



## THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of: )  
 ) Investigation Nos.:  
 CERTAIN STEEL NAILS FROM ) 731-TA-1114 and 1115  
 CHINA AND THE UNITED ARAB ) (Final)  
 EMIRATES )

Wednesday,  
 June 11, 2008

Main Hearing Room 101  
 U.S. International  
 Trade Commission  
 500 E Street, S.W.  
 Washington, D.C.

The hearing commenced, pursuant to notice, at 9:31 a.m. before the Commissioners of the United States International Trade Commission, the Honorable DANIEL R. PEARSON, Chairman, presiding.

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On behalf of The Domestic Industry:

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CHRIS PRATT, Director, Internal Audit and  
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JIM KERKVLIIET, Vice President, Commercial Sales,  
Gerdau Ameristeel U.S., Inc.  
VIC STIRNAMAN, Executive Vice President, Keystone  
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PETER CRONIN, Corporate Vice President, Sales and  
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Management, Stanley Bostitch  
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P R O C E E D I N G S

(9:31 a.m.)

CHAIRMAN PEARSON: Good morning. On behalf of the United States International Trade Commission I welcome you to this hearing on Investigation No. 731-TA-1114 (Final) involving Certain Steel Nails From China.

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

Schedules setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table.

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

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

1 business confidential that request should comply with  
2 Commission Rule 201.6.

3 Madam Secretary, are there any preliminary  
4 matters?

5 MS. ABBOTT: Mr. Chairman, all witnesses  
6 have been sworn for the hearing, and there are no  
7 other preliminary matters that I have.

8 (Witnesses sworn.)

9 CHAIRMAN PEARSON: Fine. I would recognize  
10 visitors that we have with us today, Professor  
11 Williams from Elizabethtown College in Pennsylvania  
12 and two of his students who have come to observe this  
13 proceeding. I think that means we need to be on our  
14 best behavior. Welcome.

15 Madam Vice Chairman, I welcome you.

16 VICE CHAIRMAN ARANOFF: Thank you, Mr.  
17 Chairman.

18 I've asked before the opening statements to  
19 make a few remarks. Today's hearing is the last at  
20 which our esteemed colleague, Commissioner Pearson,  
21 will wield the gavel as Chairman of the Commission,  
22 and in honor of this occasion I thought it would be  
23 appropriate to look back over the two years of his  
24 chairmanship and reflect on his many achievements.

25 According to official statistics provided by

1 the Office of the Secretary, during his two years at  
2 the helm Chairman Pearson has chaired 50 hearings and  
3 61 votes. His devotion to duty is such that he has  
4 not missed a single hearing during his tenure as  
5 Chairman.

6 He had the honor of presiding over the  
7 Commission's first public hearing in a Section 337  
8 case in more than a decade, the Base Band Processors  
9 case. He also has the more dubious honor of having  
10 presided over what may be the Commission's longest  
11 single day hearing ever, the Corrosion Resistant Steel  
12 sunset hearing, which not only concluded at  
13 10:58 p.m., but that was three hours after the air  
14 conditioning went off.

15 Unbeknownst to Chairman Pearson, his  
16 colleagues have also been tracking some somewhat less  
17 official statistics, and thus I am able to report to  
18 you that there have been approximately 40 hearings  
19 during which Chairman Pearson has yielded time to help  
20 a colleague in need, about 45 hearings at which  
21 Chairman Pearson has pointed out that he is not a  
22 lawyer before asking a legal question, and  
23 approximately 49 hearings out of 50, give or take a  
24 few, at which Chairman Pearson has mentioned Minnesota  
25 during the questioning of a witness who quite often

1 has no apparent connection with the state.

2 Having reviewed a number of transcripts in  
3 the last few days, I must add that I am impressed with  
4 the breadth of experience that comes with being a  
5 Minnesotan and how handy that knowledge can come in  
6 during hearings.

7 For example, Chairman Pearson has commented  
8 quite knowledgeably on topics that range from the  
9 insects of the Caribbean, blueberry festivals, the  
10 pleasures of bike riding and the functioning of acid  
11 batteries at temperatures below 20 below zero, all  
12 during hearings that had little or no connection to  
13 these topics.

14 But seriously, Mr. Chairman, I know that all  
15 our colleagues join me in thanking you for your  
16 leadership over the past two years, and since we don't  
17 want to make it sound as though you are retiring any  
18 time soon we also look forward to continuing to work  
19 with you for the duration of your time on the  
20 Commission.

21 Thank you for indulging me, and we can  
22 proceed with today's business.

23 CHAIRMAN PEARSON: Well, thank you, I think.  
24 I will reserve the right to offer some observations at  
25 the conclusion of the hearing, but I appreciate this

1 recognition.

2 Shall we proceed with opening statements,  
3 Madam Secretary?

4 MS. ABBOTT: Yes, Mr. Chairman. Opening  
5 remarks on behalf of the Petitioners will be by Paul  
6 C. Rosenthal, Kelley Drye & Warren.

7 CHAIRMAN PEARSON: Good morning, Mr.  
8 Rosenthal. Welcome.

9 MR. ROSENTHAL: Thank you, Mr. Chairman and  
10 members of the Commission, and I'm glad to be here to  
11 celebrate your last hearing. I did hear that  
12 exhortation to best behavior, and I recognize it's  
13 just an exhortation and best behavior is a relative  
14 term, but I'll try.

15 CHAIRMAN PEARSON: I thank you for noting  
16 that and not saying it's been a long time coming.

17 MR. ROSENTHAL: Well, you also recognize who  
18 you're dealing with. In fact, I won't go further on  
19 Vice Chairman Aranoff's theme, but I do want to say  
20 that -- well, actually it is appropriate for this  
21 particular hearing.

22 I was going to mention how the hearings  
23 don't always answer questions as succinctly and in as  
24 crystallized a form as you'd like, and sometimes the  
25 better hearings though do that. Even the witness list

1 in this particular case I think will help get us to  
2 the answers that are most appropriate.

3 One most telling aspect of this hearing and  
4 the witness list is that there aren't any customer  
5 witnesses here. I think that's in large part because  
6 at the staff conference the customers essentially  
7 conceded, either in their testimony or in the record  
8 evidence that came after their testimony, that price  
9 is paramount in this particular industry, so there's  
10 no one here to argue about price.

11 I was thinking if I were a Commissioner, and  
12 I don't know if you've been able to do this, all of  
13 you, over the time. I think about the scene from The  
14 Godfather I where Michael Corleone towards the end is  
15 settling the family business. He takes aside Carlo,  
16 his brother-in-law, who was clearly responsible for  
17 the death of Sonny.

18 He basically says to Carlo look, you know,  
19 I'm not going to make a widow out of my sister. I'm  
20 just going to tell you you're out of the family  
21 business and I'm putting you on a plane to Las Vegas,  
22 but don't tell me you're innocent, Carlo, because it  
23 insults my intelligence and makes me very, very angry.

24 I don't know how you make it through the  
25 hearings on a daily basis without saying to some of

1 these purchaser customers don't tell me it's not  
2 price. It insults my intelligence, and it makes me  
3 very, very angry.

4 Well, the purchasers decided not to show up  
5 and insult your intelligence today. They know, and  
6 everyone in this room knows, that when it comes to  
7 sales of nails price is paramount, so I'm glad that  
8 that is not or should not be an issue today. What you  
9 have essentially is an issue that has nothing to do  
10 with price, but more to do with perceived competition  
11 between some of the Respondents' importers.

12 By the way, I have to say at the outset that  
13 Petitioners share the Stanley frustration at the  
14 Commerce Department's decisions in this case, at least  
15 some of the decisions. Another fastener term aptly  
16 describes some of those decisions by the Commerce  
17 Department, and that term is screwy.

18 But no one can dispute that there are a  
19 large volume of low-priced imports from China that  
20 have surged into the United States, and no one can  
21 deny the large number of domestic producers who are  
22 losing money as a result.

23 Nor can there be any dispute about the jobs  
24 that have been lost in the U.S. nail industry as U.S.  
25 manufacturers, including Stanley, decided to stop

1 being petitioners in trade cases presumably because  
2 they felt if they couldn't beat the imports it was  
3 better to join them.

4 Now, Stanley and ITW in their brief and  
5 others make much of their credentials as U.S.  
6 manufacturers. We don't dispute that they produce in  
7 the United States. Our dispute has been whether for  
8 purposes of the Commission's analysis these companies'  
9 interests have aligned more with their importing  
10 interests or with their domestic production.

11 Ultimately we think that the question may be  
12 better addressed by getting behind the labels of  
13 manufacturer/importer and examining really what is  
14 happening to each of the companies in the domestic  
15 industry as a result of the low-priced imports from  
16 China.

17 As you'll hear today, the domestic industry  
18 is in crisis. Over the past 10 years, over 24  
19 facilities have been closed, have gone out of  
20 business, and just in the last 10 days, a company in  
21 California, Air Nail, closed its operations.

22 The filing of this case and the Commerce  
23 Department's preliminary determination brought some  
24 temporary relief to the domestic industry, but this  
25 industry needs the relief that a dumping order on

1 imports from China can provide if they're going to be  
2 able to survive.

3 The testimony you'll hear today will provide  
4 you with ample corroboration of the information  
5 already on the record, which supports an affirmative  
6 determination in this case. Thank you.

7 CHAIRMAN PEARSON: Thank you, Mr. Rosenthal.

8 MS. ABBOTT: Opening remarks on behalf of  
9 Respondents will be by Lawrence J. Board, Neville  
10 Peterson.

11 CHAIRMAN PEARSON: Good morning, Mr. Bogard.

12 MR. BOGARD: Good morning, Mr. Chairman.  
13 For the record, I am Lawrence Bogard from the firm of  
14 Neville Peterson, and I'm here this morning with my  
15 client, Stanley Fastening Systems, LP, who is also  
16 occasionally known as Stanley Bostitch or just  
17 Bostitch, in opposition to the antidumping petition  
18 against certain steel nails from China.

19 For obvious reasons, it's not necessary any  
20 more for us to testify in opposition to the United  
21 Arab Emirates' petition. The fact that this  
22 investigation no longer involves the United Arab  
23 Emirates is just one of the several changes in the  
24 posture of this case since the prehearing briefs were  
25 filed.

1                   Not only is the UAE no longer under  
2                   investigation, but neither is one of the major  
3                   exporters from China, Paslode Fasteners Shanghai. All  
4                   of Petitioners' arguments concerning the exporters  
5                   from the UAE or Paslode Shanghai are now rendered  
6                   moot. Petitioners' extensive arguments as to why  
7                   imports from China and the UAE must be cumulated are  
8                   also now moot.

9                   Petitioners have alleged critical  
10                  circumstances against the Shingya Group, but that's  
11                  now moot. Petitioners have argued extensively that  
12                  the Commission should exclude ITW from the domestic  
13                  industry as a related party. That argument is moot  
14                  now too.

15                 A substantial portion of the imports the  
16                 Petitioners have argued are causing material injury,  
17                 at least argued in their prehearing brief, are no  
18                 longer subject to investigation. So what's left,  
19                 Commissioners, to argue to you today?

20                 Well, obviously they're going to tell you  
21                 why what's left of the imports from China remain a  
22                 cause of material injury to the domestic industry.  
23                 For you to reach that conclusion, however, you're  
24                 going to have to reach a number of determinations that  
25                 are unsupported by the record evidence.

1           Petitioners have asked you to consider a  
2 domestic industry that does not include Bostitch.  
3 You're going to hear today why Bostitch's principal  
4 interest lies in domestic manufacturing and not in  
5 importing, and we're going to tell you why you should  
6 not exclude Bostitch from the domestic industry.

7           The Petitioners want you to abandon your  
8 usual three year period of investigation in what can  
9 only be characterized as a blatant attempt to  
10 manipulate your database. They ask you to go back to  
11 2004 for your investigation period, and remarkably  
12 their rationale for your doing this is that the 2007  
13 data has been influenced by their petition. We're  
14 going to tell you today why that's not true.

15           Indeed, Petitioners would have you dismiss  
16 almost every one of the facts that inconveniently  
17 undercuts their arguments on the grounds that every  
18 positive development that's taken place in this  
19 industry is attributable to their petition. You're  
20 going to hear today why the petition had no effect on  
21 the U.S. industry or the U.S. market in 2007, and  
22 you're going to hear why there's absolutely no reason  
23 to abandon your normal three-year period of  
24 investigation.

25           The fact that Paslode Shanghai is not

1 dumping puts this investigation in a very peculiar  
2 posture. The 21.24 percent dumping margin that's been  
3 assigned to almost all the other Chinese exporters  
4 give Paslode Shanghai and its U.S. parent a  
5 significant competitive advantage in the U.S. market,  
6 and we're going to talk to you about that some today  
7 as well.

8           You will hear today why the potential for  
9 significant harm to the domestic industry actually  
10 could flow from an affirmative determination by you.  
11 The information that's been developed in this  
12 investigation shows that the domestic industry has in  
13 fact responded well to what should be characterized as  
14 extraordinary conditions of competition, which demand  
15 has plunged and raw material prices have soared, yet  
16 the stability of the industry's financial performance  
17 in these circumstances is clear from the data your  
18 staff has collected.

19           The domestic industry is not suffering  
20 material injury, nor is it threatened with such  
21 material injury by reason of some exports from China.

22           Thank you.

23           CHAIRMAN PEARSON: Thank you, Mr. Bogard.

24           MS. ABBOTT: Will the first panel in support  
25 of the imposition of antidumping duties please come

1 forward?

2 CHAIRMAN PEARSON: Okay, Mr. Rosenthal. Are  
3 you driving this bus?

4 MR. ROSENTHAL: I believe so. I'm not sure  
5 which direction though.

6 We have a distinguished panel of witnesses  
7 today, and I won't spend time introducing them now.  
8 They'll introduce themselves, and then we have a  
9 couple of other people who will be available to answer  
10 questions.

11 With that, I'd like to introduce our first  
12 witness, Mr. David Libla.

13 MR. LIBLA: Good morning. I appreciate the  
14 opportunity to be here. My name is David Libla, the  
15 president of Mid Continent Nail Corporation. I  
16 founded Mid Continent Nail back in 1987 and have  
17 served as president ever since.

18 Mid Continent is a Petitioner here because  
19 we have experienced firsthand the devastating effects  
20 that surging volumes of dumped imports have on a  
21 company and on a U.S. industry. Let me give you some  
22 background on my company and the products we produce  
23 before I address the injury issue.

24 Mid Continent began producing nails in the  
25 late '80s and quickly grew to become a major U.S. nail

1 supplier. We produce a wide variety of nails, as we  
2 demonstrated to Mr. Ruggles during a plant tour of our  
3 Poplar Bluff facility.

4 We currently manufacture the vast majority  
5 and types of nails required by purchasers and can  
6 produce other types as well. I have brought along a  
7 few samples for you to examine.

8 Is Chris here?

9 MR. ROSENTHAL: Mr. Pratt will pass those up  
10 to the Commissioners.

11 MR. LIBLA: At Mid Continent we produce  
12 nails both in bulk, as shown by this package of loose  
13 nails, and in collated form for use in nail guns.  
14 Collated nails can be attached to the use of plastic,  
15 paper or wire. We make the plastic and wire collated  
16 nails. The same nail that is sold in bulk can be  
17 collated by simply attaching it with plastic, paper or  
18 wire.

19 Nails can also be sold in different  
20 finishes. Here's an example of a bright nail, which  
21 has no surface coating and generally is used for  
22 indoor construction. Here is an electrogalvanized  
23 nail in which a thin layer of zinc has been applied to  
24 the nail. This nail has a hot-galvanized coating,  
25 resulting from its immersion in molten zinc, which

1 helps resist weathering.

2 Nails are also sold in a number of different  
3 forms. Here are some examples of different types of  
4 nails, including a common collated nail, a flooring  
5 nail and a pallet nail. These types all come in  
6 collated and bulk nails.

7 (Electronic interference.)

8 MR. LIBLA: -- private label nails. That is  
9 not true. As we showed Mr. Ruggles during our plant  
10 tour, we make private label nails for a number of  
11 purchasers. In fact, we have a sizeable inventory of  
12 private label nails.

13 Some of the Respondents also said that they  
14 had to import nails from China because only  
15 specialized nails fit their nail guns. That is not  
16 true. Here is a color-coded chart that Mid Continent  
17 developed for our customers showing the types of nails  
18 we produce that fit all of the various nail guns,  
19 including those of Respondents. This chart was  
20 included as Exhibit 2 to our brief. We can and do  
21 engineer our nails to fit all types of guns.

22 At Mid Continent we pride ourselves on  
23 producing a high quality product and providing  
24 exceptional service to our customers. As we  
25 demonstrated during our plant tour, we have a modern

1 and efficient production facility that produces a wide  
2 range of nails to meet our customers' needs, and we  
3 are constantly looking to upgrade and expand to serve  
4 this market.

5 We have not lost sales because of producing  
6 an inferior product or not being able to supply the  
7 types of nails customers want to purchase. We have  
8 lost sales because of the lower prices at which the  
9 dumped imports from China sell their products as  
10 compared to our prices.

11 The nail industry in the United States is  
12 really at a crossroads at this point. It is believed  
13 in the last 10 years that more than 20 to 25 nail  
14 mills in this country have either closed or gone out  
15 of business. In the past few years alone, a number of  
16 companies have exited the market completely while  
17 others have reduced U.S. production and shifted to  
18 producing nails in China or importing dumped nails.

19 I know it is tempting for U.S. producers to  
20 import these dumped nails to take advantage of the low  
21 prices they offer. The prices I have seen offered for  
22 Chinese nails are so low in some cases that they  
23 barely cover the cost of the wire. An interest on the  
24 part of some U.S. producers in reducing their cost by  
25 importing nails from abroad rather than producing them

1 here, however, does not excuse the unfair behavior or  
2 justify these actions.

3 By importing dumped products, the U.S.  
4 producers are becoming a part of the problem  
5 themselves. Their dumped imports harm other companies  
6 like Mid Continent that are trying to sustain a U.S.  
7 nail producing industry and keep U.S. workers  
8 employed.

9 Further, I find it ironic that ITW and  
10 Stanley are opposing our case and shifting their lines  
11 away from their own domestic industry toward imports.  
12 Only 10 years ago, ITW Paslode was a petitioner itself  
13 in a case against imports of roofing nails from China  
14 and other countries because of the injury it was  
15 suffering from dumped imports, and Stanley Bostitch  
16 supported that petition.

17 Now, when injury from other dumped nails are  
18 causing injury to the domestic industry, both  
19 companies oppose relief for us. How under these facts  
20 ITW or Stanley can try to argue that their actions  
21 show that their interests lie in domestic production  
22 rather than importation is beyond me.

23 The dumping practices by Chinese producers  
24 permit them to sell at substantially lower prices than  
25 the U.S. producers. I've read your prehearing report

1 nearly page by page, and the quarterly pricing  
2 information shows a lot of overselling by these  
3 imports as compared to U.S. producer prices.

4 I can tell you that the data do not square  
5 at all with my market experience. As we might say in  
6 the Ozarks, that dog simply don't hunt. These imports  
7 consistently and significantly have undercut Mid  
8 Continent's prices causing us to lose sales and  
9 depressing our prices. They have gained market share  
10 and forced U.S. producers to close down plants and  
11 reduce production by underselling us, not by  
12 overselling us.

13 The surviving members of the nail industry  
14 have watched our market share fall, our prices decline  
15 and our profits diminish to unhealthy levels due to  
16 these dumped imports. We cannot continue to operate  
17 in this business unless action is taken to halt the  
18 surge in these products.

19 On the other hand, if an order is imposed  
20 here I have every confidence that the U.S. industry  
21 will recover and be able to compete effectively again  
22 in our home market. In fact, that is already  
23 happening as a result of this case. Just since this  
24 case was filed we've developed 79 new customers.

25 In addition, numerous other customers have

1 returned to buying nails from us that were previously  
2 buying imports. We've also been able to increase our  
3 prices as the subject imports increased their prices  
4 in reaction to this case. Had this case not been  
5 filed, we would not have seen these benefits.

6 And, if matters weren't bad enough at the  
7 time this case was filed, we are facing even greater  
8 hurdles today. The cost of our input product, wire  
9 rod, have increased substantially, driven by  
10 increasing cost of scrap. We have struggled even with  
11 this case in effect to increase our prices  
12 sufficiently to cover these rampant cost increases.

13 We anticipate that if this case is  
14 successful we will be able to increase prices enough  
15 to cover our cost and earn reasonable profits. If  
16 relief is not granted, the cost/price squeeze created  
17 by rising costs and low import price pressures will  
18 cause further deterioration in our financial position.

19 The Chinese industry is massive, and it is  
20 not going away. The rapid increase in imports that  
21 has taken place in recent years is alarming evidence  
22 of the ability of these imports to quickly penetrate  
23 the U.S. market.

24 The Chinese Government took away the VAT  
25 rebate on wire rod and put export taxes on wire rod.

1 At the same time, they gave a five percent VAT rebate  
2 on nails. These policies provide a strong incentive  
3 for Chinese steel producers to export value-added  
4 product like nails to the disadvantage of our  
5 industry.

6 In sum, Mid Continent has worked hard to  
7 manufacture a quality product and to preserve the  
8 manufacturing of nails and employment in the U.S.  
9 market. The dumped imports from China are decimating  
10 the U.S. nail industry, and relief is badly needed.

11 Thank you very much.

12 MR. ROSENTHAL: Mr. Cronin?

13 MR. CRONIN: Thank you, Paul.

14 Good morning. My name is Peter Cronin, and  
15 I am Corporate Vice President in Sales and Marketing  
16 for the Heico Wire Group USA, which includes Davis  
17 Wire Corporation, a Petitioner in this case. I have  
18 been in my current position since March of 2005 and  
19 have over 30 years of experience in the wire and nail  
20 industries.

21 Davis Wire's production facility is located  
22 in Pueblo, Colorado. We as a company are one of the  
23 largest wire producers in the United States. Our nail  
24 production is integrated with our wire operations in  
25 Pueblo. Despite the size of our wire mill and our

1 integrated status, we have been unable to compete with  
2 the unfair imports of nails from China.

3 As a result of the rampant underselling of  
4 the subject imports, Davis Wire has lost an extremely  
5 high percentage of our sale of steel nails, as you can  
6 see in our questionnaire responses. In fact, by 2007,  
7 we were selling just a small fraction of what we were  
8 selling in 2004.

9 Production has declined in tandem with  
10 sales, and we have huge overcapacity on our nail  
11 production equipment. Profitability has been severely  
12 depressed in the period you're examining. We simply  
13 cannot justify any meaningful capital investments in  
14 our nail production facility.

15 We have seen extreme price competition from  
16 nails imported from China firsthand. Our customers  
17 regularly tell us that our pricing is not in the same  
18 ballpark as what they are offering on the subject  
19 imports. Given this experience, it was a shock to see  
20 that your staff report shows that imports from China  
21 were priced above U.S. nails in many of the  
22 comparisons.

23 I can tell you from personal experience that  
24 these imported nails are essentially always sold at  
25 prices below domestically produced nails. I don't

1 know how these pricing numbers were developed, but we  
2 just don't see competitive situations where imports  
3 from China are priced above our product. These  
4 imports are gaining huge percentages of the U.S.  
5 market, and I can assure you that is not being done on  
6 the basis of higher prices.

7           The situation in relation to nail imports  
8 from China has actually become more worrisome since  
9 your preliminary determination in this case. While we  
10 have seen price increases announced by some of the  
11 major importers, we need an order put in place over  
12 the long term to ensure that prices don't slide right  
13 back down to where they were before.

14           We have faced huge increases in our raw  
15 material costs over the last nine months as steel  
16 scrap costs have skyrocketed and have been passed  
17 through in the form of higher costs for rod, drawn  
18 wire and ultimately the nails we produce.

19           We have been able to pass through some of  
20 these increased costs due to the constraints placed on  
21 Chinese pricing because of this action. In fact, my  
22 company managed to eke out a minimal operating profit  
23 for 2007 for our nail segment operations because of  
24 the impact of this case.

25           But our market is currently depressed.

1 Recent economic news is not good as unemployment is up  
2 with many of the job losses taking place in the  
3 construction and building material industries. We are  
4 also seeing continuing increases in mortgage defaults,  
5 which will act to depress home prices and housing  
6 starts even further.

7 If an order is not put into place for the  
8 long term, we will be placed in a terrible cost/price  
9 squeeze. Purchasers of nails will continue to buy on  
10 price at the same time that raw material costs for  
11 nail manufacturers go through the roof. Given the  
12 massive size of the Chinese nail industry, we will be  
13 inundated with cheap, unfair imports if this order is  
14 not imposed.

15 As bad as things were in the 2004-2007  
16 period, in the face of current market conditions in  
17 the U.S. we will see a cataclysmic situation in the  
18 near term if the subject imports are again allowed  
19 unfettered access to our markets.

20 Now I have one last comment for the record.  
21 Today is my birthday, and I wanted to tell the  
22 Commissioners that I was actually born before the POI.  
23 I can tell you that. Anyway, this is a memorable  
24 birthday for me. Thank you.

25 CHAIRMAN PEARSON: I would just observe that

1 you and I are celebrating together, my last go-round  
2 as Chairman and your birthday.

3 MR. CRONIN: Thank you, Chairman.

4 MR. ROSENTHAL: Mr. Kerkvliet?

5 MR. KERKVLiet: Good morning. I am Jim  
6 Kerkvliet, Vice President of Commercial Sales for  
7 Gerdau Ameristeel. I have been with Gerdau Ameristeel  
8 since 2004 and have been in the steel business for  
9 more than 23 years.

10 Commissioner Pearson, I am also from  
11 Minnesota as well.

12 I testified here at the preliminary phase of  
13 this case and also in your sunset review hearing on  
14 Carbon Wire Rod two months ago. On behalf of Gerdau  
15 and its 10,000 employees in the United States, thank  
16 you for your recent affirmative determinations in that  
17 case.

18 I mention this to you because Gerdau  
19 Ameristeel is in a unique position within the domestic  
20 industry as a producer of both wire rod and steel  
21 nails which use wire rod and drawn wire as their input  
22 material.

23 Actually, I should say that Gerdau  
24 Ameristeel was in a unique position. We are not any  
25 longer because we closed our nail production facility,

1 Atlas Steel & Wire, in Hanrahan, Louisiana, in January  
2 of this year. Gerdau Ameristeel concluded that the  
3 U.S. market was just too difficult to turn a profit in  
4 as price competition from imports from China reached  
5 extreme levels in recent years.

6 As you can see from our preliminary and  
7 final questionnaire responses, my company suffered  
8 severe declines in production, shipments, employment  
9 and profitability from 2004 to 2007. In fact, while  
10 our nail facility turned an operating profit in 2004,  
11 we lost money over the next several years.

12 While there was a substantial drop in demand  
13 for nails in the U.S. market last year as housing  
14 starts fell off, that has not been the primary reason  
15 for our industry's decline. The reason is that the  
16 Chinese continue to increase their market share in  
17 this declining market by undercutting our prices.

18 While the nail industry has had a long  
19 history of competition from imports, the volumes and  
20 price aggression seen in our market from China in the  
21 last few years are without precedent. The nail market  
22 is one driven primarily by price, so when the subject  
23 imports are sold at a deep discount they will get the  
24 sale.

25 Even though our Atlas Steel & Wire Division

1 was in a very competitive cost position due to its  
2 integration back to Gerdau Ameristeel rod production  
3 and wire drawing capabilities, this was not enough to  
4 allow the company to be competitive with low-priced  
5 imports from China. The final straw for us came as  
6 costs for steel scrap increased over 2007, forcing us  
7 to increase prices for wire rod and drawn wire inputs.

8           Given the low market prices for nails due to  
9 dumped imports, we concluded that the likelihood of  
10 our nail operation returning to profitability was  
11 extremely remote. That was when we made the difficult  
12 decision to get out of the nail business. So as of  
13 the beginning of this year, we shut down production  
14 completely.

15           Although Gerdau Ameristeel has left the  
16 business of producing nails, we continue to support  
17 this case. Several domestic nail producers use our  
18 wire rod as their input material, and we know very  
19 well that nail producers are in a difficult situation.  
20 Raw material costs for nails are increasing rapidly at  
21 the same time that U.S. consumption is depressed.

22           The only thing that has given the industry a  
23 glimmer of hope has been this case. As a result of  
24 this investigation, importers of Chinese nails have  
25 increased prices and eliminated some of their most

1 aggressive tactics. That does not mean, however, that  
2 the problem has been solved.

3 If an antidumping order is not put into  
4 place aggressively priced imports from China will  
5 resume their surge into the U.S. market immediately.  
6 If that occurs, it is a safe bet that many other U.S.  
7 nail producers will come to the same conclusion as  
8 Gerdau Ameristeel and exit production of the nails.

9 Thank you for allowing me to address you  
10 this morning.

11 MR. DEES: Good morning. My name is John  
12 Dees, and I am the president of Treasure Coast  
13 Fasteners, Inc., a Petitioner in this proceeding.

14 Treasure Coast is located in Fort Pierce,  
15 Florida, where our nails are produced with the most  
16 technologically advanced equipment in the world. In  
17 my remarks this morning, I would like to focus on the  
18 devastating impact imports from China has had on our  
19 business and also describe some of the benefits we  
20 have seen since the filing of this case in May of  
21 2007.

22 Like other domestic producers before you,  
23 Treasure Coast has experienced lost sales to unfair  
24 imports where we could not meet those prices. In  
25 fact, Treasure Coast's production and shipments fell

1 to an all-time low in 2007 as did our profitability.  
2 This deterioration in profitability at Treasure Coast  
3 is directly attributed to the onslaught of unfair  
4 prices from imports from China.

5 Based on Treasure Coast's experience,  
6 unfairly priced imports have undersold U.S. nails by  
7 significant margins during the 2004 to 2007 period.  
8 At one time we had dozens of customers to whom we were  
9 selling pallets of nails on a regular basis. Over the  
10 past couple of years, however, our customer base  
11 declined as nails from China were being offered at  
12 prices far below our own.

13 I can assure you that purchasers of nails  
14 such as Prime Source buy nails solely on the basis of  
15 price. Although some purchasers may try to convince  
16 you that quality is the most important factor in  
17 purchasing decisions, it's simply not true. Price is  
18 the driving factor.

19 Over the past several years, our customers  
20 have consistently told us that they can buy imported  
21 nails at a lower price than ours. The underselling  
22 has allowed imports from China to take sales and  
23 market share directly away from Treasure Coast  
24 Fasteners and other U.S. producers.

25 The severe financial deterioration due to

1 the loss of sales and price depression has reduced the  
2 cashflows required to support additional investments,  
3 to improve products and efficiency. Because of the  
4 low-priced imports from China, we have had to postpone  
5 certain expansion plans, including the purchase of a  
6 new, larger facility with additional equipment.

7 With the filing of this case, however, we  
8 did see some improvement in our business and the U.S.  
9 market. For example, Prime Source, which has always  
10 been known for being the cheapest supplier of nails in  
11 the U.S. market, issued several price increase  
12 announcements due specifically to this case.

13 We have also seen a decrease in the volume  
14 of subject imports. Not only have we been able to  
15 obtain some reasonable price increases to cover the  
16 increased costs we face; we've also begun to recapture  
17 sales that were previously lost to Chinese imports.

18 Even better, we have gained a number of new  
19 customers to whom we never sold nails before. So far  
20 we have around a dozen new customers who were  
21 previously buying imports, and our sales have  
22 increased sixfold since December of 2007.

23 Despite these improvements, I remain very  
24 concerned about the future of our company. We  
25 recently received news that Prime Source was acquiring

1 Coast to Coast, another wholesale distributor of  
2 nails. Given Prime Source's historical practice of  
3 sourcing low-priced nails from China, this expansion  
4 of Prime Source's position, particularly in the  
5 southeast market of the United States where Treasure  
6 Coast competes, puts us at additional risk unless  
7 relief is granted.

8 Treasure Coast added heading equipment and  
9 doubled our capacity in 2004 in hopes of expanding our  
10 business. Relief from these unfair imports is  
11 critical to enable Treasure Coast to continue to  
12 produce products we make competitively and  
13 efficiently, and I ask that you grant us relief.

14 Thank you.

15 MR. ROSENTHAL: Our next witness is Dennis  
16 McMorrow.

17 MR. McMORROW: Good morning, Mr. and Mrs.  
18 Commissioners. My name is Denis McMorrow. I am the  
19 owner of a small company called Wheeling La-Belle Nail  
20 Company located in Wheeling, West Virginia.

21 I purchased this plant over 10 years ago  
22 from Wheeling Pittsburgh Steel Corporation, the prior  
23 owner, and I had the good fortune to work for Wheeling  
24 Pittsburgh in Minneapolis, where I met my great  
25 Minnesota wife from Northfield. I will refer to

1 Wheeling La-Belle as Wheeling henceforth.

2 Wheeling was established in 1852 and is a  
3 manufacturer of quality cut nails. We serve the  
4 building and heavy construction industries, as well as  
5 preservation sensitive restoration projects. Today  
6 our nail manufacturing facility in West Virginia is on  
7 the National Register of Historic Landmarks and ranks  
8 as the largest producer of cut nails in North America.

9 I came to Washington this morning because  
10 this case is very important to my employees and to me.  
11 I am extremely concerned about the future of my  
12 company due to low-priced imports from China. The  
13 large volume of these imports has had a devastating  
14 effect on Wheeling over the past several years. I  
15 cannot overstate the importance of this case because  
16 it is the last chance my company has to remain in  
17 business.

18 Mr. Libla provided you with some samples of  
19 Mid Continent's nails. I have brought some samples of  
20 Wheeling's cut nails for you to see, which Michael  
21 will present to you. The main distinguishing feature  
22 of cut nails is that they are produced from sheet  
23 steel rather than from wire, as Commissioner Lane and  
24 her staff member saw during their recent tour of our  
25 production plant.

1                   We are very proud of our cut nail  
2 manufacturing process and long history of nail making.  
3 Our production operations, however, have been severely  
4 challenged by cut nail imports from China at extremely  
5 low prices over the past several years. For instance,  
6 in the year 2000 we had 40 people working for us, and  
7 we were producing 7,000 tons a year of cut nails.  
8 Last year we had nine people working for us, and we  
9 produced 720 tons of cut nails, down from 7,000, down  
10 from 40 people to nine, due to price.

11                   These unfair imports have grown tremendously  
12 and have consistently undercut Wheeling's prices by  
13 large margins. We have been forced to reduce our  
14 prices to unprofitable levels to meet the prices of  
15 Chinese imports. In most cases we could not meet  
16 these low import prices, and we lost more sales to  
17 imports.

18                   As a result, our production volume has been  
19 reduced by half during the past couple of years.  
20 Wheeling currently has 80 nail shaping and heading  
21 machines in its plant, but we are only using 16. All  
22 of the idle equipment is right there in the plant next  
23 to the machines that are being used, as Commissioner  
24 Lane saw during her visit.

25                   We have also been forced to significantly

1 reduce our workforce through the past several years as  
2 a result of declining production volumes. This layoff  
3 process was particularly difficult for me because many  
4 employees were second and third generation workers at  
5 our plant.

6 Our workforce was dropped by about 50  
7 percent over the past several years as a result of  
8 production and sales declines. Commissioner Lane and  
9 her staff member met our remaining workers and heard  
10 how important this case is to them. Many of these  
11 employees have worked for Wheeling for close to 35  
12 years and their fathers for 40 plus years and their  
13 grandfathers before them. They are not asking for  
14 anything more than being able to keep their jobs.

15 Fortunately, Wheeling has already benefitted  
16 from this case. Dumped imports started to decline in  
17 the latter part of 2007 in anticipation of Commerce's  
18 preliminary decision. This has had a direct effect on  
19 our business. One former customer who had been buying  
20 imports from China placed an order with us, the first  
21 in five years. It also looks like we will be  
22 regaining business from other customers.

23 Import prices from China have also shown  
24 some increases since the case was filed, but we still  
25 hear customers saying that imports are coming in at

1 low prices. To make matters worse, since the  
2 beginning of 2008 the price of steel sheet, the major  
3 raw material input into the production of cut nails,  
4 as escalated 100 percent and is still going up. That  
5 makes this case even more important to us.

6 If this industry does not receive relief  
7 from China's imports our existence will cease to be.  
8 It will be a pity for our 155-year-old West Virginia  
9 company to no longer exist.

10 Thank you very much for hearing me.

11 MR. ROSENTHAL: Our next witness is Mr.  
12 Stirnaman.

13 MR. STIRNAMAN: Good morning. My name is  
14 Vic Stirnaman. I am Executive Vice President of  
15 Keystone Consolidated Industries. I am here today in  
16 support of the Petitioners in this case.

17 As I testified at the preliminary staff  
18 conference last year, Keystone at one time was one of  
19 the largest nail producers in the United States. Our  
20 nail production process was fully integrated from  
21 scrap to wire rod to wire and then to nails. During  
22 2004 to 2006, our annual capacity to produce nails was  
23 over 50,000 tons.

24 Unfortunately, our ability to utilize that  
25 capacity declined significantly over that time as

1       unfairly traded imports displaced our sales. Large  
2       volumes of dumped imports from China surged into the  
3       U.S. market, capturing an increasing share of our  
4       market. As a result, Keystone saw its sales volume  
5       plummet and its share of the U.S. nail market erode.

6               By 2006, our capacity utilization had fallen  
7       to a dismal level with more than two-thirds of our  
8       capacity sitting idle. Our financial picture was  
9       equally bleak. The lower prices offered by unfairly  
10      traded imports from China forced us to lower our  
11      prices, which led to significant financial losses on  
12      nails for my company.

13             The deterioration of our business was not  
14      due to a poor quality product or an inability to  
15      produce nails to specification. Our business declined  
16      because of one reason: Price. It was always price.  
17      We simply could not compete with the low prices  
18      offered by dumped nail imports.

19             The flood of low-priced imports from China  
20      caused us to suffer declines in production, shipment  
21      and employment, as well as financial losses. Thus, in  
22      December 2006, Keystone announced that it was shutting  
23      down its nail operations, and in the first quarter  
24      2007 we exited the nail business.

25             While this trade case is too late to save

1 Keystone's nail production operations and now Gerdau  
2 Ameristeel's, I am hoping it is not too late to help  
3 the remaining domestic nail industry members. That is  
4 why I have come here today to support the other U.S.  
5 nail producers who are suffering a similar plight to  
6 what my company and Gerdau Ameristeel have faced.

7 Unless an order is imposed, there is no  
8 doubt in my mind that closure of other domestic  
9 production facilities will soon follow.

10 Thank you.

11 MR. ROSENTHAL: Our next witness will be  
12 Kathleen Cannon.

13 MS. CANNON: Good morning. I am Kathleen  
14 Cannon of Kelley Drye & Warren, and I would like to  
15 address a few of the legal issues presented by this  
16 case.

17 First, like product. We agree with the  
18 Commission's preliminary conclusion that a single like  
19 product definition is appropriate here, given the  
20 common essential characteristics and broad overlap in  
21 uses in all types of steel nails.

22 Only one party, Hilte, argued for a  
23 different like product finding if certain types of  
24 gas-actuated nails were included in the scope of this  
25 case. In its final decision, Commerce excluded the

1       nails Hilde described so, as I understand it, they are  
2       no longer pressing that point.

3               Second, domestic industry. Most of the  
4       information relevant to whether appropriate  
5       circumstances exist to exclude specific companies as  
6       related parties is confidential, so unfortunately I'll  
7       have to refer you to our prehearing brief for that  
8       analysis.

9               I would, though, add one point regarding how  
10       the Commission should examine the domestic industry in  
11       this case. When you look at the disaggregated data  
12       for the U.S. industry you see a disparity in operating  
13       performance among various companies. Although the  
14       Commission must evaluate the U.S. industry as a whole,  
15       it should also consider the individual performances of  
16       the various producers and the circumstances that may  
17       have led to the varying results.

