

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:

PURE AND ALLOY MAGNESIUM)	Investigation Nos.:
FROM CANADA AND PURE)	701-TA-309-A and B and
MAGNESIUM FROM CHINA)	731-TA-696 (Second Review)
)	

Pages: 1 through 233

Place: Washington, D.C.

Date: April 25, 2006

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

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)
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 PURE AND ALLOY MAGNESIUM) 701-TA-309-A and B and
 FROM CANADA AND PURE) 731-TA-696 (Second Review)
 MAGNESIUM FROM CHINA)

Tuesday,
 April 25, 2006

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

The hearing commenced, pursuant to notice, at
 9:30 a.m. before the Commissioners of the United States
 International Trade Commission, the Honorable STEPHEN
 KOPLAN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

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 VICE CHAIRMAN DEANNA TANNER OKUN
 COMMISSIONER JENNIFER A. HILLMAN
 COMMISSIONER CHARLOTTE R. LANE
 COMMISSIONER DANIEL R. PEARSON
 COMMISSIONER SHARA L. ARANOFF

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Staff:

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PETER SULTAN, ATTORNEY
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In Support of the Continuation of Antidumping and
Countervailing Duty Orders:

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Officer, US Magnesium
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In Opposition to the Continuation of the Antidumping
and Countervailing Duty Orders:

On behalf of the Gouvernement du Quebec:

PATRICK J. TOGNI, Esquire
Paul, Hastings, Janofsky & Walker, LLP
Washington, D.C.

APPEARANCES: (Cont'd.)

In Opposition to the Continuation of the Antidumping
and Countervailing Duty Orders:

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P R O C E E D I N G S

(9:30 a.m.)

1
2
3 CHAIRMAN KOPLAN: Good morning. On behalf
4 of the United States International Trade Commission I
5 welcome you to this hearing on Investigation Nos.
6 701-TA-309-A and B and 731-TA-696 (Second Review)
7 involving Pure and Alloy Magnesium From Canada and
8 Pure Magnesium From China.

9 The purpose of these five-year review
10 investigations is to determine whether the revocation
11 of the antidumping and countervailing duty orders
12 covering pure and alloy magnesium from Canada and pure
13 magnesium from China would be likely to lead to
14 continuation or recurrence of material injury to an
15 industry in the United States is materially injured or
16 threatened with material injury within a reasonably
17 foreseeable time.

18 Notice of investigation for this hearing,
19 list of witnesses and transcript order forms are
20 available at the Secretary's desk. I understand the
21 parties are aware of the time allocations. Any
22 questions regarding the time allocations should be
23 directed to the Secretary.

24 As all written material will be entered in
25 full into the record it need not be read to us at this

1 time. The parties are reminded to give any prepared
2 non-confidential testimony and exhibits to the
3 Secretary. Do not place any non-confidential
4 testimony or exhibits directly on the public
5 distribution table.

6 All witnesses must be sworn in by the
7 Secretary before presenting testimony. Finally, if
8 you will be submitting documents that contain
9 information you wish classified as business
10 confidential your requests should comply with
11 Commission Rule 201.6.

12 Mr. Secretary, are there any preliminary
13 matters?

14 MR. BISHOP: No, Mr. Chairman.

15 CHAIRMAN KOPLAN: Very well. Let's proceed
16 with the opening remarks.

17 MR. BISHOP: Opening remarks in support of
18 continuation of orders will be by Stephen Jones, King
19 & Spalding.

20 CHAIRMAN KOPLAN: Welcome back.

21 MR. JONES: Thank you, Commissioner Koplan.
22 Good morning.

23 The countervailing duty orders on pure and
24 alloy magnesium from Canada and the antidumping order
25 on pure magnesium from China must be continued to

1 prevent the continuation or recurrence of material
2 injury to the domestic industry.

3 Despite assurances during the first sunset
4 review that the massive countervailable grants to NHCI
5 in the early 1990s were a one-time event, the
6 Department of Commerce determined in 2003 that Quebec
7 provided a large countervailable grant for worker
8 training to Magnola in the late 1990s.

9 The Commission was not fooled by such false
10 assurances in the first sunset review, and it should
11 not be fooled this time. Continuation of the orders
12 is absolutely critical to prevent NHCI and Magnola
13 from using available subsidies to compete more
14 effectively in the U.S. market, which is the only
15 realistic outlet for their huge production capacity.

16 NHCI has long wanted to substantially
17 increase its capacity. Revocation of the orders would
18 enable it to receive subsidies to facilitate its long
19 postponed expansion plans. In addition NHCI's long-
20 term contract with General Motors concludes at the end
21 of 2007, and the volumes come up for rebid soon,
22 perhaps as early as this year. The ability to accept
23 new subsidies free of the threat of countervailing
24 duties would enable NHCI to compete unfairly for this
25 business to the detriment of US Magnesium.

1 The Canadian parties would have the
2 Commission believe that Magnola has ceased production
3 permanently. Magnola has again chosen not to appear
4 at the Commission's hearing, but in its public
5 statements Magnola has been quite clear that it is not
6 permanently closed, but is on a low-cost care and
7 maintenance status and could be restarted quickly if
8 market conditions improve.

9 Revocation of the orders would enable
10 Magnola to receive subsidies to train a new workforce
11 and bring production up to full planned capacity. As
12 a 20 percent owner of Magnola, Quebec has a
13 substantial incentive to provide new financial
14 assistance to the plant. The only impediments are the
15 countervailing duty orders.

16 With regard to China, imports of pure
17 magnesium have been virtually eliminated since the
18 order was imposed in 1995, demonstrating that the
19 Chinese cannot export magnesium to the United States
20 without dumping.

21 Being cut off from the U.S. market has not
22 stopped the Chinese industry from dramatically
23 increasing its production capacity, however, now large
24 enough to supply the entire world's demand for
25 magnesium.

1 Chinese pricing in Europe, Canada and other
2 markets is unbelievably low. All European producers
3 of primary magnesia have been driven out of business
4 by imports from China. US Magnesium would quickly
5 face the same fate if the antidumping order were
6 revoked.

7 Despite the recent imposition of antidumping
8 duties on imports of alloy magnesium from China and
9 pure and alloy magnesium from Russia, the domestic
10 industry remains vulnerable. The increase in market
11 prices resulting from the filing of the China-Russia
12 petition in early 2004 was a temporary phenomenon as
13 low-priced subject and non-subject merchandise
14 continued to enter the market, depressing prices for
15 the 2006 contract year.

16 At the same time, the industry's costs,
17 particularly its energy costs, have risen
18 significantly since the 2004 investigation. Thus, for
19 the past several months the domestic industry has
20 experienced a severe cost/price squeeze, damaging its
21 profitability. This situation has left the industry
22 extremely vulnerable to material injury if these
23 orders are revoked.

24 US Magnesium is doing everything possible to
25 survive, but it will fail if these orders are revoked.

1 US Magnesium has invested heavily to become one of the
2 world's most technologically advanced magnesium
3 producers. It has the potential to expand its
4 capacity significantly.

5 If fair competition with Canada and China is
6 maintained US Magnesium should earn a positive return
7 on its investments and should be able to further
8 expand its capacity, reduce its cost of production and
9 compete effectively into the future.

10 Thank you.

11 CHAIRMAN KOPLAN: Thank you.

12 Mr. Secretary?

13 MR. BISHOP: Opening remarks in opposition
14 to continuation of orders will be by Patrick Togni,
15 Paul, Hastings, Janofsky & Walker.

16 CHAIRMAN KOPLAN: Good morning.

17 MR. TOGNI: Good morning. Once again, for
18 the record my name is Patrick Togni. I'm with Paul
19 Hastings, and I'm here on behalf of the Government of
20 Quebec.

21 CHAIRMAN KOPLAN: Could you just move that
22 microphone a little closer to you?

23 MR. TOGNI: Sure. Sorry. How does that
24 sound?

25 CHAIRMAN KOPLAN: Much better. Thank you.

1 MR. TOGNI: I'd like to begin by thanking
2 the Commission for conducting this second set of full
3 sunset reviews. We certainly recognize that truncated
4 second reviews are common, and we appreciate that the
5 Commission has recognized that this one deserves full
6 consideration as a result of the changes that have
7 occurred since the orders originally went into effect
8 in 1992.

9 For a bit of background I just want to place
10 the GOQ's view of sunset reviews in its appropriate
11 context. This is extremely important to the
12 Government of Quebec.

13 First off, the sunset review process
14 resulted from extensive multilateral negotiations that
15 were central to the conclusion of the WTO agreement.
16 Now it's a mandatory element of global trade law and
17 is included in the United States' own implementing
18 statute.

19 At its core the sunset process requires
20 trade agencies to review orders on a periodic basis
21 and compels that those orders be revoked unless an
22 affirmative showing is made, and here for the
23 Commission's purposes that affirmative showing would
24 be whether material injury would be likely to continue
25 or recur.

1 Fourteen years into the life of these orders
2 if ever there were a case where the record creates the
3 kind of scenario that the sunset statute framers were
4 concerned about this is it. The basis for the
5 original 1992 orders is no longer present, and NHCI is
6 no longer subject to the small CVD rate that was in
7 effect during the time of the first sunset review.

8 Fourteen years later, again the record data
9 also confirms that there's nothing in the record to
10 suggest that NHCI could itself act as a basis for the
11 continuation of these orders. Likewise, the one
12 invisible giant in this room at the time of the first
13 sunset review, Magnola, has turned out to be what
14 another person, but not me, might call a colossal
15 failure. If you look at the record, it is clear that
16 Magnola fell short of every expectation and does not
17 merit the level of concern that Steve Jones says it
18 does.

19 This brings me to a brief word on the
20 Commission's primary reason for conducting this second
21 set of full sunset reviews in the first place;
22 specifically that Magnola ceased all operations in
23 2003.

24 US Magnesium's prehearing brief, their brief
25 introduction now and certainly their full argument

1 later on today will miss this point entirely, and they
2 appear to hope that the Commission has forgotten its
3 primary reason for conducting this second set of full
4 sunset reviews in the first place.

5 Magnola's absence of any production for
6 three years now, along with other recorded evidence
7 regarding NHCI and Magnola itself, confirms that the
8 Commission's decision to conduct this second set of
9 reviews is fully justified.

10 GOQ believes now, as it has throughout the
11 life of these orders, that the record developed here
12 confirms that the lifting of these orders will not
13 lead to the continuation or recurrence of material
14 injury within a reasonably foreseeable time.

15 I'd also like to point out that the
16 Commission sought in this second set of full sunset
17 reviews to consider the like product definition issue.
18 The GOQ notes that Dick Cunningham is here as counsel
19 to NHCI, and he's going to make a statement on that
20 discrete issue later on this morning. We think his
21 view is correct on that issue.

22 Thank you very much

23 CHAIRMAN KOPLAN: Thank you.

24 Mr. Secretary?

25 MR. BISHOP: Would those in support of

1 continuation of the antidumping and countervailing
2 duty orders please come forward?

3 All witnesses have been sworn.

4 (Witnesses sworn.)

5 CHAIRMAN KOPLAN: Thank you.

6 (Pause.)

7 CHAIRMAN KOPLAN: You may proceed.

8 MR. JONES: Thank you, Commissioner Koplan.

9 My name is Steve Jones. I'm from the law firm of King
10 & Spalding, LLP here today on behalf of US Magnesium.

11 To begin our direct presentation, US
12 Magnesium's president and CEO, Mike Legge.

13 CHAIRMAN KOPLAN: Good morning.

14 MR. LEGGE: Good morning.

15 CHAIRMAN KOPLAN: Is that light bothering
16 you?

17 MR. LEGGE: Some.

18 CHAIRMAN KOPLAN: I thought it might. Is
19 there some way we can adjust it so it's not hitting
20 the witness in the face?

21 MR. LEGGE: I can pull back a little.

22 CHAIRMAN KOPLAN: I need you to be with your
23 mic at the same time.

24 MR. LEGGE: Good morning. I am Mike Legge,
25 president of US Magnesium. US Magnesium is

1 headquartered in Salt Lake City, Utah, and its
2 production operations are at Rowley, Utah, on the
3 western shore of the Great Salt Lake.

4 I joined a predecessor of US Magnesium in
5 1979, and I was appointed president in 1993. US
6 Magnesium's production facility was established in
7 1972. The raw material for the plant is magnesium
8 chloride brine from the Great Salt Lake.

9 We operate 65,000 acres of solar evaporation
10 ponds to produce harvest brine, which is concentrated,
11 dried, purified and charged to electrolytic cells
12 which produce primary, pure, molten magnesium. The
13 molten magnesium is transferred to the cast house to
14 be cast as pure or alloy ingot, which US Magnesium
15 sells into all markets.

16 On behalf of US Magnesium and its 400
17 workers, I would like to thank the Commission for its
18 hard work over the years on the many investigations
19 and reviews of imported magnesium.

20 The Commission's affirmative determinations
21 in our trade remedy actions, including the original
22 investigations and prior five-year reviews on
23 magnesium from Canada and China, have allowed us to
24 stay in business, invest significantly in upgrading
25 our plant and making it more cost efficient and

1 environmentally friendly and look with optimism to the
2 future.

3 Without these determinations, US Magnesium
4 would not be in operation today. We are optimistic
5 that we can be profitable and complete our current
6 expansion plan so long as fair competition is
7 maintained. However, our ability to stay in business
8 continues to be threatened by dumped and subsidized
9 imports.

10 As the Commission knows, magnesium is a
11 price sensitive commodity product. Therefore, our
12 business is extremely vulnerable to unfairly priced
13 imports. We have needed the Commission's help to keep
14 unfair imports from destroying our business. We will
15 need the Commission's continued assistance and the
16 maximum relief provided by law to stay in business in
17 the face of unfair import competition.

18 Our management team has done everything
19 reasonably possible to make this company a global
20 industry leader in technology, cost efficiency and
21 environmental controls. Our owners have taken
22 tremendous risks and invested significant capital to
23 save our plant and hundreds of jobs.

24 The benefit of these investments would be
25 lost by eliminating the countervailing duty orders on

1 imports of pure and alloy magnesium from Canada and
2 the antidumping order on pure magnesium from China.

3 As you know, US Magnesium is the only
4 remaining U.S. producer of primary magnesium. We
5 believe that our customers benefit from having a
6 healthy domestic supplier of primary magnesium. It is
7 important to U.S. consumers and to the national
8 interest to maintain a primary magnesium industry in
9 the United States.

10 In addition to providing customers assured
11 access to magnesium products, having a domestic
12 industry ensures that magnesium is available for
13 sophisticated military applications such as precise
14 countermeasure flares used by aircraft taking off or
15 landing in hostile environments.

16 Since 1998, over two-thirds of U.S. primary
17 magnesium capacity has shut down as a result of import
18 competition. Dow Magnesium closed in 1998, and
19 Northwest Alloys closed in 2001. Dow made a
20 commercial decision to exit the magnesium business in
21 1997, and subsequently Dow's plant was damaged in a
22 hurricane. Then Dow chose not to repair the plant
23 because of poor market conditions.

24 The workers at Northwest Alloys were
25 certified for trade adjustment assistance benefits

1 multiple times, and Alcoa increased its purchases of
2 imports after the plant was closed. These shutdowns
3 demonstrate that primary magnesium production is in a
4 constant state of vulnerability due to import
5 competition.

6 We do not have the option of shutting off
7 our electrolytic cells to decrease production when we
8 lose the potential volume to lower priced imports.
9 Doing so would destroy the cells' refractory lining,
10 and it would be cost prohibitive to rebuild them.

11 As a result, we must follow the market price
12 down, even if doing so causes us to operate at a loss.
13 As a result of these factors, US Magnesium is highly
14 vulnerable to injury from imports from Canada and
15 China if the antidumping and countervailing duty
16 orders are removed.

17 Although the imposition of antidumping
18 orders in 2005 on imports of alloy magnesium from
19 China and pure and alloy magnesium from Russia
20 initially improved U.S. market prices, the improvement
21 was only temporary as low priced imports pushed prices
22 down for the 2006 contract year.

23 If the orders subject to this review are
24 revoked, increased imports from Canada and China would
25 exert further downward pressure on our prices. We are

1 already faced with an existing cost/price squeeze due
2 to rapidly rising energy costs and other inputs and
3 declining magnesium market prices.

4 In particular, the cost of natural gas has
5 stayed at irrationally inflated levels in 2006, and
6 the temporary magnesium price increases in 2005 were
7 not sustained in 2006. Thus, we are unable to cover
8 these inflated costs at current prices. The
9 intensified pressure from dumped and subsidized
10 imports that would follow removal of the orders would
11 significantly exacerbate this problem.

12 Despite our financial difficulties, we have
13 pursued a major modernization program to improve the
14 company's production technology, to improve
15 efficiency, to reduce unit cost and to reduce chlorine
16 emissions. The centerpiece of the plan was the
17 development and installation of a new type of
18 electrolytic cell to convert magnesium chloride into
19 liquid pure magnesium.

20 The new type of cell, which we call the M
21 cell, was the product of five years of intense
22 research and development. The M cell has proven to be
23 one of the most advanced electrolytic cell
24 technologies in the world.

25 The original modernization plan called for

1 construction of 60 M cells filling two of the existing
2 four cell buildings. This \$60 million investment
3 project would have increased our capacity from 43,000
4 metric tons per year to about 55,000 tons per year.

5 As the company approached the implementation
6 of the plan in 2001, however, financial difficulties
7 due to the deteriorating market conditions resulted in
8 reduced cashflows and caused the initial scope of the
9 project to be scaled back from 60 cells in two
10 buildings to only 30 cells in one building.

11 We removed all of the oldest technology
12 cells from service when the conversion to the new M
13 cells began in April of 2001. We installed these 30
14 new cells at a capital cost of \$40 million. On
15 August 3, 2001, the company filed for protection under
16 Chapter 11 of the U.S. Bankruptcy Code, but we
17 continue to work towards the completion of the 30 new
18 cell installation.

19 We exited bankruptcy through a sale of
20 assets of US Magnesium in June of 2002. In 2002 and
21 2003, we applied the M cell technology to the
22 remaining older cells at a cost of \$6 million. As
23 shown in Hearing Slide 1, the M cells have increased
24 electrical power efficiency at the cell and reduced
25 our consumption of electrical energy per pound by one-

1 third.

2 They have dramatically improved the strength
3 of the chlorine that the cells discharge and the
4 recovery of chlorine. They have increased the life of
5 the cell before refractory rebuilding from 500 days to
6 1,500 days and enabled us to reduce our labor hours
7 per ton by almost 30 percent from 2000 to 2003.

8 As shown on Hearing Slide 2, the M cells
9 have reduced chlorine emissions by 91 percent. The
10 captured chlorine is used to make wastewater treatment
11 products that are used by municipalities all over the
12 western United States.

13 These investments have been extremely
14 successful from an operational standpoint. Among
15 other things, the modernization has enabled the plant
16 to meet the EPA's 2004 max standard or maximum
17 achievable control technology for the U.S. magnesium
18 industry.

19 Our success in making our production
20 facilities more efficient and environmentally friendly
21 has been widely recognized by the U.S. Government, the
22 State of Utah and others. As shown in Hearing Slides
23 3 and 4, the U.S. Environmental Protection Agency
24 awarded us its prestigious Climate Protection Award,
25 and the Utah state legislature issued an official

1 citation honoring our successful efforts.

2 In addition, as shown in Hearing Slides 5
3 and 6, we received the Best of State Award for primary
4 metal production in Utah and Union Pacific's Pinnacle
5 Award for safety.

6 The filing of our petition against dumped
7 imports from China and Russia gave us reason to
8 believe that magnesium prices would improve.
9 Accordingly, we developed and implemented plans to
10 increase our total ingot capacity to 53,500 metric
11 tons per year.

12 We are in the process of upgrading our
13 existing M cells in the first building, which would be
14 completed by the end of 2007. In addition, as
15 announced in a press release on September 23, 2004, we
16 began installation of additional M cells in Building 3
17 to further increase capacity.

18 Start up of the new cells, however, has been
19 delayed due to falling market prices. However, if
20 prices return to fair market levels we would be able
21 to complete the ongoing expansion and could possibly
22 justify further expansion to as much as 73,000 metric
23 tons per year.

24 Although the modernization project has
25 improved our competitive position, our financial

1 condition remains precarious and vulnerable to further
2 reductions in prices. Prices for pure magnesium in
3 the 2005 contract year rose following the successful
4 petition in imports from China and Russia and led to
5 modest profits for the first time in years at US
6 Magnesium.

7 Unfortunately, the prices and profits
8 realized in 2005 were largely based on contracts that
9 we entered into in 2004 while the China-Russia
10 investigation was having a positive impact on prices.
11 Since then spot prices have declined significantly.

12 As a result, the prices negotiated in 2005
13 for delivery in 2006 were well below the prices that
14 led to improvements in our financial performance in
15 2005. The impact of falling prices on our operation
16 is worsened by the sharp increases in our production
17 costs caused by escalating natural gas prices.

18 I understand that one of the factors that
19 the Commission must consider in this review is the
20 impact of revocation of the orders on the industry's
21 ability to grow and invest. So long as the orders
22 remain in effect, they provide some stability to the
23 market by controlling the behavior of Canadian and
24 Chinese producers.

25 Given our existing infrastructure, we are in

1 an excellent position to expand capacity if market
2 prices justify the capital investment. We have the
3 existing capacity to harvest magnesium chloride from
4 the Great Salt Lake brine to supply twice our current
5 electrolytic cell capacity.

6 A similar situation exists with our ingot
7 casting capabilities. All we need to do is add more
8 of the new cell technology cells, the M cells, to
9 increase our electrolytic production capacity.

10 Elimination of the orders, however, would be
11 devastating. Increased imports from Canada and China
12 will cause already low market prices to plunge
13 further. This would destroy any return in our past
14 and pending investment projects and make it impossible
15 to consider any future expansion.

16 In conclusion, we ask for the Commission's
17 help in keeping the orders in place to prevent the
18 return to the U.S. market of the distortions caused by
19 unfairly priced imports from Canada and China. In the
20 absence of the orders, we cannot expect to survive
21 much less to continue our significant investment
22 efforts to maintain, modernize and expand U.S.
23 magnesium production.

24 Thank you.

25 CHAIRMAN KOPLAN: Thank you, sir.

1 MR. TISSINGTON: Good morning. My name is
2 Cam Tissington. I'm vice president of sales and
3 marketing for US Magnesium, LLC. I have more than 30
4 years of diversified experience as a business
5 executive in the marketing, developing and sale of
6 magnesium.

7 Between 1983 and 1998, I was employed in
8 various capacities in the Dow Chemical Company's
9 magnesium business, including magnesium marketing
10 manager and global commercial manager. Since 1998, I
11 have worked for US Magnesium and its predecessor
12 company as vice president of sales and marketing. I
13 therefore understand the commercial realities, the
14 economics and the technical aspects of the U.S. and
15 global magnesium industry.

16 I will begin by discussing what the
17 Commission calls the domestic like product issue. I
18 will focus on the question that is contested by Norsk
19 Hydro Canada in its prehearing brief; that is, whether
20 based on the factors the Commission normally considers
21 pure and alloy magnesium are the same or different
22 like products.

23 These factors include the physical
24 characteristics and uses of pure and alloy magnesium,
25 the extent to which pure and alloy magnesium are used

1 interchangeably and the relative prices of pure and
2 alloy magnesium.

3 In the recent investigations on China and
4 Russia, the Commission correctly found that pure and
5 alloy magnesium are a single domestic like product.
6 It is extremely important to consider this issue in
7 context. Magnesium encompasses a broad continuum of
8 chemistries, raw material sources, form sizes and
9 shapes. If you ignore this continuum and subdivide it
10 you will not get a result that reflects the realities
11 of the marketplace.

12 There's no real question that pure and alloy
13 magnesium are similar in physical characteristics. As
14 the Commission noted in the China-Russia
15 investigation, both consist mostly of magnesium, at
16 least 99.8 percent in the case of pure magnesium and
17 90 percent in the case of alloy magnesium.

18 In addition, as discussed in our prehearing
19 brief and questionnaire response, pure and alloy
20 magnesium are produced in the same facilities using
21 the same machinery, equipment and workers. The amount
22 of value added in the alloying phase is extremely
23 small.

24 In earlier cases, the Commission found that
25 pure and alloy magnesium are used for different

1 purposes and therefore do not compete in the
2 marketplace. As found in the China-Russia
3 investigations, however, circumstances have changed
4 sufficiently to demonstrate that pure and alloy
5 magnesium do have sufficiently overlapping uses
6 primarily in the production of aluminum alloys and in
7 the manufacture of reagents used in iron and steel
8 desulfurization.

9 These two applications alone account for a
10 large percentage of the U.S. magnesium market.
11 According to the U.S. Geological Survey in 2005,
12 aluminum alloying and desulfurization of iron and
13 steel accounted for 35 percent of magnesium
14 consumption.

15 To understand why pure and alloy magnesium
16 are used interchangeably in these large segments of
17 the magnesium market, you need to appreciate the
18 manner in which alloy magnesium is used by producers.
19 It is used based primarily upon the pounds of
20 magnesium content irrespective of the alloying
21 ingredient.

22 Aluminum producers and others use alloy
23 magnesium instead of pure magnesium when on a per
24 pound of magnesium basis the magnesium content is
25 available at comparable or lower prices. They buy

1 alloy rather than pure whenever it makes economic
2 sense as it has often in recent years.

3 They do so because there's nothing about
4 alloy magnesium that makes it unsuitable for use in
5 these market segments. Over 95 percent of alloy
6 magnesium sold in this country is made to ASTM
7 specifications AM50A, AM60B and AZ91D.

8 AM50A consists of 95 percent magnesium, five
9 percent aluminum and less than .6 percent manganese.
10 The five percent aluminum content is obviously useable
11 in making aluminum alloy, and the nominal .6 percent
12 manganese content is easily tolerated in aluminum
13 alloys. Thus, aluminum producers can freely add
14 magnesium to their product using either pure magnesium
15 or AM50A alloy. The same is true with the use of both
16 AM60B and AZ91D alloy, both of which consist primarily
17 of magnesium and aluminum.

18 Alcoa, which is the largest aluminum
19 producer in this country, stated at a hearing before
20 the Department of Commerce in the recent investigation
21 of imports from China and Russia that it was using
22 AM50A alloy magnesium to produce aluminum alloys.
23 AM50A is a very common alloy and is one of the three
24 dominant magnesium alloys used in the United States.
25 Alcoa began using it because it was cheaper than pure

1 magnesium. It was that simple.

2 Alcan is also a very large aluminum
3 producer. In the preliminary China-Russia
4 investigation, Alcan's witness stated explicitly that
5 Alcan was using secondary alloy magnesium. We have
6 known for some time that the producers of secondary
7 alloy magnesium have been selling alloy magnesium to
8 aluminum producers.

9 Other evidence of the use of ASTM
10 specification alloy magnesium by aluminum producers
11 can be found in the trade press. For example,
12 *American Metal Market* made the following observation
13 about the China-Russia investigation:

14 "US Magnesium's petition against Chinese
15 alloy didn't surprise market participants, many of
16 whom anticipated the move for the past year. It was
17 widely acknowledged that some consumers, aluminum
18 producers especially, were using AM50 as a substitute
19 for pure magnesium, which they could get from China."

20 Prior to the China-Russia investigation, the
21 Commission found that the prices of pure and alloy
22 magnesium were not closely correlated. As the
23 Commission found in the China-Russia case, however,
24 that is no longer true. The prices of the two types
25 of magnesium have converged.

1 We are in a unique position to speak to this
2 issue because we are the only remaining domestic
3 producer of pure magnesium. The prices of pure and
4 alloy magnesium today are essentially identical.
5 That's true for our products. It's true for most of
6 the imports.

7 I've looked at the public version of the
8 brief submitted to the Commission by NHCI in this case
9 where it argues that the Commission should revert to
10 finding pure magnesium and alloy magnesium to be two
11 separate products.

12 According to NHCI, the pricing conditions
13 that led to pure and alloy magnesium being used
14 interchangeably has been eliminated by the antidumping
15 orders on Chinese and Russian magnesium that were
16 imposed last year. As a factual matter, this argument
17 simply doesn't fly. Pure and alloy magnesium
18 continues to be sold to the same customers for the
19 same purposes.

20 Moreover, the argument just doesn't make any
21 sense. If Norsk Hydro Canada's logic prevails the
22 Commission's determination whether two products are
23 the same or different domestic like products would
24 shift back and forth from case to case depending on
25 whether current pricing conditions made it economical

1 to use them interchangeably.

2 The fact remains that pure and alloy
3 magnesium are fully useable for identical purposes.
4 This wouldn't change just because the prevailing
5 prices may affect the buyer's choice between pure and
6 alloy magnesium.

7 Switching gears a bit, I would like to talk
8 about magnesium prices. Prices went up in 2005 in
9 response to our filing the China-Russia petition, and
10 our profitability improved as well. This temporary
11 improvement in prices, however, largely resulted from
12 contract sales delivered in 2005 that were negotiated
13 in 2004 at the peak of the price improvement related
14 to the petition.

15 Spot prices have declined in both 2005 and
16 2006, reflecting intense continued competition from
17 both subject and non-subject imports. We have had
18 little choice but to meet the low price of the imports
19 head on.

20 As Mr. Legge just told you, we have made
21 very expensive investments in new electrolytic cells.
22 It was never an option to leave these cells idle and
23 let them deteriorate until they were unusable. Thus,
24 our 2006 contract prices have locked in some low
25 prevailing prices.

1 This situation leaves US Magnesium highly
2 vulnerable to injury from imports from China and
3 Canada. If the orders are not kept in place, there is
4 no doubt that spot prices will continue dropping and
5 contract prices will follow.

6 Once free of the orders, the volumes of
7 imports from Canada and China will increase
8 significantly and further depress prices. There would
9 be massive underselling by these imports, just as
10 there was before. We would experience lost sales and
11 revenues on a massive scale, just as we did before.

12 Our plans to expand capacity would be
13 severely impaired, just as they were previously. We
14 would be deprived of an opportunity to earn a
15 reasonable return on the extensive investments that we
16 have already made.

17 An affirmative determination that revocation
18 of the orders would be likely to result in the
19 continuation or reoccurrence of material injury is the
20 only thing that will prevent this from happening.

