UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	**) Investigation Nos.:**
SILICOMANGANESE FROM CHINA	**) 731-TA-672-673**
AND UKRAINE	**) (FOURTH REVIEW)**

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UNITED STATES OF AMERICA

BEFORE THE

INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation Nos.:
SILICOMANGANESE FROM CHINA) 731-TA-672-673
AND UKRAINE) (FOURTH REVIEW)

Main Hearing Room (Room 101)
U.S. International Trade Commission
500 E Street, SW
Washington, DC
Tuesday, September 25, 2018

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

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

Chairman David S. Johanson (presiding)

Commissioner Rhonda K. Schmidtlein

Commissioner Irving A. Williamson

Commissioner Meredith M. Broadbent

Commissioner Jason E. Kearns

Staff:

William R. Bishop, Supervisory Hearings and Information Officer

Tyrell Burch, Program Support Specialist

Sharon Bellamy, Records Management Specialist

Julie Duffy, Investigator

David Guberman, International Trade Analyst

Emily Burke, International Economist

Charles Yost, Accountant/Auditor

Patrick Gallagher, Attorney/Advisor

Douglas Corkran, Supervisory Investigator

APPEARANCES:

Embassy Appearance:

The Embassy of the Ukraine

Washington, DC

Nataliya Sydoruk, Director General of the Trade Protection Department of the Ministry of Economic Development and Trade

Olena Yushchuk, Head of the Protection on Foreign Markets Unit, Trade Protection Department of the Ministry of Economic Development and Trade of Ukraine

Pavlo Moiseichenko, First Secretary of the Embassy

Timur Baudarbekov, Second Secretary of the Embassy

Opening Remarks:

In Support of Continuation of Orders (Mary Jane Alves, Cassidy Levy Kent (USA) LLP)

In Opposition to Continuation of Orders (Kristin H. Mowry, Mowry & Grimson, PLLC)

APPEARANCES:

In Support of the Continuation of Antidumping and Duty Orders:

Cassidy Levy Kent (USA) LLP

Washington, DC

on behalf of

Eramet Marietta, Inc. ("Eramet Marietta")

Peter Rochussen, Vice President, Eramet Comilog Manganese

Nicholas Fell, Counsel-Americas, Eramet North America

Dan Thieman, Representative, USW Local 0639

Holly Hart, Assistant to the President, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

Mary Jane Alves, Myles Getlan and Jack Levy - Of Counsel

APPEARANCES:

In Opposition to the Continuation of Antidumping Duty Orders:

Mowry & Grimson, PLLC
Washington, DC
on behalf of
Nikopol Ferroalloy Plant ("NFP")
Zaporozhye Ferroalloy Plant ("ZFP")
Katerina Vatutina, General Consultant of ZFP and NFP
Denys Sysuyev, Consultant of ZFP
Kristin H. Mowry - Of Counsel

Ilyashev & Partners Law Firm
Kyiv, Ukraine
on behalf of
Ukrainian Association of Producers of Ferroalloys and other Electrometallurgy Products
Sergii Kudriavtsev, Executive Director, Ukrainian Association of Producers of Ferroalloys and other Electrometallurgy Products
Olena Omelchenko - Of Counsel

APPEARANCES:

Rebuttal/Closing Remarks:

In Support of Continuation of Orders (Jack Levy, Cassidy Levy Kent (USA) LLP)

In Opposition to Continuation of Orders (Kristin H. Mowry, Mowry & Grimson, PLLC)

I N D E X

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P R O C E E D I N G S

(9:32 a.m.)

MR. BISHOP: Will the room please come to order.

CHAIRMAN JOHANSON: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-672 and 673 Fourth Review involving silicone manganese from China and Ukraine.

The purpose of this review is to determine whether revocation of the antidumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

Schedule setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do no place testimony directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony.

I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary. Speakers are reminded not to refer in their remarks or answers to questions to business proprietary information. Please speak clearly into the microphone and state your name for the record and for the benefit of the court reporter.

If you will be submitting documents that contain information you wish classified as business confidential your request should comply with Commission Rule 201.6. Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Mr. Chairman, I would like to note that all witnesses for today's hearing have been sworn in. There are no other preliminary matters.

CHARIMAN JOHANSON: Very well. Will you please announce our Embassy Witnesses?

MR. BISHOP: Our Embassy appearances today are from the Embassy of the Ukraine and include Nataliya Sydoruk Director General of the Trade Protection Department of the Ministry of Economic Development and Trade; Olena Yushchuk Head of the Protection on Foreign Markets Unit, Trade Protection Department of the Ministry of Economic Development and Trade of Ukraine Pavlo Moiseichenko First Secretary of the Embassy and Timur Baudarbekov Second Secretary of the Embassy.

CHAIRMAN JOHANSON: You may begin.

STATEMENT OF OLENA YUSHCHUK

MS. YUSHCHUK: Good morning Chairman, Commissioners and Members of Staff. I'm a representative of the Ministry of Economic Development and Trade of Ukraine.

My name is Olena Yushchuk. I would like to thank you for this opportunity to speak about this case on silicomanganese from China and the Ukraine.

As a representative of the Government of Ukraine I would like to bring to your attention some key points of the case which are of crucial importance for the objective consideration of the situation in Ukraine. Referencing the case documents we can say that these particular points weren't completely clarified.

First, the significant change in the status of the Ukrainian economy as a whole and the silicomanganese industry in particular should be taken into consideration in this case. We would like to emphasize that antidumping measures on silicomanganese from Ukraine was imposed back in 1994 and does not reflect the current situation and U.S. Market and even the world market of silicomanganese.

The dumping margin was originally calculated on the basis of prejudicial non-market economy methodology. This methodology is no longer applicable or used by the Department of Commerce with respect to Ukraine because Ukraine was granted "Market Economy Status" in 2006.

The market status is not only used for the purpose of dumping margin calculation but it also strongly confirms that as of today Ukrainian producers are operating on the basis of market principal. It means that all decisions regarding production and distribution are guided by price signals created by the forces of supply and demand.

These particular indicators are the primary basis for assessment of potential behavior of any foreign company under consideration for the purpose of recurrence of injury in the framework of antidumping review.

Along with this a number of changes in the U.S.' approach to conducting the antidumping investigation took place since the beginning of the 1990's, including for instance cessation of using by the U.S. of zeroing methodology in calculation of antidumping margin. The 163 percent antidumping margin based on calculations made in early 1990's effectively reduced to zero imports to the U.S. of silicomanganese from Ukraine.

Only in 2015 Ukraine exported 22 short tons of subject product to the U.S. In this situation, assessment of likelihood of recurrence of material injury in the reasonably foreseeable time caused by hypothetical export supplies from Ukraine to the U.S. should be done in a very comprehensive and deep manner.

One of the most important aspects of such an assessment should be the decision not to cumulate Ukraine with China for the purpose of injury analysis. Our opposition is based on the above-mentioned and will be confirmed by factual information further explained in this testimony.

The second important point that we would like to draw your attention to is that today Ukraine's industry of silicomanganese represented only by two operating mills: Nikopol Ferroalloy Plant and Zaporozhye Ferroalloy Plant which are fully cooperating in this case.

It is well-known that the Ukrainian Economy has been affected by the long-term armed aggression of the Russian Federation in certain areas of the Donetsk and Luhansk regions of Ukraine as well as occupation of Crimea. Considerable part of the production facilities of Ukrainian industries, especially the metallurgical and ferroalloy is concentrated in the occupied territories which affected the Ukrainian capacity of production, cost of production and export potential.

Indeed, due to armed aggression by the Russian Federation, Ukraine has lost control over the Ukrainian Producer of ferroalloys, the Stakhanovsk Ferro-Allow Work, which is located in the part of the Lugansk region that is temporarily not controlled by the Ukrainian Government.

Law of Ukraine No. 2268 on Peculiarities of State Policy on Ensuring State Sovereignty of Ukraine in the temporarily occupied territory in Donetsk and Lugansk regions, dated January 18, 2018, regulates special relations with occupied territories. According to the mentioned Law, temporarily occupied territories in Donetsk and Lugansk regions are defined as parts of territory of Ukraine over which armed formations of the Russian Federation and occupation administration of Russian Federation have established and are maintaining their control.

The Government of Ukraine has identified according to Resolution No. 1085 of November 7, 2014 a list of communities (cities, towns, villages) over which Ukrainian public authorities temporarily do not exercise powers. The cities where Stakhanovsk Ferro-Alloy Work is located named Kadiivka is included in the mentioned place.

Along with this, by the decree of the President of the Ukraine No. 62-2107, dated March 15, 2017 the decision of National Security and Defense Council of Ukraine on Urgent Additional Measures to Counter Hybrid Threats to the National Security of the Ukraine was enacted. According to the decision the movement of goods through the collision line within the Donetsk and Luvansk regions has been stopped. Exceptions were made only for humanitarian goods.

Furthermore, according to The State Fiscal Service of the Ukraine, the very last customs clearance of export operation was made by Stakhanovsk Ferro-Alloy Work on July 18, 2014 and its last payment of taxes and fees to the Ukraine was recorded in January of 2015.

We emphasize that it should be taken into consideration that the Ukraine has lost a significant part of its production facilities which in turn resulted in production decrease of silicomanganese in Ukraine by 17 percent during 2014 and 2015.

Accordingly, allegation of the U.S. Producer that the Commission should consider production capacities of Stakhanovsk Ferro-Alloy Work in this review is incorrect. Ukraine does not have control over territories where Stakhanovsk Ferro-Alloy Work is located and does not have information on its activity. Therefore, its production facilities capacities should not be cumulated with those of Nikopol Ferroalloy Plant and Zaporozhye Ferro Plant.

Our next point is about general situation with the export of the Ukrainian silicomanganese. Indicators of Ukrainian export of the subject product during 2013 and 2017 testify to constant high level of demand for Ukrainian silicomanganese on the foreign market other than U.S.

In 2015, due to the loss of Stakhanovsk Ferro-Alloy Work, exports of the Subject Product from the Ukraine decreased significantly. The other two Ukrainian producers filled in the share of Stakhanovsk Ferro-Alloy Work by operating at almost maximum capacity.

Priority markets for Ukrainian exporters Asian Countries and European Countries which due to geographical proximity are the most convenient for deliveries from Ukraine. It's important to mention that since 2015 Ukrainian products have been exported to markets of the EU Countries under the terms of the Association agreement that established deep and comprehensive free trade area between Ukraine and the European Union.

Such a new condition of market access for Ukrainian products to the EU resulted in significant increase in Ukrainian Export to the EU Countries. Obviously the European market became the most favorable and convenient for Ukrainian exporters given the access conditions and geographical proximity.

Finalizing our testimony, we would like to emphasize the following: Described situation in the Ukrainian Industry is of long-term character and therefore it is unlikely that Ukraine would increase its production and export to such an amount that it would result in recurrence of material injury to the U.S. silicomanganese industry.

Due to the excessive antidumping duty Ukraine has not been among the suppliers to the U.S. for a long time. The Ukrainian side believes that one hundred and sixty-three percent antidumping duty is not intended to correct competition in the U.S. Market but rather aimed to prohibit Ukrainian export to the U.S. which does not comply with the

WTO principles and rules of antidumping measures application.

Therefore, we kindly request that the U.S. International Trade Commission take into account current reality in the Ukraine as the situation in the Ukrainian Economy has changed dramatically and such a change is of a long-term character.

We also respectfully ask that the Commission to decide on declining of cumulation of the Subject Imports from Ukraine and China. For the reasons set forth herein the U.S. International Trade Commission should determine that revocation of the antidumping duty order for silicomanganese from Ukraine will not lead to continuation or recurrence of material injury within a reasonably foreseeable time. Thank you for your attention.

MR. BISHOP: We thank you so much for joining us this morning, and we release you with our thanks.

CHAIRMAN JOHANSON: Actually before we do that, do any Commissioners have questions for this panel? Okay, none do. Thank you for appearing here today. We appreciate it.

MR. BISHOP: We will now proceed with opening remarks. Opening remarks on behalf of those in support of continuation of the orders will be given by Mary Jane Alves of Cassidy, Levy Kent. Ms. Alves, you have five minutes.

OPENING STATEMENT OF MARY JANE ALVES

MS. ALVES: Thank you. Good morning, Mr. Chairman, Commissioners. My name is Mary Jane Alves of Cassidy Levy Kent. We represent Eramet Marietta, an Ohio-based producer of Silicomanganese, and the successor to the Petitioner Elken. Our panel this morning will explain why revoking orders on Silicomanganese from China and Ukraine will lead to the continuation or recurrence of material injury to the domestic industry.

As an initial matter, the Commission should exercise its discretion to cumulate imports from both China and Ukraine. If the orders are revoked, imports from China and Ukraine each will have a significant, not just discernible impact that's adverse to the domestic industry. And although both industries are impeding this investigation through their failure to answer your questionnaires, the record shows no significant differences in the likely conditions of competition for imports from China and Ukraine.

Both countries have large industries that have substantial unused capacity that increased their U.S. imports in the original investigations, that export to a variety of markets, and that will compete based on price.

Let's first talk about China. As the largest global producer of silicomanganese, the Chinese industry has the ability and will export a significant volume to the United States if the order is revoked. U.S. imports from China surged during the original investigations, and undersold the domestic like product. They even continued with the U.S. market presence after the anti-dumping duty orders were imposed.

The U.S. market was attractive to the Chinese industry in the original investigations, and is attractive today. The United States is the largest global importer of silicomanganese, and prices are high relative to other markets. Which is why numerous non-subject countries supply this market.

Now let's turn to Ukraine. As the third largest global producer, the Ukrainian industry also has the ability and will export a significant volume to the United States if the order is revoked. Its imports surged during the original investigations, and undersold the domestic like product. It continued to export to the United States under the suspension agreement and order.

The two Ukrainian producers that are participating in these reviews collectively export to many countries, sometimes jumping from one market to the next, especially after their exports become subject to third country orders. The third Ukranian producer, Stakhanovsk, is resuming production, and the Commission must consider

Stakhanovsk part of the Ukrainian industry.

The Ukrainian industry has demonstrated its interest in this market, has existing channels of distribution, and as noted, the U.S. market is attractive. If the orders are revoked, competition between the likely significant volume of subject imports and the domestic industry will be price-based.

The record reflects that silicomanganese made in the United States, China and Ukraine is highly substitutable, and that products from all three sources are comparable for all factors related to purchasing decisions. While the Ukrainian suggests that its silicomanganese will not be desirable due to its high phosphorous content, let us not forget they also sell standard grade silicomanganese.

Moreover, the U.S. market also consumes increasing amounts of high phosphorous products. Price continues to be important in purchasing decisions. Purchasers usually buy the lowest-priced product and will adjust their purchasing decisions for price reasons. Spot market prices are rapidly disseminated through the industry publication such as Ryan's Notes, meaning that a very small spot market transaction can have immediate and massive effects on published spot prices. That also affects annual contracts, where the contract price adjusts based on these published spot prices.

If the order is revoked, subject imports will again undersell the domestic like product. The domestic industry then will have to lower its prices or lose sales, and lower prices will affect its ability to cover its costs and in turn profitability. The record shows that the domestic industry is vulnerable, particularly given the volatility of raw material prices and other market indicators.

But notwithstanding this vulnerability, the domestic industry has just made significant new investments to comply with new environmental regulations. As our witnesses will explain, they cannot expect to earn a return on those important investments if the orders are revoked.

If the orders are removed, the likely significant volume of subject imports will undersell the domestic like product, depress and suppress prices, and otherwise adversely impact the domestic industry. We need these orders to continue. Thank you.

MR. BISHOP: Thank you, Ms. Alves. Opening remarks on behalf of those in opposition to continuation of the orders will be given by Kristin H. Mowry and Mowry and Grimson. Ms. Mowry, you have five minutes.

OPENING STATEMENT OF KRISTIN MOWRY

MS. MOWRY: Thank you. Good morning Commissioners. I'm Kristin Mowry of Mowry and Grimson on behalf of Ukrainian silicomanganese producers Nikopol Ferroalloy plant and Zaporozhye Ferroalloy plant. I'd like to start, if you'll indulge me, by taking you back to 1994.

For those of us in the trade community, obviously the biggest event was the creation of NAFTA, the world leaders of the time were Bill Clinton, Boris Yeltsin, John Major, Helmut Kohl, Francois Mitterrand, a completely different era. Nelson Mandela was elected the first black president of South Africa. Many of us watched helicopter footage of a certain white Ford Bronco on the LA freeway, as O.J. Simpson tried to allude the police.

Schindler's List swept the Oscars. Whitney Houston swept the Grammies. Troy Aikman led the Dallas Cowboys to a Super Bowl win and if you don't remember who won the World Series that year, it's because the players were on strike and they cancelled the series. What was still to come?

Two years until the DVD was invented. Five years until the Dow Jones broke 10,000. Eleven years until we welcomed our beloved Washington Nationals and 13 years until we got the iPhone. Here we are 24 years later, the domestic industry has been protected all this time, and Ukrainian silicomanganese producers have been effectively shut out of the U.S. market. Now that the Commission has the opportunity to reevaluate that decision, we urge you to take the following factors into consideration.

First, the Commission must decumulate imports from Ukraine and China in its examination of the impact of likely imports, and when it does so, must find that the anti-dumping order on imports of silicomanganese from Ukraine should be revoked. The Chinese are not here today, and have not provided information to the Commission in this proceeding. By contrast, there is ample evidence from Ukrainian exporters.

Product difference is an important consideration of conditions of competition in determining whether or not to cumulate imports in the sunset review. There is no question that silicomanganese from Ukraine differs significantly from silicomanganese from China.

Second, once the Commission looks at Ukrainian imports separately, it will see that Ukrainian exporters' responses regarding their production of high phosphorous product is undisputed, and it will see that the record is clear that domestic consumption of high phosphorous product as a percent of total domestic consumption is, shall we say, minimal.

The differences in product characteristics between the U.S. and Ukrainian silicomanganese confirm the lack of any injurious overlap of competition, supporting revocation of the order with respect to Ukraine. Ukrainian imports definitively would not compete with the domestic like product if the order were lifted, and in any event would be in volumes that have no discernible adverse impact on the domestic industry.

You will hear today from industry experts that will explain far better than I can why the phosphorous level is so determinative, both in terms of ASTM standards and in terms of the end use of steel product into which the silicomanganese is introduced.

American steel-making companies use -- produce high quality steel grades for car manufacturing, shipbuilding, oil and gas pipes, among other products, and in the production of high quality steel American manufacturers must use silicomanganese within the ASTM grades, which have a limit on the content of phosphorous of less than 0.2 percent.

The Ukrainian producers produce silicomanganese with a high content of phosphorous because both companies use local Ukrainian manganese ore, which is one of the main raw materials, with a high content of phosphorous of more than 0.25, and often as high as .50 or .60.

It's clear that the phosphorous content is an important factor in purchasing decisions. Nine of the 16 responding purchasers responded that phosphorous content is a very important factor when they're making a purchasing decision. So it's pretty simple. The United States consumes and produces silicomanganese with a low content of phosphorous. The domestic silicomanganese and Ukrainian product are wholly distinct.

Because the two products are distinct, they are operating in unique market segments, and the Ukrainian product cannot reasonably be regarded as having a negative impact on domestic industry.

On the other hand, revocation of the order on Ukraine is not likely to lead to a significant volume of silicomanganese in the domestic market, because there are minimal imports. They're too small to have an impact on U.S. industry. Moreover, if the order is revoked, there is no evidence that there would be significant price effects.

Finally, contrary to the Petitioners' argument, the current Ukrainian silicomanganese industry bears no relation to the industry back in 1994, when the investigation was conducted. The order against Ukrainian silicomanganese imports was issued against an industry that does not exist anymore.

These two companies are private companies with private shareholders. The privatization has transformed the industry into a market-driven, competitive and efficient industry that produces and sells silicomanganese at a market price. Even though the production is slightly in favor of exports, these producers also have a healthy home market in addition to long-standing commercial relationships throughout the world.

Finally, we should remember that Ukraine has long been recognized as --

CHAIRMAN JOHANSON: Ms. Mowry, your time has expired.

MS. MOWRY: Thank you. You should revoke the order as regards to the Ukraine. Thank you.

MR. BISHOP: Thank you, Ms. Mowry. Would the panel in support of the continuation of the orders please come forward and be seated? Mr. Chairman, this panel has 60 minutes for their direct testimony.

(Pause.)

CHAIRMAN JOHANSON: You may begin.

MS. ALVES: Good morning again. We, as I mentioned earlier, have a phenomenal panel of witnesses assembled for you. We'd like to proceed to first start with the presentation from Mr. Peter Rochussen.

STATEMENT OF PETER ROCHUSSEN

MR. ROCHUSSEN: Good morning Chairman and Commissioners and staff. My name is Peter Rochussen. I'm the Vice President of Eramet Comilog Manganese, a subsidiary or Eramet Marietta, and handles its sales. I have 25 years of industry experience and I'm responsible for sales and marketing of the silicomanganese manufactured in Marietta, Ohio.

I am here representing Eramet Marietta and our employees. We are asking that the orders on silicomanganese from China and Ukraine continue, because without them, low-priced imports would resume and severely harm our company and our plant workers. This morning, I will explain why silicomanganese is a commodity product, and I will try to help you make sense of all these terms that are being used, like standard grade, high grade or high cost.

I will also explain why dumped pricing even in small volumes can have enormously negative impact on our operations. Eramet produces silicomanganese at our plant in Marietta, Ohio. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron. Silicomanganese is used as a source of both silicon and manganese units for steel manufacturing, particularly in steel long products such as bar, rod, beams and rails, and to a lesser extent in steel flat-rolled products.

Thus, the demand for our products mostly depends on the demand for long steel products that are made in the United States. Silicomanganese is a commodity. While each steel mill has its own proprietary specifications and may engage in blending, most silicomanganese sold in the U.S. market is a standard grade. Sometimes referred to as ASTM

Grade B, this generally contains 65 to 68 percent manganese and about 17 percent of silicon. Typical phosphorous levels for standard grade silicomanganese is .2 percent.

Some silicomanganese sold to is referred as high grade, simply because it has a higher level of contained manganese, about 72 percent. This high grade silicomanganese also has phosphorous levels that are higher than the .2 percent levels that are typically found in the standard grade silicomanganese product.

High grade silicomanganese with higher phosphorous levels is manufactured in both Georgia and Ukraine. In recent years, we have seen more and more imports of silicomanganese from Georgia into the U.S. market, while imports from Ukraine have been held in check due to the anti-dumping order. I am aware of the arguments from the Ukrainian producers which focuses on the production of high phos product.

My first point would be that the Ukrainians also produce a standard grade silicomanganese product and export it to other markets. In fact just yesterday, I received a report that our group in Europe had lost a sales opportunity in the Middle East. I understand that the sale was lost to Ukrainian producers, and the product that had been offered was a standard grade silicomanganese.

The high grade product also competes directly with the standard Grade B silicomanganese product. The degree of interest by silicomanganese purchasers in high manganese and high phosphorous material varies across the market. This interest is driven by a combination of price and the technical flexibility of the steel producer.

While some steel mills are not interested in purchasing silicomanganese with higher phosphorous levels, many are increasingly willing to purchase higher phosphorous silicomanganese, particularly because it allows them to acquire additional manganese units at a discount. At the right price, they are willing to change their steel production recipe to use silicomanganese with higher phosphorous level, or blend it with lower phosphorous silicomanganese.

Remember, they are just looking for a cheap source of manganese and silicon units for their steel production process. Over the years, we have even seen steel producers change the phosphorous tolerance in their requests for proposals to allow for higher phosphorous levels. The last time that I have testified before many of you, the Commission found that high grade silicomanganese and standard ASTM Grade B silicomanganese can be used interchangeably for a significant proportion of applications. Every year that seems to be increasingly the case.

Just as high phosphorous silicomanganese competes in the U.S. market, it also competes in the global market. If the orders go away, Ukrainian producers will offer their products here, and purchasers will buy their low-priced products regardless of whether they are offering a standard grade silicomanganese or high grade high phosphorous silicomanganese.

The Ukrainians already are competing aggressively for sales to steel manufacturers in Europe and elsewhere, so there is no reason to believe that they won't direct silicomanganese to the higher-priced U.S. market if the orders are revoked.

As noted, silicomanganese is a commodity product. Nobody cares where it is made. We compete in the U.S. market against other domestic producer, Felman, and against imports from a number of different countries. The U.S. market is typically higher priced than other markets. But even in the U.S. market, competition is based on price.

