

1 THE UNITED STATES INTERNATIONAL TRADE COMMISSION

2

3 IN THE MATTER OF:) Investigation Nos.:

4 WELDED STAINLESS STEEL PRESSURE) 731-TA-1210-1212

5 PIPE FROM MALAYSIA, THAILAND AND) (Final)

6 VIETNAM)

7

8 Thursday, May 22, 2014

9 Main Hearing Room (Room 101)

10 U.S. International Trade

11 Commission

12 500 E. Street, S.W.

13 Washington, D.C.

14

15 The meeting commenced, pursuant to notice at 9:35
16 a.m., Chairman Irving A. Williamson (presiding).

17

18 Commissioners Present:

19 Chairman Irving A. Williamson (presiding)

20 Commissioner Dean A. Pinkert

21 Commissioner David S. Johanson

22 Commissioner Meredith M. Broadbent

23 Commissioner F. Scott Kieff

24 Commissioner Rhonda S. Schmidtlein

25

1 Staff Present:

2 Bill Bishop, Supervisory Hearings and Information Officer

3 Sharon D. Bellamy, Program Support Specialist

4 Mikalya Kelley, Intern

5

6 Fred Ruggles, Investigator

7 Karen Taylor, International Trade Analyst

8 Amelia Preece, Economist

9 Justin Jee, Accountant/Auditor

10 John Henderson, Attorney

11 James McClure, Supervisory Investigator

12

13 APPEARANCES:

14 The Honorable Tammy Baldwin, United States Senator, Wisconsin

15 The Honorable Peter J. Visclosky, U.S. Representative, 1st

16 District, Indiana

17

18 Schagrin Associates, Washington, DC on behalf of: Bristol

19 Metals LLC; Felker Brothers Corporation; Outokumpu Stainless

20 Pipe, Inc. and United Steelworkers of America

21 Kyle Pennington, President, Synalloy Metals

22 John Tidlow, Executive Vice President, Synalloy Metals

23 David Hendrickson, President, Felker Brothers Corporation

24 Randy Krogman, Sales Manager Stainless Pipe, Felker Brothers

25 Corporation

1 Kris Podsiad, Senior Vice President and General Manager,
2 Outokumpu Stainless Pipe
3 Don Brunswick, Vice President of Sales, Marcegaglis USA
4 Services
5 Ken Norman, Finisher and Former Union Local President,
6 Marcegaglia USA Services
7 Holly Hart, Legislative Director, United Steelworkers of
8 America
9 Roger B. Schagrín, John W. Bohn and Paul W. Jameson -- Of
10 Counsel
11
12 Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP,
13 Washington, DC on behalf of: Son Ha International
14 Corporation ("Son Ha") and Silbo Industries, Inc. ("Silbo")
15 Howard Jakob, Executive Vice President, Silbo
16 Jim Dougan, Senior Economist, Economic Consulting Services
17 Max F. Schutzman, Ned H. Marshak and Kavita Mohan -- Of
18 Counsel
19
20 Morris Manning & Martin LLP, Washington, DC on behalf of
21 Allied Fitting LP ("Allied")
22 Julie C. Mendoza and R. Will Planert -- Of Counsel
23
24
25

1 Appleton Luff PTE LTD, Washington, DC on behalf of: Pantech
2 Stainless & Alloy Industries Sdn. Bhd. ("Pantech")
3 Kelly A. Slater and Edmund S. Sim -- Of Counsel

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11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Page

Testimony of The Honorable Tammy Baldwin, United States Senator, Wisconsin	8
Testimony of The Honorable Peter J. Visclosky, U.S. Representative, 1st District, Indiana	11
Opening Remarks - Roger B. Schagrín, Schagrín Associates	13
Max F. Schutzman, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP	17
Testimony of Kyle Pennington, President, Synalloy Metals	22
Testimony of David Hendrickson, President, Felker Brothers Corporation	25
Testimony of Kris Podsiad, Senior Vice President and General Manager, Outokumpu Stainless Pipe	30
Testimony of Don Brunswick, Vice President of Sales, Marcegaglis USA Services	33

1	Testimony of Holly Hart, Legislative Director,	37
2	United Steelworkers of America	
3		
4	Testimony of Ken Norman, Finisher and Former	42
5	Union Local President, Marcegaglia USA Services	
6		
7	Testimony of Howard Jakob, Executive	127
8	Vice President, Silbo	
9		
10	Testimony of Jim Dougan, Senior Economist,	133
11	Economic Consulting Services	
12		
13	Testimony of Edmund W. Sim	151
14	Testimony of R. Will Planert	153
15		
16	Rebuttal/Closing Remarks --	
17	Roger B. Schagrín, Schagrín Associates	226
18		
19	Ned H. Marshak, Grunfeld, Desiderio,	238
20	Lebowitz, Silverman & Klestadt LLP,	
21		
22		
23		
24		
25		

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

2 MR. BISHOP: Will the room please come to order?

3 Okay.

4 CHAIRMAN WILLIAMSON: Okay, good morning. On
5 behalf of the U.S. International Trade Commission, I welcome
6 you to this hearing on Investigation Nos. 731-TA-1210
7 through 1212, Final, involving Welded Stainless Pressure
8 Pipe from Malaysia, Thailand and Vietnam.

9 The purpose of these investigations is to
10 determine whether an industry in the United States is
11 materially injured, or threatened with material injury, or
12 the establishment of an industry in the United States is
13 materially retarded by reason of less than fair value
14 imports from Malaysia, Thailand and Vietnam, of welded
15 stainless steel pipe.

16 The schedule setting forth the presentation of
17 this hearing, notices of investigation and transcript order
18 forms are available at the public distribution table. All
19 prepared testimony should be given to the Secretary. Please
20 do not place testimony directly on the public distribution
21 table.

22

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

1 time allocations should be directed to the Secretary.
2 Speakers are reminded not to refer in their remarks or
3 answers to questions to business proprietary information.

4 Please speak clearly into the microphone, and
5 state your name for the record for the benefit of the court
6 reporter. If you will be submitting documents that contain
7 information you wish classified as business confidential,
8 your request should comply with Commission Rule 201.6.

9 Mr. Secretary, are there any preliminary matters?

10 MR. BISHOP: Mr. Chairman, I would note that all
11 witnesses for today's hearing have been sworn in, with the
12 exception of Ms. Mendoza and Mr. Sim. I'll swear them in
13 when they arrive. There are no other preliminary matters.

14 CHAIRMAN WILLIAMSON: Okay, thank you. Very
15 well. Will you please announce our first Congressional
16 witness?

17

18 MR. BISHOP: The Honorable Tammy Baldwin, United
19 States Senator, Wisconsin. Welcome, Senator Baldwin, and
20 you may begin when you're ready.

21 SENATOR BALDWIN: Thank you. Good morning, and I
22 want to thank you for the opportunity to appear before the
23 Commission on a matter of great importance to the state of
24 Wisconsin. In Wisconsin, we have one of the largest
25 manufacturing sectors in the nation, supporting a large

1 share of our state's workforce, and exporting goods to all
2 over America and the rest of the world.

3 Today, I'm proud to represent my state's made in
4 Wisconsin economy by speaking in support of one of the
5 nation's leading producers of stainless steel pipe, Felker
6 Brothers of Marshfield, Wisconsin.

7 Felker employs 200 workers at a headquarters in
8 Marshfield. It has been in operation as a family-run
9 business for over a century. The success of Wisconsin's
10 most recognizable industries. Dairy, beer and papermaking
11 is made possible in no small part because of the high
12 quality stainless steel piping made by Wisconsin companies
13 like Felker.

14

15 But Felker's products don't just serve Wisconsin.
16 They serve the world. For example, Felker provided all the
17 stainless steel tubing for the Burj Tower in Dubai,
18 currently the tallest building in the world. I think that
19 shows that when the rules are fair and there's a level
20 playing field, Felker can compete with any company in the
21 world.

22 That is what brings me before you, the Commission
23 today, because when countries are allowed to cheat and sell
24 their products below fair market value, Felker, its workers
25 and its customers lose out. Today, the Commission will hear

1 from industry and labor about unfairly traded imports of
2 welded stainless pressure pipes from Malaysia, Thailand and
3 Vietnam.

4 As you know, on December 31st, 2013, the Commerce
5 Department announced affirmative preliminary determinations
6 in this investigation. Over a two-year period, dumped
7 imports from these countries have taken 25 percent of the
8 U.S. market.

9 As a result, Felker and others have been forced
10 to make difficult decisions, to reduce worker hours or
11 announce layoffs. At a time when our economy is still
12 struggling to create broad-based economic growth and shared
13 prosperity, we can't tolerate trade practices that put our
14 products, workers and businesses at a disadvantage.

15

16 What this hard-working family business in
17 Wisconsin and manufacturers across America need is simply
18 the opportunity to compete on a level playing field. If we
19 ensure that, I am more than confident that Felker and other
20 American manufacturers will win.

21 In conclusion, I thank you for warmly welcoming
22 me here today. I know that the Commission will weigh the
23 issues in this investigation carefully. I hope that you
24 will agree that an affirmative final injury determination in
25 this matter is imperative, to ensure fair competition for

1 the industry, its workers and communities throughout the
2 country. Thank you for your time and your careful
3 consideration of this case.

4 CHAIRMAN WILLIAMSON: Thank you, Senator Baldwin.
5 Are there any questions for the Senator? If not, we'll let
6 you go back, and thank you very much for coming.

7 SENATOR BALDWIN: Thank you.

8 CHAIRMAN WILLIAMSON: Okay.

9 MR. BISHOP: Our next Congressional witness is
10 the Honorable Peter J. Visclosky, United States
11 Representative, 1st District, Indiana.

12

13 CHAIRMAN WILLIAMSON: Welcome again,
14 Representative Visclosky.

15 REPRESENTATIVE VISCLOSKY: Thank you very much.
16 It's good to be back, and I want to thank you and all the
17 members of the Commission for allowing me to testify on this
18 welded and stainless steel pressure pipe case.

19 I would point out that given the events of the
20 last week, where our government has indicted a number of
21 Chinese military officials for seeking economic information
22 to undermine our economy and to improve theirs, given the
23 fact that while overall steel imports this past year were
24 down, but oil country tubular goods were up to 35 percent,
25 it's clear we're dealing in a very sophisticated world, as

1 far as our trading partners, and I do believe that we are
2 under attack, and people are looking for every advantage
3 possible.

4 The Commerce Department in December issued
5 preliminary anti-dumping duties, ranging from seven percent
6 to 167 percent, relative to countries of Malaysia, Thailand
7 and Vietnam. Each one of those percentages count. Each one
8 of those percentages are important to those Americans who
9 are engaged in manufacturing, who possibly are going to lose
10 their job.

11

12 As you consider this case I trust, as you have
13 always done in the past, that you will be thorough, you will
14 be fair and you will be careful. I would hope in the end
15 that there is an affirmative and final decision relative to
16 your investigation, because I do believe injury has been
17 found. But in conclusion again, I would thank you for this
18 opportunity today.

19 CHAIRMAN WILLIAMSON: Thank you very much. Are
20 there any questions? If not, we'll let you go back to your
21 busy schedule and thank you for coming.

22 REPRESENTATIVE VISCLOSKY: See you in July.

23 CHAIRMAN WILLIAMSON: Thank you, okay.

24 (Pause.)

25 MR. BISHOP: Mr. Chairman, we will now proceed

1 with opening remarks. Opening remarks on behalf of
2 Petitioners will be by Roger B. Schagrin, Schagrin
3 Associates.

4 CHAIRMAN WILLIAMSON: Welcome, Mr. Schagrin. You
5 may begin when you're ready.

6 MR. SCHAGRIN: Good morning, Chairman Williamson
7 and members of the Commission. I would especially like to
8 welcome Commissioner Schmidtlein. I understand this is your
9 first hearing, and I hope you enjoy your entire term at the
10 Commission.

11 The record in these investigations presents clear
12 evidence of material injury. The U.S. industry producing
13 welded stainless steel pressure pipe, by reason of imports
14 from Malaysia, Vietnam and Thailand. I am confident that
15 tomorrow, the Department of Commerce will announce
16 significant dumping margins against every foreign producer
17 subject to these investigations.

18 The filing of these cases in May 2013 led to a
19 steep drop, in fact the almost complete disappearance, of
20 imports from these three countries in the fourth quarter of
21 2013, although inventories from this country continued to
22 compete in the U.S. market through the end of 2013.

23 However, the level of imports in just the first
24 three quarters of 2013 were about as much as imports for the
25 full years of 2011 and 2012. Import market share was nearly

1 a quarter of the U.S. market, and these subject imports are
2 actually understated, because many importers refused to
3 participate in the Commission's final investigation.

4

5 Virtually all U.S. producers, foreign producers,
6 importers and purchasers who did respond, confirmed to the
7 Commission that subject imports of ACMA 312 products and
8 domestic products are commodity substitutable products.
9 Therefore, as the evidence shows, the complete underselling
10 by subject imports over the POI, by average underselling
11 margins of 16 percent, depressed U.S. prices.

12 U.S. prices for the subject products fell
13 significantly faster than raw material costs declined over
14 the POI, resulting in U.S. producers seeing increasing
15 losses. It is clear from the record and the testimony you
16 will hear today that many U.S. producers fought back against
17 these dumped imports, using lower prices in order to
18 maintain enough volume to keep their production facilities
19 viable and their workers employed.

20 This came at a significant cost, as this industry
21 experienced negative cash flow throughout the POI, with
22 massively negative cash flow in the last year of the POI,
23 2013. It is clear that without the relief afforded by the
24 unfair trade laws, some U.S. plants will be shut down.

25

1 Rarely have I ever seen a clearer case for
2 present material injury than that of the record in this
3 investigation. If you do not find present material injury,
4 then there is also significant evidence of a real and
5 imminent threat of material injury on an accumulated basis
6 from these three countries.

7 A domestic industry with over 12 percent
8 operating losses in the most recent years, and with mills
9 that could not even find a willing buyer is clearly
10 vulnerable to increased imports. Given that these imports
11 undersell the market significantly, the resumption of large
12 volume sales by these foreign producers would be a
13 certainty.

14 The Commission can see through monthly import
15 data how quickly the foreign producers were able to ramp up
16 their sales in the three months following the filing of the
17 petition. There is massive excess capacity in these
18 countries.

19 Finally, if the Commission does determine threat,
20 it will have to decide what action should be taken, when
21 almost half of the foreign producers that filed
22 questionnaire responses in the short time frame of the
23 preliminary investigation, have chosen not to participate by
24 filing questionnaire responses in the much longer time frame
25 afforded by a final investigation.

1

2 Here, the three petitioners and the fourth major
3 producer in this industry, who account for almost the
4 complete entirety of the domestic industry, have completed
5 the Commission's questionnaires and have all sent executives
6 to this hearing today, to answer your questions.

7 However, foreign producers and importers are now
8 choosing to selectively participate in Commission
9 proceedings, including this one. Only by making adverse
10 inferences under your statutory authority can you compel
11 participation in your investigations.

12 I would also urge you to make an affirmative
13 critical circumstances determination. These cases presented
14 some very unusual situations. None of the Malaysian
15 producers chose to fully participate in the DOC
16 investigation. However, knowing at the time of the prelim
17 that they would be hit with large margins, they and their
18 U.S. importers decided to ship as much as possible from
19 Malaysia to the U.S. prior to the imposition of duties.

20

21 The importers thought these preliminary
22 determinations would be earlier, not knowing in advance of
23 the nearly three week government shutdown. One of the Thai
24 producers was essentially caught lying red-handed, and
25 pulled out of the investigation after a preliminary DOC

1 determination, and before verification and very unusually,
2 Commerce issued a revised prelim.

3 The Commission can see from this record how much
4 financial damage these surge of imports caused the domestic
5 industry, because failing to find critical circumstances
6 would seriously undermine the remedial effect of the order.
7 An affirmative critical circumstances determination is
8 warranted. Thank you.

9 CHAIRMAN WILLIAMSON: Thank you.

10 MR. BISHOP: Opening remarks on behalf of
11 Respondents will be by Max F. Schutzman, Grunfeld,
12 Desiderio, Lebowitz, Silverman and Klestadt.

13 CHAIRMAN WILLIAMSON: Welcome, Mr. Schutzman.
14 You may begin when you're ready.

15 MR. SCHUTZMAN: Mr. Chairman, members of the
16 Commission. Good morning. My name is Max Schutzman of
17 Grunfeld, Desiderio, and I appreciate the opportunity to
18 provide introductory remarks in connection with Respondent's
19 opposition to the imposition of anti-dumping duties in this
20 investigation.

21 Almost one year ago, the same cast of characters
22 appeared in this room to provide testimony to the ITC staff
23 in connection with its preliminary conference. On the basis
24 of information obtained at that conference, as well as the
25 additional information of record, the Commission decided

1 there was a reasonable indication of material injury or the
2 threat thereof to the domestic industry in this case.

3 However, the record developed in the preliminary
4 phase of this investigation, and the record developed for
5 this final phase look considerably and significantly
6 different. For one, we now have complete 2013 data to
7 analyze, whereas for the prelim, 2013 was not a factor.

8 POI data including calendar year 2013 demonstrate
9 that although demand for this commodity product was
10 relatively stable over the three year period, domestic
11 industry production, capacity utilization, market share,
12 producer shipments and relevant employment indicators all
13 increased.

14 Moreover, while Petitioners argued and the
15 Commission at the prelim stage agreed that there was a
16 causal nexus between injury suffered by the U.S. industry
17 and subject imports, the record for this final investigation
18 demonstrates otherwise.

19
20 Indeed, it reflects that market fluctuations in
21 the cost of raw material, particularly worldwide nickel
22 prices, profoundly influenced the prices which all market
23 participants charged domestic purchasers of welded stainless
24 pipe.

25 The record shows that nickel prices dropped

1 precipitously over the POI, and that as our witness, Mr.
2 Jakob will tell you, this was and always has been the
3 principle determinant driving U.S. prices of subject
4 merchandise.

5 Jim Dougan, in his testimony, will also discuss
6 this phenomenon in greater detail, and specifically why, if
7 key raw material prices declined, producers of welded
8 stainless pipe, including U.S. producers, do not reap the
9 seeming advantage of such lower prices in terms of increased
10 profitability.

11 Related to this is Petitioner's argument that but
12 for increasing pricing pressure from unfairly traded subject
13 imports, they would have a surcharge program in effect to
14 account for fluctuations in the prices of raw material,
15 nickel in particular.

16
17 This, however, makes no sense at all, where
18 nickel prices are falling as they were doing the POI.
19 Additionally, we ask you to please be mindful of and not
20 underestimate of the relevance of non-subject imports in
21 this marketplace, especially imports from the largest
22 worldwide foreign supplier in Taiwan, Ta Chen, and those
23 from Korea.

24 The Commission's preliminary phase record
25 demonstrated that non-subject imports consistently undersold

1 both domestically produced product and subject imports. The
2 Commission's final phase record is not as comprehensive, due
3 principally to the failure of foreign producers and U.S.
4 importers of non-subject imports, to participate.

