competitive in the U.S. market during calendar year 2015. That would not be the case with Australia. If you look at the data, the last time the Australian operations started up from greenfield to U.S. shipment, it took 20 months. Now they have a brownfield site. Presumably, it would move faster. Mr. Manley testified that when his affiliate set up operations for EMD in China, they did it from greenfield to production in 16 months.

So I think we get a sense that clearly, in less than two years, and exactly how much less than two years is to be determined, this can all materialize. But it wouldn't be a factor in the U.S. market in 2015. It wouldn't be a factor in the U.S. market in 2016. What it would be, however, is a factor during 2016 contract negotiations for deliveries to take place in 2017. I've

looked at the case law, and I have not seen black-and-white guidance as to whether that constitutes a reasonably foreseeable time. We respectfully submit that it is, but that's the question put before you.

I want to speak to one final issue, and I think we will conclude our panel. Can I just ask how we're doing on time?

MR. BISHOP: You have 11 minutes remaining.

MR. LEVY: Okay. Well, I won't use that. You will see in our brief, we address a legal issue, which I think we term the inputs of cost issue. And I know it's an issue that is being raised in other cases before this Commission, including the refrigerants case where a vote is still pending. Just a little bit of the factual background here.

So here, you have the production of EMD where you are taking an ore, and you are roasting it, you're dissolving it in sulfuric acid to make a manganese sulfate solution. You're electroplating from that solution, and then you're neutralizing and finishing and packing and shipping. That's what goes on in the United States, but also as Tronox at Erachem. Erachem sources its ore from an affiliate in Gabon. This affiliate is in the business of mining, and their mining operation produces ore that is suitable for Erachem's use in the production of EMD.

Erachem pays its affiliate a transaction price for that ore. That transaction price is what's reflected in their books and records. It's how they run their business. It's how Mr. Manley is judged in terms of financial performance. That's the cost base that he uses to make business decisions.

Now, that's the factual context. The Commission's consistent practice for as long as I've seen it, and it's quite well articulated in the prehearing report, is to require the elimination of the related parties' profit or loss from the relevant cost of goods sold reported in the financial section of the U.S. producer questionnaire.

And the intent, I think as correctly summarized in the prehearing report, the intent of the adjustment is for the related parties' actual costs to be recognized in determining the financial results reported to the Commission. We are very grateful that the Staff diligently reported the data both ways. That is to say, in your C table, you have the Commission's standard practice, and in appendix E, you have the data summarized without the adjustment.

So all the information has been collected, and it's before you. Really, what you are faced with is a decision which we want to put before you in a very pointed

way, which is what's required under the statute.

In sunset reviews, the statute instructs the Commission to assess the likely impact of subject imports on the industry in the United States, and the statute defines "industry" as being producers as a whole of the domestic-like product.

I hope you can recognize that the affiliate in Gabon is not an industry in the United States. They do not produce the domestic-like product. It's a foreign company mining ore. It's not a U.S. company producing EMD.

So to the extent you're dealing here with a case where you have an affiliated supplier located outside the United States, they don't produce the like product, the transaction price that Erachem is paying for the input is consistent with their accounting records and their own consolidated financial statements in the U.S., this is the information that they're using for tax purposes, it complies with international transfer pricing rules, it complies with the Customs valuation principles. This is the reality under which their business operates.

And so I would ask you to sort of think about two questions. Number one, does the statute really permit you to make this kind of an adjustment, given the requirement to analyze the likely impact of subject imports on producers of the domestic-like product? And I would

submit that as a matter of law, that is not a permissible adjustment under these facts.

And then separate from the statute, I would urge you to just think about whether this makes common sense. If the orders are revoked and the effect of subject imports is to drive Erachem to unprofitability, to unsustainable profitability, what does it matter that there's a mine in Gabon that may be profitable? It does nothing to address the threat to U.S. manufacturing or to American jobs.

Now, I can appreciate that there are going to be some cases where the ITC's rule may make sense, and it makes sense, perhaps, for the ITC's staff to always collect the data both ways. You can imagine a case where you have a vertically integrated company or a group of related companies all in the United States, and you have concern about the bona fides of the data being reported, that the group of U.S. producers may be shifting costs from one division or one company to another so as to manufacture injury in a case where otherwise none existed. And so it would be a part of your factfinding function to look at the data with a cold eye and ask whether or not the data reported in the books and records of the domestic producer manufacturing of the domestic-like product is representative of what's really going on, whether it's representative of commercial reality.

So of course, there are going to be cases where your standard practice makes sense, and I hazard to guess that your standard practice emanated from exactly the kind of hypothetical that I'm citing. But I think that the standard practice may have gone too far.

And when you're talking about a case here where you have a foreign affiliate mining ore, is that really a case where you're going to distort the U.S. industry's stated financial performance because of the profitability of a foreign mine in Gabon, and I submit that is not what Congress intended. I submit that under these facts you're not permitted to make that adjustment. And even if you have the discretion, it makes no sense here. And I say that with all respect, but let me also call out that if you were to do your standard practice, our facts would actually be stronger in this case, because it would show an even sharper improvement to the domestic industry after the orders are issued, make for a more pronounced illustration of the cause-and-effect relationship between subject imports and the financial performance of the domestic producers.

We're not arguing this point in this case because we need it to win. In fact, we do just fine in this case without this issue. We're arguing this out of principle because there are other cases that will surely be

filed where application of the Commission's standard practice may very well be the difference between evidence of material injury and masking or distortion of material injury. And so we want to use this case, like others, frankly, that are pending before this Commission, to get the law right and so that the right signals are sent to U.S. producers, that the law can work for them, and that American workers are not going to be held hostage to the profits of foreign affiliates producing another product.

So I'll close on that point, and thank you very much for your time and attention, and we look forward to your questions.

CHAIRMAN BROADBENT: I want to thank the witnesses for coming today and taking time out of your schedule to be with us. We appreciate it. And great testimony, really interesting on this industry.

I guess I'm still a little confused on what you, as the experts, expect for demand changes in the future, in the next -- in the reasonably foreseeable future. We've got a lot of different things going up and down, the LED, increase in consumption in LED, which leads to a decrease in consumption of the subject product, which I see all over when I buy things for my house and so forth. Nobody's even installing a regular lightbulb anymore. So I'm sure it's declining use in flashlights and so forth. And then all of

these other very exciting potential developments that, Mr. Helou, that you're involved in.

In the reasonably foreseeable future, what do you think demand is going to do in this product in the U.S.?

MR. HELOU: I think the demand is difficult to make sure to articulate right and to -- there is no question in my mind that demand would continue to go down, to slow. It will slow very slowly.

CHAIRMAN BROADBENT: Because of the LED?

MR. HELOU: Because of the LED, because more and more tools, toys, electric equipment comes from China with batteries already in, and we rely more and more on China for those products. So the demand will continue to go down slowly for the next few years.

There is also a push on rechargeable batteries. Today, rechargeable batteries are at a very acceptable price. I remember 10 years ago my wife made half an hour talk to me because I'm spending too much money buying batteries from the store and why would I pay $9 for a cell when I can buy eight for $6.20. Today, you can buy rechargeable batteries for cheaper than what it used to be 10 years ago. So those elements are going to continue to really lose demand. It's not going to be step functions. It's not going to be 5, 10 percent year. But it's going to

be -- let's put it this way: At best, it will be stable. In the regular scenario, it's going to go down slowly.

On the other hand, we have new applications coming in, and the new applications, I cannot tell you what I tell my CEO, that sometimes I need to go back two steps so I can jump when he asked me why didn't you get the result. Those are certainly marketing approaches. When we think about what will be the volume, generally, it is in best scenario. First, the technology succeeded. We know, for example, that for pipelines the technology will succeed. We just got indication last week from the Gas Technology Institute that our technology to clean water from natural gas pipelines is going to be, how do you call it, recommended for the industry, and coming from the Gas Technology Institute, this is big time.

