

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
CARBON AND CERTAIN ALLOY STEEL) 701-TA-512 AND
WIRE ROD FROM CHINA) 731-TA-1248 (FINAL)

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Place: Washington, D.C.
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THE UNITED STATES
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation Nos.:
CARBON AND CERTAIN ALLOY) 701-TA-512 AND
STEEL WIRE ROD FROM CHINA) 731-TA-1248 (FINAL)

Wednesday, November 12, 2014
Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC

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

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners Present:

4 Chairman Meredith M. Broadbent (presiding)

5 Vice Chairman Dean A. Pinkert

6 Commissioner Irving A. Williamson

7 Commissioner David S. Johanson

8 Commissioner F. Scott Kieff

9 Commissioner Rhonda K. Schmidtlein

10

11 William R. Bishop, Supervisory Hearings and Information

12 Officer

13 Jennifer Rohrbach, Supervisory Attorney, Docket

14 Services

15

16 Carolyn Esko, Investigator

17 Karl Tsuji, International Trade Analyst

18 Samantha Day, Economist

19 Charles Yost, Accountant/Auditor

20 Charles St. Charles, Attorney/Advisor

21 Douglas Corkran, Supervisory Investigator

22

23

24

25

1 In Support of the Imposition of Antidumping and
2 Countervailing Duty Orders:

3 Kelley Drye & Warren LLP, Washington, DC on behalf of
4 ArcelorMittal USA LLC, Charter Steel, Evraz Pueblo, Gerdau
5 Ameristeel US Inc., Keystone Consolidated Industries, Inc.

6 Stephen Ashby, Director of Rod and Bar Sales, Evraz
7 Pueblo

8 Mark Brachbill, Vice President-Finance, Keystone
9 Consolidated Industries, Inc.

10 Daniel Fuller, Director of Wire Rod Sales,
11 ArcelorMittal USA

12 James Kerkvliet, Vice President of Sales and Marketing,
13 Gerdau Ameristeel US Inc.

14 James Sanderson, President USW Local 7898

15 Gina E. Beck, Economist, Georgetown Economic Services

16 Paul C. Rosenthal, Kathleen W. Cannon, R. Alan Luberda
17 and Benjamin Blase Caryl, Kelley Drye & Warren LLP

18

19 Wiley Rein, Washington, DC on behalf of Nucor Corporation

20 Eric Nystrom, Director, SBQ & Wire Rod, Nucor
21 Corporation

22 Alan H. Rice, Daniel B. Pickard, Maureen E. Thorson,
23 Derick G. Holt, Wiley Rein

24

25

1 In Opposition to the Imposition of Antidumping and
2 Countervailing Duty Orders:

3 Husch Blackwell, Washington, DC on behalf of China Iron &
4 Steel Association

5 Thomas (Jinghua) Yang, Vice President, Benxi Iron &
6 Steel America

7 Todd (Weizhong) Wang, President, Angang America, Inc.

8 Zhenqiang Chen, Sales Manager, Angang America, Inc.

9 James Dougan, Senior Economist, Economic Consulting
10 Services, LLC

11

12 Vorys, Sater, Seymour and Pease LLP, Washington, DC on
13 behalf of Macsteel International USA Corporation ("MIUSA"),
14 Stemcor USA Inc. ("Stemcor")

15 Frederick P. Waite, Kimberly R. Young, Vorys, Sater,
16 Seymour and Pease LLP

17

18 White & Case LLP, Washington, DC on behalf of Duferco Steel
19 Inc. ("Duferco")

20 Jay C. Campbell, White & Case LLP

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1 P R O C E E D I N G S

2 CHAIRMAN BROADBENT: Good morning. On behalf
3 of the U.S. International Trade Commission, I welcome you to
4 this hearing on Investigation Nos. 701-512 and 731-1248,
5 involving Carbon and Alloy Steel Wire Rod from China. The
6 purpose of these investigations is to determine whether an
7 industry in the United States is materially injured or
8 threatened with material injury by reason of imports that
9 are subsidized by the government of China, and by reason of
10 imports from China that are sold at less than fair value.

11 Documents concerning this hearing are
12 available at the public distribution table. Please give all
13 your prepared testimony to the Secretary. Do not place it
14 on the public distribution table. All witnesses must be
15 sworn in by the Secretary before presenting testimony.

16 I understand that parties are aware of the
17 time allocations, but if you have any questions about time,
18 please ask the Secretary. Speakers are reminded not to
19 refer to business proprietary information in their remarks
20 and answers to questions. Please speak clearly into the
21 microphone and state your name for the record, so that the
22 court reporter knows who is speaking.

23 Finally, if you will be submitting documents
24 that contain information you wish classified as business
25 confidential, you're requested to comply with Commission

1 Rule 201.6. Mr. Secretary, are there any preliminary
2 matters?

3 MR. BISHOP: No, Madam Chairman.

4 CHAIRMAN BROADBENT: Very well. Let's now
5 proceed with opening remarks.

6 MR. BISHOP: Opening remarks on behalf of
7 Petitioners will be given by Kathleen W. Cannon, Kelley Drye
8 and Warren.

9 CHAIRMAN BROADBENT: Welcome, Ms. Cannon. You
10 may begin when you're ready.

11 OPENING REMARKS BY KATHLEEN W. CANNON

12 MS. CANNON: Thank you, Madam Chairman. Good
13 morning to you and members of the Commission and staff. I
14 am Kathleen Cannon of Kelley Drye, appearing on behalf of
15 Petitioners, the domestic producers of wire rod. I have
16 participated in too many cases at the Commission to
17 characterize any case as simple. But as cases go, the facts
18 of record here are about as strong and straightforward and
19 demonstrating material injury caused by subject imports as
20 you will find in a trade remedy proceeding.

21 From virtually no imports in 2011, dumped and
22 subsidized imports from China surged into the U.S. market,
23 to become the largest single source of imported wire rod in
24 just two years. By 2013, imports from China exceeded
25 600,000 tons, and had captured 11.7 percent of the U.S.

1 market, most of that coming at the expense of the U.S.
2 industry.

3 Even after we filed the case, the imports did
4 not back off. They grew even further in volume and market
5 share in the first half of 2014. As the staff report shows,
6 the imports compete directly with U.S. producers for sales
7 of the same types of wire rod at the same customer accounts,
8 and displace U.S. producer sales on the basis of price.

9 The Commission has found in past cases and
10 purchasers reported in this case as well that wire rod is a
11 highly substitutable and price-sensitive product. Wire rod
12 imports gained market share by selling at prices below U.S.
13 producer prices. Quarterly price comparisons by your staff
14 show underselling by China in 36 of 38 instances, that is 95
15 percent of the time.

16 Further, the frequency and degree of
17 under-selling intensified as import volumes and market
18 shares increased. As a result, domestic prices fell over
19 the past three years, along with domestic industry profits.
20 The unfair import behavior caused U.S. producers to suffer
21 declines in production, shipments and employment.

22 Producers curtailed production and laid off
23 workers, despite rising demand for wire rod. In a growing
24 market, the domestic industry's operating profits plunged to
25 unsustainable levels. Non-subject imports cannot be blamed,

1 as those imports generally declined and were priced much
2 higher than imports from China. These facts point to a
3 classic case of material injury caused by subject imports.

4 Although a threat analysis is unnecessary
5 here, the record also shows massive capacity and increased
6 idle capacity in China that could swamp the U.S. market if
7 left unchecked. The idle capacity of the few Chinese
8 producers that responded to questionnaires alone is enough
9 to capture almost half of the U.S. market. Weak whole
10 market demand and increasing Chinese exports makes this
11 scenario likely, absent relief.

12 Last, we urge you to find that critical
13 circumstances exist in this case. Chinese exports sent to
14 the U.S. market increased significantly in volumes after the
15 case was filed. Record evidence shows that they were trying
16 to beat the imposition of preliminary countervailing duties.
17 Purchasers stockpiled inventories in wire rod, preventing
18 U.S. producers from making much-needed sales, even after
19 preliminary duties were imposed.

20 In fact, as you will hear from our industry
21 witnesses this morning, even today, purchasers continue to
22 have inventories of Chinese product that is limiting U.S.
23 producer sales in fourth quarter 2014 and into first quarter
24 2015.

25 As a result of this behavior, anticipated

1 price relief for U.S. producers did not occur. Instead,
2 aggressive underselling by China caused U.S. prices and
3 profits to fall even further in 2014, after the petition was
4 filed. These continued adverse price effects and the
5 inventory increases at purchaser accounts have seriously
6 undermined the effect of any resulting orders.

7 The Commission has not found critical
8 circumstances in most of its past cases. The precedent has
9 encouraged Chinese producers and their importers and
10 purchasers to act with impunity in increasing exports and
11 stockpiling product once this case was filed.

12 That is exactly what happened here, and
13 precisely what the critical circumstances provision was
14 intended to address. We urge you to apply this law as
15 Congress intended, and to reach an affirmative critical
16 circumstances finding to help remedy this behavior, and to
17 deter such action in the future. Thank you.

18 MR. BISHOP: Opening remarks on behalf of
19 Respondents will be given by Jeffrey S. Neeley, Husch
20 Blackwell.

21 CHAIRMAN BROADBENT: Welcome, Mr. Neeley.

22 OPENING REMARKS BY JEFFREY S. NEELEY

23 MR. NEELEY: Thank you. There we go. I'm
24 Jeffrey Neeley on behalf of Husch Blackwell, on behalf of
25 the China Iron and Steel Association and seven member

1 companies. Those seven member companies constitute
2 virtually 100 percent of companies who export into the
3 United States during the Period of Investigation that the
4 Commission looked at.

5 We think that's an important point. We'll
6 return to that several times during this -- during our
7 presentations. But it's interesting for us, because we know
8 that many times the Commission has problems in getting
9 Chinese companies to come and participate in these
10 investigations.

11 Here, I think we have very good response
12 rates. We've answered questions. We had some supplemental
13 questions I know from the Commission we will answer. All of
14 that is a bit unusual. Nevertheless, you know, what we hear
15 is -- and we found this kind of astounding, was that somehow
16 the Commission should take adverse inferences against the
17 Chinese, because of failure to cooperate.

18 I don't take that very seriously in one sense,
19 but I think it's significant for another sense. It's
20 certainly not surprising, it's certainly legitimate on the
21 part of domestic industry to argue there might be other
22 entrants into the market. That's fine. We can address
23 that.

24 But it's something else entirely to talk about
25 adverse inferences, because what it really says to you, I

1 think, is that we're talking about hyperbole and we're
2 talking about gross exaggeration, as to what the real
3 situation is here. Unfortunately, that has been a pattern
4 of the U.S. industry for many years in the wire rod cases.

5 Gross exaggeration we have seen, in the sense
6 that your predecessors on the Commission, and of course we
7 realize that each Commissioner looks at his or her -- has
8 his or her own approach and we're not saying this is
9 precedent, you have to rely on what people have done in the
10 past.

11 But it is instructive, we think, that in the
12 past, since 1992, you've had 60 cases filed on wire rod by
13 the domestic industry, and half of those have resulted in
14 negatives. That's really an astounding number. I'm not
15 sure there's any other industry that has that sort of track
16 record.

17 One of the things that's happened is in
18 January of 2006, a case was filed against China, Turkey and
19 Germany, and the Commission went negative at a preliminary
20 on the three countries, cumulating them, and at a time when
21 you had a 22 percent market share for those three countries,
22 China at that time, despite what we hear from the domestic
23 industry that China is some sort of new entrant, in fact
24 China's market share during the end of that period was
25 almost identical to what it is right now.

1 What actually happened, if you look at all the
2 data and not cherry-pick it, is that China was in the
3 market. They exited when the market got bad. They've
4 returned. But we were at about the same level from China in
5 2005-2004, about 12 percent, 11-12 percent.

6 The overall market share of the three
7 cumulated countries is about 22 percent, and the Commission
8 went negative, not only went negative, but went negative on
9 a preliminary. So I think that it is a good exercise to say
10 what's changed? I mean you're certainly not bound by what
11 the Commission did in the past; we understand that.

12 But really, they haven't explained what's
13 changed if you couldn't win with 22 percent? You know,
14 maybe they have an answer. If they have an answer, it will
15 be interesting to hear it and we can address it. But they
16 really haven't addressed it so far.

17 What we have done is we have tried to rely on
18 data, hard data, data for many years, and we will, you know,
19 explain that data and be very glad to answer any questions
20 that the Commission has about the data. But what we won't
21 do is rely simply on speculation and hyperbole. There's a
22 lot of new theories that are coming out of the domestic
23 industry during this case.

24 But what there isn't, we think, is a very
25 clear explanation of why it is they win this time. It's

1 more than imports are up, profits are down, we win. I think
2 there's a lot of data out there, and we will explain during
3 the course of our testimony why we think that results in a
4 negative determination. Thank you.

5 MR. BISHOP: Would the first panel, those in
6 support of the imposition of anti-dumping and countervailing
7 duty orders, please come forward and be seated. Madam
8 Chairman, all witnesses on this panel have been sworn in.

9 (Pause.)

10 CHAIRMAN BROADBENT: I want to welcome the
11 panel to the ITC. You may begin when you're ready.

12 STATEMENT OF PAUL C. ROSENTHAL

13 MR. ROSENTHAL: Good morning. I'm Paul
14 Rosenthal of Kelley Drye of Warren, appearing on behalf of
15 the Petitioners, the domestic producers of carbon and alloy
16 steel wire rod. The Commission has familiarity this
17 product, having been involved in several cases, including
18 the recent wire rod sunset review on multiple countries.
19 Some of you have toured the wire rod facility in the past
20 and have seen the product being made.

21 Of course in our cases, we talk about the
22 product, but it is the workers who are the ultimate focus of
23 the statute. The numbers we discussed, the products we
24 analyze matter, because they directly and indirectly reflect
25 the effects of imports on jobs and employment in the United

1 States.

2 As Ms. Cannon alluded to in her opening
3 statement though, the numbers tell a compelling story of how
4 imports from China have harmed the domestic industry and its
5 workers. The first slide this morning depicts the rapid
6 increase in imports from China.

7 As Slide 1 shows, imports from China
8 skyrocketed from a mere 144 short tons in 2011 to nearly
9 619,000 tons in 2013. That reflects a growth rate of
10 430,000 percent. Let me repeat that number: 430,000
11 percent. Remember Carl Sagan, the astronomer who hosted the
12 PBS show "The Cosmos" and whose famous and oft-repeated
13 phrase "billions upon billions of stars." Well, I get to
14 repeat 430,000 percent increase. There aren't many cases
15 with numbers like that.

16 Even more amazing, long after imports reach
17 launch velocity, and even after this case was filed, imports
18 continued to rise. Between interim 2013 and 2014, imports
19 increased another 33 percent. Indeed, the surge continues,
20 as you will hear further from Ms. Cannon, in order to beat
21 the imposition of provisional duties.

22 Not surprising, as the absolute level of
23 imports from China increase, China's share of the U.S.
24 market surged. China's market share increase is even more
25 prominent and injurious, when the market for U.S. commercial

1 shipments is examined. From a zero percent market share,
2 Chinese import penetration increased to 15.7 percent in
3 interim 2014.

4 How were imports from China able to penetrate
5 the market so quickly? The old-fashioned way, cheap prices.
6 As the staff report shows, Chinese products undersold their
7 domestic competitors 95 percent of the time. The result of
8 the underselling was price depression and price suppression.

9
10 In fact, when costs rose in late 2013 and
11 interim 2014, U.S. producers could not raise prices to cover
12 increased costs due to lower Chinese prices. Prices
13 actually dropped again in 2014, as imports of Chinese wire
14 rods surged into the market ahead of the countervailing duty
15 preliminary determination.

16 As the purchasers told you in their
17 questionnaire responses, price is paramount in purchasing
18 decisions. The only thing that serves to differentiate
19 Chinese product is the low-prices at which they are offered.
20 So it is not surprising that China undersold U.S. producers
21 by large margins, as indicated in Slide 6. These are charts
22 from 2012. Slide 7, 2013 and the next slide for 2014.

23 AUVs are used as a proxy for prices, given the
24 confidential pricing data, but the Commission's confidential
25 quarterly pricing data demonstrated the same underselling by

1 large and growing margins over the Period of Investigation.
2 For all the products surveyed by the Commission, U.S. prices
3 declined from the first quarter of 2012 to the second
4 quarter of 2014, and you'll see for each product, there was
5 a decline in prices for the U.S. producers.

6 This next slide graphs the data on U.S.
7 production, shipments and employment. As you can see, all
8 of those important indicators of industry health, or more
9 accurately lack thereof, declined. Production decreased by
10 more than seven percent over the three-year Period of
11 Investigation, and fall further in the interim period.

12 Decline in production was felt by production
13 and related workers. Many workers lost their jobs and still
14 more suffered shift reductions and temporary layoffs.
15 Overall, there's a 6.4 percent reduction in hours worked,
16 and a 5.7 percent decline in wages over the POI. The union
17 and company representatives will explain more about these
18 curtailments, layoffs and shift reductions.

19 In 2011, capacity utilization was not
20 particularly robust coming out of the great recession.
21 Unfortunately, domestic capacity utilization dropped over
22 the POI, despite increasing domestic consumption and
23 declining capacity from 2011 to 2013. Capacity utilization
24 reached its lowest levels in the first half of 2014, 67
25 percent, when consumption growth was the strongest.

1 As the next slide shows, U.S. producers'
2 operating income has declined significantly, from a not
3 particularly robust level at the beginning of the POI; after
4 all, the industry was still emerging from the Recession in
5 2011. The industry's operating income plummeted.

6 Beginning at \$214 million 2011, the industry's
7 operating income plunged to just \$47 million on an
8 annualized basis in 2014. On an operating income to net
9 sales basis, the industry's profits fell from seven percent
10 in 2011 to just 1.7 percent in interim 2014.

11 When merchant market sales alone are examined,
12 the industry's operating income to net sales ratio by 2014
13 is only 1.1 percent. This level is simply unsustainable.
14 As the Commission understands, a capital-intensive industry
15 needs income, in absolute and relative senses, to stay
16 modern and compete, as well as to attract capital from
17 outside investors and within large companies.

18 If a company or an industry does not make
19 money, especially in times of economic expansion, it cannot
20 survive. Workers and communities will suffer. So what
21 caused injury? I was intrigued by Mr. Neeley's opening
22 statement. He has lots of explanations about why you should
23 not pay attention to this record before you in this case,
24 and Respondents make a series of arguments that try to
25 explain away the obvious impact of the imports from China.

1 They're all unsupported.

2 Take a look at this record, this record before
3 you for this case. We know the industry's problems were not
4 demand. Demand has been increasing in 2013 and 2014. We
5 know the problems were not caused by the volume of
6 non-subject imports, because non-subject import volumes have
7 been decreasing.

8 It was not the price of non-subject imports,
9 because those prices were well above Chinese import prices
10 in 2013, as well as in 2014. Let's take a look at one slide
11 overlaying the market share change of imports from China and
12 the U.S. industry.

13 The Chinese Respondents claim that there are,
14 and I quote from their brief, "no adverse effects of Chinese
15 imports on U.S. producer volumes." How are we to understand
16 this chart? It is obvious that the Chinese and U.S.
17 producers had almost a one for one swap of market share.

18 Specifically, the Chinese producers gained
19 12.8 percent of the U.S. market, while U.S. producers lost
20 10.8 percent of their home market. Yet Respondents
21 inexplicably claim that this dramatic shift in market share
22 has not caused material injury? That's their argument? All
23 the Respondents' other claims for alternative causes of
24 injury lack any record support.

25 We'll be happy to discuss their claims, their

1 alternative theories in response to your questions later.
2 But for now, I will just repeat that the Respondents'
3 strained efforts to explain away the obvious lack any basis
4 in the record. Their entire analysis is based on, to use
5 Mr. Neeley's words, cherry-picking particular data and
6 misinterpreting the facts of record before the Commission
7 today.

8 We stand on this record and it's a strong one.
9 I hesitate to even discuss threat this morning, because I
10 don't think we need to go there. But you need to at least
11 have in the back of your mind some important data. This
12 first slide, detailing threat, makes it clear that since
13 their imports surged, while the Chinese have pretty much
14 disappeared from the market, they are simply lying in wait.

15 There is -- unless there's an affirmative
16 injury determination in this case, the Chinese producers are
17 well poised to come back and surge in this market once
18 again. There's massive unused capacity in China. Indeed,
19 the unused capacity of just the responding producers in this
20 case could capture half of the market. Just the responding
21 producers could capture half of the market.

22 Unfortunately, the responding producers are
23 just a small portion of the overall Chinese industry. The
24 total unused capacity in China is even more daunting and
25 more frightening if you're a domestic producer or worker, as

1 this next slide shows. Unused capacity in China is a
2 multiple of U.S. demand. We cannot discuss the capacity
3 estimate that this slide is derived from because it's from a
4 proprietary source.

5 But if you look at our prehearing brief,
6 you'll see that a massive amount of unused capacity that can
7 be directed to the U.S. market. And make no mistake:
8 despite what you hear from Respondents later, exports from
9 China continue to grow to destinations around the world, and
10 will return to the U.S. market in massive quantities not
11 subject to an order in this case.

12 In sum, the record supports an affirmative
13 determination in this case, and you will hear more detail of
14 why that's so from our witnesses this morning. Now I'm
15 going to turn the microphone over to Mr. James Sanderson of
16 the USW.

17 STATEMENT OF MR. JAMES SANDERSON

18 MR. SANDERSON: Good morning Madam Chairman
19 and members of the Commission. My name is James Sanderson,
20 and I am president of the United Steelworkers, Local 7898 in
21 Georgetown, South Carolina. I have been a steelworker for
22 four years at what is now is the ArcelorMittal Georgetown
23 mill, and I have been president of the Local since 1988.

24 The USW is the largest industrial union in
25 North America, with more than 850,000 active members. I

1 appreciate the opportunity to testify before you again. I
2 am here proudly representing steelworkers at the
3 ArcelorMittal Georgetown mill, but I also speak today on
4 behalf of the United Steelworker members producing wire rod
5 at AcelorMittal in Indiana; Cascade Steel Rolling Mills in
6 Oregon; Evraz, Pueblo in Colorado; Gerdau Ameristeel U.S. in
7 Texas; Republic Engineered Products in Ohio and Sterling
8 Steel Company in Illinois.

9 It is essential to the well-being of our
10 steelworker members, retirees and their families that the
11 Commission provide relief from the unfair imports of steel
12 wire rod from China. As you consider this case, please keep
13 in mind that the wire rod industry is more than a collection
14 of companies, shareholders and balance statements.

15 All the data you have before you represents
16 the lives and livelihood of the American steelworkers that
17 produce wire rod, and the families and communities that
18 depend on the continued viability of the U.S. steel wire rod
19 industry to survive. When unfair trade hurts the U.S.
20 industry, often it is the workers who are likely to feel it
21 the hardest in the form of layoffs, job loss, reduced
22 benefits and lost salaries.

23 This is why our union has for years been
24 fighting against foreign governments and companies, seeking
25 to gain an unfair advantage by violating trade rules at the

1 expense of the nation's manufacturers and workers. The
2 collapse of the wire rod demand in the Great Recession of
3 2008 and 2009 led to the closing of the Georgetown mill from
4 2009 until January 2011.

5 This closure put 307 steelworkers out of work
6 for an extended period, and it put a strain on the
7 Georgetown community, because our jobs also support many
8 other businesses in the surrounding area. It was a great
9 relief for the workers and their families when the mill
10 finally reopened in January 2011, as the economy improved
11 again.

12 Unfortunately, just after Georgetown restarted
13 operations, Chinese products also began to attack this
14 market. By the end of 2012, unfairly traded imports of wire
15 rod from China were flooding the United States. As a
16 result, the company was forced to again lay off an entire
17 production shift of 40 steelworkers at Georgetown. Many of
18 those workers are still not back to work.

19 Other American wire rod industry workers have
20 suffered reduced work hours, shrinking paychecks, as their
21 employers cut back production. If the Chinese companies are
22 allowed to continue to sell dumped and subsidized wire rod
23 in the United States, I worry we are going to lose a lot
24 more than 40 jobs at Georgetown and elsewhere in the
25 industry.

1 Based on history, we always worry that the
2 next plant closure will be permanent. American steelworkers
3 continue to do everything we can to insure the viability of
4 the industry, and we've done our part in that effort at
5 Georgetown, and endured a lot in the process.

6 It is extremely important to the men and women
7 at Georgetown, and across the wire rod industry, that you do
8 your part to stop the injury caused by an import surge
9 driven by the massive overcapacity, government subsidies and
10 unfair pricing of Chinese wire rod.

11 No U.S. steelworker producing wire rod should
12 have to lose a job because unfairly traded steel is allowed
13 into our country. On behalf of our U.S. steelworker
14 members, retirees and their families all over the country, I
15 urge the Commission not to allow unfairly traded wire from
16 China to continue to injure the domestic wire rod industry,
17 and to put the jobs of my fellow steelworkers at risk.

18 Thank you very much.

19 STATEMENT OF MR. JAMES KERKVLIIET

20 MR. KERKVLIIET: Good morning, Madam Chairman and
21 Commissioners. My name is Jim Kerkvliet. I am the Vice
22 President of sales and marketing for Gerdau Ameristeel U.S.
23 I have served in this capacity for over seven years and have
24 been involved in the wire rod industry for over 29 years.

25 Gerdau is a major supplier of long steel products

1 including carbon wire rod in the United States. We produce
2 wire rod in Beaumont, Texas and Jacksonville, Florida. We
3 also have a currently idled wire rod production facility in
4 Perth Amboy, New Jersey. Our industry has struggled over
5 the years with injury inflicted by a variety of unfairly
6 trading countries.

7 In 2002 Gerdau joined a coalition that
8 successfully pursued trade cases against dumped and
9 subsidized wire rod imports from multiple countries that
10 were costing us sales and hurting us financially.

11 Imposition of those trade remedies provided the
12 industry a much-needed level playing field for sales in our
13 market. In June of this year you found that revocation of
14 the orders on wire rod from five countries would result in
15 material injury to the domestic industry and continue those
16 orders for another five years. That decision ensures
17 continued fair trading behavior and prevents injury from
18 those countries. While U.S. demand for wire rod has slowly
19 but steadily recovered from the great recession over the
20 past three years, U.S. wire rods producers recovery was
21 short-lived due to the surge of unfairly traded imports from
22 China.

23 Instead of increased sales in line with improving
24 demand, we were stopped dead in our tracks and experienced
25 declining sales volumes. The primary reason for this is

1 dumped and subsidized imports from China that captured
2 virtually all of the increased consumption during the
3 period. We can and do compete every day with imports from
4 other countries, but those imports, like U.S. shipments
5 declined over the past three years as imports from China
6 grew.

7 What is truly disturbing about China is the
8 unbelievable rapid pace in which its producers have
9 aggressively penetrated the U.S. wire rod market. From
10 virtually no imports in 2011, China came roaring into the
11 United States in 2012 with over 240,000 tons of imports and
12 then more than doubled that to a level of over 618,000 tons
13 last year making China the largest foreign supplier of wire
14 rod to this market.

15 Despite filing this case in January of this year,
16 Chinese wire rod imports were 33 percent higher in the first
17 half of 2014 compare to the first half of 2013. Importers
18 and purchasers raced to stockpile Chinese wire rod before
19 the imports became liable for the preliminary countervailing
20 duties.

21 My experience over the past few months is that
22 many of our customers still have inventories of Chinese wire
23 rod which continues to depress our ability to sell wire rod.

24

25 During meetings with customers at the AWA

1 conference in Washington this fall, most, if not all
2 customers indicated that their need for wire rod from Gerdau
3 would be less than anticipated due to excess inventory
4 either at their facilities or for their account at a
5 terminal due to the last round of Chinese rod arrivals in
6 April and May.

7 The continued Chinese import surge after the
8 petition filing at rock-bottom prices has resulted in the
9 first half of 2014 being the worst financial performance
10 during your investigation period for the United States
11 industry. These inroads by China in the U.S. market are
12 taking place solely due to unfairly traded imports. The
13 Chinese product competes head to head with the product
14 Gerdau and other U.S. producers sell. The imports from
15 China are not obtaining sales based on a better quality or
16 special type of product needed by U.S. purchasers.

17 Gerdau Ameristeel has world-class operations and
18 highly skilled employees. We produce a high-quality wire
19 rod in a wide variety of types ranging from low to high
20 carbon, welding, cold heading quality, and many others. We
21 service our customers very well.

22 The only reason we are not able to win sales in
23 today's market is that we cannot compete with Chinese rod
24 producers' unfairly low prices. It's really that simple.

25 We have documented for the Commission many

1 examples of sales that Gerdau has lost to U.S. customers due
2 to lower-priced imports from China. The price differential
3 is often substantial and requires to sell at prices that are
4 below cost to compete with Chinese product in most cases.
5 Gerdau has reduced prices in a number of instances to try to
6 keep sales when confronted with lower competing prices from
7 China, but we do so at a cost to our bottom line.

8 This practice is not sustainable for our company.
9 But this surge into our market at this volume and price
10 levels left us little choice. And what makes the surge all
11 the more concerning is it may well just be the tip of the
12 iceberg for China.

13 Chinese capacity to produce wire rod is massive
14 by any measure. Our understanding is that Chinese rod
15 producers are faced with substantial overcapacity and
16 weakening domestic demand.

17 To make matters worse, the Chinese government
18 provides its producers subsidies and other incentives to
19 export wire rod, including a VAT rebate. The large and open
20 U.S. market is a very attractive outlet for the massive
21 excess capacity.