5 We know the staff is diligently pursuing these
6 gaps in the record, and hope that additional data is
7 forthcoming on this subject, in sufficient time to be
8 included in the parties' post-hearing briefs. It is also
9 apparent that there are significant differences in the
10 2011-2012 financial data provided to the Commission by
11 certain U.S. producers, from the preliminary phase to the
12 final phase of this investigation, and we are aware that the
13 Commission staff is looking carefully at these data as well.

14

15 In this regard, we were made aware yesterday
16 morning that supplemental information will be forthcoming
17 from U.S. producers, presumably addressing these issues.
18 This is both fortunate and unfortunate. Fortunate, in that
19 hopefully the Commission will have a fuller, more accurate
20 record on which to make its determination, and unfortunate,
21 since it would have been nice to have that supplemental
22 information in time for this hearing.

23 One word about critical circumstances. In the
24 event the Department of Commerce issues an affirmative final
25 determination against the three Malaysian producers, as it

1 did in the preliminary, the Commission typically examines
2 the six-month period prior and subsequent to the filing of
3 the petition, to determine whether post-petition imports
4 were massive, such that the failure to find critical
5 circumstances would seriously undermine the remedial effects
6 of any ensuing anti-dumping order.

7

8 Resort to the record here will confirm that under
9 no reasonable construction of the Commission's mandate were
10 post-petition imports from these three Malaysian producers
11 massive. In addition, post-petition inventory levels of
12 subject merchandise from Malaysia provide no basis
13 whatsoever to support a finding of critical circumstances.

14 Mr. Planert will address the subject in greater
15 detail during Respondent's principal presentation. In sum,
16 Petitioners here have failed to provide you with a case for
17 relief, and Respondents respectfully request that you
18 confirm it in your final determination. Thank you.

19 CHAIRMAN WILLIAMSON: Thank you. Would the first
20 panel, those in support of the imposition of anti-dumping
21 duty orders, please come forward and be seated.

22 (Pause.)

23 CHAIRMAN WILLIAMSON: I want to welcome the panel
24 to the ITC. Mr. Schagrín, you may begin when you're ready.

25 MR. SCHAGRIN: Good morning again, Chairman

1 Williamson. It's a pleasure to be before you for this case
2 involving these extremely large quantities of dumped imports
3 from Malaysia, Thailand and Vietnam.

4

5 While Mr. Schutzman has some complaints about the
6 quality of the record, interestingly enough, almost all of
7 which are based on non-responsiveness of foreign producers
8 and importers, I don't think he can complain about the
9 representation by witnesses at this hearing.

10 He also complained, if you look at the
11 preliminary transcript, he said "Where's Marcegaglia? This
12 can't even be a real case if one of the largest U.S.
13 producers wasn't present at the preliminary conference or as
14 a petitioner." You have before you today the senior
15 executives of the entire U.S. industry.

16 This case is going to be handled by the people
17 with the most knowledge about the industry, in contrast to
18 the fact that almost all of the representation of the
19 foreign producers and importers is just through attorneys
20 and economists. I'm very pleased that the domestic industry
21 can start its testimony with Kyle Pennington, the president
22 of Synalloy Metals. Mr. Pennington.

23 MR. PENNINGTON: Good morning, Chairman
24 Williamson and members of the Commission. For the record,
25 my name is Kyle Pennington, and I am president of Synalloy

1 Metals. I've been in the metals industry for 24 years. I'm
2 accompanied by John Tidlow, our executive vice president.

3 Synalloy Metals is the larger of two major
4 operating segments of Synalloy Corporation. Synalloy was
5 formed in 1945. The other major segment is Manufacturers
6 Chemicals, a specialty chemicals producer. Within Synalloy
7 Metals, we have Bristol Metals, which manufactures the
8 subject welded stainless pipe, Synalloy Fabrication, which
9 fabricates piping systems, including small amounts of the
10 subject product and Palmer of Texas, which is a manufacturer
11 of storage tanks.

12 We are a publicly-traded corporation. As
13 president of the largest division of a publicly-traded
14 corporation, my first job is to make sure that all our
15 plants provide a safe working environment for our employees.
16 At our company, we will not sacrifice safety for profits.

17 My second biggest responsibility is to try to
18 achieve the highest profits and best returns for our
19 shareholders. Unfortunately, over the past five years,
20 Synalloy Corporation's return to shareholders have
21 underperformed those of the Russell 2000 and the NASDAQ
22 non-financial indices.

23

24 Our Synalloy Metals division is not doing as well
25 as our chemicals division, and within Synalloy Metals, one

1 of the worst performers is the commodity segment of Bristol
2 Metals, because it primarily produces commodity grades of
3 stainless pressure pipe, which have been subject to repeated
4 unfair import competition.

5 Within a business like ours, decisions have to be
6 made on allocating capital. No capital outside of
7 maintenance and repair work will be allocated to a division
8 that cannot provide a return on investment better than other
9 investment opportunities.

10 In fact, in 2012, the company made a significant
11 acquisition of Palmer of Texas, a major manufacturer of
12 tanks and separators for the oil and gas industry. Our
13 business strategy in each of our businesses is to be the
14 lowest cost producer. However, it is clear that even if we
15 have achieved this goal, we cannot obtain adequate returns.

16 The result is because the marketplace has been
17 significantly and adversely impacted by large volumes of
18 low-priced imports from Malaysia, Thailand and Vietnam.
19 Despite a strengthening economy, our production of the
20 subject products fell over the last three years.

21

22 The U.S. industry producing welded stainless
23 pressure pipe has more than ample capacity to supply the
24 entire United States market. Therefore, no distributor buys
25 subject imports instead of domestic for any reason other

1 than the fact that importers give them a significantly lower
2 price than domestic prices.

3 You have before you senior management of the four
4 last remaining major producers of this product in the United
5 States. We all have to face the difficult decision of
6 whether or not to close down mills or lay off employees due
7 to unfair traded imports.

8 We simply cannot stay in business and lose money.
9 This is just not the way the American business system works.
10 When you lose money over a sustained period of time, you
11 shut it down. That's one of the first things they teach us
12 in business school.

13 As an industry, we can't keep limping along by
14 just waiting for the next victim of unfairly traded imports
15 to shut down. We need to reinvest and it's difficult to
16 produce in highly critical product.

17 On behalf of all of our valued employees in our
18 Bristol Metals division, making the welded stainless pipe in
19 Bristol, Tennessee, I ask you to make an affirmative
20 determination. Thank you.

21 MR. SCHRAGRIN: Thank you, Kyle.

22 Our next witness is David Hendrickson, President
23 of Felker Brothers Corporation. David.

24 MR. HENDRICKSON: Good morning, Chairman
25 Williamson and members of the Commission. For the record,

1 my name is David Hendrickson and I am president of Felker
2 Brothers.

3 Felker Brothers is a family-owned company founded
4 in 1898 and incorporated in 1903. It has been in the
5 stainless pipe business for approximately 50 years. I have
6 been with the company for 19 years and became president in
7 2010.

8 I am accompanied by Randy Krogman, our sales
9 manager for stainless pipe. He has been in the industry for
10 32 years. Our client in Marshfield, Wisconsin does not
11 produce any of the subject product.

12 We have a pipe roll for making large stem or
13 light-wall pipe outside the scope of this investigation as
14 well as fabrication facilities for producing piping systems.
15 Those piping systems are primarily for the wastewater
16 treatment and water purification and green processing
17 industries.

18 In 1993 Felker built a new manufacturing plant in
19 Glasgow, Kentucky. We did this in part to be close to the
20 new and extremely efficient world-class stainless flat
21 rolled facility names North American Stainless. And also to
22 be closer to customers in the southeast and gulf coast of
23 the United States where significant quantities of welded
24 stainless steel pipe are utilized.

25 This plant has five continuous mills and one

1 batch mill. Three of the continuous mills produce subject
2 merchandise and one product on the batch mill in subject
3 merchandise. The other two continuous mills produce
4 non-subject stainless steel mechanical tubing.

5 In 2009 we added one new continuous mill in
6 Glasgow to produce 10 and 12-inch pipe more efficiently and
7 add more and more additional pipe thickness. We have also
8 added new pickling and water treatment facilities which we
9 just completed in 2012. The plant currently employs 72
10 employees.

11 North American Stainless is about a
12 two-and-a-half hour delivery truck drive from our Glasgow
13 plant. I think everyone in the industry would agree that
14 this is not only the most efficient stainless, flat rolled
15 plant in the United States, but one of the most efficient in
16 the world. It is certainly more efficient than stainless
17 plants in China. However, it's owner Acerinox is a publicly
18 traded company in Spain and operates for profit.

19 This is unlike Chinese flat rolled stainless
20 mills which are owned by the government of China, are
21 heavily subsidized and exist primarily to maintain
22 employment in China. We believe that the Asian mills we are
23 competing with in Malaysia, Thailand, Vietnam primarily
24 source their flat rolled stainless steel from these
25 government-owned subsidized Chinese steel mills.

1 Ninety to 95 percent of the cost of stainless
2 pipe is in stainless flat rolled. There is almost no
3 explanation for how the imports from these three countries
4 that we have sued can undercut our price in the United
5 States by 20 percent. Even though the stainless mills are
6 huge capital investment pieces of equipment, it is still the
7 case that the overwhelming amount of costs of stainless is
8 in the alloy component of the steel; chrome, nickel, and
9 aluminum.

10 Stainless steel mills in China, just like mills
11 in the United States, or anywhere else in the world, should
12 be paying the same price for raw materials. Each which is
13 listed on the London Mineral Exchange at a very transparent
14 price. Add to this the significant freight costs of sending
15 the product halfway around the world.

16 Once again, we cannot understand how the
17 producers from Malaysia, Thailand, and Vietnam can undercut
18 our prices so much when raw materials are calling for a vast
19 majority of the overall cost of the final product and the
20 freight costs are significant higher.

21 We now know at the Department of Commerce that
22 these companies have in fact been dumping these products
23 into the United States and we expect those margins to be
24 finalized tomorrow. We participated in a case against China
25 in 2008. As a result of that relief, for about a year or

1 so, the market really improved and our results improved
2 significantly.

3 Then the imports from Malaysia, Thailand, and
4 Vietnam began pouring into the U.S. market at prices that
5 significantly undercut the market. Regardless of the ups
6 and downs in demand, our ASTM-A-312 business has deteriorated
7 over the past couple of years. In fact, I do not think I
8 could justify keeping the Glasgow plant open if the only
9 products we made there were ASTM-A-312.

10 We have not laid off any employees, but as
11 production suffers, we certainly cut back these employees'
12 hours and thus their wages suffered as a result.

13 Finally, as the inventories of these dumped
14 imports start disappearing from distributors' yards, we see
15 those distributors starting to place more order with us.
16 Thus, the imposition of duties is helping our business which
17 I believe is what the trade laws intend.

18 As a family-owned company that has invested in
19 good equipment and has an excellent workforce we all ask is
20 that the U.S. government enforce the trade laws passed by
21 Congress to give our company and its employees a chance to
22 compete fairly. When the competition is fair, I am
23 confident that our company, which has already survived 115
24 years, can continue to survive and thrive.

25 Thank you.

1 MR. SCHRAGRIN: Thank you, David.

2 Our next witness is Chris Podsiad, the Senior
3 Vice President and General Manager of Otokurnpu Stainless
4 Pipe. Chris.

5 MR. PODSIAD: Thank you.

6 Good morning, Chairman Williamson and members of
7 the Commission. For the record, my name is Chris Podsiad,
8 and I'm the Senior Vice President and General Manager of
9 Outokumpu Stainless Pipe located in Wildwood, Florida.

10 We are a division of Outokumpu OIJ. That company
11 which is one of the largest stainless steel companies in the
12 world is a Finnish company that is publicly traded.

13 In the past two years the company has undertaken
14 one of the largest corporate reorganizations in its history.
15 First, the company acquired the worldwide stainless
16 operations of TK Stainless. That acquisition was effective
17 January 2013.

18 Secondly, the company divested 51 percent of its
19 worldwide pipe operations to an investment firm. Our U.S.
20 operation was not part of that sale and we're still a 100
21 percent subsidiary of Outokumpu.

22 We surmise that the buyer did not want our U.S.
23 operations even though we were part of the sales prospectus
24 for several reasons. First, we were losing money. Second,
25 in the international steel market everyone knows that the

1 U.S. is the most open market in the world and is a dumping
2 ground for steel. So for any number of reasons, we were
3 left standing at the alter and we have to fight for
4 investment and assets within Outokumpu.

5 I started with the company's Canadian operation
6 in 2001 and held a number of other positions in the company
7 including time spent in Scandinavia before being sent to
8 Florida to take over the pipe operations in January 2010 as
9 senior Vice President and General Manager.

10 Our Florida operations have a number of press
11 breaks and rules in order to make pipe through 84-inch
12 diameter and with wall thicknesses up to two inch. We have
13 been investing in this business because it is a specialty
14 business with very little foreign competition and we have
15 primarily sales to specific end-user projects.

16 At our Florida plant we now have nine continuous
17 welding mills that make only subject product. We
18 permanently decommissioned two mills making under two-inch
19 sizes in January of 2013. These small sizes cost much more
20 to produce per ton, but the subject foreign mills charge the
21 same prices per ton regardless of size making it completely
22 uneconomical for us to compete.

23 We've not been investing in this business for a
24 number of reasons. ASTM-A312 is a commodity product and has
25 been subject to intense foreign competition which the

1 Commerce Department has found to be dumped. Until after
2 relief was granted, we were only operating two or three of
3 these seven mills. Our sales are to four master
4 distributors and between 15 to 20 smaller distributors.

5 ASTMA-312 is sold only on the basis of price. In
6 early 2011 we laid off 15 workers which represented more
7 than 15 percent of our workforce at these continuous weld
8 mills. By the end of 2011 we were seeing imports continue
9 to grab market share. We were preparing to lay off more
10 workers if we were unable to regain volume in the
11 marketplace. These workers are highly skilled workers and
12 very difficult to replace in a place like Wildwood, Florida.

13 By late 2011 imports from Malaysia, Thailand, and
14 Vietnam were underselling our prices by 15 to 20 percent.
15 In early 2012 we instituted a foreign fighter program where
16 we allocated a set amount of tonnage to our master
17 distributors each month significantly below our regular
18 prices to regain volume and prevent these further layoffs.

19 One particular master distributor took advantage
20 of the program and bought the majority of the tons we
21 allocated under our foreign fighter program.

22 In 2013, at the time we were filing these cases,
23 that distributor told us they could not continue buying from
24 us under the foreign fighter program because the trading
25 companies representing the foreign producers in Malaysia,

1 Thailand, and Vietnam had cut their prices substantially.
2 After having already cut our prices by 15 percent, we would
3 have had to cut our prices another 15 to get within 5
4 percent of these imports. We told them we simply could not
5 afford to lose that much money on these sales and we lost
6 that business.

7 These cases should allow us to remain in the
8 ASTMA-312 business. Without relief our small diameter
9 stainless -- welded stainless pressure pipe business will no
10 survive and we will undoubtedly have to execute plans to
11 shut down those operations and continue only as a customized
12 large diameter producer.

13 On behalf of our employees in Wildwood, I ask you
14 to enforce the laws and give our employees a chance to keep
15 their jobs.

16 Thank you.

17 MR. SCHRAGRIN: Thank you, Chris.

18 Our next witness is Don Brunswick, the Vice
19 President of sales of Marcegaglia USA Services.

20 STATEMENT OF DON BRUNSWICK

21 Mr. BRUNSWICK: Thank you. Good morning,
22 Chairman Williamson and members of the Commission. For the
23 record, my name is Don Brunswick. I'm the Vice President of
24 sales at Marcegaglia USA in Munhall, Pennsylvania. I've
25 been with the company for about seven years.

1 Marcegaglia is the last steel plant located on
2 the grounds of the former U.S. Steel Homestead Works. In
3 fact, there's a memorial right next to our building
4 commemorating the famous Homestead Strike and the deaths
5 that occurred during that strike.

6 The rest of the former Homestead Works was
7 leveled, had environmental remediation and had been turned
8 into apartment buildings and restaurants. This is a
9 landmark for transition of America's economy for
10 manufacturing to services and the consumption of almost
11 entirely imported products.

12 As I will explain, we would like to remain as a
13 viable welded stainless pressure pipe manufacturer in our
14 present facility.

15 Our parent company, Marcegaglia of Italy which is
16 the world's largest welded pipe and tube producer purchased
17 two U.S. stainless pipe companies in the mid-1990's and
18 combined their operations in our present facility in
19 Munhall, Pennsylvania.

20 They also rationalized some of those two
21 companies' capacity, utilizing the best of those company's
22 welding mills. Since that time Marcegaglia also invested in
23 upgrading our plant as well as expanding our product range
24 from a maximum of six-inch OD up to 12-inch OD for A-312
25 products.

1 Unlike the three U.S. producers we have no
2 fabrication facilities or mills that can produce
3 large-diameter pipe. Most of our welding mills are
4 committed to the small-diameter pipe products that are the
5 focus of the subject imports.

6 Last year our parent company put our subsidiary
7 up for sale. A tentative sales agreement was reached, but
8 during due diligence the buyer backed out. It was because
9 of our looming sale that our company did not join others in
10 the industry as a petitioner in these cases. I would like
11 to apologize to the Commission for the lateness of our
12 questionnaire response. Our pending sale also led to a lot
13 of turnover in management.

14 I am confident that our final questionnaire data
15 is more accurate than our preliminary questionnaire data and
16 we are working with your staff to clear up any remaining
17 issues.

18 As has been stated by my fellow executives on the
19 panel, since we do not receive government subsidies, our
20 parent company will not subsidize a loss-making subsidiary
21 for very long. If we cannot be sold and we cannot make a
22 profit, then we will be shut down.

23 I can tell you without any doubt that the imports
24 of the subject products from Malaysia, Thailand and Vietnam
25 have had a devastating impact in the marketplace.

1 As the other speakers have told you, these
2 products are sold almost entirely in the distribution. Even
3 though they are extremely difficult to make, once the
4 product meets specification they are a commodity and they
5 are sold only on the basis of price.

6 In the marketplace it is common knowledge that
7 imports from these three countries are all priced
8 significantly lower than imports from Korea and Taiwan.
9 Thus, they have more price effect in the marketplace.

10 Once the dumping duties were imposed at the end
11 of December, new offers from the producers and these
12 countries through international trading companies stopped.
13 This is definitely benefitting Marcegaglia's business.

14 In order to maintain operations we are doing
15 everything possible to reduce costs that are under our
16 control. However, our single biggest cost by far is flat
17 rolled stainless steel. We cannot control the cost of our
18 steel. Basically, all four of the U.S. flat rolled
19 stainless steel producers sell at the same prices. And as
20 you've heard from these mills, one tends to buy from the
21 closest stainless flat rolled mill in order to reduce
22 freight costs.

23 If we decided to purchase cheaper Chinese
24 stainless flat rolled, then I'm sure our United Steel Worker
25 associates working in our mills would be very unhappy as

1 this would have a negative impact on the U.S. W members
2 working at Allegheny Technology Mills located near to us.

3 I also suspect that if all the U.S. welded
4 stainless pressure pipe producers started buying dumped and
5 subsidized Chinese flat rolled steel to compete with dumped
6 imports from other countries that the U.S. flat rolled
7 producers would file the same type of dumping and subsidy
8 actions against flat rolled stainless steel that we did
9 against Chinese welded stainless pressure pipe in 2008.