18               As the Court in the Alt X case stated: The  
19       requirement to consider the industry as a whole "is  
20       not a license to ignore information that would give  
21       context and meaning to the data." The Commission  
22       should look behind the aggregate industry data to  
23       obtain context and meaning as to how this industry is  
24       performing as the Court contemplated. We will address  
25       the proprietary aspects of this issue in our

1 posthearing brief.

2 Third, the period of investigation.

3 Although typically the Commission examines a three-  
4 year POI, it has also considered a four-year POI in  
5 circumstances similar to those presented here. We  
6 filed the petition in May of 2007 and saw subject  
7 imports begin to decline and U.S. industry prices  
8 improve in the second half of last year.

9 The statute contemplates focusing on a POI  
10 that considers the impact of unrestrained imports. To  
11 fully appreciate the impact of imports excluding the  
12 case effects, the Commission should begin with the  
13 year 2004 and trace trends from that date through  
14 2007. That is particularly easy to do here where 2004  
15 data were gathered in the preliminary stage of this  
16 case.

17 Fourth, the Bratsk test. The triggering  
18 factors the Commission has identified to the  
19 replacement benefit test are not met here. Much of  
20 the Respondent testimony at the preliminary stage of  
21 this case focused on the differences in types of nails  
22 among various third countries, indicating that nails  
23 do not have the high level of fungibility needed for a  
24 replacement test.

25 Further and more telling is that price

1 competitive, nonsubject imports are not a significant  
2 factor in this market. Nonsubject imports, including  
3 those from the UAE and ITW, accounted for a much lower  
4 share of the U.S. market than the subject imports from  
5 China, and nonsubject import volumes declined while  
6 subject imports increased.

7           Extensive information in our brief indicates  
8 that whether comparing the average unit values both  
9 for all nails as a whole or by product type, subject  
10 imports consistently and significantly undercut  
11 nonsubject import AUVs. Here I would refer you to our  
12 handout, which is included as Exhibit 6 to our  
13 prehearing brief, comparing the nonsubject and the  
14 Chinese AUVs by type of nail.

15           This chart shows that China is consistently  
16 lower priced than nonsubject imports. Nonsubject  
17 imports are simply not price competitive with subject  
18 imports. Under these facts, the Bratsk test should  
19 not apply at all. Were the test applied, the final  
20 two factors fail as well.

21           Record information does not indicate that  
22 the nonsubject imports are in any position to replace  
23 the massive capacity and export volumes of China.  
24 Further, as I just mentioned, nonsubject AUVs are  
25 consistently higher than Chinese AUVs. Even if

1 replacement occurred, therefore, the U.S. industry  
2 would benefit from the higher prices.

3 Indeed, in this case there is ample evidence  
4 that a benefit to the U.S. industry has already  
5 occurred from the case filing. As you just heard  
6 several industry witnesses testify, they have been  
7 able to recapture sales and customers, as well as  
8 increase prices.

9 Purchaser statements that they would simply  
10 source other imports if they could not buy the Chinese  
11 product have not proven to be true. Import statistics  
12 show only a minor increase in nonsubject imports in  
13 interim 2008, compared to a huge drop in subject  
14 imports. Purchasers also uniformly report that they  
15 have to pay more for nonsubject imports. The U.S.  
16 industry has benefitted from this case filing and will  
17 benefit further if an order is imposed.

18 In this context, let me briefly address an  
19 argument that Stanley has made. Stanley argues that  
20 due to the Commerce finding that ITW is not dumping,  
21 imposition of an order would simply help ITW while  
22 hurting Stanley and other U.S. producers. Stanley  
23 claims that had it been investigated by Commerce, it  
24 also would have been found not to be dumping.

25 Stanley complains that ITW will now have a

1 competitive advantage because Stanley will no longer  
2 be able to import the lower-priced nails from China if  
3 it has to pay an antidumping duty.

4 There are many unfounded assumptions, as  
5 well as some interesting concessions, in Stanley's  
6 argument. Initially Stanley assumes that it would  
7 have been found not to be dumping, but no record data  
8 supports that conclusion. The Commission must accept  
9 the Commerce finding as issued, and that finding was  
10 that the Chinese separate rate producers, including  
11 Stanley, were dumping at a 21 percent rate.

12 Exclusion of ITW, on the other hand, was  
13 based on a finding of no dumping. If ITW is not  
14 dumping and is selling at fair price levels,  
15 Petitioners stand ready and willing to compete with  
16 ITW on a fair trade basis.

17 Stanley's main concern does not lie with  
18 protecting its U.S. production, but in maintaining  
19 access to its low-priced import source. Stanley  
20 essentially concedes that it is sourcing nails from  
21 China due to their lower prices and that it is  
22 concerned about losing its source of low-priced,  
23 dumped imports. I refer you to their brief at page 10  
24 for that discussion.

25 Imposition of duties to correct dumping

1 behavior, however, is what this law is about and is  
2 precisely the intended outcome of the statute. We  
3 fully anticipate that imposition of an order will lead  
4 to higher prices under fair trade conditions that will  
5 benefit both Stanley's and other U.S. producers'  
6 domestic production.

7 Let me just respond here to Mr. Bogard's  
8 opening statement that price increases that occurred  
9 were not really due to this case. They were due to  
10 other factors. While I don't completely disagree that  
11 other factors such as the increase in costs were a  
12 factor in price increases, it cannot be doubted that  
13 this case did in fact directly cause price increases.

14 I would refer you here to Exhibit 10 to our  
15 prehearing brief, which contains a statement of  
16 Stanley Bostitch to its customers where it's reporting  
17 a price increase and it states, and I quote, "Our  
18 first price action is a direct result of the tariff  
19 imposed by the DOC effective January 23."

20 Finally, critical circumstances. Commerce  
21 has made an affirmative finding as to the PRC-wide  
22 entity. The Chinese producers comprising this group,  
23 however, have refused to submit information to the  
24 Commission in the final stage of this case to enable  
25 it to conduct a critical circumstances analysis, even

1       though a number of the companies did submit  
2       information preliminarily.

3                 Under these circumstances, adverse  
4       inferences should be adopted and an affirmative  
5       critical circumstances finding issued by the  
6       Commission as well.

7                 Thank you.

8                 MR. ROSENTHAL: Our last direct witness will  
9       be Ms. Beck.

10                MS. BECK: Good morning. My name is Gina  
11       Beck of Georgetown Economic Services, and I am joined  
12       by Michael Kerwin also of GES. I am here today to  
13       discuss the material injury to the U.S. nail industry  
14       caused by low-priced imports from China.

15                As described in our prehearing brief and  
16       explained by Ms. Cannon, Petitioners believe that the  
17       Commission should examine import and injury trends  
18       over the 2004 through 2007 period. Regardless of the  
19       base year used for comparing subject imports, however,  
20       imports from China demonstrated significant growth  
21       over the past several years and were significant  
22       during each year of the POI.

23                Given that import volume and U.S. market  
24       share of imports from China are proprietary based on  
25       the exclusion of ITW, I will first discuss trends so

1 as not to disclose BPI data. The data show that the  
2 volume of imports from China rose significantly from  
3 2004 to 2005 before rising even further to 2006.

4 Subject imports remained at a high level in  
5 2007, but declined somewhat compared to 2006 levels  
6 due to the filing of this case. Notably, the growth  
7 rate of imports from China represented an increase  
8 that was faster than the decline in consumption over  
9 the POI. For purposes of public discussion, total  
10 volumes of imports from China are useful to discuss  
11 even though they include ITW, given the similarity in  
12 trends.

13 Imports from China increased significantly  
14 from 339,000 tons in 2004 to 480,000 tons in '05 and  
15 rose even further to 616,000 tons in 2006. In 2007,  
16 imports from China remained at a high level of 562,000  
17 tons. As a percentage of the U.S. market, imports  
18 from China increased rapidly during each year of the  
19 POI and represented substantial shares of the market  
20 each year. We will present the exact shares in our  
21 confidential posthearing brief.

22 The way Chinese imports were able to  
23 increase market share in a declining market was by  
24 undercutting U.S. prices. As a result, the U.S.  
25 producers' share of the domestic market dropped during

1 each years. Nonsubject imports, in contrast to  
2 imports from China, showed a market share decline over  
3 the '04 to '07 and '05 to '07 periods. The decline in  
4 the U.S. industry's market share is attributable to  
5 subject, not nonsubject imports.

6 It is also important to note the substantial  
7 decline in imports from China as a result of this  
8 case, with imports dropping particularly in first  
9 quarter 2008 after Commerce's preliminary  
10 determination was announced in January. As detailed  
11 in our brief, importers indicated that their imports  
12 from China had been reduced due to the investigation,  
13 and they have even shifted back to sourcing from U.S.  
14 producers.

15 Now I will turn to the impact of unfair  
16 imports to the U.S. producers' prices. The record in  
17 this investigation is filled with evidence of  
18 underselling by imports from China, as well as price  
19 depression and suppression.

20 First, purchasers' consistent and  
21 overwhelming responses indicate that imports from  
22 China are lower priced than domestically produced  
23 nails. Second, average unit values on an overall and  
24 product type basis also show consistent underselling  
25 by imports. Third, the numerous confirmed lost sales

1 and lost revenue examples demonstrate that it is  
2 imports from China, not the U.S. product, that have  
3 been lower priced in the U.S. market.

4 Based on purchasers' questionnaire responses  
5 when customers compared prices of imports and U.S.  
6 made nails, they reported that the prices of imports  
7 from China were lower than the comparable U.S. product  
8 in 25 of 31 comparisons. Purchasers also reported  
9 increasing purchases of imports from China due to  
10 lower prices.

11 As you've heard from other witnesses this  
12 morning that converse with customers on a daily basis,  
13 price is paramount in purchasing decisions in the U.S.  
14 nail market. Thirty of 39 purchasers stated that  
15 price was the first or second most important factor in  
16 selecting a supplier. Nearly half of all responding  
17 purchasers also stated that they always or usually  
18 purchased the lowest priced product.

19 In addition, the Commission's prehearing  
20 report indicates that AUVs of U.S. producer shipments  
21 are significantly below the average unit value of  
22 imports from China, whether examined overall or on a  
23 product specific basis. The results are proprietary,  
24 but the instances of underselling and margins of  
25 underselling are detailed in our brief at pages 40 to

1 41 and are significant. As Ms. Cannon also noted,  
2 AUVs of imports from China are well below nonsubject  
3 import sources.

4 This investigation also includes more lost  
5 sales and lost revenue examples that show price  
6 underselling than most investigations. Numerous lost  
7 sales examples were confirmed by purchasers admitting  
8 that price was the reason for their purchases of  
9 imports from China. Even many nonconfirmed examples  
10 do not reflect denials of the allegations but merely  
11 failure of the purchaser to recall the information.

12 So here is a record with overwhelming  
13 evidence of underselling by Chinese imports, and then  
14 you get to the Commission's quarterly pricing  
15 comparisons that show more overselling than  
16 underselling by imports from China. These data are  
17 directly at odds with all other record evidence.

18 We know the Commission staff worked very  
19 hard to solve data problems such as conversion issues  
20 from the preliminary investigation. Petitioners also  
21 worked with staff to ensure that the price  
22 descriptives were accurate, reflected proper unit  
23 bases and covered comparable imported and domestically  
24 produced products.

25 Despite these efforts, the quarterly pricing

1 data in this final investigation still suffer from  
2 errors leading to continued limited usefulness, as  
3 detailed in our prehearing brief. No matter what you  
4 may hear from the other side this afternoon, there is  
5 no doubt that the data are erroneous.

6           Would imports from China really have  
7 increased at such a rapid pace over the past several  
8 years in market share if they were being priced higher  
9 than the U.S. product? Are purchasers really  
10 interested in buying the highest priced product in the  
11 market?

12           Given the significant discrepancies between  
13 what the quarterly pricing data show and what all  
14 other record evidence indicates as to underselling by  
15 China, to the extent the Commission is at all inclined  
16 to consider the quarterly data, we urge the Commission  
17 to verify importers' data.

18           In terms of pricing trends, the U.S. pricing  
19 data demonstrate that domestic prices have been both  
20 depressed and suppressed over the POI as costs  
21 increased, particularly in 2007. As the Commission's  
22 prehearing report indicates, monthly carbon steel wire  
23 rod prices began to increase dramatically in late 2007  
24 and reached the period high in early 2008.

25           In particular, low carbon steel wire rod

1 average monthly prices jumped from \$500 per ton in  
2 early 2007 to over \$700 per ton in March 2008.  
3 Currently, rod prices are up to \$1,000 per ton.  
4 Purchasers' questionnaire responses confirm that  
5 importers' prices increased for nail purchases from  
6 China after the petition was filed.

7           Thirty-three of 45 responding purchasers  
8 noted that import prices have increased and many  
9 reported that the increases were rapid and  
10 substantial. Domestic industry has suffered material  
11 injury, as shown in declines in nearly every trade  
12 indicia, regardless of what companies are included in  
13 or excluded from the industry.

14           As a result in surging imports from China,  
15 domestic producers' capacity, production, capacity  
16 utilization, shipments and employment levels all  
17 declined over the 2004 and 2007 and 2005 to 2007  
18 periods. As a whole, during the period of  
19 investigation, capacity utilization never achieved an  
20 efficient level and declined to a period low in 2007.

21           The negative affect of imports is also  
22 demonstrated in the number of companies that have been  
23 forced to suspend their operations and experience shut  
24 downs, as you've heard from industry witnesses this  
25 morning, and detailed in our prehearing brief.

1                   As a result of U.S. production declines as  
2 well as permanent and temporary plant shut downs,  
3 domestic manufacturers have been forced to reduce  
4 their workforce. The average number of production-  
5 related workers, hours worked and wages paid also all  
6 substantially declined over the period.

7                   The closure of nail production plants that  
8 had been in existence for numerous years and the  
9 layoffs of long time employees is extremely telling of  
10 the injurious impact of unfair imports. Financially,  
11 the growth of low priced imports took a toll on the  
12 industry sales and profits.

13                   The Commission staff report indicates that,  
14 "the decline in sales between 2005 and 2007 was  
15 precipitous", and that a large and increasing number  
16 of producers experienced operating losses in 2007.  
17 These losses had a direct negative impact on U.S.  
18 producers' ability to invest in capital improvements  
19 and resulted in shrinking expenditures.

20                   Numerous U.S. producers noted in  
21 questionnaire responses that investment and expansion  
22 projects were postponed as a result of unfair imports  
23 from China. As to threat of material injury, the  
24 Commission should first recognize the lack of  
25 cooperation by the Chinese producers in possession of

1 this critical information.

2 The Commission should draw adverse  
3 inferences from the poor Chinese response rates given  
4 that only nine Chinese producers responded in the  
5 final phase of this investigation. In the preliminary  
6 investigation, 43 producers responded and even that  
7 response rate was limited as there are over 300  
8 Chinese nails producers.

9 As detailed further in our prehearing brief,  
10 the following factors demonstrate a threat of injury  
11 to U.S. producers: 1) massive capacity to produce  
12 nails in China as well as severely underutilize  
13 capacity; 2) a demonstrated ability to rapidly  
14 penetrate the U.S. market by surging imports; 3)  
15 Chinese importers' inventories have demonstrated  
16 dramatic increases over the POI; 4) Chinese imports  
17 will likely lead to price suppression and depression;  
18 5) third-country barriers will lead to increased U.S.  
19 imports of Chinese product; and 6) Chinese tax policy  
20 changes provide increased incentives to export  
21 downstream steel products including nails.

22 These factors indicate that the ongoing  
23 threat of imports of nails from China is both real and  
24 imminent. Thank you.

25 MR. ROSENTHAL: Thanks, Gina. A couple

1 preliminary points before we respond to questions.  
2 First, I want to introduce my colleague, Grace Kim,  
3 from Kelley Drye & Warren, and Michael Kerwin, from  
4 Georgetown Economic Services, who will also be  
5 available to answer questions this morning.

6 Chris Pratt from Mid Continent who was  
7 handling the nails earlier is available to answer  
8 questions, too. Additionally, I'd like to state a  
9 couple things. First, I hope you know that it's  
10 unusual to have companies who have gone out of the  
11 business that is the subject of your hearing actually  
12 come in and testify.

13 We were fortunate that we've been able to  
14 recall some of these companies from the dead, if you  
15 will, to testify since their exit from the business is  
16 really recent and they still have an ongoing interest  
17 as suppliers to the nail industry. So we're pleased  
18 to have them here.

19 Next, I want to reiterate the next  
20 suggestion request that you verify the importers' data  
21 on pricing if you were going to take that into account  
22 because it is so at odds with the rest of the record.

23 Last, and we may want to have further  
24 conversation about this, I note that a number of the  
25 domestic producer importers who are Respondents in the

1 case have claimed that they have an interest in  
2 domestic manufacturing primarily and not importing,  
3 but each one of these companies has made a decision to  
4 begin importing, in some instances to establish  
5 facilities in China and produce there and export from  
6 those facilities to the U.S.

7 Each one of them has to have information,  
8 documentation, in their books concerning their  
9 decision to do so. My bet is that each one of these  
10 companies has said we want to do this because we want  
11 to lower our prices. I would respectfully urge the  
12 Commissioners to in turn request that documentation  
13 from those companies.

14 I'm not asking about business plans, I'm  
15 asking about the specific decisions about when to and  
16 why they began to import and why they built facilities  
17 in China. I think that's relevant to your inquiry.  
18 With that, we're prepared to answer questions.

19 CHAIRMAN PEARSON: Permit me to express my  
20 appreciation to this panel for being with us today,  
21 for the time you've taken to get prepared and to  
22 travel here. You have businesses to run, you could be  
23 doing other things, so we very much appreciate your  
24 presence.

25 We will begin the questioning this morning

1 with Commissioner Okun.

2 COMMISSIONER OKUN: Thank you, Mr. Chairman,  
3 and I join you in thanking this panel of witnesses for  
4 being here this morning very much, seeing all of you  
5 here today and for your willingness to spend some time  
6 with us here this morning.

7 I also want to join in the Vice Chairman's  
8 comments regarding Chairman Pearson's hearing. I  
9 never say last hearing because we have had repeat  
10 chairmen in the past, so your last of this  
11 chairmanship.

12 Mr. Chairman, if I didn't know how honest  
13 you were I would think maybe you packed this witness  
14 list. I haven't had so many Minnesota on one panel,  
15 so we know the Chairman's going to have a good time  
16 asking questions today where he can actually have a  
17 real connection to Minnesota to talk about it.

18 If any of you are chicken farmers that also,  
19 you know, you might want to go down that line, too.  
20 Let me note before I begin my question -- and this  
21 obviously was a challenging hearing to prepare for  
22 with the Department of Commerce announcement, the data  
23 in the staff report, and actually, your prehearing  
24 briefs are not based on the data that we will be  
25 looking at in a final report, so I think that is a

1 challenge.

2 I do want to compliment the staff very much  
3 for working with the Commissioners and our staff over  
4 the last 24, 48 hours to help us try to look at data  
5 and try to understand what we will see in a final  
6 report.

7 So let me start I guess, Ms. Cannon or Mr.  
8 Rosenthal, with regard to the domestic industry. I  
9 was trying to listen to what you were saying about how  
10 we should view data for the domestic industry. In  
11 your posthearing brief or today will you be arguing  
12 for a different -- I mean, we had a related parties  
13 issue. We dealt with it at the prelim. Circumstances  
14 have changed.

15 Will you be changing your analysis of who is  
16 a related party I guess primarily and then whether  
17 there should be exclusions for purposes of the  
18 posthearing? I don't think your microphone is on.

19 MS. CANNON: Yes, Commissioner Okun, we will  
20 be changing our analysis. We're not going to be  
21 arguing that ITTW is a related party. Given that they  
22 were excluded from the case, I think technically they  
23 are out.

24 We will be presenting our analysis in our  
25 brief because of the confidentiality, but the main

1 point was what I stated in my testimony was that we're  
2 shifting our analysis a bit to urge you to consider  
3 the approach that was recognized by the old Tax Court  
4 where basically the Court said you can get behind the  
5 numbers.

6 Even though you look at the industry as a  
7 whole, it is appropriate to look behind the numbers  
8 and to see what circumstances led to the different  
9 companies' results. Here you have a record with  
10 different results that were driven by different  
11 circumstances for different companies.

12 Whether or not they are related parties, the  
13 behaviors that they took, whether they were importers  
14 or what they were doing in the U.S. market, were what  
15 drove a lot of the different results that you see. I  
16 think it's important to take that into account when  
17 you're considering what the affects of dumped imports  
18 have been on this industry and who has been affected  
19 by the dumped imports in this industry.

20 I'm not sure I can go beyond that on a  
21 public record.

22 COMMISSIONER OKUN: Okay. Well, for  
23 posthearing then, I mean, one thing that I think would  
24 be helpful when you're doing that analysis, and  
25 obviously the Commission has certainly had cases

1 before us where we've had domestic industries who are  
2 importers and we've looked at it in different ways, it  
3 would be I think useful if you can identify any other  
4 cases where how the Commission has evaluated  
5 circumstances similar to this where domestic import,  
6 depending on whether they're importing nonsubject or  
7 subject imports, whether that makes a difference, and  
8 how we take it into consideration, both for purposes,  
9 well, particularly for purposes of the impact on the  
10 bottom line of a company.

11 MS. CANNON: We'll be happy to do that.

12 COMMISSIONER OKUN: Okay. So I will look  
13 forward to seeing that. Then let me turn to the  
14 pricing data. I think you've done a fair amount in  
15 the testimony today to discuss why it is you see the  
16 quarterly pricing data as not reflecting the reality  
17 in the marketplace.

18 I know that you made in your prehearing  
19 brief, I think there were five or six points about  
20 what could have been impacting the quarterly pricing  
21 data. I wondered I guess whether even any of the  
22 producers out here have any other views of what could  
23 happen.

24 I mean, is it, Mr. Rosenthal, you think that  
25 the importers just didn't give us the right data,

1       which is I think what your end point is, that those  
2       need to be verified, or could there be anything else  
3       going in the -- I mean, you know, we've spent a lot of  
4       time in the last couple of days trying to figure out  
5       is there something else that these prices reflect in  
6       some other way that things come into the market and  
7       then are sold? Could it be anything else?

8               MR. ROSENTHAL: I think it does come down to  
9       not having the right data from the importers. It may  
10      simply be that they are reporting at the wrong level  
11      of sale. That's one possibility. We've talked about  
12      it with the members of the industry. I will tell you,  
13      Mr. Libla, when he said he read the staff report page  
14      by page, he read it page by page, and he was  
15      mystified.

16             We've talked about -- that obviously is  
17      public data -- and the other members of the industry.  
18      This does not square with their experience. So we've  
19      been scratching our heads. In fact, the staff has  
20      been extremely helpful, cooperative, diligent, to try  
21      to get to the bottom of this since the prelim.

22             So from our point of view it's not a lack of  
23      effort by the staff or anyone else to try to figure  
24      out what's going on here. I simply think in computer  
25      terms it's garbage in, garbage out. You're not

1 getting the right data from the importers to start  
2 your analysis.

3 COMMISSIONER OKUN: Okay. To the extent the  
4 Respondents in their prehearing brief have made the  
5 argument that the imports sort of now is different  
6 than what the domestic industry can produce.

7 Leaving aside the chart from Mid Continent,  
8 which was helpful in what you do or don't produce,  
9 within the product categories for which we've  
10 collected pricing data, could there be any differences  
11 with respect to availability of particular nails that  
12 you think could impact those prices that would have  
13 made the Chinese prices --

14 MR. ROSENTHAL: Did you say availability of  
15 particular nails?

16 COMMISSIONER OKUN: Yes, of particular  
17 nails. In other words, to the extent the Respondents  
18 have argued that there's a lack of availability, would  
19 our pricing data reflect that subject products were  
20 getting higher prices because they were bringing in  
21 something the domestic industry wasn't selling?

22 Again, I'm just kind of throwing things out  
23 here because I haven't seen anything yet that  
24 explains --

25 MR. ROSENTHAL: As we've talked about them,

1 I'm sure seller's data has not been one of the  
2 explanations that's been offered. That does not seem  
3 to make sense to our collective industry judgment.

4 MS. BECK: Commissioner Okun, if I could  
5 add?

6 COMMISSIONER OKUN: Yes.

7 MS. BECK: This is Gina Beck of GES. In  
8 terms of the eight pricing categories that were  
9 requested, they truly, and Mr. Libla may want to add  
10 to this, but they truly represent very, very common,  
11 typical nails that are sold both by U.S. producers and  
12 importers. There isn't anything fancy about them.  
13 They're really kind of the bread and butter nails.

14 We even added a couple more from the prelim  
15 in an effort to try to expand, and, again, it was the  
16 same problem. I think you'll notice, too, just from  
17 the volumes that are being reported, you know, both  
18 sides are, you know, reporting enough of a volume  
19 that, again, it doesn't appear to be that it's some  
20 product that is not available or uncommon to the  
21 market.

22 COMMISSIONER OKUN: Okay. Then let me ask  
23 you about, I heard the arguments with respect to  
24 looking at a different period of investigation and  
25 what may have been going on in the time that would

1 impact the data we see. I'll continue to evaluate  
2 that because you are correct obviously that we have  
3 the 2004 data from the prelim, so we do have that  
4 available.

5 One question or I guess maybe a response  
6 from you with regard to Respondents' argument that  
7 really if you look at what's gone on with demand in  
8 the industry, demand for your product, that this has  
9 been a pretty tough time to the extent that we can  
10 look at these financials and see declines in  
11 shipments, and production, a number of the other  
12 things that you have ticked through; that we should  
13 attribute that, if you will, to the market itself and  
14 not subject imports and have the producers respond to  
15 how you look at it.

16 Can I have the producers respond to how you  
17 look at it?

18 MR. CRONIN: Well, I think we've  
19 acknowledged that the market in total is off. The  
20 housing starts are down, we have all the subprime  
21 issues that are going on in the economy, but I think  
22 there's still a volume of nails being sold. Right  
23 now, with the already preliminary influence of this  
24 case, we're able to sell those nails at a reasonable  
25 profit and we're able to make some money.

1                   So even though the market's down, without  
2                   the Chinese imports coming at low prices, we think we  
3                   can be competitive and be profitable.

4                   COMMISSIONER OKUN: Other producers want to  
5                   comment on that?

6                   MR. LIBLA: David Libla, sorry. I would  
7                   just like to add that even though the imports were  
8                   down, the imports were taking more market share even  
9                   during this period of time the housing, you know,  
10                  crisis started downward. Really, that didn't really  
11                  start happening at any significant amounts until late,  
12                  late 2006 and into first half 2007.

13                  COMMISSIONER OKUN: Okay. Well, thanks very  
14                  much. My red light's on. I'll have a chance to come  
15                  back on that and talk about your costs.

16                  Thanks very much, Mr. Chairman.

17                  CHAIRMAN PEARSON: Commissioner Lane?

18                  COMMISSIONER LANE: Good morning. Mr.  
19                  Chairman, I'd like to note that it's not often that  
20                  you and I have a convergence of a witness that has  
21                  both West Virginia and Minnesota ties, so it will be  
22                  an interesting day.

23                  CHAIRMAN PEARSON: This is a really special  
24                  occasion.

25                  COMMISSIONER LANE: Yes. Well, before I get

1 to Mr. McMorrow, I have a question for Ms. Beck. I  
2 believe that there might be a typo in your prehearing  
3 brief and in your prepared remarks. I think you said  
4 that the AUVs of domestic deliveries are below the  
5 AUVs of imports from China. Did you mean to say that  
6 the domestic AUVs are above the AUVs of imports from  
7 China?

8 MS. BECK: That's correct. We're seeing  
9 AUVs of imports from China below those of the U.S.

10 COMMISSIONER LANE: Okay. So then your  
11 prehearing brief could be corrected to reflect that?

12 MS. BECK: We will do so.

13 COMMISSIONER LANE: Okay. Thank you. Mr.  
14 Libla, did I pronounce that right?

15 MR. LIBLA: Close enough, ma'am.

16 COMMISSIONER LANE: Okay. In your prepared  
17 remarks, you referred to prices on imported nails that  
18 would not even cover the cost of the wire used to make  
19 nails. How do you become aware of those low price  
20 levels? Were you told by customers or do you have  
21 other sources of information for pricing?

22 MR. LIBLA: We actually learned that  
23 information by market intelligence, both from  
24 customers as well as other sources.

25 COMMISSIONER LANE: Do you have sources that

1 are public or publicly available?

2 MR. LIBLA: I don't know if I could provide  
3 that from a confidentiality standpoint I guess.

4 MR. ROSENTHAL: They're not public, but can  
5 we provide it in confidence?

6 MR. LIBLA: We will attempt to provide it in  
7 confidence for you.

8 COMMISSIONER LANE: Okay, thank you. Now,  
9 what is your company's experience with discounting  
10 prices? Have you experienced lost sales or been  
11 forced to drop prices to retain sales?

12 MR. LIBLA: Yes, ma'am.

13 COMMISSIONER LANE: And have the instances  
14 of lost sales and/or revenues been increasing or  
15 decreasing or about the same over the last three  
16 years?

17 MR. LIBLA: Our sales were decreasing up  
18 until mid-summer in 2007.

19 COMMISSIONER LANE: Okay, thank you.

20 Now, Mr. McMorrow, first of all, I want to  
21 say that I really enjoyed the tour of the facility,  
22 and I shared with my fellow commissioners the nails  
23 that you make there. Could you tell us, and you've  
24 described your product, but could you tell us whether  
25 the type of nails that you produce are produced in

1 other U.S. facilities, and where the imports of that  
2 type of nail are coming from, and what your nails are  
3 used for?

4 MR. McMORROW: Cut nails, as you see by the  
5 samples up there, are made from steel sheet or steel  
6 plate, as opposed to from wire rod, and a hundred  
7 years ago, these cut nails were what made America.  
8 The expansion westward was basically built on nails  
9 being used for homes and barns, and they used to burn  
10 barns simply to get the nails, these kind of nails, so  
11 they were like currency, you know?

12 Anyway, the wire nails, introduction of the  
13 wire nails in the late 1800s and the early 1900s  
14 gradually forced the cut nails out of the common  
15 market, common volume markets like framing and stuff  
16 like that for houses, because wire nails were easier  
17 to produce and cheaper, obviously. So that's just a  
18 market trend. Eventually, cut nails ended up being  
19 used for specific purposes, and the particular purpose  
20 that our nails are used for now are for concrete  
21 construction.

22 We order high-carbon steel, and after they  
23 are cut and headed, they are heat-treated so that they  
24 call them case-hardened, which means that the surface,  
25 the outer surface of the nails are hard so that it can

1 penetrate into concrete and you can drive these nails  
2 into a concrete block. It's better if it's green  
3 concrete than cured concrete, but you can drive them  
4 straight into a concrete block, or poured concrete if  
5 it's green, and they are used mostly for furring.

6 In other words, if people want to use  
7 drywall on a home or a building where you have  
8 concrete block or cinder block, they have to be able  
9 to attach the drywall or panel to the wall, and to do  
10 that, they put furring runners in there and they  
11 attach the furring runners to the concrete itself by  
12 these nails, and then they can put their drywall  
13 screws or panel screws into the furring runners.

14 So basically, that's what the majority of  
15 the nails now are being used. We also make what we  
16 call a flooring nail, which are used for hardwood  
17 floors, but there have been other products that have  
18 come in the market using nail guns and pin-type  
19 fasteners, which have basically taken over that  
20 market. So we are now basically in the masonry or  
21 concrete nail business.

22 Now, there is one other small company in  
23 Massachusetts called Tremont, who are in Wareham,  
24 Massachusetts. They are much smaller than we are.  
25 They are the only other one left, cut nail company

1 left, in the United States. We used to compete with  
2 the cut nails from Korea up until 2000, and we didn't  
3 have any problem competing successfully with them  
4 because their prices were much -- were basically like  
5 ours were, and also their quality was pretty poor.

6 It was only with the advent of cut nails  
7 from China, inspired by people like Prime Source who  
8 scour the world for the lowest priced product, who set  
9 up factories and arrange for people in China to make  
10 our type of nails, which logically is kind of silly  
11 because we only have a niche of the market that's a  
12 very small sliver of the market, and I can't imagine  
13 why they would have gone to that expense.

14 Not only did they go to that expense, but  
15 they sell them at a ridiculously low price for most of  
16 the period that we're in, we're talking about, they  
17 were selling their nails in here below the cost of our  
18 steel, not taking into account overhead or anything  
19 else.

20 COMMISSIONER LANE: Okay, thank you. Now,  
21 are there wire nail products that can be used for the  
22 same purposes that your cut nails are used for, and if  
23 so, what kind of competition, both domestic and  
24 foreign, do you face from those products?

25 MR. McMORROW: Okay, there are a wire-type

1 nail which are hardened wire, and they are called  
2 fluted or spiral fluted, they've got flutes down the  
3 sides, which are used also for concrete, attaching  
4 furring strips or lumber to concrete, and there used  
5 to be some companies in this country. I don't know if  
6 there are any left. I know most of that has gone to  
7 China as well. So we compete with that.

8 Typically, their prices are more or less  
9 then price of the cut nails, so we haven't seen that  
10 competition as a real factor. There are also some, I  
11 think in Mexico, for instance, they imposed dumping  
12 duties on concrete nails there, and the kind of  
13 concrete nails they make there are these type of  
14 fluted wire nails that are produced in Mexico.

15 COMMISSIONER LANE: Okay, now, I know that  
16 your nails cannot be used in guns. Now, the wire  
17 nails that compete with your nails, can those be used  
18 in guns?

19 MR. McMORROW: As far as I know, they can,  
20 as far as I know. I would think logically that there  
21 wouldn't be a major technical problem with developing  
22 a gun to do that. The only thing is, is the market  
23 sufficiently large to justify the, you know, financing  
24 that kind of research.

25 COMMISSIONER LANE: Okay, now, I know that

1 you provided pricing information in your questionnaire  
2 even though cut nails were not one of the pricing  
3 products. First, could you tell me if the pricing  
4 quantities that you reported were in tons or thousands  
5 of nails?

6 MR. McMORROW: Tons.

7 COMMISSIONER LANE: Okay, thank you. Well,  
8 I have more questions for you but I'll come back to  
9 you the next round. Thank you.

10 MR. McMORROW: Thank you.

11 CHAIRMAN PEARSON: Commissioner Williamson.

12 COMMISSIONER WILLIAMSON: Thank you, Mr.  
13 Chairman, and I do want to express my appreciation to  
14 the witnesses for their testimony today. I would like  
15 to start off with a question about market structure.  
16 The respondent firm Stanley describes two parts of the  
17 nail market, construction and what they call  
18 industrial market, which I guess is anything where the  
19 nailing is done under a roof in a manufacturing  
20 process, in a manufacturing facility, and I wonder if  
21 you agree with this description of the industry, and  
22 if so, what are the relative sizes between the  
23 construction part of the industry and this industrial  
24 part, and how do the types of nails in each part  
25 differ?

1                   MR. CRONIN: Yeah, we really don't define  
2 two industries because they, in a lot of ways, kind of  
3 blend together. I'll give you an example. You have  
4 companies making manufactured housing under a roof,  
5 but they may be using similar nails to do that as they  
6 would use out on a construction site, but their nails  
7 used for industrial use to make furniture and cabinets  
8 and things like that, and there are industrial uses  
9 for nails and there are also construction uses for  
10 nails, but basically a nail is a fastening device that  
11 fastens things together.

12                   MR. LIBLA: I would agree with that, sir. I  
13 think in general, different companies will have  
14 different methods of managing sales, or maybe their  
15 sales forces and how they want to approach different  
16 types of customers, if you will.

17                   COMMISSIONER WILLIAMSON: Okay, that was  
18 going to be my question, was whether there are  
19 different methods of selling. Can you elaborate on  
20 that as to, will there be a difference if you are  
21 selling to people who are primarily making furniture,  
22 things like that, as opposed to construction firms?

23                   MR. LIBLA: We approach it ourselves that  
24 our nails can be used whether it's in a construction  
25 project being built on-site, or whether it's

1 construction materials like prefabricated housing  
2 that's done in a factory, and I think we can look at  
3 the factory as an industrial account, if you would,  
4 for purposes of just understanding they are an  
5 industrial account, or a contractor that would supply  
6 the nails to the job site.

7 MR. CRONIN: You might have a larger company  
8 having more division of their sales force, but medium  
9 sized companies, some of our companies, you might use  
10 the same salespeople for both sales efforts.

11 MR. DEES: At Treasure Coast in Florida, I  
12 think Stanley is probably referring to the pallet  
13 business. They are pretty large in the pallet  
14 business in which they are considering that their  
15 commercial accounts, but the process to make the  
16 nails, they're using a coil nail, same process that's  
17 used for housing, maybe a different type of nail, like  
18 a 2-1/2 x 131 versus an 09 two-inch nail for a screw  
19 shank for the pallets, and typically, a lot of  
20 companies like that will supply the guns and the  
21 nails, and the guns are a loaner program, and that's  
22 their commercial sales, versus selling nails directly  
23 to a contractor, which he buys his own guns, and  
24 that's really the distinction.

25 Other than that, the nails are basically,

1 are similar, except for application. The application  
2 may have a different nail, but the process of making  
3 the nails are basically the same, and we do the same  
4 thing.

5 COMMISSIONER WILLIAMSON: Okay. Thank you,  
6 Mr. Dees. That actually anticipates my next question,  
7 but before getting to that, this pricing question, and  
8 Mr. Libla, you've mentioned that the dog doesn't hunt,  
9 and I'm from the city of St. Louis, Missouri, and they  
10 are more concerned about the dog barking than hunting,  
11 and I've been trying to figure out, is there any  
12 difference between these two processes, because  
13 clearly what you want is you want the rabbit from the  
14 dog in St. Louis. You just want to keep people away.

15 So I'm just trying to get -- we've had a lot  
16 of questions about the Commission's pricing data, and  
17 I take it your position is that the record does show  
18 significant underselling, even though the price  
19 comparison charts don't show that. Is that correct?

20 MR. LIBLA: That is correct, sir.

21 COMMISSIONER WILLIAMSON: Okay. Now, going  
22 back to what Mr. Dees just said about the way your  
23 products are sold, I guess with the pallet people you  
24 might be selling both the gun and the nails, is that  
25 correct?

1 MR. LIBLA: That would be true.

2 COMMISSIONER WILLIAMSON: Okay. Is there  
3 any differences between the way the domestic nails are  
4 sold and the way imported nails are sold in this  
5 regard?

6 MR. LIBLA: Not that I would be aware of.

7 MR. CRONIN: There is a difference. The  
8 import nails are sold at a lower price than the  
9 domestic nails.

10 COMMISSIONER WILLIAMSON: Do you use  
11 imported or domestic guns, or is there any difference?

12 MR. LIBLA: Well, quite honestly, there are  
13 imported guns too.

14 COMMISSIONER WILLIAMSON: So how much of the  
15 market consists of direct imports by retailers? Any  
16 idea on that? There's been a lot of talk -- I guess  
17 Prime Source is not a retailer, but there's been a lot  
18 of talk about them today.

19 MR. CRONIN: Yeah, Prime Source is really a  
20 wholesaler and logistics company that buys nails all  
21 over the world and distributes them to a lot of the  
22 Big Box stores and also to a lot of our customers, and  
23 we might be able to come up with something in the  
24 post-hearing brief that maybe described how large we  
25 thought that portion of -- what it would be.

1 MS. BECK: And Commissioner Williamson,  
2 if I can add to that point, from what I understand  
3 from the experts in the market, that direct importing  
4 is becoming more common in the latter part of the POI  
5 and even currently.

6 COMMISSIONER WILLIAMSON: You mean direct  
7 importing by --

8 MS. BECK: By the retailers, exactly.

9 COMMISSIONER WILLIAMSON: Okay. Is there  
10 any indication whether retailers are -- a larger  
11 percentage of nails are being sold by retailers  
12 versus, say, wholesalers? Is there any change in  
13 that, any pattern there that's worth noting?