22 Due to increasing volumes of dumped and
23 subsidized Chinese imports, Gerdau has curtailed production,
24 lost market share, laid off workers, cut prices, and
25 suffered financially. We have been forced to cancel planned

1 investments. Not only is our Perth Amboy facility idle, but
2 we've struggled to keep our Beaumont and Jacksonville
3 facilities fully operational. The size of the Chinese
4 industry is so great compared to U.S. demand that the
5 Chinese producers will basically wipe out our entire
6 industry if they continue to export their significant excess
7 capacity here.

8 The only thing standing in the way of that
9 happening is remedial relief that an affirmative decision in
10 this case would provide.

11 Gerdau joined the coalition that filed this trade
12 case to remedy the effects of the injurious practices in
13 which the Chinese producers have engaged. We did not bring
14 these cases lightly, but here we had no choice.

15 Absent a remedy there is no question in my mind
16 that the rapid market penetration China has accomplished in
17 the past three years will continue and accelerate at the
18 expense of Gerdau and other U.S. rod producers. Relief and
19 restoration of fair trade conditions are badly needed in our
20 market.

21 On behalf of Gerdau's employees and families,
22 thank you very much.

23 MR. ROSENTHAL: Mr. Brachbill.

24 STATEMENT OF MR. MARK BRACHBILL

25 MR. BRACHBILL: Good morning. My name is Mark

1 Brachbill, I am Vice President and Financial --

2 I'm sorry. Good morning. My name is Mark
3 Brachbill. I'm Vice President of Finance for Keystone
4 Consolidated Industries. I've served in Keystone senior
5 management since 1998 and have been involved in the steel
6 wire industry for over 16 years.

7 I would like to address the negative effects that
8 dumping and subsidized imports of steel wire rod from China
9 have had on Keystone and our workers.

10 We produce steel wire rod at our manufacturing
11 facility in Peoria, Illinois. At Keystone we maintain
12 control over every step of our wire rod production process
13 from scrap through final packaging.

14 Our fully integrated capabilities enable us to
15 efficiently produce the finest steel possible and then
16 process that to match stringent customer specifications.
17 However, the bottom line for our customers is always price.

18 Over the past two and a half years, surging
19 imports of unfairly traded steel wire rod from China have
20 seriously hurt our ability to sell wire rod in our home
21 market. Quite frankly it is frightening how quickly Chinese
22 import volumes have penetrated the U.S. market and displaced
23 our sales. Almost overnight China has become the largest
24 supplier of imported wire rod in the U.S. market solely on
25 the basis of very low, aggressive pricing.

1 Nothing else differentiates China wire rod from
2 U.S. produced wire rod. While Keystone must try to take
3 into account changes in raw material costs, utilities, and
4 other production costs when making pricing decisions for
5 wire rod, Chinese producers do not appear to consider costs
6 at all when setting prices. Keystone cannot compete with
7 Chinese prices that consistently undersell as no matter what
8 is happening in the cost markets or demand in the
9 marketplace. These extremely low prices are obviously
10 attractive to our purchasers. Since late 2011, we have seen
11 our customers increasingly shift from Keystone product
12 towards Chinese imports because of the low prices.

13 As a fully, vertically integrated steel producer
14 we internally consume some of the wire rod that we produce
15 for our downstream industrial and wire products. We sell
16 industrial and wire products that compete in the market with
17 similar products that our wire rod customers produce as
18 well. The flood of cheap Chinese wire imports has hurt us
19 in two ways.

20 First, when the Chinese producers undersell us on
21 the wire rod products, we lose commercial wire rod sales to
22 our wire rod business customers.

23 Secondly, as we transfer wire rod from internal
24 consumption at market prices because our downstream products
25 must compete against products made from the low-priced

1 Chinese rod. As a result our internal consumption of wire
2 rod does not insulate us from the negative effects of the
3 unfairly traded Chinese rod.

4 The surging imports from China have caused our
5 wire rod production to plummet over the past three years
6 leaving us with significant idle capacity.

7 Last year, as imports from China soared, Keystone
8 was forced to take multiple week-long shutdowns. We had
9 four one-week rolling mill shutdown, and nine one-week melt
10 shop shutdowns in 2013. During these shutdowns Keystone had
11 to lay off all of our workers who make wire rod.

12 In 2014, the filing of the case, Chinese wire rod
13 was still being offered in large volumes and at the same
14 rock bottom prices for delivery through the end of May 2014.
15 During that time, we had half-week rolling mill shutdowns in
16 February and March and one-week rolling mill shutdowns in
17 April, a period historically that has been our strongest
18 utilization of production.

19 Imports from China stopped in June only because
20 traders were concerned about the anticipated preliminary
21 countervailing duty decision and the resulting duty
22 liability. By then, however, the damage was done. Many of
23 our customers had stockpiled Chinese wire rod and had no
24 need for additional purchases from Keystone. Thus, we were
25 forced to incur additional production shutdowns and layoffs.

1 We had to shut down both our melting and rolling operations
2 for four weeks, one in July, one in September, and two of
3 them in October, laying off workers during each of those
4 times.

5 Without trade relief, we will likely have to
6 implement additional shutdowns and layoffs. Such outages
7 and layoffs are devastating to our workers and their
8 families that depend on Keystone to put food on the table.

9 Unfortunately, given the effects of the imports
10 in the market, we had no choice. With trade relief we hope
11 to be able to quickly ramp up our idle capacity and serve
12 the many wire rod customers that have been sourcing wire rod
13 from China.

14 This year, Keystone will celebrate its 125th year
15 of doing business. We would like to continue our company's
16 great tradition of providing quality steel rod and wire
17 products for another 125 years. To do that, however, the
18 Chinese producers must be forced to play by the rules. They
19 must cease dumping and receiving government subsidies that
20 enable them to sell at such low prices in the U.S. market.

21 No more Keystone workers should have to lose
22 their job to keep the wire rod mills in China running. On
23 behalf of my company and all our workers in Keystone, I urge
24 you to give us the trade relief from imports of wire rod
25 steel from China.

1 Thank you very much.

2 STATEMENT OF MR. DANIEL FULLER

3 MR. FULLER: Good morning. My name is Dan Fuller
4 and I'm the Director of wire rod sales for ArcelorMittal,
5 USA. I've held this position for nine years and I've been
6 involved in the wire rod industry for over 25 years.

7 ArcelorMittal, USA's primary wire rod production facility is
8 located in Georgetown, South Carolina. We also produce wire
9 rod at our long product facility in East Chicago, Indiana.

10 ArcelorMittal, USA has excellent production
11 facilities and employs some of the best and most experienced
12 steel workers in the industry. We make a wide variety of
13 wire rod grades at our facilities including low, medium, and
14 high carbon, tire cord, tire bead, and welding wire rod.

15 If you look at the capabilities of the list of
16 petitioned companies in this case, the domestic wire rod
17 industry is capable of supplying high quality wire rod to
18 the entire U.S. market regardless of end use.

19 As you heard from Mr. Sanderson, ArcelorMittal,
20 USA closed its Georgetown facility for a period of about 18
21 months beginning in July of 2009 when demand for wire rod
22 crashed during the great recession. This was a difficult
23 decision for the company and it was very tough on the
24 workers, their families, and the entire Georgetown
25 community. When we reopened the plant in early 2011, the

1 economy and the demand for wire rod had improved
2 sufficiently to support that decision given our established
3 customer base and the reputation for quality products. It
4 is important to understand that at that time there was
5 virtually no imports of Chinese wire rod in the U.S. market.
6 That all changed in 2012 when a flood of low-priced wire rod
7 from China hit the market almost overnight.

8 In 2012 we were suddenly faced with nearly a
9 quarter of a million tons of imported Chinese wire rod at
10 prices well below those ArcelorMittal USA was offering.
11 Price is the most important factor driving wire rod
12 purchasing decisions because Chinese prices have been the
13 lowest prices in the market by far during the past three
14 years, Chinese wire rod fast became the low price setter in
15 the United States.

16 Our customers are rational business people who
17 like us want to make a profit. Some of these customers have
18 their own problems with pricing pressure from imports from
19 China in their sales of downstream wire products. These
20 customers will not pay more than they have to for wire rod
21 and they're not going to turn down low Chinese prices.

22 Add to that the fact that their available supply
23 of Chinese wire rod at these low prices appears to be
24 essentially limitless. We either have to meet the Chinese
25 prices or lose the business.

1 Over the course of 2013, and into the first half
2 of 2014, things have gotten worse for our industry. The
3 imports of wire rod from China continue to increase rapidly
4 and the level of underselling has intensified. Even after
5 we filed the case, the volumes of Chinese wire rod actually
6 increased as purchasers sought to bring in as much of this
7 cheap, dumped, and subsidized rod as possible.

8 Our customers have stockpiled such large
9 inventories of Chinese rod they prevented ArcelorMittal from
10 increasing sales or recovering from the injury as we had
11 anticipated in the third quarter of 2013. In fact, these
12 inventories are continuing to affect our sales in the fourth
13 quarter of 2014 as well.

14 As our customers' inventories of Chinese rod
15 increased we have been forced to live with this continuing
16 negative effect of unfairly traded rod for some time. That
17 has meant that price increase attempts have often not fully
18 been effective even though our costs were rising. The
19 negative effects of that inventory of unfairly traded rod
20 continued to be felt in market pricing and order levels
21 today. The effects of competing with dumped and subsidized
22 wire rod from China has been devastating to our wire rod
23 business. Despite the economy improving and consumption
24 rising, we have not been able to achieve the kind of volume,
25 prices, and profitability that we had anticipated when the

1 decision was made to reopen Georgetown.

2 As you heard from Mr. Sanderson, we were forced
3 to cut back production from three shifts to two shifts in
4 the fourth quarter of 2012. That resulted in the lay off of
5 40 steel workers. The United States is Georgetown mills'
6 main market and we have been able to obtain prices and we
7 have to be able to obtain prices that cover our costs and
8 provide a reasonable return to the company. Our experience
9 in 2014 proved that as long as the market has unfettered
10 access to the huge amounts of Chinese wire rod at such low
11 prices, we will not be able to do that. If the Chinese
12 producers are permitted to export their huge overcapacity at
13 extremely low prices in this market, we will continue to
14 face severe pricing pressure, lost sales volume and injury
15 to our bottom line.

16 It is critical to the long-term viability of
17 ArcelorMittal USA's wire rod operations that we obtain
18 relief from the dumped and subsidized imports of wire rod
19 from China.

20 Thank you.

21 STATEMENT OF MR. ERIC NYSTROM

22 MR. NYSTROM: Good morning. My name is Eric
23 Nystrom and I'm the director for SBQ & Wire Rod for Nucor
24 Corporation. I've been employed with Nucor for 14 years.
25 Nucor has four wire rod facilities in Nebraska, Connecticut,

1 Arizona, and one in South Carolina which just started
2 production late last year. I appreciate the opportunity to
3 speak with you today.

4 Over the past three years Chinese imports have
5 increased significantly and have showed no sign of letting
6 up since this case was filed. In 2011 the U.S. wire rod
7 industry was recuperating from the effects of the great
8 recession and we expected a gradual recovery in demand.
9 With this positive demand picture in mind, Nucor made
10 several investments intended to support our wire rod
11 customer base.

12 In particular after restarting our Kingman,
13 Arizona rod mill we decided to install a new wire rod
14 rolling facility for our Darlington, South Carolina mill.
15 We anticipated that when our Darlington mill came on line in
16 late 2013, it would help satisfy increased demand and ensure
17 that our customers would have plenty of supply. However,
18 Chinese producers had a different plan in mind. Just after
19 we announced our new mill in late 2011, economic growth in
20 China began to slow and we started to see massive volumes of
21 low-priced Chinese wire rod surge into the domestic market.
22 These imports entered the United States with one goal, to
23 steal market share.

24 The Chinese producers' strategy of aggressively
25 underselling domestic wire rod worked. Chinese prices were

1 incredibly low and kept declining as the year went on. We
2 dropped our prices in an attempt to remain competitive but
3 Chinese prices kept falling to the point where we were
4 unable to match their prices and recover our costs of
5 production. By the end of 2012, Chinese imports had taken
6 significant market share away from the domestic industry.
7 And because we decreased our prices to compete with the
8 Chinese imports, our profitability decreased too.

9 But 2012 was merely a preview of the even greater
10 flood of Chinese imports that was to come. Chinese import
11 volumes in 2013 were over 150 percent greater than in 2012.
12 These massive volumes snatched additional market share from
13 domestic producers. The devastating impact of rapidly
14 increasing volumes of low-priced Chinese imports caused the
15 domestic wire rod industry to file trade cases. With
16 potential duties looming, we expected that Chinese imports
17 would slow. Instead the opposite occurred. In the months
18 immediately following the petition, Chinese producers
19 shipped enormous amounts of low-priced wire rod to evade
20 potential preliminary duties. This has caused a significant
21 overhang of Chinese wire rod in the market and our customers
22 have reduced their orders as they continue to work through
23 inventory.

24 Chinese imports were able to quickly penetrate
25 the domestic market by offering exceptionally low prices.

1 Although we lowered our prices, we could not match the
2 Chinese import price and cover our costs. As a result
3 customers simply stopped buying U.S. rod, instead turning to
4 Chinese imports. In many cases the price gaps caused by
5 Chinese underselling were so large that customers went ahead
6 and bought the cut-rate Chinese imports without even asking
7 us for quotes.

8 Because we could no longer drop our prices, we
9 lost sales and market share our profitability plummeted.
10 Our production and shipments also declined. Our Nucor
11 teammates worked less hours and took home less pay.
12 Currently Nucor and other domestic producers are operating
13 at very low levels of capacity utilization. We have not
14 seen the increased orders that we normally would expect with
15 increasing demand or even the bump that would be typical
16 once petitions are filed. Instead, our customers stocked up
17 on Chinese wire rod before preliminary duties could be
18 imposed. This has significantly reduced their sales orders,
19 delaying the benefits of a potential order.

20 The domestic industry has more than enough
21 capacity to supply the domestic market. We certainly could
22 have produced every ton that's been lost to Chinese imports.
23 But let's be clear, Chinese wire rod is not in the market
24 because the domestic industry cannot supply its customers.
25 It is here because the Chinese government subsidizes excess

1 wire rod production and Chinese wire rod producers are
2 dumping it in our market at extremely low prices.

3 Furthermore, domestic industry can produce
4 essentially any grade of wire rod including boron added wire
5 rod. U.S. customers are not asking for boron. Instead the
6 added boron in Chinese wire rod serves two main purposes.
7 One, to obtain a vat tax rebate for exporting alloy steel;
8 and two, to evade and circumvent antidumping orders around
9 the world. The small amount of boron that most Chinese
10 producers place in their wire rod is commercially
11 insignificant. It certainly does not make Chinese wire rod
12 a specialty product. Rather imported Chinese wire rod is
13 generally industrial quality, highly substitutable, and
14 competes directly with the wire rod produced by the domestic
15 industry.

16 To prevent further damage to the domestic
17 industry caused by wire rod from China, trade relief is
18 necessary. Otherwise Chinese producers will continue to
19 ship massive quantities of wire rod to the United States
20 preventing the domestic industry from benefitting from
21 increased demand and taking away established market share.
22 Without the discipline of an order, Chinese producers will
23 use their massive excess capacity to continue to increase
24 their exports to the U.S. market.

25 There is no doubt in my mind without trade

1 relief, the domestic industry will continue to lose orders
2 and eventually shut down capacity. American workers will
3 suffer. Nucor prides itself on providing stable,
4 well-paying jobs that are important to local communities.
5 But without trade relief Nucor and its teammates will
6 continue to lose ground to unfairly traded -- unfairly
7 priced imports.

8 On behalf of Nucor I urge the Commission to find
9 injury by reason of wire rod imports from China.

10 Thank you.

11 STATEMENT OF STEPHEN ASHBY

12 MR. ASHBY: Good morning my name is Stephen
13 Ashby. I'm Director of Rod and Bar Sales for Evraz Pueblo,
14 a domestic producer of carbon and alloy steel wire rod.
15 I've held this position for two years and prior to joining
16 Evraz I held wire rod and wire sales positions with
17 ArcelorMittal USA. I have been involved in the rod and wire
18 businesses for over 30 years.

19 I'm here today to describe the injury caused by
20 imports of wire rod from China. Evraz is a major wire rod
21 production facility in Pueblo, Colorado and we produce a
22 wide range of wire rod products in numerous grades and
23 sizes. Evraz produces low carbon mesh industrial grade rod
24 and our product mix is weighted heavily toward high and
25 medium carbon wire rod.

1 Our medium grades of wire rod are used for
2 furniture and bedding spring wire, while high carbon rod is
3 used for products such as PC strand and wire rope. Evraz
4 also produces welding quality wire rod. Unfortunately we
5 are being injured by dumped and subsidized imports from wire
6 rod from China across all of our product lines. The first
7 significant influx of low-priced wire rod from China in 2012
8 appeared to be primarily in low carbon and mesh grades.

9 But over the course of the last two years we have
10 seen the imported Chinese wire rod moving into medium and
11 high carbon grades as well. The Chinese producers have
12 been selling wire rod to our customers and competing with us
13 head to head for our sales. They have targeted in
14 particular the high carbon PC strand market which is an
15 important market for Evraz.

16 The Chinese wire rod industry has established
17 itself as making a product that meets the standards of U.S.
18 customers including some of the largest purchasers of wire
19 rod in the United States.

20 Imported Chinese wire rod is interchangeable with
21 domestic and other import sources in the eyes of our
22 customers. The Chinese producers have established that
23 they can meet the quality requirements of the large U.S.
24 purchasers. The 600,000 plus tons of wire rod they pumped
25 into the U.S. market last year shows that they have a large

1 and expanding customer base here.

2 Unfairly traded Chinese wire rod has consistently
3 oversold Evraz by very significant margins over the past
4 three years. The low Chinese pricing has held to both
5 lower prices and lost sales to Evraz. When Evraz loses a
6 sale to dumped and subsidized Chinese wire rod or takes a
7 smaller share of a customer's needs at a lower price that's
8 not because the customer's prefer the quality, delivery or
9 service associated with Chinese wire rod, what the
10 purchasers want are much lower prices.

11 If the Chinese producers are not forced to trade
12 fairly, purchasers will resume buying as much low priced
13 Chinese wire rod as they can. As it is we are still having
14 difficulty competing with huge stockpiles of Chinese wire
15 rod in U.S. purchasers inventories. As the director of rod
16 sales for Evraz, I cannot overstate my concern of what will
17 happen to our industry if unfairly traded Chinese wire rod
18 is permitted to resume flooding the U.S. markets.

19 We face Chinese competitors with the ability to
20 increase shipments to the United States by millions of tons
21 each year. The effects we felt in 2013 when Chinese
22 imports grew to 600,000 tons were severe and grew even worse
23 this year as imports from China accelerated at an even more
24 rapid pace. We make every type of wire rod that Chinese
25 producers export here, so it all blows down to price.

1 Our customers told us they cannot afford to
2 ignore the lower prices offered for Chinese wire rod and I
3 cannot afford to match them. This continued unfair pricing
4 behavior is a recipe for disaster at Evraz and the domestic
5 wire rod industry overall.

6 On behalf of Evraz Pueblo, its workers, families
7 and the entire Pueblo community, I urge the Commission to
8 grant us relief from injury being caused by dumped and
9 subsidized Chinese wire rod. Thank you.

10 MS. CANNON: For the record I am Kathleen Cannon
11 and I will conclude our panel's presentation by addressing
12 one issue critical circumstances. Respondents have argued
13 that critical circumstances cannot be found in this case
14 because the import volumes and the importer's inventories
15 declined in the six months following the Petition filing.
16 Those arguments reflect a misunderstanding of the law, its
17 purpose and the facts of record.

18 Congress enacted the critical circumstances
19 provision to deter exporters subject to an investigation
20 from circumventing the intent of the dumping and subsidy
21 laws by increasing exports to the United States during the
22 period between the initiation of the case and the Commerce
23 preliminary determination.

24 As the record here shows, Chinese rod exports
25 increased significantly after the case was initiated but

1 prior to the agency's preliminary countervailing duty
2 decision. They took exactly the action that this provision
3 was designed to deter. Let me preface my discussion of the
4 facts by emphasizing that we are only urging the Commission
5 to find critical circumstances in the countervailing duty
6 case.

7 Given the extended time period for a dumping case
8 at Commerce, imports have largely ceased in the 90 days
9 preceding the preliminary dumping decision because of the
10 significant countervailing duty liability they were already
11 facing. The importers reaction to the Petition filing and
12 the effort to evade countervailing duty liability here,
13 however, satisfied the statutory test for retroaction duty
14 application.

15 First let's look at import volumes, Commerce
16 found that import volumes had surged massively in the three
17 months after the Petition filing. The significant volume
18 increase that Commerce cited is even more pronounced within
19 four months after the Petition filing are compared to the
20 prior four months.

21 In fact, imports in the month of April, 2014 were
22 more than double import volumes in almost every month
23 preceding the Petition filing. New record information
24 indicates that the post-Petition import volumes were even
25 higher than we originally calculated. Press reports and

1 statements of purchasers indicate that this surge was no
2 accident. It was a deliberate effort to get as much
3 Chinese rod into the United States before duty liability
4 accrued.

5 Respondents cite declining import volumes during
6 the six months following the Petition filing and urging a
7 negative decision here. During part of that six month
8 period however, importers would have potentially been on the
9 hook for countervailing duties. They stopped importing rod
10 in June as the date for potential duty liability grew closer
11 to avoid the risk of having to pay very high potential
12 duties.

13 When you look at the import volume period you
14 cannot include July, that is the month after preliminary
15 countervailing duties were announced. The law clearly
16 contemplates only looking at imports prior to the
17 preliminary decision. Even the month of June is
18 inappropriate for inclusion given record evidence that
19 traders did not want to risk importing Chinese product that
20 close to potential duty liability.

21 The dramatic drop off in Chinese imports from
22 June forward following their surge in the proceeding four
23 months is strong evidence that importers were reacting to
24 the looming duty liability and were not in the business as
25 usual mode. The post-Petition surging imports as properly

1 calculated based on the data of record the revised data of
2 record was substantial.

3 A second statutory factor is a rapid increase in
4 inventories. Importantly, the statute does not direct the
5 Commission to consider only importer inventories, the
6 statute simply says inventories. Here there was a rapid
7 increase in purchaser inventories. Those inventories
8 undermine relief to the domestic industry just as much as
9 importer inventories.

10 You heard testimony just now from U.S. producers
11 that purchasers were telling them they would not buy
12 domestic product even after the provisional duties went into
13 effect because they had stockpiles of low priced Chinese
14 wire rods sitting in their facilities. Other confidential
15 record evidence corroborates this testimony and we will
16 provide some additional specifics in our post-hearing brief.

17 As our industry witnesses stated, those purchaser
18 inventories of the Chinese product were so large that U.S.
19 producers struggled now in November of 2014 to sell wire rod
20 in the U.S. market despite the preliminary duties that were
21 imposed. When they should have been able to increase sales
22 of wire rod, U.S. producers were forced instead to curtail
23 production due to this huge inventory overhang.

24 This rapid increase in inventories as the statute
25 indicates and as the U.S. producers have attested from

1 personal experience seriously undermines the order's effect
2 and we urge the ITC staff to instruct purchasers to report
3 inventories of wire rod as of June 2014 in comparison to
4 June 2013 to further document for the record this inventory
5 buildup.

6 Finally the statute instructs the Commission to
7 consider any other circumstances that undermine the remedial
8 effect of the trade case filing. The aggressive Chinese
9 pricing behavior that occurred after this case was filed is
10 such a circumstance. Record data show intensified
11 underselling in the first half of 2014. As price
12 undercutting worsened, the domestic industries prices
13 actually declined in the face of rising costs and its
14 already precarious financial condition became even more
15 dire.

16 This is not a case where the domestic industry
17 saw immediate benefits from the Petition filing as you may
18 have seen in other contexts. Instead, subject imports
19 seized the opportunity to capture all the U.S. sales that
20 they could with aggressive underselling before the
21 preliminary duties were imposed.

22 The Commission has recognized such import pricing
23 behavior after Petition filing as supported as a critical
24 circumstances finding in other cases. In some the facts
25 relevant to the application of the critical circumstance

1 provision here are not nearly as simplistic as Respondent's
2 suggest. The Commission's reluctance to issue affirmative
3 critical circumstances, findings, in any past cases
4 unfortunately has encouraged the very actions that this
5 provision was meant to deter, namely the buying and
6 stockpiling of large volumes of subject imports after cases
7 filed, but before the preliminary duties go into effect.

8 We urge you to recognize that this behavior has
9 undermined the intended benefit of the law and to remedy it
10 here, thank you very much.

11 MR. ROSENTHAL: That concludes our direct
12 presentation. We would be happy to answer questions.

13 CHAIRMAN BROADBENT: Thank you, I want to thank
14 the witnesses for coming today and taking time from their
15 businesses to be with us. This morning we will begin our
16 questioning with Commissioner Johanson.

17 COMMISSIONER JOHANSON: Thank you Commissioner
18 Broadbent and I would also like to thank all of the
19 witnesses and their counsel for being here today. Mr.
20 Nystrom, you spoke of Nucor bringing new capacity online I
21 believe, could you perhaps speak a bit more on that? The
22 staff report indicates that the domestic industry has
23 increased wire rod capacity albeit not greatly, in comparing
24 interim 2014 data to interim 2013 data, and that's at table
25 C1 of the staff report.

1 Given the industry's concern about injury from
2 the imports, why is there any increase in capacity?

3 MR. NYSTROM: At the time when we were making
4 our decisions and going for a decision making process, we
5 expected a gradual market recovery and we had made the
6 business decision to go ahead and lets add capacity to
7 support our customer base, to make sure we could basically
8 respond to their requests.

9 And it was shortly thereafter that the Chinese
10 imports started coming to the United States, so clear when
11 we went through our business case, you know steel is a
12 challenging business and we saw that we had an opportunity
13 to generate a return, and we made this investment to support
14 our customers and our own teammates and it was not long
15 thereafter that the imports starting coming and they started
16 coming at such low prices that you know, had we been in the
17 middle of that type of an environment, the decision may have
18 been different.

19 Certainly with the types of prices that were
20 being offered in the market it would change your return
21 profiles.

22 COMMISSIONER JOHANSON: And was that decision
23 made in light of the expanding overall U.S. economy?

24 MR. NYSTROM: Absolutely, you know we had come
25 out of a pretty tough time in 2009 and we saw things

1 expanding. We do see some potential for re-shoring, we
2 hear about it, we read about it all the time and we see that
3 the U.S. is a great manufacturing country and we expect that
4 manufacturing base to continue to grow so it's Nucor's
5 position, we are trying to establish ourselves in a broader
6 sense to support our manufacturing customers for our growth
7 opportunities for the future.

8 COMMISSIONER JOHANSON: Thank you for your
9 response Mr. Nystrom and Mr. Kerkvliet, my next question is
10 something that you could answer and it follows somewhat in
11 line of my previous question for Mr. Nystrom but what is the
12 status of your idle Perth Amboy facility? Is it expected
13 to produce wire rod in the near future?

14 MR. KERKVLIIET: The facility in Perth Amboy
15 remains idle. We have provided data in the pre-hearing
16 brief to the staff about what we are spending on a month,
17 annual basis to keep it viable but based upon where the
18 market conditions are now today, with the level of operating
19 income that we have with our existing facilities, which is
20 paltry as an industry standpoint, 1.1% until we see a more
21 favorable market condition, the likelihood that we will
22 bring that capacity back on will be very unlikely.

23 COMMISSIONER JOHANSON: Thank you for your
24 response. My next question deals with scrap which is
25 something I have learned a whole lot about since I've been

1 here, something I didn't know about -- well actually I knew
2 about it, but did not know a great deal about prior to
3 becoming a Commissioner. In figure 5-1 of the pre-hearing
4 staff report presents prices for steel scrap and shows that
5 these prices have fluctuated since 2011 and stabilized in
6 recent months in 2014.

7 Do you anticipate that scrap prices will be
8 relatively stable going forward or return to the fluctuating
9 pattern seen over much of the period?

10 MR. KERKVLIIET: Jim Kerkvliet from Gerdau. The
11 scrap market is a globally traded commodity and so it's
12 difficult to really project as to what the outlook is going
13 to be for scrap going forward. I kid our scrap guys and
14 say what our forecast is going to be for next months and
15 their response is typically on one hand it could go up on
16 the other hand it might go down, or it might stay the same.

17
18 So to give a longer term forecast of what is
19 going to happen on scrap is difficult. The belief is
20 however, that scrap is just one component of cost for us and
21 it's very clear on the record that while scrap could be up
22 or down, our overall costs have gone up because we have been
23 unable to fully utilize the capacity of the mills. Our
24 costs have gone up because we have had to invest in two of
25 the facilities to make sure that we are environmentally and

1 safety conscious relative to the safety standards that we
2 have in the United States so to answer the question on scrap
3 it's a long term and it's hard to pinpoint but scrap is just
4 one component of our overall cost basis.

5 COMMISSIONER JOHANSON: I know that scrap has
6 been described as somewhat constrained, I know in recent
7 case, not necessarily constrained but exports of U.S. scrap
8 have been fairly high, is that still the situation?

9 MR. KERKVLIIET: Again, Jim Kerkvliet from
10 Gerdau. I don't know that I would agree with your statement
11 that scrap has been constrained. Scrap, it's on the record
12 from the data from the custom's department, the scrap
13 exports in this year are lower than what they have been in
14 the past. I think in 2012 I think it reached 22 million
15 tons and I think it's pacing something like 14 or 15 million
16 tons for this year, just off the top of my head.

17 COMMISSIONER JOHANSON: Okay, thanks for your
18 response. China's Respondents have had made several
19 arguments that there are product mix differences that impact
20 competition between subject imports and the domestic
21 industry, including the U.S. producers selling further
22 processed higher priced products and that Chinese exporters
23 have moved away from traditional industrial quality
24 products.

