

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
LAWN AND GARDEN STEEL) Investigation No. :
) 731-TA-1010 (Final)
FENCE POSTS FROM CHINA)

Pages: 1 through 91

Place: Washington, D.C.

Date: April 22, 2003

HERITAGE REPORTING CORPORATION

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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) Investigation No.:
 LAWN AND GARDEN STEEL) 731-TA-1010 (Final)
 FENCE POSTS FROM CHINA)

Tuesday,
 April 22, 2003

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

The hearing commenced, pursuant to notice, at 9:33 a.m. before the Commissioners of the United States International Trade Commission, the Honorable DEANNA TANNER OKUN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:Commissioners:

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On behalf of Steel City Corporation:

KEN FIBUS, President, Steel City Corporation
STEVE SPEECE, Vice President, Production, Steel
City Corporation
MICHAEL JANAK, Controller, Steel City Corporation
PETER KIMBALL, Economic Consultant, Economic
Consulting Services, Inc.

MARCY B. STRAS, Esquire
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Washington, D.C.

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P R O C E E D I N G S

(9:00 a.m.)

1
2
3 CHAIRMAN OKUN: Good morning. On behalf of
4 the United States International Trade Commission, I
5 welcome you to this hearing on Investigation No.
6 731-TA-1010 (Final), involving Lawn and Garden Steel
7 Fence Posts From China.

8 The purpose of this investigation is to
9 determine whether an industry in the United States is
10 materially injured or threatened with material injury
11 by reason of less than fair value imports of subject
12 merchandise.

13 Schedules setting forth the presentation of
14 this hearing and testimony of witnesses are available
15 at the Secretary's desk. I understand the parties are
16 aware of time allocations, and any questions regarding
17 such should be directed to the Secretary. As all
18 written material will be entered in full in the
19 record, it need not be read to us at this time. All
20 witnesses must be sworn in by the Secretary before
21 presenting testimony.

22 Copies of the notice of institution, the
23 tentative calendar, and transcript order forms are
24 available at the Secretary's desk. Transcript order
25 forms are also located in the wall rack outside of the

1 Secretary's office. Finally, if you will be
2 submitting documents that contain information you wish
3 classified as business confidential, your requests
4 should comply with Commission Rule 201.6.

5 Good morning, Madam Secretary.

6 MS. ABBOTT: Good morning, Madam Chairman.

7 CHAIRMAN OKUN: Are there any preliminary
8 matters before we proceed to opening remarks?

9 MS. ABBOTT: No, Madam Chairman.

10 CHAIRMAN OKUN: Very well then. We will now
11 have opening remarks.

12 (Witnesses sworn.)

13 MS. STRAS: Thank you. Thank you. My name
14 is Marcy Stras, and I am a partner with Baker &
15 Hostetler. I'm here today with the representatives
16 from Steel City Corporation. Steel City is the last
17 U.S. producer of lawn and garden steel fence posts.

18 We have three representatives from the
19 company here this morning. Mr. Ken Fibus, the
20 president, who will give you a background on Steel
21 City and its lawn and garden steel fence post
22 business.

23 Mr. Steve Speece, VP of production, who will
24 discuss the product, lawn and garden steel fence
25 posts, how the posts are made, why they're not like

1 tee posts, signposts or any other type of post. His
2 testimony will be in support of our argument that
3 there is only one like product in this case, lawn and
4 garden steel fence posts.

5 Mr. Mike Janak is also here. He is the
6 controller, who will discuss how Steel City has tried
7 to compete with the dumped Chinese imports.

8 Then we have Mr. Peter Kimball, economist,
9 from Economic Consulting Services, who will describe
10 how the economic indicators clearly show that Steel
11 City has been materially injured by the dumped Chinese
12 imports.

13 As you know, the Department of Commerce
14 issued a final determination of sales at less than
15 fair value yesterday. We just got it yesterday. It
16 was due Friday. One Chinese producer, Bao Steel,
17 received a margin of zero. However, the remaining
18 producers received margins ranging up to 15.61
19 percent.

20 We are here today to tell you, and it was
21 detailed in our prehearing brief, that it is the
22 dumped imports, not the fairly traded imports, that
23 most directly compete with Steel City. These are the
24 imports that have materially injured Steel City, and
25 Steel City needs a remedy from these imports or it

1 will be forced to close its production, and a U.S.
2 industry will be lost to China.

3 Steel City is here today to ask for your
4 help. It is very noteworthy that the Chinese dumpers
5 and their importers are not here today to defend the
6 case. It must also be noted that the Chinese
7 producers did not cooperate in this final
8 investigation and participated minimally in the
9 preliminary investigation. We urge you to impose
10 adverse inferences to their absence and lack of
11 cooperation.

12 We would like to begin our testimony with
13 Mr. Kin Fibus, president of Steel City Corporation.

14 MR. FIBUS: Good morning. My name is Ken
15 Fibus, and I am the president of Steel City
16 Corporation. Steel City is a family owned business
17 founded by my father in 1939 in Youngstown, Ohio. I
18 have been with the company part- or full-time since
19 1947.

20 Originally, Steel City produced small
21 products such as wine coolers and ice-cold beverage
22 dispensers. In 1946, we erected an 8,000 square foot
23 building, a manufacturing facility, at our current
24 site and began producing metal products such as
25 dustpans and jello molds. Newspaper delivery tubes

1 and rural mail boxes were added later.

2 The first lawn and garden steel fence post
3 was produced in 1955 by Utility Products, located in
4 Milwaukee, Wisconsin. Steel City began producing
5 similar lawn and garden steel fence posts in 1959. I
6 developed the lawn and garden steel fence market east
7 of Indiana, and Utility Products developed the market
8 to the west.

9 In the late 1960s, Utility Products sold out
10 to Gilbert & Bennett, a major lawn and garden wire
11 fence producer. Gilbert & Bennett then took lawn and
12 garden fence posts from a regional to a national
13 business. At that time, only regional home centers
14 plus mom and pop hardware stores, discounters and
15 Sears Roebuck were retail outlets for the lightweight
16 lawn and garden posts. Hardware wholesalers who sold
17 lightweight fencing for play yards, dog runs and small
18 animal/garden protection then began supplying the
19 lightweight lawn and garden steel fence posts to their
20 regional retailers.

21 When I set out on the road to sell our U
22 shaped lawn and garden steel fence posts, I faced
23 tough resistance from the retailers. They felt that
24 our posts would not be accepted by farmers because
25 they were not strong enough, and they did not believe

1 there was enough residential demand. Over time, with
2 persistence I was able to convince wholesalers that
3 there were two markets -- farm, one, and lawn and
4 garden -- and to try to sell our lawn and garden steel
5 fence posts with their lightweight steel fencing to
6 residential consumers.

7 The first orders were minimal, but gradual
8 acceptance continued for several years. As
9 lightweight lawn and garden wire fencing gained wider
10 acceptance, so did our lawn and garden steel fence
11 posts. In 1976, our sales of lawn and garden steel
12 fence posts were approximately \$1.5 million. It
13 wasn't until the introduction of the national home
14 center chains that more consumers became familiar with
15 the lawn and garden steel fence posts.

16 By 1985, our sales of lawn and garden steel
17 fence posts had grown to \$3.8 million, and in 1995 our
18 sales were \$6.3 million. With the success of our lawn
19 and garden steel posts, we became a viable, profitable
20 company. The consumer found the lightweight lawn and
21 garden steel fence posts with easy-to-bend holding
22 clips simple to use, and it became the preferred post
23 of the residential customer. The homeowner clearly
24 preferred the user friendly lawn and garden steel
25 fence posts.

1 In the early 1990s, Gilbert & Bennett, our
2 major competitor, decided to take some lawn and garden
3 fencing and fence post tooling to China to undercut
4 the market. There were many delivery and quality
5 problems for over two years. Gilbert & Bennett then
6 tried to recall their tooling, only to be rebuffed.
7 The Chinese then became our formidable competitor,
8 taking major accounts and later forcing Gilbert &
9 Bennett, a \$60 million company, into bankruptcy.

10 We first started seeing the Chinese lawn and
11 garden steel fence posts in the U.S. market around
12 1992 or 1993. The Chinese import volumes increased as
13 their prices decreased. Today, we are facing
14 financial ruin and the end of our lawn and garden
15 steel fence post production. We are here to ask for
16 your help from the dumped, unbelievably low-priced
17 Chinese imports.

18 Thank you for giving me the opportunity to
19 testify, and I'll be happy to answer any questions
20 that you may have.

21 CHAIRMAN OKUN: Thank you.

22 MS. STRAS: I'm assuming you'll reserve your
23 questions until --

24 CHAIRMAN OKUN: Ms. Stras, if you could just
25 turn your microphone on?

1 MS. STRAS: I'm assuming you'll reserve your
2 questions until the end, as normal?

3 CHAIRMAN OKUN: Yes, we will.

4 MS. STRAS: Thank you.

5 Our next witness is Steven Speece. Steve is
6 the vice-president of production.

7 MR. SPEECE: Good morning. My name is Steve
8 Speece, and I am vice-president of production at Steel
9 City Corporation. I have been there for over 28
10 years, and I must tell you the last five years have
11 definitely been the toughest. The loss of fence post
12 sales has had a major impact on our company.

13 Lawn and garden steel fence posts are a
14 separate industry that supplies fence posts for
15 homeowners in suburban and rural areas for lawn and
16 garden applications. They are used for pet
17 containment, tomato stakes, garden production,
18 property boundaries, sapling supports, safety barriers
19 and for many other home and garden uses.

20 Lawn and garden steel fence posts are made
21 of mild steel and weigh up to one pound per foot and
22 are U shaped or hat shaped in profile. Lawn and
23 garden posts are much different than other posts in
24 physical size and shape, uses, marketing, customer
25 perceptions, manufacturing processes and pricing.

1 I have brought some cut off samples of the
2 various posts I'd like to show you. Would you like us
3 to pass those around?

4 CHAIRMAN OKUN: Yes, you may. If you can
5 just bring them up?

6 MR. SPEECE: Okay. Mike? Mike can do that.

7 The first sample I'd like to pass around is
8 a cut off signpost. These are typically used for stop
9 signs and other road signs. They weigh over four
10 pounds per foot and are made by heating old railroad
11 rail or other scrap steel red hot and hot-rolling it
12 into shape. Not only is this post very heavy, but
13 it's also very hard and will usually break off rather
14 than bend. These posts are produced by steel mills
15 such as Chicago Heights Steel.

16 The second sample I'd like to pass around is
17 of a tee post. Tee posts are made by the same
18 manufacturing process as a signpost and are made by
19 the same companies. These posts are also very hard
20 and are made by heating old railroad rail or other
21 scrap metal red hot and rolling it into shape.

22 The sample you have is the most common
23 weight of a tee post, which is 1.25 pounds per foot.
24 Companies that make these include Chicago Heights
25 Steel, Franklin Industries and SMI, which is formerly

1 Southern Post. Tee posts are used for farm and
2 construction applications.

3 The third samples that I would like to pass
4 around are of the Steel City and the Chinese light
5 duty lawn and garden posts. As you can see, these
6 posts are much lighter, .4 pounds per foot, than the
7 other posts you have looked at. They are also made of
8 much softer steel.

9 These posts have lugs on them, which make it
10 very easy to attach wire, which make them more user
11 friendly. Please note that the Steel City Corporation
12 post and the Chinese post are almost identical in
13 size, shape and function. The consumer would not know
14 one from the other.

15 The last set of samples I'd like to pass
16 around are of the Steel City and Chinese lawn and
17 garden heavy-duty posts. These posts weight .9 pounds
18 per foot and are made of the same mild steel as the
19 light-duty posts. You can see that they have the same
20 U shaped profile as the light-duty posts and are used
21 for the same purposes. They also have the same lugs
22 for holding onto wire.