10 In closing, Marcegaglia USA and its 135 employees
11 in Munhall need your help in making an affirmative
12 determination against dumped imports from Malaysia,
13 Thailand, and Vietnam in order to keep our plant open and
14 our workers gainfully employed. I wish to thank the
15 petitioners for inviting me to testify on behalf of our
16 employees in the industry today and I would also like to
17 thank the Commission for listening to my testimony.

18 Thank you.

19 MR. SCHRAGRIN: Thank you, Don.

20 We're so pleased today to have representatives of
21 the workers in this industry appear before you and we'll
22 start with Holly Hart, the fabulous legislative director for
23 the USW in Washington who does such a great job.

24 Without further adieu, Ms. Hart.

25 STATEMENT OF HOLLY HART

1 MS. HART: Good lord. I'm going to have to do a
2 really good dramatic reading here to live up to that.
3 Anyway, good morning, Chairman Williamson and members of the
4 Commission and welcome, Commission Schmidtlein.

5 For the record, my name is Holly Hart and I am
6 simply the legislative director and assistant to the
7 President for the United Steel, Paper and Forestry, Rubber,
8 Manufacturing, Energy, Allied Industrial and Service Workers
9 Union -- International Union commonly known and thankfully
10 known as the USW.

11 We represent the production workers making the
12 subject welded stainless pressure pipe at petitioners at
13 Bristol Metals in Bristol, Tennessee and Outokumpu Stainless
14 Pipe in Wildwood, Florida.

15 We also represent workers at a nonpetitioner
16 producer of the subject merchandise at Marcegaglia,
17 Incorporated located in Munhall, Pennsylvania, just miles
18 from our headquarters in Pittsburgh.

19 The record in these cases shows that Commerce has
20 preliminarily determined, and we hope, will announce final
21 determinations tomorrow that 100 percent of all imports from
22 Malaysia, Thailand, and Vietnam at sold at dumped prices
23 during the period of investigation.

24 As you have heard, these dumped imports took
25 about a quarter of the U.S. market at prices well below the

1 U.S. industry's prices and occurred during a period when the
2 U.S. industry had massive excess capacity. Consequently the
3 dumped imports did not arrive because of either booming
4 demand or an inability of the domestic industry to supply
5 the market, but solely because the importers could buy and
6 sell the product at below market prices. The massive
7 quantity of these dumped imports has already had an
8 injurious impact on our members.

9 You've heard in the testimony of Mr. Podsiad that
10 his company Outokumpu laid off 15 of our union members in
11 2012. That doesn't sound like a lot, but to 15 families
12 that certainly was traumatic. And because of the permanent
13 retirement of two of the seven production lines last year,
14 the remaining employees are working reduced hours and
15 consequently bringing home less pay.

16 This industry is now suffering massive losses
17 which we at the union know is precursor to a company's
18 exiting the industry. As you will shortly hear from Mr. Ken
19 Norman, our union's members at the Marcegaglia facility
20 consider their jobs at risk and are facing a possible
21 shutdown. That risk will rise exponentially if you make a
22 negative determination and allow these dumped imports back
23 into the market.

24 In addition to the direct jobs as well as the
25 hours and thus the wages that have been lost to these

1 unfairly traded imports in the welded stainless pressure
2 pipe industry, the steel workers also represents the workers
3 at two of the major U.S. flat rolled stainless steel
4 producers. These companies are Allegheny Technologies and
5 AK Steel.

6 Welded stainless pipe is a major user of their
7 stainless flat rolled products for the manufacture of the
8 subject product. Therefore every ton of unfairly traded
9 imports is not only affecting domestic pipe production, but
10 is taking away a ton of domestic flat rolled stainless
11 production and work from our members in that industry.

12 Strong trade law enforcement is absolutely
13 essential to both steel worker members and other
14 manufacturing workers in the United States. The Economic
15 Policy Institute along with the American Manufacturer --
16 Alliance for American Manufacturing just issued a report
17 entitled more than half a million jobs at risk due to unfair
18 trade in the U.S. steel industry. That report details how
19 world steel over capacity has resulted in the worst import
20 surge into the U.S. since the Asian financial crisis. Right
21 now we're a co-petitioner in many of the 40 steel cases that
22 have been filed in the past year. And growing steel
23 industries and exports from Malaysia, Thailand and Vietnam
24 are part of this problem.

25 The steel workers and its members are in a trade

1 war. We learned earlier this week just how dirty and
2 vicious that war is when the U.S. Attorney for Pittsburgh
3 revealed that the Chinese Army which owns stakes in many
4 Chinese steel companies was hacking our computers during the
5 case against China on oil country tubular goods and lime
6 pipe which Mr. Schragrin was also our counsel for.

7 Finally, I urge the Commission to make an
8 affirmative, critical circumstances determination against
9 Malaysia. The importers from Malaysia knew those imports
10 were dumped. They knew the Malaysian companies were not
11 responding to the Department of Commerce's questionnaires,
12 but they rushed in as many imports as they could in the
13 three months after the petitions were filed. It's time to
14 make these importers whose pockets seem so deep that they
15 can afford to pay deposits, if they know they're going to
16 get them back, realize they cannot take good family
17 supportive jobs with impunity. They should pay the dumping
18 duties under critical circumstances.

19 Given the losses in this industry, those
20 importers have put this industry and our members and its
21 workers literally fighting for their survival.

22 Thank you.

23 MR. SCHRAGRIN: Thank you, Holly.

24 And our last witness today is Ken Norman who is
25 presently a finisher and the former union local president at

1 Marcegaglia USA Services. Ken.

2 MR. NORMAN: Good morning, Chairman Williamson
3 and members of the Commission.

4 For the record, my name is Ken Norman and I have
5 worked at Marcegaglia for over 14 years. I was hired
6 shortly after the company opened the plant in Munhall,
7 Pennsylvania and I'm now the 8th most senior worker in the
8 plant. I'm a finisher and I run the cutoff saw at the end
9 of the line after the pipe is welded. I was the union
10 president from 2008 to 2010 and I am now the union
11 secretary.

12 Our local, union 22, now has 100 workers. We had
13 about 125 workers just a few years ago. Everyone in the
14 local is well aware of the fact that Marcegaglia had put our
15 plant up for sale and that a deal with a perspective buyer
16 fell through last year.

17 During the negotiations for a new labor contract,
18 which concluded in October of 2013, the company shared
19 figures with us showing that they had been losing quite a
20 lot of money at the plant over the last few years. We
21 entered into a four-year contract extension in October of
22 2013 with only a 25 cent an hour increase in the first year
23 and a 15 cent per hour in the second year with increases in
24 the third and fourth years dependent on profits. And during
25 the 14 years I've been working at Marcegaglia, my wage has

1 probably increased about 25 percent, while the cost of
2 everything we buy for our family, whether it's milk, or gas,
3 or the cost of college has more than doubled. And needless
4 to say, our contribution for our health care benefits has
5 more than tripled since I started with the company.

6 Everyone in our unit is well aware of the fact
7 that Marcegaglia may shut the plant down if it cannot become
8 profitable. I don't know much about trade laws, but I have
9 been told that the Commerce Department has made findings
10 that imports of the welded stainless pressure pipe basically
11 ASTM-312 that we make in Munhall that has been imported
12 from Malaysia, Thailand, and Vietnam has been sold at dumped
13 prices.

14 I know that you have found that the imports from
15 these countries has taken about a quarter of the U.S.
16 market. Most importantly, I know that if we do not get
17 relief by your finding, that these imports are injuring us,
18 then our employer is going to continue losing money and they
19 are going to shut down our plant.

20 We will all lose our jobs.

21 Please make an affirmative injury determination
22 in this case.

23 Thank you.

24 MR. SCHRAGRIN: Thank you, Mr. Norman. I'm glad
25 we could have not only executives from the industry but

1 representatives of labor and an actual worker in the plant.
2 I was pleased that members of the Commission were able to
3 visit a number of plants in Northeast Ohio last month across
4 a whole large number of investigations.

5 On a personal note, let's face it, these jobs are
6 what these cases are all about. I mean, folks like Mr.
7 Norman, people represented by the USW have a chance to go to
8 work, make products, earn \$60 or 70,000 a year, have a
9 middle-class existence. If you allow unfair trade to take
10 their jobs, you only benefit the folks who carry briefcases
11 and cell phones with the international trading companies who
12 could care less about how much dumped product they buy and
13 how many U.S. workers they put out of work. So, in the end,
14 I'm sure I know after my years of experience, you focus on
15 the numbers that the staff puts together in the
16 investigations to make sure there's substantial evidence to
17 support your determinations. But, in the end, it's the jobs
18 and the workers and the families behind those jobs that
19 really matter.

20 That completes our direct testimony. We would be
21 more than happy to answer all of the Commission's questions.

22 Thank you.

23 CHAIRMAN WILLIAMSON: Thank you. And I want to
24 thank all the witnesses for coming today and taking time
25 away from their work and their businesses to come here.

1 This morning we're going to begin our questioning
2 with Commissioner Kieff.

3 COMMISSIONER KIEFF: Thank you very much, Mr.
4 Chairman.

5 And I echo the Chairman's remarks of
6 appreciation. It is just extremely helpful to us to have
7 the input, the information on which we can base our
8 decisions with which we can conduct our analysis. It's so
9 valuable so the time and energy spent by each of you to
10 prepare for and your testimony and to come and give it as
11 well as the Senator and the Representative, these are each
12 valuable sources of information for us.

13 So too is the opportunity that Mr. Schragrin
14 mentioned so many of us, including myself, we enjoyed
15 visiting the steel facilities in Ohio. I happened to have
16 gone to a technical school, so few things could be more fun
17 for me than going to a factory and actually watching things
18 in production. It is a great treat to watch the machines
19 and also to watch the people. The people -- the human
20 element is essential and it's great to have real direct
21 exposure to both the technology and the people and, of
22 course, the economics.

23 So, as we think about the economics, the first
24 question I have is to ask you about margins across the
25 different domestic producers. I recognize, of course,

1 that's a personal question. It's a private question. It is
2 awkward, especially in this setting, to discuss. But it's
3 an important question and so in whatever way is comfortable
4 and convenient for you, can you give me -- give us an
5 understanding of whether you think it is likely that the
6 U.S. producers, the plurality of U.S. producers likely have
7 the same margins or likely have different margins? Is there
8 a short answer for today and then perhaps a longer answer
9 for the post-hearing on the question about margins?

10 MR. SCHRAGRIN: You know, Commissioner, I should
11 probably handle this because, of course, I'm aware of the
12 different margins for each of the producers. And since in
13 almost all of my cases before this Commission I represent
14 competitors and they don't know, with the exception of a few
15 public companies, how well or poorly their competitors are
16 performing.

17 We'll address this further in the post-hearing.
18 I would say, based upon my experience, and maybe contrary to
19 the views of respondents that I have very often, in the vast
20 majority of my cases, seen wide variations in profitability
21 among members of a domestic industry. I think it's much
22 more the norm than the exception. Reasons for that may be
23 that somebody's more productive in their plants, their
24 equipment may be newer than in other companies, it's not
25 unusual for somebody with the newest equipment to have lower

1 costs than somebody with oldest equipment. It may be that
2 even across commodity products that somebody's sales team is
3 a little bit better than another company's sales team.

4 So, I think very often in cases respondents will
5 say, ahh, the data's got to be bad because we can't imagine
6 in a commodity product that everybody wouldn't make exactly
7 the same profit margin or exactly the same laws. But there
8 are various reasons why that occurs and that's the nature of
9 competitiveness in the United States.

10 COMMISSIONER KIEFF: And I recognize that really
11 everything you've said must be right to, of course, some
12 degree, and that it's especially awkward for company A to
13 really have good information about company B without hacking
14 their computers. So we recognize that.

15 Let's assume that it turns out to be the case
16 that there is variation. I'm curious to any of the
17 corporate representatives who'd like to volunteer, do you
18 think of yourselves as to some congenial degree competing
19 with each other and if so, you're -- of course, in gracious
20 ways, competing on what basis? Is it price? Is it other
21 things? How do you compete with each other?

22 MR. PENNINGTON: My name is Kyle Pennington.
23 Mr. Kieff I want to go back to your first question. It
24 would be a little bit difficult for me to assess the margins
25 for our friendly competitors here, okay. But I will state

1 that I think of some relevancy that the pricing for products
2 inside this pressure pipe range that we are discussing,
3 those different line items are atrociously low in comparison
4 to other products that we offer.

5 We often have taken orders for certain line items
6 in this category at losses, so from Bristol Metal's
7 prospective, I will share that the comparison in margins is
8 grossly much, much lower and at a loss compared to other
9 products that we offer in product outside this subject
10 material.

11 COMMISSIONER KIEFF: So as a follow-up, are you
12 suggesting that the pricing you are able to experience for
13 one of your products might perhaps impact the pricing for
14 one of your other products? So for example if you have a
15 single factory and it produces more than one product and it
16 is a large capital expenditure to build the factory, you
17 might rationally choose to charge a higher price for the
18 products where you can, if you have to charge a lower price
19 on some other products. There's in effect a trade-off, is
20 that right?

21 MR. PENNINGTON: Yes, there are checks and
22 balances and it becomes a matter of what the product is,
23 what the market will bear and certainly what the cost
24 structure is but very often inside this product range that
25 we are discussing today, we really have to rationalize

1 whether or not we take an order at a loss or we hope that we
2 have a better product outside this range that will help
3 carry that.

4 And that rationalization is pretty much a
5 constant practice in our day-to-day decisions as to whether
6 or not we accept orders. And one other comment, and many
7 times we walk away from these orders because just of the
8 issue of the financial irresponsibility to take those orders
9 and then certainly at that point we can't carry our
10 overhead, so it is really a tricky situation.

11 COMMISSIONER KIEFF: So then returning to how
12 you compete, it sounds like are you saying you compete to
13 some extent on price? To a large extent on price?
14 Entirely on price? Do you compete, for example, on bundled
15 relationships or the depth of a relationship? Do you
16 compete on service? Do you compete on reputation? Post
17 sale, technical support -- how do you compete with each
18 other?

19 MR. PENNINGTON: I would say all of the above
20 actually.

21 COMMISSIONER KIEFF: Okay.

22 MR. PENNINGTON: You know all of the above and
23 in this particular case in our groupings of product, it
24 really gets down to price. Not only do we compete probably
25 against ourselves, we are actualizing taking an order, we

1 compete against our friendly competition and certainly we
2 compete against the import pressure.

3 COMMISSIONER KIEFF: Thank you. I will just --
4 I recognize that my time is about to expire and I will just
5 invite for the post-hearing if any of you, including Mr.
6 Pennington, would like to provide more information about
7 this I always enjoy reading, just as much as I enjoy a
8 conversation so please, you are not losing an opportunity if
9 we haven't yet spoken. We look forward to whatever you can
10 provide and I look forward to following up with some more
11 questions next round.

12 MR. SCHAGRIN: Commissioner, just before the
13 light turns red I just want to make one point, because I
14 have been representing this segment of the industry for 14
15 years. During that time I have seen one U.S. producer that
16 is called Davis Pipe file for bankruptcy. They completely
17 don't exist. No one even purchased their equipment for
18 this industry.

19 Another major producer, Trent Tube is still in
20 business, but is not in this industry anymore, so they shut
21 down the plant that is making this. I would surmise and of
22 course I have forgotten any confidential information I
23 learned I'm good at that -- that they had the biggest
24 losses, that's why they got out of this industry or went
25 bankrupt.

1 And then if you made a negative determination
2 here, it would probably be the company with the largest
3 losses that would shut down first and then the company with
4 the next largest losses that would shut down second, so the
5 marketplace works and it is tough but that's how losses
6 translate into plant closures.

7 COMMISSIONER KIEFF: Thank you very much Mr.
8 Chairman.

9 CHAIRMAN WILLIAMSON: Thank you. Commissioner
10 Schmidtlein.

11 COMMISSIONER SCHMIDTLEIN: Thank you. So I
12 would also like to thank the witnesses for appearing here
13 today, for welcoming me Mr. Schagrin and Miss Hart, you are
14 correct I am new, but this is actually my second hearing if
15 you could believe it. Four weeks in, so it's pretty busy
16 here.

17 I just have to add a personal note. This case
18 is really interesting for me because I grew up in the
19 Midwest and my father actually was a pipeline construction
20 worker and he laid natural gas pipeline from about 1960 to
21 2009 I guess, so I never paid much attention to you know,
22 exactly what he was doing. He traveled around the United
23 States a lot, working on different projects, but I think
24 it's sort of ironic, I've been in Washington 20 years and I
25 have landed in a spot where the case I am dealing with has

1 to do with the products that he, you know, worked with every
2 day. So it makes it a little bit more interesting for me.

3 So I want to start with the raw material cost.
4 And since I'm new, and this has been discussed a little bit,
5 but can you walk me through and I will just open this up to
6 any number of the panel, you know. The trends in the raw or
7 the cost of goods sold, in particular, raw material cost and
8 how that impacted the price, and then I have a couple of
9 follow up questions for how that fits into the legal
10 analysis, so.

11 MR. HENDRICKSON: David Hendrickson, Felker
12 Brothers Corporation. Um, steel prices as far as the cost
13 goes, is very transparent in our market. As I stated in my
14 testimony, chrome-molly and nickel are traded on the London
15 Metal Exchange and those are used in the production of
16 stainless steel.

17 The price is very apparent every month what it is
18 traded at, and that's really what sets your future costs
19 going into the next month and that's across the world. It
20 is not just domestically, it is across the whole world and
21 it spikes up and down but for the most part though everybody
22 has a feel for what the price is at that time. You know
23 what you paid for it and you know what you are going to be
24 buying it for and you know what the future value is going to
25 be.

1 But the windows have shortened up so dramatically
2 in the last few years. In the past the prices would be out
3 there for months in advance for us to be able to decide
4 whether they are going to pull forward on inventory or put
5 back, but now with pricing being so pushed condensed
6 together, and lead times for the steel mills are well beyond
7 pricing, so you are buying material right now in the months
8 you have no idea what the cost is going to be.

9 Everybody, not just us, everybody. So what you
10 have to do then is you have to work your inventory based on
11 what you believe your sales is going to be and what you
12 think your mix is going to be. So and we are all in the
13 same boat, whether you are domestic or international.
14 Everybody has to take a guess at what the inventory they are
15 going to sell and the size that they are going to be selling
16 it.

17 That's why it became to me, how can anybody sell
18 at such a low margin when everybody knows what the price is?
19 You know, it may be up or down but if we are constantly 15
20 to 20% below what the market it, there is something not
21 right there and we have seen that steadily so in the China
22 case and we are seeing it now with this case also and so
23 it's really not that difficult for our customer base to be
24 able to understand where the pricing is at in the market.

25 Then what they do is basically just shop around

1 and find out where the best deal they can get, and that's
2 why I think we have seen so much pressure from the foreign
3 imports.

4 COMMISSIONER SCHMIDTLEIN: And so do I understand
5 -- do the price of nickel and chrome and so forth, the
6 flat-rolled steel producers, they pass all of those charges
7 through to you.