25 Is competition limited by product mix?

1 MR. ASHBY: This is Steve Ashby from Evraz.
2 Certainly again in my testimony we talked about the initial
3 imports coming in, low carbon or low grade steel but I can
4 tell you that we compete on every level with China. We
5 make every product that they make and the only reason they
6 continue to import in the U.S. are lower prices so we make
7 every product that they make here and there's nothing that
8 they can make that we don't make here domestically.

9 MS. CANNON: Commissioner Johanson if we could
10 just address the Respondent argument. If you look at the
11 brief they cite that they have based their argument on
12 product mix from a survey that they conducted independently
13 and not from the data in your staff report and if you look
14 at your staff report specifically, comparing pages 4-9 and
15 pages 3-12 which have U.S. producer product mix and the
16 product mix as reported by importers, you will see a
17 substantial overlap in the types of wire rod that are sold,
18 so we think it's simply a reclassification by them in terms
19 of the products that they have identified.

20 COMMISSIONER JOHANSON: Thank you Miss Cannon,
21 that helps out. 27 of the 55 producers reported that U.S.
22 produced product was required by law for at least some of
23 their wire rod purchases, how large a part of the market are
24 Buy America or Buy American sales? What had been the
25 demand during the period of investigation for this part of

1 the market and where do you see demand for Buy America or
2 Buy American sales heading, looking towards the future?

3 MR. NYSTROM: Eric Nystrom with Nucor. Our
4 customers don't necessarily come to us and tell us projects
5 that they need Buy American for and projects that they don't
6 so we don't necessarily have good information. It is my
7 understanding and belief that not a large amount of our
8 product does go into Buy American, but when we sell our
9 products to our customers, it's basically you know, they are
10 not going to volunteer this has to be for a Buy American
11 project and they are coming to us basically with very low
12 pricing competitive offers that we must compete with.

13 MR. BRACHBILL: Mark Brachbill from Keystone
14 Consolidated. Essentially we see the same thing that Eric
15 and his group does. We price a product with a customer's
16 specification, and what the final usage of that product is
17 we really don't know.

18 MR. KERKVLIIET: Jim Kerkvliet from Gerdau.
19 Echoing the comments from both Mark and Eric, customers will
20 seldom tell them specifically that it has to be made in the
21 United States or for Buy America, but to answer your
22 question further about the outlook for the market, you know,
23 based upon our experience in other products that we produce,
24 infrastructure spent in the United States has basically from
25 the Great Recession has not recovered at all.

1 The Surface Transportation Act has not been
2 re-established and so other markets have grown, albeit very
3 small, the infrastructure built in the United States has
4 stayed relatively flat to even declined like 1 1/2% so as a
5 percentage overall, the made in America continues to be a
6 very, very small piece and it's a declining piece of the
7 overall market base.

8 COMMISSIONER JOHANSON: Yes Mr. Ashby?

9 MR. ASHBY: Steve Ashby at Evraz. I would just
10 say that we have tried to identify it as well and had
11 similar experiences with the rest of the group here, but
12 it's relatively insignificant in terms of customers actually
13 coming to us and asking us to Buy America.

14 COMMISSIONER JOHANSON: All right thank you for
15 your responses, my time has expired.

16 CHAIRMAN BROADBENT: Commissioner Kieff?

17 COMMISSIONER KIEFF: Thank you Madame Chairman.

18 Let me begin by thanking both the morning panel and the
19 afternoon panel for coming today. It's very helpful to us
20 to have the participation by both Petitioners and
21 Respondents and we greatly benefit from the input from both
22 sides. I personally won't be here for the rest of the day
23 but I really look forward to the information that will be
24 gathered during the hearing from my colleagues here on the
25 panel as well as from the two panels out there and I look

1 forward to reading the transcript as well as to reading the
2 post-hearing submissions that each side will be providing.
3 We try hard to work together up here to use the day to
4 elicit as much helpful information as we can from both
5 sides, so in my few minutes here right now let me just ask
6 some questions that might not otherwise be asked and I look
7 forward to the excellent questions that my colleagues will
8 be asking and the excellent answers and information that
9 both sides will be providing and again I look forward to
10 reading that in the transcript as well as in the
11 post-hearing submissions.

12 One very down in the weeds detailed question that
13 again I would like not to spend time on the answer now but
14 in the interest of just moving forward let me ask now to ask
15 about is related to Exhibit 3 in the brief pre-hearing brief
16 filed by the Respondent China Iron and Steel Association
17 where there are a set of least square regression results.
18 Maybe it's my many years at a technical school but I love
19 math and data, the Respondent takes from this math that in
20 effect there is no meaningful correlation between various
21 conditions and the overall profitability of the Petitioners,
22 the domestic industry and I think it would help me a lot if
23 the Respondents could provide in the post-hearing as much of
24 the data that they rely on to do these regressions and then
25 if both sides could provide as much analysis as possible so

1 that we can best understand whether this set of regressions
2 tells us anything and if so, what we should take from it.

3 So in particular, it might help to know what the
4 Respondent's think would be data -- sorry, would be results
5 that would justify conclusion about a causal link and why
6 you think these results don't meet that threshold and from
7 the Petitioners the opposite side if you will.

8 Another somewhat down in the weeds question, this
9 one is really directed actually at the Respondents Duferco
10 and Macsteel. The arguments you seem to make are largely
11 focused on critical circumstances and not about material
12 injury or a threat of material injury, this is a fairly
13 technical legal question but do you concede injury? Again
14 you don't have to -- please don't answer that now, but
15 please during the post-hearing if you could let me know more
16 about that.

17 And then for both of the parties the Respondent
18 China Iron and Steel Association makes a point about the
19 so-called typically low profits that the domestic industry
20 has had for a low period of time and it would help me to
21 hear from both sides how and why that matters and what
22 factual or economic market reasons there are to think that
23 conditions of yesterday are relevant or not for conditions
24 today and what legal significance if any, we should draw
25 from that.

1 Put it differently, even if it turns out that the
2 domestic industry ordinarily has a low profit margin so
3 what. Is that relevant in the face of at least what looks
4 like a significant decline in whatever the margins were
5 during the period of investigation?

6 Let me conclude there by just re-iterating that I
7 greatly appreciate the questions from my colleagues and the
8 answers from each of you and I look forward to reading them
9 in the transcript and in the post-hearing submissions and
10 again reiterate how helpful it is that the Respondents have
11 come in some cases, travelled a long distance and come, but
12 also that detailed information you have provided it is very
13 helpful to have it.

14 Thank you all very much.

15 CHAIRMAN BROADBENT: Commissioner Schmidtlein?

16 COMMISSIONER SCHMIDTLEIN: All right. Thank you
17 very much. I also want to thank the witnesses for appearing
18 here today.

19 I want to focus on -- because I know my
20 colleagues will focus on, I think, different questions, but
21 I want to make sure I understand the critical circumstances
22 argument. So, maybe it's helpful if I just ask you to --
23 let's start with the time period that you're arguing for,
24 and can you just walk me through -- you're asking for us to
25 consider a shorter time period than what the ITC normally

1 does, my understanding, six months.

2 So, what would differentiate this case for
3 looking at a different time period? And then, if you could
4 talk about how that affects how we look at the Commerce
5 Department's determination, and the time period that they
6 look at and how they came up with their greater than 15
7 percent surge and so forth. We'll start there.

8 MS. CANNON: Certainly. The Commission has
9 looked at six months, but as we set forth in our brief, it
10 has not looked exclusively at six months.

11 In many cases in the past, the Commission has
12 looked at shorter period. So, I would first put that out
13 that we're not asking for something that's extremely
14 aberrational. The Commission, in a number of cases, has
15 looked at periods as short as three months or four months,
16 and we've cited those cases in our brief.

17 Here, you look at, I believe, as a starting
18 point, the Statement of Administration Action, which
19 explains what the critical circumstances provision was
20 about. And it says, specifically, that what we're looking
21 at is what happens in the period between the time when the
22 case was initiated and where the preliminary Commerce
23 decision was issued.

24 Well, here, the preliminary Commerce decision
25 came out at the end of June of this year. So, by July, if

1 you are looking at imports and measuring them to see if
2 there's been this import surge, of course, you wouldn't see
3 it. That's after the preliminary decision. And that
4 Statement of Administration Action has been cited by the
5 Appellate Court and recognized as a proper statutory purpose
6 in a case that we cite in your brief.

7 So, I think that's the first factor you have to
8 take into account is that looking at a six-month period when
9 you know that part of that period is after the preliminary
10 decision, which they're trying to beat, would be directly
11 inconsistent with the purpose that the statute was designed
12 to address. Then the question becomes what about June?
13 June is before -- most of June is before the preliminary
14 decision. It came out at the very end of June, the Commerce
15 countervailing duty decision. But we have record evidence
16 from the trader saying we got to stop this as the beginning
17 of June because we're worried about it.

18 They're always worried about, you know, you put
19 something on the water when is it actually going to come in?
20 So, they're trying to get it in as quickly as they can to
21 make sure they're not going to run that liability. It was
22 all very carefully designed to get product into this country
23 in that time period right before they were going to face
24 what they fully expected, and were right to expect, were
25 going to be substantial countervailing preliminary duties.

1 So, that's why, consistent with the statutory
2 purpose, we're focusing on that four-month period. And I
3 think that's exactly consistent with the purpose of the law,
4 and also with Commission precedent in other cases where
5 you've looked at a narrower period that pre-dates the
6 preliminary decision and that focuses on the period when the
7 imports are pumping the product in to beat the provisional
8 duties, just the volume.

9 MR. ROSENTHAL: I just want to add one more point
10 about that.

11 COMMISSIONER SCHMIDTLEIN: Who's talking?

12 MR. ROSENTHAL: Paul Rosenthal. So, we didn't
13 emphasize this overly in our brief, but the record shows,
14 and there is a reference in tab 2 of our pre-hearing brief
15 to the fact that the traders, the importers heard rumors
16 about this case well before it was filed, and even before it
17 was filed began to ramp up the volume of the imports that
18 they were bringing into the country.

19 So, that argues again for a shorter time period
20 after the filing of this case for the Commission to focus on
21 because, honestly, there is an increase that even began
22 prior to the filing and just accelerated after the filing,
23 and that has to be taken into account.

24 COMMISSIONER SCHMIDTLEIN: So, have there been
25 other cases where the preliminary determination date falls

1 before that six-month period that the Commission has said,
2 well, we're not going to look at those others -- you know,
3 if they'd reached a negative critical circumstance that they
4 can explain the time period we were looking at that they've
5 said it's more appropriate to look at the shorter time
6 period because of where that determination fell?

7 MS. CANNON: I believe so. I'll need to look
8 back at some of the cases, but I believe that that was part
9 of the reason that the Commission was looking at the
10 narrower time period.

11 In a lot of cases, of course, you have a dumping
12 timetable, not a countervailing duty timetable. And when
13 you have a dumping timetable, which is extended, this issue
14 doesn't arise because you don't have provisional duties for
15 a while. So, it's only in these contexts of a
16 countervailing duty case where you're going to get that
17 earlier provisional measure, and that's what we see here.

18 COMMISSIONER SCHMIDTLEIN: Okay.

19 MR. HOLT: Derick Holt, Wiley Rein. Indigo from
20 China, the Commission used a three-month period, so there's
21 been cases that the Commission have used the shorter time
22 period.

23 And we also would like to emphasize that the
24 Commerce can impose CVD duties within 85 days of initiation,
25 so what you'll see is that importers, to minimize their risk

1 of having the shipments arrive after the preliminary
2 determination that they cease shipping or cut it back in
3 June.

4 COMMISSIONER SCHMIDTLEIN: All right. Thank you.

5 And I was going to ask this question with Nucor's
6 counsel, which, I guess, Wiley Rein, Nucor argues that we
7 should just take the Commerce Department's determination,
8 their surge determination and make that our surge
9 determination; is that right? And can you discuss -- I
10 assume that this -- whoever would like to respond that --

11 MR. PRICE: We were going to ask Mr. Holt to
12 respond to that.

13 COMMISSIONER SCHMIDTLEIN: Okay. Is there a
14 precedent for that? Surely, that seems like a legal
15 question that's come up before.

16 MR. PICKARD: Good morning, Commissioner. This
17 is Dan Pickard. Why don't I start it off and then probably
18 Mr. Holt will follow up.

19 I don't think we specifically argued that you
20 necessarily don't conduct your timing and volume analysis.
21 As a matter of fact, you're required to do that under the
22 statute. What we were suggesting is that the Department has
23 already made a finding of a massive surge of imports, and
24 that there's not a need for the Commission to duplicate
25 that.

1 Then it becomes kind of the traditional analysis
2 that the Department has heard that the Commission has
3 conducted before is whether to examine whether there's been
4 a surge of imports that is really going to delay the
5 effects, the beneficial effects of the antidumping order.
6 And that's what we were arguing, not to turn a blind eye to
7 the surge, but to recognize that the Department has already
8 made that finding and not to do a duplicative determination.

9 And I think it bears repeating or bears emphasis
10 in this case, at least, that perhaps the most probative
11 piece of evidence that the importers did surge imports in to
12 intentionally delay the beneficial effects of the order we
13 know that happened because they stated publicly that they did
14 so, and you've got that evidence in the record, that there
15 are public statements by larger purchasers saying that they
16 knew the case was coming. They felt the case was going to
17 be successful, so they intentionally made a decision to
18 stockpile Chinese rod.

19 I don't know if you want to add to it.

20 COMMISSIONER SCHMIDTLEIN: In doing our analysis,
21 if we were to accept that there is a surge, you know we have
22 to consider the volume, so how would that -- so, you would
23 say, well, we're going to label that, whatever that volume
24 is since the Commerce Department has found it's a massive
25 surge that we're labeling it different. Can you explain to

1 me how does that effect the analysis as you acknowledge that
2 we have to do under the statute?

3 MR. HOLT: Well, the Commission can also look at
4 the time period and the timing of the value, so you can also
5 look at the time period after the petition was filed,
6 whether imports the volume had doubled. The Commission has
7 done that in the past, looking at whether the imports from,
8 let's say, the first month to the second month to the third
9 month had doubled, tripled. So, the Commission has another
10 way to look at the timing and volume, if it's possible.

11 MR. PICKARD: Just to follow up, Commissioner --
12 again, this is Dan Pickard.

13 We were just suggesting that perhaps the starting
14 point for the Commission's analysis should be a recognition
15 of the Department of Commerce's determination that there's
16 been a large surge, and then the Commission would continue
17 to do its more traditional analysis, as far as looking at
18 the significance of that surge, the timing of that surge,
19 what that's done as far as imports, and also, consistent
20 with the third prong of the statute, look at the other
21 relevant and economic factors in regard to the evidence that
22 in regard to whether that large surge is going to delay the
23 beneficial effects of the order.

24 MR. LUBERDA: Commissioner, Schmidtlein, this is
25 Alan Luberda from Kelly Drye. I just want to build on one

1 point that Mr. Holt made, and that was the 85 days, which is
2 the initial time for the preliminary determination, but this
3 got extended. And when you ask for an extension, it doesn't
4 come right at the beginning. You have to wait a month or
5 so. I'm not sure what the exact days we put in our brief,
6 but there was a time period between when we filed the
7 petition and when we requested the extension.

8 That's going to factor into the importers'
9 decision on how far out they can go to order ahead to bring
10 product in. And because of that, I mean, that's what I
11 think argues for a shorter time period than six months.
12 They had to make a decision based on not knowing if we're
13 going to get that extension or not.

14 COMMISSIONER SCHMIDTLEIN: All right, thank you.
15 My time is up.

16 CHAIRMAN BROADBENT: Mr. Rosenthal, I was looking
17 at your public submission, this very cute rocket you've got
18 up here. What kind of rocket is that?

19 MR. ROSENTHAL: I don't know, but I know some
20 people who are rocket scientists. You might check with
21 them.

22 MR. Price: It was intended to be a domestically
23 produced rocket.

24 CHAIRMAN BROADBENT: Every part, right?

25 All right, I'm just trying to understand volume a

1 little bit more. What is the timeframe that we ought to
2 look at volume in this case? I mean we're kind of coming
3 out of a recession, volumes are very low, and I think at the
4 end of the period they aren't even close to where they were
5 pre-recession levels. So, could you give me a little
6 context for evaluating the surge in volume?

7 MR. ROSENTHAL: Well, you're talking about the
8 import volume to focus on. I don't see any reason why you
9 would differ from your normal period of investigation.

10 What's interesting here is that we were coming
11 out of the recession. As you heard, Nucor made some
12 investment decisions based on the belief that consumption
13 would increase, demand would increase. And at that time
14 when we were emerging, the imports from China were
15 negligible, so I think that's the appropriate starting
16 period in 2011, and you can see what's happened since then.
17 But I don't see any reason to alter the traditional period
18 of investigation in this case. No facts that argue for
19 doing so.

20 CHAIRMAN BROADBENT: I'm thinking that any
21 increase, since they started at such a low level, would be
22 --

23 MR. ROSENTHAL: That may be true, but it's not
24 just any increase. It was, as you saw from that rocket
25 ship, an incredible acceleration of increase. And it's not

1 just an increase; it's how they did it. They didn't just
2 displace other imports. They did a little bit of that.
3 What they did was displace the domestic industry shipments,
4 as I said, almost a one-for-one basis.

5 And by the way, as we're looking at volume, we
6 cannot forget the efforts by this industry to maintain
7 volume, and do so, they reduced price. So it's not just the
8 volume issue, although volumes are phenomenal and point to
9 injury. It's the price underselling, which lead to price
10 suppression and depression that's also resulted in the
11 rapidly declining incomes. And again, I know you're asking
12 simply about volume, but you can't disassociate all these
13 factors together from one another because there's nothing
14 else that explains why the operating income went down as
15 rapidly as it did, other than the increased import volumes
16 at very, very low prices.

17 MS. CANNON: Madam Chairman, if I could also
18 supplement that. I mean, the 430,000 percent increase
19 sounds really great, and I know my colleague loves to say
20 it, but I find just as compelling the fact that they went
21 from nothing to the largest supplier in the market in two
22 years.

23 When you go from nothing to become the largest
24 supplier, I mean that is a surge. That's an awfully fast
25 penetration of a market with a lot of other subject or

1 non-subject sources competing as well, and the only way you
2 do that is by the low prices that they used here. So, that
3 phenomenon, to go from nothing to being the largest, single
4 supplier on a volume basis I think is a very compelling fact
5 for our case as well.

6 MR. PRICE: Alan Price, Wiley Rein on Behalf of
7 Nucor.

8 Each case is sae generous. This is a period where
9 the industry is operating at low levels of capacity
10 utilization. This volume of imports with this level of
11 capacity utilization captured, and the imports captured
12 their share and entered the market solely by underselling
13 was devastating. This is a significant volume of imports.

14 Volume of imports in each case can be very
15 different, depending on the economic circumstances. If
16 you're in a period of booming demand, the same volume of
17 imports might not be significant. In a period of limited
18 demand, while improving at a very low base, this volume of
19 imports was very significant and devastating to the
20 industry.

21 CHAIRMAN BROADBENT: You know I was interested to
22 hear, and this is a little farther afield than some of the
23 things we look at, but on the Buy America restrictions that
24 none of the companies at this table talked to their
25 customers about this as an advantage of their product. I

1 mean isn't this something that you should be marketing,
2 solving their concerns about getting cross-wise with the Buy
3 America restrictions you can assure them that they won't by
4 using your product? It was just interesting to me that no
5 one discusses this with customers.

6 MR. NYSTROM: Eric Nystrom with Nucor.

7 You know, it's not that we don't necessarily
8 discuss it with the customer, but from their perspective
9 when they're buying raw materials for their business they're
10 not going to share with you when exactly they need it, and
11 they're not going to be willing to offer up premiums, per
12 say. So, it's not that we don't try to figure out what
13 percentage of their business is going to Buy America, but
14 it's very difficult to get hard and fast figures.

15 And again, in our experience, as we mentioned
16 earlier, it does not appear that a lot of their volume is
17 going to be dedicated to "Buy America" type projects.

18 MR. ROSENTHAL: One of the interesting things
19 since we represent a number of downstream wire industries,
20 they'll tell you that their Buy America percentages are
21 relatively small, and as a negotiating tactic they don't
22 want to tell their suppliers, well gee, I need this for a
23 Buy America project because they'll think, well gee, I can
24 expect to pay more. They'll just say I know you're
25 producing in the United States. I will buy your product if

1 it's at the right price. But we know that, overall, the
2 percentage of sales that go into Buy America are relatively
3 small and it's, as these guys are back as an intermediate
4 product producer, they don't have a lot of visibility into
5 the exact number.

6 MR. SANDERSON: James Sanderson, Georgetown.

7 One thing that we have done jointly, the
8 companies and the union, we have got together and we have
9 put "Made in USA" on the labels on every call that we ship
10 from our Georgetown plant, but we don't see any type of
11 increase in sales because of that.

12 MR. PRICE: Alan Price, Wiley Rein.

13 The Commission explored this "Buy America" issue
14 and similar issues in the very recent rebar investigation
15 against Mexico and Turkey.

16 I would say that "Buy America" is even less
17 important factor in this market. We don't think it's a
18 significant issue. Certainly, it is a small portion of the
19 market share. As Mr. Kierkvliet testified, it's a shrinking
20 portion of the market. And as you heard, the customers
21 don't say charge me a premium because this is a Buy America
22 project. They intentionally don't tell the industry that.
23 So, it's small. It's shrinking. And we don't know selling
24 into it. The customers don't say charge us more. So, at
25 the end of the day, it is not an insulating factor in terms

1 of competition, certainly not on the price side and not much
2 on the volume side either.

3 CHAIRMAN BROADBENT: Okay.

4 Mr. Sanderson, thanks for your statement. I
5 thought it was very well done. How would you compare the
6 experience of the steel workers producing wire rod during
7 the 2011 to 2013 period of the investigation as compared
8 with 2002 to 2004?

9 MR. SANDERSON: We have found it very difficult.
10 We are up and down. We had an extended period of layoff at
11 our facility in the year of 2009 because of the imports that
12 we felt like was eating away out our job security. And we
13 are very much insecure in Georgetown right now because of
14 these influx of imports coming in from China. And if
15 something is not done, we don't know exactly how much longer
16 we're going to be able to survive, to be honest with you.

17 CHAIRMAN BROADBENT: Okay. And what's going on
18 with wages at this point?

19 MR. SANDERSON: Wages are stagnant. We had to
20 take a \$3 and something an hour wage cut in order to be able
21 to at least hold our own, and that's in addition to cutting
22 back a full shift, one in the rolling mill and one in the
23 steel-making end. So, we have taken a reduction in wages
24 and benefits in order to try to address these issues.

25 CHAIRMAN BROADBENT: Okay.

1 Ms. Cannon, did U.S. prices for wire rod track
2 scrap during the period of investigation, the prices for
3 scrap?

4 MS. CANNON: The Respondent's metal margin
5 analysis, I think, is what you're referring to, maybe, in
6 the scrap analysis where they're trying to compare scrap
7 with U.S. prices. And I'd like, actually, to ask my
8 colleague, Gina Beck, to address that more specifically.

9 The one thing I would want to say from a legal
10 vantage is that you're not really looking just at one --
11 that analysis looks at just one variable, which is a scrap
12 cost. And as you heard Mr. Kerkvliet testified, you really
13 have to look at the total cost for the industry when you're
14 trying to see how costs track prices. But let me turn to
15 Ms. Beck and ask her to address specifically the scrap issue
16 and the metal margin.

17 CHAIRMAN BROADBENT: Okay, I don't have much time
18 on this, but go ahead.

19 MS. BECK: Okay, this is Gina Beck from
20 Georgetown Economic Services.

21 If I could just briefly state that in response to
22 the Respondents' metal margin analysis, there are several
23 shortcomings, including the time period they picked. They
24 looked at one quarter; the first quarter of 2012 compared it
25 to fourth quarter or second quarter 2014. No mention of any

1 quarters in between or on an annual basis.

2 If you actually look, on a quarterly basis, using
3 their own data, which is presented in their Exhibit 5, you
4 will see from the second quarter 2013 to second quarter 2014
5 the metal margin going down every single quarter. If you
6 look at it on an annual basis, from 2012 to 2013 al declines
7 and further declines in 2014. Their analysis completely
8 ignores other costs.

9 And if you look at the metal margin from 2012 to
10 first quarter 2014, the cost of which the metal margin it's
11 quite actually increased, whereas all other costs --

12 CHAIRMAN BROADBENT: Thank you very much.
13 Commission Pinkert.

14 VICE CHAIRMAN PINKERT: Thank you, Madame
15 Chairman. And I'd like to thank this panel for being here
16 today to help us understand these issues.

17 I want to begin with a question for the domestic
18 producers on the panel. To what extent are you competing
19 with your customers for sale of the end use products
20 produced by your customers?

21 MR. BRACHBILL: Mark Brachbill, with Keystone
22 Consolidate.

23 We compete with our downstream. We sell rod and
24 then turn around and compete with our downstream customers
25 to the tune of 200,000 tons a year in varying products from

1 industrial wire, wire products, and mesh products.

2 MR. KERKVLIIET: This is Jim Kerkvliet from
3 Gerdau. We compete with our external customers, I think is
4 the terminology in the filing as merchant customers. Our
5 downstream piece is a very small piece of our overall
6 business portfolio, but we compete with them head-to-head,
7 and we compete with them based upon the same asset cost or
8 purchase cost that they have, based upon the imported
9 material that's coming in. So, we have to compete based
10 upon what they're buying -- with our downstream from what
11 they're buying fro imports coming in from China. So, it's a
12 level playing field across the board.

13 MR. ASHBY: Steve Ashby from Evraz.

14 We don't have any downstream operations, so
15 everything we sell is right to market.

16 MR. BRACHBILL: Mark Brachbill of Keystone
17 Consolidated.

18 Just to follow up, we've seen similar margin
19 compressions in the downstream products as we've experienced
20 in wire rod because of the import costs from wire rod in
21 China.

22 MR. NYSTROM: Eric Nystrom from Nucor.

23 We do have some downstream processing. It is a
24 fairly small percentage at Nucor, so we will compete to some
25 degree with the customers. The vast majority of the

1 business we do not. And what's also important to remember
2 is, again, we're having to make sure those downstream
3 operations are able to compete effectively in the market and
4 our transfer of pricing between our wire rod to those
5 customers has to match market pricing as well. So, those
6 downstream products are directly affected by the price of
7 cheap imports.

8 MR. FULLER: Dan Fuller, Arcelor Mittal.

9 Today we do not have any downstream, but during
10 the POI we did have a very small downstream account, very
11 small volume.

12 MR. ROSENTHAL: Vice Chairman Pinkert, I think
13 it's important to note that the amount of captive
14 consumption or in turn, downstream competition is relatively
15 small, and the vast of majority of sales in this industry
16 are in the merchant market.

17 VICE CHAIRMAN PINKERT: I though you would try to
18 put in context for us, and I want to ask you an additional
19 contextual question. To what extent does this competition,
20 albeit limited competition, with the customers affect the
21 customer's desire to purchase from other sources than
22 domestic producers?

23 MR. ROSENTHAL: I will tell you since I represent
24 folks on both ends of this. They don't care. They want to
25 get -- the downstream customers want to get the cheapest

1 wire rod from whomever they can get it. And I've heard this
2 from my colleagues or clients sitting at this table, and
3 I've heard it from the downstream wire producers, and it's
4 not I don't want to buy from them because they're my
5 competitors. Many say I don't want to buy from them because
6 they cost more than what I can get in China. They're very
7 honest about it, and I love them anyway.

8 VICE CHAIRMAN PINKERT: Got to love your
9 purchasers, right? Mr. Price?

10 MR. PRICE: One of the things we do in our brief
11 is actually we document the overlap in customers in our
12 brief. And you'll see, if you look at the top Chinese
13 customers, they're all purchasers of the domestic industry,
14 so there's no difference in product from what you see has
15 been shipped as prices of Chinese rod goes lower and lower
16 and lower they ship more and more volume to underselling
17 Chinese rod. And we show it in very specific account bases.
18 So, what you have is a classic story of underselling wire
19 rod just capturing sales, sales directly at the expense of
20 the domestic industry.

21 And it's all driven by what they keep on telling
22 you, and it's pretty straightforward in this record. It's
23 price, price, price, not Alan Price or Alayna Price, my
24 daughter. It's because of the lower import prices.

25 VICE CHAIRMAN PINKERT: Thank you. Let's

1 stick with the purchasers for a moment, and as you know, a
2 number of purchasers reported experiencing significant
3 supply constraints, and eight reported being refused,
4 declined or unable to make purchases from domestic
5 producers.

6 Do purchasers need an import supply from China
7 in order to deal with the supply constraint?

8 MR. ROSENTHAL: I'd like for each of the
9 companies to respond to this, but I believe that having seen
10 what you're referring to, I don't believe those are accurate
11 representations as to what's been happening in the
12 marketplace during this Period of Investigation, because
13 there's been ample supply.

14 I think there's been a lot more that's gone on
15 then has been reported, so I'd like the actual industry
16 members who dealt with the purchasers to tell you what their
17 experience has been please.

18 MR. BRACHBILL: This is Mark Brachbill from
19 Keystone Consolidated. Other than credit issues, we have
20 not refused any orders in the last three to four years, for
21 any other purpose than selling price and margin.

22 MR. FULLER: Dan Fuller with ArcelorMittal.
23 Again, the industry's running at 67-1/2 percent capacity
24 utilization. So from a total volume perspective we can --
25 the entire domestic industry can meet the volume

1 requirements. As far as the quality and grades,
2 ArcelorMittal Georgetown can make everything that's come in
3 from China. But no different than we cannot meet their
4 pricing level.

