THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of: )  Investigation No.: 
REFINED BROWN ALUMINUM )  731-TA-1022 (Final) 
OXIDE FROM CHINA 

Tuesday, 
September 23, 2003
Room No. 101 
U.S. International 
Trade Commission 
500 E Street, S.W. 
Washington, D.C.

The hearing commenced, pursuant to notice, at 9:31 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:

DEANNA TANNER OKUN, CHAIRMAN
JENNIFER A. HILLMAN, VICE CHAIRMAN
MARCIA E. MILLER, COMMISSIONER
STEPHEN KOPLAN, COMMISSIONER
CHARLOTTE R. LANE, COMMISSIONER

Staff:

MARILYN R. ABBOTT, THE SECRETARY
DEBORAH A. DANIELS, LEGAL DOCUMENTS ASSISTANT
JAMES MCCLURE, SUPERVISORY INVESTIGATOR & INVESTIGATOR
PETER SULTAN, ATTORNEY
AMELIA PREECE, ECONOMIST
JUSTIN JEE, ACCOUNTANT

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APPEARANCES:  (cont'd.)

In Support of the Imposition of Antidumping Duties:

On behalf of C-E Minerals; Treibacher Schleifmittel Corporation; and Washington Mills Company, Inc.:

PETER H. WILLIAMS, President, Washington Mills Company, Inc.
BERND DURSTBERGER, Chief Executive Officer, Treibacher Schleifmittel Corporation; Chief Operating Officer, C-E Minerals
FRED SILVER, Former President, Exolon Company, a Division of Washington Mills Company, Inc.
DON MCLEOD, Vice President, Marketing and Sales, Washington Mills Company, Inc.
HARVEY PLONSKER, President, AGSCO Corporation
WEBB KANE, President, Midvale Industries, Inc.
THOM BELL, Vice President and Sales Manager, Precision Finishing, Inc.
GARY WATERHOUSE, President, Local 4447-06, United Steelworkers of America
LOWELL (PETE) STRADER, Legislative Director, PACE International
ROBERT A. BLECKER, Professor of Economics, American University

ROGER B. SCHAGRIN, Esquire
Schagrin & Associates
Washington, D.C.
APPEARANCES:  (cont'd.)

In Opposition to the Imposition of Antidumping Duties:

On behalf of Allied Mineral Products, Inc.; Cometals, a Division of Commercial Metals Company; Saint-Gobain Corporation; Dauber Company, Inc.; Golden Dynamic, Inc.; White Dove Group Import and Export, Inc.; Henan Mianchi Great Wall Corundum Co., Ltd.; Hainan Meida Import and Export Company, Ltd.; China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters:

THOMAS E. GIBSON, Vice President, Corporate Development, Allied
DOUGLAS K. DOZA, Senior Vice President, Manufacturing and Research, Allied
DENNIS GATES, Vice President, Cometals
KELLEEN LOEWEN, Market Manager, Abrasive Materials, Saint-Gobain
JOHN L. REDSHAW, Sales & Marketing, Dauber
DANIEL W. KLETT, Consultant, Capital Trade, Inc.
CHEN HAORAN, Chairman, Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters
LIU ZHIMEI, Director, Bidding Department, China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters
LIU JIANWEI, Deputy Director, Legal Service, China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters

KEVIN M. O'BRIEN, Esquire
STUART P. SEIDEL, Esquire
LISA A. MURRAY, Esquire
Baker & McKenzie
Washington, D.C.
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CHAIRMAN OKUN: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-1022 (Final), involving Refined Brown Aluminum Oxide From China.

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

Schedules setting forth the presentation of this hearing and testimony of witnesses is available at the Secretary's desk. I understand the parties are aware of time allocations. Any questions regarding time allocations should be directed to the Secretary.

As all written testimony will be entered in full into the record, it need not be read to us at this time. All witnesses must be sworn in by the Secretary before presenting testimony.

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

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PROCEEDINGS
(9:31 a.m.)
Secretary's office. Finally, if you will be submitting information that you wish classified as business confidential, your requests should comply with Commission Rule 201.6.

Madam Secretary, I note that we are welcoming Commissioner Lane to her first hearing here at the Commission. Welcome.

Are there any other preliminary matters?

MS. ABBOTT: No, Madam Chairman.

CHAIRMAN OKUN: Very well. Let us proceed with opening remarks.

MS. ABBOTT: Opening remarks on behalf of the Petitioners will be made by Roger B. Schagrin, Schagrin Associates.

CHAIRMAN OKUN: Good morning, Mr. Schagrin.

MR. SCHAGRIN: Good morning, Chairman Okun, members of the Commission.

A special good morning and welcome to Commissioner Lane. I understand this is your first hearing. I look forward to seeing a lot of you over the next eight years, and the feeling does not have to be mutual, as I'm sure the others Commissioners will let you know.

If you read the prehearing staff report or the Petitioners' prehearing brief, you will find that...
this is a straightforward case that requires a
unanimous affirmative injury determination and an
affirmative critical circumstances vote.

What are the facts? The staff report
concludes that purchasers almost uniformly agree that
the domestic and Chinese refined brown aluminum oxides
are interchangeable. Purchasers are buying on the
basis of price because quality and delivery are the
same.

Imports from China have been high over the
three year period, with the shipments of imports
increasing and market share growing rapidly. Any
decreases in the interim period data were clearly the
result of the filing of this case last November and
the huge dumping margins imposed in May with the
retroactive critical circumstances duties back to
February.

Import inventories by any measure absolutely
as a share of imports or relative to domestic
inventories or shipments are absolutely gigantic and
explain why these imports have had a long-lasting
impact and continue to devastate domestic pricing.

The condition of this industry went from bad
to worse over the POI with production, shipments,
employment and prices all falling and profits, already
poor at the outset of the POI, having turned into losses.

I must tip my hat to both the petitioning companies and the Commission economic staff for the extensive validation of the lost sales and lost revenues that have occurred over the POI as purchasers of domestic product shifted their purchases to imported product because of lower prices.

The extent of these lost sales really document both the injury and causation cases here. The persistent availability of dumped Chinese product caused volume losses and price depression. This is a small domestic industry. They would give their eye teeth for $7 million or $8 million of restored annual sales and a few percentage points improvement in pricing.

The record on underselling both on a product specific and on an AUV basis, as well as the record on price depression, also support the statutory finding of material injury. The import increase after the filing of the petition by importers who knew they faced large dumping duties and the massive inventories in the market support an affirmative critical circumstances vote.

Yesterday, the Department of Commerce

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confirmed massive final dumping duties of 135 percent for all Chinese exporters and final affirmative critical circumstance determinations for all exporters and importers.

As to threat, first, demand is down. Second, import inventories are very high. Third, there is plenty of excess Chinese capacity, and the exporters who responded were increasing their exports to the United States.

Now, we have had so many China cases before this Commission with no cooperation by Chinese exporters that we begin to almost get excited when half the Chinese industry decides to participate and file foreign producer questionnaire responses, but we can't overlook the fact that we're still missing data from half the Chinese industry, including two of the biggest Chinese producers and exporters.

Changes in the conditions of competition are relevant in this case. The change in ownership of Treibacher led C-E Minerals to switch from being a major importer to a domestic producer by restarting a facility previously shut down by Allied Mineral. The sale of over 60,000 tons of crude BAO by the DLA gave the domestic industry temporarily lower cost raw materials. That is over. There's no more DLA crude
In the face of the overwhelming record in support of an affirmative injury determination, all Respondents could do in their prehearing brief and I presume today at the hearing is to engage in mud slinging against the domestic industry and to try to muddy the record before you.

Some of these allegations are simply wrong. Others are easily explained. I am confident that when the Commission fully evaluates the data you will find that it strongly supports an affirmative determination in this case.

Thank you.

CHAIRMAN OKUN: Thank you.

MS. ABBOTT: Opening remarks on behalf of the Respondents will be made by Kevin M. O'Brien, Baker & McKenzie

CHAIRMAN OKUN: Good morning, Mr. O'Brien. If you can just make sure your mike comes on there? There you go.

MR. O'BRIEN: Is that better?

CHAIRMAN OKUN: Yes.

MR. O'BRIEN: Good morning, Madam Chairman, Commissioners, and again a special good morning to Commissioner Lane. We look forward to working with

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It's not surprising the Petitioner would say this case is straightforward and deserves a unanimous affirmative determination. The Petitioner would like to keep this case cast as simply as possible and not have the Commissioners take a hard look at what is really going on.

The reason is because, or one reason is that the activities of the U.S. producers blanket the entire industry. They and their affiliates at least produce the crude product in China, produce refined product in China, import crude and refined product into the United States, manufacture end use products in other countries for sale into the United States and manufacture end use products here in competition with the downstream customers.

Now, I say at least because this list is not exhaustive. These U.S. producers are literally everywhere. Every issue, every significant issue raised in this case, has lead to U.S. producers in a very major part.

Whether it's price effects at the distributor level, whether it's price effects due to the massive DLA sales during the late 1990s and into the early 2000s, whether it's long-term and deep
investments in China, whether it's the introduction of
downstream products which erode the customer base for
those products, the U.S. producers are in every way
deeply and heavily involved in the competitive market
conditions.

Now, we urge the Commission to review the
conditions of competition very carefully in this
investigation. The domestic industry is not in a
state of injury. With new entrants and healthy
investments, they are doing well given the cyclical
nature of the business.

Nobody can reasonably deny that the economy
has slowed down nor that several market segments of
this business are strictly tied to the steel and
foundry industry. There is no question that it's a
cyclical market and that when the steel industry slows
down the demand for this particular product will slow
down and vice versa. When it picks up, demand for
this product will pick up. It's happened numerous
times over the past decades and will happen again.

Now regarding the definition of the domestic
like product, it is interesting that the producers
can't agree among themselves who is and who is not a
member of the domestic industry. There's a reason for
this. The scope of this investigation is a contrived
definition.

It is not a commercial meaningful definition of what is a refined product versus what is a crude product. It is an arbitrary three-eighths inch, 50 percent by weight definition, which is commercially meaningless to purchasers of refined product on the one hand or crude on the other hand.

Now, rather than use a meaningful definition such as a product which is fit for use by an end use customer, they use this definition having to do with dimension and weight, which is simply not meaningful. The result has been numerous inconsistencies and ironies that have arisen whereby a customer can buy a product and the specifications overlap the definition of what's crude and refined, so one shipment can be considered crude. The exact same shipment can be considered refined. The reason for that is because the definition is contrived.

Finally, you'll no doubt hear vague references to Chinese suppliers during the course of the morning by Petitioners as if to infer that the U.S. producers themselves don't meet this description. They do in a very big way. Keep in mind when issues of price leadership or lost sales are discussed, the facts show that the Petitioners themselves have been
deeply and intimately involved in the actions they complain of.

In short, the U.S. producers are essentially asking the Commission to stop one small slice of one small piece of this production and sales chain. That is not the role of this Commission, and the petition should be rejected.

One final comment, and I'm sure you'll hear the margin and the critical circumstances findings several times today. Please just be aware that they were based on data calculated for one single Respondent company, and it was an adverse facts available findings to the entire Chinese industry.

Thank you very much. That completes my opening statement.

CHAIRMAN OKUN: Thank you.

Madam Secretary, will you please call the first panel?

MS. ABBOTT: The first panel in support of the petition, please come forward. All members have been sworn.

(Witnesses sworn.)

CHAIRMAN OKUN: Looks like everyone is seated. Mr. Schagrin, you may proceed.

MR. SCHAGRIN: Thank you. Good morning
again, Chairman Okun, members of the Commission.

Before introducing the witnesses, let's just take a quick look at Respondent's main arguments. First, they have intimated in their brief that there are numerous problems with Petitioners' data, that Petitioners have been uncooperative with the ITC staff and that Petitioners have been hiding the ball behind their international operations.

Nothing could be further from the truth. Petitioners have responded fully and expeditiously to requests from all the Commission staff. Mr. Jee has now verified Petitioners' financial data. The changes he requested have been submitted for the record.

I understand that there's some additional changes that he has to work out with one of the companies. They're in conversation, he and the CFO, but the Commission should also be aware that on the whole the changes requested by the Commission staff have strengthened the record for the domestic industry. That's far from hiding the ball.

Second, Respondents claim that Treibacher's parent, Immeris, which they repeatedly identify as that French company, as in, you know, the French who didn't support us in the war in Iraq, you know, unlike Saint-Gobain's French parent, of course, is using this
case not to get antidumping relief for its U.S. brown aluminum oxide subsidiaries, but instead is in some type of conspiracy to squeeze Allied with refractory exports to the United States. Again, this is not even close to being true. Mr. Durstberger can explain this to you later.

Third, they say the domestic industry has poor quality control and can't be relied upon. Wrong again. One of the lead Respondents may complain, but, based on purchaser responses, over 90 percent of the 24 responding purchasers, 90 percent, raised no complaint about the quality of the domestic industry's product and overwhelmingly found that Chinese and domestic products were equivalent in quality. That is why 23 of the responding purchasers stated that a lower price was a very important consideration in their purchasing decisions.

Fourth, the Respondents try to undermine the record on underselling and price suppression for a coefficient and correlation analysis and claim that the pricing products are unrepresentative. Dr. Blecker will talk about the fallacies of their underselling correlation analysis.

As to representativeness of the pricing products, the staff added the big refractory split...
size that Respondents asked for in their comments on the questionnaire. Covering more than 10 percent of sales in an industry with hundreds of split, grit and table variations is very good coverage for this Commission.

However, even if you pick dozens of sample pricing products all you would do — all you would have done — is destroyed the lives of your economics staff because the results would have been exactly the same. Consistent and high underselling for all comparisons of domestic and Chinese prices.

They also complain about the confirmed lost sales and lost revenue allegations, but this record is replete with information on Chinese prices underselling the domestic industry and the domestic industry lowering prices to compete.

Let me conclude with the granddaddy of all the Respondents' arguments. Respondents' ultimate argument is to ask this Commission to essentially rejigger the domestic industry. Not only do they want you to make Great Lakes Minerals a part of the domestic industry, something you rejected unanimously in your preliminary affirmative determination, but they actually want you to count Great Lakes' imports as part of the domestic industry's market share under
a new theory of how to assess both imports and the
domestic industry.

Again and again, just as Mr. O'Brien did in
his opening statement, they argue you can lump the
whole domestic industry together. Everyone in the
domestic industry is a big importer. Look at all the
imports from everyone in the domestic industry.

The only problem is look at the record.

Washington Mills and Treibacher throughout the POI had
minuscule amounts of imports just to even out some of
their product ranges, in general less than one percent
of imports by each of Treibacher and Washington Mills.
That doesn't sound like the domestic industry
destroying their own industry through their imports.
No.

Now C-E, whose imports were admittedly large
at the beginning of the POI, for reasons unrelated to
the filing of this petition stopped importing in mid
2002, yet because of increased imports by other
importers imports hardly missed a beat.

What is at the heart of Respondents'
arguments today is that Great Lakes is a part of the
domestic industry, and because they're a big,
injurious importer the industry is injuring itself.
That is the point. If it is Great Lakes' imports and

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the rest of the imports from numerous other importers that are injuring the industry, that just helps support Petitioners' argument of why Great Lakes should be excluded from the domestic industry.

Now, by necessity most of our arguments on not including Great Lakes as a member of the domestic industry must be kept confidential, and we'll argue them again confidentially in our posthearing brief. Nevertheless, let me just say now that Great Lakes was certainly a major importer throughout the POI, and, as to recent imports, Great Lakes' letter in opposition to the Department of Commerce's critical circumstances determination, which interestingly enough was included in both Petitioners' and Respondents' briefs as exhibits, speaks for itself.

How often do domestic producers oppose a finding of critical circumstances at the Department of Commerce? That's what importers do, not domestic producers. In sum, there is clearly a substantial difference in sales and production philosophy between Great Lakes and the Petitioners.

Not only are all of Respondents' arguments against an injury finding unavailing, but the most amazing thing is that even if you look at the industry the way they want you to there are still significant
imports that are increasing, are underselling the U.S. industry and are injuring the industry. Indeed, Respondents' own charts establish a strong correlation between poor domestic industry performance and the increase of what Respondents refer to as "independent importers."

One last comment on scope. Mr. O'Brien says boy, the domestic industry really jiggered a funny scope that has nothing to do with the way business occurs in this industry. Well, you can ask all the distributors here as to whether or not our scope fits the domestic industry, and you can look at the products themselves and there are clear differences, but really what Respondents harp on in their brief and what Mr. O'Brien referred to this morning is that domestic producers do have some product sizes of refined BAO that are above our scope.

We've checked into it. We'll give you the actual data in our posthearing brief. It amounts to about one-third of one percent of all domestic industry shipments. One-third of one percent. This is what Mr. O'Brien is resting his case on. This is typical of their entire case. They take a one percent number, and they blow it up as if it's a major tragedy occurring.

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Since they have Mr. Seidel on their team and
his experience at Customs, they know as well as you
know as well as I know the best thing for Petitioners,
particularly in a case like this, would have had scope
based on end use customers and end use customer
certifications. Commerce and Customs simply won't
accept that.

We are forced to find a scope that reflects
industry realities and to try to find clear,
enforceable dividing lines and to make sure that the
domestic crushers who need crude didn't have their
product covered because the product is not produced in
the United States.

With that I'll turn to Peter Williams.

MR. WILLIAMS: Good morning, Chairman Okun
and members of the Commission. For the record, my
name is Peter Williams, and I am president of
Washington Mills Company, Inc.

Washington Mills was founded in 1868. It is
still a family owned business. I have been with the
company for 43 years. Washington Mills has two
domestic facilities where we crush, sieve, grade and
package refined brown aluminum oxide or what is
commonly known as brown grain.

One plant is in North Grafton,

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Massachusetts, and the other complex is in Niagara Falls, New York. Nearby, we operate our Exolon Division in Tonawanda, New York. We also have three facilities in Canada where we produce both crude and refined brown aluminum oxide, two of which are currently shut down.

Brown aluminum oxide crude ore and refined brown aluminum oxide grain are two different products. First, crude is not produced in the United States. If it were, it would be made in totally separate and different facilities. A company needs an electric arc furnace to fuse aluminum oxide crude ore out of bauxite.

Second, as you can see from the samples set out before me, crude ore is physically quite different from refined grain products. There are not less than 30 distinctly different standard brown grain sizes. On the other hand, crude ore is simply produced as one inch and finer material.

Finally, our customers cannot use crude chunks. Only grain producers with extensive crushing capabilities can convert crude ore aluminum oxide into finished, usable brown grain.

There are other varieties of refined aluminum oxide, but they are also distinctly different.
from brown. White and pink aluminum oxide are much purer forms in terms of chemistry, from 99.5 to 99.9 percent pure versus a normal range of 93 to 97 percent for brown grain, for brown crude ore.

These different products must be produced on separate and quite different equipment. Because white and pink refined prices are nearly double those for brown, they're only used where absolutely required.

Brown aluminum oxide grain is one of Washington Mills' principal products, accounting for about half of our revenues. We believe we are an efficient, world-class producer of brown grain, and we continue to invest in that segment of our U.S. business up until the magnitude of the Chinese attack on the brown grain business became evident.

Over the years, we observed companies such as Copperandum Company and Norton cease to invest in their U.S. brown grain crushing businesses. As a result, they eventually closed or sold their brown grain plants. In 2001, 3M Company followed and closed its brown grain plant.

By the end of 2000, Exolon Company was clearly in shaky financial condition. We purchased Exolon for a fraction of its asset value in August 2001. Had we not purchased it, Exolon would have gone...
bankrupt. Our plans were to help consolidate the
industry, cut costs and make both Washington Mills and
Exolon's aluminum oxide business profitable again.

The Commission will understand these goals
as they are similar to the benefits that will accrue
to the consolidation of the steel industry that has
been the subject of Commission inquiry this summer.
In our purchase of Exolon, formerly a publicly traded
company, we combined the two largest abrasive grain
companies in North America and the two largest refined
brown aluminum oxide producers in the United States.
In a mature industry, this makes sense.

We proceeded to cut costs and rationalize
production between Washington Mills and Exolon.
Moreover, we ended Exolon's self-defeating price
strategy of trying to match Chinese prices to sustain
their volume. However, our strategy did not entirely
succeed as the surge in imports from China and the
growth of their market share driven by their very low
prices is now the most significant factor affecting
the U.S. market.

Indeed, the decrease in volume caused us to
lay off a significant portion of our workforce. In
1999 and 2000, we were able to purchase large
quantities of U.S. government DLA stockpile crude ore
at extremely low prices. Much of this low-cost crude
was released to us and used in 2001 and 2002. Without
this one-time windfall, we could not have withstood
the Chinese onslaught. Steep financial losses would
have caused us to close our U.S. grain plants. There
is no more crude ore remaining in the DLA stockpile.

Our vice president of sales and marketing,
Don McLeod, will explain marketing of brown aluminum
oxide in greater detail. However, in general I have
witnessed the Chinese take over much of the refractory
market seven or eight years ago. Then three or four
years ago we saw the Chinese make major inroads into
the abrasive market, selling through trading companies
to major producers of grinding wheels and sandpaper.

Finally, in just the last year or two, we've
seen the distributor market that sells brown aluminum
oxide and many other products to the industrial
markets also buying more Chinese imports as well.

As to the import surge that occurred after
we filed the petition and is the subject of your
critical circumstances review, let me share one
anecdote with you. Norton Sangobane is one of the
largest users of brown aluminum oxide grain in the
United States. One of their main plants is located in
Worcester, Massachusetts, about seven miles from our
In April, we learned that Norton's warehouse was being reorganized to accommodate 1,400 to 1,500 tons of brown aluminum oxide grain imports from China. That is a huge inventory for Norton to stock. After the ITC preliminary determination, our sales staff has heard rumors about various accounts buying Chinese imports who were trying to determine when the duties would be assessed and how much inventory they could get at cheap prices prior to the imposition of dumping duties. This build-up of import inventories has continued to hurt our volume and pricing to this day, five months after Commerce's preliminary dumping determination.

If you review our questionnaire response, which combines data from Exolon and Washington Mills back to 2000, you'll see that we have managed to cut our losses in each year over the period of investigation. However, this has been achieved exclusively by cost cutting in spite of significant volume declines.

We have increased productivity and significantly reduced selling and general expenses at the combined companies. Two years after the Exolon acquisition, I'm proud to say that our synergistic

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savings goals have been met, but if you look at our product prices you'll see that they have fallen by at least 10 percent over the past three years.

Here is my dilemma. First, the DLA stockpile of crude aluminum oxide is gone. There is no more. Second, we have no further cost cutting within reach, so if the pricing and volume do not improve we will continue to lose money in brown grain.

One basic business maxim I learned almost 50 years ago is that in a multi-product line business you cannot cross subsidize unprofitable product lines with profitable business segments unless it is to survive a short-term, cyclical downturn. This maxim has not changed and is even more applicable today.

We are not in a cyclical downturn. We are on the receiving end of a calculated attack on our very existence. If you do not impose dumping duties against the dumped imports from China, then I know that our refined brown aluminum oxide prices won't increase, the product line will not regain profitability, and I may have to shut down our three brown grain plants with a loss of over 100 jobs.

I implore you not to let that happen. Please make an affirmative injury vote. Thank you.

CHAIRMAN OKUN: Thank you.

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MR. SCHAGRIN: Mr. Durstberger?

MR. DURSTBERGER: Good morning, Chairman Okun and members of the Commission. My name is Bernd Durstberger. I am the CEO of Treibacher Schleifmittel North America and the COO of C-E Minerals, both subsidiaries of Immeris. Treibacher is a worldwide producer of minerals for the abrasives industry. C-E Minerals produces minerals for the refractory industry.

Let me first give you some background on the production facility operated by C-E Minerals in Newell, West Virginia. In the early 1990s, this plant was operated by Allied Mineral Products in a joint venture with Frank & Chulton, the German trading company, and was called Napco. The plant had crushing equipment which could crush brown aluminum oxide into the refractory splits used, amongst others, by Allied Mineral.

In the late 1990s, Allied decided to stop operating the plant and instead started to import all of its refined brown aluminum oxide from China. In 1999, C-E Minerals bought the assets at Newell from Napco. However, C-E used the plant just as a distribution and warehouse facility. C-E imported refined brown aluminum oxide into Newell and
distributed it to a full range of customers --
refractory producers, abrasive producers and
distributors.

In July 2000, Immeris purchased Treibacher's
worldwide operations. As part of the post merger
business plan discussions, the decision was made to
cease C-E's imports of brown aluminum oxide grain for
abrasive applications in competition with Treibacher.
C-E then made an investment to produce only brown
aluminum oxide for refractory customers.

In comparison to Treibacher or Washington
Mills, which produce hundreds of sizes of brown
aluminum oxide grain, C-E produces only very few sizes
for these refractory customers. To the best of our
knowledge, Allied has imported all of their refined
brown aluminum oxide needs from China since they
stopped production at the Newell plant, which is
seemingly why they have taken the lead in opposition
to the duties.

The domestic industry, including C-E, has
plenty of available capacity to supply the entire
demand for refractory splits in the United States.
The 2002 change in C-E's business starting to produce
rather than import refined brown aluminum oxide has
probably had a short-term impact on imports of Chinese
grain.

However, given the huge excess capacity in China to produce brown aluminum oxide grain and their ridiculously low prices, normally half of our prices, other importers quickly rushed in to more than offset the cessation of imports by C-E Minerals.

Treibacher Schleifmittel has manufacturing facilities in Niagara Falls, New York, where we produce refined brown aluminum oxide. I have been with Treibacher in Niagara Falls for nine years. We built a new $9.5 million crushing and sizing facility that came on line in 1996, which we believe is the most modern and most efficient production facility for brown aluminum oxide grain in the world.

In 1999, for financing purposes, the company sold the plant under a sale leaseback plan to a financial services company and leased it back. In 2002, we then repurchased the facility for the remainder of its asset value. This is why we now show a significant capital expenditure for 2002. That money was not spent to build a new plant, but to repurchase the already existing facility.

This also shifted expenses from cash expenses for monthly lease payments to cash expenses for interest and non-cash expenses for depreciation.
These decisions were based on financial reasons, tax planning and changes in interest rates, not on the fundamental decision of whether or not to make investments in our refined brown aluminum oxide business.

I have witnessed a tremendous surge in Chinese imports of brown aluminum oxide grain over the past several years. We at Treibacher made the decision to try not to lower our selling prices to compete with low-priced Chinese imports. As a result, we have lost very significant volume at Treibacher in each of the last four years. This lost volume has caused our per unit costs to increase and, therefore, even while holding prices relatively stable our profits have fallen significantly, and we suffered losses in 2003.

In fact, our bonded abrasive customers who are producers of grinding wheels and who make up the majority of Treibacher's business reported getting at least one new offer per week from importers of Chinese brown aluminum oxide grain. Unfortunately, we're slowly but surely losing these customers, and our distributors as well, to imports of Chinese brown aluminum oxide grain.

If the U.S. Government does not impose

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antidumping duties on these imports we will not only fail to obtain a return on our investments made in our plants in the United States, but the very continuation of the operation of these facilities is threatened.

Aluminum oxide is a very abrasive material which wears out the production equipment. Therefore, continued reinvestment in the equipment is necessary to stay cost competitive and to stay in business. Without dumping relief, reinvestment would be foolish, and our plant in Niagara Falls will be closed.

Therefore, I respectfully request that this Commission make an affirmative injury determination in this investigation. Thank you.

CHAIRMAN OKUN: Thank you.

MR. SCHAGRIN: Mr. McLeod?

MR. MCLEOD: Good morning, Chairman Okun and members of the Commission. For the record, my name is Don McLeod, and I am the vice president of sales and marketing --

CHAIRMAN OKUN: Mr. McLeod, could you pull your microphone a little bit closer?

MR. MCLEOD: Yes.

CHAIRMAN OKUN: Thank you.

MR. MCLEOD: For the record, my name is Don McLeod, and I am the vice president of sales and marketing --

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marketing at Washington Mills. I am in charge of all sales for Washington Mills and Exolon.

After our acquisition of Exolon, we combined the two sales departments into one. I have been in the industry for 29 years and with Washington Mills for the past 16. We sell to three main groups of customers -- refractory producers, bonded and coated customers, i.e., grinding wheel manufacturers and sandpaper manufacturers, and general industrial customers.

Virtually all of the customers in the first two categories buy directly from manufacturers or importers, while almost all of the general industrial customers buy from distributors. These distributors in turn buy from either producers or importers.

The refractory producers tend to buy a relatively coarse or macro grit group of sizes. They buy in large quantities on an annual contract basis and demand pricing close to or the same as that of Chinese products. After we purchased Exolon, we decided to end Exolon's practice of trying to match Chinese prices to the refractory industry and gave up much of the refractory business.

The bonded and coated business is also an annual contract business negotiated prior to the end
of the year. The customers buy a range of sizes from coarse to micro grits. During the past three years, we have lowered our prices to many of these bonded and coated customers because of Chinese competition, yet despite lowering prices I would estimate that we have lost one-quarter of our business with bonded and coated customers since 1999.

Because major importers of Chinese brown aluminum oxide are now stocking inventories in the United States. We no longer possess delivery time advantages over the Chinese.

The third segment of the market is served by distributors that stock our product or imported product to sell to industrial users. These users are generally supplying a range of abrasive products for auto, aerospace and consumer good sectors. Prices in the industrial user segment of the market tend to be on a spot basis and change as distributors and customers constantly look for better prices.

The Chinese have lowered their prices significantly to distributors in the past few years, and we are faced with decisions about keeping our distributors competitive or walking away from the business.