21 Thank you.

22 MR. JONES: Steve Jones again from King &
23 Spalding. I'm joined today by my colleague, Mike
24 Mabile.

25 Before Dr. Button goes into some of the

1 economic factors demonstrating a likelihood of
2 continuation or recurrence of material injury to the
3 domestic industry I'd like to address briefly two
4 issues, the first being like product. There are
5 several important additional points that I'd like to
6 make to add to what Mr. Tissington said.

7 As you know, the Commission considered this
8 issue as thoroughly as possible just a little over a
9 year ago in the case involving imports from China and
10 Russia. The Commission found that pure magnesium and
11 alloy magnesium, primary magnesium and secondary
12 magnesium, and granule magnesium and cast ingot
13 magnesium are all part of the same domestic like
14 product.

15 Specifically with respect to pure and alloy
16 magnesium, the Commission concluded that,
17 "Circumstances had changed sufficiently so as to blur
18 the dividing line between pure and alloy magnesium and
19 to warrant treating pure and alloy magnesium as a
20 single domestic like product in these investigations."

21 The changed circumstances that the
22 Commission was referring to is the use of alloy
23 magnesium for the same principal applications as pure
24 magnesium.

25 NHCI would like the Commission to find two

1 like products in this case based on its assertion that
2 the market situation that was present a year ago was
3 temporary and disappeared as a result of the
4 imposition of antidumping duties on alloy magnesium
5 from China.

6 Essentially NHCI admits that pure magnesium
7 and alloy magnesium are substitutable and can be used
8 interchangeably when it makes economic sense to do so.
9 It argues, however, that the economic rationale for
10 substituting alloy magnesium for pure magnesium is not
11 as strong today as it was one or two years ago and
12 that therefore the basis for finding one like product
13 no longer exists.

14 The Commission should reject this argument.
15 The economic motivation for substituting alloy
16 magnesium for pure magnesium is as strong today as it
17 was before antidumping duties were imposed on alloy
18 magnesium from China about a year ago.

19 Even if it weren't, it was conclusively
20 demonstrated in that investigation and in this review
21 that aluminum producers can and will substitute alloy
22 magnesium for pure magnesium if the pricing justifies
23 it. This means then that alloy magnesium and pure
24 magnesium compete for the same business and that
25 imports of alloy magnesium can cause material injury

1 to producers of pure magnesium.

2 This was not possible when the Commission
3 first considered this issue 15 years ago in the first
4 ever magnesium case under Title VII. As you may
5 recall from reading that determination, the Commission
6 originally found one like product and was told after
7 an appeal to a binational panel to render a
8 determination based on two like products.

9 Today this interchangeability of alloy
10 magnesium and pure magnesium is not only a theoretical
11 possibility; it has been thoroughly demonstrated and
12 documented. NHCI would like to put that horse back
13 into the barn, but the horse has already gone.

14 As Mr. Tissington told you, pure magnesium
15 and alloy magnesium continue to be sold to the same
16 customers for the same purposes even after the
17 imposition of antidumping duties against alloy
18 magnesium from China.

19 The domestic industry's concern, of course,
20 is that an unjustified finding of two or more like
21 products could create a loophole in the relief
22 provided by these orders. Given the nature of the
23 product and the history of prior magnesium cases, that
24 concern is justified.

25 For example, if the Commission were to find

1 that pure magnesium and alloy magnesium are separate
2 like products in these reviews and were to make an
3 affirmative determination for pure but a negative
4 determination for alloy, alloy magnesium from Canada
5 could pour into this country to be used in traditional
6 pure magnesium applications without being subject to
7 countervailing duties, just like alloy magnesium from
8 China did under similar circumstances a few years ago.

9 Of course, while there is clear evidence as
10 to substantial interchangeability on the record, you
11 can find a single like product even if there is no
12 interchangeability. That is what the Commission has
13 said on other occasions in other cases.

14 That is the only conclusion consistent with
15 the legislative history of the statute and the
16 Commission's repeated statements over many years,
17 which make clear that none of the various like product
18 factors, no single like product factor is dispositive.

19 There's also a very important legal
20 dimension to the issue that we ask the Commission to
21 keep in mind. The legislative history of the Trade
22 Agreements Act of 1979 says that the definition of
23 like product should not be interpreted in such a way
24 to prevent consideration of an industry affected by
25 the imports under consideration.

1 Please think about what that means in the
2 context of this case. If you find that pure and alloy
3 magnesium are separate like products, you are
4 effectively precluding yourself from considering the
5 likely harm that imports of alloy magnesium from
6 Canada will cause to the domestic pure magnesium
7 industry in its sales to aluminum producers. We think
8 that this harm likely would be considerable.

9 Even if you were not as sure of this as we
10 are, if you find that pure and alloy magnesium are
11 separate like products you cannot even consider this
12 evidence. It becomes irrelevant. We respectfully
13 submit that this would be contrary to the clear
14 guidance that Congress has given to the Commission on
15 this subject.

16 The second issue I'd like to discuss is the
17 significance of the Department of Commerce's
18 affirmative determination. Congress made affirmative
19 determinations that both NHCI and Magnola would be
20 likely to receive countervailable subsidies if the
21 orders are revoked. A determination of likely
22 countervailable subsidies if a countervailing duty
23 order is revoked is Commerce's job in sunset reviews,
24 not the Commission's.

25 The Canadian parties in this case would have

1 the Commission second guess or discount Commerce's
2 judgment in making its determination of likely future
3 material injury to the domestic industry if the order
4 is revoked. The Commission may not do this. It must
5 take Commerce's determination at face value and
6 proceed from there. If Congress' determinations are
7 affirmative here, the Commission must proceed from the
8 premise that countervailable subsidies are likely if
9 the orders are revoked.

10 In the first sunset review, Quebec assured
11 the Commission that its subsidization of NHCI was a
12 one-time event and that future subsidies would not
13 occur. Fortunately, the Commission gave no weight to
14 Quebec's assurances because they were not true.

15 In a new shipper administrative review
16 requested by Magnola after the Commission's
17 determination in the first sunset review, Commerce
18 determined that Quebec had provided a several million
19 dollar cash grant to Magnola to train its workforce.
20 That this grant was a countervailable subsidy as
21 determined by Commerce was affirmed by a NAFTA
22 binational panel. Thus, contrary to Quebec's
23 assurances in the first sunset review, the
24 subsidization of NHCI was not a one-time event.

25 To the contrary, Quebec is fully capable and

1 willing to subsidize its magnesium industry if
2 necessary at rates that are commercially significant.
3 If NHCI can pursue its expansion plans and Magnola can
4 restart its plant without accepting subsidies, more
5 power to them. History has shown that they cannot do
6 so.

7 The countervailing duty order provides
8 critical discipline to ensure that Canadian magnesium
9 producers do not accept subsidies that will enable
10 them to compete more effectively in the U.S. market to
11 the detriment of the domestic industry.

12 Thank you.

13 MR. BISHOP: Good morning. I'm Kenneth
14 Button, Senior Vice President of Economic Consulting
15 Services, LLC, appearing on behalf of US Magnesium.
16 I'm accompanied by ECS senior economist Jennifer Lutz.

17 I'd like to note eight of the conditions of
18 competition that are important in defining the U.S.
19 magnesium market. First, demand for magnesium is a
20 derived demand associated with the demand for
21 downstream products such as aluminum alloys and die
22 cast automotive parts. In these uses, the demand for
23 magnesium tends to be price inelastic. A change in
24 the price of magnesium has relatively little impact on
25 the quantity of magnesium demanded.

1 Second, the electrolytic cells used by
2 producers such as US Magnesium and the Canadian
3 producers if shut down require rebuilding at
4 significant cost. Thus, to be cost effective
5 producers must attain continuous production at a high
6 level of capacity utilization. Therefore, in the face
7 of price competition a magnesium producer is generally
8 compelled to cut price rather than to reduce
9 production volume.

10 Third, magnesium is a commodity product.
11 The magnesium produced in China and Canada is a close
12 substitute for U.S. produced magnesium. In all
13 material aspects of product chemistry, form and
14 quality, magnesium from China and Canada competes
15 directly with domestically produced magnesium.

16 Four, reflecting the fact that magnesium is
17 a commodity product, the market for magnesium products
18 is extremely price competitive. Because the chemistry
19 and physical characteristics of the domestic product
20 and imported product are comparable and governed by
21 the same industry accepted ASTM specifications,
22 customers focus on price in the selection of a
23 supplier.

24 Fifth, US Magnesium and the producers in
25 China and Canada can easily switch production between

1 pure magnesium and alloy magnesium to suit the
2 producers' commercial interest. For example, when
3 antidumping duties were imposed on pure magnesium
4 products from China, the Chinese producers switched
5 their exports from pure magnesium to alloy magnesium
6 for the U.S. market.

7 Six, a more recent change in the conditions
8 of competition concerns U.S. consumers, especially,
9 but not exclusively, U.S. aluminum producers which
10 have traditionally used pure magnesium to make their
11 products. Major U.S. aluminum producers increased
12 their purchases of low-priced imported alloy magnesium
13 as a low-cost means of introducing magnesium units
14 into their aluminum alloy production.

15 Seventh, there is significant excess global
16 capacity to produce magnesium. After U.S. imports of
17 pure and alloy magnesium from Russia and alloy
18 magnesium from China were constrained due to
19 preliminary dumping determinations in October of 2004,
20 imports from other sources have sought to take their
21 place reflecting the excess global capacity.
22 Significant excess capacity exists, especially in
23 China.

24 Finally, U.S. market price increases due to
25 the investigation and subject orders on magnesium from

1 China and Russia were short-lived. This condition is
2 very relevant to the vulnerability of the industry.
3 The magnesium price data reported by Platt's *Metals*
4 *Week* and shown in Slide 7 show clearly the improvement
5 in spot prices for pure magnesium in 2004.

6 These improvements were reflected in
7 contract prices negotiated in 2004 for delivery in
8 2005. However, during 2005 spot prices declined
9 sharply, adversely impacting the contract negotiations
10 occurring in 2005 for delivery in 2006. While 2006
11 prices remain above the level before the China-Russia
12 investigation level, prices have declined
13 significantly from the higher spot and contract price
14 levels achieved in 2004 and 2005.

15 Revocation of the orders on pure and alloy
16 magnesium from Canada would have a significant adverse
17 effect on the domestic magnesium industry. As noted
18 by Mr. Jones, the Department of Commerce found that
19 Canadian Government subsidization was likely to
20 continue or recur in the absence of the orders.

21 In the original investigations, the Commerce
22 Department found several forms of countervailable
23 subsidies. The array of subsidies was diverse and
24 included, as shown in Slide 8, funding for a
25 feasibility study, exemption from paying water bills,

1 Article VII capital equipment financing grants and
2 reduced electricity rates.

3 NHCI has long stated its wishes to expand
4 production capacity. Prior to the first sunset review
5 of these orders, NHCI announced plans to double its
6 capacity from 43,000 metric tons to 86,000 metric
7 tons. In a press release, NHCI noted that the
8 expansion was considered necessary to achieve
9 essential cost reduction derived from economies of
10 scale.

11 However, after NHCI failed to achieve
12 revocation of the antidumping and countervailing duty
13 orders in the first sunset review, these plans were
14 postponed. NHCI more recently announced plans to add
15 smaller, but still very significant, additional
16 capacity to its plant.

17 It is clear that any new capacity would be
18 directed at the U.S. market. The reason is that NHCI
19 is currently facing fierce price competition in its
20 Canadian home market and in other export markets from
21 Chinese magnesium.

22 Canadian Government import statistics show
23 rapidly increasing imports into Canada of low-priced
24 magnesium, particularly from China. NHCI has lost the
25 ability to compete effectively in its European and

1 Asian export markets due to competition from China and
2 Russia as well.

3 As noted, NHCI accepted a variety of
4 subsidies in building its original plant. In the
5 absence of the CVD orders it would likely accept new
6 subsidies as found by the Department of Commerce in
7 this sunset review.

8 In the first sunset review, NHCI provided
9 testimony on two key points that are relevant here.
10 First, in an attempt to achieve revocation of the
11 antidumping order on pure magnesium, NHCI stated that
12 it had permanently switched its focus from pure
13 magnesium to alloy magnesium for reasons allegedly
14 unrelated to the order and thus U.S. imports of pure
15 magnesium would remain very low, yet after the
16 decision by a NAFTA panel the antidumping order was
17 removed at the end of 2004 and immediately U.S.
18 imports of pure magnesium from Canada increased. They
19 jumped from only 1,900 metric tons in 2004 to 4,800
20 tons in 2005, an increase of 159 percent.

21 This abrupt change occurred not in
22 association with an increase in total NHCI production
23 volume, which is one of the primary concerns of the
24 U.S. industry with respect to the removal of the
25 countervailing duty order. Rather, the increase in

1 NHCI pure magnesium exports appears to have been
2 simply a switch in the composition of its U.S.
3 shipments from alloy magnesium back to pure magnesium
4 arising from the removal of the discipline of the
5 antidumping order.

6 The message from this change in NHCI
7 commercial behavior is not just that NHCI can switch
8 seamlessly between pure and alloy shipments to the
9 U.S. market, but that it will also respond
10 aggressively to commercial opportunities in the U.S.
11 market by increasing volumes and cutting prices.

12 With respect to price, the increase in NHCI
13 exports of pure magnesium was achieved through a
14 reduction in its pure magnesium price. The average
15 unit value of pure magnesium from Canada fell by nine
16 percent from 2004 to 2005.

17 In achieving this expanded pure sales
18 volume, NHCI appears to have taken volumes previously
19 supplied by the Russians, which US Magnesium had
20 fought to win. US Magnesium believes that NHCI's
21 prices for these sales undercut US Magnesium and was
22 key to NHCI winning these pure magnesium volumes.

23 In 2006, with prices falling, the volume of
24 pure magnesium imports from Canada has continued to
25 rise. In the January-February 2006 period, import

1 volumes are 57 percent higher than the January-
2 February 2005 level, and the average unit value of the
3 pure import fell by 23 percent.

4 According to Census Bureau data, Canada is
5 now the lowest priced supplier of pure magnesium to
6 the U.S. market. While imports of alloy magnesium
7 from Canada have entered at higher AUVs, US Magnesium
8 believes that this in fact is due to very special and
9 important circumstances regarding NHCI's long-term
10 alloy magnesium contract with General Motors.

11 That multi-year contract was signed in 1996.
12 As Slide 9 shows, the 1995-1996 pricing environment
13 during which the GM contract was negotiated was
14 clearly far stronger than the current pricing
15 environment. US Magnesium understands that although
16 the GM contract price provision calls for some
17 periodic price reduction over time, the mild declining
18 price trajectory still leaves the 2006 price to GM far
19 higher than the general market prices prevailing
20 today, hence the relative consistency and higher price
21 levels in Canadian alloy magnesium import AUVs over
22 time.

23 This GM contract expires at the end of 2007,
24 the end of next year. US Magnesium believes that
25 NHCI, to put it mildly, is very keen to keep this high

1 volume GM business, yet US Magnesium understands that
2 GM will request bids from a number of suppliers in
3 order to get lower prices.

4 US Magnesium is very concerned that absent
5 the discipline of the countervailing duty orders,
6 first, Magnola would seek government subsidies to let
7 it restart and to reemploy the 380 laid off workers
8 and to compete for the GM volume.

9 Second, NHCI, facing this additional home
10 town competition, would find itself commercially
11 compelled to seek production cost subsidies such as
12 preferential electricity and water rates, as well as
13 capital equipment subsidies that were the source of
14 the original countervailing duty orders. By the way,
15 that capital equipment subsidy program still exists
16 today.

17 US Magnesium hopes to compete successfully
18 for the GM business and not to have to compete against
19 Canadian Government subsidies in doing so as to
20 Magnola.

21 At the time of the first sunset review on
22 these orders, the U.S. industry was anxiously awaiting
23 the start up of Magnola Metallurgy, a magnesium
24 producer with a projected 65,000 metric tons of
25 capacity owned at that time by Noranda and the Quebec

1 Government agency, SGF.

2 U.S. producers were concerned that Magnola
3 would receive countervailable subsidies and direct its
4 production at the U.S. market. The Commission cited
5 Magnola as a factor in its affirmative sunset review
6 determination.

7 In fact, Magnola then did begin exporting to
8 the U.S. market in 2001 and requested a new shipper
9 review at the U.S. Commerce Department. This review,
10 however, showed that despite Magnola's claims to the
11 contrary, Magnola did receive countervailable
12 subsidies in the form of an \$8 million training grant.

13 After shipping to the U.S. market in 2001,
14 2002 and 2003, Magnola suspended operations in 2003.
15 Slide 10 shows public statements regarding the status
16 of Magnola. At the time of the shutdown, Magnola
17 stated that Magnola's closure was only temporary and
18 that 10 workers would remain on site to maintain the
19 plant. Noranda later confirmed that the shutdown was
20 "for an indefinite period of time until market
21 conditions allow for a viable operation of the plant."

22 Following the acquisition of Noranda by
23 Falconbridge, a 2005 news article reported that the
24 CEO of Falconbridge stated that the plant "isn't
25 permanently closed, but rather is on a low-cost care

1 and maintenance status."

2 More recently, Falconbridge reiterated in
3 its 2005 annual report that Magnola was only
4 "temporarily shut down." Finally, the prehearing
5 report cites the Quebec Government, part owner, as
6 stating that Magnola "could reopen in the next few
7 years."

8 If the orders against Canada were to be
9 revoked, Magnola would be likely to resume production.
10 Magnola laid off most of its 380 workers when it
11 suspended production in 2003. It would need to train
12 a new work force. It would likely request and receive
13 subsidies to do so, just as it did when it first began
14 production.

15 Furthermore, public reports note that the
16 plant, although designed to produce 65,000 metric tons
17 per year, only reached production of 25,000 metric
18 tons before shutting down in 2003. While the CVD
19 orders restrain Magnola's level of subsidization,
20 revocation of the orders would enable Magnola to
21 request subsidization to bring production up to full
22 planned capacity.

23 Given the public policy desire to reemploy
24 Magnola's 380 workers, the Quebec Government, a 20
25 percent owner of Magnola, would have significant

1 incentive to provide new financial assistance to the
2 plant.

3 Plans for an entirely new magnesium producer
4 are discussed in the Commission's prehearing report.
5 The Cogburn Magnesium Project in Halley, British
6 Columbia, is described as a U.S. dollar \$1.3 billion
7 integrated quarry and magnesium reduction plant with
8 an annual production capacity of a truly huge 131,000
9 metric tons.

10 The Canadian magnesium industry has long
11 focused its output on the U.S. market and no doubt
12 will continue to do so. The Canadian magnesium home
13 market is relatively small, and official Canadian
14 import stats show that it is overrun by imports of
15 low-priced magnesium from sources such as China and
16 Russia.

17 Because of the protection that the U.S.
18 industry has sought and received in the U.S. market,
19 Canadian producers enjoy higher prices on sales to the
20 U.S. market than on sales in their Canadian home
21 market or in third countries.

22 Even putting aside the prospects of new
23 production at Cogburn, the potential of new import
24 volume into the U.S. market from NHCI and Magnola
25 would be larger than NHCI's annual production. In

1 order to find customers for these new volumes in the
2 U.S. market, the Canadian producers would have to
3 offer lower prices to take sales from U.S. and third
4 country suppliers.

5 US Magnesium, as an electrolytic producer,
6 must keep operating at full capacity and be forced to
7 offer even lower prices, threatening further US
8 Magnesium's financial viability.

9 Ms. Lutz will continue our testimony
10 regarding the order on dumped imports from China.

11 MS. LUTZ: China is by far the world's
12 largest producer of magnesium. As shown in Slide 11,
13 China's production capacity has increased sharply over
14 time and particularly since the original
15 investigation.

16 In 1993, China had only 26,000 metric tons
17 of capacity. By the time of the first sunset review
18 of this order, Chinese capacity had risen to 170,000
19 to 180,000 metric tons. Chinese capacity is currently
20 conservatively estimated at 527,600 metric tons in
21 2005, although the Chinese Magnesium Association
22 suggests that capacity is even higher.

23 Production in 2005 was estimated at 469,000
24 metric tons, indicating that the Chinese industry has
25 a very large level of excess capacity, well above US

1 Magnesium's total capacity to produce pure and alloy
2 magnesium.

3 The Chinese Magnesium Industry is heavily
4 export oriented with approximately 80 percent of its
5 production sent to export markets. China's magnesium
6 suppliers are very aggressive in export markets. The
7 sequence of investigations regarding pure, granular
8 and alloy magnesium exports to the U.S. market shows
9 this clearly.

10 Slide 12 illustrates the pattern of
11 sequential growth and then decline in U.S. imports of
12 Chinese pure magnesium, granular magnesium and alloy
13 magnesium along with the dates that the U.S. industry
14 filed petitions against each wave of imports and the
15 dates that orders were issued. The pattern is quite
16 striking.

17 Let me describe the sequence of events.
18 First, imports of Chinese pure magnesium in ingot form
19 appeared at very low prices, and volumes began to rise
20 sharply. In response, the U.S. industry brought an
21 antidumping case against Chinese pure magnesium ingot.

22 After the order was put in place, imports of
23 pure ingot from China dropped immediately. The only
24 significant volumes entering the U.S. market after the
25 order entered under the provisions for temporary

1 importation under bond.

2 Immediately after the cessation of imports
3 of Chinese pure magnesium ingot, U.S. imports of
4 Chinese granular magnesium took off. From only one
5 metric ton in 1993, granular imports reached a high of
6 15,300 metric tons in 2000. A petition filed by the
7 U.S. industry in late 2000 and the imposition of an
8 order in 2001 caused these imports to fall off
9 immediately.

10 Finally, U.S. imports of Chinese alloy
11 magnesium rose sharply, particularly after the order
12 on granular pure magnesium was imposed. From a level
13 of 6,700 metric tons in 2000, U.S. imports of Chinese
14 alloy magnesium rose to 13,300 metric tons in 2004, at
15 which time the U.S. industry filed a petition against
16 the Chinese alloy imports.

17 By 2005, the order on alloy magnesium from
18 China had stopped the flood of these imports as well.
19 It is quite clear from this pattern what would happen
20 if the order against pure magnesium from China were
21 revoked. U.S. imports of Chinese pure magnesium would
22 quickly soar, displacing U.S. producers' shipments
23 rapidly.

24 The aggressive export pricing of the Chinese
25 magnesium producers has caused magnesium producers in

1 a number of foreign countries to go out of business.
2 For example, Pechiney in France and Southern Magnesium
3 in India shut down their primary magnesium operations
4 because of Chinese competition.

5 Similarly, Magnola in Canada cited low-
6 priced imports from China as one of the reasons for
7 suspending its production. Likewise, NHCI's parent
8 company, Norsk Hydro, pointed to the impact of Chinese
9 export prices in causing the closure of Norsk Hydro's
10 primary production plant in Norway in 2002.

11 Revocation of the antidumping order on
12 imports of pure magnesium from China would allow the
13 world's largest magnesium producer to flood the U.S.
14 market. China has been unable to sell in the U.S.
15 market without dumping. It has large, unused capacity
16 that could and would be directed at the U.S. market.
17 Chinese suppliers would take sales from all suppliers,
18 including US Magnesium, by undercutting their prices.

19 As Mr. Legge discussed, US Magnesium has
20 benefitted from the orders on Canada and China. The
21 protection provided by these orders has allowed US
22 Magnesium to upgrade its cell technology, improving
23 its efficiency, lowering its costs of production and
24 improving its environmental performance.

25 These improvements are in jeopardy, however,

1 as the U.S. industry remains vulnerable to continued
2 or renewed material injury by reason of subject
3 imports. The conditions of competition in the U.S.
4 magnesium market as discussed earlier make the
5 industry highly vulnerable.

6 While the U.S. magnesium industry was
7 certainly helped by improvements in the U.S. market
8 arising from the recent Russia-China investigation, a
9 short period of relief and improved profitability are
10 not sufficient to make up for years of losses.

11 In the Commission's determination in
12 Magnesium From China and Russia it noted that although
13 the U.S. industry saw improvements in 2004, it was
14 still incurring losses. Further improvement achieved
15 in 2005 was not sufficient to counter years of losses
16 seen by the Commission in that investigation.

17 US Magnesium believes it must maintain its
18 network of orders against unfairly traded imports to
19 remain viable. In its original investigation of
20 imports from Canada the Commission found deterioration
21 in virtually all indicia of injury. The industry
22 suffered declines in production, capacity utilization,
23 shipments, employment, prices and profitability.

24 In its investigation of pure imports from
25 China the Commission found further deterioration.

1 Imports from China were found to cause additional
2 material injury to an already injured U.S. industry.
3 The Commerce Department has made affirmative
4 determinations with respect to imports from Canada and
5 China in its sunset review determinations.

6 These subsidized and dumped imports would
7 likely injure the U.S. industry if these orders are
8 revoked. The domestic industry is especially
9 vulnerable to the current cost price squeeze arising
10 from the recent sharp increases in energy prices,
11 natural gas in particular.

12 The market's magnesium prices are set based
13 on the interplay of supply and demand forces not
14 simply matching U.S. Magnesium's production cost
15 changes. As indicated in Slide No. 7 magnesium prices
16 in the U.S. market have fallen just as natural gas
17 prices have shot up.

18 As China with its extraordinary capacity to
19 produce magnesium floods world markets other suppliers
20 channel their output to the U.S. market which has the
21 protection of anti-dumping duty orders on pure,
22 granular and alloy magnesium.

23 While U.S. Magnesium enjoyed increased spot
24 price sales in 2004 and contract sales in 2005
25 contract negotiations for 2006 were much less

1 favorable, although prices certainly were better than
2 they were prior to the China/Russia investigations.
3 This import challenge is not new.

4 The U.S. magnesium market is extremely price
5 sensitive. Two U.S. primary magnesium producers have
6 already ceased production as a result of low-priced
7 imports as discussed in Exhibit No. 1 to our brief.
8 Thank you for your attention and we'd be happy to
9 answer any questions.

10 MR. JONES: Mr. Chairman, that concludes our
11 direct presentation. We'd be happy to answer any
12 questions you may have.

13 CHAIRMAN KOPLAN: Thank you, Mr. Jones.
14 We'll begin the questioning with
15 Commissioner Lane.

16 COMMISSIONER LANE: Good morning, and
17 welcome to all of you to this panel.

18 I would like to address my first question to
19 perhaps Mr. Legge, Mr. Jones, Dr. Button or Mr.
20 Tissington because you all talked about contracts.

21 I would like for you if you can to provide
22 us with your existing contracts or at least the terms,
23 prices and conditions of those contracts including
24 whether or not there are price escalators or other
25 conditions that would permit price reductions -- I'm

1 assuming that you probably can't discuss that on the
2 record, but it can be provided post-hearing -- and I
3 would like to know how much of your production is
4 covered by contracts.

5 MR. JONES: Commissioner Lane, we'd happy to
6 provide the information. Just to clarify you would
7 like for us to submit in our post-hearing brief copies
8 of all existing contracts that U.S. Magnesium has?

9 COMMISSIONER LANE: Well, if that is not too
10 inconvenient. If that is really inconvenient I really
11 just need to know your customers, the terms of the
12 contract, the prices, any other special conditions
13 that would relate to this proceeding and whether or
14 not there are built-in price escalators or reductions.

15 MR. JONES: We'd be happy to provide the
16 information on post-hearing brief, Commissioner Lane.

17 COMMISSIONER LANE: Then of course the
18 percentage of your production that are covered by
19 contracts. Okay. Thank you.

20 Mr. Tissington, you discussed -- you said
21 that you wanted or that the conditions were depriving
22 U.S. Magnesium the ability to earn a reasonable
23 return. I would like to know what you consider to be
24 a reasonable return on your investment.

25 MR. TISSINGTON: The company's financial

1 targets are really confidential information.

2 COMMISSIONER LANE: Okay. Can you provide
3 those post-hearing?

4 MR. TISSINGTON: Certainly.

5 COMMISSIONER LANE: Thank you. On page 11-1
6 of the Commission's prehearing staff report it states
7 that end users who purchase pure magnesium generally
8 do not purchase alloy magnesium and those who bought
9 alloy magnesium do not generally buy pure magnesium.

10 In light of this statement why do you
11 conclude on page 11 of your prehearing brief that a
12 large segment of the market does not perceive pure and
13 alloy magnesium to be distinct products?

14 MR. JONES: Commissioner Lane, the statement
15 in the brief reflects not only the evidence in this
16 record, but also what the Commission found just a year
17 ago in its investigation of alloy magnesium from China
18 and pure and alloy magnesium from Russia. In addition
19 much of the evidence that we provided in our brief is
20 evidence that was also on the record of that
21 investigation.

22 We think that this issue the Commission must
23 look at of course the evidence that's on the record of
24 this investigation, but also it must be guided by its
25 knowledge of the market and by prior findings on the

1 issue and so we think certainly that what the
2 Commission just determined last year is very much
3 relevant to its determination on this issue in this
4 review.

5 COMMISSIONER LANE: Thank you. In the
6 prehearing brief you talk about the sky rocketing
7 energy costs which have further weakened the
8 industry's financial condition. You go on to say that
9 increased energy costs leave the domestic magnesium
10 industry extremely vulnerable to material injury
11 caused by increased imports if the orders are revoked.

12 Please explain how the sky rocketing energy
13 costs have affected the domestic industry and the
14 subject import producers. Are subject import
15 producers subject to the same increased costs as
16 domestic producers?

17 MR. LEGGE: I could make a try at answering
18 that for you. When we talk about sky rocketing energy
19 costs the real focus is natural gas in the United
20 States.

21 I don't know how many people here have
22 looked at their gas bill, but just to refresh
23 everyone's memory in December in the midwest the IMEX
24 hit an all time record of \$15.50 a decotherm which is
25 a huge increase from four to five years ago when you

1 would have probably seen the same gas pricing at
2 around five, so you're about triple.

3 We buy natural gas partially a firm contract
4 with a local utility, but we also buy some in the spot
5 market and we don't price magnesium according to what
6 we pay for gas. We contract a year ahead of time, and
7 then you basically sell a contract and then you
8 operate your plant with whatever type of raw material
9 inputs you get to include natural gas.

10 I think Ken Tissington can speak more to
11 this, but I don't believe that we see any of our
12 competition pricing metal in the U.S. market with any
13 knowledge of natural gas pricing.