5 MR. ROSENTHAL: Have you refused to supply
6 anybody because of capacity constraints? I think that's the
7 important thing.

8 MR. FULLER: No, no. No refusal to supply.

9 MR. ASHBY: Steve Ashby from Evraz. I'd like
10 to be here to tell you that we're going to have a couple of
11 shifts at our rod mill, but today I can't do that. We
12 haven't turned down any orders at all from any customers,
13 unless we happen to be competing with China for a particular
14 job with a customer.

15 And in those cases, sometimes I don't even get
16 a chance to compete, because their prices are so low. So in
17 those cases, yes we have had -- we don't even get the
18 opportunity to bid those jobs because of the low, low
19 cheap-priced Chinese steel that's coming into our country.

20 MR. NYSTROM: Eric Nystrom from Nucor, and you
21 know at some point, decisions have been made not to match a
22 competitive Chinese import prices. But since 2011, Nucor
23 has always had wire rod capacity in the United States to
24 supply in any request. It just may not have been locally at
25 a particular price, as requested.

1 MR. KERKVLIIET: This is Jim Kerkvliet from
2 Gerdau. Echoing the comments from my peers on the panel,
3 basis availability, Gerdau has not turned down any
4 opportunity. Basis price, there have been occasions where
5 we have elected not to meet the offer at hand because it was
6 below our cost.

7 During the Period of Review, we went through
8 an implementation of SAP, and even during the implementation
9 of SAP, we made arrangements with customers to make sure
10 that they were fully covered, that we did not have any
11 supply interruptions with any customers.

12 So the statement that the Respondents are
13 seeing, that we have not been able to supply our customer
14 base in the North American market, is simply not true.

15 VICE CHAIRMAN PINKERT: Okay. So now we have
16 a conflict in the evidence. Is there something that counsel
17 can do in post-hearing, to look at those eight purchasers,
18 and tell us what's wrong with their answers to those
19 questions?

20 MR. PRICE: Yeah, we will -- Alan Price, Wiley
21 Rein. We will be happy to address those in the post-hearing
22 brief. I will echo one thing Mr. Rosenthal said, that in
23 certain cases we looked at some of those, and it was almost
24 -- it appeared to be cut and paste from periods long ago and
25 far away in some of those statements, that things are just

1 not -- don't make any sense.

2 And I'll add one other thing to that, which is
3 as we -- as we looked at wire rod cases, there have been
4 periods where there have been bills shut down for labor
5 disputes and issues along those lines a long time ago, and
6 the customers were banging down the doors here, saying we
7 couldn't get it because of price, okay. We couldn't get it
8 because of availability. We couldn't get it because of
9 availability issues.

10 You know, you might point to hey, there was a
11 one week blip because of a furnace somewhere or something
12 like that. This is not this record. This is not this time
13 period. We don't have customers knocking down the door
14 here, saying "My God, we're going to be out of business
15 because there's just no available capacity." There's tons
16 of capacity here.

17 MR. ROSENTHAL: We'll do our best to parse
18 through that. Some of this obviously is proprietary, so
19 we're constrained. But I would have believed some of those
20 statements in 2004. I can't believe those in 2014.

21 VICE CHAIRMAN PINKERT: Thank you very much.
22 Thank you, Madam Chairman.

23 CHAIRMAN BROADBENT: Commissioner Williamson.

24 COMMISSIONER WILLIAMSON: Okay, thank you. I
25 also want to thank the witnesses for their testimony. Mr.

1 Sanderson, do the employees of any of the UAW wire rod -- at
2 any of the UAW wire rod companies have profit-sharing
3 arrangements?

4 MR. SANDERSON: We have gain sharing at our
5 facility, and right now it currently isn't doing what we
6 think it should be doing, because we don't have the
7 production that we need in order to sustain gain-sharing.

8 COMMISSIONER WILLIAMSON: How is gain-sharing
9 different from profit-sharing?

10 MR. SANDERSON: You've got different factors
11 that make up the gain-sharing, other than just the financial
12 EBITDA of a plant.

13 COMMISSIONER WILLIAMSON: Okay. So this is a
14 broader --

15 MR. SANDERSON: Different factors, exactly.

16 COMMISSIONER WILLIAMSON: Good, okay. Thank
17 you.

18 MR. KERKVLIIET: Commissioner, this is Jim
19 Kerkvliet from Gerdau. At our facility in Beaumont, they
20 have what's called Partners in Performance, and it's based
21 upon certain factors, on productivity, etcetera. But
22 there's also a piece that's based upon profitability, the
23 EBITDA from the mill.

24 So there is a piece about if we're not making
25 money, a piece of the variable compensation, which is the

1 case today, goes to zero.

2 COMMISSIONER WILLIAMSON: Okay, thank you.

3 Also, Mr. Sanderson, when are the collective bargaining
4 agreements up for renewal at the UAW wire rod companies?

5 MR. SANDERSON: We have a master agreement
6 coming up next year, and September of 2015 is when it
7 expires. We'll probably start some time in the period of
8 June of 2015 negotiating the contracts.

9 COMMISSIONER WILLIAMSON: Okay, thank you. I
10 wondered about that. There's a question I have here by
11 recent history -- if you look at the recent history of the
12 imports from China, and Mr. Neeley made reference to this,
13 you know, there were imports 2005, 2006 and there were --
14 from China and they were substantial. Yet imports were very
15 minor in 2011 and then we had this surge in 2012 and '13.

16 What explains this up and down trend of
17 imports from China over the last ten years? We often have
18 Respondents coming in and talking about we've been a stable,
19 steady supplier to the U.S. market. This doesn't seem to be
20 the case.

21 MR. ROSENTHAL: I cannot explain the Chinese
22 behavior. It's not exactly economically rational. But we
23 know they have a tremendous amount of excess capacity and
24 have been building up to irrational levels over the last few
25 years. We could spend a lot of time talking about the 2004,

1 2005, 2006 period. I don't think it's really productive,
2 because it's a totally different set of facts in those
3 cases.

4 But I'd be happy to do that, including
5 explaining why the Commission's decision was wrong at that
6 time period.

7 (Laughter.)

8 COMMISSIONER WILLIAMSON: You don't have to do
9 that now.

10 MR. ROSENTHAL: But I figured we could wait
11 for another time. In any event, the record now is what
12 matters. The record in the last few years is what matters,
13 and the behavior, the capacity, the pricing in the last
14 three years has been devastating. Whether it wasn't
15 devastating before because we were coming out of that period
16 of constraints on domestic supply and a booming economy, is
17 something else again. Looking at the facts of this record
18 is what you need to do.

19 COMMISSIONER WILLIAMSON: I understand that.
20 But sometimes understanding the dynamic of what was going
21 on, just well helps you.

22 MR. ROSENTHAL: I will say it was a totally
23 different situation. There were shortages. There was a
24 booming demand at that earlier time period. There was one
25 phenomenon, which I think the Commission missed totally at

1 the time, was when the Chinese increased dramatically,
2 because of their supply constraints back in those days.

3 They pumped in a tremendous amount of
4 inventory which overhung the market in 2005. That is what
5 honestly hurt the domestic industry the most, because of the
6 previously-supplied product. The Commission didn't really
7 focus on that unfortunately.

8 We have that problem now. Fortunately, it's
9 not as bad as it was before, but it is a major factor in our
10 critical circumstance analysis, and I hope you will focus on
11 that in the current time period. Mr. Price wanted to add
12 something.

13 COMMISSIONER WILLIAMSON: Okay.

14 MR. PRICE: Alan Price, and I have an exhibit
15 here. We were not part of the 2005 case. It was part of my
16 hiatus from wire rod, part of my hiatus from wire rod cases.
17 But we're handing something out to you now, Wiley Rein
18 Exhibit 1. You know, the Commission -- there were some vast
19 differences in circumstances, huge demand explosion, and you
20 had imports coming in.

21 Import prices increasing sharply, domestic
22 prices increasing sharply. There were labor situations in
23 2004, which led to a whole variety of issues, unique set of
24 facts. We could talk about that. But one of the things
25 that happened, and you've got to remember when we talked

1 about that 2006 case, it was really a decision in December
2 2005, based upon 2004 and 2005 data.

3 As you looked at that period, the Chinese --
4 an issue that came up on threat, and we think this is a
5 pretty clear injury case, was what's going to happen with
6 Chinese volume? We said Chinese volume's exploding.
7 Massive volumes of Chinese product were coming in. I think
8 that was the case that you presented.

9 The Commission relied on statements of Chinese
10 counsel and Chinese respondents, many of which are the same
11 companies here, that said they would not ship any more tons
12 in. If you go to the --

13 COMMISSIONER WILLIAMSON: Okay. I don't want
14 to waddle in this issue.

15 MR. PRICE: Right, but if you go to page 32
16 and 33 of that decision, that was the basis for the negative
17 threat determination on China. It turns out they doubled
18 imports again, and we've shown this, by the way, in the rod
19 case and the rebar cases. You've seen this.

20 What happened by the way? You go to the
21 sunset, next sunset case and the result of that research, a
22 huge, huge collapse in domestic industry profitability. So
23 that increase -- so there's massive volumes, and this market
24 is tremendously responsive to large and growing volumes of
25 Chinese imports.

1 Now what volumes it responds at, how its
2 impact is dependent on the facts and the demand, the supply
3 and demand dynamics at any given time in this supply and
4 demand dynamic, obviously we have material injury going on
5 in that supply and demand dynamic.

6 What I would say is that the Chinese were not
7 forthright in characterizing their intentions in the market
8 and their ability to surge huge volumes into the U.S.
9 market.

10 COMMISSIONER WILLIAMSON: Okay. Thank you for
11 those answers.

12 MR. ROSENTHAL: Are you sorry you asked?

13 COMMISSIONER WILLIAMSON: Yes.

14 (Laughter.)

15 COMMISSIONER WILLIAMSON: Okay. Let's turn --
16 Ms. Beck, I just wanted to check. On the metal margin, did
17 you have any points to add to that, because that was
18 excellent.

19 MS. BECK: Oh yeah. I can add a couple of
20 more points, and then also just to address, or perhaps maybe
21 the best place to start is just specifically with scrap.

22 I mean if you are asking about the correlation
23 between the two, I think 2013 is one of the best periods to
24 look at, when you had the height of the import volume from
25 China, and you had decreasing scrap prices from third

1 quarter -- or excuse me, increasing prices of scrap from
2 third quarter to fourth quarter 2013, and at the same time
3 falling U.S. prices, and even throughout 2013, you had
4 falling U.S. prices.

5 So I think that's very significant. But also
6 just a concluding point to some of my comments on the metal
7 margin, is I think the Respondents not taking into
8 consideration all of their costs is also something that
9 needs to be done. When you have costs increasing each year
10 in the interim period, and you had falling prices, basically
11 when costs exceed price, U.S. producers cannot increase
12 prices, and that's what's happened here.

13 You not only had price depression, but you've
14 also had price suppression. So frankly if you look -- just
15 one closing point is if you look at Respondents' own data,
16 they're basically reinforcing U.S. industry's arguments
17 about the price suppression/depression and the resultant
18 profitability declines.

19 COMMISSIONER WILLIAMSON: Okay, thank you.
20 Good. I wanted to turn to critical circumstances. The DOC
21 preliminary decision was scheduled for April 28. Why were
22 traders willing to bring product in as late as the end of
23 May?

24 MS. BECK: Because even though the preliminary
25 decision was scheduled, the traders are very familiar with

1 the Commerce practice. I cannot recall a case where the
2 Commerce Department has not extended a preliminary decision.
3 Commerce basically talks to us very early in the case as
4 petitioners, and says "we need more time."

5 They barely, in a countervailing duty case,
6 can get the questionnaires out before that deadline is
7 looming. And so it's a common practice. You can look at
8 virtually every case, it happens.

9 MR. PRICE: I would -- Alan Price, Wiley Rein.
10 I would also add that, you know, it's when I can get one
11 more shipment. So about 45 days out, you get an extension
12 in, and they can get one more rolling cycle in in May. They
13 realize once we get that extension, and boom. Let's get one
14 more cycle in. Let's get it on the ship. Let's get it in.
15 Let's surge it in.

16 COMMISSIONER WILLIAMSON: Thank you. Let's
17 see. This falls in the middle. Nucor argues that because
18 the wire rod market is generally slower in winter months and
19 therefore seasonal, the Commission could measure the import
20 volume increase by comparing interim periods. Do you agree?

21 MR. FULLER: Dan Fuller with ArcelorMittal.
22 We see some seasonality in the wire rod, but I think it's a
23 function of product range. If you're into agriculture or
24 highway or certain products, we may not have as much as
25 Nucor. But we see a very slight seasonality in wire rod.

1 COMMISSIONER WILLIAMSON: Okay, thank you. Am
2 I over? I'm sorry, okay.

3 CHAIRMAN BROADBENT: Sorry. Commissioner
4 Johanson.

5 COMMISSIONER JOHANSON: Thank you, Chairman
6 Broadbent, and I'd also like to compliment you all on the
7 rockets you have in your chart. It's very pretty.

8 MR. ROSENTHAL: Didn't have Russian engines.

9 COMMISSIONER JOHANSON: Anyway, it looks very
10 nice. But no, I liked it. I figured Chairman Broadbent
11 talked about it, so that gave me license to do the same,
12 right. The Chinese respondents contend that lead times for
13 subject imports are much greater than for domestic
14 producers, and that this results in purchasers being willing
15 to pay a premium for domestic product.

16 What is the significance of lead times of
17 purchased decisions from your perspective, and how does this
18 impact pricing?

19 MR. FULLER: Dan Fuller with ArcelorMittal. I
20 mean for sure there's a lead time differential, but as far
21 as decisions, the price was so -- to be very blunt, it was
22 so cheap, I don't think there's a decision to be made by a
23 purchaser. They just bought it.

24 MR. ASHBY: Steve Ashby from Evraz. Our
25 purchasers require a number of large quantities of product

1 on a regular basis, and because of that, they're able to
2 plan out far in advance what they need for their individual
3 plants. So they could decide we're going to bring in 50
4 percent of our product from overseas, and they always do
5 that, and then unfortunately we get what's left over.

6 MR. BRACHBILL: Mark Brachbill, Keystone
7 Consolidated. Our lead times are essentially what our
8 rolling cycle is. So because our rolling cycles aren't
9 fully utilized, aren't fully at capacity, we have the
10 ability to put in additional quantities into any rolling
11 cycle. That rolling cycle never exceeds six weeks.

12 To the extent that it's common products across
13 multiple customers, we keep inventory on the ground to
14 satisfy any customer needs on a shorter time basis.

15 COMMISSIONER JOHANSON: Could you explain the
16 rolling cycle a bit more?

17 MR. BRACHBILL: It's the grades and sizes that
18 optimize the efficiency of the mill. So we group products
19 that are like to be more efficient in the rolling process.

20 MR. NYSTROM: Eric Nystrom at Nucor. The only
21 thing I would add is that our rolling cycles and deliveries
22 do have shorter lead times than what imports do. The real
23 insurance with the imports comes with the prices being so
24 drastically different, that there really isn't much risk,
25 from their standpoint, to bring it in.

1 The benefits you might have with the domestic
2 supply is, you know, those prices can be variable. But when
3 the import pricing that's being discussed is so drastically
4 lower, then you're able to place some of these longer lead
5 time orders, which really aren't that much longer than lead
6 times than what some of the domestic mills are.

7 MR. KERKVLIIET: Jim Kerkvliet from Gerdau.
8 I'll build on Steve's comments a little bit. I think the
9 rolling cycle or the lead time is important, but it has
10 become much less important because the purchasers have
11 become much more sophisticated and have become much more
12 adept at bringing more inventory in.

13 So that our rolling cycles, our lead times are
14 really the fill-in, rather than being the primary supplier.
15 So they've been able to, because of the cost of capital, and
16 because of their ability to take advantage of these
17 significantly lower prices, that they can put that material
18 into their inventory, and then they utilize the domestic
19 mills as a fill-in basis.

20 MR. PRICE: Alan Price, Wiley Rein. Just as
21 an economic matter, we don't believe there's a price
22 premium. But to the extent you have a price premium
23 argument, it actually concedes that there's price
24 competition going on head to head here, and once there's
25 price competition going on, the imports are under-selling

1 capturing market share. It goes a long way to saying
2 they're the cause of injury.

3 COMMISSIONER JOHANSON: Thanks for your
4 responses. How do you all respond to the Chinese
5 respondents' argument that U.S. producers' internal
6 consumption or transfers to related firms are insulated from
7 import competition?

8 MR. BRACHBILL: Mark Brachbill, Keystone
9 Consolidated. Because of our downstream operations, we sell
10 our wire rod to internal consumption and a small quantity to
11 sister companies. Because those selling prices to internal
12 consumption are at market prices, we see the same
13 deterioration in the rod selling prices to our internal
14 customers as we do to the market.

15 In addition, we're seeing the same margin
16 compression as we take those finished goods products, if you
17 will, to the marketplace, and competing with our competitors
18 that are using the low-priced Chinese import wire rod.

19 COMMISSIONER JOHANSON: Yes, Mr. Kerkvliet?

20 MR. KERKVLIIET: We had testified just a little
21 bit earlier to a similar question that, you know, we compete
22 in the marketplace against our customers who are buying that
23 product on an imported basis. So because we have to compete
24 at that same level, there is really no insulation that we
25 have from the downstream, the limited downstream piece that

1 we have at Gerdau.

2 MR. ROSENTHAL: Commissioner Johanson, if you
3 take a look at the Slide No. 19 in my presentation, you see
4 a comparison between the operating income for what amounts
5 to captive consumption and merchant market sales, and you'll
6 see there is a slight difference. But there's a decline in
7 operating income for captive sales as well, to pretty awful
8 levels.

9 So there really isn't any hiding from the
10 effect of the low prices from China, whether you're selling
11 captively or in the merchant market.

12 COMMISSIONER JOHANSON: Thanks for your
13 responses. This morning, Mr. Neeley, the Respondents'
14 counsel, referred to past investigations involving this
15 product.

16 Chinese respondents argue that no adverse
17 volume effects have been demonstrated on this record, and
18 that instead, imports from China have simply reverted to the
19 position they held at the time of the January 2006 wire rod
20 investigations involving China and Germany and Turkey. How
21 do you all respond to this?

22 MR. ROSENTHAL: I'll try to give you the short
23 version this time. We've had a volume decline directly
24 caused by the imports from China. There have been price
25 declines directly caused by imports from China and price

1 suppression and depression. Purchasers have told you they
2 bought from China based on price, and there are numerous
3 lost sales and lost revenue allegations that have been
4 verified. Those are direct impacts of the low prices
5 offered by the Chinese product.

6 That is an inescapable case of material injury
7 caused by the imports from China. You don't have to compare
8 this to any other time period. Just look at those facts and
9 you have to find a material injury caused by those imports.

10 MR. PRICE: Alan Price. So I'll just agree
11 and just say each case is sui generis. There is no historic
12 right to a market. There's no historic right to export.
13 This set of facts basically -- with this set -- on this
14 record dictates, I think, or supports an affirmative final
15 -- an affirmative determination.

16 MS. BECK: Commissioner Johanson, just
17 something to add on the 2005 case. Forgetting whether we
18 think anybody's right or wrong, if you look at just what the
19 Commission said about the volumes, they said they weren't
20 significant, given the supply and demand conditions that
21 they saw at the time.

22 So it was very much in the context of that
23 case. When you look at the volumes here, you have to look
24 at the context of this case, and these conditions are quite
25 different. You don't have anything like what was going on

1 at that time. So for the Chinese to come in and say well
2 gee, we've just returned to our historic levels, and
3 effectively we're entitled to be at that level is wrong.

4 Nobody's entitled to anything if they're
5 selling dumped and subsidized product and undercuts U.S.
6 product, and that's how they're getting the market
7 penetration. Other non-subject countries are in this
8 market. Canada. Canada's a big source of supply. We
9 didn't target Canada in this case because they are not
10 engaging in those practices. That's the difference. That's
11 the reason that China is a problem here under these facts.

12 MR. HOLT: Derick Holt, Wiley Rein.

13 COMMISSIONER JOHANSON: Oh yes. Okay, I see
14 you back there.

15 MR. HOLT: I would like to also add that the
16 AWPA in the staff conference also conceded that the facts in
17 2006 are different from this case.

18 COMMISSIONER JOHANSON: All right, thanks.
19 That helps out. Thanks for your responses. My time is
20 about to expire.

21 CHAIRMAN BROADBENT: Commissioner Schmidtlein.

22 COMMISSIONER SCHMIDTLEIN: Thank you. So I
23 had a few more questions on the critical circumstances that
24 are probably legal questions. There was mention of the
25 evidence on the record about the intent of some of the

1 importers, in terms of bringing product in during this time
2 period and so forth.

3 So my question is is intent an element for the
4 Commission to consider, and -- bless you -- and if there
5 were evidence on the record that the Respondents place, that
6 say some companies are unaware of the investigation, you
7 know, how would we consider that?

8 So you know, maybe that doesn't apply in this
9 case. But I'm thinking about just more broadly, in terms of
10 precedent. There's no element of intent in the statute.
11 The statute does not require intent. It just says are they
12 -- look at the timing and volume of the imports. Look at
13 the rapid increase in inventories, which we have here at the
14 purchaser accounts, and then look at any other factors.

15 So we're trying to have you look broadly at
16 what was going on, because what you're really looking at is
17 trying to capture the essence of what was that provision
18 designed to deter. Where you have evidence that the
19 purchasers are saying we're trying to bring this product in,
20 because we know that this case is going on and we're trying
21 to beat it, that we think is a very compelling indication
22 for your last factor, to say what happened in the market,
23 why was this going on, and is this what critical
24 circumstances is about.

25 You may not have that in other cases. In

1 other cases, you may simply have objective facts. So a
2 surge in imports that show a buildup in inventories and
3 that's enough. The statute doesn't say you have to go
4 beyond that. Here, I think we have a very compelling
5 record, where we are able to go beyond that and point to
6 purchaser statements saying hey, we're so worried about
7 this, we're going to bring this in and stockpile it.

8 So the third element of the statute that
9 allows you to look broadly at other circumstances, that's
10 where we're pointing to that factor here.

11 COMMISSIONER SCHMIDTLEIN: I guess -- and this
12 sort of dovetails with my second question, because it kind
13 of gets at, what is the point of the provision? Because
14 obviously if the company -- if there are companies out there
15 who aren't aware of the investigation, then it's hard to
16 deter those types of companies with this type of provision
17 or this type of finding.

18 So it's kind of similar to my second question
19 which is the notion of whether retroactive application --
20 that we are looking at whether this buildup would seriously
21 undermine the remedial effect of the order or delay it. And
22 so the question is, and you've asked us to look at purchaser
23 inventory, how would the remedial -- how would the
24 retroactive application of the order -- and I understand
25 you're talking about delay and the remedial effect because

1 that's still affecting the company as they're competing with
2 those products setting in purchaser inventory, but how would
3 retroactive application of an order fix that problem? Since
4 the purchasers are now holding inventory, they're not going
5 to get the bill for those duties. Do you see what I'm
6 saying? And so that goes to, well, is the purpose of this
7 really to fix a potential remedial -- you know, undermining
8 the remedial effect? Or is it to deter? And I understand
9 there's language in the legislative history about both of
10 those aspects.

11 MS. CANNON: Right. It's a good question because
12 ideally you would like to be able to fix a problem and say,
13 here we're putting duties going back 90 days, and now you
14 all are okay. We're not okay. I mean, there's nothing that
15 you can do by putting on the duties that fixes everything.
16 But what it does do is accomplish the purpose of the
17 statute. They said, we want you to have this provision so
18 that importers are aware that if this happens, and
19 purchasers are aware, and foreign producers are aware, that
20 if they do this, and they bring the product in, they're
21 going to be subject to retroactive duties to deter them. It
22 says specifically, "to deter them".

23 That's what we're trying to do here. We know
24 they've come in. We know it's seriously undermined in the
25 order. You heard the testimony that right now they're

1 struggling to sell product. We should be, you know, in a
2 great position now, having provisional duties imposed that
3 were very high -- the subsidy duties were very high,
4 provisional dumping duties were very high. But instead the
5 product is sitting at the purchasers and so we're still
6 struggling after the case was filed and that's exactly what
7 the provision was designed to address.

8 So by issuing an affirmative decision, the
9 Commission sends a message that, yes, we are going to apply
10 this provision as it was intended to and you all are going
11 to get caught up in this. So don't do it. That will deter
12 people in the future. It's exactly why the critical
13 circumstances provision was enacted.

14 MR. ROSENTHAL: Commission Schmidtlein, obviously
15 our clients are not going to be helped by retroactive
16 application immediately. But one of the problems that we
17 are acknowledging here is that this provision has fallen
18 into misuse or hasn't been an effective deterrent up until
19 now. And one of the questions I think about is if you don't
20 find critical circumstances here, when will you find
21 critical circumstances? When will this provision ever been
22 seen as effective or is this just going to become a
23 vestidual provision of the law which won't have any
24 effectiveness going further.

25 So I think it is important under these facts to

1 make an affirmative determination so that in the future --
2 and I hope it won't be the wire rod industry, but other
3 importers will be deterred going forward and they'll
4 recognize that, you know what, this provision does work.
5 The Commission is willing to apply it in appropriate
6 circumstances.

7 MR. LUBERDA: This is Alan Luberda from Kelley
8 Drye. There's also record evidence that there is some
9 importer inventory there. So clearly those would be
10 affected. And Mr. Kerkvliet testified that there's material
11 on the dock for the account of certain customers and I think
12 those would be also affected if the duties were imposed. So
13 there is some benefit, direct benefit by imposing critical
14 circumstances now, even if we can't make up for the things
15 that are in inventory of our customers.

16 MR. PRICE: Alan Price, Wiley Rein. So as we
17 look at this and as I talk to my clients, I have a lot of
18 steel executives that are incredibly frustrated that we file
19 cases and what happens is the imports come in. And actually
20 things get worse rather than better because it's, you know,
21 let's get it in and let's see that -- and therefore as a
22 result of the importers bringing all this in and putting it
23 in inventories and delaying relief, their finances are
24 adversely affected, market pricing actually gets worse short
25 term than better. You see it in this record where you get a

1 first-half -- dramatic first-half collapse in financial
2 performance as we see this import surge come in, completely
3 undercut the market which has long-term implications on
4 raising capital, on your financial effects, so it is
5 important to help remedy the harm both as a deterrent, but
6 because additional harm did occur in this case as a result
7 of this surge.

8 MS. CANNON: Could I just add one final point?

9 COMMISSIONER SCHMIDTLEIN: Yes.

10 MS. CANNON: You asked me whether it would be
11 somehow unfair if this was applied to the importers who
12 would have to pay the retroactive duties when the purchasers
13 had stocked all the inventories. And to that I would say,
14 the importers were the ones that brought it in. That's
15 where the product came in. They were the ones surging it
16 into the market. The fact that instead of sitting on their
17 floor, the product happens to be sitting on the purchasers'
18 floor doesn't really matter. It has the same effect, and
19 they were the ones responsible for the initial behavior that
20 led to this situation.

21 MR. KERKVLIIET: Jim Kerkvliet from Gerdau.
22 Appreciate the comments from our esteemed counsel, but the
23 -- and Alan said it to a certain extent, but the real world
24 is, as I said in our testimony, we don't take these matters
25 lightly. We don't come up willy-nilly in filing trade

1 cases. And the critical circumstances were filed because we
2 wanted to make sure that we had protection, we had the
3 ability to trade fairly in the marketplace. And because
4 these imports came in specifically just to try to get ahead
5 of the duty, undermined our ability to compete in the
6 marketplace post order. So our order book, our level of
7 income, our ability to provide the necessary return for our
8 company, has been undermined by the importers have brought
9 in a tremendous amount of material just to beat the order
10 and we're still suffering because of that today.

11 MR. PRICE: And let me just add one thing. The
12 importers in this case are sophisticated, well financed
13 companies. This is a risk they decided to take here. This
14 is not an accident here.

15 COMMISSIONER SCHMIDTLEIN: All right. Thank you
16 very much for that helpful discussion. So I had to switch
17 gears a little bit and ask a different -- about the other
18 unique issue in this case, captive production. And, again,
19 this is sort of a legal question, I guess. If we find that
20 the provision doesn't apply, how does that impact our
21 analysis if we want to consider the performance of the
22 merchant market as a condition of competition? Does it
23 affect it at all?

24 MS. CANNON: It does. I mean, I would encourage
25 the Commission to do here what it has done in past cases

1 when it found that the technical provisions of the statute
2 were not all complied with so that it wasn't exclusively
3 looking at captive production, it was looking at captive
4 production and the merchant market specifically in addition
5 to the total market.

6 COMMISSIONER SCHMIDTLEIN: Uh-huh.

7 MS. CANNON: So that's what the Commission did
8 preliminarily here, it said, we're starting with the total
9 market because that provision wasn't met, but beyond that,
10 let's also look, as a condition of competition, at how
11 directly it affected the merchant market sales. And when
12 you do that, you see what you would expect to see, which is,
13 even though it affected everybody, and you heard testimony
14 this morning that it does affect producers that internally
15 consume negatively as well, you get an even more direct and
16 injurious effect on the merchant market alone, and that's
17 exactly what the financial condition of the industry shows.
18 So I think by doing that two-step analysis, you accomplish
19 what the statute was intended to do, and can focus on that,
20 but only as a condition of competition taking into account
21 the overall market as well.