As vice president of sales and marketing, I
can just tell you that dumped Chinese material has
decimated the market, and without dumping relief our
sales force and our company may not be able to
continue in this product line.

Thank you.

MR. SCHAGRIN: Thank you.

Mr. Silver?

MR. SILVER: Good morning, Chairman Okun and
members of the Commission. For the record, my name is
Fred Silver, and I represent the Exolon Company, a
division of Washington Mills.

Exolon was founded in 1914, and I was
president from 1996 until June 1 of this year. I have
been in the abrasive industry for 34 years. We
produce brown aluminum oxide in our Tonawanda, New
York, facility and silicon carbide in both our
Hennepin, Illinois, and Tonawanda plants.

Exolon long pursued a strategy for aluminum
oxide sales of offering a broad range of sizes similar
to Washington Mills, but we had a larger portion of
our sales in the refractory market. Between 1998 and
2001, we saw Chinese pricing to our largest customer,
Vesuvius, cut from 24.5 cents to 13.5 cents per pound.

We reduced our prices by almost a third over
this period to try and maintain the business, but by
2001 we threw in the towel and lost the business.

This lost sale was reported with confidential particulars in the petition.

Exolon was unable to renew our credit facilities in 2000 and 2001 because of our poor financial picture, which was caused by imports from China. Our employees and union responded positively and worked with us during these hard times. However, our increases in productivity and cost cutting could not keep up with falling prices in brown aluminum oxide.

When we couldn't chase prices down any more, we didn't have the volume to operate efficiently. Having become unprofitable and being on the verge of loan default and bankruptcy, we were happy to arrange a merger with Washington Mills. Since that merger, facilities and production have been rationalized, and our employment has been drastically reduced, as Gary Waterhouse will testify later.

Exolon was a petitioner in a silicon carbide case in 1994. We lost the final ITC vote. The Commission should know that the result of this negative vote was a surge in imports from China that has caused our silicon carbide sales to drop by a half.
If we lose this case, the end could be near for a 90-year-old company that occupies an important place in western New York's manufacturing sector.

Thank you.

MR. SCHAGRIN: Thank you.

Mr. Kane?

MR. KANE: Good morning, Chairman Okun and members of the Commission staff. For the record, my name is Webb Kane, and I am president of Midvale Industries, Inc. based in St. Louis, Missouri.

Our company was founded in 1901 to provide raw material and abrasives to the foundry industry. Today, the majority of our business involves the distribution and sales of abrasives. We sell to a broad range of industries, including aircraft manufacturers such as Boeing and Raytheon, automotive parts producers such as Timken, Parker Hannifin, as well as numerous other large and small companies making a wide variety of metal parts.

We have 11 stocking locations throughout the United States. We do not buy Chinese aluminum oxide grain, yet have to compete with other distributors selling Chinese aluminum oxide grain.

For example, last year in a request for quote from a power turbine repair company, we quoted
48 cents a pound and lost the business to a
distributor selling Chinese grain for 35 cents a
pound. To add insult to injury, this was a small user
buying only one ton of material.

We have been losing business to other
distributors over the past few years as well. As our
business declines, Washington Mills' business
decreases. I am extremely concerned that if something
is not done about aluminum oxide dumped on the market
from China that we will lose our domestic supply
availability.

Thank you for your consideration.

CHAIRMAN OKUN: Thank you.

MR. SCHAGRIN: Thank you.

Mr. Bell?

MR. BELL: Good morning, Chairman Okun and
members of the Commission. For the record, my name is
Tom Bell, and I'm vice president and sales manager at
Precision Finishing, Inc.

The company was founded in 1955. I've been
in the business for 25 years. Precision Finishing is
a distributor of equipment and supplies to
manufacturers that use metal finishing in their
processes located in the Mid-Atlantic area. We are
also a user of abrasives as a metal finisher. As an
example, we sell to companies that manufacture automotive parts for the car companies. I have a number of salespeople on the road who report to me. About five years ago, a lot of sales reports were coming back reporting competitive price quotes from other distributors to our customers. These competing quotes were for Chinese brown aluminum oxide grain that was available at much lower prices. As a result, we decided we had to buy Chinese abrasive product to stay competitive and keep existing customers from going elsewhere for their abrasive needs. We were able to sell the Chinese product to our customers at prices that were less than our cost of materials from Washington Mills. After Washington Mills lost so much of our business and after we shared the cost of our purchases from China with them, they lowered their prices to us. Because they lowered their prices, we were able to resume selling Washington Mills' products. The good news is that after the dumping duties went into effect in May, Chinese importers stopped contacting me with new offers on brown aluminum oxide. The bad news is that distributors who handle the Chinese product still have plenty of inventory. As recently as two weeks ago they were
still offering extremely low Chinese product to their
customers.

With Chinese prices as Peter testified, I
don't know how long the domestic producers could
continue to lower prices and still stay in business.

Thank you.

CHAIRMAN OKUN: Thank you.

MR. SCHAGRIN: Mr. Plonsker?

MR. PLONSKER: Good morning, Chairman Okun
and members of the Commission. For the record, my
name is Harvey Plonsker, and I am the president of
AGSCO Corporation.

We are a processor and distributor of
industrial minerals. Our company was founded in 1888.
I have been with the company since 1980. We have two
locations, one in the Chicago area and one in New
York.

As a distributor, we purchase in bulk from
the abrasive grain manufacturers and then sell to
industrial users generally in less than truckload
quantities. We distribute brown aluminum oxide
typically in 50 pound bags or 400 pound drums. As
long as we ship the correct grain sizes in the right
amount, most of our customers do not care and in fact
do not even know who produced the brown aluminum oxide

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One thing they do care about very much is our price. We have purchased both domestic and Chinese brown aluminum oxide. The reason we have purchased Chinese grain is because their prices are much lower than our principal domestic supplier, Washington Mills.

We asked Washington Mills to reduce its price to us, and over the past few years Washington Mills has lowered prices to us in order to keep us competitive with distributors who are selling Chinese brown aluminum oxide.

Having been in this business for over 20 years, I would offer the following generalizations. Fifteen years ago, when brown aluminum oxide grain from China was first introduced to the U.S. market, there were quality issues with Chinese product and a significant amount of problems with inconsistent size grading of the Chinese products. In the past several years, most of these problems have largely disappeared.

The Chinese product is essentially equivalent in quality to the domestic product and is being delivered according to the sizes ordered. Thus, at this point in time brown aluminum oxide grain is

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strictly a commodity product sold on price.

Virtually all our customers are willing to buy Chinese brown aluminum oxide grain at lower prices. In fact, large industrial users, even General Electric, have switched from only buying domestic brown aluminum oxide to buying Chinese brown aluminum oxide for large portions of their needs.

I can also tell you that there is an ever growing plethora of sellers of Chinese brown aluminum oxide grain. Until the preliminary Commerce Department determination this spring, we were constantly receiving new solicitations from Chinese firms and U.S. importers offering us extremely attractive prices for Chinese brown aluminum oxide grain.

Thank you for the opportunity to present my testimony.

CHAIRMAN OKUN: Thank you.

MR. SCHAGRIN: Thank you.

Mr. Waterhouse?

MR. WATERHOUSE: Good morning, Chairman Okun and members of the Commission. For the record, my name is Gary Waterhouse. I am president of Local 4447-06 of the United Steelworkers of America. We represent the workforce at Exolon.
I've been with the company for 18 years.

Over the past two years, total employment at Exolon in Tonawanda has fallen from 125 to 34, and the union workforce has fallen from 75 to 28.

As you know, dumped imports from China have increased over this period and robbed us of our jobs. In fact, in 2002, the Department of Labor certified that increased imports were the cause of our job losses. Therefore, we qualified for trade adjustment assistance.

As Fred told you, our union did everything possible, working with management, to increase productivity, reduce cost and save jobs. We were unsuccessful because of the imports from China.

These were not hamburger flipping jobs. These are jobs that pay decent wages with important social benefits such as health care, 401(k), pensions and vacations. Jobs like this are hard to replace in the Buffalo area today.

I am here today to ask for relief from dumping so that we can keep our 28 jobs, but, most importantly, so laid off workers can be rehired to replace Chinese imports with products made at Exolon.

Thank you.

CHAIRMAN OKUN: Thank you.
MR. SCHAGRIN: Thank you.

Mr. Strader?

MR. STRADER: Good morning, Chairman Okun, members of the Commission. For the record, my name is Lowell (Pete) Strader. I'm the legislative director for the Paper, Allied Industrial, Chemical and Energy Workers International Union, more commonly known as PACE.

PACE is a union that represents workers at the Washington Mills and Treibacher plants in Niagara Falls, New York. It is my understanding that both of these plants are in serious danger of being closed if dumping relief is not given. This is unfortunate.

These are good paying manufacturing jobs, good benefits that provide a good quality of living for workers in their community. These companies are good employers. It has been over eight years since there was even an arbitration case at Washington Mills or Treibacher. It has been so long since there was a labor dispute, I could not find one in the record.

Many employers today tell the unions to take wages and benefits concessions or they will move our jobs to China. Instead of engaging in that type of economic terrorism, Treibacher and Washington Mills have chosen to fight the dumped imports and the unfair
trade practices of the Chinese industry in order that they can keep good U.S. manufacturing jobs in the United States.

PACE, like other unions, has seen tens of thousands of jobs lost over the last three years, many to imports from China. The Buffalo/Niagara Falls area can be compared to an economic disaster zone, having seen so many manufacturing plants shut down and leaving countless numbers of unemployed workers.

It's my understanding that the unemployment rate in that area is 6.8 percent. However, the real rate is actually in double digits with the number of unemployed workers whose benefits have already expired factored into the percentage.

To add insult to injury, it was announced last week that the Globe Manufacturing Company, whose facility is organized by our brothers and sisters in the United Steelworkers of America, will close its doors, and this will forever add another 100 Niagara Falls workers to the unemployment line. Not counting these individuals, the Niagara Falls area has lost over 2,000 jobs in just the last three years.

On behalf of our union workers in Niagara Falls, we ask you to make an affirmative injury determination so that Treibacher and Washington Mills
do not join the list of closed facilities, and our
hardworking, productive members don't lose their jobs.

The Commission should know that if workers
lose a job like this in today's market, life as they
know it is over. There is very little chance that
these workers will find another manufacturing job at
similar wages or with benefits. We need to keep these
manufacturing jobs.

Thank you very much.

CHAIRMAN OKUN: Thank you.

MR. SCHAGRIN: Thank you.

Dr. Blecker?

MR. BLECKER: Good morning, Chairman Okun
and members of the Commission. For the record, my
name is Robert Blecker, and I am a professor of
economics at American University.

I would just like to comment on a few of the
economic issues in this investigation. One of the
most unusual features in this case is the very large
volume of subject imports held as inventories by U.S.
importers. Although I cannot discuss the exact
numbers in this public hearing, these inventories of
subject imports amount to very large percentages of
domestic output and shipments and are large relative
to the U.S. producers' own inventories.
The large importers' inventories are significant because they imply the easy availability of dumped imports from China in the U.S. domestic market. Essentially there is no difference to a U.S. purchaser in terms of the lead time for obtaining supplies of Chinese imports versus domestic RBAO product.

This easy availability of Chinese import supplies, combined with the fact that refined brown aluminum oxide is a commodity product sold to identical technical standards, implies a very high degree of substitutability between subject imports and the domestic like product.

In the context of these conditions of competition, the low prices of the readily available dumped Chinese imports have had a severe negative impact on the U.S. producers. With no advantages in either product quality or supply availability, U.S. producers face the unenviable choice of either cutting prices to the point where they are losing money on every ton sold or else giving up volume and suffering reduced sales revenue and market share. Either way, they lose.

The overwhelming evidence of persistent underselling and significant lost sales in this
investigation, along with a high and steady supply of subject import shipments and the deteriorating performance of the domestic industry, establishes that subject imports have depressed domestic prices, shipments, revenue and profits for the domestic producers.

In response to this overwhelming evidence, Respondents have argued in their brief that there is no positive correlation in the data between U.S. and Chinese prices for the four specific products shown in the staff report. This is like saying that because Hurricane Isabell passed through the Washington area by Friday morning it can't explain the continued power outages over the weekend and since that time.

One variable can have a significant and persistent causal effect on another variable even if the two variables do not move in exact synchronization with each other. In the price comparison data, the important point is that the dumped Chinese product began the POI at significantly lower prices, and regardless of the fact that these Chinese prices did not fall any further, they effectively pulled down the prices of domestic product and also took away sales from domestic producers throughout the entire period of investigation.
Indeed, the data of record demonstrates that subject imports which entered the United States in the largest volumes since 2001 continued to be shipped to purchasers in large quantities in 2002 and interim 2003, causing further material injury to domestic producers in the remainder of the POI.

Because so many of these importers were stocking inventories, they continued to take sales from domestic producers and to depress domestic prices well into this year, along with later imports that arrived in 2002 before the Commission's affirmative preliminary determination. Also, purchaser questionnaire responses showed continual increases in sales of subject imports at the expense of domestic product.

Madam Chairman, this month marks the eleventh anniversary of my first appearance before this Commission as an economic expert witness for Mr. Schagrin. In all these years, I have never participated in a case in which the very existence of the U.S. domestic industry was more threatened by subject imports than in the present investigation.

Without the relief from unfair Chinese trade practices sought by the Petitioners, few, if any of them, will be able to remain profitable as domestic

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producers of refined brown aluminum oxide.

It is no exaggeration to say that the fate
of an industry lies in your hands, and I urge you to
make an affirmative determination.

Thank you.

CHAIRMAN OKUN: Thank you.

MR. SCHAGRIN: Chairman Okun, members of the
Commission, before we turn it over to answer your
questions, which we eagerly await, I would like to
just point out that we have brought some samples, and
I think they would be helpful in your deliberations.

We've got five pounds of crude brown
aluminum oxide here, and we've also got five samples
of brown grain. I think we've covered three or four
of the pricing products with samples here, as well as
some pink and white.

Really I think if you look at this crude,
which is kind of like the gravel that's poured onto
your driveway, you can see it's mostly big pieces of
rock about one inch in size, and then there's a lot of
smaller pieces and even a fair amount of dust in it.

You know, really in dealing with the three
Petitioners, as well as a number of distributors,
these three, and I've talked to several others during
this investigation, I really believe that the
Respondents' arguments that it's really difficult to
differentiate between crude and grain are clearly
without foundation. I don't think anything could be
clearer in terms of differentiating between products
between this crude and all these grain sizes.

CHAIRMAN OKUN: Mr. Schagrin, maybe we could
ask the Secretary to bring those up and let the
Commissioners examine them during the questions.

MR. SCHAGRIN: That would be our pleasure.

CHAIRMAN OKUN: Okay.

MR. SCHAGRIN: I would also invite any of
the members, the six Commissioners or any of the
additional staff, to visit any of these plants.

It's a beautiful time to go to Niagara Falls
or North Grafton or Newell, West Virginia. The colors
are changing. Trust me, it's much better than during
the heart of the winter when I made a number of my
visits, which is a horrible time to visit Niagara
Falls.

I really think that even a small amount of
inspection of these products and visits to these
plants would make it very clear that in this industry,
it's known differences between crude and grain, and
the only reason that the crude exception needed some
additional defining in the scope is that crude does
come in a mumbo-jumbo of sizes in this gravel, and it
was important to us.

Particularly, I've seen recent Commission
determinations where there was a party that had
feedstock and other parties -- I think that party
might have been Ciba that produced feedstock, and the
other U.S. producers couldn't purchase feedstock from
them.

We wanted to be careful. We do not produce
any crude in this country. We need to make sure that
we did not cover with dumping duties products not
produced in the United States.

With that, we'd be very happy to answer the
Commission's questions. Thank you very much.

CHAIRMAN OKUN: Thank you very much for that
testimony.

Before we begin our questions, let me take
this opportunity to thank all the witnesses for being
here. We always appreciate the efforts of businesses
to take time away from their businesses to travel to
be with us and also to the representatives from the
USW and from PACE for being here as well. We
appreciate it.

Mr. Blecker, I don't know if we congratulate
you on your eleventh year. I'm not quite sure what to
say to people when they tell us how long they've been practicing here.

With that, I do want to remind witnesses that with the number of tables we cannot see all of your nameplates so that if you can repeat your name when you're responding to questions it helps us and the court reporter very much.

With that, we will begin our questioning this morning with Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you, Madam Chairman. I want to as well thank you all for your direct presentation. It's been extremely helpful for me.

Just a housekeeping matter. Mr. Blecker, I just want to ask you. You summed up by using the term threatened. Were you conceding the issue of material injury at that point?

MR. BLECKER: No, sir. That was not my intention. I was using the term in its more literary meaning.

COMMISSIONER KOPLAN: I just wanted to clarify that. That was my easy question for you.

Let me start with this. On page 21 of your brief, you state that: "Subject imports and domestic production are fungible." In support of this you
allege that: "Refined brown aluminum oxide products
are made to American National Standards Institute
specifications, and many customers ask for quality and
sizing certifications."

As I understand your position, it is that
Chinese subject RBAO is of comparable quality to the
domestic product and that ANSI certifications relating
to sizing and grit size are used by both U.S. and
Chinese producers to satisfy potential customers that
a particular product meets U.S. industrial standards.

My question is is there a different
certification process when, for example, Washington
Mills exports its RBAO rather than ships it
domestically? Mr. Williams?

MR. WILLIAMS: The certification would be
the same, Mr. Koplan. In this case, though, our
exports of brown aluminum oxide are minimal so it has
little application.

COMMISSIONER KOPLAN: Thank you.

Mr. Schagrin, does Commerce's scope of the
Harmonized Tariff Schedule for RBAO, subheading
2818.10, .20 or both frame the test to be applied by
ANSI?

MR. SCHAGRIN: No. I believe that ANSI
specifications are separate from the tariff

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classification nomenclature, and the ANSI specifications are independent of that HTS classification language.

I would invite the producers to --

COMMISSIONER KOPLAN: Mr. Durstberger?

MR. DURSTBERGER: Yes. I concur with Mr. Schagrin. The ANSI specifications provide further subgroupings, if you wish, of refined grain. We call them a certain grit size, like grit size 80, which is the sandpaper you buy at the hardware store.

COMMISSIONER KOPLAN: Thank you for that.

Let me ask. Does the producer certification, once obtained, carry forward to its subsequent transactions with other customers?

MR. SCHAGRIN: Mr. Koplan, why don't I invite the distributors to answer that question to you since they buy from the producers and then they pass on this product to end users.

Could I invite any of the distributors to answer that question, please?

MR. PLONSKER: If I understand your question, you were asking if a certification from Washington Mills is then transmitted on to one of our customers. The answer is yes.

COMMISSIONER KOPLAN: But I'm also asking if

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on a subsequent sale or a subsequent purchase do you have to be recertified, or does the certification continue for a period of time or indefinitely?

MR. PLONSKER: It's typically for a specific lot of material.

COMMISSIONER KOPLAN: A specific lot, so you'd have to come back again.

How long does it take to get certified, to get an ANSI certification generally?

MR. PLONSKER: Well, typically if you're working with either an ISO type of system, the certifications are coming from the manufacturer as you receive the product.

You then track that lot number, and when a customer asks for a certification you know what you shipped them. You therefore provide them with a certification.

COMMISSIONER KOPLAN: Does ANSI have a role if a domestic company is exporting the product?

MR. PLONSKER: Well, ANSI standards really define the size distribution of the particles, of the grit, so that if you're certifying that you're making 80 grit it has to meet those standards.

COMMISSIONER KOPLAN: Okay. So there is no separate certification process for exports?
MR. PLONSKER: Well, the product is what it is based on it meeting these industry standards.

COMMISSIONER KOPLAN: Okay. I appreciate that. The reason I was asking these questions is because responding purchasers list quality right along side price as very important issues in their decision making process, so I just wanted to follow up on that with you. I do appreciate your responses.

MR. WILLIAMS: Commissioner Koplan, if I could just add in terms of clarifying things for you? I think that the ANSI system of standards here is much like the ASTM standards in pipe.

COMMISSIONER KOPLAN: Okay.

MR. WILLIAMS: i.e., you certify your product meets the standard, but ANSI does not certify like U.L. or the American Petroleum Institute. They do not certify a producer meets the standards. It's a self-policing system for the industry where the producers certify that their product meets an industry standard in this case established by ANSI.

COMMISSIONER KOPLAN: Thank you. That's helpful. I appreciate that.

Let me stay with you if I could, Mr. Schagrin. You've touched on this in your direct presentation. On pages 10 and 11 of their prehearing
brief, Respondents argue that these products are offered for sale on a continuum of sizes that include both in-scope and out-of-scope merchandise and that any sales of such products should be part of the domestic industry.

Alternatively they argue that if the Commission maintains the current definition of like product then those non-conforming sales must be removed from the data submitted by the domestic industry to the Commission.

Respondents allege that there has been no attempt by the domestic industry to separate the in-scope sales from the non in-scope sales in the data submitted in this case and that it follows that all BAO crushed in the U.S. is part of the domestic like product whether or not the BAO being crushed itself meets the definition of subject merchandise. Finally, they allege this applies to the crushing operations at Great Lakes, Detroit Abrasives, Washington Mills, Treibacher and C-E Minerals.

I think you said earlier that you have looked at this issue and that, if I remember correctly, you said one-third of one percent of your data would be subsequently removed, or you'd be submitting something to us on that.
MR. SCHAGRIN: That is correct, Commissioner Koplan.

After we saw the allegations, and it's unfortunate we didn't get the -- because of the hurricane, we got the public version yesterday, but each of the three mills that we represent, the Petitioners who other than Great Lakes are really the whole industry here, they checked, and the numbers are it's approximately one percent from Washington Mills, zero for Treibacher, and it's about one-third of one percent for C-E Minerals.

It has no effect clearly on the data. It's in the data. We would take no exception to including this in the like product because it just doesn't make a difference, but the line was drawn, as I stated earlier, and I don't want to become repetitive, because we had to find a way to draw a line so that Customs can enforce the exemption for crude.

We had to draw a line that was commercially reasonable for the industry, so we did not cover imports of crude product with dumping duties because the product is not produced here.

COMMISSIONER KOPLAN: I appreciate that.

MR. SCHAGRIN: We will furnish that in our posthearing brief, Commissioner Koplan, as I stated.
COMMISSIONER KOPLAN: I do appreciate that.

They made the allegation, but there was no quantification of amounts in their brief, so if you're going to provide the specifics that would be helpful.

MR. SCHAGRIN: We will do so.

COMMISSIONER KOPLAN: Thank you.

At pages 10 and 11 of your prehearing brief, you state that there are no facilities in the United States that produce crude aluminum oxide, and the machinery used to fuse bauxite ore in an electric arc furnace that ultimately results in crystallized ingots is different than that used to produce refined brown aluminum oxide.

Mr. Williams, you actually testified on this issue I think in your direct presentation.

MR. WILLIAMS: Yes, sir.

COMMISSIONER KOPLAN: I'd like to ask whether there are any domestic facilities that make a more refined crude product from a coarser crude product. Is that done domestically? Does that happen?

MR. WILLIAMS: When you say a coarser refined product, I'm not quite sure what you mean, Mr. Koplan.

COMMISSIONER KOPLAN: It's brought closer to
RBAO, but perhaps from your standpoint you don't quite get there.

The reason I'm asking that is if the answer is yes then my question would be couldn't such activity constitute domestic production of crude aluminum oxide that should be included in the domestic industry's performance calculation?

MR. WILLIAMS: To answer the first part of your question, offhand I cannot think of anyone that would fill that bill, but, secondly, in order to make crude aluminum oxide you must have an arc furnace very similar to a steel mill arc furnace.

COMMISSIONER KOPLAN: I understand that.

MR. WILLIAMS: Without that piece of equipment, which is a large capital expenditure, it's simply impossible to transmute bauxite, which is the raw material, into crude aluminum oxide.

COMMISSIONER KOPLAN: Thank you for that. I see my red light has come on. I just want to make sure. Does that answer comport with the other domestic producers?

MR. DURSTBERGER: Yes. I agree with that answer.

COMMISSIONER KOPLAN: Okay. Thank you very much.
Thank you, Madam Chairman.

CHAIRMAN OKUN: Commissioner Lane?

COMMISSIONER LANE: I'm happy to be here today for my first hearing, and I'd like to note for the record, Mr. Schagrin, that any time of the year is a great time to visit West Virginia.

MR. SCHAGRIN: I'm all for that. I agree with you completely, Commissioner Lane.

COMMISSIONER LANE: My question is that on page 43 of your prehearing brief you argue that, as indicated earlier, importer inventories continue to be huge. You later state on the same page that these large inventories of subject imports pose a continuing threat to the domestic producers.

However, on page 57 of their prehearing brief Respondents argue that to the extent that U.S. producers have ordered the RBAO held in importer inventories, it poses no threat to their future financial condition.

Can you explain why U.S. producers would be holding such inventories of subject merchandise over the POI?

MR. SCHAGRIN: Yes, Commissioner Lane. Two parts to the answer.

First, I think really what Respondents are
referring to are the inventories held by one particular company that we do not believe is part of the domestic industry, and it comes to this lumping problem again that they refer to inventories held by the domestic industry when they're really only referring to one alleged member of the industry.

Secondly, any minuscule amounts of inventories held by the Petitioners would be related to the fact that over the POI they purchased very minuscule amounts of Chinese product in order to even out inventories that they held of this range of products so that they have inventories of dozens of products, but they're out of one.

Instead of crushing something, they can't crush the only product they need. When they crush the crude aluminum oxide, they wind up with 30 or 40 products. That's the nature of the production process. It's actually very unusual, but that's the nature of the production process.

They could buy an import either from China or from another country of this product that they're missing in their inventory group rather than crushing it themselves, but for the Petitioners, for really the entire domestic industry as the Commission should define it, inventories held of Chinese imports are...
very minuscule, probably less than one percent of the
inventories of total imports held.

COMMISSIONER LANE: Okay. Thank you.

CHAIRMAN OKUN: Thank you, and again thank you to all the witnesses for your participation here today.

In both your testimony and brief, you have I think done a good job in trying to describe what's going on in the industry because there have been a number of changes over the period of investigation. I wanted to go back to a couple of those just to make sure that I understand the significance of some of these changes.

Mr. Durstberger, let me just start with you. I think you answered this specifically, but I want to make sure that I understand it. In terms of the business model now and the relationship between C-E and Treibacher, go through again for me where the focus is.

I think you had said that C-E now has fewer sizes for refractory, and Treibacher concentrates on the others. If you could go through that for me again?

MR. DURSTBERGER: What I had mentioned is that basically since July 2000, Treibacher and C-E
Minerals are sister companies, affiliated companies specializing in different downstream markets. Treibacher is specializing to sell to abrasive customers making grinding wheels and sandpaper. C-E Minerals sells to the refractory industry.

Pre the acquisition of Treibacher by our joint parent company, Immeris, C-E Minerals sold both abrasives and refractory. They exited the production -- I'm sorry. The import at that point, and Treibacher has taken over the production of brown alumina grain for abrasives.

CHAIRMAN OKUN: Okay. I appreciate that. I just wanted to make sure that I had heard that correctly and understood it.

Let me turn I guess or let me ask the distributors perhaps this question. I'm not sure from the testimony I heard whether you'll be able to necessarily answer these, but just let me make sure I understand.

Mr. Kane, you had noted that Midvale Industries buys from Washington Mills, but not from China. If you can say in public session, I wondered whether you have an exclusive arrangement with Washington Mills?

MR. KANE: We have done business with Heritage Reporting Corporation
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Washington Mills for a number of years. We have
chosen over the years to sell Washington Mills' products because they were great products, but the reason I'm here is we're finally to the point where we absolutely cannot compete with other distributors selling these products.

Washington Mills has worked very closely with us trying to help us, but we're to the point where something has to be done. If we lose this supplier in Washington Mills, we'll have to do something else.

CHAIRMAN OKUN: Okay. Just so that I understand because it's the type of material you're marketing. Would there be other U.S. companies? Do other U.S. companies approach you, or have they approached you to sell their product?

MR. KANE: We had been approached some time ago by some of the importers to sell these products.

Our company sells in a little bit of a unique way. We consider ourselves a technical sales company. We work very hard on applications and trying to lower customers' total cost, being the use cost in application of these materials.

Because of changes in the market, and the quality of the Chinese material appears to be there,
our customers don't seem to have any issues with it at all. We're losing share.

CHAIRMAN OKUN: Okay. I have another question, but --

MR. KANE: Sure.

CHAIRMAN OKUN: -- let me turn, if I could, to Mr. Bell for a moment.

You had noted that Precision Finishing shared its purchase price for brown grain from China with Washington Mills, and I was curious whether that type of price sharing is common practice.

MR. BELL: It's not very common. What I really wanted to do was get away from having to purchase the Chinese abrasive.

I really didn't want to get involved in that, but the only way we could keep our customer base was to go to the Chinese and get the abrasive so we can keep our customer base underneath our umbrella.

I was not really giving them direct pricing. I just needed lower prices. I can still buy Chinese abrasive at a lower price than I'm getting from Washington Mills. I've taken a hit when I stopped buying from China, but I have not taken such a big hit because they lowered their price.

I just think it's important that you find in
favor of this.

CHAIRMAN OKUN: Mr. McLeod?

MR. MCLEOD: Yes, Chairman Okun. We do not have exclusive arrangements with our distributors. However, we have good working relationships with our distributors, and a normal course of action when you run into a competitive situation is to ask the distributor to get competitive information, and to share these prices with us; either verbally, either through an invoice or a price letter quotation. So, in working with our distributors, we do share this information, and it's important in making the decision, the final decision on whether or not we're going to meet a certain situation.