14 MS. BECK: I'm not aware of any shift in  
15 that, but, you know, we can look into it further.

16 COMMISSIONER WILLIAMSON: No, I'm just  
17 asking because, again, we're trying to figure out why  
18 the dog is either barking without hunting him.

19 Okay. I wonder if you could describe the  
20 trends in industry employment since 2005 and explain  
21 any changes that you see there.

22 MR. ROSENTHAL: The trends in employment in  
23 the industry?

24 COMMISSIONER WILLIAMSON: Yes, uh-huh.

25 MR. ROSENTHAL: Okay. I, well, go ahead and

1 answer for your companies. I think Ms. Beck has the  
2 overall employment numbers.

3 MR. LIBLA: I'm sorry. I would like for you  
4 to repeat the question, please. I have a little bit  
5 of a hearing problem.

6 COMMISSIONER WILLIAMSON: I've heard from  
7 you about plants closing, about layoffs, but I was  
8 wondering, any general descriptions about the  
9 employment trends in the industry, do you attribute  
10 them to -- I notice the productivity really hasn't  
11 changed greatly.

12 MR. KERKVLIIET: I would answer for Gerdau  
13 Ameristeel and say that with Atlas Steel and Wire, our  
14 plant, our productivity or our staffing went down on a  
15 year-on-year basis basically 20 percent per year,  
16 maybe even a little bit higher than that, and the  
17 reason was that we had to lay off people or move  
18 people to other production opportunities, because we  
19 also made mesh at that facility, because we had lower  
20 volumes because we couldn't ship the product because  
21 our customers were buying more imports from China and  
22 we just couldn't meet the price.

23 So in response to imported volumes, we had  
24 to contract our production capacity because we just  
25 couldn't meet the price.

1                   MR. LIBLA: In our case, we only make nails,  
2 so if we are lacking orders, we don't, you know, our  
3 employment demand can swing pretty radically if we  
4 don't have orders.

5                   COMMISSIONER WILLIAMSON: So there are, and  
6 I take it, were these the people who are on the  
7 factory floor who you're talking mostly about?

8                   MR. LIBLA: That would be true, both on the  
9 factory floor, as well as administrative positions.  
10 So it's not just the production workers themselves.  
11 For example, we closed two plants. In early 2007, we  
12 consolidated our Virginia plant to our Missouri  
13 facility. That resulted in a pretty significant loss  
14 of jobs. And then in the same period, within the same  
15 quarter of 2007, we closed a plant that we had built  
16 brand new in 2004 with state-of-the-art equipment in  
17 the first quarter of 2007, and that also affected  
18 employment, downward.

19                   MR. KERWIN: Commissioner Williamson, if I  
20 could add one point. It's Mike Kerwin. I mean, the  
21 industry over this period, 2005 to 2007, suffered  
22 about a 50 percent decline in its production volume.  
23 I think any industry that's facing that kind of a  
24 contraction is not going to see any kind of  
25 improvements. If they can just maintain the status

1       quo in terms of productivity, they are probably doing  
2       very well, but that kind of a contraction is obviously  
3       brutal conditions under which to try to improve  
4       efficiency.

5                   MR. STIRNAMAN: Commissioner Williamson, at  
6       Keystone, we went from having capacity of 50, 60,  
7       maybe even above that, thousand tons of nails -- I  
8       don't remember exact numbers, but in its heyday, well  
9       over a hundred people, perhaps close to 200 people  
10      employed plus hourly people plus management to manage  
11      that business, and as Mr. Kerkvliet just related, year  
12      on year, just reduced, reduced, reduced.

13                   Today, the people are gone, the equipment is  
14      gone, the buildings are empty.

15                   MS. KIM: Commissioner Williamson, this  
16      Grace Kim. I also wanted to point out, with the  
17      decline in production over the POI, just from 2004 to  
18      2007, there have been about 700 job losses during that  
19      period.

20                   COMMISSIONER WILLIAMSON: I was just  
21      wondering because both the volume and the employment  
22      seem to be the most dramatic indications of what's  
23      happening to the industry. That's why I just wanted  
24      to get further details on that. Thank you. My time  
25      is about expired, so thank you for those.

1                   CHAIRMAN PEARSON: Commissioner Pinkert.

2                   COMMISSIONER PINKERT: Thank you, Mr.  
3 Chairman. I'd like to begin by offering my  
4 congratulations to you, Mr. Chairman, for the work  
5 you've done as Chairman over the past two years. I'd  
6 like to point out that the light roasting that you  
7 received from the Vice Chairman today is entirely in  
8 keeping with the light touch that you've employed as  
9 Chairman in wielding the gavel. So thank you for  
10 that.

11                   CHAIRMAN PEARSON: I probably deserved  
12 worse. You're right.

13                   (Laughter.)

14                   COMMISSIONER PINKERT: Perhaps we can  
15 continue the roasting on another occasion, but turning  
16 to the panel, I'd like to thank you all for being  
17 here, for taking the time to testify, including the  
18 folks who are no longer actually producing the  
19 merchandise in the United States, but who testified  
20 about their experiences in this industry. I'd like to  
21 begin with Mr. Libla and Mr. Dees, who pointed out  
22 that, or at least who maintained that they have seen  
23 new customers come to their companies as a result of  
24 the filing of the petition, and I'd like to ask them  
25 to testify about how they know that those new

1 customers came to your companies as a result of the  
2 filing of the petition.

3 MR. DEES: John Dees from Treasure Coast. I  
4 started -- we are a smaller company, and regional,  
5 basically. In Florida, we specialize in that area and  
6 in Georgia and those areas, but we have been shipping  
7 product now all the way up to Chicago, Kansas City,  
8 South Carolina, New Jersey, and they came to us  
9 because, basically, the customers told us that. I  
10 mean they, you know, I have direct contact with the  
11 owners of the companies and they said the prices were  
12 going up and they wanted to start buying, and actually  
13 they were happy to see it because they were kind of  
14 glad to be able to deal with a U.S. producer instead  
15 of having to buy into the future from China.

16 So we've actually, in the past three months,  
17 have seen a fairly good increase in the volume of our  
18 sales, so for that, I appreciate what they've done for  
19 us, but basically, we know that, and there's emails  
20 going back and forth all the time to other contacts we  
21 have, and at the same time, the direct sales at our  
22 primary source though, from what they are telling us,  
23 so we know that from them.

24 MR. LIBLA: Pretty much the same thing  
25 applies to us. After the case was filed in the end of

1 May 2007, there was a certain amount of uncertainty  
2 starting to develop within the purchasers' arena. The  
3 prices started rising modestly during the summer of  
4 last year, of 2007. Then when the Department of  
5 Commerce announced their preliminary results in  
6 January, I believe, right after that then we had  
7 numerous, most of our new business came to us, has  
8 been probably since January if I would be guessing  
9 here right now, since those preliminary numbers were  
10 announced, and then many distributors that we sell to  
11 and even direct accounts that we sell to have  
12 contacted us wanting to buy product from Mid Continent  
13 Nail, since pricing had been escalating rapidly from  
14 China as well during that period of time.

15 COMMISSIONER PINKERT: Now, again, to stay  
16 with the two company witnesses that I just asked that  
17 question of, are you aware of Commerce's recent action  
18 in excluding or exempting certain Chinese company as  
19 well as another country from the coverage of the  
20 investigation, and if so, how does that have -- what  
21 impact do you expect that to have on the circumstances  
22 in the market that you've just testified to?

23 MR. LIBLA: I am aware that the Commerce  
24 Department chose to exclude ITW's plant in China,  
25 somewhat of a disappointment to us, however, the

1 decision was made, and we don't deem ITW's being  
2 excluded from the case near as dangerous to our  
3 industry as the other Chinese producers, nearly 300  
4 from China.

5 MR. DEES: Yes, sir, I feel the same way. I  
6 think ITW has always been a little bit of a higher  
7 price product on the market and we don't feel as  
8 threatened by ITW as we do the others, or Dubai for  
9 that matter. I mean, Dubai was not as low a price as  
10 the Chinese.

11 COMMISSIONER PINKERT: But my question was  
12 not so much as to threat as it was to the points that  
13 you were just making concerning whether or not the  
14 filing of the petition had had a particular impact on  
15 the circumstances in the industry. The reason I ask  
16 that is because the petition obviously covered more  
17 than just the companies and countries that are  
18 currently -- or I should say the companies and  
19 country, that are currently subject to the  
20 investigation.

21 So I'm wondering whether you can help me to  
22 understand whether some of that impact that the filing  
23 of the petition had is attributable to entities that  
24 are no longer subject to the investigation.

25 MR. CRONIN: I think if you look at

1 statistics on the tonnages coming in, as our economist  
2 mentioned, your 500, 600,000 tons coming in from --  
3 600,000 tons coming in from China, and I think we'll  
4 be very happy to have an injury decision and a dumping  
5 order in the magnitude of 21 percent against the bulk  
6 of those tons. That will help our industry greatly.

7 MR. McMORROW: Commissioner, if I would  
8 interrupt here a second. We are a small company, of  
9 course, and we make these cut nails, but it's  
10 insignificant for us about those two exclusions  
11 because the UAE does not produce cut nails, and to my  
12 knowledge, ITW does not import cut nails from China,  
13 so we are not affected by those two exclusions.

14 COMMISSIONER PINKERT: Thank you.

15 Mr. Libla?

16 MR. LIBLA: Yes, sir. The customers that I  
17 mentioned earlier that we've sold and took on as  
18 customers since the case was filed, I think it would  
19 be safe to say that the majority of those customers  
20 would have come to us as a result of -- many of those  
21 customers would be coming to us as a result of other  
22 Chinese producers, and not so much as a result of ITW,  
23 and also in the UAE country, we've probably taken on a  
24 number of customers that were formerly buying from the  
25 UAE as well as China. China would be by far the

1 largest.

2 COMMISSIONER PINKERT: Thank you.

3 Mr. Dees, anything to add to that?

4 MR. DEES: Well, basically, I concur with  
5 what they said, so no, I really don't.

6 COMMISSIONER PINKERT: Thank you. Now,  
7 turning to the issue regarding -- oh.

8 MR. ROSENTHAL: If you can take two minutes,  
9 Commissioner Pinkert, I just want to explain a little  
10 bit more about the Commerce determination because I  
11 think it may help round out the answers to your  
12 question, and I characterize some of the  
13 determinations by Commerce Department early today only  
14 partially in a facetious way, but one of the odd  
15 things about what Commerce did was Respondent  
16 selection in the first instance.

17 When we filed our petition, we named a bunch  
18 of Chinese companies that we felt were significantly  
19 underselling the domestic producers and had  
20 significant dumping margins. Those particular  
21 companies were not selected by the Commerce Department  
22 in their methodology, and so we feel that a large  
23 number of the Chinese companies were not investigated,  
24 have been dumping, and if you will, driving the market  
25 pricing downward.

1                   ITW's selection, we wouldn't have picked  
2 them first. We're not saying they weren't an  
3 aggressive pricer, but they were not the worst, lowest  
4 pricer in the marketplace. So the coverage of 300  
5 companies minus one from China, or 70 of the  
6 identified companies minus one, is still going to be a  
7 tremendous boon to this industry and its ability to  
8 compete against China.

9                   We've covered the vast majority of Chinese  
10 sources and, from our point of view, the most  
11 egregious dumpers.

12                   COMMISSIONER PINKERT: Thank you.

13                   Thank you, Mr. Chairman.

14                   CHAIRMAN PEARSON: Okay, now it's my turn,  
15 and not wanting to disappoint my colleagues, I would  
16 just mention that when I was younger and farming for a  
17 living, I actually had some experience with this  
18 subject product, not subject imports, because I think  
19 in those years they must have all been U.S. nails, but  
20 at one time I actually could look at a nail and tell  
21 you whether it was a 10 penny, 12, 16, used them all,  
22 smaller ones than that, and larger, up to the 12-inch  
23 spikes.

24                   So I have a question for you. I know that  
25 12-inch wire nails are within the scope, right,

1 because it's up to 12 inches in length, I think? Is a  
2 12-inch nail actually a wire nail, or is that a rod  
3 nail?

4 MR. CRONIN: It's a wire not, like a pole  
5 barn nail, yeah, and I might also add, Chairman, since  
6 I have the microphone, that two of the companies on  
7 this panel used to make chicken wire. I want you to  
8 know that, and now it's all coming from China.

9 CHAIRMAN PEARSON: Okay, I've been out of  
10 that market for a while too. You mention a pole barn  
11 nail, though. Those are thinner than the heavy spikes  
12 that I'm thinking of that you drive with a maul.

13 MR. LIBLA: A pole barn nail would be just a  
14 little shorter and maybe a smaller diameter than the  
15 typical spike.

16 CHAIRMAN PEARSON: Right, and with the  
17 whatever, not flutes on it, but the ridges that retain  
18 it to keep it from slipping out, whatever those are  
19 called.

20 MR. LIBLA: It could have what we call a  
21 ring shank on parts of it for pole barn application.

22 CHAIRMAN PEARSON: Mr. Kerkvliet?

23 MR. KERKVLIT: But in general, all nails  
24 are made out of wire, not made out of rod, whether  
25 it's 1-inch, 2-inch, 12-inch, it goes through a

1       descaling process, drawing, and then a heading  
2       process.

3                   CHAIRMAN PEARSON:  Okay, it's just it wasn't  
4       clear in my mind whether there is some dividing line  
5       between what's wire and what's rod.  At some diameter  
6       does it become rod, or is it a matter of how it's  
7       used?

8                   MR. CRONIN:  No, rod is the raw material to  
9       manufacture wire, and you buy rod hot-rolled in coils,  
10      large coils, 4 to 6,000-pound coils from all these  
11      steel rod mills that you are very familiar with  
12      because you just had a sunset review here, and so we  
13      take that rod and we either mechanically descale it or  
14      we pickle it in acid and clean it, and then we put a  
15      lube coating on it, and then we draw it through a  
16      series of tapered dies on wire drawing machines and we  
17      draw it down to whatever size we need.

18                   So we would buy a very large diameter rod to  
19      make the spike, whereas if we are making a lot of our  
20      nails, we'd buy a 5.5 millimeter rod which is  
21      basically most of the rod that you talked about in the  
22      sunset review cases, the smaller diameters.

23                   CHAIRMAN PEARSON:  Okay, thanks.  Well, let  
24      me shift now to an issue that my colleagues already  
25      have raised, and that has to do with our pricing data,

1 because I think all of us find this troubling. We are  
2 hearing one thing very clearly from this panel. We  
3 see another thing quite clearly in the data, and so  
4 there must be some reason for the difference.

5 When the United Arab Emirates were part of  
6 this investigation, our pricing data showed a pattern  
7 of predominant overselling for those nails. Now that  
8 the Department of Commerce has shown de minimis  
9 margins for the UAE, should we take that as a type of  
10 validation that perhaps our pricing data were correct?

11 MS. BECK: Chairman Pearson --

12 CHAIRMAN PEARSON: Ms. Beck, yes.

13 MS. BECK: No, I don't think we should.

14 Consistently, whether it's just for the UAE or for  
15 China, you're seeing similar trends, so we still feel  
16 that there are errors in the data and it was not just  
17 indicative of what was -- you know, specific to one  
18 country and not the other. We believe it's an overall  
19 problem in the data.

20 CHAIRMAN PEARSON: Mr. Kerkvliet?

21 MR. KERKVLIT: I would add from an  
22 anecdotal standpoint, if you talk about that there's  
23 been 26 plant closures, we've had the rapid massive  
24 reduction in employment, that doesn't come because  
25 material is being brought into the United States at a

1 price that's higher than what we can produce it for.  
2 So I think that there's just the anecdotal evidence  
3 and the information that we have from our customers  
4 that says, look, we'll give you the order if you match  
5 the import number from China, and you can't do that so  
6 then therefore you lose volume.

7 I definitely believe that there are some  
8 errors in the data how they've been presented.

9 MR. CRONIN: I worked for Tree Island  
10 Industries before my job with Davis Wire, Heico Wire  
11 Group, and we had a large customer that was also a  
12 tool manufacturer that was buying a lot of collated  
13 nails for us, private label, to go with our tools, and  
14 we lost that customer to Dubai on price.

15 CHAIRMAN PEARSON: Okay, so -- Ms. Cannon?

16 MR. CRONIN: That was before the POI,  
17 though.

18 MS. CANNON: Chairman Pearson, I think, as  
19 Ms. Beck indicated, we don't think that the quarterly  
20 pricing data are correct on the UAE because they also  
21 don't square with your other record data, such as all  
22 the purchaser statements that say the UAE imports were  
23 lower priced, and they were, but the one caveat I  
24 would add is that even though they are lower priced,  
25 no one ever thought they were lower priced than China.

1                   They are not as low-priced as China, and all  
2 of the average unit value data that you have indicate  
3 that. So when you get to the next nuance, which is  
4 the Bratsk analysis, and you are trying to determine  
5 if the UAE imports are replaceable and substitutable,  
6 please look at that additional data on the prices that  
7 really show that they are not priced as low as the  
8 Chinese prices for purposes of substituting and  
9 depriving the industry of a benefit, even if they  
10 remain in the market without any antidumping duty  
11 order.

12                   CHAIRMAN PEARSON: Okay, thanks. I might  
13 mention, Ms. Cannon, that I was a bit disappointed  
14 when the UAE got kicked out, if for no other reason  
15 than I didn't have the opportunity to hear you argue  
16 with precision and passion the issues of cumulation.  
17 I've come to --

18                   MR. LIBLA: If you don't mind me saying so,  
19 Mr. Chairman, I agree.

20                   (Laughter.)

21                   CHAIRMAN PEARSON: I've come to enjoy that,  
22 and so I missed it this time. Okay, but the reason  
23 for asking about Commerce's analysis on the UAE is  
24 that sometimes I have a hard time understanding how  
25 their margins relate to what we see in our pricing

1 data, and of course, the analysis is not the same,  
2 it's not supposed to do the exact same thing. Still,  
3 I take some comfort if I see some general coherence  
4 between what they are doing and what we are doing, and  
5 so I can rationalize that what Commerce found for the  
6 UAE was not inconsistent with what we were seeing in  
7 our quarterly pricing data, okay.

8 Now, take that to the next step and look at  
9 China, and there, the firms that cooperated with  
10 Commerce, a significant percentage of those imports  
11 have been found to be non-subject, which would also  
12 not be inconsistent with the overselling that we are  
13 seeing in our data. So can you help me with that? I  
14 mean, am I making too much of a leap here to see  
15 something with the UAE sales and then start to  
16 transfer it to China and start to wonder whether our  
17 pricing data aren't right?

18 I mean, I have great respect for the staff.  
19 I know they are not doing something that they think is  
20 incorrect.

21 MR. ROSENTHAL: I think you are looking for  
22 connections, understandably, but unfortunately in this  
23 case and in this record, you can't make those  
24 connections. They just don't exist, and part of it  
25 is, well, we pointed out a number of the reasons why

1 we think the pricing data are incorrect, but, you  
2 know, you don't have a very good response rate here  
3 from the Chinese.

4 Presumably, a lot of the worst offenders who  
5 would have provided data just didn't do it. You heard  
6 Ms. Beck mention that even in the prelim when you had  
7 43 Chinese companies responding in one fashion or  
8 another, that only counted for a small portion of the  
9 overall Chinese company headcount, and now you're down  
10 to something like nine. So I don't think you can take  
11 much comfort in the data you've gotten from those  
12 companies and the response rate there, which is one of  
13 the reasons why we urge adverse inferences, which  
14 would include an inference when it comes to the  
15 pricing data.

16 CHAIRMAN PEARSON: Okay. Well, in some  
17 industries, we see a situation in which there is quite  
18 intense price competition among the domestic industry,  
19 the various members of the domestic industry, and at  
20 times the domestic industry has imperfect knowledge  
21 regarding the pricing of imports, such that we have  
22 seen overselling by imports that we believe is quite  
23 genuine, very intense price competition within the  
24 domestic industry.

25 So I'm wondering how good your knowledge is

1 of what's going on in the marketplace, and I'm not  
2 suggesting you don't know a whole lot more than I do,  
3 but I could envision a negotiation where you sit down  
4 with a major customer and you say, I would like to  
5 sell you some nails at price X, and the guy across the  
6 table says, hmm, well, that's nice, but I've just had  
7 a very interesting offer on some Chinese nails. Could  
8 you do a little better on that price? And he doesn't  
9 tell you that the interesting offer was overselling by  
10 6 percent, he just leads to an inference that there's  
11 a lot of competition out there.

12 Can buyers using that type of approach put  
13 pressure downward on the sales prices of the domestic  
14 industry?

15 MS. BECK: I think, Chairman Pearson, if I  
16 can just start off and then the industry witnesses can  
17 add, I think the one thing that's very indicative is  
18 in the particular questionnaire response, is you  
19 actually have the purchasers admitting that it was in  
20 fact lower prices that were being offered by the  
21 imports from China, so I think as a starting block  
22 that if it's coming directly from the customers and  
23 the purchasers, then in fact they really are being  
24 offered the lower prices as opposed to just telling  
25 the U.S. producers that, but Mr. Libla, do you want to

1 add?

2 MR. LIBLA: Mr Chairman, as it relates to  
3 lost sales in the documents we provided of lost sales,  
4 which was pretty substantial, we've actually I think  
5 even provided some written documents that showed  
6 actual pricing to our customers that was substantially  
7 lower than ours in our prior documents.

8 MR. CRONIN: As a company, we typically  
9 require our salespeople to try to at least look at  
10 some documentation. We don't take verbal information  
11 and develop competitive pricing.

12 Also, the way we prove these things out is  
13 we get an order. If we have too low a price, we  
14 usually get an order. I think you can see from the  
15 records that we haven't gotten the orders. The  
16 Chinese have gotten the orders.

17 MR. DEES: Chairman Pearson, we've done the  
18 same thing. I've sometimes gotten a price back from a  
19 customer verbally. I almost fall off the chair and  
20 say that's impossible. So what we've done, we've  
21 asked for receipts or invoices, which they've provided  
22 us; and therefore we know they're doing that.

23 If we still don't get that, we'll counter,  
24 just to see if they'll take the offer, and they do.  
25 They usually do. When we match that price, they

1 usually do.

2 MR. ROSENTHAL: One last point, and maybe no  
3 one wants to say this out loud. But a number of these  
4 companies either get solicited directly by Chinese  
5 nail producers saying, will you buy our products. So  
6 they have a pretty good insight into that; and  
7 occasionally they've tried them, and contemplated  
8 whether to switch rather than fight.

9 Now they're here because they want to fight.  
10 But as a practical matter, they have pretty good  
11 insight into what the Chinese are offering their  
12 customers and to them directly.

13 CHAIRMAN PEARSON: Okay, well, there's  
14 contradictory evidence on this record, and I don't  
15 know yet what it all means. So thank you for  
16 indulging me.

17 MR. STIRNAMAN: Mr. Chairman, Vic Stirnaman  
18 from Keystone -- I'd really like to jump in on this a  
19 little bit if you please.

20 CHAIRMAN PEARSON: Quickly, because my  
21 light's red.

22 MR. STIRNAMAN: Okay, in our company, we  
23 were told repeatedly over and over and over, if you  
24 match the Chinese price, you can get the sale. At one  
25 point, it was communicated to us that our customer

1 understood that our price gap was insurmountable.

2 CHAIRMAN PEARSON: Thank you very much.

3 Vice Chairman Aranoff?

4 VICE CHAIRMAN ARANOFF: Thank you, Mr.  
5 Chairman; I join all of my colleagues in welcoming  
6 what is still the morning panel here today. It's  
7 really hard to tell, because our clock is broken.  
8 It's very disorienting.

9 There are some issues that came up in the  
10 preliminary and that were addressed in your brief, but  
11 I just want to circle back to them to make sure that  
12 we've covered all the angles.

13 Some purchasers reported that the Chinese  
14 product is preferred to the domestic product because  
15 of custom packaging that's available. So I wanted to  
16 ask the company witnesses, can you just tell me what's  
17 the range of packaging options that available for  
18 nails; and how important do you think that is to  
19 purchasers?

20 MR. LIBLA: Let me get my thoughts together  
21 here. Any packaging that's available in China could  
22 be made available in the U.S. That's the short  
23 answer.

24 VICE CHAIRMAN ARANOFF: How many ways are  
25 there to package a nail?

1 MR. LIBLA: I'm sorry, ma'am?

2 VICE CHAIRMAN ARANOFF: How many ways are  
3 there to package a nail? Are there a range of  
4 packaging options, or are we talking about just, you  
5 know, you put it in a bag or you put it in a box?

6 MR. LIBLA: Well, basically, it would be the  
7 type -- or not necessarily the type, but the size, the  
8 dimensions of a carton or other, you know, container.  
9 It could be, in some cases, a plastic container. But  
10 the size of the nail more dictates the size of the  
11 carton than anything else.

12 Now going past the packaging thing, it could  
13 be the private label issue they were referring to, and  
14 that I mentioned in my early statement. Some of the  
15 buyers would ask for a special labeling to be done to  
16 the packaging.

17 MR. CRONIN: I could address your question a  
18 little bit, too. There are one and five pound boxes,  
19 forty pound boxes, or forty pound tubs, fifty pound  
20 boxes. All that is used in bulk nail that might go  
21 through mass merchandizing that the big box kind of  
22 stores.

23 Then all the collated nails are not really  
24 sold by weight. They're sold by piece count, and  
25 there are a number of strips in each box. The boxes

1 vary in weight, depending on the size of the nail and  
2 the number of strips that are in each box.

3 There are certain industry standards for  
4 that, or it could be custom ordered. If the customer  
5 chose a different method of packaging, he could talk  
6 to any one of the suppliers about it.

7 MR. ROSENTHAL: I do remember some testimony  
8 at the prelim by one of the purchasers on that, and I  
9 thought we submitted some information in our post-  
10 conference brief that pretty well refuted that claim  
11 that the U.S. industry was unwilling to package in the  
12 way that this particular customer wanted.

13 VICE CHAIRMAN ARANOFF: Okay, well, then let  
14 me follow up with what Mr. Libla was saying and go on  
15 to the question of private labels. How important is  
16 branding, in general, in selling nails; either at your  
17 level of trade or maybe at the next level selling to  
18 consumers further down the line?

19 MR. LIBLA: Well, I don't think the consumer  
20 is that concerned about branding this day, as much as  
21 maybe the intermediary might want his name on the  
22 package. Did I answer your question okay?

23 VICE CHAIRMAN ARANOFF: Well, practically.

24 MR. LIBLA: Okay.

25 VICE CHAIRMAN ARANOFF: I'm trying to figure

1 out, you know, within the market, how much of demand  
2 for your product will the purchasers who purchase from  
3 you -- do they want private labeled versus willing to  
4 take in whatever box you give them?

5 MR. CRONIN: The risk we always run in this  
6 industry when we private label for somebody, which  
7 large accounts request that, is that they can take  
8 your nail at your price and your quality, and sell it  
9 for a period of time; and then they can take that same  
10 package and go to China. The end customer is not  
11 sophisticated enough, in a lot of cases, to recognize  
12 that in small print somewhere, it says "Made in China"  
13 on it; instead of made in Poplar Bluff, Missouri.

14 So most companies that make nails want to  
15 supply their own brand, but will do private labeling  
16 for large accounts.

17 VICE CHAIRMAN ARANOFF: Are there any of the  
18 producers present today who do not product private  
19 label; or didn't when they were producing?

20 MR. DEES: Vice Chairman Aranoff, John Dees  
21 again with Treasure Coast Fasteners -- we started off  
22 actually with generic boxes, when we first started our  
23 business, and we were private labeling with stickers  
24 for different customers. Prudential was once at the  
25 time, and then Prime Source.

1                   We found that a lot of these guys would take  
2                   our nails, put them in the market, and we had a  
3                   relatively good reputation for our nails. But then  
4                   they would get in a load of Chinese nails, and then  
5                   they would have problems with them and they would try  
6                   to blame it on us, because now we have a generic box.

7                   So we kind of started saying, well, this is  
8                   nuts. We're getting blamed for this. Of course, you  
9                   can't return it to China; but you could come talk to  
10                  us. So we started our own labeling with our own  
11                  boxes. We preferred that because now if we're going  
12                  to take the blame, at least we know who we are. They  
13                  an point right to us.

14                  While we prefer that we use our nails, just  
15                  because it promotes our business, we do private  
16                  labeling. In fact, we've had customers who have asked  
17                  for changes in the shape of boxes, even though the  
18                  count is the same, to accommodate stacking, and we  
19                  have done that.

20                  All we've asked them to do is, if you've got  
21                  something different than what we're offering, just  
22                  send us a sample and give us the dimensions, and we'll  
23                  see if we can make it work for you. Usually, we'll  
24                  send them a sample back, and if they approve it, then  
25                  we put it in production. We've done that all the

1 time. We've been doing that since we started.

2 MR. McMORROW: For our cut nails, we ship  
3 them in 50 pound cartons, with the Wheeling LaBelle  
4 Nail Company and high carbon, heat treated nails is on  
5 it.

6 Typically, our customers, who are all  
7 wholesalers, require that or request that. Because  
8 the brand name, in our industry, is very important.  
9 The people who still buy from us want the Wheeling  
10 nail. So obviously, we ship them in the Wheeling box.

11 MR. KERKVLiet: At the Atlas Steel and Wire  
12 Facility, we also do private labeling.

13 VICE CHAIRMAN ARANOFF: Okay, would you say  
14 in general that the share of your production that is  
15 being private labeled has been going up or going down  
16 over the course of the period that we've been looking  
17 at?

18 MR. LIBLA: Our share has been going up in  
19 private label over the past years.

20 MR. KERKVLiet: During the period of review,  
21 before we shut down the facility, I would say that it  
22 stayed relatively constant on the private label.

23 MR. DEES: I would also say for us that  
24 private labeling has been a constant. It doesn't seem  
25 to be going up. We prefer still to sell in our name,

1 because it's brand recognition to us.

2 VICE CHAIRMAN ARANOFF: Okay, all right, I  
3 appreciate all those answers. I want to go over some  
4 things which I think the Chairman and some of my other  
5 colleagues raised in going into the way that prices  
6 are set for particular sales in this market. I know  
7 our record tells us that these are largely spot sales  
8 in the market. So I guess I'm trying to sort that  
9 through.

10 First of all, even though sales tend to be  
11 spot sales, you must know with respect to customers, I  
12 mean, how often would a typical customer purchase  
13 nails: once a year, once every six months, every two  
14 weeks? Does it matter what's going on in the housing  
15 market how often the purchase?

16 MR. LIBLA: No, we have customers that  
17 purchase nails monthly from us, in varying volume.

18 MR. KERKVLIIET: Similarly, the spot  
19 transaction could be week to week. It could be month  
20 to month. It could vary based on the customer. But  
21 on par, on average, I would say people tended to buy  
22 on a month in, month out basis, or on a monthly basis.

23 VICE CHAIRMAN ARANOFF: Okay.

24 MR. CRONIN: Monthly.

25 MR. DEES: We basically had a mix from

1 monthly to weekly. Some of the commercial accounts  
2 buy weekly. So it's a mix.

3 CHAIRMAN PEARSON: Okay, so in this market,  
4 it's pretty typical to hear from your customers quite  
5 frequently. Okay, I'll stop there and come back to  
6 this in the next round. Thanks, Mr. Chairman.

7 CHAIRMAN PEARSON: Commissioner Okun?

8 COMMISSIONER OKUN: Thank you; let's see, I  
9 have a couple of other questions on the private  
10 labeling. In the market, for the purchaser, the  
11 private labeling, does it bring any type of premium?

12 I mean, I was curious, Mr. Cronin, when you  
13 talked about someone busy domestic nails and have a  
14 private label, and then they'd switch to Chinese. I  
15 mean, are they getting the same prices doing that?

16 MR. CRONIN: They'll attempt to sell the  
17 name for the same price, but they've switched to a  
18 lower price Chinese nail.

19 COMMISSIONER OKUN: And the purchasers would  
20 buy based on that level?

21 MR. CRONIN: Yes, and most of the purchasers  
22 wouldn't be sophisticated enough or care. So they  
23 build the brand and then do the bait and switch.

24 COMMISSIONER OKUN: So you think that that  
25 has been widespread?

1                   MR. CRONIN: It depends on the customer.  
2                   You know, some of the larger customers like Prime  
3                   Source have done that.

4                   COMMISSIONER OKUN: Okay, someone else; you  
5                   look like you wanted to add something, Mr. Libla, no?

6                   MR. LIBLA: I'm going to add it. Sometimes  
7                   I might get kicked for adding it, but I'm going to add  
8                   it.

9                   We've actually saw over the course of the  
10                  years, and I'm not just saying since the period of  
11                  investigation -- but when those switches happen, like  
12                  Peter has talked about, the country of original might  
13                  actually be very difficult to find on the carton.  
14                  Sometimes, until you open the carton, you won't find  
15                  it. We even have customers that think PRC is Puerto  
16                  Rico.

17                  (Laughter.)

18                  COMMISSIONER OKUN: That doesn't surprise  
19                  me. Another thing we talked about, we raised a number  
20                  of things that the purchases have said. One of the  
21                  things I wanted you to comment on, and again this is  
22                  what effect the petition has had on what's going on in  
23                  the market versus other things.

24                  There were a number of purchasers who had  
25                  noted that they believed price increases were not a

1 result of the trade case, but due to increased steel  
2 and shipping costs. I wanted to have you comment on  
3 that and what was going on with raw materials, again,  
4 focusing on 2007.

5 MR. ROSENTHAL: I'll let the industry  
6 witnesses add further to this. But as you heard from  
7 Ms. Cannon, that was a statement by Stanley, and we  
8 provided you in our pre-hearing brief a contradictory  
9 statement where they announced publicly one of the  
10 reasons for raising prices was this case.

11 There are other statements on those. I  
12 think Prime Source, another big importer, admitted  
13 that. You've got statements on the record that make  
14 it plain that while there are raw material costs  
15 driving the price increases, this case was a  
16 significant factor in that, as well.

17 COMMISSIONER OKUN: Okay, I'll go back and  
18 look at the hook up between those.

19 MR. KERKVLIIET: To add upon that, I would  
20 say that while raw material increases had an increase  
21 of our costs of goods sold, if our market was strong  
22 enough, that we're able to pass those along, we would  
23 have different operating profit levels.

24 But as you can see, at least from our  
25 response specifically, is that our cost of goods sold

1 increased at a greater rate than what our sales price  
2 did; meaning that the import competition reduced the  
3 ability for us to pass through those prices all the  
4 way through the value stream.

5 COMMISSIONER OKUN: Right, I understand that  
6 argument. Obviously, we're looking at the industry as  
7 a whole. But I appreciate those comments with respect  
8 to that.

9 I have just one other question, just in  
10 responding on the pricing data. I know you've made  
11 the argument that because of the low number of Chinese  
12 Respondents in the final, in particular.

13 When we look at the pricing coverage here  
14 for domestic versus Chinese, do you think that  
15 supports that argument in terms of, you know, if you  
16 look at other cases of what type of coverage we got  
17 over the pricing products; that this would be  
18 considered one where it was unusually low?

19 MR. ROSENTHAL: Well, I don't know how to  
20 compare. You certainly have numbers to compare one  
21 versus the other. But in other cases, you might have  
22 five Respondents and five domestic manufacturers.  
23 Here, you should have 40, 70, 300 Respondents, and  
24 instead, you get nine.

25 So you have numbers from the Respondents.

1 But is it representative? Does it tell you the  
2 accurate picture of what their pricing really is? I  
3 would say no.

4 COMMISSIONER OKUN: But we often look at a  
5 percentage covered. You know, in other words, you get  
6 lots and lots of --

7 MR. ROSENTHAL: And I think you have a tiny  
8 percentage covered of the Respondents, which is  
9 troublesome. Again, comparing it to other cases, I  
10 don't have all those numbers in front of me.

11 One of my frustrations in some other cases  
12 is that you don't have create Respondent coverage  
13 either, and you're kind of stuck with it. Because you  
14 can't go and force them to respond.

15 But I will say that the gap between how many  
16 companies are out there and how many actually reported  
17 should make you very anxious about relying on the  
18 representativeness of that Respondent data here.

19 COMMISSIONER OKUN: Okay, then let's see,  
20 I'm going to make a request for post-hearing, both to  
21 Petitioner's counsel and also Respondent's counsel.  
22 That is, in Appendix G, as you're aware, we have the  
23 consolidated figures, as well as on domestic  
24 operation.

25 I would appreciate your kind of legal

1 thoughts on, in particular, for related party  
2 analysis; whether the Commission should be looking at  
3 consolidated to draw any inferences about what's going  
4 on in the market, and whether someone should be  
5 excluded as a related party. I don't expect you to do  
6 that here. But I would appreciate both Petitioners  
7 and Respondents to take a look at that and do that.

8 MS. BECK: Commissioner Okun, regarding the  
9 last question, I was trying to jump in on the  
10 coverage.

11 COMMISSIONER OKUN: Yes, I apologize.

12 MS. BECK: In terms of the coverage of the  
13 importers, in terms of the import volume data, 37  
14 importers reported; for the pricing, only 28. Of the  
15 37 that reported for the volume data, those were  
16 importers from China.

17 So you do have importers that reported for  
18 the volume. I know there can be different reasons.  
19 Maybe they didn't produce the exact product. But you  
20 also have importers that reported in the prelim that  
21 aren't reporting in the final.

22 Then also if you look at the coverage, which  
23 is actually proprietary as to what the volume of the  
24 37 importers represented of total Chinese imports, if  
25 you compare that -- and I'll direct you to that figure

1 -- again, it's a decent coverage, but it's not 100  
2 percent. So we definitely are lacking in coverage of  
3 importers, we'd have to say.

4 COMMISSIONER OKUN: Okay, I appreciate those  
5 further comments on that. Again, I know a fair amount  
6 of this will have to be done in post-hearing, because  
7 of the proprietary nature.

8 But in a domestic industry that would not  
9 include ITW and the different impact that might have  
10 on our analysis of volume, price, and impact, in  
11 particular for impact, one of the question, I think,  
12 that I will be looking at is how do you evaluate the  
13 bottom line of the industry and ITW?

14 I mean, if it's trends for many things are  
15 the same or different, how do I take that into account  
16 if it's doing however it's doing? Well, it's a  
17 domestic producer. I'm trying to do this without  
18 revealing confidential information. But I think this  
19 time you understand where the question is going; which  
20 is, if I see similar trends by producers that you  
21 would say would be situated differently, take big  
22 players in this industry, what does that mean for my  
23 analysis?

24 MS. CANNON: Well, again, you have to get  
25 behind the numbers, and I can't do that in a public

1 forum. We'll do that more in our brief.

2 But I think if you get behind the numbers of  
3 producers, there's no one else that's really situated  
4 similarly to ITW. They're in a very unique position.  
5 Any other producer that may be performing similarly is  
6 performing similarly for a different reason.

7 So when you get behind the numbers of the  
8 different companies, which we can go into more in our  
9 post-hearing brief, I think you're going to see very  
10 clearly why the disparate performances are resulting.  
11 That's why I cited the Altex case, because I think  
12 when you undertake the analysis that way, rather than  
13 just looking at the bottom line figures, you will see  
14 how many of these domestic companies are in a loss  
15 position, are losing and shutting down lines, et  
16 cetera, when they aren't having to rely on imports,  
17 for example.

18 COMMISSIONER OKUN: I guess my question on  
19 that is just going to be, does it matter in that  
20 analysis whether they're relying on fairly traded  
21 imports or not? The statute directs me to look at how  
22 they're doing on their domestic production, right?

23 MS. CANNON: Correct, but the answer is, to  
24 the extent that they've been able to alter the  
25 landscape, if you will, because of the way that

1 they've set up the importation, even though you're not  
2 excluding them as a related party, that's a  
3 circumstance I think that the Commission can take into  
4 account in terms of considering how that particular  
5 company is performing and why it's performing the way  
6 it's performing.