23 I want to expand on why the lawn and garden
24 fence post business is a separate industry from the
25 other posts on the market. The first point I want to

1 make is on the physical characteristics and uses.

2 You can see by the samples that there are no
3 similarities in appearance between the lawn and garden
4 posts and the other samples. Lawn and garden posts
5 are U shaped or hat shaped in profile and are much
6 lighter, weighing .4 pounds per foot for light-duty
7 and .9 pounds per foot for heavy-duty, than the tee
8 posts at 1.25 pounds per foot or the signposts at four
9 pounds per foot.

10 Lawn and garden posts also have lugs on them
11 that can be bent out and then back in as a convenient
12 way to attach wire without the need of additional
13 fasteners. Tee posts and other posts require the use
14 of wire or some other type of fastener to hold the
15 field fence on.

16 Another major difference, as I mentioned
17 before, is that lawn and garden posts are made of mild
18 steel and will bend if pushed, while other posts are
19 made of very hard steel and will break off rather than
20 bend.

21 The second point I want to make is on the
22 lack of interchangeability. One cannot be substituted
23 for the other. It should be noted that while some tee
24 post manufacturers list posts that go down to as low
25 as .9 pounds per foot, I was unable to find any of

1 those for sale in the retail market. After I
2 contacted two of these producers, Franklin Industries
3 and Jersey Shore Steel, I was told that the lighter
4 posts are sold only for limited users, such as for
5 silt retention, and they are normally not even
6 painted. They are used once and thrown away.

7 Steel City tried to cross over to the rail
8 steel market on two separate occasions. About 20
9 years ago, Steel City tried to sell our heavy-duty
10 posts to vineyards to hold up grapevines, but they
11 were not strong enough, and most of what we sold was
12 returned to us. We also tried to sell a heavier farm
13 post in 1994, but our posts were not strong enough to
14 compete with the tee posts, and the cost was too high.
15 We were forced to discontinue them.

16 Residential consumers will not use tee posts
17 or signposts because they are too heavy, and there is
18 no convenient way to attach the wire. Farmers and
19 contractors will not use lawn and garden posts because
20 they bend too easily. In fact, several tee post
21 manufacturers such as Keystone and Northwestern bought
22 lawn and garden posts from Steel City because it is a
23 different product which they do not produce, and some
24 of their customers requested both.

25 The third difference I wanted to touch on is

1 the channels of distribution. Because the lawn and
2 garden posts are bought by different end users, they
3 are often distributed in different ways. While some
4 retailers such as Lowe's carry both lawn and garden
5 posts and tee posts because they cater to both
6 contractors and the homeowner, most stores do not
7 carry both. Farm supply outlets such as Tractor
8 Supply and Agland carry only tee posts for farmers,
9 while most hardware stores such as Ace and TruServ
10 carry only lawn and garden posts for the homeowner.

11 It should be noted that stores like Lowe's,
12 who carry a large assortment of lawn and garden posts
13 ranging from three foot light to seven foot heavy,
14 carry only one size of tee post.

15 The fourth difference in these posts is in
16 the customer's and the producer's perception. The
17 customer obviously sees a physical difference in
18 appearance and uses. Otherwise there would be no
19 reason for the two types of posts to exist. The
20 manufacturing process is completely different, as you
21 will see in the next section. Farmers and
22 construction workers cannot live with the reduced
23 strength and increased cost of the lawn and garden
24 posts, and homeowners are willing to pay more for the
25 convenience and user friendly lawn and garden post.

1 I touched on this next point briefly, but
2 the manufacturing process and production processes are
3 completely different. No U.S. producers make both
4 lawn and garden posts and tee posts. Sign and tee
5 posts are produced in steel mills such as Chicago
6 Heights Steel, Cascade Rolling Mills and SMI. The
7 process starts out using old railroad rail or other
8 scrap steel and heating it red hot, almost to the
9 point of melting. The steel is then hot-rolled into
10 the tee posts or signpost shape, and the finished
11 posts are then cut to length and cooled, leaving a
12 very strong and hard post.

13 Steel City and other lawn and garden fence
14 post producers make the posts by either stamping or
15 roll forming mild steel coil into the U shaped
16 profile. Our light-duty post production starts out
17 with 14-gauge mild steel an inch and three-quarters
18 wide as fed through a series of rolls to produce the U
19 shape. The formed channels are cut to length and then
20 placed in a pierce die that punches the holes and lugs
21 and crimps the anchor plate on.

22 Our heavy-duty process starts out with 13-
23 gauge strips that are three inches wide by the desired
24 length, and these strips are placed in a form die that
25 stamps them into a U shape channel. That channel is

1 then placed in a pierce die that punches the holes and
2 lugs and crimps the anchor plate on.

3 It should be noted from examining the
4 Chinese posts and from all information we have been
5 able to gather, the manufacturing of the Chinese post
6 is very similar to ours. When we lost business to the
7 Chinese posts, none of our customers indicated that
8 the posts were any better, worse, stronger, weaker or
9 different than ours in any way. It was strictly a
10 matter of a huge price difference.

11 The last difference I want to point out
12 between the lawn and garden posts and the others is
13 the price difference. The tee posts are much cheaper
14 because even though they're stronger and heavier, they
15 are made of scrap steel. As an example, Lowe's retail
16 price for a six foot tee post is \$1.85 compared to
17 \$2.96 for a six foot lawn and garden heavy-duty post.
18 If the posts were interchangeable, obviously they
19 wouldn't be selling any of the lawn and garden posts.

20 Thank you. I'd be happy to answer any
21 questions.

22 CHAIRMAN OKUN: Thank you.

23 MS. STRAS: Our next witness will be Mike
24 Janak, who is the controller of Steel City.

25 MR. JANAK: Good morning. My name is Mike

1 Janak, and I've been the controller of Steel City for
2 the past seven years. I am here to tell you that we
3 have done everything we possibly can to be able to
4 compete with the dumped Chinese lawn and garden steel
5 fence posts.

6 Let me give you an example. In 1997, we met
7 with Lowe's, our customer, to discuss the 1998 season.
8 We offered Lowe's a five percent rebate from our
9 prices. We were told in addition to the rebate we
10 would have to reduce our prices 10 percent, which we
11 did, to keep the customer.

12 We were also confidentially told we would
13 lose the business in 1999 because our prices, even
14 after the five percent rebate and the 10 percent price
15 reduction, were 15 to 20 percent higher than the
16 Chinese prices. We lost the business in 1999, and we
17 were only used as a back up supplier when its primary
18 Chinese supplier could not supply the posts because of
19 logistics problems. We reorganized, and we reduced
20 our manufacturing overhead cost plant wide by \$1.8
21 million to offset lost revenues. We believed that the
22 plan would allow us to be competitive in the lawn and
23 garden steel fence post business.

24 In 1999, we again met with Lowe's to discuss
25 the 2000 season. We offered prices that were 30

1 percent lower for light-duty and 15 percent lower for
2 the heavy-duty lawn and garden steel fence posts than
3 our already reduced prices and offered a five percent
4 rebate. We were again told our prices were 15 to 20
5 percent above the Chinese imported price. We have
6 never sold directly to Home Depot.

7 Each year, the Chinese have steadily
8 attacked the market. Each year, we lost more
9 customers. Eventually, we will have nothing left.
10 Since 1998, our sales of lawn and garden steel fence
11 posts have plummeted by 86 percent. Because of the
12 dumped Chinese imports, we have been unable to raise
13 our prices, even though our production costs have
14 increased. We have been unable to pass on any cost
15 increases.

16 In the preliminary investigation, questions
17 were raised by a Chinese importer about Steel City's
18 ability to serve the big box retailers such as Lowe's.
19 It was asserted that the big box retailers prefer to
20 do business with companies that produce a broader
21 product line.

22 Steel City was Lowe's only supplier of lawn
23 and garden steel fence posts for over 20 years before
24 Lowe's switched to the cheap, dumped Chinese imports.
25 Steel City has also supplied Lowe's with vinyl coated

1 lawn and garden wire and mesh fencing, mailboxes, tool
2 organizing kits and shelving brackets. Some of these
3 items we produce. Other items we stock.

4 Steel City continues to supply Lowe's with
5 many of these items. During the time we supplied
6 posts to Lowe's, they enjoyed the economies of our
7 ability to ship multiple items on the same truck,
8 thereby reducing their freight costs.

9 In 1998, the last year in which we were
10 Lowe's only supplier of lawn and garden steel fence
11 posts, our vendor performance rating was above 99
12 percent. We can continue to supply lawn and garden
13 steel fence posts to Lowe's, along with mailboxes,
14 shelving brackets, and Lowe's would enjoy the same
15 economies it previously took advantage of. I recently
16 went to a Lowe's store and noted that it had multiple
17 suppliers for multiple products. I did not see any
18 commonality of suppliers.

19 A second issue raised at the preliminary
20 conference was whether Steel City would be able to
21 supply the lawn and garden steel fence post market.
22 MAT, a Chinese importer, suggested the market is
23 around \$12 to \$15 million, which may be a reasonable
24 estimate. Converting the estimated market of sales to
25 pounds would be approximately 34 million pounds.

1 In 1998, Steel City sold nearly 14 million
2 pounds or approximately 41 percent of the market.
3 Steel City only ran a single shift during the non-peak
4 season and only ran an additional one-half shift
5 during the peak season.

6 Since 1998, Steel City has doubled its
7 production capabilities by adding a second paint line
8 and a second banding station. Steel City could supply
9 37 million pounds of posts by running two and one-half
10 shifts and building inventory in the off season. Of
11 course, since some of the Chinese imports have been
12 found to be fairly traded, we would not have to supply
13 the whole lawn and garden steel fence post market.

14 I would like to share with you the
15 devastating economic effects that Chinese dumped posts
16 have had on us. Our profit from the lawn and garden
17 steel fence post business is down 93 percent from 1999
18 to 2000. We were recently asked by our bank to go
19 through a formal process to renew our line of credit.

20 As part of the bank's evaluation of our
21 credit worthiness, we were asked to provide it with an
22 orderly liquidation value of our equipment. We had
23 never been asked to provide this kind of information
24 in the past. When I asked the bank why they needed
25 this information, I was told it was because of the

1 concerns over the dramatic loss of fence post sales.

2 Steel City has permanently laid off 40
3 percent of its employees. We have had to cut in half
4 our employer contribution to the employee defined
5 contribution plan, and in 2000 we had to terminate the
6 employees' defined benefit pension plan. In 2002,
7 Steel City increased the employees' cost of health
8 insurance and required employees to pay for long-term
9 disability insurance. We had paid for it in prior
10 years.

11 Many of our employees have not received any
12 pay raise for the past two years. I cannot impress
13 upon you the fear our remaining employees have of
14 losing their jobs. Most of these people have few
15 skills, if any, to transfer to other jobs. Further,
16 the job market in Youngstown is currently depressed.
17 The effects of the dumped, cheap imports are felt by
18 us every day. We are on the brink of being out of the
19 business. We ask for your help.

20 Thank you for the opportunity to testify,
21 and I'll be happy to answer any questions.

22 CHAIRMAN OKUN: Thank you.

23 MS. STRAS: Our next witness will be Peter
24 Kimball, who's an economist with Economic Consulting
25 Services.

1 MR. KIMBALL: Good morning, Madam Chairman,
2 Madam Vice Chairman and members of the Commission. My
3 name is Peter Kimball, and I am a staff economist at
4 Economic Consulting Services.

5 Steel City, which is the domestic industry
6 for lawn and garden steel fence posts, exhibits
7 numerous signs of material injury. This injury can be
8 attributed squarely to imports of dumped lawn and
9 garden steel fence posts from China. The dumped
10 imports compete most directly with Steel City's sales,
11 and the behavior of these dumped imports' volumes and
12 prices over the POI have had significant and
13 detrimental effects on Petitioner's ability to make a
14 reasonable profit.