22 COMMISSIONER SCHMIDTLEIN: Okay. All right.
23 Thank you, my time is up.

24 CHAIRMAN BROADBENT: Okay. Thanks, I just wanted
25 to go back just for a minute to the boron issue to make sure

1 I understand what's going on there. The exporters 9 percent
2 VAT rebate on exports if they add boron to it in China; is
3 that correct?

4 MR. KERKVLiet: Jim Kerkvliet from Gerdau. There
5 is a value added tax rebate for the inclusion of alloys.
6 And as Mr. Nystrom commented in his testimony the amount of
7 boron that's added is negligible. It's trace, it doesn't do
8 anything for the product itself. The only reason why
9 they're putting the boron in is to either get around a
10 certain trade case or to qualify for the VAT rebate.

11 CHAIRMAN BROADBENT: Okay. So that's an
12 additional incentive to export, I assume. Yeah.

13 Okay. And then we did an HTS change, is that
14 correct, relative to boron? Can someone tell me about that?

15 MR. LUBERDA: There hasn't been an HTS change
16 relative to boron in particular that I'm aware of.

17 CHAIRMAN BROADBENT: Okay. I thought I had seen
18 something in here, but I can't find it at this point.

19 MR. LUBERDA: We made an HTS change that had to
20 do with sort of bar and rod sizes in the alloy portion of
21 the HTS to break out, as it is in the carbon portion to
22 break out larger diameter product which is bar and coil and
23 is outside our scope so that it would be easier to track.
24 Because much -- what was happening is much of the imports
25 that were coming in really being sold as carbon material was

1 being sold with a little boron, so it was alloy and it was
2 masking what the total import volumes would be. But that
3 all got picked up in this case. The staff did a good job of
4 that and with our change. So now we don't have that issue.

5 CHAIRMAN BROADBENT: Got it. Thanks.

6 Okay. Let's see, Mr. Price, on page 20-21 of your
7 prehearing brief for Nucor, you had an interesting quote by
8 the executive vice secretary general of Sisa in China about
9 over capacity in the steel sector. And he said, "It's
10 probably beyond our imagination, a mere fraction of China's
11 current excess wire rod capacity can completely destroy the
12 entire domestic industry." What domestic industry was he
13 referring to there; can you explain that?

14 PARTICIPANT: (Off microphone.)

15 CHAIRMAN BROADBENT: That's his domestic
16 industry.

17 MR. PRICE: (Off microphone.) The quote is -- I
18 think the quote is as to you can't imagine the -- I'll
19 double check the quote.

20 CHAIRMAN BROADBENT: Yeah.

21 MR. PRICE: I don't have my brief right in front
22 of me at this point. But the quote is the general quote of
23 their capacity is just enormous. And a mere fraction of
24 that excess is -- well, then our character -- yeah.

25 CHAIRMAN BROADBENT: He's talking about

1 destroying his own domestic industry?

2 MR. PRICE: Yeah, the quote ends after
3 "imagination."

4 CHAIRMAN BROADBENT: Oh, okay. So my question --

5 MR. PRICE: So it's our error. And what we're
6 saying is that a fraction of that will destroy -- it's our
7 characterization that it says a mere fraction of that will
8 destroy.

9 CHAIRMAN BROADBENT: Oh, I see. Okay. I got it,
10 yeah. It was a little -- got it.

11 MR. PRICE: That's what I thought, I just didn't
12 have it in front of me.

13 CHAIRMAN BROADBENT: Yeah, that's great.

14 A question for ArcelorMittal. On page 3-3 of the
15 staff report it states that a major Chinese steel producer
16 is a materials associate of ArcelorMittal. What does that
17 mean? And does it have any effect on your analysis of
18 related parties?

19 MR. FULLER: I don't believe it has any effect on
20 your analysis. We have a very small share of a company
21 called Hunan Valan that does produce wire rod. I think our
22 share today is 15 percent. And we have no decisionmaking of
23 Hunan Valan whatsoever.

24 MR. ROSENTHAL: Sorry, that was 1-5?

25 MR. FULLER: Yeah, 15, yeah, 1-5.

1 MR. ROSENTHAL: And going to ten, I believe?

2 MR. FULLER: I can't predict, but it continues to
3 get lower every year.

4 MR. ROSENTHAL: I think that's in the public
5 record.

6 CHAIRMAN BROADBENT: Okay. All right. In
7 post-hearing briefs, I would request both sides to consider
8 the Commission's findings in the investigation we just did
9 on rebar from Mexico and Turkey and specifically to address
10 any similarity that had to do with the -- that has to do
11 with the current case on wire rod looking at price
12 depression and suppression. So if you could look at the
13 Mexico/Turkey case and our tax before us in this case with
14 respect to price depression and price suppression.

15 I think I'm getting to the end of my questions.
16 So I'm going to yield to Commissioner Pinkert at this point.

17 VICE CHAIRMAN PINKERT: Thank you, Madam
18 Chairman.

19 How common is it for domestically produced wire
20 rod to be sold through contracts rather than on the spot
21 market?

22 MR. BRACHBILL: Mark Brachbill, Keystone
23 Consolidated. Ninety-nine percent of our wire rod is sold
24 on the spot market. We have little or no contracts in place
25 on a long-term basis.

1 MR. NYSTROM: Eric Nystrom from Nucor. Similar
2 to what was just mentioned, that majority of our product is
3 sold on the spot basis. And where there may be some piece
4 of contractual business, it tends to be in the much
5 different quality levels than what the imported material
6 from China has been. So in summary we rely very much on
7 basic spot pricing in the market where we're competing with
8 this Chinese product.

9 MR. ASHBY: Steve Ashby, Evraz. Almost 95
10 percent of our product is spot market position. So very
11 little contract business and we compete month to month for
12 our business.

13 MR. FULLER: Dan Fuller with ArcelorMittal. The
14 vast majority of our sales are spot or monthly pricing.

15 MR. KERKVLIIET: Jim Kerkvliet from Gerdau.
16 Echoing the comments from my peers, the vast majority of our
17 business is on spot with very little business being on
18 contract whether long-term or short-term contracts.

19 VICE CHAIRMAN PINKERT: Okay. Well, this is for
20 post-hearing. If you could look at the situations where the
21 product is being sold on contract, does that insulate the
22 domestic industry from the impact of import competition.

23 MR. ROSENTHAL: We'll answer it in the
24 post-hearing.

25 VICE CHAIRMAN PINKERT: Thank you. Now, I know

1 that you're probably loaded up to respond to this question.
2 There's a suggestion in the Respondent's brief that there is
3 a neutral level of underselling that is non-injurious
4 because the customer is willing to pay more for the domestic
5 product, has a preference for the domestic product, and
6 therefore the underselling is not injurious. Can you
7 respond to that argument?

8 MS. CANNON: Yes, Commission Pinkert. The
9 Respondents start by referring you to the OCTG case as the
10 basis for that argument. And when I read the brief because
11 I was not involved in OCTG I was rather astonished to see
12 that that's what the Commission found. But when I actually
13 read what you found, you did not find what they've
14 contended. You did not find that there was a price premium
15 and you should discount a bunch of the underselling for that
16 reason. Instead you said, "we're not persuaded by their
17 argument and we aren't finding any record evidence of any
18 such price premium" and you just concluded by saying,
19 nonetheless, even if we looked at this 7.5 percent premium
20 that they say exists, there's still plenty of underselling.
21 So Respondents first mischaracterized the case and then they
22 tried to take the 7.5 percent margin from OCTG and
23 extrapolate it into this case without any basis in the
24 record. There's nothing in the record here of what a rod
25 purchaser is saying there's a price premium at all, let

1 alone saying there's a 7.5 percent price premium.

2 So to then try to have you discount all of the
3 underselling that falls below that level, has no
4 substantiation in the record whatsoever. So we very much
5 disagree with basically the fundamental premise. It doesn't
6 characterize the Commission's practice at all. And as
7 you've heard from the industry witnesses, the underselling
8 at whatever level it occurs is taking their sales. Whether
9 it be a small percentage or a large percentage and
10 increasingly it's a large percentage.

11 MS. BECK: Commissioner Pinkert, this is Gina
12 Beck from GES, if I could just add one point from the
13 purchasers' questionnaires and that's the bulk of the
14 responding purchasers which actually make up a large
15 percentage of the purchasers of industry. Their data
16 actually shows a shift right from a certain level of Chinese
17 imports to an even greater and an even greater by the end of
18 the POI. And the reason for that, if you look at their
19 responses, was the price.

20 VICE CHAIRMAN PINKERT: So then what do we do
21 with evidence in the record that suggests that purchasers
22 may be willing to pay a little bit more for the domestic
23 product? How should that impact our analysis?

24 MR. ROSENTHAL: I don't think it should impact
25 your analysis at all because of the following. Most of the

1 purchasers have said, we are buying on price or price is the
2 most important factor. And they have actually put their
3 money and their purchases where their words are. They've
4 bought higher volumes of domestic product. They've
5 negotiated with the domestic -- sorry, higher volumes of the
6 imported product, they've negotiated with the domestic
7 industry to get them to reduce their prices, and so if there
8 were some purchasers who were willing to buy at a higher
9 price from the domestic industry, they haven't had much
10 impact on the ability of the industry to make money. What
11 you have in this record is most purchasers saying, I want to
12 buy on price. I do buy on price. The result is what you
13 see which is lower operating income, lower volumes, lower
14 capacity utilization, and a whole plethora of indicators of
15 injury.

16 So whatever people might say doesn't matter.
17 What's happening is price is going down because of the
18 imports and the domestic industry is suffering.

19 VICE CHAIRMAN PINKERT: I see some folks in the
20 back row that are shaking their heads. Any comments on
21 that, Mr. Luberda?

22 MR. LUBERDA: I'm not quite the back row, but --
23 (Laughter.)

24 MR. LUBERDA: -- yeah, I mean, it strikes me as
25 odd that somebody could argue, well, if I'm a domestic

1 producer selling at \$500 a ton and the Chinese come in at
2 \$400 a ton, if the purchaser comes to me and says, if you
3 get 5 percent above 400 maybe I'll give you some tons, then
4 I'm not being injured by that. They're still underselling
5 me by a lot, they're still forcing prices down. I mean, in
6 this record when our costs were going down, prices fell by
7 more than costs. When our costs were going up, prices did
8 not rise as much as our costs. So, they're exerting price
9 pressure downward that, you know, whatever the margin of
10 underselling is, they're exerting that price pressure, that
11 the record shows it was hurting us.

12 VICE CHAIRMAN PINKERT: Mr. Sanderson, I saw you
13 were shaking your head as well.

14 MR. SANDERSON: (Off microphone.) I just find it
15 hard to believe that somebody would honestly say that they
16 would pay more, but yet they buy less. They've got a record
17 of what they're doing and I agree with what Paul Rosenthal
18 said. Action speaks louder than what anybody would say.

19 VICE CHAIRMAN PINKERT: Thank you. Mr. Price.

20 MR. PRICE: Thank you. I concur with this whole
21 set of statements here. But I'd also take a slightly
22 broader view of this.

23 Imports here are not competing on quality in some
24 parallel universe where they're going to oversell and
25 therefore get sales anyway. Or where there's immense unmet

1 demand and therefore not having -- and therefore not
2 necessarily having a harmful impact on prices and volumes of
3 the domestic industry.

4 The concession in essence of an argument that
5 there is some price premium, even if you were to buy that,
6 and we don't buy that and we don't believe that, but even if
7 there was some interaction at some customers, there's still
8 a price interaction going on. So they've admitted they're
9 competing on price. That is in fact an implicit admission
10 against interest by the respondents that price is material.
11 I don't think there's any question in this case that if you
12 impose these dumping margins, these imports will be out of
13 this market. These imports will -- and as a result the
14 domestic industry will be doing better.

15 I realize that this is not necessarily a "but
16 for" analysis for you, Commissioner Pinkert, but in essence
17 this is whole argument on price premiums is an admission
18 that price counts. And so there is competitive impacts on
19 pricing. And so I find this whole argument that's been out
20 there that respondents keep in trying in all of these cases
21 not relevant to the Commission inquiry of whether there is a
22 significant price impact. If there's a significant price
23 impact, if there's no price premium or 10 percent price
24 premium, that dictates an affirmative determination.

25 MR. KERKVLIIET: This is Jim Kerkvliet from

1 Gerdau. And I want to build on Alan's comments. I think it
2 was very much spot on. The only thing I would add to that
3 as well, sometimes we don't even get the opportunity. The
4 price is so low that our customers will say, and we'll learn
5 about it afterwards, hey what happened with our orders for
6 last month? Well, I knew you couldn't meet it, so I just
7 bought it from X, Y, Z importer.

8 MR. ASHBY: Steve Ashby, Evraz. I think the
9 difference here just from a practical standpoint is that I'm
10 currently not meeting my volume targets. Forget about
11 capacity utilization. Maybe this goes back to critical
12 circumstance, but I'm not meeting volume targets today with
13 the number of shifts that we have on our plant and it has to
14 do with cheap prices and the surge of Chinese volume that's
15 coming into this country.

16 VICE CHAIRMAN PINKERT: Thank you very much.

17 CHAIRMAN BROADBENT: Commissioner Williamson.

18 COMMISSIONER WILLIAMSON: Thank you. Going back
19 to critical circumstances and the question of purchaser
20 inventories. And I was just wondering, has the Commission
21 examined purchaser inventories in prior cases with respect
22 to critical circumstances?

23 MS. CANNON: Not to my knowledge. But I don't
24 know whether the issue has been presented. I think the
25 issue normally, or the normal situation is that the

1 importers have the inventories sitting on their floors and
2 so that's what the Commission has looked at. But the
3 important thing is the statute just says inventories. It
4 doesn't ask where the inventories are. So I think under the
5 statute, under the law either one is consistent with what
6 the statute requires, which is a rapid increase in
7 inventories.

8 COMMISSIONER WILLIAMSON: I think you suggested
9 that we should now question the purchasers about that. And
10 I was sort of wondering why it wasn't done earlier if it's
11 relevant?

12 MS. CANNON: Why the request was not made sooner?

13 COMMISSIONER WILLIAMSON: Yeah. Uh-huh.

14 MS. CANNON: We had heard that the inventory had
15 built up. Frankly, I was assuming it was at the importer
16 accounts more than the purchaser accounts, and it was only
17 as we developed the case and talked with the industry
18 witnesses further, because we were surprised to not see an
19 inventory build up. Honestly when I saw your staff report
20 that we realized that almost all of this was at the
21 purchaser locations. And so that's why we've now asked at
22 this point. And I think that it's a fairly simply request.
23 You're looking at importer inventories in June of this year
24 compared to what they were in June of last year. That would
25 be two numbers for the purchaser to provide.

1 COMMISSIONER WILLIAMSON: Okay. Good. Thank
2 you. And with that I thank the panel for their responses.

3 CHAIRMAN BROADBENT: Commission Johanson?

4 COMMISSIONER JOHANSON: Nothing.

5 CHAIRMAN BROADBENT: Any other questions?

6 (No response.)

7 CHAIRMAN BROADBENT: If Commissioners have no
8 further questions, does the staff have any questions for
9 this panel?

10 MR. CORKRAN: Douglas Corkran, Office of
11 Investigations. Thank you, Madam Chairman, staff has no
12 additional questions.

13 CHAIRMAN BROADBENT: Do respondents have any
14 questions for this panel?

15 (No response.)

16 CHAIRMAN BROADBENT: Thank you. I don't see any.
17 Okay. In that case I think it's time for our lunch break.
18 We will resume at 1:20, in an hour.

19 The hearing room is not secure, so please do not
20 leave confidential business information out. And I want to
21 thank all the witnesses for coming today.

22 (Whereupon, at 12:20 p.m., the hearing was
23 recessed to be reconvened at 1:20 p.m.)

24

25

1 imports went up and domestic profits went down and those
2 that are based on more serious analysis.

3 We submit that Petitioner's case is based on the
4 former and ours is based on the later. The analysis in our
5 pre-hearing briefs is set forth in a relatively small number
6 of textual pages, but is supported by abundant evidence on
7 the record. I will first summarize our affirmative points
8 and then draw for the Commission a roadmap of how they
9 negate every one of the arguments offered by counsel for the
10 domestic industry.

11 This case is not taking place in a vacuum.
12 Petitioner's applied well-worn arguments hoping that the
13 Commission will not recall or consider the numerous past
14 occasions in which it voted negatively. And as Mr. Neeley
15 said we understand that you not bound by prior decisions but
16 the Commission most recently voted to dismiss this case at a
17 preliminary stage in 2005 when faced with facts very similar
18 to those in this case and it should do the same here.

19 On page 2 of Respondent's pre-hearing brief we
20 note how the domestic industry largely has failed to prove
21 its case in numerous past investigations, including the one
22 in 2005. And this unfavorable record calls into question
23 the credibility of its well-worn claims in this case, even
24 apart from their reliance on unsupported ascertains and
25 surface deep readings of the data. And I might add that I

1 will point out a few places where statements of the
2 Petitioner's panel this morning are refuted directly by
3 evidence on the record and on the public record so I can
4 discuss it.

5 On pages 2 to 5 of our brief we discussed the
6 various factors that show that subject imports are not
7 causing injury to the domestic industry. They include the
8 fact that the industry primarily exists to produce high
9 valued bar and downstream wire products with wire rod
10 representing incremental sales revenue. As shown at table
11 3-4 of the public pre-hearing report by 2013 rebar and other
12 bar or rod products accounted for over 40% of the production
13 output on the capacity shared with wire rod.

14 When the volumes of wire rod consumed internally
15 are transferred to related parties for downstream wire
16 production are included, this figure is much greater.
17 Unfortunately the exact figures are confidential but we will
18 provide them in our post-hearing brief. This is important
19 because it means that the production and investment
20 decisions are driven by markets other than wire rod and that
21 the profit expectations for wire rod are lower.

22 One interesting example of this focus is by
23 Cascade Steel. On November 5, 2014 there appeared an
24 article in American Metal Market entitled Cascade Chases
25 Shift in Demand to Capture Rebound in Rebar. We will

1 provide the full text of the article in our post-hearing
2 brief but in general it discusses how Cascade has taken
3 advantage of strong demand for rebar to improve its
4 performance of its mill where production is shared between
5 rebar and wire rod.

6 In the words of Cascade President, Jeff Dyck "We
7 are a combination mill for long products, both rebar and
8 wire rod so as markets strengthen in those different
9 products we try to take advantage of that". Another key
10 quote from Mr. Dyck credits west coast construction demand,
11 especially in the private and non-residential sector with
12 helping drive Cascade's strong performance. The electric
13 arc furnace mill reported its best quarterly performance and
14 capacity utilization since fiscal 2008 with sales tonnage up
15 9.2% in fiscal year 2014 versus the year ago period.

16 While this is just one recent example, the data
17 and aggregate point to similar trends among other domestic
18 rod producers, given the large expansions in domestic
19 capacity at these combination mills and shifts in production
20 share to non-wire rod products.

21 The other part of the equation is the fact that a
22 substantial and growing share of domestic rod production is
23 captively consumed by its rod producers, especially among
24 Petitioners. The implication is that this production is
25 insulated from import competition.

1 The Commission and other administering
2 authorities have long accepted that captive consumption is
3 insulated from import competition.

4 Number three, there are legal and other Buy
5 American requirements that further insulate domestic
6 production from import competition. As detailed in the
7 pre-hearing report at page 2-23, 27 of 55 purchasers
8 reported that U.S. produced product was required by law for
9 at some of their wire rod purchases. 19 of these 27 firms
10 reported that U.S. produced products were required by law
11 for up to 15% of their purchases while 3 reported it was
12 required by law for 60 to 80% of the purchases.

13 In addition as noted on the pre-hearing report
14 page 2-19, 8 purchasers reported a preference for U.S.
15 produced wire rod, thus whether or not companies have formal
16 Buy American provisions, there are other practices that have
17 the same effect. This morning Mr. Kerkvliet characterized
18 the share of Buy American sales as tiny and threw out a
19 figure of 1.5%.

20 Petitioner's counsel likewise downplayed the
21 significance of this program but again there's evidence on
22 the record for the Commission from purchaser's
23 questionnaires at 3-8. The data are confidential so I
24 can't discuss them here but I can tell you that it's not
25 tiny and it's not 1.5%, it's not even close so keep that in

1 mind.

2 Number four -- statistical analysis based on more
3 than two decades of published ITC data from successive
4 investigations shows no correlation between the domestic
5 industry's profitability and such key variables as
6 production, capacity utilization and apparent domestic
7 consumption. These results break any arguable causal link
8 between key indicia volume effects and the domestic
9 industry's overall condition and per Commissioner Kieff's
10 request we will be happy to discuss further and provide
11 additional data in post-hearing.

12 Number five -- trends in the domestic industry's
13 metal margin reveal an absence of significance adverse price
14 effects from subject imports. Analysis of point to point
15 comparisons of price changes from the beginning to the end
16 of the period provide little insight in this case yet
17 strangely this morning Ms. Beck accused us of doing just
18 that, relying on a point-to-point two quarter comparison but
19 then referred specifically to our Exhibit 5 where we present
20 every quarter of metal margin over the period so I'm not
21 sure of the context for that criticism but without getting
22 into confidential data, the metal margin fluctuated over the
23 period but within a narrow range, and didn't display any
24 trend that would be related to subject imports.

25 We note also that as shown on pre-hearing report

1 table 6-1, the industry's raw materials to sales ratio,
2 which is usually an indicator of cost price squeeze,
3 declined over the POI from 64.8% in 2011 to 61.9% in 2013
4 which runs directly counter to the usual picture of injury
5 presented to the Commission.

6 Number six -- subject imports in this case may
7 have arithmetically undersold domestic prices. The great
8 majority of these underselling margins are within a neutral
9 range that we argued did not product significant adverse
10 price effects. When the Commission viewed the underselling
11 data and the comparatively small margins which average 9.2%
12 per the table 5-9 of the pre-hearing report it should keep
13 in mind the particular terms of sale for this product.

14 As discussed at pre-hearing report 2-16 virtually
15 all wire rod is produced to order. 97% of U.S. producer
16 shipments and 99.6% of imports from China were produced to
17 order. This isn't a product that was imported and then
18 piled on the docks looking for customers. The domestic
19 producer lead times when producing to order ranged from 15
20 to 75 days. Importers lead times range from 60 to 150 days
21 that is two to four times as long.

22 It is not at all surprising that customers would
23 pay a premium for product that they can get within half or
24 even one quarter of the lead time and the single digit
25 underselling margins seem to be a reasonable reflection of

1 that premium. Moreover, counsel for Petitioners this
2 morning I believe it was Miss Cannon, said that prices in
3 2014 declined because of the alleged surge in imports but
4 again look at the record.

5 Domestic producer's net sales average unit value
6 increased. The price of all 7 pricing products increased
7 in 2014. Petitioner's statements are not supported by the
8 record.

9 Another important condition of competition is
10 that this is an industry in which the U.S. producers compete
11 with their customers in downstream products. At
12 pre-hearing report 2-12, 16 of 50 purchasers reported that
13 their suppliers also produced the same end use product. 10
14 of those 16 purchasers indicated that this effected up to
15 15% of their 2013 purchases while 3 firms reported in effect
16 that 75% or more of their 2013 purchases. Given the
17 substantial and growing share of domestic rod production
18 that's captive, this is bound to have an impact on
19 availability for domestic rod customers. In fact, 18 to 55
20 purchasers reported experiencing supply constraints over the
21 POI with 8 specifically mentioning that they were refused,
22 declined or unable to purchase wire rod from a U.S.
23 producer.

24 Moreover, at tables 3-2 of the pre-hearing report
25 presents a number of instances of production curtailment by

1 U.S. producers. Given this context, it is important to
2 note that the product mix of Chinese imports over the POI
3 shows that much of the net increase in volume was in
4 products of comparatively lesser significance to the
5 domestic industry and relatively little was in products of
6 greater significance to the domestic industry.

7 It's important to remember that despite the
8 statement of someone on the panel this morning that domestic
9 producers are not the fill-in producers. They have 70% of
10 the market. It's the Chinese producers that if anything,
11 are filling in. Respondent's pre-hearing brief otherwise
12 demonstrates that subject imports did not cause significant
13 adverse effects on the industry's volume prices and overall
14 condition and we direct you to please see pages 11 to 15 of
15 the brief for details.

16 I respectfully suggest that these analyses and
17 Respondent's pre-hearing brief effectively refute the same
18 affirmative points of Petitioner's economic arguments. In
19 the pre-hearing brief of Kelley, Drye & Warren, these points
20 are contained in the introduction excuse me of pages 1 to 3.

21 The first point is that "imports of dumped and subsidized
22 Chinese wire rod have surged into the U.S. market increasing
23 from virtually non-existent levels in 2011 to over 600,000
24 tons in 2014."

25 This point is effectively refuted in section 3,

1 pages 11 to 15 of Respondent's pre-hearing brief. In
2 essence, the Kelley Drye brief ignores recent history. In
3 the 2005 case which also involved China, the Commission
4 dismissed the case at the preliminary stage and what is
5 different here. Respondent's brief demonstrates a
6 comparison on page 12. This table shows that during the
7 POI in this case, volume and market share of subject imports
8 from China are very consistent with corresponding numbers in
9 the previous case.

10 In fact, the cumulated share of subject imports
11 in the 2005 case was almost double the subject import market
12 share in this case. We submit that if those volumes and
13 that market penetration were not viewed as significant then
14 they are not significant now. Petitioner's next salient
15 point focused on a rogue recitation of instances of
16 arithmetic underselling and point to point comparisons of
17 price trends.

18 Their conclusion is that subject imports
19 suppressed and/or depressed domestic prices, but such simple
20 recitation provides at best no analytical insight in this
21 case and worse can be highly misleading. Instead we submit
22 the more substantial insight is provided at pages 7 to 10
23 and 14 to 15 of Respondent's brief which demonstrates an
24 absence of significant adverse price effects.

25 The third and final salient point in the Kelley

1 Drye brief asserts that "no other factor accounts for their
2 precipitous decline in the domestic industry's condition".
3 We submit that this ascertain is effectively refuted at
4 pages 15 to 16 in Respondent's pre-hearing brief.

5 The fact is that based entirely on data published
6 this this Commission, the domestic industry during the POI
7 in this case did well by historical standards and certainly
8 had earnings at a sufficient level to generate expansions to
9 reported capacity and otherwise make new investment. In
10 fact, per table 6-6 of the pre-hearing report, the domestic
11 industry's capital expenditures tripled from 60.4 million
12 dollars in 2011 to 183.5 million dollars in 2013 and in
13 every period exceeding depreciation by a substantial amount
14 which indicates that even at their lowest levels early in
15 the POI, domestic producers were investing in their business
16 far in excess of the amount needed to simply replace
17 depreciating assets.

18 This is a sharp contrast to the 2005 case in
19 which the staff report at 6-6 stated that the industry's
20 reported capital expenditures in each year were less than
21 total depreciation expense, thus the domestic industry's
22 ability to finance investments is far stronger now than in
23 2005 and given that it has made these investments at such a
24 significant level, its own outlook regarding its future is
25 demonstrably far stronger as well regardless of what it may

1 tell the Commission.

2 This morning Mr. Nystrom said that as soon as
3 their new investment decision had been made, Chinese import
4 volumes surged because demand in China softened. Again we
5 invite the Commission to look at the record. Table 7-3 of
6 the pre-hearing report shows that Chinese producers whole
7 market shipments increased by 31% from 2011 to 2012, over 3
8 million tons, that doesn't look like a softening in demand
9 to me and again another unsupported ascertain by the
10 domestic industry.

11 Separate and apart from addressing the selling
12 points at Petitioner's introduction to their brief I would
13 like to correct certain points raised later in that document
14 that are based on incorrect information. These concern the
15 text on page 8 of their pre-hearing brief and footnote 16 on
16 page 25.

17 The related discussion concerns differences in
18 product mix between subject imports and domestic production
19 that is presented as ascertains about whether or not the
20 domestic industry produces certain varieties of products for
21 example, IQ quality versus welding wire rod, but in fact the
22 issue in the argument that we make doesn't concern the
23 product mix of what is produced domestically, it is about
24 the mix of the products that fuel the recent growth of
25 subject imports compared to their relative importance to the

1 domestic industry.

2 It's part of Respondent's argument as to why
3 there are no significant volume effects in this case we
4 invite you to see Section 1, pages 10 to 11 of Respondent's
5 pre-hearing brief.

6 I will now briefly address the Wiley Rein brief
7 filed on behalf of Nucor. That brief essentially repeats
8 arguments made in the Kelley Drye brief with respect to
9 injury that I addressed in my earlier remarks. I must
10 respectfully point out however, there are two very serious
11 factual errors contained that detract generally from the
12 credibility of the brief's arguments. It first occurs on
13 page 1 which refers to the "unprecedented influx of dumped
14 and subsidized wire rod imports from China". Apparently
15 the writer was unaware of the Commission's negative
16 determination in the 2005 case in which the increase in
17 Chinese volume from 2003 to 2004 was of an even greater
18 magnitude, over 500,000 short tons or 186% compared to the
19 increase from 2012 to 2013 which was roughly 376,000 short
20 tons.

21 Again, the Commission did not find this volume to
22 be significant even when combined with the volume of imports
23 from Germany and Turkey. I direct the Commission to a
24 discussion at pages 11 to 14 of our brief for further
25 elimination.

1 Secondly, at page 4 of the Wiley Rein brief
2 references made to the lack of cooperation by Chinese
3 Respondents in the Commission's investigation but as the
4 pre-hearing report plainly shows and as Mr. Neeley pointed
5 out this morning, Chinese producers accounted for nearly
6 100% of Chinese exports during the POI have cooperated
7 entirely with the Commission's investigation and are
8 represented here today.