14 You might add something on that, Ken.

15 MR. TISSINGTON: The price squeeze that Mike
16 is describing is simply that our prices are determined
17 by market supply/demand forces and the competitive
18 pressures because of that supply/demand.

19 The squeeze is that we've seen dramatic
20 increases in our cost of energy whereas the prices are
21 not determined by the cost of energy, they're
22 determined by the supply dynamics that are available
23 in the marketplace at the time.

24 COMMISSIONER LANE: Dr. Button?

25 MR. BUTTON: Commissioner, I believe you

1 additionally asked about the subject import producers
2 as to whether they were subject to the same forces of
3 energy prices?

4 COMMISSIONER LANE: Yes.

5 MR. BUTTON: Certainly that is true, and
6 certainly with respect to China, still a nonmarket
7 economy for the purposes of trade law, it appears not
8 to have much of a retarding affect on the volume of
9 either their production or their exports.

10 With respect to Canada, and NHCI, and
11 Magnola indeed they would face similar pressures, but
12 I would have to note that one of the reasons for the
13 original countervailing duty case in 1992 was a
14 substantial electricity subsidy they received from
15 Quebec.

16 The concern is that in this kind of
17 environment without the discipline of the
18 countervailing duty order that type of subsidy could
19 recur.

20 COMMISSIONER LANE: Mr. Legge, are you able
21 to take advantage of like hedging or anything like
22 that to control or manage your natural gas prices?

23 MR. LEGGE: As I've indicated we have about
24 50 percent of our gas demand is purchased locally and
25 as I said it's a firm contract and that contract does

1 not follow the spot market.

2 It's sort of a bundle of gas costs because
3 the local utility owns some of -- Questar -- it's own
4 gas, so they have mixed that and offered it to large
5 industrial consumers, so if there is a hedge out there
6 that would be it. With regard to spot prices I don't
7 know of anybody that's hedging right now because it
8 requires money.

9 COMMISSIONER LANE: Thank you. Do rising
10 energy costs affect pure and alloy magnesium producers
11 differently?

12 MR. LEGGE: It would be the same.

13 COMMISSIONER LANE: Thank you. In U.S.
14 Magnesium's prehearing brief you note that the
15 institution of the anti-dumping and countervailing
16 duty orders have allowed U.S. Magnesium to modernize
17 its plant and invest for the future. What plans if
18 any does U.S. Magnesium have to further improve and
19 modernize its facilities in the foreseeable future?

20 CHAIRMAN KOPLAN: Thank you, Dr. Button.

21 MR. LEGGE: At this point in time we were
22 going to --

23 COMMISSIONER LANE: Put that name tag back
24 there in front of that light.

25 MR. LEGGE: Just briefly we were already

1 planning to go to around 55,000 tons per year. We
2 could go to over 70,000 if the market conditions were
3 appropriate.

4 COMMISSIONER LANE: Thank you. I'm sorry.
5 I didn't see that light at all.

6 CHAIRMAN KOPLAN: I know you didn't.

7 Commissioner Pearson?

8 COMMISSIONER PEARSON: Thank you, Mr.
9 Chairman. Permit me to extend my welcome also to the
10 first panel.

11 Yes, I can see the lights, Mr. Chairman. I
12 will try to follow them also.

13 I'm trying to understand what's going on
14 with apparent consumption for magnesium in the United
15 States. Am I correct to understand that apparent
16 consumption of pure magnesium is in a long-term down
17 trend?

18 MR. TISSINGTON: I guess it depends how you
19 determine long-term. It's certainly been in a long-
20 term decline since the closure of a lot of the
21 smelters in the northwest part of the United States --
22 I'm sorry, aluminum smelters in the northwest part of
23 the United States -- so if you take it back to that
24 point certainly there is a long-term decline in the
25 demand for magnesium to the aluminum segment.

1 If you look over the shorter period, the
2 last few years, it's been relatively flat in regards
3 to aluminum with the exception that in 2005 we did see
4 a significant drop off in mag demands to the aluminum
5 industry. Probably around five percent.

6 COMMISSIONER PEARSON: Okay. There must
7 have been a little pick up somewhere else because the
8 numbers that we have available I think would indicate
9 something less than a five percent drop from 2004 to
10 2005. Is the U.S. economy overall then utilizing less
11 magnesium in the end products that are used by
12 businesses and consumers?

13 MR. TISSINGTON: It is very dependent upon
14 market segment. For example in magnesium dye casting
15 we saw a flat 2005 compared to 2004, but we had
16 predicted a year and a half ago that we would see then
17 a decline in 2006 and 2007 and in fact we are going to
18 see that decline just because of the use of magnesium
19 in the automotive segment.

20 There are other segments, though, that are
21 slightly increasing. Overall if you add all those
22 segments together what you'll find is the U.S. market
23 demand is actually decreasing to flat over the next
24 few years.

25 COMMISSIONER PEARSON: Increasing to flat?

1 MR. TISSINGTON: I'm sorry. Decreasing to
2 flat over the next few years.

3 COMMISSIONER PEARSON: I'm curious why that
4 would be the case largely because magnesium is a
5 lightweight strong metal that would seem to be well-
6 suited to the demands of the modern economy. What am
7 I missing here because we do deal with steel cases
8 occasionally also and in some of those products we're
9 seeing demand increases and that's strong stuff, but
10 that's heavy, and so why not growth in magnesium?

11 MR. TISSINGTON: As a sales and marketing
12 guy I absolutely agree with your point that
13 lightweight material like magnesium should be used
14 extensively. Unfortunately we're not seeing that in
15 the auto industry in the United States. We do see
16 that in the auto industry in Europe where they're much
17 more progressive, much more concerned about
18 performance.

19 Here in the United States, though, we
20 haven't seen that jump in demand for magnesium alloy.
21 When you look at the U.S. demand for material it's
22 really dominated by the aluminum alloying segment and
23 the automotive parts segment, so if either one of
24 those segments is down for whatever reason then the
25 demand in the United States follows that and is down

1 as well.

2 What we're seeing in the next couple of
3 years is that we've lost a significant application of
4 magnesium in the auto industry. It was planned out a
5 few years ago. We knew it was going to happen. We
6 are going to see that drop in the next couple of
7 years. It's actually a General Motors platform and
8 they converted parts to steel and aluminum for reasons
9 other than the price of magnesium.

10 This was a decision a few years ago. That
11 one application on that one platform will actually
12 move the dye cast demand market here in the United
13 States. So although we're working on new applications
14 we haven't turned that decline in growth around.

15 COMMISSIONER PEARSON: Let me just clarify
16 what you're saying about why the shift at GM is
17 working. That's a shift that will be in the direction
18 away from magnesium consumption?

19 MR. TISSINGTON: That's correct. It's
20 called the GMT900 Program which replaced the GMT800
21 Program and the switch is from magnesium to steel
22 stampings and on some parts to aluminum castings.
23 That will certainly decrease the demand for dye cast
24 alloy.

25 COMMISSIONER PEARSON: So we aren't in a

1 situation here where we're just seeing a shift of U.S.
2 magnesium consumption from domestically to overseas
3 and then we're in essence importing more products
4 containing magnesium such that the total consumption
5 of magnesium by end users in the United States has
6 gone up? I don't know if that was clear.

7 MR. TISSINGTON: Yes. Your question was
8 clear. No. We're not really seeing that. We have
9 seen some movement over the past 10 years of some dye
10 cast parts overseas. For instance a lot of the
11 electronic component parts have moved overseas. That
12 was years ago. We're not seeing any of these heavy
13 automotive parts actually move overseas.

14 When we talk about demand, though, in the
15 United States there is also a dye cast industry in
16 Canada and demand does flop back and forth from Canada
17 and the United States depending upon capacity issues,
18 those types of things, but not necessarily on the
19 price of magnesium.

20 COMMISSIONER PEARSON: Well, you've
21 mentioned dye casting and the consumption of alloy
22 magnesium. Let me now ask specifically about that.
23 As I've gone back through the record alloy magnesium
24 consumption in the early years of this process to
25 where we are now one notices really quite a robust

1 growth in consumption with a drop off then in 2005
2 relative to 2004.

3 Would you characterize the consumption of
4 alloy magnesium as quite a bit different than the
5 consumption pattern of pure magnesium?

6 MR. TISSINGTON: Certainly alloy magnesium
7 has been the golden goose for the U.S. magnesium
8 industry for a couple of decades. You're absolutely
9 correct. The growth of alloy in the United States was
10 fairly dramatic as we introduced parts into the
11 automotive industry.

12 The pure side in comparison has been
13 relatively flat. The major consumption is aluminum
14 alloy. We're very much dependent upon the demand
15 within the cast houses in the aluminum industry and
16 that's been relatively flat.

17 The growth that took place over all those
18 years was really starting from a very, very tiny base
19 if you take a look at magnesium alloy and how it grew
20 15 to 20 percent per year in those early years. Only
21 recently have we had the problem where we've lost big
22 applications to other materials at General Motors for
23 instance that have caused that drop off in alloy.

24 We are going to see a turnaround. It's
25 going to be modest, but we'll see a decline for the

1 next couple of years and in 2008 we'll probably see a
2 slight increase in dye cast alloy based on the demand
3 in the auto industry.

4 The other abnormality that you see in the
5 alloy consumption is -- we've talked about this in the
6 China/Russia situation -- there was a fair amount of
7 Chinese alloy that was actually going into the
8 aluminum segments, so when you take a look at the drop
9 off in alloy consumption part of that is that these
10 materials are substitutable.

11 We had alloy going into the aluminum
12 industry. A lot of people thought that was alloy
13 going into dye casting. So it's not quite as dramatic
14 a drop as you might think.

15 COMMISSIONER PEARSON: Okay. So it's just
16 an issue with the data?

17 MR. TISSINGTON: Correct.

18 COMMISSIONER PEARSON: How we've got it
19 compiled here. Okay. So looking forward if you were
20 to predict ahead five years you would think that the
21 consumption of alloy magnesium might be a little
22 higher than it is currently? Maybe a couple of soft
23 years here and then some hope for growth after that?

24 MR. TISSINGTON: Yes. I predict that we're
25 going to see a couple of very soft years, off five

1 percent a year, and then we'll probably see growth
2 back in the two to three percent range.

3 COMMISSIONER PEARSON: Okay.

4 Any other comments on apparent consumption?
5 My light's turning, so if you want to add to this
6 discussion --

7 MR. JONES: Commissioner Pearson, I would
8 just add briefly that it's interesting to note the
9 differences between the demand projections in this
10 sunset review and in the first sunset review where
11 industry participants were projecting 10 to 15 percent
12 growth in alloy magnesium each year and the situation
13 has changed dramatically.

14 The significance of that for U.S. Magnesium
15 is that it makes U.S. Magnesium much more vulnerable
16 to the adverse affects of unfairly traded imports
17 because the same reason: more material chasing less
18 business.

19 COMMISSIONER PEARSON: Thank you very much.
20 Mr. Chairman, over to you.

21 CHAIRMAN KOPLAN: Thank you, Commissioner.
22 Commissioner Aranoff?

23 COMMISSIONER ARANOFF: Thank you, Mr.
24 Chairman.

25 I want to welcome the panel here this

1 morning, and thank you for taking the time to answer
2 our questions. I want to start by following-up on
3 some of the like products issues that were raised in
4 your direct testimony and particularly the issue of
5 primary versus secondary magnesium.

6 As you know, Mr. Jones, although secondary
7 magnesium was within the scope in the most recent
8 investigation, the original investigation that the
9 Commission had, it was not in the scope in this
10 investigation. The Commission has been historically
11 somewhat reluctant to find a like product that goes
12 beyond the scope.

13 That's not an issue that you addressed in
14 your brief when you were going through the six factor
15 test and I wanted to give you another chance to look
16 at the issue in that light.

17 MR. JONES: I think you're right. I think
18 we should have addressed it in our prehearing brief
19 and we will be happy to address it in our post-hearing
20 brief. I think I'd like to just leave my comments at
21 that if I may?

22 COMMISSIONER ARANOFF: Okay. That's fine.
23 If you're going to address it in your brief I would
24 just point out to you when you look at it that once
25 you include secondary product in the scope it I think

1 also can have implications for the issue of one versus
2 two like products and pure and alloy since of course
3 the secondary products have some differences in their
4 production process which I think to some extent
5 complicates the other like product issues, so I hope
6 you'll look at that as well.

7 MR. JONES: We will do so.

8 COMMISSIONER ARANOFF: I guess also as
9 you're doing that granular also not in the scope in
10 this investigation.

11 MR. JONES: Correct.

12 COMMISSIONER ARANOFF: Okay. Question. I
13 guess maybe Mr. Tissington is the best one to address
14 this to, but anyone who has the answer. When
15 Northwest exited the market can you tell me who its
16 main customers were at the time and who has that
17 business now?

18 MR. TISSINGTON: To the best of my knowledge
19 Northwest Alloys' major customer was their parent
20 company, Alcoa. They also moved a fair amount of
21 material to the merchant market depending upon the
22 year. Depending upon Northwest Alloys' production at
23 that year and Alcoa's demand that year they may have
24 moved small quantities to significant quantities to
25 the merchant market.

1 Right now everyone buys for the Alcoa
2 business. Alcoa is the largest aluminum producer in
3 the United States. They represent a very large
4 portion of the U.S. market and really all the
5 suppliers -- domestic, offshore -- all vie for that
6 business. It's no secret, we testified to this a year
7 ago, that we do enjoy some of Alcoa's business.

8 COMMISSIONER ARANOFF: Does Alcoa get out
9 its business on a long-term contract, an annual
10 contract basis? Does it buy on the spot market? How
11 is its demand divided up amongst the various
12 suppliers?

13 MR. TISSINGTON: Our particular arrangement
14 with Alcoa is obviously confidential and we can share
15 that in a post-hearing brief, but typically they put
16 their material under contract either for what the
17 Commission defines as short-term or long-term
18 contracts.

19 COMMISSIONER ARANOFF: Any details that you
20 can provide about Alcoa as a customer of the duration
21 of the contracts, how much of a share of their
22 business you think you have and what you know about
23 who is supplying the rest. Then let me understand.

24 When you say that the rest of Northwest's
25 production if there was any left over after Alcoa went

1 into the merchant market you mean they made spot
2 sales?

3 MR. TISSINGTON: Some of it was spot, but
4 there was also some contract business. They tended to
5 concentrate on pure magnesium, but they were capable
6 of alloy as well, so we found their sales were really
7 in a variety of different industries.

8 COMMISSIONER ARANOFF: Because they
9 obviously had to supply the parent company first were
10 they viewed in the marketplace by other customers as a
11 reliable supplier that you could contract with over a
12 year or more period of time?

13 MR. TISSINGTON: I certainly think customers
14 felt comfortable dealing with Alcoa as a supplier.
15 Alcoa certainly has the wherewithal to be a reliable
16 supplier. During this period, though, Northwest
17 Alloys wasn't the only supplier to Alcoa. For example
18 we supplied Alcoa even when Northwest Alloys was a
19 producer of material.

20 COMMISSIONER ARANOFF: Any other details
21 that you can provide on a confidential basis, that
22 would be very helpful. I want to turn to some pricing
23 questions. I'm still trying to understand the spike
24 in prices that we saw during the recent Russia/China
25 investigation perhaps understandable, but the fall off

1 in prices that was illustrated in the overhead since
2 then I'm still trying to understand.

3 What do you ascribe that to given cost
4 increases, given the fact that China which everybody
5 agrees is this very large producer is now under order
6 in the U.S. market for the full range of its magnesium
7 products, why are the prices falling off the way they
8 are?

9 MR. TISSINGTON: Well, certainly the spot
10 market prices are higher now than they were prior to
11 the China/Russia petition. However, the Chinese
12 magnesium producers have certainly not slowed down,
13 they've simply exported more and more material around
14 the world and it's the finite demand globally.

15 What that has done is it simply has moved
16 even more attention from folks like Hydro to the U.S.
17 marketplace. So the U.S. marketplace has simply
18 become more and more competitive even though the
19 Chinese product is not prevalent here in the United
20 States at this time.

21 COMMISSIONER ARANOFF: So in a sense and I
22 don't want to put words in your mouth what you're
23 telling me is that our orders on China are not
24 effective because the Chinese volume is perhaps moved
25 out of the U.S. market but its affect on global prices

1 remains the same and we just get nonsubject imports at
2 the same prices that we would have seen the Chinese
3 product at?

4 MR. TISSINGTON: I would be the last one to
5 say that it didn't have an impact. Our profitability
6 in 2005 was certainly better than we had seen and
7 prices are certainly better than they were prior to
8 the China/Russia petition.

9 MR. BUTTON: I would add if I might, please,
10 that the role of China in the international market
11 certainly is to put price pressure on everyone. It's
12 the classic squeezing the balloon situation and the
13 U.S. market becomes the market of last resort. All
14 the western producers certainly realize that.

15 The orders against China have been extremely
16 affective in protecting and keeping the U.S. prices
17 higher than those overseas. That is something that is
18 certainly vital to U.S. magnesium.

19 COMMISSIONER ARANOFF: Appreciate that
20 clarification. Particularly wanted to ask I guess the
21 major source of nonsubject imports right now that's
22 not subject to any of our orders, would that be Israel
23 at this point?

24 MR. TISSINGTON: So nonsubject meaning non-
25 Canadian, non-Chinese --

1 COMMISSIONER ARANOFF: Also non-Russian.

2 Yes.

3 MR. TISSINGTON: Non-Russian. Israel. Yes.

4 COMMISSIONER ARANOFF: Are you aware of any
5 suppliers that are new to the U.S. market? I note for
6 example that there's some mention in our staff report
7 of Taiwan and Kazakstan as potentially relevant
8 suppliers. Do you know anything about new producers
9 and what their status is?

10 MR. TISSINGTON: Yes. I think we need to
11 separate between new producers and new countries that
12 are shipping product to the United States. In the
13 case of Taiwan I'm not aware of a primary magnesium
14 producer in Taiwan or in Korea, so although we do
15 certainly see shipments from those countries I doubt
16 that is actually the country of origin of those
17 materials.

18 The Kazakstan material, that plant has been
19 in existence for a long, long time. There's also a
20 plant in the Ukraine. Then turn them off and then
21 five years later they bring them back online. So we
22 certainly are seeing material from those countries as
23 well.

24 COMMISSIONER ARANOFF: I appreciate that.
25 Are they using a different technology than you that

1 they can turn off and turn on their plants?

2 MR. TISSINGTON: No. No. It's all
3 electrolytic technology and it's extremely expensive
4 to try to restart one of those old Kazakstan plants.

5 COMMISSIONER ARANOFF: Maybe in your post-
6 hearing brief if you could just follow-up on that. I
7 guess why it pays for them to do that and it doesn't
8 pay for you to do that. That would be helpful.

9 MR. TISSINGTON: Certainly. We can give you
10 our best estimation.

11 COMMISSIONER ARANOFF: Thank you very much.
12 Thank you, Mr. Chairman.

13 CHAIRMAN KOPLAN: Thank you, Commissioner.

14 I want to thank you all for not only your
15 direct presentation, but your answers to our questions
16 thus far. It's extremely helpful.

17 Mr. Legge, I will start with you if I could.
18 At page 2 of your prehearing brief -- and I'm coming
19 back to Magnola -- you argue that continuation of the
20 orders is essential to prevent Magnola from accepting
21 new subsidies, restarting its plant and flooding the
22 U.S. market with large quantities of low-priced
23 magnesium.

24 These arguments are made again this morning.
25 I note that when the plant was shuttered it was

1 reported that Magnola's short operating life was
2 plagued with technical problems that prevented the
3 plant from ever operating at nameplate capacity. That
4 was the AMM March 26, 2003, article that's actually
5 Exhibit No. 26 to your brief.

6 After all this time how quickly would you
7 estimate they could resume operations? I'm asking
8 that because at page 26 of your brief it states that
9 electrolytic cells used in the production of magnesium
10 deteriorate if they are not kept running constantly
11 and I note that Mr. Button made this point again today
12 and mentioned that the attendant costs could be quite
13 substantial.

14 I'm asking the question because I'm
15 wondering is it likely that Magnola would restart
16 production in the face of increased imports from China
17 as testified to by Mr. Button?

18 MR. LEGGE: In the first place I would say
19 none of us from U.S. Magnesium have been in the plant
20 since it was shuttered. We have heard stories about
21 very difficult technical issues. I've also heard that
22 some of those were solved before they were shut down.

23 CHAIRMAN KOPLAN: When did you hear that?

24 MR. LEGGE: I was a board member at the
25 International Magnesium Association. Even after the

1 plant was shuttered the president of Magnola was on
2 the board for I believe a year and a half, two years.

3 CHAIRMAN KOPLAN: The equipment is not
4 running now, right?

5 MR. LEGGE: It is not.

6 CHAIRMAN KOPLAN: And it hasn't been since
7 then?

8 MR. LEGGE: It is not. What I would say is
9 I can give you some sort of parameters that would tell
10 you how quickly I think someone could start a plant.

11 CHAIRMAN KOPLAN: That's what I'm looking
12 for, and how much it would cost.

13 MR. LEGGE: Okay.

14 CHAIRMAN KOPLAN: If he sells a
15 deteriorating there must be from what I understand in
16 the testimony a substantial cost involved.

17 MR. LEGGE: We've started one building of
18 the M cells as we've stated. It's a \$30 million
19 investment, but that was totally capitalized. I mean,
20 that was including demolition of both cells and we
21 started it in 18 months. Eighteen months we went from
22 start of demolition to all of the cells running at
23 approximately a 30,000 ton per year rate.

24 They have cells that were taken down and
25 "mothballed" or whatever. I don't know what condition

1 they were in, but you're talking about relining a cell
2 not starting a completely new capitalized cell because
3 when you do that there's of course steel,
4 infrastructure, concrete and so forth.

5 I would say this, that we can rebuild our
6 newest cell at the rate of two per month if we're
7 doing just the factory.

8 CHAIRMAN KOPLAN: What I'm struggling with a
9 bit here is this. Coming back again to this exhibit
10 that you all have in your brief it appears that at the
11 time they shuttered a major problem for them were the
12 Chinese imports and that they sought to have their
13 government institute a dumping action against China
14 actually in Canada and failed to accomplish that.

15 In hearing the testimony today it sounds to
16 me from what you've said, from what Mr. Button said,
17 that Chinese imports are increasing in Canada, so I'm
18 wondering why they would have an incentive to suddenly
19 start production and go through the cost and intent in
20 doing all this and that's why I'm probing it with you.

21 MR. LEGGE: I believe the only incentive is
22 to produce and ship into the United States.

23 CHAIRMAN KOPLAN: Okay.

24 MR. LEGGE: Because I can't imagine anyone
25 producing and shipping into Canada right now, the

1 whole market, at that price.

2 CHAIRMAN KOPLAN: Mr. Button?

3 Thank you.

4 MR. BUTTON: I think, Mr. Chairman, first I
5 would probably invite Mr. Legge to go ahead and
6 complete I guess a comment he was beginning as to what
7 was told to him on a board meeting by the people of
8 Magnola as to what the technical situation was at that
9 time post-closing.

10 CHAIRMAN KOPLAN: When was that board
11 meeting?

12 MR. LEGGE: Well, the problem they had is
13 in --

14 CHAIRMAN KOPLAN: When did that board
15 meeting occur? 2003?

16 MR. LEGGE: I would guess it would have been
17 2003.

18 CHAIRMAN KOPLAN: Okay.

19 MR. LEGGE: I was told that the technical
20 issues were with the quality of seed that was being
21 put into the electrolytic cells and that's a very
22 common problem if you don't do things correctly. We
23 also know that there was a great deal of work done on
24 it because Noranda is a very accomplished technical
25 entity, mining company.

1 They have a tremendous amount of experience,
2 so I could see that they might overcome some of those.
3 I'm not sure. I also know that Norsk Hydro assisted
4 them at some point in time.

5 CHAIRMAN KOPLAN: Thank you very much.

6 Mr. Tissington, did you want to add
7 something?

8 MR. TISSINGTON: Yes. I guess from a
9 commercial standpoint we look at Magnola and wonder
10 why its just idled and not really shuttered.

11 CHAIRMAN KOPLAN: That's what I'm wondering.

12 MR. TISSINGTON: There are six to 10 people
13 that are there supposedly keeping things warm and the
14 lights turned on, they still have a marketing group
15 for magnesium that is employed, so to us we look at it
16 and think this is not a plan that is shuttered to
17 close and make a parking lot out of like Dow Chemical
18 was, this is a plant that is truly idled and kept on
19 standby for the right conditions.

20 Obviously only they know what the conditions
21 are. My paranoia of course is it could be the GM
22 contract that comes due at the end of 2007, it could
23 be because there has been some success with dumping
24 petitions here in the United States.

25 It's hard to tell exactly what their

1 motivations are, but we view that as a plant that is
2 truly on standby.

3 CHAIRMAN KOPLAN: I appreciate that. The
4 reason I've stayed with this question is it's not like
5 they go in tomorrow and just flip the switch and they
6 start up again. From what you've said this
7 deterioration process with the cells is a continuing
8 event and now years have gone by. That's why I was
9 curious.

10 MR. TISSINGTON: From our standpoint and our
11 operating experience when you destroy a cell what
12 you've really destroyed is the factory lining of the
13 cell which means you spend a lot of money to go in
14 there and put in new brick, and you've paid
15 bricklayers, and you put in new cathodes and possibly
16 anodes, but the cell itself is a steel shell and the
17 infrastructure of busbar and concrete is still there
18 and has not been damaged, so whether you've shut it
19 down for four months or you've shut it down for 14
20 months in our opinion you may have to go back in and
21 reline that cell.

22 CHAIRMAN KOPLAN: Can you put a dollar
23 figure on that for me?

24 MR. TISSINGTON: I'm a sales guy. I sure
25 can't, but I'm sure --

1 CHAIRMAN KOPLAN: How about you, Mr. Legge?

2 MR. TISSINGTON: -- Mike could in a post-
3 hearing.

4 MR. LEGGE: I would believe certainly we
5 could give you probably more of a speculation on it in
6 a confidential post-hearing brief --

7 CHAIRMAN KOPLAN: I'd appreciate that.

8 MR. LEGGE: -- because we did test the cell.

9 CHAIRMAN KOPLAN: Thank you. I look forward
10 to that.

11 MR. BUTTON: If I could make a final comment
12 that in my comments in talking about the conditions of
13 competition and the difficulties for an electrolytic
14 producer to reduce production it was specifically
15 related to the fact that if you stop producing in a
16 cell you will then be obliged to reline it.

17 It doesn't mean you have to build a new
18 cell. In the case of the Kazakstan producers and so
19 forth after being closed for a longer period of time
20 it may be that there are other infrastructural needs
21 that need to be taking place. I was speaking more of
22 the relining issue.

23 CHAIRMAN KOPLAN: Thank you very much. I
24 see my light is about to come on.

25 I appreciate your responses to my questions.

1 Vice Chairman Okun?

2 VICE CHAIRMAN OKUN: Thank you, Mr.
3 Chairman.

4 I join my colleagues in welcoming back many
5 of you to this hearing. Appreciate you taking the
6 time to be here and the responses you've given thus
7 far. If I could just stay with the questions with
8 regard to Magnola for a few moments.

9 As I think Respondents noted it was a very
10 big part of the first sunset review. I appreciate the
11 responses you've given so far to the Chairman.

12 With regard to the technology Magnola was
13 using, Mr. Legge, can you comment? Are they using the
14 same type of cells or a different type of cells, and
15 does that matter with regard to how quickly they could
16 restart up and how much it costs, sort of the
17 technology maybe I should say?

18 MR. LEGGE: They were using what you could
19 generally describe as an electrolytic cell like ours.
20 Ours is technically what's called a monopolar cell and
21 theirs is a multipolar and it's extremely complicated.
22 Their technology was licensed from Alcan who developed
23 the cell technology.

24 They're both sophisticated pieces of
25 equipment. We have operated a similar cell. We

1 piloted that cell and ran it for some period of time.

2 VICE CHAIRMAN OKUN: That's helpful. So,
3 again, in responding for post-hearing I think it will
4 be helpful to --

5 MR. LEGGE: They're not dissimilar.

6 VICE CHAIRMAN OKUN: They're not
7 dissimilar --

8 MR. LEGGE: Yes.

9 VICE CHAIRMAN OKUN: -- okay, in terms of
10 the start-up and the lining costs that you've talked
11 about. Okay. Appreciate that.

12 Then in looking at the comments that were on
13 page 10 of your handout here and also in your brief,
14 the statements that they could reopen in the next few
15 years and that they're in a low-cost and care
16 maintenance status, I guess my question to you and
17 it's a legal question for post-hearing is whether the
18 information that you've submitted to us in your view
19 supports a finding that it is probable that Magnola
20 would reopen in the reasonably foreseeable future as
21 opposed to possible.

22 I hear Mr. Tissington talk about the
23 paranoia or the fact that there is a GM contract out
24 there. If you can evaluate that in light of the
25 economic incentives they might have to reopen?

1 Because one of those things that of course is
2 different on this record than it was before -- well,
3 there are a couple of things, but one is that of
4 course there's been a U.S. producer that's shut down,
5 so to the extent there's pull into the United States
6 market I'd like you to address that.

7 Second NHCI has stayed in the market, so
8 this isn't a case of like say Chinese where an order
9 went in place and the country's imports were shut out,
10 so I'm not sure that I see the same economic incentive
11 for an order being removed with a Chinese producer
12 vis-a-vis a Canadian producer like Magnola.

13 You can respond here if you'd like. I think
14 Mr. Legge is grabbing his microphone, so he might want
15 to say something. I also want you to cover that post-
16 hearing.

17 MR. LEGGE: We would be happy to address
18 that in our post-hearing brief. It's kind of a long
19 question. I think I'd like to think about it a little
20 bit before I comment, but we'd be happy to do so in
21 our post-hearing.

22 VICE CHAIRMAN OKUN: Did any of the industry
23 witnesses want to comment on that?

24 (No response.)

25 VICE CHAIRMAN OKUN: Okay. Then the second

1 part of that question with regard to Magnola would be
2 if the Commission were to consider that Magnola would
3 likely reopen what capacity number would you have us
4 look at?

5 Mr. Button, you reference in your public
6 testimony the 65,000 metric tons and then you also
7 reference the argument by Respondents that in fact
8 when it was operating it never got above 25,000 metric
9 tons and was not operating at full capacity. We
10 talked a little bit about the technical problems.