15 It is important to note at the outset that
16 no foreign country other than China produces lawn and
17 garden steel fence posts that enter the U.S. market.
18 The injury that Petitioner has suffered cannot be
19 ascribed to imports from other countries, as there are
20 none.

21 The imports from China that most directly
22 compete with Petitioner are the dumped imports. This
23 claim is strongly supported by the first page of
24 Attachment 2 of Petitioner's prehearing brief, which
25 you now have before you, page 10 of Petitioner's

1 prehearing brief, and the customer lists provided in
2 the domestic producers' and importers' questionnaires.

3 The increasing volumes of the dumped imports
4 have unquestionably displaced domestic shipments and
5 have consequently caused financial deterioration. The
6 volume of dumped imports has increased at an alarming
7 rate over the POI, as discussed on page 11 and
8 presented graphically in Attachment 3 of Petitioner's
9 prehearing brief. Simultaneously, Steel City's
10 shipment volume decreased dramatically.

11 The diverging volume trends have endowed the
12 importers of dumped fence posts with greater market
13 power, and they have used this increased market power
14 to suppress prices and to reduce Steel City's
15 profitability. The fact that these changes,
16 increasing sales volume of dumped imports and
17 decreasing sales volume of domestic product, occurred
18 during a period of rising demand only exacerbated the
19 detrimental volume effects for Steel City. Rising
20 demand in a mature industry such as that for lawn and
21 garden steel fence posts should increase all
22 producers' shipment volumes, just as a rising tide
23 raises all ships.

24 The distorting of natural market effects
25 caused by dumped imports rendered Steel City unable to

1 take advantage of the favorable demand condition.
2 Thus, the effect of the dumped imports' volume
3 increase was even more devastating than it would have
4 been had demand been steady or decreasing.

5 Increasing volumes of imports of dumped lawn
6 and garden steel fence posts at very low prices have
7 prevented Steel City from raising prices as would
8 naturally have occurred in a time of rising demand.
9 This suppressive effect of the dumped imports, when
10 combined with the other deleterious effects of
11 increasing volume of dumped imports, has had a serious
12 negative impact on Petitioner's ability to maintain a
13 healthy level of profitability.

14 The underselling reported in the prehearing
15 staff report by dumped imports in 2002 is significant
16 and impacts a great majority of Petitioner's lawn and
17 garden steel fence posts. Although the pricing data
18 are incomplete at this time, there are still useful
19 conclusions to be drawn from them. It is apparent
20 from the pricing data currently available that dumped
21 imports are having a suppressive effect on domestic
22 prices.

23 Rising demand should enable all suppliers to
24 raise prices. Petitioner, however, has not been able
25 to raise its price on any of the Commission's four

1 pricing products to the degree it should have been
2 able to. The pricing data suggests that this
3 inability to raise prices stemmed from the low prices
4 of the dumped imports whose underselling was
5 especially pronounced in 2002. This underselling
6 forced Steel City to remain competitive on price with
7 unfairly traded imports.

8 A much broader and more general examination
9 of the pricing behavior of dumped imports is available
10 in the table on page 4-4 of the staff report and is
11 discussed in footnote 35 on page 15 of Petitioner's
12 prehearing brief. These prices provide a good
13 approximation of the average prices of dumped imports.
14 They are also an excellent indication of the direction
15 in which the price of dumped imports is moving.
16 Attachment 3-A of Petitioner's prehearing brief
17 compares these prices with the prices of fairly traded
18 import shipments and Steel City's domestic shipments.

19 Meanwhile, Steel City was struggling to
20 raise its prices on these products in response to
21 rising demand. Exhibit 8 shows that it had little
22 success with pricing Products 1 and 2 from 2000 to
23 2002. Exhibit 3-A shows that it had even less success
24 when the average price of all of its lawn and garden
25 steel fence posts is considered. Steel City should

1 have been able to raise prices much more than it was
2 able to, given the increase in demand over the POI.
3 The shortfall is directly attributable to the low
4 prices of the competing dumped fence posts.

5 It is important to note in the context of
6 price effects that very small shifts in price can have
7 a very large impact on the market. Steel City's lost
8 sales allegations are excellent examples of this force
9 at work. Steel City was forced to compete with dumped
10 imports on price during the POI, but lost additional
11 sales to those dumped imports after prices inched
12 lower still. These were not large price decreases,
13 but were enough to draw purchasers away from Steel
14 City and to importers of dumped fence posts.

15 The displacement of domestic sales volume
16 and price suppression by imports of dumped lawn and
17 garden steel fence posts have caused material injury
18 to the domestic industry by affecting Petitioner's
19 profitability significantly. Petitioner's sales
20 quantities and values have decreased, and their
21 effects on operating income is evident.

22 Petitioner slashed costs in 2002, but that
23 did not help because sales volumes dropped further.
24 Numerous indicia suffered -- employment, capability,
25 utilization, output, market share, cash flow and

1 capital expenditures. These are discussed in detail
2 in Petitioner's prehearing brief.

3 Please note the variance analysis that the
4 Commission staff performed and presented as Table VI-2
5 of the staff report, which discusses the role that
6 volume and price effects played in the domestic
7 industry's injury. Even if the Commission finds no
8 injury, there is ample evidence that the domestic
9 industry for lawn and garden steel fence posts is
10 threatened with material injury in the near future.

11 With regard to the state of the Chinese
12 industry, Petitioner notes that no Chinese producer of
13 lawn and garden steel fence posts has returned a
14 questionnaire in this phase of the investigation and
15 recommends that the Commission make adverse inferences
16 with regard to the Chinese industry's productive
17 capacity.

18 The trends over the POI and several other
19 threat factors clearly show that the domestic industry
20 for lawn and garden steel fence posts is threatened
21 with material injury. The volume of dumped imports is
22 rising rapidly. The prices of dumped imports are very
23 low and are suppressing Steel City's prices as demand
24 is rising. Importers' inventories present a real
25 threat to the domestic industry. Please look

1 carefully at Exhibit 10 of Petitioner's prehearing
2 brief for an illustration of the problem of importers'
3 inventories.

4 On the basis of adverse inferences and these
5 threat factors/trends over the POI, Petitioner
6 respectfully urges the Commission to make an
7 affirmative threat determination if it does not make
8 an affirmative injury determination.

9 To conclude, it is clear from the record
10 that Steel City's shipments compete most directly with
11 dumped imports. These imports volume and price
12 effects have caused the bulk of deterioration in Steel
13 City's financial performance. Finally, Steel City is
14 threatened with additional injury in the near future
15 if antidumping duties are not put in place. This case
16 provides the Commission with an unusually strong
17 record supporting action against unfair trading
18 practice.

19 Thank you.

20 CHAIRMAN OKUN: Thank you.

21 MS. STRAS: That ends our direct testimony.

22 CHAIRMAN OKUN: Very well. Before we begin
23 our questions, let me thank all the witnesses for
24 appearing here today, for providing your testimony,
25 the written information you've provided and your

1 willingness to answer questions. We very much
2 appreciate that, and I would also note for the record
3 that all witnesses were sworn in prior to beginning
4 their statement today.

5 With that, I will turn to Commissioner
6 Koplan to start the questioning this morning.

7 COMMISSIONER KOPLAN: Thank you, Madam
8 Chairman. I, too, want to thank the witnesses for
9 their testimony.

10 Ms. Stras, Mr. Janak just testified that in
11 1999 Steel City lost Lowe's business. That was in his
12 direct testimony. Am I correct? It's in his prepared
13 statement as well.

14 MR. JANAK: Yes.

15 COMMISSIONER KOPLAN: That is correct, Mr.
16 Janak?

17 MR. JANAK: Yes.

18 COMMISSIONER KOPLAN: Okay. I would like
19 you to explain to me if you could, Ms. Stras, then. I
20 can't get into the specifics of this because it's BPI,
21 but do you have the staff report with you? Do you
22 have that, the confidential staff report?

23 MS. STRAS: I don't have the confidential
24 version. I brought only the public version.

25 COMMISSIONER KOPLAN: You brought only the

1 public version?

2 MS. STRAS: Right.

3 COMMISSIONER KOPLAN: Okay. Let me just --

4 MS. STRAS: It makes life safer that way.

5 COMMISSIONER KOPLAN: Not for me. Let me do
6 it this way.

7 MS. STRAS: Okay.

8 COMMISSIONER KOPLAN: If you would make a
9 note?

10 MS. STRAS: Okay.

11 COMMISSIONER KOPLAN: I'm directing your
12 attention to Table V-5.

13 MS. STRAS: V-5.

14 COMMISSIONER KOPLAN: That appears in
15 chapter 5 on page 12 of the staff report.

16 MS. STRAS: Okay.

17 COMMISSIONER KOPLAN: I can't get into the
18 specifics, but the information contained in that table
19 is not consistent with what I'm hearing this morning,
20 and I'd like you for posthearing purposes to explain
21 that to me as a posthearing submission. Would you do
22 that?

23 MS. STRAS: Of course we will. Table V-5,
24 chapter 5, page 12.

25 COMMISSIONER KOPLAN: Right. This part is

1 not BPI.

2 MR. JANAK: Excuse me.

3 COMMISSIONER KOPLAN: Yes?

4 MR. JANAK: I don't know if this would help
5 clear up the question --

6 COMMISSIONER KOPLAN: Can I just finish my
7 statement?

8 MR. JANAK: I'm sorry. Go ahead.

9 COMMISSIONER KOPLAN: Thank you.

10 MR. JANAK: I was going to answer.

11 COMMISSIONER KOPLAN: The portion that I'm
12 referring to refers to lost sales and lost revenues.
13 That's the header. That part is not BPI, but what's
14 in the table is. You'll see when you look at the
15 table what I'm referring to.

16 MS. STRAS: Okay.

17 COMMISSIONER KOPLAN: Thank you.

18 Yes, sir?

19 MR. JANAK: In my testimony, I testified to
20 the fact that we lost the business in 1999.

21 However, we were used as a back up supplier
22 during that year when the Chinese could not get the
23 posts to Lowe's because of logistics problems. We did
24 have a much smaller portion of Lowe's business in 1999
25 as a back up supplier.

1 COMMISSIONER KOPLAN: I understood that.

2 MR. JANAK: Okay.

3 COMMISSIONER KOPLAN: Right. Thank you. I
4 still have the same question, and I think counsel will
5 understand it when she looks at it.

6 MS. STRAS: Okay.

7 COMMISSIONER KOPLAN: Now if I could come
8 back to my other questions. You referred to this in
9 your opening, Ms. Stras, but yesterday the Department
10 of Commerce issued its final determination in this
11 investigation. This is the background for my
12 question.

13 It maintained the weighted average margin at
14 zero percent previously assigned to Shanghai Bao Steel
15 International Economic and Trading Company, Ltd.
16 Thus, those imports are deemed fairly traded. In
17 addition, China Nan Yang Import and Export Corporation
18 received a de minimis weighted average margin at 1.42
19 percent and Hebei Metals and Minerals Imports and
20 Export Corporation a greatly reduced margin at 6.60
21 percent. Lastly, the PRC margin was more than cut in
22 half to 15.61 percent.

23 Have you determined the effect this has on
24 the varying arguments that you have previously made at
25 different times in this investigation regarding your

1 customers?

2 I am trying to understand exactly which
3 markets Steel City is selling to, the extent to which
4 you're in competition with the fairly traded and/or de
5 minimis imports and the extent to which you are
6 competing with imports from Hebei Metals or other
7 Chinese producers of remaining subject product.

8 Mr. Fibus, would you like to respond to
9 that? Do you remember the question?

10 MR. FIBUS: It was long and involved. From
11 your statement, there are far too many Chinese
12 producers of lawn and garden fence posts than there is
13 market.