9 Finally, perhaps the strangest argument from
10 Nucor's representatives appears on page 2 of their brief.
11 The plain language suggests that the industry injured itself
12 by circulating rumors of this case therefore precipitating
13 an alleged surge in subject imports about which they now
14 complain and say that they are injured. In my experience
15 this logic is bizarre and indicative of the low merits of
16 the case. I would be pleased to answer any questions, thank
17 you.

18 MR. NEELEY: Thank you Jim, I will just touch on
19 the threat issue briefly before turning to Fred Waite. Of
20 course we have argued strongly that there is no indication
21 of threat for several reasons. First of all as Jim alluded
22 to market share simply has returned to previous levels,
23 there is no surge in a real sense that you see in this case.

24 There is what we see is that the domestic industry is
25 simply trying to take what's happened over the last couple

1 of years and basically extrapolate that trade to infinity.
2 There's really no basis that's argued there that has offered
3 for that and in our view is just based on utter speculation.

4 What we have seen is that the Chinese producers
5 were in this market as the Commission well knows in 2003,
6 2004, 2005 in fact the Chinese left the market and from
7 information from my clients left the market for good reason.

8 Mr. Rosenthal seemed to think that it was economically
9 irrational in fact it wasn't economically irrational at all.

10

11 At the end of 2008 there was a huge recession,
12 2009 the Chinese producers decided that this was really not
13 an attractive market, either in terms of demand or price and
14 largely exited the market. What they have seen is and again
15 as the U.S. industry itself alluded to there has been some
16 recovery in the U.S. market and they have now crept back up
17 to where they were before, that's really not economically
18 irrational nor is it very surprising.

19 Secondly we also see in this case a very high
20 capacity utilization on the part of Chinese producers that
21 was similar to the last case. The producers have submitted
22 their data to the Commission and you know we are certainly
23 glad to answer any questions that the Commission has about
24 that data.

25 Thirdly, there are very substantial home marketed

1 third country sales on the part of all the Chinese
2 producers. The shift -- there is some shift from year to
3 year from home market to third country markets, depending on
4 which of the markets in a particular year happens to be
5 stronger.

6 But together those markets are overwhelmingly
7 much, much larger than the U.S. market. The idea that the
8 U.S. market is just a market that everybody in China is just
9 dying to get into is really bellied by the facts, it's even
10 bellied by the facts regarding the 7 companies who are here,
11 7 companies who have -- who account for almost 100% of the
12 exports. For those companies what we see is that for most
13 of them this is a -- I can only categorize it and the
14 Commission has it in the staff report of the market share
15 U.S. represents in those companies an utterly insignificant
16 market for most of them.

17 For a couple of them it's more significant
18 perhaps but certainly not in any way anything that they
19 consider major so the speculation that we are hearing is
20 somehow this is an incredibly attractive market for these
21 clients and apparently they think to everybody in China but
22 in fact there is nothing in America that bears that out.

23 Again we have got the issue which we talked about
24 earlier of qualification of products Buy American
25 provisions, other things that limit the amount of product

1 that can come to the United States from China again it cuts
2 against the idea of threat.

3 In terms of inventory buildups it is just not
4 showing up in the record. Even if you talk about purchases
5 where is it showing up, I mean they haven't really specified
6 when that is because even if its purchasers that supposedly
7 have these inventories, when did the imports occur
8 specifically you know.

9 They had to at some point been imports and it's
10 less than clear to us from the discussion this morning, less
11 than clear to us from what was said in the briefs, when
12 exactly that was supposed to have occurred. It would be
13 very useful to know that, I mean we could then have
14 something we can actually discuss with data as opposed to
15 just words about how things are a threat.

16 Finally, we've gone through the other trade
17 remedies cases for other countries one by one, we have shown
18 that none of them really have any significant effect on
19 Chinese imports, I'll leave it at that, other than to say
20 that this morning we heard some testimony that somehow the
21 Chinese producers were you know, putting a certain amount of
22 boron into the products and we are going to avoid those
23 trade remedy cases. Well you can't have it both ways, you
24 can't argue that they are avoiding those trade remedy cases
25 in other countries and at the same time say let's trade

1 remedy cases that are causing the Chinese to not be able to
2 export to other markets, so I mean it's one or the other so
3 I'll leave it at that.

4 But the fundamental point is that there is no
5 evidence that those are having any major effect on Chinese
6 producers. I will now turn to Fred Waite who will discuss
7 the critical circumstances issues.

8 STATEMENT OF FREDERICK P. WAITE

9 MR. WAITE: Good afternoon Madam Chairman,
10 members of the Commission. My name is Fred Waite with the
11 firm Vorys, Sater and I'm here today with my colleague
12 Kimberly Young on behalf of two American importers of
13 subject merchandise, Macsteel International USA and Stemcor
14 USA in order to address this sole issue of critical
15 circumstances.

16 Also on this panel to discuss critical
17 circumstances is Jay Campbell of the firm White & Case who
18 represents another U.S. importer Duferco Steel. Although
19 the Commerce Department has made affirmative preliminary
20 determinations in critical circumstances in its
21 investigations countervailing duty and anti-dumping of wire
22 rod from China, we submit that the facts on the record in
23 this investigation mandate a negative determination by the
24 Commission.

25 The Commission generally considers several

1 factors in its analysis of critical circumstances and you
2 have discussed those at length this morning and I would just
3 like to outline our views on those factors now.

4 First, the volume and timing of imports -- in
5 this regard the Commission almost always examines imports
6 during the six month periods before and after a Petition is
7 filed. Here imports of subject wire rod from China
8 declined significantly during the post-petition six month
9 period for both the countervailing duty and the anti-dumping
10 investigations and I would note that the Commission
11 collected separate data because the Commerce Department had
12 different determinations with respect to the countervailing,
13 anti-dumping critical circumstances in its investigations.

14 That is in one case one set of companies were
15 excluded from the Congress Department's preliminary finding
16 and in the other case, three companies were excluded from
17 the Department's preliminary finding. Petitioners argue
18 that the Commission should consider two different periods in
19 its analysis of critical circumstances, either a three month
20 comparison period or a four month comparison period.

21 Even if the Commission were to consider periods
22 of three or four months, the result would be the same. The
23 change of volume of imports over 3, 4, 5, 6, 7 whatever
24 months are far below the levels that the Commission has
25 found sufficient to support a finding of critical

1 circumstances in other cases. In fact these changes in
2 volumes during the three and four month periods are less
3 than in the previous investigation of wire rod from Moldova
4 where the Commission made a negative critical circumstance's
5 determination.

6 Second the Commission also considers whether
7 there has been a rapid increase in inventories. Here the
8 inventories held by U.S. importers of subject merchandise
9 actually declined as shown in table VII-5 of the pre-hearing
10 staff report. In addition, importer's inventories also
11 fell sharply as a percentage of imports and as a percentage
12 of total shipments.

13 Petitioners argue that the Commission should also
14 consider inventories held by U.S. purchasers however the
15 Commission does not collect information on the inventory
16 held by customers so there is no basis in the record for
17 making such comparisons in this investigation.

18 Further there is no evidence in the record that
19 importers deliberately increased their shipments after the
20 Petition was filed. The staff report shows that virtually
21 all of the imported wire rod from China, 99.6% is made to
22 order and the staff report also shows that the lead times
23 range from 60 to 150 days, therefore subject imports which
24 entered the United States after the Petition was filed on
25 January 31, 2014 and before August, 2014 which is the 7th

1 month after the Petition was filed, all of the subject
2 imports have been ordered before the Petition was even
3 filed.

4 Finally, the Petitioners claim that the pricing
5 data "hit new lows after the Petition was filed". Because
6 much of the pricing data are confidential, we will address
7 this issue more fully in our post-hearing brief however we
8 would note that for the pricing product with the greatest
9 tonnage, Chinese prices actually increased after the
10 Petition was filed in this case.

11 Based on all of these factors we respectfully
12 submit that there is nothing about this case that suggests
13 the need for the extraordinary remedy of retroactive duties.

14 We respectfully urge the Commission to make a negative
15 determination of critical circumstances with respect to wire
16 rod from China. Thank you and I believe that concludes the
17 affirmative presentation of this panel.

18 CHAIRMAN BROADBENT: Thank you to the panel.
19 We'll begin with Commissioner Schmidtlein this afternoon.

20 COMMISSIONER SCHMIDTLEIN: Thank you. I want to
21 thank the witnesses and their counsel for appearing here
22 today.

23 Since I started with critical circumstances with
24 the Petitioners' side, let me just ask you a general
25 question. You've answered some of the more specific points,

1 I think, that I raised this morning. But can you comment,
2 Mr. Waite, on what you think the purpose of the critical
3 circumstances provision is? I mean does deterrents play --
4 it is in the legislative history, so how should we consider
5 the idea of deterrents in looking at critical circumstances?

6 MR. WAITE: Yes, Commissioner. Again, it's Fred
7 Waite, and I would also invite my colleague, Mr. Campbell,
8 to respond after I complete.

9 The statute and the legislative history, in
10 particular, do refer to deterrents. And I believe that's
11 the prerogative of the Congress and the Administration, in a
12 general sense, of policymaking. You are not a legislature.
13 I don't think you are in the business of deterrents, other
14 than deciding cases on the facts before you. In other
15 words, the merit of this investigation is the decisive fact
16 that I believe the Commission should consider in making its
17 critical circumstances determination.

18 Whether, as Petitioners appear to argue this
19 morning, that an affirmative determination of critical
20 circumstances will send a shutter through the importing
21 community in hypothetical cases that may be filed in the
22 future I think is not a matter within the purview of this
23 Commission and not relevant to your analysis in this
24 investigation. I think you must look at the facts.

25 And related to that, on the deterrents issue, is,

1 I believe, intent; and that issue came up this morning too.
2 Is intent a factor to be considered by the Commission? I
3 think that it's not to be considered, but I also think the
4 Commission, as it always does, needs to be fairly skeptical
5 of broad, hyperbolic claims of intent by parties based on
6 often mere speculation or an anonymous publication^^^^
7 anonymous source in a publication.

8 I can tell you that with our clients intent was
9 not an issue. As I mentioned in my prepared testimony, the
10 imports that were made after the petition were filed covered
11 wire rod from China that had already been negotiated and
12 contracted and signed into contract before the case was
13 filed. So, this was material that was already obligated by
14 the mill and by the importer to be brought into the United
15 States.

16 The other point I would make, and this may touch
17 on the points that you were raising earlier, and some of
18 your colleagues were raising earlier, about inventories held
19 by customers and also whether any inventories held by
20 importers were significant. And I think there was even an
21 elusion by one of Petitioners' counsel to inventory sitting
22 on the docks. And I, of course, remember cases where
23 photographs were brought in, a pipe, and other product
24 sitting on docks.

25 That's not the case here. These products are

1 sold back-to-back by importers in almost every case. In
2 other words, the importer buys the product and almost
3 immediately it's sold to a customer. As these products are
4 entered into the United States, then they are moved very
5 promptly to the customers.

6 The inventory build-up by customers I think,
7 again, is hypothetical. There's no evidence in the record
8 that there's been an inventory build up. There is one
9 example given in both briefs by Petitioners of a domestic
10 purchasers who purportedly, according to Petitioners, was
11 building up inventory. I didn't read the comments of that
12 domestic producers to say, "I'm building up inventory." I
13 think you need to look at the source of those comments in
14 order to draw your own conclusions.

15 I'm also perplexed why all of this is bracketed
16 confidential because these were comments by a company in the
17 public record, on the company's website, in the company's
18 routine conversations with investors, which are available in
19 the public domain. And it might be a little easier for all
20 of us if we could discuss who that company is and maybe what
21 that company was thinking when it said what it said.

22 And indeed, what it said was not that we are
23 simply building up inventory because these purchasers tend
24 to be much smaller companies. They're not
25 multi-billion-dollar, multi-national companies like the

1 Petitioners generally are. They can't afford to carry the
2 kind of inventory that the Petitioners alleged that they may
3 have built up and be carrying. They need to move that
4 inventory quickly.

5 So, I think there's just so much --

6 COMMISSIONER SCHMIDTLEIN: But there is an
7 inventory -- I mean it shows in the staff report that
8 Chinese imports there was -- I'm not talking just about
9 critical circumstances, but just this general idea of
10 inventory.

11 MR. WAITE: By the U.S. importers held in the
12 United States.

13 COMMISSIONER SCHMIDTLEIN: That's right. Yes,
14 that substantially went up.

15 MR. WAITE: No, it actually declined.

16 COMMISSIONER SCHMIDTLEIN: I mean from year to
17 year.

18 MR. WAITE: It declined from the -- during the
19 interim period.

20 COMMISSIONER SCHMIDTLEIN: Okay, interim period.

21 MR. WAITE: Yes.

22 COMMISSIONER SCHMIDTLEIN: But from '11 to '12 to
23 '13.

24 MR. WAITE: Yes. And again, I think you're
25 addressing an issue that's --

1 COMMISSIONER SCHMIDTLEIN: Sort of separate, but
2 yes, okay.

3 MR. WAITE: Exactly, Commissioner, that I would
4 like to also address. And that is, it appears that from
5 time to time the Petitioners can play the injury analysis
6 with the critical circumstances analysis, and think your
7 point is well taken. The build up of inventory, perhaps,
8 plays into an analysis of material injury or perhaps even
9 threat. But for critical circumstances, we're looking at
10 what's happened immediately after a petition is filed
11 compared with what's happened before the petition was filed.

12 And that's why you and the Commerce Department
13 started Ground Zero, which is the date the petition is filed
14 and go backwards and forwards in your volume analysis, in
15 the Commerce Department's massive imports analysis to
16 compare those numbers. That's the critical circumstances
17 analysis for volume.

18 For injury, you would be looking at longer
19 timeframes. Obviously, the three-year period of your
20 investigation, plus the interim periods. That was correct.

21 COMMISSIONER SCHMIDTLEIN: Mr. Campbell, did you
22 want to add anything to that? Okay.

23 So, related to inventory this is a question
24 really maybe for Mr. Dougan. In hearing what you just said
25 about -- and I'm switching gears here, but I want to get

1 this question out before I run out of time. So, in terms of
2 the underselling and this neutral margin, right, and that
3 margin is attributable to the fact that there's lead time
4 for Chinese product that doesn't happen with regard to U.S.
5 product. And I guess my question is, though, when you see
6 importers holding inventory -- yes, it's made-to-order, but
7 they can hold this in inventory. Obviously, this stuff
8 doesn't perish. So, how relevant is lead time when -- and
9 in fact, they do increase their inventories, as we just
10 discussed over the POI.

11 So, in other words, so why would I think there's
12 a premium for U.S. product when importers can bring this
13 stuff in basically whenever they want, hold it in inventory,
14 and then sell it out to the customer?

15 MR. DOUGAN: If I can address the first part --
16 the premise of your question, and the data are confidential,
17 so I will tap dance here a bit. But there was an increase
18 in inventory from the beginning of the POI to 2013 or the
19 end, but that's effectively because in 2011 there wasn't
20 any. And between '12 and '13, you actually see decline, and
21 between the prior periods you also see a decline relative to
22 shipments.

23 So, in absolute numbers -- again, I'm trying to
24 be careful here. In absolute numbers there is an increase,
25 but that is not the case between the prior periods. And as

1 a relative share of the shipments, that is also not the
2 case.

3 COMMISSIONER SCHMIDTLEIN: But just this concept
4 of -- yeah.

5 MR. DOUGAN: That's just the factual part of it.

6 COMMISSIONER SCHMIDTLEIN: Yes, I mean not the
7 trends, but just the whole notion that they do, in fact,
8 hold stuff in inventory. So, why is somebody going to pay a
9 premium for a U.S. product because of the lead time with
10 regard to Chinese product when I can buy it out of inventory
11 from an importer?

12 MR. DOUGAN: I think there is a bit of a tension
13 here because it seems like, and you point this out, there is
14 a portion of importer sales that are made from inventory.
15 The responses in another part of the staff report indicate
16 that that is very small. So, there are sales out of
17 inventory, but most of them are -- I mean the ones that are
18 in inventory here are presumably destined for a particular
19 customer at some point.

20 So, I'm not sure that it's the same -- given the
21 responses elsewhere, I'm not sure that these are inventories
22 in search of a customer, but maybe inventories that are
23 happen to be in stock at a time before they're transferred.

24 MR. NEELY: Yes, I would just say we don't know
25 long they're in inventory, which is a pretty relevant point,

1 I would think. If it's three months, four months, it's one
2 thing or six months or if it's a week is something else.

3 COMMISSIONER SCHMIDTLEIN: All right, thank you.
4 My time is up.

5 CHAIRMAN BROADBENT: Thank you.

6 In terms of the production in China of this
7 product, what is capacity utilization in China and how much
8 is production growing in that market?

9 MR. DOUGAN: Chairman Broadbent, looking at Table
10 7-3 of the pre-hearing report, and this is public, so
11 thankfully I can discuss it. The capacity utilization
12 between '11 and '13 ranged between 92.5 and 95.3 percent,
13 which is very high.

14 CHAIRMAN BROADBENT: In China?

15 MR. DOUGAN: In China, that's correct.

16 CHAIRMAN BROADBENT: All Chinese producers?

17 MR. DOUGAN: This is those for which we have the
18 evidence, the seven who are exporting to the United States.

19 CHAIRMAN BROADBENT: Right.

20 MR. DOUGAN: But as an indicator of the relevance
21 of home market demand, the lion's share of their production
22 and their shipments go to the home market. And in fact,
23 that increased over the POI from 62.8 percent to 72.8
24 percent in 2013. So, all the while this -- the capacity
25 remained relatively constant at about 18.2 million short

1 tons, but the share of it that went to the home market
2 actually increased. So, this idea that the capacity is
3 being built and is destined for the U.S. and that home
4 market demand is softening it doesn't really seem to be
5 borne out by the evidence here that we're seeing.

6 CHAIRMAN BROADBENT: But we only have the
7 responding exporters to the U.S., right?

8 MR. NEELY: Yes, we only have the responding
9 exporters to the U.S., and this is always a dilemma, I
10 think, that the Commission has. People who aren't
11 interested in the market aren't interested in the market. I
12 mean it's very difficult to get people who are not in the
13 U.S. market who don't have any interest in the U.S. market
14 to fill out Commission questionnaires.

15 Certainly, there's additional capacity in China.
16 I mean nobody's said there isn't. There clearly is, but
17 what we've seen is that year in and year out there's not
18 that much interest in the U.S. market. I mean, I think what
19 the U.S. industry is telling you is grossly exaggerated.
20 And if you even look at the percentage, as I said, of
21 production that's coming to the U.S. from each of the seven
22 who actively participate in the U.S. market it isn't very
23 big.

24 So, yes, there are other producers in China.
25 They primarily sell to their home market. To some extent,

1 they also sell to third country markets. I mean you can
2 just see that from the raw data in Chinese exports. And we
3 can supplement the record with some additional information
4 on those other importers --

5 CHAIRMAN BROADBENT: I mean, the difficulty we
6 have here, of course, with China and steel, as you know, is
7 that the projections and the measurements of just total
8 production of steel capacity in China are huge, and they
9 have doubled in the last 10 years, and capacity utilization
10 is plummeting there and there is just more and more excess
11 capacity. Seemingly, it's a fairly out of control
12 situation. So, it's very hard for us to figure out what's
13 going to happen to our industry by parsing out what
14 responding companies are saying without knowing the fuller
15 picture of what's going on in China. And I think for China
16 it's even more important because of just the magnitude of
17 what's going on there right now.

18 MR. NEELY: I understand what you're saying, but
19 I think if you look at the data that you have from the seven
20 who have participate and the seven who are in the U.S.
21 market, the idea that there's a huge collapse in the Chinese
22 market for this product that is affecting these companies
23 it's just not thee.

24 CHAIRMAN BROADBENT: No, no, what I'm talking
25 about is the capacity that growing in China throughout the

1 steel sector is what we always to wrestle with here.

2 MR. NEELY: I understand.

3 CHAIRMAN BROADBENT: And with only seeing a
4 little tiny slice of what's going there it's very difficult
5 for us to be assured that it's not a threat.

6 MR. DOUGAN: Jim Dougan.

7 I think what might be useful is whatever you may
8 think of the comparisons of the conditions of competition in
9 the 2005 case to present, we have foreign producer data from
10 that case of what Chinese capacity looked like then, and it
11 was in the same ballpark, 17 to 18 million short tons. It
12 hasn't increased substantially. In fact, relative to 2004,
13 it's actually lower.

14 The 2004 capacity here is 21 million, and we're
15 looking at 18 to 18.5 million during the current POI. So,
16 whatever may be going on in the larger steel sector, over
17 the past 10 years it doesn't appear to have been affected
18 wire rod. So, there isn't really this additional capacity
19 overhang for this particular product to the degree that
20 there's large amounts of shipments that aren't going to the
21 U.S. Well, I mean, they aren't going to the U.S.

22 And in the absence of an order because the
23 Commission went negative in January of 2006, given millions
24 and millions and millions of tons of capacity the Chinese
25 import volumes in the intervening years when there was no

1 order are modest and even went down. It's interesting that
2 Petitioners put together this exhibit that showed what
3 happened between 2005 and 2006, but they didn't put what
4 happened in 2007 on there. So, the implication that you're
5 supposed to take from that is vote negative and the imports
6 surge.

7 Well, there may have been market reasons for
8 their imports increase from '05 to '06, but they went down
9 in 2007 for market reasons, presumably. They went up again
10 in '08, and then basically disappeared in '09 and '10. If
11 there were these millions and millions and millions of tons
12 of Chinese wire rod just waiting to come to the U.S. market
13 and had nowhere else to go why didn't they come here before?
14 And they don't have a story on that. They don't.

15 CHAIRMAN BROADBENT: You argue in page 3 of your
16 brief that U.S. producers' internal consumption or transfers
17 to related firms are insulated from import competition. How
18 should we interpret the fact that the domestic industry's
19 commercial shipments fell noticeably between 2011 and 2013
20 in an expanding market while the domestic industry's
21 non-commercial U.S. shipments did not?

22 MR. DOUGAN: Jim Dougan.

23 My response to that would be, again, look at what
24 this industry really is, which is part of a larger
25 combination mill for many of these producers, and the focus

1 again being on other higher margin products and their
2 downstream wire production. So, their internal consumption,
3 their transfers, their captive consumption is intended for
4 their downstream market. That's going to be what it is
5 dictated by the terms in that market.

6 To the degree what they sell, what's leftover
7 from the capacity that they can use for rebar and other long
8 products and what's intended for their wire production, to
9 the degree that that shrinks I'm not sure that that's
10 necessarily an evidence of injury because they, by
11 admission, like Cascade and others doing very well in these
12 other products. They've simply chosen to use that capacity
13 to make other things, and that is clear from Table -- it's
14 in the pre-hearing report. But the shift in the capacity
15 that is devoted to other products, both in absolute tonnage
16 and percentage terms is significant.

17 So, I would submit that it's the incremental to
18 them, the stuff that's not intended for the rebar and the
19 high-value added products, and the stuff that's not intended
20 for their downstream wire production. If that gets
21 squeezed, well, you know, so be it.

22 CHAIRMAN BROADBENT: And if you can get me that
23 cite.

24 MR. DOUGAN: Yes, it's Table 3-4, at page 3-7 of
25 the pre-hearing report.

1 CHAIRMAN BROADBENT: Got it. Why did demand
2 decline in 2013 relative to 2012?

3 MR. DOUGAN: This is Jim Dougan.

4 I think I'll have to give that some more thought
5 and provide an answer in the post-hearing.

6 CHAIRMAN BROADBENT: Sure.

7 MR. DOUGAN: I don't have anything on the tip of
8 my tongue.

9 CHAIRMAN BROADBENT: Got it.

10 MR. DOUGAN: I know that one thing that's been
11 going on is that the customers, the wire producers you've
12 seen them in other proceedings and so they've had a
13 difficult time of it at times. So, there maybe things going
14 on in their market, in the downstream markets that have
15 impacted demand for this product.

16 CHAIRMAN BROADBENT: Okay. Vice Chairman
17 Pinkert?

18 VICE CHAIRMAN PINKERT: Thank you, Madam
19 Chairman. And I thank all of you for being here today to
20 help us to understand these issues.

21 You argue that the increase in volume and market
22 share of Chinese imports has restored China to the place in
23 the U.S. market where it was previously. For purposes of
24 our analysis in this investigation, doesn't it matter how
25 that happened rather than it's the restoration of some prior

1 period?

2 In other words, the increase in the volume and
3 market share of the Chinese imports occurred in the context
4 of a market dynamic that is either injurious or not
5 injurious to the domestic industry. Wouldn't you agree with
6 that?

7 MR. NEELY: I'll let Mr. Dougan talk about it a
8 little bit more, but what I would say is, yes, we basically
9 agree that that's ultimately what the Commission has to look
10 at. But what we also would say is that the market share of
11 the imports you looked at last time was about 22 percent.
12 And yes, there were differences. There were similarities.

13 We think that one needs to look at the
14 differences and similarities compared to the last case and
15 see what is it that's changed. Is that significant enough
16 to have a different outcome here? We don't think it is.
17 And Jim, do you have anything to add on that?

18 MR. DOUGAN: I think the one thing the next stage
19 of the line inquiry that you're going with is it happened
20 because of price, that there was a price affect associated
21 with -- they got in here on the basis of a lower price. You
22 know our response to that with regard to our natural premium
23 and things of that nature. But also, with regard to the
24 moments in the metal margin and the movements in scrap
25 prices and they can't be divorced from one another in terms

1 of what that price meant.

2 So, if you look at the metal margin, you look at
3 the input costs relative to prices for the domestic
4 industry, they've moved within a very narrow band. Whatever
5 injury may have happened to the domestic industry appears to
6 have been the result of increased other factory costs, plus
7 and absolute in other terms. But I'm not sure that those
8 can be attributed to subject imports, especially given the
9 large amount of new investment and capacity being added in
10 this industry. So, the causal link isn't, to me, quite as
11 clear as they would present.

12 VICE CHAIRMAN PINKERT: Thank you.

13 Now, in your brief at pages 10 and 11, you also
14 argue that imports from China are increasingly moving away
15 from product categories in which the domestic industry has a
16 large presence and toward, and I quote "Other specialty
17 carbon and alloy quality wire rod." Can you give me a
18 little better idea of what it is that you're talking about
19 in defining that "Other" category?

20 MR. DOUGAN: I'm going to be careful here because
21 I think this analysis is not a little bit, but entirely
22 based on confidential information.

23 The argument there is --

24 VICE CHAIRMAN PINKERT: If want to preview the
25 argument now and then elaborate on it in the post-hearing,

1 that would be helpful.

2 MR. DOUGAN: Okay. I mean the general argument
3 is it clear that the increase in subject imports was
4 concentrated in a couple of categories among the categories
5 for which data were gathered by the Commission, so it's not
6 across the board in everything. It's very highly
7 concentrated in a couple of them, and those categories are
8 not the primary end use markets or the primary categories
9 for the domestic industry. So, that is essentially the
10 argument made.

11 The Petitioners have put up a straw man to say
12 that we're saying that the domestic industry doesn't make
13 everything and can't make everything and doesn't have an
14 overlap. And the point, as I said in my testimony, is not
15 that the range of products is entirely different. It's the
16 question about where the focus is. And in a market where
17 these producers are competing with their downstream
18 customers where there have been various different supply
19 difficulties and purchasers are saying that they can't get
20 rod for one reason or the other the fact that it's not
21 universal competition in every segment of the market I think
22 is relevant.

23 I think that if it's focused in a couple of areas
24 it's a reasonable conclusion to draw that those are areas
25 where they weren't able to get it from the domestics. And

1 the Petitioners tried to present a picture that they are now
2 the ones who fill in the gaps, but the weight of the
3 evidence just doesn't really support that. I think the
4 evidence supports that that's really the case with the
5 Chinese, but we'll elaborate more in post-hearing.

6 VICE CHAIRMAN PINKERT: Thank you.

7 Now, I remember 10, 15 years ago working on a
8 Boron scope issue at the Commerce Department, and there was
9 a clarification of scope. I can't remember what country it
10 was, what order it was, but there was a clarification that,
11 including a little bit of Boron didn't change anything about
12 the product and that it should be included in the scope.

13 I'm wondering. Is there a specific market in the
14 United States for wire rod containing Boron or is this
15 another -- I think Mr. Price referred to it as a trick or a
16 gimmick.

17 MR. NEELY: I think the best thing would be for
18 us to go back to the clients and ask them exactly what the
19 scope of what they're exporting is. Some may have a small
20 amount of Boron other amounts may be larger. I don't have
21 those figures in front of me, so it's a little bit hard for
22 me to answer that question sitting here, but we'll certainly
23 look at it.

24 VICE CHAIRMAN PINKERT: That would be very
25 helpful. And if you know, for purposes of the public

1 hearing, whether there's a specific quality that's imparted
2 by the Boron that would be helpful too.

3 MR. NEELY: Yes, I mean, we'll discuss all of
4 that, I think, in the post-hearing where I can do it right
5 without speculating.

6 VICE CHAIRMAN PINKERT: Thank you very much.

7 Now, in this investigation, is there a basis for
8 concluding that during the period of investigation
9 non-subject imports would've replaced the subject imports
10 without benefit to the domestic industry had the subject
11 imports existed the market? I'm not going to ask Mr. Waite
12 to answer that question.

13 MR. NEELY: Yes, we're not really making that
14 argument here. I think we have other arguments on
15 non-causation. That isn't one of them.

16 VICE CHAIRMAN PINKERT: Thank you.

17 Now, in one of Mr. Dougan's answers I thought
18 that I might have heard echoes of the notion that the
19 domestic industry is injured, but not by reason of subject
20 imports. Is that your contention, or are you saying that
21 the domestic industry is doing just fine?