For fracking, it's a bit more difficult. The Gas Technology Institute recognizes the need for that. The fracking industry is a very -- like oil industry, it's a very, very slow to implement any change because it's -- they really fight for their penny and so on. We know that the technology will work. We know it will be one day implemented. But we don't know when the legislation is going to come from the federal government to force implementation. Generally, if I am British, if I am a fracking company, I'm not going to go and volunteer

personally to be able to spend more money to purify water coming out. I'm going to find a way to do it, although with all my heart I want to be environmentally responsible, but it is not a motivation. It needs more. So we don't know what's going to happen. What we know is that the day it happens, then demand for EMD is going to grow.

Now, Mrs. Broadbent, is it going to be -- for the technology to develop from the pilot scale to become a reality, it takes about four to five years, because we need to develop a bigger pilot, then we need a contractor for the fracking industry to take it, then we need to work with them to implement it. It will take about two more years. Then we have to look at the economics. Generally, we are talking about four to five years to start really the commercial scale. If in the meantime there is an indication that the fracking industry is going to implement those -- it needs to be able to really purify the water and not throw it in a deep well injection, then the market is going to fly, and we can expect in maybe six, seven years to reach probably 10-, 15,000 tons and then 10 years from now 25,000 tons for maturity of the fracking industry.

So on one side we had requirement for 100,000 tons in U.S. It went down 20 percent. We have a major Energizer plant that has closed in Maryville. We also have another plant that has closed. We know that the market is

going down slowly, very slowly, but it's going down.

On the other hand, five years from now, this demand will certainly offset, there will be a requirement, but we don't expect the requirement to really force us on having massive introduction of EMD because we ourselves have the capacity. As I told you, for example, in Henderson, we can scale it as big as what you want.

CHAIRMAN BROADBENT: So you foresee supplying it from the domestic production even for -- the other area you had mentioned was for renewable.

MR. HELOU: I have to look at my friend here to make sure that I have the help. But for me in Henderson, I can double capacity. Mrs. Broadbent, I can double capacity. I can add 25,000 tons. I don't have any problem with that.

There are also other imports that we have to acknowledge, and those imports do not go in the dumped product. We have Colombia with Quintal. We have Japan with TOSO. Those are responsible companies, and they bring already product into the U.S. We know that TOSO brings about 6-, 7,000 metric tons in the U.S. for sale. We know that Quintal is trying to penetrate. There is also TOSO Greece and TOSO Spain and so on. So there have been other companies that have been qualified by our customer base that are willing to come in when they need to. Now, those

we can afford because those we can fight the right way. We can compete in a business-like environment, not the way we have with China and so on.

So to answer your question, is there any fear that those requirements will not be met in five years, the answer for you is no, there is no fear from what I see today.

CHAIRMAN BROADBENT: Right. Because we do have sort of a blunt instrument here. It's like all or nothing for five years. And with the changes going on, not knowing if you will have a breakthrough in the renewable sector, et cetera, et cetera, there is an issue there, do you want to lock in this protection for the next five years.

Mr. Levy -- is it Levy or Levy? I know you have a colleague named Levy.

MR. LEVY: Yes. He likes me to say that he's my younger brother. I go by Levy, yes.

CHAIRMAN BROADBENT: You both use the same pronunciation.

MR. LEVY: Yes.

CHAIRMAN BROADBENT: Got it. Okay. Great. I guess I've been here a couple of years, but I think this is the first time that we've had a petitioner come in and request an order continue on a plant, in this case the Australian plant that's completely closed and out of

production and based on the speculative idea that it may resume production and get certified within some definition of the reasonably foreseeable future. And I know, Mr. Levy, you represent Respondents and so forth. So you know this law very well.

How realistic is it for us to define reasonably foreseeable future as the period for a recurrence of injury in the time frame that you've laid out, which seems to be two or three years?

MR. LEVY: There are actually two parts here when you talk about Australia and the speculative nature of the assessment. Sunset reviews, by their very nature, entail speculation. This is as much true of China as it is Australia. There are two pieces under the statute. One is, is it likely that we will see the recurrence of shipments. And then even if it's likely, is it likely within a reasonably foreseeable time? So on some level, there are two questions; right? Is it likely to come back, yes or no. Even if the answer to the first question is yes, is the time period reasonably foreseeable. And we've attempted to give you evidence to speak to both of those issues.

Let me take the second one first, and this is reasonably foreseeable time. I think what you've seen is, in the record here and in the testimony before you,

evidence that if there's a business case for produce reducing production in Australia, going from greenfield or brownfield to shipments to the United States is something that's easily done in well less than two years. It was done by the Australians in 20 months' time when there was a U.S. market opportunity. More recently, under today's technology, it was done by an Erachem facility in China in 16 months' time. So if you kind of play that out against the contract negotiation calendar, would they be in play in 2015, negotiations for 2016? No, they wouldn't be there yet. Would they be in play in 2016 for 2017 deliveries? The answer is yes.

So I think that the mechanics of ramping up, having product, and shipping it, there's pretty clear evidence as to how long that takes. And so the question in a nutshell is, is that time period, negotiations in the second half of 2016, deliveries in 2017 a reasonably foreseeable time. And we respectfully submit the answer to that is yes. We think that's consistent with the spirit of --

CHAIRMAN BROADBENT: Mr. Levy, I'm so sorry. My time has run out. But I do want to get back to 1 ton of imports and a recurrence of injury. That's two different things, I think, as well.

So Vice Chairman Pinkert?

VICE CHAIRMAN PINKERT: Thank you, Madam Chairman.

I thank you all of you for being here today to help us understand these issues.

Do you want to finish up your answer to the chairman's question, Mr. Levy?

MR. LEVY: Thank you for indulging me, Commissioner Pinkert.

CHAIRMAN BROADBENT: Thank you.

MR. LEVY: Just on the reasonably foreseeable time, that's just an issue of timing and whether, if you believe it's going to happen, it's going to happen in the relevant statutory window. And we think that this is a reasonably foreseeable time, but ultimately, you know, you, commissioner, and all of you are charged with developing a reasonable interpretation of the statute. So that discretion ultimately resides with you. You're the deciders on that issue. We've given you the facts. You have a statute. You need to make a determination.

On the issue of likelihood, which is, I think, where you had, perhaps, expressed great interest, there are a number of issues. You spoke to volume and whether it's significant within the meaning of the statute. And again, if we look at the past track record of Australia, let's look at Exhibit 2 as an example, when Australia is in the

market, they are in in a big way. If you look -- if you think about the market as being back of the envelope, 100,000 short tons, it appears that when they're in the market, they're in the market, 10-plus percent of U.S. market share, often as high as 30,000. It doesn't make sense to get back into this business and spend the capital to restart the New South Wales plant or to start a greenfield facility only to come in in a small volume. You've got to sell in scale in order to make it economical. So I think that if they're going to pull the trigger and resume production, they're going to be focused on the business case for selling in the U.S. market and on selling in significant quantities.

So from our perspective, then, the related question is well, how persuasive is the business case? And we've given you the facts as we understand them, and this is, to be sure, a unique fact pattern for the Commission. There are a couple of cases that go the other way, but this case can be distinguished from those.

So I'm sure you're aware of some of the precedent prior to your tenure and two that are probably worth mentioning. I really regret, Commissioner Pinkert, I'm eating all of your time.

VICE CHAIRMAN PINKERT: Why don't you mention the two cases, and then we will move on to my next

question.

MR. LEVY: I will touch on them. We can talk about them later. But one is solid urea from Armenia, and the other is brass sheet and strip from Sweden. I would be happy to elaborate on those cases and distinguish them later in the session.

VICE CHAIRMAN PINKERT: Thank you very much.

Now, Mr. Helou, you testified both passionately and at length about the opportunities that you expected and that you hope for in the near future in the expansion of the business. And you also talked about how if the orders are revoked, that that would prevent your company from exploiting those opportunities. So what I want to ask you specifically with regard to Australia is whether the revocation of that order would have the impact that you testified about that would prevent your company from exploiting those opportunities.

MR. HELOU: I will just say, we don't have to date Australia. What I can talk about is what could happen. And obviously, I would like certainly to see the least amount of product coming in. And if Australia in two years is running and if the old practice comes back, then Tronox will find itself truly in difficulties in terms of prices and so on, and therefore will not be able to continue operations. If you don't continue operations, you

cannot continue working on application development.