CHAIRMAN OKUN: Would that apply to other domestic producers' prices as well?

I mean, I guess the question I'm asking, and I would like Mr. Kane too, just trying to understand how price information is shared in this industry, and it just struck me, I was trying to figure out if you see all of them?

MR. McLEOD: Yes, it would come from domestic suppliers who are competitors and offshore suppliers --

CHAIRMAN OKUN: Okay.
MR. McLEOD: -- who are competitors.

CHAIRMAN OKUN: Okay. And Mr. Kane, is that the same practice?

MR. KING: Yes, if we find ourselves in a competitive situation, we will do our best to give some idea of where the price is, and then we'll pass that information along.

Part of what's difficult to understand, Midvale is a 26-employee company. We are not Wal-Mart. We don't go out for bids every year on all the products that we sell. We found, and it's our philosophy, and again it's something that's been perpetuated for the 23 years that I have been involved with the company, that we found our best course of business is to pick some leading companies and represent their products as best we can in the industry. But of course, that game is in question at this stage of the game.

CHAIRMAN OKUN: Okay. Well, the other question I had, and again, I guess that's to the distributors on, you know, helpful, relevant purchasers always played is helping us better understand how the market is operating, and one of the questions that I am curious about is what changes you have seen over this period.
In other words, we have heard the
description of what's gone on the market and the
changes with C-E and Treibacher. There are other
changes that have taken place with others. And I
wondered if you could give me any sense of how you see
that as a distributor. Is it really what you have
just said here, which is you still see, or what you
have testified to is just seeing the Chinese price,
price continue in the market, or Chinese quotes? I
mean, is there anything else you can say about the
domestic industry and what it's marketing or how?

MR. PLONSKER: My name is Harvey Plonsker.
I would offer a couple of observations. In
1980, we were buying a particular grit of aluminum
oxide, let's say 220 grit. We were paying 42 cents a
pound. We are now paying in the low thirties for that
same product from domestic producers.

We could pay a lot less for that same
product if we were buying directly from China.

CHAIRMAN OKUN: And I'm not -- can you speak
more specifically for us just in terms of the more
recent period?

Again, what I'm focused on is just the
changes that have taken place in the domestic
industry.
MR. PLONSKER: Well, what's taken place in the domestic industry is that in general volume is down because a vast amount of industry has left the United States. There are far fewer customers that we all are now trying to fight over because parts and products are just gone. Manufacturers have closed plants, so there is just a lot less opportunity to sell the product, and because of the low blanket on pricing that the Chinese have put in, it has basically forced the whole industry level down.

People are paying -- end-use customers are now paying a lot less for the products than they were paying three years ago, four years ago.

CHAIRMAN OKUN: Okay.

MR. PLONSKER: And it's basically because they can get the product directly from Chinese suppliers.

To give you an example, I was at a small user buying 500 pounds of aluminum oxide, 80 grit at a time in South Carolina, and this is 10 years ago, and the bags were from China. Already it had started occurring, and those were at very low prices. That's the only reason that the -- the distributor at that point, it was not ourselves, another distributor in South Carolina had already started stocking and
selling Chinese product in small quantities. Five
hundred pounds is a small quantity.

CHAIRMAN OKUN: Okay. Mr. Schagrin, my red
light is going to come on. I can come back on these
questions.

Vice Chairman Hillman.

VICE CHAIRMAN HILLMAN: Thank you very much,
and I would like to join my colleagues in welcoming
all of you here this morning. We very much appreciate
your taking the time to be with us and your
willingness to answer our questions.

Let me start first with this issue of the
like product. And Mr. Schagrin, in your comments you
said you were trying to choose a commercially
reasonable place to draw this line. But I guess I
want to hear from the industry.

I mean, Mr. Williams, in your testimony you
said there is, you know, crude product and there is
grain product, and you used the term "one inch or
finer," I think was the language that you used in your
testimony.

I'm trying to understand from the industry's
perspective, you know, is there a clear place in which
you draw the line between a crude product and grain
product?
MR. WILLIAMS: Yes, there is, Ms. Hillman.

My first job in the industry was to shovel crude ore out of box cars into the crushers at Washington Mills, and so I had a firsthand experience with finding out what crude ore is.

There is absolutely no doubt in my mind or any other producer that crude ore as it comes from the crude ore furnaces and crushing is one inch and finer material. What you saw in that plastic bag with the chunks of aluminum oxide, that is crude ore.

VICE CHAIRMAN HILLMAN: Okay. Then when you go on the grain side, I'm trying to understand sort of how large a particle can be. Again, is there an industry standard of how big a particle can be to still be considered a grain product?

MR. WILLIAMS: The commonly accepted definition is three-eighths inch.

VICE CHAIRMAN HILLMAN: Okay.

MR. WILLIAMS: Finer than that, you're into the grain sieving and processing plants.

VICE CHAIRMAN HILLMAN: Okay. If I were to look at the ANSI standards, how high -- how large a particle would ANSI still recognize as an ANSI certified grain product? How big a particle?

MR. WILLIAMS: I'm sorry. I can't answer
MR. SCHAGRIN: Mr. Durstberger will answer that because he has a copy of the ANSI standards with him.

VICE CHAIRMAN HILLMAN: Okay. Okay. But clearly, I'm just trying to make sure I understand the relationship between the ANSI standards and this general sort of industry wisdom as to where is this line between crude product and grain product.

Would most of the industry look to ANSI standards as anything that is covered by an ANSI standard is a grain product?

MR. SCHAGRIN: Yes, Commissioner. Let me try as someone who had to learn this as a layman, who never did well in chemistry, who doesn't do well with minerals. Since I learned it, maybe I can help translate it for you.

Essentially the grain products are sold to specific sizes. The grits are all the same. The refractories use what are called splits, so that the sample you have is a one to three millimeter. It's the same as the pricing product.

That means that actually within that size you have a range of split sizes that will go from one to three millimeters. But everything in there is one
to three millimeters.

    The specific grit sizes are all -- when I say "all," I think ANSI requires 80 or 90 percent to all be of a specific grit, whether it be four, or 10, or 26, or 60, 82, 20, and that's what really separates into this industry is that the users of refined product order their refined to a specific size that they need. The refractories order the specific split sizes. The grinding wheel producers order their specific grit sides. The distributors order their specific grit sizes.

    VICE CHAIRMAN HILLMAN: That I understand.

    MR. SCHAGRIN: Okay.

    VICE CHAIRMAN HILLMAN: I'm trying to understand where ANSI standards pick up.

    MR. SCHAGRIN: And Mr. Durstberger will answer that.

    VICE CHAIRMAN HILLMAN: All right.

    MR. DURSTBERGER: I would suggest that the coarse grade that we probably sell in commercial sizes would be an eight grade, Peter. Would that be proper?

    Eight grade has a 50 percent of its particles are between two and three millimeter. The crude that we're talking about has to be basically 50 percent is larger than 10 millimeter.
VICE CHAIRMAN HILLMAN: Okay.

MR. DURSTBERGER: And that is the coarsest size that we commercially sell under the ANSI standards.

VICE CHAIRMAN HILLMAN: Okay. No, that's helpful.

MR. WILLIAMS: I would agree with that.

VICE CHAIRMAN HILLMAN: I mean, obviously I'm trying to correlate this too. I mean, Mr. Schagrin, you have --

MR. SCHAGRIN: Understood.

VICE CHAIRMAN HILLMAN: -- testified that this three-eighths-inch line, which is again not in the tariff schedule, and part of the reason I'm struggling with this is, you know, you have put in a definition that is not in the tariff schedule for the scope of this case. Fair enough, you know.

But obviously the tariff schedule has accrued an HTS number for crude and an HTS number for refined, but with no measurement criteria in them.

MR. SCHAGRIN: That's correct.

VICE CHAIRMAN HILLMAN: And I'm just trying to make sure that when you tell me that this is a commercially reasonable price to draw this line, that the industry sees -- really does see it that way.
MR. SCHAGRIN: I can swear to you that the industry does see it that way.

VICE CHAIRMAN HILLMAN: Well, again it's not that --

MR. SCHAGRIN: But also one of our problems, and I am sure that it is very likely that respondents will mention this, is that HTS codes only say crude and refined. And what we also had a concern that maybe at customs if you don't give them a measurement, and if importers decide, how is customs going to know whether it's crude or refined?

I can call it crude because I see it as crude. I can call it refined because I see it as refined.

There has been mistakes made on imports here by both domestic producers importing crude, and by some importers about classification. And so we definitely had concerns at the outset of this case about just broad definitions that we know everybody in industry knows. Everybody in the industry knows what is crude and refined.

Customs brokers may not, and customs may not, and we were worried about just having a scope that went according to HTS items.

Don't forget when you get huge dumping
margins there is a huge incentive for importers to try
to find a way around.

VICE CHAIRMAN HILLMAN: No, I understand. I
understand.

On the refractory side, is there a particle
size that is too large to be used in the refractory
process? I mean, for those that are purchasing again
in the refractory segment of the market, again is
there a particular particle size that would be too
large to be used?

MR. DURSTBERGER: I'm sorry. I don't quite
understand. A particular particle size of?

VICE CHAIRMAN HILLMAN: I'm looking at your
splits.

MR. DURSTBERGER: Yes.

VICE CHAIRMAN HILLMAN: Your jar of splits,
and you know, I can see the size of that product.

MR. DURSTBERGER: Right.

VICE CHAIRMAN HILLMAN: I'm saying if the
particles, if the individual particles were
significantly larger, is there a kind of ceiling on
the particle size at which the refractory industry
cannot use the product?

MR. DURSTBERGER: Yes, there would be.

VICE CHAIRMAN HILLMAN: And what is it?
MR. DURSTBERGER: The largest refractory size that we sell, but again it's less than one percent of our sales, is one and a quarter by one inch, I think.

VICE CHAIRMAN HILLMAN: One and a quarter by one inch, that is the largest size that you know of that can be used in the refractory industry?

MR. DURSTBERGER: Yes.

VICE CHAIRMAN HILLMAN: Mr. Plonsker, you look like you were nodding your head at one point to this. Did you have something you wanted to add to help me understand this issue of --

MR. PLONSKER: Well, I was just going to say that as a distributor to the general industrial users, we have never ever sold a pound of crude. It's always finished grain.

VICE CHAIRMAN HILLMAN: Okay. And when you say that, I mean, is it clearly understood in your mind exactly where the line is drawn between crude product and grain product?

MR. PLONSKER: Absolutely.

VICE CHAIRMAN HILLMAN: Okay, and what is that?

MR. PLONSKER: A grain product has been further processed so that the size distribution of the

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particles has been narrowed significantly.

If you look at that bag of crude, you will see everything from one inch all the way down to dust. Well, general industrial users don't want a product like that. They want something that is very specifically sized. It might be very, very fine, or it might be quite coarse, but they don't want the full range.

VICE CHAIRMAN HILLMAN: Okay.

MR. PLONSKER: They can't use it.

VICE CHAIRMAN HILLMAN: And in your view, is that issue the consistency of the sizing more important than the actual size of the particle itself? In other words, you are saying that you could sell something as a big as an inch or an inch and a quarter, as long as it was consistently sized, and have that still be treated as a refined product. Is that what I'm --

MR. PLONSKER: Yes, absolutely.

VICE CHAIRMAN HILLMAN: Okay.

MR. PLONSKER: It's the refining of the screening process that is defining the difference between a crude and a finished product.

VICE CHAIRMAN HILLMAN: Okay. All right.

MR. PLONSKER: Crude is just not a finished
VICE CHAIRMAN HILLMAN: Okay. And obviously for Mr. Schagrin, this is this issue of sort of say to the Customs Service, you know, crude is not our finished product is going to be tricky.

MR. SCHAGRIN: Mr. Williams wants to just add one thing under refractory.

VICE CHAIRMAN HILLMAN: Mr. Williams, go ahead.

MR. WILLIAMS: If I may just add quickly something to add to Mr. Durstberger's comments. Although there are a very small number of large refractory splits, by far the overwhelming preponderance of refractory usage is in the finer splits; say finer than one to three millimeters.

VICE CHAIRMAN HILLMAN: Okay. Mr. Schagrin, given that this testimony that there is some product that, you know, the industry would define as a refined product, but then nonetheless has particle size in excess of your three-eights of an inch line, if there is data, and it may be one and the same of the data that you were talking about earlier with Commissioner Koplan, but it may not be, and I'm not sure exactly what set we're talking about here, if you could tell us for the record, you know, again how much product is
sold that you consider refined above this three-eighth-inch size line; this product, for example, that Mr. Durstberger just testified to. If we could get, you know, data in the post-hearing that would indicate again who is selling it, who is making it, and how much of it does exceed your three-eights-inch size limit in the scope of the petition, that would be very helpful.

MR. SCHAGRIN: We will do so, Commissioner, and it's the same data that Commissioner Koplan was referring to.

VICE CHAIRMAN HILLMAN: Okay.

MR. SCHAGRIN: We have that data already.

VICE CHAIRMAN HILLMAN: I wasn't sure exactly how you split the data. Thank you.

MR. SCHAGRIN: And as I said, it's already in the petitioners' data, and we will give you the exact volume for each year. We will give you everything we have on that, and it's very, very tiny.

VICE CHAIRMAN HILLMAN: Okay, appreciate it.

CHAIRMAN OKUN: Commissioner Miller.

COMMISSIONER MILLER: Thank you, Madam Chairman, and thank you as well to all of the witnesses. Your testimony today has been very helpful, at least for me, in understanding the way the
industry operates. So we appreciate your willingness to be here and to answer questions as well.

I'm going to continue a little bit on some lines similar to Vice Chairman Hillman, mostly because I want to make sure I understand the industry and the manufacturing process, and step back a little, a little bit of history again, or big picture here.

The crude ore, which you all use to produce the refined, it's not produced in the United States. That point is clearly on the public record.

Has that always been the case? And where are the global sources of crude?

We obviously know that China is a source. I think I have heard that Canada is a source. Are those the only two or are there others as well? Mr. Williams?

MR. WILLIAMS: I repeat the obvious. There is no crude manufactured in the United States, and to my knowledge, there never has been. The crude ore plants were always located in Canada for the domestic industry here.

There are many plans making crude ore over the world today. There are several in Europe that make crude ore. There is a Brazilian company that makes crude ore. There are many plans in China,
multitude of plants in China making crude ore, and
they now have the world's largest capacity and
production of brow aluminum oxide crude ore in China.

COMMISSIONER MILLER: Okay. And Canada is
the source, where the sources are. Is it essentially
because of the need for the bauxite?

I mean, what is that globally is defining
where the crude ore is being produced?

MR. WILLIAMS: The reason that the industry
originally concentrated in Canada was to use the
hydroelectric power that was developing in the late
1900s, mid-1900s in Niagara Falls, in and around
Niagara Falls, Canada.

COMMISSIONER MILLER: I see. And
historically U.S. producers have primarily relied on
the Canadian ore, but when or in what kind of time
frame, if it was a shift to using more of the Chinese
ore, did that occur?

MR. WILLIAMS: U.S. manufacturers have
relied primarily on Canadian crude ore until after
World War II when the DLA, or as it was called then
the General Services Administration, the GSA, was
charged with the responsibility of putting in a
stockpile of crude ore.

And we watched that stockpile go in. It was
approximately a 250,000 tons of crude ore. That put fear in our hearts because it went in very cheaply, and our then president then predicted to me it would come out even cheaper still, and that has been the case.

So the interim moves that affected the crude ore industry were, number one, the release of the Defense Logistics Agency's stockpile, and then, number two, the arrival of very cheap Chinese crude ore on the scene, cheaper than we can produce it ourselves.

COMMISSIONER MILLER: And the DLA purchases and decision to stockpiling, and the decision to let go of those stockpiles, help me understand that, I mean, from a bigger perspective.

Why in the first instance to develop them, and then now why don't we need them anymore.

MR. WILLIAMS: Well, Ms. Miller, I was a kid when that all happened, so you will forgive me if I don't have my facts completely straight. But my understanding is that the Congress wanted to have a stockpile of strategic raw materials which World War II had demonstrated we were lacking in, enough to sustain this country for, I think it was a three-year war, and various materials, tantalum and columbium, and many other things, including brown fused aluminum
oxide, were designated a strategic materials, and brown crude aluminum oxide was accorded a stockpile goal of 250,000 tons, and that was implemented over the years, and held in stockpile until roughly somewhere around the 1980s, and then was commenced to be released for sale.

MR. SCHAGRIN: If I could just add,

Commissioner Miller.

COMMISSIONER MILLER: Yes, Mr. Schagrin.

MR. SCHAGRIN: I think one of the reasons that crude BAO was decided to be a strategic material is, first, we don't really have the aluminum oxide grade bauxite in North America, so it was thought that because it comes from places like Brazil or China or Russia or Africa or Australia, that it wasn't a product you could easily get your hands on because the mineral itself to make the aluminum oxide wasn't here.

Secondly, as I think these distributors and others in the industry can testify to you, even today you cannot really make a jet engine without BAO. That's still the main abrasive for finishing the metal in parts like jet engines, submarine parts. The naval shipyards still use large quantity of this product because it's still your main abrasive for doing a good job of blasting smooth metals. So that's why it was
thought to be important to our defense. It's because it really is a critical abrasive material.

COMMISSIONER MILLER: Okay. Well, thank you. I needed little history and perspective. It helps me, I think, at least my aim is I hope it will help me.

Now, you know, I have sort of a general question of wanting to understand the value added in the process of converting the crude to a refined product. I mean, there may be company-specific. I'm not asking for company -- any proprietary company information. Can you give me sort of a big picture answer to it, or a commonly understood answer to the question of does it depend on -- are there any characteristics of the crude that you're working with that affects how much value you add?

Also depending on the grit size, the grit size, maybe that's a way to sort of get an idea. You know, maybe depending on -- does it differ by the grit size?

MR. WILLIAMS: Well, it's a good question, and in general, we have always felt that the value added component of grain, refined brown grain starting from brown crude ore was roughly 100 percent.

If you took your brown crude ore transfer

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and doubled it, you were in the ballpark of what it took.

When you get -- it gets a little complicated because the finer grits require the import of much more energy time and manpower, sieving time, and all the rest of it, to convert those larger pieces into very, very fine pieces than it does if they are coarser pieces.

Basically, if you think of a refined grain, grit size number, you can almost visualize it in terms of the number of particles per linear inch it would take to occupy one inch. For example, 10 grit -- if you lined it up, 10 particles side by side, you have 10 particles or 16 grit. Two-twenty, you would have roughly 220 particles.

COMMISSIONER MILLER: Okay.

MR. WILLIAMS: So the input of energy and all the rest of it to achieve the finer grit sizes is greater than the cost of producing the coarse sizes. But in general, you get very hard to cost that kind of production process. So in general, I would say we just simply double the crude ore cost and that's what we regard as the value added.

COMMISSIONER MILLER: Right, right. Anybody else want to comment? Mr. Durstberger?
MR. DURSTBERGER: I agree with Peter's assessment. I would probably say that -- I would have probably argued that about three-fifths of the production costs were to be accounted for by crude ore and two-fifths by the processing of it into refined grain.

Now, let's not forget that when we talk about Chinese crude that these are likewise in my opinion not manufactured at -- not sold a true production cost, and therefore that 50/50 ratio would apply much more appropriately.

But if you were to produce it in a western economy in the United States or in western Europe where we have a lot of manufacturing facilities, I would probably say it would between 50 percent and maybe 60 percent crude ore and the remainder the refining.

COMMISSIONER MILLER: Okay. The red light is on so I will stop for now. Thank you. I appreciate your answers.

CHAIRMAN OKUN: Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you, Madam Chairman.

Let me just follow up if I could to close the loop for myself on the issue of the stockpile, and
I know you have testified both on direct and in the response to Commissioner Miller, and I hope I'm not covering this exactly the same ground.

But in our preliminary determination we noted that a condition of competition affecting the supply of refined brown aluminum oxide was the sale at low prices by the Defense Logistics Agency of its stockpile of crude aluminum oxide, the raw material used by domestic producers in '99 and 2000.

We noted that you stated that these stockpiles were purchased mainly by the domestic industry, but that these stockpile sales have now ceased and you talked about this morning.

We also noted that there was no information in the record as to whether any further sales from or purchases for the stockpile are likely. That all appeared in views at page 13.

In Footnote 11 on page 11 of the prehearing brief, respondents state, and I quote so you don't have to search for it, Mr. Schagrin, "This is not correct. As recently as the second quarter of 2003, bids for sales of fused aluminum oxide grain were accepted, and there exists additional inventory for future disposal."

Are respondents correct with regard to that,
and if so, how should we regard that when analyzing conditions of competition now?

I'm just concentrating on that footnote.

MR. SCHAGRIN: This is Roger Schagrin.

Happy to respond, Commissioner Koplan.

Respondents are not correct as to their comments on the Commission's preliminary determination, because as you read from the Commission's preliminary determination, the Commission's preliminary determination conditions of competition refer to sales of crude, not aluminum oxide by DLA, and stated that those had ended.

What respondents' footnote says is the Commission determination states that DLA sales have ceased. That is not true, because the Commission's determination said sales of DLA crude had ceased, which was a correct statement by the Commission.

So respondents, having made one incorrect assertion, then go on to make a correct assertion, which is that the DLA continues to have an inventory stockpile of refined brown aluminum oxide, the subject product, which they continue to sell.

The producers here or the distributors can tell you about the fact that while those products are still in the stockpile and still offered for sale,
there are a number of reasons why in fact those DLA
sales have been minimal over the past two years,
primarily because the DLA wants higher prices for that
refined brown aluminum oxide than U.S. purchasers
could buy Chinese for.

So not only is the U.S. industry being
undersold by the Chinese, but so is the U.S.
government is being undersold by the Chinese. I know
that's not really a part of your injury analysis. We
don't take into account any injury to the U.S.
government.

However, that material remains in the
stockpile. By now it's down to a variety of grit
sizes that are probably the less popular sizes, but it
does remain there, and in fact, given the availability
of that inventory combined with the Chinese inventory,
in a way it's a condition of competition that adds to
the threat to the domestic industry, because the
government also has inventories that are available for
sale.

COMMISSIONER KOPLAN: Thank you.

Did the distributors want to add anything to
that, or has Mr. Schagrin covered it for you?

From the way you are silently nodding your
heads, he has covered that just for the record.
MR. PLONSKER: That is correct.
MR. BELL: That is correct.
COMMISSIONER KOPLAN: Okay. Thank you, if you could both identify yourselves for the record so the reporter gets it.
MR. PLONSKER: Harvey Plonsker.
MR. BELL: And Tom Bell.
COMMISSIONER KOPLAN: Thank you very much.

Thank you, Mr. Schagrin.

On page 56 of respondents' prehearing brief, they state that price trends must be considered in the context of falling raw material costs and declining demand.

In the RBAO industry, they claim that demand has declined as the most significant consumers in the end-use refractory and abrasives markets have experienced the effects of the down economy, and that these industry conditions have a far more powerful effect on average selling price than fluctuations in price among independent importers that held, and I can't use the numbers here because they are BPI, but they refer to their share of the U.S. market in this context.

Respondents then conclude by saying, "Thus, any variation in the average selling price of subject
imports is likely to have too weak an effect on the market to result in a significant depressing or suppressing effect on domestic prices."

How do you respond to this in the context of your argument on page 24 of your prehearing brief that the high volume and low price of subject imports has caused price depression and suppression as well as lost sales volume?

MR. SCHAGRIN: It is quite easy, Commissioner Koplan. And I invite Dr. Blecker to comment after I do.

First, respondents have made the amazing leap which the Commission knows from all the experience that the changes in cost for the domestic industry would have the biggest effect on changes in price.

If that were the case, most American industries would be quite profitable and we wouldn't have cases here.

When these folks costs go up or down, that does not mean that they can raise their prices or lower their prices accordingly. That's not the biggest impact on pricing in the market. The biggest impact on pricing in the market is supply and demand of the finished product.
Second, in terms of declining demand, you know, it's really a mixed picture. There has been declines in demand, of all things the refractory side of the industry has been improving, partially as a result of the steel 201, because we brought blast furnaces back on, and when they were brought back on, when they have to be relined, they are now being relined instead of not being relined and just shut down.

But certainly demand would have an effect on price as well as supply. But the bottom line is that purchasers' information that they are buying Chinese because of price, lost sales and lost revenue information confirm that the domestic industry lost huge amounts of volume to Chinese product based on price.

Your underselling data based on both AUV and product prices shows both consistent underselling and price depression for the domestic industry.

Any way you measure the Chinese imports, even if you measure them their way, and obviously we believe you need to measure them based on total imports, you can see that Chinese imports are extremely strong presence in this market, and all these distributors, all the U.S. producers, everyone
in the industry, confirmed by virtually all your
purchaser responses, all say it's the Chinese pricing
and the volume of Chinese product which is causing
prices to fall in the U.S. market.

So I just think the respondents have a
problem trying to explain away an avalanche of data,
and it's just not possible.

COMMISSIONER KOPLAN: Thank you.

Dr. Blecker?

MR. BLECKER: I have to be careful because a
lot of this data is confidential, so I will have to
amplify these remarks in the post-hearing.

COMMISSIONER KOPLAN: Just about everything
is bracketed in their brief.

MR. BLECKER: But speaking in very general
terms, I think what matters of course is the bottom
line, the margin between price and cost. So even if
cost is falling per unit for the raw materials, if the
pricing more, that's a problem.

Furthermore, we have to look at the other
cost, which as the industry witnesses have testified
are very significant here, and what's happened is that
as they have lost volume to the subject imports, I
believe that their fixed cost per unit, like SG&A, for
example, per unit have risen. I hope such a broad
statement is permissible here. And so they are
getting squeezed on the cost side from the loss of
volume that's raising unit cost in other areas. So
they are being affected in that way as well.

COMMISSIONER KOPLAN: Thank you very much.

I see my red light is about to come on. I have
nothing further. I want to thank each of you for your
presentations and answers to our questions. Thank
you.

CHAIRMAN OKUN: Commissioner Lane.

COMMISSIONER LANE: I have no further
questions.

CHAIRMAN OKUN: Thank you.

Mr. Schagrin, let me turn to you because I
think somewhat a follow up to Commissioner Koplan's
question, and kind of where I ended my first round,
which is, I mean, to the extent when we look at this
record and the changes in the domestic industry over
the period, you know, we do see a growing domestic
supply capability during the period, and I wanted both
you and Mr. Blecker to have a chance to address that;
you from the legal side, what's the legal significance
in the context of this market; and then, Mr. Blecker,
after that if you can talk about the economics. And
you have to some extent, but I want to address it
straight on terms of the domestic supply during our period of investigation.

MR. SCHAGRIN: Chairman Okun, the first thing to keep in mind, which is the condition of competition we spoke about, and it really goes to the time period of this POI, respondents would have you believe that things must be wonderful because C-E reopened a plant in Newell, West Virginia. That is wonderful for Newell, West Virginia.

But the fact is that's not, and that is the addition of capacity here. But you have to remember that was Allied Minerals' plant throughout the 1990s. It shut down, we believe, in approximately 1998 or 1999.

What we really have here in terms of changes in capacity, so over the POI we have an upward -- we have an increase in capacity because a plant previously shut down just before the POI was reopened. So really over a slightly longer continuum of time there hasn't been an increase in capacity.

We have talked to the staff. It's was in the testimony of Mr. Williams, and I believe, though it's tough to refer to anything in the 3M brief because we didn't receive a public version of it, it was referenced in the 3M brief, and that is that 3M
had had a production facility in the U.S, and that was shut down during the POI. I don't believe that is in your data.

But in general, the addition of capacity by the U.S. industry has not been the cause of any impact on the domestic industry in terms of injury. We had the replacement of some portion of imports by C-E by domestic production of C-E, and in fact that was more beneficial to the domestic industry because they stopped importing other products that had been in direct competition with Treibacher and Washington Mills.

I hope that answers your question.

Dr. Blecker.

MR. BLECKER: I think Roger has covered that.

CHAIRMAN OKUN: Okay. Then let's turn to the other argument raised by respondents which you touched on in the beginning, Mr. Schagrin, but I'm going to go back to it, which is the issue of looking at our data and what role the domestics have played in importing the subject product.

And I think from my perspective what I want you to go back to is, or what I want you to address is just how do we evaluate the time period. Is it more
relevant to look at the most recent time period because of the changes that took place in the domestic industry with regard to importation of domestic imports? I mean, it's that question.

It's looking at Table 4-2 in the staff report and, you know, hearing what you're saying about, you know, what your clients are importing, but we have -- there have been a few cases and maybe you can also for post-hearing just go back and look at wax transfer ribbons for me and do an evaluation of how we handled these type of imports.

Let me let you respond there.

MR. SCHAGRIN: In our post-hearing brief we're going to look at all the past cases. You just had D-RAMs from Korea in which you excluded Hinix USA. I don't think there is a lot of application in that case here. And we will discuss the wax ribbons case as well -- all the cases.

But in terms of looking at the import data, respondents' argument about self-injury by the domestic industry applies to really just one alleged member of the domestic industry, someone that you excluded from the domestic industry in the prehearing, and we believe strongly that you will exclude them again in the final based on the normal criteria,
because the nature and character of their operations just appear overwhelmingly to be more like an importer's than a domestic producer's, and we also think that it has negative overall impact on the view of the industry data.

We think, given the extremely high margins in this case, and the fact that the case was filed in November, that the Commission can exercise its discretion to focus on 2000 through 2002. There is no question that first half 2003 data was impacted in a very significant way by the filing of this case.