14 COMMISSIONER KOPLAN: Let me come back to
15 the nut of the question, okay? What I'm trying to
16 understand is which markets you are selling to, the
17 extent to which you are in competition with the fairly
18 traded and/or de minimis imports, and those I'm
19 referring to are Bao and Nan Yang, okay, and then the
20 extent to which you are competing with imports from
21 Hebei Metals, which now has a margin at 6.60 percent,
22 or the other Chinese producers of remaining subject
23 product.

24 Now you understand where I'm coming from on
25 that. That's the question.

1 MR. FIBUS: Your fairly traded post is
2 almost exclusively going into Home Depot --

3 COMMISSIONER KOPLAN: Okay.

4 MR. FIBUS: -- which we have never sold
5 directly. We had sold them through a distributor,
6 another manufacturer, at one time.

7 COMMISSIONER KOPLAN: That's MAT? That's
8 M-A-T, right?

9 MR. FIBUS: MAT is now supplying them.

10 COMMISSIONER KOPLAN: Okay.

11 MR. FIBUS: The rest of the market we have
12 sold directly for long periods or short periods of
13 time. One of my problems is I'm not totally familiar
14 with all the manufacturers that you have mentioned.

15 COMMISSIONER KOPLAN: Do you happen to know,
16 for example, with regard to Lowe's which segment of
17 the Chinese imports are being sold to Lowe's? Would
18 they be the fairly traded, the de minimis or the
19 subject, if you know?

20 MR. FIBUS: To the best of my knowledge,
21 Lowe's is not buying from the fairly traded group.
22 They have their own importing buyers, and they bring
23 the posts in themselves.

24 COMMISSIONER KOPLAN: But from what I heard,
25 you lost their business back in 1999. That's prior to

1 our period of investigation. Okay.

2 Yes, Ms. Stras? You look like you'd like to
3 add something to this.

4 MS. STRAS: As I started my presentation, we
5 understand and we were, of course, disappointed with
6 the margins falling a little bit, but Bao Steel had a
7 zero at the preliminary as well --

8 COMMISSIONER KOPLAN: Yes.

9 MS. STRAS: -- so that was not a surprise to
10 us.

11 We are here and we're continuing the case
12 because we have not competed with Bao Steel, and we
13 understand they're fairly traded. We are here because
14 we have competed with the rest of the dumped imports.
15 I'll caution you that Hebei with 6.6 percent -- it was
16 the other company that was 1.42, I believe.

17 COMMISSIONER KOPLAN: That's what I said.

18 MS. STRAS: Right.

19 COMMISSIONER KOPLAN: Nan Yang was the 1.42.

20 MS. STRAS: Nan Yang was, right.

21 COMMISSIONER KOPLAN: So that's de minimis.

22 MS. STRAS: Exactly. They're here basically
23 to get Lowe's back, and to their market knowledge --

24 COMMISSIONER KOPLAN: Steel City is?

25 MS. STRAS: Right. To their market

1 knowledge, and this is their own independent market
2 knowledge, Bao Steel has never supplied Lowe's.
3 They've never seen them out there. That's the market
4 they compete with, and that's the market they need to
5 get back.

6 COMMISSIONER KOPLAN: Thank you. If there's
7 anything else you can add post hearing that might be
8 BPI in response to that question, I'd appreciate it.

9 Now let me stay with you if I could. I
10 direct your attention to Table C-1 -- well, you don't
11 have this with you -- of the confidential version of
12 the staff report. I can't cite the specific numbers
13 because that's BPI.

14 However, it's clear to me that given the
15 sheer magnitude of the fairly traded and de minimis
16 Chinese imports that I need to have you address the
17 applicability of Gerald Metals, Inc. v. United States
18 at 132 F.3d 716, Federal Circuit, in 1997,
19 particularly in light of the fact that you have argued
20 beginning with your petition that Chinese imports are
21 substitutes for each other and the domestic product.

22 I need to hear your analysis of the
23 application of Gerald Metals in this case. You can
24 respond to me now and expand on that in the
25 posthearing. I thought you might have done that in

1 your brief actually because you had this zero margin
2 assigned --

3 MS. STRAS: Right.

4 COMMISSIONER KOPLAN: -- by Congress at the
5 preliminary, but you didn't.

6 MS. STRAS: Right.

7 COMMISSIONER KOPLAN: I really need to have
8 you do that.

9 MS. STRAS: Okay. We'll do it in the
10 posthearing brief.

11 COMMISSIONER KOPLAN: Okay.

12 MS. STRAS: 132 Federal Circuit. Okay.

13 COMMISSIONER KOPLAN: Excuse me?

14 MS. STRAS: I was talking to myself.

15 COMMISSIONER KOPLAN: Oh, okay. I think
16 I've got time to get this one in.

17 In the Commission's preliminary
18 determination, we noted at page 16 the Commission data
19 regarding your capacity, which is BPI, appear to
20 reflect a more reasonable estimate than the estimate
21 that appears in your postconference brief, which is
22 highly dependent upon certain expectations concerning
23 number of worker shifts and use of idled equipment.

24 We flagged to you that in any final
25 investigation we would further explore the domestic

1 industry's ability to supply the U.S. market and the
2 implications arising from this supply situation. Your
3 prehearing brief omits any discussion of this issue.
4 I would appreciate your addressing it now and any
5 further elaboration, if necessary, in your posthearing
6 submission.

7 I see the red light is on, so I can come
8 back to this on the next round if you would like to
9 give me a partial response then, but I do need to have
10 you address it in the posthearing.

11 Thank you, Madam Chairman.

12 CHAIRMAN OKUN: Thank you, and again thank
13 you to all the witnesses.

14 Mr. Fibus, I appreciate your testimony.
15 There's one thing that I always find helpful,
16 particularly in a case like this where our POI is a
17 snapshot of the industry, and you helped put that in a
18 little bit of a historical basis for your industry and
19 what's been going on, and I found that particularly
20 helpful. I had some questions that I wanted to expand
21 on.

22 Probably, Mr. Janak, you also could help out
23 on this. Again, based on the line of questioning from
24 Commissioner Koplan about Lowe's and the further
25 information you gave that was helpful, but I just want

1 to make sure that I understand kind of how you, Steel
2 City, perceive the industry out there or who you're
3 selling, your customers.

4 You've talked about Home Depot, that you've
5 never sold Home Depot, but something you said, Mr.
6 Janak, I think in your testimony about the demand over
7 this historical demand. The big box stores grew the
8 demand is what I took from what you said. Previous to
9 this time they were kind of the small mom and pops and
10 that you had the big boxes come in, and demand
11 increased rapidly. Is that --

12 MR. JANAK: Yes. Correct.

13 CHAIRMAN OKUN: Okay. Just so that I'm
14 clear, in addition to Home Depot, who we think of as a
15 big box, and I guess Lowe's I put in that same
16 category, are there any other customers that you did
17 sell to or do sell to that you would put in that
18 category?

19 Hechingers is one that comes to mind, which
20 has now gone out of business, but I wondered if that
21 would also be something that you would have
22 considered.

23 MR. JANAK: When Hechingers and Builders
24 Square were in business, we did sell lawn and garden
25 steel fence posts to them.

1 CHAIRMAN OKUN: Okay. And so the bankruptcy
2 of Hechingers, did that go to other places? I mean,
3 what happened in the market when those stores went out
4 from your perspective?

5 MR. FIBUS: It all ends up at Home Depot and
6 Lowe's in the end and some other regional big box
7 stores.

8 CHAIRMAN OKUN: Okay. So when you're
9 talking about Ms. Stras' comment that a lot of this is
10 about Lowe's it's because you see so much of the
11 volume now being split between Home Depot and Lowe's?

12 MR. FIBUS: They're the ones that are left.
13 You might also remember people like Channels and
14 Rickles and Two Guys from Harrison. I could go on
15 forever with the bankruptcies. They're not there
16 anymore.

17 CHAIRMAN OKUN: Okay.

18 MR. JANAK: Lowe's and Home Depot are so far
19 beyond anybody else that's in the market.

20 CHAIRMAN OKUN: Okay. That I guess would
21 have been my next question, which is what is the
22 relationship between pricing, the Lowe's and Home
23 Depot pricing, how that impacts your other customers.

24 You know, you've given us a list of other
25 customers, and I'm not looking at them so I'm not

1 sure, but I think they would not fit this big box/big
2 volume category. They're kind of more still the mom
3 and pop that you still supply?

4 MR. FIBUS: There are some of them out
5 there, yes.

6 CHAIRMAN OKUN: Okay.

7 MR. FIBUS: Co-ops.

8 CHAIRMAN OKUN: Do you see what's going on
9 at the Home Depots and the Lowe's impacting the
10 pricing at which you're selling to these mom and pops?
11 I'm trying to understand the relationship between
12 those two types of customers.

13 MR. FIBUS: Absolutely. It does impact the
14 price because they have to compete.

15 CHAIRMAN OKUN: Okay. Do you have anything
16 else on that, Mr. Janak?

17 MR. JANAK: No.

18 CHAIRMAN OKUN: Okay. I mean, I think this
19 does go to the question Commissioner Koplan raised,
20 which is this is a case where we see a large number of
21 fairly traded imports. I understand the testimony
22 being you're not selling to Home Depot, that you did
23 sell to Lowe's. You've lost that account.

24 The large volume then is a fairly traded
25 Chinese good going to Home Depot impacting the prices

1 perhaps, but in terms of the law I think that's a very
2 relevant question in terms of what the Federal Circuit
3 has said in Gerald Metals and how it is applicable to
4 this case. I'm trying to understand from the
5 industry's perspective as well how you see the prices
6 out there.

7 The other thing I guess I would ask you,
8 which is one of the comments you've made is that
9 during this period you saw prices suppressed. You
10 weren't able to raise your prices as much as you
11 expected in a period of rising demand. You used a
12 couple of different words.

13 I guess my question is what you would have
14 expected, what you expected prices to do when you had
15 this large influx of fairly traded imports and Chinese
16 imports, whether you would have expected prices to go
17 up at that point, or would you have tried to get more
18 volume? In fact, I'm just not sure what you did
19 during this period; tried to get more volume or --

20 MR. JANAK: I believe that as demand for a
21 product goes up, so should the ability to increase the
22 price, so economically speaking the logic would follow
23 that as demand increased prices should be able to
24 increase. That was not the case.

25 CHAIRMAN OKUN: Okay. I guess my question,

1 and maybe, Mr. Kimball, you might shed some light on
2 this as well, which is again demand went up. There
3 was a growth in the market. There was also a large
4 volume of that growth being supplied by what are
5 considered fairly traded imports, what you would
6 expect as an economist to see in that particular
7 instance with prices and whether that differs from
8 what we actually see in this record.

9 MR. KIMBALL: I think the short answer that
10 I would give is that if you look at Attachment 3-A, I
11 believe it is, which gives the line graph of the
12 prices of the fairly traded imports, the domestic
13 shipments and the dumped imports, and this is
14 obviously confidential so I can't get into the details
15 here, but if you take a look at that graph you can see
16 the effect that the fairly traded imports were having
17 on price. You can see the effects that the dumped
18 imports were having on price.

19 Mike is exactly correct. In a period of
20 rising demand, especially given the elasticities that
21 are present that the Commission staff found for this
22 product, you would expect a price increase, a
23 significant price increase in a time of rising demand.

24 Based on what that graph shows, you know, we
25 believe you can pinpoint why it didn't -- why they

1 were not able to get the price increase they expected.

2 CHAIRMAN OKUN: Okay. I appreciate those
3 comments. I may have a question I want to come back
4 to on that, but there was one thing that I had wanted
5 to go back to, which is for posthearing in terms of
6 the Lowe's account, and again a follow up on what we
7 see in the posthearing, which is if you could give the
8 volumes you supplied to Lowe's in 1998 and 1999 just
9 for comparison's sake? I'd like to see that.

10 Again, one of the allegations being made
11 that I'd like you to respond to is whether with the
12 growth in demand at the stores like Lowe's and Home
13 Depot whether Steel City was in a position to supply a
14 growing volume. I understand what you said about
15 capacity, but I just would like you to address
16 directly just this issue of whether you could supply
17 in the types of volumes these stores were looking for
18 at that point, whether that was ever an issue.