So to say specifically today what Australia will do, I cannot tell you. What I can tell you is in two years, because it can in two years and a half come to the U.S. It has done it before. It's feasible. I visited South Africa when they closed. I looked at their assets. I know what it costs to take them from one place to another, and I know how long it will take. So if we don't have against Australia, we can probably with a certain probability accept the fact that they will come. If they come and they use the practices that they used before, they will injure us as an industry. How much by themselves, I cannot tell you. How much they will injure us will really reflect on how much we're going to be able to continue working and focusing resources on what we are trying to do.

VICE CHAIRMAN PINKERT: Thank you.

Mr. Levy, given the characterization in your own brief that the global market is oversupplied, can you explain what the incentive is for any company to invest in new production capacity in Australia?

MR. LEVY: Thank you. The oversupply centers almost entirely around Chinese industry and Chinese capacity and unutilized capacity. So when I talk about the Australia analysis, it presupposes the continuation of the order as to China and an opportunity for an Australian

manufacturer to exploit U.S. market conditions. If you were to revoke the order against China, the U.S. market would be ruined, and there would be no economic incentive for anyone to produce for sale in the U.S. market. To the contrary, I think there's a real question about whether there would be any U.S. manufacturing left.

VICE CHAIRMAN PINKERT: Thank you. Highly technical legal question. Looking at page 17 of your prehearing brief, is your argument that the Commission can consider the question of no discernible adverse impact on a cumulated basis?

MR. LEVY: Yes. I mean, our assessment is that you have it within your discretion to cumulate and that that analysis can and should be done. As a practical matter, what I expect is that if the majority of this Commission goes affirmative as to both China and Australia, that we will find cumulation. If the result is affirmative as to China and negative as to Australia, some commissioners may decumulate. But surely, that is within your discretion, and our position is that cumulation is appropriate.

VICE CHAIRMAN PINKERT: Thank you. And I think I know the answer to this next question based on your testimony, but I want to get it on the record as clearly as possible. If the Commission were to disagree with you

about cumulating imports from Australia and China and made a negative determination with respect to Australia, is there a sufficient basis for an affirmative determination on imports from China?

MR. LEVY: The answer to that is certainly yes, and I think we were careful in our brief to deal with subject imports cumulatively, but also China and Australia individually. When you look specifically at China, the case for a likely resumption of shipments and causation and material injury to the domestic industry is clear. When you look back at the original investigation, obviously, it is written in terms of subject imports cumulatively, but if you parse out the role of China, Chinese volume was significant, the Chinese underselling was pervasive, it was a cause of price suppression and cost-price squeeze, operating losses to the domestic industry every bit as much, if not more, than Australia in the original period of investigation.

VICE CHAIRMAN PINKERT: Thank you. Now, last question regarding the closure of the Delta plant in 2008 in Australia.

Is there any legal relevance to our analysis of that issue in the original investigation?

MR. LEVY: So my recollection -- I was counsel for Tronox in the original investigation, and I remember,

Commissioner Pinkert, you were there as well. It was an interesting issue, because during the pendency of the investigation, Delta closed its facility. But what closure meant at that time was cessation of operations. And they made the argument that you should go negative because there is no longer production there. And so the Commission didn't take that bait. But one of the other representations they made was that there was no longer any operations at all. And if memory serves, we submitted satellite photography showing smoke coming out of the factory. So we had some real concerns about the facts surrounding the continued operation.

At this point in time, there's no dispute that if you were go to the site, it's a brownfield site. Much of the capital equipment, indeed all of it, has been either sold or relocated to South Africa.

So I'm not sure if I've answered your question, but the answer in short is you did analyze the Australia question separate and apart from China in trying to assess whether, for example, Australia should be decumulated and the determination was no, Australia should be cumulated by reference to the then-period of investigation.

VICE CHAIRMAN PINKERT: Okay. Thank you very much.

CHAIRMAN BROADBENT: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you. I want to express my appreciation to the witnesses for coming today. I do miss those pictures. They were quite interesting before.

Posthearing, Mr. Levy, could you describe the precedence and the five-year reviews where a foreign entity is no longer producing a subject product? You were asked about this and were going on in a long answer, but I think this is particularly a question that might be useful to see posthearing discussion of that.

MR. LEVY: I would be pleased to discuss it in posthearing submission. I don't know if you want an abbreviated answer right now, or I can save it for writing. That's fine.

COMMISSIONER WILLIAMSON: You've already began to discuss it.

MR. LEVY: Yeah, we will be happy to discuss it.

COMMISSIONER WILLIAMSON: Posthearing, thank you.

On the South African operations -- and I guess your staff report talks to the decision in 2014 to discontinue operations. I was just wondering, do you have any updates on that?

MR. LEVY: Mr. Helou, I believe, is closest to that. So maybe he can speak to the status of Delta South

Africa and the availability of its assets for purchase.

And please turn on your microphone, Mr. Helou.

MR. HELOU: I went to South Africa in March of 2014, and it just happens that on my way to go there to try to work with them on some business issues, one week before it came out that announcement that they are going to close. So I was very close to really what was going on, which is a very, very good learning experience.

What I can say is that they have -- in March, when I was there, there was a meeting which they had with their personnel to tell them that they are shutting the plant. They showed me their facility where they do calcine -- well, one of the step of the process, and they were eager to sell it to me. What they told me is they intend in June to stop one part of the process and then in July to stop the other part of the process. They sent me a list of all the assets that are for sale, and I signed some confidentiality agreements where I cannot go through this in depth. But what the real price mean is suddenly we don't hear about it. Generally, in our business, we are very few, and therefore, if this started, then it should continue somewhere. And now we are asking the question why aren't we hearing a lot about it, and why, I cannot tell you exactly today where they are. I knew exactly where they were two months ago, but I don't know today, and this

is where all the speculation comes in in terms of them being bought by somebody else or move to somewhere else to produce.

The reason why they closed in South Africa, it's really electricity is a problem, and they could not really produce at the level that they were supposed to produce, and they were dropped by a major customer in the U.S., and that's why really they closed.

COMMISSIONER WILLIAMSON: So why did the U.S. customer drop them? Can you say?

MR. HELOU: It's a surprise for everybody. I think they had some issues over time of product consistency. Electricity really, the quality of electricity dictates -- one of the things that dictates the quality of the product that you produce, no question about it, because of the crystallographic form when you do electrolysis. There are other issues. I like to say that we are the best, even if my competitor is beside me. But for the product itself, electricity is key. And since in South Africa they have a huge problem of electricity, their product was not consistent. It created some issues. That's one of the reasons they shut down.

COMMISSIONER WILLIAMSON: So that means basically the power grid in South Africa is not adequate?

MR. HELOU: Actually, when you go to South

Africa you can see clearly that the grid has issues, as well as also Internet. In this area, they are really working very hard to improve, and they will. South Africans made miracles all their lives. But in this particular case, you can see that their grid has problems.

COMMISSIONER WILLIAMSON: How many times can you move equipment? If they move equipment from Australia to South Africa, how likely is it that somebody is going to move it back?

MR. HELOU: In a plant, in an EMD plant, what we call equipment has nothing to do with what GM calls equipment. Those are not sophisticated robotics that paint or put together a car. Those are mostly containers, huge casseroles made of steel, very thick steel, pumps, lines. It is why it is not a problem to move. The only technology, real technology part is in the reduction of the product, the process of reduction from MNO2 to MNO. This one is truly technology, but this one is easily because you can take it as is and put it somewhere else. The rest are casseroles, huge casseroles.

COMMISSIONER WILLIAMSON: Huge what?

MR. HELOU: Casseroles.

COMMISSIONER WILLIAMSON: For cooking, okay.

MR. HELOU: It's a casserole. I remember the first time I went to visit the plant, the process engineer

was talking to me about an issue, and it was like hmm, all right, and then he showed it to me, and I said wait a minute, you have been talking half an hour about a thickener technology, and this is a damn casserole.

COMMISSIONER WILLIAMSON: Thank you. Got you.

MR. HELOU: It's easier.