11 In your opinion what is supportable on the
12 record with regard to even if it were reopened what
13 capacity it would reopen at and how long would it take
14 to get to anything that would be close to nameplate
15 capacity?

16 MR. BUTTON: Let me respond with respect to
17 the economic side of it, and I'll turn to the industry
18 witnesses as to the technical issues and whether or
19 not they're likely to solve technical problems and so
20 forth.

21 First, Magnola made it clear that they
22 believed at the time the capacity was 65,000 tons, and
23 they said this was what they intended to produce and
24 also they said that for the most economical operation
25 -- they sought to achieve the economy scales -- in the

1 low production cost it would be achieved with getting
2 that capacity achieved.

3 They simply in terms of the ramp up were at
4 about 25,000 tons when they failed to get removal of
5 this order and therefore shut down production. I
6 think that there's a strong basis for the Commission
7 to use as the capacity as to what they are reasonably
8 capable of producing exactly what they said they would
9 which is 65,000 tons.

10 VICE CHAIRMAN OKUN: Industry witnesses?

11 Mr. Legge?

12 MR. LEGGE: Well, I just wanted to clarify
13 that I had indicated previously that we had started 30
14 cells in 18 months, but that was not rebuilt that was
15 from just the ground. To run at the level they were
16 running at given the production rate we know the cells
17 had targeted -- to go back to 25,000 metric tons per
18 year if they were running the cells as they were
19 designed it would only take about 10 or 12 cells.

20 As I had said previously we've started two
21 of our latest cells, we've started two a month. So
22 that can give you an idea. If they had the materials
23 then that's how quickly you could probably rebuild
24 them if everything else was solved. That's what we
25 would believe.

1 VICE CHAIRMAN OKUN: I appreciate those
2 further comments and anything else that you can
3 provide in the post-hearing because as the Respondents
4 have argued the record in the first review in which we
5 made the decision with regard to Magnola is changed by
6 time, and so to the extent that you're making an
7 argument that we should use the same nameplate
8 capacity when in that case we did have Magnola's
9 testimony as to what they were going to do we now know
10 what they did whether that's supportable by the
11 evidence, I appreciate that as well for post-hearing.

12 I have a few more questions about like
13 product. I've appreciated all the comments that
14 you've given so far and what you're going to give in
15 the post-hearing. Again, I find it curious sitting
16 here in a fairly short amount of time and see a record
17 that looks very different with regard to alloy and
18 pure than what we saw in the China/Russia case.

19 I think that was curious. It may have even
20 been the language that the Respondents used in their
21 brief, the NHCI brief, about the differences in the
22 record.

23 I want to get a better understanding of what
24 could have changed it because even some of the data is
25 from the same period in 2004 and it looks different

1 here in terms of how much of the alloy magnesium was
2 sold to aluminum manufacturers is much different.
3 Again, we placed quite a bit of weight on that in our
4 like product decisions in the China/Russia case.

5 So in looking at the decline in alloy
6 production towards the end of the POR we see that at
7 least it in part in looking at this is due to the fact
8 that one of the secondary producers ceased production
9 and another had a fire at its facility during this
10 period and I would like you to assess how these events
11 may have impacted the decline in shipments of alloy
12 magnesium to aluminum producers as compared to what we
13 saw, again, in the Russia/China investigation.

14 In doing that if you can note why that may
15 or may not be a temporary decline or as the
16 Respondents suggest that we saw very atypical market
17 conditions driven by low-priced Chinese and Russian
18 product at that time.

19 I know you've had a chance to respond to
20 some of that, but again, I'm trying to figure out if
21 the anomaly is due to this fire and the producers and
22 whether that matters.

23 I think, Mr. Tissington, you had I thought
24 an interesting reply in saying, I think it was you
25 saying, you can't switch your like product decision

1 just because prices are going to go up and down and I
2 listened to that, but I'm also trying to figure out if
3 the record looks so different it seems to me to
4 support continuing to find one like product one would
5 have to have the evidence, have an explanation as to
6 why the record looks so different in this case.

7 MR. TISSINGTON: The amount of alloy that is
8 consumed by the aluminum industry is totally dependent
9 upon the aluminum industry buying philosophy. In the
10 case of the big aluminum producers or the big aluminum
11 alloy producers they choose to buy pure alloy
12 depending upon the price.

13 They have no inherent need for the alloy per
14 se, they're looking for the magnesium molecules. If
15 they can get it cheaper in an alloy then their
16 consumption of alloy goes up dramatically. If they
17 can get it cheaper on the pure side they'll buy pure
18 magnesium.

19 So it's really the big aluminum companies,
20 the Alcoas and the Alcans, that decide how much of the
21 alloy will go into that segment. It's not a producer
22 decision, it's really a purchasing decision from the
23 aluminum company.

24 MR. BUTTON: There is some specific
25 confidential information on this point that we'd be

1 happy to include in our post-hearing brief to you on
2 that.

3 VICE CHAIRMAN OKUN: Given that my red
4 light's come on I will look for that and I may have
5 one follow-up on that.

6 Mr. Chairman?

7 CHAIRMAN KOPLAN: Thank you.

8 Commissioner Hillman?

9 COMMISSIONER HILLMAN: Thank you.

10 I, too, would join my colleagues in
11 welcoming I believe all of you back to the Commission.
12 We appreciate all of the testimony provided so far
13 this morning.

14 If I can follow-up a little bit on this line
15 of questioning just because I share the Vice
16 Chairman's concern that when we made a decision, and
17 it was a change in our decision to treat pure and
18 alloy as a single like product that was different from
19 where we had been before, it was based very much on a
20 perception by the Commission that there had been a
21 significant blurring in the purchasing.

22 Again, there's always been a distinction on
23 the production end of it in the sense that yes, you
24 can make both. I need maybe to understand a little
25 bit more on exactly how long and how difficult it is

1 to switch, I mean, to flush out the cells or whatever
2 it is that you need to do to switch between producing
3 pure versus alloy and then switch back again.

4 On the purchasing side we had seen a pretty
5 dramatic shift both in the amount of aluminum
6 manufacturers purchases of the alloy, but also in the
7 granule reagent producers purchases of alloy product.
8 I've heard your answer on the aluminum side.

9 At the time that we made that decision there
10 was a lot of discussion about the degree to which a
11 new technology was permitting particularly the
12 aluminum can producers to address the issue of any
13 beryllium content in it.

14 I'm wondering if you can say anything more
15 about that because if we look at the data that we have
16 there was a fairly dramatic shift that led to our
17 decision to treat it as one like product in 2003.

18 I have to tell you looking at the data that
19 we have before us now I would argue there's an equally
20 dramatic shift back to where we used to be or even
21 more in terms of a separation of where pure goes
22 versus where alloy goes.

23 I'm trying to make sure I understand whether
24 it is as you describe it 100 percent driven by price
25 or whether there's anything about the technology of

1 the user end of it either on the aluminum can side or
2 on the aluminum side that's driving that. Then also
3 very specifically if you can address the granular
4 reagent change in their percentage usage of alloy
5 product.

6 MR. TISSINGTON: I would certainly submit
7 that it truly is driven by the aluminum industry as to
8 whether or not they use alloy or they use pure. The
9 consumer that you're referring to that talked about
10 new technology to be able to remove beryllium, those
11 materials were still not beryllium free.

12 That particular consumer is also still
13 consuming some alloy material. So they consume some
14 pure, they consume some alloy and they're making
15 aluminum alloy. So it gets down to what they can buy
16 cheaper. If they could buy alloy from U.S. Magnesium
17 cheaper than they can buy pure from somebody else
18 they'd buy alloy from U.S. magnesium.

19 We don't really have any incentive to sell
20 them alloy differently than our pure, but if they can
21 get it then they will handle it that way. I think the
22 dramatic shift that you're seeing is testimony to the
23 fact that they can move quickly from one to the other
24 because after all magnesium alloys are simply
25 magnesium and aluminum.

1 If you're an aluminum alloyer than using an
2 alloy of magnesium that contains aluminum and
3 magnesium is not really an issue, so it's very easy
4 for them to switch back and forth.

5 COMMISSIONER HILLMAN: Then on the granular
6 reagent side?

7 MR. TISSINGTON: Granular reagents, it's
8 always being referred to as the bottom feeders in the
9 magnesium industry in that they can use pretty doggone
10 near anything.

11 A reagent is 90 percent magnesium and then
12 it's also got a carrier and if it's an alloy magnesium
13 that goes into the reagent it has a little bit of
14 aluminum, a little bit of manganese, which when you're
15 injecting these materials into molten steel or iron
16 are really not a problem.

17 Again, the industry will choose pure alloy
18 depending upon what is the cheapest. Primary or
19 secondary depending upon what is the cheapest.

20 COMMISSIONER HILLMAN: So the fact that,
21 again, we see this very I would argue even more
22 dramatic shift on the reagent granule side in terms of
23 their ability or willingness to use alloy product
24 versus pure product is, again, you're saying totally a
25 function of price not of anything else?

1 MR. TISSINGTON: It's totally a price driven
2 decision by them. I would go further to say that an
3 aluminum alloyer or a user of a reagent has no real
4 inherent need to use that alloy. Historically back 20
5 years ago they used pure magnesium. It is the product
6 that they're really looking for, the magnesium
7 molecule, but if they can get the other cheaper then
8 there's no reason not to use it to reduce their costs.

9 COMMISSIONER HILLMAN: Mr. Jones, if I can
10 come back to some of the questions that Commissioner
11 Aranoff was asking with respect to like product. I
12 just wanted to add in your response in your post-
13 hearing brief if you could also specifically address
14 the issues raised by those of us that made the
15 determination that granular product was a separate
16 like product.

17 Again, we walked through very specifically
18 why we came to that view.

19 Obviously I assume given that you're
20 suggesting one like product you are of a different
21 view, but I would like you to address the very
22 particular issues in terms of the differences in the
23 product itself, the granular versus the inked or other
24 larger tasked product, in terms of the differences --
25 the size, the dimensions, the shapes, the other

1 physical properties, the volatility issue, the
2 different facilities in terms of employment, et
3 cetera, the different channels of distribution -- all
4 of the traditional factors that were outlined in there
5 I would ask you to also address on the granular side.

6 MR. JONES: Commissioner Hillman, we will
7 address the factors that you and Commissioner Miller
8 identified in the prior case.

9 COMMISSIONER HILLMAN: Then if we go on from
10 this, if we accept your notion of this single like
11 product I want to make sure I understand how you then
12 define the domestic industry. Would you consider
13 grinders, I mean, the heart metals, reed
14 manufacturing, the grinders, to be part of the
15 domestic industry?

16 So we should be looking at all of their
17 performance data in terms of understanding the
18 condition of the domestic industry.

19 MR. JONES: We would consider grinders to be
20 part of the domestic industry to the extent that they
21 are engaged in the production as defined by the
22 Commission in its prior case.

23 If the fact is if the Commission considers
24 determining whether an activity is domestic production
25 -- I believe that was an issue in the previous case --

1 we looked at that and for some of the companies I
2 noted there may have been a question about whether
3 what they were doing was significant enough to
4 constitute domestic production as something that we
5 would want to look at given an individual producer,
6 but generally if granular magnesium is within the
7 domestic like product we would say yes, that those
8 companies are domestic producers.

9 COMMISSIONER HILLMAN: Now, how about
10 producers of secondary, remelted magnesium? AMACOR,
11 Garfield, et cetera? Are those that are produced
12 secondary, remelters, in your view should we be
13 including them as part of the domestic industry?

14 MR. JONES: As in the case involving imports
15 from China and Russia that just concluded last year,
16 yes, we would say that the producers of secondary
17 magnesium are members of the domestic industry.

18 COMMISSIONER HILLMAN: Then how about the
19 dye casters that recycle scrap magnesium? Should we
20 be including those as part of the domestic industry?

21 MR. JONES: Our position is that, no, you
22 should not be including dye casters as part of the
23 domestic industry. Dye casters are not producing
24 magnesium. They are remelting and then producing dye
25 cast magnesium parts of some kind. They are not

1 producing a magnesium product and therefore our
2 position would be that the dye casters are not members
3 of the domestic industry.

4 COMMISSIONER HILLMAN: Again, if there's
5 anything further on that in light of the brief that's
6 coming in on the like product issues that could be
7 added as well.

8 If I can then come back on the pure versus
9 alloy to the production end of it I want to make sure
10 I understand how easy or hard and how expensive and
11 time-consuming it is for you as a producer to go from
12 producing pure to producing alloy and vice versa.

13 MR. TISSINGTON: All magnesium starts at
14 least in an electrolytic plant as pure magnesium and
15 electrolytic cell. Be it alloy, be it pure, it all
16 starts in that electrolytic cell as pure magnesium.

17 COMMISSIONER HILLMAN: So the alloys are
18 added at what stage of the process?

19 MR. TISSINGTON: After we take the molten
20 metal from the electrolytic cell and we put it into a
21 furnace we can either then cast that material into a
22 pure ingot or we can alloy it in that furnace and then
23 case an alloy ingot. So when we talk about switching
24 from one to the other our electrolytic plant doesn't
25 change.

1 It continues to produce pure magnesium day
2 in, day out. The only thing that changes is in a
3 particular furnace we would alloy the proper alloy,
4 AM6D or AZ91D, and cast ingots of an alloy. Because
5 our cast house is so over designed, it has a capacity
6 of about 70,000 ton a year, we don't lose any
7 production in the plant by doing that either.

8 We continue to cast metal, but we might
9 switch over a particular piece of equipment, a
10 furnace, to make an alloy product. So no production
11 is lost, transition is pretty smooth.

12 COMMISSIONER HILLMAN: Then you have to
13 clean the furnace if you want to go back to casting a
14 pure product?

15 MR. TISSINGTON: It would depend. We never
16 would have to clean out going from pure to an alloy.

17 COMMISSIONER HILLMAN: Correct.

18 MR. TISSINGTON: We're talking about a
19 furnace. We're talking about a steel furnace. We'd
20 only have to clean out if we were going to go from
21 alloy back to pure. What we try to do is run our cast
22 house so that the lines that make alloy make alloy.
23 If we need to we can certainly move them back to pure
24 in a hurry, but we tend to try to optimize the cast
25 house and make alloy on alloy.

1 COMMISSIONER HILLMAN: Okay. If you could
2 in the post-hearing brief help me understand in a
3 hurry how long is the hurry and how expensive is it to
4 do that cleaning out? Given that the red light is on
5 I'll take whatever answers you can give on --

6 MR. TISSINGTON: We can certainly do that.
7 To me the key point as a salesperson, though, is we
8 don't lose any production when we do that clean out
9 because of the cast house being so far over designed.
10 So whether we do it in a hurry or we do it slowly
11 doesn't really matter to us, although it is a shift
12 type process.

13 COMMISSIONER HILLMAN: Appreciate those
14 answers. Thank you.

15 CHAIRMAN KOPLAN: Commissioner Lane?

16 COMMISSIONER LANE: Mr. Legge, could you
17 tell me how many hours a day you all are in production
18 and how many days a week?

19 MR. LEGGE: We are a 24-hour-per-day, 365-
20 day-a-year operation, and we run 12-hour shifts, so we
21 have four shifts. We run all the time.

22 COMMISSIONER LANE: And it's my
23 understanding that that is necessary because of the
24 cells and the cost of the cells and what it costs if
25 you shut them down, to start them back up again.

1 MR. LEGGE: Well, that's a little bit
2 longer-term issue. The reason we are on 24 hours a
3 day is the cells have what's called, like, a heat
4 balance, and that means when you put a certain amount
5 of current in, electrical power, part of it goes to
6 making the magnesium, but part of it goes to just
7 keeping the cell at a temperature. And obviously, if
8 you take the power down, even for an hour or two, you
9 lose about 10 to 15 degrees an hour in the cell.

10 So even though, in that instance, you
11 wouldn't have to reline it, it's not very efficient to
12 have that capital there and, say, have the cell not
13 run for an hour or two because it's not making
14 magnesium, and it's cooling down. So then you would
15 just have to put the power back on and bring the
16 temperature back up. So that's why we're at 24 hours
17 a day.

18 COMMISSIONER LANE: Okay. Thank you.

19 Mr. Jones, this may be a question for you.
20 What is the status of the U.S. Department of Justice's
21 action under the Resource Conservation Recovery Act
22 and the Toxic Substances Control Act against US
23 Magnesium and Renco Metals?

24 MR. JONES: As a lawyer, you would think
25 that would be within my bailiwick, Commissioner Lane,

1 but actually I think Mr. Legge is a better source for
2 an answer on that.

3 COMMISSIONER LANE: Okay. Thank you.

4 MR. LEGGE: The government has made certain
5 claims as to our violations of VAREQA, and we contend
6 that we're operating within the regulation, given the
7 -- exclusion, which is an exclusion that was granted
8 back in the eighties for certain mining-type
9 operations. So that case is going to litigation.

10 COMMISSIONER LANE: Okay. Thank you. I'll
11 just stick with you. What impact did the EPA's
12 emissions standards for primary magnesium that were
13 issued in October 2003, effective 2004, have on your
14 firm?

15 MR. LEGGE: When the mag standard was put in
16 place, we were already complying, and the major tool
17 for that was the cell modernization because one of the
18 main concerns was air emissions, and that cell
19 captures essentially all of the chlorine. So we were
20 in compliance when the mag standard came into place,
21 and we're in compliance today.

22 COMMISSIONER LANE: Okay. Thank you.

23 I'm not sure who to ask this question to,
24 but to the extent we don't have in the record already
25 market prices for pure and alloy, could you provide

1 those for us post-hearing?

2 MR. BUTTON: We'll attempt to provide some
3 contribution on that point.

4 COMMISSIONER LANE: Okay. Thank you.

5 At one time, automotive applications of
6 magnesium was considered an area of potential for an
7 increase in demand. To what extent has demand
8 increased in automotive applications?

9 MR. TISSINGTON: If you go back from when we
10 developed high-purity alloys in 1982, it's been
11 dramatic. We had a lot of years where we had 15 to 20
12 percent growth. Here recently, it's flattened out,
13 and as I testified earlier, it's probably going to
14 decline for the next couple of years. It doesn't mean
15 there isn't great potential. There is, but we're not
16 going to see the dramatic growth that we saw when we
17 were only selling 2,000 tons a year into that
18 industry. We're a much larger volume into that
19 industry now, and the growth rate is going to be
20 relatively modest.

21 Here in North America, we're going to see
22 probably a decline of 5 percent per year for the next
23 couple of years, and then we'll probably see modest
24 growth in the 3, 4, 5 percent range. But there is
25 still tremendous potential within the magnesium

1 industry. It is still the golden goose because it has
2 the highest growth rate.

3 COMMISSIONER LANE: Okay. Thank you.

4 To what extent does pure magnesium compete
5 for the same customers and applications as alloy
6 magnesium, and have you sold any alloy magnesium to
7 customers who had expressed a preference for pure
8 magnesium?

9 MR. TISSINGTON: We certainly have sold
10 alloy magnesium to aluminum industry customers that
11 really expressed a preference for pure magnesium. We
12 had alloy magnesium at the time readily available and
13 offered it to them, and they purchased it. So that
14 situation occurred, and it will probably occur again.

15 Pure magnesium is certainly the preferred
16 material by the aluminum industry, given all prices
17 are equal, but when there is an advantage to use alloy
18 magnesium, they certainly will do that. The reverse
19 is also true. There are some traditional alloy
20 industries that will use pure magnesium from time to
21 time, depending upon the price level of the material.

22 COMMISSIONER LANE: Okay. Has US Magnesium
23 been able to supply all of its customers pure
24 magnesium during the period of investigation?

25 MR. TISSINGTON: We have never failed to

1 deliver on a contract or to meet orders that we had
2 agreed to supply.

3 COMMISSIONER LANE: Mr. Chairman, I think
4 that's all the questions I have.

5 CHAIRMAN KOPLAN: Thank you, Commissioner.
6 Commissioner Pearson?

7 COMMISSIONER PEARSON: Going back for a
8 minute to an issue that Commissioner Aranoff had
9 touched on, page 7 of your charts does show a marked
10 decline in the market price for pure magnesium
11 starting sometime in the last half of 2004. What was
12 going on in the marketplace to cause that decline? I
13 understand the price increase that had preceded it was
14 related to the filing of the petition on China and
15 Russia, but why that fall-off?

16 MR. TISSINGTON: The spot price in 2004 went
17 up fairly dramatically due to the filing in February
18 and then the subsequent progress on the petition
19 during 2004. So we saw rather a dramatic increase in
20 spot prices. It probably was overly dramatic and
21 certainly did need to fall off. The fall-off during
22 2005 in the spot market, though, was simply due to a
23 surplus of material in the U.S. market and due to the
24 competitive situation that existed.

25 COMMISSIONER PEARSON: Our data would

1 indicate that total imports of magnesium into the
2 United States were lower in 2005 than 2004, so we have
3 an anomaly in which, at a time of relatively high
4 imports, we also had high prices. Then we see imports
5 declining, and we see the prices going down also. So
6 I'm just having some difficulty linking the imports to
7 what seems to have been going on in the marketplace.

8 MR. TISSINGTON: This may help a bit.
9 There's certainly two different pricing mechanisms.
10 There's contract prices, and the contract prices for
11 2005 were negotiated in 2004, when the full impact of
12 that duty petition had really taken effect. So 2005
13 prices were really negotiated in that period and then
14 delivered in 2005. Some of what you're seeing on
15 those import numbers are probably going to supply
16 contracts.

17 Spot prices are reflected by the chart we
18 provided and show the transaction price of a load of
19 material during that particular period of time. So in
20 rationalizing the numbers that you see on imports and
21 the numbers that you see in the contract information
22 that we provided with the spot price, you really have
23 a lag of time there. You need to go back and look at
24 when that contract was negotiated and what the spot
25 price might have been at that particular time.

1 COMMISSIONER PEARSON: Okay. So in 2003,
2 when the spot price would have been lower, there would
3 have been larger contracts for imports that would have
4 then come into the country in 2004.

5 I think I hear what you're saying, and I'm
6 not yet able to match it up directly with my sense of
7 what the numbers are showing.

8 MR. TISSINGTON: Okay. This chart that
9 we're looking at right here is the U.S. dealer import
10 price, spot price, so this would not reflect a
11 contract price through that particular period of time.

12 COMMISSIONER PEARSON: Right. The price
13 movements are running counter to what we're seeing
14 happening in import volumes. That's what I'm
15 wrestling with. So you've got the spot price going
16 off and doing something on its own that seems
17 unrelated to something that we have measured in the
18 marketplace in terms of import volumes, so that's what
19 I'm confused about.

20 MR. TISSINGTON: I would have to look at the
21 specific data to properly understand the question, I
22 guess, because, to me, they have always run the same
23 direction, not counter to one another.

24 The contract prices in 2004 were really
25 negotiated in late 2003, so the numbers that you see

1 coming in in 2004, import or our contract numbers,
2 were really those 2003 negotiated pricing.

3 MR. BUTTON: Commissioner, we would be happy
4 in the post to try and piece together the timing
5 issues that we think are involved here. Additionally,
6 the Metals Week dealer import price is essentially a
7 spot price of what -- are available at a particular
8 point in time based on interviews with selected import
9 dealers. That represents a relatively small portion
10 of the overall transaction volume going on in the
11 market. The actual transaction volume, bulk, tends to
12 be within the contract realm. I'll be happy to
13 provide further comment on that in the post-hearing
14 brief, if that would be helpful.

15 COMMISSIONER PEARSON: I'm not surprised
16 that you would be willing to do so, and I appreciate
17 it. You see, I think, what I'm confused about just at
18 the moment in terms of matching up the prices and the
19 volumes of imports. So whatever you can provide that
20 will explain it would be helpful because clearly there
21 is some explanation for it. I just don't know what it
22 is.

23 There has been discussion already about
24 Magnola and testimony that the technology didn't work
25 as well as expected. There were startup problems, et

1 cetera. What I'm wondering is do we know whether it
2 was an issue that the technology just didn't work as
3 expected, or are the operating costs for running the
4 plant simply higher than the engineers had projected
5 when they built the thing? That's maybe a fine
6 distinction.

7 For instance, if they are having problems
8 with the material coming into the plant in terms of
9 its purity, and they need to run it through some
10 additional steps to get it ready so that the
11 electrolytic cells can work on it efficiently, that's
12 going to be a cost that would be embedded and would,
13 on an ongoing basis, affect the break-even price that
14 Magnola would need, and that's somewhat different than
15 just a straight startup cost.

16 Mr. Legge, you've got some thoughts on this?

17 MR. LEGGE: I would say there might have
18 been the two issues you raised, and that is technical
19 and process problems and high unit cost during
20 startup. They could have both been at play. I don't
21 know that. I would say this: Certainly, if they were
22 operating in any given year around 24 to 25,000 metric
23 tons, we do know generally what a cost-volume curve
24 looks like, and so it would be very unattractive. But
25 I think when most plants start up, magnesium plants in

1 general are not immune to these sorts of problems.

2 I think almost every plant I've ever heard
3 of started up has had technical issues. It's not a
4 cookie cutter-type technology that transfers like
5 maybe the aluminum industry. I know that you have to
6 anticipate that you're going to start from zero and go
7 to 65,000 metric tons per year, and I would assume
8 they had a business plan that said it's going to take
9 whatever months or years to penetrate the market and
10 do that. I don't know what they were thinking.

11 COMMISSIONER PEARSON: Well, my experience
12 in other industries has been that it's not normally
13 the lowest-cost-of-production plants that shut down.
14 So when we see a brand-new plant shutting down, one
15 could infer from that that this may, unfortunately
16 from the owner's perspective, be a high-cost plant
17 where the ongoing costs of operating it exceed their
18 projections, and looking forward, they are just not
19 seeing daylight that will allow them to run it in a
20 profitable way.

21 MR. LEGGE: You know, they publicly stated
22 that one of the issues was the compression they saw in
23 pricing because of Chinese production, but I think we
24 could offer you a little bit more insight on what we
25 do know in a confidential post-hearing brief.

1 COMMISSIONER PEARSON: I would appreciate
2 that. Specifically, if you have a sense of what would
3 their break-even price be? What would they need to
4 see as a price in the magnesium market in order to
5 justify bringing this plant up in an economically
6 rational way? Obviously, you may not want to discuss
7 that now, but in the post-hearing, I would be
8 interested to learn.

9 MR. LEGGE: We'll give it a try. Thanks.

10 COMMISSIONER PEARSON: Thank you very much.
11 Mr. Chairman, my light is changing.

12 CHAIRMAN KOPLAN: Thank you, Commissioner.
13 Commissioner Aranoff?

14 COMMISSIONER ARANOFF: Thank you, Mr.
15 Chairman. A few more questions that I wanted to
16 follow up on. I've, obviously, spent a great deal of
17 time with a number of my colleagues discussing Magnola
18 and what might happen in the future with respect to
19 that plant.

20 But I just wanted to ask for a little bit of
21 clarification, Mr. Tissington, you were speaking
22 earlier about your concern about Magnola and the GM
23 contract, and I wanted to follow up with you on that
24 make sure I understood your testimony.

25 It sounded to me like you were suggesting a

1 concern that Magnola could bid on the GM contract when
2 it becomes available in 2007, win some or all of the
3 contract, and then start up its production capacity to
4 satisfy whatever contract it was able to win. Was
5 that, in fact, the scenario that you were describing?

6 MR. TISSINGTON: No. Actually, I was
7 responding to a question about what possible
8 motivation they might have to start up, and certainly
9 the GM volume is a huge carrot. It's somewhere
10 between 20 and 30,000 metric tons a year, so GM
11 represents a tremendous chunk of business in the
12 magnesium industry.

13 So my paranoia says, well, certainly they
14 might be motivated to start up the plant, to bid on
15 the GM volume. The current contract that GM has for
16 most of their volume expires at the end of 2007. They
17 also have other agreements with suppliers that have
18 different periods and different volumes associated
19 with them, but certainly that could be one motivation
20 for somebody like Magnola.

21 I understand that we need to compete against
22 people like Magnola and Hydro Magnesium, but I don't
23 think we need to compete against the government of
24 Quebec and dumped material.

25 COMMISSIONER ARANOFF: I understand your

1 clarification. So I guess I wanted to ask you or
2 maybe Mr. Legge, as a businessperson, would it ever
3 make economic sense to invest the amount of money that
4 you've told us it would cost to restart Magnola cells
5 to compete for a contract that you're obviously going
6 to have a lot of competition in competing for?

7 MR. TISSINGTON: You certainly wouldn't
8 start up a plant like Magnola solely for a shot at the
9 GM contract. We've certainly testified that you need
10 to run an electrolytic magnesium plant at very high
11 operating rates, and even with 100 percent of the GM
12 contract for a year or two years, you couldn't justify
13 a business plan to bring up an electrolytic magnesium
14 plant. So it is certainly more complicated than that.
15 I don't mean to infer that they would start this thing
16 up to supply GM for a year.

17 COMMISSIONER ARANOFF: Okay. Thanks.
18 That's a very helpful clarification.

19 MR. JONES: Commissioner Aranoff, if I might
20 add to that briefly.

21 COMMISSIONER ARANOFF: Sure, Mr. Jones. Go
22 ahead.

23 MR. JONES: Of course, what we're talking
24 about here is revocation of the countervailing duty
25 order and a likely further subsidization of Magnola by

1 the government of Quebec. So when we're talking about
2 what would make economic sense, we need to keep in
3 mind that this is an entity that will be receiving
4 subsidies from the government in Canada.

5 COMMISSIONER ARANOFF: Okay. Thank you. I
6 appreciate that clarification as well.

7 We discussed earlier today a number of
8 European facilities that have been shut down in the
9 recent past. The testimony earlier today was that the
10 United States is the market of last resort. You
11 talking about squeezing the balloon so that when we
12 push the Chinese product out of the U.S. market, other
13 countries' excess comes in here instead while the
14 Chinese product moves to other markets. We've seen
15 some pattern of that happening with respect to some
16 nonsubject countries, but that's not what happened
17 with respect to the European producers, the French
18 producer, the Norwegian producer. Were they higher-
19 cost producers, or is there another explanation?

20 MR. BUTTON: Well, let me just begin, and
21 others can comment. The Norwegian producer is the
22 parent of NHCI, so, indeed, they already are competing
23 in the U.S. market, and with respect to the French
24 producer, their primary production, which is what has
25 closed down -- there is still some recycling

1 production -- as to why they were not able to direct
2 their primary production to the U.S. market and
3 compete here as well, perhaps I would have to turn to
4 some of the industry representatives who might know
5 more detail on that.