7 COMMISSIONER OKUN: Okay, well, I will  
8 obviously look forward to seeing that. I have some  
9 other questions that I'll come back to, Mr. Chairman;  
10 thank you.

11 CHAIRMAN PEARSON: Commissioner Lane?

12 COMMISSIONER LANE: Ms. Beck, I'd like to  
13 come back to you. The staff report indicates a supply  
14 elasticity of three to five. Considering capacity  
15 utilization at 22 percent, do you think that a  
16 domestic supply elasticity range of three to five is  
17 reasonable?

18 MS. BECK: Commissioner Lane, actually, we  
19 would think that it is probably somewhat higher. I  
20 would have to say in our discussions, we thought it  
21 was on the downside of where it should be.

22 COMMISSIONER LANE: Okay, thank you; have  
23 you prepared any analysis of the likely impact on the  
24 domestic industry if dumping orders are imposed on  
25 subject imports from China?

1 MS. BECK: We would be happy to do that for  
2 the post-hearing brief.

3 COMMISSIONER LANE: Okay, thank you; now  
4 some importers and purchasers reported that they are  
5 forced to buy imports because they cannot get types of  
6 nails from U.S. producers. So I have several  
7 questions on that issue.

8 One, what are the types of nails that your  
9 firms do not produce, and what is your estimate of the  
10 market share of these types of nails?

11 MR. LIBLA: We do not produce roofing nails.  
12 We do not produce finish nails.

13 COMMISSIONER LANE: I'm sorry, what kind of  
14 nails?

15 MR. LIBLA: Finish nails --

16 COMMISSIONER LANE: Okay.

17 MR. LIBLA: -- and brads, and they were  
18 excluded from the case.

19 COMMISSIONER LANE: Oh, they were excluded  
20 from the case?

21 MR. LIBLA: Yes, Paul just brought that back  
22 to my attention.

23 COMMISSIONER LANE: Okay, does anybody else  
24 have an answer?

25 (No response.)

1                   COMMISSIONER LANE: So are you all saying  
2 that the nails that are included in the scope, you  
3 make all of those kinds of nails?

4                   MR. LIBLA: We would either make them  
5 currently or we have the capability to.

6                   COMMISSIONER LANE: Okay, and so if there is  
7 a market for a kind of nail that you do not make, and  
8 people are importing them from China, why are you not  
9 producing them if you have the capability of doing  
10 that?

11                  MR. LIBLA: It's price only.

12                  COMMISSIONER LANE: Okay, thank you; I'm not  
13 sure where the nails are that we passed around at the  
14 beginning. But I noticed that one of the sets of nails  
15 had a blunt end. What does it have a blunt end, and  
16 what is that used for?

17                  MR. LIBLA: I would think that is a nail  
18 that's manufactured for the wooden pallet industry.  
19 That blunt point on it, instead of a diamond point or  
20 a long point, is designed to minimize splitting of the  
21 hardwood lumber when it's being driven.

22                  COMMISSIONER LANE: Okay, thank you; now  
23 going back to Mr. McMorrow, since we have no pricing  
24 products to compare to, could you describe the pricing  
25 competition that you are facing from cut nails from

1 China, and indicate whether that information is based  
2 on your experience with customers, any lost sales, or  
3 revenue you have experienced, or other sources of  
4 information?

5 MR. McMORROW: As regards our cut nail  
6 market, all of my information has come from customers.  
7 I've been in the business awhile, and I have a lot of  
8 people who have become my friends over 30 years or  
9 more. They are the ones who have continued to buy  
10 from us, and they're the ones who have supplied us  
11 with the information about what the Chinese nails are  
12 being quoted at.

13 For instance, as an example, just last week,  
14 I was speaking to a distributor in Puerto Rico, which  
15 is one of our major markets. Because down there, it's  
16 all concrete construction of houses and building, due  
17 to termites and things like that.

18 He says, you know, he came in with a second  
19 order, with an amount for the first one, which was  
20 surprising, and said he wanted to put another order  
21 on, in 30 days more. I said, what's going on,  
22 Alfonzo? You know, he sells to retailers. He's a  
23 wholesaler. He says, you know, all these customers of  
24 mine, the hardware stores or whatever, are coming to  
25 me now wanting to buy my nails, and they have been

1 buying from China. That's just recently now, last  
2 week.

3 I had been furnished, for instance, with  
4 faxes that they would receive from people like Borneo  
5 Sumatra, who is another trading company, or one of the  
6 others, Etushu, people like that, faxes offering  
7 prices over the years that showed what the Chinese  
8 products were being sold at.

9 Customers themselves, the ones that were  
10 buying from Chinese, would say, Dennis, you know, your  
11 price CIF San Juan, for instance, is \$34 for a 50  
12 pound carton. But I can buy it from China for \$24 CIF  
13 San Juan. So, I mean, it's direct information  
14 straight from the market.

15 I had cut the prices to the point where I  
16 just covered the cost of the material and our overhead  
17 -- no profit for the last couple of years. As a  
18 matter of fact, in the last couple of years, I have  
19 been subsidizing the plant myself, out of my  
20 retirement money, so to speak. Because I feel that  
21 it's worth preserving, and I feel that maybe we have a  
22 chance, you know, of getting some relief. So that's  
23 the way it is with cut nails.

24 COMMISSIONER LANE: Okay, thank you; could  
25 you describe the major components of your cost of

1 goods sold, and indicate whether these costs are  
2 increasing?

3 MR. McMORROW: Obviously, we're impacted by  
4 the increased price of steel, steel plate or steel  
5 sheet, which we use for the nails. We have also been  
6 impacted by the high price of electricity, which is  
7 passed on to us in our state. Recently, natural gas  
8 prices have also spiked, and we use a lot of natural  
9 gas in the heat treating furnace that we use to harden  
10 the nails.

11 So overall, you know, our overhead has been  
12 increasing to material and other costs. Health  
13 insurance, pension, everything, you know, has  
14 escalated over the period of time. So, you know, we  
15 can handle those things if we can get the price for  
16 our nails that would cover those. China has prevented  
17 us from doing that.

18 COMMISSIONER LANE: Okay, thank you; I'd  
19 like to talk to the other producers that are here  
20 today, and have you give me some idea of the  
21 percentage of your total costs that are represented by  
22 raw materials and energy. Can you differentiate  
23 between the case costs and your electricity costs?

24 MR. LIBLA: I would think that we would want  
25 to address that in a post-hearing brief, if I heard

1 your question correctly.

2 COMMISSIONER LANE: Okay, thank you.

3 MR. KERKVLIIET: I would answer the same way.  
4 I can give you general approximations. But to give  
5 you accurate information, I would prefer to do it in a  
6 post-hearing brief.

7 COMMISSIONER LANE: Okay, and then I have  
8 one more question. I know that we've discussed this.  
9 But maybe it would help if I just asked in a broad  
10 sense. Is there any quality difference between the  
11 U.S. nail and the Chinese nail? If I am just a  
12 customer on the street, if I go in and look and want  
13 to use nails, does it matter to me whether I get a  
14 Chinese nail or a U.S. nail, as far as the quality?

15 MR. LIBLA: I do not think so. I don't  
16 think it would matter to you.

17 MR. McMORROW: I would say, in our case,  
18 with cut nails, we have benefitted from the brand name  
19 of Wheeling for 100 years, okay? If we were within  
20 five percent of China, we would get all the business.

21 COMMISSIONER LANE: Okay, thank you; Mr.  
22 Chairman, that's all I have right now.

23 CHAIRMAN PEARSON: Commissioner Williamson?

24 COMMISSIONER WILLIAMSON: Thank you, Mr.  
25 Chairman.

1 I think witnesses have already given  
2 testimony as to the impact of the exclusion of the UAE  
3 and Paslode. I was wondering though, how does their  
4 inclusion in the category of non-subject imports  
5 affect the Commission's Bratsk analysis; Ms. Cannon?

6 MS. CANNON: Yes, Commissioner Williamson,  
7 it will change it, and we will address that in further  
8 detail in our post-hearing brief.

9 You can look at the volume statistics that  
10 are public, and see that the volumes of imports from  
11 the UAE are drastically below those of China; and that  
12 they were heavily export-oriented toward the United  
13 States.

14 So given that, you know, we don't think that  
15 the including of UAE in the non-subject import  
16 category is really going to shift volume-wise anything  
17 very significant in terms of their ability to replace  
18 the massive volumes you're looking at from the  
19 included producers in China.

20 I can't really address ITW's numbers  
21 publicly. But again, you've got one company, versus  
22 the other several hundred in China. So the ability to  
23 replace is very minor and modest.

24 Also, on the AUV front, I can address that  
25 the overall AUV number for the UAE. Again, it was

1 significantly higher than the average unit values from  
2 China. So even though it was lower than maybe some  
3 other imports, which is what we were discussing in our  
4 brief, if you compare then to China, again, their AUVs  
5 were higher. China was lower. So that suggests a  
6 likely benefit by imposition of the orders.

7 Then when you get into the more specific  
8 AUVs broken out by product type, you are again seeing  
9 some under-selling. But we can address that further,  
10 because most of that is proprietary.

11 So the bottom line is that inclusion of UAE  
12 and ITW as non-subject imports really does not change  
13 the landscape very much. Because the subject Chinese  
14 producers are so massive, and their prices are so low,  
15 as compared to all the other non-subject imports, even  
16 including those, there wouldn't be replacement and  
17 deprivation of a benefit under Bratsk.

18 COMMISSIONER WILLIAMSON: Okay, thank you  
19 for that answer. Also, have there been difficulties  
20 in obtaining wire rods since 2005; for any of  
21 producers, have they experienced difficulty getting  
22 wire rod?

23 MR. ROSENTHAL: Can we direct that to the  
24 Gerdau and Keystone witnesses? I'm just kidding.

25 MR. CRONIN: We're one of the largest rod

1 consumers in the U.S., Heico Wire Group. We have  
2 plants in California, Colorado, Texas, Michigan,  
3 Oklahoma, and also in Canada.

4 Rod has been tight. But we have  
5 traditionally bought a lot of domestic rod, and are  
6 getting good support from the domestic rod mills right  
7 now.

8 COMMISSIONER WILLIAMSON: Okay, thank you;  
9 and to what extent have you been able to pass on  
10 increased cost of wire rod to your purchasers?

11 MR. CRONIN: We've been moderately  
12 successful in passing on costs. We, as a company, try  
13 to get ahead of the curve a little bit, and use a  
14 replacement cost analysis. So we try to be successful  
15 in passing on the cost.

16 MR. ROSENTHAL: Commissioner, one thing I  
17 will say, and we've talked about this internally, both  
18 the integrated wire companies and non-integrated, I  
19 think there's general consensus that at all times  
20 during the period of investigation, that wire rod was  
21 available to wire producers, as long as they're  
22 willing to pay the price. I don't think there's been  
23 any situation here where there's been a wire producer  
24 who has not been able to get wire rod.

25 Also, then the question is, can we pass that

1 on the price? I think the testimony earlier certainly  
2 by Mr. Libla, who is now back, was that up until 2007,  
3 there clearly wasn't any ability to pass on the price,  
4 because of the presence of the Chinese imports. Only  
5 with the advent of the case was some of that pricing  
6 pressure relieved, and there was a greater ability to  
7 pass on the increased costs.

8 COMMISSIONER WILLIAMSON: I thank you for  
9 that.

10 Mr. McMorrow, I was wondering what share of  
11 the U.S. nail market is made up of cut nails. Do you  
12 have an idea about that?

13 MR. McMORROW: Of the whole nail market?

14 COMMISSIONER WILLIAMSON: Yes.

15 MR. McMORROW: This is just a guesstimate.  
16 I'd say .05 percent.

17 COMMISSIONER WILLIAMSON: It's a pretty  
18 small part.

19 MR. McMORROW: It's a sliver of a sliver,  
20 really, yes.

21 COMMISSIONER WILLIAMSON: No, I was just  
22 wondering.

23 MR. McMORROW: Yes, it's very small

24 COMMISSIONER WILLIAMSON: Thank you.

25 MR. ROSENTHAL: Well, the total nail market

1 in the U.S. is about a million tons of nails, if you  
2 include domestic and import, and his tonnage would  
3 annually be less than 1,000 tons probably, wouldn't  
4 it?

5 MR. McMORROW: Yes.

6 COMMISSIONER WILLIAMSON: Okay, thank you;  
7 as you indicate on pages 66 and 67 of your brief,  
8 Chinese producers' response in the final investigation  
9 were a small share of the industry and significantly  
10 less than in the preliminary determination.

11 Since you requested that the Commission take  
12 adverse inferences in making its determination, would  
13 you please elaborate on the data that the Commission  
14 should consider?

15 MR. KERWIN: This is Mike Kerwin from  
16 Georgetown Economics. I think the Commission can take  
17 what it can from the information that's on the record.  
18 Obviously, what is on the record in the final  
19 investigation is extremely limited in relation to the  
20 Chinese foreign producers.

21 There was a better response at the  
22 preliminary stage of the investigation. Obviously,  
23 those data are more detailed than what you have before  
24 you now. But even in that instance, those numbers  
25 represent a very small element of the entire universe

1 of Chinese producers.

2 I think it's certainly within your rights,  
3 under the law, to draw adverse inferences. But  
4 certainly from those data, you can see the extent of  
5 growth of the industry. There are things that can be  
6 gleaned such as that the growth of the industry in  
7 China has been absolutely astounding over this period.  
8 From those data, you could extrapolate to assume that  
9 the Chinese industry as a whole is growing at a  
10 tremendous rate, and presents a huge threat to the  
11 domestic industry.

12 But in terms of the overall percentage of  
13 response that you've received, obviously it's very  
14 disappointing, and certainly the Commission is within  
15 its rights to draw an adverse inference on that basis.

16 MR. ROSENTHAL: I'd like to just address  
17 that briefly, just a couple points. One adverse  
18 inference is that since they haven't responded, you  
19 should assume and you should find that there are large  
20 numbers of Chinese companies, number one; number two,  
21 they have a large amount of productive capacity;  
22 number three, they have a large amount of unused  
23 production capacity; number four, that that production  
24 capacity can be and will be directed to the United  
25 States; and number five, and that's the conclusion,

1 those are facts that you can draw; and number six,  
2 that they constitute a threat of material injury to  
3 the U.S. producers.

4 Those are the sorts of inferences that you  
5 should draw by the unwillingness of the Chinese  
6 producers to provide actual information on those very  
7 specific questions that they should be answering.

8 By the way, I do want to correct a  
9 misstatement I had earlier in response to Commissioner  
10 Okun. I was talking about those questionnaire  
11 Respondents and not the pricing numbers. I apologize.  
12 Ms. Beck did correct me. But those are the sorts of  
13 things that are proper for adverse inferences, and  
14 there are others, as well.

15 MS. CANNON: If I could just add one thing  
16 about adverse inferences. Historically, the  
17 Commission has not used adverse inferences very often.

18 But one case in which the Commission has  
19 recognized the use in several other cases is precisely  
20 the situation presented here. That is, where you have  
21 producers that come in at the preliminary stage of the  
22 case and give you information, and then disappear off  
23 the face of the early by the final; and don't  
24 cooperate, don't participate, and don't submit  
25 questionnaire responses.

1                   In several cases, the Commission says, that  
2                   particular circumstance which shows that they know  
3                   about the case, they have the ability to respond, and  
4                   they have the information, but they simply chose not  
5                   to show up is so egregious that really adverse  
6                   inference inferences are warranted there. We think  
7                   that that's a very good result and an appropriate  
8                   result under the statute which permits the Commission  
9                   to take those type of adverse inferences, and it  
10                  should be adopted here.

11                  The only other point is a factual point that  
12                  Mr. Libla raised regarding the Chinese situation, that  
13                  I would ask him to just add a point about regarding  
14                  their home market.

15                  MR. LIBLA: To my knowledge, they don't have  
16                  much of a home market. The consumption in China of  
17                  nails is very minimal; in that the majority of their  
18                  buildings are high rise concrete and so on, and of  
19                  their homes.

20                  COMMISSIONER WILLIAMSON: I was about to ask  
21                  you, with all the construction we hear about.

22                  MR. LIBLA: So if they don't export, they  
23                  don't do business.

24                  COMMISSIONER WILLIAMSON: Okay, in fact, one  
25                  of my questions was going to be, what data do we have

1 or any indication that the bulk of those non-reporting  
2 firms are in the export business?

3 MR. KERWIN: Commissioner Williamson, if I  
4 could add, are limited as they are, the data that are  
5 in the staff report from the Responding Chinese  
6 producers indicate that the percentage of their  
7 shipments that go to their home market is absolutely  
8 infinitesimal. It's extremely small.

9 The vast, vast majority of what is being  
10 produced is being exported; and of that quantity, the  
11 vast, vast majority is coming to the U.S. market.  
12 It's really some of the most striking foreign producer  
13 numbers that I've ever seen.

14 MR. CRONIN: In their home use, their  
15 residential construction is concrete block or brick.  
16 They make a lot of brick, too.

17 MR. ROSENTHAL: Okay, one last point,  
18 obviously, the purpose of drawing an adverse inference  
19 is that you haven't gotten cooperation, and you are  
20 assuming that had they provided the information, it  
21 would have worse than their failure not to provide it.  
22 So you have to assume that what they would have  
23 provided would have not been helpful to them. I know  
24 the Commission is loathe to draw those inferences.  
25 But we urge you to do that here.

1                   COMMISSIONER WILLIAMSON: Okay, and I'm  
2 loathe to go any further on this one; thank you.

3                   CHAIRMAN PEARSON: Commissioner Pinkert?

4                   COMMISSIONER PINKERT: Thank you, Mr.  
5 Chairman; I have some questions on impact that I would  
6 like to address, at least initially, to the  
7 economists on the panel.

8                   First of all, how should we factor into our  
9 analysis the decline in housing starts and the  
10 consequent decline in demand during the POI? I ask  
11 that question because I assume -- but correct me if  
12 I'm wrong -- that even in the absence of pressure from  
13 imports, that those factors in the market would have a  
14 adverse impact on the domestic industry. So how  
15 should we factor this into the analysis?

16                   MS. BECK: Commissioner Pinkert, if I could  
17 start by saying, I think that in 2007, which would be  
18 over the entire period of investigation, really the  
19 only period that you could you really attribute  
20 housing decline at all, the industry witnesses may  
21 want to detail a little further.

22                   But I think what really is more indicative,  
23 if you look at the market as a whole over the POI from  
24 2004 to 2007, there really wasn't a significant  
25 decline in the market until you look at 2006 to 2007.

1           So from 2004 to 2005 to 2006, there was  
2 really a minimal decline. So over that period, what  
3 you did see was this spike in imports, which continued  
4 in 2007, in terms of not only volume but also market  
5 share.

6           So I think we really need to look at it in  
7 terms of what was happening with consumption, and to  
8 focus on the fact that you really didn't see the  
9 decline until 2007. Even then, it wasn't a tremendous  
10 decline.

11           MR. KERWIN: I'd just follow up on that by  
12 saying I think in assessing the causation here, what  
13 you really need to focus on is the market shares, the  
14 volumes of imports that came in from China, and the  
15 market share of the domestic industry.

16           In a declining market, in a contracting  
17 market, the domestic industry had an enormous decline  
18 in shipments. That decline far outstripped the  
19 decline in overall consumption of nails in the U.S.  
20 market.

21           So the domestic industry's market share  
22 declined precipitously over this period, and surprise,  
23 surprise, the Chinese imports did the exact opposite.  
24 In a declining market, they increased their share of  
25 the U.S. market quite substantially. I think when you

1 are assessing the causation in this context, that that  
2 is key right there.

3 Obviously, the Commission has to take the  
4 industry and the market as it finds it; and certainly,  
5 the conditions in relation to housing starts in 2007  
6 were obviously a negative factor in the market.

7 But I think in trying to decipher which was  
8 the more important effect, I think you really have to  
9 examine those market shares and what went on in  
10 relation to the domestic industry and the Chinese  
11 imports. That far outweighed what went on with the  
12 housing market.

13 COMMISSIONER PINKERT: Now looking to the  
14 imminent future, where do you see demand going in this  
15 market? Do you see a continued decline, as a result  
16 of the situation in the housing market or for any  
17 other reason; or do you see it leveling off?

18 MR. ROSENTHAL: Mr. Bernanke could not be  
19 with us today. I think people are looking around the  
20 table to try to figure out.

21 COMMISSIONER PINKERT: Was that a conscious  
22 decision on your part not to bring him?

23 (Laughter.)

24 MR. ROSENTHAL: Yes, and you can draw an  
25 adverse inference.

1 (Laughter.)

2 MR. ROSENTHAL: We've talked about this,  
3 too; and I think no one really knows where the bottom  
4 is and when things are going to turn around.

5 MR. CRONIN: Yes, we have major customers  
6 that are involved in the stucco netting business for  
7 housing that are involved. They distribute different  
8 products to the construction market; and particularly,  
9 I'll talk about the housing market.

10 It looks like some of them think things will  
11 start to improve as early as forth quarter of this  
12 year. But a lot of them feel like we've got another  
13 rough year ahead of us after that, before we're going  
14 to start to see any kind of substantial turn around.

15 So, you know, the business volumes right now  
16 are down. But we'll have an opportunity. We may sell  
17 a little less volume, but if we get a positive ruling  
18 here today, we think we can live on that volume and be  
19 profitable.

20 COMMISSIONER PINKERT: Now I have a question  
21 that you may not be able to address in public session;  
22 but you may have to address in the post-hearing. But  
23 I'm wondering whether you can help me to understand  
24 what explains the trend in per-unit SG&N, selling  
25 general and administrative expenses during the period

1 of investigation.

2 I can't say in public session what that  
3 trend is. But if you have something you can say in  
4 public session, that would be great. Otherwise,  
5 please address that issue in the post-hearing.

6 MS. BECK: We can say publicly that a large  
7 part of the trends is SG&A was driven by the closures  
8 and reduced operations, reduction production of U.S.  
9 producers over the period. That was a large driving  
10 force.

11 COMMISSIONER PINKERT: If you could add  
12 anything further in the post-hearing, I would  
13 appreciate it. Also, how does the domestic industry  
14 respond to the argument that this is an industry that  
15 is plagued by chronic low capacity utilization; so  
16 that we should, according to this view, perhaps not be  
17 as alarmed by capacity utilization during the POI,  
18 because it's just an indication of a chronic situation  
19 over a longer period of time?

20 MR. LIBLA: My opinion is that the chronic  
21 would strictly be due -- if you wanted to call it  
22 chronic and I don't know what that definition of  
23 chronic really means -- but in my view, the low priced  
24 imports and to the sheer mass invasion of them over  
25 the last few years, and not just the POI but going

1 beyond that, has caused many of these companies I  
2 mentioned earlier in my initial statement to close or  
3 cease operations or close permanently. So I don't  
4 know of any chronic thing due to any other reason,  
5 other than massive imports at low prices.

6 COMMISSIONER PINKERT: Are there any other  
7 perspectives?

8 MR. KERKVLiet: I think David said it very  
9 well. It's kind of the chicken before the egg type  
10 thing. I mean, the capacity utilization was directly  
11 attributable to the imports by subject country. If  
12 you look at the market share that China has taken over  
13 the overall consumption, which Peter just said roughly  
14 is about a million tons, they are the driver in the  
15 market.

16 As that driver in the market, if you can't  
17 meet that low priced number that's coming in, and you  
18 can't do it at a competitive standpoint, you have to  
19 make the unfortunate and the really difficult decision  
20 of shutting down capacity, whether it be permanent or  
21 whether it be through layoffs.

22 MR. STIRNAMAN: If it weren't for the  
23 imports, my company would still be in the nail  
24 business.

25 MR. McMORROW: In our case, we were running

1 at full capacity, up until the Chinese entered the  
2 market. Since then, there's been a continuous decline  
3 every year since then. Going back to your prior  
4 question, Commissioner, about SG&A and so forth, in  
5 our case, we have a fair amount of fixed costs; and as  
6 our volume goes down, fixed costs are less supported  
7 obviously by sales. So our SG&A goes up and has been  
8 going up.

9 COMMISSIONER PINKERT: For the post-hearing  
10 when you go address the per-unit SG&A issue, I would  
11 also appreciate it if you address what impact that has  
12 had on overall industry profitability, as well as the  
13 profitability on a company-by-company basis; thank  
14 you. Thank you, Mr. Chairman.

15 CHAIRMAN PEARSON: You've mentioned a  
16 significant number of plant closures in recent years.  
17 Can you give me any sense of what percentage of the  
18 volume that could have been produced by those plants  
19 would be accounted for by integrated producers,  
20 compared to non-integrated producers; some type of  
21 ballpark, if you're willing here in the public  
22 session? Otherwise, we could do it in the post-  
23 hearing, but I was just trying to get a sense of this.

24 MR. ROSENTHAL: I think we need a little  
25 time.

1                   CHAIRMAN PEARSON: Okay, as you think about  
2                   it, let me know if you come up with a number, okay,  
3                   and we'll shift back.

4                   Given that there have been plant closures,  
5                   there obviously has been some financial pressure on  
6                   the industry for awhile, okay? Because, you know, you  
7                   generally don't close a plant unless there's some  
8                   financial justification for doing so.

9                   Has this industry avoided the type of self-  
10                  destructive price under-cutting that we sometimes see  
11                  in industries where firms are having a lot of  
12                  financial trouble; maybe about to go into bankruptcy  
13                  or in bankruptcy, where they are running to maintain  
14                  cash flow, and they're not in a position to cover full  
15                  costs, and you can get a downward spiral of prices?  
16                  Has this industry seen that, or has it avoided that?

17                  MR. LIBLA: I don't have the list of names  
18                  of the closure in front of me. I have it in my  
19                  briefcase, which I shouldn't discuss here in the  
20                  public forum.

21                  But many of those companies that have ceased  
22                  manufacturing nails are still in business today in  
23                  other wire products. So, you know, they didn't leave  
24                  nails because they were not managing their financial  
25                  well being well. They left because of pricing.

1 CHAIRMAN PEARSON: No, no, I understand  
2 that.

3 MR. LIBLA: Okay.

4 CHAIRMAN PEARSON: It's entirely possible to  
5 envision an industry in which one or more major firms  
6 are operating in bankruptcy, and they're just trying  
7 to generate cash flow to make payroll.

8 So in those instances, we can see some very  
9 undisciplined pricing, where they're just trying to  
10 cover variable costs and generate some cash. You've  
11 not seen that in this industry. Am I deducing that  
12 correctly, Mr. Cronin?

13 MR. CRONIN: I don't think we've seen that.  
14 Our company -- and we're a bulk nail producer in  
15 Colorado -- we're operating at maybe 20 percent  
16 capacity. Because we're not going to sell nails that  
17 are unprofitable, and we're fully integrated. So what  
18 we've done is de-emphasize that business, and we've  
19 curtailed any capital improvements or any capacity  
20 increases, just because of the low pricing.

21 CHAIRMAN PEARSON: Mr. Kerkvliet?

22 MR. KERKVLIIET: I think that we could  
23 probably provide something to you in a post-hearing  
24 brief; not that it's confidential.

25 But I think if you look at the companies

1 that have shut down, or shut down, as David said,  
2 fettered their nail capacity, if you look at their  
3 cash flow and you look at how they've operated as a  
4 company overall, I think you'll see that the pricing  
5 in the industry was set from an import level basis;  
6 not because of the undisciplined approach that you  
7 might have mentioned.

8           Because I think if you look at the industry  
9 as a whole, they are still viable; they are still in  
10 other business, in general. So I think if we could  
11 probably provide an analysis to you, that will show it  
12 to you in black and white.

13           CHAIRMAN PEARSON: Okay, I would be  
14 interested in that, just because that would help me  
15 understand that this is a different business than some  
16 others.

17           I can understand though why it may be  
18 correct. Because almost all producers will know very  
19 specifically what their input cost would be for the  
20 wire rod. Almost all producers, since they're short-  
21 term contracts or spot sales, they're going to know  
22 pretty closely what they can get for the nails.

23           If you know both sides of the equation,  
24 there's not a likelihood that you'd have a lot of  
25 people selling below variable costs. You might have

1 people swallowing some fixed costs. I could certainly  
2 envision that; Mr. Cronin?

3 MR. CRONIN: Yes, we provide data to our  
4 sales group and all our product lines. We require  
5 them to sell our products at a profit. We track their  
6 performance and we track the performance of the  
7 different product groups. That's how we decide where  
8 to put our capital money for increased capacity or new  
9 products.

10 CHAIRMAN PEARSON: Okay, good, I appreciate  
11 those answers. Mr. McMorrow, I have one question for  
12 you with your cut nails. Are these the type of nails  
13 used by farriers to shoe horses?

14 MR. McMORROW: They look very alike. But  
15 horse shoe nails are different, because there's a very  
16 sharp point on a horse shoe nail. But in general, the  
17 machines that make horse shoe nails are more or less  
18 like what we have in cut nails. The corners, the  
19 angles, the radii are not as defined. You don't want  
20 the horse to suffer too much by trying to put a blunt  
21 nail into its hoof. But anyway, no, it's not the same  
22 nail. But it's very similar.

23 CHAIRMAN PEARSON: Okay, are horse shoe nail  
24 a part of subject product here?

25 MR. ROSENTHAL: No, but in the preliminary

1 conference, counsel for one Respondent, Mr. Leonard,  
2 did the poem about, for loss of a nail, et cetera.  
3 But it was non-subject nails.

4 MR. CRONIN: And none of us provided the  
5 nails for Big Brown before his race.

6 CHAIRMAN PEARSON: Thank you for that  
7 clarification. I thought someone used lead nails.

8 Okay, I should clarify for the record, I  
9 never had shod horses, okay? But I've seen this.  
10 I've seen the nails, and they look not so terribly  
11 dissimilar from the ones that were passed around  
12 earlier. So I just was curious.

13 Then finally, my Commissioners would be  
14 disappointed if I didn't do something that was a  
15 little more off the wall that I have so far. Mr.  
16 Kerkvliet, this is for you. If you prefer not to  
17 respond, that's fine. You can do it in the post-  
18 hearing or not at all. But I'm just curious, did you  
19 come into Gerdau in the acquisition of North Star?

20 MR. KERKVLIIET: Yes, I did.

21 CHAIRMAN PEARSON: Okay, I thought that  
22 might be the case. Then your surname is Norwegian?

23 MR. KERKVLIIET: It's Dutch.

24 CHAIRMAN PEARSON: Dutch, oh, okay.

25 MR. KERKVLIIET: It means church by the

1 brook.

2 CHAIRMAN PEARSON: Okay, well, I was with  
3 you on church. I wasn't sure what it was by; okay,  
4 good. Thank you very much for that.

5 MR. KERKVLIIET: You're welcome.

6 MR. LIBLA: You wouldn't hold that against  
7 him, would you, Mr. Chairman?

8 (Laughter.)

9 CHAIRMAN PEARSON: Mr. Rosenthal, did you  
10 have something to add?

11 MR. ROSENTHAL: No, I don't think that Mr.  
12 Kerkvliet mentioned his Minneapolis roots quite as  
13 much as he should have.

14 (Laughter.)

15 CHAIRMAN PEARSON: Okay, well, I think I've  
16 exhausted all my questions, reasonable and otherwise.  
17 So let me turn now to Madam Vice Chairman.

18 VICE CHAIRMAN ARANOFF: Thank you, Mr.  
19 Chairman.

20 The Chairman was asking some questions about  
21 plants that have been closed by the domestic industry.  
22 Of those plants, can you give me an idea, have they  
23 mostly been dismantled or could they be restarted, and  
24 what would it take to restart them?

25 MR. STIRNAMAN: Well, at Keystone, our plant

1 is completely disassembled. The machinery is gone.  
2 It's been sold. And so we could not and have no  
3 intentions of starting back in the nail business.

4 VICE CHAIRMAN ARANOFF: Did you sell the  
5 equipment to a domestic producer, or did you ship it  
6 out of the country?

7 MR. STERNMAN: It was sold to a domestic  
8 producer.

9 VICE CHAIRMAN ARANOFF: All right, so  
10 someone else could still use it to produce nails?

11 MR. STERNMAN: Yes.

12 VICE CHAIRMAN ARANOFF: Okay. Mr. Libla,  
13 were you leaning towards your microphone?

14 MR. LIBLA: I guess I just have a habit of  
15 doing that. I would confer with Mr. Sternman that  
16 much of the machinery has been dismantled and sold to  
17 other parties, or, in some cases, I think maybe some  
18 people still owe him some of it, but they just have to  
19 put it back together. For example, I think Davis Wire  
20 owns a substantial amount of machinery that could be  
21 brought back online.

22 MR. KERKVLIT: I think from a --

23 MR. LIBLA: Excuse me, Jim, so does Mid  
24 Continent. We have substantial quantities of nail-  
25 making machinery not being used currently.

1                   MR. KERKVLIIET: From Gerdau Ameristeel's  
2 standpoint, we shut down the capacity and actually  
3 shut down the facility overall and sold the equipment  
4 to another producer.

5                   But to follow up to answer your question,  
6 what would it take to bring that capacity back on  
7 line?, I think it's to be able to earn a reasonable  
8 return for your efforts.

9                   VICE CHAIRMAN ARANOFF: Okay. I think I'd  
10 ask for the post hearing, if you would just go plant  
11 by plant through the plants that have closed and give  
12 us an indication of whether the plant could be brought  
13 back into operation.

14                   If not, whether the equipment was sold to  
15 another domestic producer or was disposed of in some  
16 other way? That would be helpful just in keeping  
17 track of where all of this capacity has gone.

18                   MR. KERKVLIIET: Okay.

19                   VICE CHAIRMAN ARANOFF: I'll note for the  
20 record that there is some nodding on the part of the  
21 panel.

22                   MR. ROSENTHAL: Yes, we'll do that.

23                   VICE CHAIRMAN ARANOFF: Thank you. I know  
24 Mr. Kervliet, you mentioned, that Gerdau had sold its  
25 assets to another domestic producer. And I believe

1 that that is on the public record that they were sold  
2 to Mid Continent.

3 So I wanted to ask, Mr. Libla, if those  
4 assets were purchased early in 2008, is that a sign  
5 that you have faith in a positive financial future for  
6 the U. S. nail market?

7 MR. LIBLA: Depending on the outcome of this  
8 trade case, ma'am, totally.

9 VICE CHAIRMAN ARANOFF: But the purchase  
10 wasn't contingent on the outcome of this trade case.

11 MR. LIBLA: But we felt positive that if the  
12 facts were presented fairly, we would have a positive  
13 outcome of this case, so I had confidence in you, the  
14 Commissioners.

15 VICE CHAIRMAN ARANOFF: Are you using those  
16 assets right now that you purchased from Gerdau, or  
17 are they sitting idle?

18 MR. LIBLA: Some of them have already been  
19 installed and are being used today.

20 VICE CHAIRMAN ARANOFF: Okay, thank you.

21 Let me go back briefly to the pricing  
22 questions that I was asking at the end of my last  
23 round of questions.

24 We had gotten to the point of hearing that  
25 it's typical for customers to be in touch and be

1 purchasing monthly or more frequently. But I wanted  
2 to know: when a customer is ready to make a purchase,  
3 what is the typical practice?

4 Is the typical practice that the customer  
5 calls you and says how much they need, and you give  
6 her a price? Do they put something up for bids, so  
7 that multiple offers are made like on a request for  
8 quotation basis. How exactly does the process work?

9 MR. KERKVLIIET: We have a mixed bag of  
10 customers, and how they actually purchase and their  
11 decision to purchase. Some send out bids requests.  
12 If you happen to be the low price, you get the order;  
13 and, if you're not the low price, you don't get the  
14 order.

15 And there are others they buy from us every  
16 month for so long as we are competitive. So, you  
17 know, we would have a very mixed bag I think of how  
18 they make their decision.

19 VICE CHAIRMAN ARANOFF: Now, there are no  
20 published public pricing data for this industry that  
21 you can consult to know whether your prices are  
22 competitive, is that correct?

23 This isn't the kind of thing, you know, that  
24 Purchasing Magazine, or an institution of that sort,  
25 is publishing prices on?

1 MR. KERKVLIIET: No.

2 VICE CHAIRMAN ARANOFF: Okay. So you're  
3 basically deciding what price to offer based on market  
4 intelligence, what worked the last time, that sort of  
5 thing?

6 MR. KERKVLIIET: Pretty much.

7 VICE CHAIRMAN ARANOFF: Okay. Do customers  
8 ever have sort of a multiple stage bidding processes,  
9 or do they just ask you what your price is and  
10 whoever's best price is the best wins?

11 MR. KERKVLIIET: Well, as I said earlier,  
12 some of those buyers will -- they don't give you a  
13 second chance. Your number is either right the first  
14 time or you're done for that round of ordering.

15 Now those same customers may be buying on a  
16 monthly or quarterly basis. But in large, those  
17 particular customers that do that, if you're not right  
18 there with the number, you're not going to get it.

19 Then, we have other customers on the other  
20 hand that are quick to let us know because they are  
21 more loyal to us maybe and more interested in buying  
22 domestic. If they can, they'll let us know where the  
23 numbers need to be. Oftentimes, that ends up leading  
24 to poorer pricing as a result of the import price  
25 levels that they have available to them.

1                   VICE CHAIRMAN ARANOFF: Is it your practice,  
2 in that case, to lower your price in order to keep the  
3 sale, or would you prefer, for your bottom line, to  
4 sell only where you can make a good-enough price to  
5 come out ahead?

6                   MR. KERKVLiet: I think the data would  
7 probably support the fact that the industry attempts  
8 to maintain that customer relationship until it is  
9 absolutely no longer profitable, when you change one  
10 dollar for eighty cents.

11                   When it gets to that point, then you have  
12 decide: All right, I can't, that don't work any more,  
13 I would say that in our experience, prior to closure,  
14 that our selling approach with our customer base was  
15 on a consultative basis, meaning that you had dialogue  
16 on an ongoing basis and you'd try to sell them.

17                   Or you'd ask them how many tons, or how many  
18 boxes, how pallets, how many truckloads were they  
19 going to buy on a monthly basis, and they would tell  
20 you that we would like to buy from you, or they would  
21 keep us in the loop, or keep us in play as being an  
22 insurance policy, if you will, for the imports.

23                   So if, on that monthly consultative basis,  
24 they'd say: Look, Jim, we'd love to give you the order  
25 but our number from China is x, I have to place more

1 of my business there. So, we would see our volume  
2 work within a range relative to where the import  
3 number was, and/or if that import boat was late for  
4 whatever reason.

5 It was really more from a month-to-month  
6 consultative approach, but for the use of Gerdau  
7 Ameristeel & Wire's basis, there's no selling. Other  
8 people can talk to it. We were seen as an insurance  
9 policy only for the import business, in our case.

10 VICE CHAIRMAN ARANOFF: Okay. Does that  
11 mean -- is it your experience, those of you who are  
12 making the product, that your customers tend to split  
13 their orders between a multiple purchasers sort of the  
14 idea, insurance that there is an adequate supply?

15 Is that a common practice, or is it more  
16 common for a purchaser to throw their entire purchase  
17 to whoever has the lowest price that month?

18 MR. LIBLA: We will have customers, and I'm  
19 not sure that I can answer your question properly, but  
20 we will have customers that will buy from more than  
21 one vendor. I think in any industry you'll see that,  
22 that they buy from more than one vendor for whatever  
23 their reasons are, or maybe it's just a fear factor.  
24 Maybe it's a philosophy or business plan that they  
25 will have more than one vendor.

1           In many of Mid Continent's customers, we are  
2 the only vendor except to the point of price. When it  
3 gets to the price, again, if it gets too low, I mean  
4 our price gets too high, then we can lose that  
5 business, and when we lose it, it doesn't come back  
6 easy.

7           In cut nails, we have and have had customers  
8 who have split the business between us and China and  
9 paid a much higher price from us, but the only reason  
10 is that they had customers who demanded that they be  
11 furnished with our nails.