22 MR. DOUGAN: My argument would be that to the
23 degree there has been diminishment of their financial
24 results. I would say that it's not injurious. I think
25 looking at the time series of data that we presented from

1 all of the investigated years back to 1992, by comparison,
2 the operating margins that they're earning now are pretty
3 good.

4 To the degree that there's an observed decline,
5 it's not as a result of a cost price squeeze with regard to
6 prices of raw materials and other costs. The decline in the
7 operating margin, the sort of one-for-one, whatever it is
8 from '11 to '13 and '14 is wholly, I think, attributable to
9 other factory costs, which includes things like energy and
10 other things, but in also includes allocations of new
11 facilities and PP&E and equipment and things of that nature,
12 which we know that they have made very large investments,
13 partly, to respond to demand in this product and partly to
14 respond to, we think, market conditions in their other
15 products made on these same mills. There's an allocation
16 issue here.

17 So, we would argue that if you were seeing injury
18 by reason of subject imports you would observe it directly,
19 much more directly than you see it here. You would observe
20 it directly in the metal margin. You would observe it
21 directly in the raw materials to sales ratio, and you don't.
22 You don't.

23 I think if price competition of the sort of
24 damaging nature that they purport were happening, you would
25 see it in those other indicators, and you don't.

1 VICE CHAIRMAN PINKERT: Thank you. Thank you,
2 Madam Chairman.

3 CHAIRMAN BROADBENT: Commissioner Williamson.

4 COMMISSIONER WILLIAMSON: Thank you, Madam
5 Chairman, and I do want to express my appreciation to the
6 witnesses for coming today. You characterized the Chinese
7 industry as having moved away from industry quality wire rod
8 into specialty carbon and alloy wire rod.

9 I'll say that taking a look at the prehearing
10 report at page 4-9, where some 98 percent of the imports
11 from China are industrial quality wire rod, isn't such a
12 characterization flatly contradicted by this U.S. importer
13 data?

14 MR. DOUGAN: I think the argument that we're
15 making, and this is a bit like the response of Commissioner
16 Pinkert, the argument is where the increases in imports
17 occurred between '11 and '13, as opposed to the overall
18 magnitude. So if you look at our prehearing brief, exhibit
19 --

20 (Pause.)

21 MR. DOUGAN: It's in our prehearing brief, I
22 promise.

23 COMMISSIONER WILLIAMSON: Well given what I
24 see in '13 --

25 MR. DOUGAN: Oh, Exhibit 2. Sorry. Exhibit

1 2.

2 COMMISSIONER WILLIAMSON: Given the relative
3 magnitudes that I see here in '13, I don't know what you can
4 say before, of what was happening before and whether or not
5 that's really significant. But in any case, maybe
6 post-hearing you could --

7 MR. DOUGAN: I have an answer, but it would
8 probably involve confidential information. So I'd like to
9 be careful about that.

10 COMMISSIONER WILLIAMSON: Okay, okay, good.
11 Let's just do that. But I was wondering, the difference
12 between the exporter and importer information, does this
13 reporting reflect differences between exporters and
14 importers, reflecting the use of a modest amount of boron?
15 Commissioner Pinkert has already asked you about the
16 significance of the boron. But I was wondering, you want to
17 address that post-hearing?

18 MR. DOUGAN: I think we're going to have to
19 address that one post-hearing. So we have to go back to our
20 clients on that one.

21 COMMISSIONER WILLIAMSON: Thanks, okay. So
22 you say that the shorter lead times results in -- shorter
23 lead times for domestic product results in a natural price
24 decline for domestic wire rod, and you base this argument on
25 data from a separate investigation involving different

1 product, OCTG.

2 I was wondering, why is it appropriate to base
3 conclusions for wire rod on data concerning a separate
4 industry, and you know, the activity there is quite
5 different from what we have here?

6 MR. DOUGAN: It is, Commissioner Williamson,
7 and I think that, if anything, the conditions of competition
8 in this industry are more indicative of -- it's a little bit
9 of a cleaner comparison here, in fact. The reason that the
10 data for OCTG were used is mostly because that is a rare
11 instance in which the Commission questionnaires and staff
12 actually went out and asked that question and gathered that
13 data, you know, as --

14 And we -- I think as for these types of
15 analyses, it would be helpful to have that in every
16 investigation, but we don't. While the conditions of
17 competition, it's a different product, different
18 investigation certainly, I think there is -- there is
19 something to be said for -- even leaving aside OCTG, the
20 idea that I can get something in a week or two weeks, or I
21 can get something in four months.

22 I mean, you know, there's two gas stations.
23 One is ten percent cheaper than the other one. But you pull
24 in the one and they tell you you have to wait four months
25 for your gas. You might not be willing to pay as much for

1 that one. So I think --

2 COMMISSIONER WILLIAMSON: Well first off, I
3 think the lead times are between 60 and 150 days. It wasn't
4 all of four months. It's not a spot market. Inventory
5 seemed to be a big factor in this -- and particularly since
6 the -- in sales here. So there are more differences in the
7 OCTG.

8 MR. DOUGAN: Well, I think if anything, the
9 inventories and the inventories held by distributors and
10 OCTG are much more important in OCTG than they are here.
11 The OCTG you did not have, you know, virtually universal
12 products that were sold to order the way that you do here.

13 So if anything the comparison favors this
14 case, as compared to OCTG. I think, you know, the idea of
15 importer inventories and distributor inventories is more
16 helpful here than it was there, and the lead times are
17 longer here.

18 COMMISSIONER WILLIAMSON: Yeah. If there's
19 anything post-hearing you can address this, because that
20 does -- I have some questions about that. Okay. Let's turn
21 to critical circumstances. You argue that the Commission
22 should compare the six months period prior to filing with
23 the six months subsequent to the filing of the petition.

24 Commerce's preliminary CBG was just issued in
25 just over five months from the filing of the petition. Why

1 should the post-petition period include some time subsequent
2 to the Commerce preliminary determination?

3 MR. WAITE: Commissioner Williamson?

4 COMMISSIONER WILLIAMSON: Mr. Waite, sure.

5 MR. WAITE: Thank you. It's Fred Waite. Let
6 me first, as a prelude, say that the Commission has in
7 virtually every critical circumstances determination that's
8 come before it applied the six month period, and it's done
9 that in cases involving dumping, where the preliminary
10 determination generally comes at the seven month point, and
11 also in cases involving countervailing duties like this one,
12 where the preliminary determination often comes after the
13 five month point.

14 In fact, this is a stack of your decisions,
15 most recent decisions on critical circumstances involving
16 both countervailing duties and anti-dumping. Every one of
17 them used a six month period. In the welded pipe case on
18 China, I note that the petitioners in that case argued that
19 the Commission should use only five months of data prior to
20 and after the filing of a petition.

21 Given that Commerce's affirmative preliminary
22 countervailing duty determination was issued essentially 150
23 days after the case was filed, the Commission rejected that
24 argument and even in that case, as in all of the others,
25 applied the six month period.

1 I think the Commission probably does it for a
2 number of reasons. One it's a good benchmark to look at.
3 It does include all of the imports that come in, before the
4 Commerce Department completes its preliminary phase, and
5 that's usually in the dumping case when it completes its
6 preliminary phase.

7 Secondly, unlike the Commerce Department,
8 which quite frankly just applies a mathematical formula in
9 its analysis of massive imports, if imports during the
10 pre-petition period, post-petition period exceed imports
11 during the pre-petition period by 15 percent or more --

12 COMMISSIONER WILLIAMSON: Okay.

13 MR. WAITE: Your mandate is not
14 that. Your mandate is to look at the volume of imports and
15 the trend of imports and the timing of imports. I think
16 looking at the six month period gives you substantial time
17 to consider that.

18 COMMISSIONER WILLIAMSON: What about
19 Petitioners' argument that the post-petition effects that
20 one often sees in a case that are not present here, and
21 that's why the critical -- finding critical circumstances
22 would be appropriate here?

23 MR. WAITE: Well I think there, they are
24 getting into issues that have more to do with injury than
25 critical circumstances. But is there data, explicit data on

1 the record about how the petitioners have been doing in the
2 third quarter and fourth quarter? They mentioned that.

3 But I don't think there's information that can
4 lead you to draw any conclusions about that, and in any
5 event, the statute says that the Commission should consider
6 the timing and volume of imports. It should consider
7 inventories, and I know we can have a discussion about those
8 inventories accrued, purchasers' inventories as well as
9 importers' inventories.

10 The Commission has historically looked only at
11 importers' inventories, because there, I believe, what the
12 Commission is doing is looking at what is overhanging the
13 market. What could diminish the remedial effect of an
14 anti-dumping order, and what could diminish that effect is
15 if importers built up significant inventories, as they have
16 done in those cases where the Commission has made
17 affirmative critical circumstances determinations in honey.

18 Actually, it was 13 years ago this month, that
19 that overhang of inventory could continue to have a negative
20 impact on the domestic industry, because the domestic
21 industry would still be competing with those imports, as
22 distributors, as importers release that --

23 COMMISSIONER WILLIAMSON: Do you disagree with
24 the Petitioners' claim that inventory overhang is having an
25 impact? That was the statement I thought I heard them make

1 this morning.

2 MR. WAITE: I don't know. I don't know.

3 They've said that. I haven't seen anything that quantifies
4 that impact. I've heard a lot of speculation. I've heard a
5 lot of anecdotal references to one customer.

6 COMMISSIONER WILLIAMSON: My time is running
7 out. But what about the question about seasonality, and
8 whether we should be comparing '13 to '14? Yeah, well '13
9 to '14.

10 MR. WAITE: Thank you, Commissioner. I
11 believe that the wire rod industry is not seasonal, and I
12 believe it was Mr. Kerkvliet this morning, who conceded that
13 there's not much seasonality in wire rod. Unlike perhaps
14 other products, where you might have a buildup in the winter
15 for spring construction, wire rod is used in products that
16 are used year-round, everything from coat hangers to paper
17 clips. There's no seasonality at all.

18 COMMISSIONER WILLIAMSON: Okay, okay. Thank
19 you for those answers.

20 MR. WAITE: Thank you, Commissioner.

21 CHAIRMAN BROADBENT: Commissioner Johanson.

22 COMMISSIONER JOHANSON: Thank you, Chairman
23 Broadbent, and I would also like to thank all of the
24 witnesses and their counsel for appearing here today.
25 Subject imports from China have increased approximately 430

1 percent from 2011 to 2013, and appear to have taken market
2 share directly from the domestic industry.

3 That is the case, whether you look at the
4 entire market or the merchant market. Under what definition
5 of significant do you contend that significant subject
6 import volume is not demonstrated on this record? I'm
7 sorry, it's 430,000 percent. It was inflated a bit.

8 MR. DOUGAN: Well, you know, if import volume
9 had actually been zero, than the import increase would have
10 been infinite by Mr. Rosenthal's calculations. So you know,
11 we'd be talking about quantum physics.

12 I think the -- the answer here is that, you
13 know, based on the conditions of competition and based on
14 what is -- what the overall strategy of these domestic
15 producers is with respect to the balance between this
16 product and the other products that they make on the same
17 mill.

18 The increase to a level that it is at now is,
19 you know, has been determined in the past by the Commission
20 to not be significant, and I think it's not clear that it
21 has led to particular displacement of volume, other than
22 that that might have been precipitated by a redirection of
23 capacity to other products that it finds to be more
24 profitable.

25 COMMISSIONER JOHANSON: Thank you, Mr. Dougan.

1 According to the pricing data the Commission's collected,
2 prices for wire rod from China were below those for
3 U.S.-produced product in 36 of 38 instances, and the average
4 under-selling margin was 9.2 percent. Does this not show
5 significant under-selling on the record?

6 MR. DOUGAN: Commissioner Johanson, Jim Dougan
7 again. We're not arguing with the plain facts that the
8 pricing data show, that the Chinese wire rod was, you know,
9 imported at a lower price level. But we believe that that
10 is a reflection of, among other things, the significantly
11 longer lead times associated with getting the product to the
12 United States, and the irrevocability of the purchase orders
13 and things like that.

14 They're tied into a purchase that's going to
15 happen, you know, two to three to four months from now
16 delivery, and they're kind of hoping that market conditions
17 pan out in the meantime. That single digit level of
18 under-selling is essentially, you know, a discount or a
19 premium for the domestic industry product, that compensates
20 them for the risk of that commitment.

21 COMMISSIONER JOHANSON: Thank you again, Mr.
22 Dougan. Petitioners this morning explained that demand
23 doesn't explain the industry's current condition, and
24 neither does non-subject import volume or non-subject import
25 prices. What other factors might explain the domestic

1 industry's decline in performance during the Period of
2 Investigation, including interim 2014?

3 MR. DOUGAN: I think -- Jim Dougan again. I
4 think, as I mentioned in response to Commissioner Pinkert,
5 if you look at what it actually was that led to declines in
6 the operating income of the domestic industry. It wasn't a
7 squeeze with regard to raw materials. It was increasing
8 absolute, as well as relative other factory costs.

9 That was the driver, if you look at their --
10 if you look at Table 6-1. This isn't a situation where you
11 can argue that, you know, we've got a relatively flat level
12 of fixed costs, but now it's just being spread over smaller
13 volumes, and therefore it's an increase only in relative
14 terms.

15 There's actually an increase in absolute other
16 factors costs as well, and my interpretation of that -- I
17 mean it's difficult to know precisely what is in other
18 factory costs. It's kind of the, you know, everything
19 that's not raw materials and direct labor, right, that goes
20 into the direct cost of the product. So the mix, I'm sure,
21 varies from producer to producer.

22 But when you've got a situation with very
23 significant capital expenditures and additions to capacity
24 during this POI, and you know, admittedly much of it for
25 other products made on the same equipment, some of that is

1 going to show up in other factory costs.

2 So to a degree, that increased in absolute
3 terms as well as in relative terms, and that that is the
4 source of the decline in operating income. It to me says
5 that there are other factors at play.

6 Again, my view is that if price competition
7 from subject imports is leading to the diminishment in
8 profitability, you'd expect to see it in a narrowing margin
9 with regard to their inability to recover raw materials
10 costs, and you don't see that here.

11 COMMISSIONER JOHANSON: Thanks again, Mr.
12 Dougan. Apparent consumption has increased during the
13 Period of Investigation. How should the Commission view the
14 domestic industry's decline in performance through a period
15 of modest recovery?

16 MR. DOUGAN: Jim Dougan again. To go -- I
17 guess to echo the previous point, to the degree that we're
18 seeing demand recover, demand for this product recover in
19 anticipation of a demand recovery, which is what everyone is
20 hoping for, you know, capacity is lumpy. Adding it often
21 occurs in large increments.

22 So the decision to make that investment and to
23 add that capacity, you know, it's a little bit like a -- it
24 takes a while to digest to some degree, and if that has been
25 added in anticipation of growth in demand, then that

1 investment needs to amortized over current production and
2 demand levels, then you know, that is --

3 In other words, demand may not have caught up
4 with the additional available capacity that's been added.

5 COMMISSIONER JOHANSON: Thanks, and to follow
6 up on that question, you all argue at page three of your
7 brief that the U.S. producers' internal consumption or
8 transfers to related firms are insulated from import
9 competition. How should we interpret the fact that during
10 the domestic industry -- that the domestic industry's
11 commercial U.S. shipments fell noticeably during 2011 and
12 2013, in that expanding market while the domestic industry's
13 non-commercial U.S. shipments did not?

14 MR. DOUGAN: Jim Dougan again. The fact that
15 their non-commercial shipments did not reflects, I think,
16 the degree of their more stable commitment to the downstream
17 products that they produce, like wire and other things using
18 wire rod.

19 The fact that the remaining capacity that
20 might normally be allocated or dedicated to wire rod is
21 diminished in favor of other products that are made on the
22 same equipment, like rebar and other things which we know to
23 be more valuable and more profitable, you know, is
24 unsurprising. So you know, they think about their
25 downstream wire production; they think about their rebar and

1 other bar products.

2 And then sort of what's left over gets made
3 for wire rod sold to the merchant market. You know, that
4 may have been of lesser focus to them over the period.

5 COMMISSIONER JOHANSON: Thanks again. How do
6 you all respond to the Petitioner's argument that Buy
7 America and Buy American preferences do not insulate the
8 domestic industry from competition from subject imports, and
9 how large a part of the U.S. market are Buy America and Buy
10 American sales at this point? Mr. Neeley.

11 MR. NEELEY: I think we can provide the
12 percentage in the post-hearing, because I think it's
13 confidential. It's in the staff report. I think we can
14 derive it from there, so we'll be glad to provide that.

15 I think it's of some significance, I mean.
16 I'm not saying it's overwhelming, but it's a significant
17 part of the market. I think that's a fair description, and
18 that does not allow the Chinese to sell into that part of
19 the market.

20 COMMISSIONER JOHANSON: Do you have view on
21 where this might be heading, with Buy America or Buy
22 American? I mean there's talk of Congress revisiting the
23 issue of infrastructure, building U.S. infrastructure. I
24 mean that could change the situation.

25 MR. NEELEY: If you can tell me what the

1 Congress is going to do, you know, I could probably predict.
2 I'm not so sure that we're in the position to be able to
3 know what will happen, at least in the foreseeable future
4 with them.

5 COMMISSIONER JOHANSON: That's a good point.

6 MR. NEELEY: Thank you.

7 MR. DOUGAN: Commissioner Johanson, just one
8 thing to add to that.

9 COMMISSIONER JOHANSON: Yes.

10 MR. DOUGAN: Even if the proportion of
11 customers who either by law or by preference, Buy American
12 only remains the same. One would think that a large
13 investment in infrastructure in this country would sort of
14 be the rising tide that lifted all boats.

15 So that percentage, whatever it may happen to
16 be, which we'll tell you in the post-hearing, would
17 represent a much larger absolute volume of rod.

18 COMMISSIONER JOHANSON: Thank you. My time
19 has expired.

20 CHAIRMAN BROADBENT: Commissioner Schmidtlein.

21 COMMISSIONER SCHMIDTLEIN: Thank you. All
22 right. I have a few things I wanted to follow up on, and
23 some of them may seem sort of related. First with regard to
24 the lead time, and the idea that wire rod is made to order,
25 when such ordered by the customer.

1 Could one of the maybe the industry witnesses
2 talk about how long a product is held in inventory, and
3 whether all of that product is destined for a particular
4 customer? In other words, it's been brought into the
5 country at the specific order of another other customer
6 here?

7 MR. DOUGAN: I think that the people who are
8 here from the Chinese industry are not actually the
9 importers. So the people who they're selling to, these
10 companies and the other companies, are primarily selling to
11 importers. So to the extent that the inventories would be
12 held by anybody or for what length of time, would best be
13 answered by the people who are those importers, rather than
14 our guys who are basically just selling the product.

15 COMMISSIONER SCHMIDTLEIN: Okay, okay. So we
16 don't have that information.

17 MR. DOUGAN: We don't have that information
18 right now. We do not.

19 COMMISSIONER SCHMIDTLEIN: Okay, and I guess I
20 would invite both sides to comment in the post-hearing on
21 what it means that this is made to order. Is that just --
22 is this just a quantity notion, quantity and price? In
23 other words, you're not suggesting that wire rod is
24 something other than a mere commodity or commodity-like
25 product?

1 MR. DOUGAN: I think the distinction in it
2 being made to order suggests that, you know, there is an
3 intent, you know, to -- there would be a demand for it, for
4 it to be consumed, that this is, you know, these companies
5 aren't intending to purchase it to hold it to inventory and
6 speculate, and hope that, you know, prices move in a way
7 that they can make an arbitrage margin on their inventories.

8 I think that would, especially given the
9 physical nature of this and the production and lead times
10 involved, I think that would be a pretty risky proposition.
11 So that's -- it's intended to be back to back, is where
12 we're going with that.

13 COMMISSIONER SCHMIDTLEIN: Okay, okay, thank
14 you. So I wanted to understand a little bit more the
15 argument in the brief on the metal margin, and I'm looking
16 at, for China Iron and Steel, where you discuss this. It's
17 on page 15. But at one point you describe what the metal
18 margin is, that it's the difference between the net price of
19 rod and the cost of the scrap metal; is that right?

20 MR. DOUGAN: Correct.

21 COMMISSIONER SCHMIDTLEIN: Okay, and when you
22 say "net price," what's been netted out of the price?

23 MR. DOUGAN: It is net of returns and rebates.
24 It uses the pricing product data. So it's whatever that is,
25 the net price. So it's net of, you know, returns and

1 rebates, all the things that go into -- or that netted out
2 of the sales value and the pricing data.

3 COMMISSIONER SCHMIDTLEIN: Okay. So if I
4 understand your argument in this regard, it's that basically
5 that margin was constant at the beginning of the period you
6 cite and then the end period you cite, roughly the same?

7 MR. DOUGAN: That's part of -- part of the
8 argument is that it ended up at, you know, where it began.
9 I think I can say, without getting into anything else, that
10 it never went lower than when it began, which to me would be
11 evidence of again, like the pressure on that squeeze.

12 And in fact, as you see from quarter to
13 quarter in Exhibit 5, it actually went up for a while,
14 suggesting that even as imports were increasing and there
15 was this supposedly injurious price effect, that the margin
16 spread, that they were able to more than pass on any changes
17 in the margin.

18 COMMISSIONER SCHMIDTLEIN: Well I guess that
19 was my question, and maybe it is in Exhibit 5. Did you --
20 what happened to the margin in between the two, you know,
21 the two end points?

22 MR. DOUGAN: Right. If you look at Exhibit 5,
23 you can actually see.

24 COMMISSIONER SCHMIDTLEIN: Okay, okay, and I
25 don't know why I've lost my place here for that particular,

1 but the time period you chose was -- what was it, first
2 quarter or --

3 MR. DOUGAN: '12 to second quarter of '14.

4 COMMISSIONER SCHMIDTLEIN: Right. So and why
5 was it -- oh, I guess because that's when the volume started
6 coming in. This is what --

7 MR. DOUGAN: I think that's partly it. I
8 think it may also be that the -- I'm not sure that we had
9 American metal -- medical market -- metal market data from
10 prior to that. But certainly the volumes in 2011 were
11 fairly insignificant with respect to China. So the degree
12 that you're going to see the price impact from the Chinese
13 volume you're going to see it in 2012.

14 But I can add one thing, which is -- which may
15 be helpful in putting this into context. I also presented
16 information, and it's in the staff report, about the raw
17 materials to net sales ratios for the domestic producers,
18 and that that actually declined between '11 and '13.

19 What's interesting about that is that in 2011,
20 when the POI began, so essentially before the Chinese were
21 coming in here in any significant volume, it was lower.
22 That margin was lower. That percentage was lower than it
23 was in the prior investigation, the 2005 investigation, if
24 you look at those ratios.

25 So you know, and it actually improved during

1 the course of this POI. So to the degree that there was,
2 you know, some kind of shift in the nature of the ability to
3 pass through a metal margin, that predated the Chinese
4 imports' entry into the market.

5 COMMISSIONER SCHMIDTLEIN: So I just want to
6 make sure I understand the argument, though, about this,
7 that it's you all's position that the prices of wire rod
8 move with the price of scrap metal, and that's shown through
9 this analysis of margin. Is that right?

10 MR. DOUGAN: That is right.

11 COMMISSIONER SCHMIDTLEIN: So and when I look
12 at the AUV data, though, I see that, you know at least for
13 commercial shipments, I believe when I looked at it, that
14 the AUV data fell more than the unit COGS, and I realize
15 unit COGS takes into account more than just raw materials.
16 So I know this is -- those numbers are confidential.

17 But when you look at the decrease, right. So
18 in other words, the prices went down more than their unit
19 COGS. So if they're always moving constant, you know, why
20 is that? Why am I seeing that? Is that SG&A? Is that what
21 you're going to say?

22 MR. DOUGAN: No. My answer to that is that
23 element of other factory costs, because I think it is, and
24 you know, the trade press, looking at American Metal Market
25 from day to day, the conversation about scrap and with

1 regard to rod is, you know, what's the price going to be
2 next month, you know?

3 We don't know. There's a lot of volatility in
4 the scrap price, and that leads to a volatility in the rod
5 price, that isn't driven by any kind of underlying demand
6 factors. It really is driven by scrap, and there's articles
7 from as far back as '11 and '12 and even before the Chinese
8 were coming here in any significant volumes.

9 Customers saying, you know, this is crazy. We
10 don't know what's going to happen to our price from month to
11 month, because it's all dependent on our volatility to the
12 scrap price. Demand isn't changing in any particular way;
13 it's just the price moves with scrap.

14 COMMISSIONER SCHMIDTLEIN: But you -- in the
15 brief you say -- well, you know, competition can affect the
16 price, outside of the raw material price.

17 MR. DOUGAN: But I think if you were -- you
18 would -- if it didn't track the scrap price as cleanly as it
19 does, you would see -- and because everyone kind of knows
20 that, you know, when the scrap prices are announced each
21 month, then the rod prices get quoted. I think it was a
22 representative of the domestic industry this morning who
23 said, you know, his own scrap guy doesn't know what it's
24 going to be next month.

25 It might go up, it might go down, it might

1 stay the same. They really don't know. There's a
2 tremendous amount of volatility. So the prices do tend to
3 track that, and to the degree that you would see pricing
4 pressure relative to say an index that everyone in the
5 market understands is an important indicator, the key
6 indicator maybe even, you'd see it in the metal margin
7 shrinking, because you wouldn't -- the overall market price
8 for these things wouldn't be set by any individual producers
9 of the factory costs or what its depreciation is or anything
10 like that. Everybody's looking at the scrap price.

11 So if you're seeing pricing pressure, you'd
12 see it in that ratio, and you kind of don't.

13 COMMISSIONER SCHMIDTLEIN: So the last
14 question I had has to do with the premium -- I meant to ask
15 this earlier -- the premium that you claim for the lead
16 time, for the lack of lead time for the U.S. products, and
17 that that is what accounts for the under-selling.

18 So my question is is that just a coincidence
19 or, you know, what's the evidence in the record that those
20 particular numbers reflects the premium? Do you see what
21 I'm trying to ask here?

22 MR. DOUGAN: I understand. There was no
23 question asked of purchasers like there was --

24 COMMISSIONER SCHMIDTLEIN: Yes, exactly. So
25 how do I --

1 MR. DOUGAN: Unfortunately, we don't have
2 that. So you're looking --

3 COMMISSIONER SCHMIDTLEIN: Right.

4 MR. DOUGAN: I think if -- it is somewhat
5 impressionistic, to be honest. I mean it's a single digit
6 under-selling margin. I think if you were seeing
7 under-selling margins in the 20 and 30 percent range, you
8 know, would that be reasonable premium or compensation for a
9 difference in lead time? Perhaps not.

10 When you're seeing single digit under-selling
11 margins, you know, that in my opinion seems like more
12 reasonable --

13 COMMISSIONER SCHMIDTLEIN: It's a
14 commodity-like product. I mean don't commodity-like
15 products --

16 MR. DOUGAN: But in terms of trading --

17 COMMISSIONER SCHMIDTLEIN: --normally trade
18 pretty close together?

19 MR. DOUGAN: They ought to. But again, if the
20 terms of trade are that different, I mean we're not talking
21 one week versus two weeks. We're talking, you know, 15 days
22 versus 60 or 75 days.

23 I mean those are fairly substantial, and when
24 you are -- you have an irrevocable, you know, letter of
25 credit, and the stuff's going to be in production and on the

1 water for three months or four months, you're hoping to be
2 able to predict what -- that you're still going to need it
3 to the same degree that you think you do now.

4 And given the volatility in the scrap price,
5 the ability to predict and understand, you know, what you
6 are going to be able, you know, what your price for that is
7 going to be, there is a risk to you as a purchaser. And you
8 know, a single digit under-selling margin to me does not
9 seem like an unreasonable indication or compensation for
10 that risk.

11 COMMISSIONER SCHMIDTLEIN: Okay. All right,
12 thank you. I have no further questions. Thank you all very
13 much.

14 CHAIRMAN BROADBENT: Okay, let's see on table
15 2-8 of the staff report and this would be for you Mr.
16 Dougan, it shows that most purchasers considered the U.S.
17 product to be inferior to the Chinese product with respect
18 to price. Price was considered a very important factor in
19 53 out of 54 purchasers we surveyed. What should we take
20 away from this in terms of our analysis of price?

21 MR. DOUGAN: I think with respect to the physical
22 product I don't think we are making an argument that it's
23 different, that you can't use it for the same applications.
24 I think what we are saying is the pricing is different
25 because as I was discussing with Commissioner Schmidtlein

1 the terms of trade are different in that there is a risk
2 associated with buying the Chinese product, associated with
3 how long it takes to get it and their ability to cancel
4 orders or modify your quantities ordered over the interim
5 period so that is what we are saying is the difference.

6 CHAIRMAN BROADBENT: Okay, how would you respond
7 to Petitioner's -- the Petitioner's statement that they have
8 sufficient capacities to serve the entire U.S. market for
9 wire rod?

10 MR. DOUGAN: Well it's interesting and I'm going
11 to be cautious about getting into confidential data, but
12 there are -- the data that are presented in the pre-hearing
13 report with regard to industry capacity which are in Section
14 3 not only overall capacity but wire rod capacity as
15 presented at table 3-3 and you can compare them to apparent
16 consumption and you know it's not always greater than 100%.

17
18 There are data presented in Petitioner's
19 pre-hearing briefs that "some other number that is much
20 higher with regard to wire rod capacity," I'm not sure where
21 that comes from but it doesn't come from the staff report,
22 so the idea that you know that there is absolutely just
23 loads of available wire rod capacity at all times to serve
24 all customers and all demand in the United States I don't
25 think really holds water.