Purchasers just want a low price, and they will switch suppliers or reduce their purchase volumes from us if they can get a lower price elsewhere. There are typically two forms of sales in this market, spot sales and contracts. Spot sales typically involve a fixed price that is based on negotiations between the producers or importer and the purchaser, and these are informed by available market intelligence, include import values, published price indexes and other communications.

Groups such as CRU Ryan's Notes, Platt's Metals Week and American Metal Market publish an index of prices of individual spot transactions that they track. Low-priced imports limit Eramet's ability to compete for these spot sales. Most of our sales are made through contracts. Our customers almost always purchase silicomanganese using the bidding prices, in which they issue a request for bid on a quarterly, semi-annual or annual basis.

They typically receive multiple bids. Bid prices are based on a formula of a discount off of published price index. The suppliers offering the largest discount or the reference price are in the strongest position to win new contracts and to grow volumes under their existing supply agreements.

Importantly, because contract prices are tied to published spot prices, even a small volume of low-priced imports sold on a spot basis can seriously erode the value of our contract sales. Let me give you an example to help you understand how import sensitive we really are. Let's say we have an annual contract for 10,000 tons of silicomanganese with a local steel mill. The price formula is a fixed discount of the prevailing spot prices, as published in CUR Ryan's Notes.

If the Chinese or Ukrainians were to import even a small say 100 ton volume of product for a spot transaction at a low price, it would get published in CRU Ryan's Notes, and the price for our entire 10,000 contracts would be automatically reduced. The Commission asked in its questionnaire about how the Section 232 steel action has affected conditions of competition for silicomanganese.

We expected to see a substantial increase in demand for domestically produced steel long products, and in turn silicomanganese. But through the summer, we have seen limited improvement from a volume perspective. Our raw material inputs such as manganese ore and silicon are commodity products. Like demand by U.S. steel producers for silicomanganese, prices of our raw materials are also unpredictable.

Ordinarily, we would expect raw material price trends to be reflected at some level in our selling prices. We need to be able to price at levels that cover our costs such as for these raw materials. Low-priced imports would prevent us from being able to do so.

The silicomanganese industries in China and Ukraine have enormous production operations and significant unused capacity. The United States is the single largest country importer of silicomanganese in the world, and U.S. prices are higher than in other markets. If the orders on

China and Ukraine are revoked, we will immediately see increased availability of low-priced silicomanganese from these countries and downward pressure on prices.

We have witnessed what happens when increasing volume of dumped silicomanganese imports have entered the U.S. market, and how quickly prices deteriorated until orders were put in place. If we do not lower our prices, we will lose the sale, which will result in lower shipments and revenues, reduce production and capacity utilization, job losses and an inability to make investments in equipment and research and development.

When market conditions are favorable, Eramet has been able to generate profits on its silicomanganese business. But low-priced imports can have an immediate and devastating effect on domestic prices and profitability. In a market with fairly traded imports we can compete, and we are willing to compete. We have been able to be profitable in the U.S. market even while competing against imports from a number of non-subject countries.

We ask the Commission to keep the orders on China and Ukraine in place, so that we can continue to compete fairly in the U.S. market. Thank you.

MS. ALVES: Thank you, Peter. We now turn to Mr. Nicholas Fell.

STATEMENT OF NICHOLAS FELL

MR. FELL: Good morning. My name is Nicholas Fell. I am Corporate Counsel for Eramet in North America.

I know it may seem a little unusual that a company lawyer is testifying before you tody, but I have been directly involved in company decision making around plant employment and environmental compliance, as well as investment decisions at the plant.

I can tell you that from my own experience that the continuation of these antidumping orders has been an important consideration that has supported the decision to reinvest and modernize the plant over the past two years.

Eramet's plant in Marietta is one of the largest industrial employers in Washington County, Ohio, which is part of the Appalachian Region. The plant dates back to the 1950s. The Eramet Group purchased the plant from Elken Metals in 1999. Elken was the petitioner in the original investigations.

Since that time, Eramet has devoted substantial capital to upgrade and modernize our silicomanganese operations and to invest in our workforce. We take the safety of our workers very seriously, and I am proud to say that we have not had a lost-time injury in more than three years.

As you may be aware, the U.S. Environmental Protection Agency, or EPA, established new rules on emissions at silicomanganese and ferromanganese production facilities, called the National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production or "NESHAP."

Pursuant to the final rule issued in June 2015, and extension from the Ohio authorities, the deadline for compliance is the end of this calendar year.

We have had to commit significant capital in order to meet these new NESHAP environmental standards. Given the millions of dollars needed, I attended meetings where the company discussed whether it even made sense to undertake these expenditures. It was a difficult decision. Eramet Marietta ultimately decided to make these investments based on the assumption that the orders on imports from China and Ukraine would stay in place.

In order to complete the investments, achieve a reasonable payback period, and make new investments, we are counting on a level, competitive playing field which these orders help maintain.

Commissioner Broadbent and her aide, Mr. Carlson, visited our plant with two members of the investigative team. They saw first-hand the additional equipment that we have installed to meet the new environmental rules. All of the work that Eramet Marietta has done and is continuing to do to comply with these new environmental regulations, however, would be severely at risk if you issue a negative determination. Revoking the Orders would undermine our investments and jeopardize U.S. jobs.

After the Commission announced that it would be conducting full reviews of the Orders on China and Ukraine, I reached out to Felman's counsel to see if they would be participating. As some of you know, we have worked together with Felman in prior silicomanganese proceedings. To my surprise and disappointment, Felman's counsel reported that Felman would be seeking to maintain the Order on imports from China only.

Given the amount of investments that we have made to our facility to comply with NESHAP, Felman must also need stable market conditions in order to recoup their own investments. It is difficult to imagine how in West Virginia they decided to support only continuing the Order on imports from China and not Ukraine.

I want to echo Peter's request. We ask the Commission to vote to continue the antidumping orders on silicomanganese imports from China and Ukraine in order to avoid the continuation or recurrence of material injury to the domestic industry producing silicomanganese. Thank you.

MS. ALVES: Thank you, Nick. We now turn to Daniel Thieman.

STATEMENT OF DANIEL THIEMAN

MR. THIEMAN: Good morning. My name is Dan Thieman and I am one of the representatives of Eramet's Bargaining Unit. I am here on behalf of the United Steelworkers and my co-workers at the plant who have so much at risk depending on how the Commission votes in this case.

I have been working at Eramet in Marietta, Ohio, since 1988. I am currently a crusher operator. I have operated a number of other equipment throughout my time at Eramet Marietta, including cranes, furnaces, and mobile equipment.

Our workers maintain and operate the furnace, transformers, conveyor belts, electrical substation, mix house, tracks, and loaders. We test the products during production and afterwards, and we help to install new equipment. We keep Eramet's silicomanganese production facilities running around the clock every day throughout the year.

We have a solid working relationship with management and have done our best over the years to meet our needs and theirs in order to continue operations. In November of 2017, members of our Local Chapter 0639 of the United Steelworkers worked with management on a new contract for our 110 workers.

We restructured the contract in order to maximize efficiencies of the process and the flexibility of the workforce. In turn, management agreed to pay us more and to give us higher benefits. Our benefits include medical and dental insurance for us and our families, as well as short-term disability.

This is important for our workers, their families, and the entire Marietta/Parkersburg, West Virginia, area. In our area, good-paying jobs like these are hard to find. Several large, local employers have closed in the last five years. Our plant and its workforce are important to the surrounding community, which would be devastated by job losses.

Please keep the Orders because we cannot afford to lose these good jobs. There are only so many job opportunities in our area of Ohio, and our families are depending upon a successful outcome in this case. Thank you.

MS. ALVES: Thank you, Dan. That brings us to our final witness, Holly Hart.

STATEMENT OF HOLLY HART

MS. HART: Good morning. My name is Holly Hart. I am the Assistant to the President of the United Steelworkers Union, or the USW.

We are the successor to the union that joined with Elken to file the petitions in the original investigations. As you know, the Steelworkers and their

850,000 members are employed in a wide range of industries. We have consistently opposed foreign companies that get an unfair advantage over American industries and their workers by the violation of U.S. and international trade rules.

So I am here on behalf of all of USW's members producing silicomanganese at Elken's successor, Eramet Marietta and at Felman Production. I want to underscore the need to continue the antidumping duty orders on silicomanganese from both China and the Ukraine.

USW has approximately 110 members, as you've heard, at our Local Union 0369 [sic] at Eramet's facility in Ohio. Together with management, they negotiated a new contract in November last year that increased workers' wages, benefits, and productivity. And in parts of this country, such as Eramet's Marietta, Ohio, location, it is hard to find jobs that provide that kind of economic security.

Further down the Ohio River in a county with a lot higher unemployment rate, USW also represents the workers at Felman's plant in Letart, West Virginia. As a representative of USW Local Unio9n 5171 testified a couple of years ago, between the time that Felman bought the West Virginia plant from Highlander in 2006 and the summer of 2012, Felman increased employment to over 250 workers.

The following year during a period of low silicomanganese prices, Felman shut down all silicomanganese production and laid off 155 of the 208 USW workers.

It was not until the spring of 2014 that USW workers started being called back to help restart the plant. Felman was operating with one small furnace but recently rebuilt and restarted a larger furnace and employment has risen from 74 workers to 88. Their most recent collective bargaining agreement was also non-concessionary and even included a wage increase.

So as you can see, these workers, their families, their communities, know exactly what happens when American silicomanganese producers can't get adequate prices for their products.

Commerce has already found that revoking the Orders will lead to dumped imports from China and the Ukraine. Similarly, you should find that revoking the Orders would materially injure the domestic industry and its workers.

Subject imports will return at significant volumes at low prices, taking sales or forcing Eramet and Felman to lower their prices. This will erode the domestic industry's profitability and jeopardize the employment of our skilled workers at these plants in Ohio and West Virginia.

The trade laws give workers an important voice in antidumping duty proceedings, and we ask you to give them the weight they deserve.

Please make sure that the silicomanganese products that our workers manufacture compete on a level playing field. Continuation of both Orders is necessary to support U.S. production of silicomanganese and employment of American manufacturing workers.

Thank you, very much.

MS. ALVES: Thank you, Holly. That concludes our affirmative presentation. We'd like to reserve any remaining time for our closing remarks. We welcome your questions.

CHAIRMAN JOHANSON: Thank you, Ms. Alves, and other members of the panel. We will begin Commissioner questions with Commissioner Kearns.

COMMISSIONER KEARNS: Thank you. And thank you all for appearing here today. I appreciate your testimony.

I wanted to focus on the high phosphorus arguments that Respondents have made and that you all addressed in your opening remarks. What can steelmakers produce with non-ASTM high phosphorus silicomanganese? And how much of U.S. consumption does this represent?

MR. ROCHUSSEN: From what I understand from a review of specifications that we receive periodically in requests for quotations, we've seen that high phosphorus material is specified in about 30 percent of steelmakers' requirements. That's as far as I know. Quite conceivably there would be more out there that I'm not aware of.

From what I understand, this material is used in a variety of grades of lawn product production, and also, to a limited extent, in some flex-steel products as well. The type of actual steel grade, I mean I'm not familiar with the intricacies of every single steel grade and how the phosphorus level may impact, but from a general point of view over the years we've seen that steelmakers have become far more creative in a way that can adapt to the various products which are offered on the marketplace at economically opportunistic pricing levels.

As I've mentioned in my opening statement, we've seen over the years that specification levels have been changed and evolving constantly. We've not only seen that for silicomanganese products but for other manganese alloy products as well. And this is a constant evolution in the steel industry itself, as they always strive for the lowest cost addition mix to their furnace to remain competitive in the marketplace for their own product.

COMMISSIONER KEARNS: Okay.

MR. LEVY: Commissioner Kearns, Jack Levy for Eramet Marietta. If I could just supplement, you know your question I think is a critical one, which is what portion of

U.S. consumption can absorb so-called high-phos product?

I think you've just heard from Mr. Rochussen that in his experience more than a third of steel consumers are able to purchase. But what do we see in terms of actual purchases during the Period of Review, I think is another related question.

And I think it would be helpful if we could turn to slide 8 of our exhibits, because we need not speculate on this point. Ms. Mowry testified that U.S. consumption of high-phos product is minimal, in her words, and admittedly the prehearing report doesn't fully develop this issue. But we know that the single largest source of imports into the United States is imports from Georgia. Georgia represents about 25 percent of U.S. imports.

Georgia, while they can produce both standard grade and so-called high-grade, high-phos material, what we see being imported is almost exclusively high-grade high-phos material. And by then, that's the second grade along the bottom. This is material that is about 72 percent contain manganese, and phos, in the point 2 to point 35 percent range--

COMMISSIONER WILLIAMSON: Mr. Levy, could you identify which--where this page is?

MR. LEVY: This is page 8. It's the second-to-the-last page of our prepared exhibits.

COMMISSIONER WILLIAMSON: Thank you.

MR. LEVY: And so what you see here is, this is an excerpt from the Georgia American Alloys website. And they are identifying two grades of Georgian product that are available for sale in the United States.

The first grade they're identifying is the so-called standard grade, which we're all familiar with. And the second grade they're identifying is the high-grade, high-phos material. This latter grade is essentially what the Ukranians are saying they also make, and that is so unique and almost nonexistent in the U.S. market.

And what we're telling you is, that the Georgians represent 25 percent of U.S. imports; that the Georgian product is almost exclusively high-grade, high-phos. And so one can readily discern from the proprietary record that if 25 percent of U.S. imports is high-grade, high-phos, that it must also be the case that a significant share of U.S. consumption--never mind willingness to purchase--but U.S. consumption is significantly high-grade, high-phos.

One final point, which is how do we know what's coming from Georgia isn't just standard grade? How do we know that it's all high grade? And we need not speculate. And in fact I think the staff can do this analysis, and we'll develop it in our post-hearing brief, but the official import statistics allow you to discern the contained

manganese levels for imports.
And so by reference to U.S. import statistics from Georgia, one can readily discern, aha! What's coming in from Georgia is the stuff at the bottom of the page, the high-grade, high-phos material. And indeed it is a significant portion of the U.S. market, and there is a significant overlap of competition.
So I hope that is responsive to your question.
COMMISSIONER KEARNS: It is. Thank you both.
First, though, let me just back up. Mr. Rochussen, you had mentioned in your opening, you described a high-grade product. Just to make sure I'm clear, is all high-phosphorus product high-grade product? Or is there also some high-phosphorus product that doesn't have high levels of manganese, too?
MR. ROCHUSSEN: As far as I'm aware, the high-phos and the high-manganese product go together.
COMMISSIONER KEARNS: Okay.
MR. ROCHUSSEN: So as far as I'm concerned, they're one and the same product, from my knowledge.
COMMISSIONER KEARNS: Okay, and then going back to the question I just had, so when you say "30 percent," is that an estimate of how much your purchasers are consuming of high grade? Or is it specific to particular products? In other words, they may blend more for other products, but

for certain kinds of steel products you believe that 30 percent of those kinds of products can accept high-grade phosphorus? Does that question make sense to you?

MR. ROCHUSSEN: Yes. The 30 percent is an estimate just based on my knowledge of the requests for quotations that we receive on an annual basis.

COMMISSIONER KEARNS: Okay.

MR. ROCHUSSEN: And having a look at the total of those requests which specify a high-phosphorus material compared to what we believe the total market is, that's approximately 30 percent.

COMMISSIONER KEARNS: I've got 'cha.

MR. ROCHUSSEN: Those steelmakers in turn might blend the material in some fashion once they've received it.

COMMISSIONER KEARNS: Okay. And are there some steel products where you would prefer high-grade, or at least where it doesn't matter, where you wouldn't need to blend it with a lower phosphorus product before using it?

MR. ROCHUSSEN: That almost entirely depends on the steel production process, and the flexibility that the operating personnel at the particular steel mill are willing to provide. Metallurgically there are ways to dephosphorize steels. It's just a question that comes down to the pricing of the commodity that's been offered.

COMMISSIONER KEARNS: You anticipated my next question. Respondents have asserted that the high-phosphorus silicomanganese requires steel dephosphorization during the melting process. Is this correct? And if so, how costly is it? Do you have any estimates on the cost to dephosphorize?

MR. ROCHUSSEN: I think there again it would probably vary. I'm not a metaller just by training, so bear with me here. I think it would vary significantly from steel producer to steel producer depending on the nature of their other inputs into the steel recipe--the metallics they're using, whether it's an integrated mull or an electric furnace mull; the kind of scrap they're using; the type of iron ore they're using; the type of steel grade the producer tolerates, and how the phosphorus is tolerated in their particular steel grade will determine to what extent they might have to dephosphorize during primary steelmaking operation.

So certainly it does come at a cost. I think there's no denying that. And it requires some flexibility on behalf of the steel company. But typically, as I've said, they are becoming far more creative in adapting to the availability of low-cost materials out there, to be able to produce their steel at the lowest possible cost to be able to compete in the marketplace.

MR. LEVY: Commissioner Kearns, if I could just supplement? One of the things we have seen in relation to Georgian imports is that, you know, it is also a higher contained manganese product. So there are more manganese units per gross ton. And that those manganese units are offered at essentially, at a discount. And so the question in the eyes of the purchaser, the steel mill, is: Is the cheaper manganese units, is that a sufficient savings to justify the inconvenience of tolerating the additional phos, whether it be through blending, or dephosphoring--dephosphorizing, or whatnot. Is that a fair characterization, Peter?

MR. ROCHUSSEN: That's a fair comment. The other point, I mean just to get perhaps a little more technical, if you have a look at the ratio of phosphorus to manganese in a standard product versus a high-phos product, so you're getting approximately 10 percent more manganese units in the so-called high-grade product, meaning that they have to add in less gross amount of material to achieve the same manganese unit input.

So that in turn dilutes to a certain extent the higher phosphorus level in the high-grade silicomanganese material. So you've got to take the two into account in evaluating what the impact of the phosphorus level is.

COMMISSIONER KEARNS: Just real quick to follow on to that, what about the silicon content? Does that matter? I mean if you're getting high-grade, you're getting more manganese, and I get the point you're saying about there's a tradeoff between that and the phosphorus, what about the silicon? Do we--are there certain applications where you're less concerned about the silicon content?

MR. ROCHUSSEN: That's, I can't answer offhand. I think, you know, all of the folk are using silicomanganese required, but silicone and manganese in their particular steel. If we have a look at the specifications over there, the silicone content is somewhat similar between the various grades. So certainly that would be -- I'm not sure exactly where the silicone level is in the high-grade material coming from Georgia, whether it's at the top end of the specification, or towards the bottom end.

COMMISSIONER KEARNS: I see.

MR. ROCHUSSEN: But certainly, there would be a play on that, in terms of, and again, it determines the final steel grade specification.

COMMISSIONER KEARNS: Okay. Thank you very much.

CHAIRMAN JOHANSON: According to International Manganese Institute data provided by the domestic industry, in 2016, apparent consumption of silicomanganese was greater than silicomanganese production in China. If these data are reliable and China consumes most or all of the silicomanganese that it produces and exports very little--less than 8,000 short tons in 2017--what is the basis for a claim that China would export a substantial volume of silicomanganese to the United States if antidumping orders were revoked?

MS. ALVES: Thank you, Chairman Johanson. Mary Jane Alves for Cassidy Levy Kent. There are a number of reasons why the industry in China would come to the United States.

First of all, we have seen, in the last year, an uptick in exports from China. Exports from China increased eight-fold. And they were exporting to seven different countries in 2016, and then that quadrupled to twenty-one countries in 2017.

The U.S. market prices are more attractive than the export markets where China has recently sent materials, and so therefore, they would have an incentive to send products to the United States.

In addition, they also have substantial excess capacity. That capacity would necessarily, even without having to switch markets, that capacity could easily come to the U.S. market.

MR. LEVY: Commissioner Johanson, just to follow up. If you look at some of your pink paper, confidential Exhibit A, at the top in Table A-1, is a summary of unused production capacity in China in recent years. And if you just look at, say, 2017, what is the unused capacity in China, what is that number? And then look all the way to the bottom of the page and look at total apparent U.S. consumption.

The volume of unused capacity in China for silicomanganese is many multiples of total apparent domestic consumption in United States. So I think it's very clear that, from a volume perspective, there's just an enormous volume that can penetrate the U.S. market, and given the attractive U.S. prices, would in the absence of antidumping orders.

CHAIRMAN JOHANSON: All right, thank you, Mr. Levy and Ms. Alves. Thanks for your responses. Imports of silicomanganese from Brazil were once subject to an antidumping duty order in the United States. Even after revocation of that order, imports of silicomanganese from Brazil account for less than 3% of total imports. What, if anything, does the experience of revoking the order on imports from Brazil suggest for revocation of the current orders?

MS. ALVES: Commissioner Johanson, Mary Jane Alves again. The experience that you should take from revoking the orders with respect to Brazil in the last reviews is that those imports, in fact, have increased as the Commission's record shows in Section 4 of the Report, imports from Brazil have increased between 2015 and 2017.

So, even though the respondents from Brazil told the Commission the last time that they were not really interested in supplying the U.S. market, there is still an attraction to the U.S. market, and they are here in increasing volumes, just as other producers in Ukraine and China would do if the orders were revoked with respect to them as well.

CHAIRMAN JOHANSON: But at a relatively low figure, correct?

MS. ALVES: The concern here is that, in this particular industry, a low volume can have a significant impact on pricing if those imports occur at unfair trade. As Mr. Rochussen mentioned, the impact of a small volume of imports, even 100 tons, can have an impact on the CRU Ryan's Note pricing for the market.

It will also have an impact on prices that are negotiated for annual contracts. The timing of the Commission's vote in this case is such that it's occurring right as a lot of these annual contracts are being negotiated. So it's also a concern to the industry that the timing of the case may also impact the pricing as well.

CHAIRMAN JOHANSON: As a follow-up to that question, I'd like to bring up the whole issue of nonsubject imports. Given the large volume of nonsubject imports already present in the U.S. market, why should the Commission conclude that displacement of U.S. production is likely, if one or more of the subject orders is revoked?

MR. ALVES: Chairman Johanson, two points there. First, there isn't a requirement under the statute that there be a displacement of U.S. imports. The statute is written in the disjunctive. And so you don't need to find that there's necessarily a volume effect in terms of apparent U.S. consumption and loss of market share.

Nevertheless, we do anticipate that there would be loss of market share, in addition to displacement of nonsubject imports as occurred during the original investigations. During the original investigations, imports from both China and Ukraine pummeled their way into the U.S. market. They used underselling to get that additional market share. And there's every indication that they would do the same if the orders were revoked.

CHAIRMAN JOHANSON: Okay, thanks, Ms. Alves. The record in these reviews shows that both U.S. producers directly import significant amounts of silicomanganese. And this is in the Staff Report at Page 126, 3-1 and 3-12. What explains reliance on such imports and why these products are not produced domestically?

MR. LEVY: So we'll let Mr. Rochussen take the Eramet imports and then I'll try to speak to the Felman issue as best I can from the public record.

MR. ROCHUSSEN: As far as Eramet Marietta's imports of what is classified under the same classification of silicomanganese, our group facilities in Norway produce a low-carbon silicomanganese product. This is a product with a lower manganese content, a higher silicone content, and a significantly lower carbon content, around a 0.1% carbon or lower, compared to the 2% carbon level that you see in the standard-grade silicomanganese product.

The low-carbon silicomanganese that Eramet Marietta imports and sells in the U.S. market is predominantly used for stainless steel applications. It does not compete with a standard-grade silicomanganese. And to a lesser extent, this low-carbon silicomanganese product is also used in specialty steel applications that require an extremely low carbon addition, together with the manganese and the silicone level.

So it's a completely different -- even though it's coming in at the same classification, the 7202.30, it's a completely different product that follows a totally different pricing dynamic in the marketplace, compared to the pricing dynamic of standard-grade silicomanganese.

CHAIRMAN JOHANSON: So is there, in effect, attenuated competition with the product coming in from Norway?

MR. ROCHUSSEN: I'm sorry, could you repeat?

CHAIRMAN JOHANSON: Is there, in effect, attenuated competition with the product coming in from Norway? In other words, you would say it's entirely different grade used for some distinct purposes?

MR. ROCHUSSEN: It's used for entirely different purposes. It's not competing at all with the standard silicomanganese product.

CHAIRMAN JOHANSON: Okay. And how does that carry over into the product coming in from Ukraine, which is a higher phosphorus content, and the uses of that product is for?