12           And also the government of Puerto Rico has a  
13 buy-American policy, so anything going to government  
14 projects ostensibly have to be American. That has  
15 helped us somewhat, but, in general, whoever has the  
16 lowest price gets the job.

17           VICE CHAIRMAN ARANOFF: Okay. I appreciate  
18 all those answers, thank yo very much.

19           CHAIRMAN PEARSON: Commissioner Okun?

20           COMMISSIONER OKUN: Thank you, Mr. Chairman.

21           For the producers: If an order is imposed,  
22 would your product mix of nails, of the different  
23 types of nails you produce, would it change?

24           MR. LIBLA: We could add some products and  
25 we could probably add them fairly quickly to our

1 staple of offerings.

2 COMMISSIONER OKUN: Would that be a  
3 particular type of nail that you can think of?

4 I know there are a lot of different types,  
5 but is there anything that you did produce that you  
6 don't produce now that you think would come back?

7 If this is something that you could answer  
8 post hearing, you could do that as well.

9 MR. LIBLA: I really think, in our case, we  
10 just increase our production and increase our volume  
11 and improve our profitability. But our company made a  
12 full line of bulk nails. We could do that again. We  
13 still have all the toolings. So, as some of this  
14 business came back, if some items that were currently  
15 not producing, if they wanted them, we could tool up  
16 and make them.

17 And I would add, ma'am, that I'd be happy to  
18 share some examples of those items that we are  
19 contemplating bringing on should we be successful.

20 COMMISSIONER OKUN: Okay. If you could put  
21 that in the post-hearing, I would appreciate that.

22 MR. LIBLA: I don't mind doing it.

23 COMMISSIONER OKUN: Mr. Dees, does that  
24 apply for your company?

25 MR. DEES: Yes, ma'am, we've had plans to

1 expand our product line to different nails. The only  
2 reason we've held back is we were trying to find out  
3 what you guys were going to decide; and then,  
4 basically, we, in the past, have been somewhat like  
5 they have, a fill-in or insurance policy. If boats  
6 from China didn't show up on time, then we'd be  
7 everybody's friend for a while.

8           Then, the minute they got in, you wouldn't  
9 hear from the guys. It was always due to price. Yes,  
10 if we could -- one of the problems we faced over the  
11 past two years is that our production, because we're a  
12 fill-in company, goes up and down, up and down.

13           It's very hard to run a production facility,  
14 especially when there is less and less of us, you  
15 know, you have to lay people off and retrain them, and  
16 lay them back off again. It's disruptive. Sometimes  
17 it's not even worth it.

18           We sometimes have to weigh whether we really  
19 want to try to go to a second shift maybe, and then  
20 turn around two weeks later and start laying everybody  
21 off. But if we could get a stabilized production  
22 rate, which is starting to happen for us right now  
23 because of your preliminary decision, we're really  
24 gone up in our sales.

25           We had plans, we had an offer on the larger

1 facility, and we had already purchased some additional  
2 equipment, but we've held off on any additional style  
3 of nail which would be a corrugated type until we find  
4 out what you guys are going to do.

5 COMMISSIONER OKUN: Okay, I appreciate that.

6 I'm not sure, Mr. McMorrow, if that would --  
7 it sounds like you do kind of one type, would you add  
8 any other types?

9 MR. McMORROW: No, we're a cut nail  
10 producer, that's it. But we ramp up production to use  
11 those, any machines that are sitting there idle.

12 COMMISSIONER OKUN: Okay. then, let's see,  
13 a question for Mr. Rosenthal or Ms. Cannon: You had,  
14 in your brief I think today, talked about the Chinese,  
15 about rebate on the nails, that that would influence  
16 the Chinese, to have an incentive to export the  
17 downstream product.

18 How much weight should we put on that?

19 I ask that because obviously this has come  
20 up in a number of other cases, so I am curious because  
21 the Chinese can change those policies, can and do.  
22 So, just from how much weight we would give that, what  
23 would you?

24 MS. CANNON: I think it's a significant  
25 factor because it's been in place for a while and it's

1 consistent with an overall scheme by the government.  
2 It isn't just a limited thing that they've put into  
3 effect for a few months. There is an overall  
4 government policy.

5 I believe that we've put some of these  
6 papers on the record showing an intent by the Chinese  
7 government to really have incentives, the export of  
8 the downstream further manufactured products, and to  
9 keep the raw material inputs in the market.

10 That's what this whole dual tax scheme that  
11 they have imposed, where wire rod is subject to export  
12 taxes and has no flat rate. Whereas, products like  
13 nails have no export taxes and get a flat rebate of  
14 forces, and you see the results in the import data in  
15 this case.

16 That policy has been in place for a while.  
17 It is something that there's no indication is likely  
18 to change. And to the extent that you're looking at  
19 it, for example, for a thread analysis, where you're  
20 just looking at the imminent future, there is no  
21 indication that that's going away in the imminent  
22 future.

23 So I think that is a relevant factor for the  
24 Commission's analysis here.

25 MR. ROSENTHAL: Excuse me, I also think it's

1 relevant to your Roth analysis to the extent --

2 COMMISSIONER OKUN: I was going to get into  
3 that, so go ahead.

4 MR. ROSENTHAL: It's not just that, but it's  
5 other things that are unique to China that make the  
6 exports from China so much more different than any  
7 other country's exports.

8 I mean one of the fascinating things that  
9 we've learned during the last year or so is: How many  
10 of the other countries that used to be exporters to  
11 the U. S. can't compete with China. Korea, Taiwan,  
12 Mexico, in the past, they have been significant  
13 exporters to the U. S. in nails, and now they can't  
14 even touch the Chinese prices.

15 Indeed, as some of the industry's members  
16 can elaborate, Korean machines have been shipped to  
17 China. They are being employed in Chinese factories.  
18 So, Korea and some of these other countries no longer  
19 even have the capacity to ship the way the Chinese  
20 can. And no one, the record will bear this out, no  
21 one can touch the Chinese prices.

22 So there are a lot of different things going  
23 on there. The export-oriented industry in China,  
24 government support not just on the back rebate, but  
25 with respect to subsidies on raw material costs as

1 well. There is no other import source, if you will,  
2 that aligns so many different things, and makes them  
3 so unique the way that China does in nails.

4 We have mentioned some of those things.  
5 And, in our pre-hearing brief, will elaborate on some  
6 of what I just said here. But, clearly, the  
7 government policy in China on nails is much different  
8 than any place else.

9 COMMISSIONER OKUN: Okay. I have just some  
10 additional questions that relate to the non-subjects  
11 and Bratsk analysis. I heard your arguments and  
12 understand that you would not classify this as a  
13 commodity product.

14 One question, I guess going more to the  
15 significance of non-subjects: So, in this case, the  
16 market is dominated by non-subjects and subjects  
17 combined?

18 In looking at that and other cases we've  
19 done, I think in those cases we have seen that as  
20 being making non-subjects significant that they're a  
21 very large presence; and, obviously, they've gone down  
22 with the presence of subject Chinese imports.

23 But help me understand why that shouldn't be  
24 a factor in looking at their significance in the  
25 market?

1 MS. CANNON: We're not so much arguing  
2 against their significance, we're arguing against  
3 their price competitiveness. They are not price  
4 competitive with the other imports.

5 COMMISSIONER OKUN: Okay. So, on that --

6 MS. CANNON: We're not suggesting that  
7 they're not a significant factor generally. We are  
8 suggesting that they're certainly not significant  
9 enough to replace China, the subject imports from  
10 China.

11 They are not even close to that. Their  
12 import volumes have been going down. They are showing  
13 just the opposite behavior that you're seeing  
14 exhibited by the subject imports that are increasing  
15 their market share.

16 And their prices, they're averaging values  
17 are much lower across the board than what you're  
18 seeing from China. I'm sorry, much higher across the  
19 board than what you're seeing from China.

20 COMMISSIONER OKUN: Well, this might be a  
21 question that the producers can answer: But if you  
22 look at it again, just the transactions that are being  
23 increased in subject that decrease in non-subjects,  
24 are they seeing the same type of nails?

25 I mean: Are the non-subjects losing out

1 because the Chinese are bringing in the same type of  
2 nails? Are they competing?

3 I see heads shaking. It's that product, so  
4 they're making the same things, okay.

5 With respect to averaging of values, I know  
6 that you've talked a lot about them today,  
7 particularly in light of our pricing data, there are a  
8 lot of different products out there. Is this a good  
9 case to look at AUVs, either for purposes of pricing,  
10 or in looking at the competitiveness here?

11 MS. CANNON: Well, certainly, for the  
12 overall AUVs, I recognize that there were a mix. But,  
13 in this case, you have an unusual break-out by type of  
14 nail that was gathered by your staff from the various  
15 parties to the case that shows, depending on whether  
16 it's a corrugated nail, or a bolt nail, in different  
17 forms, in different finishes and different types.

18 They were in multiple break-outs, and  
19 consistently, you see that they are lower prices, or  
20 lower AUVs.

21 I think given that pattern, even though  
22 there could be some product mix, it's so overwhelming  
23 that it's a pretty strong indication that you have  
24 underselling by China as compared to everybody else  
25 here.

1                   COMMISSIONER OKUN: Okay. I know my time is  
2 running out and we've kept you a very long time, and  
3 I'm hungry. So I'll make my last two questions for  
4 post-hearing.

5                   One is: If you can respond post-hearing to  
6 the argument from Respondents regarding whether we  
7 would expect to see Paslode increase, in fact eat up  
8 the rest of the Chinese companies to sell here with as  
9 being de minimis and out of the case?

10                   Then, second, there was a lot of discussion  
11 about what the producers see in terms of their  
12 competition with the Chinese product, and what's going  
13 on in pricing, and the responses to the Vice Chairman  
14 in particular, in that you never mentioned non-  
15 subjects but they are a big part of the market.

16                   So, for purposes of the post-hearing, if the  
17 producers can help me understand where the producers  
18 see the non-subjects in the market and are they, or  
19 are they just not at all in there if the Chinese are  
20 competing? Because, again, there is a lot of product  
21 in the market.

22                   With that, I want to thank all of you for  
23 your response. It's been very helpful this morning  
24 and this afternoon.

25                   Thank you, Mr. Chairman.

1 CHAIRMAN PEARSON: Commissioner Lane?

2 COMMISSIONER LANE: I just have one question  
3 and I am going to direct it to Mr. Kerkvliet. You  
4 said that you would increase your production if you  
5 got the right return on your assets. So I was going  
6 to ask you: What you would deem a reasonable return on  
7 your assets in order to warrant an increase in your  
8 production?

9 MR. KERKVLIE: Well, it was more of in a  
10 theoretical case because we've sold our equipment.  
11 We're not in the business any more.

12 But, as far as a return, I'd be prepared to  
13 answer that, as from a company perspective, what we  
14 expect our assets to be returning for the corporation,  
15 I will say that throughout the whole period of revue,  
16 if you looked at the Atlas Steel & Wire assets  
17 relative to other businesses, whether mill related or  
18 downstream, the Atlas assets continually -- likewise,  
19 you will see that we didn't make any money. So they  
20 perform much less than the overall company average  
21 much less.

22 COMMISSIONER LANE: Okay, thank you.

23 Mr. Cronin?

24 MR. CRONIN: I was just going to say when we  
25 look at capital projects in our company, we look at an

1 internal rate of return. We like to see our return on  
2 investment in a couple of years on new projects.

3 COMMISSIONER LANE: Okay, thank you.

4 Does anybody else want to answer that? If  
5 not, I want to thank all of you for your testimony  
6 today, and we look forward to the post-hearing  
7 responses.

8 CHAIRMAN PEARSON: Commissioner Williamson?

9 COMMISSIONER WILLIAMSON: Thank you, Mr.  
10 Chairman. I have no further questions, and I would  
11 like to thank the witnesses for their testimony.

12 I would also like to say something to what  
13 Mr. Pinkert said: Although you may have a light touch,  
14 he has a very, very deft touch.

15 CHAIRMAN PEARSON: Commissioner Pinkert?

16 COMMISSIONER PINKERT: I have nothing to add  
17 to Commissioner Williamson's statement, and I thank  
18 the panel for testifying. I look forward to the post-  
19 hearing submissions.

20 CHAIRMAN PEARSON: I also have no further  
21 questions, and I appreciate very much your  
22 participation with us today.

23 Are there any further questions from the  
24 dais?

25 (No response.)

1                   CHAIRMAN PEARSON: Okay, do members of the  
2 staff have questions for this panel?

3                   MS. TURNER: Yes, Mr. Chairman, Robin  
4 Turner, Office of the General Council, we have one  
5 question. My question is a follow-up to just some of  
6 the discussion about new customers and return  
7 customers that have occurred in the more recent time  
8 period, 2008 in particular, because of this case.

9                   If, in the post-conference brief, you can  
10 provide some documentation to show indication of these  
11 increases in shipments and sales, that would be very  
12 helpful. I believe the staff has no further  
13 questions, Mr. Chairman.

14                  CHAIRMAN PEARSON: Mr. Bogard, do the  
15 Respondents have any questions for this panel?

16                  MR. BOGARD: Thank you, Mr. Chairman. In  
17 fact I do have two very quick questions. The first is  
18 for Ms. Cannon. Earlier this morning, you read from a  
19 letter that was sent by Stanley Bostitch to its  
20 customers. Could you, for the record, give us the  
21 date of that letter please?

22                  MS. CANNON: I'm sorry, I don't see a date  
23 on the letter, Mr. Bogard. At the top, it starts by  
24 saying: On January 16th, the U. S. Department of  
25 Commerce imposed duties. So it was obviously dated at

1 some point after January 16th when the Commerce  
2 decision was issued, but I don't see another date on  
3 that letter.

4 MR. BOGARD: But it's safe to infer that  
5 it's a 2008 letter?

6 MS. CANNON: Yes, it was a 2008 I'm assuming  
7 because that was when the Commerce Department issued  
8 its decision.

9 MR. BOGARD: Great, thank you.

10 Mr. Libla, I believe, in the course of  
11 answering a question earlier this morning, you made  
12 passing reference to domestic manufacturers buying  
13 imported nail guns. Do you buy imported nail guns?

14 MR. LIBLA: Yes, we do.

15 MR. BOGARD: Thank you very much. That was  
16 my two questions. Thank you, Mr. Chairman.

17 CHAIRMAN PEARSON: Well, I think we've  
18 pretty well covered the ground this morning.

19 For lunch, I posed a question a little while  
20 ago to the Commissioners: Would they be interested on  
21 this last hearing that I'm chairing to go a full hour  
22 for lunch. Normally, I've kept it a little less than  
23 that because the afternoons sometimes get kind of  
24 late.

25 There were no objections to taking a full

1 hour, so I'm going to do even just a little bit  
2 better. My watch shows three minutes past one. Let's  
3 come back at five minutes past two. The room is not  
4 secure, so either take your stuff with you or nail it  
5 down securely.

6 The hearing stands at recess.

7 WHEREAS, a short recess was taken.

8 CHAIRMAN PEARSON: The hearing will come to  
9 order. The Chair would note that even one hour and  
10 three minutes isn't quite enough for some  
11 commissioners, but we won't mention any names.

12 Let the record show that the Vice Chairman  
13 was here and stepped out. She'll be back shortly.  
14 This is the last time that I get to have this kind of  
15 fun, okay.

16 Mr. Secretary, are we ready to begin with  
17 the Respondent's panel?

18 MR. BOGARD: Yes, Mr. Chairman. The  
19 afternoon panel, those in opposition to the imposition  
20 of the anti-dumping duties have been seated, and all  
21 witnesses have been sworn.

22 CHAIRMAN PEARSON: Please proceed.

23 MR. BOGARD: Thank you, Mr. Chairman.

24 For the record again, I am Lawrence Bogard  
25 from the law firm of Neville Peterson.

1           Before we begin, I'll introduce my panel.  
2           To the extreme far right is Denise Nemchev, who is the  
3           President of Stanley Bostitch.   Sitting to her left is  
4           Theodore Morris, who is the Assistant General Counsel  
5           and the Assistant Secretary of The Stanley Works.   On  
6           my immediate right is Mr. Chris Dutra, who is the Vice  
7           President for Product and Channel Management at  
8           Stanley Bostitch.

9           On my immediate left is my colleague George  
10          Thompson.   We ran out of tables, so sitting behind me  
11          is my colleague Casey Richter.

12          Our testimony today is going to begin with  
13          Mr. Dutra.   After he has spoken for a while, Mr.  
14          Thompson will have some things to say, and then Mr.  
15          Dutra will then have some more things to say, and then  
16          I'll have some things to speak about.

17          Chris, would you like to go ahead.

18          MR. DUTRA:   Thank you.   Good afternoon.   My  
19          name is Chris Dutra.   I have been employed in the  
20          nails industry in the United States for seventeen  
21          years.   In fact, my first real job after college was  
22          selling nails out of a van.   For thirteen of those  
23          years, I have been employed by Stanley Fastening  
24          Systems, LP, which does business under the Stanley  
25          Bostitch firm.

1           I am currently Vice President for Product  
2           and Channel Management, and I am very familiar with  
3           the United States nails market, the nails industry,  
4           both in the united States and internationally.

5           The first thing that I'd like to talk to you  
6           about this morning is your preliminary conclusion that  
7           Stanley Bostitch is not part of the U. S. nails  
8           industry.

9           Frankly, I was amazed at this. The  
10          statement that our primary interest is shifting to  
11          importation rather than domestic production shows a  
12          basic misunderstanding of Stanley Bostitch and how we  
13          make and sell nails.

14          Bostitch's origins in the United States date  
15          back to 1896 when the Boston Wire Stitch Company was  
16          founded. Today, we manufacture top quality,  
17          innovative fastening tools such as Bostitch brand  
18          pneumatic nailers and fasteners, such as nails,  
19          staples, rings, clips and corrugated fasteners both  
20          for industrial construction and home improvement  
21          applications.

22          We are headquartered in East Greenwich,  
23          Rhode Island. Our annual sales are about \$600  
24          million, and we employ nearly 1,000 people in our  
25          Rhode Island, Connecticut and Indiana manufacturing

1 facilities. And we employ another couple of hundred  
2 people in direct sales and service.

3 If you include our distribution and repair  
4 facilities, we also have operations in Kentucky,  
5 Mississippi and North Carolina.

6 Stanley Bostitch is a subsidiary of The  
7 Stanley Works of New Britain, Connecticut, which has  
8 global sales of over \$4 billion, and a U. S. work  
9 force of approximately 9,000 employees.

10 Given these facts, you can understand why I  
11 was shocked to learn that you don't consider Stanley  
12 Bostitch to be part of the domestic industry, even if  
13 you define that industry only in terms of nails.

14 Make no mistake, as far as our nails  
15 business is concerned, our primary interest is in  
16 manufacturing in the United States. We import nails  
17 from our affiliated factory in China because doing so  
18 enables us to maximize production of our higher-valued  
19 products in the United States.

20 I would like to explain a few things about  
21 the marketing of nails in the United States. The  
22 nails market has two very distinct sectors. The first  
23 is the construction sector where the customers are  
24 residential builders and remodelers. There are  
25 basically three channels of distribution in this

1 sector. In each, we sell the nails to various  
2 entities that, in turn, sell them to builders and  
3 contractors.

4 In the construction sector, we sell nails as  
5 a distinct product and we price them that way. Other  
6 products that we sell to this sector, such as the  
7 pneumatic tools, nails, staplers and other fasteners  
8 and hardware are priced and sold separately.

9 The second sector that we talked a little  
10 bit about this morning is the manufacturing, or  
11 industrial sector. Here the customer is any  
12 manufacturer that works under a roof. Our customers  
13 in this sector, for example, make up manufactured  
14 housing plants, furniture manufacturing, bedding  
15 manufacturing, fence panel shops, shipping pallets and  
16 crates.

17 Most of the distribution in this sector is  
18 direct from us to the end user. We don't sell nails  
19 to the manufacturing sector as a distinct product.  
20 Instead, we package a Fastening Solutions model that  
21 includes the nails, free bone tools, free tool  
22 service, free technical advice and non-nail fasteners  
23 such as staples, corrugated fasteners, rings and  
24 clips.

25 We price and sell our Fastening Solutions as

1 a package. For example, a furniture maker may have a  
2 dozen work stations on the production line, and each  
3 station requires a different type of fastener. What  
4 he wants from us is a package that supplies the nails  
5 he needs, the pneumatic nailer to drive the nails,  
6 staples and staplers, and all of the other fasteners  
7 required to do the job.

8 That furniture maker will not buy his nails  
9 from us and his staples from someone else. He is not  
10 going to buy some nails from us and some from someone  
11 else, and he's not going to buy our Fastening  
12 Solutions package if the nails component does not work  
13 economically for him.

14 The vast bulk of the products that we sell  
15 in our Fastening Solutions package are manufactured  
16 in Rhode Island and Indiana. At Stanley Bostitch, we  
17 have tried to keep as much nails production in the  
18 United States as possible.

19 Not all nails sell for the same price;  
20 however, the prices for pallet nails, for example,  
21 simply just aren't as high in the marketplace as  
22 prices for some other types like framing nails. But  
23 the cost of making a pallet nail is about the same as  
24 the cost of a higher priced, higher valued nail.

25 In order to avoid getting caught in a cost

1 price squeeze that would threaten our entire nail  
2 line, and thus our U. S. nails production, not to  
3 mention our Fastening Solutions marketing market, we  
4 look for cost savings on our lower priced, lower  
5 valued nails.

6 In order to take advantage of lower  
7 production costs, we used the production of our pallet  
8 nails, and some framing nails to Mexico in 1996. But  
9 by 2006, the steel wire rod cost in Mexico, as well as  
10 the freight costs, rose to a level to where we could  
11 not afford to keep manufacturing here. So we returned  
12 most of our Mexican framing nails to production in  
13 Rhode Island, and shifted our pallet nails production  
14 to China.

15 The Mexico plant was shut down entirely in  
16 the beginning of May 2007 before the petition.  
17 Ironically, the decision to close down Mexico and  
18 shift nails production - some to China and some to the  
19 U. S. - was done eighteen months prior to the actual  
20 shutdown of the facility.

21 It looks to me like your preliminary  
22 determination mistook our transfer of production from  
23 Mexico to China for a growing interest in importing.  
24 This conclusion is absolutely contradicted by the  
25 facts. It fails to recognize that we returned most of

1 the Mexican framing nails production to Rhode Island.

2 In fact, we produced more nails in Rhode  
3 Island during the July 2006 through June 2007 time  
4 period than we did in the previous twelve-month  
5 period.

6 It took us a reasonable amount of time in  
7 late 2007 to ramp up the equipment we brought back  
8 from Mexico. But, at present, our capacity  
9 utilization rate in Rhode Island is above 70 percent.  
10 As a result, today the percentage of total nails that  
11 we make in the United States, compared to imports, is  
12 much higher than your records show.

13 It also fails to recognize that we  
14 transferred production between offshore plants and did  
15 not move production from the U. S. offshore; and it  
16 fails to consider that our total imports of nails from  
17 subject and non-subject countries fell substantially  
18 during the investigation period.

19 This is true whether you look at the volume  
20 of our imports in absolute terms, or you compare them  
21 to our domestic production volume. Stanley Bostitch's  
22 primary interest is in our domestic production.

23 Our imports are part of our strategy, first  
24 adopted in 1996 with regard to Mexico to strengthen  
25 our domestic operations by selling imported nails

1 separately with complementary high-value items  
2 manufactured in the United States.

3 Thank you.

4 MR. BOGARD: Thanks, Chris.

5 George Thompson will now address some of the  
6 legal issues that are present in this case.

7 MR. THOMPSON: Thank you, Mr. Chairman.

8 In its preliminary determination, the  
9 Commission excluded four domestic producers from the  
10 domestic industry as related parties. Bostitch was  
11 one of the excluded companies. The Commission also  
12 stated its intent to revisit the issue in this final  
13 investigation.

14 The Agency should reverse course and include  
15 Bostitch as part of the industry.

16 As Mr. Dutra discussed, Bostitch's primary  
17 interest is in domestic production, not in importing  
18 the subject merchandise. Mr. Dutra discussed  
19 Bostitch's leading role in the fastening solutions  
20 industry.

21 Now, Fastening Solutions obviously is a  
22 broader category than steel nails. However, it does  
23 bespeak the company's commitment to maintaining  
24 production of higher-valued products in the United  
25 States, including nails.

1           While the data are confidential, a look at  
2           the company's relative share of domestic production,  
3           over-the-course of the investigation period, should  
4           dispel any notion that it is losing interest in  
5           manufacturing here.

6           The fact is that production of lower-valued  
7           products abroad, including in China, allows Bostitch  
8           to present its customers with a competitive package  
9           for its full range of products.

10           The Commission has recognized, in previous  
11           investigations, that a producer's importing to  
12           maintain market share is consistent with it having a  
13           primary interest in domestic production.

14           For example, this was addressed in the  
15           Retail Carrier Bags case a few years ago. The same  
16           reasoning would apply here. Excluding Bostitch from  
17           the industry will skewer the data for several reasons.

18           First, the company is one of the largest  
19           domestic producers. It makes a full range of products  
20           here; and it markets branded products that typically  
21           command a higher price point. Thus, its exclusion  
22           would leave out a major producer, and provide the  
23           Commission with a misleadingly limited set of industry  
24           data.

25           Second, ITW Paslode Exports are now excluded

1 from the scope of the investigation. Consequently,  
2 that company cannot be excluded as a related party as  
3 a matter of law. It must be included in the domestic  
4 industry.

5 Why does this bear on Bostitch's status?

6 Because Bostitch, like ITW Paslode, is a  
7 producer of branded nails. Both compete at the upper  
8 end of the market. With ITW Paslode in, it would be  
9 distortive to exclude Bostitch because that is a  
10 similarly situated company.

11 Third, Bostitch's financial data are in line  
12 with those of the overall industry. This demonstrates  
13 that including Bostitch would not distort the industry  
14 averages. It also demonstrates that Bostitch's  
15 domestic operations are not being shielded by, or  
16 otherwise benefiting from, the subject imports.

17 Now, the Commission also considers a  
18 producer's ratio of import shipments to domestic  
19 production.

20 At first glance, Bostitch's ratio appears  
21 large. It certainly showed an increase after 2005;  
22 however, the reasons for this change do not reflect  
23 any substitution of Chinese production, nor do they  
24 reflect any diminution in Bostitch's interest in  
25 domestic production.

1           Rather, there was an increase in Chinese  
2 production, as we just heard, in part because Bostitch  
3 closed its Mexican factory, and moved most of the  
4 capacity for lower-valued product to China. The  
5 remainder for higher-valued product went to the United  
6 States.

7           Thus, the growth in Chinese production  
8 reflected a movement in Bostitch's foreign sourcing  
9 rather than a movement away from domestic production.

10           At the same time, production fell in the  
11 United States because of decreased demand here. This  
12 was due to broad economic trends. The higher-valued  
13 products that Bostitch produces in the United States  
14 saw a drop in demand. This, of course, resulted in  
15 declines in domestic production and shipments.

16           If you look at the import trends, that would  
17 be consistent with the rationale that there was a  
18 decline in domestic demand that affected nail  
19 shipments across the board.

20           MR. DUTRA: I am not going to complain to  
21 you that Commerce assigned us a dumping margin based  
22 on a weighted average of one company. I know it's not  
23 your job to review Commerce's work, and I certainly am  
24 not going to argue to you that Commerce got it wrong  
25 when it concluded that Dubai Wire & Paslode in

1 Shanghai are not dumping.

2 In fact, I think that they probably got that  
3 right. The reason I say so is because I firmly  
4 believe that if our Chinese factory had been picked as  
5 a mandatory Respondent, it would have proved that it,  
6 too, was not dumping. There is no reason for me to  
7 think that Paslode's Shanghai's cost structure is  
8 significantly different than our Chinese factories.

9 ITW, Paslode and Stanley Bostitch are  
10 similarly positioned in the U. S. market. We take our  
11 costs into account when we price our nails, including  
12 nails from our China factory. If Paslode isn't  
13 dumping, I doubt that we could be.

14 What I do think is important for you to  
15 understand about the decision, however, is the  
16 disruption that all U. S. manufacturers, except ITS  
17 Paslode, will suffer if dumping duties are imposed  
18 against all Chinese exports except Paslode Shanghai.

19 I have already described the strategy of  
20 selling Fastener Solutions to the manufacturing sector  
21 of the market. ITW Paslode uses much of the same  
22 strategy and occupies the same price points we do.  
23 ITW Paslode is our competition. It will be extremely  
24 difficult for us to compete against them in the U. S.  
25 market when they have free access to their factory in

1 China and we are depositing dumping duties at 21.24  
2 percent. We may lose a significant portion of our  
3 nails business to ITW Paslode, unfortunately centered  
4 on the nails that we make in Rhode Island because ITW  
5 Paslode will be able to continue its strategy of  
6 sourcing some items in the Untied States and others in  
7 China while we will not.

8 Our business model, through which we were  
9 able to continue production of the highest-valued  
10 items in Rhode Island will be in jeopardy. ITW  
11 Paslode's business model, which, from where I sit  
12 looks a lot the same, will be preserved.

13 As I testified earlier, Stanley Bostitch  
14 sells Fastening Solutions as a package. We cannot  
15 sell that package without nails; we cannot sell it  
16 with only some nails. And we will have great  
17 difficulty selling that package carrying a price that  
18 takes a 21.24 percent dumping duty on nails into  
19 account.

20 I do not think that Petitioners should be  
21 feeling too comfortable about an affirmative  
22 determination either. With all Chinese exporters  
23 assigned a double-digit dumping margin, a lot of small  
24 Chinese manufacturers will have production equipment  
25 that they will not be able to use. The greatest value

1 in that equipment lies in selling it to the one  
2 exporter that has no dumping margin.

3 Nothing would prevent Paslode Shanghai from  
4 buying additional production equipment from the now  
5 non-competitive manufacturers and using it to expand  
6 its presence in the U.S., including items where  
7 Petitioners now focus their sales.

8 With this additional capacity and open  
9 access to Paslode Shanghai's lower cost structure, ITS  
10 Paslode would be positioned to dominate the U. S.  
11 market. Other Chinese exporters could not compete  
12 because of the anti-dumping duties.

13 And our business model, designed to support  
14 our domestic manufacturing operations, may no longer  
15 be workable. The Petitioners could not compete  
16 because it cost them more to make nails than it cost  
17 Paslode Shanghai even though Paslode is not dumping.

18 In turning to a couple of other topics, I  
19 understand that Petitioners want you to look at the  
20 year 2004 as the first year for your investigation  
21 period. There was a sudden and unexpected shortage of  
22 steel wire rod in 2004, and this caused quite bit of  
23 panic buying in the nails industry as customers got  
24 scared that if they did not buy the nails right away,  
25 there might not be any for them to buy. This panic

1 buying did artificially inflate the performance of the  
2 industry in 2004.

3 I understand that another reason they say  
4 was starting your investigation period with 2004 was  
5 necessary is because the filing of the petition has  
6 affected the volume in prices of imports in 2007 is  
7 absolutely not true.

8 I find it strange that the Petitioners are  
9 arguing to you that imports went down in 2007 because  
10 of the petition when they made critical circumstances  
11 allegations against all Chinese exporters, arguing to  
12 Commerce that imports went up as a result of the  
13 petition, I guess detailing the facts to fit the  
14 audience.

15 In any event, as far as the import volume  
16 goes, the reason imports declined is because demand  
17 declined, not because of the petition. Nobody will  
18 deny that the demand for nails was horrible in 2007.  
19 The horrible demand affected imports as well as  
20 domestic produced nails.

21 Given lead times for production, and time on  
22 the water for shipping, a petition filed in late May  
23 could not have affected imports until late in the  
24 year. As far as price, many things caused the price  
25 of nails to increase in 2007, none of them was the

1 petition.

2           What did cause nail prices to rise was the  
3 rising cost of zinc early in the year that was used to  
4 galvanize nails, the rising cost of steel wire rod,  
5 the rising freight costs to truck the product back  
6 here, the reduction by the Chinese government in the  
7 rebate of the value-added taxes on exports from 13% to  
8 5%, and the appreciation of the value of the R&B in  
9 relation to the U. S. dollar.

10           We are very, very careful to communicate  
11 price increases to our customers. When we tell  
12 customers that we need a price increase, they want to  
13 know why and we have to tell them.

14           If you would like, I can submit with out  
15 post-hearing briefs copies of letters my competition  
16 and I sent our customers documenting why we raise  
17 prices. These make it clear that the petition was not  
18 a factor.

19           It is not a secret that these are volatile  
20 times in the nails industry. We have been hit with an  
21 extra ordinary combination of falling demand and  
22 rising raw material costs.

23           Any problems that the industry may be facing  
24 are caused by these difficult combinations, not  
25 imports from China. Demand for nails in the United

1 States is driven in large part by two things. The  
2 first is housing starts. The construction sector of  
3 the nails market is tied directly to housing starts.  
4 If people are not building houses, they're not buying  
5 nails. It's that simple.

6 I do not need to tell you that the  
7 construction of new housing has plunged in the last  
8 two years. The demand for nails has plunged with it.

9 The second is the health of the economy  
10 generally. Our sales in the manufacturing sector are  
11 driven by general economic activity. An excellent  
12 example is pallet nails. Construction and repair of  
13 shipping pallets ties so closely to the economy  
14 generally that I believe pallet construction is used  
15 as an indicator of economic activity.

16 As the economy slows, so does the  
17 construction of repair of shipping pallets.

18 Again, it is not news that the economy has  
19 been slow the past year. This has been reflected in  
20 declining demand for nails in the manufacturing  
21 sector.

22 And a third lesser factor driving demand is  
23 weather. Reconstruction after major storms and  
24 hurricanes require large quantities of nails. There  
25 has not been a major hurricane in this country for

1 almost three years. Certainly a blessing for the  
2 country, but it has absolutely reduced the demand for  
3 nails.

4 At the same time that the demand has been  
5 falling, prices for our main raw material, steel wire  
6 rod, has been going crazy. The surge in rod prices is  
7 taking place everywhere in the world, including China.  
8 AIT is not just something happening in the United  
9 States. The surge began in about March of 2007.  
10 Since then, wire rod prices have increased almost 98%  
11 in China, and almost 59% in the United States.

12 I have wire rod prices forwarded to my  
13 Blackberry several times a day because the market is  
14 so volatile that I cannot set nail prices without  
15 knowing the latest wire rod cost.

16 We have been able to avoid a cost price  
17 squeeze in this environment because we have been able  
18 to raise our prices to cover our costs. Our customers  
19 know what is happening with rod costs, and they know  
20 why we are raising prices. And, quite frankly, they  
21 are not happy.

22 They push back and they push back pretty  
23 hard. But at the end of the day, we're able to cover  
24 our increased costs. I know this is true for Stanley  
25 Bostitch. I see where the Staff Report says that the

1 ratio of raw materials to net sales has declined. So  
2 it must also be true for the U. S. industry as a  
3 whole.

4 The last thing I want to talk about is the  
5 availability of wire rod in China. I have already  
6 mentioned that the cost of wire rod is rising in China  
7 as it is everywhere. In fact, the rate of the cost  
8 increase has been much faster than in other countries.  
9 So the cost of producing nails in China is rising and  
10 doing so faster than in other countries.

11 In addition, wire rod is now very hard to  
12 get in China. The same rod that we use to make nails  
13 is also used to make concrete rebar and concrete wire  
14 mesh. Both of these products are in very high demand  
15 in China as the Chinese continue their domestic  
16 construction boom.

17 To sum up, the U. S. nails industry is  
18 dealing as well as can be expected with a difficult  
19 and volatile market. We are not suffering material  
20 injury, and whatever problems we face are not caused  
21 by imports from China.

22 Thank you for your attention.

23 CHAIRMAN PEARSON: Mr. Thompson?

24 MR. THOMPSON: Thank you, Mr. Chairman. I'd  
25 like to follow up on one of the points that Mr. Dutra

1 touched on and that is the base year for the period of  
2 investigation.

3 The Petitioners have asked the Commission to  
4 extend the period of investigation to include 2004.  
5 This is an entirely results-oriented exercise, of  
6 course. Petitioners seem to believe that including  
7 2004 would provide more favorable trends than the data  
8 that the Commission has actually gathered in this  
9 final investigation. It is interesting that the  
10 Petitioners have so little confidence that the 2005  
11 through '07 data support an affirmative determination  
12 that they are now seeking to include an additional  
13 year in the investigation period.

14 However, their stated reasons for including  
15 2004 do not hold up. They assert that the very act of  
16 filing the petition in 2007 caused a change in import  
17 pricing and availability.

18 First of all, the petition was filed on May  
19 29, 2007, and we heard the Petitioners this morning  
20 say that they typically set prices on no less than a  
21 monthly basis. So if there were to be an effect of  
22 merely by filing the petition, this wouldn't have  
23 shown up until the second half of 2007, contrary to  
24 the argument that they have presented on why 2007 is  
25 inherently flawed.

1           In addition, and probably more importantly,  
2           any effect of the investigation on volume and prices  
3           would not be felt until preliminary anti-dumping  
4           duties were put into place. That did not occur until  
5           January 2008, after the investigation period's  
6           coverage was closed.

7           Inconsistently as well, they have also  
8           asserted that there are critical circumstances due to  
9           a post-petition import spike. Moreover, the trends to  
10          which Petitioners point as evidence of the petition's  
11          effect are consistent with the general decline in  
12          demand for steel nails, as Mr. Dutra has covered in  
13          detail. These trends stem from adverse macro-economic  
14          developments. The slowing housing market explains far  
15          more about import trends than does the filing of the  
16          petition in this investigation.

17          Quite aside from the flimsy rationale that  
18          Petitioners have offered for including 2004, there are  
19          a number of reasons why doing so would in fact weaken  
20          the Commission's record and its analysis. First, 2004  
21          was an anomalous year in the steel industry, as Mr.  
22          Dutra indicated. There was a spike in steel prices  
23          and a shortfall in steel supply. This led to a jump  
24          in nail prices. Nail producers sought to capture  
25          their increased costs. More importantly, it led to

1 abnormal buying patterns. There was panic buying by  
2 purchasers to avoid feared nail shortages as well as  
3 impending price increases. As a result, there was  
4 considerable front loading of purchases in 2004.  
5 Under normal circumstances, these would have been made  
6 in 2005. So 2004 is just an abnormal year from which  
7 to start the investigation.

8 But second, the Commission has not gathered  
9 2004 information in this final investigation. This  
10 was, in my view, quite proper. But I doubt now that  
11 the agency could successfully gather a full set of  
12 2004 data at this point even if it were inclined to do  
13 so.

14 There are some 2004 data available from the  
15 preliminary investigation. However, these do not  
16 cover the broader range of issues examined in the  
17 final investigation. They show incomplete coverage  
18 even of the relatively limited issues that they do  
19 address. They also show considerable inconsistencies  
20 with the final investigation data for the time periods  
21 in which they do overlap. Therefore they would  
22 provide a dubious basis on which to evaluate 2004 in  
23 any event.

24 So in sum, Bostitch urges the Commission to  
25 continue with its investigation period from 2005

1 through 2007 as it does in the typical injury  
2 investigation.

3 Thank you.

4 MR. BOGARD: Thank you, Mr. Chairman. I'm  
5 going to start my portion of the testimony by  
6 identifying those issues in which we're actually in  
7 agreement with Petitioners.

8 The first of those is that we agree that  
9 there is only one like product under investigation  
10 here. That product is Certain Steel Nails, as defined  
11 congruently with the scope of Commerce's final  
12 determination.

13 Second, we agree with Petitioners that  
14 there's a high degree of substitutability among  
15 domestically produced nails, subject nails and non-  
16 subject imports. The substitutability of subject and  
17 non-subject merchandise is certainly confirmed by the  
18 fact that the exports from United Arab Emirates plus  
19 the exports from China by Paslode Shanghai changed  
20 from subject to non-subject merchandise on Monday  
21 simply by virtue of Congress' final determination.