1 It's you know, not far off but again it's about
2 that capacity is an allocation of shared capacity to some
3 degree and when that capacity might be demanded for higher
4 margin products, it's you know understandable that the wire
5 rod might not get to the front of the que.

6 CHAIRMAN BROADBENT: So you are saying that they
7 can't supply the entire market because of their other
8 priorities?

9 MR. DOUGAN: I mean at times. You know the --
10 because they themselves say you know we shift, based on
11 relative demand and relative in different products. If
12 they could devote a constant share of capacity always to
13 wire rod and make sure that those customers always get
14 served to the you know, exclusion of others, I mean
15 hypothetically they could come close to supplying a quantity
16 at least an aggregate that is an aggregate similar to the
17 overall quantity demanded but they you have to look at
18 products and yes they may make the full spectrum of products
19 but do they make it in the same proportions that is demanded
20 by the market.

21 Are there customers who at a given time have a
22 need for a particular product that is not going to get
23 served, I think that's unquestionably true so I don't think
24 it's really a true statement to say that they could serve
25 100% of the demand in the market, 100% of the time.

1 CHAIRMAN BROADBENT: Okay, I've got to go back
2 and look at your correlation argument but let me just ask
3 this question and you can respond. On page 7 Exhibit 3 of
4 your brief you assert that U.S. producer's production
5 capacity utilization and apparent U.S. consumption have very
6 little correlation with profitability contrary to the
7 long-time arguments of the domestic industry. Would we
8 expect a different outcome if the dependent variable here
9 were the value of operating income as opposed to operating
10 income margins?

11 MR. DOUGAN: That is a very good question and I
12 will look into it for the post-hearing.

13 CHAIRMAN BROADBENT: Yeah I probably wouldn't
14 understand it if you explained it to me now anyways. I
15 hate to say but --

16 MR. DOUGAN: But what I can say is given the
17 lack of correlation and the numbers that don't appear here
18 per Commissioner Kieff's request provide them in the
19 post-hearing. It's not just the lack of explanatory power
20 of the model or lack of correlation that you are seeing.
21 The coefficients for each one of these are not statistically
22 significant, that's not shown here but so there's -- it's
23 not just no correlation, it's not just you know these things
24 don't explain it, there's no indication that the results
25 that you see would be derived of anything but random chance

1 but we will look into that more and see if we get a
2 different result.

3 CHAIRMAN BROADBENT: Okay, great. Let's see Mr.
4 Dougan you are more than earning your wage here as I ask you
5 another question.

6 MR. DOUGAN: Tell me about it.

7 CHAIRMAN BROADBENT: How do we deal with the
8 fact that we have got this modest demand recovery and we
9 still have -- even though we are not expecting huge great
10 performance from the domestic industry, we are really not
11 seeing anything and they are not benefitting at all from the
12 increase in demand, what is going on?

13 MR. DOUGAN: Based on the redeployment or the
14 shift in production among products shared on the same mill
15 and based on statements like the one from the President of
16 Cascade, it seems to me that you know faced with a choice of
17 making a product where demand is increasing by a lot and
18 margins are very strong and where demand is recovering
19 marginally and margins are somewhat lower and always have
20 been by the way, this isn't the impact of the Chinese
21 imports, you are going to product elsewhere so I mean if we
22 saw a profitability from the mills as a whole, I think you
23 might see a different picture, but you are not seeing it
24 here.

25 CHAIRMAN BROADBENT: Okay and then I had back on

1 my -- I want to talk about demand in the future and maybe
2 there's an industry rep here that can help me but do we
3 think demand for this product will pick up worldwide so we
4 have more of a balance and prices can start rising globally
5 again?

6 MR. NEELEY: I guess we ought to just take a
7 look at some studies and see what we can come up with for
8 the post-hearing, it's probably some -- I don't want to
9 speculate off the top of our heads.

10 CHAIRMAN BROADBENT: Okay the folks in the back
11 of the room? Whether you expect global demand to go up?

12 MR. WANG: This is Weizhong Wang from Angang. I
13 will try to make some statement about demand trending. I
14 think the national economy -- and we can say this year,
15 that import tonnage which were high to support this major
16 economy and also given the down trend and down trades in a
17 bad turn, -- outnumber the down trade so it's hard for me to
18 say that. If in this nation for the people, so that this
19 year such as wire rod import tonnage is still at a high
20 level because there is very strong demand and the down trend
21 for the product. We can say for the argument, today we can
22 say that there is a worry you know, the local mills also
23 produce the down trend product so it's not wire rod, it's
24 just a semi-product, a segment downtrend product so that
25 let's relive the local, we have often competed, also

1 competed where there are customs.

2 So at the year-end economy I think that there is
3 still good demand for wire rod, here and in the future.

4 MR. NEELEY: And we will try to get you some
5 more specific if there are projections out there about that,
6 I mean that's impressionistic obviously of what is going on
7 but we can see what else we can find.

8 CHAIRMAN BROADBENT: Thank you very much I
9 appreciate that answer. Let's see I have one more here,
10 this is for the post-hearing. On page 5-2 of the staff
11 report we have indexes for three types of scrap for each of
12 our pricing products, can you explain which type of scrap
13 would be used to produce it and if you could do that for the
14 post-hearing that would be great and with that I will yield
15 to Commissioner Williamson. You told me you didn't have
16 any more questions, okay, all right, Vice Chairman Pinkert?

17 VICE CHAIRMAN PINKERT: Just a couple of
18 follow-up questions. You heard me ask the earlier panel
19 about the extent to which producers are competing with their
20 own customers for sales of the end use products that the
21 customers produce and the earlier panel I think tended to
22 minimize the extent to which that might have an impact on
23 purchasers seeking alternative sources for imports and I'm
24 wondering if you can respond to the points that they are
25 making.

1 MR. DOUGAN: Jim Dougan we can respond more
2 completely I think in post-hearing but in general you know
3 this is, this is fairly unusual degree to the amount to
4 which there is competition so I mean I think some of them
5 said that oh well you know, their customer's don't care as
6 long as they get it at the cheapest price but I think they
7 care that they can get it and you know if you are in a
8 situation and again it's not about not making everything and
9 it's not about having certain amounts of available capacity
10 but it very well is about priorities and you know your own
11 internal production be it for downstream or of another
12 product of the same mill I think is going to come first.

13 So I can't imagine that that doesn't have an
14 impact on the conditions of competition but you know we will
15 look at what they said and answer more completely in
16 post-hearing.

17 VICE CHAIRMAN PINKERT: That would be helpful
18 and also if you could answer here or in the post-hearing,
19 how would we see that prioritization by the producer. You
20 said that you would expect that they would prioritize their
21 own production over the production by a customer of a
22 downstream product but how would we see that prioritization
23 in the evidence of record in the case?

24 Would it come up only because of supply
25 constraints that are imposed on customers?

1 MR. DOUGAN: I think you see it in the share of
2 sales and the share of production that is consumed or
3 transferred internally, that would be number one. And then
4 you see it in like I said the share of capacity that is
5 being used to not make wire rod at all but to make other
6 things and I think if there are merchant market wire rod
7 customers were the priority, you wouldn't see those trends,
8 you would see them try to maintain a fairly you know, even
9 balance of that and you don't so that would be my short
10 answer.

11 VICE CHAIRMAN PINKERT: I look forward to the
12 longer answer on that one. Now, also on the contracts
13 versus spot market, there was some discussion earlier about
14 whether contract sales would insulate the domestic industry
15 to some extent from subject import competition and I believe
16 the earlier panel tended to minimize the significance of the
17 contract segment or the contract sales so I want to give you
18 an opportunity to respond to that as well.

19 MR. DOUGAN: Jim Dougan again my impression is
20 that the contract sales are not a significant portion of the
21 sales here right, I don't have the -- well I have the data
22 in front of me but I don't have them pulled up, so I think
23 it would have to do with the length of the contract and the
24 proportion of the demand that went in the contracts versus
25 spot sales so I would think that the degree of influence

1 from the spot market would be stronger to the degree that
2 spot market sales represented a greater proportion of their
3 overall shipments so there may be however, applications
4 where it's all contracts that may align with situations
5 where Buy America is important or other things like that so
6 to that degree, that would aid for the insulation but I
7 think in general I mean I could be wrong here but I don't
8 think the contract sales are that you know, not significant
9 enough to be a major factor here.

10 VICE CHAIRMAN PINKERT: Thank you, thank you
11 Madame Chairman.

12 CHAIRMAN BROADBENT: Commissioner Williamson?

13 COMMISSIONER WILLIAMSON: Thank you, Mr. Yang
14 and Mr. Wang, we very much appreciate your coming today it's
15 helpful to have you present. I don't know if you can now
16 or in post-hearing if you want to give us some comments on
17 conditions in the Chinese market over the last 3 years and
18 what conditions are like now.

19 MR. NEELEY: Conditions is Commissioner what you
20 are primarily looking at?

21 COMMISSIONER WILLIAMSON: Yeah and demand
22 conditions yes.

23 MR. NEELEY: Okay yeah, will do.

24 COMMISSIONER WILLIAMSON: Okay, thank you. Mr.
25 Waite I think I heard you say that the shipments that came

1 in after the addition, some clients were by and much ordered
2 before the Petition was filed so does that mean that your
3 clients did not place any orders after the Petition was
4 filed?

5 MR. WAITE: Sorry, Commissioner Williamson it's
6 Fred Waite, I'd like to hold that for the post-conference
7 confidential. I can tell you that for the client the
8 importer who is prominently mentioned in the Petitioner's
9 brief in terms of their looking at critical circumstances,
10 that importer did not place any new orders after the
11 Petition was filed.

12 COMMISSIONER WILLIAMSON: Okay.

13 MR. WAITE: All of its orders had been
14 negotiated and signed before the Petition was filed.

15 COMMISSIONER WILLIAMSON: Okay.

16 MR. WAITE: But I can give you dates and facts
17 in the post-hearing.

18 COMMISSIONER WILLIAMSON: Okay, thank you for
19 that. Mr. Neeley you assert that Respondent Chinese
20 producers account for virtually all subject imports during
21 the period of investigation, could you please address
22 whether this is also true for the first half of 2014?

23 MR. NEELEY: I believe it's true for the entire,
24 the overall period of investigation in general as an
25 aggregate use.

1 COMMISSIONER WILLIAMSON: Okay, thank you. I
2 think when I raised the question about producer inventories,
3 I think we didn't have that data and so I was wondering if
4 Petitioner's had proposed asking producers to provide that
5 information about their inventories and I was wondering if
6 you had any objections to that?

7 MR. DOUGAN: We don't have any objections. I
8 mean we much prefer to argue on facts than you know
9 speculation.

10 COMMISSIONER WILLIAMSON: Wow, okay. No thank
11 you and good, so I guess those two windows when those
12 inventories were ordered, okay. And with that I have no
13 further questions. I want to thank this panel for their
14 testimony.

15 CHAIRMAN BROADBENT: Mr. Johanson?

16 COMMISSIONER JOHANSON: Thank you Chairman
17 Broadbent. Mr. Neeley you stated earlier today that Chinese
18 producers left the U.S. market in 2009 due to poor economic
19 conditions in the U.S. market. Where did they go at that
20 time? Or was there a cut-back in Chinese production
21 overall?

22 MR. DOUGAN: Jim Dougan, yeah Commissioner
23 Johanson I think it's helpful if you look at the -- this is
24 the staff report from the 2005 versus now and you compare
25 the I don't know if it's the same table it's from Section 7,

1 it's 7-1 in the 2005 case and 7-3 in the current one. What
2 you can see is that the -- it looks like the home market
3 shipments are withheld as confidential in the 2005 one, but
4 the total exports between 2002 and 2004 range between about
5 700,000 short tons and 2 million short tons.

6 In this current deal the home market shipment --
7 and that is out of total shipments of say between 16 and 19
8 million so very, very small and it was almost all going to
9 the home market apparently. You look now, total shipments
10 again between 16 and 17 million so not a whole lot different
11 but total exports range between 3 and 6 million. Home
12 market shipments were you know 10 to 13 million so it
13 appears that you know, this discussion about the home market
14 demand for China being lower now than it was then may be
15 true but all that volume didn't come to the United States.

16 There are other export markets in the range where
17 essentially I mean you know we are talking a couple of
18 hundred thousand short tons for the U.S. market versus 3, 4
19 or 6 million tons going to other export markets, that's
20 where it's going.

21 COMMISSIONER JOHANSON: But wasn't the entire
22 world economy in the trough at that point?

23 MR. NEELEY: It actually changed in some markets
24 at that time and some of the other markets were not in the
25 trough to the same extent of the United States. You also I

1 think have to recognize that for many of these companies it
2 simply is easier to sell in China if you have the risk of
3 selling to the U.S. where the market seems to be spinning
4 out of control, they can sell to Asia or they can sell even
5 to China and the home market which has always been
6 significantly important to these companies than the U.S.
7 market.

8 MR. DOUGAN: And they could also sell into
9 markets where you know there may not be a domestic industry
10 to compete against so you know in that sense it might be
11 more attractive. It obviously is more attractive, they
12 have millions of tons to export and it didn't come here so
13 obviously it is more attractive somewhere else, there was no
14 order, there was nothing stopping it from coming here and it
15 didn't come here.

16 COMMISSIONER JOHANSON: All right thanks for
17 your explanations.
18 Your pre-hearing brief at page 4 points out that some of the
19 price incentives to producing products other than wire rod
20 on bar and in bar and in rod mills, to what extent did
21 Chinese producers produce products other than the wire rod,
22 the bar and rod mills?

23 MR. NEELEY: I think the answer to that in their
24 questionnaires that this is unlike the U.S. industry it is
25 not done in the same way. We have not said that we don't

1 produce bar by these companies, but they are not being
2 produced in the same machinery which is what the question
3 was that the Commission had asked.

4 MR. DOUGAN: Commissioner Johanson it's table
5 7-4 on page 7-9 of the pre-hearing report and there is based
6 on the responses from these foreign producers, zero
7 production of other, you know, the same types of products
8 that were asked about in the domestic industry so at least
9 among these purchasers you are not seeing it.

10 COMMISSIONER JOHANSON: All right thanks for
11 your responses and that concludes my questions, my thanks
12 again to all of you for being here today.

13 CHAIRMAN BROADBENT: All right, no further
14 questions from the Commissioners as I understand it. The
15 Commissioners don't have any further questions does the
16 staff have questions for this panel?

17 MR. CORKRAN: Douglas Corkran, Office of
18 Investigations, thank you Madame Chairman staff has no
19 additional questions.

20 CHAIRMAN BROADBENT: Do the Petitioners have any
21 questions for this panel?

22 MR. ROSENTHAL: Paul Rosenthal, Petitioners have
23 no questions.

24 CHAIRMAN BROADBENT: Okay, thank you in that
25 case I want to thank the panel very much for their testimony

1 and taking time away from their businesses to come here
2 today and I'll dismiss you now. And with that we come to
3 closing statements. Those in support of the Petition have
4 7 minutes from direct and 5 for closing for a total of 12
5 minutes and those in opposition have 30 minutes from direct
6 and 5 for closing for a total of 35 minutes. As is our
7 custom we will combine those, of course you do not have to
8 take all of that time. We will start with those in support
9 of the Petition.

10 CLOSING REMARKS

11 CHAIRMAN BROADBENT: You may begin when you're
12 ready, Mr. Rosenthal.

13 MR. PICKARD: Good afternoon. For the record,
14 I'm Dan Pickard of Wiley Rein. I'm going to keep my
15 comments very brief, and then defer to my colleague and
16 co-counsel.

17 First, and as always, would like to thank the
18 staff and the Commissioners for their time. I think I'd
19 like to sum up one aspect of the case. And I would agree
20 with my colleague, Ms. Cannon, that while there may be no
21 simple cases, this really does fall under the category of a
22 classic case.

23 When you look at the traditional, classic,
24 affirmative determination by the ITC, traditionally, kind of
25 the jargon at the bar has been the magic "x" case. It's the

1 case where you see volumes increasing over the POI and
2 hand-in-hand you see profits decreasing, and that's exactly
3 what we have here.

4 There's been a lot of talk regarding the
5 astronomical percentage increase of imports, but on absolute
6 basis it's a 600,000 ton increase over a three-year period
7 that took approximately 13 percent market share from the
8 domestic industry and transferred to the Chinese on the
9 basis of price. That's a significant volume affect.

10 When it comes to price affects, and the
11 significance of underselling, the Commission's data
12 demonstrates 95 percent incidents of underselling by the
13 Chinese imports. And when it comes to a classic in dicta of
14 material injury, we have a sharp decline in operating
15 margins, almost to the point of being a breakeven point.
16 That, I would suggest, is a classic case.

17 I would like to offer three very, very brief
18 rebuttal points. First off, there's been a decent amount of
19 discussion today in regard to the 2005 case with, I think,
20 the insinuation of if there was a negative determination in
21 that case, then you should make a negative determination in
22 this case.

23 As a purely factual matter, I would suggest, and
24 we will certainly be spelling out in our post-hearing brief
25 that there are significant factual differences when it comes

1 to pricing, when it comes to supply issues, when comes to
2 capacity issues, and when it comes to profitability issues.

3 But arguably, more important, from a legal
4 perspective, obviously every case stands on its own
5 administrative record. And this is a record that shows a
6 huge spike in imports that cost the domestic industry jobs
7 and market share and profits.

8 There are also some arguments in regard to metal
9 margins, which we'll address in more detail in our
10 post-hearing brief, in part, because I think a lot of the
11 flaws, the fundamental flaws in their analysis touch on
12 business proprietary information. But I think it's worth
13 making two observations about that.

14 Even if you assumed that their argument was
15 correct or factually true that metal margin remained flat
16 throughout the period of investigation, what that would mean
17 is metal margins stayed flat during a period of increasing
18 demand. And that itself is classic price suppression. On
19 top of that, and this is public information as well, during
20 the period of investigation we see the cost of goods sold
21 for the domestic industry increase as a percent of net
22 sales. That's also classic price suppression.

23 As to the statistical analysis, that also will
24 get a decent amount of space in our post-hearing brief. I
25 would suggest that any economic analysis or statistical

1 analysis that says an industry's profitability is unrelated
2 to production, capacity utilization, or demand is suspect
3 from the beginning, the idea that an industry's
4 profitability is essentially divorced from demand and supply
5 considerations fails kind of Eco 101, but we'll go into that
6 in more detail.

7 What I think is unusual in this case is the
8 critical circumstances issue. And I would emphasize that
9 the Commission has very rarely found affirmed --for critical
10 circumstances determinations. And we would welcome perhaps
11 revisiting part of that analysis.

12 What I attempted to emphasize earlier, and
13 perhaps did not do as well as I should have, is not to imply
14 that there's an intent requirement in the statute. But if
15 the fundamental question goes to whether purchasers
16 increased their orders because they anticipated an
17 antidumping order and that is going to delay the beneficial
18 affects of the case, some of the most probative evidence of
19 that is the fact that purchasers and importers specifically
20 and explicitly stated that they were doing so.

21 So, how do we know? If you go to the fundamental
22 question at heart of critical circumstances, whether they
23 rushed imports, we know that they did so because they've
24 said that they did so. And we have several examples of
25 statements in our post-hearing brief, but it's also publicly

1 available. We quickly just looked on the Internet and
2 Insteel, as the Commission might know, is one of the largest
3 purchasers of wire rod in the United States, and in their
4 earnings call, which is available on the web, and I believe
5 it's dated July 17, 2014 -- and this is a partial quote,
6 they state that, and the quote begins here "In anticipation
7 of successful Chinese trade cases, we elevated our import
8 purchases and inventory levels." And the quote goes on, but
9 that is specific probative evidence in regard to the
10 critical circumstances determination.

11 And with that, I defer to my colleague.

12 MR. ROSENTHAL: Thank you. I almost hate to see
13 the afternoon end. I know it's a little bit early for a
14 conclusion of a hearing, and I'm not referring to Mr.
15 Pickard's statement, but I think as Napoleon said never
16 interrupt your enemy when he's making a mistake. Well, the
17 longer the questioning went on the more mistakes were made
18 by the other side. And in a way I feel a little sympathetic
19 for them because, in fact, they don't have a lot to say on
20 the record of this case.

21 They're bringing in arguments that are clearly
22 speculation in their view, hyperbole, and frankly, they
23 couldn't answer your questions.

24 If you go back and look at the transcript, which
25 I will do, I'm going to have a hard time matching up their

1 answers and your questions. Not disrespectful for them, but
2 frankly, the facts just don't support their theories.

3 I had to laugh when Mr. Dougan referred to, in
4 response to a question about the premium and where that came
5 from; he said I'll have to admit it's impressionistic. I
6 think my view would be it's more surrealistic. Their
7 theories here have no basis in this particular record.

8 Briefly, on critical circumstances, I will say
9 that on the time period take a look at page 41 of our brief.
10 We cite a number of instances and cases where you use the
11 three or four-month period. One of them was mentioned
12 earlier, indigo from China. I think you made a negative
13 determination, but did use a three-month period. I remember
14 that case. I was involved in it. Your determination made
15 me blue, but nevertheless, you did use the three-month
16 period, and there are other cases along those lines as well.

17 Mr. Waite had said that there's no record
18 evidence and databasing that the industry didn't improve
19 after the case was filed. He's not right about that. Take
20 a look at the first half 2014 data. The industry condition
21 worsened in 2014 after the filing of the case. It did not
22 improve, so there is record evidence of that. And there's
23 also record evidence that there is -- the importers
24 deliberately brought in product because of the rumors of the
25 filing and the actual filing. We'll go into detail there.

1 And as we talked about earlier with Commissioner
2 Schmidtlein, you don't have to prove intent, but that's
3 clearly a factor that ought to drive your decision-making
4 when it comes to the time period.

5 There are a number of other misstatements that
6 were made by the Respondents beyond the price premium and
7 the metal analysis. I just wanted to refer to the staff
8 report when it comes to the claims concerning Chinese rod
9 coming in because they're selling different kinds of rod that
10 really don't compete with the U.S. If you look at the staff
11 report, it shows the vast majority, 98.9 percent of the
12 imported rod was industrial quality, not other specialty and
13 about 70 percent or more of the U.S. product is in that
14 exact same category.

15 Mr. Dougan said that home market share of Chinese
16 shipments are up. That's not true. They actually declined,
17 and at the same time the export share of Chinese shipments
18 increased as well.

19 One of the non sequiturs, I would say, that was
20 repeated often by the Respondents was, well, they left the
21 market previously and therefore they're entitled to come
22 back in at the levels that they had achieved nine years ago.
23 Let's remember this period of investigation is 2011 to 2013
24 and interim 2014. That's the period which the Commission
25 has to focus on, has to look at what happened in this

1 period. What happened to volume? What happened to price?
2 What were the affects in this period? What happened in a
3 different time, almost a decade ago under total different
4 factual circumstance is not relevant to your analysis here.

5 In the couple of minutes I have remaining, I want
6 to point to a couple other points. Respondents claim that
7 we've engaged in hyperbole. I just want to -- maybe theirs
8 is not hyperbole, it's just misstatements, but they suggest
9 that the industry doesn't care much about profits that makes
10 wire rod. Not true. Or the domestics get a premium in
11 price. No evidence upon it, about it, all speculation on
12 their part.

13 They say the domestic industry can't compete the
14 imports for share with respect to -- I'm sorry -- the
15 particular specialty products, et cetera. Again, as I
16 mentioned, not correct. And their theory that if Chinese
17 import market share doesn't increase above where it was nine
18 years ago that somehow that's not injurious, again no
19 support in the record.

20 Ninety-five percent underselling with import
21 share jumping to 15 is somehow not injurious in their world.
22 Where is that in the statute or based in any reality? Not
23 clear, again, based on what they have presented today. A
24 600,000 ton increase they may regard as minor in the big
25 scheme of things, given the amount of capacity and shipments

1 that the Chinese industry is capable of, but in this market,
2 in the U.S. market 600,000 tons over a couple of years is a
3 lot of product.

4 So, the facts are underselling 95 percent of the
5 time. When costs fell, prices fell by more, and a constant
6 pattern of price suppression, U.S. industry losing market
7 share when the Chinese were gaining market share, and
8 operating profit, which started off at 7 percent going down
9 to below to 1 percent.

10 We can talk all about what the averages should be
11 according to the Respondents' claim, but even now we're not
12 even at the average that they suggest we should be at.

13 So, I'm not going to get into threat. We don't
14 even need to go there. This is a very, very clear case of
15 present material injury. We urge the Commission to make an
16 affirmative determination in this case. Thank you.

17 CHAIRMAN BROADBENT: Thank you.

18 Mr. Neeley, you may begin when you're ready.

19 MR. NEELEY: And I won't take my 30 minutes here.
20 You're guaranteed.

21 CHAIRMAN BROADBENT: Thank you.

22 MR. NEELEY: What we've heard is that it's a
23 simple case. Imports brought our profits down, which is
24 pretty much what we heard from the beginning. Obviously, we
25 disagree with that. We think it's a much more complicated

1 case.

2 China's role in the market is one thing we talked
3 about, the fact that they were in the market. They left the
4 market. They came back. That's really an unusual
5 situation, and we talked about it for a reason, and it
6 wasn't because we thought that they were entitled to be in
7 the market. That's the words of the domestic industry.
8 Those aren't our words. Those are their words.

9 We discussed that primarily for one reason, and
10 that is to show the Commission that this is not the
11 overwhelmingly important market for these companies. It
12 just is not the case. As much as they emphasize it, as much
13 as they try to convince you of that, it isn't the case. If
14 it were the case, they won the case in 2005, obviously. And
15 if they were sitting there ready to flood the market, not
16 only with the companies that were involved then, but with
17 other companies, they had plenty of chances to do that.
18 They didn't do it, and so I think you should take from that
19 that there's actually a history here. There's actually
20 something going on here more than what they've told you, and
21 that's generally true.

22 I think this industry, and again, when we cite
23 back to past cases it wasn't to tell the Commission you did
24 it then. You have to do it now. But it does tell you, to
25 some extent, what your predecessors thought when they looked

1 at what this industry had to say. And clearly, a lot of the
2 arguments they're making today were made in the past and
3 were found wanting and exaggerated by previous
4 commissioners. And so, again, you should take what they
5 say, I think, with a very large grain of salt.

6 Profits, yes, they showed that profits are down,
7 as we discussed. But as Mr. Dougan pointed out, it's not
8 due to the raw materials. Typically, that's what you would
9 see. That's what the metal margin's about. That's why we
10 argued about the metal margin. There's other factory costs.
11 It would be, I think, very helpful for the Commission to
12 find out what exactly is going on in those other factory
13 costs.

14 Generally speaking, that is not where you're
15 going to see the so-called cost price squeeze. There's a
16 lot that could be in there. Certainly, this is an industry
17 that has been expanding in terms of its capacity. There's a
18 lot else going on, not only that relates to the so-called
19 wire rod industry, but the broader industry of which wire
20 rod is a part, in which these companies all operate. And I
21 don't think we can just put blinders on and ignore the rest
22 of reality.

23 We've presented evidence, and we'll supplement
24 that in the post-hearing brief about correlations between or
25 lack of correlations between capacity and profitability.

1 It's simply not there.

2 We hear from Mr. Pickard that it's suspect.

3 Well, let them present their data, we'll present our data,
4 and let the Commission decide. I think just saying it
5 doesn't make it so. I think we've presented a very thorough
6 analysis. We have more information we can provide. We will
7 do that.

8 In terms of prices, what we're really talking
9 about is what the terms of trade are and how the Commission
10 should consider that. The Commission takes into account in
11 every case things like delivery terms. You know you want to
12 make sure you're comparing apples to apples. That's really
13 all we're talking about here. It's not really a terribly
14 new concept to the Commission, not terribly complicated.
15 We're saying take into account the fact that you've got
16 different terms of sales here and what does that mean in
17 terms of what the prices are?

18 Altogether, this is not a simple case. There's a
19 number of things that you've got to take into account, other
20 than simply imports, which are, as Mr. Dougan pointed out,
21 could've been infinitesimal if there had been zero imports
22 in 2011. But the rate of increase is not terrible
23 important. It's what the impact is and where you see it in
24 the data and not just impressionistic or other ways of
25 terming it, but what is actually going on terms of the data

1 and how is it supported by price analysis, by correlations,
2 by all the things that we talked about in our pre-hearing
3 brief.

4 Finally, I just have to add it's not so much my
5 issue. Mr. Waite addressed it, and I'm not going to spend a
6 lot of time on it, but critical circumstances.

7 Their whole case, and this is similar to some of
8 the other arguments they made, they're relying on a
9 statement by one person that was ambiguous and they have
10 other citations for sure in their pre-hearing brief, but
11 it's basically citations to themselves. This build up
12 there's not evidence of it. They haven't defined when this
13 build-up occurred. It's all left kind of vague. We're glad
14 for the Commission to look at it further. We think and
15 we're very much convinced that if the Commission looks at
16 it, no matter how you look at it, you're going to come to
17 the same conclusion that there are no critical circumstances
18 here.

19 So, thank you very much for your time and
20 attention today.

21 CHAIRMAN BROADBENT: Thank you for your brevity.
22 I want to express the Commission's appreciation to everyone
23 who participated in today's hearing. Your closing
24 statement, post-hearing brief statements responsive to the
25 questions and requests of the Commission and corrections to

1 the transcript will be filed by November 19, 2014. Closing
2 of the record and final release of data to the parties will
3 be on December 8, 2014. Final comments are due on December
4 10, 2014.

5 And with that, this hearing is adjourned. Thank
6 you very much.

7 (Whereupon the hearing adjourned at 3:39 p.m.)

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CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Carbon and Certain Alloy Steel Wire Rod from China

INVESTIGATION NOS.: 701-TA-512 and 731-TA-1248 (Final)

HEARING DATE: 11-12-14

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.

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