MR. ROCHUSSEN: I'm not sure I'm --

CHAIRMAN JOHANSON: In other words, the Ukrainian respondents contend that their product fulfills a certain demand in the market and that it's pretty clear that that is the case with the product coming from Norway. So I'm looking at different gradations of uses of silicomanganese --

MR. ROCHUSSEN: The grade that's the Georgian material has indicated over there, and which is similar to the Ukrainian material, competes directly with the standard-grade silicomanganese product that is produced by the domestic folk in the States, both Felman and Eramet. So it's an interchangeable product, which can be interchanged with a number of different carbon steel grades.

Whereas the product coming from Norway is used for a totally different steel application, stainless steel and specialty steels, as opposed to a straight carbon steel that the standard silicomanganese is used for.

CHAIRMAN JOHANSON: All right. Thanks, Mr. Rochussen. Mr. Levy, you wanted to add about Felman?

MR. LEVY: Yeah, I believe, Mr. Chairman, you also inquired about imports from the Felman Group of Companies, for lack of a better word. It is our understanding, based on the public record that there are at bottom, two Ukrainian oligarchs who indirectly or directly own and control all three of the Ukrainian silicomanganese facilities.

The Georgian silicomanganese facility, as well as the Felman production facility in West Virginia, as well as trading companies in the United States. They're involved in the distribution and marketing of silicomanganese from their various affiliates.

I think there's no question that imports from Georgia have been an important feature of the U.S. market in recent years. They've been significant and impactful in terms of the conditions of competition. And we have every reason to believe that, if the orders are revoked, these two Ukrainian oligarchs have an incentive to direct Ukrainian volume to the U.S. market where prices are highest.

CHAIRMAN JOHANSON: All right, thank you, Mr. Levy. My time has concluded. Commissioner Williamson?

COMMISSIONER WILLIAMSON: Thank you, Mr. Chairman. I, too, wanna thank all the witnesses for coming today. Just to follow up with Mr. Levy's point, Ms. Mowry had made reference to the change between '93 and now. Has there been a change in the role of oligarchs in terms of this industry? And does somebody want to describe that if there has been?

MR. LEVY: Yeah, I commend Ms. Mowry for her poetry this morning. It is true that 1994 was a long time ago, and indeed, many things in the world have changed. But some things have not changed. U.S. law has not changed. It is still the case, as the Commerce Department has found, that if the orders are --

COMMISSIONER WILLIAMSON: Without going too long, I was just curious about the role of the oligarchs, in terms of --

MR. LEVY: Well, I think that --

COMMISSIONER WILLIAMSON: So who runs the industry and --

MR. LEVY: Well, this is an issue that actually came up in the most recent review. So this is not novel, right? The Commission considered this issue in the most recent Sunset Review involving silicomanganese from Ukraine. Commissioner Pearson was alone in advocating for a theory that since these Ukrainian oligarchs who also control the so-called Provot group.

Since they own and control Ukrainian production, we need not worry, Commissioners that they will somehow harm Felman or, for that matter, the U.S. industry generally because they have no economic incentive to cannibalize their U.S. holdings. And this was Commissioner Pearson's theory or revoking as to Ukraine. And then all other Commissioners found otherwise. I would say that the vast majority of the Commissioners got it right in the last review on this point, and the same analysis applies.

Think there's one additional fact that I think even Commissioner Pearson would find persuasive on this record. And we'll be happy to develop more on this post-hearing. But around the time that the Felman production plant had a shutdown a few years ago, and we've heard that testimony, they renegotiated their electricity rate with the local utility and --

COMMISSIONER WILLIAMSON: Local utility? You mean in --

MR. LEVY: In West Virginia.

COMMISSIONER WILLIAMSON: Okay.

MR. LEVY: And based on press reports and there a description of what they were negotiating, the thrust of the new deal on electricity provides that when the market is tough and they're doing worse financially, they're gonna pay less for electricity. The flip being that when the market is better, they should be paying more for electricity.

So now, if you're the Ukrainian oligarchs and thinking, hmm, maybe I'm gonna supply more Ukrainian material into the United States, what's that gonna do for our holdings in West Virginia? Well, another factor to consider as well, now we get a discount on our electricity costs if we essentially crash U.S. market prices with Ukrainian product.

So the notion that these Ukrainian oligarchs have the best interest of U.S. production at heart, I think is belied by that fact. It's also belied by the fact that while management may be instructed not to support the order, labor is. And you've heard testimony today from the USW, saying that they want this order to continue.

COMMISSIONER WILLIAMSON: Okay, thank you. I wanna go to some other questions now. You note that subject import behavior during the original POI--I refer to that--has the U.S. industry changed since 1993? And in what ways?

MR. LEVY: Well, I think the most significant -- so the short answer is yes. In some ways, there are similarities. And as we've developed in our brief, the vulnerability of the domestic industry is in, by reference to some factors, even more vulnerable than at the time of the original affirmative vote.

But where we are today is an industry that lost money in 2015, lost money in 2016, made money in 2017, and now, speaking from Eramet's own experience, continuing to make money in 2018, but to a far lesser degree. The magnitude of Eramet's profits in 2017 was smaller than what they lost in '15 and '16, and they're barely treading water in 2018.

So this is not a domestic industry that is hitting home runs, like in the period of the original investigation. This is an industry that is very much vulnerable. I think what's special and unique at this moment in time, and why this is not an ancient order that should be somehow phased out just because it's been around a long time, you have to look at the facts in the moment. And there's no presumption of revocation just because the orders have been around.

And what's happened at this moment in time, and you've heard this testimony, is that both U.S. producers have made a decision to spend many millions of dollars to modernize their facilities and upgrade their environmental compliance. Those decisions were just made in the last two years. You heard that from Mr. Fell. They're barely eking by in terms of profitability. They need the ability to earn a return on these investments, and to be able to compete on a level playing field.

And so at this moment in time, you have a domestic industry that is reinvested in its plant, in the environment, in its workers with new contracts and higher wages, and they're at a moment in time where they have a chance to compete and win, but they're very much vulnerable.

COMMISSIONER WILLIAMSON: Thank you. Page 34 of the Petitioners' brief, they note that the industry in Ukraine does produce some Grade B product. Does the record suggest that this level of production would be discernible in the U.S. market? And that it would be directed entirely at the U.S. market? This Grade B product?

MR. ROCHUSSEN: I'm sorry? Could you rephrase the question?

COMMISSIONER WILLIAMSON: Petitioners' brief indicates that the Ukraine does produce some Grade B product. And my question is, does the record suggest that the level of production in the Ukraine of the Grade B product, would it be discernible in the U.S. market, if the order were revoked? And would that product be directed entirely at the U.S. market, or would it be going to other markets in Europe? And if you wanna think about it and address it post-hearing, that's okay.

MR. ROCHUSSEN: I'm not sure I could answer that question without further --

COMMISSIONER WILLIAMSON: Okay, that's fine. Post-hearing's fine.

MR. ROCHUSSEN: Okay.

MS. ALVES: Commissioner Williamson, if I may.

COMMISSIONER WILLIAMSON: Yes.

MS. ALVES: If you could look at -- there's an affidavit that we have attached as part of our prehearing brief -- that contains some information about the composition of Ukraine's exports to other markets. And that gives you some guidance on the fact that there are other markets that are willing to take Grade B and high-grade, high-phosphorus silicomanganese from Ukraine. They are actively marketing that product in other markets.

As Mr. Rochussen mentioned this morning, they have recently lost a sale in Israel of Ukrainian product. So yes. Certainly the Ukrainian producers are capable of not only making Grade B, but also the high-phosphorus product. And any exports that they make for the U.S. market would be discernible.

Moreover, as your questionnaire responses show, the purchasers overwhelmingly report that the products that are manufactured in Ukraine, the United States and China are interchangeable. They were asked to compare them on a number of different factors, including phosphorus content, and they all reported, a majority of them reported that they are, in fact, comparable, even with respect to criteria such as phosphorus content.

COMMISSIONER WILLIAMSON: Okay. Does that mean that Grade B product would be directed to the U.S. market?

MR. LEVY: Commissioner Williamson, I think we'll develop this more in our post-hearing brief.

COMMISSIONER WILLIAMSON: That's fine.

MR. LEVY: But I think what the record shows is that in markets like Europe and like in the Middle East, the Ukrainians are offering for sale and selling, among other products, Grade B silicomanganese and it is worth noting that U.S. market prices are higher than in those markets. So if the question is, is it discernible that they would sell products --

COMMISSIONER WILLIAMSON: Okay.

MR. LEVY: -- to higher-priced U.S. market, the answer is, hell, yes.

COMMISSIONER WILLIAMSON: Okay, thank you.

MR. GETLAN: Commissioner Williamson --

COMMISSIONER WILLIAMSON: Yes.

MR. GETLAN: -- this is Myles Getlan at CLK. Just to direct your attention to Page 420, Roman 420 of the prehearing report. It's a proprietary number, but it indicates that the volume of shipments that's standard Grade B product out of Ukraine is significant. It's certainly much more than deminimus and given the pricing in the U.S., of course, they would be incentivized to direct their shipments to the U.S.

COMMISSIONER WILLIAMSON: Thank you. Okay, just one additional question. You talked about the content of silicomanganese from Georgia, 0.20 and 0.35. What about the -- the Ukrainian product is 0.5 or above. So is that really competitive with the Georgian product? I'm talking about the phosphorus content.

MR. LEVY: I'm sorry, Commissioner Williamson, are you representing that the Georgian product has contained phosphorus in excess of 0.5%?

COMMISSIONER WILLIAMSON: No. You've given us numbers to the Georgian product.

MR. LEVY: Oh, so you're saying the Ukrainian product --

COMMISSIONER WILLIAMSON: Yeah.

MR. LEVY: -- its phosphorus in excess of 0.5%?

COMMISSIONER WILLIAMSON: Right.

MR. LEVY: So what I read in the Ukrainian's brief is -- I'll pull it up here if I have it handy -- I believe that they are representing that their so-called high-phos is in the -- do you have it in the public version there? I think I sent you an e-mail on it, Peter. I think it's in the 0.25 to -- it's not 0.5%.

It's in their brief, in the public version of their brief, they cite what they're calling high-phos. And there -- excuse me here -- according to the Ukrainians, and I'm quoting from Ms. Mowry's brief, they're describing their high-phos product as between 0.25 and 0.3%. And if we go back to Slide 8 --

COMMISSIONER WILLIAMSON: Okay.

MR. LEVY: The Georgian product is between 0.2 and 0.35% --

COMMISSIONER WILLIAMSON: And that's what I said. That's what the Georgian product was. But this prehearing brief, it talks about 0.5% or above. But let's suggest that later, 'cuz my time is way over. Thank you.

CHAIRMAN JOHANSON: Commissioner Schmidtlein? No, pardon me. Commissioner Broadbent?

COMMISSIONER BROADBENT: Okay. Mr. Rochussen, I wanna welcome, actually first welcome the witnesses and thank you for coming today. Mr. Rochussen, what is the relationship between Eramet and its affiliates in Norway and elsewhere? Does Eramet control the merchandise from its affiliates that's sold in the U.S.? Do you ever compete head-to-head with your affiliates in other countries for sales in the U.S.?

MR. ROCHUSSEN: The affiliates in Norway and in France are owned by the same parent company ultimately. Eramet Marietta is the sole distributor of product that may be produced in Norway and imported into the U.S. market. On the silicomanganese product, this is primarily the low-carbon silicomanganese, which we alluded to in an earlier question and answer. In addition to that, there are other manganese alloys which are brought in from our Norwegian affiliates in the U.S. market that are unrelated to silicomanganese.

COMMISSIONER BROADBENT: Right. But for the product in this investigation -- I'm not sure I quite followed you there -- so Eramet is owned by the Norwegian parent?

MR. ROCHUSSEN: No, the ultimate parent, and Nick can carry on this --

MR. FELL: Sure. Excuse me. Our ultimate parent is a French company, and that's Eramet and France, they own -- it's a worldwide group and we own the Norwegian facilities, as well as the Marietta facility. But the ultimate parent is French.

COMMISSIONER BROADBENT: And then, do you have facilities in France as well? Does the parent company have facilities in France?

MR. FELL: Yes, we do. And we have reproduced manganese, nickel and steel alloys. So we have a sort of wide variety of facilities throughout the world, but I do believe we have Dunkirk in France is a manganese producer.

COMMISSIONER BROADBENT: Okay. For this product that we have under investigation --

MR. FELL: I'm not positive about that.

COMMISSIONER BROADBENT: Where is it all -- could you help me in where it's produced?

MR. ROCHUSSEN: The standard silicomanganese?

COMMISSIONER BROADBENT: Yes.

MR. ROCHUSSEN: Okay. Obviously, it's produced in Marietta, Ohio. And it's produced at two plants in Norway, and at a plant in France. And also at a relatively new plant in Gabon, Africa.

COMMISSIONER BROADBENT: Okay. And then, for the product under investigation, how much do you import from Norway or France?

MR. ROCHUSSEN: Okay, so under the 7202.30 tariff classification, low-carbon silico is imported from Norway. That is -- I don't have the actual numbers on hand over here, so I couldn't quote exact numbers. We can refer to that in a post-hearing brief. But the vast majority, I mean if I were to put a number to it, probably in excess of 90% of the material we brought in from Norway under that classification, is the low-carbon silicomanganese.

Periodically, we may have had the need to also bring in a standard-grade product to supplement a deficiency at the Marietta facility due to a technical issue or a contractual obligation that might've gone above what we're able to supply at a point in time for Marietta.

COMMISSIONER BROADBENT: So when the parent is selling standard-grade manganese, is it silicomanganese in Norway, France and for Marietta, Ohio, are you selling at all different prices? Is the parent selling at different prices?

MR. ROCHUSSEN: Eramet only sells within the U.S. market, within the North American market.

COMMISSIONER BROADBENT: Right. And then what are the prices that product is being sold in France or in Norway?

MR. ROCHUSSEN: So the product that's produced in France and Norway and sold in the European market, Eastern European, Middle East areas, North Africa --

COMMISSIONER BROADBENT: And how do those prices compare to the price in the U.S.?

MR. ROCHUSSEN: I can't comment directly on the --

COMMISSIONER BROADBENT: But it's generally lower -- you said they had different prices in different markets.

They're generally lower prices?
MR. ROCHUSSEN: Lower prices in the other markets than --
COMMISSIONER BROADBENT: Right.
MR. ROCHUSSEN: -- the U.S. market, yes.
COMMISSIONER BROADBENT: And the high -- the U.S. market would be the higher market? --
MR. ROCHUSSEN: U.S. market traditionally is the higher market, yes.
COMMISSIONER BROADBENT: Okay. Hang on one second.
Given -- this would be for Mr. Rochussen. Given the large volume of imports already present in the U.S. market, why should the Commission conclude that U.S. production would be displaced if the orders were revoked?
MR. ROCHUSSEN: Well, add in one more supplier to a market which in our view is already over-represented and over-supplied by imports that are coming in from non-subject countries, would simply make our future that much more vulnerable compared to what it is today.
COMMISSIONER BROADBENT: Make your future, sorry?
MR. ROCHUSSEN: Far more vulnerable compared to what it is today. You know, the question in the -- one of the questions in the questionnaire that was sent out

relative to Section 232, and I briefly commented on that in the statement, about the expectation of the market under Section 232. And I think everybody had this view that demand would increase enormously, not only from the steelmakers' point of view, the domestic steelmakers, but in turn also for the suppliers to the steel industry such as ourselves with silicomanganese.

What we've seen in the first six months of this year compared to the first six months of last year, steel production, domestic steel production increased by three percent, yet because of the expectation of an improved market silicomanganese imports increased by almost 20 percent, and that's without Ukraine.

COMMISSIONER BROADBENT: And those were --

MR. ROCHUSSEN: I mean basically we're faced with a market situation right now where we're in an over-supplied market already.

COMMISSIONER BROADBENT: Right, but those are non-subject imports, that are not -- those are non-subject imports?

MR. ROCHUSSEN: Those are non-subject imports, yes.

COMMISSIONER BROADBENT: Right. It's just hard to see how subject imports are going to increase in much volume, given the domination of the market by non-subjects themselves.

MR. LEVY: Commissioner Broadbent, if I could elaborate, the simple mechanism through which subject imports can displace U.S. producers is through offering a lower price. The U.S. market is the highest-priced market. They can do better for themselves by charging a U.S. market price that undercuts existing U.S. producer prices, but is still a better price than what they're getting elsewhere in the world.

Through that price level, U.S. purchasers will switch because price matters in this commodity market. So obviously there would be an adverse volume effect, so-called displacement as you allude to, but there would also be pernicious price effect, and Commissioner, Peter Rochussen spoke to this in two senses.

Number one, even as they begin to put their toe in the water with spot transactions, it would change the index price and have a chain reaction in terms of the price of the large contracts that U.S. producers have. That is to say a small spot sale changes the index and immediately reduces the revenue associated with existing domestic producer sales contracts.

And then of course in the mating season, offers for sale even without a transaction depress U.S. producer prices because they must offer competitive discounts off of the index at the time of contract negotiation. My understanding is that the ITC vote in this sunset review occurs smack in the middle of mating season for next calendar year. Is that correct Peter?

MR. ROCHUSSEN: Yes, that's correct. Typically, most of our sales are on a contract basis, and 90 percent of those contracts are negotiated between late September and the end of November-early December.

COMMISSIONER BROADBENT: Okay. Ms. Alves, Table 3-3 provides insight into the stability of the domestic industry's capacity over the POI, as well as to the degree to which it had excess capacity. However, there's other information provided throughout Chapter III, particularly the statement concerning Felman on III-4, calls the industry capacity data into question.

Can you just address these inconsistencies in your post-hearing brief?

MS. ALVES: Yes. Thank you for allowing me the opportunity to address it. I'm not sure I could respond in a public setting.

COMMISSIONER BROADBENT: Yeah, and then can you explain why the domestic industry imported substantial quantities of non-subject imports. If the domestic products that it cannot produce domestically, does this indicate that certain customers prefer different specifications of silicomanganese? This would be for Mr. Rochussen. I can read that one tomorrow.

I'm talking again about the non-subject imports. If the domestic industry is importing products that it cannot produce domestically, does this indicate that certain customers prefer different specifications of silicomanganese?

MR. LEVY: Yeah. Commissioner Broadbent, we'll produce a full response post-hearing. But I think what we've heard this morning is that what the Eramet Group is importing from its Norwegian affiliate is low carbon silicomanganese almost exclusively, and that this serves a discrete segment of the market, which is stainless steel applications and certain specialty steels, which is separate and apart from standard kind of carbon quality long products, which is the market at issue here, where there's head to head competition between U.S. producers, Felman and Eramet on the one hand, as well as Chinese and Ukrainian supply, be it standard grade or high grade/high phos. We look forward to providing more complete --

COMMISSIONER BROADBENT: Yeah, that would be helpful, because it sounds like you're making two different distinctions that aren't totally consistent. I appreciate that. Thank you.

CHAIRMAN JOHANSON: Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Right, thank you. I'd like to also thank the witnesses for being here today. Mr. Levy, I want to go back to the conversation you were having, I don't recall which Commissioner it was with, but it was about the imports from Georgia and that according to you, given that Georgia is the largest single supply of imports, and that these imports were all or almost all consisting of high phosphorous silicomanganese. Is that -- that was what I understood you to say, right?

MR. LEVY: Yeah. Sorry, Jack Levy for Eramet. What we see here on Slide 8 are two grades of Georgia manganese that are offered for sale in the United States. The top one essentially is a standard grade product. The bottom one is a high grade/high phos, in other high contained manganese and higher phos than the standard grade.

It is our understanding that all or nearly all of the Georgian origin silicomanganese offered, that is in fact being imported is the latter, and that that can be validated by reference to the official import statistics, because one can discern in the official import statistics the contained manganese level of what's being imported.

COMMISSIONER SCHMIDTLEIN: Okay. So and maybe you'll have to do this in the post-hearing, but when you look at Table IV-5, Roman numeral IV-5, which shows the amount and then the percentage of shipments of U.S.

importers from all sources of Grade A, B, C and then high phosphorous and then you all cite this number in your brief, right? That there is -- looks like there's an increasing demand for high phosphorous, because the number in terms of the volume has gone up.

But as a percentage of imports, it's still quite a small number, and so I'm a bit confused though. If the largest single source of imports from Georgia which you said account for 25 percent of all imports is importing only high phos, why do we see such a very small amount as being the percentage of high phos of all imports?

You see what I'm saying? So this is drawn from Commission questionnaires, Table IV-5. So are these numbers not accurate? Is your supposition about the percentage of high phos coming from Georgia not accurate? How do you square those two?

MR. LEVY: Commissioner Schmidtlein, I alluded to this earlier today and will address it squarely in the post-hearing. But the short answer is that on this particular point, the prehearing report, is incomplete and inaccurate, and we intend to provide more complete and probative information because it's a key issue. If there is no meaningful market for high phos product, if everyone here on this table is smoking dope, then it's a very different result. So this is an issue that we have to get right on the factual record.

COMMISSIONER SCHMIDTLEIN: Correct. Okay, thank you. Another question I wanted to follow up, I believe Chairman Johanson asked about this, which is the fact that the Chinese exported to the whole world a very small amount in 2017. And so my question is, because I think you focused on the fact that they have excess capacity, and the number of countries that they exported to jumped from 2016 to 2017, from something like 7 to 21 or something like that.

But my question is given that they have such substantial excess capacity, which is, you know, on your confidential exhibit which was drawn from the staff, it's a large amount. Why aren't they exporting more to the rest of the world in 2017?

MR. LEVY: Commissioner Schmidtlein, let me try to answer that at least in part today in the hearing. I mean you're correct in noting that China has massive unused capacity based on available information. Admittedly, we have imperfect information because the Chinese have failed to participate in this proceeding, and we also witnessed in 2017 an eight-fold increase in their exports, and going from exporting to seven countries in 2016 to 21 in 2017.

But you are correct, Commissioner. There's still a relatively modest absolute number in relation to their total unused capacity. So it begs the question what's going on with China in 2017, and what if anything does that tell us about their likely shipments to the United States going forward? It is worth noting that for the period through 2017, there was in effect a China export tax on silicomanganese.

COMMISSIONER SCHMIDTLEIN: I thought it was lifted in 2017.

MR. LEVY: No. Let's turn to Exhibit 2. So this is an excerpt from ferroalloys.com. We'll provide the full document on the record post-hearing. But this particular notice is from December of 2017, and it says "According to the General Administration of Customs Tariff Commission and Customs Tariff Commission of the State Council, notified that this -- details of the China customs export tariff in 2018 and enforced from effective January 1st, 2018."

It lists the silicomanganese code. It shows the currently in effect customs export tariff of 20 percent, and there is a blank for 2018. Now admittedly, we don't know for sure that it has been phased out. But this is the only -- this is the best available information to us, which would show to us that in 2017 an export tariff appeared to be in effect, and we have no evidence that an export tariff continues to be administered in 2018. So this is part of the puzzle.

COMMISSIONER SCHMIDTLEIN: Well was it reduced in 2017 then?

MR. LEVY: In earlier years, it had been as high as I believe 25 percent, but that reduction occurred not in 2017 but again in a prior year, prior to that. So notwithstanding this export tax, we have an eight-fold increase in China exports in 2017, exporting from 7 countries in 2016 to 21 countries in 2017.

And now here we are where apparently, by best available information, this export tax may very well have been phased out. Also if we look at the next exhibit, and again we're challenged here because we don't have cooperating Chinese respondents. But we are also seeing in the media reports about Chinese measures to increase export tax rebates.

Now this particular list of product we don't think includes silicomanganese, but it is part of now an ongoing Chinese government program to support their export performance in an environment where there is in effect a bilateral trade war with the United States. And so even if, arguendo, there were still an export tax, query whether it's being rebated behind the scenes.

So we have every reason to be concerned that the export tax has now been lifted, and even if it's still on the books it's effectively being nullified through a rebate scheme. The other point to note, and I think we jump ahead to Slide 5, is that we are also in an environment where the Chinese currency is being devalued, to the tune of, you know, six-seven percent in recent months, and will that continue as a Chinese government policy, in an effort to support their exports amidst this bilateral trade conflict.

So we think that the environment in which we find ourselves today is qualitatively different than 2017. But with that said, there's a very important point I want to make on price. So if we could turn to slide, I believe it's 4, this requires a bit of narration, but I know Madam Commissioner you have a lot of appreciation for price data. So we're trying to give you price data here.