22 Third, while cumulation is now a moot issue,  
23 we would not have opposed Petitioner's position on  
24 cumulation if it were still relevant.

25 The scope of this investigation has changed

1 significantly because of Commerce's final  
2 determination. All merchandise from the UAE and a  
3 significant portion of the volume of merchandise from  
4 China are no longer subject merchandise and this will  
5 have a material affect on your analysis.

6 Unfortunately, the staff report didn't  
7 anticipate this possibility. Petitioners, who almost  
8 certainly did anticipate this possibility, simply  
9 chose to ignore it in their pre-hearing brief. So  
10 much of what they've told you in their pre-hearing  
11 brief has been overtaken by events.

12 I know we at the table here plan to  
13 relitigate Commerce's final determination in front of  
14 you. We certainly do understand that the exports of  
15 our factory, Stanley Longfong, are deemed to be dumped  
16 for purposes of your analysis, whether or not they  
17 actually are dumped. But you should recognize for  
18 purposes of your investigation that the dumping margin  
19 assigned to Stanley Longfong and the other separate  
20 applicants is a function of the fact that Commerce is  
21 barred by statute from including Paslode Shanghai's  
22 zero dumping margin in their calculation of the  
23 separate rates dumping margin. This is important to  
24 you because to the extent any of you are inclined to  
25 engage in a margins analysis you need to understand

1 that Stanley Longfong's margin is a result of  
2 Commerce's process and not an investigation of the  
3 Chinese factor.

4 Mr. Thompson is going to address the absence  
5 of any significant price affects by imports.

6 MR. THOMPSON: We heard considerable  
7 discussion this morning about the perceptions of the  
8 domestic industry for the Petitioners regarding prices  
9 and what the Commission's empirical data actually  
10 showed. The Commission has obtained price comparison  
11 information for eight specific products, and these  
12 were chosen because they are very common types of  
13 nails in which both the Chinese product, non-subject  
14 imports, UAE product, and the domestic product,  
15 compete. So these are very broad, they're specific  
16 product categories, but they should capture a large  
17 quantity of sales and a fairly good percentage of  
18 total sales.

19 These data reflect sales prices by producers  
20 and importers so there is no question that they are  
21 comparable. They also cover a substantial portion of  
22 the merchandise under investigation, so they give us a  
23 pretty comprehensive picture of relative price levels  
24 as well as price trends.

25 As reflected in the public report, the data

1 show predominantly higher prices by Chinese imports  
2 compared with the identical domestic product. Imports  
3 were priced higher in 58 of 94 comparisons. The  
4 margin of overselling tended to be higher than the  
5 margin of underselling in those relatively few  
6 instances where underselling did take place.

7 Moreover, domestic prices for each of the  
8 products generally trended upward from 2005 through  
9 2007.

10 Domestic and import average unit values also  
11 increased over the period of investigation. I don't  
12 want to make too much about average unit values  
13 because as we've seen, this investigation, both on the  
14 domestic side and on the import side, covers literally  
15 probably thousands of different products with  
16 different configurations and sizes. So average unit  
17 value doesn't tell us much about specific overselling  
18 or underselling, but it does indicate general price  
19 trends.

20 Importantly, the average unit values showing  
21 an increase in domestic prices would belie any  
22 conclusion that there was price depression. Price  
23 depression requires prices to decline. The  
24 information before the Commission shows that they did  
25 not. They increased. Nor was there price

1 suppression. The numbers themselves are business  
2 proprietary so I'm not of course going to go into  
3 detail here, but suffice it to say that they indicate  
4 that the industry was able to cover its cost  
5 increases.

6 We heard this morning from both Petitioners  
7 and this afternoon from Mr. Dutra that wire prices  
8 have gone through the roof and have had a considerable  
9 impact on nail production both in China and in the  
10 United States. So it is no small feat for the  
11 domestic industry to be able to cover these increased  
12 costs through their pricing. The Commission's record  
13 shows that in fact they have.

14 Now Petitioners emphatically do not like the  
15 price data that the Commission has gathered, and I  
16 don't blame them. The data contradict Petitioner's  
17 underlying theory of the case. No wonder, then, that  
18 they asked the Commission to disregard the product  
19 specific price comparisons, the empirical data that  
20 you have gathered, and set it aside in favor of their  
21 anecdotal statements about what they understand  
22 pricing to be.

23 Thus they speculate that the data must be  
24 wrong. They give a number of unsupported reasons:  
25 that the reporting parties used the wrong units of

1 measure; withheld information; et cetera, et cetera.  
2 But there is no proof offered for these theories, just  
3 speculation. That is not sufficient to question, much  
4 less disregard the price comparisons. Again, the  
5 price comparisons, the public report indicates the  
6 number of reporting companies and the approximate  
7 percentage of imports that are covered, and that in my  
8 view is a fairly high percentage overall and a fairly  
9 high, both in terms of total imports as well as in  
10 terms of the number of importers. It compares quite  
11 favorably to the typical Commission investigation.

12 Certainly no one could look at those numbers  
13 and say wow, this is the result of a poor response.  
14 Quite the contrary. But also, again without going  
15 into confidential information, the Commission will  
16 have to revisit those percentages and those numbers in  
17 light of the actions taken by the Commerce Department  
18 earlier in the week.

19 Petitioners also point to the broader  
20 product shipment price comparisons that the Commission  
21 collected only for 2007 to assert that the 2005  
22 through '07 detailed product comparisons must be  
23 flawed. However, the 2007 product categories each  
24 encompass literally hundreds of different nail styles,  
25 types and sizes. They therefore provide an inadequate

1 basis on which to compare import and domestic prices  
2 for specific product. Indeed, they were never  
3 intended by the Commission for that purpose.

4 The eight product specific comparisons by  
5 contrast provide prices for the exact same items.  
6 They offer the best evidence of whether the subject  
7 imports undersold the domestic like product, and they  
8 emphatically demonstrate that the imports did not  
9 undersell.

10 Thank you.

11 MR. BOGARD: Thank you, Mr. Chairman.

12 The record evidence in the Commission's  
13 investigation to date shows that the domestic nails  
14 industry, however you ultimately may decide to define  
15 it, is not suffering material injury by reason of  
16 subject imports, nor is it threatened with material  
17 injury. The administrative record certainly confirms  
18 what Mr. Dutra told you earlier this afternoon, that  
19 demand for nails in the United States has been  
20 horrible. The record shows there's been a 22 percent  
21 decline in U.S. consumption for certain nails during  
22 the period of investigation and that there was a 19  
23 percent decline in demand in 2007.

24 That drop in demand explains the industry's  
25 mixed results during the investigation period. We

1 can't go into detail here about those results because  
2 so much data is business proprietary, but what can be  
3 discussed publicly is that U.S. prices for certain  
4 nails increased during the investigation period and  
5 did so at a rate that was sufficient to cover  
6 increased costs for raw materials. As a result the  
7 domestic industry's financial performance can fairly  
8 be described as stable. This is a remarkably positive  
9 performance given the extent to which consumption  
10 declined during the period of investigation.

11 Mr. Thompson has already described to you  
12 the absence of any adverse price affects by reason of  
13 subject imports, but subject imports have had no  
14 adverse affect by virtue of volume either.

15 The increase in subject import volume during  
16 the investigation period was moderate. It was less  
17 than ten percent. The volume itself frankly is not  
18 significant when appropriate consideration is given to  
19 the fact that imports, and this depends on what year  
20 of the POI you want to pick, but in any given year of  
21 the POI imports would have captured between 29 percent  
22 and 41 percent of the U.S. market even if the domestic  
23 nails industry had been operating at 100 percent of  
24 its capacity.

25 These rising domestic prices and the

1 financial stability of the industry confirm that the  
2 volume of subject imports has had no adverse affect on  
3 the domestic industry. The staff report at Section 6,  
4 page 9 very accurately and succinctly describes the  
5 economic condition of the domestic industry. The  
6 report states, quoting, "The decline in sales between  
7 2005 and 2007 was precipitous. The decline in  
8 operating margins was less so and was small at the  
9 industry-wide level."

10 Declines in production, sales productivity,  
11 cash flow and capacity utilization can all be directly  
12 attributed to falling demand. Prices are increasing,  
13 financial performance is stable, as declines in  
14 operating income, the staff has found, are small.  
15 Declines in capital expenditures were unrelated to  
16 imports. There is no evidence, as you heard, of price  
17 suppression or depression. Subject imports did not  
18 have an adverse impact on the domestic industry. In  
19 short, this industry is coping remarkably well in what  
20 you've been told is a volatile market.

21 Turning to the Bratsk analysis, an issue  
22 that was discussed this morning at some length, under  
23 Bratsk the Commission is required to make a specific  
24 causation determination and to directly address  
25 whether non-subject imports are likely to replace

1 subject imports without any beneficial affect for the  
2 domestic producers. The Commission has correctly  
3 interpreted the Court's mandate as creating a  
4 presumption of replacement by non-subject imports that  
5 can then be rebutted by evidence affirmatively  
6 established on the record. Consequently the  
7 Commission must explain why the elimination of subject  
8 imports will benefit the domestic industry and why  
9 elimination of those imports will simply not result in  
10 the replacement of subject imports with non-subject.

11 The Commission must conduct a Bratsk  
12 analysis where the product under investigation is a  
13 commodity and where non-subject imports are present in  
14 the marketplace. The overwhelming majority of  
15 questionnaire responses in this investigation confirm  
16 that certain steel nails are substitutable, one for  
17 another, to such a degree that they comprise a  
18 commodity product.

19 Non-subject imports are now unquestionably a  
20 significant presence in the U.S. market. Notably all  
21 the imports from the United Arab Emirates and from  
22 Paslode Shanghai are now non-subject imports. In fact  
23 if you look at all non-subject imports they have a  
24 market penetration rate now that meets the threshold  
25 for significance set by the CIT in Tropicana Products

1 v. United States.

2 As Commissioners Pearson and Okun correctly  
3 recognized in the Commission's preliminary  
4 determination, a Bratsk analysis is warranted here.

5 The Petitioners contend that the record  
6 evidence does not support an affirmative conclusion  
7 under Bratsk, but that contention fails to recognize  
8 that there's a presumption that operates under Bratsk  
9 and that it weighs in favor of replacement by non-  
10 subject imports. The fact is, the staff report does  
11 not contain any evidence sufficient to rebut that  
12 presumption.

13 In addition, the Petitioners base most of  
14 their Bratsk arguments on the performance of non-  
15 subject imports in the U.S. market during the period  
16 of investigation. But this approach ignores the  
17 nature of the Commission's Bratsk inquiry. The Bratsk  
18 analysis is prospective in nature and it must consider  
19 the production capacity of non-subject producers.

20 In view of the prospective nature of this  
21 analysis we find Petitioner's statements in their pre-  
22 hearing brief concerning the threat posed to the  
23 domestic industry by the now non-subject UAE imports  
24 to be particularly interesting.

25 As the Petitioners said in their pre-hearing

1       brief, "At issue is what these UAE producers are  
2       capable of producing, not just what they've done in  
3       the 2005-2007 period of review. That being said,  
4       there is ample evidence on the record that the steel  
5       nail industry in the UAE presents a real and eminent  
6       threat to the U.S. industry."

7               Now that's essentially the same analysis  
8       that you should be bringing in analyzing the UAE  
9       imports in a Bratsk context.

10              Imports of subject merchandise also don't  
11       pose a threat to the domestic nails industry. There  
12       are no countervailable subsidies involved in this  
13       investigation. Unused production capacity does not  
14       support a threat determination. According to the  
15       staff report in fact there is no unused production  
16       capacity in China.

17              Now even if you're to accept Petitioner's  
18       unsupported assertion that of course there's massive  
19       unused production capacity in China, or accept their  
20       invitation to employ adverse inferences simply to deem  
21       unused capacity to exist in China, that really won't  
22       affect your threat analysis. The reason for that is  
23       as you have had explained to you by Mr. Dutra, Paslode  
24       Shanghai, a non-dumping exporter from China, is free  
25       now to acquire now non-competitive production capacity

1 in China from now non-competitive exporters, and  
2 they're free to use that production capacity to make  
3 and export nails to the United States. The nails may  
4 say Paslode. They certainly will be fairly traded.  
5 But they will come from existing production capacity  
6 in China.

7 The volume of subject imports, as I said  
8 earlier, increased by less than 10 percent during the  
9 investigation period and there is simply no evidence  
10 of a likelihood that that's going to increase  
11 substantially in the near future. Subject imports  
12 have not suppressed or depressed prices, as you've  
13 heard. A simple comparison of the quantity and value  
14 of domestic industry shipments confirms that prices  
15 have gone up and they've gone up enough to cover raw  
16 materials costs. Nothing in the record of this  
17 investigation indicates that prices cannot or will not  
18 continue to increase, at least enough to cover costs.

19 The trend in importers' inventories of  
20 subject merchandise is the reverse of the trend of  
21 inventories for non-subject merchandise. The evidence  
22 supports no conclusion that inventories of subject  
23 merchandise threaten the domestic industry. There is  
24 no evidence of a potential for shifting production  
25 from non-subject merchandise to subject nails.

1 There's no actual or potential negative effects that  
2 suggest imminent harm to the domestic industry.

3 Finally, while the staff report says there's  
4 no third country dumping orders in place against  
5 nails, Petitioners cite a Mexican dumping order  
6 against concrete nails. But concrete nails are a very  
7 small fraction of subject merchandise and the Mexican  
8 order dates from March of 2004. If it's had any  
9 diversionary effect it's had it long ago in the past.

10 To sum up, there's evidence that imports of  
11 subject imports pose a threat of real imminent harm to  
12 the domestic industry. That concludes our affirmative  
13 presentation this afternoon. Of course we're happy  
14 and ready to answer questions. Thank you.

15 CHAIRMAN PEARSON: Thank you, Mr. Bogard and  
16 the rest of the panel. It's good to have you here  
17 today. You've had an opportunity to listen to all of  
18 the discussion this morning and no doubt you're eager  
19 to provide more of your perspective.

20 We will begin the questioning this afternoon  
21 with Commissioner Lane.

22 COMMISSIONER LANE: Good afternoon and  
23 welcome.

24 You said that you were surprised in the  
25 preliminary that we took Stanley out as a related

1 party. So I have a question. I know it's business  
2 proprietary information, but in the staff report at  
3 Table 3-7 it talks about the number of imports to  
4 production and that's one of the numbers that we look  
5 at when we're analyzing whether or not a company  
6 should be taken out as a related party.

7 Do you question those numbers that are in  
8 that table? And if you have an explanation as to why  
9 it's not relevant would you want to discuss that  
10 perhaps in the post-hearing?

11 MR. BOGARD: Commissioner Lane, you said  
12 Table 3-4? Did I mishear you?

13 COMMISSIONER LANE: No, 3-7 at page 3-13.

14 MR. BOGARD: Commissioner, it is business  
15 proprietary information. We'll be happy to address it  
16 in the post-hearing.

17 As Mr. Dutra did testify earlier this  
18 afternoon, however, production capacity has been  
19 returned to the United States from Mexico. That  
20 capacity is being utilized at a fairly high rate at  
21 present, and as you said, the current story is  
22 somewhat different than what your records show, but  
23 we'll try to put the table you refer to in context in  
24 the post-hearing brief.

25 COMMISSIONER LANE: Thank yo, I would

1 appreciate that.

2 In your pre-hearing brief you refer to  
3 fastener solutions which include a group of products  
4 including nails, staples, rings, clips, and corrugated  
5 fasteners. You also argue that Stanley concentrates  
6 on high value products in its U.S. corporations.

7 When you refer to your focus on high value  
8 products, are you referring to fastener solution  
9 products other than subject nails? And if the high  
10 value products you produced in the United States are  
11 within the subject nails group, could you describe  
12 these high value subject nail products and explain why  
13 they are high value products?

14 MR. DUTRA: Sure. I'll start with the last  
15 question. High value products manufactured in the  
16 United States.

17 As I stated in my testimony, the price in  
18 the marketplace commanding of products is very  
19 different, even if the nail costs virtually the same.

20 High value products are products  
21 particularly as we define them in certain nails, it's  
22 like nails to build houses require galvanization which  
23 has to meet specific codes and has to meet specific  
24 specifications. The nails themselves have to meet  
25 specific specifications relative to building codes,

1 the tensile strength of the wire, very specific on  
2 length and diameter in the head geometry, so we  
3 consider those much higher value. And they command a  
4 higher price in the marketplace on a value basis.

5 As far as fastening solutions, that's a  
6 completely, a bit of a different way that we define  
7 the marketplace, fastening solutions. We don't define  
8 the market in certain steel nails, we define the  
9 market in fastening solutions by being able to provide  
10 a customer or an end user the ability to fasten two  
11 pieces of wood. Sometimes it's certain steel nails  
12 and sometimes it's not. And the ability to keep a  
13 manufacturing plant going through value-added service  
14 like tools and service and parts.

15 MR. BOGARD: Commissioner Lane, just to be  
16 sure there's no ambiguity, when we talk about higher  
17 value added products, Mr. Dutra is talking about  
18 certain steel nails. He's talking about higher value  
19 nail versus lower value nail.

20 COMMISSIONER LANE: Okay. In your pre-  
21 hearing brief you mention that Stanley's business  
22 strategy for the U.S. is to locate production of  
23 higher value, higher profit products in the United  
24 States. If that strategy depends on your importation  
25 of subject nails to provide customers with total

1 fastener solutions, doesn't that mean that Stanley  
2 benefits from its importation of subject nails and  
3 that its domestic profits from the high value products  
4 is likely to be higher than the domestic products of  
5 domestic producers that produce the subject nails in  
6 the U.S. without concentrating on high value products?

7 MR. THOMPSON: Well, what Stanley imports  
8 is, as we said, the lower value products. It brings  
9 them in because it is filling out its product line at  
10 the lower end. The Commission has recognized, as I  
11 mentioned in Retail Carrier Bags, and I believe there  
12 are other determinations along these lines, that when  
13 a domestic producer imports for those purposes the  
14 Commission didn't say explicitly that this is not a  
15 benefit but in those circumstances it did not exclude  
16 the domestic producers who were importing to say round  
17 out their product lines.

18 COMMISSIONER LANE: Having listened to you  
19 state that, would you then reconcile what you just  
20 said with the chart that I referred you to that is  
21 business proprietary, but you can reconcile that  
22 statement with the data that we have in the staff  
23 report.

24 MR. THOMPSON: That is on the ratio of  
25 imports to production?

1 COMMISSIONER LANE: Yes.

2 MR. THOMPSON: Oh, yes, we'd be happy to do  
3 so.

4 Also, ma'am, regarding the effect on  
5 Stanley's profitability, the Commission has data that  
6 show the profitability of the company's domestic  
7 operations both in isolation as well, I think this is  
8 in Annex G of the report, as well as compared to the  
9 overall industry. Again, those numbers are business  
10 proprietary, but it would be difficult to see a  
11 benefit in financial terms that is accruing to the  
12 domestic production from the subject imports.

13 COMMISSIONER LANE: Remaining with the same  
14 line of questioning, could you explain what you mean  
15 by your lower value nails that you produce abroad?  
16 For example, what are lower value nails and do you  
17 mean that all subject nails are a lower value product?  
18 Or do you mean that within the subject nail category  
19 there are higher value nails, subject nails that you  
20 concentrate on for your U.S. production?

21 MR. DUTRA: We define lower and higher value  
22 nails pretty much by what the marketplace can command  
23 from a pricing perspective relative to cost for  
24 margin.

25 As I stated in the fastening solutions

1 model, it's more than just selling the product, it's  
2 providing the service, the loan tools, the free tools,  
3 the parts. So when we look at the value or the cost  
4 of serving those particular industries too, define how  
5 we define value. So it's a combination of what the  
6 marketplace can bear and what the cost of service.

7 The lower value nails that we do is  
8 predominantly the pallet nails. The pallet market is  
9 --

10 COMMISSIONER LANE: What kind of nails?

11 MR. DUTRA: Pallet. For manufacturing and  
12 putting together shipping pallets. The higher value  
13 nails are the ones that we predominantly manufacture,  
14 the ones for building houses, and they're all subject  
15 nails.

16 COMMISSIONER LANE: I couldn't tell if  
17 someone else wanted to answer that or not.

18 Okay.

19 At pages 31 and 32 of your pre-hearing brief  
20 you point out that a segment of the market for subject  
21 nails is providing nails directly to end users in the  
22 manufacturing process. These are makers of, among  
23 other things, manufactured housing, et cetera. You  
24 argue that in addition to selling subject nails you  
25 provide free nailing equipment, free maintenance of

1 equipment, and free advice. You also indicate that  
2 the value of these free services are then reflected in  
3 your prices.

4 How are these costs reflected in the cost of  
5 your domestic operations as reported to the  
6 Commission?

7 MR. DUTRA: It's reflected in SG&A. Does  
8 that answer the question? The sum in cost of goods,  
9 the cost of service, the account from a repair  
10 perspective is in SG&A and the parts and the loan  
11 tools are in our cost of goods.

12 COMMISSIONER LANE: Thank you.

13 Mr. Chairman, I'll wait until my next round.

14 CHAIRMAN PEARSON: Commissioner Williamson?

15 COMMISSIONER WILLIAMSON: Thank you, Mr.  
16 Chairman. I want to thank the witnesses for their  
17 testimony.

18 Just to finish up on Commissioner Lane's  
19 question, Mr. Dutra, you're saying the cost of the  
20 equipment, the guns and all of that, is that a free  
21 service or is that separate when you have this  
22 packaging solution in the example she gave?

23 MR. DUTRA: We call it as part of our value  
24 proposition and we provide it free of cost to the  
25 customer, so we loan them the tools. We send a

1 service person in to fix the tools, and we provide the  
2 parts.

3 COMMISSIONER WILLIAMSON: Which means you  
4 must be making -- You make the money on the nails  
5 then?

6 MR. DUTRA: Correct. And the fasteners.  
7 All the other fasteners. We're able to leverage a lot  
8 of those. Most of those accounts in the industrial  
9 sector don't primarily, with the exception of the  
10 pallet industry, the furniture making, the  
11 manufactured housing, they buy a whole potpourri of  
12 products that I mentioned.

13 COMMISSIONER WILLIAMSON: What kind of grade  
14 of products?

15 MR. DUTRA: A potpourri, a whole market  
16 basket of different types of fasteners. So we  
17 leverage the service person, the parts, the cost of  
18 that over the whole factory, if you will. For  
19 example, in Ashleigh Furniture, which many of you have  
20 heard of, multiple plants in multiple locations with  
21 thousands of loaned tools, buying different types of  
22 fasteners. We're able to leverage that cost that we  
23 get in the volume that we get in the fasteners.

24 COMMISSIONER WILLIAMSON: Partially why I'm  
25 raising this is this morning when we raised the

1 question about your example of the manufacturing, the  
2 construction and the industrial segments of the  
3 industry, it was said this morning that the  
4 construction segment, they have their own equipment.  
5 So I'm assuming they're just buying the nails from you  
6 if they're buying them at all.

7 MS. NEMCHEV: Let me take a stab at this.  
8 What we're talking about is primarily in the  
9 industrial segment. In return what we get is a long  
10 term agreement with that customer. So basically the  
11 way we do the financials on this, we look at the cost  
12 to serve over a period of time and amortize that cost,  
13 theoretically into the piece part price that they pay  
14 through in the fasteners. That's where we sell direct  
15 to the end users that we described this morning.

16 On the construction side, you're correct, we  
17 don't do these programs in construction. We either  
18 sell direct to the end user or primarily we go through  
19 wholesale distributors who then may do the same kind  
20 of packaged program to their end users. So they're  
21 not free on the construction side.

22 COMMISSIONER WILLIAMSON: I don't know to  
23 what extent you can look at the industry overall, say  
24 how large is the construction versus the industrial  
25 use in terms of consumption of nails. I don't know if

1 that's --

2 MR. DUTRA: As we look at the marketplace  
3 and how we define it, approximately the construction  
4 in certain steel nails, the construction industry is  
5 about 60 percent and the industrial is about 40  
6 percent.

7 COMMISSIONER WILLIAMSON: When we're looking  
8 at the price you're selling the nails for, would there  
9 be a significant, might there be a significant  
10 difference? I know there's a wide variety of nails,  
11 but --

12 MR. DUTRA: As Ms. Nemchev stated, depending  
13 on the long term contract we may have with an  
14 industrial account, let's say it's the same certain  
15 nail, depending on the total cost to serve that, the  
16 cost would be different in an industrial account than  
17 it would in a construction account. Again, through  
18 construction we sell through wholesale distribution  
19 who then goes out and sells it to a contractor on the  
20 job site. Industrial we're direct to that end user  
21 manufacturing a particular product.

22 COMMISSIONER WILLIAMSON: I take it you and  
23 the industry, manufacturing nails could use either  
24 imported or domestic nails in either one of these. In  
25 other words, whether it's imported or not is not a

1 function of use for this purpose.

2 MR. DUTRA: That's correct.

3 COMMISSIONER WILLIAMSON: Is there a trend  
4 in terms of which way the consumption is going? Are  
5 you seeing more of the packaging solutions? Is that  
6 beginning to invade the construction industry?

7 MR. DUTRA: I don't think there's a trend  
8 going one way or the other. I think generally in the  
9 home building construction side you see more and more  
10 houses starting to be made in a factory setting where  
11 they're building the wall panels under a roof, if you  
12 will, then it's going out and being erected on the job  
13 site. That is a trend we're seeing. But in the other  
14 industries there's no swing either way.

15 COMMISSIONER WILLIAMSON: Thank you for  
16 those answers. I'm trying to figure how that plays  
17 into the issue that we have to address here.

18 Does that imply that maybe we're going to  
19 have two different types of nail manufacturers in the  
20 United States, those who provide total solutions and  
21 those who don't?

22 MR. DUTRA: I don't believe it's related to  
23 the manufacturer, I believe it's related to the  
24 marketing strategies and how you choose to go to  
25 market. You can manufacture and sell through

1 distribution or you can choose to do value added  
2 service by providing loan tools, parts and service and  
3 going direct. So it's really more of a marketing  
4 thing than it is a manufacturing thing.

5 MS. NEMCHEV: I'll just add, I think what's  
6 different about Osygi and Paslode is we make the full  
7 breadth of line for the service. We have the scale on  
8 the service and sales side across the nation. We make  
9 our own tools, we make all the fasteners. So a lot of  
10 our competitors don't have that scale and what they do  
11 is they buy and source and package that from several  
12 other sources. To support what Chris said, it's not  
13 necessarily who makes the product but who's closest to  
14 the end user and how does that end user want to buy  
15 the product.

16 So in construction, there are some wholesale  
17 distributors out there who provide the value of  
18 bringing everything they need just in time every day,  
19 whether it's nails and staples and building materials.  
20 That might be the value they provide in the  
21 construction channel. Osygi isn't in a position to  
22 send plywood out with our product so we go through a  
23 wholesale distributor to get our product to the end  
24 users. In the industrial segment we do have the means  
25 to get access directly to these end users, so that's

1 the value we provide. We can get access and give them  
2 the whole solution to ensure that their lines are up  
3 every day, all day, 24x7, and that's what they're  
4 looking for from us.

5 COMMISSIONER WILLIAMSON: We've talked a lot  
6 about the construction industry and the current  
7 economic situation. Has there been less of a decline  
8 in the industrial segment?

9 MR. DUTRA: There has been less of a decline  
10 in the industrial segment. It usually follows the  
11 housing about six to eight months in certain sectors,  
12 particularly furniture. Pallet very closely follows  
13 the GDP of the country. And manufactured housing is  
14 with the housing starts. But it's been less of a  
15 decline than we've seen in the housing industry.

16 COMMISSIONER WILLIAMSON: Thank you.

17 I'm not sure, Commissioner Lane may have  
18 already raised this question. I know she made  
19 reference to the quote on page 17 that production  
20 strategy is built around locating higher value return.  
21 Higher value, higher return production in the United  
22 States.

23 The question I want to ask, this is probably  
24 for post-hearing, is how you reconcile that with the  
25 data on the table on G-3.

1                   MR. BOGARD: Commissioner, we will try to  
2 address that in post-hearing.

3                   COMMISSIONER WILLIAMSON: Okay.

4                   In your pre-hearing brief on page 65 you  
5 state that the record is insufficient to show that  
6 non-subject imports are not positioned to replace  
7 subject imports in the U.S. market. Is it your  
8 position that Bratsk imposes a burden of proof such  
9 that non-replacement must be demonstrated?

10                  MR. BOGARD: Yes, Commissioner, that's it.  
11 Our position is that Bratsk, as you have interpreted  
12 it, creates a presumption of replacement that can be  
13 rebutted by affirmative evidence on the record. But  
14 in the absence of affirmative record the presumption  
15 runs in favor of replacement.

16                  COMMISSIONER WILLIAMSON: So if you find  
17 that the imports that may come to replace may be at a  
18 higher selling price, does the domestic industry  
19 benefit from that? The fact that the general prices  
20 go up for the competitors?

21                  MR. BOGARD: There are several elements to  
22 the analysis, and I believe that the language that  
23 you're citing in the brief is with reference to the  
24 absence of any evidence as to the production capacity  
25 of third country imports. With regard to prices going

1 up I think the record is clear that regardless of the  
2 source of the imports, whether they're subject or non-  
3 subject, they are lower in price than the domestic  
4 product on an average unit value basis. So that  
5 imports from non-subject countries will continue to  
6 have a price competitive advantage vis-a-vis the  
7 domestic on an average unit value basis. There is no  
8 evidence on the record at this point that suggests  
9 otherwise.

10 COMMISSIONER WILLIAMSON: My time is up so  
11 I'll stop there. Thank you, Mr. Chairman.

12 CHAIRMAN PEARSON: Commissioner Pinkert?

13 COMMISSIONER PINKERT: Thank you, Mr.  
14 Chairman. I'd like to join my colleagues in welcoming  
15 the panel and thanking you for testifying today.

16 I'd like to start with Mr. Bogard. I know  
17 that Mr. Bogard has a depth of experience at the  
18 Commerce Department, and going back I believe to the  
19 1980s. And I want to --

20 MR. BOGARD: You're treating me kindly.

21 COMMISSIONER PINKERT: I want to start with  
22 a question about that rate that Paslode Shanghai has  
23 gotten in the most recent determination from the  
24 Commerce Department. There was some discussion  
25 earlier about the possibility of an expanded presence

1 of imports from Paslode Shanghai, and what I want to  
2 ask you is whether other producers in China can take  
3 advantage in some way of that rate that Paslode  
4 Shanghai has received in shipping merchandise to the  
5 United States.

6 MR. BOGARD: No, I don't believe anybody  
7 other than Paslode Shanghai can take advantage of that  
8 rate absent a new shipper review or something of that  
9 nature.

10 The dumping margins coming out of Commerce  
11 essentially fall into I'll call it four categories.  
12 There's the zero dumping margin. That is a result of  
13 the investigation of Paslode Shanghai. There is the  
14 118-point-something percent margin that is the China-  
15 wide rate that was assigned to companies who either  
16 didn't cooperate or failed in a separate rates  
17 application. There is the 21.24 percent rate that is  
18 a product of the investigation of the Shingya Group.  
19 Then there is the 21.24 percent rate that was assigned  
20 to all other separate rates applicants in China. The  
21 reason that rate equals the Shingya rate is by virtue  
22 of the provision in the statute that says that  
23 Commerce is barred from including zero or de minimis  
24 margins in its calculation as a weighted average  
25 margin for separate rates purposes.

1           So every company that appeared in the form  
2 of a separate rates applicant or was actually subject  
3 to investigation is covered by one margin or another.

4           COMMISSIONER PINKERT: Thank you.

5           Turning to your testimony about Bratsk, I  
6 know that you focused to some extent on the language  
7 in the Commission decision about a presumption of  
8 replacement without benefit. I'm wondering, has the  
9 Commission ever applied such a presumption in a threat  
10 context? In the context of making a determination  
11 about the threat of injury?

12           MR. BOGARD: I'm going to be honest with  
13 you. We don't know. We're happy to look into it and  
14 respond in post-hearing.

15           COMMISSIONER PINKERT: I'd appreciate that.  
16 Also more generally, how the Commission has dealt with  
17 the Bratsk issue in the context of threat  
18 determination.

19           MR. BOGARD: We're happy to do so.

20           COMMISSIONER PINKERT: Turning to Stanley, I  
21 understand our testimony, Mr. Dutra, in response to  
22 Commissioner Lane's question about the rationalization  
23 of your product line, but can you say that the prices  
24 of imports from China have played no part or no role  
25 in your company's decision to source nails from that

1 country?

2 MR. DUTRA: We look at the cost of  
3 manufacturing the nails versus the price, then we  
4 determine where our profitability could come out on  
5 that. That was one of the determining factors we look  
6 at in where we determine we were going to manufacture  
7 something.

8 COMMISSIONER PINKERT: So would you import  
9 rather than produce domestically if you didn't have an  
10 opportunity to obtain the nails at lower cost by  
11 importing?

12 MR. DUTRA: Sorry, can you repeat the  
13 question? You lost me.

14 COMMISSIONER PINKERT: Would you import  
15 rather than producing domestically if there wasn't a  
16 cost advantage in obtaining the nails from importation  
17 as opposed to producing domestically?

18 MR. DUTRA: I think we do that in some cases  
19 today, actually. Some categories of fasteners that  
20 when we look at what we could potentially manufacture  
21 for, but we choose not to do so due to capital  
22 investment or rate of return, and we do do that in  
23 some cases. So the answer is yes.

24 COMMISSIONER PINKERT: Perhaps in the post-  
25 hearing can you supply information about how pervasive

1 the practice that you've just cited of potentially  
2 importing, or not importing when the cost would be  
3 lower for importing?

4 MR. DUTRA: Sure.

5 COMMISSIONER PINKERT: Thank you.

6 At page 26 of the brief you say that Stanley  
7 imports nails from China as part of a coordinated  
8 strategy that supports and increases production of  
9 nails in the United States. Specifically, how does  
10 importing support and increase Stanley's U.S.  
11 production?

12 MR. DUTRA: I believe this is related to  
13 when we shut down our Mexico facility and we  
14 determined that we would move our higher value  
15 products to the United States due to the fact that  
16 they are under much more stringent codes. They  
17 command a higher price in the marketplace as opposed  
18 to pallet nails which command a lower price in the  
19 market, and based on the model that we serve have a  
20 bit higher cost to serve that market.

21 MR. BOGARD: Commissioner Pinkert, if I  
22 could expand for a second, which is usually dangerous  
23 for the lawyer to do when we're talking about the  
24 actual product, bear in mind that what Stanley sells  
25 is an entire range of certain nails products. The

1 fact that they sell that entire range is part of the  
2 fact that they are the Stanley brand. It's one of the  
3 positives of being the Stanley brand. If the company  
4 is unable to supply certain nails within that range,  
5 as Mr. Dutra testified earlier this afternoon, that  
6 has the potential impact of adversely affecting their  
7 ability to sell other products in that range. He's  
8 described the synergistic effect. If they can sell  
9 the full product range, manufacturing the low value  
10 product where costs allow them to charge the price  
11 that the market demands for that product, and  
12 manufacture the high value product in the United  
13 States where the high value product price permits them  
14 to realize a profit margin on that product, they'll do  
15 so.

16 One of the things I think is interesting,  
17 and you should keep in mind as Mr. Dutra has  
18 testified, Stanley Bostitch views itself as sitting a  
19 lot in the same position as Paslode, as ITW and  
20 Paslode Shanghai. When Petitioners talked this  
21 morning, they're constantly talking about how people  
22 are going to China to chase price. For the most part,  
23 Bostitch doesn't buy nails in China. They make nails  
24 in China. They follow essentially the same model that  
25 Paslode does in making the nails and selling them in

1 the United States. The reason they're there is in an  
2 effort to achieve a profit margin on the nails that  
3 they sell that they produce there.

4 As a consequence, it is their hope that  
5 they're achieving a profit throughout the product  
6 line. We believe that because Paslode in Mr. Dutra's  
7 estimation follows a similar model, that's reflected  
8 in the fact that Paslode is not dumping. It's one of  
9 the reasons why Stanley believes if it had been  
10 selected as a mandatory respondent at Commerce, it too  
11 would have been found not to be dumping.

12 So I would urge you to consider that the  
13 motivations of a manufacturer like Stanley are not to  
14 chase price when they're going abroad to manufacture.

15 COMMISSIONER PINKERT: Following up on the  
16 discussion that you just presented about the role that  
17 Paslode Shanghai plays in the market and the role that  
18 Stanley plays in the market, are you arguing that an  
19 affirmative material injury determination would be  
20 more harmful to the domestic industry than a negative  
21 determination in this case?

22 MR. DUTRA: Yes, we believe, as I testified,  
23 that Paslode would have a significant cost advantage  
24 by having zero versus 21.24 and the cost to  
25 manufacture in the United States, and potentially

1       could enter the marketplace through various categories  
2       of nails, I think you saw all the samples of the  
3       different types. They're not in all types. And I  
4       testified that would have a material effect on the  
5       industry and particularly, we feel, our nails that we  
6       make in the U.S..

7                   COMMISSIONER PINKERT: For the post-hearing  
8       could you try to provide us with an estimate of what  
9       you think the potential for the expansion of Paslode  
10      Shanghai's presence in the U.S. market in the imminent  
11      future is likely to be?

12                   MR. DUTRA: Yes, sir.

13                   MR. BOGARD: We will certainly try.

14                   COMMISSIONER PINKERT: Thank you.

15                   Thank you, Mr. Chairman.

16                   CHAIRMAN PEARSON: Would it be correct to  
17      understand that Paslode is your major competitor in  
18      the U.S. market for fasteners given the overall  
19      positioning of the two firms in the market? Or are  
20      there other firms you would see as equally close  
21      competitors?

22                   MR. DUTRA: There are other firms we feel  
23      are equal, like competitors, but we feel we've very  
24      closely and similarly situated to Paslode and that  
25      we're part of large U.S. corporations, we engineer

1 pneumatic tools, we provide a breadth of fasteners  
2 that covers, as I stated, how we define the industry -  
3 - staples, nails, finish nails, roofing nails. We  
4 provide value proposition services to the end user  
5 base of the industrial sector. So those types of  
6 things Paslode is most closely aligned with us in the  
7 marketplace and how we view ourselves at the very high  
8 end of the marketplace.

9 CHAIRMAN PEARSON: Both from selling a  
10 significant portion of their products as branded  
11 products?

12 MR. DUTRA: We sell all of our product as  
13 branded product, and I believe Paslode does too.

14 CHAIRMAN PEARSON: So it's correct for us to  
15 see the two firms as being substantial competitors,  
16 working to sell to largely the same customer base,  
17 trying to maintain U.S. production while blending that  
18 domestic production with some imports. Painting with  
19 a broad brush, the profiles of the two firms are  
20 fairly similar?

21 MR. BOGARD: Yes, sir.

22 MS. NEMCHEV: I'd just like to add, Paslode  
23 being part of the ITW, they're a public company and  
24 they just released their statement a couple of weeks  
25 ago. They're a \$16 billion company and very healthy

1 and growing company. I forget the exact number, but  
2 they're acquiring like a company a week. They've  
3 acquired 200 companies or something like that in just  
4 the last two years or four years. I think it was a  
5 company a week for the last three or four years. If I  
6 were them, which clearly we've done for the last year,  
7 what would I do if I were them? They clearly have the  
8 capital to just go buy a JV partnership in the Chinese  
9 industry. The other ones in that group would be  
10 Hitachi, Sanko, Sanko's not as large, but being part  
11 of a large industrial multinational company, the  
12 definitely have access to capital that many others of  
13 the Chinese competitors would not have access to.

14 CHAIRMAN PEARSON: Since Stanley is not  
15 dealing in commodity nails -- Some importers probably  
16 are just buying commodity nails from Chinese  
17 producers, bringing them in and selling them. They  
18 are more opportunistic in the marketplace than I would  
19 think Stanley might be where I assume you have a  
20 longer term strategy for how you want to be positioned  
21 in the marketplace.