6 MR. TISSINGTON: The official reason given
7 in the press releases on Pechiney in France was that
8 they had filed for dumping protection in Europe as the
9 only European producer, and the marketing manager of
10 Pechiney actually went public and said that it was the
11 circumvention of the Chinese material into Europe that
12 didn't allow them to compete. So the reason they gave
13 publicly was the low-priced Chinese material. In
14 fact, they did export material to the United States
15 through that period.

16 COMMISSIONER ARANOFF: Okay. Thanks. I
17 know you also mentioned that there was a producer in
18 India, I believe, that shut down. Did they give
19 reasons at the time?

20 MR. BUTTON: Yes. We can provide more
21 information. My recollection is that they produced
22 primary magnesium. They had cited impacts from the
23 Chinese and eventually chose to close that down and to
24 start buying Chinese.

25 COMMISSIONER ARANOFF: One last question,

1 and I guess it has both a legal and a factual aspect
2 to it. We're in the unusual posture in these reviews
3 of having reviews concerning two countries where
4 cumulation is not an issue, and I'm interested in
5 seeing how, then, the Commission should consider the
6 role of China in the market when making its
7 determination with respect to the CVD orders on
8 Canada.

9 MR. BUTTON: One point that we made
10 previously is a role of China is making the U.S.
11 market all that much more important to the Canadian
12 producers. The Canadian producers need to sell into
13 the U.S. market in order to achieve prices that they
14 cannot achieve in their home markets and their third-
15 country export markets.

16 MR. JONES: If I might just ask for
17 clarification, Commissioner, are you asking what would
18 be the likelihood of injury caused by imports from
19 Canada if the order on China were revoked? Are you
20 asking us to cross the likely injurious effects of
21 revocation of one versus the other? I'm not sure I
22 understand the question.

23 COMMISSIONER ARANOFF: I guess, in a way, I
24 am asking you that question. I'm saying to you, in
25 most reviews where we've got two countries, we can

1 decide to look at them together and look at the
2 effects of revoking or keeping them. In this case, we
3 can't cumulate the imports, and so we have to make a
4 separate determination, and we have to ask ourselves
5 if we revoke one but not the other, we have to try and
6 isolate the effects to some extent.

7 Now, I know you'll tell me that it's a
8 condition of competition. That's not the way the
9 world works, and we shouldn't look at it that way, but
10 I'm struggling with it a little bit, so any guidance
11 that you can offer.

12 MR. JONES: Well, I would just say, on the
13 scenario that I just outlined, if that were to take
14 place, it would make US Magnesium even more vulnerable
15 to injury caused by imports from Canada because
16 revocation of the order on China would unleash Chinese
17 imports on this market, drive prices down further.
18 The Canadians, in order to make sales, would have to
19 drop their prices as well. It would just be a
20 downward spiral of price in the market. So that would
21 be my sense of what would happen.

22 COMMISSIONER ARANOFF: But on the flip side,
23 if the Commission were to revoke the orders on Canada
24 and not on China, what would happen with Canadian
25 imports?

1 MR. JONES: Well, I think, as we've said, if
2 the Canadian orders are revoked, we would expect to
3 see a significant increase in the quantity of imports
4 from Canada, again, at very low prices. I believe
5 that that would be the ideal circumstance, from the
6 Canadians' point of view, that the U.S. market, as a
7 safe haven, as the last haven of higher prices, would
8 continue to exist and a place into which the Canadian
9 producers could sell their products, and they would be
10 able to do so and receive government subsidies without
11 the discipline of the orders.

12 COMMISSIONER ARANOFF: Okay. I take your
13 point. I think there is something inconsistent in
14 having the U.S. as this haven of higher prices while
15 it seems like that, based on your view of the market,
16 would be a very short-lived phenomenon, so it couldn't
17 sustain the kind of effect that you're describing.

18 MR. JONES: Which is precisely US
19 Magnesium's concern. Even if the Chinese order stayed
20 in place, and the Canadian order was revoked, then
21 NHCI would find this is the place to which there large
22 volume would go, and whatever incentives it could be
23 concluded that Magnola has for continuing to exist and
24 not be turned into a parking lot -- if they restarted
25 even just with their 25,000 tons, they would come down

1 here as well. US Magnesium, I think, would be then
2 the one that would suffer.

3 COMMISSIONER ARANOFF: Thank you very much.
4 I see my time is up. I just want to thank all of the
5 witnesses for your testimony and your answers this
6 morning. Thank you, Mr. Chairman.

7 CHAIRMAN KOPLAN: Thank you, Commissioner.
8 Mr. Button, I'm going to start with you.
9 I've got a couple of questions I would like to run by
10 you.

11 First, your prehearing brief, at pages 11
12 and 12 -- this is a follow up to some questions that
13 Commissioner Hillman had -- at pages 11 and 12, it
14 argues that the pricing data collected in these
15 investigations shows that the gap in price for alloy
16 and pure magnesium closed substantially by 2005. You
17 state there has been a remarkable convergence since
18 2001 and that this plainly demonstrates that they are
19 a single like product, and you rely in part on
20 bracketed data in Chapter 5 of our staff report for
21 Products 1 and 2 that reflects sales to aluminum
22 producers.

23 However, the NHCI brief at page 9 asserts
24 that the difference in average unit values between
25 pure and alloy magnesium was greater in 2005 than it

1 was in 2000. They claim that looking at the entire
2 period of review, the present record shows that the
3 prices for the two products, to quote them, have, in
4 fact, diverged. Have there been substantial
5 differences in the product mix that would account for
6 these two apparently opposite trends?

7 MR. BUTTON: In the post-hearing brief, we
8 would be happy to lay out the details, and, yes, there
9 are divergences, I would say, in terms of the pricing
10 trends derived from contract sales and from spot sales
11 and in the customer bases for these.

12 CHAIRMAN KOPLAN: Thank you, and I look
13 forward to your post-hearing submission on that point.
14 Let me stay with you.

15 Your prehearing brief, at page 35, argues
16 that, and I'm quoting, "domestic supply of magnesium
17 is price elastic." You cite as evidence US
18 Magnesium's investment project to increase capacity in
19 response to increased market prices and Alcoa's
20 decision to close Northwest Alloys in response to
21 extremely depressed market prices.

22 Now, these are examples of long-term or
23 permanent reactions to price changes. What is your
24 estimate of the U.S. supply elasticity of pure and
25 alloy magnesium and over what timeframe? Commission

1 staff has estimated it is likely that the domestic
2 supply elasticity for both pure and alloy magnesium
3 falls in the range of five to 10, and that's in the
4 staff report in Chapter 2, page 25. Your brief did
5 not respond to staff's request for comment on that.

6 Now, you've testified that, in the short
7 run, US Magnesium has continued to produce the same
8 quantity, even if prices decline, to avoid having to
9 reline the cells. So could you help me out on this?

10 MR. BUTTON: We concur that, as you noted,
11 in the short term, the supply is highly inelastic, and
12 in the long term --

13 CHAIRMAN KOPLAN: Highly inelastic.

14 MR. BUTTON: Pardon me?

15 CHAIRMAN KOPLAN: Highly --

16 MR. BUTTON: It is highly inelastic in the
17 short term, but it is elastic in the long term, based
18 on the expected pricing incentives. Although an
19 estimate of the price elasticity in terms of five to
20 10 or whatever is difficult, what I do observe around
21 me --

22 CHAIRMAN KOPLAN: Do you accept it?

23 MR. BUTTON: I think it's a reasonable
24 number.

25 CHAIRMAN KOPLAN: Thank you.

1 MR. BUTTON: But I believe what you've seen
2 is perhaps the more practical number is that US
3 Magnesium, in its prior appearances over time before
4 this Commission, has indicated that if the price
5 incentives would exist, it would expand capacity in
6 the long term, and that's exactly what it has tried to
7 do, and it has put its investment money into
8 specifically doing that and has announced today,
9 likewise, that it could expand to up to 73,000 tons if
10 the market conditions would permit it to do so.

11 CHAIRMAN KOPLAN: Okay. Thank you for those
12 answers.

13 Mr. Legge, this is a follow-up, again, to a
14 question, I think, that Commissioner Hillman had.
15 Your -- brief, at page 17, states: "Cast and granular
16 magnesium are both sold to end users." What share of
17 the granular magnesium used by ferro-alloy producers
18 is ground from ingot in house, and what share is
19 ground by outside grinders? Can you give me an
20 estimate on that?

21 MR. LEGGE: Cam, you've come a lot closer
22 than I.

23 CHAIRMAN KOPLAN: Mr. Tissington?

24 MR. TISSINGTON: My experience is when
25 ferro-alloy producers decide to use granular magnesium

1 rather than ingot magnesium, they don't do the
2 grinding in house. They go to a different party to
3 get the actual material ground.

4 CHAIRMAN KOPLAN: Can you give me an
5 estimate of how that breaks out in terms of what share
6 is done which way and the other?

7 MR. TISSINGTON: I would say 100 percent is
8 done by a third party and not at the ferro-alloy
9 producer.

10 CHAIRMAN KOPLAN: Okay. Thank you.

11 Mr. Legge or Mr. Tissington, let me back up.
12 At page 40 of your brief, you mention that some
13 contracts have meet-or-release provisions. Do any
14 contracts for pure magnesium reference the price for
15 alloy magnesium, or do contracts for alloy magnesium
16 reference the price for pure magnesium? It's for
17 either Mr. Legge or Mr. Tissington.

18 MR. LEGGE: I can't think of a single
19 contract where we have the price of pure magnesium and
20 alloy magnesium in the same document or one
21 benchmarking the other.

22 CHAIRMAN KOPLAN: Thank you. Your light was
23 on. Did you want to say something?

24 Again, this is for Mr. Legge or Mr.
25 Tissington. Your brief argues, at page 40, that price

1 is so important in sales of pure and alloy magnesium
2 that differences of less than a penny per pound can be
3 the deciding factor in winning a contract. In
4 addition, contract conditions reportedly magnify the
5 effect of price changes from one producer to any
6 purchaser.

7 Why is it, then, that in U.S. sales of pure
8 magnesium to aluminum manufacturers over the period of
9 review imports from Canada oversold the comparable
10 domestic product in 19 of 23 comparisons? And on
11 sales of alloy magnesium to die casters, imports from
12 Canada oversold the domestic product in 20 of 24
13 comparisons.

14 How does this square with the presence of
15 meet-or-release clauses and the statement at page 41
16 that even when a contract does not contain such a
17 price-adjustment clause, prices for magnesium tend to
18 follow the prices charged by other producers, given
19 the fungible nature of the commodity?

20 MR. BUTTON: I think, on this one, we're
21 going to have to respond using confidential
22 information in the post-hearing brief.

23 CHAIRMAN KOPLAN: No problem with that. I
24 look forward to receiving your response post-hearing,
25 and with that, I have no further questions. Thank you

1 very much for your answers today, and I'll turn to
2 Vice Chairman Okun.

3 VICE CHAIRMAN OKUN: Thank you, Mr.
4 Chairman. I think I just have a couple of things left
5 here.

6 First, with respect to the question that
7 Commissioner Aranoff posed with regard to how we treat
8 the Chinese imports with respect to deciding the case
9 with respect to Canada and how to treat the Canadian
10 imports with respect to deciding the case with respect
11 to China, I'm sure counsel is aware that on April 10,
12 2006, the Federal Circuit issued a decision in Brass
13 and Aluminum Smelter v. United States. In that case,
14 the Federal Circuit had some discussion about Gerald
15 Metals and how the Commission is to consider
16 nonsubject imports. I would appreciate you briefing
17 that case, whether we should apply it, how we should
18 apply it on the facts before us here.

19 MR. JONES: We would be happy to do so.

20 VICE CHAIRMAN OKUN: Okay. And then just a
21 follow-up on the pricing question from the chairman,
22 which, Mr. Button, I'm looking for a more a general --
23 I know you're briefing post-hearing, but in sunset
24 cases often pricing data, you don't put a lot of
25 weight on it because you don't have a lot of product

1 in the market here. Of course, with the Canadians in
2 the market, the Respondents have argued that, and I
3 understand your argument, that while they are still
4 subject to the constraint of the order, in fact,
5 during this period, the Canadians have been shipping
6 in large amounts into the market, and the record
7 indicates there has been overselling. My question is,
8 how do we take that into account in looking at future
9 pricing behavior?

10 MR. BUTTON: As you noted, we will comment
11 more in the brief, but among the things is that it's
12 important to have the underselling and overselling
13 analysis be on an apples-to-apples basis with respect
14 to those which are on a contract, perhaps a long-term
15 contract basis, and those which are in a short-term
16 perspective, and some other specific conditions of
17 sale, which we will address.

18 VICE CHAIRMAN OKUN: Okay. I will look
19 forward to that.

20 I guess my final question, again, with
21 respect to the focus on the GM contract that will be
22 awarded, can you comment in a public session, has your
23 company ever had the GM contract, or has that been a
24 Canadian contract?

25 MR. TISSINGTON: There is probably some

1 confusion that we created when we talk about a GM
2 contract. GM actually has a number of different
3 contracts for magnesium alloy. We are actually
4 currently a supplier to General Motors. So when we
5 talk about "the contract," I think what we've been
6 referring to here is, by far, the major portion of
7 their volume has been under extremely long-term
8 contract with Hydro Magnesium.

9 VICE CHAIRMAN OKUN: I know some of those
10 details are on the record, but if there is anything
11 else you can help clarify with respect to that for
12 post-hearing, I would appreciate that.

13 MR. TISSINGTON: Certainly.

14 VICE CHAIRMAN OKUN: With that, Mr.
15 Chairman, I have no further questions.

16 CHAIRMAN KOPLAN: Thank you.

17 Commissioner Hillman?

18 COMMISSIONER HILLMAN: Thank you. I have
19 just a little bit of a follow-up on the issue that you
20 raised, Dr. Button, in your testimony. I'm trying to
21 understand, and we're looking forward, if this order
22 on Canada were to be revoked, I'm trying to get a
23 little better sense than I think I have now of how
24 likely it is that either NHCI or Magnola would, in
25 fact, receive countervailable subsidies.

1 You mentioned that you think both of them
2 would get some form of a production subsidy, and yet
3 if I look at the record we've got in front of us, we
4 have this one grant given to NHCI in 1990 that's been
5 fully amortized. We have a training grant to Magnola
6 in, whenever it was, 2001. I'm trying to make sure I
7 understand which specific programs you think are still
8 out there, available, funded by the Canadian
9 government or the Quebec government, that are likely
10 to be granted to Magnola or NHCI in the absence of
11 this order.

12 You mentioned generically production
13 subsidies, but I just want to make sure I understand
14 whether you would describe this SDI grant or this
15 training grant to Magnola as, in fact, production
16 subsidies. Are those programs still in existence?
17 How likely is it that there are these subsidy programs
18 available, and how likely is it that they would be
19 given to these two companies if this order were to be
20 revoked?

21 MR. BUTTON: We believe they are likely, and
22 let me walk through some of the logic to that.

23 First, with respect to Magnola, when they
24 started production they had workforce of 380 workers.
25 They needed to train them. They sought and received

1 \$8 million in subsidy. Those workers have been laid
2 off; they have got to do it all over again. They
3 sought subsidies before when they said they wouldn't.
4 There is no reason to doubt that they wouldn't try
5 again. That's just one point.

6 If there was no discipline available on
7 subsidies in general, would they seek to perhaps deal
8 with some of their technical issues, some of the costs
9 that would be involved in bringing their plant up to
10 full 65,000-ton capacity, seek to make use of the
11 Article 7 grants, which is still a program currently
12 in existence. That would be something that the Quebec
13 government certainly might have a public policy
14 interest in approving, given that they want to expand
15 the workforce locally.

16 With respect to NHCI, there is clearly a
17 philosophical difficulty with NHCI subsidies of either
18 a capital nature, the Article 7 grant, or of operating
19 nature. They got preferential electricity, and they
20 were able not to pay their water bills for a while,
21 and they had, at that time, a feasibility study grant.
22 So they have had both capital and operating subsidies.

23 COMMISSIONER HILLMAN: And all of those
24 programs for the water, the electricity, et cetera,
25 are still in existence.

1 MR. BUTTON: With respect to electricity,
2 after the Commerce Department countervailing duty
3 order, they negotiated a new contract with Hydro
4 Quebec such that that contract was replaced with one
5 that Commerce determined was not a countervailable
6 subsidy.

7 Today, as far as we know, there is no
8 inhibition, legal or otherwise, that would prevent
9 Hydro Quebec from providing lower-cost electricity to
10 either of these Canadian producers. The fact that
11 you're dealing with the political world in Quebec, and
12 you have two of these companies competing with each
13 other, I wouldn't be surprised if they try giving
14 subsidies to both of them that way.

15 These are the kinds of things that could
16 happen in a high-energy environment. There would be
17 tremendous incentive for that to be sought and to be
18 granted. These are not speculative, from US
19 Magnesium's point of view, and I think that they are,
20 indeed, likely.

21 COMMISSIONER HILLMAN: Okay. If there is
22 anything further on specific programs and the
23 likelihood that either Magnola or NHCI would be a
24 recipient of that, that would be useful information to
25 add into the post-hearing brief.

1 Then my final question: There was some
2 brief mention in your brief about a new leader-mining,
3 Cogburn facility being brought online. If the
4 Commission were to determine that the reasonable
5 foreseeable future would be, say, a year or two, if
6 you could address whether you think it is likely that
7 this leader-mining, Cogburn facility would be up,
8 running, and able to export product to the United
9 States within that year or two timeframe, if there is
10 anything further you can add about whether it is
11 likely that we could see actual product in the U.S.
12 market from this facility. I don't know whether there
13 is anything more you can say than was said in the
14 prehearing briefs now or whether there is more that
15 could be added in the post-hearing.

16 MR. BUTTON: I would only note that with
17 respect to the concept of foreseeable future and the
18 Commission's traditional use of the conditions of
19 competition for a particular industry, in some
20 industries you might have longer-term planning
21 horizons, and I believe that this is one of those
22 longer-term planning horizons. Why? Both with
23 respect to the production operations taking longer
24 planning horizons and companies announcing intended
25 changes in their capacity farther in advance, and,

1 additionally, with respect to the contracts and
2 consumers. You have consumers who have been willing,
3 certainly in the past, to have very long-term
4 contracts and announce far in advance, make it clear
5 far in advance when these contracts will be expiring
6 and new ones will be coming into place.

7 COMMISSIONER HILLMAN: In light of that,
8 what are you suggesting is the reasonably foreseeable
9 timeframe that we should be looking at for this
10 industry?

11 MR. BUTTON: I would be happy to go into
12 that in the brief, if I may.

13 COMMISSIONER HILLMAN: And then within that,
14 again, how likely is it that this leader-mining,
15 Cogburn facility would, in fact, be up, running, and
16 able to ship or enter into contracts within this
17 reasonably foreseeable timeframe.

18 MR. BUTTON: I understand. Thank you.

19 COMMISSIONER HILLMAN: Great. With that, I
20 have no further questions, but thank you all very much
21 for your answers. It's been very helpful. Thanks.

22 CHAIRMAN KOPLAN: Thank you, Commissioner.
23 Commissioner Pearson?

24 COMMISSIONER PEARSON: Following up on
25 Commissioner Hillman's questioning, from a slightly

1 different angle, are there indications on the record
2 that the management of NHCI is likely to seek new
3 subsidies if the order is lifted? So not does the
4 government want to give it, but do we see something on
5 the management side with their history or any current
6 statements that would indicate that they are chomping
7 at the bit for a new round of subsidies?

8 MR. BUTTON: I am not aware of any specific
9 commentary by NHCI management that way.

10 COMMISSIONER PEARSON: Okay. My experience
11 has been that although there is a subset to which
12 these comments wouldn't apply, that a majority of
13 businessmen in North America are very much focused on
14 serving their customers and trying to keep their
15 production costs in line, and they are trying hard to
16 run the business. In doing so, they would like
17 government to stay out of the way, thank you. I think
18 it's not that many businessmen who, as part of their
19 business plan, think, boy, if I could get a subsidy
20 from the government, then I could do X.

21 So is it possible that NHCI would take a
22 relatively market-oriented approach and avoid seeking
23 subsidies partly in the knowledge that if they get
24 them, it's quite likely that there might be a new CVD
25 investigation?

1 MR. BUTTON: From my perspective as an
2 economist, I would simply note the history. Business
3 folks in this industry, in the early nineties, they
4 accepted the subsidies, and in 2001, another set of
5 businesspeople in Quebec in this industry again sought
6 and accepted government money rather than keeping
7 government out of their business.

8 MR. JONES: Commissioner Pearson, if I
9 might.

10 COMMISSIONER PEARSON: Mr. Jones.

11 MR. JONES: I think it's a little
12 unrealistic to expect to find on the record of a
13 sunset review statements by business leaders in an
14 exporting industry that they are planning to go seek
15 new subsidies if an order is revoked. I think we all
16 expect NHCI and Magnola and others to be smarter than
17 that.

18 I think what the Commission has and what
19 Congress directs the Commission to look at in the
20 statute and in the SAA are to, as Dr. Button said,
21 look at the past, look at what the behavior of the
22 exporters was in the absence of the countervailing
23 duty order, and we have not only NHCI accepting huge
24 subsidies in the early nineties in order to very
25 gladly welcome government participation in their

1 business in order to compete in the U.S. market in the
2 early nineties, but then when Magnola was getting
3 started in the late nineties, with an eye toward
4 building the highest-producing magnesium plant in the
5 world, Magnola very easily went to the government of
6 Quebec and availed themselves of a Quebec government
7 program that provided them a significant subsidy to
8 train their workforce.

9 So we have clear evidence of their having
10 done it in the past, and that's really all, I would
11 submit, that one can reasonably expect to see on a
12 record like this. I think it's unrealistic to expect
13 there to be admissions by savvy businesspeople that
14 they are going to seek government subsidies when they
15 know they could be subject to a countervailing duty
16 order in the future.

17 COMMISSIONER PEARSON: Well, the question
18 then rises, what's reasonable to assume about whether
19 they have learned something from the experiences they
20 have had with the U.S. government in recent years?
21 I'll ask them this afternoon, but if you've got
22 anything to add to that, I'm happy to hear it.

23 MS. LUTZ: I would like to add one thing. I
24 think it's pretty important to remember that the
25 Department of Commerce has already made a ruling on

1 this very issue. In their sunset review
2 investigation, they found NHCI and Magnola were likely
3 to get subsidies. They made an affirmative
4 determination.

5 MR. BUTTON: I would finish simply with a
6 comment. The test case of whether or not they would,
7 in fact, do it if the order is revoked only arises if,
8 in fact, the orders are revoked, and then they do it,
9 and then we have a very complex situation of waiting
10 for them to get the subsidies and find out information
11 and bring a new countervailing duty case, which would
12 be, I suspect, very difficult for the U.S. industry.

13 I guess that the weight of the evidence in
14 terms of likelihood is if they have done it in the
15 past, and are they likely to do it in the future,
16 suggests that, yeah, they are likely to do it. I
17 think the whole idea is to prevent the U.S. industry
18 from having to go with this all over again.

19 COMMISSIONER PEARSON: Well, they have
20 indicated an ability to oversell into the U.S. market,
21 to exercise some discipline in that regard. What's
22 not clear to me is whether it's more likely than not
23 that they are going to seek and receive subsidy in the
24 immediately foreseeable timeframe that we're looking
25 at for purposes of this review. Go ahead.

1 MR. BUTTON: There are reasons that might
2 explain their alloy prices, but we do note that the
3 pure prices, as noted when the antidumping order was
4 removed on pure, the volume of imports of pure into
5 the United States increased substantially, and their
6 prices did fall.

7 COMMISSIONER PEARSON: Without looking
8 behind Commerce's determination of what constitutes a
9 countervailable subsidy and, rather, looking at this
10 as a condition of competition, is there something
11 about the subsidy packages that have been received by
12 the Canadian producers that's really different than
13 the sorts of incentives that units of government in
14 the United States would provide to businesses that
15 might be thinking of adding or expanding a plant? I
16 have some knowledge of employee-training programs in
17 the United States that are offered and preferential
18 tax arrangements for new investments and even
19 discounts in waste treatment handling, water, that
20 type of thing.

21 I hear you talking about all of those nasty
22 things that are happening up in Quebec, but how
23 different are they than what we do here because maybe
24 there is something different about them that's not
25 obvious to me?

1 MR. JONES: Commissioner Pearson, I would be
2 reluctant to speculate about programs that may be
3 available in the United States. I'm not aware of any.
4 I don't have knowledge of any that are similar to
5 these programs. But I would respectfully submit that
6 whether the United States has programs that are
7 similar or not is irrelevant. These are
8 countervailable subsidies.

9 COMMISSIONER PEARSON: I understand it's
10 very relevant in that sense. I'm just trying to
11 understand what exactly is the nature of whatever is
12 going on in Canada, so I'm trying to relate it to
13 something that I have familiarity with here, so that's
14 what's happening.

15 Mr. Button?

16 MR. BUTTON: Perhaps one factor that is
17 somewhat unusual and that makes us look with
18 particular attention at Magnola is the fact that it's
19 one-fifth owned by the government.

20 COMMISSIONER PEARSON: Although that
21 ownership itself was not part of the countervailable
22 subsidy found by Congress, was it?

23 MR. BUTTON: That's absolutely right. As
24 you just asked a moment ago about the general economic
25 incentives and the broader policy issues, Quebec, as a

1 one-fifth owner of this plant, may well have public
2 policy interests in seeing that the laid-off workers
3 are reemployed.

4 COMMISSIONER PEARSON: Mr. Chairman, I think
5 I've about exhausted my line of questioning, so I have
6 no further. Thank you very much to the panel for your
7 answers this morning.

8 CHAIRMAN KOPLAN: Thank you, Commissioner.
9 Again, I want to thank the witnesses for
10 their responses to all of our questions.

11 Mr. Deyman, does staff have questions of
12 this panel? I see that they do.

13 MR. DEYMAN: Yes. There is a question.

14 MS. DeFILIPPO: Catherine DeFilippo from the
15 Office of Economics. Just to follow up on a response
16 to question, I think, that came from the chairman and
17 was perhaps followed up by the vice chairman, Mr.
18 Button, you had noted that it's important to make an
19 apple-to-apple comparison with the pricing data and
20 that we should take into account contract versus spot
21 sales. I know you're going to address that in your
22 brief, but, as you know, the questionnaires in these
23 reviews did not collect quarterly price data
24 separately from spot and contract prices.

25 So if you could, in your post-hearing

1 submission, please report the quarterly price data and
2 break it out for both sales of pure magnesium to
3 aluminum producers and for the sales of alloy
4 magnesium to die casters, report separately price data
5 for contract sales and separately for spot sales, so
6 there would be four separate groups in that response.
7 And I will be asking the same thing of Norsk Hydro
8 this afternoon, in case I forget. Thank you.

9 MR. BUTTON: We would be happy to provide
10 the data.

11 CHAIRMAN KOPLAN: Thank you for that
12 question.

13 MR. DEYMAN: George Deyman, Office of
14 Investigations. The staff has no further questions.

15 CHAIRMAN KOPLAN: Thank you, Mr. Deyman.

16 Mr. Cunningham or Mr. Togni, do you have any
17 questions of this panel before they are released? I
18 see you shaking your head "no" before I finish the
19 question.

20 With that, we will take a lunch break for 45
21 minutes. I want to thank you again for your testimony
22 and answers to our questions, and I would caution that
23 this room is not secure, so any business-proprietary
24 information that you have with you, you should take
25 during the lunch break. See you back in 45 minutes.

1 (Whereupon, a luncheon recess was taken.)
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1 submit that the GOQ prehearing brief describes the
2 business-proprietary information on the record that
3 leads to this conclusion, and I'll do my best now to
4 discuss on the public record some of those same
5 issues.

6 First, as to pure magnesium on the volume
7 side, we submit that there is no question that the
8 record shows that imports from Canada will not be
9 significant if the order is revoked. We believe this
10 is true in absolute terms, and we respectfully direct
11 the Commission's attention to Table I-10 of the
12 prehearing staff report. We certainly also submit
13 with equal force that this is true relative to U.S.
14 production and consumption, and, again, that data is
15 shown in Table I-4.

16 Not surprisingly, we submit that the
17 information both specific to NHCI and as to Magnola
18 confirms that there is no affirmative likelihood
19 threat with regard to pure magnesium imports from
20 Canada on the basis of volume.

21 The same can be said on the basis of price.
22 To restate, the statute requires the Commission to
23 consider likelihood of significant price underselling
24 and whether imports will enter at prices that
25 otherwise would have a significant price-depressing

1 effect on the price of domestic like products.

2 The data in this record confirm that simply
3 no adverse price effects are likely if the Canadian
4 pure order is revoked.

5 Quite frankly, the data also show the real
6 story about pure pricing when US Magnesium's prices
7 are compared to subject imports. This fact is borne
8 out by the purchaser questionnaires that we cited in
9 our prehearing briefs, NHCI's questionnaire, and, in
10 general, the data assimilated in the prehearing staff
11 report.

12 In conclusion on this point, NHCI's prices,
13 as reflected in the record, show that no material
14 injury is likely.

15 Once again, the record on Magnola is equally
16 clear, and we certainly appreciate several of the
17 commissioners bringing up this point during
18 questioning in the morning session. The fact is that
19 the company's magnesium production has been shut down
20 for three years now, and we submit that that status is
21 the point of departure for the Commission's analysis
22 here.

23 Turning now to the pure magnesium analysis
24 with respect to the impact on industry, again, we
25 submit that the record evidence shows that the

1 condition of US Magnesium can be seen in several ways
2 on the record. If we take a look at the capacity
3 utilization rates, their shipments, and, finally, the
4 employment indicators, all of this information shows
5 that there is no likelihood of injury should this
6 order on pure magnesium from Canada be revoked.

7 Turning now to alloy magnesium, we
8 respectfully submit that the record leads to the same
9 result for the Commission's likelihood analysis
10 respecting alloy magnesium from Canada, not
11 surprisingly, principally for the same reasons.
12 Again, we submit that Magnola ceased operations in
13 April 2003. Although I think this will come up on
14 questioning, I just want to flag an issue now that
15 Petitioners' hypotheticals regarding this future GM
16 contract as a trigger for Magnola to reenter the
17 market, we submit, has no basis in the record, has no
18 basis in sound economic principles or anything else
19 that might be before this Commission.