And so we think the Commission should focus mostly on 2000 through 2002.

The only other comment is that the import data in 4-2 would made it seem that in 2002 the domestic industry was getting a break, a major break from imports. But when you look at Table 4-3, which gives you the U.S. shipments of imports from China, U.S. shipments of imports from China barely declined at all between 2001 and 2002. Their market share increased significantly, and they have increased over the year 2000.

The reason for that is clearly that much of the imports in 2001 shows that imports by the end of the year, and they really led to a tremendous jump in

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inventories of Chinese imports at the end of 2001, and those were obviously shipped in 2002, and continuing into 2003.

CHAIRMAN OKUN: Okay. Well, I will, of course, be looking at the post-hearing when you can go into detail on other figures which I think will be helpful to see that as well.

But just to follow up, I guess, the period that best represents the current state of the industry, I mean, I guess I want to understand your legal perspective on that, and I apologize not going to the industry on a number of these questions. But in the context of -- what I hear you saying is if you look at '03, you have this post-petition behavior of someone in the market. But, you know, I mean, if I look at the whole period, you had changes by -- the changes Mr. Durstberger has testified to, where you've had a change from an importing company to a producer and you want us to evaluate that, that is the condition of this industry and that would be a good thing. I'm trying to figure out, we throw out '03 in your mind, or we pay less attention to '03 in your mind because -- it's not because of someone just importing or not importing. I mean, it is different than in a lot of cases where I think we could just
say, oh, yes, that's post-petition behavior, we can
give less weight to it.

MR. SCHAGRIN: Chairman Okun, I don't want
to be misunderstood. There is certainly a major
change in post-petition behavior on the part of
imports. That's because of the extremely high margins
here, 135 percent. We allege margins in that range in
our petition. But the injury by the imports already
in the market in '02 that continue to be sold in the
first half of '03, the pricing pressure they causes,
the volume pressure they caused, continued to
demonstrate injury to the domestic industry in the
interim period. And that is because of extremely high
inventories present in this case.

So there's really a difference in our focus
in terms of the commission can take into account the
effect of the filing of the petition. We think it's
most appropriate here to take that into account based
on what is in the record, what's been stated on the
record by various parties, as to how the filing of the
petition affected imports. Filing the petition didn't
have the same effect on the quote-unquote sales of
imports because of these high inventories and on the
injury caused to the industry in the interim period.

CHAIRMAN OKUN: Is your analysis the same
for both price effects as volume effects, looking at that period?

MR. SCHAGRIN: Yes, it is. And the different in volume effects is because of the start up of CE, but there's still volume effects. If you look at -- and maybe because of certain of the changes in the industry this is not a bad time, I know you have to look at the industry as a whole and you look at the industry as a whole first -- if you look at the two largest producers, Washington Mills and Treibacher, they consistently lost volume over the entire POI, the consistently saw poor profitability and declines in profitability on the part of Treibacher over the POI and lost positions on the part of Washington Mills. And even CE performed worse after start up. Start up you would think would be the worst time. They started performing worse in terms of profit margins and profits in the interim period as compared to the previous period.

So look at the whole industry together, the injury is clear; look at the main players separately and the injury is also extremely clear.

CHAIRMAN OKUN: I appreciate those comments. Let me turn to Vice Chairman Hillman.

VICE CHAIRMAN HILLMAN: Thank you. And I
apologize again to our industry witnesses.

Mr. Schagrin, if I could start with you for two questions that I think are going to have to be addressed in the post-hearing. given the degree of confidential data involved, but the first is in reading your brief it is not entirely clear to me exactly what you're arguing with respect to Great Lakes and the issue I want to know is do you think they are in fact a domestic industry that should nonetheless be excluded for the traditional criteria that the commission looks at? Or are you arguing that they are not in fact a domestic industry?

Again, if I look at all of the factors the commission traditionally looks at, I'm not sure the preliminary opinion actually specifically addressed this issue and it's not entirely clear to me that your pre-hearing brief comes down four square one way or another on the threshold question of are they a domestic industry?

MR. SCHAGRIN: Commissioner Hillman, I'm going to answer the first part of that question confidentially in our post-hearing brief. I think in order to really give you a complete answer to that question we have to utilize confidential information as to whether or not Great Lakes should be considered
a domestic industry.

As to the second part, if we were to say based on its confidential information that Great Lakes is a domestic industry, it is completely clear from this record and all of the precedents of this commission that Great Lakes should not be considered a part of the domestic industry when the commission analyzes this industry because of their interest as an importer, which is really what the commission normally looks at is what's the significance of this company's interest as an importer, how does it affect their consideration as a member of the domestic industry?

On that basis, it's clear that Great Lakes should not be considered a member of the domestic industry as the commission analyzes the injury data.

And as to the first part of your question, we'll answer it fully. We'll also answer the second part more fully in our post-hearing brief, but the first part we'll address completely just in our post-hearing brief.

VICE CHAIRMAN HILLMAN: All right. I appreciate that.

And then the second one, I think, clearly has got to be addressed in the post-hearing brief which is when I look at the financials that we're
looking at, there are obvious and clear distinctions, differences, between the various companies and I would like you to help us understand why there are those differences. If the Chinese imports are, as we've heard, spread across the various product segments and affecting all of the market segments into which this product is sold, why, then, are the financials as different as they are among the U.S. producers?

MR. SCHAGRIN: We will do that and that will also tie in to part of our answer to the first question you asked about whether someone should be part of the domestic industry, but I really think when you realize that Treibacher and Washington Mills are the two biggest players in this industry, I don't think their financial trends are actually very different. I think that -- and we'll explain this confidentially in our post-hearing brief -- I really think respondents using some pretty simple analysis have tried to say, boy, I mean, everybody in the industry is just showing such different trends. I think we'll demonstrate to you that in terms of trends in volume and profits and losses that actually the experience of the two largest producers in the industry have been very similar over the POI and we'll explain that in our post-hearing brief.
VICE CHAIRMAN HILLMAN: I appreciate that.

I will look forward to seeing that.

If I can go back to the distributors and follow up a little bit on the questions that Chairman Okun started with in terms of prices, I just want to make sure I understand the arguments compared to the arguments that we're going to hear from the respondents in terms of what's really driving prices.

Just so I make sure I understand it, all three of the distributors here, as I understood your testimony, you're buying not on a long-term contract but on a spot basis in the market? I just want to make sure I'm understanding that right. Is that correct? For all three of you?

I see all three heads nodding.

I guess, then, and what we're going to hear, obviously, is that there were other things also going on in the market. I mean, I know a number of you have touched on --

I think, Mr. Plonsker, you were very specific about it, the decline in demand, that a lot of the users of this product are moving their production offshore and so there's simply been this sort of fairly substantial long-term decline in demand for the product.
You combine that with information that we have on costs that would suggest that there may have been, either as a result of purchasing through EOA or others that there may have been some cost reductions from the production side.

Why should I not think that those were not also driving the prices down? I mean, you've all said prices went down over this period, but why wouldn't this decline in demand and/or decline in prices not be also driving prices down? I mean, why are you so clearly attributing price to the Chinese imports?

MR. KANE: I think I can explain that in terms of the abrasive market in general. We sell aluminum oxide silicon carbide steel shot, stainless steel shot, zinc abrasives, I can go on down the list, silica, slag, starches, plastics, every sort of abrasive material that you can use in an abrasive blasting operation is something that we sell. And I've been in this business since 1980. We've all suffered through downturns and recessions and the way all of these businesses have worked that we've done our best to raise prices if possible when the economy was booming, which has been tough because a lot of these businesses have been around a long, long time.
But the traditional posture of the abrasive industry in general has been to try to hold the line during these tough times and just basically hang on and keep prices where they are. And that's basically what's happened in the industry.

Certainly there's cases where there's remote examples of a price being shot somewhere on a spot buy or something, but in general, as an abrasive industry, we've tried to hold the line because the industry does not have the profit margins of a Merck or some pharmaceutical company.

Now, these are mature industries, but during this time, as in previous times, aluminum oxide has held up in other recessions, the price of aluminum oxide has held fairly well during other recessions. This is the first time we've seen people selling material in the market at our cost.

VICE CHAIRMAN HILLMAN: And would you describe what has happened in the prices for the brown aluminum oxide behaving differently from these other abrasives?

MR. KANE: Yes, I would. In my experience, that's correct.

VICE CHAIRMAN HILLMAN: Okay. Do others that are distributors want to comment on that?
MR. PLONSKER: Well, I'd like to give you a little bit of a perspective. You asked how do we know what's driving the prices down and let me give you a perspective from a distributor's point of view.

Let's suppose that there is a customer ABC that is now receiving visits from various sales people and somebody new wants to come in and offer a product. They're obviously going to attempt to do that, assuming that quality and delivery are equal, and I think that's fair assumption, they're going to lower the price. So some of the large users would now receive lower prices.

Well, how is a distributor going to basically offer that unless they had a cost for their raw materials, their product, that was not less than what they were currently paying?

And so the result is that people like Washington Mills and Treibacher pretty much know what the industry prices are so if some distributor is now going to come in and offer a large user a substantially lower price in order to achieve the business, it's got to be coming from someplace other than these people, the domestic producers, and that's what happened.

People found that they could get prices that
were significantly lower from Chinese product and that's what drove the product certainly into our marketplace and it's really true if you look at grinding wheel manufacturers or refracting people, they found there was a way to get lower prices and that was to in effect bring in imported grain.

Because if I went to Don McLeod and I said, Don, I've got a problem, I need to have lower prices, and he knew that I was either going to source from a domestic manufacture or nobody, he knew what the competition was offering, he would say, well, I'm sorry, I can't lower my prices down there, we have to maintain our margin. I would understand that. But that totally changed when Chinese material became readily available.

VICE CHAIRMAN HILLMAN: Now, Mr. McLeod, if I then look at your long-term contract purchasers and I've now heard on the spot side but from the refractory and the coat, I guess it was, that you described you typically purchase on an annual contract basis, help me sort of look at the effect of imports as opposed to reductions in demand or changes in cost in terms of how they affect your annual contract.

MR. MCLEOD: Well, from the standpoint of how it affects our cost, our cost to produce is
heavily controlled by volume. If we lose volume going through our plants, it has an effect on our cost.

Sitting down with a large grinding wheel company, a large sandpaper company, which is in the fall of the year, we're talking to them right now about next year's usage and agreement, we put all this into play in terms of how are we going to quote that customer.

We understand who the competition is, we understand what the effect is on our plants is if we lose that volume, and then we make a decision, our management team will make a decision, on whether or not we want to meet a certain situation on price.

VICE CHAIRMAN HILLMAN: I see the red light has come on. I may come back.

You look like you wanted to add something, Mr. Durstberger, I'll come back on that.

Thank you.

CHAIRMAN OKUN: Commissioner Miller?

COMMISSIONER MILLER: Thank you, Madam Chairman.

I'd like to just finish up a little bit on the line of questioning that I was pursuing before, making sure I understand some of these issues related to the crude product.

I wanted, sort of, Mr. Williams for you,
when you were back there shoveling that crude ore out, is there good crude and not so good crude, good crude and bad crude, depending on the size? I mean, is there any differentiation between the crude ore that you use?

MR. WILLIAMS: We only make good crude ore, of course, at Washington Mills. There's really no difference.

COMMISSIONER MILLER: You mean in Canada.

MR. WILLIAMS: Correct. But there is --

Washington Mills Canada.

COMMISSIONER MILLER: Well, now, I'm going to ask you, is your crude ore that you produce in Canada better than the crude ore that comes from China?

MR. WILLIAMS: I'd like to tell you that it is, but the honest truth is it isn't. It's the same. We can't tell --

COMMISSIONER MILLER: Well, if you wanted to tell your customers -- I mean, does it make any difference? What would make it good or bad, bigger, smaller? You're telling me it really makes no difference, I know --

MR. WILLIAMS: I hate to say this in front of some of our distributor customers, but they know it
anyway, there is no difference between the Chinese crude ore and ours. We use it interchangeably. And we mix it in together.

COMMISSIONER MILLER: Okay. And does it come in different sizes, even though it makes no difference, does it come in different sizes?

MR. WILLIAMS: I suppose you could order it in different sizes, but the standard crude ore that the Chinese produce for the export markets that they sell is exactly what we're selling.

COMMISSIONER MILLER: Okay. And when you described it earlier, you talked about it being a grit size, I think you said, of one inch or less.

MR. WILLIAMS: Yes.

COMMISSIONER MILLER: Okay. And that's what we're going to see between the three-eighths inch and the one-inch is what you all are calling crude. Your discussion earlier about the sort of consistency of the product -- I found Mr. Plonsker's description of it, it's sort of like it's all different and what you produce in the refined is a more uniform product. I was just trying to understand whether it made any difference if you started with something closer to the one inch or something closer to the half inch?

MR. WILLIAMS: It would require slightly
more crushing if you started with a coarser crushed crude than a finer crushed crude, but in essence it's indistinguishable to the crushers.

COMMISSIONER MILLER: And is there anyone that takes the one inch and turns it into a half inch before then selling it to somebody else?

MR. WILLIAMS: Not that I know of.

COMMISSIONER MILLER: Either here or elsewhere.

MR. WILLIAMS: Correct.

COMMISSIONER MILLER: And that would essentially be a crushing kind of operation, it wouldn't be an electric arc furnace operation?

MR. WILLIAMS: Yes. You're right. Do you mean are there other crushers of crude ore in the United States?

COMMISSIONER MILLER: Well, I'm asking sort of generally.

MR. SCHAGRIN: Making the smaller sizes for crude people to use.

MR. WILLIAMS: No. No.

MR. SCHAGRIN: What Mr. Williams was trying to make clear in response to your question, Commissioner Miller, is that there are not only to our knowledge no crushers in the United States who would
crush crude into smaller size crude for refiners to use, we're not even aware of it in other parts of the world, but maybe Mr. Durstberger could add his knowledge.

MR. DURSTBERGER: Yes. That's correct. The only reason to crush crude would be to turn it into refined grain. There is no reason to touch it twice. The cost of it would be prohibitive.

COMMISSIONER MILLER: Okay.

MR. SCHAGRIN: I would add, Commissioner Miller, only from the standpoint of poor Mr. Williams having shoveled this, the only thing I can think of having shoveled gravel is the one thing that makes the difference is whether it's wet or not. I've just got to imagine it's a lot heavier and not as good to have your crude be wet versus dry. Other than that, I'm sure there's no difference.

COMMISSIONER MILLER: Okay. All right.

And to make sure I understand our pricing products as well, we have four different pricing products, different grit sizes. From what I've been hearing, my understanding and impression and is that one to three millimeters is probably going exclusive to the refractory?

MR. SCHAGRIN: Correct.
COMMISSIONER MILLER: The other three products, the 80 to 60 and the 220, are they going to just the bonding and coating or just industrial?

MR. SCHAGRIN: They go to both. All three of those products would go to both bonded and coated users as well as to distributors.

COMMISSIONER MILLER: Okay. But not likely to a refractory?

MR. SCHAGRIN: But not to refractories.

COMMISSIONER MILLER: Okay. And then within those products, is there any differentiation -- having not looked at the raw data, but just our compilation of the data, I mean, if you're talking about that product that we have, for example, as the grit size 80, are there different -- if it's going to industrial and the bonded and coated folks, is it a different product going to them with different kinds of prices? Are we seeing an average or are we seeing a pretty uniform price there?

MR. SCHAGRIN: I understand it's the same, it doesn't matter who it's going to, it's the same.

COMMISSIONER MILLER: It's a very uniform product if it's grit 80?

MR. SCHAGRIN: Uniform product.

COMMISSIONER MILLER: Would any of the
producers or Mr. McLeod, perhaps, I mean, if you're selling the grit 80 product to one guy versus the other guy, is it all the same or are there some little fine differences there?

MR. MCLEOD: Depending on the market that you're selling to, whether it's bonded, coated or industrial, there is a difference. There's a Table 2 specification and a Table 3. A Table 2 is a tighter grading spec that normally is sold to the bonded abrasive producers. The Table 3 is more industrial driven, a little bit wider specification. There might be some changes in the iron content because of the application. But in all cases, it's application driven and the size requirements, the chemistry requirement, will be dictated by the application.

COMMISSIONER MILLER: So if you're within the table, the same table you're again narrowing the product range that you'd be looking at or the price range for that product?

MR. MCLEOD: Correct. Yes. Yes.

COMMISSIONER MILLER: Okay. All right.

MR. SCHAGRIN: And, Commissioner Miller, our pricing products do have the table --

COMMISSIONER MILLER: You included the table. That's exactly why I asked.
MR. SCHAGRIN: -- because it's either Table 1 or Table 3.

COMMISSIONER MILLER: Right. Exactly.

MR. SCHAGRIN: One small comment, and this applies across a lot of the data in the staff report, and that is, for example, on page 5-4, the numbers are confidential, but I would note that when you look at this data and what it accounts for, here and in a lot of the other parts of the staff report except for Exhibit C-2, it included everybody in the domestic industry. And, of course, that would have an effect on your data, so I would suggest to the commission, particularly given your preliminary determination to exclude Great Lakes from the domestic industry, that maybe you ask the staff to put together data throughout the report that gives you data or comparisons here inclusive or exclusive for the industry, either inclusive or exclusive of them, because it does make a difference in all these percentages.

COMMISSIONER MILLER: Right. Well I recognize a lot of the data changes depending on the decision that's made, the threshold decision of how to handle Great Lakes.

All right. I only have one more question.

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and I just wanted to get a little bit of a clarification and, Mr. Durstberger, I think this is probably best addressed to you.

I know there was an E.U. order on aluminum oxide. It covered both what we're calling crude and refined, didn't it?

MR. DURSTBERGER: Yes, it did.

COMMISSIONER MILLER: Can you just tell me a little bit about that order? I understand it has expired.

MR. DURSTBERGER: It expired in May of this year, 2003.

COMMISSIONER MILLER: Okay. And just -- could you tell us a little bit about the history of what happened while that order was in place?

MR. DURSTBERGER: Well, what had happened in Europe is Europe -- Peter was addressing crude production, but in more general terms, aluminum oxide production in Europe had shrunk from, I think, approximately 15 producers down to three or four, mostly due to pressure by Chinese imports likewise.

Ten years ago, the first antidumping duty tariff was imposed in Europe to protect the European industry. It is our belief that weak enforcement in Europe has not had the desired effect, therefore,
during the last ten years, there was another
significant amount of production facilities that have
closed.

I think I have commented on it during the
last hearing that there was a lot of imports from
countries where it is very well known there is no
aluminum oxide production, South Africa, Vietnam,
places where Chinese grain was probably transported,
transshipped, repackaged and sent into Europe. And
the quantities were significant, I think 50 to 60,000
tons a year. So partially to that there was
resignation on the part of the remaining European
producers to keep this antidumping in force and the
European commission has let it expire.

COMMISSIONER MILLER: Okay. I know my red
light is on, can I just have one follow-up on that?
CHAIRMAN OKUN: Yes.
COMMISSIONER MILLER: The European
producers, I know earlier in response to one of my
questions there was a comment that they do produce
crude. Do the same producers in Europe produce the
crude and the refined? Is it a more integrated
industry?
MR. DURSTBERGER: Yes, it is, generally
speaking. It is sometimes broken down in different
plants. For example, one of Treibacher's plants in Austria that specializes in crushing and grading is supplied by a crude ore fusion plant in Slovenia where electricity rates are more favorable. But, generally speaking, they are more integrated, yes.

COMMISSIONER MILLER: Okay. All right.

Thank you. I appreciate all your answers very much.

CHAIRMAN OKUN: Commissioner Koplan?

COMMISSIONER KOPLAN: Thank you, Madam Chairman.

I do have just a couple of quick matters.

First, if I could just follow up on what Commissioner Miller was talking to you about, the E.U. antidumping matter, I know you did cover that in the staff conference in response to a question from Mr. McClure, but respondents weren't present when you testified on this issue and I would just point out that on page 23 of their pre-hearing brief, and this is not BPI, they discuss this in their opening paragraph on that page and put a somewhat different spin on it.

And I would just ask for purposes of the post-hearing if you would take a look at that again, Mr. Schagrin, and see if there is anything else you
want to add to the response that Mr. Durstberger gave both today and at the staff conference.

MR. SCHAGRIN: There is a lot we would like to add, Commissioner Koplan. I would invite Mr. Durstberger if he would like to add some things now about allegations about --

COMMISSIONER KOPLAN: It's brief. I can put the allegation on the record if you want to respond to it now.

MR. SCHAGRIN: Okay.

COMMISSIONER KOPLAN: Let me just tell you what the allegation is. They say Imerys, Treibacher and C.E. Minerals, Plabrico web of affiliations is headquartered in France. The E.U. imposed a dumping order on BAO in 1997. In October 2002, however, Treibacher, the major BAO producer in Europe, consented to the termination of the dumping order. Why would Treibacher allow the E.U. order to terminate? One answer is that the Imerys group makes production and sales decisions based on global considerations, part of the effect of terminating the E.U. order is that Plabrico once again would import Chinese BAO and Plabrico has since begun shipping finished refractories to the U.S. market.

That's the allegation.
MR. DURSTBERGER: First of all, it's partially incorrect because the first antidumping tariff in Europe was imposed, to the best of my knowledge, in 1992, not 1997. Secondly, since learning of this allegation yesterday, I have checked with Plabrico Europe, who is a fully owned subsidiary of the Imerys Group. They have informed me that they just two major production plants, one is in Germany and one is in the Netherlands. The one in Germany has supplied exactly half a ton of material to the U.S. in 2002 and zero in 2003. The factory in the Netherlands has supplied 20 tons in 2002 and 30 tons in 2003. As a side remark, the product shipped from Holland did not contained brown fused aluminum.

The history of Plabrico Europe is that it does not sell into the United States or Canada. Why? When the Plabrico Group was split up in three different parts, Plabrico U.S.A., Plabrico Japan and Plabrico Europe, Plabrico U.S.A. was completely independent of the Imerys Group, they maintained their trademarks here in the United States and has continued to sell as Plabrico U.S.A. here in the U.S., so we do not own any trademarks to sell our products in the U.S.

In a mature market, like the one outlined by
the opponent, it would be commercial suicide to enter
a market with a no name product in a refractory
industry where your technology, your references, your
brand names ultimately mean success. So we not only
have not sold here, we also do not intend to sell in
the United States as Plabrico Europe.

COMMISSIONER KOPLAN: Thank you very much
for that.

I have just one other matter, and I
apologize for this, I'm going to come back to that
footnote 11 that I mentioned earlier that dealt with
the DLA sales having ceased. And in looking at the
exhibit that accompanies the brief, Exhibit 9 that's
cited in that footnote, I now see that the exhibit
does not comport with the allegation in the footnote.

In the footnote, there is a reference to
sales of fused aluminum oxide grain. In our
preliminary determination, what we were talking about,
as I excerpted from the prelim was crude aluminum
oxide, okay? When you go to that exhibit, and this is
a public exhibit, the source of the exhibit is the
U.S. Geological Survey, headed "Abrasives Manufactured
Annual and Quarterly Reports," the header on the
exhibit is "NDS Disposals of Crude and Refined
Aluminum Oxide." And when you look at that, what you
see is that crude aluminum oxide inventories disappeared in 2000 and there were no inventories in 2001, 2002 of crude aluminum oxide or in the first six months of January to June of 2003. So the finding that we made with regard to that in our prelim, according to this exhibit, would still be accurate today. And I'm sorry that I missed that when I went through it.

MR. SCHAGRIN: That's okay, Commissioner Koplan, because I hope that I told you that the commission's preliminary determination was completely correct.

COMMISSIONER KOPLAN: Well, I thought you would have said that anyway, Mr. Schagrin.

MR. SCHAGRIN: No, no, no. Oh, no. You know me better than that. If you made a mistake, I'd be the first one to point it out. When I make a mistake, I think I'm the first one to point it out. But I think as Mr. Williams testified and I think we put this in our pre-hearing brief, if not we'll put it in our post-hearing brief, while DLA sold all their inventory by the end of 2000, the terms, which is one of the reasons the prices were lower, were pretty favorable compared to other purchasers, the purchasers had 18 months to pick it up and pay for it. So what
Washington Mills purchased in 1999 and 2000, they were allowed to pick up in 2001 and they used a lot in 2001 and 2002.

And I think you'll also notice, Commissioner Koplan, look at how little on the refined, look at how little the changes are between 2000 and the first half of 2003 and between 2001 and 2002, the reduction -- I mean, the disposals are in the hundred ton range. What impact is that having in a market of 100,000 tons? It's obviously the Chinese, not the DLA sales, that are causing the problems here.

Thank you.

COMMISSIONER KOPLAN: Thank you.

And with that, I have nothing further.

Thank you, Madam Chairman.

CHAIRMAN OKUN: Thank you.

Commissioner Lane?

COMMISSIONER LANE: No questions.

CHAIRMAN OKUN: Now, Mr. Schagrin, I have to go back. I thought I had understood the earlier answer on DLA and what was in this chart and about the refined versus the crude, but when you were talking about how we would consider that in terms of -- I don't know if you were talking about threat context or not, saying that the presence of this DLA stockpile on
the refined side was also something we should be
looking at, did I hear you incorrectly the last time?

MR. SCHAGRIN: No, you heard me correctly
and you analyzed this correctly in your preliminary
determination. As you can see, the DLA sold in 1998,
1999 and 2000 an average of 50,000 tons a year of
crude. That's about the average over that three-year
period. The DLA notwithstanding a law that says that
the DLA is supposed to get market prices, the fact is
that DLA sold that crude at prices less than the
availability of crude from Canada, less than the
availability of Chinese crude. It was significantly
low priced product.

It's the contention of the domestic industry
that without the ability to get what was almost a
one-time windfall from the federal government really
over a four, four and a half year period, getting low
cost input product, that the injury to the domestic
industry would have looked that much worse earlier on
because of the Chinese imports, which were already
high back in 1999 and 2000, were already underselling
the U.S. industry and that the industry would have
already seen significant closures of plants and even
producers going out of business.

Now that the DLA crude is over, we are just
at the mercy of the Chinese.

The respondents argue, oh, the answer here is just buy Chinese crude. Treibacher only buys Chinese crude. They've gone from profits to losses. There is not a spread between the pricing of Chinese crude and Chinese grain that would allow the U.S. industry to stay in business. The answer for the domestic industry is if they just buy Chinese crude and don't get dumping relief they're going to be put out of business by dumped China grain sales.

CHAIRMAN OKUN: Okay. I understood that argument with regard to whether there was a spread. With regard to the DLA refined product, were you arguing anything about that now?

MR. SCHAGRIN: No, our only arguments were that there are some inventories out there, it may be something in threat when you look at the fact that there's also Chinese inventories, there are also government inventories that are out there that may have an effect on the marketplace. They really haven't had an effect over the last few years because if you look at the DLA disposal prices, they're in the $450 range for 2000 through 2002, their sales are minuscule, distributors have told me and I think they've testified to it today or else they can put
that testimony on the record that distributors wouldn't buy DLA refined nor would members of the domestic industry in any quantity other than to fill in here, I think Washington Mills itself bought 30 or 40 tons in the last year or so, maybe 100 tons, but that the prices that DLA wants are higher than Chinese prices and that's why DLA is unable to sell its refined out of its stockpile.

COMMISSIONER KOPLAN: Okay. I had only gone back to that both just hearing the response but also when Mr. Williams was responding to Commissioner Miller about kind of this historical -- how he looked at the DLA.

My impression of your testimony, Mr. Williams, was you were fearful of the DLA purchasing the refined product as well because it would impact U.S. producers' markets, I guess, when they put it in the market because they would be able to sell at a lower price.

That was the impression I got for why you were saying we didn't necessarily think this was such a good thing and that's why I was curious as to if there was anything further you wanted to say on that.

MR. WILLIAMS: It is a fact that the DLA has sold some of the refined grain at lower prices than we

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would like to see in the marketplace, but this is
inescapable because the material that the DLA is
offering is packed in 800 to 1000 pound drums. This
is not a standard pack at all. The drums themselves
are old, 1950s drums. They are galvanized drums. The
disposal of those drums is very difficult due to the
toxic qualities of the galvanized coating, so there's
a lot of downside to the DLA grain sales by virtue of
the material itself. But the DLA prices are the
largest downside because their prices are way above
what the Chinese selling prices for refined brown
grain are presently. We can buy Chinese grain much
cheaper than we can buy DLA.

CHAIRMAN OKUN: Okay. I understand that now
in that context.

I believe two of my post-hearing questions
Vice Chairman Hillman covered regarding the financials
and also addressing the related party issue directly
and I've heard you, Mr. Schagrin, say that you would
do that as well as in the context of what that means
for our data, with whatever decision is reached with
regard to Great Lakes.

The other post-hearing question I would have
is that in terms of critical circumstances, I have
normally looked at the import volumes during intervals
of three to six months preceding and following the petition and the inventories over the same timeframes where we have that information available and if you can make sure that you address that to the best of your ability to the extent you are arguing a different period, to justify that as well.

MR. SCHAGRIN: Chairman Okun?

CHAIRMAN OKUN: Yes?

MR. SCHAGRIN: We'll address that. I'm not really sure that according to the way the data has been gathered -- and we're fairly hesitant -- it's maybe the one thing we agree upon with respondents, we're a little hesitant to rely on data from all the Customs statistics, but I think we can take a shot at looking at both three month and six month. I'm not sure you have the data completely set out that way in terms of the staff report, in terms of both three months and six months prior to and after the filing of the petition, but we'll do our best to address that in the post-hearing brief.