22 MR. DUTRA: Exactly. Many of the product  
23 coming in from China is what we consider a generic  
24 product. It carries no brand, or they put a sticker  
25 on as was discussed this morning. Joe's Lumber Yard

1       nails.

2                       We have a branded strategy. A branded  
3 strategy comes with a portfolio of products that isn't  
4 just a particular type of nail or a portfolio of just  
5 certain steel nails. It includes pneumatic tools. It  
6 includes accessories. It includes the power to power  
7 them, the air compressors. We sell through multiple  
8 channels of distribution, wholesale distributors,  
9 specialty tool distributors, large home centers, and  
10 we play at the higher end of the market for providing  
11 the marketing, the point of purchase, the programs  
12 that support the coop advertising for the model that  
13 we go, and we don't consider nails a commodity. We  
14 try to differentiate. We do have multiple patents on  
15 certain nails. We don't like to view them as a  
16 commodity so we don't price them as such. As I'm  
17 told, every day as being responsible for pricing,  
18 we're not the lowest priced guy. That's where we want  
19 to be.

20                   CHAIRMAN PEARSON: Then it's correct to see  
21 the position of Stanley as having been dealt a  
22 particularly difficult hand in this case, particularly  
23 since ITW in essence got a get out of jail free card.  
24 Now I'm mentioning my games there, but Stanley would  
25 see itself as significantly disadvantaged by this

1 because of your direct competition against ITW, is  
2 that correct?

3 MR. DUTRA: That is correct. In fact by  
4 virtue of not being one of the largest exporters from  
5 China we didn't get a chance to tell our story like a  
6 similarly situated company that plays at the high end  
7 of the market with a portfolio that's very broad in  
8 the pneumatic tool and fastener industry.

9 CHAIRMAN PEARSON: With that background and  
10 with the reality that Stanley obviously is a long term  
11 player, intends to be in the marketplace, intends to  
12 serve the customer base, either now or in the post-  
13 hearing could you talk about what are the company's  
14 likely alternatives for dealing with an antidumping  
15 duty order if one does go into play? I can think of  
16 at least three alternatives, and there may well be  
17 more. One would be to move your overseas production  
18 to some non-subject country, experienced before,  
19 shifting among countries. Another would be to ask  
20 Commerce for an administrative review. And another  
21 would be to produce more nails in the United States to  
22 round out your fastening solution packages.

23 If you're able to comment on that now I'd be  
24 very interested. Otherwise, if you could elaborate in  
25 the post-hearing that also would be good.

1                   MR. DUTRA: We would be glad to talk about  
2 that in the post-hearing brief and some of the  
3 strategies we have. We have looked at those multiple  
4 strategies.

5                   MR. BOGARD: One reason Mr. Dutra wants to  
6 talk in the post-hearing brief is that the  
7 administrative review option may not be a viable one  
8 in that as I'm sure you realize, an administrative  
9 review wouldn't even start until a year from July or  
10 August, and in the most optimistic case, without  
11 casting aspersions on the Commerce staff, wouldn't be  
12 done for another year or probably longer.

13                   CHAIRMAN PEARSON: We need to be very  
14 careful here not to say impolite things about the  
15 Department of Commerce.

16                   MR. BOGARD: Well, I have to deal with them  
17 a lot, so I'm probably less inhibited.

18                   In any event, the options that have to be  
19 explored have to be looked at in a timeframe that's  
20 shorter than the typical administrative review. So  
21 whatever harm is visited isn't going to be cured by an  
22 administrative review.

23                   CHAIRMAN PEARSON: I am curious about this  
24 because somehow Stanley's going to be in the market  
25 and provide nails to customers. And I'm just --

1                   MR. DUTRA: That is our plan. Like I said,  
2 we will continue with our value proposition, but  
3 certainly the imminent threat from someone with a lot  
4 of capital and should I, if I were in their shoes as  
5 Ms. Nemchev stated and I were putting together my  
6 business plan, I certainly would be looking at the  
7 return on capital having a 20 percent cost advantage.

8                   CHAIRMAN PEARSON: A somewhat different  
9 question, just for clarification. You've talked about  
10 the concept of higher value or lower value nails. My  
11 sense is that that does not align nicely with branded  
12 versus non-branded products. Are you selling even  
13 what you consider your lower end nails as a branded  
14 product?

15                   MR. DUTRA: Yes, absolutely. And again, as  
16 we define it, it's what the market price bears. Even  
17 in that scenario we play at the high end of the lower  
18 value product. We are not the lowest price. Again,  
19 it's what's the return potential in the particular  
20 market segment that those nails go in, and within that  
21 segment we're branded and we play at the higher end of  
22 that segment.

23                   CHAIRMAN PEARSON: It would be correct then  
24 to understand that branded product is going to sell  
25 for some premium in the U.S. market.

1           MR. DUTRA: Absolutely. Behind it becomes  
2 marketing programs. As you get more and more industry  
3 consolidation in the distribution networks, in the  
4 growth of home center stores, their inability to  
5 really import products and the fact that they want to  
6 be a house of brands, if you will, to bring people in,  
7 it becomes very critical that you have marketing  
8 programs supporting what's happening in the industry  
9 as more and more, fewer customers, if you will --

10           CHAIRMAN PEARSON: So along with the higher  
11 prices from a branding strategy go higher costs for  
12 the administrative overhead that goes into supporting  
13 a marketing program.

14           MR. DUTRA: A little bit, yes.

15           CHAIRMAN PEARSON: For purposes of the post-  
16 hearing perhaps rather than now, can you give us a  
17 sense of what you think the premium is for branded  
18 nails versus on-branded ones? If you want to comment  
19 now you could, but --

20           MR. DUTRA: Absolutely, we would be glad to  
21 do that. It can be anywhere from 10 to 40 percent,  
22 depending on the category of fasteners. We'll have  
23 some exhibits in there to show.

24           CHAIRMAN PEARSON: Thank you.

25           My light's changing, so let me turn now to

1 Vice Chairman Aranoff.

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

4 Welcome all of you on the afternoon panel.

5 Mr. Dutra, can you tell me, are 100 percent  
6 of the nails that your company produces in China sold  
7 in the U.S. market?

8 MR. DUTRA: No. I think it's, I want to say  
9 about 85, 86 percent. We also make some for the  
10 Canadian marketplace and Australia.

11 VICE CHAIRMAN ARANOFF: And are all the  
12 nails that you produce in China and that you do sell  
13 in the United States sold under your own brand name?

14 MR. DUTRA: Yes, they are.

15 VICE CHAIRMAN ARANOFF: So you don't produce  
16 for any other label?

17 MR. DUTRA: No, we do not.

18 VICE CHAIRMAN ARANOFF: Is that also true of  
19 your domestic production?

20 MR. DUTRA: Yes, it is.

21 VICE CHAIRMAN ARANOFF: You were talking  
22 with the Chairman about branding allowing you to  
23 charge a premium on fastening products. I guess I  
24 just wanted to clarify with you, is it really the  
25 Bostitch brand name that allows you to charge a

1 premium or is it the service, the package of services  
2 that you're providing that allows you to charge a  
3 premium?

4 MR. DUTRA: We believe it's both. In the  
5 industrial sector where we go direct to the end user  
6 by providing the loan tools, service and parts program  
7 it is the value of services that we offer and our  
8 ability to do it on a nationwide scale with major,  
9 large industrial type accounts, as I stated earlier,  
10 to places like Ashleigh Furniture, SeaRay Boats, Chet  
11 Pallet Company, large major industrial businesses.

12 In the construction sector we believe it  
13 absolutely is the brand that allows us to do it  
14 because we have to put a lot of marketing to pull the  
15 product through and off the shelves at our retailers.  
16 We sell quite a bit through major large box retailers,  
17 local regional chains, if you will, and through our  
18 distribution network. So the cost to pull through and  
19 the marketing that goes behind it is a key role that  
20 brings brand awareness, and the fact that we have the  
21 tie-in between the tool brand, which is very very  
22 important in the marketplace, particularly in the  
23 retail sector, where if a person goes in and they have  
24 a Bostitch tool and they went in and they were to look  
25 at a bunch of white boxes that say nails, it gets

1 pretty confusing for the consumer. So the brand tie-  
2 in is very important and we need to market that in the  
3 message that we have to tell.

4 MS. NEMCHEV: I'd just like to add to that,  
5 it's not just the brand, it's what the brand  
6 represents. We've had a lot of independent third  
7 party studies and analysis done on brand studies,  
8 particularly Bostitch and other brands. What it means  
9 to our end users, and again this is through a  
10 statistical sample and different channels, if it's  
11 trusted, it's reliable, it's quality, it's available,  
12 and it's innovative. So it's not just buying a brand,  
13 they're buying a trusted product that they know is  
14 going to work reliably every time they use it. That's  
15 where we get to the solutions, because we do the tools  
16 as well as the fasteners, and we find that people  
17 trust, when they go to shop, this is more on the  
18 retail side, they try to match the fastener they buy  
19 to the tool they have knowing that it will fit. Just  
20 like your razors and razor blades; or staples and  
21 staplers. You tend to match the brand so you know  
22 it's going to work as a system. So we don't see them  
23 as two separate products. We continue to look at it  
24 as a solution because that's how a lot of our end  
25 users buy the products themselves.

1                   VICE CHAIRMAN ARANOFF: The truth is, right,  
2 that other people's nails could work in your tool.

3                   MS. NEMCHEV: Some can, yes. And they'll be  
4 on the shelves next to our products and they typically  
5 say can be used in the series of products. Just as  
6 our fasteners can work in some of their products as  
7 well. But it's not always true.

8                   VICE CHAIRMAN ARANOFF: In the construction  
9 market, do you sell at all directly to large home  
10 builders? Or is it always through a distributor or  
11 retailer?

12                  MR. DUTRA: It's always through a  
13 distributor or retailer. We are not selling direct in  
14 the construction marketplace.

15                  VICE CHAIRMAN ARANOFF: Does anybody in the  
16 nail business?

17                  MR. DUTRA: I don't believe they do, no.  
18 Not from the manufacturing sector. Obviously that's  
19 what distributors would do that.

20                  VICE CHAIRMAN ARANOFF: It's interesting to  
21 me that that hasn't been a development in the  
22 marketplace because there are some very large national  
23 home builders who I think would be big enough and  
24 regular enough accounts all by themselves.

25                  MR. DUTRA: We see it as a potential trend

1 when you get into the large folks like the KB Homes or  
2 the Toll Brothers, et cetera, but they also, a lot of  
3 those source out, if you will, the framing and the  
4 finish to various contractors. So it's not like  
5 they're buying the product themselves. They  
6 subcontract to contractors in many instances.

7 VICE CHAIRMAN ARANOFF: When you're selling  
8 to distributors or retailers, to what extent do you  
9 view other Chinese product that's coming into the  
10 country that might be private labeled as competition  
11 versus other domestic product?

12 MR. DUTRA: We really don't disseminate  
13 between domestic and Chinese brought in product as  
14 competition. We consider any nail that comes in  
15 competition, regardless of where it's from. Obviously  
16 our story is a big different because we have the  
17 pneumatic tools that your customer wants, we have the  
18 warranty repair centers, we offer demo days at your  
19 stores, we offer coop advertising, if you will. So we  
20 obviously view everybody as a threat, but we feel like  
21 the value proposition we offer is there, hence the way  
22 we market.

23 VICE CHAIRMAN ARANOFF: Has your company  
24 ever lost sales or had to reduce its prices due to  
25 competition from imports from China?

1                   MR. DUTRA: I was anticipating that  
2 question. I would say as we looked in the last year,  
3 year and a half, the increase in costs relative to all  
4 the factors I stated in my testimony have been such a  
5 shock to the system to the industry that we feel like  
6 we've lost and gained in fact what we call the churn  
7 of customers in the last year, has been significant  
8 relative to the years before.

9                   If you can imagine you were a manufacturing  
10 plant and I came in and said hey, wire rod's up 40  
11 percent in the last three months, you need a 35  
12 percent price increase, and you go out and they shop,  
13 and sometimes they don't want to pay for the value any  
14 more, or they feel there's a different value  
15 proposition. But the same happens with their  
16 competitors. Their customers are calling up. So we  
17 have an increase in churn. We try to keep pretty good  
18 track of that, and what we've seen is a whole heck of  
19 a lot of turbulence in the last year. Not just from  
20 Chinese manufacturers either, I might add.

21                   VICE CHAIRMAN ARANOFF: I'm not sure that's  
22 actually an answer to the question of whether you've  
23 actually had to, actually lost a sale or reduced  
24 prices. Maybe it goes to the lost sale.

25                   MR. DUTRA: I would say we probably have

1 lost some, just like we've lost some to some domestic  
2 manufacturers. And we've gained some under the same  
3 reasons.

4 VICE CHAIRMAN ARANOFF: You talked in your  
5 direct testimony about taking your Mexican production  
6 and moving it back and putting some in the U.S. and  
7 some in China. Since the time that you executed that  
8 decision has your company made further adjustments to  
9 which products are produced in the U.S. and which are  
10 produced in China? Or was it a one-time thing and  
11 it's stayed the same since then?

12 MR. DUTRA: Since that time we have made  
13 some adjustments to some products. It really has been  
14 a customer-specific product that I can think of off  
15 the top of my head. And I'm trying to think, I  
16 believe we've moved some product from our Poland  
17 facility to Rhode Island. But really it was customer  
18 specific and it had more to do with lead times and the  
19 demands on the customers' working capital, if you  
20 will, and their inventory position, the agreement we  
21 struck precipitated the move of the product.

22 VICE CHAIRMAN ARANOFF: My light's turning  
23 yellow. I'll come back in my next round. Thanks, Mr.  
24 Chairman.

25 CHAIRMAN PEARSON: Commissioner Okun?

1                   COMMISSIONER OKUN: Thank you, Mr. Chairman.  
2 I too want to thank this panel for being here this  
3 afternoon and the information you've provided and the  
4 answers you've given.

5                   Mr. Thompson, Mr. Bogard, let me start with  
6 a legal question or just a follow-up on some of the  
7 responses you've given with respect to your arguments  
8 of why Bostitch should be part of the domestic  
9 industry. I know you addressed it in your pre-hearing  
10 brief. I think for post-hearing, there obviously have  
11 been cases where you've had companies in the U.S. who  
12 import subject products produced in the U.S. who have  
13 been included under particular circumstances. The  
14 ones that you cited in your brief, bags and a few  
15 other ones, I think didn't go to, were not similar  
16 circumstances in the way I viewed them in the totality  
17 of both the ratio of imports to production which  
18 Commissioner Lane asked you about. So if there's  
19 anything else that you see from some of the other  
20 cases we've looked at that you want to point us to,  
21 I'd appreciate that in post-hearing. Also, and I  
22 think that is also relevant to the question I asked  
23 for post-hearing on looking at the consolidated  
24 results in G1 to see whether that is the relevant  
25 inquiry for purposes of the related party analysis for

1 the Commission to conduct.

2 For Mr. Dutra, I always say when people are  
3 here I think it's always, we obviously operate under a  
4 statute where there are particular provisions that  
5 apply so I can very much understand your sentiment to  
6 come here and say I produce here in the United States.  
7 For us it's a very specific inquiry of you are  
8 situated now different than ITW because their imports  
9 were found to be fairly traded and other ones aren't.  
10 It is the way that law is written that those ratios  
11 are indeed important to our analysis, as are other  
12 factors, so we'll continue to look at it as we  
13 indicated we would in the preliminary.

14 A follow up to the Chairman's question about  
15 your competition with ITW. I heard your response. I  
16 just wanted to make sure I understood. The actual  
17 product that you think you compete with ITW with, you  
18 also see them in the same type of nails, what you  
19 described as lower value nails are the ones you're  
20 bringing in from China and you would be competing with  
21 what ITW is bringing in from China. Is that your  
22 response? I wasn't quite sure about that.

23 MR. DUTRA: I think it's the total product  
24 line in the potential of what we see ITW Paslode doing  
25 in all categories of nails, be it both high and low

1 value, by having the cost advantages they have.

2 COMMISSIONER OKUN: But the specific type of  
3 nails they're bringing in from China, do you know  
4 whether that's the same type of nail?

5 MR. DUTRA: It's different. It's a  
6 different category of nails today.

7 MR. MORRIS: This is Ted Morris, if I can  
8 just expand on that for one second.

9 Petitioners professed this morning to be  
10 fairly unconcerned by the fact that out of 300 folks  
11 who were producing, that if Paslode is only one that  
12 gets out and Paslode isn't, let's say, importing a  
13 certain type of nail that that's something they can  
14 live with. What I think Mr. Dutra's been talking  
15 about but maybe bears repetition is, we all keep  
16 talking about what they're doing right now and what  
17 the effect of a potentially negative decision here  
18 will be is what they can do. It's interesting that  
19 they might not be currently importing a certain type  
20 of nail right now, but what we would expect to see and  
21 we will address in our post-hearing brief, it really  
22 doesn't matter if they're not in 12 categories coming  
23 out of China, for instance if they're not making the  
24 expensive framing nails out of China because you can  
25 be sure they will get there.

1                   COMMISSIONER OKUN: If you have any other  
2 additional information on that, because I think I  
3 couldn't be sure because I have no idea what their  
4 intentions are. Again, I would need to see more  
5 information indicating what they're going to do other  
6 than they are going to be situated differently.

7                   MR. MORRIS: Right. And the other piece of  
8 it that's relevant is if it were a particular supplier  
9 out of China who was Joe's Nails operating out of a  
10 van in China, perhaps not in the same situation as an  
11 ITW, to actually capitalize on the expansion of its  
12 China operations the way Paslode's capable of  
13 expanding on its China operations. So it's not just  
14 that they're one out of 300, it's who they are out of  
15 the 300.

16                   COMMISSIONER OKUN: For post-hearing, would  
17 you be able to provide additional documentation with  
18 respect to what you've described as the reason for  
19 moving your production from Mexico partially back to  
20 the U.S. and partially to China?

21                   MR. BOGARD: Yes, we can do that.

22                   COMMISSIONER OKUN: Again, I'm looking for  
23 contemporaneous documentation.

24                   MR. BOGARD: We can do that.

25                   COMMISSIONER OKUN: I appreciate that.

1                   On pricing, I think we've had an exchange  
2 with both panels with respect to the pricing data  
3 that's been collected and what it does or doesn't say.  
4 I did want to hear, and I may have missed it so let me  
5 know if you've already responded to this, but to the  
6 extent that there may, if we're looking at the  
7 coverage of the Chinese pricing product, if it were  
8 the case that we're missing a single large, one of  
9 these Chinese exporters who maybe participated in the  
10 beginning and didn't at the end. Does that change  
11 your argument with respect to how much weight one  
12 should put on the quarterly pricing data? In other  
13 words --

14                   MR. THOMPSON: These are on the eight  
15 product specific --

16                   COMMISSIONER OKUN: Yes, on the pricing  
17 data.

18                   MR. THOMPSON: I don't think it should. In  
19 part if you look at ,in the confidential report, the  
20 companies that reported and those that didn't, there  
21 is some interesting information about who's in and  
22 who's out. Also a number of companies that did  
23 respond, their information, and I'm sure staff is  
24 working on this, but their information wasn't useable  
25 for various technical reasons. But if you had a

1 company that reported in the prelim and didn't report  
2 in the final, I don't think you would have that for  
3 the specific price data. But if you did, I think the  
4 Commission should focus on what coverage do we have of  
5 the overall market as opposed to is any one individual  
6 company in or out.

7 COMMISSIONER OKUN: Okay.

8 MR. THOMPSON: As I recall, and this is a  
9 public number, it's pretty close to three-quarters of  
10 the imports are covered in the pricing data based on  
11 the import numbers prior to the Commerce final  
12 determination.

13 COMMISSIONER OKUN: We'll look at that in  
14 the post-hearing. I'll ask you to comment on that as  
15 well in terms of if you want to see that data. I  
16 don't have that.

17 MR. THOMPSON: Certainly.

18 COMMISSIONER OKUN: The other thing I wanted  
19 to hear more response from and Mr. Dutra, maybe you  
20 being in the best position to explain, which is again,  
21 if we look at the record and see the volume increases  
22 from China, we see the change in market share,  
23 significant change in market share, if the argument is  
24 okay, all we've got to do is look at this pricing data  
25 and show that it's overselling, the Chinese product

1       isn't coming in there, I have a hard time figuring out  
2       why, I'm very interested in what made the market  
3       share, again, Petitioner's argument, a down market,  
4       why did the Chinese capture more of that market share  
5       during that period. So help me understand how you see  
6       the market or how we should look at the market in  
7       trying to evaluate, again, the market share shift  
8       during the period of investigation.

9                   MR. DUTRA: Relative to the Chinese  
10       increases in imports?

11                   COMMISSIONER OKUN: Correct.

12                   MR. DUTRA: I think there's some data, as we  
13       talked about, missing that makes a difference and  
14       certainly when we think of our scale and size being in  
15       Mexico, there were others that were manufacturing in  
16       the period of time in other parts of the world that  
17       have moved production to either the United States or  
18       another country or even to China.

19                   I think a lot of it probably has to do with  
20       the market conditions and the growth in the industry  
21       as a whole relative to the homebuilding, but I think  
22       during the period of investigation, particularly in  
23       2007 when we shut down Mexico, the data would be  
24       significantly different relative to what I can  
25       understand and see.

1 I don't think price played as big a role as  
2 we're talking about here, and I'm struggling to  
3 understand why and where and triangulate all that data  
4 relative to what's causing that. So not how we see it  
5 totally.

6 COMMISSIONER OKUN: My red light's come on.  
7 I'll have a chance to come back. But maybe just on  
8 that specific point for post-hearing, it may not be  
9 clear to me from the pre-hearing brief, and maybe  
10 we'll have better data on exactly what portion of that  
11 shift would be reflected in the description, what Mr.  
12 Dutra's saying on the Chinese. Thank you.

13 CHAIRMAN PEARSON: Commissioner Lane?

14 COMMISSIONER LANE: I was hoping to ask a  
15 question today of ITW, but since that company isn't  
16 here I'm going to ask you all the question and if you  
17 can't answer it, that's fine.

18 But as I understand what ITW was doing as  
19 far as imports, they were importing from their  
20 affiliated company Paslode and it was a patented  
21 product that they were bringing in specifically to  
22 this country. Now that Commerce has determined that  
23 they weren't dumping, then that issue sort of goes  
24 away.

25 But the question I had was, was ITW only

1 importing from that particular company in China? Or  
2 were they also importing other merchandise from other  
3 companies?

4 MR. BOGARD: We have no way of knowing that.

5 COMMISSIONER LANE: Okay. Thank you.

6 On page 22 of your pre-hearing brief you  
7 indicate that your U.S. production is affected by the  
8 housing market whereas subject product that you import  
9 is not affected by the housing market. Could you  
10 explain what subject products Stanley imports that are  
11 not affected by the housing market and where are those  
12 products used?

13 MR. DUTRA: Sure. The subject product that  
14 is affected by the housing market that we make in the  
15 U.S. is the framing nails used to frame houses. The  
16 subject merchandise that we manufacture in China is  
17 pallet nails used for the manufacture and repair of  
18 shipping pallets. Obviously that's not tied directly  
19 to housing starts.

20 COMMISSIONER LANE: Okay.

21 So then on page 32 of your pre--hearing  
22 brief you make the point that most parties responding  
23 to the Commission's questionnaires including importers  
24 agree that the slow-down in the housing market that  
25 began in 2006 has greatly affected the steel nail

1 market. If the housing market is impacting importers,  
2 would that be inconsistent with your argument on page  
3 22 of your brief that imported subject nails are not  
4 affected by the housing market?

5 MR. BOGARD: Commissioner Lane, let me  
6 intervene for just a second. What Mr. Dutra tried to  
7 respond to before is the fact that there are framing  
8 nails, products that he makes in Rhode Island are  
9 affected by the housing market. As he testified  
10 earlier this afternoon, obviously those types of nails  
11 are directly impacted by the decline in housing  
12 starts.

13 He just testified that pallet nails are what  
14 he produces in China and that those are not directly  
15 related to decline in housing starts. But he had  
16 testified in his initial testimony that demand for  
17 pallet nails and the like tracks the GDP in the United  
18 States fairly closely, and in response to an earlier  
19 question he indicated that demand for pallet nails  
20 tends to lag behind the trends, tends to lag behind  
21 the housing start trends by what did you say, about  
22 six months, Chris?

23 And just to clarify the statement at the  
24 bottom of our brief at page 22 doesn't say the decline  
25 in housing starts had no impact on imports from China.

1 It said it had a lesser impact. I think that's  
2 entirely consistent with what Mr. Dutra's testified.

3 COMMISSIONER LANE: Okay, thank you.

4 You also argue in your pre-hearing brief  
5 that there has been no suppression or depression of  
6 domestic prices. The domestic industry challenges the  
7 individual product pricing information and argues that  
8 all other evidence in the record indicates  
9 undercutting of domestic prices by subject imports and  
10 lost sales and revenues by the domestic industry  
11 because of subject imports.

12 How do you respond to the domestic  
13 industry's arguments that the record supports a  
14 finding of price suppression or depression?

15 MR. THOMPSON: I think the single most  
16 salient rebuttal point, and again the numbers are  
17 confidential so we can expand in the post-hearing  
18 submission, would be the relationship between net  
19 sales and cost of goods sold which in our view does  
20 not show either a depression of prices. Prices have  
21 not declined, and that's as far as I know how price  
22 depression is defined. It also does not show  
23 suppression which again as far as I know is defined as  
24 an inability to raise prices to the extent necessary  
25 to cover increased costs. I think the cost of goods

1 sold data show that that has not occurred, that price  
2 increases have been sufficient to cover increased  
3 costs. That would be certainly our main or initial  
4 response, or at least one I can think of right  
5 offhand.

6 We just don't think the pricing data show  
7 it. Their anecdotal evidence about how imports lead  
8 the way, that would go to underselling, even if it  
9 were accepted as valid, and somehow the Commission  
10 said well, we'll discard the numbers and take the word  
11 of mouth instead. But that would not show suppression  
12 or depression. That just goes to underselling. And  
13 then lost sales and lost revenues, again, would not go  
14 to suppression or depression. That goes to another  
15 potential aspect of pricing or a consequence of  
16 pricing, but it doesn't tell us whether there's been  
17 suppression.

18 COMMISSIONER LANE: Okay.

19 Does Stanley produce or import cut nails?

20 MR. DUTRA: No, we do not. We're not in the  
21 cut nail business.

22 Flooring cleats. We sell flooring cleats  
23 but they're manufactured in Canada.

24 COMMISSIONER LANE: I'm sorry. Say that  
25 again.

1                   MR. DUTRA: We sell one particular kind of  
2 cut nail used for hardwood flooring and we import it  
3 from Canada.

4                   COMMISSIONER LANE: Thank you.

5                   Mr. Chairman, that's all I have.

6                   CHAIRMAN PEARSON: Commissioner Williamson?

7                   COMMISSIONER WILLIAMSON: Thank you, Mr.  
8 Chairman.

9                   Given Stanley's ratio of imports to domestic  
10 production which of course is BPI, can it be said  
11 recently that Stanley is simply rounding out its  
12 domestic production when it imports?

13                   MR. BOGARD: That's certainly Stanley's view  
14 of the world.

15                   COMMISSIONER WILLIAMSON: Looking at the  
16 numbers, you might want to address that in post-  
17 hearing.

18                   MR. BOGARD: We intend to do so.

19                   COMMISSIONER WILLIAMSON: Thank you.

20                   Do you have a position on the issue of  
21 critical circumstances with regard to the China-wide  
22 entity?

23                   MR. BOGARD: We do not. It's irrelevant as  
24 far as we're concerned.

25                   COMMISSIONER WILLIAMSON: The Chinese

1 producers that responded to the Commission's  
2 questionnaire in the final investigation are a small  
3 share of the industry and significantly less than  
4 those that responded in the preliminary determination.  
5 I've asked this question of the domestic industry this  
6 morning. I want to know what your view is.

7 Can you elaborate on what data the  
8 Commission should consider on the Petitioner's  
9 contention that the Commission takes adverse inference  
10 in making its determination?

11 MR. THOMPSON: Mr. Commissioner, our view is  
12 that if the Commission believe this is an inadequate  
13 response, either sort of qualitatively where the  
14 parties didn't act to the best of their ability to  
15 participate, or quantitatively, that it simply does  
16 not provide you with a sufficient record to make a  
17 reasoned evaluation, you certainly have the option of  
18 going back to the responses in the preliminary  
19 investigation which would give you, well, the  
20 complaint was we have even lower response rate in the  
21 final than in the preliminary. One remedy for that is  
22 to take into account the information that was provided  
23 in the preliminary.

24 We've heard the number thrown around of  
25 something like 300 producers, but there's no reason to

1 believe they're all at this point exporting to the  
2 U.S. or have any intention to do so, so simply making  
3 the assumption that the Chinese industry didn't  
4 respond therefore we have to make an affirmative  
5 threat determination does seem to be a bit of over-  
6 reach. That was the proposal from the petitioners  
7 this morning.

8 COMMISSIONER WILLIAMSON: To your knowledge  
9 is there much domestic consumption of nails in China?  
10 Petitioners raised that this morning.

11 MR. DUTRA: I concur with what they say.  
12 Most of the homes are concrete and block.

13 COMMISSIONER WILLIAMSON: That gets to the  
14 question of what are the other producers doing if we  
15 don't have the data.

16 It looks like my red light is on.

17 CHAIRMAN PEARSON: Mr. Secretary, have ten  
18 minutes actually expired for Commissioner Williamson?  
19 I'm thinking not. Was the red light left on  
20 inadvertently?

21 COMMISSIONER WILLIAMSON: No, the yellow  
22 came on, but it sure came on fast.

23 CHAIRMAN PEARSON: We have been having clock  
24 problems today of course. This could be related.

25 COMMISSIONER WILLIAMSON: If I can just ask

1 one more question.

2 CHAIRMAN PEARSON: Permit me to yield  
3 Commissioner Williamson enough time to finish his  
4 questions.

5 COMMISSIONER PINKERT: There you go again.  
6 (Laughter).

7 COMMISSIONER WILLIAMSON: Thank you.

8 Just one question, in relation to something  
9 I asked you earlier about Bratsk. On page 63 of your  
10 pre-hearing brief you indicate that non-subject  
11 imports are likely to substantially replace subject  
12 imports in the U.S. market. However, your argument  
13 regarding likely to substantially replace and  
14 discussion of AUVs does not address the issue of  
15 without any beneficial impact on domestic producers of  
16 any product. So I was wondering what about the  
17 beneficial impact aspect of this test.

18 MR. BOGARD: I think for this afternoon, and  
19 again we've been asked to do a number of things in the  
20 post-hearing, we'll address some of this. But for  
21 this afternoon you've heard a great deal about Paslode  
22 Shanghai which is now non-subject merchandise.  
23 Paslode Shanghai's capability of acquiring additional  
24 production capacity that already exists in China, by  
25 virtue of their acquisition of it, it becomes non-

1 subject production capacity. They certainly have the  
2 capital, they have the marketing wherewithal to come  
3 into the U.S. market and occupy a dominant position in  
4 the U.S. market. I'll tell you, frankly, that in my  
5 discussions with people here from Stanley over the  
6 last three or four weeks, the reason we are here is  
7 because of a concern to Paslode Shanghai's ability  
8 with non-dumped imports, non-subject imports, to come  
9 in and dominate the U.S. market.

10 As Mr. Dutra testified earlier this  
11 afternoon, he doesn't perceive that danger, if you  
12 will, as being limited to companies like his own. He  
13 believes quite fervently, because he's gotten quite  
14 fervent with me in explaining it, that if Paslode  
15 adopts this type of strategy they will be able to  
16 enter the U.S. market with products manufactured in  
17 China that they currently don't produce in China that  
18 will directly affect the Petitioner companies. In  
19 that respect we believe that under a Bratsk analysis  
20 an affirmative determination would deny a benefit to  
21 the domestic industry.

22 COMMISSIONER WILLIAMSON: I think you've  
23 said that both Stanley and ITW are companies that are  
24 the high end, and I guess this is full service, this  
25 package solution, but aren't a lot of the domestic

1 producers selling in a different market? Where you  
2 don't have the package solution. Isn't that a large  
3 part of domestic production? That makes me wonder why  
4 this is likely.

5 MR. DUTRA: Our other domestic producers  
6 have a different model, if you will, of going through  
7 distribution. We choose in the industrial sector to  
8 go direct and provide all those breadth of product in  
9 the service and the tools. There are others that  
10 manufacture nails and sell them to a distributor who  
11 in turn may choose to offer that market basket of  
12 goods with tools, service, and loan tools, or just  
13 sell an account for tools and let the account service  
14 their own product.

15 But I think the biggest threat that we have  
16 is ITW, and the model we have is fairly unique on a  
17 national basis that we can offer, and there are only a  
18 few of us that have the ability in the breadth of  
19 product and the tools to support it on a national  
20 basis.

21 COMMISSIONER WILLIAMSON: Is the threat more  
22 to Stanley or to the U.S. industry as a whole?

23 MR. DUTRA: I think it's to the U.S.  
24 industry as a whole.

25 COMMISSIONER WILLIAMSON: Even though ITW is

1 basically like you, selling to certain markets?

2 MR. DUTRA: I do. I think any time you get  
3 a 20 percent cost advantage where I think we've all  
4 seen, we know our margins, I haven't obviously seen  
5 the others, but it's a pretty big differential in  
6 cost, and as Mr. Bogard stated, I also feel it's not  
7 just us, it's even the Petitioners.

8 COMMISSIONER WILLIAMSON: Thank you, Mr.  
9 Chairman.

10 CHAIRMAN PEARSON: Commissioner Pinkert?

11 COMMISSIONER PINKERT: Thank you, Mr.  
12 Chairman.

13 Mr. Thompson, I noticed in your testimony  
14 just now about allegations of price suppression you  
15 focused on the, to some extent you focused on the  
16 ratio of cost of goods sold to net sales. And I'm  
17 wondering whether you can help me to understand the  
18 variation from company to company among domestic  
19 producers in that particular ratio.

20 MR. THOMPSON: I don't have those data in  
21 front of me. If it's all right, well, I couldn't  
22 discuss them publicly anyway. We'll try to address  
23 that in our post-hearing submission. Is that  
24 acceptable?

25 COMMISSIONER PINKERT: Yes, absolutely. And

1 I would invite the domestic industry to comment on  
2 that issue as well in the post-hearing.

3 I believe you also heard me ask some  
4 questions of the domestic industry concerning per unit  
5 SG&A expenses, and the degree to which those might  
6 account for trends in profitability for the domestic  
7 industry. If you can comment on that now, that would  
8 be great. If you can't, I would appreciate comments  
9 on that in the post-hearing submission.

10 MR. BOGARD: Commissioner Pinkert, we'll add  
11 that to the post-hearing submission.

12 COMMISSIONER PINKERT: Thank you. I'm not  
13 trying to add a raft of material to the post-hearing  
14 submission, but I think those are very important  
15 issues that we need to get your insight on.

16 Turning to Bratsk for a moment, Mr. Bogard,  
17 does the evidence in this case support the finding  
18 that nails from China and from non-subject countries  
19 are interchangeable for purposes of applying Bratsk?  
20 Before you answer that question I want to bring up the  
21 question in this context of whether interchangeability  
22 for purposes of Bratsk is the same as  
23 interchangeability for purposes of other  
24 determinations that we might make under the statute,  
25 either in this case or in cases where cumulation is

1 still a live issue?

2 MR. BOGARD: If the last part of your  
3 question was leading into fungibility for cumulation  
4 purposes, I don't think they necessarily are the same,  
5 but I don't think you have to go there. I think that  
6 the evidence of substitutability of the products on  
7 the record of this investigation, all the responses in  
8 the questionnaires, confirms overwhelmingly that a  
9 nail is a nail is a nail regardless of its origin. So  
10 I think for purposes of the Bratsk analysis that  
11 subject and non-subject nails are interchangeable. I  
12 don't think there's much question about it.

13 COMMISSIONER PINKERT: Does the evidence  
14 support findings that non-subject imports were price  
15 competitive with subject imports, given that the AUVs  
16 of imports from China were substantially lower than  
17 for most of the non-subjects?

18 MR. BOGARD: First of all you're going to  
19 have to relook at all the data for China and for non-  
20 subject imports as a result of the fact that the non-  
21 subject imports have changed dramatically since  
22 Monday. And in any event, the, as I noted earlier  
23 this afternoon, the pricing for non-subject imports on  
24 an AUV basis is also below the domestic industry  
25 prices. So whether or not they can replace China

1 immediately on a straight cost basis may be more  
2 questionable. It's something that in looking at in  
3 the post hearing the relationships that Mr. Dutra has  
4 said, adding 21.24 percent to somebody's cost tends to  
5 make them less competitive. So one of the things that  
6 needs to be considered is whether or not the AUV  
7 differential between subject and non-subject falls  
8 within that gap. That's something we'll look at and  
9 something maybe your staff should look at.

10 But in any event, all of the imports are  
11 below the AUVs of the domestics and the domestics will  
12 continue to face whatever price pressure they're  
13 feeling now, they'll feel from a different source.

14 MR. THOMPSON: Commissioner Pinkert, if I  
15 could follow upon that.

16 In this case sometimes AUVs do provide  
17 pretty approximate proxy for determining competition  
18 directly between imports and domestic products or  
19 between subject and non-subject imports. But with the  
20 probably literally thousands of product variations  
21 that you are going to see in the subject imports, non-  
22 subject imports and domestic production, AUVs I think  
23 are better for seeing trends here than determining  
24 whether a particular substitutable subject or non-  
25 subject nail is at a price competitive level.

1                   So for those purposes you did gather  
2 information on the UAE. And that would at least give  
3 you, for the eight product specific comparisons. That  
4 might be a starting point for the evaluation that I  
5 think you were asking Mr. Bogard about, how do we  
6 relate the price levels for the subject and non-  
7 subject imports. It's probably only a starting point.  
8 I'd have to go back to the report and see if you have  
9 a more complete or extensive set of data for other  
10 non-subject imports. But that at least gives you I  
11 think a little more guidance than AUVs. As Mr. Bogard  
12 pointed out, on an AUV basis both subject and non-  
13 subject imports are below where the domestic industry  
14 or domestic AUVs are, so that gives you some  
15 indication but there's such a product mix in there I  
16 don't know how far it goes.

17                   COMMISSIONER PINKERT: Thank you.

18                   Finally regarding the issue of threat of  
19 material injury, do you agree with Petitioners that  
20 Chinese producers have reported their capacity data  
21 based on methodologies that understate their actual  
22 production capacity?

23                   MR. BOGARD: As I've testified at the  
24 beginning of my testimony, I don't think it matters.  
25 I think in your evaluation of threat and your

1 consideration of the available production capacity in  
2 China, I think the result of the Commerce Department's  
3 determination with regard to Paslode neutralizes the  
4 capacity availability argument in a threat context.  
5 As you've heard from the Stanley Bostitch witnesses  
6 today, there's significant concern that whatever  
7 available capacity there may be there is going to end  
8 up in the hands of Paslode Shanghai.

9           It may come to, the output of that  
10 production capacity may come into the U.S. but it  
11 will come into the U.S. as fairly traded merchandise.

12           COMMISSIONER PINKERT: Thank you.

13           With that I conclude my questions. I  
14 appreciate the testimony today and I look forward to  
15 the post-hearing.

16           CHAIRMAN PEARSON: I'd like to get your  
17 thoughts on the issue of export taxes on Chinese  
18 subject product. Did the change in July 2007,  
19 dropping the export rebate from 13 percent to 5  
20 percent, did that apply to all subject merchandise?  
21 Do you know?