19 I would like also the industry
20 representative, so, Mr. Kimball, do you want to go
21 ahead and start?

22 MR. KIMBALL: I just wanted to make one
23 point about the demand issues that you speak of.

24 As the industry representatives have
25 testified, the presence of the big box stores have

1 served to create an increase in demand because of
2 their ubiquity and availability. That demand can
3 reasonably be expected to affect all players, all
4 suppliers, retailers, wholesalers, distributors of
5 that product, even though the big box stores are the
6 ones, you know, in essence creating the demand.

7 Awareness of that, combined with end users'
8 preferences, will -- you know, some end users may
9 prefer a mom and pop store, you know, that kind of
10 thing, but they're more aware of the product so it's
11 going to increase demand not only at the big box
12 stores, but also at all types of retailers,
13 distributors and wholesalers.

14 CHAIRMAN OKUN: Okay. I appreciate those
15 further comments on demand.

16 Mr. Janak, could you comment on whether with
17 a customer like Lowe's whether you ever were not able
18 to supply -- whether they asked you to supply
19 additional volume that you were not prepared to meet?

20 MR. JANAK: The last year that we sold
21 Lowe's, 1998, as I stated in my testimony, our service
22 level was at 99 percent. That's measured as your
23 ability to fill the orders on time when received. I'm
24 quite sure we were one of their highest rated vendors.

25 CHAIRMAN OKUN: Okay. When they were

1 talking about future volumes for them, was there ever
2 any discussion of an increased volume that you were
3 not prepared to meet?

4 MR. JANAK: Well, as I also testified, we
5 did add a second paint line or actually converted a
6 paint line to be able to paint posts and added a
7 second banding station, so we did anticipate should
8 volume requirements require us to supply more posts.
9 We took the steps necessary that we felt to be able to
10 supply the market.

11 CHAIRMAN OKUN: And I know I've seen it, but
12 remind me again. When did you do that extension?

13 MR. JANAK: I believe it was 1998.

14 CHAIRMAN OKUN: Okay. I see my red light
15 has come on. I appreciate very much those answers. I
16 will turn to Vice Chairman Hillman.

17 VICE CHAIRMAN HILLMAN: Thank you, and I
18 would join my colleagues in thanking you for your
19 appearance here this morning and for all the
20 information that you've provided in your briefs and in
21 your statements this morning.

22 I guess just a little bit more of a quick
23 follow up where the Chairman had been going in terms
24 of this issue of Lowe's. I just want to make sure
25 I've got it right.

1 Did Lowe's ever suggest to you -- I mean,
2 your testimony discussed the issue of price, but did
3 Lowe's ever suggest to you that there was any other
4 reason that they would switch business away from you?

5 MR. JANAK: No.

6 VICE CHAIRMAN HILLMAN: That you were too
7 small? That you couldn't supply another range of
8 products? I mean, you've touched on these but I just
9 want to hear it. Did Lowe's say to you I'm not sure
10 you can supply enough volume?

11 MR. JANAK: No, they did not.

12 VICE CHAIRMAN HILLMAN: Okay. Okay. Just
13 so I understand the sort of relationship with Lowe's
14 as it was in 1998, do you know? Were you the sole
15 supplier of lawn and fence posts to Lowe's? Were you
16 a major supplier of theirs of this product, or were
17 they sourcing lawn and fence posts from multiple
18 places?

19 MR. JANAK: We were the only supplier --

20 VICE CHAIRMAN HILLMAN: Okay.

21 MR. JANAK: -- of lawn and garden steel
22 fence posts and also vinyl coated wire mesh and fence.

23 VICE CHAIRMAN HILLMAN: And that had been
24 the case for some time?

25 MR. JANAK: Over 20 years.

1 VICE CHAIRMAN HILLMAN: Okay. Okay. Ms.
2 Stras, I guess I wanted to ask. Again, a lot of your
3 testimony and a lot of the information that you have
4 presented to us this morning has started with 1998 as
5 a year. I understand that in terms of what it shows
6 us in terms of the volume, and yet the POI for our
7 investigation is 2000 through 2002.

8 I just want to understand. As a legal
9 matter, are you arguing that we should be looking
10 outside of our traditional period of investigation?

11 MS. STRAS: We're arguing that even if you
12 look at the POI, the period of investigation, of three
13 years you can still find material injury. We brought
14 the graphs because they're much more dramatic, and you
15 can see the downward slope, but we're not asking you
16 to include the full five years.

17 VICE CHAIRMAN HILLMAN: Okay. I just wanted
18 to make sure I understood exactly what you were
19 suggesting in terms of an appropriate period for us to
20 look at.

21 I guess then if I can go to the issue of
22 price competition. I realize that this is difficult
23 for us and difficult for you because the pricing data
24 itself that's in our record is confidential, but I'm
25 just trying to square my sense of what I've heard you

1 all talk about this morning with the data that's in
2 our record.

3 Maybe I could start with trying to
4 understand. From your perspective, did you feel like
5 you saw greater price competition from the Chinese in
6 the lighter weight lawn and fence posts or in the
7 heavier weight? Where would you say you saw the
8 greatest price competition from the Chinese?

9 MR. JANAK: The largest disparity in pricing
10 was the light-duty.

11 VICE CHAIRMAN HILLMAN: The light-duty?

12 MR. JANAK: Yes.

13 VICE CHAIRMAN HILLMAN: Okay. And again,
14 Ms. Stras, this may be something that you need to
15 answer in a posthearing, but again you've all referred
16 in your testimony at various points to the very low
17 priced imports.

18 MS. STRAS: Uh-huh.

19 VICE CHAIRMAN HILLMAN: Again, the data is
20 confidential, but I will say, you know, generally when
21 we look at the margins of underselling they're not
22 what I would call really large. They're not --

23 MS. STRAS: Right.

24 VICE CHAIRMAN HILLMAN: -- large numbers, so
25 our data is not suggesting that at least the Chinese

1 prices that we're looking at show a significant
2 difference between the Steel City price versus the
3 Chinese price and would suggest if anything that the
4 trend in terms of the margins is different, is greater
5 for the heavy products and lesser for the lightweight
6 products.

7 I guess I'm wanting to hear a little bit
8 more about this issue of the price competition
9 because, like I said, it's not clear to me that our
10 record reflects what I'm hearing you say. All of you
11 discussed this issue of lower Chinese prices. Help me
12 understand. I mean, some of your testimony with
13 Lowe's suggested they were talking at 15 and 20
14 percent below.

15 What is your general perception of when you
16 are competing with the Chinese of the difference
17 between your price and the Chinese price? Again, I'm
18 not asking for what's in the record. I'm asking for
19 when you're all out there in the market. I mean,
20 where and how do you see the price competition with
21 the Chinese?

22 MS. STRAS: You're asking for the price
23 competition between the U.S. and Chinese, and then
24 you're asking for the price competition within the
25 heavy and the light? Am I understanding that?

1 VICE CHAIRMAN HILLMAN: I was trying to
2 understand where you feel the greatest price
3 competition.

4 MS. STRAS: Okay.

5 VICE CHAIRMAN HILLMAN: I heard the answer
6 being in the light-duty fence posts. Help me
7 understand how you see it.

8 I mean, you described the situation with
9 Lowe's, but with other customers. How does it go?
10 You approach a customer, and you say, you know, I'd
11 like to fill your order again for next year. What is
12 the response? How do you know what the Chinese
13 product is being priced at?

14 (Pause.)

15 MS. STRAS: I'm sorry. Because we've all
16 talked about prices, we're trying to find out the
17 right person to answer the question. I think Mike
18 will talk about it.

19 MR. JANAK: Well, first off we have fairly
20 good knowledge of the kind of quoting the Chinese have
21 quoted because for information gathering purposes we
22 requested quotes from the Chinese producers so we can
23 have an idea where they're quoting these other
24 customers other than Lowe's maybe that you're talking
25 about.

1 Their prices that they've quoted us are
2 significantly lower. I'm not privy to the information
3 you have, but they are significantly lower than what
4 we have quoted.

5 VICE CHAIRMAN HILLMAN: And when you say
6 significant, how much is that?

7 MR. JANAK: I know that we lowered our
8 prices 30 percent, and we were told by Lowe's that we
9 were still 15 to 20 percent high.

10 VICE CHAIRMAN HILLMAN: Okay. And typically
11 again then out in the market other than seeking these
12 quotes from the Chinese you go to a customer other
13 than Lowe's? Again, I'm trying to understand the
14 competition. Other than Lowe's.

15 MR. JANAK: Well, what normally happens is,
16 as we talked about, fence posts is sort of a seasonal
17 business. We will go to a customer with the hope of
18 maintaining the business and even the larger hope of
19 maybe getting a price increase because our costs have
20 increased, so we would quote our pricing.

21 A period of time would go past, and we would
22 get a call from the buyer saying okay, we kept the
23 business at the price you wanted; we kept the
24 business, but you have to lower your price; or we did
25 not keep the business. A lot of times we will not

1 know what the price was that we lost the business, you
2 know, the quoted competitor price. Sometimes we will
3 get a general idea such as 15 to 20 percent higher
4 than the competition.

5 VICE CHAIRMAN HILLMAN: When you say the
6 buyer, I'm trying to understand who that is.

7 MR. JANAK: Our customer's buyer, the
8 purchaser of the fence posts.

9 VICE CHAIRMAN HILLMAN: Okay. So in other
10 words, the retailer is telling the distributor that
11 you sell through this? That's what I'm trying to
12 understand is how that works.

13 MR. JANAK: The majority of our remaining
14 retail customers we sell direct, but we do sell co-op
15 through supply dealer stores. We receive all our
16 price information directly from the retailer or the
17 co-op if they provide it to us.

18 VICE CHAIRMAN HILLMAN: Okay. Do they come
19 back to you and say I'd like to stay with you, but I'm
20 being quoted X amount from China? If so, how much is
21 that?

22 MR. JANAK: Well, they won't tell us the
23 exact price, but they'll tell us you're high. If we
24 feel we can get down to that price, we may try to, but
25 to date we haven't been able to touch their prices.

1 VICE CHAIRMAN HILLMAN: Okay. Now, you
2 mentioned also this issue of wanting to raise your
3 prices.

4 MR. JANAK: Yes.

5 VICE CHAIRMAN HILLMAN: Can you tell me?
6 Were there specific times periods in which you
7 actually suggested -- I mean quoted -- higher prices?

8 MR. JANAK: In 1999, we quoted Lowe's -- I'm
9 sorry. For the 1998 season, we initially raised the
10 price I believe it was about 10 percent, and they
11 required us to lower the price 10 percent.

12 VICE CHAIRMAN HILLMAN: Okay. During our
13 period of investigation, 2000 to 2002, were you
14 attempting to raise prices then?

15 MR. JANAK: Yes.

16 VICE CHAIRMAN HILLMAN: Okay. Do you have
17 sort of specific times or amounts that you were
18 seeking a price increase and any evidence that you
19 were not able to get it?

20 MR. JANAK: I cannot recall any specific
21 instances now, but we can address that in the --

22 VICE CHAIRMAN HILLMAN: Okay.

23 MR. JANAK: -- posthearing brief.

24 VICE CHAIRMAN HILLMAN: If you could, if
25 there are again any specific time periods or quotes in

1 terms of how much you attempted to raise your prices
2 and what happened as a result of that, I think that
3 would be very helpful.

4 MR. JANAK: Okay.

5 VICE CHAIRMAN HILLMAN: The last issue was
6 you mentioned that you wanted these price increases in
7 order to cover increased costs. What increased costs
8 were you trying to cover?

9 MR. SPEECE: As with most companies, you
10 have increased health care insurance, workmen's comp,
11 steel costs. You know, all those things go up. Even
12 if it's only a few percent a year, it ends up adding
13 up. You know, obviously you have to cover those costs
14 somewhere.