COMMISSIONER WILLIAMSON: To what extent did GSP -- I don't know how much you're familiar with the tariff references for the products that were coming in from South Africa. Do you know whether they were getting duty-free treatment either because of GSP or AGOA, African Growth and Opportunity Act?

MR. HELOU: To my knowledge, they were not different than anybody else, to my knowledge.

COMMISSIONER WILLIAMSON: What I was trying to do is -- the GSP program, I think, is suspended. I was trying to figure out, is this a factor in, say, maybe a customer switching? Clearly, with Australia and the free trade agreement, you get duty-free treatment there, and the 4 percent tariff still matters.

MR. LEVY: We will check that out and be sure to address it clearly in our posthearing submission.

COMMISSIONER WILLIAMSON: Thank you. Let's see. Mesa Minerals, to what extent is your argument concerning Australia based on significant EMD exports to the U.S. by

Mesa? And particularly given this is a pretty modest operation, I understand.

MR. MANLEY: Mesa Minerals, they have a proprietary process for making EMD. The point of the fact is that they have not turned this into a commercial operation, but they are located in Australia. And my point is, if there is -- if Australia is open to ship to the United States and sell EMD without antidumping, there is certainly plenty of reason for someone to invest in Mesa to basically make their process a reality.

COMMISSIONER WILLIAMSON: By making it, you mean -- I assume you mean scaling it up?

MR. MANLEY: Yes.

COMMISSIONER WILLIAMSON: How long would it take to scale that up?

MR. MANLEY: To me, it's going to be a similar overall total operation to what we've done in China and what they've done in Australia in the past. What I don't know is the -- really, the proprietary side of the process. So I can't speak to that. But overall, we should be talking between 16 and 24 months to have an operation.

COMMISSIONER WILLIAMSON: If Mesa doesn't happen but Delta comes back online, is that one set of arguments -- that Mesa and Delta both happen, I assume that has a stronger case, and what happens if Mesa happens and

Delta doesn't, is there any difference in your argument in those three hypotheticals?

MR. MANLEY: Realistically, I guess it depends on the size. If Delta were to start up their operation, their brownfield operation, certainly, they've got the expertise from the past operation. And we know that when they do it, they do it big. So I can't say exactly what Mesa would do, but I would expect that Delta would come in with a large operation that could significantly impact the domestic producers. It's a little tough for me to say whether or not Mesa --

COMMISSIOER WILLIAMSON: You may want to address that posthearing. You keep referring to brownfield and Delta. I looked up brownfield on the Internet. It seems to say often there are environmental issues that need to be cleaned up. When you're using brownfield with regarding to the Delta operation, are you just taking about they have a facility there or something else involved there?

MR. MANLEY: So Delta Australia is a former -- is the former location of their EMD operation. So that's -- the site's still there. I think some of the buildings are actually still there. It's a brownfield location --

COMMISSIOER WILLIAMSON: Brownfield meaning what, that stuff is there?

MR. MANLEY: It's a previous operation, previous site for manufacture with some structures still there. Greenfield would be, you know, when you go with brand-new property and you've got to improve the whole property site just to put your structures in place and your process.

COMMISSIONER WILLIAMSON: Your point by saying brownfield is that it's going to be quicker than for greenfield?

MR. MANLEY: Yes, because it's already developed for manufacturing operation, yes, sir.

COMMISSIONER WILLIAMSON: Okay. I understand. Thank you.

CHAIRMAN BROADBENT: Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Chairman Broadbent.

I would also like to thank today's witnesses for appearing here today. I've been learning quite a bit about battery production over the past year, first of all with EMD, and also last year Cassidy Levy Kent brought an investigation on battery steel. So I'm learning quite a bit on that subject.

For purposes of no discernible adverse impact, doesn't statutory provision fit Australia's circumstances, after all, since 2008 Australia has had no industry, no production, and no imports?

MR. LEVY: Thank you, Commissioner. Let me try to answer that and, perhaps, follow up more in our posthearing submission.

Insofar as there have been no imports since the imposition of the order, you know, I think it's important to recognize that the reason there are no imports since the imposition of the order is that the investigation itself was, in our view, a key determinant of the decision to cease production in Australia and that but for the continuation of the antidumping order, we would see a reversal of behavior and a resumption of production.

We have given you facts that we think make it more likely than not that there will be a resumption of production in Australia for shipment to the United States under a fact pattern where the order against Australia is revoked but the order against China continued. It is not a certainty, and it is admittedly a closer call than China.

And I think that the Commission recognizes that, and that's why we're here in a full review and not an expedited review. We've given you the facts as we know them. We've given you sworn testimony of our witnesses. And it's ultimately your responsibility to exercise your best judgment on these facts. The best judgment of the businesspeople before you is that it is likely, not certain, that there will be a resumption of production in

Australia for shipment to the United States. The Commerce Department has already determined that should shipments resume, they would be dumped at a rate of roughly 83 percent. So those are the facts as we have them.

We will give you a more elaborate response in posthearing submission, but admittedly, this is a hard case to look at. There's no clear precedent where this is exactly this fact pattern has come up. But you've never had quite these facts before. And we will talk a little bit about how this case, we think, is qualitatively different than the solid urea case, from the brass sheet case. It's a closer call but one that we think warrants an affirmative finding.

COMMISSIONER JOHANSON: Thank you for your response. You have noted in your brief that Australia -- that in Australia the key structure for making EMD, apart from plant and equipment, remains intact, and that is at page 26 of your brief. Do you all know what the status is of plant and equipment in Australia? I know you've mentioned there's a possibility of plant and equipment being brought in from South Africa. Do you know what current status is of plant and equipment in Australia as of notice?

MR. LEVY: So we don't have full information on this point. We do know that Delta owns the site in

Australia, that it has been for sale for some time. Mr. Manley has testified that he understands some of the buildings and the related infrastructure is still there. If there is any, we will call it, manufacturing equipment still residing in Australia, our best intelligence is that it does not reside on-site, that it would be somewhere in a warehouse. We just don't know the extent of that or the extent to which it's been repatriated to South Africa. With that said, it's very important to note that the South African plant is now ceasing production, and it has EMD assets that are waiting for a home. So we think it's more than mere speculation to connect the dots when the record shows that for substantially less than $10 billion one could have all the ingredients necessary to resume production in Australia.

COMMISSIONER JOHANSON: Could you all, please, address whether there are producers in Australia other than Delta that would likely be in a position to export significant volumes to the United States within a reasonably foreseeable time?

MR. MANLEY: So Mason Minerals certainly has the expertise to produce EMD in Australia. They are not on the market. They are not making it commercially. But it's our view that they've basically got the technology to produce EMD. They have their own process to produce EMD. And

revoking the antidumping duties to Australia would certainly be some advantage to Mesa than looking for investors to get into the U.S. market. But they do not have a commercial operation.

MR. LEVY: Mr. Helou also alluded to the fact that TOSO, or maybe it was Mr. Manley, TOSO is a possible interested investor or purchaser of these assets. So it wouldn't necessarily have to be, separate from Mesa Minerals, it wouldn't have to be Delta that restarts the operation in Australia. It could be, say, TOSO, who has operations in Japan and Greece, that would look to buy those assets and exploit them. Obviously, TOSO has the expertise to pull this off in short order. I don't know the details. Maybe Mr. Helou can comment, but what is the electricity landscape for TOSO in Japan, and to what extent is that a factor here?

MR. HELOU: Yes. When the earthquake occurred in Japan, a lot of Japanese companies came to the United States and talked to you frankly saying they have a mandate, internal mandate that requires them to try to be a part of American companies and European companies, up to 25 percent stake in them, to allow them to start building. Just in case another earthquake occurs, companies would survive by having outside-of-Japan presence.

In the specific case of EMD, EMD, the biggest

ingredient is really electricity. Japan has decided to discontinue nuclear electricity, and therefore, their production of electricity is going down. TOSO specifically, to be able to save the company, went into the development of what we call CMD instead of EMD. CMD is chemical manganese. Because then he does not need to do electrolysis. So electrolysis really is a very important factor, and something like getting the assets at a very cheap price from Delta in South Africa, moving them into Australia to make it in Australia will give him certainly a business advantage because now he has electricity that he can rely on that is not scarce, as difficult as Japan, but at the same time, he has also access to manganese ore that is high quality and so on.