8 MR. HENDRICKSON: Yes ma'am, they are a pass
9 through. They will announce their pricing and it will be
10 linked right -- and they will actually put on the top of
11 there what the alimine closed out at and there's a formula
12 that they have that all the mills use that tells you what
13 the price the stainless is based on for those commodities
14 moly-chrome and nickel which are traded and they are put
15 right on top of their and they are readily available for
16 everybody to look at.

17 COMMISSIONER SCHMIDTLEIN: Okay, so I guess sort
18 of following up in this line on you know, the price effects,
19 and this might be a question for you, Mr. Schagrin, in the
20 final investigation hearing you all are arguing that there
21 are significant price depression, which of course, the
22 Commission didn't find in the prelim. Can you talk about
23 what you believe is different in this record that was in the
24 prelim and what establishes that there is price depression?

25 MR. SCHAGRIN: Yeah, I'll address that. So in

1 the prelim which a lot of Commissioners are using, I'll be
2 quite honest, I don't agree with it, is that instead of
3 looking at the movement of domestic prices and combined with
4 the underselling to determine whether there is price
5 suppression or price depression, most of the Commission has
6 been looking at the change in COGS, cost of goods sold,
7 percentage and in the prelim the COGS percentage had gone
8 down by 2/10s of a percent over the POI so the Commission
9 said because COGS has been declining as a percentage of
10 sales revenue, we don't find price depression.

11 In this final record, you see a steep increase in
12 the COGS percentage, which of course is correlated to a
13 steep decline in profits or a steep increase in losses, so
14 applying the same methodology for the final as the
15 Commission applied in the prelim, you would now find that
16 the underselling caused price depression.

17 Getting there from the numbers and then the
18 business reality, which all of these witnesses would
19 understand. The failure in the respondent's argument of
20 saying that "of course U.S. prices for stainless pressure
21 pipe fell because raw material i.e. flammable steel prices
22 fell over the POI is too simplistic."

23 I think almost everyone on this panel has an MBA,
24 they don't pass those out like popcorn in a movie theater.
25 You don't, when you are operating a business in the United

1 States, if your raw material costs fall \$500.00 a ton, you
2 don't say to your customers, "let me cut my pricing by
3 \$700.00 a ton." Your customer says, "wow your raw material
4 costs are falling, I expect the lower price." You say
5 "yeah, I'll cut my price to you \$300.00 a ton and I'll try
6 to regain profitability."

7 So I don't know whether any of the lawyers or the
8 economists, you know, how they run their law firms or their
9 businesses -- I can tell you because I also have my own
10 business for 30 years. Besides being a nice person and
11 wanting to preserve jobs, you try to maximize profits and so
12 it is just too facile to say, oh there's a correlation
13 between falling raw material costs and a correlation between
14 falling prices for this product without comparing the two.

15 And clearly this record demonstrates that the
16 prices fell for the subject products, fell more than raw
17 material costs and because it is a commodity product, no one
18 disagrees with that and because there was consistent
19 underselling, by these unfairly traded imports which
20 represent an amazing one-quarter of the U.S. market.

21 Of course, unfairly traded imports supplying
22 one-quarter of the U.S. market, heavily concentrated on the
23 most commodity sizes and the largest demand sizes in the
24 marketplace have had a price depressing effect.

25 COMMISSIONER SCHMIDTLEIN: So this sort of

1 raises the other topic that has been discussed, is the
2 non-subject imports and what they're priced at. You know
3 how do you differentiate between whether which one is
4 driving the price. Can you talk a little bit, or one of
5 the witnesses, any of the witnesses, about you know where
6 are the non-subject imports priced in the market and how do
7 you know whether they are driving the price or not driving
8 the price?

9 MR. PODSIAD: Okay Kris Podsiad, sorry can you
10 state your question again. You are looking to
11 differentiate between subject and non-subject material?

12 COMMISSIONER SCHMIDTLEIN: Right, right.

13 MR. PODSIAD: Okay.

14 COMMISSIONER SCHMIDTLEIN: So we are talking
15 about a commodity that's price driven right, the purchase is
16 price driven, we have these non-subject imports in the
17 market, where are they priced?

18 MR. PODSIAD: The non-subject products are
19 priced at a much higher price relative to the subject
20 material and it is mainly because there is no competition,
21 foreign competition for us to have to compete with and the
22 theory is that it all comes down to loading containers.

23 COMMISSIONER SCHMIDTLEIN: So the non-subject
24 are priced higher than the subject imports in the U.S.
25 market?

1 MR. PODSIAD: Right.

2 COMMISSIONER SCHMIDTLEIN: Okay, so why are they
3 maintaining that steady market share that they have?

4 MR. PODSIAD: The theory is of course if you
5 imagine filling a container with -- their large diameter are
6 the non-subjects, we are talking greater than 14 inch.

7 MR. SCHAGRIN: No they are talking non Ta-Chen.

8 COMMISSIONER SCHMIDTLEIN: Yeah, yeah, Taiwan,
9 Korea, yeah, yeah, sorry, I could have been more specific.

10 MR. SCHAGRIN: Would you like us to go back to
11 this or answer this question now Mr. Chairman?

12 COMMISSIONER SCHMIDTLEIN: Oh my time is up,
13 yes, I'm sorry.

14 MR. SCHAGRIN: I know it's an important
15 question, I know we'll talk about it, so we can answer the
16 question in the next round or --

17 CHAIRMAN WILLIAMSON: Why don't you answer that
18 question.

19 COMMISSIONER SCHMIDTLEIN: Okay, okay, the light
20 is blinking everywhere, I should have noticed.

21 MR. TIDLOW: So the question is about Ta-Chen
22 imports and that's a non-subject.

23 CHAIRMAN WILLIAMSON: Identify yourself too.

24 MR. TIDLOW: Oh, I'm sorry, my name is John
25 Tidlow I am from Synalloy Metals. We don't have perfect

1 information about the values and things that come in, but
2 the information that we do have, shows that the values
3 recorded on their import documentation is significantly
4 higher to the tune of 30 and 40 and 50% higher than the
5 subject countries of Vietnam, Malaysia and Thailand. We
6 compete with Ta-Chen in our marketplace because they are a
7 master distributor. We supply Ta-Chen, but they have, they
8 have invested in this market and it appears to us that they
9 have a considerable stake in not ruining the market and
10 driving the prices to ruinous levels that they can't make
11 money and we can't make money.

12 They have become almost a brick and mortar for
13 that part of our business.

14 COMMISSIONER SCHMIDTLEIN: So are they selling
15 at lower than domestic producers? The non-subject Ta-Chen,
16 did I say that right?

17 MR. SCHAGRIN: To summarize, Commissioner
18 Schmidtlein, and we will further elucidate this in our
19 post-hearing brief. Ta-Chen goes at the market in a
20 completely different way than all of the subject imports,
21 and for that matter, even a different way than domestic
22 producers, because they are probably the single largest, or
23 second largest master distributor in the United States.

24 So all of the subject imports are sold by trading
25 companies who go to master distributors to say we will give

1 you the lowest price. Ta-Chen has eight stocking depots
2 across the United States where they don't normally sell what
3 they import to anybody. They stock it themselves in their
4 stocking depots as a master distributor and then they will
5 either sell to distributors or end users as a distributor
6 would.

7 So as I think Mr. Tidlow said, the big difference
8 between Ta-Chen which everybody knows, and we can tell from
9 the import statistics is far and away the largest share of
10 non-subject imports. The way they go to the market is
11 entirely different than subject imports. They are also a
12 major customer of the U.S. industry. Silbo and the trading
13 companies, they don't buy from the domestic industry.

14 Malaysians, Vietnamese and Thai companies don't
15 buy from the domestic industries, Ta-Chen, because they are
16 both a foreign producers, an importer and a master
17 distributor, is actually also a major customer of the U.S.
18 industry. So they are just entirely different.

19 COMMISSIONER SCHMIDTLEIN: Okay, well it might
20 be helpful to have that.

21 MR. SCHAGRIN: Sure, we will explain that
22 further post-hearing, or later in today's hearing.

23 COMMISSIONER SCHMIDTLEIN: Okay, I will - - .

24 CHAIRMAN WILLIAMSON: Thank you. Mr.
25 Pennington, you -- we are talking about how the subject

1 product is, I guess you say lower priced than products that
2 were made for -- other products, and I was wondering if you
3 post-hearing and others can do this, are these other
4 products are using some of the same raw materials? What is
5 different that allows you to sell them, I guess for what you
6 consider a fair price?

7 MR. PENNINGTON: Kyle Pennington again,
8 Commissioner Williamson, these other products that I am
9 speaking of, they are outside the range of the subject
10 material and they are typically for project work. They are
11 not restocking sizes of material that we see in this range,
12 and typically have better margins. There are more one-offs,
13 they are almost customer product in larger OD sizes so my
14 point was that I guess the health of some of those products
15 help carry the financial deficiency of the subject material.

16 That's the point that I was making, but also
17 inside this range of subject material there are many of
18 those line items where our gross margins are very low and
19 indeed in the red. Does that answer your question?

20 CHAIRMAN WILLIAMSON: That starts to get it, I
21 guess probably post-hearing, unless someone else wants to
22 add something now.

23 MR. HENDRICKSON: David Hendrickson, another
24 thing is the raw materials, really the same raw material
25 that we make in the subject material and in the non-subject

1 material, but because of the lack of the suppression of
2 prices from the foreign stuff, we are able to sustain a
3 margin that is more healthy on the non-subject material and
4 run the subject material. And when you look at a building
5 material from a customer, that's the way you have to look at
6 it.

7 When you go through a list of building material,
8 you know what the price is for subject material and either
9 you offer that or else you don't take the order, but you try
10 -- what you do is you look at the non-subject material which
11 you know is a little healthier, and the overall building
12 material, you look at what's that margin there. Is that
13 acceptable or not.

14 If you deal with just the subject material, it is
15 very difficult to compete in.

16 CHAIRMAN WILLIAMSON: Okay, and I guess maybe
17 post-hearing any company now -- what I'm trying to do is how
18 do we understand what is the role of the subject imports in
19 this market and it's -- when Mr. Pennington was talking in
20 terms of maybe this might, this comparison might provide
21 some -- might help us understand that and that's the
22 question that can be addressed. And respondents can also
23 address their view of that difference. Thank you.

24 In listening to everyone, you know, we are
25 talking about how fragile the plants are, the pressures of

1 the owners to want to close them down, and then you kind of
2 look at the aggregate numbers for the industry in terms of
3 you know, for output, best utilization, market share and
4 then also the number of workers and all and you don't see
5 quite that same picture.

6 So I was wondering if and I understand each
7 company has to look at its own plant, but I was wondering if
8 everybody could help address that, and I am particularly
9 wondering if Miss Hart could talk about the role the workers
10 in the industry, because we have seen also an increase in --
11 we've seen a decline in productivity over the period too,
12 it kind of leads two questions there.

13 MS. HART: Okay, so if I understand that you are
14 questioning the role of workers and the levels of
15 productivity at these companies?

16 CHAIRMAN WILLIAMSON: Yes, what are some of the
17 things associated that the workers have done to keep
18 themselves competitive, when you have got -- because it's
19 ---

20 MS. HART: I know, I can't personally speak to
21 any of this because I am a legislative director --

22 CHAIRMAN WILLIAMSON: I understand. Many I
23 should ask Mr. Norman.

24 MS. HART: Mr. Norman may be able to address
25 that a little better and I would also like the opportunity I

1 think for us to address it in the post hearing brief.

2 CHAIRMAN WILLIAMSON: Sure.

3 MS. HART: But, you know, commonly, I mean
4 throughout our industries, I mean when we are in a contract
5 for a bidding obviously our job is to try to get the best
6 deals for our members as far as their benefits, wages, et
7 cetera, but you know we are very understanding of the
8 pressures all our manufacturers are under as a union and we
9 represent workers in a wide range of industries and I can
10 say our you know, vastly touted size has decreased
11 significantly over the years due to in every single
12 industry, a wide range of import pressures and competitive
13 pressures.

14 Though American manufacturing is losing jobs
15 period, just at large. At least the industries we
16 represent and you know, so we are very interested in
17 insuring that when we do negotiate with a company that
18 number one our employees are being, you know our members are
19 being treated fairly, but that we are also helping the
20 business succeed as best we can.

21 As to specifics, I cannot address that.

22 CHAIRMAN WILLIAMSON: Mr. Norman do you want to
23 take that one. You are out there on the factory floor, you
24 know what it's doing every day.

25 MR. NORMAN: Kenny Norman again, like in our

1 plant. The finishers we have learned just about all the
2 jobs in finishing whereas we don't have a specific job. We
3 know them all so if there is something that needs done,
4 somebody can do it, if nobody shows up.

5 Like maintenance, you know if you can fix it you
6 don't call a maintenance man, you fix it. We are not going
7 to file a grievance because you didn't call the maintenance
8 man because he is doing something else and you can fix your
9 own machine and it keeps costs down, because they don't have
10 to hire as many maintenance people and try and help the
11 company to be profitable by saving them money.

12 CHAIRMAN WILLIAMSON: Okay thank you.

13 MR. SCHAGRIN: Chairman Williamson, I would like
14 to comment. I was going to do it in my closing anyway.
15 During my experience with the Commission, I well remember
16 one particular respondent's counsel who has since retired
17 but you know, in cases like this, he used to do a power
18 point. I'm not sure if we are going to get any of those
19 later today, and he would have these big arrows and if U.S.
20 production increased by .001 percent, you would have this
21 huge thick arrow going up and he would show, look out of all
22 the factors the Commission looks at, you know we have 8
23 arrows going up and only 2 going down, you should go
24 negative.

25 Well this is a case like that only I'm sure the

1 Commission is not going to be as facsinile in its analysis.
2 If you look at the record evidence, and it's all on the C
3 tables, you would see that sales for the U.S. industry high
4 quantity increased by .1 percent over this field line .1.
5 Did they increase? Yes. Any more than zero is an
6 increase. Capacity utilization increased from 50.4% to
7 52.1. What this industry is telling you is they will lose
8 money when they are operating only at 50%.

9 Most of these plants, just from the nature of
10 production, the mills only make one or two sizes, so they
11 will have three, five, seven, eight mills to produce this.
12 Back in '05-'06, all of those mills were operating before
13 the surge of imports, God bless you. (sneezing)

14 Before the imports from China and now we have the
15 surge of imports from Malaysia, Thailand and Vietnam. This
16 industry, I would say virtually no industry can survive at
17 capacity utilization rates of only 50%. Is 52.1 higher
18 than 50.4? Yes it is, but the most cogent number in the
19 report, much more important than an increase of .1 percent
20 in sale is that over the period of investigation, losses
21 increased by 133%. I mean that's why one or two of these
22 plants is on the verge of shutting down.

23 And as I'll probably talk later about or maybe in
24 answers to questions, this issue of is it subject imports or
25 non-subject imports -- it's clearly subject imports having a

1 major role, because we will provide in our post-hearing
2 brief information that once these subject imports left the
3 markets because of the imposition of duties, this industry
4 is recovering.

5 Shipments are up by over 20% in the first four
6 months of this year, versus the first four months of last
7 year. That means this industry is benefitting from relief.
8 If subject imports didn't play any role in the market, why
9 would the industry be benefitting? They are benefitting.
10 This is their life line. I think the red light is on.
11 Thank you.

12 CHAIRMAN WILLIAMSON: In essence, it sounds you
13 said the industry really started out in a vulnerable
14 position and hasn't gotten any better.

15 MR. SCHAGRIN: Worse.

16 CHAIRMAN WILLIAMSON: Okay. Thank you.
17 Commissioner Pinkert?

18 COMMISSIONER PINKERT: Thank you, Mr. Chairman.
19 And I join my colleagues in thanking all of you for being
20 here today and helping us to understand these issues.

21 I want to begin with a question about industry
22 capacity, and I don't want to state numbers in my question;
23 but if you could give me an idea about the trend and
24 capacity utilization in the industry and why if, in fact,
25 there has been some increase in capacity why that might have

1 occurred during the period?

2 MR. TIDLOW: I cannot speak to the increase for
3 other people's capacity because I'm not aware of that. But
4 the capacity for these plants is very straightforward. It's
5 the amount of time and the amount of material you can run
6 through it. These are continuous equipment that we started
7 on Monday and we can run it for 30 days. We can run it for
8 60 days. We can run it for 90 days. Historically, we've
9 done that. At this point in time we're not doing that.

10 When I first started at this company two or three
11 of the mills would run for 60, 90 days and we'd never shut
12 them down. Right now, we're running those same mills one
13 shift. So, our capacity on our reports has not changed. We
14 have the same equipment we had in 2005, 2009, 2010, and we
15 just track it as a 24x7 facility because that's the nature
16 of the operation.

17 COMMISSIONER PINKERT: Thank you. I'm sure
18 others on the panel will want to comment on this.

19 MR. HENDRICKSON: David Hendrickson. I know as
20 far as our capacity, it really has not changed so much.
21 I've added some new products, you know, some stuff that I
22 would call it "non-standard" material to try to bolster the
23 margins and try to bolster the volume 'cause when we buy
24 stainless you get attentions from the stainless mills when
25 you buy a certain volume of stainless.

1 If you fall below a certain line, you will pay
2 more for your stainless, so you have to maintain a certain
3 level of purchasing to maintain the pricing from the mills.
4 So, you either have to sell at a lower margin, maybe at a
5 loss, or add other products that you can make out of that
6 that are maybe non-standard. And that's some of the things
7 that we have done to try to get us through this period of
8 time, but you can only do that for so long.

9 There's a very high portion of the volume that we
10 do sell. When it becomes that low a number, you can't
11 offset that. So, we did try some things like that, like
12 increasing the number of items that we can offer or even
13 stocking a little more to offset some of the lead times to
14 try to get competitive advantage, but those are all
15 short-term remedies.

16 MR. BRUNSWICK: Good morning. My name is Don
17 Brunswick.

18 Just as David had mentioned, I could speak for
19 Marcegaglia in regards to capacity utilization, and we're
20 running about 50 percent. And in order to compensate for
21 the loss in its subject import sizes, we started producing
22 some pipe and tube in other markets to fill the mills.

23 And what that does is that lowers the efficiency
24 of the mills because of so many tooling changeovers that are
25 needed throughout the month, when, historically, we could

1 set up on one size and run it for 30 days. Now, we're
2 setting that same mill up five or six times in a one-month
3 period.

4 So, now you have down time, but you're paying
5 workers to set that mill up and change it over. So, the
6 gains or returns on trying to get into different markets to
7 compensate for the loss in market share for the pipe
8 products in A-312 really isn't working out as much as one
9 would think to benefit a company.

10 MR. PODSIAD: Kris Podsiad. And as my testimony
11 indicated, we did shut some capacity. We shut down two
12 engine down, which was two lines for us. And our capacity,
13 in total, is the same, other than those changes, but we run
14 into the same issues.

15 We actually started to eliminate some specialty
16 sizes or oddball sizes that we couldn't get long runs out of
17 because we weren't as -- as John Tidlow indicated, when you
18 turn on a mill and only run it eight hours, your first 12,
19 13 pipes aren't straight. You have a lot more re-work. And
20 that had a negative impact on productivity in our mill, and
21 I suspect in my colleagues' mills as well.