What you see along the bottom are spot prices within China for silicomanganese, the gray line. What you see in orange are European prices for silicomanganese, and what you see in blue along the top are U.S. prices for silicomanganese. I'll talk about the yellow line in a minute, but what you see right away here in terms of relative pricing is that the domestic market in China has the lowest prices.

One level up in orange are European prices, and one level higher are U.S. prices in blue, okay. This is all from the Ryan's Notes data series. So what we did in 2017 is we mapped out for you a yellow line that took the Chinese price and applied, for purposes of analysis, a 20 percent markup.

So the idea would be that if you're a Chinese producer-exporter, for you to have an economic incentive to sell outside the Chinese market in lieu of the domestic market, the price would need to be higher than the yellow line. Otherwise, inclusive of the export tax, you're not doing any better.

What did we see in 2017? Well, interestingly, the European market doesn't look so attractive, because the line in orange is below the line in yellow. But even with the export tax, the blue line is higher for the lion's share of that year, 2017. What does that tell us?

What it tells us is that even with the export tax in effect in 2017, had the order not been in effect, the Chinese would have had every economic incentive to ship through and penetrate the U.S. market, because the prices are too darn attractive.

COMMISSIONER SCHMIDTLEIN: So what happened to the rest of the yellow line starting in November 2017? We have the other three lines continuing through March and I believe May 2018?

MR. LEVY: Yeah. So we --

COMMISSIONER SCHMIDTLEIN: So what does the yellow line do for those months?

MR. LEVY: So thank you for asking. So what we did was we discontinued the yellow line at the end of 2017, simply because to the best of our information there is no export tax in effect in 2018. If you wanted to continue with the assumption that the 20 percent tax continued into 2018, and that there is going to be no rebates, you know, you could continue to map this out and I think what you'd find, particularly at the very end of our period of review, is that, you know, things fluctuate.

But yet again, the yellow line is below the blue line at the end, and there is an economic incentive to be shipping to the United States. So we think this is really critically important. So in an environment where you have massive unused capacity in China, many multiples of total domestic consumption in the United States, and even if, arguendo, there's an export tax, and even if, arguendo, it's not rebated, there is a compelling economic reason for them to ship more product to the United States, and just, it will be like a wrecking ball for the U.S. industry.

COMMISSIONER SCHMIDTLEIN: Okay, all right. My time is expired. Thank you.

CHAIRMAN JOHANSON: Commissioner Kearns.

COMMISSIONER KEARNS: Thank you. Just a couple of follow-up questions on that. First, on the -- your Slide No. 2, you know, it would be interesting to know whether, you know, what this looks like for other products around that same time. I mean would we have seen for other products, would we have seen a number in the 2018 column?

MR. LEVY: Yeah. So we'll provide the full exhibit post-hearing, but the full document has dozens of products in various categories, with numbers in the left column and numbers in the right column some of the time.

COMMISSIONER KEARNS: Okay.

MR. LEVY: As well as a narrative where in certain cases where there's a number in the right column, well it's self-explanatory, and where there's a number, no number in the right column, there's a narrative explanation I believe, explaining that the export tax has been lifted for those products.

Now we've seen no narrative explanation that accompanies this particular line item because it's one of many, and again we don't purport to know all the facts. This is just the best information available to us, and we're challenged by the fact that the Chinese have chosen to snub their nose at the Commission and not answer your questionnaires.

So we're doing the best we can with the available information we have.

COMMISSIONER KEARNS: And just to confirm, there's been no update to this, to this information from the

Customs Commission?

MR. LEVY: No. So we have this document in prior years, and appears to happen every year in December, where they basically say this is what it's been this year. This is what it's moving to in the next calendar year, and so this is the most recently available. We'd expect there would be another one in December of this year.

COMMISSIONER KEARNS: Okay, thank you.

MS. ALVES: Commissioner Kearns, if I could also add, Mary Jane Alves from Cassidy Levy Kent. Another phenomenon that has occurred this year is that the Chinese government has stopped reporting export information to GTIS. So we were looking at import trends for 2018, and as of April, there's no more updates. We have a slide for you, Slide 6. GTI, DTA Data is reporting we're not able to get that information.

So on a number of different fronts, the government of China is controlling the information that is going out to the U.S. market.

COMMISSIONER KEARNS: Okay, thank you. Turning back just for a minute to high phosphorous product, do we know what the prices of high phosphorous are compared to the Grade B product? What's the price difference?

MR. ROCHUSSEN: We don't know the exact different. What we do know is that what we have seen in the past from the activity of Felman with the material from Georgia, is that the material is offered at a discount, which includes the fact that it has a higher manganese content than the standard material.

In other words, they aren't fully valuing the fact that the steel producer is getting more manganese in the silicomanganese compared to what is in the standard grade silicomanganese. So even if they were offering at exactly the same price as the standard grade silicomanganese, the fact that there's more manganese units gives it a better value, a lower valued product in the steelmaker's eyes.

COMMISSIONER KEARNS: Right. Well, I don't know if -- I mean Mr. Levy, you had mentioned that the official import statistics actually have a breakout about with respect to the phosphorous content. I don't know if that would enable us to look at the price difference or at the AUVs between high phosphorous and Grade B.

I take the point, Mr. Rochussen, that you would maybe want to adjust that to reflect the fact that you're getting more manganese. But anything you can do now or post-hearing brief to help us understand that difference, and whatever statistics you can use would be helpful.

MR. LEVY: Yeah. Commissioner Kearns, I think that's a fair request. Again, I think we understand that the import statistics allow you to track imports, both on a gross weight and on contained manganese basis. So what that allows you to do, we already said with reference to imports from Georgia, is to validate that that's a higher grade/high phos product.

COMMISSIONER KEARNS: Okay.

MR. LEVY: What you can also do is you can express import prices from various sources on a DMTU basis. This is essentially looking at the price per unit of contained manganese, which is very common in the industry, and in fact that's the way ore is priced by way of illustration. And so that should allow you to discern the extent to which high grade product is selling at a discount relative to standard grade product, when expressed on a DMTU basis.

So I think that's going to be responsive to your question, and we'd be happy to give you that information, as well as information on Eramet's pricing expressed in DMTU terms.

COMMISSIONER KEARNS: That would great. Thank you.

MR. LEVY: You're very welcome.

MR. ROCHUSSEN: Sorry, I'll just add a little bit to that. In the European market, typically silicomanganese is sold on a -- what we call a scale per rata basis, where the additional manganese that's contained in the product is scaled up fully. In the U.S., typically the pricing mechanism does not include that. It's sold on a material weight basis.

So unless the material, the high grade material is sold at a premium, the mere fact that it has high manganese in, makes it a discount for the steel producer, because the pricing is not done on a scale per rata basis.

COMMISSIONER KEARNS: Okay, okay. Thank you. I wanted to turn to the price trends. Our data show a substantial or a significant at least decline in prices from 2015 to 2016, followed by a pretty strong increase in prices at the start of 2017. Could you describe what is happening in the market that caused these trends, and what you expect or what you anticipate prices will do going forward?

MR. ROCHUSSEN: Okay. I don't, I don't have the particular data in front of me, so I'm going to speak in a general sense. To a large extent, the price trend going into 2017 was driven by manganese ore pricing. So there was a somewhat of a delayed reaction in the U.S. market. There always seems to be a lag in U.S. market in reacting to global raw material price trends.

That is a significant reason why we saw silicomanganese process trend up going into 2017 compared to where it had been in prior years. Pricing has remained at higher levels since then, again predominantly due to the fact that there has been a higher manganese ore price level over the last year and a half or so.

COMMISSIONER KEARNS: Okay, thank you. Mr. Thieman, you had mentioned in your opening that you all have worked out a new contract with management, I think you said in November 2017. As I understand it, essentially benefits were increased and then the quid pro quo was some more efficiencies on the employment side. Can you just explain a little bit more what you mean by that? It looks like our employment data don't suggest there's been a big decline in employment. So if you can just tell us more about how things are since you negotiated a new agreement, that would be helpful.

MR. THIEMAN: Okay, thank you. What we had done 2017, before the negotiations the committee, our negotiating committee sat down and decided that basically the way we had worked as the union force was becoming inefficient with the way things are working in today's world.

So we decided to restructure the way our seniority works within the plant, and which also gives the company more flexibility to move employees from different areas as needed. In regards to the wage increases, they were modest wage increases. But it is the first wage increases we've had, without any concessions in a contract, for several years.

COMMISSIONER KEARNS: Okay, thank you. I have no further questions right now. Thank you.

CHAIRMAN JOHANSON: I have kind of a somewhat basic question for you, and that is how does silicomanganese from China and Ukraine compare? For example, the differences in their phosphorous content suggest different applications.

MS. ALVES: Chairman Johanson, Mary Jane Alves from Cassidy Levy Kent. According to the questionnaire data that you received, they compare very favorably with one another and also with silicomanganese manufactured in the United States. So based on, you know, a comparison of a number of different purchasing factors, the purchasers reported that they, you know, are comparable.

What that tells us is that they will be competing on a price basis in the U.S. market.

MR. LEVY: Commissioner Johanson, you know, the first chart talks about interchangeability, where a product is always or frequently interchangeable, and then differences based on grade or phos or other things here show again a high degree of comparability.

I think it's just an important point to make though, that when we're talking about carbon quality steel as distinct from the stainless and specialty steels, and we're talking about long products, that's the heart of the market for silicomanganese. In that regard, you have Felman and you have Eramet producing a standard grade silicomanganese. You have China and Ukraine able to produce and sell standard grade silicomanganese.

And then you also admittedly have the Ukrainian capacity to produce and sell a high grade/high phos product. The applications that can accept that high grade/high phos product overlaps with the applications that accept the standard grade silicomanganese. I think it's just a very important point.

It's not some different segment of the market that doesn't compete. It is simply a feature of the fact that it's not an identical specification, but it's one that can be substituted for standard grade silicomanganese in those applications at those steel mills. What we've heard from Commissioner, from Peter Rochussen is that for roughly a third of the market, their specifications in their request for quotation explicitly tolerate the higher phos, and we'll provide you with further documentation on that point.

And we've also seen and we've discussed that the record needs to be amplified with regard to the Georgian illustration. But the Georgian illustration shows us that for a significant share of U.S. actual consumption, high grade/high phos is being actually used during the POR.

CHAIRMAN JOHANSON: Thank you Mr. Levy and Ms. Alves. The record shows constant and perhaps unusual changes in Felman's operations in West Virginia since the last reviews, including a cessation of production of silicomanganese in 2013, resumption of production in 2014, and a purportedly temporary shutdown in 2017, and this is all in the staff report at page III-2. From what you all know, what is happening with this plant and what is its current status?

MR. FELL: I guess I could talk a little bit about, and this -- I can't speak for Felman, but both Felman and Marietta have had to invest significantly in environmental compliance upgrades, and so it's quite possible that some of those fluctuations could have been because of that.

We've certainly had our own struggles to make sure that we're complying, and have had to make significant investments in that field. I would imagine that Felman's had to do the same, and they would be relying on doing so with sort of the bottom line of having these duties in place, these orders in place, and that they are, you know, they would be looking at sort of when they're making those investment decisions, having these continue into place.

I don't know how they could really recoup that investment without that. You know, I don't know though exactly why they've had the fluctuations that they've had though.

CHAIRMAN JOHANSON: With problems in production at Felman's plant in West Virginia, could that not result in pull of imports into the U.S. market?

MR. LEVY: Commissioner Johanson, I think that the proprietary record is more robust as to the nature of what's happening at Felman's operations.

What I think we can say in relation to Eramet's operations is that the company reports significant unused capacity, and Eramet is ready, willing and able to supply more volume when and if those opportunities arise. And so, you know, from our perspective, the need for subject imports is certainly not manifest in this record.

CHAIRMAN JOHANSON: All right. Thank you to both of you for your answers. Is there an understanding that Eramet produces both ferromanganese and silicomanganese at its plant in Marietta, Ohio, as discussed in the staff report at page I-21. Are these products sold to the same customers?

MR. ROCHUSSEN: There are common customers for both products, yes. So we might sell silicomanganese to same customer as we sell a ferromanganese product. That basically is in the case of steel groups, large steel groups that have both long product steel production as well as flat-rolled steel production.

We do also sell silicomanganese to producers that are only producing long product as well. So there is an overlap in our customer base between, on the silicomanganese and the ferromanganese sales.

MR. LEVY: Mr. Chairman, if I could elaborate. I think I've developed a layman's understanding of this issue, which is an important thing to convey. So you know as a general rule, well so to back up, steel producers need manganese and silicon in their production process.

As a general rule, the way things have shaped up in the world, those producing long products typically turn to silicomanganese to meet their manganese and silicon requirements. For those producers that are producing flat products, they have tended to gravitate toward a combination of ferromanganese for their manganese requirements, and ferrosilicon for their silicon requirements.

And so what Mr. Rochussen is describing is situations where indeed, he has customers that are engaged in the production of both long and flat products. So yes, they would be customers for both silicomanganese and ferromanganese.

CHAIRMAN JOHANSON: What determines if a steel producer uses the combination of high carbon ferromanganese and ferrosilicon instead of silicomanganese?

MR. ROCHUSSEN: Economics is one factor that is taken into account. The value of the manganese and silicon unit within the ferromanganese product and the ferrosilicon compared to the equivalent units in the silicomanganese, and also the silicon content in the final steel product.

If you're adding in silicomanganese, you're getting a given amount of silicon units based on the specification of the product that has been requested, whereas if the steel producer has a steel grade which requires a slightly lower silicon content in the end chemistry, they have more ability to regulate that by using a ferromanganese and a ferrosilicon addition, as a simple addition, to be able to give more flexibility to their operation.

CHAIRMAN JOHANSON: How does the production process differ between ferromanganese, silicomanganese and ferrosilicon?

MR. ROCHUSSEN: The actual -- I'm not a metallurgist or an operator, so perhaps even Dan could offer some comments on this. Essentially the process is somewhat similar. We're using a variety of different manganese sources in the blend that goes into electric furnace. It goes through a smelting and reduction process, tapped periodically and cast into slabs and then crushed.

So in a sense, it's a very similar process stream, although the actual ingredients that go into the mix obviously do vary, to get the different manganese and silicon levels at the end of the day.

CHAIRMAN JOHANSON: Mr. Thieman, do you have any comments on that?

MR. THIEMAN: No. That was a pretty good description of the processes.

CHAIRMAN JOHANSON: Okay, well good going Mr. Rochussen.

MR. LEVY: Mr. Chairman, the only point I would supplement is that I think with regard to ferromanganese, there's additional capital equipment that is required at your plant. For example, the manganese oxygen reduction furnace, the MOR. So there's additional capital equipment that's associated with the production of ferromanganese, as distinct from silicomanganese. Is that correct, Mr. Rochussen?

MR. ROCHUSSEN: Yes, that's correct, depending on the grade of ferromanganese that is produced according to the carbon level that's required in the marketplace.

CHAIRMAN JOHANSON: All right. Thanks for your responses. My time has expired. Commissioner Williamson.

COMMISSIONER WILLIAMSON: Okay, thank you. Mr. Thieman, since both your plant and Felman plant are represented by USW, I was just wondering you've already described the improvements that, you know, the unions made to improve I guess the efficient plant in Marietta, Ohio. What about -- do you know if comparable things have been done at the Felman plant in West Virginia, or Ms. Hart do you know?

MR. THIEMAN: No, I haven't. I have no idea what they have done at the Felman facility.

MS. HART: What I do know is that Felman has, like Eramet, invested in rebuilding their furnace to meet the NESHAP requirements. So you know, they too have made a significant investment. As far as what the workers have done, the staff representative I spoke to told me that this is the first non-concessionary agreement they've had in a very long time.

So I can get further detail from the staff representative who, you know, represents that local union at the -- you know, and once was an employee of Felman, to perhaps add some more detail in the post-hearing brief if necessary.

COMMISSIONER WILLIAMSON: By non-concessionary, you mean more favorable for the workers?

MS. HART: Correct, yeah. I mean they either did not have to give up, you know, wages, time or, you know, various benefits, health care concessions, perhaps changes in the pension from a defined benefit to -- I can't think of the word right now, but you know, 401(k) versus that. So again --

COMMISSIONER WILLIAMSON: When was -- and when was that agreement done?

MS. HART: That agreement was negotiated --

COMMISSIONER WILLIAMSON: Well, if it's in the report I can find it.

MS. HART: It was within the last two years or year, I believe. But you know, the other thing I just wanted to say is that, you know, the workforce at Felman was once at, you know, 200 and now it's, it was down to 74 and now up to 88. So some improvement is happening, but certainly nothing like what once was.

COMMISSIONER WILLIAMSON: Okay, thank you. I just wondered, what are the expectations for demand for this product going forward?

MR. ROCHUSSEN: I mean our expectation, and lot of this goes back to, you know, the Section 232 discussion, you know. Our demand for our product is entirely dependent on the demand for domestically produced long steel product and, to a lesser extent, flat steel product.

So you know, unless the steel industry in the U.S. is able to continuously increase their production of these products in the marketplace going forward, whether it's by Section 232 or whether it's through infrastructure programs, which increased the use of long product steel in the marketplace, the demand for silicomanganese is tied to that.

COMMISSIONER WILLIAMSON: Okay.

MR. ROCHUSSEN: Our expectation is that we would hope that there is some level of improvement. As I'd indicated earlier on in the first half of this year, we hadn't seen a significant level of improvement at that point in time. Yes some improvement, but not to the extent that I think a lot of people had expected at that point in time.

COMMISSIONER WILLIAMSON: And you say that's through June you haven't seen that?

MR. ROCHUSSEN: Correct, through the June period. I'll simply use June, because that's the level of import data on silicomanganese that I had available at the time to do the comparison.

COMMISSIONER WILLIAMSON: Okay, thank you. What has happened to domestic market share in this Period of Review and why? And if you want to address it in post-hearing, you can.

MR. LEVY: Yeah, we'll address it post-hearing, as it's all proprietary. Thank you.

COMMISSIONER WILLIAMSON: Good, okay. Thank you. I was just wondering, what are some of the applications where high phosphorous content would be --

would not be an issue, and what share of U.S. production is accounted for by those products? I know you're saying the use of high phosphorous is growing, but I was just curious, what do we know already?

MR. ROCHUSSEN: To my knowledge it wouldn't be an issue in a large majority of long steel product production. But it comes down to at the end of the day as to whether the steelmaker will use it. It comes down to the price at which the product is offered, and whether that price is incentive to encourage these steelmaker to be flexible in the operation, to be able to adjust their steel recipes accordingly.

At the end of the day, what's important to the steelmaker is the cost of manganese and the cost of the silicon that's ultimately being recovered within this steel production process and in the final steel product which they sold to their customers.

COMMISSIONER WILLIAMSON: Okay. Just out of curiosity, why they use the silicomanganese is in long products, whereas the ferromanganese is in the --

MR. ROCHUSSEN: That's just typically the way that the steel industry in the U.S. has developed. I think a lot of it has to do with the specification of the steel and flat product versus long product, surrounding the silicon levels. In Europe, from my understanding it may be slightly different. The other differentiation in the U.S. market compared to elsewhere is the level of production of integrated steel mills versus electric furnace steel mills.

What we find is that electric furnace steel mills typically would use more silicomanganese compared to an integrated steel mill, and that kind of like relates to the grade of steel that's being produced.

COMMISSIONER WILLIAMSON: Okay, thank you. What effect would the higher tariffs on silicomanganese imported from China as a result, say, of the Section 301 duties? Any idea what, and what effect if the orders had been revoked would those have, or if they were revoked but --

MR. LEVY: We'll try to develop this more in our post-hearing. But it is worth calling out that effective yesterday, the administration imposed ten percent duties on imports of silicomanganese from China, pursuant to Section 301. It is entirely speculative how long this may last. It's entirely speculative whether any exclusions will be granted for some or all of volumes from China, should there be a revocation of the orders.

It's entirely speculative what, you know, effect there would be in terms of the market, because we at this early stage sort of have no data and we don't yet know what other government measures may be imposed. I mean I think just to remind you, if we go to Slide No. 3, the Chinese government seems to be in the business of doing things to offset U.S. government measures.

There's a tremendous amount of tit for tat. So whether it's through their own tax rebates, or whether it's through further devaluation of the yuan on Slide 5, it is entirely speculative as to what, if any, effectiveness Section 301 duties would have going forward. It's just all we do know is that a ten percent rate is quite modest, given the magnitude of dumping.

Commerce has found a likely recurrence of dumping at a rate of 150 percent, as well as the track record of underselling that we've seen from China in the original investigation, which was significant. So you know, we're kind of at a loss to speculate beyond this, but this is what we know.

COMMISSIONER WILLIAMSON: Okay. Thank you for those answers and for the questions at this time.

CHAIRMAN JOHANSON: Commissioner Broadbent.

COMMISSIONER BROADBENT: Yeah. Mr. Levy, I'm just a little troubled by -- I think speculation is kind of right word for what you're doing. I mean we have go forward and make a projection based on what we know and what's happened in the past, and exports to the world from China have remained low over the entire Period of Review.

Their exports, I think, were equivalent to about

.2 percent of global exports in 2017. Now if all of those exports were directed to the United States, they would technically probably be negligible. So if you didn't -- if viewed in a precedentiary (sic) context, given that this has been the trend for the entire review period and into part of the previous review, wouldn't this indicate that the Chinese industry is no longer likely to export significant volumes anywhere, let alone the U.S.?

I mean I think we're trying to project on past behavior going forward, not -- and we got -- that's a pretty speculative slide up there at this point.

MR. LEVY: Yeah. I think what's not speculative, and I think we can turn back to Slide 4, is you know, let's look at prices, and it's worth remembering that U.S. market prices are significantly higher that just about anywhere else in the world. Significantly higher than Europe, significantly higher than the Middle East.

And so if afforded an opportunity to ship to the United States without the discipline of anti-dumping orders, it is clear, even by reference to 2017, that China would have had a strong economic incentive to ship into the U.S. market in order to achieve those higher returns. They would not have had that incentive to ship to Europe, because as we can see from the yellow line, inclusive of the export tax that was in effect from 2017, they would be worse off selling into Europe than shipping into their domestic market.

But by contrast, in the absence of an anti-dumping order against U.S. imports from China, they would be better off shipping into the U.S. market. So we can only extrapolate so much from China's export behavior to other markets, because the U.S. market is right now so much more attractive than these other markets, where they are selling in relatively modest volumes.

So our view is that if the orders were to be lifted, you would in effect very quickly hear that giant sucking sound, and there would be a tremendous amount of unutilized capacity in China that would be directed at the U.S. market, precisely because of those relatively higher prices.

COMMISSIONER BROADBENT: Mr. Levy, can you tell me what the ten percent tariff that went into effect would do to that chart?

MR. LEVY: Well again, if we're talking about the Section 301.

COMMISSIONER BROADBENT: Right, sorry.

MR. LEVY: You know again, we don't know how long 301 would ensure, and what we don't know, again in going back to Slide 3, is whether or not China would in a tit for tat --

COMMISSIONER BROADBENT: But we're just getting into a lot of speculation. We've got to look at this record and understand how we go forward.

MR. LEVY: Sure, and I think there's -- if we go back to Slide 4, I think if you focus on the Period of Review, where we actually have data as opposed to, you know, looking ahead where we don't yet have data, what we can see in a very concrete way is that the U.S. prices are the most attractive.

If you were to, for example, take the gray line that you see in 2018 and shift it up ten percent, what you would see if you did nothing else is that U.S. prices are still more attractive, and there would be an economic incentive to ship to the United States. So I think that's our fundamental point.

COMMISSIONER BROADBENT: But the 301 tariffs are making it much less attractive to ship to the United States. They put the ten percent on just recently on the 24th, and then in 2019 it's going to -- it's scheduled to go up to an additional 25 percent. So we'll have a 28.9 percent total tariff on imports from China, and they haven't been selling here anyways. So what --

MR. LEVY: I'm sorry, what total tariff, I'm sorry?

COMMISSIONER BROADBENT: So if you add all --

the total tariff on Chinese imports would be -- an additional tariff would be 28.9 percent after January 1 of 2019, according to what has been announced in the Federal Register.

MR. LEVY: Are you adding normal duty to that? Is that the math?

COMMISSIONER BROADBENT: Yeah.

MR. LEVY: Okay. Yeah. I think that --

COMMISSIONER BROADBENT: Yeah. Okay. Why are we getting -- why is our market getting more attractive? I mean you're speculating on a lot of future Chinese behavior, but just looking at our market and what's going on and the conditions of competition after the 301 tariffs, I don't see our market becoming any more attractive and I see it becoming much less attractive with a total duty of 28.9 percent by January 1, 2019.