CHAIRMAN OKUN: Right. And if it's a data limitation, just to describe in the detail necessary so that it's clear what those limitations are.

MR. SCHAGRIN: We will do so.

CHAIRMAN OKUN: I think with that I have no
further questions.

Let me turn to Vice Chairman Hillman.

VICE CHAIRMAN HILLMAN: Thank you.

I wanted, I guess, to come back to the question that I had asked earlier and give Mr. Durstberger a chance to respond. I'm trying to understand, for those purchasers that are purchasing on an annual contract basis, which presumably would be your purchasers, Mr. Durstberger, this issue of the relative relationship between Chinese product in the market as opposed to cost reductions or demand reductions and their implications for prices.

MR. DURSTBERGER: Yes, I did want to make a comment to that. Firstly, although Mr. Plonsker mentioned that demand has seemingly decreased due to production moving offshore, et cetera, I think that I'm in a position to see the differences in what I would consider structural demand change and a change in demand for our refined brown aluminum oxide due to competition from China, due to the fact that we also sell products that do not directly compete with Chinese products to the same industry, mostly the abrasive industry. And whereas I do concur that there is a slight decrease in demand, and when I say slight, I mean in the range of 2 to probably 5 percent,
depending on people's point of view, and this change
in demand might be made up by technological change
where less grinding, less abrasives are necessary
every year. This, however, is an organic decrease
that we producers have had for a hundred years.

The way we react to it is that when less
abrasives is used, it generally tends to turn into a
trend where finer sizes are required, meaning that
probably on a tonnage basis the consumption, the
demand, decreases; on the dollar basis, not
necessarily so because those products sell for higher
prices, as I think Mr. Williams and Mr. Plonsker
pointed out.

So on an overall basis, being a global
producer with 13 facilities around the world, I agree
that demand is probably flat to slightly decreasing,
not necessarily dollarwise but tonnage based.

These organic changes are nothing compared
to the onslaught that currently is happening here in
the United States where your selling prices are
undercut by 50 percent. That's not a 3 to 5 percent
in structural demand or some production moving
offshore or a tendency to different production
technologies that affect demand slightly negatively.
That's a situation where from one day to the other you
will not lose 3 percent of your sales to certain a
abrasives customer, you will lose 100 percent because
they start to buy offshore due to pricing reasons.

So although there is granted demand decrease
on a worldwide basis in the U.S. due to technical
changes and production shifts to low-cost countries,
the scale is absolutely not comparable. You're
comparing a 2 to 5 percent maybe to a much, much more
severe impact of these lower prices.

VICE CHAIRMAN HILLMAN: Okay. Then just a
last little follow-up on this cost issue. I mean,
obviously, we've got the data on these DLA sales, and,
Mr. Schagrin, you just pointed out that the prices on
them were lower than anybody's crude in the market.

Mr. McLeod, to you or to Mr. Durstberger, I
mean, are your -- again, your contract purchasers, the
ones that are out there for these big volumes on an
annual contract basis, are they following at all your
costs? Would your purchasers be aware that you've
gotten this big windfall from the government and, gee,
why shouldn't they get some of it? I mean, is there
pressure for lower prices in order to pass along, if
you will, this windfall that you've gotten in the form
of lower prices to that set of customers?

MR. MCLEOD: There is constant pressure
offering a lower price to the end user. We don't go 
through a day without a negotiation of some sort with 
our customers based around the cost issue. And it's 
always about the economy, it's about my business, it's 
about my customers and what I'm up against as a 
competitor, so it goes hand in hand.

In terms of the windfall, I believe it is a 
public record that if someone wants to know if we 
bought DLA crude, it's out there. I don't think I've 
had anyone come back to me and say you just had this 
wonderful windfall so therefore I want you to pass it 
along to us. I can't say that I've been asked that 
question.

VICE CHAIRMAN HILLMAN: Okay. Like I said, 
I mean, obviously, we're going to hear a lot about 
whether and how to factor in these cost reductions in 
terms of looking at why did prices go down.

Mr. Durstberger, did any of your customers 
come and say, well, gee, since you're getting such a 
great deal on crude, we want a better deal on our 
finished product?

MR. DURSTBERGER: No. At the point where 
the DLA crude became an issue, the refractory industry 
was firmly in Chinese hands and the abrasives industry 
did at this point not concern themselves to my opinion
with our cost position on DLA crude.

VICE CHAIRMAN HILLMAN: And then my last question, Mr. Schagrin, in your opening comments, you pointed to the table that looks at what purchasers look at when they're buying this product and you've obviously pointed out that the one cited most often was lower price. But I was struck a little bit by the other factors that purchasers tend to place a lot of emphasis on, two in particular, of availability and reliability of supply.

Now, we see purchasers say that those are very important factors, usually in cases where there's been a shortage in the market or difficulties with accessing supply. I haven't heard any of that this morning, so I'm just curious, from either the distributor's perspective or the producer's perspective, why is that? Why are purchasers saying that next to price, key things for them are reliability of supply and availability? Have there been supply problems out there that purchasers are reacting to in ranking those as very important factors in their purchasing decisions?

MR. WILLIAMS: In my experience, no. A purchaser will always tell us that they want a reliable supplier because abrasive grain is a
repetitive commodity that is used consistently. And so it is a normal and predictable response and desire on the part of the purchaser to have a reliable and secure source of supply.

But at the end of the day, despite that ringing statement, most of our customers want us also to meet the lowest price and the lowest price, unfortunately today, is Chinese. Fifteen years ago, they weren't so reliable. Today, by virtue of the fact that they have large inventories in this country, they are very reliable suppliers.

VICE CHAIRMAN HILLMAN: How about any of the distributors? Would you comment? I mean, again, does it strike you as odd that purchasers would say that next to price the other absolutely key factors, more important than lots of other things, would be availability and reliability of supply?

MR. PLONSKER: I can't think of a better way for a purchasing agent of a large company to get fired than to not have product available and shut the plant down. If he pays a few more cents a pound, it's not going to be quite so crucial, but if he shuts the plant down because he's made a bad choice on who he's buying his product from in terms of reliability, he's in big trouble.
But given that, the basic assumption of most people is that if they're dealing with a reliable supplier, such as ourselves as distributors or one of the domestic manufacturers, availability is essentially a given. I mean, they have established their records over the years as being a reliable, trustworthy supplier, so it's the basic given.

So if that's a given, what's the really differentiating factor? And it's price.

VICE CHAIRMAN HILLMAN: Okay. But I'm not hearing from anybody that there has been in fact supply problems out there in the market.

MR. PLONSKER: Correct.

MR. KANE: No, there have not been supply problems at all.

MR. SCHAGRIN: Not to any of our knowledge over the POI.

MR. BLECKER: If I might just add to that, although the purchasers state that those factors are extremely important to them, they also in the vast majority do not see that as a difference between the U.S. and Chinese supply. Take a look at Table 2-3, U.S. and China are regarded as comparable by the vast majority on both availability and reliability of supply.
VICE CHAIRMAN HILLMAN: I appreciate that.

And with that, I have no further questions, but I thank you all very much for your answers.

CHAIRMAN OKUN: Seeing no further questions from my colleagues, let me turn to staff to see if staff has questions for this panel.

MR. MCCLURE: Jim McClure, Office of Investigations. The staff has no questions.

CHAIRMAN OKUN: Let me ask counsel for respondents, do respondents have questions of this panel?

MR. O'BRIEN: Thank you, Madam Chairman. We have no questions.

CHAIRMAN OKUN: Thank you.

Before we take a lunch break, two things. One is, Mr. Schagrin, if you can make sure that the samples that may be up here still are available for respondents to review, although I would note that the big bag of the crude stuff is going to break, so someone needs to get something on it so that it's not in Madam Secretary's courtroom floor for after the hearing, which I know she'll appreciate.

And then, second, to remind all parties that the room is not secure during the lunch break, therefore, take any information that's business

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confidential with you as you go.

And the final thing, which is I want to thank all the witnesses once again for their testimony, for their willingness to answer our many questions today. We very much appreciate your participation and the additional information you will provide in post-hearing.

With that, we will take a lunch break until 1:30. The hearing is adjourned.

(Whereupon, at 12:28 p.m., the proceedings n the above-captioned matter were adjourned until 1:30 p.m.)
AFTERNOON SESSION

(1:30 p.m.)

CHAIRMAN OKUN: This hearing of the United States International Trade Commission will please come back to order.

Madam Secretary, I see that the second panel has been seated. Are all witnesses sworn?

MS. ABBOTT: All witnesses have been sworn.

CHAIRMAN OKUN: Thank you very much.

Mr. O'Brien, you may proceed.

MR. O'BRIEN: Thank you very much and good afternoon, Madam Chairman, Commissioner Lane.

The companies around this table did not participate in the preliminary determination, so I want to just to take a minute to introduce who it is that's in front of the commission.

On my left is Lisa Murray, behind Lisa is Stu Seidel, both colleagues of mine at Baker & McKenzie.

To my immediate right is Mr. Tom Gibson, the Vice President of Corporate Development at Allied Mineral Products.

Next to Tom's right is Kelleen Loewen, the Market Manager for Abrasive Materials, Saint-Gobain.

On Kelleen's right is Mr. Dennis Gates, Vice Heritage Reporting Corporation (202) 628-4888
President with Cometals, Inc.

Immediately behind Mr. Gates is Mr. Liu Jianwei, the Deputy Director of Legal Services of the China Chamber of Commerce of Metals, Minerals and Chemicals.

Next to Mr. Liu is Mr. Douglas Doza, Senior Vice President, Manufacturing and Research, for Allied Mineral.

On Mr. Doza's immediate left is Mr. John Redshaw, Sales and Marketing Director for Dauber, Inc.

Before the company witnesses begin, I'd just like to make a couple of points. One of the exhibits that was not discussed today was Exhibit 3 in our brief, which shows a very dramatic decline in shipments of crude product from Canada.

Now, you can pull from the tariff schedules and we'll certainly supply it a corresponding chart showing crude products from China during the same period and you will see that the source of crude brown fused alumina has increased sharply from China, decreased sharply from Canada.

Now, the position of the domestic industry, as we understand it so far, is that that didn't matter, that you can have a Canadian crude plant which has reduced its exports dramatically and that has no
effect on the financials at all. That just simply
does not hold water.

Now, as of yesterday, we received yet
another set of financials from the domestic industry
and while we are a little bit regretful that it's so
late, we are happy that the staff is continuing to try
to get to the bottom of this issue. There is quite a
lot going on with the domestic industry in terms of
related companies and the move of product from Canada
to China.

One of the interesting things that came out
this morning was the discussion of the domestic like
product and, as I understand it, petitioners' position
was that their hands were tied, that Customs couldn't
enforce a scope definition that they would like, so
they came up with one and they did the best they
could.

Well, the one they happened to pick had an
absolutely dramatic effect on the data that's in front
of the commission and a small change one way or the
other would dramatically change the data and I think
all parties agree that it would affect virtually every
aspect of this case if the definition were changed
even slightly.

Now, on that point, it is interesting, of
course, as Exhibit 7-C in our brief we included a product line offering by Washington Mills in which they promote their refined products for domestic consumption. But they chose not to include that particular definition of refined product, even though they market and sell it. Instead, they took a truncated version which happened to have a dramatic effect on all the data in front of the commission.

Now, the scope definition, of course, is a Commerce Department matter, we're not challenging that, but, by the same token, the commission has broad discretion and authority over the domestic like product definition and I am certainly pleased that the commission is giving it serious consideration because I do believe it should be changed.

Two final points. One is I was happy to hear all the questions about quality today. We have a lot to say about quality. I think fairly stated, when quality matters, quality really matters, so if you're looking at this industry as to what happened on particular customers, and we are certainly prepared to answer those questions, when quality counts, you either have the quality or you do not do business with that company period. And for reasons we'll explain.

Finally, this morning, I stopped keeping

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count of the times I heard references to the Chinese suppliers. As I mentioned in my opening statement, that is a very, very broad statement and, given the profile of this particular domestic industry, it is extremely unhelpful to refer merely to Chinese suppliers. As is noted and as admitted, all of the U.S. producers import both the crude product and the refined product from China. Without more specificity, a mere reference to Chinese suppliers is of very marginal use.

With that, I'd like to turn to the first company witness, Tom Gibson of Allied Mineral.

MR. GIBSON: Good afternoon, Madam Chairman, commissioners. My name is Thomas E. Gibson. I'm Vice President of Corporate Development for Allied Mineral Products of Columbus, Ohio. My responsibilities include business planning, start up of new ventures and raw material sourcing. I also have direct responsibility for Allied's affiliated companies in China and South Africa, which are manufacturing and marketing organizations for Allied's products which are monolithic refractories.

Our major markets are foundries and steel mills. Allied exports 25 percent of what we make in Columbus, Ohio worldwide into over 50 countries. We
have won two presidential awards for excellence in export. We are an employee-owned company. We have over 300 employees worldwide with 235 in the United States and 200 in Ohio. Those owner-employees are very concerned about preserving U.S. manufacturing employment.

One reason is that both BFA and refractories are global businesses. For example, next month, Allied will begin production of its refractory products at a new plant in Brownsville, Texas. Allied has a dominant share of the induction furnace refractory market in Mexico. To protect that position, we considered opening a plant in Mexico. However, we determined that a better strategy would be to build and operate a plant in Brownsville where we have just invested over $2 million.

The reasons for that decision were (1) favorable transportation costs into the major markets in Mexico, (2) excellent port facilities, and (3) we could combine shipments of major raw materials, including BFA, bauxite, silicon carbide, and magnesium oxide, from Tenchen, China into Brownsville, produce our refractory products and then ship those into Mexico under NAFTA.

Combining raw materials for shipment

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produces economies in transportation and administration. This points out the global planning that must go into this industry.

Through the 1990s, Allied processed BFA through a joint venture company, North American Processing Company, or NAPCO, so we can also bring the perspective of a former U.S. producer to this case.

In the late 1980s, I managed the startup of NAPCO in Newell, West Virginia, which was a 50/50 joint venture between Frankenshulte, a minerals trading company, and Allied. NAPCO's mission was to crush, screen, package and market refractory minerals, including brown fused alumina, which is RBAO, by the way. I hope I can use the term brown fused alumina, which I'm more familiar with, but it's the same product.

Logistics is a major factor in almost all industrial minerals operations. For that reason, we located NAPCO on the Ohio River between Parkersburg, West Virginia and Pittsburgh, Pennsylvania. This decision was based on a detailed study of the location of the U.S. refractories market, NAPCO's target market, and the total cost of importing crude raw materials from China and elsewhere, including bauxite and magnesium, and delivering the processed product to
major refractory producers.

NAPCO processed aluminum-based products, including BFA and bauxite, and magnesium-based products, which were dead burned MGO.

In 1995, I began traveling to China on a quarterly basis to do the ground work for the startup of a refractory plant in China to serve the China market and other Asian markets and to develop raw material suppliers for that operation as well as for our operations in the U.S., Italy and South Africa.

From 1989 through 1998, Allied purchased the majority of its BFA requirements from NAPCO, which sourced crude BFA from China and crushed and sized it for Allied and other refractory industry customers. Realizing that we were having significant quality problems with the BFA from NAPCO, which Mr. Doza will describe in a few minutes, and that we were paying two and sometimes three middlemen in the process, it was my belief that the best and most efficient way to purchase BFA for all of Allied's global companies was from an integrated producer, either in China or elsewhere. I've seen nothing in the subsequent years that would change that opinion.

We've always said in China you don't find suppliers, you develop them. That was certainly true.
in the 1990s and it's still very much true today.

There is a wide variation in the quality and service capabilities of Chinese crude and refined BFA producers.

Our efforts from 1995 through 1998 and continuing until today were to develop suppliers of BFA and other refractory minerals for Allied's global companies. The motivating factors were and are to improve quality, no contamination, consistent properties and traceability to a producer, and to eliminate the middlemen.

The major cost to producing BFA is refining bauxite in fusion furnaces. Modern integrated plants in China then cool and crush the ingot, separate impurities and process the crushed ingot through a series of additional crushers and screens to make refractory split grain sizes, which are then packaged directly into super sacks or big backs or small bags.

This integrated process is inherently more efficient than interrupting the process at some point and shipping the intermediate product to a distant processing plant.

After assuring ourselves that we had two high quality sources for BFA in China, in November 1999, we sold the NAPCO plant to C.E. Minerals. To

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the best of my knowledge, that operation has been a success for C.E., who now processes Chinese bauxite, South American bauxite, and Chinese BFA at the plant.

One major reason for that plant's success is its location. I believe that C.E. has at least a 5 percent of selling price transportation cost advantage at Newell versus Niagara Falls and Tanawanda, New York and a much larger transportation cost advantage versus North Grafton, Massachusetts to the major refractory consumers who are in Ohio and Illinois.

In March of 2000, Great Lakes Industries began processing what we and they regard as crude BFA at Wurtland, Kentucky. I visited the Great Lakes plant and, based on my experience, I believe it to be one of the most advanced processing facilities in the world for making refined brown fused alumina.

In spite of what Mr. Durstberger says, we have purchased BFA from both C.E. and Great Lakes in recent years. I note this for two reasons. First, our purchases from domestic suppliers other than NAPCO have not declined since we shut down NAPCO in 1999 and began sourcing mostly from China. We source roughly the same volume domestically today as we did before the move. The only change is that we replaced our captive production with Chinese product.
Second, we have purchased more in recent years from one domestic supplier than any other. For confidentiality reasons, I will refer to that supplier as supplier X.

We purchased more in recent years from supplier X primarily because supplier X was the only domestic supplier that provided traceability to an Allied approved source in China.

Until this year, we believe all of the crude that supplier X brought into the U.S. came from one of two Allied approved sources.

We are currently ordering BFA from supplier X with the instructions that they source the product from a specified crude supplier.

Another domestic supplier, supplier Y, has just agreed after years of refusing to do so to identify their source of crude. We believe often they didn't really know where their crude came from, that they were buying from an intermediary. We hope to approve that source and are now beginning to work with supplier Y.

In both cases, we have to pay more for the refined BFA made from crude from an approved supplier. This has everything to do with traceability and quality and nothing to do with price.
Next, I would like to comment on how the global reach of some of the U.S. producers affects this case. Enclosed in my declaration is an advertisement appearing in a U.S. publication called "Refractory Applications and Use." This publication has a distribution of 3400 copies in the U.S. and only 110 copies internationally. The ad was for monolithic refractories in competition to Allied and it was sponsored by Plabrico International of the Netherlands, a subsidiary of Imerys. Imerys, as you know, is also the parent of Treibacher and C.E. Minerals.

In addition, in 2002, Treibacher allowed the E.U. Chinese BFA antidumping order to expire by announcing it would not oppose such expiration. This was a duty that Treibacher had petitioned for earlier, I believed it 1997, perhaps it was 1992, but it was prior to the company's acquisition by Imerys in 2000.

Now, Treibacher is petitioning for a duty on Chinese refined BFA into the United States, a type of duty that its sister company in the Netherlands no longer has to pay due to Treibacher's decision to let that duty expire. And now that sister company is advertising in the monolithic refractories.

Now, you can understand, I think, why our
management is a bit concerned about this and I was
glad to hear Mr. Durstberger say it shouldn't be such
a major concern, but he admitted that they're bringing
product in and I really don't feel any more
comfortable today than I did prior to hearing his
testimony.

Treibacher also produces BFA in a fusion
plant in China. C.E. Minerals, another Imerys
company, has refractory mixing plants in
Andersonville, Georgia and Zhanjiang, China, where it
toll manufactures refractories for U.S. and European
companies.

Imerys has every right to structure its
global operations as it sees fit, but please
appreciate that the Imerys companies are first
producing crude and refined BFA in China, they're
importing crude and refined BFA into the U.S., they're
advertising European monolithic refractories in a U.S.
publishation, they're producing refractory product in
China and the U.S. on a tolling basis. Competitive
pressures are applied by the Imerys companies at every
step of the process.

To me, it seems basically unfair for the
Imerys companies to try to carve out one process step
for protection when doing so would help other Imerys
companies compete in other steps of the value chain.

Next, I would like to briefly address the problems with the definition of the covered product. Let me cite some examples. First, the plaintiffs offer and Allied consumes BFA that the petition defines as crude but in reality it's refined. Washington Mills offers a product defined as three-quarters by three-eighths. That means that a minimum of 80 to 90 percent of the grains will be bigger than three-eighths inch or smaller than three-quarters inch in size.

A Treibacher brochure states that its refined BFA is supplied in sizes from microns to a few centimeters. BFA of a few centimeters is definitely larger than three-eighths inch. Allied has an internal spec for a product that is one and a quarter inch by one inch. All three products are refined. They underwent crushing, sizing, screening to meet ours and the petitioners' strict grain size distribution specifications. By the arbitrary definitions as proposed in this petition, these refined products would be classified as crude.

In addition, Allied uses a BFA product defined as one-half inch by one-quarter inch. Our specification specifies 40 percent to 55 percent on a
three-eighths inch screen. Under the definition of this petition, this refined BFA would sometimes be classified as refined and sometimes as crude, depending on the exact measurements on the three-eighths inch screen.

I have two samples of this product here, one of which would not be subject to the antidumping order if it came down and one of which would, but you cannot look at these products and tell a difference and we see no difference in the products. We would use these products interchangeably in our formulation.

I suppose this begs the question how would Allied define crude versus refined BFA? Our definition -- and these are definitions that we strongly believe would receive the endorsement of the majority of abrasives, industrial minerals and refractory companies, are that refined BFA is a product that is ready for use by the industrial customer. Crude BFA is a product that requires further processing before the industrial customer can use it.

The petitioners' definition is arbitrary and does not take into consideration the reality of the BFA refractory products or the variety of sizes of crude that have been shipped into the commercial
market.

Just if I could break my testimony, I've seen crude and I agree that one-inch by down is a very common definition of crude, but I've also seen crude that was 30 millimeter or about one and a quarter inch by down, 20 millimeter, which is about three-quarters of an inch by down, and even 10 millimeter or 9 millimeter by down, which is three-eighths of an inch by down. So that goes very much to the issue of how you define crude.

Finally, regarding the industry outlook, the U.S. refractories industry underwent a major consolidation and downsizing in the late 1990s and early 2000s. Shipments from U.S. refractory producers dropped from $2.5 billion in 1997 to $1.9 billion in 2001, a 24 percent drop. The industry is finally experiencing some strengthening in 2003. The short-term outlook has continued to rebound with the current economic recovery. In particular, monolithic refractories, where the majority of BFA is consumed, will grow in the years ahead at the expense of refractory bricks.

Thank you, Madam Chairman and commissioners.

CHAIRMAN OKUN: Thank you.

MR. O'BRIEN: We will now hear from Mr.

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Doza, also of Allied Mineral.

MR. DOZA: Good afternoon. My name is Douglas K. Doza. I am Senior Vice President, Manufacturing and Research, Allied Mineral Products.

Prior to making my statement, I would like to make a few changes to page 2 of my declaration.

In Section 8, line 3, Exhibit C should read Exhibit D.

In Section 9, line 2, Exhibit D should read Exhibit E and line 5, Exhibit E should read Exhibit F.

In Section 10, the second and third questions should read as follows: "In Allied's experience, purchasing from a U.S. processor makes this significant quality problem worse because the material is not normally traceable to its source in China. For example, enclosed as the final" that ends page 2, the balance of that sentence is correct, starting page 3.

I will now make my statement.

I have been involved in Allied's quality assurance efforts for refractory products since 1988. Product consistency and the absence of contamination and product traceability are major concerns in refractories due to the demanding applications in which they are used. For example, Allied manufactures monolithic refractories using brown fused alumina.
primarily for the metal melting market.

Brown fused alumina makes up most of these refractory products due to its ability to withstand the harsh chemical and thermal environments present in these applications. These applications include blast furnace troughing systems as well as induction furnaces. For example, in these applications, refractories must withstand temperatures of up to 3200 degree Fahrenheit while being in direct contact with molten iron and/or steel.

Enclosed as Exhibit A in my declaration are two photographs of common applications of Allied's products. The first is a coreless induction furnace, pouring molten metal into a ladle. As noted in the photograph, temperatures can reach 3200 degrees Fahrenheit. There is nominally five inches of refractory between the molten metal and the water cooling system in these furnaces. If molten metal contacts the water cooling system, then a catastrophic event will occur.

The second photograph is of a blast furnace trough. Blast furnace troughing systems have a highly corrosive environment operating at temperatures up to 2800 degrees Fahrenheit. Failure of the refractory material in these applications can be catastrophic.
Earlier today, we heard that quality was not that important.

Well the refractory system is as strong as its weakest part. Refractories are expected to have a minimum useful life and eventually require replacement. Replacing a refractory system is costly and time consuming, during which the furnace normally does not run. For this reason, Allied markets its products based on expectations of maximum throughput before replacement. Therefore, quality is crucial to the application of our products.

Inconsistent quality can greatly reduce the life of a refractory lining. Inconsistent quality linings can be the result of inconsistent quality raw materials, including RBAO with inconsistent chemical or physical properties. These deficiencies can result in faster wear in harsh thermal and corrosive conditions.

In addition, contamination can substantially reduce the useful life of a refractory. The defects caused by contamination can create holes or weak spots in a refractory lining, exposing areas and leaving them more vulnerable to heat or chemical degradation. For this reason, Allied strives for uniformity in content and composition of its refractories.
Inconsistent and out of specification quality is therefore not acceptable to Allied.

Inconsistent quality in RBAO from China is often caused by sourcing from different producers, some of who do not have the production controls, sampling techniques or testing procedures necessary to produce consistent crude BAO. My declaration sets forth further details on this point.

In addition, contamination in RBAO used by Allied is simply not acceptable. However, contamination can enter RBAO from many sources. Enclosed as Exhibit C in my declaration are a series of photographs taken recently at various points in the supply chain regarding shipments of crude and RBAO from China.

Industry practice for shipment of crude BAO involves transportation of BAO in super sacks from the producers, which Tom Gibson mentioned earlier, to the port in China. These super sacks are then cut open to facilitate bulk handling. Sometimes they are cut open in warehouses, sometimes they are cut open at the port, sometimes they are cut open on the vessel, where it is then transported to its final destination.

Once it arrives, a clam shell or similar bulk handling system is used to remove the BAO. Many
opportunities in this process present itself for
contamination.

These photographs illustrate that unless
product is shipped in sealed packages such as those
used by Allied contamination can enter from wood
sources, paper, rust, fiber, and other various
sources.

Attachments D, E and F to my declaration
reference examples of contaminated RBAO received from
the petitioners. These are wholly unacceptable for
Allied's applications. As shown in Exhibit D, a
recent inspection of a shipment found the following:
metal scales from the hold of a ship, ferro silicon,
wood splinters, rope, fiber, plastic, a piece of a
metal nut and a string. I have this sample with me
today. None of these contaminants is acceptable for
Allied's application and this particular shipment had
all of them.

I will point out two contaminants which are
particularly alarming: one, a large metal nut
measuring one inch in length by one and a half inches
in width. This nut, if it was to find its way into a
refractory lining such as the coreless furnace example
I discussed earlier, having a nominal wall thickness
of five inches, it would create an isolated defect

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measuring nearly one-third of the refractory cross-section. This would substantially compromise the integrity of the refractory.

Second is bulk bag tie. It measured over ten inches in length. If this was to fall into a refractory lining horizontally, it would span the entire width of the refractory wall, allowing molten metal to be potentially released from the furnace. As stated previously, the consequences of contamination could be catastrophic.

Based on these facts, Allied rejected this particular shipment. This supplier has acknowledged the inevitability of contamination in the current transportation system of crude BAO from China. Allied has had similar experiences with other domestic suppliers. Please refer to my declaration for additional details.

As noted previously, quality and consistency vary significantly amongst the China crude BAO producers. In Allied's experience, purchasing from a U.S. processor makes this significant quality problem worse because generally the material is not traceable. Quality issues were a major factor in Allied's decision to sell its Newell, West Virginia BAO crushing facility in 1999. Since that time, Allied

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has sourced directly from pre-qualified Chinese facilities that crush the aluminum oxide ingots.

Besides having complete traceability, Allied personnel can walk the factory floors. Allied ships from these factories in sealed containers, super sacks, which eliminate the very substantial risk of contamination often associated with bulk unsealed shipments. This has allowed Allied to achieve a much higher quality level than that provided by the Newell facility or from the RBAO produced by domestic suppliers.

Thank you very much. I would be happy to answer questions.

CHAIRMAN OKUN: Thank you.

MR. O'BRIEN: Our next witness is Ms. Kelleen Loewen.

MS. LOEWEN: Good afternoon, Madam Chairman, and commissioners. My name is Kelleen Loewen and I am the Global Market Manager for Saint-Gobain Grains and Powders located in Worcester, Massachusetts. I appreciate the opportunity to make the following points this afternoon and would be pleased to respond to any questions you might have.

My company, Saint-Gobain, has been headquartered in Worcester, Massachusetts since 1885.
It was formerly known as Norton Company. It is part of the Saint-Gobain family of companies headquartered in Paris, where it was founded in 1665. Saint-Gobain has produced, supplied and consumed industrial grains and powders for many years.

My responsibility at Saint-Gobain is to manage the global sales and marketing of materials we manufacture and that are sold to the abrasives and general industrial markets. One of the products that I am involved in is the selling of refined brown alumina oxide, or BFA as it is commonly referred to, from our Saint-Gobain facility located in Xien Jo, China.

It is important to understand the different market segments and uses that BFA exists for since the product itself and the suppliers and purchasers differ by market segment.