22 When you start to reduce your run, your scrap
23 goes up and your productivity goes down because of the
24 amount of re-work you have to get those starter pipes
25 straight. And due to the fact, as David indicated, the

1 price of raw material, such a substantial part of the
2 product, you're not going to scrap those parts that aren't
3 perfect. You're going to finish those.

4 MR. PENNINGTON: Kyle Pennington, Bristol Metals
5 again.

6 I would just echo some of the statements relative
7 to capacity. Just in my scribbling here, I reflected on
8 four of our eight continuous mills. And in recent history,
9 we have taken the workload from eight personnel down to
10 three across these four mills, and those are only mill
11 operators. That does not include downstream personnel who
12 might, you know, transport the material, material handling,
13 cutting, sorting, and acid treatment prior to shipping.

14 And so, I think with those three personnel across
15 -- excuse me -- the difference between the eight and three
16 personnel across those mills that has all those mills
17 probably running at 35 or 40 percent capacity -- more like
18 30 actually. So, indeed, we have much capacity remaining in
19 the subject sizes. And that doesn't even address the other
20 four mills that actually produce these sizes as well. But
21 they probably run an average of two and a half, or two
22 shifts per day versus three.

23 COMMISSIONER PINKERT: Thank you.

24 Now, I take Mr. Schagrins point that sometimes a
25 small increase over a long period is not necessarily

1 indicative of anything, but if you could look at the
2 aggregate numbers, Mr. Schagrin, for capacity over the
3 period and explain any increase in capacity I think that
4 would be useful.

5 Also, let's take a look at capital expenditures
6 in the industry. And if we can't talk too much about it
7 here, we can talk about it in the post-hearing. But what's
8 the trend in your experience in capital expenditures during
9 this period that we're looking at for this investigation?

10 MR. PODSIAD: Kris Podsiad again.

11 We've made no investments in the subject product.
12 We have made sizable investments in the non-subject product,
13 the large OD. I can't speak to what my peers have done.

14 MR. PENNINGTON: Kyle Pennington.

15 I will just comment that the reflect over recent
16 years, other than routine efficiency gains that we would try
17 to make -- certainly, Mr. Williamson asked a question about
18 what has the labor force done and so forth to support or
19 pitch in.

20 I mean we constantly are working on methods and
21 systems to improve safety, quality, throughput, material
22 loss, and all those things. And certainly, the working
23 force participates in that to help us to be as efficient as
24 we can and to certainly help our throughput and our costs.

25 And then relative to the question, Mr. Pinkert,

1 on capital investment, other than routine, necessary,
2 standard-type maintenance, we have invested none in these
3 continuous mills that run this product. I would say other
4 than one particular mill, which that investment was relative
5 to a product size outside of this range.

6 MR. SCHAGRIN: Commissioner Pinkert, we'll
7 comment further in the post-hearing brief, but I would say
8 that while the data is confidential the staff report does
9 say, and I think it says it as well as it can be said, that
10 capital expenditures spent over the period were relatively
11 small. And I think it's not surprising in an industry
12 that's losing money every year of the POI that the capital
13 expenditures are really for maintenance and safety. No one
14 is reinvesting in this industry.

15 I've seen this before in other segments of the
16 steel industry. I mean it is not easy to make a 312
17 stainless pipe. And if this industry is subject to further
18 unfair import competition, and without the ability to
19 generate profits and reinvest in these plants, this industry
20 is going to go. And when this industry is gone, then Mr.
21 Jakob and Silbo and the trading companies will be able to
22 make a fortune when the domestic industry doesn't have half
23 the market, which is pathetic enough when the domestic
24 industry only has a third of the market, a quarter of the
25 market, a tenth of the market.

1 So, I mean, unfortunately, compared to many of
2 the industries I represent here, this industry is in
3 horrible shape. And at least, unfairly traded imports are a
4 material cause of its pathetic shape.

5 COMMISSIONER PINKERT: Thank you.

6 Mr. Schagrin, I know for the post-hearing ^^^^ I
7 know you've already promised a couple of things this round,
8 but if you could take a look at Roman Numeral III-3 of the
9 staff report, there's a discussion there of events in 2011
10 and 2012 involving one of the domestic producers. If you
11 can comment on why the events discussed there occurred, I
12 think that would also be very helpful.

13 MR. SCHAGRIN: We'll do that in the post-hearing.

14 COMMISSIONER PINKERT: Thank you.

15 MR. SCHAGRIN: Thank you.

16 COMMISSIONER PINKERT: Thank you, Mr. Chairman.

17 CHAIRMAN WILLIAMSON: Thank you. Commissioner
18 Johanson?

19 COMMISSIONER JOHANSON: Thank you, Mr. Chairman.
20 And I would also like to thank all of the witnesses for
21 appearing here today.

22 I'd like to return to the issue of the prices of
23 subject versus non-subject imports. As you all are probably
24 aware, there seems to be some disparity in the views of
25 Petitioners and Respondents regarding the prices of these

1 products.

2 Specifically, Respondents contend that an
3 analysis in Exhibits 2-A to 2-F of their brief indicates
4 that non-subject imports were among the lowest priced
5 merchandise and gained significant market share at the
6 expense of both the domestic industry and subject imports
7 during the period of investigation. How do you all respond
8 to this?

9 MR. SCHAGRIN: I'll respond first, Commissioner
10 Johanson.

11 So, I mean what you have in Respondents' brief is
12 an analysis of the pricing of non-subject imports for the
13 pricing products. And I think that an analysis which we
14 will get into in our post-hearing brief, because it's
15 confidential, will show that the amount of non-subject
16 imports reported to the Commission for those pricing
17 products is miniscule.

18 So, they're really trying to make a mountain out
19 of a molehill because if you compare in contrast to that the
20 information that you have which represents virtually all
21 non-subject imports in terms of importer responses you will
22 see that the average unit values reported in the staff
23 report, and I think those are in I think Table 2-2 and then
24 again in some other tables, that the average unit values for
25 non-subject imports are much higher than the average unit

1 values for subject imports. And we don't think the product
2 mix is different between non-subject and subject.

3 So, look, I know Mr. Schutzman in a request to
4 the Commission before the hearing took place said subpoena
5 the pricing data from non-subject imports. We said in our
6 pre-hearing brief we not only -- just so there's not a lot
7 of chutzpa involved, you know, it's like one thing for
8 somebody to live in a glass house. It's another thing for
9 somebody to live in a glass house and then throw stones
10 because his clients' purchasers in the United States didn't
11 respond to the Commission's questionnaires.

12 So, we're all for, although we all know in the
13 real world it's completely impractical, we're all for the
14 Commission to subpoena all the importers of these products,
15 non-subject and subject, so you have a more complete record.
16 But we don't think the U.S. industry should be penalized for
17 the lack of participation of importers of either subject
18 products or non-subject products.

19 And as I say, we'll explain further in our
20 post-hearing brief how the information relied upon by
21 Respondents to make these arguments on non-subject imports
22 is not very robust data. And the much more robust data by
23 volume shows that non-subject imports are priced higher than
24 subject imports. And I think you've already heard some of
25 the members of the domestic industry tell you about how

1 differently Ta-Chen goes to the marketplace than the trading
2 company subject imports go to the marketplace.

3 COMMISSIONER JOHANSON: Thank you, Mr. Schagrin.
4 Yes, I do look forward to seeing a post-hearing brief. As
5 you are aware, the Respondents -- this is a fairly major
6 part of their argument, so I look forward to seeing what you
7 have to supply.

8 I'd now like to turn to something which the
9 Respondents also raised, and that is the issue of
10 surcharges. Please explain the role of raw materials
11 surcharges in this industry. And how would any increase in
12 the price of hot rolled steel, if that were to take place,
13 be passed through?

14 MR. HENDRICKSON: Well, as far as surcharges go,
15 and in your cost, base prices, that's really the cost of
16 just stainless is base price and in your surcharges.

17 Your surcharges, like I testified earlier, are
18 publicly traded and the prices are very transparent in the
19 market, so everybody knows what the next month's level is.

20 As far as the base prices go, mills will announce
21 base prices periodically, but they haven't really been very
22 volatile in the last, you know, two or three years. They
23 may go up a little bit, may go down a little bit, but they
24 don't really move very much. The surcharge, particularly
25 those three items, nickel, moly, and chrome are the one that

1 really drive the price -- have been driving the pricing up
2 or down, and they are very readily available. So, it's not
3 a secret of what they are. Everybody knows what they are,
4 and they can see it out there.

5 The challenge is trying to predict where they're
6 going to be because the lead times from the mills are
7 outside the timeframe in which you have the visibility to
8 the price.

9 MR. SCHAGRIN: Commissioner Johanson, can I ask
10 -- I think now that Mr. Hendrickson answered the question as
11 to the flat rolled side I would invite Mr. Krogman or Mr.
12 Tidlow to tell you about any role of surcharges for the pipe
13 being sold by the domestic industry.

14 MR. TIDLOW: One of the things that's changed in
15 this industry -- this is John Tidlow again. I'm sorry.

16 One of the things that's changed in this industry
17 since I began 12 and 1/2, 13 years ago is we're not allowed
18 to pass surcharges through any more. Our vendors, our flat
19 rolled producers give us surcharges on 100 percent of what
20 they sell to us. So, we are subject to the surcharge, but
21 we must sell our product on a base cost, which includes the
22 surcharge. We pay for a base cost for the material, plus
23 surcharge, but we only are allowed to bundle that altogether
24 and pass that on.

25 In the past, we used to be able to charge base

1 price, plus surcharge. And that's disappeared in the last
2 three to four years because the import materials that are
3 coming in from subject countries and others price on just a
4 base price. This is your full unit cost which you must pay
5 to buy this item.

6 So, Randy, do you have anything to add?

7 MR. KROGMAN: Randy Krogman.

8 And that is correct. The pricing is based up on
9 two components today. It's a base price and the unit
10 surcharge cost per pound.

11 COMMISSIONER JOHANSON: All right. So, Mr.
12 Tidlow, you're basically stating that the U.S. producers
13 have to swallow the surcharge? You can't pass that on?

14 MR. TIDLOW: We pass on as much of it as we
15 possibly can. The surcharge to us is transparent.
16 Everybody can look and see what it is. The price that we
17 receive for the product may or may not include all of the
18 surcharge that comes to us. So, we try everyday to pass it
19 on. But given the way the pricing comes in on a per pound
20 basis from most of the importers, we're very unsuccessful.

21 As surcharges move, they tend to move quicker
22 than what we get. They tend to go down faster than what
23 ours are going down, and they go up slower than what we've
24 seen. So, generally, we cannot pass it on.

25 COMMISSIONER JOHANSON: Is that the case with

1 other producers at the table today?

2 MR. KROGMAN: Randy Krogman. Yes.

3 MR. PODSIAD: Kris Podsiad. Yeah, it is the
4 case.

5 And just to clarify what John's saying, when we
6 buy our flat rolled from the mills, we agree on a base price
7 and then we get our surcharge at time of delivery. And
8 David point out that what's happened is the deliveries
9 exceed the visible window from the LME on what the nickel,
10 and the moly and the surcharges are going to be. So, with
11 the increase in imports and how they've changed the pricing
12 in our market now we're pricing on a net number, including
13 surcharge. So, it really depends on -- we're kind of
14 victims. We're bearing the risk of whether the material
15 we're buying is at a higher nickel price than what we're
16 selling at because we're selling on fixed on receiving a
17 variable cost that's flowing through on the nickel side.

18 COMMISSIONER JOHANSON: And Mr. Podsiad, just to
19 make it clear, LME, is London Metals Exchange?

20 MR. PODSIAD: Correct.

21 COMMISSIONER JOHANSON: Okay. Thank you.

22 MR. HENDRICKSON: David Hendrickson.

23 I think to clear it up is that the surcharge and
24 the base price coming to us in the mills on the invoice in
25 the mills is there, but the invoice to our customers on that

1 number, and that net number does not always match up with
2 the price in which we're paying for the steel. It's
3 whatever the market number is. And because of the
4 suppression in prices due to the foreign imports, that
5 number is coming down and coming farther down.

6 So, our customer base doesn't see the invoice.
7 They know what the price is on the LME. They know what's
8 out there, but they're not paying that on their invoice.
9 They're offering a net number in which they're willing to
10 pay for. And it's up to us whether we want to take that
11 number not, but our number that we pay in the mills, and
12 everybody else pays in the mills, will have that distinction
13 on it, the separation between the base and the surcharge.

14 COMMISSIONER JOHANSON: Thank you for your
15 responses, and my time has expired.

16 CHAIRMAN WILLIAMSON: Okay. Thank you.
17 Commissioner Broadbent?

18 COMMISSIONER BROADBENT: Thank you. I appreciate
19 all the witness participation here today.

20 We've talked about the changing raw material
21 prices and the surcharges. Are there other principal
22 factors that we ought to be understanding that go into the
23 price?

24 MR. PENNINGTON: I would think the only other
25 item would just be the cost of operations. You know, as you

1 look at the product, you certainly want to know what your
2 cost is and even calculate what a margin. But this product
3 line is so market driven by price it ultimately gets down to
4 comparing that against cost.

5 COMMISSIONER BROADBENT: Okay.

6 This is for Mr. Schagrín. What's the response to
7 the argument that was offered by the Respondents that loss
8 sales and loss revenue allegations made by the domestic
9 industry are so small relative to the market as a whole that
10 they should bear little analytical weight?

11 MR. SCHAGRIN: I don't want to engage in
12 hyperboles.

13 COMMISSIONER BROADBENT: You never do that.

14 MR. SCHAGRIN: So, I'm not going to say it's
15 stupid or nonsensical, even though it is. As any of these
16 witnesses could explain to you, and as the staff report
17 supports, for both the domestic industry, the subject
18 imports and non-subject imports well over 90 percent of
19 sales are to this very wide distribution network in the
20 United States.

21 There's about five master distributors. There
22 might be anywhere from 80 to 100 regional or local
23 distributors. Those distributors are the ones that sell to
24 the end users. Those distributors are out shopping for
25 product, and they will buy from whomever offers them the

1 lowest price.

2 It is almost always the case in all products
3 involving sales through a very large number of distributors
4 that the domestic industry cannot make loss sales and loss
5 revenue allegations. It's just the nature of the
6 marketplace. The distributor doesn't come to Mr. Krogman
7 and Mr. Tidlow and say, "Oh, I have a price of \$1.57 a pound
8 for two-inch schedule ten from this mill in Malaysia. Do
9 you want to match it or not?"

10 No, they'll put a request for quote and say,
11 "This is what I need in my truckload of product, 1-inch,
12 2-inch, 4-inch, et cetera. Send me your prices." And then
13 when they don't order, they say you weren't competitive.
14 And that's just the way distribution works in the pipe and
15 tube industry. There's all these pipe valves and fitting
16 distributors. And over my 33 years, even though I've now
17 seen like 50 or 60 commissioners, we've been trying to
18 explain to the Commission for 33 years, usually very
19 successfully, you commissioners being an exception, that you
20 just don't get what sales and loss revenues in industries
21 where almost all the sales go through a very large
22 distribution network.

23 So, I mean there's certain cases -- I do not
24 believe any part of the statute requires the domestic
25 industry in order to demonstrate that imports are a material

1 cause of injury that we have the burden of demonstrating
2 loss sales and loss revenues when it's a commodity product
3 sold on a price. This is ASTM A-312.

4 I submit, and I believe any type of economic
5 logic that's reasonable, fair, and not ideological, would
6 demonstrate under the laws of economics that where the U.S.
7 industry is operating at 50 percent capacity utilization
8 that every single ton of dump subject imports over the POI
9 was a loss sale for the U.S. industry.

10 COMMISSIONER BROADBENT: Okay.

11 I'd like to hear from a couple of the producer
12 witnesses some more background about the statement in the
13 Petitioners' brief at page 2, which says that "The domestic
14 industry is posed on the verge of shutdowns." What's
15 actually going on here, and how we know you're posed on the
16 verge of shutdowns?

17 MR. PODSIAD: As we've said with most, I can only
18 comment on Outokumpu and our situation. But as we did
19 decide to shutdown some lines, we did look at a broader
20 cutback. And we always have in the back of our mind to go
21 to -- just being a larger D mill, but of course, the bulk of
22 our volume comes from the range that's in question here, and
23 it would substantially transform our operation. And we
24 wouldn't be able to cover the fixed overheads that we've
25 already put in place with our buildings and property, et

1 cetera.

2 So, we're publicly traded, as I mentioned in our
3 testimony. Our owners are very adamant about a positive
4 return, and they've sold all the other pipe mills in our
5 particular case. We know we're non-core. And the most
6 likely scenario for us was discussed recently is that if we
7 can't be prosperous we will be shutdown.

8 MR. BRUNSWICK: Good morning, Commissioner. My
9 name is Don Brunswick from Marcegaglia.

10 Just like Kris had mentioned, I can't speak for
11 the other witnesses here, but in regards to Marcegaglia, I
12 know that it's definitely very transparent and on the table
13 our guidelines and what we need to do in order to avoid
14 shutdown, and that's to become profitable. There might be a
15 lot of different ways that a company can do so, but in our
16 business it's not that easily done.

17 For example, you might be able to say, well, cut
18 your labor forces. We have a lot of investment in every
19 employee in Marcegaglia. It's not very easy to train a
20 welder on one of these mills and have them being able to
21 operate this welding line completely on their own. It's
22 literally two to three years before they're fully trained.

23 So, if you cut or reduce your labor force, then
24 that's a significant loss the company's taken. And if
25 business does turn around, then how do we get those people

1 back? You can't just hire 10 or 12 people off the street
2 and then you'd have to spend the next two years retraining
3 all of them again, which is considerable time and, you know,
4 it's not a simple as training them by themselves. You need
5 one or two other employees with them who are veterans to
6 train them as well. So, now you're taking your capacity
7 rates and utilization rates down as well.

8 So, it's not really as easy as one would think to
9 recourse or rebound from scary situations like this. So,
10 it's definitely an imminent threat that if we don't sustain
11 some type of profit very quickly, then we will be shutdown.

12 COMMISSIONER BROADBENT: Okay.

13 Any other comments on being on the verge of
14 shutdown?

15 MR. PENNINGTON: Kyle Pennington.

16 Again, I would just like to comment that relative
17 to some of these sizes in the subject range when we
18 experienced this really poor financial results in several
19 months last year, but in particular three, we have
20 determined that it is more costly to run this material than
21 it is to not.

22 I think there've been periods of time where we
23 felt like the through put and the volume would help absorb
24 some of our overhead, but it is a greater loss to make this
25 product at the price you have to sell it at in which to get

1 it.

2 COMMISSIONER BROADBENT: Okay.

3 I wanted to talk a little about domestic capacity
4 utilization. I think our domestic capacity utilization is
5 actually lower than in the subject industries. Has the
6 domestic overbuilt or is there a sense that there might be a
7 recovery coming for a higher of production? And then what
8 was the last time that the industry had a healthy level of
9 capacity utilization?