MR. LEVY: Well, the dynamic I think that we describe is one in which by all appearances, an export tax of 20 percent has been lifted in 2018. Now as of yesterday, we have an import duty that was imposed to the tune of ten percent. There's rumor, or not rumor, it's in the Federal Register of an intent to further escalate that ten percent to 25 percent effective in January 2019.

Whether we get there, we don't know. I mean it may very well be that, you know, tomorrow after the election there's a big bilateral deal with China. But if you were to net those two out, ceteris paribus, you would have, you know, it would be what, eight percent more costly to ship to the United States than had it been in 2017, in the absence of anti-dumping orders.

COMMISSIONER BROADBENT: All right. I'd just like to look at your, I think it's page three again. You stated that according to best information available, the Chinese export tax may no longer be in place. You're trying to lead us to that conclusion. The staff has been kind of looking at the PDF related to this visual, the one you just had up there on page three.

It's a PDF that Mothcom put out on these taxes, and that for you're right, that in 2018 they leave the column for ferrosilicon blank. But for all the other products on that list, it goes to zero with a definite zero rate. In addition, the document refers to 202 commodities with export tariffs, and there are -- if you add them up, there are 202 commodities, including silicomanganese.

So that document really leads you to believe that the export tax will stay on and not come off.

MR. LEVY: We'll provide the full document and do our best to interpret it. But you know again, the point that we're making is that we're in an environment where the Chinese are not cooperating. We're doing our best to discern what's happening to the export tax in 2018.

COMMISSIONER BROADBENT: Yeah. But I'm just trying to look with our statute and extrapolate on trends based on concrete information that we have. You're ding an awful lot of filling in the blanks here, with stuff we don't know is going to happen.

MR. LEVY: We're just doing our best. We're using the best information reasonably available, and we're presenting it, and we're going to provide the full document post-hearing. It's up to the Commission to extrapolate from that and discern whether there's a likely recurrence of material injury should the orders be revoked.

We respectfully submit the answer to that is yes, given the massive unutilized capacity in China, and given the relatively attractive prices in the United States. To be sure, we're in a very unique environment in which there are a lot of moving parts, with new duties and rates changing, both on the Chinese side and on the U.S. side. This is perhaps if for that reason one of the more challenging fact patterns for the Commission.

But the Commission has begun to sort of reckon with these issues in the context of other reviews thus far year-to-date, and we trust that you'll reckon with these issues as well in your final determination.

COMMISSIONER BROADBENT: Yeah. I'm just trying to look. I mean we've got low exports for the last seven years, this Period of Review and most of the last Period of Review, and how do we know those are not going to continue? I mean the evidence on the record says they probably will continue if you extrapolate.

MR. LEVY: What we've seen from the historical record is that U.S. prices were more attractive than any other market, and there was unutilized capacity. We reasoned that in the absence of a 150 percent cash deposit rate, Chinese producers would have an economic incentive to focus that unutilized capacity on the highest prices in -- what are effectively the highest prices in the world.

COMMISSIONER BROADBENT: Okay. I get your point on that. I just had one other question for Ms. Hart, if I could do -- unless you really have something new. Okay.

MR. LEVY: Yeah.

COMMISSIONER BROADBENT: Ms. Hart and Mr. Thieman, an article entitled "The Spectacular Rise and Fall of Igor Kolimenski's Steel Empire," states that an employee of Felman Production said that "the company doesn't receive enough money to operate safely." Have you had any information on the company's safety record at all, and what's going on there at Felman?

MS. HART: Actually I have not. When I did speak to the staff representative, he implied that the company and the workers at Felman in West Virginia have a good relationship. But that's all I can attest to without further conversation with him.

COMMISSIONER BROADBENT: Right. I mean maybe if you guys can put some stuff on the record. We've just heard kind of, I don't know, rumors in terms of problems with safety and the soundness of that production facility, so it would be helpful to know. Thank you.

CHAIRMAN JOHANSON: Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Okay. I just have a couple of questions. One goes back to this question about the affiliation between Felman and the Ukrainian producers, and you all go to some length in your prehearing brief talking about that. But at the end of that discussion, you don't argue that Felman should be excluded.

So the question that comes to my mind is given that in a couple of recent reviews, and specifically I'm thinking of wire rod and stainless steel bar, we have looked at the corporate affiliation of foreign producers with a U.S. producer as one of the conditions of competition.

So why wouldn't we look at that relationship, which you go to quite a length to establish, to find that they would not send injurious volumes of subject imports to the U.S. should the order be lifted?

MR. LEVY: Commissioner Schmidtlein, let me try to answer that at least in part. I think the question in effect is sort of again testing what was Commissioner Pearson's theory in the last sunset review. Just to back up and make sure we're level set on the facts, we have these two Ukranian oligarches that own all three facilities in the Ukraine, as well as Georgia, for that matter, and also own Felman Production indirectly.

And so given common ownership and control, why shouldn't we rest assured that they will manage their affairs in a way that is non-injurious to U.S. production, including the production of Eramet?

I think as a threshold matter, and speaking for Eramet, we don't perceive that these Ukranian Oligarches are motivated by helping Eramet improve its capacity utilization in Ohio. I mean I think that's the obvious point.

The second point is--and I think this is clear again from the facts--is that Ukraine has very deliberate designs on the U.S. market. You know, they go to great lengths to argue that they are not capable of serving the U.S. market in a meaningful way, but frankly they protest too much, not only through their testimony today but through their recent efforts through an administrative review at the Department of Commerce.

They went through a lengthy administrative review that concluded last year in an effort on the part of two companies to get their own company-specific rate. So it's very clear that they have designs on the U.S. market; that there is a tremendous amount of unutilized capacity in Ukraine. And, as I testified earlier today, the electricity contract that Felman has appears to be such that if they crash U.S. market prices with Ukranian volume, Felman gets a discount on their electricity costs.

That does not accrue to the benefit of Eramet by any way, shape, or form.

CHAIRMAN SCHMIDTLEIN: Right, but you just mentioned the fact that there's also common ownership with the producers in the country of Georgia. Georgia is the largest single import source right now. So, supposedly, wouldn't they have the same incentive to crash prices with their Georgian imports in order to benefit their West Virginia production under this electricity contract? And no case has been brought against Georgian imports as being unfairly traded, so apparently they're not doing that. But if this West Virginia contract gives them that incentive, why aren't they already doing that, given that they also own these producers, or producer in Georgia?

MR. LEVY: Yeah, well we'll try to answer this in greater length posthearing, but I think it is correct that no one is alleging that the imports from Georgia are unfairly traded.

By contrast, the Commerce Department has told us that imports from Ukraine would be dumped if the Orders were revoked. So that is a qualitative difference between the two country sources. And we'll try to speak more to the nature of the interests of this so-called provoc group of oligarches. But it is obviously a complicated web that they have woven.

We call it out in our brief because it is a relevant condition of competition, and I think it's important to understand that to the extent Felman is not actively supporting the Order as to Ukraine, it's important to understand perhaps why, and why that stands in stark contrast to the interests of their plant workers who through the USW has testified today that they support continuation of the Order.

CHAIRMAN SCHMIDTLEIN: Okay. The other question I had was: Can you respond to the Respondent's argument that the purchaser responses should not be relied on because they haven't any recent experience with the product and therefore we should give that less weight?

MR. LEVY: So we'll speak, again, to this with more specificity posthearing because we can identify who these purchasers are, but at a high level--and maybe Peter can elaborate--there are two kinds of purchasers in the world. There are traders who operate globally, not just for the U.S. market. And there are steel companies, you know, the likes of ArcelorMittal who produce around the world. And it is I think too cute by half to suggest that these traders in ferroalloys, as well as steel mills with global operations, or familiarity with global markets, are utterly ignorant as to the nature of Ukranian product.

In fact, Ukranian product is well known in Europe and the Middle East. It competes. It's supplied. And so the notion that their questionnaire responses should be disregarded, and you simply should trust them in how they characterize their product, I think would be unprecedented in recent Commission jurisprudence.

COMMISSIONER SCHMIDTLEIN: Okay. Alright, and then the last question is--again, this is an argument of the Respondent's--the Ukraine has been designated a market economy since the original investigations. And given that there were only two of the six comparisons were underselling in the original, why would we find that the underselling would continue, given the large change in the Ukranian economy since that time?

(Pause.)

You can answer it in the posthearing, if you'd like.

MR. LEVY: Yes, we'll definitely speak to that posthearing.

COMMISSIONER SCHMIDTLEIN: Okay. Alright, thank you. I don't have any further questions.

CHAIRMAN JOHANSON: Commissioner Kearns?

COMMISSIONER KEARNS: Just a couple of quick questions here, I think. First, going back to Felman--this is for Ms. Alves, I believe--our report on page 3-4 notes a proprietary statement by Felman of an anticipated change in its operations.

In your posthearing brief, please indicate how you expect this will impact the U.S. market. And also please address Felman's capacity utilization and how the anticipated changes will affect that, and what might be going on there in terms of capacity utilization.

MS. ALVES: Thank you, Commissioner Kearns. We will address that in the posthearing brief. I think I can just say for the moment that that does increase the domestic industry's vulnerability.

COMMISSIONER KEARNS: Okay, thank you.

And then I think my last question, just returning back to Commissioner Broadbent's questions about China's exports, I guess for starters if you could provide data on prices in other markets besides China and the EU. So looking at this slide that you all had prepared on page 4, it would be good to know what the price trends look like in other countries. And I think we have in our staff report, we have, you know, top markets, or top export markets around the world. So maybe just pick, you know, some of the most significant export markets and see what prices look like in those other countries as well that would be helpful.

Still on China's exports, I mean this is really a strange situation where we have Table 4-14 that shows that China makes up more than half of world-wide silicomanganese production, which is pretty staggering and odd that it has so little in exports. Of course we have another chart that shows China also makes up about half of global consumption.

And then we have another chart here, looking at Table 4-6, that shows China's capacity of silicomanganese has dropped pretty dramatically since 2013, although production has remained relatively constant.

And then I guess I'd just like to have a better understanding of, you know, of where this is headed. In particular, as we know, I think China has essentially recognized that it has an overcapacity of steel problem, and that it intends to reduce its capacity of steel. I think there is speculation--there's concern about whether or not they're actually going to make do on those commitments to reduce steel production. But I'm just kind of curious.

Have they made similar statements with respect to silicomanganese production? Or instead are we likely to see potentially that steel capacity will drop and steel production will drop in the future, whereas silicomanganese will be looking for another market?

If you all have any thoughts on what to make of the domestic market in China for silicomanganese, that would be helpful, either now or post-hearing.

MR. LEVY: Commissioner Kearns, we'll try to develop that for you post-hearing. But I think something else that comes to mind--and again we'll develop it more post-hearing--it is worth nothing that within China there was a period when certain silicomanganese producers were going through their own environmental challenges, which temporarily limited their capacity to produce.

So, Peter, maybe you could just briefly provide some color, and then we'll develop it more post-hearing.

MR. ROCHUSSEN: I think that's something I'd rather reserve for post-hearing completely. I'd be speaking just totally off-the-cuff without any background information, so I'd rather develop that a bit more fully.

COMMISSIONER KEARNS: Okay, thank you. I have no further questions.

CHAIRMAN JOHANSON: Commissioner Williamson?

(No response.)

CHAIRMAN JOHANSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: I just had one for Ms. Alves, and it's nice to see you here today. You assert that the Ukranian producer Stakhanev has restarted production of silicomanganese. And then to support this you cite an article from the Luhansk People's Republic Today, which appears, as far as we could see, it looks kind of like a propaganda arm of Russian-led force that has violently taken control of the region. Is that really a credible source in terms of whether production has restarted?

MS. ALVES: Commissioner Broadbent, Mary Jane Alves from Cassidy Levy Kent. Once again we are in a position where we know the Commission is going to be testing the information. We know the sorts of tests the Commission has applied in other contexts such as polyvinyl alcohol, and carboxymethylcellulose, where there have been allegations that particular producers have ceased operations or have dismantled their production.

We know that you would be probing that. We researched as much as we could. We knew that there was a third producer in Ukraine. We also knew that one of the main arguments that the Ukranian Respondents were making, the Government of Ukraine is making, is that the industry has changed because there is no longer production at Stakhanov and it's in occupied territory.

As part of this research, we uncovered the fact that as of last year there were some trial runs being done at the facility in Stakhanov. One of the main impediments to production there was that they restored an electrical power bridge that had been damaged during the fighting, and that apparently they had then started production ferrosilicon, and the reports also indicate that they are also then in the process of trying to produce at all four of their furnaces that produce silicomanganese this year.

That's the best information that we could gather. At this point, without a questionnaire response from Stakhanov, that's the best information that you have as well.

It's also important to consider that whether or not you include Stakhanov in the Ukranian industry, based on that information or not, which we believe you should, there is still substantial capacity, available capacity, in Ukraine. And as mentioned before, the U.S. market is very attractive.

So whether or not you include Stakhanov's facility in the tally or not, there is an affirmative determination to be made in this case.

COMMISSIONER BROADBENT: Okay, thanks for that answer. And I have no further questions and I want to thank the witnesses.

CHAIRMAN JOHANSON: Do any other Commissioners have questions?

(No response.)

CHAIRMAN JOHANSON: Okay, with that we will end this morning's panel. Thank you all for being here today.

Do staff have any questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Mr. Chairman, staff has no additional questions.

CHAIRMAN JOHANSON: Do Respondents have any questions for this panel?

MS. MOWRY: We do not, Mr. Chairman.

CHAIRMAN JOHANSON: Okay, then we will now break for lunch until 1:15. And I would like to remind all the parties that they should not leave confidential business information in the room, as this room is not secure.

We will see you back here at 1:15.

(Whereupon, the hearing was recessed for lunch, to reconvene at 1:15 p.m., this same day.)

A F T E R N O O N S E S S I O N

MR. BISHOP: Will the room please come to order.

CHAIRMAN JOHANSON: Welcome to this afternoon's panel. You all may proceed.

MS. MOWRY: Thank you, Mr. Chairman. Kristin Mowry of Mowry & Grimson on behalf of the Ukranian Respondents.

We have three witnesses today that have come a great distance, and their knowledge of the industry is thorough, but their knowledge of English is much more limited. So I am going to lead off by apologizing and begging your forgiveness as we try to answer your questions.

I will say that I predict that we will have to defer most responses to the written post-hearing brief, because we want to be precise about the translation and precise about our responses. But with that said, to the extent any of our witnesses can respond today, we will do our very best to do so. And for sure we want to hear all of your questions so that we can make every effort to respond to them in the post-hearing brief.

So with that, we will turn to our first witness who is Sergii Kudriavtsev. He is not going to read his own statement. His statement will be read by his counsel, Olena Omelchenko.

STATEMENT OF SERGII KUDRIAVTSEV

(READ BY OLENA OMELCHENKO)

MS. OMELCHENKO: Thank you. "Ladies and gentlemen, good afternoon, Commissioners and members of staff.

"My name is Kudriavtsev Sergii Leonidovych. I am the Executive Director of the Ukraniaqn Association of the Producers of Ferroalloys and other Electrometallurgy Productions, 'UkrFA,' which is interested party to this five-year review.

"Firstly, I would like to thank you for the opportunity to present our arguments in this case here.

"UkrFA was established in 1997. The Association organizes an effective interaction of its participants with the legislative, executive, and judicial authorities of Ukraine. We are engaged into the comprehensive study of the problems associated with the production, sale of ferroalloy and other electrometallurgy products in Ukraine and abroad. We analyze the internal and external markets and forecast possible changes, analyze the current conditions of these markets, et cetera.

"The members of UkrFA are Nikopol Ferroalloy Plant, the Zaporozhsky Ferroalloy Plant, Pobuzhsky Ferro-Nickel Plant, Kramatorsky Ferroalloy Plant, Pokrovsky Ore Mining and Processing Enterprise, Marganetsky Ore Mining and Processing Plant and Energostal. Since 2014, the membership of Stakhanov Ferroalloy Plant and Donetsk Electrometallurgical Plant in UkrFA has been discontinued.

"As a representative of UkrFA, I would like to introduce the following arguments in my presentation regarding the information provided by Eramet in its public version of the Prehearing Briefs.

"Firstly, the Commission should not cumulate Ukraine and China. In our opinion, it would be unfair to apply the cumulative approach to Ukraine and China due to the following reasons:

"It is clear that because of the high phosphorus content of Ukrainian silicomanganese, it does no0t compete with either domestic, Chinese, or other imports of silicomanganese.

"Antidumping measures were adopted in 1994 when Ukrainian industry was under the state control and enjoyed state support. The circumstances within the country have changed significantly during these 24 years, and the Ukrainian producers have changed the form of incorporation from state to private. The prime cost and the product's prices in Ukraine are formed on a competitive market basis.

"In 2006, the United States identified Ukraine as a market economy country--unlike China which in itself already indicates a market-based approach to doing business in Ukraine.

"In 2008, Ukraine became a member of the WTO and undertook the obligations not to provide targeted export subsidies to Ukrainian producers. Unlike China, no countervailing measure is applied to Ukrainian imports. Please note that the Russian Federation previously conducted a countervailing investigation into the imports of ferrosilicomanganese from Ukraine and completed the investigation without resorting to a countervailing measure.

"Secondly, the level of workload of Ukrainian sea ports constrains the possibility to process additional imported volumes of manganese ore.

"The two producers of silicomanganese in Ukraine--the ZFP and NFP ferroalloy plants produce silicomanganese with the high content of phosphorus, because they use Ukrainian manganese ore with a high phosphorus content. Phosphorus is a harmful element for most steel grades since it reduces the plasticity and impact strength of the metal at low temperatures and worsens the weldability of the metal, which is especially important for the automotive, shipbuilding, and the like.

"Importation of additional volumes of manganese ore to Ukraine may be problematic due to the heavy loaded capacities of Black Sea ports, which is as a result of occupation of Crimean Peninsula and ongoing military combat actions in Donbas Region. Indeed, today there is massive congestion of the Black Sea seaports as a result of this occupation of Crimea.

"In addition, because of the occupation of Crimea by the Russian Federation, Ukraine has lost access to the Crimean Sea ports. Starting from 2014, all these freight flows were redirected to Black Sea ports of mainland Ukraine. Also, due to the gaining of control by the Russian Federation over the Kerch Strait and problematic railroad transportation because of the military actions in Donbas, it has become more difficult to operate Azov Sea Ports--Mariupol and Berdyansk--which decreased the volume of transloading.

"As a result of the aforementioned events, Ukrainian Black Sea ports have increased the volumes of cargo transloading. Further increase of transloading volume the Black Sea ports is problematic due to the excessive exploitation of railway stations adjacent to the ports which experience problems with loading/unloading of railway cars even under the current level of workload.

"Conclusions:

"Ukrainian silicomanganese does not compete with U.S., Chinese, or other imports of silicomanganese because of its unique properties.

"Due to the heavy operation load of seaports, additional imports of low-phosphorus manganese ore used for production of large volumes of low-phosphorus silicomanganese are not possible.

"This situation in Ukraine has significantly changed after the occupation of the Crimea and Eastern territories of Ukraine which should be undoubtedly taken into account by the Commission.

"Thus, the revocation of the antidumping duty order on silicomanganese from Ukraine will not lead to a continuation or reoccurrence of dumping or material injury.

"Thank you for your attention and I respectfully ask to respond to any of your questions in writing."

STATEMENT OF KATERYNA VATUTINA

MS. VATUTINA: Ladies and gentlemen, my name is Kateryna Vatutina. I am Deputy CEO in Ukrainian consulting company that's named "Production Innovation Trading," a team of professionals who consult Nikopol and Zaporozhye Ferroalloy Plants under a consulting services agreement.

We assist these entities to reach as much effectiveness as they can in their daily operating activity. We have been involved in this business since 2011.

We are really happy to be here, and really thankful to--for having such an opportunity to be heard here and to express our opinion to all of you.

So as you know, the steel smelters are the main consumers of ferroalloys. The current United States

Government policy in regards to the U.S. steelmaking is a protectionist policy that is aimed at protecting the domestic producers from import in order to develop and increase the production of American steel.

This policy has already formed the foundation for introduction of tariffs of 25 percent on steel imports from most of the world since March 2018, and from Canada, Mexico, and the United Union starting from June of the current year.

This, in turn, leads to a reduction in steel imports, an increase in domestic prices, a revival of steel mills and an increase in the production of American steel. In total, the potential shortage of steel due to the closure of these markets will amount up to 12.7 million tons per year-pursuant to datas on exports to the United States from Canada, Mexico, and the United Union in the first half of 2017. This will automatically lead to an annual silicomanganese deficit in the United States market of up to 62,000 tons.

I am sure that all the experts here are well aware of the share of domestic production of silicomanganese in the overall consumption of American steelmaking enterprises. It currently amounts to no more than 15 to 19 percent. Even at the peak of prices and production in 2012, this figure did not exceed 29 percent of domestic consumption.

In addition, according to statistics we have, in 2001-2017, the volume of domestic production of silicomanganese has never exceeded the volume achieved in 2012, and no modernizations of American ferroalloy enterprises aimed at increasing their production capacity have been observed.

So taking into account the United States' plans to increase steel production volumes, as well as having due regard to the available statistics of the silicomanganese production in the United States, we are quite confident that, as related to the silicomanganese, the United States is an import-dependent country which, by shutting out itself from imports, risks to unbalance its own economy.

The Indian Government has a similar roadmap and plans to increase its steel production up to 300 million tons by 2030. With a uniform increase, we can talk about additional 16 million tons of steel per year. The demand for silicomanganese for the production of this 16 million tons of steel will be about 160,000 tons. And we all understand that India will be using all silicomanganese produced in its domestic market.

So it is highly expected that currently imported to the US Indian material, it's about 8,000 tons per year, will no longer be present at the United States market. It is most likely that Malaysia may also stop importing its

13,000 tons of silicomanganese to the United States, redirecting its supplies to Indian steelmakers since the neighboring country is a priori most commercially advantageous.

Ukrainian producers, being the integrated producers of ferroalloys, traditionally consume manganese raw materials of Ukrainian origin. The specific quality of these raw materials provide them with the ability to produce silicomanganese with a high content of manganese and a high content phosphorus. We are talking about phosphorus about 0.50.6 percent.

So there is a certain number of customers who are willing to pay higher price for high manganese content, and whose product quality is not harmed by the high phosphorus content. Such consumers are the reinforced concrete, or structural steel producers located in the CIS countries, Middle East, United States, and Southeast Asia countries.

So it is quite reasonable for Ukrainian producers to focus on supplies of their traditional silicomanganese, which limits the potential sales volumes into the United States.

When determining the priority of export direction for its products, any market participant is guided by some important criteria such as:

Cost of goods sold; pricing; duration of contracts; and proximity of the customers.

Definitely the priority markets for Nikopol and the Zaporozhsky Ferroalloy Plants are the markets of the CIS and the United Union, having the criteria of long-term relations, long-term contracts, and locations of the customers.

Whether it is for our high-phosphorus/high-manganese premium product or for our high-phosphorus/non-ASTM grade lower value product, we have found stable, reliable customers throughout the world.

Consequently, for our non-ASTM grade product we will not compete with U.S. production or with any other imports with the exception of Georgia. Even for that small percentage of production that is both high phosphorus and high manganese, it is more likely that Nikopol Ferroalloy Plant and Zaporozhsky Ferroalloy Plant will compete not with the U.S. producers of ferroalloys, but rather with producers from Norway, India, Spain, Russia, and Australia.

As it is known, profitability is achieved by the presence of the combination of such factors as the attractiveness of the rice, the low costs of goods sold, and the proximity of the customers. The United States market has traditionally been attractive in terms of price.

However, the cost of goods sold of the Ukrainian silicomanganese limits the competitive opportunities of

Nikopol Ferroalloy Plant and Zaporozhsky Ferroalloy Plant due to the high cost of electricity that takes around 30 percent of the cost of goods sold.

Ukrainian plants do not have any preferences in buying electricity like American manufacturers of silicomanganese have. In addition, Ukrainian producers of silicomanganese are forced to partially purchase the expensive4 imported coke and coal products that take around 15 percent of the cost of goods sold due to the lack of opportunities to cooperate with coke-producing enterprises located in the occupied territory of the Ukraine, like they previously did.