15 VICE CHAIRMAN HILLMAN: Okay. I see that my
16 red light is on. I may come back to this issue.
17 Thank you very much.

18 CHAIRMAN OKUN: Commissioner Miller?

19 COMMISSIONER MILLER: Thank you, Madam
20 Chairman, and thank you as well to the members of the
21 panel for being here today and being willing to answer
22 our questions as we struggle to understand your
23 industry. That's the job we're about.

24 I very much appreciate, Mr. Fibus, your
25 explanation of the history of the company. If you

1 hadn't done that, I probably was going to ask you
2 about that. It's helpful to get some perspective on a
3 company and on an industry that we're not familiar
4 with.

5 We've had a lot of questions about the
6 period of investigation versus the earlier time frame,
7 and I think we're all struggling because I think we
8 recognize that much of the damage that apparently has
9 occurred to your company was prior to our period of
10 investigation.

11 All I can say is as a practical matter
12 you've answered our questionnaires, and perhaps you
13 understand why we try to limit them to no more than
14 three years because they're enough of a burden on
15 companies as it is, though we have to rely on hard
16 data, too, so that is our main focus.

17 I think that presents a particular issue for
18 us because it's clear from the history here that
19 something was going on before our period of
20 investigation, which your company is still suffering
21 as a result of. I'm going to try a little bit more to
22 clarify that because some of the questions have gone
23 to that point, and I want to go a little bit more.

24 Mr. Janak, at one point a few moments ago on
25 Lowe's you said you had been their sole supplier for

1 20 years basically.

2 MR. JANAK: Yes.

3 COMMISSIONER MILLER: Okay. So I understand
4 the Lowe's history and the time frame of what happened
5 in the late 1990s.

6 On Home Depot, you made the comment, and,
7 Mr. Fibus, you went back to it again, that you didn't
8 sell directly to them, but you listed them as a
9 customer in your petition originally, and you've said
10 that you were selling to them through a distributor.
11 Okay. So they were a customer, but it was through a
12 distributor.

13 We've heard a lot about Lowe's. Help me a
14 little bit on the Home Depot side as well. What time
15 frame were you selling to Home Depot, and when did you
16 lose that business, even though it was through a
17 distributor? Are we talking about a similar time
18 frame to the Lowe's or a different time frame?

19 MR. JANAK: I believe it was. We did sell
20 Home Depot through a distributor in 1998, and we lost
21 that in 1999.

22 COMMISSIONER MILLER: Okay. And had you
23 been selling them? I'm not sure I can remember how
24 long Home Depot has been in existence.

25 MR. JANAK: It wasn't a -- Ken?

1 MR. FIBUS: We sold them through
2 Northwestern Steel and Wire, --

3 COMMISSIONER MILLER: Yes.

4 MR. FIBUS: -- who made their own welded
5 wire.

6 COMMISSIONER MILLER: Right.

7 MR. FIBUS: After our last season, which
8 could have been 1998 or 1997, they shut down their
9 wire mill. With no wire, they went out of the post
10 business. They were supplying Home Depot, --

11 COMMISSIONER MILLER: Okay.

12 MR. FIBUS: -- and we were selling them
13 posts. That's how that came about.

14 COMMISSIONER MILLER: So through
15 Northwestern Wire, and then Home Depot found another
16 supplier totally.

17 MR. FIBUS: Northwestern is a big steel
18 mill.

19 COMMISSIONER MILLER: Right.

20 MR. FIBUS: They went out of the tee post
21 business, the wire business --

22 COMMISSIONER MILLER: Right. We've seen
23 them in other cases.

24 MR. FIBUS: -- and primarily make beams

25 MS. STRAS: Can I add one thing here?

1 COMMISSIONER MILLER: Yes.

2 MS. STRAS: Whenever they refer to wire,
3 they mean wire fencing. It's an industry term of art
4 that I learned the hard way. Wire is wire mesh
5 fencing.

6 COMMISSIONER MILLER: Okay. Okay. All
7 right.

8 Mr. Kimball, let me ask you a question
9 because for purposes of your presentation and your
10 comparison of the prices of the less than fair value,
11 the dumped imports and the now non-subject imports,
12 you used two different pricing tables in the
13 Commission's staff report.

14 I know you have some references in your
15 brief to how you justify that, but to the extent you
16 can explain to us here in the open hearing can you
17 tell me why you think it's justified to use two
18 different pricing series for that different
19 information?

20 MR. KIMBALL: Sure. It is clearly not a
21 direct -- I wouldn't advise you to look only at
22 Attachment 3-A and base your conclusions on that.
23 That would certainly not be at the same level of trade
24 and would not be appropriate.

25 The decision to mix and match came after a

1 conversation I had with the economist, Mary Pedersen,
2 in which we discussed a certain reporting error in the
3 shipment data. You know, without getting into it
4 here, and while, you know, that issue has not been
5 resolved or, you know, the parties haven't been
6 informed of the resolution to that problem, I felt it
7 would be appropriate to include the numbers which seem
8 to be the most representative, which were the import
9 numbers, the import values.

10 COMMISSIONER MILLER: As opposed to the
11 shipment values?

12 MR. KIMBALL: As opposed to the shipment
13 values, with the caveat and footnotes to the effect
14 that this reporting issue needs to be resolved for the
15 shipment data, but, you know, because of the
16 peculiarity of who's importing it and who it's being
17 shipped to, you know, there is a certain adjustment
18 that needs to be made, in my opinion, that will not
19 dramatically alter those prices. I mean, of course,
20 shipment prices are always higher than import prices,
21 but if you --

22 COMMISSIONER MILLER: What you're really
23 saying is right now we don't have a good series to
24 make this comparison?

25 MR. KIMBALL: Well, yes.

1 COMMISSIONER MILLER: Fundamentally.

2 MR. KIMBALL: I fully agree.

3 COMMISSIONER MILLER: You did the best you
4 could with some data that --

5 MR. KIMBALL: Right. I look forward to, you
6 know, any sort of resolution. I would much prefer to
7 use the hard, reliable numbers than the numbers that
8 we have at this time. I know the Commission staff is
9 working hard to get those. You know, we'll see what
10 they show when that issue is resolved.

11 COMMISSIONER MILLER: Okay.

12 MR. KIMBALL: I would much rather work with
13 those.

14 COMMISSIONER MILLER: Okay.

15 MR. KIMBALL: That is what I felt was the
16 best that I could do at this time.

17 COMMISSIONER MILLER: Okay.

18 MR. KIMBALL: It should be, you know,
19 approached with a grain of salt, but I think that the
20 trends and the general level are representative.

21 COMMISSIONER MILLER: Okay, I appreciate
22 that.

23 We haven't talked very much about the scope
24 issue and stuff, and I don't think I really, I'm not
25 going to pursue it a lot at the moment. I think

1 having made the determination I did in the preliminary
2 phase based on the scope of the case at that point,
3 the scope at this point is different by virtue of the
4 Commission majority determination of the preliminary.
5 So we have a different scope, it's a different point
6 of departure. I understand your arguments on the
7 differences between the products that were part of the
8 scope before but are no longer and I can't believe I
9 wouldn't have any more questions at all, but there's
10 been a lot of history here.

11 I could ask for a little bit more, but I
12 think this case as others that we've seen does tell
13 you some interesting things about the changes in
14 retailing in the U.S. in the last 10 to 20 years.
15 There's a lot, I suspect, that has to do with how the
16 changes in retailing have impacted companies that
17 you're kind of a case in point on.

18 Am I right, Mr. Fibus? Changes in the
19 nature of retaining in this country have a lot to do
20 with what's happened to your product.

21 MR. FIBUS: You had a pristine company here
22 in Washington, D.C., Hechingers, that just couldn't
23 make it. Some of the most attractive stores I've ever
24 seen but their prices were wrong.

25 COMMISSIONER MILLER: The yellow light's on.

1 I'll see if I have any further questions for a second
2 round.

3 I appreciate all your answers. Thank you.

4 CHAIRMAN OKUN: Commissioner Koplan?

5 COMMISSIONER KOPLAN: Thank you, Madame
6 Chairman.

7 I've got a few things left.

8 Counsel, I refer you to the discussion of
9 lost sales and lost revenue, again, that appears at
10 pages 12 and 13 at Chapter 5 of the confidential
11 version of the staff report as my back ground for the
12 question I'm about to ask.

13 Mr. Fibus, have you ever imported subject
14 product from China for sale to a domestic purchaser?
15 If so, when, to whom, from which Chinese producer, in
16 what quantity, at what price?

17 MR. FIBUS: Are we talking about lawn and
18 garden fence posts now?

19 COMMISSIONER KOPLAN: Yes.

20 MR. FIBUS: I don't recall ever importing
21 lawn and garden fence posts. WE have received many
22 many quotes, but I don't recall ever importing any.

23 COMMISSIONER KOPLAN: So to the best of your
24 recollection you have never --

25 MR. FIBUS: Not the posts.

1 COMMISSIONER KOPLAN: Am I asking the
2 question too narrowly? What have you imported that
3 would relate to this --

4 MR. FIBUS: I've imported wire, but we don't
5 make wire. Welded wire, lawn and garden wire.

6 COMMISSIONER KOPLAN: Oh, lawn and garden
7 wire.

8 MR. FIBUS: Yes. I've imported that. We
9 don't manufacture it.

10 COMMISSIONER KOPLAN: For what customer?

11 MR. FIBUS: I'd say many customers. I'm not
12 quite sure.

13 COMMISSIONER KOPLAN: But not the subject
14 product.

15 MR. FIBUS: Not the lawn and garden fence
16 posts, no.

17 COMMISSIONER KOPLAN: If I could come back,
18 counsel, to my capacity question that I asked you in
19 the first round, do you have anything you can tell me
20 about that now? Or would you rather do it all in
21 post-hearing?

22 MS. STRAS: Are you referring to their
23 capacity to supply the U.S. market?

24 COMMISSIONER KOPLAN: Yes.

25 MR. FIBUS: Could I answer that question?

1 COMMISSIONER KOPLAN: Sure.

2 MR. FIBUS: We have enough production at
3 Steel City if everybody in the country and in the
4 world shut down today, we could supply the total lawn
5 and garden business in the United States and Canada
6 with the equipment that we have right now. We're
7 short of people, but we have the equipment. People
8 would come fast.

9 Does that answer that question?

10 COMMISSIONER KOPLAN: You're close, but not
11 quite there. Let me tell you where I'm coming from.

12 We had from our staff a capacity figure that
13 appears to me to have been a different estimate than
14 the estimate that was in your post-conference brief
15 and we flagged that in our preliminary determination.

16 The reason it appeared to be different we
17 stated was that your estimate was highly dependent
18 upon certain expectations concerning the number of
19 worker shifts and use of idled equipment. We said we
20 were going to pursue that in any final investigation.

21 So I appreciate what you're saying, but what
22 I'm trying to pin down is what's the right capacity
23 figure? And what we used, what I'm looking at is
24 business proprietary and that's why I said that
25 counsel could elaborate on this in the post-hearing.

1 I don't really think that for purposes of a public
2 session because I'm referring to BPI that you can
3 cover that for me.

4 Do you follow? Thank you.

5 In your pre-hearing brief you mention on
6 page 11, and this is footnote 26, that MAT asserts
7 that Petitioner lacks the size and product range to
8 qualify as a supplier. Then you go on to say,
9 "Petitioner notes, however, that [***] a wholesaler
10 serving 6800 retail stores, is a major purchaser of
11 Petitioner's lawn and garden steel fence posts and
12 this relationship undermines MAT's claim."

13 Let me ask you, Mr. Fibus, do you know
14 whether [***] during our period of investigation was
15 also buying product from China?