22           MR. DUTRA: Yes, it did.

23           CHAIRMAN PEARSON: Did it have an affect on  
24 pricing in the U.S. marketplace?

25           MR. DUTRA: Yes, sir.

1                   CHAIRMAN PEARSON: But it affected all  
2 importers equally?

3                   MR. DUTRA: That's correct.

4                   CHAIRMAN PEARSON: Is there now an export  
5 tax of ten percent?

6                   MR. DUTRA: No. There's no export tax, just  
7 the VAT still remains at five.

8                   CHAIRMAN PEARSON: Because there's been some  
9 uncertainty regarding whether there would be an export  
10 tax on steel nails and I was wondering whether that  
11 had gone into effect. Talked about but not done, huh?

12                   MS. NEMCHEV: Rumored, but it hasn't  
13 happened.

14                   CHAIRMAN PEARSON: Have you heard anything  
15 about it, or heard nothing until I've tried to ask  
16 this question?

17                   MS. NEMCHEV: What I've heard in China is  
18 that the five percent will likely go away. When we  
19 heard about the one in July we found out affirmatively  
20 like a week before it happened. So basically you get  
21 no notice. Then after the five percent goes away,  
22 that there would be a tax imposed as well, but it's  
23 rumor.

24                   CHAIRMAN PEARSON: Okay. If there's  
25 anything definite about this to brief it as an issue

1 related to threat, it might be good to do. If it's  
2 all just speculative then there's no point. But if  
3 there is some announcement while the record is still  
4 open then it might be useful to understand what affect  
5 that change might have on future imports from China.

6 With that I think I have no further  
7 questions.

8 Madame Vice Chairman?

9 VICE CHAIRMAN ARANOFF: Thank you, Mr.  
10 Chairman. I have one last question but it's sort of a  
11 long, complicated question. It may really be several  
12 questions.

13 In your direct testimony at the beginning of  
14 this panel presentation, I believe you indicated that  
15 your company has raised prices in the time period  
16 since the petition was filed in this investigation.  
17 But if I heard you correctly, you ascribe those price  
18 increases to rising raw material costs and not to the  
19 effect of the filing of the case.

20 MR. DUTRA: I stated that in 2007 the  
21 factors for raising price which were not inclusive of  
22 the petition. We have since raised prices at the  
23 beginning of the year which did include both raw  
24 material inflation, again, and the net effect for us  
25 of the antidumping petition. We will have raised

1 prices again after that which is not strictly related  
2 to raw material. And we have another price increase  
3 scheduled here this month.

4 VICE CHAIRMAN ARANOFF: I know you said you  
5 were going to provide us documentation in the form of  
6 the letters you'd sent to your customers.

7 MR. DUTRA: Absolutely.

8 VICE CHAIRMAN ARANOFF: I appreciate that.

9 Now you've argued that your price increases  
10 in 2007 were not related to the filing of the case but  
11 the domestic producers in their testimony this morning  
12 indicated that they, since the case was filed, have  
13 had brand new customers they've never heard from  
14 before come to them for product, and that they had had  
15 customers who had been buying imports for a number of  
16 years return to them to purchase product. If that is  
17 in fact true, doesn't that provide a solid basis for  
18 the Commission to discount the significance of  
19 improvements in prices or other indicators of the  
20 condition of the domestic industry after the filing of  
21 the petition as being related to the filing of the  
22 case?

23 MR. DUTRA: I am reticent to believe that  
24 the new customers heard from are strictly due to the  
25 antidumping petition. The price increases that the

1 industry has seen in certain nails have been  
2 significantly higher, two, two and a half X that of  
3 the antidumping number, just due to the rising raw  
4 material cost, the inbound freight, and what has  
5 happened is the cost gap would have closed  
6 significantly with or without. I think the  
7 antidumping obviously closed at more of it, but the  
8 gap is closed on raw material. In particular China to  
9 U.S.. So as shocking price increases go out to  
10 customers of 40 to 50 percent, they're shopping. And  
11 we have heard from many customers we haven't either,  
12 just due to the fact that they, so and so is raising  
13 50 percent, what's your priding. But we've had a lot  
14 of loss of customers due to the increasing cost of  
15 pricing due to the rising raw material cost in  
16 freight.

17 MR. THOMPSON: Madame Vice Chairman, also if  
18 I may, the testimony this morning from Messrs. Libla  
19 and Dees, I believe it was, both emphasized that the  
20 increases in prices and the new customers they  
21 attribute to the antidumping investigation occurred  
22 after the preliminary duties went into effect which of  
23 course is subsequent to the period of investigation.  
24 So it would bear careful review of the transcript to  
25 see exactly what time period they were talking about

1 because they put it in the context of the bulk of this  
2 occurring this year.

3 VICE CHAIRMAN ARANOFF: I assume there's  
4 some lag associated with purchasing product from  
5 China, that that would tend to push the result of that  
6 product that had already been ordered prior to the  
7 filing of the petition, might have been coming in over  
8 several months thereafter before you might see an  
9 affect. Is that your experience?

10 MR. DUTRA: That is correct.

11 VICE CHAIRMAN ARANOFF: Wouldn't also the  
12 fact that, assuming it's documented on the record that  
13 domestic producers are seeing an increase in orders in  
14 this post-petition period, be evidence under the  
15 Commission's Bratsk analysis that non-subject imports  
16 would not replace subject imports?

17 MR. BOGARD: Vice Chairman, I apologize, I  
18 was distracted by my colleague. Could I ask you to  
19 repeat the question?

20 VICE CHAIRMAN ARANOFF: Sure. The question  
21 was under our Bratsk analysis the Commission will  
22 frequently look at what happens in the post-petition  
23 period as some evidence of whether or not there would  
24 be replacement. If in fact it's documented on the  
25 record that the domestic industry is gaining sales

1 volume and/or market share in the post-petition period  
2 which is what they testified to this morning, wouldn't  
3 that then be evidence that there wouldn't be  
4 replacement?

5 MR. BOGARD: In that context, but I question  
6 whether that's in fact what has fully been happening  
7 in the post-petition period.

8 The market, as we've testified, is quite  
9 volatile. People have been raising prices to cover  
10 raw material costs and I think that's what's been  
11 affecting the market. I will try to answer the  
12 question more fulsomely in the post-hearing. I  
13 apologize on being a bit distracted here.

14 VICE CHAIRMAN ARANOFF: Mr. Thompson, did  
15 you want to add something there?

16 MR. THOMPSON: Just a quick perusal of the  
17 summary at the back of the report shows that, and this  
18 is the public report, shows that that claim would not  
19 be reflected in the domestic industry numbers. That  
20 there has been an improvement this year as opposed to  
21 the earlier years in the period of investigation.

22 VICE CHAIRMAN ARANOFF: How so?

23 MR. THOMPSON: I'm looking at production  
24 quantity and U.S. shipments by volume, and they are  
25 not showing the increase that I think you were

1 alluding to.

2 VICE CHAIRMAN ARANOFF: Okay. I think it  
3 may be that it's after the period for which we  
4 collected data, but we can ask the domestic industry  
5 to clarify that in their post-hearing brief.

6 MR. BOGARD: I think Mr. Dutra has a comment  
7 he'd like to add with regard to your observation on  
8 the period after the POI.

9 MR. DUTRA: We have also heard from many  
10 customers and I think there's one factor I alluded to  
11 in my testimony relative to the difficulty in getting  
12 wire rod, but also the fact that in the last six  
13 months many of the steel mills have shut down that  
14 supply the wire rod to the nail manufacturers for the  
15 purposes of cleaning up the air around Beijing for the  
16 Olympics. Therefore many of the mills that maybe  
17 didn't have the cash to lay out to bring in three or  
18 four or five months worth of steel rod probably don't  
19 have any capacity right now or any ability to make it  
20 as the government mandated a shutdown of many of the  
21 steel factories that produce a lot of the, in front of  
22 the Olympics. So we see some of that.

23 VICE CHAIRMAN ARANOFF: I appreciate those  
24 answers and thank the panel for all of your answers  
25 today. With that, Mr. Chairman, I have no further

1 questions.

2 CHAIRMAN PEARSON: Commissioner Okun?

3 COMMISSIONER OKUN: I think everything was  
4 covered. I was going to say I have one last question,  
5 but it won't be give Vice Chairman Aranoff's last  
6 question. That would be, I don't know if you had a  
7 chance to comment on this, but if you could describe  
8 for me how you view Mid Continent in the market. A  
9 lot of your testimony today has really focused on ITW  
10 and what you see. I wondered if you have the  
11 experience to say how you view another big player in  
12 the market and how they do or don't compete in the  
13 same way.

14 MR. DUTRA: Sure. I think Mr. Libla and  
15 myself go back a long ways, and I consider him a very  
16 good friend.

17 I think we compete along the same lines.  
18 Our business models may be a little bit different in  
19 that we probably go to market direct to the end user  
20 more than Mr. Libla does. I don't think Mr. Libla's  
21 intent or Mid Continent Nail is to sell nails really  
22 cheap and make a quick buck. I think he's genuinely  
23 concerned about the health of the industry relative to  
24 keeping prices and margins healthy as we are and as  
25 are most other branded products. And I think in the

1 industries that we serve together, which are a few but  
2 not all of them, there's probably room for more Mr.  
3 Libla's in the world relative to how he goes to  
4 market.

5 COMMISSIONER OKUN: And one other question.

6 Prior to, I know you've talked about Mexico  
7 production, moved to China. Have you imported from  
8 the other non-subject countries?

9 MR. DUTRA: We have a factory in Poland that  
10 we have brought some nails in. South Africa we have a  
11 factory in, and we may have brought some augmenting or  
12 some skews in at one point. Korea for sure, at one  
13 point. And that's about it.

14 COMMISSIONER OKUN: Okay. Thank you very  
15 much. I appreciate all those responses.

16 CHAIRMAN PEARSON: Commissioner Lane?

17 (No response).

18 CHAIRMAN PEARSON: Commissioner Williamson?

19 COMMISSIONER WILLIAMSON: I have no further  
20 questions. I want to thank the panel for their  
21 testimony.

22 CHAIRMAN PEARSON: Commissioner Pinkert?

23 COMMISSIONER PINKERT: I have nothing  
24 further, Mr. Chairman.

25 CHAIRMAN PEARSON: Are there any further

1 questions from the dais?

2 (No response).

3 CHAIRMAN PEARSON: Mr. Deyman, do members of  
4 the staff have questions for this panel?

5 MS. TURNER: Mr. Chairman, the staff has  
6 just a few questions. I'll start out. Robin Turner,  
7 Office of the General Counsel.

8 My first question, Mr. Morris, you had  
9 started off and others actually also made arguments  
10 regarding the threat that you perceive ITW and Paslode  
11 China to now have to the domestic industry. You've  
12 raised a number of arguments, but in your post-hearing  
13 brief can you provide actual evidence that they will  
14 increase their capacity in some way in China? The  
15 Commission cannot make its decision based on  
16 speculation. It needs some concrete evidence that  
17 this is going to happen. If you could provide that  
18 that would be very helpful.

19 MR. MORRIS: To the extent that we can give  
20 tangible evidence of that, we will absolutely do that  
21 in our brief.

22 MS. TURNER: Thank you.

23 The second question that I had was just a  
24 clarification on this issue regarding the services and  
25 the tools that are provided that you've indicated are

1 provided. In follow-up to a question that  
2 Commissioner Lane asked, there was a response that  
3 this was included in your SG&A. But you then also  
4 elaborated in response to a few of the other  
5 Commissioners that this in fact was included in your  
6 price of your nails because you indicated that you  
7 could sell your nails at a price premium.

8 So if you could clarify first of all whether  
9 it's something that's included in your SG&A or is it  
10 included in the specific price of your nails?

11 And the second part of that question, is it  
12 different for your domestic operations than from your  
13 nails that are imported from China.

14 MS. NEMCHEV: I think one of the questions  
15 was how do we price the value versus how we cost?  
16 What I commented on this morning is that the cost, and  
17 we really break them down into tools, parts, and then  
18 services, are either in our cost of goods, is how we  
19 cost it, or it's in our SG&A and our selling expenses.  
20 We actually price, I think the question is how do we  
21 actually get the revenue for that value. It is on a  
22 box of nails. But to get a time period of value, we  
23 have a long term agreement where we will get a certain  
24 amount of volume to recoup that cost over time through  
25 the price of the box of nails.

1 MS. TURNER: I think some of the  
2 clarification here is trying to look at the pricing  
3 data and to try to determine whether in fact when  
4 you're buying a nail and there's a price for the nail  
5 versus a price for a nail with this service, we're  
6 trying to compare prices and trying to determine where  
7 in fact that service that you're providing, whether  
8 that makes that product comparable with the other  
9 products or whether in fact that has something else  
10 that has been added to it and makes it not a  
11 comparable price comparison.

12 MS. NEMCHEV: We've asked the same question.  
13 How was that value going to be captured in this  
14 analysis.

15 MS. TURNER: I guess that's a question for  
16 you all ,and this is something for more post-  
17 conference brief, tell us how you do it and tell us  
18 how you do it on both of your domestic as well as your  
19 import and that will at least provide us --

20 MS. NEMCHEV: There's no difference in how  
21 we price, regardless of where the product is made. We  
22 have a global footprint, and part of our I guess  
23 almost public strategy that we've released to analysts  
24 at least is that in order to be a viable company long  
25 term we want to be able to leverage a global footprint

1 of operation for the whole Stanley Works. So we will  
2 change that source depending on market dynamics. We  
3 don't price based on where we make product. It's  
4 subject to change.

5 MS. TURNER: But isn't it based on the cost,  
6 your price?

7 MS. TURNER: We price based on market  
8 pricing and cost is brought into effect to find out  
9 how much margin in the end will be made. We don't  
10 necessarily pull the two together to say this customer  
11 with this product on this day, we're going to price at  
12 this amount because our cost today is this. We don't  
13 price that way.

14 MS. TURNER: If you can clarify the service  
15 aspect of where that service is actually, if that is  
16 included in the nails price or that is included in  
17 your SG&A for the post-hearing brief, that would be  
18 helpful.

19 MS. NEMCHEV: No problem.

20 MS. TURNER: My last question is one that  
21 actually is both for the domestic industry as well as  
22 for you and that's in light of Commerce's findings  
23 regarding critical circumstances in the post-hearing  
24 brief if you can actually indicate its finding, it  
25 made an affirmative finding regarding China-wide, but

1 it did not make a critical circumstances finding  
2 regarding any of the separate rate entities, and  
3 basically what effect this has on how the Commission  
4 should conduct its critical circumstances analysis.

5 MR. BOGARD: I'm happy to address that in  
6 the post-hearing brief it it helps you, but as I  
7 answered earlier from Stanley's standpoint, it's  
8 irrelevant because we're a separate rates applicant.  
9 We will look at the trends if you would like us to, to  
10 the extent we can tie them to China-wide exporters,  
11 but it's really not an issue that we're concerned  
12 about.

13 MS. TURNER: My question is the Commission  
14 will have to conduct a critical circumstances analysis  
15 because Commerce made a critical circumstance finding.  
16 I'm just asking you to please brief basically what you  
17 think the Commission should do in terms of --

18 MR. BOGARD: Fair enough. We will do that.

19 MS. TURNER: I believe there are other staff  
20 questions.

21 MS. CLARK: Thank you. My name is Kelly  
22 Clark from the Office of Economics. I have one  
23 question for Mr. Thompson and then a follow-up  
24 comment.

25 Mr. Thompson, in your comments you discussed

1 coverage for the pricing data. I'd like to clarify  
2 what exactly you were talking about, and I'll refer  
3 you to Footnote 12 on page 5-7 of the staff report.

4 MR. THOMPSON: I think the number I had in  
5 my mind was for responses on imports. There would be  
6 a lower number, and I really don't know what it is  
7 offhand, for those importers who reported quarterly  
8 pricing. If that's what your question goes to.

9 MS. CLARK: It is. Thank you.

10 And just a related comment. There seemed to  
11 be a misconception on both panels, and I just want to  
12 make sure that it's straight in going forward to the  
13 post-hearing, the pricing data reported for imports  
14 does not come from foreign producer questionnaires, it  
15 comes from the import questionnaires. I just wanted  
16 to make sure that everyone has it straight at this  
17 point.

18 MR. THOMPSON: Certainly, I think that's  
19 pretty clear from the staff report the origin of that  
20 information. The respondents are confidential, but I  
21 believe they were identified in various footnotes.

22 MS. CLARK: Yes, thank you. There were just  
23 comments and I wanted to make sure that, like I said,  
24 everyone was okay with the concept. Thank you.

25 The staff has no further questions, Mr.

1 Chairman.

2 CHAIRMAN PEARSON: Mr. Rosenthal, does the  
3 domestic industry have any questions?

4 MR. ROSENTHAL: No questions.

5 CHAIRMAN PEARSON: Mr. Secretary, do we have  
6 a time check?

7 MR. DEYMAN: The Petitioners have eight  
8 minutes remaining and five minutes for close; and the  
9 Respondents have 13 minutes remaining for rebuttal and  
10 five minutes close.

11 CHAIRMAN PEARSON: I would like, in  
12 dismissing this panel, to thank you very much for your  
13 participation here today. It's been extremely useful  
14 to round out the picture and I appreciate your  
15 sticking with us right through the proceedings.

16 MR. THOMPSON: Thank you, Mr. Chairman.  
17 It's been an honor to appear before you over the past  
18 several years during the pendency of your  
19 Chairmanship, and we will look forward to being here  
20 in the future when you're not the Chairman.

21 CHAIRMAN PEARSON: Great.

22 Mr. Rosenthal, how do you wish to use the  
23 time? Do you want to take your time in a straight shot  
24 or do you want to do rebuttal and then separately  
25 closing?

1 MR. ROSENTHAL: No, I'll consolidate the  
2 remaining time in a straight shot, thank you.

3 CHAIRMAN PEARSON: Is that also your  
4 preference, Mr. Thompson?

5 MR. THOMPSON: I'll do the same as well, Mr.  
6 Chairman.

7 CHAIRMAN PEARSON: Fine. You may dismiss  
8 your panel and we'll allow Mr. Rosenthal to come  
9 forward.

10 (Pause).

11 CHAIRMAN PEARSON: Okay. Mr. Rosenthal, do  
12 you have your notes in order?

13 MR. ROSENTHAL: No, but I'll go ahead.

14 CHAIRMAN PEARSON: Okay, please proceed.

15 MR. ROSENTHAL: First I'll start with a  
16 little historic piece that was passed on to me by H.  
17 Woltz, who you may have seen in some other cases. He  
18 was in the P.C. Schram business, a wire user.

19 But he was reading a book on Thomas  
20 Jefferson's life by Faun Brody, page 365. It turns  
21 out that President Jefferson, much to my astonishment,  
22 in retirement established a small nail factory, where  
23 young slaves made up to 10,000 nails a day, bringing  
24 in much-needed cash income, until a deluge of cheap  
25 nails from England virtually destroyed his market.

1                   Now, I'm pretty sure, I'm hoping that Mr.  
2 Bogard and his responses are not going to argue on  
3 Bratsk that nails from England ought to be considered  
4 as being in a position to replace those by China at  
5 this point. In fact, the nail industry has been  
6 around since the beginning of this Republic, and there  
7 has been nails imports since the beginning of the  
8 Republic.

9                   What we're facing in this proceeding is  
10 something that is totally unprecedented in terms of  
11 scale, scope, and actually threat to the domestic  
12 industry. There has been never seen a nail machine  
13 such as represented by the nail industry in China,  
14 with the backing of the Chinese Government.

15                   That has to be understood when you're  
16 thinking about Bratsk, when you're thinking about  
17 threat. And I'll come back to those in a minute.

18                   I start off my opening statement today  
19 talking about having statements that are truly hard to  
20 believe, or hard to find credible. And I have great  
21 respect for Stanley and the witnesses. But I have to  
22 say that the statements that had to do with reasons  
23 for moving production to China suggested that price or  
24 costs were not the main consideration are really hard  
25 to fathom, really hard to square with the record.

1           Even the 2006 Stanley annual report, at page  
2           38, basically talks about the sales volume decline and  
3           cost inefficiencies experienced by U.S. Fastener  
4           Systems business, and says that, "Management is  
5           committed to restoring the Fastening Systems business  
6           long-term cost-competitiveness by continuing the  
7           migration of production to Asia, reducing the overall  
8           SG&A and manufacturing footprint, as well as SKU  
9           rationalization."

10           Now, this Stanley and every other company  
11           has the choice where to make their product, whether to  
12           be fully integrated to import. No arguments there.  
13           And we respect those decisions.

14           But it's something else again to say we've  
15           decided to rationalize production by moving a fair  
16           amount of it to China, so we can import -- they call  
17           it low-value, the common term is low-price imports --  
18           so they can sell those low-price imports to round out  
19           their product line.

20           Well, that may be a good product strategy  
21           for Stanley. We understand why they're doing that.  
22           But that is not a good strategy for the rest of the  
23           domestic industry. It certainly wasn't a good  
24           strategy for the Stanley workers who lost their jobs.

25           And what we're talking about here, despite

1 an understanding that Stanley is viewing this case  
2 through their own prism; they only see themselves as  
3 interested in their particular company's well-being.  
4 But they're not thinking about the other domestic  
5 industry jobs.

6           They admit that Mr. Libla's company, Mid  
7 Continent and its competitor, they don't deny that all  
8 the other domestic industries compete in the  
9 marketplace against them, and imports from China. Yet  
10 their view, astonishingly enough, is that it is better  
11 to have a negative determination in this case; that's  
12 better for the domestic industry, as they define it --  
13 and I think it means just Stanley for them -- than to  
14 have an affirmative determination.

15           Now, it's incredible for all sorts of  
16 reasons. But to the extent that people have any  
17 doubts and wonder about whether this company's import  
18 interests dominate their domestic production  
19 interests, at least for purposes of the ITC analysis,  
20 you may want to take that into consideration.

21           By the way, Mr. Dutra, a well-respected  
22 gentleman in the industry, also admits during the  
23 course of his responses that a majority of the product  
24 coming from China is generic, non-branded. He would  
25 argue that that means it doesn't compete against his

1 particular product line, but it certainly does compete  
2 against everyone else that you heard testify today.

3 And he also said, somewhat contradictorily,  
4 any nail is competition. He also admits that even  
5 Stanley, who seems to claim to be in a different  
6 segment of the market, which we disagree with, has  
7 lost sales to imports from China.

8 I want to address the claim that ITW is  
9 going to buy equipment from other smaller Chinese  
10 companies. Now, we're not here to press ITW's  
11 interests, trust me. We spent the last year fighting  
12 them at the Commerce Department. But that claim is  
13 unsupported. And I'm looking forward to the answer to  
14 Ms. Turner's question about actual evidence of that.

15 When ITW Paslode, as we understand it, to  
16 set up its facility in China, they had the option then  
17 to buy used or other Chinese equipment that was  
18 existing in that country. They decided not to do  
19 that, as we understand it, and bought all new modern  
20 technology that was suitable to producing their  
21 patented product.

22 As far as we can tell, I mean the domestic  
23 industry can tell, ITW Paslode would not be able to  
24 use the Chinese nail equipment to make product to ship  
25 to the U.S. in their name. The Chinese equipment is

1 not suitable for a U.S.-owned company to operate  
2 because of safety, environmental, and production  
3 reasons, and particularly because of the patented  
4 products that ITW makes.

5 I'm looking forward to any evidence to the  
6 contrary. I doubt that there will be any forthcoming.  
7 And by the way, I don't know whether you can induce  
8 ITW to provide you any information on this topic; I  
9 guess they have slightly less interest in the case  
10 than they did a couple days ago. But there's no  
11 reason why you can't ask them and see whether they  
12 would be willing to supply you with that information.

13 Along the lines that we talked about  
14 earlier, it is simply incredible to believe that  
15 Stanley shut down its Mexican facility, and moved to  
16 China, and did so with the prospect of buying nails  
17 from China that cost more than they were getting from  
18 Mexico. They did it, as I said, based on their annual  
19 report, to lower their costs, to lower their prices.  
20 And any suggestion to the contrary just is not  
21 credible.

22 Let me just quickly turn to the pricing  
23 discussion. I was very happy to hear towards the end  
24 of the hearing this afternoon an admission, or at  
25 least acknowledgement, that the pricing data you have

1 gotten may be distorted because of the inability to  
2 separate -- well, I'd say inability, to be charitable,  
3 to separate the difference, or the price of the nails  
4 versus the price of the package or the services being  
5 sold.

6 So one more I think very important reason  
7 why you want to reject or disregard the overselling  
8 and underselling information that you have.

9 Can I have a time check, please?

10 MS. ABBOTT: You have four minutes  
11 remaining.

12 MR. ROSENTHAL: Okay. Real quickly, on  
13 Bratsk. Mr. Bogard focused only on the significance  
14 of the volume of non-subject imports to trigger  
15 Bratsk. And the test is really whether there is a  
16 price-competitive non-subject imports.

17 I think Commissioner Williamson, in his last  
18 questions, brought out an admission that, in fact, it  
19 could not be argued that the non-subject imports would  
20 be price-competitive with the Chinese imports.

21 We are going to provide you information in  
22 the post-hearing brief that shows that Stanley is  
23 actually, according to the line of options that  
24 Commissioner Pearson outlined, looking at other things  
25 to do, including increasing production in the United

1 States. That would be a good thing for the domestic  
2 industry, and for domestic workers. And that would be  
3 the outcome you'd want to have happen.

4 Now, there is some skepticism expressed by  
5 the Respondents about whether, in fact, the domestic  
6 industry has gotten increased sales as a result of  
7 this case. I have here a printout -- and please do  
8 not tell me that there's any Joe McCarthy resemblance  
9 in this. I have here a printout of 78 customers, new  
10 customers in the last year by Mid Continent.

11 We're going to submit for the record this  
12 list, and indicate which of these were previously  
13 buying from China. Not every one of them, but a  
14 fairly strong, or large number of these new customers  
15 that Mid Continent has gotten in the last year have  
16 come as a result of this case. Because prior to the  
17 filing of the case, these customers were buying  
18 imports from China.

19 Maybe I should end, and maybe a good way to  
20 have a little payback for Commissioner Pearson and  
21 some of his stories about his misspent youth in my  
22 last opportunity to appear before him as Chairman, it  
23 is actually 40 years ago this month when I graduated  
24 from high school. I hate to admit that. But I had a  
25 summer job. And I started a series of summer jobs in

1 construction, working as a carpenter's apprentice.

2 My very first weeks on the job, working in a  
3 highrise building in Miami Beach, Florida, I had this  
4 rather cushy job working in closets, actually building  
5 closets, using finishing nails -- I'd never heard of  
6 that term before -- and helped build these closets.  
7 You don't ever want to live there, by the way, because  
8 there's not one of them that was even. I think  
9 everything anyone ever put on a shelf slid off.

10 But I'd been on the job for two weeks. And  
11 I came bright and early one morning, and the foreman  
12 said Paul, you're doing such a good job, we're going  
13 to give you a raise. And my face lit up, I got very  
14 excited. And he said go to the 17th floor.

15 So when I arrived at the 17th floor, things  
16 weren't quite so cushy. I was no longer putting up  
17 shelves in nice closets where the finishing had  
18 already been done. I went up to where there were only  
19 concrete blocks and furring strips, and that's where I  
20 got introduced to cut nails, and hammering those into  
21 concrete, which I did for the next several months.  
22 Because they realized my skills were better used  
23 there, since I was not really a carpenter; I was  
24 really a wood butcher.

25 That was my first exposure to the elation

1 that could come when being associated with nails, and  
2 the disappointment. And I mention that here today  
3 because this Commission's decision, preliminary  
4 decision in the case, and the subsequent Commerce  
5 Department preliminary determination, has increased  
6 the hopes of this industry to a place where they have  
7 not been for many, many years.

8           You've heard the testimony about the new  
9 sales and the new opportunities. You've heard what  
10 will happen if this order is not put in place. You  
11 have the opportunity to not only keep in place the  
12 employees that you've heard about in West Virginia and  
13 all across this country, but to actually increase  
14 sales and increase production and increase jobs in an  
15 industry that has been in this country since the days  
16 of Thomas Jefferson.

17           So we hope that you will reach an  
18 affirmative determination in this case. The record  
19 certainly justifies it.

20           Thank you.

21           CHAIRMAN PEARSON: Thank you, Mr. Rosenthal.  
22 I thought you were going to say that you had concluded  
23 that the solution to all problems was just if it  
24 wasn't fixed at first, hit it with a bigger hammer.

25           (Laughter.)

1                   CHAIRMAN PEARSON: Mr. Bogard. Yes, we give  
2 extra credit for time yielded back.

3                   MR. BOGARD: Then I will score very highly,  
4 I'm sure.

5                   Thank you, Mr. Chairman. I have to confess,  
6 I can't find a connection to Minnesota to offer to you  
7 this afternoon. But like a lot of people in the room  
8 today, I am a Midwestern boy, and I do know when a dog  
9 will hunt. And I have to say I think Mr. Rosenthal's  
10 dog is on the porch.

11                   You heard Ms. Cannon this morning urge you  
12 to refer to the Altex case and look behind the  
13 numbers, when looking behind the numbers serves  
14 Petitioner's purposes. Similarly, we would ask you to  
15 look behind the numbers with regard to Stanley's  
16 membership in the domestic industry.

17                   The numbers, when you look at them, you have  
18 to look at in a proper context. And as Mr. Dutra  
19 testified this afternoon -- and I have to commend Mr.  
20 Rosenthal and his prescience for being able to read  
21 the minds of management at Stanley Bostitch  
22 apparently.

23                   But Mr. Dutra explained to you that Stanley  
24 Bostitch has been making nails in Mexico since 1996,  
25 12 years ago. He further explained to you that a

1 decision was made 18 months before Mr. Rosenthal and  
2 his petition appeared on the scene to move that  
3 operation in part to China, and in part back to Rhode  
4 Island.

5 Mr. Dutra explained to you that that  
6 operation did, in fact, go back to Rhode Island. He's  
7 explained to you that capacity utilization in Rhode  
8 Island has, in fact, gone up. And he has explained to  
9 you, without specific reference to the ratios that are  
10 troubling some of you, that those ratios no longer  
11 reflect what's happening with Stanley Bostitch.

12 That's the context in which you need to look  
13 at those numbers. A decision that was made 12 years  
14 ago, followed by another decision that was made 18  
15 months before the petition, which affects import  
16 trends for Stanley Bostitch from non-subject  
17 merchandise to subject merchandise.

18 Nothing that Stanley Bostitch has done --  
19 and you asked, and we will provide documentation as to  
20 the decision-making process for that closing down the  
21 Chihuahua plant. But nothing in that statement that  
22 Mr. Rosenthal raised, unless, while I wasn't looking,  
23 Mexico has left North America, is inconsistent with  
24 the testimony that you were given this afternoon.

25 Notice that Mr. Rosenthal engaged in what I

1 think was a bit of a Freudian slip, because all  
2 morning they talked price, price, price, price, price.  
3 His theory of the case is what's happening here is  
4 customers here in the United States are chasing price.  
5 They're going to China for low-priced imports. It's  
6 almost like it's one word -- low-priced imports --  
7 every time it's mentioned.

8 But he had a little slip-up when he started  
9 talking about cost. And cost is important here.  
10 Because Stanley has explained its marketing model to  
11 you, and it's explained what it does in the United  
12 States. And for Stanley, what it does in China is not  
13 a function of price.

14 The price that the nails go to market in the  
15 United States is, as they have testified, and there is  
16 no contradictory evidence, at the high end of the  
17 market. What they did is go to China for cost in  
18 order to maintain the margin on their low-value nails  
19 in order to enable themselves to keep a full line of  
20 merchandise in order to keep the nails operation in  
21 Rhode Island operating.

22 None of that is indicative of a company  
23 whose interests lie in importing rather than domestic  
24 manufacturing, or whose interests are shifting toward  
25 importing rather than domestic manufacturing.

1                   With regard to some of this confusion about  
2                   the price of nails, and whether it's the nails or the  
3                   package, what we reported was the price of nails.  
4                   There is two market segments, as Mr. Dutra testified  
5                   very clearly. One market segment, what they sell is  
6                   nails, independently of the pneumatic nailers or the  
7                   other fastening products. So there's really no  
8                   question there.

9                   For the fastener package, as was explained,  
10                  there's an allocation built into the price not just of  
11                  nails, but the non-subject fasteners, that reflects  
12                  the overall cost of producing, of delivering the  
13                  fastener package.

14                  But as was also testified, the services that  
15                  are associated with the fastener package are part of  
16                  building the brand. Stanley Bostitch disagrees  
17                  strongly that all nails in this market are sold solely  
18                  on the basis of price. If that were true, Stanley  
19                  Bostitch wouldn't be successful in the market, ITW  
20                  Paslode wouldn't be successful in the market. The  
21                  idea that price is the sole basis of competition here  
22                  is simply not correct.

23                  I promised I wouldn't take 18 minutes, and I  
24                  won't. I'm going to shift the canine analogy a little  
25                  bit from the hunting dogs in Missouri and Arkansas to

1 England. And I think maybe what we ought to be  
2 looking at in this context here is The Hounds of the  
3 Baskerville, and the dog that didn't bark. And what  
4 you heard today was a dog that didn't bark.

5 As I told you this morning, the Petitioners  
6 were going to attribute every positive event that has  
7 occurred to the domestic industry to their petition.  
8 And I told you you would hear evidence as to why that  
9 wasn't true. And you did.

10 The Petitioners completely neglected, in  
11 their presentation to you, the impact of a stunning  
12 decline in demand for nails in the U.S. market. They  
13 attempted to dismiss it as well, it's not that bad  
14 this morning, but it's 22 percent over the POI and 19  
15 percent last year. That's not mild, by any means.

16 The same time you've heard plenty of  
17 testimony as to the effect of raw materials prices.  
18 Mr. Dutra was telling you that because of raw material  
19 cost increases, prices have been going up 30, 40, 50  
20 percent. And that he's been presenting price  
21 increases on nails at the same rate, and that that's  
22 had a disruptive effect on the market.

23 The market was described this morning as  
24 volatile. And I think his testimony this afternoon,  
25 and his responses to your questions, were things like

1 lost sales, and whether or not new customers have been  
2 coming since the petition was filed, demonstrate  
3 exactly what he's talking about. He calls it churn in  
4 the market; it's evidence of a volatile market.

5 So what Petitioners would have you ignore is  
6 in this volatile market, the financial performance of  
7 the domestic industry, whether you include Stanley  
8 Bostitch in it or not, has been stable in the course  
9 of the POI. There has been no material injury in  
10 this, by reason of Chinese imports. And we urge you  
11 to reach a negative determination.

12 Thank you.

13 CHAIRMAN PEARSON: Thank you, Mr. Bogard.

14 Ms. Secretary, before turning to the closing  
15 statement, I would offer some thanks, if I may.

16 Let me explain to the audience that the  
17 chairmanship here rotates every two years between  
18 parties. Commissioners serve nine-year terms, but  
19 every two years the President designates a member of  
20 the opposite party to serve as chair.

21 So I am now looking forward very much to  
22 turning over the gavel next Tuesday to one of my  
23 highly qualified Democratic colleagues.

24 But before doing that, I want to offer  
25 thanks first to counsel for the parties. And when I

1 say counsel, I would include economists such as Ms.  
2 Beck and Mr. Kerwin, who do their best to bring some  
3 empirical analysis to the legal arguments, and that's  
4 much appreciated. I have learned a great deal from  
5 counsel, even though I know it often hasn't been  
6 apparent.

7 To the Office of the Secretary. Earlier it  
8 was mentioned that the corrosion-resistant hearing --  
9 okay, I'll get to that in a moment -- but you really  
10 do a great job of anticipating what the Chairman might  
11 need, and then keeping the hearings running smoothly.

12 I was surprised, frankly, when I received  
13 Tuesday last week an email detailing how many hearings  
14 and votes I had chaired. And I thought well, that's  
15 interesting. Are they really trying to get rid of me  
16 that fast, that they want to nudge me out of here?

17 And then I realized now this morning,  
18 perhaps the Vice Chairman had requested that  
19 information, and that's why you dug it up. I'm not  
20 sure.

21 But back to the corrosion-resistant hearing,  
22 just for people who weren't here, we ran late. It  
23 didn't end until nearly 11:00. The air conditioning  
24 went off at 8:00, which is what it's scheduled to do.  
25 Marilyn Abbott spent a considerable amount of time

1 trying to contact Boston Properties, and managing to  
2 do that, and getting the appropriate engineer to make  
3 a rather long drive back into town to turn the air  
4 conditioning on. So we had it on again about 10:00.  
5 It was really hot in here on that warm fall evening.

6 Bill Bishop scrambled around the building  
7 looking for fans, and set up fans around here. We  
8 took off our coats. We just kept working. That's  
9 just one example. But the Secretary's Office really  
10 does a wonderful job making the Chairman look more  
11 organized than this one has been.

12 To the professional staff. I think you do a  
13 truly outstanding job of preparing staff reports and  
14 doing the investigations, getting the material ready  
15 for the commissioners, so that we can try to  
16 understand these cases. And I don't hold it against  
17 you at all that sometimes commissioners are not able  
18 to absorb everything that you come up with. So I know  
19 you're just hoping, did they absorb enough so they can  
20 do the right thing on vote day. I'm not sure.

21 To the commissioners' personal staff, who  
22 have always been willing to answer my questions, no  
23 matter which commissioner you work for, and try to do  
24 what's best for the Commission as a whole. I would  
25 like to make special mention of Dominic Bianchi, and

1 all commissioners will know why I'm mentioning his  
2 name. He is not only a fine attorney for Commissioner  
3 Okun, but he bakes the world's best chocolate chip  
4 cookies, and generously provides them at many  
5 hearings, including the one today.

6 I would like to thank by name my personal  
7 staff. Cecilia Allen, Kevin Rosenbaum, Michael  
8 Robbins, John Seiger, with special thanks to my Chief  
9 of Staff and alter-ego, Mary Beth Jones, who also is  
10 serving as lead counsel for me here today, and who has  
11 so effectively run the day-to-day affairs of the  
12 Commission while I've been off at hearings and other  
13 things like that.

14 I would also note that Mary Beth's constant  
15 and steady presence has done a great deal to make my  
16 chairmanship tolerable to the many ITC employees who  
17 actually need the Chairman's office to take action on  
18 various items.

19 Finally, to my fellow commissioners. Your  
20 understanding, patience, and collegiality and support  
21 have both been very gratifying to me. You all have  
22 been very gratifying to me, and that made this job a  
23 lot more fun.

24 I would be remiss if I did not offer a  
25 special comment for the Vice Chairman. You have

1 provided consistent, thoughtful, and very useful  
2 counsel on many administrative issues.

3 We come from quite different backgrounds,  
4 have different experiences. But we've collaborated  
5 closely and successfully to try to do what's best for  
6 this agency. And I genuinely appreciate your  
7 guidance.

8 So a touch of my personal philosophy. Life  
9 is short, so it's important to try to enjoy every day.  
10 I think we've managed to enjoy at least most of them.

11 Enough from me. Closing statement?

12 COMMISSIONER LANE: Mr. Chairman, you could  
13 say one more time that the Vice Chairman is a lawyer,  
14 and you're not.

15 (Laughter.)

16 CHAIRMAN PEARSON: For the record, all of my  
17 fellow commissioners are lawyers. My training was as  
18 an economist. I've never really practiced economics;  
19 I've been a trade policy person most of my career. I  
20 guess I still am. Or trade policy administrator now.

21 Okay, the closing statement.

22 In accordance with Title VII of the Tariff  
23 Act of 1930, post-hearing briefs, statements  
24 responsive to questions and requests of the  
25 Commission, and corrections to the transcript must be

1 filed by June 18, 2008. Closing of the record and  
2 final release of data to parties on July 1. And final  
3 comments due July 3. This hearing is adjourned.

4 (Whereupon, at 5:10 p.m., the hearing in the  
5 above-entitled matter was concluded.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Certain Steel Nails From China and  
the United Arab Emirates

**INVESTIGATION NO.:**  
731-TA-1114 and 1115

**HEARING DATE:** June 11, 2008

**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:** June 11, 2008

**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 E. 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:** John Del Pino  
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