In a fairly closed American market of ferroalloy products, Eramet has a predominant position since it has its own silicomanganese production in the United States market, and it is an integrated producer who owns mines in South Africa and Gabon, and therefore has the ability to manipulate the prices in the ferroalloys market since its cost of goods sold is lower.

In addition to the aforementioned advantages in the U.S. market, it is commonly known that Eramet imports silicomanganese of its own production from Norway. Such position of Eramet has negative impact on the development of free competition in the United States market.

An example of benefits of Eramet from the closure of the United States market from exporters is the difference in price on their silicomanganese produced in Norway in the markets of Europe and the United States, totaling up to $300 United States dollars per metric ton, based on CRU Monitor data.

The annual reduction in the costs of American steelmakers resulting from the Norwegian imports to the United States may reach up to $10.5 million United States dollars. If you apply a similar calculation for imports at prices above the European level, the amount of potential reduction in the cost of steelmakers will be up to 60 million tons.

Raising the price of its products in the United States market, Eramet increases the cost of steel production, thereby reducing the amount of taxes paid by steelmakers in the United States. So when importing silicomanganese of its related parties to the United States, Eramet contributes to the reimbursement of the state treasury of other countries, but not the United States.

So just to summarize what I've just said, the United States Government policy is focused on increasing the domestic steel production volumes. Hence, we will see an increase in demand for silicomanganese in the long-term run. The American producers of ferroalloys cannot satisfy this demand, neither historically nor potentially.

India, Malaysia, Russia, and some other exporters could reorient themselves to their own markets. The deficit is highly expected.

Having the specific quality of base raw materials, Nikopol Ferroalloy Plant and Zaporozhsky Ferroalloy Plant are targeted at a certain United States buyer--namely, the structural steel producer, the consumption share of which is not critical. The ability to control the United States market and the ability to influence the prices are the real reason for Eramet's active position on prolongation of antidumping measures. At the same time, Eramet is unable to cover the internal market demand.

Thank you for your time and I also respectfully request that I be permitted to respond to your questions in written form, not to mislead just as a wrong translation.

STATEMENT OF DENYS SYSUYEV

MR. SYSUEV: Good afternoon, allow me to introduce myself. My name is Denys Sysuev. I used to hold the position of the Deputy Chairman of the Management Board for Financial Matters of Zaporozhye Ferroalloy Plant and I was also the First Deputy Chairman of the Management Board of Stakhanov Ferroalloy Plant.

Presently I am a consultant to the ZFZ and the NFZ and the President of Stalmag Sp. Z.O.O., which is a related party of Nikopol Ferroalloy Plant and an importer of Ukrainian silicomanganese to the European Union.

Having reviewed the Commission Report and the comments made by Eramet Marietta, Inc, I would like to draw your attention to the following:

Subject Merchandise.

I would like to begin with more detail on the quality of silicomanganese produced by Ukrainian ferroalloy enterprises.

Ferroalloys are mainly used as alloying additives in the production of steel, to give steel certain properties.

In Ukraine, the non-volcanic oxide manganese ores of sedimentary origin, which are characterized by a relatively high content of phosphorus, 0.2% to 0.3%, are the most common. During the concentration of manganese ore, the phosphorus is not removed, since it is tightly bound with ore minerals and it reacts into manganese concentrates.

Phosphorus is almost completely dissolved in ferroalloys during their production and then actively transformed into steel, having a significant, and sometimes decisive, effect on the steel properties.

Phosphorus is a detrimental impurity in steel, since it sharply reduces the plasticity and impact strength thereof, and also makes it cold-brittle -- brittle and non-plastic at subfreezing temperatures. Phosphorus has a strong tendency to segregate at grain boundaries, which leads to the temper brittleness of alloyed steels, especially in manganese, chromium, magnesium-silicic, nickel-chromium and chromium-manganese steels.

Therefore, the maximum allowable content of phosphorus in steel is strictly limited, which, taking into account the requirements for the metal and the possibilities of phosphorus removal, amounts to 0.02% to 0.08%. Silicomanganese with high phosphorus content is used for non-conforming ordinary grades of steel only, in regions where there are no sharp changes in low temperatures, and where the plasticity of steel is not required as such -- all ordinary steel grades, structural steel. The steel used for the production of ships, railroad cars, on the contrary, should contain a small amount of phosphorus -- spring steel, ball-bearing steel, etcetera.

To remove phosphorus from the steel, its additional processing--phosphorus removal--is required, which leads to an increase in the duration of steel heating and production costs.

Our plants lack special equipment for phosphorus removal from the alloys, consequently, to achieve low phosphorus content in the alloy either the high-quality low-phosphorus raw materials should be used, or a double metallurgical extraction of domestic raw materials should be performed with additional low-quality imported raw materials with low phosphorus content, which in turn, leads to significant additional costs.

This factor is the main reason why more than 90% of ferroalloys produced by the ferroalloy plants are characterized by high phosphorus content, 0.35% and higher, against the world standard of 0.20% maximum.

Thus, the phosphorus content of manganese ore used by Ukrainian producers in the production of ferroalloys is a main factor limiting the interchangeability of Ukrainian silicomanganese with other alloys.

Capacities and other Constraints on Ukrainian Producers.

As we have reported earlier, the capacities of Ukrainian producers are being already heavily loaded mainly with the production of high-phosphorous products and there are already customers wishing to purchase these alloys.

The enterprises take care of their reputation and, accordingly, are not willing to spoil their relations with the customers by refusing to produce the required alloys -- as a result, no significant and dramatic increase in the import of low-phosphorous ore is expected.

Moreover, Ukrainian enterprises have significantly reduced the supply of the imported ore due to the limited loading capacity of Ukrainian seaports. The Ukrainian enterprises are experiencing a shortage in the provision of free seagoing ships as a result of their use to deliver coke and coal products from abroad.

In addition, due to the occupation of the Crimea, some part of other enterprises reoriented the shipment of their products through other ports of Ukraine, which also led to an increase in their congestion.

In addition to the limited capacity of ports, there is a problem with domestic transportation by rail. For example, today the issue of delivering domestic ores, high-phosphorus, is quite serious. Ukrzaliznytsia, the government railway authority, cannot ensure the delivery of ore by rail transport and the entity tries in every possible way to provide supplies of this raw material by road and there is no possibility in the near future to talk about increasing supplies of imported ore.

The reason for the problems with internal cargo transportation is the shortage of shunting locomotives that provide the delivery of empty wagons to mining and processing plants for loading and delivery of loaded wagons from the Mining and Processing Plant to the departure station. For this reason, the wagons are left abandoned beyond the territory of the stations for a long time, often for five to ten days.

Due to the high cost of imported manganese raw materials, the deficit of it is formed, which minimizes the production of low-phosphorous silicomanganese.

Trade Restrictions on Foreign Markets.

In its prehearing report, the Commission mentioned the existence of antidumping restrictions on the Korean market and market of the Eurasian Economic Union.

We would like to draw your attention to the fact that the initiative to close the Russian Federation market from Ukrainian silicomanganese arose in the period of the beginning aggression on the part of the Russian Federation towards Ukraine.

In Russia, just as in the United States, a situation occurred when domestic producers are unable to cover the consumption needs of domestic steelmaking plants. Russia imports about 170,000 tons of silicomanganese per year, in 2017, with the maximum utilization of its domestic capacities and sale of its own silicomanganese in the Russian market.

Antidumping and countervailing processes were more of political nature than an economic one and this process lasted about two years instead of twelve months. This is proved by the fact that there is no real basis for closing the market from Ukrainian silicomanganese, which also emphasizes the existence of a struggle between two directions: economy and politics. Politics won, despite the massive support of Ukrainian silicomanganese by the largest metallurgical enterprises located in the Russian Federation.

Korean example once again demonstrates that Ukrainian producers of silicomanganese are not interested in markets on which they cannot compete by the criterion of production costs, i.e., unprofitable markets. The Korean market is full with the silicomanganese of Malaysian producers, for which the nearby market is a priority market. That is why Ukrainian ferroalloy producers did not take any action to protect their interests in order to prevent the closure of the Korean market.

Stakhanov Ferroalloy Plant was Lost due to the Aggression of the Russian Federation.

I must turn now to what is for me and for all Ukrainians, a very difficult subject. You are very fortunate to live in the United States. I read in the newspapers here that there is currently in this country a great political divide. I have to tell you, humbly, that you are so privileged to be able to have these political disagreements without violence. We are not so lucky, our country is under siege. I have read the prehearing brief of Eramet and I am shocked at the ignorance and callousness of the disregard for our situation. So I would like to tell you the truth of what is happening.

In 2014 the Ukrainian ferroalloy industry lost the Stakhanov Ferroalloy Plant due to the aggression of the Russian Federation. The main alloy which used to be produced by the Stakhanov Ferroalloy Plant was high-phosphorous silicomanganese. Since its launch, Stakhanov Ferroalloy Plant has not manufactured the products with a phosphorus content less than 0.35%. This feature is associated with a long shipments chain of foreign imported ores to Stakhanov Ferroalloy Plant.

Moreover, being an employee of this enterprise up until the moment of occupation of these territories, I may assure you that starting in June of 2014, when the shelling, damaging of the plant's electrical substation and seizing the plant had occurred, Stakhanov Ferroalloy Plant ceased its works and came out of control of its management and the shareholders.

In addition, according to the information available in the mass media, the materials and equipment of the plant were embezzled, which makes it impossible to fully launch the work of plant. By reason of receiving the threats to their lives and freedom the management of the plant was forced to relocate to the Ukraine-controlled territory. Business partners of the plant were notified of force majeure circumstances.

In addition, the Chamber of Commerce and industry also issued the appropriate certificate -- the confirmation of the existing situation. Since the mentioned period, the Ukrainian Government has adopted a number of regulatory documents prohibiting trade, making supplies and organizing cooperation with the enterprises located in the occupied territory of Ukraine.

On a much more disturbing level, there was an incredible human toll as well. Members of the staff were threatened, imprisoned and worse. The lucky members of management were saved by being smuggled out of the territories. Their properties have all been confiscated, with no compensation.

After reviewing the public version of the prehearing briefs provided by Eramet Marietta, Inc., it should be reported that almost all of the arguments of Eramet Marietta, Inc., concerning the current activity of Stakhanov Ferroalloy Plant are based on publications taken from the Internet and are not supported by real evidence. And this is from sources that are known to provide disinformation.

If Eramet is so confident of the production at Stakhanov, I would suggest to them that maybe they can go and visit it themselves. But your own Department of State has a warning against traveling in Donetsk, where violent clashes have resulted in over 9,000 deaths. The warning also states that U.S. citizens have been threatened, detained, kidnapped or killed.

As far as we are aware, at the moment the territory of the plant is used by the militants of the self-proclaimed unrecognized Lugansk People's Republic for repair and storage of military equipment. It is known from open sources of information that in 2016-2017, the Government of the self-proclaimed Lugansk People's Republic announced several times the resumption of the work of Public Join-Stock Company Stakhanov Ferroalloy Plant. However, such information is not verified and cannot be considered reliable.

Along with this, Eramet Marietta, Inc., is intentionally leaving out the fact that Stakhanov Ferroalloy Plant is located in the town of Kadievka, until 2016 the city was named Stakhanov, Lugansk region, in the temporarily occupied territory of Donbass.

In accordance with the Decree of the Cabinet of Ministers of Ukraine No. 1085-r dated 07 November 2014, the town of Kadievka is included into the List of Localities on the Territory of which the State Authorities of Ukraine Temporarily do not Exercise their Powers.

The legislation of Ukraine establishes a restriction on the movement of goods through the delimitation line and the introduction of foreign economic activities and hence, the Chamber of Commerce and Industry of Ukraine and the State Fiscal Service of Ukraine have no right to issue Certificates of Origin for the request of Stakhanov Ferroalloy Plant, and accordingly, without certificates of origin of goods from Ukraine, exports of products production of this plant is impossible.

Taken together, these arguments proves that the revocation of the antidumping order on silicomanganese from Ukraine will not lead to a continuation or reoccurrence of dumping or material injury. We respectfully request that the order be lifted as to Ukraine. Thank you for your attention.

MS. MOWRY: Thank you, Denys. That concludes our affirmative presentation. We do welcome all of your questions, and we are mindful of the questions that you asked the first panel this morning as well, and we --

I know that many of our witnesses had concerns about some of the statements from this morning, but we want to be sure that we can look at the full transcript and get a full translation before we comment on what was said in the first panel. But turn it over to you. Thank you so much.

CHAIRMAN JOHANSON: Thanks to all of you for appearing here today, and we appreciate that some of you came a long way to be here. So thank you again. I will begin this afternoon's questions. The domestic industry argues that the U.S. market remains an attractive market to subject imports, given its generally higher prices, and this is in the domestic industry's brief at page 45.

Indeed, both Ukrainian producers reported U.S. prices as being higher in the U.S. market than in the Ukrainian market, and this is on page V-9 of the staff report. Could you all please comment on the impact, on the potential impact of U.S. prices on imports of Ukrainian product if the dumping order is lifted?

MS. MOWRY: Sure, I'll take a crack at that. I think the overall -- and we'll be coming back to this theme, I think, throughout the afternoon. But what we see as the current U.S. prices now do not reflect prices of what the Ukrainian product would yield. So I think there's just right off the bat a disconnect between what the U.S. market is. We know from U.S. consumption that there is minimal high phosphorous consumption.

So in terms of what the -- you know, I think Commissioner Schmidtlein mentioned earlier about looking at the price underselling from the investigation, and that in only two of the six products showed underselling, that the market is completely different now in Ukraine.

So in terms of their -- their actions since the imposition of the order, it just shows that they've had extensive and diverse customers throughout the world, and that's -- it's no secret that yes, they are here because they do want to reopen the U.S. market, but that it will be in line with their abilities to sell throughout the world.

CHAIRMAN JOHANSON: Do you all have any cost estimates as to how -- or any figures as to how much less the Ukrainian would -- let me go back to Ms. Mowry. You stated that there would be a price differential between U.S. product and Ukrainian product if the dumping order were lifted. Do you have any potential figures, figures as to how much that would be?

MS. MOWRY: Sorry. If that's how it sounded, I misspoke. I guess what I'm saying is these companies are interested in learning more about the U.S. market, but looking at the prices that are currently in the U.S. doesn't necessarily reflect either for their premium product or for their high phosphorous product that is just not consumed now. This is exactly what they're trying to explore, is what are our potential markets.

So there is no price analysis or expectation. It's the very beginning of what they hope to have as a long and stable relationship.

CHAIRMAN JOHANSON: Okay, thanks for your response. How do Ukraine's other export markets compare to the United States in terms of size and prices?

MS. MOWRY: Chairman Johanson, we will -- we'll look at that and get you the precise numbers and give you that response.

CHAIRMAN JOHANSON: All right. Thanks, Ms. Mowry. The record shows that Ukrainian silicomanganese, that the Ukranian silicomanganese industry is highly export oriented, and that it exports to different markets worldwide. That is, it is not recently constrained, and this is seen at page 424 of the staff report, and Ukrainian producers' brief at page 14.

Against this backdrop, why should we not expect Ukrainian producers of silicomanganese to resume their exporting activities to the United States if the orders are revoked?

MS. MOWRY: I think it's fair to say that these good folks are here today because they do want to explore customers and potential customers in the United States. So you know, we're not going to come up here and say they're not going to export to the U.S. The question is, is there going to be a resumption of dumped or injurious sales, and the answer is clearly no when we look at what the domestic consumption of the high phosphorous product is.

MR. SYSUYEV: [THROUGH TRANSLATOR] Currently, as Denys mentioned before, we tried with long-term relations with customers all over the world in the different markets.

Having these long term relations with the customers and long-term obligations, we hardly ever have a possibility to make diversity on the markets, and that we are quite limited in our production volume increasing, because we are almost full in capacity using. So our policy is not really to reallocate the markets. We would like ourselves position that we got before.

CHAIRMAN JOHANSON: Okay, thank you Mr. Sysuyev and Ms. Vatutina for your responses. The record shows that Ukrainian silicomanganese is subject to anti-dumping orders by the Eurasian Economics Commission and Korea. Given the access restrictions faced by Ukrainian producers in other markets, would that not make the United States an attractive outlet for the orders if, an attractive outlet if the orders were revoked?

MS. MOWRY: Sure. We will address that in the post-hearing brief, Chairman Johanson.

CHAIRMAN JOHANSON: Okay thanks, Ms. Mowry. In the two Ukrainian prehearing briefs, much emphasis was placed on the fact that Ukraine changed from a non-market to a market economy in 2006, and this can be seen in your brief on page one.

But those changes were already in place at the time of the third review in 2012, when the Commission found the revocation of the anti-dumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury to the U.S. industry.

Why should the Commission reach a different conclusion now, based on a purported market conversion that happened 12 years ago and that did not affect the Commission's previous review?

MS. MOWRY: Sure. There's two parts to that. One is of course the change in terms of the now it being a market economy and having demonstrated that it is a responsible global trader should be taken into account. But I think the bigger difference is that there was no decumulation for Ukraine in the last review.

And the main difference is that I think that in the Petitioner's brief, they make mention that this high phosphorous content argument has been tried and failed before. I think the real difference here is that the Commission has finally collected information on U.S. consumption of high phosphorous, and that's the new information that we have in this review that shows that there's just no overlap of competition when we're looking at what is actually -- not only what's consumed, but what the domestic producers are themselves capable of producing.

CHAIRMAN JOHANSON: All right. Thank you, Ms.

Mowry. I appreciate your responses. My time is about to expire, so we will now turn to Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you. I too want to express my appreciation for the witnesses for coming here. I know that you traveled a long way, so thank you very much for being here. Continuing on that last question about what was -- what's different, and Chairman Johanson asked you about the non-market economy status, and part of your answer included the high phosphorous content.

Could you go over what it is that we now know that it's different, because of --

MS. MOWRY: Sure.

COMMISSIONER WILLIAMSON: You know, why we shouldn't consider, rule the same way we did before as regards the fact that the Ukraine and U.S. product and other products are all fungible?

MS. MOWRY: Right, and I'm glad that you used that word, because that's exactly where I was going to go in the staff report, is to the Fungibility section. If you'll bear with me for one second. I'm looking at page Roman numeral IV-9.

This is, you know, often when I'm hear testifying, there's so many complicated issues to address, and it's hard to identify what the key issue is. This one, it's so crystal clear that this page is -- these next two pages are absolutely critical to understanding what's different this time, and that's because that the Commission has finally collected information on high phosphorous.

So if you look on page IV-9, you see that 86, this is public 86 percent of U.S. importers' shipments were in ASTM Grade B. It then goes on to tell the other percentage --

COMMISSIONER WILLIAMSON: I'm sorry. You said Table IV-9.

MS. MOWRY: I'm sorry. I'm on page IV-9.

COMMISSIONER WILLIAMSON: Okay, excuse me.

MS. MOWRY: Sorry. I'm not on the table yet. I'm getting there.

COMMISSIONER WILLIAMSON: Okay, good.

MS. MOWRY: Page IV-9, the Fungibility section of the staff report.

COMMISSIONER WILLIAMSON: Uh-huh.

MS. MOWRY: So this talks again about the vast majority of importers' shipments were in Grade -- in ASTM Grade B, and then it goes on to show the percentage of shipments of high phosphorous, and you'll see that that number there in brackets on the fourth line down, and that kind of information is information that we haven't had in prior reviews, to the best of my knowledge.

If you look also at the following page on Table

IV-5, and you look at the U.S. producers' shipments by grade, and you look at the U.S. producers' shipments specifically of high phosphorous in 2015, '16, '17 and in both of the interim periods, I draw your attention to that line as well, and then again even looking at the U.S. importers' shipments, you see -- again, I don't want to -- I don't want to -- I think we've --

COMMISSIONER WILLIAMSON: You can't get into it.

MS. MOWRY: He's characterized it as minimal, but you can see that it's -- that even among the importers' shipments, that there is -- that's not what predominates for sure. I think this kind of data collection is -- I was not on the APO on the prior review, so I can't speak to exactly what was collected.

But to the best of my understanding, while the Ukrainians have consistently been making this argument, because quite frankly the chemical metallurgical makeup of their ore has not changed over these 24 years. Their ore is the same as it always has been. So they've been continually making this high phosphorous argument because that's what they use.

But it's finally in this review that we've seen what impact that would have in the U.S. market, and we see that it's not that much.

COMMISSIONER WILLIAMSON: Okay, but then you get to Table IV-9 on page IV-18. I'm sorry, scratch that. I misread it. So what does -- what do you make then of the Petitioner's arguments that high phosphorous can be used, that there's a growing amount of use of high phosphorous content of silicomanganese?

MS. MOWRY: I would like to address much of the Petitioner's comments in our post-hearing brief. But I guess I would just say if you look back again at Table IV-5, and if there is a growing market for high phosphorous product in the United States, I don't see how that could cause any risk of competition to the U.S. domestic producers.

I think what we have said is if there is any competition, any overlap of competition in the U.S. for high phosphorous product, it would be only with the Georgian product. But even then, the Ukrainian level of phosphorous is much higher, and I don't know if, Katerina, if you want to speak to that or -- that's where we see the only possible overlap of competition.

COMMISSIONER WILLIAMSON: Yes, could you speak to that, because I have another question along those lines.

MS. VATUTINA: As I previously said, we never can compete with local producers because they do not produce and cannot produce because they do not have an appropriate manganese raw material for such kind of products that we can produce.

So it's totally different product with phosphorous content 0.5, 0.6. It's more close to the Georgian material. It's more similar. However still it's a huge difference, because it's a difference in phosphorous content, more than Georgian content.

COMMISSIONER WILLIAMSON: Okay. This morning, Petitioners talked about possibly mixing with other -- mixing high phosphorous with other silicomanganese products, and about the fact that it's really the value of the amount of manganese you can get.

So and then again you get to Table II-9, which still talks about the fungibility, and that the product is fungible, and giving the various ways that one can use the high phosphorous content and the advantage of the higher manganese content.

MS. VATUTINA: Sure.

COMMISSIONER WILLIAMSON: Just the fact that you produce a lot of high phosphorous content and consumption doesn't seem to be -- our domestic consumption is not that much of it in our current statistics, still doesn't address that question about are the products fungible?

MS. MOWRY: 100 percent. I'm going to separate those two questions. One is on the combination and the dephosphorization, we are definitely going to address all of those issues in the post-hearing brief. Okay, okay, sorry. Then I guess we'll address them now.

COMMISSIONER WILLIAMSON: Okay.

MR. SYSUYEV: [THROUGH TRANSLATOR] Yes, that's correct, that theoretically it is possible to mix the material with high phosphorous content and with low phosphorous content. But you should also understand that to make this mix, the steelmakers should have appropriate equipment just to be able to do this.

If you make an attempt to make this mix manually not using the specific equipment for such procedures, they will have high risk of receiving zand not the right materials they will need at zand. They will risk to have high phosphorous content at zand. So they will need just a specific equipment and a huge investment should be made to reach this.

Denys, as being a president of -- company that is exporter of Ukrainian production, he has an experience in Europe. He has an experience of selling this material, and he is quite confident and his experience is saying that the customer likes to have two different materials to be brought, just to not to mix because it's risky. It's very risky from the point of view of the chemical composition that can make steel not as they need to be done. Sorry.

COMMISSIONER WILLIAMSON: Okay. My time is expiring, but post-hearing, if you could provide sort of more details on this. Are there countries, are there producers, domestic steelmakers in the U.S. who tried to mix or haven't had good success, or are there other countries where this has happened?

I take your point about the theoretical possibility and the practical possibility, and the practicalities. But it would be useful if you can give us either some documentation or further guidance on this, this question.

MS. VATUTINA: We'll discuss it once again later, but as Denys repeated again to me, that he had no -- any experience selling such product for the mixing. So just divide -- they refused to buy such material for further renovation.

COMMISSIONER WILLIAMSON: Because they didn't have the proper equipment to do the mixing?

MS. VATUTINA: Yes.

COMMISSIONER WILLIAMSON: And maybe just, you know, where are these customers? You can provide that post-hearing, just to kind of document that. Because as I said, I know it's very easy for someone to come and say yeah, in theory we can do it. But then you can say nobody in his right mind would try it, and that's what the -- that's what would be useful to have further documentation on that point.

MS. MOWRY: We'll see what we can get for you, Commissioner Williamson.

COMMISSIONER WILLIAMSON: Okay, good. Thank you very much for that.

CHAIRMAN JOHANSON: Commissioner Broadbent.