The markets for BFA fall distinctly into the refractory segment, abrasives segment, and other industrial uses.

The refractory segment is by far the largest by volume and by product size. In general, the customers for refractory grade BFA do not buy abrasive grades, nor are these customers sought after by abrasive grade suppliers. For example, during the
three years at Saint-Gobain that I have managed this product line, I cannot recall a single sale made by my company of refractory grade product and I do not consider those companies part of my potential customer base.

The markets also vary by sales channel, such as end use or distributor. My customer base consists of related Saint-Gobain companies and unrelated customers in the end use and distributor markets.

Regarding related companies, Saint-Gobain has affiliates in the United States, several of which use abrasive grade BFA. These are not entirely captive customers, as they source their products from us based on our competitiveness. In fact, if my price is not low enough on BFA, my sister division actually buys from one of the petitioners who offers a lower price.

Regarding unrelated customers, most of my sales are to manufacturers of bonded, coated and general industrial applications. Bonded products are typically grinding wheels and coated products are typically sandpaper. The bonded and coated markets are traditionally tied to activity in industrial markets such automotive, aircraft, metal foundry, woodworking and rail production. With the slow

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economy, these markets have contracted in recent years.

My bonded and coated customers are generally long-term and pretty loyal. This makes sense given the nature of the products on which the BFA is used. A grinding wheel sold by my customers might sell for several dollars up to several thousand dollars. The BFA portion of that product can typically be around 20 to 40 percent for bonded applications and 10 to 20 percent for coated applications. The BFA is also the part that contacts the surface to be ground.

Since the raw material is such an important component of the final product, the quality and consistency of the grain is critical. In addition to quality and service, there are other factors such as consistent delivery, customer service, and brand reputation that are important. As a result, my customers normally do not switch suppliers based solely on price.

This is also the case regarding my sales to the general industrial market segment. The largest users in that market segment include companies who blast automotive, aircraft, military and industrial equipment. We also sell material for the polishing of T.V. tubes for television. These industries have been

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under serious stress in the United States in recent years. With the economic downturn in each of these businesses, the sales of brown alumina oxide also goes down.

The problems in the airline and automotive industry are well known and earlier this year one of the largest U.S. T.V. tube producers, Thompson, moved some of its operations out of the United States. However, for those customers that remain, product quality is of paramount important.

The BFA that I supply to those customers is not only ISO certified, but it's also certified to the specifications of the particular customer, such as Pratt & Whitney, GE Aircraft Engine, or to a specific spec like Thompson's. The certification process for the aircraft industry can take up to one year.

These customers do not just buy on price. Since many of the finished products that utilize abrasives are expensive end products, it would be ridiculous for one of these companies to risk finished product rejects due to quality problems. Scratching a valuable product because of sourcing BFA of inferior or inconsistent quality is just not done.

Another large portion of the industrial market segment is for granite countertops and
headstone blasting and polishing. While the headstone market is fairly recession proof, it is not immune from competition from other substitutes. I know that because one of the plants that is part of the Saint-Gobain companies produces one of those substitutes which is alumina zirconia in Canada near Niagara Falls.

Many of the customers in the granite industry are switching over from BFA to using our alumina zirconia product because, though it is more expensive, it is also much more efficient. I know because I am responsible for managing the sales of those products and I know full well that the sales of that product are displacing BFA for polishing and blasting.

At Saint-Gobain, we see the market for BFA as declining due to economic reasons and due to alternative materials. We also don't typically see customers switching suppliers strictly based upon price.

My final point is that our company, Saint-Gobain, has also been in this business long enough to see that many U.S. grinding wheel and sandpaper companies have had a hard time remaining competitive in manufacturing these products in the

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U.S. If the cost of raw materials increases, more of these companies will move this production closer to where the raw material comes from, in other words, other low cost countries. This will mean further loss of jobs in the U.S.

This completes my testimony and I would be pleased to answer any questions.

CHAIRMAN OKUN: Thank you.

MR. O'BRIEN: We'll now hear from Mr. Dennis Gates of Cometsals.

MR. GATES: Good afternoon. My name is Dennis Gates. I am a Vice President with Cometsals, which is a division of Commercial Metals Company, headquartered in Dallas, Texas. I have been with Cometsals since 1991. My responsibilities include the sourcing and sale of industrial mineral products, including the brown fused alumina that's the subject of this case.

I would like to provide a couple of examples from my own experience with Cometsals to illustrate the dominant presence of the U.S. producers in the U.S. market for brown fused alumina. Let me begin by noting that in the mid 1990s, I was importing a relatively small amount of brown fused alumina for use in the refractory market. My two largest companies
were Magneco Matrell, a market share leader in BFA refractories, and Vesuvius, the second or third largest U.S. refractory producer.

Regarding Magneco, I had about 30 percent of their business. Transtech, another importer of Chinese product, had the remaining 70 percent. In the mid 1990s, Transtech took 100 percent of Magneco's business and was subsequently bought by C.E. Minerals. Transtech took 100 percent of the business because they offered local warehousing with additional quality control and, after C.E. took over, they also offered to blend different sizes or splits to meet Magneco's specifications before delivery. C.E. Minerals was also supplying Magneco with silicon carbide.

Cometals could not compete with these value added factors and lost the business. When Magneco informed me their decision to move 100 percent of the business to Transtech, price was not mentioned as a factor.

Another customer was BMI, which through acquisition and restructuring has become Vesuvius, the second or third largest U.S. refractory producer. Vesuvius had a plant located in southern Ohio near the river. During the late 1990s, BMI decided to close its crushing line for BFA and committed to buy 100
percent of its BFA from Great Lakes, who built a new BFA processing line in northern Kentucky across the river from BMI's plant. Great Lakes brought in product from China and sized it at their Workman, Kentucky facility.

There is no reason to think I have a chance to get that business back. Vesuvius never indicated price as a reason for awarding 100 percent of this business to Great Lakes and I cannot compete with the value added by this facility.

There's one more competitive situation that speaks to the problems that are being expressed today. That's the U.S. Filter situation. U.S. Filter is the largest U.S. distributor, having bought up several independent distributors in the mid to late 1990s. I understand that at one time, Washington Mills had the majority of the business with U.S. Filter. Then, in the late 1990s, Exolon succeeded in getting a significant portion of the U.S. Filter business, I believe approximately 50 percent.

When Washington Mills purchased Exolon in 2001, I have no doubt that Washington Mills expected to resume its majority position as supplier to U.S. Filter, but by that time Great Lakes had succeeded in infiltrating U.S. Filter and took the lion's share of
their business.

So I agree, Washington Mills lost the U.S. Filter business. It lost it partially to Exolon and then nearly completely to Great Lakes, two of the U.S. producers involved in this case. Independent suppliers like Cometals had nothing to do with this major loss to Washington Mills.

So you might ask what is Cometals doing with respect to this product?

We had some sales of brown fused alumina to customers where we already did business in other products. One point the commission should understand is that this product is almost always sold in combination with other mineral products like silicon carbide, bauxite, or magnacite. I did not have a single customer that bought only brown fused alumina from Cometals. These products are loaded and shipped together and the price available for any one product depends on the cost and price of the other products in the mix. For that reason, switching suppliers does not happen easily or frequently.

My final comment goes to the scope definition in this case. When the commission considers who is and who is not a U.S. producer, it should be aware that the scope definition in this case

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raises a great deal of potential for manipulation. For example, if a U.S. producer is supplying the refractory market and wants to increase volume to the abrasives market, that producer could bring in product that is crude under the scope definition but requires a simple screening to sort out a major portion of the abrasive size product. That supplier could be a major player in the abrasives market segment without crushing a single abrasive grain or having any entry falling within the scope of this case.

To those familiar with this industry, the scope definition is utterly artificial. The important distinction is whether the product is sized to sell for an end use customer or not. A particular size or the portion of a bag that is above or below a certain size is meaningless from a commercial standpoint.

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

CHAIRMAN OKUN: Thank you.

MR. O'BRIEN: We'll now hear from Mr. John Redshaw of the Dauber Company.

MR. REDSHAW: Good afternoon, Chairman Okun and Commissioners. My name is John Redshaw and I'm responsible for sales and marketing and business development at Dauber Company, Inc.
Prior to my joining Dauber in September 2001, I was Vice President of Sales and Marketing for Exolon ESK headquartered in Tanawanda, New York. I was with Exolon for 23 years prior to my leaving to join Dauber. Until acquired in August 2001 by Washington Mills, Exolon was a significant U.S. producer of refined brown fused alumina oxide for the abrasives market.

For as long as I can recall, Exolon and Washington Mills were frequent competitors for sales of refined brown alumina oxide in the United States. During the mid 1990s, the U.S. Defense Logistics Agency, DLA, liquidated stockpiles of alumina oxide at unprecedented low prices. For the first few years of the DLA sales of alumina oxide, Exolon, and I believe Washington Mills, were precluded from bidding. At that time, I believe Treibacher was the only significant company bidding for the DLA material. And, if I remember correctly, Exolon and Washington Mills were under investigation for antitrust violations and not permitted to submit bids. During the late 1990s, Exolon and Washington Mills were able to bid for DLA material. At that time, Exolon obtained large amounts of the DLA crude and refined brown alumina oxide at very low prices. I
was involved in the corporate decision by Exolon in
the late 1990s to use the DLA prices to lower costs
and at the same time increase market share in the U.S.
abrasives market. As you heard earlier, AO went into
the DLA cheap and it came out even cheaper.

In large part based on the low-cost DLA
material, Exolon approached many Washington Mills and
Treibacher customers for refined brown alumina oxide
and tried to obtain business by offering lower prices.
At the same time, Exolon increased its imports of
China crude brown alumina oxide and I believe
Treibacher and Washington Mills did the same.
Exolon was successful in obtaining
significant business from Washington Mills during the
late 1990s and into 2000. One major account, Tirolet,
was, I believe, one of Washington Mills' largest
customers and switched their refined brown alumina
oxide business entirely to Exolon. Exolon had similar
success with U.S. Filter, another of Washington Mills'
largest customers, to which we offered low prices
during this period.

Overall, the price of the abrasive grade
refined brown alumina oxide dropped by double digit
percentages during 1998 and 1999 from the 1997 prices.
I believe that in some accounts the price decline for
refined brown alumina oxide dropped by as much as 25
percent.

During 2000 and much of 2001, the price
competition continued between Exolon and Washington
Mills. Again, this was not caused by Chinese refined
brown alumina oxide.

At the same time, Exolon was importing
Chinese crude brown alumina oxide and using DLA
material, we assumed that Washington Mills and
Treibacher were doing likewise. We believe that these
companies were also processing some crude brown
alumina oxide like Exolon so that for any specific
sale it was difficult to determine what was North
American, what was imported and what was DLA material.

In August 2001, Washington Mills acquired
Exolon's operations. By that point, the competitive
conditions of falling prices in the refined brown
alumina oxide market had been established for nearly
four years.

On that note, I would add despite claims to
the contrary, Exolon was a health company at the time
we were acquired by Washington Mills. In no way was
Exolon driven to financial ruin by trying to match
Chinese pricing. In fact, as I recall, although
Exolon lost money in 2000, shareholder equity was the

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fourth highest in the company history and the vast
majority of Exolon's debt was due to industrial
revenue bonds dedicated to plant expansion.

In addition, Exolon's Canadian subsidiary,
which was a brown fused alumina oxide fusion plant,
was carrying substantial cash and corporate inventory
was extremely healthy. Working capital in 2000 was
the fifth highest in history, while current
liabilities were the lowest in history. Due to the
cyclical nature of the synthetic abrasive business,
Exolon's business was suffering during a poor economic
cclimate. However, as with the recession of the early
and mid 1980s and, again, during the early 1990s,
Exolon would have rebounded from this dilemma.

During 1985 and 1986, Exolon lost
substantial sums of money and shareholder equity was
one-third of shareholder equity in 2000. The
debt-to-equity ratio of the mid 1980s was abysmal
compared to 2000, yet the Exolon organization near
real financial ruin in 1985 and 1986, rebounded after
two poor economic cycles to proudly record the highest

One can glean from this information that the
implication of Chinese refined brown alumina oxide
ruining the health of Exolon is simply not true. I
would like to emphasize that at no time during my
nearly seven-year tenure as Vice President of Sales
and Marketing at Exolon do I recall competing directly
against Chinese refined brown alumina oxide in the
abrasives business. Our primary targets for market
share growth remained Washington Mills and Treibacher.

As you know, both of these companies along
with Exolon had reduced prices at large refined brown
alumina oxide consumers by reducing cost of goods
sold, using Defense Logistics Agency material for many
years.

This particular economic cycle for the
synthetic abrasives business has bottomed out and
conditions have been slowly improving for the last 12
months. Antidumping duties on refined brown alumina
oxide will only slow this recovery.

Thank you very much.

CHAIRMAN OKUN: Thank you.

MR. O'BRIEN: Our next speaker is Mr. Liu.

MR. JIANWEI: Good afternoon. My name is
Liu Jianwei and I am the head of Legal Services
Department of China Chamber of Commerce of Metals,
Minerals and Chemicals, Importers & Exporters. The
CCCMC is a non-government organization under the
current market economy system in China. It acts as a
trade coordinator, providing services to its members and services as a bridge between the government and its members.

CCCMC has over 2600 members. Of this number, approximately 200 are producers of brown fused alumina. Of this number, 150 are also exporters. Although there are one or two state-owned companies, all of the producers and exporters set their prices according to the market competition.

Although there has been an increase in the production of BFA, it is because demand within China and other markets has increased. This increased production is not a threat to the United States production.

The primary reason that the production has increased is due to the significant growth of the Chinese steel industry. In year 2001, between 130 and 150 million metric tons of steel were produced. In year 2002, this number grew to 178 million metric tons. And in year 2003, production is expected to be more than 200 million metric tons.

In response to this increase production of steel, production of refractory grade of BFA and other furnace materials has increased.

Much of this steel is cold rolled steel for

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use in China's booming domestic household appliance markets such as refrigerators and washing machines. The largest Chinese steel mill, Ball Steel, recently negotiated a joint venture agreement with a Japanese company that is expected to double the output of Ball Steel, which is currently 60 percent of the Chinese production.

This will require even more production of refined BFA. In addition, the year 2008 Olympic games will be held in Beijing. This even has resulted in many new construction contracts, not only for Olympic venues, but for other infrastructure steel construction requirements such as buildings and hotels.

The production of abrasive grade BFA has also increased because of increased domestic consumption. China produces medium and low grade floor and granite for building construction. These products have kept up with the demand for new building in China. Abrasive grade BFA is required in this production. Increased production of the building materials has led to an increased domestic demand for abrasive grade BFA. In addition, exports to third countries of these building materials have also increased.
Finally, the use of abrasive grade BFA for finishing glass products has also increased. China exports of crude and refined BFA to other countries excluding the United States has increased from 180,000 metric tons in year 2002 to 270,000 metric tons for the first seven months of this year. It should be noted that Chinese export figures combine crude and refined BFA as to the export statistics of most countries other than the U.S.

With regard to the pricing of BFA from China, this has been driven in large part by the -- NATO, during winter because they are such a large volume producer and exporter.

I thank you very much for giving me the opportunity to appear before the commission today.

CHAIRMAN OKUN: Thank you.

MR. O'BRIEN: Our final speaker will be our economic consultant, Mr. Daniel Klett.

Before Mr. Klett speaks, I just want to make sure one thing is clear on the record because several of the witnesses referred to either BFA or brown fused alumina. That is the commercial name that is familiar to many of our witnesses for the product that's at issue, brown aluminum oxide, so I just want the transcript to be clear on that point.
MR. KLETT: Good afternoon, Chairman Okun and members of the commission. My name is Daniel Klett. I'm an economist with Capital Trade, Inc.

There are five points I want to make this afternoon:

First, there is no U.S. capacity to produce fused aluminum oxide ingots and the price of the fused aluminum oxide sales in the U.S. is significantly affected by the cost of the raw material input, crushed fused aluminum oxide imports, which represents a large share of the total U.S. production costs.

The commission has actual data to corroborate this. For APO reasons, I cannot go into detail, but Exhibit 18 of our pre-hearing brief shows that the pricing in the U.S. market is affected by the cost of crushed aluminum oxide imports, whether in scope or out of scope product.

Second, the commission noted in its preliminary phase investigation opinion the significant variance in financial conditions among the U.S. producers. This continues to be an important factor in this investigation and the commission cannot properly evaluate industry condition or causation without a full understanding of why the disparity exists.
1. Even in the aggregate, however, any
deterioration in volume-related production and
shipment indicia from 2000 to 2002 was affected
largely by significant demand downturn for downstream
refractory and abrasive products that consume RBAO.
U.S. producers' financial condition remained
relatively stable between 2000 and 2002, even with
certain technical accounting methodology changes by
Treibacher that resulted in an increase in costs in
2002.

The deterioration in financial conditions in
2003 cannot have been the result of subject imports
which declined in volume and market share. Neither
was there an increase in subject import inventories in
the first half of 2003 that might indicate a
correlation between subject import and the
deterioration in the industry financial condition in
interim 2003. In fact, importers' inventories
remained at relatively constant levels over the POI
and in the first half of 2003.

Regarding volume, subject import market
share did increase over the POI, but petitioners'
brief ignores the fact that the increases were at the
expense of non-subject imports. The focus by
petitioner on increases in subject import purchases

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from the purchasers' questionnaire should be given late. The shipment data from the importers' questionnaires is a more comprehensive and accurate measure of the subject import volume and trends.

The commission staff did confirm certain lost sale allegations, but these volume losses in isolation do not establish material adverse volume effects. In a competitive market, suppliers are always losing and winning sales to individual customers and it's the aggregate market shares that should be evaluated with respect to volume effects and given more weight.

Regarding price, nominal prices for the four RBO products did decrease and there was apparent underselling. However, these facts alone do not establish the existence of U.S. producers' RBO prices being depressed or suppressed by reason of subject imports.

Regarding the representativeness of the pricing product specifications, these price trends differ from the average unit value trends for the remaining products. It's not a question of coverage, it's a question of trend.

The final point I want to make relates to threat. The inventory overhang cited in petitioners'
brief as a threat factor is just not there. Foreign producers and importers must keep some inventory on hand for operational and customer requirement reasons. Petitioner assumes that any inventory will be completely liquidated and sent to the United States, which is a commercially unrealistic assumption.

Instead, what is relevant is whether ending inventory levels in June 2003 are above historical levels. Data in your staff report show that they are not, either for importers or Chinese producers. Also, a portion of importers' inventory is for internal consumption, not re-sale into the U.S. market.

Thank you.

CHAIRMAN OKUN: Thank you.

MR. O'BRIEN: Madam Chairman, that completes our witness statements. We do have the samples that were referred to by Mr. Gibson of the product that overlaps the current scope definition and the contamination that was in the shipment which Allied received from a domestic company. It's in a sealed bag, if the commission would like to take a look at it.

CHAIRMAN OKUN: If you would give those to the secretary to bring up to the commission to examine.
Before we begin our questioning this afternoon, I want to take this opportunity to thank all the witnesses for being here. We very much appreciate your participation, particularly those in business who take time away from your day-to-day operations to be here and also, Mr. Liu, to thank you for traveling from overseas to be a participant in today's proceedings. We very much appreciate your participation.

I will remind witnesses as well just if you please state your name when you answer questions to help both us and the reporter.

We will begin our questions this afternoon with Commissioner Lane.

COMMISSIONER LANE: Thank you.

I just have one question and it's a follow-up to Commissioner Koplan's question to petitioners regarding the expiration of the E.U. dumping order.

Please address Treibacher's explanation as stated on pages 74 and 75 of the pre-hearing staff report that the order was simply ineffective because of weak enforcement and Treibacher did not wish to support an order that hurt honest customers.

MR. GIBSON: From everything I've heard,
that's entirely accurate, there was a lot of cheating going on into the E.U. by third parties. There were some legitimate ways that they were getting around the duty by blending other minerals and sending in a blended product which came in under a different code. Sometimes they would skip the blending process and layer the material, which was strictly illegal, and some of them got caught.

As I think was said earlier this morning, there was brown fused alumina going into the E.U. countries from countries that had no brown fused alumina capacity such as Poland, Turkey. The South African situation was a bit different in that there was a processing facility there that claimed that they had permission to process crude and to export it to Europe with permission of the Europe Union, but there was a lot of circumvention and it was not very strictly enforced. That's correct.

MR. O'BRIEN: If I might add, Commissioner, the effectiveness or lack thereof of a dumping order is not unique to this product nor unique to the E.U. There are other avenues available to complainants besides simply terminating the dumping order. Indeed, it's a very unusual reaction, to let the order be revoked and terminated simply because it is being
circumvented or manipulated.

I would also point out there is a cause and effect here. The order was revoked. Plibrico started advertising in a publication that is overwhelmingly for the U.S. market and in a very, very minor way for the world market, and now shipments start to appear.

Now, I believe that there's an irresistible conclusion that that was part of the Imerys thinking in allowing the E.U. dumping order to be revoked.

COMMISSIONER LANE: Okay. Thank you.

CHAIRMAN OKUN: Thank you. Well, let's see. I'm going to have a few questions on like product, but let me --

I think, Mr. O'Brien, let me start with you on one thing that has just struck me kind of throughout both reading your briefs and then just the testimony today and I was reminded of it when Mr. Gates was talking about the loss of business to U.S. Filter that was gained by Great Lakes and it just brought to my mind the question I have for you, which is if the commission reached a determination regarding Great Lakes where it decided it was not a domestic producer and I think secondly, but slightly different, if it were a domestic producer but excluded, do you still have your arguments on causation?
Because my sense was reading it that you almost in all cases argued it with market share or anything, this whole expanded definition of domestic industry.

MR. O'BRIEN: Well, the answer is yes, we still have our arguments and the premise of your question is that Great Lakes is not a U.S. producer or is excluded from part of the domestic industry, so both of those premises naturally we disagree with. But accepting that premise, I believe you need to consider it a very substantial condition of competition and you need to look at all of the producers because Great Lakes has certainly -- has facts unique to Great Lakes but there are many, many facts in common.

I think you also heard Mr. Gates speak about the Magneco situation and C.E. Minerals. Magneco is the biggest refractory supplier in the United States. That business has been and continues to be a C.E. Minerals account. C.E. Minerals, of course, has undergone a transformation during the period of investigation.

So accepting the premise of your question, I think you still then say that there is a very significant condition of competition going on here.
where there is at least a very blurred line between what's being imported, what's being produced domestically and who is losing sales to what.

I believe Mr. Redshaw said that Exolon, Washington Mills and Great Lakes at various times -- or Treibacher - were all bringing in Chinese product, taking DLA product and making product in the U.S. It is one of the conditions of competition, regardless of how you come out on the domestic industry issue.

CHAIRMAN OKUN: Okay. Well, for purposes of post-hearing when you're making these arguments, if you can be sure and point out where for sake of argument if we make a decision different than where you would have us come down with respect to Great Lakes what your argument would be and what data that would be based on and then to address the issue which I posed to petitioners this morning which is when you look at our entire record and where a company shows up or doesn't, what is the change with a company in or out, because I think that is relevant to our analysis.

Then let me go back to like product for a moment and I will go to the industry witnesses, but, Mr. O'Brien, let me just start with you. In your statement at the beginning of your panel here, you talked a little bit about the problems as you see it
with the petitioners' scope. I didn't hear you
directly address the points that Mr. Schagrin had made
this morning when responding to some of my colleagues'
questions about the continuum -- let's talk about the
continuum for a minute, I think those products that
you've described as kind of crossing along this
continuum and Mr. Schagrin's response being that it's
very tiny, he gave some figures which he said he would
substantiate in his brief.

I wonder if you would respond first on that
point.

Mr. O'Brien: Well, certainly. You have --
just on that point, you have a market brochure, you
have a marketing brochure by Washington Mills that
defines refined product as larger pieces than the
current scope definition. You have advertisements by
Treibacher which refers to refined pieces in sizes
larger than the current scope diffusion. You have the
commission's precedent of looking at a domestic like
product along a continuum of processing operations
unless there's a way to draw a bright line.

There isn't any way to draw a bright line
where the petitioners have drawn it. Those additional
products, those additional sizes, are legitimately
refined product. They admittedly, I believe, are
refined product. Their operations should be in the domestic industry.

Now, the key question is what does that do to the scope of the case, which at all times was a contrived scope to begin with? Once you change that scope even a little bit, then the data in front of the commission changes dramatically in terms of what's imported versus what is U.S. produced.

CHAIRMAN OKUN: Okay. Just on that point, that's where I'm trying to understand where the distinctions are.

To the extent Mr. Schagrin was arguing not dramatic changes, but teeny changes, are we talking about two different things here? In other words, he was saying the amount that would be in this, I think it would be the continuum, I thought that was the argument he was addressing, was very small, that was the .01 or .03 percent, I can't remember the figures right now. Is that something different than what you're describing and what you're describing as dramatic?

MR. O'BRIEN: Yes. They are two different concepts.

CHAIRMAN OKUN: Okay. So help me out there on that.
MR. O'BRIEN: Excuse me?

CHAIRMAN OKUN: So help me out.

MR. O'BRIEN: So what he's saying is that Washington Mills only produces a little bit of larger sized product, so it's a non-issue whether we include it or whether we don't. No, it's not.

The reason is because in the preliminary determination, the commission defined the domestic like product exactly contemporaneously with the scope of the case.

Now, you've got a vast amount of volume coming in, it's very important data, that depends on who you consider to be a domestic producer and what you consider them to be producing. And even changing the domestic like product a little bit brings in that additional data.

CHAIRMAN OKUN: Brings in the whole -- the crude? The entire crude?

MR. O'BRIEN: No. No. We're speaking about the one particular company that we have in mind where there's a dispute or an argument over whether or not they should be a U.S. producer or not.

CHAIRMAN OKUN: Okay. Well, obviously, we'll see the data the petitioners present and maybe I'll go back before I ask another question and just
make sure that I understand. But just in terms of --  
Let me ask the second part.  

MR. O'BRIEN: Perhaps I just maybe try and  
clarify it. In our view, all of the producers bring  
in a lot of crude product. They process it and they  
make a lot of refined product. All of them. And what  
has happened is this artificial definition has been  
imposed at three-eighths of an inch, to try and say,  
well, no, all of the producers are not bringing in  
crude; some of them are, but some of them aren't. And  
that's the dispute.  

Our position again is they're all bringing  
in crude product because whether three-eighths of an  
inch or smaller or not, if it's not sized, if it's a  
lump like the crude that was passed around before,  
then it's not usable by an end customer. So it's not  
refined product. It's a commercially meaningless  
distinction.  

So our position is all the producers are  
bringing in crude in big volumes and all of them are  
making refined in big volumes.  

CHAIRMAN OKUN: Okay. But our domestic like  
product could not include what's not produced in the  
United States, so we have to make a distinction, which  
is different than I think -- I thought what I heard
Mr. Gibson talking about was getting back to this kind of -- the most commercially meaningful in his view being an end use distinction, which I completely understand from a businessperson's perspective, but not one that Commerce --

I mean, as Mr. Schagrin, explained, it's not something that we see happening where we can make an end use, it's driven by the end use, that we can say that's how we're going to get to our like product.

So I'm struggling with that. Even if we have this issue of the size and these two samples -- now, maybe you can help me out on them. I mean, on the one it says crude and the one that says refined, which to my completely untrained eye look a lot alike, I will admit that.

Does this crude one -- is anything shaken out of it? In other words, has this been run through any grade, anything has happened to this one versus this one?

If you could use your microphone, please.

MR. GIBSON: Those were prepared just to show you that there's no difference. We weighed those carefully and we made sure that they showed that there could be material that's exactly alike in our view, but that could come in as crude or refined.
In practice, you could receive either one commercially and they would be made exactly the same way, just in one case, maybe a few more grains got crushed, in other case, a few less grains got crushed. That's the only difference.

CHAIRMAN OKUN: Okay. So in the container that these come in, this one would look the same there as it does here. In other words, nothing is done to it at all.

MR. GIBSON: We would pull the sample and do a screen analysis, see how much we got on three-eighths of an inch. If it happened to 45 percent, then we've got a refined product. If it happened to be 51 percent, we've got a crude product.

CHAIRMAN OKUN: The percent. Yes. Okay.

MR. GIBSON: Yes.

CHAIRMAN OKUN: Well, I see my red light has come on. I will turn to Vice Chairman Hillman. I may come back to this, depending on what other answers I hear.

COMMISSIONER HILLMAN: Thank you. I, too, would join the chairman in thanking you very much for all of your testimony and for all the information that you have provided us.

I guess I do want to stay with this because...
I want to make sure I'm understanding it because I guess I share some of the chairman's concerns about how much difference it would make. Again, we're not talking about changing the scope, so what comes in under the scope of any potential order would not be changed by what we decide on the like product. So I'm trying to understand what you think the import is of this notion of expanding the definition of the like product.

Again, at least I think I heard, you seem to be saying, Mr. O'Brien, that there is this distinction between Mr. Schagrin's arguments about what the domestic industry does and yours and yet I have to say I heard them saying this morning -- they agree, nobody in the United States produces the crude product, okay? So there is no domestic production of the crude product and therefore it's not clear to me what you get by trying to put the crude product into a definition of the domestic like product, since there is no domestic production of crude product. And that everybody in the domestic industry imports the crude product and refines to produce the refined product, so I'm still struggling with what difference does it make, if we were to some degree change this notion of the like product.
MR. O'BRIEN: It affects the data that the Commission has received regarding the imports of refined product.