10 MR. TIDLOW: This is John Tidlow.

11 I'm not aware that we've invested in new
12 equipment in this industry, outside of a couple of laser
13 mills to do tubing for one of our competitors since I came
14 to work here in 2001.

15 The industry was at full capacity or very much
16 higher capacity when the ethanol business was booming in the
17 mid-2005/2008 period. Many of our mills ran nonstop during
18 that period. Ethanol had a very large demand for the
19 subject products. In the last ten years, we've seen a
20 tremendous growth in the imports from China and now from the
21 subject countries that have taken away the capacity directly
22 from our equipment.

23 COMMISSIONER BROADBENT: Anyone else want to
24 comment on capacity utilization?

25 MR. HENDRICKSON: David Hendrickson from Felker

1 Brothers Corporation.

2 COMMISSIONER BROADBENT: Yes.

3 MR. HENDRICKSON: I would say the same thing,
4 what John had said.

5 I remember in the ethanol years was at full
6 capacity and there was little foreign penetration. I think
7 that that's when it really started. We got in on the China
8 case, and we saw a tremendous influx of foreign pipe right
9 after the ethanol years and it has continued now after China
10 was put to the side through the trade case. Now, we've seen
11 other countries fall, and I think they're directly related.

12 I think they have a plan and a policy of
13 infiltrating our country with the low-cost material through
14 whatever country that they seem necessary they can do it. I
15 don't expect that I'll be here again four years from now
16 with other countries. It's just that's the plan, and that's
17 the plan that's out there right now is to undercut, take the
18 market, and put us out of business. There's no doubt in my
19 mind, so that's one of the reasons that I'm here right now.

20 So, I would say that, you know, we saw an influx
21 in demand in the first quarter because of the preliminary
22 ruling. I mean it was very evident, and I think it would be
23 devastating if we didn't have that. So, to me, the history
24 and the numbers speak for themselves.

25 COMMISSIONER BROADBENT: Thank you, Mr.

1 Hendrickson.

2 MR. SCHAGRIN: Mr. Chairman, should I go ahead.

3 CHAIRMAN WILLIAMSON: I'm sorry.

4 COMMISSIONER KIEFF: That's okay.

5 CHAIRMAN WILLIAMSON: Commissioner Kieff.

6 COMMISSIONER KIEFF: I really continue to
7 appreciate everybody's input on the panel, as well as my
8 colleagues input on the dais.

9 This is really a conversation that's helping a
10 great deal. And so in the spirit of interweaving in an
11 abbreviated way for convenience, let me try to just ask Mr.
12 Schagrin to in the post-hearing rather than today if you
13 could please as a follow up to your conversation with
14 Commission Broadbent.

15 During the first several minutes of her
16 questioning, the two of you were talking about, if you will,
17 a theory of the case. What a lawyer or a government
18 official might call it an overall approach. And Mr.
19 Schagrin, you were referencing the concept of hyperbole and
20 we all recognize there's good humor to be had, and that's
21 important to add levity to make everyone's day better. But
22 at the same time, I just want to be clear in pointing out
23 that there's a forcefulness and energy to the way you're
24 presenting your arguments and it comes with a tenor and tone
25 that you use and the choice of words, and it leaves me, as a

1 decision-maker, in a difficult position because I can't tell
2 if I am supposed to think that you mean everything you're
3 saying or not; and you're hanging your hat on everything
4 you're saying or not.

5 Because if you yourself are on the one hand
6 making what you call hyperbolic claims, and on the other
7 hand backing away from them, I can't tell whether that means
8 there's a great case, no case, or somewhere in between.

9 So, in the post-hearing it would really help me,
10 at least, a great deal if you would provide legal authority
11 citation for the claims you made in your conversation with
12 Commissioner Broadbent so that I can understand how much of
13 it you really mean, how much of it is essential to your
14 clients winning their case. So that they, for example,
15 might win even if some of your argument is not convincing.

16 Because if it turns out they only win if all of
17 your argument is convincing, and if it turned out there
18 weren't legal authority to support the full extent of your
19 argument, then I think what you're telling me is I have to
20 decide against them, which I'm sure they don't want and you
21 don't want.

22 So, it's in your best interest to in a careful,
23 thoughtful way walk us through the legal authority for
24 exactly what you're saying you want us to pay attention to.

25 So, then that's a legal discussion, and as a

1 former law professor I recognize that probably the best way
2 to put everybody to sleep, so let's shift gears to something
3 less like anti-insomnia medication. I recognize legal
4 niceties are only one part of our analysis.

5 Let's talk about some of the business parts of
6 the analysis. Help me understand if we had said a case --
7 maybe it's this one and maybe it's not -- but if we had a
8 case where non-subject imports were over selling subject
9 imports, but underselling domestic-like product, do we have
10 to, in such a case, decide that there is injury or should we
11 also at least analyze the question of whether there is
12 declining market share, declining profits, et cetera?

13 Put differently, if the domestic industry is
14 generally healthy or maybe going up, despite the presence of
15 the imports that I just described, are we compelled to reach
16 an affirmative, compelled to reach a negative, or should we
17 exercise discretion; and if so, using what factors?

18 MR. SCHAGRIN: I'll take it in two parts. And
19 first Commissioner Kieff, if you are under the mistaken
20 impression that during my discussions with Commissioner
21 Broadbent I was just trying to have fun and be entertaining
22 and I don't take this seriously and that after my 33 years
23 of practicing I don't know the law and am not more familiar
24 with CIT and CACF cases than probably anybody associated
25 with this Commission, then I apologize.

1 But I will say, as to the question that you were
2 trying to get to, that the U.S. Steel case from the CFC
3 makes absolutely clear it is the controlling law. It makes
4 clear that the domestic industry does not have to prove each
5 part of the statute on injury. That when imports are
6 increasing they can be causing material injury --

7 COMMISSIONER KIEFF: Mr. Schagrin, I'm sorry. I
8 have only a limit amount of time, and although I always
9 enjoy learning from people who know more than me, as you
10 clearly feel that you do, I hope you can notice that that
11 request was for the post-hearing in writing --

12 MR. SCHAGRIN: Okay.

13 COMMISSIONER KIEFF: -- in writing so that we
14 could read them.

15 MR. SCHAGRIN: We'll discuss U.S. Steel.

16 COMMISSIONER KIEFF: With all due respect, Mr.
17 Schagrin, I think it's time for you to maybe not answer
18 these questions during the hearing?

19 MR. SCHAGRIN: Really?

20 COMMISSIONER KIEFF: Yes.

21 MR. SCHAGRIN: Okay. Well, Commissioner, you
22 also asked should the Commission make a negative or an
23 affirmative determination when you find that non-subject
24 imports are overselling subject, but underselling the
25 domestic industry.

1 I think the statute is clear and will elucidate
2 in the post-hearing brief that the Commission should be
3 required under those circumstances, whether it be general
4 metals, Baratz or finally the Arcelor-Mittal case to make an
5 affirmative finding of injury. That Mittal has clarified
6 that you don't have to do a complete replacement benefit
7 analysis, and therefore, you should focus on whether the
8 subject imports are having any material impact on the
9 domestic industry, not whether or not the subject imports
10 will be replaced by non-subject imports in their entirety
11 because they're underselling the domestic industry. I will
12 also elucidate that in our post-hearing brief.

13 COMMISSIONER KIEFF: So, in the interest of
14 providing your clients with a good, fair understanding of
15 the set of concerns one of their decision-makers have I hope
16 they might keep in mind that it will benefit them to get the
17 benefit of the uncertainty of the decision-maker rather than
18 the wisdom of the lawyer. But you as clients really have to
19 make that choice, whether you want to hear from your lawyer
20 or whether you want to hear what the decision-makers are
21 wrestling with.

22 I feel that as a public servant it's my duty to
23 tell you what I'm wrestling with. We could use that time to
24 give you the benefit of that, or we could use that time for
25 other things. It's up to you.

1 So, the other question I'm wrestling with is if
2 it turned out that subject imports and non-subject imports
3 were selling for the same price it would be important for me
4 to understand what the law requires me to do on the
5 determination. Do I decide yes, do I decide no, and what
6 other factors should I consider?

7 A related question I would have is if we really
8 think that this is a commodity product, and we think about
9 the non-subject imports, how are we supposed to understand
10 that there are different prices for the domestic product and
11 the non-subject imports? So, if they're really commodities,
12 how do they price differently?

13 And then the last question is for Ta-Chen, if I
14 understand it correctly, they're an importer, so they're
15 buying product as well as selling product. Why do they take
16 prices that are different than the subject import prices, or
17 is there something else going on?

18 In the interest of transparency for you as
19 parties who are affected by my decisions, I want you to know
20 the things I'm wrestling with, that I feel is my obligation.
21 And I hope you can just keep in mind, Mr. Schagrin that it's
22 in your clients' best interest to hear that and to provide
23 the information in return in a way other than your personal
24 assertion that you are better informed about all of this
25 than all the rest of us.

1 It may very well be true that you are. I'm not
2 sure why that matters. It may very well be true that you're
3 not. I'm not sure why that matters. I know that it does
4 matter that I share with your clients the things that I'm
5 wrestling with to make a decision that impacts their jobs
6 and their lives, and I hope that you can help them with
7 that.

8 MR. SCHAGRIN: Once again, Commissioner, my
9 apologies if there's any misunderstandings. Obviously, we
10 would like to address all of your concerns on the issues in
11 the case. And you're right, my positions do not matter,
12 only the record matters, and I would invite any of the
13 witnesses -- I think most of your questions went to their
14 views from the industry of the difference between subject
15 and non-subject imports. And would just ask if the Chairman
16 would give them the ability to answer this after the time is
17 up to invite these industry experts to give you their
18 opinions of the difference between the effect of the subject
19 imports and the non-subject imports.

20 MR. SCHAGRIN: I'm perfectly comfortable getting
21 this in the post-hearing brief.

22 COMMISSIONER SCHMIDTLEIN: That's fine. I don't
23 want to beat a dead horse, but I was going to ask almost
24 that very question, so if you want to take it out of my
25 time.

1 CHAIRMAN WILLIAMSON: No, it's okay. I think
2 it's important to give the industry witnesses a change to
3 speak.

4 MR. HENDERSON: David Henderson from Felker
5 Brothers Corporation.

6 That was a long conversation. I tried to follow
7 it, and I'll do my best to try and answer your question.
8 So, what I think we're all trying to target in on is the
9 non-subject material from Ta-Chen. It seems like, okay, why
10 is Ta-Chen different from the imports?

11 Well, I think John Tidlow had referred it earlier
12 is they have actually brick and mortar investment in this
13 country. They have warehouses around this country. They
14 buy from us domestic manufacturers. They have a large
15 supply. So, in that case they have skin in the game here,
16 okay. So, they're part of the industry. They understand
17 what it takes for profit and loss, okay.

18 Where the subject material we're talking about
19 they're just sold into here. They don't have any skin in
20 the game here. And when they're getting their material from
21 below cost or selling it for below cost from other
22 countries, there is no care about the domestic market.
23 There is no care about whether it is.

24 I do think they try to take market share to put
25 it out of business so then they can adjust the prices on it,

1 but that's just my own personal opinion. I have nothing to
2 back that up. But the biggest difference I do see is that
3 Ta-Chen does have skin in the game in this country. They
4 have people here. They do have a mass amount of capital
5 invested in equipment and in materials, and they understand
6 the industry and that's why they buy and sell. They
7 understand the demand. They understand the different
8 markets that they go into.

9 They understand a domestic manufacturer's
10 capabilities and his strong points and what the foreign
11 stuff is. And the other thing Ta-Chen has is they have
12 their own mills. They have their own mills in Taiwan. So,
13 they're bringing their own material in from overseas, so
14 they understand the manufacturing concept. They understand
15 what it takes to manufacture pipe and profit and loss. So,
16 I think they have a better idea.

17 The other thing is they were on the China case,
18 and they were not found to have any injury in this country.
19 And they know that if they were going to do that that we
20 would be right back in here talking to you about that
21 subject, and they have not. So, as far as I see, they're
22 good. They have a unique situation where they, like the
23 Europeans do, where they control both a little bit of the
24 supply chain and a little bit of the manufacturing sector,
25 but they're not abusing it. You know, they're using sound

1 business principles, in my opinion.

2 MR. BRUNSWICK: Commissioner, Don Brunswick.

3 Just to back up what David was saying, from
4 Marcegaglia, I share the same concept and understanding of
5 Ta-Chen as well.

6 What I can say about Ta-Chen, and this is jut
7 through relationships I have with my customers who also buy
8 from Ta-Chen, that they understand the North American market
9 and where prices are and they react and adapt to those
10 prices. They don't set their own figures and try to
11 undercut the market and gain market share.

12 So, just recently, and I'm not sure how much I
13 could say on record, but there was a public announcement of
14 a price increase for Ta-Chen just recently. So, they public
15 price increases just like we do here in North America, and
16 that's just proof that they do react to the North American
17 pricing market.

18 MR. PODSIAD: Kris Podsiad.

19 I won't belabor the point much more, although I
20 understand it's important to the Commissioners. But I echo
21 the same words of Don and David, that at this point we don't
22 see them behaving irresponsibly in the marketplace. They
23 are publicly traded in Taiwan. And suspect if you looked at
24 their records you'd see the vast majority of their income
25 comes from the United States and from their U.S. operations,

1 not their mills overseas.

2 So, we do believe that the reason they behave
3 differently is primarily the fact that they're fully
4 invested in the United States and within the metals industry
5 in the United States.

6 And I also echo what David said, and it's a topic
7 of discussion with us many times that if we do feel they are
8 acting irresponsibly we will be perhaps seeing you again to
9 discuss Ta-Chen at that point.

10 CHAIRMAN WILLIAMSON: Okay, if there are no other
11 industry comments on this question, Commissioner
12 Schmidtlein. Thank you.

13 COMMISSIONER SCHMIDTLEIN: Thank you. That was
14 very helpful. And in fact, that was my exact follow up was
15 the prior reference that Mr. Schagrin had made to Ta-Chen
16 having bricks and mortar in the U.S. and it made it sound
17 like they really act more like almost a domestic producer
18 than what would be a -- not in any legal way, but just
19 practically speaking.

20 So, I just had one follow-up question about the
21 critical circumstances argument. And so I understand that
22 you're only seeking this finding with regards to Malaysia
23 and with regards to three companies. And so, I just
24 wondered -- and this is probably a question for Mr. Schagrin
25 -- what is the order of magnitude or what magnitude of

1 change should we be looking for in order to make that
2 finding?

3 MR. SCHAGRIN: Thank you, Commissioner
4 Schmidtlein.

5 We will find out, as will the Commission, in
6 Congress' final determinations to be announced tomorrow
7 whether they, and we expect they will, continue to make the
8 critical circumstances final against the Malaysian
9 companies. They may also make critical circumstances
10 findings against Thailand as well tomorrow. It's tough to
11 brief it. Any of the parties can address that in
12 post-hearing briefs since will not have found that out
13 before the hearing.

14 And in terms of the magnitude, it's interesting
15 that Commerce really has focused in their critical
16 circumstances findings on the change in the magnitude of
17 imports from the three months prior to the filing of the
18 petition to the three months after the filing of the
19 petition.

20 The Commission's normal precedent, although it's
21 not statutory, it's the Commission's normal practice is to
22 look at six-month periods. And I think it's been pointed
23 out by Respondents, and I wouldn't quibble with it, the
24 difference in that magnitude is much different, whether the
25 Commission looks at three months or six months. And we'll

1 address that further in our post-hearing brief.

2 It's a little bit unusual. We're all aware of
3 the fact that the government shutdown in October of last
4 year, and so I also believe that most of the Respondents,
5 given the lead times for new imports, though the Commerce
6 prelim would be at the beginning of December of last year,
7 not at the end of December. So, they were beginning to
8 ratchet back their imports because they were aware that
9 there were going to be significant margins. And that I
10 think also should be a factor the Commission takes into
11 account when you're analyzing the critical circumstances
12 issues. And we'll address that further in our post-hearing
13 brief.

14 COMMISSIONER SCHMIDTLEIN: Okay. Thank you. I
15 don't have anything else.

16 CHAIRMAN WILLIAMSON: Thank you.

17 I think you talked around this, but let me ask
18 the question directly. Respondents argue that the domestic
19 industry's deteriorating financial performance is due to
20 reasons other than subject imports. Briefly, how would you
21 respond to that?

22 MR. PODSIAD: Kris Podsiad.

23 In the last three to four years -- since really
24 the economic recovery, we haven't seen capital expenditure,
25 which drives a lot of our growth. We haven't seen that.

1 That has a much larger impact, of course, on our non-subject
2 products, our above 14-inch, not within the investigation
3 range. But it does also impact the other business, so we're
4 really only dealing with MRO and small-level projects, which
5 are primarily --

6 CHAIRMAN WILLIAMSON: MRO?

7 MR. PODSIAD: I'm sorry, Maintenance Repair.

8 CHAIRMAN WILLIAMSON: Okay. Thanks.

9 MR. PODSIAD: Yeah, I apologize.

10 So, we're only dealing with those types of small
11 capital projects and maintenance projects that are out
12 there.

13 MR. PENNINGTON: I think Commissioner Kieff had
14 asked about the conditions and circumstances by which you
15 make a sale or influence the subject material, dispensing it
16 or selling it out into the marketplace. And so, my comment,
17 Commissioner Williamson, is that through relationships,
18 through market intelligence, you know, we do find a way of
19 determining what the market will bear in terms of pricing
20 and it really gets down to a pretty simple comparison.

21 Often we determine through the many sources that
22 we have as to what it would take in order to make a sale,
23 and the reality is we walk away from those sales because
24 it's more costly to make that material than to not. And
25 that's just a layman's approach to maybe answering your

1 question as to what impact it has on us, and how we know
2 what it's doing to us? We simply can't take orders at the
3 prices we determine we have to meet in order to be able to
4 get the business. And thus, as I said, we laid off five of
5 eight personnel, as an example.

6 CHAIRMAN WILLIAMSON: Okay. Thank you for those
7 answers.

8 Now, Respondents argue that domestic pricing data
9 is flawed, and how should we evaluate these allegations of
10 underselling and price depressions given the issues raised
11 by the Respondents?

12 MR. SCHAGRIN: Chairman Williamson, address that
13 in two comments. One, since the pre-hearing staff report,
14 you will have obtained a more domestic pricing information
15 from one of the members of the industry, but I think that
16 the basis for the Respondents' argument is that they're
17 saying, look, the data you got from the domestic industry is
18 a relatively small share of the domestic industry's total
19 shipments versus a much larger share of the imports.

20 We would turn that around. The Commission has
21 used these pricing products now in, I think, the China
22 investigation and in at least one sunset review. When we go
23 to the domestic industry and say because from half inch to
24 14 inches, and with maybe six-wall thickness combinations
25 within the subject merchandise there might 200 different

1 wall NOD combinations that customers can order.

2 Obviously, it's impractical for the Commission to
3 gather data on 30 or 40 pricing products versus 4 or 6. So,
4 the industry salespeople have chosen, and I think wisely
5 chosen, the products that are the most popular, the largest
6 sized items within that large group of choices.