20 I just want to stop and make a brief point
21 of clarification that was also raised this morning. I
22 believe Vice Chairman Okun raised this issue, and I
23 thank you for that. With regard to what figure should
24 be ascribed to Magnola in this second sunset review,
25 we don't think that the 65,000-metric-ton projection

1 that was used in the first sunset review can be used
2 in this proceeding. We don't think that there is a
3 basis for that. We've made that argument in our
4 prehearing brief at page 4.

5 This morning, when I was trying to think of
6 an apt analogy to describe what Petitioners were
7 arguing in this respect, I thought about my own life,
8 and I thought about when I was a kid how I wanted to
9 be an astronaut. You can see at that point in time, I
10 certainly wanted to be an astronaut, but as my life
11 progressed, and the record got clearer and clearer,
12 and I was shown to be terrible in math and terrible in
13 science, I, obviously, didn't become an astronaut.

14 I think that applies with equal force here.
15 They are trying to take from Day One what might have
16 been applicable to Magnola but has absolutely no basis
17 in the record before you now, and we submit that that
18 takes care of the issue itself.

19 I would also like to spend a brief moment to
20 address what appears to be a new understudy in US
21 Magnesium's argument that Magnola is a looming threat.
22 Certain of the commissioners also brought this up this
23 morning with respect to the Cogburn magnesium project.

24 The document that I think was mentioned in
25 the staff report purportedly is an October 2005

1 document, but when you take a look at that document,
2 it's clear from the context of the information that's
3 included in that paperwork that it's based almost
4 entirely, if not exclusively, on pitch materials that
5 appear to have been prepared sometime in early to mid
6 2003, so almost three years ago, if not longer, and
7 it just so happens that that is around the time that
8 Magnola itself shut down. The text of the document,
9 as I said, doesn't appear to have been updated.

10 An additional point that I would like to
11 make is, although I can't get into the specifics on
12 the record here, with regard to this Cogburn magnesium
13 project, I would direct the Commission's attention to
14 footnote 28 of the prehearing staff report at page IV-
15 25.

16 And, lastly, although it's unclear whether
17 US Magnesium ties this looming Cogburn threat solely
18 to alloy, solely to pure, or a combination of the two,
19 our argument here, and what we believe should be the
20 Commission's conclusion with respect to Cogburn,
21 applies with equal force to both settings.

22 Turning now to the price effects on alloy
23 magnesium, we again submit that there will be no
24 adverse price effects that are likely to occur in the
25 alloy magnesium market upon revocation of this order.

1 As is the case in pure, we submit that the record
2 shows similar evidence with regard to pricing. We've
3 noted that at pages 10 and 11 of our prehearing brief,
4 and much of that argument was derived from Table I-5
5 of the prehearing staff report.

6 Turning now to the impact on the industry,
7 on the alloy side, again, it bears repeating, and it
8 seems to be a fundamental issue not only in this
9 hearing today but in the Commission's decision to
10 conduct full sunset reviews, what to do with Magnola
11 now in this second sunset review. The evidence on the
12 record is absolutely clear. They have been shut down
13 for three years now. There is no indication on the
14 record that that is going to change anytime soon, and
15 certainly not within the time period that the
16 Commission analyzes in the context of the sunset
17 review.

18 We also submit that the record evidence with
19 regard to pure confirms that NHCI also offers no basis
20 for an affirmative likelihood determination here.

21 There is a fundamental point that I think is
22 important to note here, and I'll probably make it
23 again in closing. It just appears that US Magnesium
24 would have this Commission turn the sunset statute on
25 its head and look to the status quo at the time that

1 the orders were originally imposed in 1992 and have
2 this Commission continue the order on alloy forever
3 without regard to anything on the record that the GOQ
4 submits compels that the order be revoked. We
5 appreciate some of the questions from the
6 commissioners on that point earlier this morning,
7 looking for additional information on that point from
8 Petitioners in post-hearing briefs, and we're going to
9 do the same as well.

10 In conclusion, I just want to again thank
11 the Commission for conducting the second set of full
12 sunset reviews and the countervailing duty orders on
13 pure and alloy magnesium. We submit that US Magnesium
14 has failed to make a compelling case, but, more
15 importantly, that the record evidence developed
16 according to the Commission's procedures here offers
17 itself a primary reason for a negative determination
18 here.

19 We again appreciate the Commission's primary
20 reason for conducting these full reviews: Magnola's
21 shutdown. Simply put, we believe that the statute
22 requires that these orders sunset in the absence of an
23 affirmative likelihood determination by the
24 Commission. We submit that the record evidence
25 developed herein leads necessarily to that result,

1 and, again, it applies with equal force as to both
2 pure and alloy magnesium.

3 Just to summarize again, what you've heard
4 from US Magnesium today and in their prehearing briefs
5 sounds more like an exercise in speculation and
6 assumption, all of which appear to fall well outside
7 the time period of review that's relevant to the issue
8 before this Commission, and they construct delicately
9 fabricated hypothesis after hypothesis as to what may
10 happen in the future, and we submit that none of it
11 has a basis in what is likely to occur in the future.
12 Thank you.

13 CHAIRMAN KOPLAN: Thank you.

14 MR. CUNNINGHAM: I'm Dick Cunningham. I
15 also failed to become an astronaut. It's something
16 about payload limits on the rockets and things like
17 that. As a consequence, I'm here representing Norsk
18 Hydro Canada. With me today from Steptoe & Johnson
19 are my colleagues, Greg McCue and Tina Potuto Kimble.

20 I'm going to devote most of my quite brief
21 time here today to the like product issue and,
22 specifically, the issue of whether pure and alloy
23 magnesium belong in the same like product. Why do I
24 do that rather than spend most of my time on the
25 merits? Frankly, we don't have any countervailable

1 subsidies anymore. We're not paying any duties
2 anymore. All of ours, as one of the commissioners
3 noted before, have amortized out.

4 So from a financial standpoint, there is not
5 a lot of bucks in it for Norsk Hydro, but we want to
6 make sure that the like product issue comes out right
7 because it's important that the Commission understands
8 this. We have a litigious U.S. industry that brings
9 cases here, and we want to make sure this doesn't go
10 the wrong way in case future cases are brought.

11 I would like to begin by sort of suggesting
12 to you a way to think about the like product issue,
13 which is a pretty simple one. For, gosh, over a
14 decade you've been looking at this like product issue,
15 and until your most recent decision in the Russia and
16 China context, you came out the same way, which is
17 they are two like products, alloy and pure. In the
18 most recent case, you reached a different decision
19 because, as you said, circumstances have changed.

20 I suggest that the most efficient and the
21 most logical way to look at this issue now is what was
22 that change that made you turn around on what had been
23 your previous analysis, and is that logic about that
24 change still applicable today? And I think you will
25 see, even from the most cursory look at the situation,

1 that the change does not apply and was the result of
2 an exogenous factor that changed the circumstances but
3 does not exist today.

4 Until the most recent case, pretty much all
5 of the factors pointed to two separate like products.
6 The one factor that was mixed was the same production
7 facilities. One of the producers, US Mag, does
8 produce both pure and alloy in the same facilities,
9 but all of the other U.S. producers, the secondary
10 producers, do not. They produce only alloy, and they
11 do it, of course, therefore, in separate facilities.
12 All of the other aspects -- pricing,
13 interchangeability, uses, content, physical
14 characteristics, consumer perceptions, and all of
15 those -- pretty much took you in the other direction.

16 What changed your mind in the Russia-China
17 case? Well, the review period you were looking at
18 there, up to 2004, and you saw a period in which there
19 was an increased interchangeability, particularly in
20 the aluminum business, and there was more alloy being
21 used in the aluminum business.

22 Why did that happen? If you listen to the
23 testimony today, and if you read the staff report,
24 it's pretty clear why that happened, and it's pretty
25 clear why that has stopped happening. There is always

1 a little interchange, but, of course, that's not what
2 the statute requires. The statute requires a
3 significant interchangeability.

4 The fact is, as your staff report concludes,
5 as the Petitioners acknowledged, that the normal price
6 relationship between pure and alloy magnesium is that
7 there is a price differential. Pure has a higher
8 price than alloy. As the representative of US Mag
9 said, customers will look at it in terms of pure
10 aluminum content, and, of course, alloy aluminum has
11 less pure magnesium content in it. Therefore, the
12 differential in price has to be greater for there to
13 be this switching for someone who uses pure to go
14 alloy.

15 So when the differential widens in the sense
16 that alloy becomes cheaper, significantly cheaper,
17 relate to pure, then you'll get more interchange.
18 That's what happened during the period you looked at
19 before, and it happened because of an exogenous
20 factor, and you see it very clearly when you look at
21 Table VI-1 of your staff report that the price of
22 alloy magnesium was way low compared to pure. It was
23 way low because of the dumping of alloy magnesium by
24 the Chinese. Everybody agrees on that. The U.S.
25 industry agrees on that. The opening up of that

1 differential, that divergence, oddly enough, is what
2 made the products interchangeable.

3 I pause there for a second because I do have
4 to take the Commission to task in a minor way for
5 imprecise use of language in your report. You talked
6 about the convergence of prices of the two products
7 making them interchangeable. It's actually not right.
8 When the prices converge, interchangeability between
9 the two products disappears. If they sold at the same
10 price per pound, you won't have anybody using alloy
11 instead of pure because they get less pure for the
12 buck.

13 So it's when prices diverge. They sort of
14 play on this unfortunate imprecision of your language
15 in the last decision. They say, look at the prices
16 now. They are converging, so you ought to look at
17 them as the same product. Well, yes, they are
18 converging because the Chinese are now out of the
19 market because of the orders, and look at the volumes
20 of interchanging in the aluminum producers in your
21 Table VI-1, and you'll see they go way down.

22 I might have argued with you as to whether
23 there was enough interchanging even when the price
24 differential widened during the Chinese period for you
25 to find that there really should be one like product,

1 but certainly now it's gone back to such a low level
2 that you just can't find it now, and that's the factor
3 that led you to say conditions have changed. That
4 factor is gone. It's clear as a bell what the reason
5 for that factor's existence was -- namely, it was the
6 Chinese pricing -- and as a consequence, now you're
7 back to where you were, I submit, before the period of
8 2000 to 2003, and you have a pretty clear case that
9 you are back in normal circumstances, and normal
10 circumstances are just what all of the customers say
11 it is, that is, there are two different products here.

12 Let me leave it at that for a moment with
13 like product, and let me make a quick point or two on
14 the overall merits of this case because I hadn't
15 intended to do so, but I must say, from the testimony
16 this morning, I can't resist saying two things.

17 The first has to do with what Mr. Togni
18 appropriately called speculation. If you look at the
19 Canadian argument that they make, the argument they
20 make as to Canada, it's that if you were to leave the
21 Chinese order in place but take the countervail order
22 off of Canada, well, my gosh, with all of those
23 subsidies, they are going to come flooding into the
24 market here, and they say, look, they are going to go
25 out and get more subsidies, and they ask you to go

1 into an exercise of figuring out how much subsidies
2 these producers in Canada are going to get.

3 Ms. Lutz was right about something. She
4 said the Commerce Department does that, and you
5 shouldn't look behind the Commerce Department's
6 decision. The Commerce Department has done that job.
7 With all respect, it's not your job to forecast what
8 subsidies these people are going to get. I think it's
9 worthwhile taking a look at what the Commerce
10 Department found so you won't be going beyond that.

11 The Commerce Department forecasted subsidy
12 rates for the Canadian producers individually for both
13 alloy and for pure magnesium. Remember, there are
14 three producers in Canada. There is Timminco, and we
15 can forget them because they have never been in this
16 case; they were always found not to be subsidized, so,
17 of course, Commerce forecasted no subsidies for them
18 for either alloy or pure.

19 For pure magnesium, they don't mention
20 Magnola, and they say, we have no basis for reporting
21 a rate for NHCI. They did the study. They had a
22 whole investigation about this and had no basis for
23 forecasting a rate for NHCI.

24 As to alloy, they forecasted a rate for
25 Magnola, 1.84 percent, and then for NHCI, you know

1 what they said? They said, again, we have no basis
2 for reporting a rate for NHCI.

3 So what does all of this come down to? This
4 comes down to an industry that's living here, that's
5 living in fear of what the Commerce Department said
6 was going to come down the pike at them. No rate they
7 can forecast for NHCI, nothing for Timminco, and 1.84
8 percent on one of the two products for a company
9 that's not in business today.

10 I find that a hard threat to get scared about.

11 Let me make one more point, and I'll turn it
12 back to you folks for some questions. My point turns
13 on what I have to confess is pure plagiarism. I asked
14 your staff to make a copy, and we're going to label it
15 proudly "Steptoe & Johnson Hearing Exhibit." It is,
16 in fact, Petitioners' hearing Slide No. 7 from this
17 morning, and I think each of you have been given a
18 copy of that. They sure thought it was important
19 because, you may remember, they left it up on the
20 screen for almost all of their testimony, and it sure
21 does look dramatic, doesn't it?

22 These are import prices for pure magnesium,
23 and they show them shooting up right after the
24 petition was filed against China and Russia. That
25 sounds reasonable to me. So shooting up to a high

1 level, and then it shows them going back down again.
2 I don't think I've ever seen a petitioner exhibit make
3 the respondent's case quite as well as this. Let me
4 tell you why.

5 What I would first like you to do is look at
6 Table VI-1, revised, of your staff report, and it will
7 tell you a couple of things here. First of all, it
8 will tell you something very important for you in
9 terms of your determination whether to cumulate
10 because this shows a whole bunch of import prices
11 going down. I'm sorry. Table V-1. I told you, I
12 couldn't even do Roman numerals. How could I ever be
13 an astronaut? He did better than I did in math.

14 Okay. Table V-1, revised, okay. First, it
15 tells you something very significant to cumulation.
16 Look at that set of import prices going down. Now
17 look at Canadian import prices for pure under Product
18 1. No relationship to that trend whatsoever. It sure
19 doesn't sound that Canadian imports ought to be
20 cumulated with other sources.

21 Now let's look at cause and effect. One
22 would think, if you had the import prices falling down
23 like that, that you would see a precipitous decline in
24 U.S. producer prices. Well, if you look at the left-
25 hand column of Table V-1, you sure don't see that

1 either.

2 So my thanks, and my hat is off to the
3 domestic producers for this chart. I think it's very
4 useful for your analysis. I think it makes important
5 points, but they are important points that pretty much
6 torpedo two major aspects of their case. With that,
7 I'll turn it back to Mr. Togni for anything more he
8 wants to say, and if not, we'll take questions from
9 you.

10 MR. TOGNI: Nothing further here. Thank
11 you.

12 CHAIRMAN KOPLAN: Thank you both very much,
13 and we'll begin the questioning with Commissioner
14 Pearson.

15 COMMISSIONER PEARSON: Thank you, Mr.
16 Chairman. Welcome to the afternoon panel. Good to
17 have you here.

18 We ended the first session this morning with
19 a discussion about subsidies that may be received by
20 Canadian producers. There were some relatively strong
21 assertions by the domestic industry that subsidies
22 would be granted by governments and that perhaps firms
23 would go see those subsidies. Could you comment on
24 that issue generally? Are government entities in
25 Quebec quite set on providing subsidies, and is it

1 going to be impossible, for instance, for Magnola to
2 come back online without getting a subsidy thrown at
3 it?

4 MR. TOGNI: Thank you. I think an
5 appropriate answer to that question might be, first of
6 all, to my knowledge, and we'll certainly confirm this
7 in the post-hearing brief, the Petitioner this morning
8 made a lot about the Article 7 grant that was the
9 genesis of the original order. To my knowledge, and,
10 again, we'll confirm this in post-hearing, there have
11 been no other allegations of subsidies under the
12 Article 7 program, respective to GOQ, since that time,
13 and I think that's an indication of what kind of
14 likelihood there might be for new subsidies to come
15 out post-revocation of this order.

16 Your second question, I think, went to the
17 fact, would Magnola -- I don't want to put words in
18 your mouth -- would Magnola need subsidies to come
19 back online?

20 COMMISSIONER PEARSON: Right.

21 MR. TOGNI: Well, certainly, I think, as
22 I've said before, we view the appropriate point of
23 departure when considering the likelihood of Magnola
24 coming back online as the simple fact that they have
25 been shut down for three years.

1 Petitioners this morning also made a lot
2 about the manpower training program that Magnola got,
3 just like any other new company, either in Quebec or
4 in the United States, might get to train its new
5 employees. I think, for purposes of the Commission's
6 task here to consider what's likely in a reasonably
7 foreseeable time, we would submit that if Magnola
8 could even possibly get back up and running in the
9 time period that's relevant to the Commission's
10 analysis, the only way they could possibly do that,
11 and we're engaging in speculation here ourselves, the
12 only way they possibly could do that was to bring back
13 the people that they have already trained or to
14 possibly use what they already learned in the first
15 instance. To suggest that a whole new program would
16 be cut out from whole cloth to bring in a whole new
17 crop of employees in the time period that's relevant
18 to the Commission's analysis here, we just think is
19 entirely unlikely and not supported on the record
20 here.

21 MR. CUNNINGHAM: I asked our client what the
22 response should be to a question of are you going to
23 go after new subsidies? I wrote down what he wanted
24 me to say, which was, don't have them, don't need
25 them, aren't trying to get them.

1 The subsidies that NHCI was found to have
2 were subsidies of the type that regions and provinces
3 and localities use to attract plants that might go to
4 other regions if conditions were better there. They
5 tend to be for getting you to put your plant in that
6 area.

7 We put our plant there. It's done.
8 Whatever benefits we got, we got. They are all played
9 out, and that's over and done with. We have an
10 efficient plant. We are able to compete in the U.S.
11 market without the subsidies -- witness our volumes in
12 recent years and witness the fact that they were done
13 without any significant subsidy and now with no
14 subsidy. So I think the subsidy issue as to NHCI is
15 not there.

16 COMMISSIONER PEARSON: Can you comment on
17 behalf of your clients whether they have an interest
18 in the future of avoiding a new countervailing duty
19 investigation in the event that this particular order
20 would be revoked?

21 MR. CUNNINGHAM: I would like to say that my
22 clients have so enjoyed paying us the legal fees to do
23 this that they welcome many more such cases, but, in
24 fact, it's just the opposite. They have found this
25 whole thing, both the dumping and the countervailing

1 cases, to be a huge pain in the butt primarily in
2 terms of a disruption of what would be their otherwise
3 attention to business matters, and they sure as heck
4 do not want to go through this again.

5 COMMISSIONER PEARSON: If there is anything
6 that you could put on the record in the post-hearing
7 brief to that effect, it might be helpful. I don't
8 know what that might be, perhaps e-mail communications
9 or some other statement that would indicate that
10 learning had occurred on the part of the management of
11 NHCI in regard to dealing with or avoiding U.S. trade-
12 remedy measures.

13 MR. CUNNINGHAM: We'll be happy to do that.
14 I will omit the part that will be derogatory to paying
15 legal fees.

16 COMMISSIONER PEARSON: With my permission.
17 Now, the Petitioner has argued that NHCI
18 postponed its plans to double its capacity in
19 Becancour, Quebec, from 43,000 tons to 86,000 tons as
20 a result of not succeeding and having the CVD order
21 revoked in the first review. Is that correct?

22 MR. McCUE: Commissioner, I'm Greg McCue on
23 behalf of NHCI. The reference to that particular
24 proposal was based on a press release that USM has
25 been submitting over and over again in these

1 proceedings. If you look at that document, you'll see
2 that that was purely a proposal. It was subject to
3 board approval and subject to a number of other steps
4 that never occurred. That proposal doesn't exist
5 anymore. It's been years now, and you could expect
6 that any reasonable business that was going to act on
7 that kind of proposal would have already, and NHCI has
8 not.

9 COMMISSIONER PEARSON: Was funding ever
10 obtained for it?

11 MR. McCUE: It never reached that point. As
12 I said, it says right in the exhibit, "subject to
13 board approval and other steps," and it never got that
14 far.

15 COMMISSIONER PEARSON: So no steps in
16 permitting for environmental purposes or other --

17 MR. McCUE: Not that I'm aware of.

18 COMMISSIONER PEARSON: Okay. Good. We may
19 already have some of that information on the record.
20 If not, go ahead and send it to us.

21 MR. CUNNINGHAM: We'll give you a complete
22 update on that or a down date, as it were.

23 COMMISSIONER PEARSON: Okay. To the best of
24 your knowledge, Mr. Togni, what is the status of the
25 Magnola plant?

1 MR. TOGNI: To the best of my knowledge,
2 it's shut down, has been since 2003, and as Magnola's
3 questionnaire response -- I don't think I can get into
4 how they characterize it in their response, but that
5 has been the case and remains the case.

6 COMMISSIONER PEARSON: Is it obvious why the
7 plant is being held in suspended animation? I don't
8 know if that's the right term, but you were talking
9 about astronauts earlier. Suspended animation sounds
10 like a related topic. What's the reason that it's
11 either not restarted or just plain put to death? It's
12 not doing anybody any good right now, is it?

13 MR. TOGNI: I honestly don't know the answer
14 to that question. We can try to address it post-
15 hearing. I think the issues that you raise, at least
16 in my view, are somehow, at least to an extent,
17 addressed by the evidence that's in the record right
18 now. I know I've hammered home the point that the
19 necessary point of departure is the fact that they are
20 closed and have been for three years now. We submit
21 that that is dispositive of this issue.

22 In answering your prior question about what
23 kinds of subsidies they might seek, in a hypothetical
24 sense, in a speculative sense, just to answer your
25 question, I think all of that, there is really no

1 basis for it in the record.

2 MR. CUNNINGHAM: Commissioner, having now
3 belabored or beaten upon the Petitioners for engaging
4 in speculation, I would like to take the liberty of a
5 little, half-informed speculation on that point.

6 If you look around the world at commodity
7 prices and metals prices, you see many of them, over
8 the last three or four years, have absolutely gone
9 through the roof. The Commission, through all of its
10 steel cases, is well aware of that phenomenon.

11 I suspect that if I were a manager of a
12 company in the metals business, and I was looking
13 around at that going on in product after product, I
14 would think to myself, gee, if I really close that
15 plant down irrevocably, and then prices quadruple,
16 boy, I would look like a dumb manager, and if it
17 doesn't cost me much to keep it in some state where it
18 could come back in a scenario where world prices went
19 through the roof, I would be a lot better off keeping
20 it in that kind of range.

21 COMMISSIONER PEARSON: Perhaps even more so
22 if one of the owners is a government entity that might
23 have a difficult time explaining to constituents why
24 they spent several millions of dollars on a white
25 elephant.

1 MR. CUNNINGHAM: I'm thinking back over my
2 days representing British Steel, and I think I can
3 concur in that.

4 COMMISSIONER PEARSON: Well, if there is
5 anything that could be put on the record with regard
6 to those motivations, I would be happy to see it.

7 MR. TOGNI: Thank you.

8 COMMISSIONER PEARSON: My light is changing,
9 Mr. Chairman.

10 CHAIRMAN KOPLAN: Thank you, Commissioner.
11 Commissioner Aranoff?

12 COMMISSIONER ARANOFF: Thank you, Mr.
13 Chairman. Good catch.

14 Welcome to the afternoon panel. The
15 chairman has a tendency to forget about me some times
16 and not give me my turn in the questioning order.

17 CHAIRMAN KOPLAN: I just wanted to emphasize
18 that you were next. That was the pause.

19 COMMISSIONER ARANOFF: To his credit, it's
20 only happened twice that I can recall, not that I'm
21 counting.

22 Going back to the like product issue, Mr.
23 Cunningham, you talked about the idea that really
24 aluminum producers don't want to use alloy; they want
25 to use pure, that it was an unusual circumstance that

1 led them to do that.

2 One technical question on that I'm trying to
3 understand is if they are usually using pure, and they
4 decide they are going to use alloy because of the
5 pricing situation, since they normally don't do it,
6 there must be a cost associated with it, and I'm
7 trying to get a handle on what are those costs, not
8 just in numerical terms, but technically speaking,
9 what is it that they have to do to use alloy that they
10 wouldn't have to do, particularly if that alloy, as
11 Petitioners were pointing out this morning, is mostly
12 aluminum?

13 MR. CUNNINGHAM: If I could suggest, I think
14 it is probably better for us to give you a little
15 primer on that in the post-hearing brief because we're
16 not technical experts. Our client, because it's not
17 paying duties anymore, didn't want to send a witness
18 down here. I'll get them to put together a little
19 paper on that for you, if that's okay.

20 COMMISSIONER ARANOFF: I would appreciate
21 that, and I also will address that question to
22 Petitioners for a post-hearing brief as well, if you
23 could let me know, as a technical matter, what is it
24 you would have to do, as an aluminum producer or any
25 other producer who might be switching from using pure

1 to alloy, as a technical matter, what do you have to
2 change in your process, how much does it cost, and
3 what does that mean about what the price spread needs
4 to be between pure and alloy in order to induce you to
5 make that switch? So anyone who wants to submit
6 information on that in their post-hearing, that would
7 be helpful.

8 Let me go on. This morning, Petitioners
9 made a number of assertions to us about what the
10 conditions of competition are like in the market in
11 Canada, in particular, in describing the sort of
12 balloon theory that Canadian production was being
13 squeezed out of Canada and into the United States
14 because of competition with Chinese or other imports.
15 I don't know if you spoke with any of your clients
16 about what the conditions they compete in Canada are
17 like, whether you would have anything to respond to
18 those assertions.

19 MR. CUNNINGHAM: I'm afraid I haven't
20 explored that with my client. I can if you want me
21 to.

22 COMMISSIONER ARANOFF: Mr. Togni?

23 MR. TOGNI: The same would be true for us on
24 behalf of the government of Quebec. We can attempt
25 certainly to address that in a post-hearing on your

1 behalf.

2 COMMISSIONER ARANOFF: One of the things I'm
3 interested in is the assertion that prices are lower
4 in Canada than they are in the United States because
5 of import competition in the Canadian market and that
6 that might be pushing imports that might otherwise go
7 to the Canadian home market into the U.S. market.

8 I don't know if any of you here today can
9 comment on this, but I'm interested in finding out
10 what contributed to the sharp increases in U.S. import
11 volumes for Canadian magnesium during the review
12 period and how the Commission should consider these
13 increases when we consider the likely volume of
14 imports if the orders on Canada are revoked.

15 MR. McCUE: Greg McCue again. My
16 understanding is that we've had an increase in demand
17 in the U.S. market, and that's called for increased
18 imports and absorbed them.

19 COMMISSIONER ARANOFF: So you think it's
20 been due to increased demand. How do you think we
21 should factor that into our consideration of likely
22 volume in the event the order is revoked?

23 MR. CUNNINGHAM: I always look at likely
24 volume as not an absolute question so much as a
25 question of volume relative to U.S. production and

1 volume relative to consumption. It looks to me as if
2 this is not taking volume away from U.S. producers;
3 it's basically filling increased demand in the U.S.
4 market.

5 The other thing that I might note is that
6 there was more demand in the U.S. market for non-
7 Russian, non-Chinese imports since they moved out of
8 the market, and, therefore, both the U.S. producers
9 and the other importers had more effective demand
10 available to them.

11 COMMISSIONER ARANOFF: Okay. Thanks.

12 Well, both sides tell us today that we
13 should not look behind Commerce's determination in
14 this review because it's their job to decide those
15 things, and clearly it is. However, you've both told
16 us that it means two completely different things, that
17 we shouldn't look behind. So that obviously makes it
18 a little difficult for us. We're not looking behind
19 it; we're just looking at it and still trying to
20 figure out what it means, is maybe the best way to put
21 it.

22 MR. CUNNINGHAM: Could I just say one thing?
23 There were several statements made that Commerce had
24 found that Norsk Hydro Canada was likely to have
25 subsidies. That's just flat wrong. If you get out

1 your Federal Register and turn to page 67141 of Volume
2 70, it says, no basis for reporting a rate for NHCI on
3 pure and no basis for reporting a rate for NHCI on
4 alloy, and I don't see how you get from that that
5 Commerce has found that NHCI is going to get
6 subsidies.

7 COMMISSIONER ARANOFF: Well, I take your
8 point on that. I do think it's one interpretation of
9 what Commerce said. I think you could also interpret
10 them to be saying, we think they will still be
11 subsidized; we're just not sure what the subsidy will
12 be.

13 MR. CUNNINGHAM: Well, there might be
14 circumstances in which I could agree that that might
15 be what they meant, but where what you have had for
16 NHCI for, gosh, the last five or six, maybe seven,
17 years is only the amortization forward of the past
18 initial subsidies given when we set up the plant, and
19 all of that amortization is done, and for the last
20 several years we've been saying to Commerce, go to a
21 zero deposit rate for us, in effect, inviting the
22 Petitioners to come in and put any new subsidy
23 allegations they might have on the record, and they
24 haven't done so. In a situation like that, I think
25 it's very hard to say that Commerce has anything that

1 could lead to the type of interpretation that you
2 suggest. I don't mean it's your interpretation; the
3 hypothetical interpretation you thought someone might
4 attach to it. I just don't think it's possible to do
5 it in this case.

6 COMMISSIONER ARANOFF: Okay. The Petitioner
7 stated in its brief that although the grant that was
8 found to have been received by NHCI had been fully
9 amortized, that shipments remained subject to the
10 order until there's a demonstration of no
11 countervailable subsidy for five years. Is that
12 correct, and where are we in the five years?

13 MR. MCCUE: We raised that with the
14 Department of Commerce. We have suggested to them
15 that because we have had for more than five years no
16 subsidies other than amortization of the existing
17 grant that those are the five years that should count.
18 And we have proffered that to the Department of
19 Commerce, and they're thinking about it right now.

20 I can tell you that USM has argued the
21 opposite. They've argued that it should be only after
22 you get past the amortization period. Then you should
23 start a brand new clock of five years of zero. We
24 don't think that's supported by the regulations.

25 The Department of Commerce is working now on

1 the administrative review of 2004, which is the last
2 year of amortization. 2005, according to the
3 Department of Commerce's chart, there's nothing left
4 to amortize.