So the risk to go to Australia and make product in Australia, I think personally that it is real, not only from the Australian side but also from other companies that would go into Australia to be able to fill the gaps that they have.

COMMISSIONER JOHANSON: Mr. Manley, you spoke of this other entity in Australia which has the technological capacity to start producing this product EMD.

Do you have an estimation as to how long it would take them to start actually producing the product? They would have to build a plant; is that correct?

MR. MANLEY: Yes, yes, they would have to build a plant. If they were to use an existing brownfield site, for example Delta's old site, that would reduce some of the timeline, I would say. But my experience inside of Erachem, we've built a plant from the greenfield, and we did it in 16 months. We were able to produce 12,000 metric tons, roughly 13,000 short tons within 16 months and then a very short expansion to full capacity after that. So I would definitely put the timeline at under 24 months and possible at 16 months.

COMMISSIONER JOHANSON: Thank you for your responses.

My time has expired.

CHAIRMAN BROADBENT: Mr. Kieff?

COMMISSIONER KIEFF: Thank you very much, to my chairman and colleagues. Great questions.

And thank you very much to the witnesses and the attorneys. Very helpful to have the presentation.

I was especially struck by Mr. Helou's reference to the cultural handicap of language, having been told as a kid by East Coast grandparents that I spoke Chicago talk, cultural dialect. But I also recognize that in the field of law, having trained in engineering and science, that's another cultural handicap and, of course, have long enjoyed work with batteries from that life, focused actually in

disordered materials. So it's one of to hear about the science and the business of this enterprise.

I guess the first kind of science business-type question that I wanted to ask is to help me understand broader context. When you pull this material out of the ground, do you mine it or make it typically with others? Is it common to co-mine or coproduce? Whoever might know the answer, if you happen to know the answer.

I will tell you the reason I'm asking. I'm trying to understand what the thinking probably is in a country like China for offering product in the world market at such a high margin, because commerce has, in fact, found a very high margin. I'm curious, is it, as alluded to in the opening statement, employment opportunity, or is it a byproduct of a business arrangement in which multiple products are mined or sold, and then you're simply left with a lot of manganese, you figure at that point you might as well dump it on the world market? What is the thinking of a dumper, if you will?

MR. MANLEY: In China, there are actually some integrated companies which are manganese mining, but their focus is on the end product. In this case it could be EMD or electrolytic manganese metal. So yes, the mining is primarily for the manganese content, and it goes into the downstream processes for either an EMD or a manganese

metal. And that's just an example.

COMMISSIONER KIEFF: For example, would a mining operation be physically collocated for manganese next to or with a mining operation for other products?

MR. MANLEY: Not in my experience, no.

COMMISSIONER KIEFF: Okay.

MR. MANLEY: They mine MNO2 ore in China and a manganese carbonate ore in China. For example, in Gabon where Comilog mines MNO2 ore, it's purely a manganese deposit, and it's --

COMMISSIONER KIEFF: Okay. Let me ask, then, and for the follow-up in the posthearing if anyone can provide more information that would be great. I don't want to belabor that question. But if I could move to another business-type question, in effect the business cycle of this product.

I was struck by your chart number 2, which goes from '90 roughly to the future -- sorry, to present, 1990 moving forward, this comparison with your chart number 1, which roughly begins at the end of the '90s, the '00s and '01 time frame. I was noticing, if I'm understanding these charts correctly, that in effect there is a big increase in manganese dioxide coming from Australia and then a big increase in manganese dioxide coming from China. Put differently, time 1, Australia; time 2, China.

And I wonder whether the sequencing as shown in your charts should inform our thinking about the likelihood of Australia coming back online soon. So you've talked a lot about how expensive it is to make a facility ready to hit the market, and you've talked about the time lag, and you've -- in a very helpful way, Mr. Levy, talked about how those factors alone make this a tougher case, and it's always helpful when a counsel doesn't overclaim. So it's very helpful that you've pointed out that there is really a difference to the way we might think about Australia from China.

But I'm wondering, in the posthearing brief, if you could tie together the thinking about the time frame between chart 2 and chart 1 and how that, combined with the overall delay to enter the market, if one decided to in Australia, combined with the overall capital investment to enter the fact, if one decided to in Australia, and if you could just talk about whether in effect the combination of those things would provide a disincentive for somebody in Australia to themselves choose to enter the market and ramp up production or somebody outside of Australia, like for example in Japan, to buy, lease, or joint venture with someone in Australia to do the same. Because I take it your point about Australia depends upon the magnitude of that disincentive being low.

Is that about right, in my understanding of the argument?

MR. LEVY: First of all, I very much appreciate the question, and we will elaborate in our posthearing submission. We will be able to answer it, I think, in a more vivid way by reference to proprietary data on the record in the original period of investigation so you can see the difference between the volumes and the sources.

With that said, I want to be perfectly clear. The business incentive to invest in Australian production and ship to the United States only exists, in our view, in an environment where the order is continued as to Australia.

COMMISSIONER KIEFF: And I get that point. But that's also why I'm struck -- again, in the posthearing, you might talk about this. I'm struck by the discontinuity in the graph on Exhibit 2 around the 2002 to 2004 time frame, which is roughly consistent with the increase in shipments from China on chart 1, which at least it could suggest that, roughly speaking, the decision to ramp up in Australia was made at a time when China was off the board, and when China entered the field, Australia backed off quite a bit. And the presence of, tomorrow, China when Australia has to start not from a high-level hum, but a absolute quiescence could be a very different, to use a

chemical jargon, activation energy needed to enter that market.

So if you could talk about why -- in the posthearing, if you could talk about why that activation energy is either lower than it might seem by looking at this chart or why whatever it is it is, it still doesn't present a sufficiently high likelihood of disincentive.

Then just a couple follow-up legal questions. So if you could help us understand, given some of the differences we've been highlighting between Australia and China, do those pose a fundamental obstacle to cumulation? In other words, are they, in the language of our practice here, fundamentally different conditions of competition?

And then the last question is, taking everything you've given us as good and true, and we have no reason not to, it still is incomplete. We don't have, you don't have, a lot of evidence about what is happening in Australia, and none of us could have great evidence about what would happen in Australia.

So the question is, if we have a duty to base our decisions in a factual record, how do we base a decision to continue an order in Australia in a record that's unfortunately not very full about that component of the decision? And in the posthearing is a perfect opportunity for all of that. There's lots of opportunities

to debate the metaphysics. We will leave that alone.

And I will just pass the baton on to Commissioner Schmidtlein. Thank you.

COMMISSIONER SCHMIDTLEIN: Thank you very much, and I want to thank the witnesses as well for appearing here today. It's very interesting.

I, too, am struggling with what to do with Australia. I guess to follow up on Commissioner Kieff's last point, one of my questions was with regard to adverse inferences.

And I think this is really for Mr. Levy. I personally am troubled by the lack of participation by foreign producers and/or importers, you know, not just in this case but in other cases as well.

So sort of along the lines of what Commissioner Kieff was asking, what exactly are you proposing that we do with regard to adverse inferences? In other words, are you suggesting that we would -- and I'm guessing I may know your answer, but I would like to hear you discuss a little bit, that there is enough evidence in the record to continue the order against Australia, but if we're concerned about that, we could draw an adverse inference against Australia and find that the likelihood that they would, you know, ramp up their production and come back in the market if the order was revoked? Is that what you're

suggesting, or is it something -- what exactly are you proposing?

MR. LEVY: I very much appreciate the question. It's worth noting that out of all the foreign producer questionnaires sent out to China and Australia, only one was answered, and it was the affiliate of Erachem in China. Delta Australia still exists. It responded and provided some information to staff, self-serving, we would maintain, but importantly didn't answer the questionnaire.

COMMISSIONER SCHMIDTLEIN: And it bothers me. They are there; they could have answered it.

MR. LEVY: And there are questions in the questionnaire anticipated changes in operations in the event the order is revoked. Convenient enough not to even notice the question, much less answer it.