16 MR. FIBUS: I would believe they were.

17 COMMISSIONER KOPLAN: If they were, do you
18 have any understanding as to whether that would be
19 fairly traded or de minimis product or subject
20 product?

21 MR. FIBUS: I don't know who their sources
22 are.

23 COMMISSIONER KOPLAN: You wouldn't know the
24 answer to that?

25 MR. FIBUS: No.

1 COMMISSIONER KOPLAN: Okay.

2 Mr. Janak, I was trying to, I was going back
3 over what you said earlier. You testified in 1998 you
4 invested in increasing production capabilities by
5 adding a second paint line and a second station?

6 MR. JANAK: Banding station.

7 COMMISSIONER KOPLAN: Banding station.

8 Can I ask you, why were you expanding at
9 that time in the face of declining demand? Wasn't
10 demand declining at that time? No?

11 MR. SPEECE: No. I can answer that.

12 We were anticipating that we were going to
13 continue to expand. 1998 was our biggest year in
14 posts and we had been increasing every year. We
15 converted a second paint line that we already had over
16 so it could do the posts and also added the banding
17 station to wrap the posts up at the end.

18 COMMISSIONER KOPLAN: Thank you for that.

19 I don't have anything further at this time.
20 I want to thank you for your answers.

21 Thank you, Madame Chairman.

22 CHAIRMAN OKUN: Thank you.

23 Mr. Janak, if I could ask you, and I guess
24 we have charts in front and we have what's in the
25 staff report, and again looking now at this 2000 to

1 2002 time period where we saw Steel City's U.S.
2 shipments decline, I can't talk about the specifics,
3 but we saw the decline.

4 Is it your experience that you saw a decline
5 in sales to all of your customers, or is the decline
6 limited to a few? Where did you see the decline?

7 MR. JANAK: I would say the majority of the
8 customers. We may have retained certain customers but
9 we're not supplying all the product that we had once
10 sold to them. We may be a backup supplier, where in
11 the past we were a primary supplier.

12 CHAIRMAN OKUN: And did you see a decline in
13 accounts, to the extent you know which accounts, do
14 you know where there were accounts where you were the
15 single source as opposed to there was a Chinese
16 source?

17 MR. JANAK: I believe we generally knew.

18 CHAIRMAN OKUN: Did you see a decline in
19 your shipments, any difference in the shipments to
20 those where you were the single source and there
21 weren't Chinese versus those where there were Chinese
22 imports?

23 MR. JANAK: Can you repeat?

24 CHAIRMAN OKUN: The question is whether for
25 those customers where you were the single source, it's

1 your impression they were not buying Chinese, whether
2 you also saw a decline in shipments to those
3 customers.

4 MR. JANAK: I don't believe we did.

5 CHAIRMAN OKUN: So it would be your
6 impression that for those who were single source from
7 you, your shipments rose over this period?

8 MR. JANAK: Yes.

9 CHAIRMAN OKUN: Okay.

10 I think we've probably covered a number of
11 the things about what impact the big block stores have
12 in terms of pricing. I think Commissioner Miller went
13 to that so I don't think I'll follow up on that.

14 I had one more question but I don't know
15 where it is. If I get it, I'll come back to you.

16 Let me turn to Vice Chairman Hillman right
17 now.

18 VICE CHAIRMAN HILLMAN: Thank you.

19 I guess initially one for the post-hearing
20 brief which is this issue of trying to meet these cost
21 increases. Obviously I'm trying to understand in
22 terms of the pricing side of it what you felt in
23 essence was a cost/price squeeze. You were wanting to
24 raise your prices, you were not able to do that, but
25 you needed to because your costs were increasing.

1 I have to say in looking at the financial
2 data we have it's not so clear to me where or how
3 much those cost increases were. So if in your post-
4 hearing if you could address this issue, to the extent
5 you feel you were experiencing a cost/price squeeze
6 kind of where is that reflected in our data?
7 Particularly this issue of increased costs.

8 If I can then go back on the price side.
9 Can you tell me, you've all talked about wanting this
10 price increase. If you can tell me at what price
11 level did you think you ought to be selling product
12 during this period of time, during the POI? In other
13 words, ideally had you been able to get these price
14 increases, what would have been the price of the
15 product?

16 MR. JANAK: We'll address that in the post-
17 hearing brief.

18 VICE CHAIRMAN HILLMAN: Thank you.

19 I guess going a little bit to this issue
20 that Chairman Okun was raising, when typically, help
21 me understand it. When you lose an account do you
22 typically lose all of their business all at once? Or
23 are most of your customers purchasing product from
24 more than one supplier so that you're just seeing a
25 reduction in your sales to any given customer?

1 MR. FIBUS: It can go either way. No two
2 customers do it the same way.

3 VICE CHAIRMAN HILLMAN: Are the majority of
4 the customers tending to sole source this product?

5 MR. FIBUS: Yes.

6 VICE CHAIRMAN HILLMAN: So the majority.
7 Most, I mean --

8 MR. FIBUS: Those that use us as a backup
9 supplier, if you get a nice weekend in the Midwest or
10 the Northeast, and let's say the temperature goes up
11 to 72 and the sun is shining, they will get a rush on
12 the lawn and garden wire and the lawn and garden fence
13 posts. And everything else that is sold in the
14 department. They may clean out their store or their
15 warehouses over a weekend, over a period of three or
16 four or five days and they need immediate shipments.
17 Sometimes the imported warehouses have enough stock.
18 Sometimes they don't, they'll turn to us.

19 Once they lose the season, the season's
20 gone, it never comes back.

21 VICE CHAIRMAN HILLMAN: And pretty much this
22 is a product that is sold heavily in the spring?

23 MR. FIBUS: Very heavily in the spring.
24 Some fall cleanup, and not a whole lot in the summer.

25 VICE CHAIRMAN HILLMAN: And virtually none

1 in the winter?

2 MR. FIBUS: None in the winter to speak of.
3 We build inventory in the winter.

4 VICE CHAIRMAN HILLMAN: All right. That's
5 helpful.

6 I guess I want to go back a little bit more
7 to this issue of how the price competition occurs
8 because I've heard all of your testimony but I'm still
9 struggling a little bit to understand this issue of
10 how you kind of get market intelligence and whether
11 it's different when you're selling to retail versus
12 where you're selling to distributors.

13 I'm trying to understand, you go out with a
14 price list? Your product is sold largely on contract,
15 is that --

16 MR. FIBUS: We have a price list.

17 VICE CHAIRMAN HILLMAN: How often do you
18 issue price lists? Are they changed?

19 MR. FIBUS: Sometimes every year, sometimes
20 once every two or three years depending on the market.

21 VICE CHAIRMAN HILLMAN: Over this POI?

22 MR. FIBUS: Market inflation.

23 VICE CHAIRMAN HILLMAN: Over our period of
24 investigation have you had one price list out there or
25 has it changed, and sort of how many times over this

1 period of 2000 to --

2 MR. FIBUS: I think there's only been one
3 change in that period of time.

4 VICE CHAIRMAN HILLMAN: Okay.

5 Do you typically sell at that list or does
6 everybody get a certain amount of a discount off the
7 list?

8 MR. FIBUS: There's an LTL prices, less than
9 truckload, and a truckload price. As you get into the
10 bigger boxes or bigger retailers, then you have to
11 make concessions.

12 VICE CHAIRMAN HILLMAN: So it would be a
13 discount off of the price --

14 MR. FIBUS: Off of the truckload price.

15 VICE CHAIRMAN HILLMAN: -- based on volume.

16 MR. FIBUS: Volume.

17 VICE CHAIRMAN HILLMAN: A set percentage or
18 that's a negotiated amount?

19 MR. FIBUS: That's negotiated.

20 VICE CHAIRMAN HILLMAN: A couple of you
21 mentioned this issue of rebates. How does that work?
22 Again, that is --

23 MR. FIBUS: That's negotiated again.

24 VICE CHAIRMAN HILLMAN: And it's a rebate
25 meaning if you buy X amount I'll give you so much

1 back.

2 MR. FIBUS: Volume advertising. They're
3 very imaginative today.

4 VICE CHAIRMAN HILLMAN: And typically the
5 rebate would take how much off of what would be your
6 list price?

7 MR. FIBUS: One percent, two percent, three
8 percent, depending.

9 VICE CHAIRMAN HILLMAN: And the discounts,
10 the large volume discounts, would take how much off
11 the list price typically?

12 MR. FIBUS: We're right in that area.

13 VICE CHAIRMAN HILLMAN: One to three
14 percent?

15 MR. FIBUS: Right. Maybe an exceptional
16 discount would be five percent for some reason.

17 VICE CHAIRMAN HILLMAN: Going back to this
18 issue of the Chinese competition that you mentioned
19 was heavier, more competition in the lighter weight
20 fence posts; less competition in the heavier weight
21 posts. Why do you think that is? There's just more
22 volume on the lighter product?

23 MR. SPEECE: I can address that.

24 Part of it's due to the freight, the fact
25 that on light duty posts you can get a lot more in a

1 container, so they can bring them over and not have as
2 much freight.

3 We've gotten quotes from China and the
4 difference between our light duty posts and theirs
5 price-wise compared to the heavy duty is a lot more.
6 We've also got feedback from buyers, one of them --

7 VICE CHAIRMAN HILLMAN: I'm sorry, say that
8 last sentence again. I want to make sure I understand
9 what you just said on the price comparisons.

10 MR. SPEECE: The difference between our
11 light duty pricing and the Chinese is greater than it
12 is on our heavy duty versus their heavy duty. As an
13 example, we've got feedback from Menards who we really
14 haven't talked about much, but they are next to Depot
15 and then Lowe's, they are probably the third, if you
16 want to include them in a big box, although they're a
17 distant third.

18 We recently got feedback from them in 2002
19 and our light duty price, in spite of giving them our
20 best price was 42 percent higher than what they were
21 getting quoted from the Chinese, and on our heavy duty
22 price it was 24 percent higher.

23 VICE CHAIRMAN HILLMAN: If there are
24 particular documents that are evidence in essence of
25 what you have just said that you could submit in a

1 post-hearing brief, I think that would be helpful.
2 And where you got these quotes from or whatever your
3 documents, if there are any available I think they
4 would be helpful.

5 MR. SPEECE: Okay.

6 VICE CHAIRMAN HILLMAN: As part of it I'm
7 trying to make sure I understand, and obviously my
8 struggle and I realize it is very difficult because
9 you don't have the pricing data that we have in front
10 of us, but I think it's fair to say that the pricing
11 data that I'm looking at doesn't show anything near
12 the level of disparity between the Chinese price and
13 the U.S. price that you're describing, and I'm trying
14 to understand why is that? Why did our record tell me
15 one thing and your testimony very clearly tell me a
16 fairly different story?

17 So I'm just trying to make sure I understand
18 when you're seeing these price quotes -- It's one
19 thing if it's a quote to the exact same customer that
20 you're quoting. I think it may be a difference if
21 it's a quote that you've received from the Chinese for
22 them to sell at a different level of trade.

23 So I'm just trying to make sure that when
24 you're describing these Chinese price codes they are
25 to a comparable level of trade. In other words, to

1 the same kind of distributor or end user of the
2 product. And your sense is that's the case. At least
3 with this one sale that you're describing.

4 MR. SPEECE: Yes.

5 VICE CHAIRMAN HILLMAN: When the Chinese are
6 quoting you directly, in other words, you're saying
7 you are soliciting quotes from the Chinese. More than
8 kind of market intelligence, you're asking them --
9 again, I'm trying to understand at what level of trade
10 that would be or whether this is subject to this large
11 volume discount or any of that to make sure I
12 understand whether those are fair comparisons to your
13 prices.

14 MR. SPEECE: I would think people like
15 Lowe's, if anything, would be able to buy even better
16 than us. For the quotes that we got, were based on
17 our volume, or what we were going to buy. I think the
18 big box people would actually, if anything, be buying
19 even cheaper than what we were quoted.