5 MR. CUNNINGHAM: And I might say one thing
6 that we will find extremely helpful on this, and that
7 is that both in this case and in another case where
8 we're a petitioner, we're representing a petitioner,
9 we did extensive research to find any case in the past
10 where Commerce has made a determination of what the
11 number of years termination period means in the
12 context of amortization, or the amortized subsidies,
13 amortization of past subsidies being the only ones.
14 And we haven't found any case, and Commerce can't find
15 any case for us. So I hope that's very helpful to
16 you.

17 COMMISSIONER ARANOFF: Okay. I'm going to
18 leave it there since the light's turned yellow and
19 come back to this. Thank you, Mr. Chairman.

20 CHAIRMAN KOPLAN: Thank you, Commissioner.

21 Mr. Cunningham, U.S. Magnesium's prehearing
22 brief at page 1 states that with regard to the
23 countervailing duty order on magnesium from Canada,
24 and I'm quoting, "Because the order has prevented
25 additional subsidies to NHCI, NHCI has been forced to

1 postpone indefinitely its well-publicized plans to
2 expand production capacity, most of which new
3 production would be directed at the U.S. market."

4 However, at page 1 of your brief, you state
5 that NHCI's entries to the U.S. made out through
6 December 31, 2004 are no longer subject to the instant
7 CVD orders under review, and you talked about that
8 this afternoon.

9 MR. CUNNINGHAM: Yes.

10 CHAIRMAN KOPLAN: I've got a three-part
11 question for you. First, does NHCI continue to
12 postpone its expansion plans, and if so, why?
13 Secondly, does it currently plan to increase capacity
14 utilization, and if not, why not? And the third part
15 is how long would it take for NHCI to substantially
16 increase production? You can take them one at a time.

17 MR. CUNNINGHAM: No. 1 and part of No. 2 is
18 that there is no plan on the table at NHCI now to
19 expand production capacity.

20 CHAIRMAN KOPLAN: Can you expand on that?

21 MR. CUNNINGHAM: I'll have to get back to
22 you as to why there's no plan at the moment. I can
23 speculate, but that would be pure speculation. Of
24 course, I never do that.

25 And as to the last one, I'll find out the

1 answer and get back to you on it. I mean, it's
2 certainly, you know, a couple years to get a
3 significant planned expansion. But I'll get back to
4 you with a more precise answer on that.

5 CHAIRMAN KOPLAN: Thank you. I know you
6 will, and I appreciate it.

7 MR. CUNNINGHAM: Yes.

8 CHAIRMAN KOPLAN: Let me stay with you. I
9 don't have a lot of industry witnesses out here to
10 question this afternoon. U.S. Magnesium's brief
11 states at page 4 that, and I'm quoting, "European
12 producers, Norsk Hydro and Pechiney, discontinued
13 production because of imports from China." Can you
14 provide us with any information as to why Norsk Hydro
15 ceased production in Europe? Was that due to
16 competition with low-priced imports from China?

17 MR. CUNNINGHAM: I'll find out and get back
18 to you on that.

19 CHAIRMAN KOPLAN: Okay. You're moving me
20 right along down my list here.

21 MR. CUNNINGHAM: There you go.

22 CHAIRMAN KOPLAN: I'm still with you.

23 MR. CUNNINGHAM: We aim to please.

24 CHAIRMAN KOPLAN: Your brief argues at page
25 1 that, and I quote, "The anomalous price conditions

1 that led the ITC to find some interchangeability
2 between pure and alloy magnesium in the investigation
3 of magnesium from China and Russia were rectified by
4 the anti-dumping orders imposed in that case. As a
5 result of those orders, the long-standing, clear
6 dividing lines between pure and alloy magnesium have
7 returned to the U.S. market in the finding of two
8 separate like products is once again appropriate."

9 U.S. Magnesium's brief at page 2474,
10 referring to China, argues that, and I quote,
11 "Revocation of any one of the three orders would open
12 the flood gates to dumped imports from China."

13 If the orders on imports of pure magnesium
14 ingot from China currently under review are revoked,
15 would you expect the anomalous price conditions to
16 recur?

17 MR. CUNNINGHAM: If the order on China
18 that's the dumping and the countervail orders were
19 revoked --

20 CHAIRMAN KOPLAN: Right.

21 MR. CUNNINGHAM: -- would the anomalous
22 price conditions -- I think we would fear that. You
23 know, I don't have a lot of basis to predict it, but
24 there's still capacity in China. And I don't know
25 what their exports to other countries look like or

1 they've rediverted, redirected all that production
2 capacity elsewhere. If they haven't, then I guess one
3 would have to be concerned about that.

4 CHAIRMAN KOPLAN: Okay. So if you're
5 concerned about that and it did occur, then I take it
6 the rest of that sentence on page 1 of your brief, you
7 would be saying that that could lead us to find some
8 interchangeability again.

9 MR. CUNNINGHAM: If the exogenous factor
10 again changed the conditions of competition in the
11 marketplace. But given the current conditions of
12 competition in the marketplace, I think you really are
13 back to where you were until the Chinese entered the
14 marketplace and changed it.

15 CHAIRMAN KOPLAN: Thank you. I asked this
16 question of Mr. Button earlier today. U.S.
17 Magnesium's prehearing brief at pages 11 and 12 argues
18 that the pricing data collected in these
19 investigations shows that prices for alloy and pure
20 magnesium have converged. That came out of its brief.
21 The data it relies on is that the sales of commission
22 products 1 and 2 sold to aluminum producers.

23 Your brief at page 9 argues that, and I
24 quote, "The difference in average unit values between
25 pure and alloy magnesium was greater in 2005 than it

1 was in 2000." It's your position that the present
2 record shows that the prices for the two products have
3 in fact diverged.

4 Have there been substantial differences in
5 the product mix that would account for these two
6 apparently opposite trends? Mr. Button testified that
7 there have been differences in product mix and
8 contract versus spot sales terms.

9 MR. CUNNINGHAM: Yes, I can talk a little
10 bit. I don't think product mix in the sense of
11 physical characteristics of the product is a
12 significant factor as to NHCI's sales. They've
13 basically been the same type of sales to the same
14 customers throughout this period, indeed throughout
15 the time I've been working with NHCI.

16 And that is also true in terms of NHCI's
17 contract versus spot sales. NHCI is primarily a
18 contract sale producer, and particularly its U.S.
19 sales are primarily contract sales. I don't know what
20 percentage the spot sales are, but they emphasize
21 contract sales.

22 There is a difference between NHCI and the
23 Chinese on that, because the Chinese, my understanding
24 is they're more spot sellers in the marketplace. And
25 one of the things that that does in the number, I

1 don't know that that affects at any given time the
2 disparity between NHCI's and the Chinese prices so
3 much as it creates a lag factor in the effect on NHCI
4 of Chinese pricing.

5 That is, the Chinese spot pricing would show
6 up instantly in the marketplace but would primarily
7 affect NHCI's pricing. And to some extent, this is
8 true of the U.S. industry -- although they do more
9 spot pricing than NHCI does -- with the delay, because
10 unless NHCI was forced to renegotiate the contract,
11 which happens once in a while, the price change
12 wouldn't show up until the next contract negotiation.

13 CHAIRMAN KOPLAN: Thank you.

14 MR. CUNNINGHAM: Did that sentence come out
15 coherently at all?

16 CHAIRMAN KOPLAN: I'll have to go back to
17 the transcript for that one.

18 MR. CUNNINGHAM: Okay.

19 CHAIRMAN KOPLAN: Thank you. Doesn't the
20 shift by aluminum producers to alloy magnesium when
21 the prices diverge indicate that these purchasers
22 perceive pure and alloy magnesium as substituted to
23 one another?

24 MR. CUNNINGHAM: Almost anything can be
25 substituted for almost anything else if the price

1 difference is such to allow you to do the conversion
2 or to compensate for the differences in the
3 characteristics. And in that sense, there is a
4 substitutability.

5 But that's not what the Commission normally
6 looks at as substitutability. The normal conditions
7 of competition in the marketability are, are the two
8 products substitutable? Under normal conditions, we
9 would submit they're not. It's only when there is an
10 exogenous factor or some factor that forces either the
11 price of pure way up or the price of alloy way down or
12 both so that there is a substantial divergence toward
13 a lower relative alloy price. It's only then that you
14 start --

15 CHAIRMAN KOPLAN: But these are products
16 that can be made with the same equipment and workers
17 basically, right?

18 MR. CUNNINGHAM: Yes, but made differently.

19 CHAIRMAN KOPLAN: Right. I understand that.

20 MR. CUNNINGHAM: But the same equipment or
21 workers. And not interchangeable without cost by the
22 users. And so you see your staff has figures as, for
23 example, to the percentage of aluminum industry
24 consumption of magnesium represented by pure and
25 represented by alloy, and you'll see that at this

1 time, the percentage of alloy use is very small.

2 CHAIRMAN KOPLAN: Thank you. I see my time
3 is about to expire, so I'll turn to Vice Chairman
4 Okun.

5 VICE CHAIRMAN OKUN: Thank you, Mr.
6 Chairman. And I join my colleagues in welcoming the
7 second panel here this afternoon. Appreciate your
8 testifying and your willingness to answer our
9 questions. Let me ask you, Mr. Cunningham, Mr. Togni,
10 and I guess go to you first, Mr. Cunningham with
11 regard to like produce, and, you know, you have a
12 brief on it. You've got a number of questions.

13 And I guess my question is maybe more of an
14 analytical one for the Commission, which is one of the
15 things it seems like I hear in the answers is, you
16 know, the facts are different because of, as you
17 describe, an exogenous factor in the China-Russia case
18 and that indeed if the order were lifted on China, as
19 the Chairman's hypothetical posed, that if we had
20 another case with Chinese product coming in not under
21 order, we could see this divergence of prices such
22 that you saw increased interchangeability.

23 And therefore, we might come to the same
24 decision we did in the first China-Russia one, that
25 it's one like product rather than two. And my

1 question, I think the industry witness from U.S. Mag,
2 I always appreciate when the industry folks have a
3 good take on the legal thing. Is it the right outcome
4 that you're going to switch your like product decision
5 every time the prices change?

6 And so I put it to you that way, because I'm
7 trying to figure out if it's the right analysis for
8 like product, if we're missing something here if we're
9 going to be switching our like product in two
10 different cases.

11 MR. CUNNINGHAM: Yes.

12 VICE CHAIRMAN OKUN: Maybe it is because the
13 facts are different in each case. And that's my
14 question.

15 MR. CUNNINGHAM: Well, it's not simply that
16 prices fluctuate, and every time they fluctuate, you
17 need to make a new decision. Where you have a normal
18 relationship, well established over years between the
19 two products' pricing, and that normal relationship of
20 pricing is such that under those conditions,
21 interchangeability is very limited, if it occurs at
22 all, you have one situation, and that's I think what
23 we have here.

24 And there you only reach a different
25 conclusion where you have a major exogenous factor

1 that results in such a substantial change away from
2 the normal relationship that you have this unusual
3 condition. Rather, if just you had prices bouncing
4 around day to day, of course we wouldn't take the
5 position that well, demand was kind of strong for pure
6 on Thursday and pure's price was higher on Thursday.
7 I guess on Thursday, there was interchangeability.

8 You know, obviously that's not what we're
9 talking about here, but where you have a situation
10 where you have a normal relationship. And your staff
11 report testifies to it, the customers testify to it,
12 the U.S. industry testified to it. It's a normal
13 condition of competition in this marketplace. Under
14 those circumstances, you stay with your approach that
15 there are two like products until and unless you get
16 the unusual condition imposed on the market.

17 VICE CHAIRMAN OKUN: Okay. Appreciate those
18 comments.

19 Mr. Togni, did you want to add anything to
20 that?

21 MR. TOGNI: Not at this time. As we said at
22 the outset, I think we defer to NHCI on this issue and
23 adopt their arguments. So thanks.

24 VICE CHAIRMAN OKUN: Okay. Appreciate that.
25 Then let me ask a couple other questions about

1 Magnola, and I know you've discussed it this afternoon
2 and put information in your brief. But, you know, I
3 mean, the situation as we look at it is not a case as
4 we have in some other circumstances where you have a
5 plant that's being sold off.

6 At this point, to the best of the
7 information we have in the record, it's not a case
8 where the Chinese are picking up pieces and moving it
9 to China, so the capacity is not gone. And so the
10 question, you know, in my view is trying to figure out
11 in the reasonably foreseeable future is it likely,
12 probable, that it's going to come online and at what
13 capacity.

14 And so the one thing that I find missing in
15 the argument, and I'm not sure, Mr. Cunningham, if
16 your clients might not be in a better position to
17 address this, which is to the extent we heard
18 testimony from Macro this morning with regard to what
19 they think it can restart, how much it would cost to
20 restart if you have these sales that have been sitting
21 there for three years now and it's just a relining
22 process, and I don't want to misstate what Mr. Legge
23 testified to about how many sales you can get up and
24 running to produce X amount of capacity, my question
25 is for posthearing, would you be able to give industry

1 responses to whether that is a fair view of what
2 Magnola could do?

3 And if there's anything you wanted to add
4 now, of course I'd take that as well. But it's really
5 that question. They said they make or had made
6 similar sales, if I understand the technology
7 correctly, had similar sales, and this is what they're
8 estimating it would take to bring it back online. And
9 my question is, is that accurate? Is that something
10 we could look to as evidence?

11 MR. CUNNINGHAM: I'll ask our people about
12 it. I think they'll be a little reluctant, so I'll
13 see what I can drag out of them. I would like to make
14 one sort of legal comment on that, and that is your
15 job as I understand it in a sunset review is to find
16 that there is affirmative evidence that supports the
17 proposition that there is a likelihood of continued or
18 renewed subsidized imports.

19 And let's suppose that you got evidence that
20 says all right, it is possible for them to bring it
21 back online in 60 days. It's possible for them to do
22 that. I don't think that gets you home in passing
23 that test. You have to have something that shows a
24 reasonable probability or prospect or likelihood that
25 they'll do that, and I don't see it on the record now.

1 I don't see it in the quotes that the domestic
2 industry adduces in their little slide about Magnola
3 quotes. And I think you have to have that.

4 But in point of fact, I think we're probably
5 going to come out with a conclusion that it's would
6 take a while to get them up and running even if they
7 did make the decision like now. But anyway, from a
8 legal standpoint, I think you really need something
9 that says they're going to do it or they're at least
10 actively considering doing it or something like that.

11 VICE CHAIRMAN OKUN: I understand your
12 point. I think that, you know, through a number of
13 the questions, it's, you know, what other evidence is
14 out there, because again, if it were a situation where
15 you could show me that, you know, the plant's being
16 picked up and sent to China, you know, then I'm not
17 going to spend that much time on it.

18 You know, if there is at least argument
19 being presented by the domestic industry that it could
20 come back online in X amount of time, you know, I
21 would like to know whether there's contrary evidence
22 out there.

23 And then of course I think you raise a point
24 which we also asked questions about, which is, you
25 know, what's the incentive to bring it out? If we

1 know it's X amount of cost or an approximation, you
2 know, what makes it come back online if it didn't come
3 back online already? And so anything that you could
4 provide on that I think would be helpful to complete
5 the record for purposes of the analysis we have to do,
6 and I would appreciate that.

7 MR. TOGNI: Vice Chairman Okun, just one
8 last point on that if that's okay.

9 VICE CHAIRMAN OKUN: Yes. That's fine.

10 MR. TOGNI: I think it's important to
11 recognize here and I think it certainly will come out
12 in posthearing, any estimates the Petitioner might
13 give in this case are necessarily hamstrung by the
14 fact or limited by the fact their evidentiary weight
15 is, that there is already evidence in the record that
16 what Magnola tried to do was previously untested,
17 untried technologies that nobody else had done before.

18 And that I think needs to be at least a
19 counterpoint to anything that the Petitioner might
20 come forward with posthearing to say, you know, based
21 on how we do things, these are the calculations that
22 we can provide to you on what they would need to do,
23 because, I don't know, but it certainly is probably
24 likely that there is more to be done than just reline
25 certain things that they alleged this morning.

1 VICE CHAIRMAN OKUN: Okay. Well, again, I
2 think one of the points this morning in the exchange
3 with Mr. Legge was that whether the technological
4 problems which were on the record contemporaneous with
5 the closure of Magnola were addressed, as we heard
6 testimony about, and so any information, any further
7 information -- I know there's some in the record --
8 but I think any other information would be helpful,
9 again to put the plant in context, so appreciate that.

10 Mr. Cunningham, I know Commissioner Aranoff
11 asked you about what other information you might be
12 able to provide with regard to the impact of the
13 Chinese and the Canadian market, and I know you will
14 endeavor to put that in there.

15 But I guess my question is there was some
16 discussion about whether Magnola perhaps was asking
17 the government to bring a case against China. I mean,
18 do you have any information about that? I was just
19 curious again just of what was going on in the time
20 period. Is that anything that you're aware of?

21 MR. CUNNINGHAM: All I can say, as far as I
22 know, NHCI never asked the government to bring a case.

23 VICE CHAIRMAN OKUN: Okay.

24 MR. CUNNINGHAM: But, I do not know about
25 Magnola.

1 VICE CHAIRMAN OKUN: Okay. I thought it
2 might be something, as a lawyer, you pick up there.
3 Thinking about Mr. Togni's comments that he's bad in
4 science and bad in math and here he is as a lawyer,
5 you know. It's not what I want to tell my children.
6 But, I guess we all get involved.

7 MR. TOGNI: I was thinking about the
8 baseball analogy, but then I went with astronauts.
9 So, that applies with equal force with me. I could
10 not hit a curve ball to save my life.

11 VICE CHAIRMAN OKUN: Okay. Well, I see my
12 yellow light is coming on. But, for post-hearing, I
13 make the same request that I made to Petitioners this
14 morning with regard to the Federal Circuit's decision
15 in Pratts Aluminum -- I cannot say that name --
16 Aluminum Smelter v. United States. If you could, for
17 post-hearing, brief on its implications for this case.
18 And with that, Mr. Chairman, I will come back on
19 another round.

20 CHAIRMAN KOPLAN: Thank you. Commissioner
21 Hillman

22 COMMISSIONER HILLMAN: Thank you, very much,
23 and I join my colleagues in welcoming you all, very
24 much. We appreciate all the time and effort to be
25 here this afternoon and for the information in the

1 briefs.

2 If I can go to the like product issue.
3 We've spent a lot of time on pure versus alloy. To
4 me, there's also these other like product issues out
5 there regarding both secondary aluminum and granular,
6 which, at least, I don't recall being addressed. And
7 I confess, I read your briefs as, in essence, assuming
8 that secondary is part of the like product. But, I
9 wanted to give you a chance to specifically address
10 whether we should or should not be including secondary
11 or granular within the like product of this case and
12 how you would see us analyzing those issues.

13 MR. CUNNINGHAM: We don't care about Tregli.
14 I will note --

15 COMMISSIONER HILLMAN: You don't care about,
16 I'm sorry?

17 MR. CUNNINGHAM: The secondary or the
18 granular, we don't care much about that, to be
19 perfectly candid with you. I will note that neither
20 of them are part of the scope.

21 COMMISSIONER HILLMAN: Correct, correct.
22 And, as you know, that was clear in Commissioner
23 Aronoff's question to Petitioners this morning.

24 MR. CUNNINGHAM: Yes.

25 COMMISSIONER HILLMAN: On what basis, in

1 this investigation, should we be going beyond the
2 scope of what the order applies to, in making a like-
3 production determination in a review.

4 MR. CUNNINGHAM: I know, I know.

5 COMMISSIONER HILLMAN: So, would you have
6 the same caution to us, stick with what's in the
7 scope? I have to say, I read your brief as more or
8 less assuming secondary is included or that there is
9 not an easy way to distinguish that.

10 MR. CUNNINGHAM: I'm going to turn to
11 someone more expert than I, Ms. Kimble.

12 MS. KIMBLE: I guess the way we look at the
13 like product question was, again, what has changed in
14 the market, and with pure alloy, I see a clear change
15 between pure -- between the China-Russia case and this
16 case. Again, our client doesn't really care so much;
17 but when I looked at the information about secondary,
18 I don't really see that change, coming to you and
19 arguing that there's a change that would require you
20 to make a different finding than you did in the China-
21 Russia case. I just didn't feel comfortable putting
22 that kind of argument forward. So, I guess, I doesn't
23 really -- to me, it doesn't make a difference in the
24 outcome of your case, in this instance, for the issue
25 that we care about as to pure and alloy. But, I don't

1 see necessarily that you need to depart from your
2 prior finding, either notwithstanding the fact, it's
3 not part of the scope. And so, you know, you complete
4 the record with support, you know, not putting it in,
5 in this case.

6 COMMISSIONER HILLMAN: And, again, for me,
7 personally, sitting here, I am in a little different
8 place than the Commission on the issue of granular, in
9 that, in my view, that was a separate like product.
10 So, I'm just needing to hear you say whether, given
11 your telling me don't make any changes, don't make any
12 changes from what the Commission did or don't make any
13 changes from -- again, my own decision was that
14 granular is a separate like product. Is there
15 anything in this record that you would see that would
16 change that?

17 MR. CUNNINGHAM: See, we don't make
18 granular, so we don't know much about it.

19 COMMISSIONER HILLMAN: Okay. Fair enough.
20 Is there is anything on the just legal side of what
21 you think the Commission ought to be looking at on
22 this that you want to add in the post-hearing -- I
23 understand, the lack of real concern over this issue.

24 If I can, then, I guess, go and follow-up a
25 little bit on Commission Aranoff's question, in terms

1 of why we saw the Canadian imports go up as much as
2 they did in 2005. As I heard your answer, Mr.
3 Cunningham, it was, to some extent, that demand was up
4 and, to some extent, that because China was out of the
5 market, there was more room, in essence, for Canada to
6 come in. I have to say, if I'm looking at the pure
7 product, where we did see a big increase in the
8 Canadian imports in 2005, I'm not sure I see either
9 one of those. It's not clear to me that, in fact,
10 consumption was up, nor is it clear to me that the
11 Chinese had not long been out of the market. So, I
12 don't see a change in Chinese shipments on the pure
13 side, nor do I see a significant increase in demand
14 that would have pulled Canadian imports into the
15 market. So --

16 MR. CUNNINGHAM: Let me ask our folks about
17 that. We're mostly alloy, you see, so --

18 COMMISSIONER HILLMAN: I understand.

19 MR. CUNNINGHAM: -- I mean, it's --

20 COMMISSIONER HILLMAN: But, the change
21 between 2004 and 2005, in terms of the volume of pure
22 shipments from Canada, is very significant.

23 MR. CUNNINGHAM: Right. I will --

24 COMMISSIONER HILLMAN: So, I would like an
25 explanation as to why that happened.

1 MR. CUNNINGHAM: And do you know whom they
2 were from? I'm not --

3 COMMISSIONER HILLMAN: Again, my problem
4 here is I don't know what the --

5 MR. CUNNINGHAM: I mean, we have to hear
6 also from Timinko, I guess.

7 COMMISSIONER HILLMAN: -- off the top of my
8 head, I'm afraid of what might be confidential
9 information, so I don't want to tell --

10 MR. CUNNINGHAM: Yes, like I said, it might
11 not even be subject merchandise. It might be Timinko.

12 COMMISSIONER HILLMAN: I'm pretty sure it's
13 subject merchandise.

14 MR. CUNNINGHAM: Timinko?

15 COMMISSIONER HILLMAN: I could --

16 MR. CUNNINGHAM: Oops.

17 COMMISSIONER HILLMAN: Again, I don't want
18 to say --

19 MR. CUNNINGHAM: Yes.

20 COMMISSIONER HILLMAN: -- it without
21 checking whether I would be giving you some
22 confidential information. So, I'm clearly not going
23 to give you any numbers, but whether -- if there's
24 anything that can be said, perhaps in the post-
25 hearing, to help us understand that.

1 MR. CUNNINGHAM: Someone will be able to
2 tell you that as to Norsk Hydro. To the extent we had
3 an increase, we'll tell you why we had the increase.

4 COMMISSIONER HILLMAN: Okay.

5 MR. CUNNINGHAM: Okay.

6 COMMISSIONER HILLMAN: All right. And then
7 going to the arguments on pure versus alloy, part of
8 me sits here and speculates, well, wait a minute, why
9 is it the case that pure is normally higher in price,
10 in your view. As I heard the testimony this morning
11 from U.S. Mag, you basically start with pure and then
12 add more stuff to it, in order to get an alloy
13 product, which generally means it costs more to
14 produce. It obviously depends on the cost of the
15 alloying agents versus the cost of the magnesium; but,
16 at some level, it's more. If I look at just the
17 import data AUVs over the entire 10-year series of
18 comparison, you would consistently, in every single
19 comparison, see that, in fact, alloy was higher priced
20 than pure. So, I'm not quite sure I understand this
21 historical relationship between pure and alloy. And
22 on the other hand, if I look at U.S. commercial
23 shipment values, you see just the reverse. You see
24 the alloy being cheaper than the pure. I'm just
25 trying to make sure I understand exactly why there is

1 -- exactly what you think this historical relationship
2 is between the price of pure versus the price of
3 alloy, why that's the case, and how comfortable we
4 should be resting a like product determination on a
5 'historical' price gap, given that the data seems to
6 be otherwise.

7 MR. CUNNINGHAM: I think, again, this is one
8 I had better get -- go back to the company and get you
9 a little textbook on that, a little analysis of that.
10 I mean, it is generally accepted in the industry. The
11 staff report reflects it. The customer things
12 reflects this.

13 COMMISSIONER HILLMAN: And like I said, and,
14 yet, when I -- just comparing, for example, total
15 import AUVs for alloy versus pure, you'll see that
16 alloy is higher. Why is that, if there is this
17 historical relationship there? I'm just struggling to
18 understand if we're going to base a like product
19 determination on the notion that there's a historical
20 gap and that the only time the two blend, in terms of
21 usage, is when the gap is very small, I guess I just
22 need a little more understanding of from what do we
23 look at, to ensure ourselves that this historical
24 trend is out there and clearly understood in the
25 market and those sort of things. Okay. I'd

1 appreciate it. I just think it's odd, because it's
2 one of those ones that's not clear to me that we have
3 that clearly on the record.

4 All right. Now, I don't want to confess
5 whether I never had astronaut fantasies or anything
6 like that, but I will say, I want a little more, if
7 you have anything, just so that we can have a complete
8 record, whether there is anything more you can say on
9 the leader mining plans for this Cogburn plant, in
10 terms of, if there's any sources you know that we
11 should look at, whether there's anything that could be
12 put on the record. Again, if this is an issue that
13 is, as you say, in outer space, fair enough. I would
14 like to see if there's anything that you could point
15 us to that would help us understand its status, how
16 far away it is from, how advanced any of these plants
17 are, any source of information we can look at on this.

18 MR. CUNNINGHAM: We'll do some digging.

19 COMMISSIONER HILLMAN: Okay, all right. I
20 would appreciate that. And last question quickly is
21 on this issue of the dye casters that remelt scrap
22 from their operations and feed it back into their
23 operations, should we be considering them to be
24 magnesium producers and, therefore, part of the
25 domestic industry?

1 MR. CUNNINGHAM: I almost jumped up and
2 said, no, and then I figured, Dick, you're going to
3 have to tell her why you say no. Then, I said, I'll -
4 - so, I'll amend that no to we'll talk about that in
5 the post-hearing brief.

6 COMMISSIONER HILLMAN: All right. I thank
7 you, very much, for those answers. Did you want to
8 add anything, Mr. Togni?

9 MR. TOGNI: Not at this time. Thank you.

10 COMMISSIONER HILLMAN: All right. Mr.
11 McCue, no? Okay, all right. Thank you, very much.

12 CHAIRMAN KOPLAN: Thank you. Commissioner
13 Lane?

14 COMMISSIONER LANE: Good afternoon. I'd
15 like to start out with a question, is there any
16 particular reason why we do not have any industry
17 witnesses here with you today, so that we could ask
18 them the technical questions directly?

19 MR. CUNNINGHAM: Yes, there is. It's
20 because they are not paying any duties. They haven't
21 paid any duties for a while. They are here because,
22 as I said, there's one issue that they want to make
23 sure doesn't go wrong for future cases, anticipating
24 this is an industry where there quite possibly may be
25 future cases. And, frankly, I'm talking about a lot

1 of issues with you right now that I know, because I've
2 dealt with the case for a number of years, but I'm
3 going a little bit beyond my mandate from them. They
4 want a nice low-budget presentation on -- don't smile,
5 please, that's so hard.

6 COMMISSIONER LANE: No, I was going to
7 suggest --

8 MR. CUNNINGHAM: You're a hard person.

9 COMMISSIONER LANE: -- since we were talking
10 baseball earlier, couldn't we trade two lawyers for
11 one industry witness?

12 MR. CUNNINGHAM: I wish we could;
13 particularly right now, I wish we could.

14 COMMISSIONER LANE: Okay, thank you. Let's
15 talk about rising energy costs. I'm assuming that the
16 Canadian industry has had rising energy costs, just
17 like the U.S. industries have. Do the rising energy
18 costs effect pure and alloy magnesium producers
19 differently?

20 MR. CUNNINGHAM: I know they have a greater
21 proportional effect on secondary producers; but, other
22 than that, I don't know and I will get you more of an
23 answer on that, too.

24 COMMISSIONER LANE: Okay. Table 3-7 of the
25 pre-hearing staff report paints a very bleak picture

1 for the domestic industry regarding return on
2 investment until 2005, when the numbers improve. In
3 your opinion, how vital is this information regarding
4 return on investment and how should the Commission
5 view this information in deciding this case?

6 MR. TOGNI: I think you can take a look at
7 that question in the context of other evidence that's
8 on the record, as well. I don't think that can be
9 analyzed alone. In other words, I think if you look
10 at the other evidence that's on the record that we've
11 previously pointed to in our briefs, with respect to
12 capacity utilization, with respect to their shipping
13 levels, with respect to certain employment indicators,
14 we think that that is more dispositive of their
15 conditions, at this point in time, and certainly for
16 the foreseeable future.

17 COMMISSIONER LANE: Okay. How easy is it to
18 switch production between pure and alloy magnesium,
19 especially with regard to the costs and the downtime
20 involved, and how often do you clients shift
21 production?

22 MR. CUNNINGHAM: Why don't we get you that -
23 - a little paper on that in the post-hearing?

24 COMMISSIONER LANE: Okay, thank you. Do you
25 have any knowledge as to whether U.S. Magnesium has

1 been able to supply all its customers of pure
2 magnesium during the period of review?