COMMISSIONER SCHMIDTLEIN: Right.

MR. LEVY: So it's clear under the statute that while you have to consider the record as a whole, you're also authorized to apply adverse inferences when a foreign producer hasn't been forthcoming.

This Commission is more reticent than the Department of Commerce in exercising that authority. But I would argue that in a case like this where Australia, if I were in your shoes, based on the facts in front of you, Australia is a close call as to the likelihood of

recurrence of shipments that would cause material injury in the foreseeable future. If you see it as a close call, the fact that you've had noncooperation after doing a full review -- remember, you could have expedited this, but you wanted a full review to develop a full record to deal with the Australia issue principally. After having spent another year on a full investigation and Delta has chosen not to cooperate, as far as I can see it, that should be the tie breaker and that should inform your decision about what inferences to make from these facts, because the evidence you have in front of you is sworn testimony from two industry witnesses that has gone unrebutted in this proceeding.

So that would be our position, and thank you for the question.

COMMISSIONER SCHMIDTLEIN: Thank you for your explanation.

Sort of along those lines, let me ask you a little bit more now about the facts. You've painted a picture of Australia where they have abundance of manganese ore, they have cheap electricity, there is a brownfield site there right now. So my question is, you know, given this sort of ideal situation for them to produce EMD, why aren't they producing EMD? Why are they a net importer of EMD when you look at the staff report? Are there no other

markets they could compete in, no other markets they could export to, given that it seems you're saying they have a potential competitive advantage in the combination of the location of the natural resource and, you know, the electricity?

MR. LEVY: The Staff report or the prehearing report describes an oversupply price war in the global marketplace, principally driven by Chinese production. And China is present in all markets around the world, but is importantly closed off from certain markets where trade remedies are in effect.

The economic opportunity to produce and sell out of Australia exists only in an environment where you can operate in a market, and Australia has no home market to speak of. There's no battery production in Australia. The only way it becomes economic is if they have the ability to sell into a market that is shielded from dumped imports from China. So obviously, if they sell into China, there's no competing with Xiangtan. If they sell into Korea there's no competing with Xiangtan. If they sell into Thailand, there's no competing with the Chinese.

COMMISSIONER SCHMIDTLEIN: Europe?

MR. LEVY: Europe? Maybe Mr. Manley can comment on the European market.

MR. MANLEY: So in Europe, you have TOSO

supplying EMD in Europe.

COMMISSIONER SCHMIDTLEIN: Is there an order on China in Europe?

MR. LEVY: No.

MR. MANLEY: No. We actually have for our Chinese site been qualified in some European operation.

For me, the picture is clear. It's the U.S. market that would support the Australian operation. The Australian operation will have to go in and globally compete somewhere where China is existing, Chinese EMD is existing, unless they can get into the United States where the Chinese order is continued and the Australian order is removed.

COMMISSIONER SCHMIDTLEIN: Thank you. How should we factor in the fact that nonsubject imports are going down here? In terms of when you're looking at the global marketplace and you're deciding and Australia is trying to decide whether to come back in, and yes, okay, so China, there's a discipline on the Chinese trade here, but when you look what's happening with nonsubject imports, they're at any time seeming to gain market share, nor is their volume increasing over the time period. So does that suggest that -- I mean, how should we factor that in to trying to figure the incentive for the Australians to come back into this market and the idea that purchasers -- that

you are arguing purchasers have a lot of market power, but that's juxtaposed against the fact that nonsubjects are not gaining? So wouldn't the purchasers be -- in other words, if price is really going to drive all of this and the Australians are going to come back in and take out sales from the domestics, why isn't that happening with nonsubjects now where purchasers have so much market power? How does that relate to Delta or anyone else's decision in Australia to ramp back up?

MR. LEVY: When you set aside Delta for a minute and you look at the other nonsubject producers, their existence and the business case for their establishment was not predicated primarily on U.S. market supply. They are available to supply U.S. market demand where the price is right. So we've seen historically Delta South Africa, TOSO, and other suppliers qualified in the U.S. market and supplying U.S. demand to varying degrees over time. But the business case for their existence relies primarily on other markets.

What you have right now is a situation where demand is off compared to the original period of investigation. U.S. producers are still not maxed out in terms of capacity utilization. And I think what you are trying to get at is what's the constraint. Why can't the purchasers leverage nonsubject imports as sort of a hammer

to beat down U.S. prices the way they succeeded during the original investigation by leveraging Chinese and Australian imports.

I think what you heard in the testimony, certainly Mr. Helou spoke to this, the difference is these other suppliers are fundamentally constrained by the economics of EMD manufacturing. Selling systematically below their cost of production is not a sustainable way to proceed. And so the TOSOs of the world are not in the business of producing to lose money. By contrast, what the Department of Commerce found was significant margins of dumping from not only China but Australia. And when you think about the market economy methodology for dumping analysis, the margin of dumping calculated for Australia is quite extraordinary. Usually, those margins are reserved only for nonmarket economies. So what you had, regardless of the ITC's healthy skepticism for the way the Commerce Department measures dumping, the fact remains, is that what the Australians and the Chinese were doing was selling below cost in a very injurious way, and that certainly played itself out in terms of the pervasive underselling.

When you talk about a Quintal in Colombia that is perfectly happy to put its toe in the U.S. market, or TOSO, that's willing to ramp up production to meet incremental demand in the United States, whether from Japan

or from Greece if it needed to or Cegasa in Spain or any number of different would-be suppliers, the difference there has been, and the testimony is, that their prices are nondumped prices. And so it's a healthy competition and one that the Duracell and Energizers of the world cannot exploit to the same degree. Because fundamentally, they have the same cost structure as Erachem and Tronox.

COMMISSIONER SCHMIDTLEIN: Thank you. My time is up.

CHAIRMAN BROADBENT: I'm trying to get a handle on the difference between the lithium battery -- EMD produced for lithium batteries and for zinc batteries and how that -- how the demand for that is in this market versus the production in China. And I'm a little confused here, as you can tell by my question, sort of the different segments and the different types of EMD. It's lithium EMD for use in lithium batteries, or is there an alkaline grade and a zinc chloride grade? Can someone describe to me the major --

MR. HELOU: I did not quite get your question. What you are asking --

CHAIRMAN BROADBENT: In the U.S. market, how much of your production goes to the different types of batteries? What are the percentages? Do you only produce for alkaline batteries?

MR. HELOU: Primarily, yes. We are trying to develop others. We sell a certain amount for what we call spinel, lithium-manganese oxide, that is used in cars. If you buy a Volt, there is a mixture inside the battery of the Volt of what we called layered material, nickel-manganese-cobalt and LMO. The reason being the first Volt when it it came out from GM plant, it burned. So they had to add LMO to make it safer. So we have -- those sales are very small. We sell also to European companies because they require a certain physical characteristic, not only electrochemical characteristics that we really can provide.

So is what we produce 100 percent for alkaline batteries? No. It is probably 97 percent to alkaline batteries and the rest is not. But we are not in the zinc-alkaline business. I personally have not seen it. I never worked with it. I know that it's an inferior product, absolutely. I know that to make it it's a totally different processes and the cheaper processes. But I cannot answer you specifically on the difference between the two. But what we produce and what the American customer requires are lithiated EMD or alkaline EMD.

CHAIRMAN BROADBENT: You would agree, your market is primarily for alkaline?

MR. MANLEY: Yes, roughly 99 percent of ECI New

Johnsonville's market is alkaline-grade EMD.

CHAIRMAN BROADBENT: Okay. And then what is the capacity in China as you all understand it, and how much of that is dedicated to the zinc batteries versus the alkaline batteries?

MR. MANLEY: I don't have the exact figure in mind for the total capacity, but it's well over 200,000 -- I'm going to speak in metric tons, I'm sorry, but well over 200,000 metric tons capacity, and roughly half is alkaline.

CHAIRMAN BROADBENT: Then the other is the zinc, which doesn't compete?

MR. MANLEY: The other is zinc-carbon, but the excess -- over half of the excess exists in the alkaline-grade EMD, the excess capacity.

CHAIRMAN BROADBENT: Okay.