20 VICE CHAIRMAN HILLMAN: But they are quoting
21 you a price as though you were a distributor?

22 MR. SPEECE: Yes, bringing in several
23 containers at a time, yes.

24 VICE CHAIRMAN HILLMAN: Okay.

25 I think at that point that's all the

1 questions I have at this point, Madame Chairman.

2 Thank you. And I thank you all for your
3 answers.

4 CHAIRMAN OKUN: Mr. Janak, you wanted to
5 answer --

6 MR. JANAK: I was just going to add that the
7 Chinese are not going to quote us a price that we're
8 going to be able to use to take business away that
9 they have directly, so their price to us will be
10 higher than the price to their customer.

11 CHAIRMAN OKUN: Mr. Kimball?

12 MR. KIMBALL: I would just like to add very
13 quickly that the pricing data in the staff report are
14 stated as being incomplete and so you're aware, I know
15 you're aware of those --

16 VICE CHAIRMAN HILLMAN: I'm trying to
17 understand whether it's just the incompleteness that's
18 leading to -- I would say the discrepancy is fairly
19 significant between the level of again what we would
20 call underselling that I'm hearing anecdotally
21 described today versus what is reflected in the data.
22 I understand that the data is very incomplete. I'm
23 just trying to figure out whether it's merely the
24 incompleteness of the data that accounts for this
25 level of discrepancy or whether there's something

1 else. So if there is anything else that you want to
2 know --

3 MR. KIMBALL: They know a lot more about the
4 actual anecdotal experience than I do.

5 VICE CHAIRMAN HILLMAN: Thank you for those
6 comments.

7 CHAIRMAN OKUN: Commissioner Miller?

8 COMMISSIONER MILLER: I have no further
9 questions. I appreciate all the testimony and your
10 answers today.

11 Thank you very much.

12 CHAIRMAN OKUN: Commissioner Koplan?

13 COMMISSIONER KOPLAN: Just one, Madame
14 Chairman.

15 I'm thinking back to when you said this case
16 is basically about trying to get Lowe's back as a
17 customer, and I'm going to ask you this.

18 Now that we know what the final margins are,
19 without my getting into who Lowe's is purchasing from,
20 I'd like you to estimate for the post-hearing because
21 I can't get into BPI in this here, but I'd like for
22 you to estimate for the post-hearing, counsel, what
23 your estimate would be as to what the price effect of
24 the margins that might apply would have. What the
25 price effect would have as to the Chinese product and

1 resultantly on the price that the domestic producer
2 can sell for.

3 Do you follow the question? Okay. I can't
4 be more specific because I can't get into BPI now, but
5 you see where I'm going with that?

6 MS. STRAS: I got it. Thank you.

7 COMMISSIONER KOPLAN: Thank you. If you
8 could submit that, I'd appreciate it.

9 I have nothing further. Thank you very
10 much.

11 CHAIRMAN OKUN: Thank you.

12 Two quick things.

13 One, it just struck me when we were talking
14 about the significance of the box stores and their
15 impact in retailing, whether it's your experience, and
16 we've heard a lot about this in other cases, whether
17 it's your experience, and maybe Mr. Janak you're the
18 best person on this, but Lowe's and Home Depot would
19 have an incentive to have different suppliers.

20 In other words we've seen the testimony that
21 they like to have someone who can sell a package and
22 you've testified to that, but would they want to have
23 different suppliers as competitors? Do you see that
24 in this?

25 MR. JANAK: I believe they do try to have

1 different suppliers.

2 CHAIRMAN OKUN: Anything they've ever said
3 to you to imply that, or that's just your experience
4 looking at the store or what they're buying?

5 MR. JANAK: Both the Lowe's and Home Depot
6 have vendor meetings where they invite all the
7 suppliers down and they both talk about
8 differentiating themselves from each other.

9 CHAIRMAN OKUN: I was just curious about
10 that.

11 The other thing, and just because I'm not
12 sure, we may have some of this information but I don't
13 think I have everything in front of me. For post-
14 hearing I'm going to ask that you can provide a
15 history of the annual sales of lawn and garden fence
16 posts to your top ten customers, reporting sales
17 quantity and values for the years 2000, 2001, and
18 2002. And for those companies where Steel City has
19 made lost sales allegations, if those are companies
20 who are not among your top ten, if you can provide the
21 same data.

22 With that I have no further questions.

23 Again, I want to thank you very much for all
24 the answers you've provided today, and let me turn to
25 staff to see if staff has questions for you.

1 MR. DEYMAN: I'm George Deyman, Office of
2 Investigations and the Supervisory Investigator on the
3 case.

4 I would like you also to provide in your
5 post-hearing briefs the data on the top ten customers
6 for 1998 and 1999, quantity and value of sales.

7 Also I'd like you to indicate for each of
8 those customers whether your sales were on a contract
9 basis or a spot basis.

10 And with regard to contracts, did you have a
11 contract with Lowe's for the 20 years that you sold to
12 it each year?

13 MR. FIBUS: We didn't have what you would
14 call a contract, but the buyer would usually say in
15 the fall sometime, you guys have the business for the
16 next year, and that was good enough. We have very few
17 contracts with anybody.

18 It was not in their best interest to change
19 suppliers in the middle of the year either, so that's
20 why that usually went from one year to the next.

21 MR. DEYMAN: When you lost the business to
22 Lowe's, was it a sudden loss?

23 MR. FIBUS: We went from total supplier to
24 backup supplier to nothing in a matter of three years.
25 Total, backup, nothing.

1 MR. DEYMAN: Thank you, I appreciate it.
2 I'm looking forward to seeing the data in the post-
3 hearing brief.

4 The staff has no further questions.

5 CHAIRMAN OKUN: Thank you, Mr. Deyman.

6 We do not have a second panel, so Ms. Stras,
7 you have five minutes for closing. You have time left
8 from your direct presentation, but usually that time
9 you would use for rebuttal and since you don't have
10 anything to rebut I am ready to proceed to -- or you
11 can rebut yourself. You might want to, but I wouldn't
12 recommend it.

13 I'm prepared to go to the closing remarks
14 unless you have something specific you think is going
15 to take you more than five minutes and that you want
16 to let us know about.

17 If you want to take a couple of minutes to
18 get your thoughts together for your closing, I'm happy
19 to have you do that as well.

20 MS. STRAS: I think because of the unusual
21 circumstance that we don't have another side here and
22 I have no one to rebut but myself what I'd like to do
23 is sort of combine a closing statement, which is sort
24 of a summary of our case. I think it will be only
25 five minutes. If it goes over a couple of minutes I'd

1 like to take that from our one hour. I'm sure there's
2 some time left, but I doubt if it will be more than
3 five minutes.

4 CHAIRMAN OKUN: Okay. Are you ready to
5 proceed then?

6 MS. STRAS: I think so.

7 CHAIRMAN OKUN: Okay.

8 MS. STRAS: As you've heard here this
9 morning there's only one like product in this case,
10 lawn and garden steel fence posts. There are
11 similarities in physical characteristics and uses
12 between lawn and garden steel fence posts and other
13 posts. As Mr. Speece discussed, the posts do not look
14 alike. There are no similarities in use. You can see
15 for yourself from the samples we brought.

16 Lawn and garden steel fence posts and other
17 posts are not interchangeable. The customer will not
18 substitute one for the other. The homeowner will use
19 the user friendly lawn and garden steel fence posts
20 rather than the heavy T-post that has no way of
21 attaching the wire fencing.

22 As a consumer I can tell you that years ago
23 before I got involved in this case I got a Yorkie
24 puppy for my daughter and we went to Lowe's and we
25 bought these posts and vinyl coated mesh wire fencing

1 to fence off a piece of the yard for the puppy. The
2 fencing was of the size and the posts were of the size
3 that a nine year old and I could handle and we didn't
4 even have to use a hammer to put them in the ground
5 because the ground was fairly soft. I'm sure you've
6 all had similar experiences with these type of posts.

7 I remember later on using the posts for
8 tomato plants and for light plant uses.

9 Lawn and garden steel fence posts are not
10 sold through the same channels of distribution. The
11 posts are sold to different consumers through
12 different stores. The stores that cater to farmers do
13 not sell lawn and garden steel fence posts while the
14 stores that cater to the homeowner do not sell the T-
15 posts. Sign posts are sold directly to the
16 municipalities, state and federal agencies by the
17 manufacturer.

18 Lawn and garden steel fence posts and other
19 posts do not have common manufacturing facilities,
20 production processes and the same employees, and
21 that's evident because no U.S. producer makes lawn and
22 garden steel fence posts and any other posts.

23 There are major prices differences, as has
24 been discussed this morning, and it's also in the
25 Commission's pre-hearing report. Lawn and garden

1 steel fence posts have an average unit value higher
2 than the average unit value for T-posts. There's only
3 one product here and there's only one manufacturer,
4 Steel City. Steel City is the only producer left in
5 the United States.

6 At the preliminary conference the one
7 Chinese importer that testified which was MAT raised a
8 couple of red herrings that we addressed in our pre-
9 hearing brief and we discussed here today.

10 As Mr. Janak detailed, Steel City can and
11 has supplied the big box customers.

12 Also the U.S. and Chinese produced dumped
13 lawn and garden steel fence posts are of comparable
14 quality. This is confirmed by the Commission staff in
15 the pre-hearing support.

16 The economic data gathered by the Commission
17 and summarized in our pre-hearing brief and by Mr.
18 Kimball this morning clearly shows that over the
19 period of investigation the dumped import volumes have
20 increased while Steel City sales volumes decreased in
21 a time of increased demand.

22 The Commission's data shows that prices of
23 the dumped imports have fallen during the period of
24 investigation. These dumped prices have suppressed
25 Steel City's prices. This price suppression has left

1 Steel City unable to recoup even a portion of its lost
2 sales revenue by raising prices.

3 As Mr. Janak testified this morning, all of
4 these have had a devastating effect on Steel City's
5 financial condition. There is no doubt that Steel
6 City has been materially injured by the dumped Chinese
7 imports.

8 We know that the Commission staff has had
9 problems confirming the lost sales allegations and
10 urge the Commission to draw adverse inferences against
11 the non-cooperation of these customers that have an
12 interest in continuing to buy the dumped Chinese
13 imports.

14 We also urge you to draw adverse inferences
15 against the dumped Chinese imports when you consider
16 the threat factors. Steel City is concerned that
17 there is substantial unused capacity in the Chinese
18 industry for lawn and garden steel fence posts. This
19 is also a simple little product and easy to shift
20 production.

21 The increased import volumes and the price
22 suppression have already been discussed this morning
23 by Mr. Kimball. We're also concerned by the
24 inventories. No matter how you look at them, at a
25 minimum all of these factors point to threat if you do

1 not find material injury.

2 The Chinese at the preliminary conference
3 referred to this as a simple little case. It may be a
4 simple little case, but it is an important case to
5 Steel City. It means the loss of market share, loss
6 of jobs, and production equipment standing idle. It
7 also means the loss of our domestic industry to the
8 Chinese dumped imports.

9 We are here today to ask you not to allow
10 this to happen.

11 Thank you.

12 CHAIRMAN OKUN: Thank you.

13 And again, thank you to all the witnesses
14 for being here, for your presentation and for
15 answering our questions.

16 Post-hearing briefs, statements responsive
17 to questions and requests of the Commission and
18 corrections to the transcript must be filed by April
19 29, 2003. Closing the record and final release of
20 data to parties is May 13, 2003. Final comments are
21 due May 15, 2003.

22 With no further business before the
23 Commission, this hearing is adjourned.

24 (Whereupon, the hearing was adjourned at
25 11:21 a.m.)

CERTIFICATION OF TRANSCRIPTION

TITLE: Lawn and Garden Steel Fence Posts
from China

INVESTIGATION NO.: 731-TA-1010 (Final)

HEARING DATE: April 22, 2003

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

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

DATE: April 22, 2003

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

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

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