Our view is that that is wrong. The Commission has received it but that is not import of refined product in the case of at least one significant company. It is imports of crude product. It happens to meet the scope definition, we can see that, but it's imports of crude product. It is not refined product. That's a big difference.

All of that product is further processed. It's crushed, sized to end user specifications and delivered to end user specifications. Those are big numbers. They affect things. They matter.

MR. KLETT: Commissioner Hillman? This is Dan Klett.

I think that if you evaluate like product in the domestic industry based on the standard that it's produced so that the end user can use it, which is I think commercially what at least our people tell us is how they look at refined versus crude, then I think it has implications for the weight and how you evaluate a particular U.S. producer in terms of their inclusion or exclusion from the domestic industry and I think in that respect it's significant, aside from the numbers...
themselves.

MS. MURRAY: If I could, Commissioner, this is Lisa Murray speaking.

We are not asking that further product be added to the like product. WE're not asking to have crude added to the like product. We're asking to have product removed that should not be part of the like product because it is in fact crude which is not produced in the United States.

VICE CHAIRMAN HILLMAN: Okay.

Again, I just want to follow up on Chairman Okun's questions on this issue because obviously this crude looks a little bit if not very different from the larger bag of crude that the Petitioner showed to us. I just want to make sure I understand it.

Your view is this is how it comes. In essence, exactly as you get it when you bring it in from wherever you bring it in from. This is how it looks. You didn't do anything to it to make it look closer to refined. This is literally how it comes in bulk form, ready to be processed with no processing of any kind?

MR. GIBSON: That material would be added to our formula just as it is. It would not be further processed, no.
VICE CHAIRMAN HILLMAN: Then help me understand why it is that this would look so different from the larger bag that the Petitioners presented.

MR. GIBSON: That's not crude. That's refined. But under their definition it's crude, but it's really refined. It's ready for use.

VICE CHAIRMAN HILLMAN: Mr. Gibson, if I brought in a large, again not pre-fac, not anything, what have you done to the product to get it to this stage?

MR. GIBSON: We didn't do anything. One of the Petitioners took that product and made this product out of it.

VICE CHAIRMAN HILLMAN: What does one do to transform that product into this product?

MR. GIBSON: First they would screen out the material that is bigger than that so they don't have to crush any more than they have to. They put that over a series of screens so that the plus, I think that's one and a half by a quarter, so the plus one-half gets screened off and goes back, maybe to a crusher. The minus one-quarter goes into making other products. What's left is a half by a quarter, which is what they ship to us.

VICE CHAIRMAN HILLMAN: Okay. Other than
for purposes of this investigation would anyone actually do that? What is the commercial significance of doing what you've just described?

MR. GIBSON: That's the whole business of the processor, of the Petitioners.

VICE CHAIRMAN HILLMAN: I understand, but you would presumably take it on down to a final refined product?

MR. GIBSON: No, that is a refined product. That goes into a blend that gets put into the walls of -- Actually this particular product goes into a blast furnace trough.

VICE CHAIRMAN HILLMAN: Either one of these bags would be considered finished end use product?

MR. GIBSON: One ingredient in our product which is a refractory product which also in this case contains a high temperature cement, gets poured like concrete into a blast furnace trough. That's an ingredient that gives that material heat resistance and corrosion resistance.

VICE CHAIRMAN HILLMAN: But you're saying these two, either one, would be sold as a finished, completed, end use product. No further crushing, refining, scaling, nothing else done. This is an end use, finished product ready for the commercial market.
MR. GIBSON: It's ready for our use. Yes, ma'am.

VICE CHAIRMAN HILLMAN: And when you say ready for your use, help me understand the size of the overall market that uses a product of this kind of size and again, I was hearing a lot this morning that the important thing here was the consistency of the particle size.

MR. GIBSON: Yes.

VICE CHAIRMAN HILLMAN: Again, to the untrained eye there's a fairly significant difference in particle sizes among these particles. They're not close to being the same size. There are big chunks and little chunks in both of these packages.

MR. GIBSON: But what you will find is --

VICE CHAIRMAN HILLMAN: What portion would you say of the total market for this, again whether we're saying RBAO or BFA, however you describe it, what portion of the total market would consume products that again are of this kind of large and mixed product size?

MR. GIBSON: I don't know the total market but for Allied it's between three and five percent of our consumption of RBAO.

VICE CHAIRMAN HILLMAN: Okay.
If I can maybe come back to make sure I understand it because you all have used this term BFA. I want to make sure I do understand. Is it exactly the same as what we would have been describing as refined brown aluminum oxide, or does the term BFA differ in any way from refined brown aluminum oxide.

MR. GIBSON: BFA would be the same as BAO, brown aluminum oxide. It can be refined or it can be crude. You can have crude BFA and refined BFA. You just substitute BFA for BAO, you have it.

VICE CHAIRMAN HILLMAN: So throughout all of your testimony you would have perhaps been mixing, I mean each of your witness' testimony, you would have been mixing what in the scope or the Commission's language would have been both refined and crude into that term BFA, correct?

MR. GIBSON: Yes, but when the distributors are speaking they are talking about product for the end user. That's refined product. Saint-Gobain sells refined product. So when Saint-Gobain refers to BFA it's refined product. It's for use by the end user. That is the distinction.

VICE CHAIRMAN HILLMAN: I understand that you all would like a use definition. It's not clear - - We have a scope and a customs system that isn't
going to do that so I'm trying to figure out how to take your testimony and match it with both the data that we're looking at and the way in which the Commission by the way it works is going to have to look at these products.

But what you're saying is when you use the term BFA it is in your view a product like this that has been refined in the sense of screened to some degree and available for end use? Or it is all crude? Would all crude product be included in your definition of BFA?

MR. GIBSON: I think --

MS. LOEWEN: Kelleen Loewen with Saint-Gobain.

I think up until about six to nine months ago everyone referred to brown aluminum oxide as BFA. No one talked about RBAO. The word refined was never used. It was always finished or crude. That's why people are kind of getting confused because up until this case there was crude and refined.

What we're talking about in each of our testimonies today, if we say BAO normally we'll put the R in front of it to say refined, to be in a finished state. But these are new terms to us also because this 3/8ths of an inch definition is new to

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VICE CHAIRMAN HILLMAN: But when you say BFA, in your view that encompasses only finished product? Or does it also encompass crude product?

MS. LOEWEN: It can encompass crude also. So we would say BFA crude if it was going to be crude, and we would say RBAO if it was to be the refined version of it.

VICE CHAIRMAN HILLMAN: All right. I appreciate that.

The red light is on. Thank you, Madame Chairman.

CHAIRMAN OKUN: Commissioner Miller?

COMMISSIONER MILLER: Thank you, Madame Chairman, and let me too join in thanking all of you for being here.

I think I will ask another question or two about these samples at some risk of continuing down a road that I guess I question, Mr. O'Brien. Even based on what Mr. Gibson just said, you just said that this kind of product would represent three to five percent of Allied's consumption of the finished, refined product.

Can you give me a sense, a bigger picture, of how much you would think it would -- First of all,
I assume only refractories are going to be using something this large. So Ms. Loewen, you probably don't deal with this kind of product very much.

MS. LOEWEN: No, that's too course for me because we're making grinding wheels and sandpaper. That would be considered crude for me.

COMMISSIONER MILLER: Exactly.

Mr. Gibson, can you give me an idea in the overall scheme of the refractory industry what percent might be accounted for by those who would use that large of a sample?

MR. GIBSON: Just based upon the end use of that type of product, the only thing I can say, the overall market has to be lower than Allied's percentages. Because --

COMMISSIONER MILLER: Because that's a big product, that's something you're pretty big in.

MR. GIBSON: Right, although we're --

COMMISSIONER MILLER: What is this for again and why is it that the refractory that uses this kind of product does so as opposed to something that uses the one to three millimeter which we're not arguing about?

MR. GIBSON: Mr. Doza is better equipped to answer that.
COMMISSIONER MILLER: Mr. Doza?

MR. DOZA: Doug Doza.

With reference to product design because that's really what this is about, Allied manufactures monolithic refractories. We use these types of sizes. Some of our products contain as large as one and one-quarter inch BFA, and when we talk about BFA as a refractory person, BFA is what is produced as an ingot. It is what goes through preliminary crushing to knock it down to one inch and down, and then it is what is later refined. That entire scope is BFA.

So when the question is asked how much of this is used in the end application, this is used primarily in highly abrasive applications. The large grains, much like in sandpaper where you're trying to make a nice finish and rub something off, in the large grain it withstands the mechanical impact of molten metal stream, mechanical impact of chipping hammers, things along these lines, in molten metal contact applications.

So we would use that in niche products which is a large part of our business to deal with the mechanical abrasion of that particular application.

When we talk about the product design itself, a formulation could contain as much as 20
percent of that particular size.

COMMISSIONER MILLER: Okay.

MR. DOZA: To impart the properties we need in our customers' furnaces.

COMMISSIONER MILLER: Okay. And at that size level is uniformity less of an issue in the product than it may be in the sandpaper application that Ms. Loewen is selling into? Earlier today the discussion was very much about the refined or finished product uniformity, consistency of particle size being important, whereas in the crude it isn't. It's everything from the dust to whatever size ingot.

In the large, when you're using something in an application that uses this, is uniformity just less of an issue?

MR. DOZA: No, the uniformity really isn't less of an issue. That is actually one of our specified sizes. That was produced for us in accordance to our specifications by one of the gentlemen whose companies talked this morning.

With that being said, the specification is for less than a half inch and greater than a quarter inch, and that's about six millimeters in difference. So we consider that fairly tight in our applications.

We would then blend that with something in a
similar tight grain size distribution. We would possibly use six or eight different crisp cuts of brown fused alumina to blend together to get a homogenous distribution which is what our product requires in its end application.

COMMISSIONER MILLER: Okay, that's helpful. Thank you. I appreciate that.

Mr. Doza, I'm going to stay with you a moment longer. Your testimony emphasized in your affidavit, I believe, at Exhibit 8 of the brief, of your pre-hearing brief, emphasized the quality issue so much and I heard that so much from Mr. Gibson's testimony. Yet maybe in some ways I want to ask what is it about Allied?

Even you from the public version of our report can see that purchasers basically responded that U.S. and Chinese product are quite comparable in terms of quality and in fact, this may be, when I look at the one indicator there that talks about how they compare U.S. and Chinese product in terms of quality exceeding industry standards, there's actually only one purchaser who said that the Chinese product exceeded industry standards.

I guess it's you, given what I heard this morning, and I don't know that. I don't know that
from anything I've seen because I haven't read all the
questionnaires from the purchasers. I'm looking at
the staff tables at the moment.

In other words, your testimony frankly is
quite inconsistent with what we got from most
purchasers. Now is there something about Allied in
particular that would mean that you would give us a
response that I otherwise see as being quite
inconsistent with purchasers generally?

MR. DOZA: The focus on quality from Allied,
I would not say we are atypical in the marketplace
from a quality push perspective, but the niche
applications and overall the demanding nature of a
refractory application means consistency, traceability
and lack of contamination is crucial.

Our process in the refractory industry
process is such that if contamination gets into it it
may not be caught before it gets into a furnace
lining. Unlike some of the abrasive applications
where further handling and visual inspection.

For example that bolt that I talked about
earlier, that would never make it to a piece of
sandpaper but it could make it into a refractory wall
because of the scale of the installation.

So when I try to answer is Allied different,
I don't think Allied is different in that our application in the refractory industry is such that we have to focus very heavily on quality because of the potential catastrophic implications of quality problems.

COMMISSIONER MILLER: I think our record does support that quality is important. It's on the issue of whether the U.S. and the Chinese product differ in terms of their quality that I think you have an apparently different view than most of our purchasers.

Mr. O'Brien, you can tell me I'm wrong in reading what I have before us at this point, but that's --

MR. O'BRIEN: I would say this, Commissioner Miller. The responses that came in focused on a bundle of factors that go into the decision to obtain product from a particular supplier. Price undeniably is one factor. Quality I believe undeniably is one factor. Availability.

Ms. Loewen referred to customer loyalty, meeting specific customer specifications.

Our point being that when you look at the causation for people moving around the industry it is not by reason of less than fair value pricing that
sourcing decisions are made. It's a bundle of factors that go into that decision.

What Mr. Doza is pointing out is that in Allied's case quality may be to an extent more important than other factors, but I believe it is a consistent story with the bundle of factors that's before the Commission.

MS. MURRAY: Also Commissioner, it's Lisa Murray speaking.

COMMISSIONER MILLER: All right.

MS. MURRAY: There was testimony this morning that the product itself was fairly homogeneous, and I think that perhaps that might have been what purchasers were thinking of to the extent they said there were not quality differences. In that if you took a couple of those lumps and you took one from one manufacturer and one from the other, yes, they would seem to be the same. However, if the question is how many pieces of string and nuts and bolts and other contaminants appear, I believe that's what Mr. Doza is referring to when he refers to quality. Not contamination in the nugget itself, but the contamination in the packing and in what's actually received.

COMMISSIONER MILLER: Okay. I hear what
you're saying, but I still look at a table that says, for example on the factor of whether quality exceeds industry standards, that the U.S. is superior in the view of six purchasers; the U.S. and China are comparable in the view of nine purchasers; and there is one purchaser who thinks China is superior. That's the indicator that strikes me as being quite inconsistent with the testimony I'm hearing from Allied.

I know you all want to answer and I know the red light is on so my time has run out. But I want to be fair and give you a chance to respond.

CHAIRMAN OKUN: Why don't we come back, to the extent that you want to address -- I see two of you reaching for it. We'll come back and make sure you have a chance to respond, Mr. Gibson.

I'll turn to Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you, Madame Chairman.

Let me start with the question that Commissioner Lane asked on the first round with regard to the EU dumping order.

Mr. O'Brien, I know you weren't present at the staff conference but did you obtain a transcript of that conference?
MR. O'BRIEN: Yes, sir.

COMMISSIONER KOPLAN: Did you review Mr. Durstberger's discussion of that in some detail at pages 32 to 34 of the staff conference?

MR. O'BRIEN: I did read the staff report excerpt. I can't honestly say I recall what else was said.

COMMISSIONER KOPLAN: You didn't read the transcript of the conference itself?

MR. O'BRIEN: Not lately, no.

COMMISSIONER KOPLAN: He covers this issue in some detail. He covered it at that time. I noted this morning that you all weren't present for that conference, but he went through it again this afternoon. Then Commissioner Lane inquired as a follow-up of you all, and I thought Mr. Gibson gave a very candid response basically saying that the problems outlined by Mr. Durstberger were real problems. The thing was not being enforced, it was going nowhere from their standpoint. And to expend time and money on something that had no effect, your client agreed on that point.

Then you jump back in and your response is that there are other avenues available and you're sticking to your original position.
When I look at what you have in your brief on this issue, all you say is that why would Treibacher allow the EU to terminate as though they never gave a reason. One answer is that the Imerys Group makes production and sales decisions based on global considerations.

There is no acknowledgement that there's any evidence in the record explaining it. I'm just saying that I'm a bit troubled by that. You've never really dealt with the response.

I would ask you, wouldn't you at least acknowledge that his response is one answer to that question?

MR. O'BRIEN: Certainly.

COMMISSIONER KOPLAN: Okay, thank you. Then that lays that to rest for me.

Now, Ms. Loewen, I might not have heard you correctly, but did you say that prior to this case refined was a term that was not used in the industry from your standpoint?

MS. LOEWEN: I would say at Saint-Gobain and for most of our customers, refined was not a word that was used. It was either crude or finished.

COMMISSIONER KOPLAN: Crude or finished?

MS. LOEWEN: Crude or finished.
COMMISSIONER KOPLAN: Okay, let me just come back again, if I could, and I don't know that you've seen this as a document, but I got into a discussion this morning about a footnote in your brief on page 11. That was Footnote 11. It was not referred to as refined or crude in that footnote. You used the other term.

In fact as I said, our preliminary determination was referring to crude in the determination as a condition of competition and I basically quoted from the opinion.

But then when I look at your own exhibit which is a public document and the sourced is the U.S. Geological Survey, "Abrasive Manufactured Annual and Quarterly Report" and the NDS disposals of the products we're talking about, the heading on your exhibit is NDS disposals of crude and refined aluminum oxide and you've got two categories in here, and this is something you put into evidence.

The first category is crude aluminum oxide which is what we were talking about in our preliminary. And that shows no inventories, no disposals after the year 2000.

The second category is refined aluminum oxide. That's your exhibit. There you are showing
some degree of inventories.

So it's not the Petitioners that injected that in, this is your own exhibit. I'm a little confused by that.

MR. KLETT: Commissioner Koplan, this is Dan Klett. I prepared that exhibit.

We in the brief have used the term refined and crude because that was the terminology used in the staff report to distinguish between the two types.

COMMISSIONER KOPLAN: But in this exhibit, the Geological Survey, weren't they using those terms or did you put those headings on?

MR. KLETT: Actually the USGS uses the term abrasive grain and I think their terminology when they say grain, that is the refined. If you go back to the USGS reports, their terminology is aluminum oxide abrasive grain and crude fused aluminum oxide. So that's the terminology used in the USGS.

COMMISSIONER KOPLAN: So you created the terminology in the exhibit?

MR. KLETT: I didn't create the term refined. I used the term refined because that was the nomenclature that was being used.

I think what our industry witnesses are saying is that just expressing their experience in the
MR. O'BRIEN: Commissioner Koplan?

COMMISSIONER KOPLAN: Yes, Mr. O'Brien.

MR. O'BRIEN: At the outset I will say that we do regret the wording in Footnote 11 but we do have some additional comments on that that you may find interesting, if we could.

COMMISSIONER KOPLAN: I would find it interesting, yeah. Do you want to make them now?

MR. O'BRIEN: Yes, please.

MS. MURRAY: Commissioner Koplan, this is Lisa Murray speaking.

As the one who drafted the apparently unfortunate footnote, both the footnote and the exhibit are correct. The exhibit focuses on the inventories of refined, however it is also true that there are sales of crude out of the DLA that have been sold but have not yet been shipped so they're not available in inventory because they've been sold. But the most recently quarterly report from the DLA reports specific quantities of crude that have not yet been shipped and we can provide that document with our post-hearing submission.

COMMISSIONER KOPLAN: I'd appreciate that.

You can understand the confusion caused when you cite
to the Commission's preliminary determination but
don't indicate that the condition of competition we
were talking about centered on crude because that
doesn't appear on that page of your brief.

MS. MURRAY: I apologize for the unfortunate
wording.

COMMISSIONER KOPLAN: No problem. I
appreciate your clarifying that.

You suggest on page 35 of your brief when
examining import data that the Commission could
subtract subject imports that independent importers
consume internally since these imports do not enter
the general U.S. market for RBAO. Is there a legal
basis that you can cite to me for discounting imports
that are internally consumed by the importer?

MS. MURRAY: The Commission of course hears
this argument in several cases and we are not arguing
so much that you need to do this as a formal matter as
that we suggest that you consider as one of many
factors that you consider what exactly is happening
with these imports including that.

COMMISSIONER KOPLAN: I appreciate that.

Let me ask you this. You've used the term
contrived scope in your brief and in your direct
presentation. As you know, it's Commerce that makes
the determination as to what the scope is in a case of
this nature.

Did you pursue that avenue at Commerce
to vigorously? And what was the result?

MR. O'BRIEN: We did not challenge the
scope. We did make a proposed definition to change
the scope back at the beginning or when the companies
were just getting into the case. That was not
accepted and we did not pursue it for the rest of the
cases.

COMMISSIONER KOPLAN: You do know that the
Commission is bound to accept the definition of scope
that's handed to us by Commerce.

MR. O'BRIEN: I do, Commissioner Koplan. We
are not challenging that.

COMMISSIONER KOPLAN: Okay. Thank you.
I see my yellow light's come on. I'll save
the rest for the next round.

Thank you very much.

CHAIRMAN OKUN: Commissioner Lane?

COMMISSIONER LANE: No questions.

CHAIRMAN OKUN: Mr. Liu, let me ask you a
couple of questions with respect to the Chinese
industry, and again, I appreciate you being here to
tell us a little bit more about China's production

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capacity, et cetera, from the perspective of your association. I was interested in what you were saying about the Chinese market, the growth in the Chinese home market and where your other exports were going.

I just wanted to go back to make sure I understood one point of what you were saying so I'm looking now at our staff report which is a public document, Table 7-1, which has Chinese production capacity, production shipments and inventories. In terms of home markets, I can track with you the home market shipments which I think are consistent with the testimony I heard you say which is they have been increasing and projected to increase going out in the '04 which I think I heard you say is related to a number of things going on in China. Is that accurate?

MR. LIU: As I mentioned in the beginning of my presentation, I myself come from the Legal Service Department and I have my colleagues with me and for the market situation and some presence on the productory itself I would like to ask my colleague. Is that okay?

CHAIRMAN OKUN: Let me just check with the Secretary in terms of whether everyone has been sworn in. I saw someone walk in late and I just want to make sure he's been sworn in before --
MS. ABBOTT: The two additional witnesses that walked in have been sworn.

CHAIRMAN OKUN: Thank you. Then, Mr. Liu, you can ask your colleagues to respond.

MR. LIU: Thank you very much.

(Pause)

MR. LIU: So far my colleague understood that the material we have presented to the lawyer is in line with what I said just now.

CHAIRMAN OKUN: So the information in the table in the staff report -- You're saying the information that is in the staff report is consistent with what your testimony is?

MR. LIU: Yes.

CHAIRMAN OKUN: With respect to exports to both the United States and to all other markets, one thing that struck me about the table is looking at the exports to all other markets where the projections are quite large, increases over where they were through 2002. I wondered if you could just, and you may have mentioned that, just tell me what's going on in the other markets that would be, that China's anticipating making those increases in exports.

MR. LIU: Okay, let me ask.

(Pause)
MR. LIU: Excuse me.

CHAIRMAN OKUN: Mr. Liu, I have a couple of questions. Let me just go back, I'll come back to you, and also let me just say that whatever my question is, Mr. O'Brien, you can go back to the transcript and give some additional information. I understand that sometimes the way we're posing it and language barriers can be a problem. So you can still add to whatever you say today.

But let me come back to you and let me do a couple of things then I'll come back to this question. Okay?

MR. LIU: Sure.

CHAIRMAN OKUN: Mr. Gibson, why don't I in the interim let you respond to Commissioner Miller's question about quality that I think you had wanted to chime in on there.

MR. GIBSON: I always like to think that Allied's on the leading edge of all trends and therefore we are a little bit different than our competitors.

But I think a lot of it goes back to the experiences that we've had. We were one of the first people to use a domestic processor of Chinese crude when we had NAPCO as an affiliated company and we ran
into all sorts of quality issues there with contamination, both from shipping and within the product itself; a variation in chemistries; variation in physical properties. It was a constant battle. Mr. Doza can tell you that, he lived it.

So we went directly to Chinese producers, were able to control, to develop them and then to control the transportation, et cetera. We experienced much better quality.

In the mean time we do a little business with the domestic producers still, the same amount we did back then, and we still have quality problems.

I'm sure that was our response. It's what we've lived. It's what we've experienced.

CHAIRMAN OKUN: Maybe on that note I could just turn to another area in those responses which Vice Chairman Hillman had asked the earlier panel about which is, I was struck not by the quality which I think again, other than your response, they seemed quite comparable. But on the fact that so many focused on reliability and availability and I was curious, I guess the panel this morning said there hadn't been any disruptions to the market that would make us think that purchasers would be putting a great emphasis on reliability, supply and availability. I
thought in particular in the case of this where it looks like there are substantial inventories, big inventories both for the domestics and for the importing companies. With that kind of inventories I would be surprised if availability is an issue. So I was curious if that part of the information we had collected as well, why that might be something purchasers were focused on.

MR. GIBSON: As one of the respondents said this morning, if you run out of material, you're out of business. WE can't make a product to ship unless we have the raw material so it's an extremely important factor. I think anybody would have to rate it as a very important factor.

I'm not aware of any significant issues relative to availability. We have a long supply chain so we have to monitor our consumption and our inventories pretty diligently, but I don't think there have been any major problems up until this year. And now we're having problems getting refined Chinese material for our European and South African plants because it's in short supply. There are delays and prices have gone up. But that's part of the market getting more active, and also some problems with Chinese BFA production.
CHAIRMAN OKUN: Mr. Gates?

MR. GATES: I'd like to make a comment on the reliability issue.

I think a lot of buyers aren't as involved in the supply chain as Allied Minerals may be, so you'll see a lot of responses I would guess, and I don't know this for a fact, but I would guess from a lot of purchasers in the abrasive industries, and also some of the purchasers who aren't as involved in the refractory end of purchasing about reliability because when they buy from an overseas source if you're not on top of that long supply chain you can run into production problems because a shipment is late or a delivery is late.

So I think it is a very big issue. I think you find a lot of purchasers who have had major issues with supply chain issues over the years.

CHAIRMAN OKUN: I appreciate those further comments on that.

I saw Mr. Liu look up. Are you ready to respond now, Mr. Liu?

MR. LIU: Okay. My colleague, Ms. Liu said the export quantity fluctuates constantly and now she could not explain why the exports to the other countries going up. That's the best answer. I'm
CHAIRMAN OKUN: I appreciate that.

Again, I will just submit a couple of additional written questions with regard to some of the information here to see if you can provide some further information, but I appreciate your responses here today.

I've lost track of where I am, if I have any questions left. So let me turn to Vice Chairman Hillman. I may come back.

VICE CHAIRMAN HILLMAN: Thank you.

I wondered if I can come forward to you, Mr. Gates, and you, Ms. Loewen, to comment on a couple of issues.

You heard Mr. Gibson and Mr. Doza talk about this issue of traceability, they want to know where the crude product came from. On the other hand we heard testimony this morning that they were being honest about it, there was really no difference between the Canadian product and the Chinese crude product.

From your perspective in the smaller grain products, the bonded and coating and other industries. Do you care where the crude is from? Do you know? Is this issue of tracing back to the source of where the
crude product came from important for either of you?

MS. LOEWEN: For Saint-Gobain we actually have a plant in Xien Xo, China which is actually a Saint-Gobain joint venture. So that is our plant and that company in Xien Xo is actually ISO certified.

So for us --

VICE CHAIRMAN HILLMAN: It is a producer of crude?

MS. LOEWEN: We make our own crude and we make our own finished sizes. So we have complete traceability. And yes, it is very important to our customers who make grinding wheels and sandpaper that that product is of a good quality.

As the folks said this morning, it is equal quality to the Canadian source. If you look at Chinese brown fused alumina versus Canadian, the qualities are very similar.

VICE CHAIRMAN HILLMAN: Okay.

Mr. Gates?

MR. GATES: I would say qualities are very similar, but that you'll find very few end use customers in the United States who would say they want to buy Chinese grain or want to buy any grain. That relates not only to the processing but also to the crude material. Almost every end user, be it in the
abrasive industry or the refractory industry, would want to know that they're getting material from the same supply that will give them not only consistent sizing but also a consistent chemistry.

It's not to say that this plant or that plant produces a better quality than any other plant, but it's important in almost all cases that it's a consistent product. I think Mr. Doza can probably speak to that better than I can. But in some cases the chemistries are affected by the crude, not necessarily by the refining, and when you're making an end use product every time you make a wheel it's got to act the same way when you send it to Ford, or every time you make a refractoring and send it to U.S. Steel it's got to act the same way. Not necessarily better or worse, but the same. Otherwise you're going to have quality issues.

VICE CHAIRMAN HILLMAN: Okay, and that issue --

MR. GATES: So I think yes, it is important. Traceability is important.

VICE CHAIRMAN HILLMAN: The consistency is more -- I'm trying to understand where the consistency comes from. Is it more from the production of the crude or is it more from the way in which it is
MR. GATES: Both. And more -- I think that would be answered differently by 100 producers. I don't know how many more would say crushing is more important, and I don't know how many more would say -- 100 end users. How many would say crushing is more important and how many would say sieving is more important. It probably depends on the end use.

VICE CHAIRMAN HILLMAN: Okay.

I want to understand a little bit more, again from your perspective in your part of this industry, the issue of pricing and how it works.

Obviously Ms. Loewen you talked very specifically that you tend to sell on a long term contracts and that's typical of sales direct to end users in this product segment. I think that's very consistent with what we heard this morning.

From your perspective, what is driving prices in the U.S. market these days?

MS. LOEWEN: I think you have to look at the price issue. It really depends on the market.

You have people who have long term contracts and price is a concern, but when you look at the businesses like the aircraft and the automotive market, you're using brown aluminum oxide to blast...
blades and veins that go into aircraft parts. So that's pretty high tech stuff and price is not necessarily of a concern.

Pricing is always, everybody seems to say that price is one component and that's true. Price is one component. There are a lot of folks who are now entering into this market. It's becoming a bit of a saturated market within the domestics.

You have ourselves, Treibacher, Washington Mills, everybody's vying for the same business and the business is declining. It's competitive out there. It has become a commodity as was mentioned this morning.

Certain parts of this commodity market are more high tech like the aircraft and land-based turbine markets. But it's competitive. There's a lot of folks out there who are all distributing this product.

Could you say that it's the Chinese entering the market? I don't think so. I bring in product from China. I think you could probably ask a lot of the folks that are sitting behind me am I one of the lowest costs out there? Absolutely not. I lose a lot of business every year, and I am a Chinese manufacturer. We are not pricing our stuff at the

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VICE CHAIRMAN HILLMAN: Mr. Gates, the same question. From your perspective.

MR. GATES: From my perspective, my actual refined aluminum oxide business over the years that I've been involved in that business, it's declined. So as not to I guess muddy the water with who's a producer and who is not a producer, I'll say that I've lost most of that business that I've lost in this particular product area to companies in the United States who bring in material and refine it or crush it or sieve it for people who used to be customers.