MR. LEVY: Mr. Manley, can you just clarify? To the extent you have zinc-carbon EMD production capacity in China and you have a market opportunity for alkaline-grade EMD, what is required to tweak your production process to produce one versus another?

MR. MANLEY: Yeah, so as Carlos had mentioned, the zinc-carbon-grade EMD is a lower-quality EMD. It has a different -- it's less specific in terms of impurities. You don't have to purify the manganese as much. It is very loose in terms of electrochemical requirements, performance

testing. It just doesn't exist at the same level as the alkaline-grade EMD. The production rates of zinc-carbon are inflated over the production rates of EMD because of the plating rate. The quality and performance of EMD is affected at how fast you plate it. And zinc-carbon can be plated at significantly higher rates than EMD.

So generally speaking, a plant can be transformed from a zinc-carbon plant to an alkaline plant, but it's -- and really, the technology is straightforward. The steps that have to be taken to go from zinc-carbon to alkaline is straightforward for the folks who are currently operating zinc-carbon EMD plants. But it's definitely a change. They have to make change in their plant to increase the performance and the purity levels to an EMD for alkaline grade.

CHAIRMAN BROADBENT: Do the witnesses have concerns, and should we take into account in our determination here that there is a lot of U.S. battery production migrating offshore?

MR. HELOU: As I told you, I'm cofounder and board member of NAATBatt. We created NAATBatt -- national alliance, is to specifically say that. Actually the first document that NAATBatt wrote was a letter that I wrote to President Obama at that time, who was a senator in Illinois.

CHAIRMAN BROADBENT: And it's called National -- I couldn't hear you.

MR. HELOU: National Alliance for Advanced Technology Batteries. In this letter what I told Senator Obama is we are looking for energy independence, to shift our dependence from the Middle East to Asia because we don't have battery manufacturing in the U.S. Actually, the problem is even more compounded because sometimes even in our national labs where we have our -- truly mined, and that we as taxpayers we really subsidize, sometimes technologists come out. They need to license the technology. There is no American company that can be licensed to, and therefore, the license goes to a German company or Japanese company.

So yes, that is a concern, and I agree with you that we have a lot of battery manufacturing for rechargeable batteries that is really foreign. I can tell you we as the United States of America, other than Tronox, there is nobody that makes cathode material, manganese-based, in the United States. I work a lot with the Department of Energy. We discussed it and so on. And that's also a concern. So yes, there is a concern.

CHAIRMAN BROADBENT: Okay. This is a question for the posthearing brief. I'm hoping that you can compare this case to the May 2011 Commission review on purified

carbomethyl cellulose from Finland and Mexico and Netherlands and Sweden. Specifically, I'm interested in how you compare the Commission's analysis of no discernible adverse impact. If that's been asked already, I apologize.

I think I don't have more questions right now.

So Commissioner Pinkert, Vice Chairman Pinkert?

VICE CHAIRMAN PINKERT: Thank you, Madam Chairman.

Just a couple of quick follow-up questions. First of all, I mentioned the determination that we made in the investigation regarding the closure of the Australian plant in 2008. In the investigation opinion, we mentioned the possibility that if the situation on the ground changed in Australia, that parties could seek a changed circumstances review to try to get revocation of the order. And I'm wondering, aren't we presented here with the kind of changed circumstances that we were implicitly referencing when we made that statement in the opinion?

MR. LEVY: Well, I think it's important to note, of course, that no party has requested a changed circumstance, and the Australian producer that was the respondent in the original investigation has elected not to cooperate with your investigation by answering your foreign producer questionnaire.

So you are faced with what Commissioner Kieff

characterizes as an incomplete record. And the only evidence put before you is the self-serving information that Delta chose to supply, as recited accurately in the prehearing report, and the sworn testimony of these witnesses in their questionnaire responses. We think that that evidence warrants a careful review on your part. If you were to have a CCR, a changed circumstances review, it doesn't speak the result. Similarly, here, we have a full sunset review. You need to look at these data with a cold eye and think through this question because it is fairly novel. And I think we've been quite candid in saying we think it's a closer call than China for sure. But we think that at the end of the day, when you consider the record evidence, when you consider the noncooperation of the Australian foreign producer, the evidence counsels in favor of continuation of the order.

VICE CHAIRMAN PINKERT: Thank you. What impact will there likely be in the U.S. market from Delta's plan to close its South African facility?

MR. HELOU: Honestly, nothing, because we have capacity. If you look at the -- Energizer has closed a major plant in Maryville. By closing Maryville in 2014, he reduced his demand to about 10,000 tons. The total capacity that was imported from South Africa into the U.S. was about 11,600. So the shortage on the American soil

from closure of the Delta plant in South Africa is 1,600 tons. 1,600 tons is three times what I need to fill capacity. The same way with Erachem. So it is not an issue. It was really completely transparent.

MR. MANLEY: And I can add, during the time, Erachem New Johnsonville has expanded their capacity by over 11,000 short tons during the same time period.

VICE CHAIRMAN PINKERT: Thank you very much. I have no further questions at this time.

CHAIRMAN BROADBENT: Commissioner Williamson?

COMMISSIOER WILLIAMSON: I have no further questions. I want to thank the panel for their answers.

CHAIRMAN BROADBENT: Mr. Johanson?

COMMISSIONER JOHANSON: To what extent will Telsa construction of a battery factory in Nevada impact Tronox's operations or the operations of other U.S. EMD producers?

MR. HELOU: To our knowledge today, manganese-based material does not go into the manufacturing of their operation in Tesla, battery material. Tronox makes it and it is not through manganese base. So we don't see any impact on Tronox. I personally have approached Tesla and we are looking at storage. They have decided not to build storage. But at the moment, your answer is no, there is no impact.

COMMISSIONER JOHANSON: Out of curiosity, why is Tronox located in Henderson, Nevada? Is there something about Nevada that makes it appropriate for battery construction or inputs for battery construction?

MR. HELOU: What is very unique in Nevada is the fact that every customer we have likes to bring quality audits in December, January, and February because of the weather in Las Vegas.

Besides that, Henderson started as a military plant built by the Army during the Second World War to make magnesium bombs, magnesium-based bombs. They had in their mind it was supposed to produce for 10 years those bombs, but the plant came on board very quickly and the production was so high that in six months they had the inventory they needed. So they decided to sell it. At that time Kerr-McGee came and bought it from the Army, and this is where the transformation occurred, and this is why it is there.

For us, it's an advantage because of the Hoover Dam. It's also a disadvantage because our customers are on the East Coast and we are on the West Coast. So we gain a lot for electricity. We lose a little bit through shipment. But that's why we are in Henderson.

COMMISSIONER JOHANSON: So electricity is, indeed, less expensive in Nevada?

MR. HELOU: Yes, with the Hoover Dam. The site where Henderson is is a part of a consortium of companies that have really preferential price due to the consumption of huge amount of electricity. It's really amazing how low it is, and it helps.

COMMISSIONER JOHANSON: All right. Thank you. I've actually been to Hoover Dam and saw the generators. It's pretty impressive.

MR. HELOU: It's a marvel of engineering, absolutely.

COMMISSIONER JOHANSON: You spoke of the plant in China that took 16 months to set up and start operating. Is it safe to assume, however, in the regulatory environment of Australia, it would take longer for a plant to come back online due to regulatory factors?

MR. MANLEY: No, I'm not so sure that's 100 percent accurate assumption. Erachem is a global company, and we have -- we certainly go through all of the requirements that we would typically go through anywhere in the world. We don't necessarily operate differently in China just because China has different regulations than, let's say, Europe or the U.S. So we had a full process of installing that plant with environmental factors considered in, safety factors, so on and so forth. Plus the fact that -- I think, what Jack had presented earlier, that we

saw in Australia back in 2003 the quick ramp-up -- or I'm sorry, '89, the quick ramp-up of operation in the past.

So I think it's quite reasonable that in less than 24 months you could have an operating site on the brownfield location.

COMMISSIONER JOHANSON: Thank you for your responses. I have no further questions.

CHAIRMAN BROADBENT: Commissioner Kieff?