COMMISSIONER BROADBENT: Thank you. Ms. Mowry, is it BPI how much of the production in Ukraine, what percentage is the high phosphorous?

MS. MOWRY: It's a good question, and I have don't have a grasp of the public record as much as I should. But I was just looking at -- I mean it's definitely in the two questionnaire responses, and it's at Table II-13 in the two questionnaire responses.

I mean I think one of the Commissioners had a question earlier today of what is the actual production of high phosphorous versus this ASTM Grade B, and that's exactly what's in these two tables. You will see that the vast majority of production from both companies is in the high phosphorous.

COMMISSIONER BROADBENT: Okay.

Now is Eramet said in its hearing Exhibit Slide 8 that high grade silicomanganese made by Georgian manganese is similar to the high phosphorous silicomanganese made by Ukrainian producers. So is this high percentage of stuff made the Ukraine similar to what Georgia is exporting to the U.S.?

MS. MOWRY: It's my understanding, and Katerina can interject, but is that the baseline may be the same, but that in reality the Ukrainian product is much higher phosphorous, the 0.5, 0.6 percent range, whereas the Georgian content -- I'll let her clarify.

MS. VATUTINA: That's totally correct. There's two materials. The Georgian one and the Ukrainian one are similar in manganese content, but as for phosphorous, Ukrainian is much higher, because Georgian material is up to .35 percent, and Ukrainian material is higher, above .35 percent.

COMMISSIONER BROADBENT: Okay. So Georgian is like 0.22 to .35 percent, and the Ukrainian is .5 to .6 percent roughly?

MR. SYSUYEV: [THROUGH TRANSLATOR] 0.5 to 0.6.

COMMISSIONER BROADBENT: Okay. So is high grade silicomanganese the same as high phosphorous silicomanganese?

MR. SYSUYEV: [THROUGH TRANSLATOR] As previously was said by Eramet, that typical is the high manganese is always followed by the high phosphorous content, but it's not true. Silicomanganese can be produced with high manganese content and with different phosphorous content and vice-versa. It can be either low phosphorous content or high, and low manganese content. It totally depends on the raw material, on the manganese ore.

COMMISSIONER BROADBENT: So a high grade silicomanganese could have a low phosphorous content?

MR. SYSUYEV: [THROUGH TRANSLATOR] Yes.

COMMISSIONER BROADBENT: Is that very often does that happen? I mean is that sold very often?

MS. VATUTINA: For the Ukrainian silicomanganese, no it's not often because we are using the Ukrainian region manganese ore, and it typically contains high phosphorous content. So it's impossible with Ukranian silicomanganese.

COMMISSIONER BROADBENT: If Ukranian silicomanganese were to re-enter the U.S. market, would it enter on a spot basis or subject to contracts would you guess?

MS. VATUTINA: Excuse me. Could you please repeat your question?

COMMISSIONER BROADBENT: Yeah. If the Ukrainian product re-entered the U.S. market, if the order was lifted, would it enter on a contract basis or spot basis, subject to contract or spot sale?

MR. SYSUYEV: [THROUGH TRANSLATOR] Ukrainian producers typically used to work on a contractual basis, or a typical formula-based, tried through Ryan's Notes or Sierra Metal Bulletin. That is a specific metallurgical publications indicating the prices. So we used to have long-term contracts and regularly formula priced, like connected to the publications.

COMMISSIONER BROADBENT: Okay. So I'm trying to get my head around the key product difference, and but if we look in the staff report, most U.S. firms reported to the questionnaires that subject imports from Ukraine and the domestic like product were always or frequently interchangeable, and there was only sometimes or never differences other than price between the two products.

So are you really arguing that there's not an overlap of competition between these products due to the product difference?

MS. MOWRY: I'll take that one. I think we tried to address this in our brief as well. But the idea that they, that the purchasers would respond to this question has to be taken into account, along with the fact that they are not purchasing or using Ukrainian product. So and that, coupled with in many of the questions they're lumping together both Ukraine and China.

So whether it's just comparing the U.S. and Ukrainian product, or comparing or giving opinions on if the order is lifted as to both or what the similarities are with both, we're talking about purchasers that don't have any experience with the Ukrainian product.

COMMISSIONER BROADBENT: But they were answering this question, Ukranian versus domestic.

MS. MOWRY: Understood, and I know in, you know, having worked with clients and I take Mr. Levy's point, that some of the respondents were traders and, you know, globally sophisticated. Typically, the people that are filling out these questionnaire responses are not the, they're not responding from headquarters. They are kind of in the trenches.

So when you're filling out those ASF, filling out all those little numbers, they do it quickly, I don't think -- I don't think for these producers, this is the key issue. I think any purchaser when they're looking at the whole questionnaire, they're not necessarily really thinking about let me think extra careful about the phosphorous issue.

It's just, you know. If they don't have the familiarity, there's not really the option to just not answer that box.

COMMISSIONER BROADBENT: Okay. During the original investigation, did you Ukranian producers export high phosphorous silicomanganese to the United States?

MS. MOWRY: Commissioner Broadbent, I do not know the answer to that question, but I would assume so.

COMMISSIONER BROADBENT: I can't even imagine how old you were when that was happening.

MS. MOWRY: Right. I will tell you, I was out of college already. I'm telling you. This case is old, I'm old, we're all old. These cases get away. I mean it's based on their, like I said, the make-up of their ore has not changed over time.

COMMISSIONER BROADBENT: Okay. So it would be the same level of phosphate I guess?

MS. MOWRY: I would assume so.

COMMISSIONER BROADBENT: Yeah.

MS. MOWRY: We can go back in the archives, but we don't know.

COMMISSIONER BROADBENT: Okay. Do you agree that U.S. prices for silicomanganese are higher than prices in Europe or elsewhere in the world?

MS. MOWRY: Yes.

COMMISSIONER BROADBENT: Ukraine has exported silicomanganese to 59 countries around the world. Doesn't this statement essentially express agreement with the domestic parties that Ukraine is broadly export-oriented, and shifts exports between different markets all the time?

MS. MOWRY: I think those are two different things. There's no doubt that they are -- that they have a great diversity of export markets, and that they have been responsible global traders for quite some time now. I think they give short shrift to their Ukrainian market. I don't want to say the wrong number but, you know, they do have a home market and the fact that they have such a broad, diverse number of export markets just shows their commitment to the long-term being a responsible global player, I think.

The other -- I know that my clients take objection to this, oh they can shift quickly. It completely disregards their long-term contractual relationships with their other customers. So there's no quick shift in the cards. Do you want to add? Thank you.

COMMISSIONER BROADBENT: Okay. Has the Stakhanov facility, Stakhanov, this is damage that happened in 2014, right, and do we have information on whether it's restarted or not? He may have said things I didn't quite catch.

MR. SYSUYEV: [THROUGH TRANSLATOR] We do not have information about restarting this entity. We just can read the same sources of information like all of us do. We have heard for several times that they were started; however, that wasn't true. But still if they will restart, this material will not be considered as Ukrainian, like Denys said in his testimony.

COMMISSIONER BROADBENT: Well, it would be considered Ukrainian in the U.S.

MS. MOWRY: I know. We need to explore this a little bit further, but in terms of the ability to ship anything, there's no possibility of the Ukrainian government -- I don't know the right word for it, authorizing it or it's by law not considered part of the Ukraine anymore. So I think that there is --

(Pause.)

MR. SYSUYEV: It's possible I repeat some words in my testimony. The legislation of Ukraine establishes a restriction on the movement of goods through the delimitation line, and the introduction of foreign economic activities, and Chamber of Commerce and Industry --

MR. BURCH: Can you speak into the microphone?

MR. SYSUYEV: of Ukraine and the State Fiscal Service of Ukraine have no right to issue Certificates of Origin for the request of Stakhanov Ferroalloy Plant, and accordingly, without certificates of origin of goods from Ukraine, exports of products production of this plant is impossible. It's only contraband from other country, not from Ukraine.

COMMISSIONER BROADBENT: Okay. So we don't know if it's producing, but if it is, it would be -- you're saying it would be illegal to sell it here.

MR. SYSUYEV: Illegal. It will be illegal for us.

COMMISSIONER BROADBENT: Okay, all right. Well, my time's expired. Thank you.

MR. SYSUYEV: And for this, who buy this material.

COMMISSIONER BROADBENT: Okay, thanks.

CHAIRMAN JOHANSON: Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Thank you. I'd like to also thank the witnesses for being here. We really do appreciate foreign producers who travel to answer our questions. So thank you very much.

I wanted to follow up on the question with regard to production and shipments during the original investigation. Given that you've made the point that the ore hasn't changed, right, so most likely you were shipping high phosphorous content and product during the original investigation.

So I wondered why, you know, what has changed in the United States market that you believe there would no longer be demand for that, that there was demand for back in the original?

MS. MOWRY: Again, I apologize. I did say I assume that that is what was being shipped during the original investment. I don't know. We will definitely review that, check and see what we can find out.

But I do think the difference is that we now have more information about what is actually being consumed. We know what's being consumed now, and we know what domestic producers are able to make now, and we see that there is just no overlap of competition.

COMMISSIONER SCHMIDTLEIN: So do you have a response to the Petitioner's point with regard to Table IV-5, in that they believe it is not complete? Which is the table that shows the percentage of imports that comprise high phosphorous.

MS. MOWRY: I don't know what -- no, I don't have an opinion about what the Petitioners are looking at there. I know that this is what reflects what the Commission has collected, and it seems pretty clear to me. But I don't, I don't know what they're speculating about.

COMMISSIONER SCHMIDTLEIN: Okay. But is that -- is that mostly the basis for the argument that we should decumulate, that the conditions of competition between the Chinese and Ukrainian product will be different because the Ukrainian product is mostly high phosphorous, or are there other bases for differing conditions of competition?

MS. MOWRY: That is the primary basis both for the decumulation and for the lack of potential injury, because it's not only that it is a different product from the Chinese, but it's a different product from what the U.S. is making.

COMMISSIONER SCHMIDTLEIN: Okay, and what are the other bases for differing conditions of competition for purposes of the cumulation analysis?

MS. MOWRY: You know what Commissioner Schmidtlein? I'm going to ask if I can defer that to our post-hearing brief. This is -- we see this as really the major issue in the case, and that's what we're -- that's what we've spent our focus on. But I will look -- I'll look at the other --

COMMISSIONER SCHMIDTLEIN: Okay. We just want to make sure we understand the whole argument.

MS. MOWRY: Sure.

COMMISSIONER SCHMIDTLEIN: So the Ukrainian producers sell into Europe, as has been discussed. Is the market in Europe different from the U.S.? I apologize if this has already been asked and answered. Is the market in Europe different from the U.S. in terms of the demand for high phosphorous product? And if it is, why is that?

MS. MOWRY: Katerina has the -- her first answer is how can we compare, because we don't have experience in the U.S. market. So if you have --

COMMISSIONER SCHMIDTLEIN: Well, but you all have taken the position that there is not a demand for high phosphorous product here, which is the product you produce. But yet you sell into Europe, and so my question is how -- is that market different? Of course, I don't know. Maybe it is, but are the steelmakers using different recipes there that U.S. steelmakers don't use or not?

I mean if your position is that U.S. buyers might be more interested in high phosphorous product than you think, or then that the past record, in your view, would show? That's fine too.

MS. MOWRY: For sure.

COMMISSIONER SCHMIDTLEIN: But I just wondered, what is the --

MS. MOWRY: We need to explore that more and huddle up on that, and we will put that in our post-hearing brief as well.

COMMISSIONER SCHMIDTLEIN: Okay.

MS. MOWRY: Sorry. We have a lot of moving parts.

COMMISSIONER SCHMIDTLEIN: That's fine. Similar to that question is a question about the other markets that you service, the 59 other export markets. Are those markets also different from the U.S. market in terms of the demand for high phosphorous? And what I'm getting to, is the U.S. the only market that has a limited demand for high phosphorous product?

MS. MOWRY: I can only go back to I know we've talked about this, but let's look at what the experience is, and what this company, these companies have been able to sell, and that's when I go back to, as I was pointing out to Commissioner Broadbent, that Table II-13 from the two questionnaire responses that shows their actual, their actual production of high phosphorous versus ASTM Grade B.

And I think we can break down more of exactly how much of that is being exported versus sold in Ukraine, but --

COMMISSIONER SCHMIDTLEIN: Okay, yeah.

MS. MOWRY: They just don't have experience with the U.S. market to know.

COMMISSIONER SCHMIDTLEIN: To know what the demand for high phosphorous would be, is that what you're saying?

MS. MOWRY: To know whether or not they have -- whether or not there is a market for them.

COMMISSIONER SCHMIDTLEIN: Okay. I have no further questions at this time.

CHAIRMAN JOHANSON: Commissioner Kearns.

COMMISSIONER KEARNS: Thank you all again to all the witnesses for being here today and for coming so far. I appreciate your testimony. My questions are fairly similar to Commissioner Schmidtlein's, but I think may be slightly different, so worth asking.

I mean it would be helpful in your post-hearing brief, I guess, to really delve into that data from the original investigation, because assuming that that is high phosphorous product coming from Ukraine, we saw a pretty dramatic increase in imports from Ukraine during the original investigation, which seems to suggest, unless something's changed about the market for steel in the United States, it seems to suggest that there is some fungibility of the product. So if you can address that, we'd appreciate it.

MS. MOWRY: We will do so.

COMMISSIONER KEARNS: Okay, thank you. And also you had said you don't expect any quick shift, because you have established relationships with customers around the world. But you know, we saw a pretty quick shift during the POI, so if you could address that as well.

MS. MOWRY: And I think that my client's response to that is that these are fundamentally different companies. Those were state-owned companies, and now we have, you know, completely privatized, you know, commercially operating companies. They're just different animals. We can barely compare them. But we will -- we'll look into it and see what we can find out from back then.

COMMISSIONER KEARNS: Okay, thank you. This is again something that I think Commissioner Schmidtlein was struggling with. But I mean my understanding, I think we have a chart here. Ukraine is I think the second or the largest exporter of silicon manganese in the world. How can it be that it produces a product that isn't substitutable for what most customers need? Is it -- is there something different about the U.S. steel market, where we have a need for low phosphorous silicomanganese but the rest of the world doesn't?

MS. MOWRY: Commissioner Kearns, I do apologize, but I think we're -- as I anticipated, I think most of these questions we're going to have to -- once we have our full, accurate translation of our discussions, then be able to get back to you on that.

COMMISSIONER KEARNS: Okay, okay. Going back to a question I asked with the Petitioners this morning, can you -- I'm guessing it will have to be in the post-hearing brief, but can you provide us with some estimate of the price difference between high phosphorous silicomanganese and the Grade B product that's more typically sold in the United States?

MS. MOWRY: We can certainly provide you that difference with looking at our own experience. I'm not sure how much we can provide that with what's sold in the United States. But we'll do our level best.

COMMISSIONER KEARNS: Okay, thank you. Now again, following up on a question Commissioner Schmidtlein had about the EU market, if you can tell us what percentage of your exports to the EU are of ASTM Grade A, B, C or high phosphorous, or they may not use ASTM, but of the various products. High phosphorous versus other maybe is the best way to describe it. I think that would be helpful.

MS. MOWRY: Absolutely.

COMMISSIONER KEARNS: Thank you. Oh, so you've mentioned that the issues you all are experiencing with the ports in Ukraine have limited exports from Ukraine. But the data we have in Table IV-13 shows rising exports from 2015 to 2017. How can you -- how do you explain that?

(Pause.)

MS. MOWRY: Part of that I know will -- when we have the revised transcript, we can look back. Part of the discussion of the ports is also relating to the -- because they're so overloaded, the difficulty of the importation of other ores. But we will -- we will for sure look at that issue and respond to that in the post-hearing brief as well.

COMMISSIONER KEARNS: Okay.

MS. MOWRY: I hate to sound like a broken record,
but -- COMMISSIONER KEARNS: No, I understand.

MS. MOWRY: But I did try to warn you.

COMMISSIONER KEARNS: You did. Okay. So in your slides, you have this argument about increasing production of Indian steel, and I may not have understood the argument well enough, and I don't remember seeing it in your prehearing brief, so forgive me if I'm misunderstanding. But if you look at page IV-33 of our report, you know, that shows that exports of silicomanganese from India are going up.

In fact, in 2017 they're the highest they have been in the three years, 2015 through 2017. Can you help us understand why that would be, given that India is producing more and more steel, so that you would expect silicomanganese exports to be decreasing?

MS. MOWRY: I think that, Commissioner Kearns that is mostly a forward-looking statement, looking at the Indian government plans up until 2030, so it's a projection. It's not a historical lookback. It's a projection of what the threats are to -- we know that the U.S. is import-dependent on silicomanganese and then looking at the major sources, this chart is anticipating that there are threats that both the Indian and Malaysian sources will be severely restricted in the future. And I will comment further on that in the post-hearing brief. But that is what -- this is forward-looking.

COMMISSIONER KEARNS: Okay. I have no further questions right now. Thank you.

CHAIRMAN JOHANSON: I'm gonna back to the Stakhanov plant with a question related to that. The domestic industry posits that the Ukrainian producers did not identify any legal authority that would support the Commission treating, "Stakhanov is not being a producer of subject merchandise in Ukraine, because it is located in a territory occupied by Russia since 2014."

Can you all point to any precedent where an occupied country has been subject to an investigation by the Commission, and how the Commission dealt with that issue?

MS. MOWRY: We will look into that, Chairman Johanson. To be honest, for these guys, it's so far from reality, they for sure don't believe anything's being produced there, but again, even if it is, it's not considered part of Ukraine, but I think that the impression I've gotten in our discussions is that, what we're seeing on the Internet is kind of repeated disinformation campaigns. But Denys, I don't know if you wanna talk about the, not just the embezzlement, but the other assets from the plant when the invasion was taking place.

MS. VATUTINA (FOR MR. SYSUYEV): When the terrorists came to the Stakhanov Ferroalloy Plants, they took, most of all, all the equipment, the transportation equipment, like ultima vials, vases and any of the equipment then could be useful in war, using in war actions.

CHAIRMAN JOHANSON: Okay, thanks for your response. If you could maybe look into that legal issue, I'd appreciate it, Ms. Mowry.

MS. MOWRY: Will do.

CHAIRMAN JOHANSON: Okay, thanks a lot. And thanks for your response there, Mr. Sysuyev. This is something that I read in your brief and I just wanted to get an answer from you, because I'm curious about it. At Page 7, you all write that Ukrainian producers have alleged that NFP has not been able to acquire Australian manganese ore for more than two years. I was wondering, why is that the case?

MS. VATUTINA: Imported are more expense and we couldn't afford those rates indicated by Australians.

CHAIRMAN JOHANSON: And how does that impact your production? And the output of your product?

MS. VATUTINA: We went into and other kind of materials and we bought the manganese ore from other associates like Ghana or we used our Ukrainian ore.

CHAIRMAN JOHANSON: Okay, all right. Thanks for your responses. Has the silicomanganese industry overall experienced any significant change in terms of manufacturing processes, technology to market conditions since the original investigation in 1993.

I'm not referring to the invasion by Russian into parts of Ukraine, but just overall. Ms. Mowry, you stated these orders went into effect twenty-four years ago. And I was wondering, what all has changed in the industry which might impact this investigation?

MS. VATUTINA (FOR MR. SYSUYEV): In principle, the technical chain remains the same. There were some modernization made in regards to ecological protection. From the points of your technology, everything remains the same. No innovations were made to change the technology process. Because unfortunately, science is staying the same. We just renewed some equipment, but functions of this equipment remains the same.

CHAIRMAN JOHANSON: Okay, thanks, Mr. Sysuyev and Ms. Vatutina. And I have just one question, at least for now. Published sources, specifically MEPS, indicates that North American prices for rebar increased by more than $150 a ton in the recent eleven-month period. Do such rapid increases in prices suggest a current and continuing strong market demand for silicomanganese in the U.S. market, which might drive up imports?

MS. MOWRY: We'll respond to that in the post-hearing brief, Chairman Johanson.

CHAIRMAN JOHANSON: Okay, thanks, Ms. Mowry. Okay, that concludes my questions, at least for now. I would like to thank all of you for appearing here today, especially since you had to come a very long way. Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you. Just a few more questions. Mr. Sysuyev, you had mentioned with regarding to production of the Stakhanov plant, if there was any production, it would be illegal. And I was wondering, illegal according to whose laws and what's the meaning of that? What's the effect of that?

MS. VATUTINA (FOR MR. SYSUYEV): As we understand the current legislation, it will be illegal, not only for the Ukrainians, as well worldwide.

COMMISSIONER WILLIAMSON: Okay. So it's Ukrainian law would say it's illegal. I don't know whether -- would any production there be covered by U.S. sanctions?

MS. MOWRY: I don't know that. Sorry. We can look into that as well.

COMMISSIONER WILLIAMSON: The reason I'm not getting that is, if there is production from their work and they sell it, could they sell it to the U.S. or would they have to sort of transship it someplace and change the origin?

MS. VATUTINA: Anyway, this material will not consider it as Ukrainian.

COMMISSIONER WILLIAMSON: It would not be considered Ukrainian.

MS. VATUTINA: No.

COMMISSIONER WILLIAMSON: Okay, thank you. For the petitioners post-hearing, I raised the questions with respondents about mixing, concrete examples of where people try to mix, you know, high-manganese, high-phosphorus and low-phosphorus and bad results. I was wondering if you have any concrete examples of that to either address that people are doing it or not doing it and do they have the equipment to do it? So it's a question for post-hearing.

Okay, going back to respondents, can you describe the relationship between NFP, ZFP and any U.S. entity engaged in producing, importing or purchasing silicomanganese? And if you want to do it post-hearing, you can.

MS. VATUTINA: We do not have exact information in regards to affiliation of Nikopol, Zaporozhye and Felman and JA. We have just public information and we can disclose our structure. I mean Nikopol and Zaporozhye structure to the beneficiary owners and if someone just had the same structural JA or Felman just to have an opportunity to compare the structures and to find the relation. However, we didn't have such chance and so we can neither confirm nor deny. But we also saw this information in our previous --

COMMISSIONER WILLIAMSON: Questionnaire?

MS. VATUTINA: -- spaces and we saw the structure disclosed by the lawyer -- if I'm not mistaken in Australian case. But we cannot confirm that.

COMMISSIONER WILLIAMSON: So you can't confirm the accuracy of any of those other disclosures? Okay. Thank you. And post-hearing, if it's not already on the record, you might clarify what you do know about your structure.

MS. MOWRY: Absolutely.

COMMISSIONER WILLIAMSON: Okay, thank you. This may have to come post-hearing, too, but is there a difference between ZFP and NFP in terms of their theoretical potential to product silicomanganese with lower phosphorus content? And what might explain the differences if they are?

MS. MOWRY: From my understanding, there's no difference between the two plants in terms of what they can produce.

COMMISSIONER WILLIAMSON: Is the potential to produce the lower phosphorus silicomanganese depend on being able to access ore from outside of the Ukraine?

MS. VATUTINA: Yes, it is. It is possible.

COMMISSIONER WILLIAMSON: Okay. And that gets to all the shipping issues and costs and all that, that you've made reference to.

MS. VATUTINA: Yes, sure. We should add the transportation costs -- .

COMMISSIONER WILLIAMSON: I'm sorry?

MS. VATUTINA: Yes, correct. We should add the transportation cost while importing manganese ore into Ukraine.

COMMISSIONER WILLIAMSON: Okay. So getting to the potential to produce silicomanganese with low phosphorus.

MS. VATUTINA: Yes, we do have such a potential, but our company's strategy, our current strategy is to consume the Ukrainian region manganese ore. And we try with obligations for this high-phosphorus material, so we need to fulfill this obligations and to continue consume Ukrainian ore.

COMMISSIONER WILLIAMSON: So are both -- I'm just thinking -- Ukrainian companies under the same constraints? And again, that may be post-hearing.

MS. MOWRY: Commissioner Williamson, we will definitely address that in the post-hearing. I think, I've asked a lot of our witness and her, she was not expecting to do full translation today. And --

MS. VATUTINA: And that's confusing when I can't understand you, sorry.