7 To me, it's not surprising, and the people in the
8 industry can tell you about this, that those are the
9 products that the farm producers and the trading companies
10 concentrate the most on. Then they don't have to carry as
11 much inventory in the United States. They might not want to
12 carry inventory of all 180 different products. They might
13 want to just carry inventories for the 20 most popular
14 sizes. And so, it's not surprising to me when the imports
15 are underselling the domestic industry by such significant
16 amounts that a much larger proportion of their sales would
17 be of the most popular products the distributors carry and
18 the domestic industry is losing their ability to make the
19 long runs on the mills of these popular products, and
20 therefore it's a smaller share.

21 So, I think the domestic industry producers, and
22 they may want to expand on this, would tell you that they're
23 more likely to get calls from distributors for the "odd
24 sizes" that the importers and farm producers are not readily
25 stocking than they are these most popular products.

1 MR. KROGMAN: Randy Krogman.

2 And that is correct. We get inquiries for the
3 "B" and "C" items, as we call them, the odd sizes in
4 comparison to the "A," or the main sizes that are in
5 discussion.

6 CHAIRMAN WILLIAMSON: My next question, and I
7 think you may have answered it, is that pricing product
8 probably only cost you about 5 percent of total domestic
9 shipments and Respondents argue that this low coverage
10 suggest limited competitive overlap with subject imports.

11 Well, what I think I've heard you said is that
12 it's the popular products that matters, and that's what the
13 pricing products cover.

14 MR. SCHAGRIN: Yes, Commissioner Williamson. And
15 of course, the alternative, which the Respondents haven't
16 advocated, but we would, as an alternative is does the
17 Respondents want you to use average unit values and give
18 more weight to those than the pricing products? Because if
19 you do that, you'll see that the average unit values of the
20 subject imports are dramatically less in the range of 15 to
21 20 percent than the average unit values for the domestic
22 industry.

23 So, any way you approach this pricing analysis,
24 you will see that the dump subject imports significantly
25 undersell the U.S. industry and have caused price

1 depression. And in all these cases because we have to deal
2 with a three-year POI, they might say, gee, if we're
3 underselling, how come we haven't gained market share?
4 Well, you have to remember that at the time this Commission
5 made an affirmative final determination in the China case
6 the imports from these countries probably only had 3 or 4 or
7 5 percent of the U.S. market in 2009.

8 I mean they grew their share from 4 or 5 percent
9 to 25 percent between 2009 and the beginning of the period
10 of investigation through underselling the market and by
11 dumping. So, they've acquired one quarter of the U.S.
12 market by underselling. The U.S. industry is only at
13 roughly 50 percent capacity utilization. They could be
14 making all these sales. They just need better pricing in
15 order to make these sales.

16 CHAIRMAN WILLIAMSON: Thank you.

17 This may be for post-hearing. What is Ta-Chen's
18 current ownership stake in Synalloy, did it invest
19 completely between the end of 2012 and the end of 2013, or
20 does it still have a minimal stake?

21 MR. PENNINGTON: Chairman Williamson, Kyle
22 Pennington.

23 I can't give you the particular date, but Ta-Chen
24 is 100 percent divested in Synalloy. They own, to my
25 knowledge, zero stock in the organization. And that

1 divesture was approximately a year or 14 months ago.

2 CHAIRMAN WILLIAMSON: Okay. Thank you.

3 No one's talked about future demand, and it may
4 not be relevant for this case. But to the extent it is,
5 does anyone have any comments on that?

6 MR. HENDRICKSON: David Hendrickson.

7 I believe that there's a lot of pent-up demand
8 out in the marketplace currently with project, particularly.
9 But people are very, very skeptical about putting out too
10 much risk at this time. But eventually, it's going to have
11 to happen because a lot of the infrastructure in the
12 wastewater treatment plants and things like that have gone
13 without any maintenance, without any upgrades for quite a
14 while. So, eventually, they're going to have to do
15 something. But I think there's still a lot of skepticism.
16 I think there's still a lot of fear out there based on the
17 way the economy ran through our deep recession that we had
18 before they start releasing it.

19 I know that from the fabrication side of our
20 business where we see people re-pricing projects and looking
21 at alternatives, looking at ways to lower their costs, but
22 they're very, very apprehensive about releasing those
23 projects for manufacturing yet. But I do think that's out
24 there.

25 CHAIRMAN WILLIAMSON: Okay. Thank you.

1 Since no one else has comments on that, thank
2 you. Commissioner Pinkert?

3 COMMISSIONER PINKERT: Thank you, Mr. Chairman.

4 I just have a few follow-up questions. First, in
5 response to the Chairman's questions, you talked about the
6 possibility that as an alternative we might look at average
7 unit values rather than the pricing comparisons, but why do
8 you think the price coverage for the domestic-like product
9 is relatively low, is there a story there that needs to be
10 told?

11 MR. SCHAGRIN: Commissioner, you mean why is the
12 share of U.S. shipments in the pricing products so low?
13 Now, I would reiterate to Chairman Williamson, and we
14 discussed this. It's all public in the staff report, so
15 this was an issue that was very easy to discuss with
16 essentially the representatives is 100 percent of the U.S.
17 industry. And they're all unanimous in saying, look, these
18 are the most popular products. There's no doubt about it.
19 The products chosen for the pricing products are the most
20 popular products distributors carry and these are the
21 products they're buying from the subject imports because
22 they have the lowest prices and they're not buying
23 significant quantities of these most popular products from
24 the domestic industries.

25 These are the products that the staff report also

1 contains information showing what a significant share of the
2 sales of these subject imports are from inventories held by
3 importers in the United States. Their share of sales from
4 inventories versus made-to-order is pretty similar to the
5 U.S. industry. So, clearly, these importers are stocking in
6 the United States these most popular products and delivering
7 them on three, four-days shipment schedules to distributors
8 and the domestic industry is not getting that business.

9 COMMISSIONER PINKERT: Thank you.

10 Now, turning to price depression, I want to take
11 the invitation provided by Commissioner Kieff to express
12 what I'm grabbling with on that issue so that you can
13 respond so that you understand some of the concerns.

14 And one of the things that I would look at in
15 trying to determine whether there is price depression is
16 whether the lines representing the underselling are
17 parallel, and think about that as not necessarily strictly
18 parallel, but running with a consistent gap over time, or
19 whether that gap tends to narrow as you see the price going
20 down for the domestic industry? And if they seem to be
21 somewhat parallel, then you could ask yourself the question
22 of whether it's not really price depression, but just
23 parallel price movements.

24 So, if you could take a look at that and help me
25 to understand that, I think that would be helpful.

1 MR. SCHAGRIN: We'll do that in the post-hearing
2 brief, Commissioner Pinkert.

3 COMMISSIONER PINKERT: Now, in terms of a threat
4 analysis, of course we have three subject countries here.
5 And in the context of determining whether to cumulate for
6 purposes of threat, I would be looking primarily at volume
7 and price trends. So, do the volume and price trends
8 support cumulating for purposes of a threat analysis?

9 MR. SCHAGRIN: Commissioner Pinkert, we'll more
10 fully discuss this in the post-hearing. I think the answer
11 is yes, except it would be most likely that you would find
12 the volume trends to be similar if you depended on for the
13 quantity of imports on the farm producer responses, not the
14 importers. I think it would be very, very unfortunate as a
15 precedent for this Commission if in an investigation such at
16 this where the HTS codes are not specific to the products
17 subject to the investigation.

18 You have both pressure pipe and say round
19 mechanical come into the same categories. And so, for
20 example, from Canada there's a lot of imports in these
21 categories, but nobody there is making an A-312 or A-778, so
22 we know that's mechanical. So, I think the Commission staff
23 has done the right thing by relying more on importer
24 questionnaires for volume. But the importers from one of
25 the countries subject to investigation haven't responded to

1 your questionnaires.

2 So, it could look like, oh gee, we have different
3 volume trends, but it's not that there's really different
4 volume trends. It's that you have importers from a country
5 not responding to your questionnaires that make the volume
6 trends look different. So, we'll address this further in
7 the post-hearing brief, but we think that accumulation for
8 threat is appropriate, and we'll go through the statutory
9 factors in our post-hearing brief.

10 COMMISSIONER PINKERT: Your answer to that
11 question, Mr. Schagrin, gives rise to a legal question that
12 I'm quite sure you're very familiar with. And that is what
13 is the role of adverse inference in the circumstances that
14 you've just outlined?

15 MR. SCHAGRIN: I think the role of adverse
16 inferences is for the Commission to use other information
17 available to it, whether it be farm producer responses,
18 import statistics, whatever it may be in order to make an
19 adverse inference to the parties to an investigation, both
20 farm producers and importers that are not responding.

21 I have to admit I'm astounded that in this case
22 literally half of the farm producers who filed responses in
23 the preliminary stage didn't file responses in the final
24 stage. I'm just increasing seeing, as someone who practices
25 a lot before the Commission, a real what I would say

1 strategic thinking by the representatives of foreign
2 industries and importers as to are we better off responding
3 or not responding?

4 And I have a lot of fear. I obviously believe
5 greatly in this institution. I spent virtually my entire
6 life here practicing before this institution. I am very
7 concerned as someone who's livelihood and life is practicing
8 before this institution that the failure of members of the
9 Commission to draw adverse inferences for lack of
10 participation is going to increasingly lead to parties
11 believing they can game the process.

12 COMMISSIONER PINKERT: For purposes of the
13 post-hearing, if you can put some flesh on that. And in
14 particular, what I mean is how do we know this is a
15 strategic decision on their part? Is there some public
16 indication that you can uncover, or have there been
17 conversations that you can relate to us that would help us
18 to understand how that strategic calculation may be working?

19 MR. SCHAGRIN: We'll do it in the post-hearing.
20 No, as to the latter. I'm always careful how I choose my
21 words, but I'm a pretty simple man. Farm producers in a
22 period of probably 10 days in May of 2013 filled out
23 questionnaires for the ITC and submitted them. Some of the
24 same attorneys here probably worked with those farm
25 producers to get you their questionnaire responses in May

1 2013.

2 I don't know what other inference a reasonable
3 decision-maker could make as to why a farm producer who
4 received a final questionnaire that just asked for an
5 additional year of information and had 30 days to respond to
6 the Commission, and could, for that matter, probably get two
7 or three weeks of additional time, would decide not to file
8 a questionnaire in the final phase after they filed a
9 questionnaire in the preliminary phase, other than thinking
10 we're better off.

11 I do believe we'll go back at the list of who
12 represented whom at the preliminary stage, but I believe at
13 least some of the farm producers who haven't responded in
14 the final phase had counsel at the preliminary phase.

15 COMMISSIONER PINKERT: Thank you.

16 Anything that you can provide in the post-hearing
17 that would elucidate your concerns about that I think would
18 prove to be helpful. Thank you very much.

19 CHAIRMAN WILLIAMSON: Thank you. Commissioner
20 Johanson?

21 COMMISSIONER JOHANSON: Thank you, Mr. Chairman.

22 And I'm going to turn to something which has been
23 brought up by the Petitioners, and that deals with the raw
24 materials cost. And this is a very basic question, but I
25 always appreciate the panelists informing me of what the

1 answers are to some of these basic questions.

2 Mr. Podsiad, you'd mentioned early the prices on
3 the London Metal Exchange. Is the price of hot rolled
4 steel, nickel, chrome, moly and other inputs the same in the
5 United States as in Asia; namely, in the countries of
6 Malaysia, Thailand, and Vietnam?

7 And one reason I'm raising that is because I know
8 when I pick up the Wall Street Journal I look at the
9 commodity prices from the London Metal Exchange and there
10 are some other exchanges, and it'll have what's considered
11 the price, the world price. But we know that it's not
12 always reflected on the ground, right? The most obvious
13 example is the price of crude oil in the United States
14 versus other country due to a variety of reasons as a
15 commodity, but the prices are, indeed, different.

16 Could you maybe explain this to me what's going
17 on in Asia versus the United States with the prices of those
18 inputs?

19 MR. PODSIAD: Unfortunately, I can't comment on
20 what's going on in Asia because I'm operating over here, and
21 I'm not buying steel in Asia currently. But just to
22 clarify, the nickel, moly, chrome, those are traded on the
23 London Metal Exchange, and then all the major producers
24 consolidate those into surcharges that are transparent at
25 that particular point in time. But in terms of base prices

1 or how they're coming together in Asia, I have no comment on
2 that.

3 COMMISSIONER JOHANSON: I can ask that, perhaps
4 this afternoon, of the Respondents' witnesses.

5 The preliminary phase volume data and the data in
6 the pre-hearing staff report show different stories in terms
7 of any shift in the supply of the U.S. market from a
8 domestic product to subject imports. The Commission found
9 such a shift in the preliminary record, yet, none seems
10 apparent based on the current data. Do you all know why the
11 data is so different here?

12 MR. SCHAGRIN: Pardon me, Commissioner Johanson,
13 'cause I know the Commissioners don't want to hear from
14 counsel. They want to hear from members of the industry,
15 and I want the same thing. That's why we brought them all
16 in; but of course, they wouldn't be as familiar with the
17 confidential aspects of the record as I am.

18 I think the reason for that is similar to my
19 discussion with Commissioner Pinkert is that the Commission
20 has utilized data from importer responses, both in the
21 preliminary and final phase, for your data on imports. And
22 you have different numbers of responses between the
23 preliminary and final phase, and that's why, as we already
24 have argued in our pre-hearing brief, and will argue in our
25 post-hearing brief, there may be more importer responses

1 coming in since the pre-hearing staff report.

2 And if not, where an importer responded in the
3 preliminary phase but not in the final phase, maybe you use
4 that questionnaire for the data that's covered, but
5 obviously then you'd only have data for '11 and '12, but '13
6 from that importer. So, it'd look like, wow, the import's
7 really dropped. So, you'd have to fill in the gap. But I
8 think the reason for the change, other than the fact that
9 the filing of petitions in May of 2013, lead to almost a
10 complete cessation of imports in the fourth quarter of 2013.
11 I think most of that is reflective of the importer
12 questionnaire responses.

13 COMMISSIONER JOHANSON: All right, Mr. Schagrín,
14 I thank you for your response.

15 I have another question. Is it fair to argue on
16 the current record, as Respondents do, that subject imports
17 do not have adverse volume effects, or have not had adverse
18 volume effects during the period of investigation?

19 MR. SCHAGRIN: Commissioner Johanson, I would say
20 their reason for that argument is the very minuscule
21 increase in domestic shipments over the three-year period of
22 investigation. But any group of farm producers that have
23 one quarter of the U.S. market through dumping I think that
24 can lead the Commission to find that the level of imports is
25 significant under the statute and that they are having

1 volume effects.

2 COMMISSIONER JOHANSON: All right. Thank you.

3 And also I wondered if you all could comment on
4 how Chinese overcapacity and any overcapacity in the
5 European union will impact the producers in subject
6 countries and their exports in the future. And this is
7 particularly concerning the continuation of the order on
8 pressure pipe from China.

9 MR. SCHAGRIN: Again, Commissioner Johanson,
10 Roger Schagrin.

11 So, both the United States and Europe have
12 dumping duties in place against imports from China. A
13 number of other countries do as well. China is far and away
14 the leading producer in the world, and I believe both the
15 staff report and our pre-hearing brief gave you information
16 on the increasing exports of welded stainless pipe from
17 China to the Thailand, Malaysia, and Vietnam markets.

18 So, we believe the relevance for threat is that
19 the overcapacity that exists in the subject countries would
20 increasingly have to come to the United States because for
21 any markets in which the Chinese have not been subject to AD
22 or CVD duties, the massive overcapacity in China would
23 displace both these producers' sales within their own
24 countries and in other export markets. But the U.S. is open
25 for them because we're closed for China, given the very high

1 duties, but open at the present time to their imports.

2 COMMISSIONER JOHANSON: All right. Thank you,
3 Mr. Schagrin. And that concludes my questions for today.

4 I have to say that I was not particularly looking
5 forward to this hearing because I thought I already knew a
6 lot about pipe. I've visited a number of pipe plants. I've
7 been to a number of pipe hearings. I'm working on another
8 pipe proceeding this week. But I do have to say I learned
9 quite a bit, so thank you for informing me today, and I look
10 forward to learning more this afternoon from the
11 Respondents' panel. Thank you.

12 CHAIRMAN WILLIAMSON: Thank you. Commissioner
13 Broadbent?

14 COMMISSIONER BROADBENT: Thank you. I just had a
15 couple more questions.

16 Setting aside volume and pricing, I wanted to
17 talk about capacity again. Actually, we have great
18 representation from the industry here, and I appreciate you
19 bringing everyone. But I guess we have to, at some point,
20 consider, as we're teasing out what's the causality of the
21 injury, is it possible that it's the presence of all this
22 domestic overcapacity and competition among yourselves
23 that's really causing the pressure and the difficulties that
24 you're all facing?

25 MR. PENNINGTON: I certainly think that domestic

1 competition among ourselves is always in play here. But
2 just looking at the volume that we have lost off of our
3 continuous mills that run this product range, it has been
4 driven by the imports. That's not to say on an order with a
5 wide ranges of sizes we won't compete amongst ourselves, but
6 I certainly would say the demise is against the pricing that
7 has to be met in order to win an order, comparing that
8 against the prices of the imports.

9 MR. HENDRICKSON: David Hendrickson.

10 I would agree with Kyle. I think if you look at
11 the orders that are lost, and that when we look at who lost
12 it and get information back rarely is it from one of our
13 domestic competitors, unless they happen to have a sweet
14 spot for that particular size group, which we all have.

15 But you will see that most of the distributors,
16 and when I walk through distributors yards, I will see
17 foreign pipes, stacks of foreign pipe, stacks and stacks of
18 foreign pipe, okay. And when we lose these orders, and we
19 see what the numbers are coming in at there's no way that
20 could be able to reach that. When it's well below your cost
21 of making the product, there's something not right. And we
22 made a significant effort in the last three years to reduce
23 our costs through better yields, through better labor
24 variances, through reduced costs, through health insurance,
25 through sharing for our employees, improving our products,

1 investing in maintenance and getting our stuff going, and I
2 have no doubt in my mind that we are about efficient
3 manufacturing facility that there is in the world. And I
4 challenge anybody to prove me wrong.

5 So, when this stuff is being sold at this price
6 at this market, you've got to remember that these guys that
7 are buying the pipe and these mass distributors are just
8 looking at the bottom dollar. You know, they're looking at
9 the short-term thing. We have to look at the long term, so
10 it takes almost six months to a year to train a good metal
11 operator, three years becomes a very good operator. We
12 can't let people go and expect them to come back three years
13 later when the market's a little bit better. We have to sit
14 through this part.

15 We've been around 115 years for a reason. We're
16 not in for short-term profits. We're on for long-term
17 longevity, and our ownership is very committed to a family
18 network. If you look at Felker Brothers, we've had
19 generations of people work for Felker Brothers, generations,
20 grandfathers, fathers, sons. The reason they come there is
21 because we do that. That is our philosophy, and they know
22 it's their responsibility to make a better product. They
23 know it has to be a quality product and made on time.
24 They've done their job.

25 My job is to make sure that they're treated

1 fairly and we're competitive. So, when we talk about
2 pricing to me it's very obvious, and I would not want to be
3 in your position. I understand that all the different
4 industries and all the different products that you have to
5 be that you cannot be an expert on everything, and it's very
6 difficult for us sometimes because we've been in the
7 industry so long. We try to get the information across to
8 you to make you better understand what our business is like
9 in such a short period of time.