So I'd say the price leaders are those companies that are bringing in material currently. The companies that sell to the biggest consumers in America, the biggest end use clients, buy from people who bring it in and refine it here.

Whether or not they're, in the scope of this case or not is not my decision, I don't know, but those people are the people who are driving the pricing and taking the business away from companies like mine.

VICE CHAIRMAN HILLMAN: The other issue that we talked a little bit about this morning in terms of whether it's having any impact at all on prices is
cost to the domestic producer. Again there was clear
testimony that there were these relatively
significantly sized sales out of the DLA inventory of
crude product at very very low prices.

Just as folks out there in the business were
you aware of that when these sales were occurring at
these low prices? Was that well known in the
industry?

MR. O'BRIEN: Perhaps Mr. Redshaw might be
able to comment just briefly because most of the big
volume of DLA was in the late '90s when it hit the
market.

VICE CHAIRMAN HILLMAN: Go ahead.

MR. REDSHAW: There is no doubt that
customers, competitors knew that he who had DLA
material at the time would be the cost of goods king,
and cost of goods, and in fact probably this isn't the
case but in the transcript, but when you had a
distributor in here talking earlier about paying 42 to
48 cents a pound, whatever it was, for a product, and
folks in the room were buying DLA material for six or
seven cents a pound, this thing has been cost driven.

From the middle '70s until 1990 the advent
of the DLA material for all practical purposes, all
the producers could just about straight line their
cost. Everyone was basically in the same cost basket.
That changed dramatically with the DLA material and
then it changed once again when those same folks were
importing Chinese crude.

Let's face it, when you look at the DLA
material, you look at the Chinese crude at anywhere
from five to ten cents a pound, and you hear market
prices thrown around at 42 to 48, it's cost driven.

VICE CHAIRMAN HILLMAN: I'm trying to
understand it also more from a purchaser perspective.
As a purchaser of product were you aware that some
folks may have had lower costs? Again, over the
course of this period, and try to take advantage of
getting some of that loser cost?

MS. LOEWEN: For us at Saint-Gobain, we used
to have our own manufacturing facility up in Chippewa,
Canada and we exited that in the late '80s. So really
from the late '80s until 1999 we were pretty much out
of the brown market. We didn't get back into the
brown market until 1999 when we started this joint
venture with this company in China.

So the time we exited in the '80s to the
recent time is when all this DLA material was actually
being disposed of.

So I can't really answer that because Saint-

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Gobain wasn't really in the brown market during that time period.

VICE CHAIRMAN HILLMAN: How about you, Mr. Gates?

MR. GATES: I would say that we were in the brown market at that time. We were aware of all the DLA sales. We couldn't take advantage of them. We would have loved to because we didn't have facilities enabling us to take advantage of crude materials.

VICE CHAIRMAN HILLMAN: Were you purchasing from anyone that was getting the DLA materia?

MR. GATES: No.

VICE CHAIRMAN HILLMAN: Okay.

I see that the yellow light has come on. Thank you Madame Chairman.

CHAIRMAN OKUN: Commissioner Miller?

COMMISSIONER MILLER: Thank you, Madame Chairman.

I appreciate the Chairman went back and gave Mr. Gibson an opportunity to respond on my last round of questioning.

I thought there was somebody else reaching for a mike or whatever, but I know most of my question was really aimed at Allied. I just wanted to make sure that anyone who wanted to speak in response -- Mr.
Redshaw? I thought it might have been you.

MR. REDSHAW: That was me at the time.

When you think about, we've been acronymed to death in this business. I can remember when it was simply AO, and there was aluminum oxide refractor and aluminum oxide for abrasives, aluminum oxide for blasting, then the advent of the Chinese was BFA, not this RBAO. Acronymed to death.

But at the same time I would comment that at a producer like Exolon who had been around, as you heard earlier, since the teens. The refractory product, I had a veteran sales manager of 30 years, always referred to refractory product as you heard earlier today, crude referred to as gravel. He always referred to refractory product as rocks. It tended to be the case not in a sales perspective, but certainly from an operations perspective, we love refractory grade because it only costs us a couple of cents a pound. WE just run it, run a crush, we can sell it, they don't care about the quality.

But with that attitude exactly, which caused problems at consumers such as Allied who they looked at their product as it should be a value-added product. Where in fact producers would tend to treat ANSI-graded products which were used for blasting and
for abrasive grains as value-added product. And
Allied was always perceived, and again, they are
probably the most successful refractory company in
what has been just an abysmal business, they've been
the most successful, and one of those reasons is their
quality. They've been quality oriented and they
didn't put up with rocks or material outside the
specification or tie racks, cigarette butts, et
cetera.

So in their defense, in my opinion, they
were one of those refractory companies that took the
quality to a whole new level.

COMMISSIONER MILLER: I appreciate that.
I'm sure Mr. Gibson does as well.

I'll only join you in telling you that I
fight acronyms all the time here at the Commission as
well.

I did have one other question for you,
however, and that was primarily because your story
about Exolon and its condition at the time of the
merger was so different from that we heard this
morning, as you said yourself.

I just want to invite both you, your
counsel, and also Mr. Schagrin on Petitioner's side,
since this story is so different and it is within the
period of our investigation and also something we said
we would look at a little bit more. If either one of
you want to provide anything, Exolon you pointed out
was a public company before the merger?

MR. REDSHAW: Yes, it was a publicly held
company.

COMMISSIONER MILLER: I'd just invite either
of you to provide us whatever -- not huge volumes, but
whatever select information is on the public record
that might help us understand that story a little bit
better.

I did have one last question. It comes back
to the question of the like product because at this
point, Mr. O'Brien, I still sort of leave here not
completely sure what alternative definition you would
give us on like product. I heard Mr. Gibson's view of
like product in the industrial sense of refined is
ready for industrial use, crude needs further
processing. But I think we have to recognize that --
I'm going to invite Mr. Seidel to respond to this
because his name was mentioned earlier this morning as
being an expert in this matter. So I'll invite him if
he would like to comment on whether -- I think the
illusion at that point was the administrability or
non-administrability of such a definition. Whatever,
you can comment on that.

But then the real question for you is, and I know this has come up, maybe you've told us specifically what you think the definition should be but I'm not sure that's clear to me yet.

So in whatever order, Mr. O'Brien and Mr. Seidel.

MR. O'BRIEN: Let me see if I can get it out on the transcript clear.

Our position is that the domestic like product is that product which is crushed or screened for use by an end user. The domestic industry would be those companies that crush or screen product for sale to end use customers.

COMMISSIONER MILLER: Okay. We can't change the scope so the scope is still the 3/8th of an inch or less.

MR. O'BRIEN: Correct.

COMMISSIONER MILLER: But the like product, in other words, is where you would have us define it by use not the scope.

MR. O'BRIEN: Correct.

COMMISSIONER MILLER: So Customs doesn't have a problem. Right, Mr. Seidel?

MR. SEIDEL: I think the big problem that
The Tariff Act defines it as artificial corundum, and then it divides it into two sections. One is crude and the other one says in "grains ground, pulverized or refined." It has nothing about size. What the scope has done here is it's created an artificial definition of certain sizes, some of which will be for Customs purposes in grains, pulverized or whatever, outside the scope. Others will be in grains inside the scope. And for the Customs Service to administer that is going to be virtually impossible. It does not inspect the shipments.

I was with Customs for 32 years and I retired as Assistant Commissioner so I know they don't inspect that many shipments.

When they do inspect it, they'll have to size it because of the percentage requirements that are in there.

The end use definition would require a certification that this is being imported as is for the end use.

Well, the same thing with the scope. It's
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going to require a written statement from the importer because Customs can't inspect the shipment that says this is within the scope or this is without the scope.

I just think you have the same administration problems regardless of which definition you have, but from a standpoint of enforceability, the end user one makes more sense. People know whether they're importing it for use in the product in the form that it's imported, or whether it's going to be further refined, screened, or whatever. There are obviously items within the scope here that are for use in refractories and items outside the scope that are for use in refractories that will come in without paying the dumping duties if one is assessed. Because as you look at the samples, and I think that was the confusion before with crude or refined. They were really talking about in scope or out of scope.

COMMISSIONER MILLER: I see your point. I appreciate it. I appreciate all the answers to my questions. Thank you very much.

CHAIRMAN OKUN: Commissioner Koplan?

COMMISSIONER KOPLAN: Thank you, Madame Chairman.

I just have one request for the post-hearing, if I may.
In our preliminary determination we indicated that in any final phase we were going to examine whether Great Lakes engages in sufficient production-related activity in the U.S. to qualify as a domestic producer. As we all know, the purpose of the preliminary, we found that appropriate circumstances existed to exclude Great Lakes from the definition of the domestic industry.

For purposes of the post-hearing it would be helpful for me if you all would as best you can review the traditional factors that were used in making such a determination. I'm referring to the source and extent of the firm's capital investment, the technical expertise involved in U.S. production activities, the value added to the product in the United States, employment levels, the quantity and type of parts sourced in the United States, and any other costs and activities in the United States directly leading to production of the like product.

If you would provide as best you can an analysis of those factors to help in my determination as to whether Great Lakes should be included as part of the domestic industry or excluded as a related party.

MR. O'BRIEN: WE will, certainly.

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COMMISSIONER KOPLAN: Thank you very much, Mr. O'Brien.

With that, I have no further questions.

CHAIRMAN OKUN: Just one last question, Mr. O'Brien, I go back to you. It is along the lines of some of the questions we were talking about earlier, but just to make it clear.

On the argument that you have made today and in your briefs regarding how we should look at the imports by U.S. producers, however the domestic industry is defined at the end of the day.

When asked about that this morning, to Mr. Schagrin, and I referenced at that point Table 4-2 in the staff report, his general characterization I think was A, that we have to get the domestic industry right, but that however we looked at it, that table is not an accurate representative of most everybody out there.

So that however we came down this was not very representative and didn't in fact color how we look at the rest of the data. I wanted to have a chance to hear your response to that point.

You can also do it in your post-hearing brief.

MR. KLETT: This is Dan Klett. I'd just
like to make one point.

CHAIRMAN OKUN: Yes.

MR. KLETT: That is regardless of how you look at the volume data, whether you break it out based on some of the ways we have it in our brief or whether you look at the volume data based on the breakout of production, subject imports and non-subject imports as reflected in your staff report, and even as reflected in Mr. Schagrin's brief with some modifications. I think the data show that while there have been increases in subject import volume and market share, that you look at the public data with respect to non-subject imports, those declined significantly and to a certain extent you have increases in subject import market share at the expense of non-subject imports, regardless of how you cut or slice the data.

CHAIRMAN OKUN: I appreciate those comments.

Mr. O'Brien, did you have anything to add on that?

MR. O'BRIEN: I think we will further address it in the post-hearing submission. There are additional comments but I think they're very consistent with the point that Mr. Klett was making.

CHAIRMAN OKUN: I appreciate those further
comments and the other issues that I wanted to raise I believe have been covered by my colleagues.

Vice Chairman Hillman?

VICE CHAIRMAN HILLMAN: I hope just one quick follow-up, because something Mr. Redshaw that you said in response to everybody would rather produce refractory product because it doesn't take as much work in essence, because you're not getting it down to as fine a grade prompted I guess two questions.

We heard some testimony this morning, and I guess I wanted your take on it of, if you will, the value added between taking the crude product and producing the refractory product as opposed to producing the more finely ground product. Do you have a relative sense of that, how much value added there is in terms of going from crude to refractory product and how much more value is added as you go up the, or down in grain size?

MR. REDSHAW: I would throw out just a rule of thumb. Not addressing the cost of the crude. Mainly because crude in Europe might cost 21 cents, 22 cents a pound to produce, and crude in North America might have cost 13 cents.

However a rule of thumb, and anyone at the table here might want to correct me, but refractory
material may be two, two and a half, maximum three
cents a pound to produce, where abrasive grain was
typically looked at as eight, nine, ten cents a pound.
So there was significant difference.

VICE CHAIRMAN HILLMAN: Okay, I think that's
very helpful.

Just help me on the volume side of it. Or
maybe it's the weight. If you take a ton or however
much you're taking of the crude product and producing
it into refractory product or whatever, do you lose a
fair amount in the process?

MR. REDSHAW: There's always a couple of
percent loss. Of course the difficulty in producing
abrasive or ANSI graded material is that you're going
to produce 20 different sizes. Some of them are in
huge demand and you can virtually charge what you
want. Others you have too much of.

In terms of a weighted average, I couldn't
tell you a producer who has the data in front of them,
I'm not privy to that data having left Exolon. But
certainly they could show you what the weighted
average of each specific grit was typically for a ton
of material run through the system.

VICE CHAIRMAN HILLMAN: But you're saying
there is some loss that occurs?
MR. REDSHAW: Yeah, whether it's refractory, whether it's abrasive grain or a blasting grain, paper and cloth. There's always a certain amount of loss. Even if you bring in refined brown fused aluminum oxide from China, there's loss. And simply repackage it, there's loss there as well.

VICE CHAIRMAN HILLMAN: All right. That's very helpful. I appreciate that.

I think with that I have no further questions. But I would join my colleagues in thanking you very much for your appearances here and for all your testimony.

Thank you.

CHAIRMAN OKUN: If there are no further questions from my colleagues, let me see if staff has questions for this panel.

MR. McCLURE: Jim McClure, Office of Investigations.

Staff has no questions.

CHAIRMAN OKUN: Thank you.

Let me ask counsel for Petitioners if they have questions for this panel.

MR. SCHAGRIN: Roger Schagrin on behalf of Petitioners. We have no questions.

CHAIRMAN OKUN: Okay.
Again, I want to thank all the witnesses for their testimony today, for their answers to our man questions, and for the information you'll be submitting in post-hearing briefs.

The time remaining, the Petitioners have a total of 14 minutes which includes five minutes for closing. Respondents have a total of nine minutes which includes five minutes for closing. So when we have a chance for this panel to go back to their seats, we will have Mr. Schagrin come up.

(Pause)

CHAIRMAN OKUN: Mr. Schagrin, it looks like you're ready to proceed.

MR. SCHAGRIN: Thank you, Chairman Okun, Members of the Commission. Roger Schagrin, of Schagrin Associates on behalf of Petitioners.

Let me start with scope and like product. Rarely have I seen, we usually spend a lot of time on like product here at the Commission but rarely have I seen so much time spent for so little use, particularly by Respondents.

One thing I did appreciate, Commissioner Koplan, was your question to Mr. O'Brien about how vigorously he contested scope at the Department of Commerce since he's raised it so ultra-vigorously here
at the Commission.

Well just a few weeks ago I had the pleasure of sitting across from Mr. O'Brien for two hours at the Department of Commerce hearing. I'll recheck the transcript, which I did read after the hearing, and I do not remember him raising scope in one word. The word scope may have been said at the hearing, but I don't remember him raising an issue about scope at the Department of Commerce which you correctly identified, Commissioner Koplan, is the place to raise it.

Now let's talk about like product over here at the Commission which we should talk about.

The fact is that Respondents' emphasis on the need to expand the like product here is such a red herring. It's okay if they raised it in their briefs because they maybe didn't know how important these larger sizes in the brochures were, but it sounded to me from the Allied witness that they really did. Allied said well we buy five percent of our products in these larger sizes. But you know, none of the other refractory producers do. And we know none of the abrasive folks do because they're all buying smaller grains. So it's maybe one percent of the entire U.S. market. Maybe one-third of one percent of the domestic producers' production and shipment.
Is that a big like product issue for the Commission? I don't think so.

But what we were trying to get to in scope, they said maybe you should have increased the scope to one inch but still call it refined. Well all the crude comes in at one inch or finer. All we would have been doing is biting off a tremendous amount of problems in terms of Customs enforcement.

By the way, all of the crude, I talked to the Petitioners during the break. All of the crude imported by Petitioners is outside of the scope. A hundred percent of it. The Petitioners do not import any crude that would be considered in the scope. It all meets the definition of being outside of the scope. We think that would be, it's the nature of the product.

If you were trying the references made of well, you could just import this product and layer in the grit sizes and then sieve them later. No, read the scope. The scope says ground, pulverized or refined artificial corundum also known as brown aluminum oxide or brown fused alumina in grit sizes of 3/8th inches or less. Then it gets into the exclusion.

If you import a product that's in grit sizes...
sizes, no matter how hard you try to hide it from the
Customs Service, if you try to mix it in with crude,
if you try to do other things that were done in
Europe. My job, as specifically given to me by
Treibacher before they joined this case, it is true
what Treibacher said about the European case. Mr.
Durstberger's European parents said we're not going to
spend money in the United States unless that lawyer
you're thinking about hiring there can tell you that
this can be enforced in the United States. We're not
going to waste our money, get another order against
the Chinese, and see all these games played. I said I
think we can do it. I work with Customs. I think we
can get this done, and that's the way we drafted it.

Now in our pre-filing discussions with the
Department of Commerce we did exactly what Mr. Seidel
suggested. We said look, the only people who can
import crude into the United States are people who can
 crush it. Why don't you just do an end use
certificate? It's so easy.

Commerce and Customs said no way. I want
you to know that Mr. Seidel has a lot of respect for
me. I don't think Customs is going to have difficulty
enforcing these orders because he said well, it's
going to be impossible for Customs to enforce this.

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Look at how much is going to enter as refined that's outside of the scope. Yes, it's probably about one percent of imports. That was Allied's testimony. That shouldn't be a problem. Now cheating will be a problem. It's always a problem. Every case we have. I don't even want to get into that.

But I will make one promise. That is once we get a dumping order in effect, I pledge I'll work with Mr. Seidel. We can do a changed circumstances review if he can get the Customs Service to agree with Commerce that we can go to end use certificates. That's my pledge. I'll live up to it. Stu, call me after the order goes into effect.

Okay, let's look at the other arguments. Let's really get into some of the others.

Allied raises the quality argument. The Commission is already aware from the record that they're probably the only one, I think there may have been one other, quality is not really an issue for the domestic industry. These domestic producers have been known throughout their histories for providing good quality.

I'll tell you what Allied's story really proves to you. That is we were asked the question before, can't you really compete if you just buy...
Chinese crude? Won't that make you competitive with the Chinese grain? Allied is the best example.

Allied tells you, we closed our Newell facility just because we couldn't assure our quality of supply of crude. Boy, we could assure our quality of supply to grain. Now if that makes more sense to you than it does to me I will be really surprised.

Treibacher, Washington Mills, they don't buy crude from brokers. They said we don't want to keep going through middlemen for the crude. Well you don't have to go through middlemen for either the crude or the grain. Treibacher and Washington Mills, where are they buying crude from? Europe, Canada, China. They always go directly to the producer. People are too big. Allied was too big to have to go through any middlemen.

But why did they get out of the business?

Just for the same reason that my clients will be forced out of the business if you make a negative determination. That is they found that they could buy Chinese grains, dumped Chinese grain, cheaper than they could buy Chinese crude and crush it themselves in Newell, West Virginia. That's why they shut down the plant. They couldn't make money at the plant. That's the real reason.
You can't possibly believe that they shut the plant down because they could assure quality of supply of grain but they couldn't assure quality of supply of crude. That's just really a red herring. It doesn't make any sense.

They say look, our imports couldn't be affecting the domestic industry. We buy the same for the domestic industry has been buying for years.

Yeah, well Washington Mills and Treibacher tell me, and we'll put this in the post-hearing brief, that they sell Allied on average less than 100 tons a year. So they really haven't shifted recently that much from domestic production to imports, but they buy trifling amounts.

The same with some of the arguments about Immires and refractories that were made by Respondents. They really take one and one and they come up with nine.

We know why Treibacher got rid of the AD order. The fact that they have a general ad in a magazine doesn't negate the fact that Plibriko is not selling from Europe into the United States, not selling product containing the refractories in any measurable amounts in a market. I think they referred to the refractories market as approximately $2 billion
a year? What's 20 tons in a $2 billion a year market?
I would think the Allied Vice President would know who
he's competing with on a day to day basis. My
Petitioners know they're competing with Chinese
imports every single day.

Now, let's talk about the Exolon gentleman's
testimony. His testimony was basically, and we'll get
into the data on why Exolon was going bankrupt, that's
not really an issue, but his data basically said, and
I think he was careful in his choice of words. He
said when I was at Exolon I didn't face competition
from Chinese imports in abrasives. He didn't say in
refractories.

The testimony of Mr. Silver, the President
of Exolon, and contrary to the testimony of the
gentleman from Cometals, that Vesuvius had been
Exolon's largest customer. Vesuvius kept coming back
to Exolon to say the Chinese are lowering their
prices. Eventually, Exolon lost the entire Vesuvius
business which was just devastating for them to
imports that were brought in by Great Lakes Minerals.
That was their testimony. They confirmed the lost
sale, that Vesuvius changed over to imported product.

The same was true, Cometals complained.
Hey, Magniko was a customer of mine for some of my
imports and they were buying domestic. But then we lost all that business to C-E. Well that was C-E, the importer originally. That was a problem. Everybody in refractories was losing out to imports.

And the testimony of Mr. Redback [sic] was consistent with the domestic industry's testimony. And that is up until late '90s the big push by imports from China was in refractories. Then 2000 onwards they went after abrasives and they went after distributors.

In fact he said that when he was at Exolon they started trying to get business based on price and they used lower prices to get people to change their business. All the other people in the Respondents' panel said our customers don't change on the basis of price. Their own panelist said well at Exolon we got people to change on the basis of price, and I think he was right about that.

But then it just didn't follow. He said Washington Mills bought Exolon but they couldn't stop the pricing problems and we don't know why.

First look at the record. In 2000 was Exolon lowering their prices just to take volume from other folks in the domestic industry? And if so, were they the lowest price folks?
Well, their prices were higher than Chinese prices. After 2001 when Washington Mills bought them, did pricing in this industry increase? You've got all your pricing products. No, pricing didn't increase.

Well Exolon's not out there lowering prices to try to grab market share any more. Why aren't prices increasing? It's because the Chinese are underselling everybody in the market. They were causing continued price depression. In fact to show how easy it was to enter the U.S. market with new Chinese imports, you need look no further than Mr. Redback [sic] himself. He leaves Exolon after being a long term sales employee. He goes to a company that was not engaged in the business of importing brown aluminum oxide. He begins importing cheap, dumped brown aluminum oxide and he goes back and sells it to all the former customers that he called on when he was at Exolon.

How was he able to sell to all those customers? On the basis of wonderful quality? No. Quality's equivalent. He sold those customers on the basis of offering them a lower price because he knows customers in fact in this industry do change suppliers based on price. They said, 23 out of 25 said price was very important to them. They obviously changed on
Let's face it, the imposition of dumping duties will hurt Mr. Redback's [sic] job. I have nothing against him. The law is the law. If you import dumped products, if you injure the domestic industry, somebody's going to have to pay the dumping duties. That's the way it goes.

Let's look at Saint-Gobain. They said look, we don't really compete with anybody. We've got our own Chinese supplier.

Well first, they do have their own Chinese supplier. Their Chinese supplier could have gone to Commerce and showed they weren't dumping. They didn't.

Saint-Gobain only sells abrasives. The testimony in response to questions was, well you know this really is a tough market because there's more and more people in the market like C-E Minerals. C-E Minerals doesn't sell to the abrasives market. C-E sells only to the refractories market.

Who are the more and more people the witness from Saint-Gobain could have been referring to in her knowledge base? You've got all the information about the domestic industry. Who are the more and more?

There are more and more importers. Just like all the

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distributors testified to. Distributors kept telling
this Commission that for the past couple of years
there have been importers coming through the woodwork.

We think you've covered most of the imports here. To be honest there's a few you haven't covered,
but there's just lots of importers of Chinese product.
It's a dumped product. It undersells the domestic
industry. This is an industry that's easy to
penetrate and to make sales if you've got the right
price, and if you hold a lot of inventories.

In conclusion, are imports significant by
volume and market share and are there increased
significant? Yes.

Did the imports rob sales from the domestic
industry and do you have a lot of verified lost sales?
Yes.

This industry was injured throughout the
POI. Capacity utilization was low. Production,
shipments, employment, all fell from 2000 to 2002,
profits weakened significantly over the POI. You have
consistent underselling in both product pricing and
UAV basis. The record overwhelmingly shows price
depression. It demands an affirmative determination
and it demands an affirmative critical circumstance of
determination is appropriate here because in the face

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of these high dumping duties, importers tried to beat
the system and that caused additional injury to the
domestic industry.

We'll say more about threat in our post-
hearing brief.

Thank you very much. I beat the red light.

CHAIRMAN OKUN: Thank you.

Mr. O'Brien?

MR. O'BRIEN: Thank you, Madame Chairman.

I certainly do appreciate Mr. Schagrin's
pledge to work with other companies to change the
scope of the case assuming that Customs will go along
with it. I believe its relevance here to the
Commission is this is a peculiar scope.

I'm not asking the Commission to change it.
All I'm saying is I'm asking the Commission to
appreciate that it's a peculiar scope. And when you
turn to the domestic like product, please keep that in
mind.

Our position on the definition of the
domestic like product is that any product, regardless
of size, if it comes in and is crushed in size it is
part of the domestic like product and those companies
that crush and size product in the United States are
U.S. producers. That's our position, plain and
simple. The effects on the Commission's analysis are extremely high.

I don't believe there's a serious disagreement about the commercial realities in accordance with the definition that I just said.

Mr. Harvey Plonsker earlier this morning when asked on this issue said consistency of sizing is more important than the size itself. Absolutely. WE agree completely. Full stop.

With regard to the other points, I believe the description of what happened with Magniko and Vesuvius really is quite revealing on the conditions of competition.

If you take Magniko, Vesuvius and Allied you've got the three top companies in the refractory market and the refractory market by volume is the biggest market segment. It's really considerably larger than abrasives or industrial.

So if you take those two, Magniko and Vesuvius, where were those sales lost? How were those lost sales?

One went to C-E Minerals who had the business when they were an importer and has the business now that they're a U.S. producer. The other one went to Great Lakes who, regardless of the status

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of them, they are certainly a company with a heavy
U.S. investment, and we obviously would argue that
they should be counted as a U.S. producer.

Those are two of the three largest
companies. You then take Allied's story and it is
simply, you cannot fairly conclude from the testimony
today that Allied sold its NAPCO facility in West
Virginia and moved to China on the basis of price.
There were too many other factors involved.

At the end of the day the Commission has to
find injury by reason of the LTFV imports. Not by
reason of all the other intervening factors, some of
which we've gone over today, the others of which are
spelled out in our brief. The DLA sales. The massive
imports of crude product by the U.S. producers
themselves. The substantial imports of refined
product by the U.S. producers themselves. The quality
issues. All the other issues interpose themselves
between the injury complained of and the LTFV sales,
and we submit you simply cannot find that those sales
were a source of material injury.

We would argue, and I think the Commission
is quite sensitive to this fact, that the domestic
industry itself is not in bad shape given its strong
ties to the steel industry and the foundry industry,
the automobile industry, the rail industry, all the heavy industries which are clearly in a depressed or slowed-down state. Hopefully it will be cyclical. 2003 looks better than 2002, and hopefully 2004 will look better than 2003.

But if the normal business cycle applies in this case, as it has in the decades before in this industry, then brown fused alumina will come back in tighter demand and higher prices as the industry recovers.

In any case it's current condition is not due to the LTFV sales.

The other issue that I believe the Commission is sensitive to is the details anomalous. There is a very substantial variation among the domestic producers. Those answers, with all due respect to all of the data submissions that have been put in to date, still leave more questions than answers.

You've got a situation where you have dramatically changing sources of crude. There is no question that the volume coming in from Canada has almost entirely disappeared. The volume of crude coming in from China has risen dramatically, and yet you have, I believe on the record, there is no
sensible link to how that has affected U.S. operations. But it's a big affect and it has to be attributable to something. I will say if the domestic industry did not think it would be doing good down the road, then why have crude shipments from China continued to increase from year upon year upon year? That includes right into 2003. The increases of crude product are increasing. That's the HPS data, and even with corrections made by Respondents and Complainants, the volume of crude product coming in from China is getting higher every year. That crude product, I believe it's a matter of record, that nobody is just reselling crude. Everybody that's taking it in is crushing it, and it has to be an indicia of where the industry thinks itself is going. Finally, with respect to threat, I appreciate your listening to Mr. Liu speak about the extremely robust Chinese market. Mr. Liu pointed out that even one producer, Bau Steel, is expanding its steel production dramatically. That steel production translates directly into increased refractories and foundries which translates directly into increased consumption in China.
The exports to third country markets are also increasing and it is certainly a reasonable and we believe correct view of the data to show that the increased capacity in China will be completely absorbed by the increased demand within the Chinese market itself.

So in summary, we would conclude that the industry is not in a state of distress or a state of injury, and we would certainly conclude that any such injury that the Commission finds is not by reason of LTFV exports from China and there is no threat of material injury in the future.

Thank you very much.

CHAIRMAN OKUN: Thank you.

Post-hearing briefings, statements responsive to questions, and requests to the Commission and corrections to the transcript must be filed by September 30, 2003.

Closing of the record and final release of data to parties is October 15, 2003.

Final comments are due October 17, 2003.

With no further business to come before the Commission, this hearing is adjourned.

(Whereupon, the hearing was concluded at 4:10 p.m.)
CERTIFICATION OF TRANSCRIPTION

TITLE: Refined Brown Aluminum Oxide from China

INVESTIGATION NO.: 731-TA-1022 (Final)

HEARING DATE: September 23, 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: September 23, 2003

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

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

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