3 MR. CUNNINGHAM: I don't, but we'll ask --
4 see if our clients do.

5 COMMISSIONER LANE: Okay, thank you.

6 MR. TOGNI: Commissioner Lane, in addition,
7 I think, and we'll double check for post-hearing, but
8 there may be one questionnaire response from a
9 purchaser that speaks to that issue, and if we can
10 confirm that point on the confidential record, we'll
11 do so.

12 COMMISSIONER LANE: Okay, thank you. Please
13 comment on U.S. Magnesium's statement on page 54 of
14 its pre-hearing brief, that Norsk Hydro's decision to
15 postpone its doubling of capacity immediately
16 following its failure to achieve revocation of the
17 orders in the first sunset review strongly suggest
18 that the expansion may depend on subsidization.

19 MR. CUNNINGHAM: Well, that makes no sense
20 at all. The subsidies that were being countervailed
21 were amortizations of the initial subsidies we got.
22 The whole question of subsidization here was a plant
23 location issue. And there have been no requests for
24 more subsidies by Norsk Hydro and there is no -- I'm
25 trying to avoid saying -- what I want to say is, gosh,

1 darnit, no, it had nothing to do with it. I can't say
2 it quite that categorically, because I don't have that
3 evidence. But, there's certainly no evidence anywhere
4 to link those two facts, not in any Norsk Hydro
5 statement, not in any government statement, and the
6 facts don't fit it.

7 COMMISSIONER LANE: If the orders of
8 magnesium from Canada were revoked, to what extent
9 would you expand production capacity and would any new
10 subsidies be available to you?

11 MR. CUNNINGHAM: Norsk Hydro is not seeking
12 new subsidies. I have no idea whether anything would
13 be available, if they did. I kind of doubt it,
14 because it's not the way Canada operates. Canada
15 tends -- Canadian governments tend to give subsidies
16 at the time you set up your plant. And as to the --
17 we certainly would not increase production where the
18 order to be lifted, because we're not paying any
19 duties under the order anyway. It would be
20 irrelevant.

21 COMMISSIONER LANE: Mr. Togni, what about
22 your client?

23 MR. TOGNI: I think it might be appropriate
24 to address that in the post-hearing. Off the top of
25 my head, I'm not sure if there's -- I don't think

1 there's any basis to suspect that there would be --
2 you know, one of the things that Petitioner pointed
3 out, that there might be a team of subsidizers waiting
4 patiently in an office building in Quebec City and
5 that's just not the case, as Mr. Cunningham said on
6 the record here. But, we'll examine that a little bit
7 further and get back to you.

8 COMMISSIONER LANE: Okay. Let me stick with
9 you for a minute. Could you explain your assertion on
10 page four of your pre-hearing brief that Magnola has
11 no production capacity, while other information in the
12 record indicates that Magnola may be capable of
13 producing?

14 MR. TOGNI: Looking at page four, and I just
15 want to make sure the -- I understood the first part
16 of your statement, but not the second part.

17 COMMISSIONER LANE: Magnola has no
18 production capacity, while other information on the
19 record indicates that Magnola may be capable of
20 producing.

21 MR. TOGNI: I'm not sure that that's in our
22 brief. I don't think we assert that they may be
23 capable. I'm looking at page four of my brief and I
24 see that the record --

25 COMMISSIONER LANE: Your brief says that

1 they have no production capacity.

2 MR. TOGNI: That's correct.

3 COMMISSIONER LANE: And then other
4 information that the record says --

5 MR. TOGNI: Or, other -- I understand. I'm
6 sorry for the confusion. This goes back to the point
7 that I made in the opening statement and earlier this
8 morning. I think the only evidence on the record that
9 shows that they ever had a capability to produce is
10 the -- I think the data in their questionnaire for
11 those few quarters or a year-and-a-half that they were
12 actually in business. So, I think that that -- if you
13 -- and as I've said before, I think the appropriate
14 point of departure for examining their production
15 capacity or likely production capacity is where it is
16 now, which is zero, and what it has been for three
17 years. So, I think that would be the way to address
18 it, in my view.

19 COMMISSIONER LANE: Okay, thank you. Have
20 the average length of your clients' contracts for
21 magnesium increased, decreased, or stayed the same in
22 the last several years? And if the length has
23 increased or decreased, please explain the factors
24 that led to the increase or decrease?

25 MR. CUNNINGHAM: We'll get you a complete

1 answer to that question.

2 COMMISSIONER LANE: See, I deliberately
3 picked out every question here that your client could
4 answer --

5 MR. CUNNINGHAM: I know.

6 COMMISSIONER LANE: -- if they were here.

7 MR. CUNNINGHAM: Well, I out-foxed you in
8 this hearing, then, didn't I?

9 COMMISSIONER LANE: Let me see, I think I
10 have one more question. Prices for pure magnesium
11 published in Metals Week decreased in the second-half
12 of 2005 and have continued to decrease. Why have
13 prices decreased and was it solely a decrease from
14 unusually high prices caused by the falling of the
15 petitions on magnesium metal from China and Russia in
16 2004?

17 MR. CUNNINGHAM: I will get you a detailed
18 answer to that, too. And, as I say, please don't
19 hesitate to ask these questions, because I'll beat on
20 my guys to say, see, you should have come to the
21 hearing, dammit. But, I'll get the answers for you.
22 But, I would only note, there have been some of a
23 major commodity, steel has backed off a little bit,
24 for example, and some of the products have backed off
25 a little bit from the very high prices they reached in

1 the last year, first month or two of -- the first week
2 or two of this year. But, that's not a sufficient
3 answer and we'll get it for you in the post-hearing.

4 COMMISSIONER LANE: Okay, thank you. Thank
5 you, Mr. Chairman.

6 CHAIRMAN KOPLAN: Thank you, Commissioner.
7 Commissioner Pearson?

8 COMMISSIONER PEARSON: Mr. Togni, somebody,
9 either in the government of Quebec or in Noranda, is
10 going to have a really good understanding of what went
11 on with Magnola, the issues where why it was closed
12 down. And, perhaps, that same somebody is going to
13 know, basically, what it would cost to get the plant
14 up and what would have to be overcome. For purposes
15 of the post-hearing, could you provide as much
16 information on that as you could and, if possible,
17 with some breakdown between capital costs that would
18 be incurred to bring the plant up versus -- contrast
19 that with ongoing operating costs that would be
20 incurred? Because, we had the comment this morning
21 that there may have been a problem with the feedstock
22 that was going into the electrolytic converters. And
23 if there's a feedstock problem, there could be
24 significant capital expenditures required, plus some
25 ongoing operating costs for getting feedstock pure

1 enough for the electrolytic cells to handle.

2 I guess I don't need to know everything that
3 the engineers know about this, but you uniquely have
4 the ability to put on the record information that
5 would help us to understand this and get to what I
6 think is the bottom line of this series of questions.
7 How high would the magnesium have to be, in order for
8 the Magnola plant to run profitable? I think that
9 information, perhaps, would help us to understand
10 whether Magnola might come on line in the reasonably
11 foreseeable future, as we address this --

12 MR. TOGNI: We'll certainly give it our best
13 efforts in post-hearing. Thank you.

14 COMMISSIONER PEARSON: Thank you, very much,
15 Mr. Togni. Mr. Chairman, I have no further questions.

16 CHAIRMAN KOPLAN: Thank you, Commissioner.
17 Commissioner Aranoff?

18 COMMISSIONER ARANOFF: Thank you, Mr.
19 Chairman. One quick follow-up on Commissioner
20 Pearson's question to you, while you're answering it,
21 Mr. Togni. Petitioners this morning indicated that
22 they thought that to get to about 25,000 metric tons a
23 year of capacity, Magnola would need to bring on line
24 10 cells, which they estimated would take five months.
25 So, if you would want to have your client comment on

1 whether that was an accurate assessment of how long it
2 would take to get Magnola back up to its prior
3 capacity, if it should chose to do so.

4 MR. TOGNI: Certainly. On behalf of GOQ, we
5 will do the best we can with that.

6 COMMISSIONER ARANOFF: Okay, thank you.
7 Commissioner Chairman, I think that that is all the
8 questions that I have.

9 MR. CUNNINGHAM: Could I just interject what
10 comment is this line of questioning? All of us are
11 sitting here and we're not Magnola. We'd love to be
12 able to answer all of these questions. All of us are
13 pretty sure that all of the answers would be
14 exculpatory; that is, beneficial to our side of the
15 case, and they're not here. If the situation is that
16 Magnola is just plussed in -- you know, is not
17 interested in getting back into production, they're
18 probably not going to be interested in giving us any
19 information either, because they have no incentive to,
20 and that leaves us in an awkward position. That's
21 probably one of the reasons why the statute requires
22 that you have positive basis to make a determination
23 that something is going to happen, rather than
24 concerned that something might happen. But, I realize
25 that's an unsatisfactory position for you. We'll try

1 like heck to get something out of Magnola or something
2 that our people can do estimates of or something like
3 that. But, you know -- we're feeling just as awkward
4 as you are and we think it would all be helpful to us.

5 COMMISSIONER ARANOFF: Okay. I guess -- I
6 don't know if that answer was to me or to everyone,
7 but we appreciate it, in any event.

8 CHAIRMAN KOPLAN: I'll say it came out of
9 your time.

10 MR. WHITMAN: Okay.

11 CHAIRMAN KOPLAN: I just heard your
12 statement. It still doesn't answer for me why your
13 own client is not here. But, I heard what your
14 response was to that, but it doesn't get me there on
15 that part of it, to be honest with you. And for that
16 matter, Mr. Togni, I'm just -- I have a full table in
17 front of me, but I don't have anybody that I can
18 question from the industry.

19 Let me come back to you, Mr. Cunningham.
20 Mr. Legge referred to this earlier today. The U.S.
21 Magnesium brief asserts at page 37 that the 2001
22 shutdown of NWA, a producer of pure magnesium, and a
23 former subsidiary of Alcoa, 'was very clearly caused
24 by low-priced imports.' And it states that the
25 Department of Labor certified NWA's work as it's

1 eligible for trade adjustment assistance after NWA
2 filed an application for the 300 workers, who lost
3 their jobs. And there are several exhibits attached
4 to their brief to back that up. Could you respond to
5 that argument about the trade adjustment assistance?

6 MR. CUNNINGHAM: Well, first of all, what
7 was the date of the shutdown again?

8 CHAIRMAN KOPLAN: Let's see, 2001.

9 MR. CUNNINGHAM: 2001.

10 CHAIRMAN KOPLAN: I don't have the month in
11 front of me, but it's 2001.

12 MR. CUNNINGHAM: That's okay; that's okay.
13 It strikes me, that that point, the problem in the
14 marketplace, if there was imports, certainly wasn't
15 Canadian imports. It was Chinese and Russian imports,
16 and that's what your date showed in the last case you
17 looked at. And your data here doesn't show much on
18 Canadian imports in 2000-2001. So, I would be very
19 skeptical that --

20 CHAIRMAN KOPLAN: June of 2001.

21 MR. CUNNINGHAM: Uh?

22 CHAIRMAN KOPLAN: I just checked, June of
23 2001.

24 MR. CUNNINGHAM: I'd be very skeptical that
25 that has any relevance to your issue here today.

1 CHAIRMAN KOPLAN: You might check and --

2 MR. CUNNINGHAM: We'll find out everything
3 our client knows about that situation.

4 CHAIRMAN KOPLAN: Thank you.

5 MR. CUNNINGHAM: This will show them not to
6 show up at the hearing.

7 CHAIRMAN KOPLAN: U.S. Magnesium -- I'm
8 going to stay with you, because you're doing so well -
9 - U.S. Magnesium asserts at page 38 that imports of
10 pure and alloy magnesium from Canada and pure
11 magnesium from China are close substitutes in the U.S.
12 market. And at pages 38 and 39, they state that the
13 'need to meet ASTM specifications limits any potential
14 chemical or physical differences between subject
15 imports and the domestically-produced pure or alloy
16 magnesium. In the original investigations, purchasers
17 reported few such differences.' Do you agree with
18 that and, if not, why not?

19 MR. CUNNINGHAM: We've never made an
20 argument to the effect that there's a difference.
21 I'll check with our people to see if there is any, but
22 I know we've never made one in past cases.

23 CHAIRMAN KOPLAN: Okay, thanks. I have
24 another one for you. U.S. Magnesium goes on to argue
25 at page 40 that price is extremely important in sales

1 of pure and alloy magnesium and that 'differences of
2 less than a penny per pound can be the deciding factor
3 in winning a contract.' Contract conditions
4 reportedly magnify the effect of price changes from
5 one producer to any purchaser. Do you agree that
6 because of the need for certification and the contract
7 conditions that prevail in this market, sales of pure
8 and alloy magnesium are particularly price sensitive?

9 MR. CUNNINGHAM: They're certainly
10 substantial to be a price sensitivity. There are some
11 quality considerations. There are some customer
12 specifications that differ from customer to customer.
13 It's not an absolute pure commodity market, but it's a
14 fairly commoditized market.

15 CHAIRMAN KOPLAN: One last thing, the Vice
16 Chairman asked you about, this morning, I think, I
17 might have gotten into a question as to the effect of
18 Chinese imports in Canada having an effect on Magnola
19 shutting down, and you indicated you weren't familiar
20 with the facts surrounding that. I would point to two
21 exhibits in Petitioners' brief. That's Exhibit 23 and
22 Exhibit 26, the AMM articles. And Mr. Togni, one of
23 them states as follows: 'Noranda would delay the
24 closure of its Magnola magnesium plant in Danville,
25 Quebec for at least two weeks, to give the provincial

1 government more time to save the facility. A two-year
2 old smelter was due to close March 31st for at least a
3 year, due to sagging prices blamed on competition from
4 low-cost Chinese producers,' and they cite back to an
5 earlier American Metal Markets article. This is an
6 American Metal Markets article that I'm reading from.
7 And it says, 'Noranda representatives agreed to
8 postpone the shutdown after meeting Monday with
9 officials from SGF, which owns 20 percent of the
10 plant.' That was one article. It, also, mentions
11 that if they did close, they would get a \$411 million,
12 in American dollars, charge, I guess deduction, when
13 it closed the plant.

14 And then there's a second article and that's
15 the one I mentioned as Exhibit 26, which also pegs the
16 Chinese imports as the main reason for this plant
17 shutting down. Are you familiar with this
18 information?

19 MR. TOGNI: I've seen it on the record --

20 CHAIRMAN KOPLAN: You have, okay.

21 MR. TOGNI: -- as you've stated back to me.

22 CHAIRMAN KOPLAN: Okay. Thank you. With
23 that, I have no further questions. I'll turn to Vice
24 Chairman Okun.

25 VICE CHAIRMAN OKUN: Just one last question

1 and, Mr. Cunningham, I'll put it to you and for you to
2 put it to your clients, and that has to do with
3 command for Canadian product. And I guess the
4 question is, is whether they can provide for us what
5 they see the forecast for demand in the U.S. market
6 for their product in the reasonably foreseeable future
7 and then, also, for their other export markets, as
8 well.

9 MR. CUNNINGHAM: We'll go get that from
10 them.

11 VICE CHAIRMAN OKUN: Okay.

12 MR. CUNNINGHAM: I might say one thing in
13 commenting on this Canadian-Chinese thing, one thing
14 you might look at here, I mean, it may be argued, I
15 suppose, that the Chinese imports forced Canadian
16 production out of Canada into the United States.
17 They're going to give you overselling, underselling
18 figures, though. I mean, if that's happening, it sure
19 as heck isn't driving down prices here. It sure as
20 heck isn't causing underselling of U.S. producers.
21 And so, it's -- and this with Canada selling into a
22 market that the U.S. industry claims is a higher-
23 priced market than the Canadian market. So, whatever,
24 but it doesn't seem like it's an injurious element
25 from the U.S. industry's standpoint.

1 VICE CHAIRMAN OKUN: Appreciate those
2 further comments. And, again, I think one of the
3 things we were asking Petitioners to do and we would
4 ask for you, as well -

5 MR. CUNNINGHAM: Right.

6 VICE CHAIRMAN OKUN: -- which is, in looking
7 -- providing post-hearing analysis, we are separately
8 looking at the case on Canada and the case on China
9 and it seems odd, as we're sitting here, in some ways,
10 analytically trying to go through it, but that we have
11 to make sure to make those arguments. Again, it's not
12 talking about what the Chinese are doing in Canada,
13 but non-subjects generally and what impact they've had
14 on prices and otherwise and how that reflects on what
15 the future will be for Canadian imports. And I see,
16 Mr. McCue, you're grabbing your microphone. No, okay.
17 All right. Well, with that, Mr. Chairman, I have no
18 further questions, but I thank you for all of those
19 responses and I look forward to the post-hearing
20 submissions and hearing more from your client.

21 CHAIRMAN KOPLAN: Thank you. Commissioner
22 Hillman?

23 COMMISSIONER HILLMAN: One last quick
24 question. I think one of you said, in response to
25 something that the time frame that we should be

1 looking at is not too distant or some relatively vague
2 term like that. Given that I asked Petitioners very
3 clearly to tell us for this industry, given the way in
4 which sales are made, the length of contracts, any
5 business cycle issues, what is the reasonable
6 foreseeable future that we should be looking at for
7 this industry, in this investigation?

8 MR. CUNNINGHAM: Well, we'll give you a
9 thought on that. I can't see how it would be longer
10 than a year or 18 months, because in other industries
11 in the past that have had annual contracts, and this
12 doesn't -- this industry does not have long-term, in
13 the sense of 10-, 12-year contracts, things like that.
14 I mean, you look at something like a period as long as
15 those contracts or a little bit longer, and that's
16 probably the outer reach of where you ought to be
17 looking here.

18 COMMISSIONER HILLMAN: All right. I
19 appreciate that. And if anything further in the post-
20 hearing, I would appreciate it. And I have no further
21 questions. Thank you.

22 CHAIRMAN KOPLAN: Thank you. Commissioner
23 Lane?

24 (No verbal response.)

25 COMMISSIONER LANE: Is there a third round?

1 (No response.)

2 CHAIRMAN KOPLAN: I see that there are none.
3 Mr. Deyman?

4 MR. DEYMAN: I'm George Deyman, Office of
5 Investigations. I have no questions, but I want to
6 remind you that we would like from you the contract
7 and pricing information that was asked of U.S.
8 Magnesium this morning, mainly specific contract
9 information, the amount of production accounted for by
10 contracts, and if you could split out your pricing
11 data between contract and non-contract sales for
12 product one to aluminum producers and product two to
13 dye casters. Would you be able to do that?

14 MR. CUNNINGHAM: We'll do it.

15 MR. DEYMAN: Thank you. The staff has no
16 further questions.

17 CHAIRMAN KOPLAN: Thank you, Mr. Deyman.
18 Mr. Jones, you've got two minutes remaining from your
19 direct presentation. Do you have any questions of
20 this panel before I release them?

21 MR. JONES: No questions, Mr. Chairman.

22 CHAIRMAN KOPLAN: Okay. Well, with that,
23 thank you all, very much. I will release the panel
24 and we will now go to rebuttal and closing remarks.
25 So, for purposes of rebuttal, you've got two minutes,

1 Mr. Jones, and, Mr. Cunningham, you all collectively
2 have 37 minutes for rebuttal.

3 MR. CUNNINGHAM: I'm either proud or
4 mortified, I'm not sure which.

5 CHAIRMAN KOPLAN: How would you like to
6 proceed? Do you have rebuttal, Mr. Jones, or do you
7 want to go directly to closing?

8 MR. JONES: Mr. Chairman, could we combine
9 our two minutes with the five minutes for closing,
10 just speak for seven minutes?

11 CHAIRMAN KOPLAN: Well, we don't do it that
12 way. Well, you can, go ahead.

13 MR. JONES: Okay. Then, we'll speak for two
14 and then speak for five.

15 CHAIRMAN KOPLAN: Right. Go ahead. From
16 there or would you like to come to the podium?

17 MR. BUTTON: Good afternoon. Ken Button
18 speaking on behalf of U.S. Magnesium. First, with
19 respect to the time frame of reasonably foreseeable in
20 this industry, Mr. Cunningham just noticed the length
21 of contracts, noting that there were no long-term
22 contracts of 10 years and the like. I dare say that,
23 in fact, one very important contract in this
24 particular proceeding, the GM contract, is, indeed, a
25 multi-year contract and it's very important.

1 Secondly, with respect to pricing, Mr.
2 Cunningham made use of this pricing chart to indicate
3 how the prices for NHCI did not follow the patterns
4 shown here in the recent period. He went, then,
5 describing to you some things, pricing patterns up and
6 down. If you were to look, indeed, that data in Table
7 V-1, on the other hand, I would ask you the rhetorical
8 questions: did not, in fact, NHCI's prices follow
9 this pattern of going from a low level in 2004,
10 rising, and then coming back down over that period of
11 2004 and 2005? And I would point out to you that Mr.
12 Cunningham said that their prices were nowhere near
13 the bottom prices here at the bottom.

14 I would direct your attention to our brief
15 and to Commerce Department import stats that show that
16 the average unit value of imports of pure magnesium
17 from Canada in January and February 2006 were
18 precisely at this level, \$1.12, \$1.13. This does
19 represent the average unit value of Canadian import
20 statistics of imports. Thank you.

21 MR. JONES: One more rebuttal point. Mr.
22 Cunningham stated that the Commerce Department did not
23 make an affirmative determination of likely future
24 subsidies to NHCI and please read the Commerce
25 Department's determination there, because in decision

1 number one, page 10, and this is the Commerce
2 Department's decision memo dated October 31, 2005, the
3 Commerce Department considered the program that NHCI
4 received a subsidy and found that it still existed and
5 found, therefore, likely future subsidies -- that
6 future subsidies to NHCI were likely. Thank you.

7 CHAIRMAN KOPLAN: We'll now go to your
8 closing remarks.

9 MR. JONES: One of the best lines in the
10 hearing and certainly a humorous point, Commissioner
11 Lane, was when you offered to trade two lawyers for
12 one industry witness, and that got a laugh. And I've
13 got to admit, I thought it was funny, too. But, it
14 really raises what we think is a very serious point,
15 which is that you asked a lot of questions today of
16 Canadian witnesses that you did not receive answers
17 to. And why were there no industry witnesses on the
18 Canadian side, the question was asked repeatedly. We
19 think the only reasonable conclusion is that the
20 Canadian industry witnesses did not want to be under
21 oath and receive a question about whether they would
22 receive future subsidies. That's the only conclusion
23 that we can draw from their failure to appear.

24 And further, it just raises a further point
25 that you have asked some questions and you hope to get

1 some information in the post-hearing briefs. To the
2 extent that you do not get information that you need
3 in this investigation, you should not hold that
4 against our clients. You should not hold it against
5 the domestic industry, which is doing everything
6 possible to cooperate with the Commission's review.
7 Indeed, the statute gives you the authority to make
8 adverse inferences against the failure of the
9 Respondents or the domestic industry, either side, to
10 make adverse inferences when a party fails to
11 cooperate. And we think you ought to consider doing
12 that here, if you don't get what you need. But,
13 certainly, do not hold it against our clients.

14 On the like product issue, Commissioner
15 Hillman, you raised again in the Canadian
16 presentation, on what basis does the Commission go
17 beyond the scope. We certainly recognize the
18 Commission's practice of not doing that. But, the
19 Commission's practice is one thing and the statute is
20 another and the guidance the Congress is giving you is
21 that you should not interpret the like product
22 provisions of the statute in such a fashion as to
23 prevent consideration of an industry that's adversely
24 affected by imports. And as I said in my presentation
25 earlier, we think that it would contravene

1 congressional intent to find that pure and alloy
2 magnesium are not a like product, because such a
3 finding would prevent the consideration of the likely
4 adverse impact of subsidized imports of alloy
5 magnesium from Canada on U.S. Magnesium's operations
6 production of pure magnesium.

7 The thrust of the Respondent's arguments
8 continue to be that the evidence for one like product
9 in this review is just not as strong as it was in the
10 recent investigation, so you should go back to two.
11 Well, Mr. Cunningham admitted today in his testimony,
12 admitted in his brief, that pure and alloy are
13 interchangeable. There really is no denying that. He
14 said, though, that the statute requires significant
15 interchangeability. Well, in fact, the statute
16 doesn't require any interchangeability. So, it
17 certainly doesn't require significant
18 interchangeability.

19 Regarding price conversions, the prices for
20 pure and alloy magnesium have converged. In fact,
21 U.S. Magnesium's prices for pure and alloy overlap and
22 they're in a range -- they're in ranges that overlap.
23 And we'll provide more information on that in our
24 post-hearing. But, the pricing basis for the
25 phenomenon seen in the recent investigation still

1 exists and it's likely that there would be continued
2 substitution of alloy for pure in the future, if the
3 orders were revoked.

4 Regarding the likely future of
5 subsidization, just one more point on that. It's true
6 that the Commerce Department couldn't estimate a rate,
7 did not estimate a rate, likely to prevail for NHCI,
8 certainly no thanks for NHCI. What Mr. Cunningham
9 failed to tell you this morning is that NHCI didn't
10 show up at the Commerce Department, didn't participate
11 in the review. So, that -- it's too bad that Commerce
12 wasn't able to get the information that it needed for
13 its finding. But, we maintain and please focus on the
14 fact that the determination of the Commerce Department
15 was affirmative for NHCI.

16 Finally, Mr. Cunningham said, 'Canadian
17 governments tend to give subsidies when you start up
18 your plant.' Boy, that's comforting. And, certainly,
19 if they give you subsidies when you start up your
20 plant, they give you subsidies when you restart your
21 plant, and that applies to Magnola. And if they give
22 you subsidies when you start up your plant, that
23 applies to the new project down in British Columbia.
24 So, we agree with that and, unfortunately, that's
25 exactly why we're here and what we're concerned about.

1 That concludes our presentation. Thank you.

2 CHAIRMAN KOPLAN: Thank you. Mr.
3 Cunningham, do you have any rebuttal? You have 37
4 minutes.

5 MR. CUNNINGHAM: I think I can do it a
6 little less than that. And I wasn't going to do any
7 rebuttal until Mr. Jones did his little diatribe
8 there. And I must say, I find it offensive, and I
9 don't often say that. It's not out to make these
10 cases into ad hominem attacks. And it goes more to
11 show that his side needs to do that sort of thing, in
12 order to build their lack of affirmative evidence,
13 than it does to go and castigate my client. And on
14 behalf of my client, I just say to the Commission, I
15 wish he had not done that kind of thing.

16 CHAIRMAN KOPLAN: Mr. Togni?

17 MR. TOGNI: Chairman Koplan, I echo those
18 comments. Once again, this is Pat Togni from the
19 Government of Quebec, and just had a couple of brief
20 rebuttal points, as well.

21 First off, to follow-up on that point about
22 the absence of either industry or government witnesses
23 being here, because they are afraid to be under oath
24 to discuss the likely fact, as Petitioner put it, as
25 future subsidization, that certainly -- I think

1 Petitioner said that's the only conclusion that the
2 Commission could draw here. I think it's sufficient
3 for me to say that's certainly the most helpful
4 conclusion that Petitioner would have you to draw.
5 And, in fact, as my colleague said, I thought it was
6 inappropriate.

7 Second point, I just wanted to go back to
8 the issue -- another issue that Mr. Jones raised about
9 supposed adverse inferences being able to be raised by
10 depending on how much information comes back to the
11 Commission here, in post-hearing briefs. And I think,
12 I have to admit, he might have smelled a little blood
13 on my part, as a second year associate, in responding
14 to Commissioner Pearson's questions and Commissioner
15 Aranoff's questions about what I can do to get
16 specific data from Magnola, who is not my client, with
17 respect to their operations and what kind of inputs
18 they would need to do, to get back on line. I
19 promised that we would try to do the best that we
20 could, but it bears repeating, we represent the GOQ.
21 We don't represent Magnola, and that's that. So, I
22 think it was totally inappropriate for him to suggest
23 that adverse inferences would be appropriate in that
24 setting.

25 The bottom line fact here is that Magnola

1 shut down three years ago. Petitioners' own evidence
2 talks about this rogue element of maybe 10 skeleton
3 crew on the staff at the facility. And I'm not sure
4 what a broom sweeper might be able to provide to the
5 Commission. But, as I said, we'll try our best, but
6 that's not our client. So, thank you, very much.

7 CHAIRMAN KOPLAN: Thank you, Mr. Togni.
8 We'll go to closing remarks.

9 MR. TOGNI: Once again, this is Pat Togni
10 for the GOQ. Just brief closing remarks and, thank
11 you, again, for your time today and for conducting a
12 full series of second sunset reviews. As we said
13 throughout today's proceeding, and it is, we feel the
14 evidence in this case shows that U.S. Magnesium has
15 failed to make a compelling case and we submit that
16 that's based on the evidence in the record that you
17 need to look at, in making your final determination.
18 We think the only determination that can be made on
19 this record is a negative determination and we submit,
20 once again, that this is true as to both pure and
21 alloy magnesium.

22 As I said at the outset, and I think this
23 bears repeating, Petitioner is trying to turn the
24 sunset statute on its head. It's trying to use as its
25 beginning point the status quo 14 years ago; now, the

1 evidence that it purportedly put before you today,
2 that, in its mind's eye, wanted an affirmative
3 determination. We're not here for that. This is the
4 second sunset review with a fully-developed record,
5 because of the prescience oversight of this Commission
6 and we think that record warrants a negative
7 determination. Thank you.

8 CHAIRMAN KOPLAN: Thank you. I, also, want
9 to thank staff for their assistance in this
10 investigation. Post-hearing briefs, statements
11 responsive to questions, and requests of the
12 Commission and corrections to the transcript must be
13 filed by May 4, 2006. Closing of the record and final
14 release of data to parties by May 26, 2006, and final
15 comments for May 31, 2006. So, I want to thank all of
16 those, who have participated in today's hearing. And
17 with that, this meeting is adjourned.

18 (Whereupon, at 3:15 p.m, the hearing was
19 concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Pure and Alloy Magnesium from
Canada and Pure Magnesium from
China

INVESTIGATION NOS.: 701-TA-309-A, 701-TA-309-B
731-TA-696 (Second Review)

HEARING DATE: April 25, 2006

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

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

DATE: April 25, 2006

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

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

SIGNED: Carlos Gamez
Signature of Proofreader

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

SIGNED: Christina Chesley
Signature of Court Reporter