COMMISSIONER KIEFF: Maybe a follow-up, if I may. Can you tell us a little bit more about why you chose to interact with China over Australia when you, Erachem, built your relationship with an entity in China? I mean, in other words, we've heard a lot today about how wonderfully attractive the Australia situation is. Presumably, that's not because of something brand-new. So why China?

MR. MANLEY: I certainly would be glad to answer the question, but perhaps we can do it in posthearing brief?

COMMISSIONER KIEFF: Absolutely, whichever way is convenient for you. Maybe another question for the posthearing is to help us better understand why other firms -- and I know, of course, you each are limited to your own enterprises, as appropriate. But to the extent you have either analysis or facts that might help us to

understand why, for example, TOSO has so far also passed up the opportunity to invest in Australia, this is kind of a version of the question I was asking -- one of the questions I was asking in the last round, which is why have U.S. firms, or non-U.S. but nonAustralian firms, not licensed the great technology that the Australian firm Delta has patented. It's patented technology. You can read about it. And why have U.S. firms and other non-U.S. but nonAustralian firms not somehow bought access to Australian production or Australian mining? Again, the posthearing is a perfectly fine place to handle that.

That concludes my questions. Thank you all very much. It was all very helpful.

CHAIRMAN BROADBENT: Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: I just had one question to follow up. The two charts which Commissioner Kieff asked about, we see that Australia was in the market for many, many years, right, prior? And it's a little bit hard to compare them since the scale is different. But my question is, it looks like to me that, you know, prior to when China came into the market, apparently Australia was competing fairly. Would you agree with that?

MR. LEVY: I think the view of Tronox's predecessor, Kerr-McGee, is that Australia was dumping at the time. What happened was China became a major factor in

the marketplace around 2003, and essentially caused Australia to be evermore aggressive in competing with the Chinese to protect its foothold in the U.S. market. And what we saw during the period of investigation in this case was kind of a back and forth between China and Australia in terms of who was going to get that volume. But they were both very active participants in annual contract negotiations, sort of one undercutting the other. But it wasn't like one was on and the other was off. They were both very much competing head to head with one another. So I think to answer your question, the intensity of Australian competition was greatly magnified once China was a factor in the marketplace. It isn't to say that Australia was entirely benign before then, because certainly there was a petition alleging dumping. But clearly, the magnitude of the problem escalated once Chinese product entered the marketplace.

COMMISSIONER SCHMIDTLEIN: And so my follow-up question is, why would we assume that Australia would come back and dump its product if we then continued the order on China but not Australia?

MR. LEVY: That's a great question. I think the answer under the statute is that, as a matter of law, you have to defer to the agency that made that determination, the Department of Commerce, that if Australian shipments

were to resume, they would resume dumping at a calculated margin. So I appreciate that this Commission has a healthy degree of skepticism for the Department of Commerce's methodologies, but as a matter of law, you must take their findings as they are.

COMMISSIONER SCHMIDTLEIN: All right. I have no further questions. Thank you.

CHAIRMAN BROADBENT: Okay. Mr. Manley, how much do you produce in China, does your affiliate produce there?

MR. MANLEY: We produce 24,000 metric tons in China.

CHAIRMAN BROADBENT: Is much of that exported?

MR. MANLEY: Yes. We export roughly 25 percent.

CHAIRMAN BROADBENT: And how do your prices compare, U.S. versus those exports?

MR. MANLEY: Prices in the U.S. are higher than the prices we get for our Chinese EMD.

CHAIRMAN BROADBENT: Okay. Where do you mostly sell that?

MR. MANLEY: The Chinese EMD?

CHAIRMAN BROADBENT: Yes.

MR. MANLEY: A lot of it in China. Roughly -- the figures I'm giving you are rough. But three quarters of it is in China, and the remaining is in Korea, some Europe, Thailand.

CHAIRMAN BROADBENT: Okay. All right. Let's see. I don't have any further questions. Anybody else?

Oh, you do, Vice Chairman Pinkert. Sorry.

VICE CHAIRMAN PINKERT: Mr. Zielinski will appreciate this. I was just perusing the statute, an area that the Commerce Department is frequently active on the adverse inferences. In order to apply an adverse interest, it seems to me that you have to be dealing with the failure of an interested party to comply with requests for information to the best of its ability. Is the Australian former producer an interested party within the meaning of the statute?

MR. LEVY: We will elaborate on that question in our posthearing submission. But I think the facts are clear that they received a questionnaire as a foreign producer during the period of review. They were a foreign producer during the period of review. They were there for an interested party for purposes of this review, even if not -- if you had a different hypothetical period of review, you may hypothetically have a different answer. But under these facts, under this period of review, they were a producer during the period of review. They were an interested party for purposes of this period of review. And they made a decision to thumb their nose at this Commission and not answer the questionnaire and not answer

key questions like what's the likely impact of the revocation of the order. And we think that under those facts, the statute empowers you to make adverse inferences.

Commissioner Pinkert, I think you raised an interesting hypothetical, but fortunately for us, as U.S. producers, we don't have to wrestle with that under these facts. Thank you, though.

VICE CHAIRMAN PINKERT: My question was really on the legal side. I'm taking the facts as you have just stated them regarding the noncooperation. And my question is focused on whether we have noncooperation by an interested party within the meaning of the statute, just to be very clear about it.

MR. LEVY: And we would be happy to address that in our posthearing submission.

VICE CHAIRMAN PINKERT: Thank you very much.

Thank you, Madam Chairman.

CHAIRMAN BROADBENT: No further questions.

If the commissioners have no further questions, does the Staff have any questions for this panel?

MR. MC CLURE: Thank you, Madam Chairman. Jim McClure, office of investigations. Staff has no questions, and a thank you to the folks who came in and spent their time with us.

CHAIRMAN BROADBENT: All right. Let's see. So

with that, we will have closing statements. Those in support of continuation of the orders have five minutes for closing.

CLOSING REMARKS BY JACK A. LEVY

MR. LEVY: So ordinarily, I would use my closing remarks for a de facto rebuttal. But of course, as we are well aware, there's no one on the other side here and nothing to respond to. So I'm not going to take much more of your time. I do want to thank the Staff for their diligence in preparing the prehearing report. They've done their usual competent job in that regard, and we really do appreciate their time and effort. This is an unusual case in that you received adequate responses from the U.S. industry and no one else. Despite that, we've gone through the time and work of a full review, and with the exception of Erachem's Chinese affiliate, no foreign producer has elected to fully cooperate and answer your questionnaire. And so I do think, to the extent you are wrestling with the Australia question, I would urge you to reflect on the fact that the evidence before you is you have sworn testimony from two industry witnesses, and that has gone unrebutted, and that is the making of the foreign producers and their unwillingness to cooperate. So to the extent the Australian question is a tough question, and it is, we think that this is the kind of case where adverse

inferences would be warranted. And we will address that more elaborately in our posthearing submission, but we really do appreciate your consideration of these important issues, and obviously, it is an existential question for the producers sitting here to my left. Obviously, you want to consider the record as a whole, but the fact is that the foreign producers have created major gaps in the record. When you go about the business of considering what is likely in terms of subject imports, please appreciate that you are making a decision that goes to the very existence of U.S. manufacturing and U.S. workers in an industry that, despite some recent challenges, has a promising future and is one worth cultivating.

So thank you again for your time. As always, it's a pleasure.

CHAIRMAN BROADBENT: Thank you again. And I want to express the Commission's appreciation to everyone who took time out of their schedules to be with us here.

Your closing statements, posthearing brief statements, responses to questions and requests of the Commission and corrections to the transcript must be filed by October 28, 2014. Closing of the record and final release of data to the parties will be on November 20th, 2014. Final comments are due on November 24th, 2014. And with that, this hearing is adjourned. Thank you.

(Whereupon, at 12:08 p.m., the hearing was concluded.)

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Electrolytic Manganese Dioxide from Australia and China

INVESTIGATION NOS.: 731-TA-1124 and 1125 (Review)

HEARING DATE: 10-21-2014

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

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

DATE: 10-21-2014

SIGNED: Mark A. Jagan

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I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings 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 proceedings.

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