COMMISSIONER WILLIAMSON: I'm sorry. No, I

understand. It's not easy. Okay. Thank you.
MS. MOWRY: But we will definitely address that.
COMMISSIONER WILLIAMSON: Okay, thank you.
MS. MOWRY: I think that the situation is the same in both plants, but it could be that there are more obstacles at one versus the other. But we will absolutely confirm and respond to that.
COMMISSIONER WILLIAMSON: Okay. We asked the petitioners this morning about demand, and I think someone's already asked, raised the question of demand. I guess, I forgot whether it was the Ukraine and also in Europe. And do you agree with petitioners that demand in the U.S. looks strong?
MS. MOWRY: I think we agree on the impact of the Section 232, if we wanna go back to the slide, I think it's the prior slide about the -- the increase for an already import-dependent market here in the U.S. And as we like to -- or whether or not we like to hear it, as we hear so often, if you don't have steel, you don't have a country.
So it's very clear that the U.S. government policy is to increase the domestic production of steel. And that would logically lead to an increase for demand for silicomanganese and I think the issue here that we foresee, whether or not it's Ukrainian product or not, but just in general, that the demand for silicomanganese --

COMMISSIONER WILLIAMSON: Okay. That's in the U.S. market?

MS. MOWRY: In the U.S. market --

COMMISSIONER WILLIAMSON: What about in the European market and the Ukrainian market?

MS. MOWRY: That we will address for you in the post-hearing.

COMMISSIONER WILLIAMSON: Okay, thank you. And this question is for you, Ms. Mowry. Is the imposition of tariffs on China under Section 301 a difference of a condition of competition between Ukraine and China? And is that a basis for decumulation?

MS. MOWRY: I do think it is. And I will encourage you to find any basis that you would like for decumulation. But, you know, as I said to Commissioner Schmidtlein, we really focus on the phosphorus issue as the main basis for both decumulation and for lack of overlap of competition here in the U.S. But, you know, there are different industries. We have no opinion about whether or not the order should continue on China. We're here to talk about Ukraine and would like to be examined on our own merits.

COMMISSIONER WILLIAMSON: Okay. Good. Okay, thank you for those answers. And I have no further questions.

CHAIRMAN JOHANSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: Okay. Ms. Mowry, this bug-a-boo issue of Felman's relationships with Ukrainian producers, I think we need some help, some response to what's in our staff report. I think it's Page 126 to 128. Where the staff states that public information, take that Prevac Group which owns the Ukrainian producers, has had an ownership interest in Felman.

Felman's uh, trading website includes a statement that it has an exclusive sales arrangement with all three Ukrainian producers. And within this website, it's easy to link between websites to other plants that appear to be affiliated with the Georgian American Alloys Group, including both NFP and ZFP. And then, but Felman hasn't identified any relationship with any of these firms in the subject country.

Can you please clarify, either here or in your post-hearing response what your relationship is with Georgian American Alloys, the Prevac Group and Felman Production. We need to know this.

MS. MOWRY: We will definitely address it in the post-hearing brief. I think there's, Ms. Vatutina said before, we can only provide what our ownership is. We cannot provide information of other company's ownerships. But as she said, we see the same reports that others do.

But we will answer as fully as we can in our post-hearing brief.

COMMISSIONER BROADBENT: Okay. And then, I guess this is BPI, but please address the statements and arguments made by domestic parties on Page 30 to 32 of their prehearing brief. And you can do that in the post-hearing. I guess I can't refer to it here publicly.

MS. MOWRY: For sure. We will. I also just wanna find out that Ms. Vatutina said, in response to your last question, we definitely do have comments on the exclusivity issue and we will address those, this idea of exclusivity arrangements, we will address those in the post-hearing as well.

COMMISSIONER BROADBENT: Thank you. I have no further questions.

CHAIRMAN JOHANSON: Commissioner Kearns?

COMMISSIONER KEARNS: No further questions.

CHAIRMAN JOHANSON: Okay. Do any Commissioners have further questions? Okay. No Commissioner have other questions. We appreciate you all being here today. Thank you again for your participation in this hearing. And with that, let me ask if the staff have any questions for this panel.

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Mr. Chairman, Staff has no additional questions.

CHAIRMAN JOHANSON: Do petitioners have any questions for this panel?

MR. LEVY: Just one, Mr. Chairman. Earlier in the panel, Commissioner Kearns asked respondents if they would kindly report the difference between their average unit price for what they are calling their high-phos product produced in Ukraine on the one hand, and their standard-grade, or lower-phos product produced in Ukraine on the other hand.

I would simply ask whether, in so reporting, they can report that information both on a dollars per gross ton basis, and on a dollars per DMTU basis, so that we have the ability to make apples to apples comparisons of prices per contained manganese unit, as well as on a gross ton basis.

MS. MOWRY: Your request is noted, Mr. Levy.

CHAIRMAN JOHANSON: All right. With that, we will prepare for petitioners' closing, to be followed by respondents' closing. Let me let y'all know the time allocations. Those that supported the petition have forty minutes of direct and five minutes of closing for a total of forty-five minutes. Those in opposition have twenty-five minutes of direct, five minutes of closing, for a total of thirty minutes.

MR. BURCH: Closing and rebuttal remarks in support of Continuation of Orders will be given by Jack Levy of Cassidy Levy Kent. Mr. Levy, you have 45 minutes.

CLOSING STATEMENT OF JACK LEVY

MR. LEVY: Thank you, Mr. Chairman and Commissioners. I have oodles of time, and I endeavor to use very little of it.

We started off the morning with testimony from the Government of Ukraine, and I think they painted a very sympathetic picture of a government that is struggling with tremendous civil strife and Russian aggression. And later in the afternoon, Mr. Sysuyev noted that we should all be lucky to live here in America. I think that's absolutely right. And, it is sobering to hear about their struggles and their troubles, and to reflect on how fortunate we are here.

I think one of the things that I love most about America is our rule of law. And we have a statute, the antidumping statute, and it is incumbent upon this Commission to enforce our laws. That is the American way.

And so as much as we sympathize with the facts on the ground in Ukraine, we have a law to administer here consistent with the facts on the administrative record.

It is not for this Commission to set aside applicable law, or to disregard applicable facts, as much as we might sympathize with their plight. So, for example, when they say that the antidumping raid that Commerce forecasts in the event that the Order is revoked, the raid of 163 percent, if they say don't believe that for a second, I would simply point to you that that's the rate that Commerce calculated last year in an administrative review, and based on their administration of the law they predict that, should the Orders be revoked, that would be their rate of dumping.

And I would simply respectfully suggest that Secretary Ross would be very disappointed were you to substitute your judgment on that issue of law for his.

By the same token, I think we heard testimony this afternoon that the Stakhanov Plant is in a portion of Ukraine that's occupied by Russian aggressors, and to the extent merchandise is going to be produced there beginning at the end of the year, it's not Ukrainian product.

And here again I would simply say that, you know, Secretary Pompeo may have something to say about that. We're not predicating our argument on the probability that the Stakhanov volumes will come into production and penetrate the U.S. market. We're simply calling out the fact that it is a relevant condition of competition, and there was a failure on the part of Stakhanov owned by the same two Ukrainian oligarches, mind you, to submit a questionnaire response and provide you with information.

And so we have simply provided you with the best available information on the record. Some might say it's "fake news" put out there by terrorists. Maybe so. But we're just doing the best we can to provide you, the Commission, with the information that's available in the public space, because we don't have the ability to do better.

So with that, I wanted to turn to the substance of what we heard this afternoon from the Ukrainian industry Respondents. And I think that Ms. Mowry echoed the sentiment that she also articulated at the start of the day, which is that these Orders are getting pretty long in the tooth. It's been almost 20 years now, and shouldn't that somehow create a rebuttable presumption of revocation as to one or both countries.

And I respectfully submit that that's not the way the law is written. And I respectfully submit that little has changed since the last sunset review that would counsel in favor of revocation. In fact, there are new facts that counsel in favor of maintaining those Orders.

It is worth observing that you, Commissioner Williamson, and you, Chairman Johanson, you participated in those reviews. You made findings of fact, and you made findings of law, and some of those findings are very much now at issue on this record.

So at the heart of what Ukrainian Respondents seem to be arguing is the point that they produce almost exclusively a high-phos product that has little or no demand, finds little or no consumption, in the U.S. market; that that is a new fact that was not present on the record of a prior review, and that in their view that is a game-changer. That because of that you now should decumulate and go on to revoke as to Ukraine.

And the heart of their observation as a factual matter is to be found on page 4-9 of the prehearing report where I think she correctly characterizes the number in brackets as sort of a minimal percent of high-phosphorous product being consumed in the U.S. market.

We--and let me be perfectly clear on this point--this is one of these cases where you're not going to be able to go back to your office and know how you're going to vote. You're going to have to wait and see what's in the post-hearing briefs, and what the staff develops in terms of further facts for the final report, and what you see in the final comments. Because we vehemently insist that that is not an accurate picture of the U.S. market in terms of consumption of silicomanganese.

We heard from Ms. Vatutina, I believe she testified that the Ukrainian product was close in kind to the Georgian material. I think she acknowledged that the

Georgian material is high-grade, and so is the Ukrainian product high-grade.

She acknowledged that the Georgian material is high-phos in the point two to point three-five range, but then went on to represent that the Ukrainian product is point five to point six percent. So it's like super high phos. And that's the distinction that she was emphasizing, and saying that it remains to be seen whether there's a market for the super high Ukrainian phos in the U.S. market.

And I think two things are worth observing as a result of those comments.

First, there seems to be an acknowledgment from Ms. Vatutina that the Georgian product is high-phos, if you define that as point two to point three-five percent phosphorus, which is well above the ASTMB standard. But yet the data in the prehearing report, it acknowledges that 25 percent of imports are from Georgia but makes no account for the high-phos content of that Georgian product.

In other words, this cannot be reconciled. How can it be that a quarter of imports are from Georgia and are high-phos by their own admission on the one hand, and then on the other hand that we have a prehearing report that says there's no consumption of high-phos in the U.S. market?

Both cannot be right. And we respectfully submit that we will be providing much more detailed and robust data to prove the point we are making, which is the Georgian product is by and large high-phos product, and that evidences the fact that there is demand for this product. This product competes head-to-head in the United States for a significant segment of the market with standard grade silicomanganese.

The second point that she makes in observing the distinction between the Georgian product and the Ukrainian product is to say, you know, again they have high-phos, point two to point three-five, but in Ukraine we have super-high phos, right? The point five to point six percent. There's a wonderful illustration here in one of their exhibits. They say it right here: Ukraine silicomanganese specific chemical composition, and they show the Ukrainian ore, the Ukrainian silicomanganese, a very nice picture. They show that it's high grade, right, up to 72 percent contain manganese. And then for phos, they show .05 to .06 percent.

So we've got that statement there, and they also represent that their questionnaire responses further evidence the fact that they produce minimal amounts of standard grade.

Well I'm here to remind you that from the perspective of our clients that's not the Ukrainian industry that we know around the world. The Ukrainian industry that we know around the world is very, very different. And if we want to talk about their product mix from the perspective of phos, let's do that.

I don't know how many of you have before you our proprietary brief from the prehearing and the underlying exhibits, but let me paraphrase some of that information for you here. And insofar as it contains our business proprietary information, I'll show a little leg here at the hearing just to make for ease of conversation. And we'll provide much deeper detail in the post-hearing submission.

But in Exhibit F of our pre-hearing brief, we include a declaration from a member of the Eramet Group who is very familiar with the sale of silicomanganese in places like Europe and the Middle East, because Eramet has affiliates that produces and sells into those markets. And what this gentleman reports is that there is a publication called "Metal Expert." And what "Metal Expert" does is they compile export statistics from the certifications that exporters declare as a condition of exporting from Ukraine.

So Ukrainians are in the business of filling our export declarations and certifying by country destination their phos levels. And so we can develop this information more fully in the posthearing brief, but what we summarize there--and I'll give you the example for their exports to the Netherlands in 2017, where the total reported volume is in excess of 72,000 tons. It's not a trivial quantity. And they break it down into four ranges.

The first range is essentially less than .02 percent. It's the Grade B standard. And 49 percent of the total is standard grade. Half. Half of what they're shipping to the Netherlands is standard grade. I don't know how that reconciles with this picture that they're showing you that says that their stuff is .05 to .06 phos. They seem to be completely irreconcilable.

The next level is .21 to .25 percent. That's another 34 percent of their volume. That's the stuff that's kind of on par with the Georgian material, right? .26 to .30 percent. That's another 11 percent. How much of it is more than .31 percent? Now we're pushing super-high phos, right? Five percent. Five percent of their exports in this case to the Netherlands is this super-high phos.

So we respectfully submit that there's a real disconnect between the product mix and the phos levels that Ukraine has represented to the Commission here today on the one hand, and on the other hand the phos levels that they've certified and declared to their own government for export to markets like the Netherlands.

What we have told you is that fundamentally in our experience Eramet understands, based on their competition with Ukraine in markets in the Middle East and

Europe, that the Ukrainians produce and offer for sale standard grade silicomanganese; that they also produce and offer for sale a higher manganese content product that has, along with it to be sure, a higher phos level, but a higher phos level that is generally on par with the Georgia. And the reason that that is important is that when you add up the standard grade, and you add up the stuff that looks like the Georgian material, all of that production and that capacity that they have--and Lord knows they've got a lot of unused capacity in Ukraine--all of that can be immediately turned on the U.S. market to compete head to head with standard-grade silicomanganese.

The high-grade/high-phos product competes head to head with standard-grade silicomanganese in the U.S. for at least a third of the market. You've heard from Mr. Rochussen, and the standard-grade silicomanganese from Ukraine, of which there's plenty of it so it seems, well that stuff is fungible. And all of a sudden the purchaser questionnaire responses that we talked about this morning, they start to make sense.

If you turn--I don't know if we have the ability to project exhibits, but if you go back to the last exhibit, Exhibit 9 that we projected, and purchasers were asked about interchangeability, U.S. versus China, U.S. versus Ukraine, China versus Ukraine. And the finding was, this stuff is most of the time, if not frequently, interchangeable. Well, it all makes sense, because what's produced and sold out of Ukraine is standard-grade silicomanganese, and high-grade/high-phos just like the Georgian stuff where there's overlapping competition in a third-plus of the U.S. market.

So, it make perfect sense. By the same token, there are questions here about phosphorus content, and whether quality meets industry standards; whether it's made to spec, and whether there are different grades. And what you here again is that there's comparability across countries.

Now Respondents advanced the argument that this is one of these cases where purchaser questionnaire responses are not to be believed. You know, whenever I'm in a case where Respondents are arguing that you need to set aside the questionnaire responses, you know that there are some issues here and you've got to look at this with a very cold eye.

Who is answering these questionnaires? Well, we'll speak to it more in the proprietary record, but these are global traders. And these are steel mills, many of which have affiliates overseas. They know what they're talking about. Eramet knows what it's talking about. So at the end of the day, the one argument for why this case is different from the last review when you, Mr. Chairman, you, Commissioner Williamson, voted affirmative vis-a-vis Ukraine, the one difference which is somehow they are producing an uber-high phos, that's all they have to offer, and there's little or no U.S. consumption of it? That's just counter-factual. Admittedly we have work to do. The information that is on that page of the staff report at page 4-9 where a minimal percent of the U.S. consumption is described as high-phos, that data point needs to be scrubbed. It needs to be reconciled with the reality that there are imports from Georgia. And, thankfully, we will be able to do that in a way that is definitive. Because the official U.S. import statistics will tell us that what's coming in from Georgia is high grade, and we know that the Georgian material is both high-grade and high-phos.

Even Ms. Vatutina agrees on that point. So really the, if you will, the keystone of Ukrainian industry's argument both for decumulation and for a negative determination is predicated on this incomplete summary, and basically an incomplete characterization of the Georgian material and the way in which it competes head to head in the U.S. market, coupled with, frankly, a failure to own up to how pervasive they are in their ability to produce standard-grade silicomanganese, standard-grade silicomanganese that they can prove that is not only from

Australian ore but from ore from Gabon, or South Africa, or any number of other global sources.

And so on the issue of Ukraine, you know, we respectfully submit that there is no basis for decumulation. There's no basis for revocation. There are other arguments that are largely speculation. They basically say that, well, U.S. demand is booming. So your problems in the U.S. industry are solved. This immunizes you from any injurious impact of future dumped imports from Ukraine.

Well you heard sworn testimony from Mr. Rochussen that whatever the intended benefits of Section 232 when it comes to volume, the rubber hasn't met the road yet. And, similarly, we have heard speculation that India and Malaysia are going to exit the U.S. market. And so, if anything, they're just going to displace the Indians and the Malaysians. They're not going to eat anyone else's lunch, which I kind of find hard to reconcile with the next box which says: Ukrainian silicomanganese won't compete with U.S. or other imports.

So how are they going to eat the Indian Malaysian lunch on the one hand, and then not compete with them on the other? I think at the end of the day that's just forward-looking speculation, and all we're left with is an industry that frankly deserves our sympathy. The predicament in Ukraine is pitiful, and they have all of our sympathy. But under U.S. law, that doesn't mean that the good workers in Ohio, and in West Virginia, need to be subjected to the scourge of dumped imports from Ukraine.

As much as they would like to believe that they are now a responsible global player, let us not forget that they have been slapped with antidumping duties in Mexico, in Korea, in the Eurasian Economic Commission. So please don't let the workers in West Virginia and Ohio be the next victims of dumped product from Ukraine.

Finally, I have to return to China. It's I guess not a rebuttal because the Chinese didn't participate. They didn't answer questionnaire responses. I don't know what there is to respond to. But perhaps I'll respond a little bit more to the questions we heard this morning.

Chairman Johanson, I think you asked a pointed question this morning, which is: What can we learn from the experience with Brazil that might instruct us as we think about the Chinese fact pattern?   Because obviously you revoked us to Brazil, and what happened then?

I went back and I looked at the proprietary record in the most recent sunset review, which was placed on the record of this proceeding. And without getting into the specifics, what we observed was that unused capacity in Brazil in the last case was quite modest and very small in relation to U.S. consumption.

And even so, parenthetically, a nontrivial amount of that unused capacity found its way into the U.S. market after the Orders were lifted. But that stands in stark contrast to China.

And if you go back to confidential exhibit A that we've provided you, what you have in China is a quantity of unused capacity that just stupefies the mind. It is so many multiples of total domestic consumption. I cannot think of a single case where you have that much unused capacity just sort of laying out there, and the Commission revoking as to that country.

But we heard some very fair points from Commissioner Broadbent, Commissioner Schmidtlein, and others, which is: What are we to make of the fact that China's export performance in recent years, while there's in percent terms there's an important increase from 16 to 17, and the number of countries is increasing from 16 to 17, the absolute number is still modest both in relation to U.S. consumption and in relation to the unused capacity. So how do you reconcile the fact that you have this massive unused capacity in China and yet they're not exporting that much?

Part of the answer, again, has to be the role of the Chinese export tax. There are other explanations that we'll develop further in our post-hearing brief, but there's no question that that was an important feature during the course of this period of review.

And in all honesty, we don't know whether the Chinese export tax remains in effect in 2018 or not. We've simply provided to you the admittedly ambiguous evidence before us. And we can all try to interpret what that empty box means.

But even if the export tax remains in effect, and even if there's no effort to offset the tax through other Chinese Government regulatory measures, the fact remains--and you heard this again, the Ukrainian Respondents admitted to it--a U.S. market has the highest prices in the world. And we'll develop more evidence to support that proposition, Commissioner Kearns, because I know you're interested in having more data points to support that assertion. But the fact is, if there were not 150 percent duties on imports into the United States during the Period of Review, the United States is the one market that China would have wanted to saturate to a fare-thee-well. And it's not speculation because we need only turn again to the information at Exhibit Number 4.

And even inclusive of the export tax, the U.S. industry prices at the blue line was higher than the yellow line, which is again the Chinese domestic price plus an amount for export tax, through most of 2017.

So what we would have expected to see during 2017 without an Order, is really not a matter of speculation. What we would have seen is we would have seen a gush of Chinese product coming into the United States to capture volume.

Why? Because they have all that unutilized capacity and the price is higher than what they could get anywhere else. So of course they would be shipping. The difference between shipping to the United States and shipping to the rest of the world is the U.S. prices are materially higher, so much so that there's an economic incentive to ship there.

And how will they penetrate the U.S. market? Easy. By offering lower prices, prices that would immediately have an adverse impact, separate and apart from displacement of volume, which would be real, but the first transaction, the first spot transaction would have a chain reaction across all of the long-term contracts in the U.S. industry because it's the discount off of the published spot index. Not to mention what it would do during this mating season where Eramet and for that matter Felman, they're negotiating for long-term contracts for the next year.

So I think it's pretty clear that even with an export tax, which may or may not still be in effect, it's pretty clear that, given these high U.S. market prices, the incentive for the Chinese to produce and sell in the United

States is actually quite palpable. And with so much unused capacity, so many multiples larger than the entire U.S. market, it would crush the U.S. producers, which I guess takes me back to where we started.

Which was, you know, the testimony from our clients. You heard from U.S. producers and their workers that they were profitable in 2017, and they're still treading water in 2018. But those profits don't overcome the losses in the prior years. And they've just made some major commitments. It's been an iffy, touch-and-go environment, but despite that, what have they done?

They've negotiated new deals with their unionized workers, offering them higher wages and benefits. They've committed to their workforce, and they've committed to the environment. They've invested millions of dollars in greener compliant plants that can long endure in the heartland. But they have not yet gotten a payback on those millions of investments.

Their capacity utilization is not what it needs to be. These producers are vulnerable, and they deserve protection under these facts and under the applicable law because we respectfully submit that if the Orders are revoked the best evidence shows a likelihood of a recurrence of material injury.

And so we thank you very much for your

consideration of these facts. We know we have some homework to do after the hearing to get better data in front of you and to help you sort out some of these open issues, but we hope you will reserve judgment and carefully consider those points because we know that once we sort through these issues you will see what we've been telling you, and you'll understand that there is a strong basis for cumulation.

Nothing has fundamentally changed since the last review that would support revocation. If anything, the facts further support continuation of the Order. Why? Because you heard from Mr. Rochussen that the market is increasingly accepting of higher phos. So whatever you're hearing from the Ukrainians, the new facts of this review compared to the old actually support another affirmative determination.

And even as to China who is not here and chooses not to participate, the record evidence shows that, given these high U.S. prices the U.S. is the one market that they would flood, given our high prices and the absence of 150 percent duties.

So thank you again. And thank you to the staff. You know, except for this one loose end that we need to sort out, we think it's a very fine and complete record, and we also thank Commissioner Broadbent and staff for taking the time to visit Marietta. We know it's always helpful when we can take time and impart a richer sense of what's happening on the ground for the company and the people.

So with that, I think we will conclude and please look out for our post-hearing submission. Thank you.

MR. BURCH: Final closing and rebuttal remarks on behalf of in opposition to continuation of Orders will be given by Kristin H. Mowry of Mowry & Grimson. Ms. Mowry, you have 30 minutes.

CLOSING STATEMENT OF KRISTIN H. MOWRY

MS. MOWRY: Thank you. I intend to take all 30 minutes and keep us all here all afternoon, and go over these arguments over and over again.

Mr. Levy is quite eloquent. He unfortunately also has a tendency to put words in people's mouths, speculate wildly, and apparently now accuse our clients of making false statements.

So I am not going to take anyone's time. I am going to say we will be very happy to provide all the facts in our post-hearing brief. I am interested to see what separate data set the Petitioners want to come up with to compare to Table 4-5. I'm certain that whatever separate data set they come up with with respect to imports, I cannot imagine that they're going to have any new data with respect to U.S. producers' shipments of high-phosphorus product.

This is not a complicated case. There are a lot of issues that we still need to address and go through and get you answers on, but this is a case about there simply being no overlap of competition. And we look forward to the revocation of the Order as to Ukraine. Thank you.

CHAIRMAN JOHANSON: Thank you again to all the parties for appearing here today, and I will now make the closing statement.

Post-hearing briefs, statements responsive to questions, and requests of the Commission, and corrections to the transcript must be filed by October 4th, 2018.

Closing of the record and final release of data to parties occurs on October 26, 2018. And final comments are due on October 30th, 2018.

And with that, this hearing is adjourned.

(Whereupon, at 3:34 p.m., Tuesday, September 25, 2018, the hearing in the above-entitled matter was adjourned.)

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Silicomanganese from China and Ukraine

INVESTIGATION NO.: 731-TA-672-673

HEARING DATE: 09-25-18

LOCATION: Washington, D.C.

NATURE OF HEARING: Fourth Review

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: 09-25-18

SIGNED: Mark A. Jagan

Signature of the Contractor or the Authorized Contractor's Representative

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.

SIGNED: Duane Rice
Signature of Proofreader

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

SIGNED: Gaynell Catherine
Signature of Court Reporter