10 So, you have to rely on the data. You have to
11 rely on information that's being gathered and put together
12 and statistics, but the reality is, if you look at it,
13 there's not many of here left. When you look at some of the
14 seamless pipe manufacturers that are gone now. We don't
15 want to go in that direction. We don't want to be the
16 dinosaurs. You know manufacturing has taken a huge hit in
17 this country, and some of it is our fault. We weren't
18 efficient. We weren't effective. We didn't get the job
19 done.

20 Not any more. We're still are the most efficient
21 manufacturing country in the world, bar nobody, but we have
22 to be able to be able to play on a fair table. Fair that's
23 all we're asking for. So, I guess that's a long-winded
24 answer in saying that we believe the product being brought
25 in is underneath cost and that the domestic manufacturers we

1 all know about where we're at, and I don't think that's
2 really out competing anybody else because the product is
3 brought and stainless is such a big part of the cost. It's
4 hard to be able to do that.

5 If it's 90, 95 percent, you're not going to get
6 that much leverage over your competition, unless you're
7 willing to sell below cost.

8 COMMISSIONER BROADBENT: Thank you.

9 Mr. Hendrickson, I guess as head into summer here
10 there's been a lot of articles in the paper about just the
11 overall, huge levels of capacity globally in the steel
12 sector. And I wanted to get your perspective on what
13 pressure is the global excess capacity exerting on your
14 industries, and can you distinguish that from the subject
15 imports in question here?

16 MR. HENDRICKSON: David Hendrickson again.

17 I'm not an expert, per say, but I can give you my
18 opinion. I think countries like China have run their
19 manufacturing facilities to employ people. Profit and loss
20 is of no meaning. They'll grow inventories to unbelievable
21 levels and they'll dump the material off when they get
22 addressed by this committee, and then they just move the raw
23 material to other countries and do the same thing, using
24 them as a vehicle to dumping onto this country. So, I think
25 if they were held to profitability standards like most of

1 the world is I don't think this would be an issue. But the
2 fact is that there is no profitability even looked at in
3 these countries.

4 They look at just full employment just make more
5 money. Let's just keep hammering this stuff out, regardless
6 of how the balance sheet looks. It's impossible to compete
7 with that, and it's very apparent to me that's what's
8 happening. And I just don't want to see our industry become
9 one of them that used to be strong in this country.

10 Steel to a pretty good beating in the last 30
11 years, and we're starting to make a comeback, and we have to
12 fight for fairness. But I do think that the overcapacity in
13 some of these countries and pushing that product into this
14 country where they can sell it below cost, because they're
15 not held accountable for profitability.

16 MR. PODSIAD: I have a further comment to that.
17 I think the steel business has a high fixed cost base.
18 They're standards are very high. And what my belief is,
19 like David, I don't know this for sure, but this is my
20 theory that they're really just dumping excess capacity. I
21 mean they're really meeting the definition of "dumping."
22 They've got their domestic markets and some of them are
23 protected.

24 We know Malaysia, for example, the Petronas
25 Towers were all mandated that it had to be domestic

1 production. So, they're filling their capacity with their
2 domestic, and then we would all love to have 10 percent of
3 our volume we could sell at our fixed cost base to cover
4 overhead, but we want to do it fairly, and that's the
5 difference. So, the table is not fair, the platform is not
6 fair that we're competing against and it's really they're
7 taking advantage of covering their fixed costs domestically
8 and then it's really gravy at this point when they export to
9 the U.S.

10 COMMISSIONER BROADBENT: Okay. I want to thank
11 the participants for all their participation, and I have no
12 further questions.

13 CHAIRMAN WILLIAMSON: Thank you. Commissioner
14 Kieff.

15 COMMISSIONER KIEFF: I just join my colleagues in
16 thanking the witnesses for all their participation. This
17 has been a very helpful hearing. I've learned a great deal,
18 and look forward to reading the post-hearing as well. And
19 thank you all very much.

20 I guess the only other just general context for
21 the witnesses or the attorneys on both sides is to continue
22 to help brief us on the boundaries of a case where, for
23 example, to follow up on the last exchange where there might
24 be -- let's assume there's good evidence of determination by
25 Commerce of dumping, does that mere fact alone drive our

1 conclusion, or do we have to do more? How extensive of an
2 injury analysis should we do?

3 Those contours, I recognize are subject to
4 debate, and I'm not suggesting that we here need to enter
5 the debate. We here are bound by the law as given, and will
6 apply the law as given. I think it would really help us to
7 hear from the lawyers on both sides what those contours are.
8 So, just with that, thank you all very much, and look
9 forward to the rest of the case.

10 CHAIRMAN WILLIAMSON: Thank you. Commissioner
11 Schmidtlein?

12 COMMISSIONER SCHMIDTLEIN: I have no further
13 questions. But thank you very much for coming and for your
14 time today. It's been very helpful.

15 CHAIRMAN WILLIAMSON: Commissioners, do you have
16 any further questions?

17 If Commissioners have no further questions, does
18 staff have any questions for this panel?

19 MR. MCCLURE: Thank you, Mr. Chairman. Jim
20 McClure, Office of Investigations.

21 Staff has no questions. I would like to ask
22 everyone on both sides who has responded to a questionnaire
23 if we've got outstanding questions to your clients, please
24 get on them to respond now. We need it now. If you have
25 any influence with somebody you know who received a

1 questionnaire and hasn't responded, use any influence you
2 have -- threats are fine -- to get them to respond as soon
3 as possible. We really need your help in this regard.

4 We will work with them. We appreciate that our
5 questionnaires can sometime be burdensome, but they have had
6 plenty of time. So, to quote the late Jim Morrison, the
7 time for hesitating is through. Thank you.

8 CHAIRMAN WILLIAMSON: Couldn't have said it any
9 better myself. Thank you.

10 Do Respondents have any questions for this panel?
11 I take the shake of head to mean "no."

12 MS. HART: We do not.

13 CHAIRMAN WILLIAMSON: Okay. Thank you.

14 In that case, I think it's time for our lunch
15 break. So, we will resume at 1:40. And I want to thank all
16 of the witnesses for coming today. Thank you.

17 (Whereupon, a lunch recess was taken.)

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1 MR. BISHOP: Will the room please come to order.

2 CHAIRMAN WILLIAMSON: Mr. Secretary, are we ready to
3 begin?

4 MR. BISHOP: Yes Mr. Chairman. The panel in
5 opposition to the imposition of the anti-dumping duty orders
6 have been seated, all witnesses have been sworn.

7 CHAIRMAN WILLIAMSON: Okay, thank you. I want
8 to welcome the afternoon panel and Mr.Schutzman you may
9 begin when you are ready.

10 MR. SCHUTZMAN: Thank you Mr. Chairman, members
11 of the Commission. Again we appreciate the opportunity to
12 present our opposition to this petition. Our presentation
13 will consist of four speakers. Mr. Jakob to my immediate
14 right is our industry spokesperson.

15 Mr. Dougan will present the economic position.
16 Mr. Sim will talk about threat and Mr. Planert behind me
17 will then discuss critical circumstances. Mr. Jakob.

18 MR. JAKOB: Good morning. My name is Howard
19 Jakob, thank you for your efforts and for the opportunity to
20 speak this afternoon. I am Executive Vice-President of
21 Silbo Industries. Silbo is an international trading
22 company specializing for over 50 years in industrial piping
23 components, phalanges, fittings and related products made
24 from carbon, stainless and alloy steel.

25 Our experience and position in the market provide

1 us with a complete prospective on which to assess and
2 comment on this dubious petition. Ta-Chen, a very
3 significant world-wide producer of stainless welded pipe,
4 manufacturing in Taiwan and a non-subject importer does not
5 qualify as a U.S. producer but without a doubt Ta-Chen would
6 be the primary long-term beneficiary should an anti-dumping
7 order be issued.

8 Not only is Ta-Chen a very large world-wide
9 producer but it is also the largest distributor by far in
10 the United States. Besides its formidable presence in the
11 worldwide pipe business, Ta-Chen is a primary distributor as
12 well as of the underlying coil from which the pipe is made,
13 also, with being a producer of a host of other related
14 stainless products.

15 In short, Ta-Chen is a force. In our
16 post-conference brief, we included a copy of Notice of
17 Annual Meeting, dated March 25, 2013 to the shareholders of
18 Synalloy Corporation, parent of Bristol Metals, which
19 depicts a 7.62% ownership by Ta-Chen as of December 31, 2012
20 in Synalloy. The 485,993 shares represent the second
21 largest stockholder.

22 Shortly before the filing of this petition, I am
23 told that Synalloy disposed of its interest in Ta-Chen.
24 Regardless of its current financial or legal relationship to
25 petitioners in this case, Ta-Chen certainly has a strong

1 interest in excluding imports of welded stainless pipe from
2 Malaysia, Thailand and Vietnam from the U.S. market.

3 The stainless welded pipe business is
4 historically extremely competitive, with many worldwide
5 producers and generally low margins. Commodity markets in
6 general and metal markets in particular have been soft.
7 Stainless demand in general, despite what we read in the
8 petition was off considerably in most of 2011, '12 and '13.

9 Over the past 5 or 6 months, very significant
10 changes have occurred in the stainless welded pipe market.
11 Most importantly, the price of nickel was \$9.43 per pound
12 the other day, up substantially from \$6.67 per pound at the
13 time of the preliminary hearing.

14 Over the past month there has been a great deal
15 of volatility in the price of nickel attributed to market
16 reactions to real and perceived supply disruptions. If
17 these short term swings are factored out, there remains an
18 undeniable, recent, uptrend in price.

19 Further, there is a direct correlation between
20 the price of nickel and profitability of all players in this
21 market. In addition, we and others have discerned a recent
22 increase in demand in the stainless welded pipe. Several
23 weeks ago, AK Steel announced it will increase prices on all
24 of its stainless steel products effective with shipments on
25 May 4th. As reported in yesterday's Steel Business

1 briefing, the quarry commodities research has lifted its
2 forecast for nickel through 2018 by an average of 50% on
3 supply tightness.

4 It predicted prices of \$23,500.00 a metric ton in
5 the third and fourth quarters of this year compared to the
6 current price of about \$20,000.00 a metric ton. Even
7 Synalloy, in its very recent 10-Q speaking about capital
8 expenditures sees gradually improvement throughout 2014,
9 with increased quoting activity and new project startups.
10 Prices are up significantly across the board with deliveries
11 of domestic pipe out to between 14 and 16 weeks. Any
12 difficulty experienced by the petitioners, was caused by
13 general market weakness, not by subject imports.

14 Although we have recommended that the
15 Commission's analysis include a detailed review of Taiwan,
16 that is Ta-Chen's imports of stainless welded pipe, it does
17 not appear to have happened, mostly because of what we
18 understand to be Ta-Chen's unwillingness to cooperate with
19 the Commission.

20 Not once in the petition is Ta-Chen mentioned.
21 To be all meaningful, every statement and table presented by
22 the petitioners should superimpose the discussion of
23 Ta-Chen. As an example, in the first paragraph of page two
24 of the petition, it concludes "so without the subject U.S.
25 manufacturers could have increased shipments by at least

1 one-third". The same types of conclusions are drawn in
2 nearly every paragraph of the petition.

3 The petition ignores completely Ta-Chen. Our
4 research shows that at least 90% of imports from Taiwan are
5 represented by Ta-Chen. So equating Ta-Chen with Taiwan
6 would be appropriate. The imports into the U.S. during the
7 period of investigation from Ta-Chen represent a very
8 substantial portion of the market. The queer, inarguable
9 conclusion is that Ta-Chen and not the domestic industry,
10 will be the beneficiary of this petition.

11 It is beyond credulity that any analysis of
12 stainless welded pipe of the market, stainless welded pipe
13 market, can omit the overwhelmingly significant
14 participation of Ta-Chen. Anecdotally, if you were to
15 review as we do the data prepared by various import analysis
16 services, you will be jolted by the massive level of imports
17 into the U.S. every month from Ta-Chen.

18 We will provide samples of this data in our
19 post-hearing brief. Customers of ours have commented over
20 the last several days as to how much prices have increased
21 across the board. Hopefully, the Commission will insist on
22 receiving and reviewing pricing information from Ta-Chen.

23 It is our experience that non-subject imports
24 undersell the U.S. producers. Any dumping order is likely
25 to principally benefit Ta-Chen. In my opinion, not only

1 will it help -- not help the U.S. producers, it will
2 actually harm them in the long run. By virtue of Ta-Chen's
3 strength in the marketplace and their vertical integration,
4 they can take or make any deal they want.

5 I think economists refer to this as market power.
6 Reducing the number of other competitors in the market will
7 only increase this power. Before I conclude I would like
8 to offer some observations on critical circumstances which
9 has been claimed against Malaysia.

10 As I understand it, the criteria for
11 implementation of critical circumstances is massively
12 increasing imports prior to the date of relief which
13 seriously undermine the remedial effect of the order.
14 There is absolutely nothing in the data that I have seen or
15 in my experience in the marketplace, during 2013, which
16 conforms with critical circumstance guidelines.

17 Silbo's imports from Pantek measured in short
18 tons were pretty much the same and even a little bit higher
19 in the first half as in the second half of 2013. By the
20 date of relief, January 7, 2014, nearly all of the material
21 that we imported during 2013 was sold. Inventory levels of
22 Malaysian's stainless welded pipe are likely to have been
23 very low, not even approaching levels necessary in any
24 matter to affect the remedial effect of this order.

25 The only evident surge in import levels during

1 2013, particularly in the second half of 2013, that was
2 experienced were those out of Taiwan. The domestic
3 industry appears to have obtained the support of Taiwan,
4 Ta-Chen, specifically, a foreign producer.

5 In order to pass the standard of material injury,
6 a full discussion of Ta-Chen would be a pre-requisite, both
7 with regard to its effect on the stainless welded pipe
8 market, and in its participation in this case.

9 In my opinion, the cases are transparent, all be
10 it created attempt for one bohemith importer to curtain and
11 effectively eliminate competition. Thank you.

12 MR. DOUGAN: Good afternoon, I'm Jim Dougan from
13 Economic Consulting Services, appearing on behalf of joint
14 respondents. We submit to the Commission, that the record
15 does not provide sufficient evidence that subject imports
16 are the cause of any injury suffered by the domestic
17 industry and therefore the Commission does not have the
18 basis for an affirmative determination.

19 In truth, the U.S. welded stainless pipe market
20 has been stagnant over the period and domestic subject
21 import and non-subject import volumes and market shares have
22 been essentially constant. The true mover in this market
23 over the POI has been plummeting nickel prices, which are
24 the main driver of welded stainless pipe prices and as the
25 Commission and petitioners themselves have recognized

1 historically, the key driver of domestic industry
2 profitability. This decline, not subject imports, explains
3 the decline in domestic industry in prices and in
4 profitability.

5 When subject imports dropped off after the filing
6 of the petition, they were simply replaced by non-subject
7 imports, particularly from Taiwan, the largest supplier of
8 the market, with no apparent benefit to the domestic
9 industry.

10 The domestic producers have drastically revised
11 their data between the prelim and the final phases and their
12 theory of the case as well, but their story doesn't explain
13 what's going on in the market as they have failed to
14 properly address the primary roles of nickel prices and
15 non-subject imports.

16 First, to provide some context, we note that the
17 demand for welded stainless steel pressure pipe was
18 effectively flat from 2011 to 2013, as shown on slide 1
19 which comes from the pre-hearing staff report. Apparently
20 the consumption in short tons was 64,321 in 2011 and 64,500
21 in 2013.

22 There was a lack of consensus about demand and
23 questionnaire responses as revealed in the staff report at
24 Roman 211 "Producers reported either that demand had
25 increased or decreased. Importers reported that demand had

1 either decreased or fluctuated and thus purchases reported
2 that either demand was unchanged or demand had fluctuated."

3

4 What I take from all of that is demand was flat.

5 Despite this flat demand, the domestic industry's volume
6 indicators all increased over the POI, see slide 2.

7 Production increased by 3.8% from 2011 to 2013 and

8 utilization increased from 50.4% to 52.1% over the same

9 period. U.S. shipments increased by 2.1% and domestic

10 industry market share from 51% to 52.3%.

11 And this is the sort of thing that Mr. Schagrin

12 this morning said was you know we would put a big arrow on

13 and be hyperbolic about but he also claimed that this

14 industry is losing money and can't make money at capacity

15 utilizations of its current levels of 52%, they are going to

16 start shutting down.

17 I think so historical context is useful. If you

18 look at the China case, much of the data are redacted, but

19 in January to September 2007, the most profitable segment,

20 the most profitable time period of that entire POI, the

21 domestic industry earned an operating margin of 11.7%.

22 11.7%. What was their utilization during that period?

23 45.7. So the idea that they can't make money at a

24 utilization rate like they are currently experiencing is

25 just not supported by the evidence.

1 Likewise, Mr. Schagrin characterized their
2 current 50% market share as "pathetic" and when asked about
3 market share and utilization, the Commission asked what the
4 producers, what was some good times, where were you running
5 at high utilization and they referred to the mid 2000's what
6 they referred to as the ethanol years. And this was the
7 2005-2008 period where they had high utilization and were
8 running at full capacity, again, 46% utilization during
9 these ethanol years.

10 Their market share, what was their market share
11 during this period when they earned an operating margin of
12 nearly 12%? 29.2%. So the idea that these changes, the
13 fact that they maintained a market share in the neighborhood
14 of 50% and had a utilization rate that increased by a couple
15 of percentage points, you know, are indeed evidence of
16 improvement and are not -- show that subject imports are
17 disconnected from profitability. And in fact these
18 indicators are separated from profitability.

19 Moreover, as noted in Son Ha's pre-hearing brief,
20 some of the data reported by the domestic industry show an
21 even greater increase in production of the subject
22 merchandise, both in absolute terms and as a share of the
23 goods produced on the same equipment and machinery. The
24 later point, domestic producers increasing their production
25 of subject merchandise relative to other alternative

1 products that could be produced on the same available
2 assets, runs counter to the testimony that they have
3 re-focused their production on other products and counter to
4 the picture of an industry suffering material injury and to
5 the idea that they are on the verge of shutting down these
6 facilities.

7 Now we understand that staff is in conversation
8 with certain domestic producers about inconsistencies in
9 their questionnaires, it is possible that these data may get
10 revised, but as the record stands right now, that's what it
11 shows. They are producing more, not only absolutely, but
12 relatively more of the subject merchandise relative to other
13 products on the same assets.

14 Slide 2 also shows that the industry's employment
15 indicators have increased. The number of production
16 related workers increased from 363 in 2011 to 372 in 2013,
17 and hourly wages increased by 5% from 19.15 in 2011 to
18 \$20.11 in 2013, although there was a small decline in
19 productivity of 4.8%.

20 I note also, in terms of historical context,
21 these employment figures are up from the 2007 to 2008
22 timeframe covered in the China case. The production and
23 related workers in year to date September '07 were 308 and
24 the year to date 2008 were 348. Okay, so what that means
25 there are more people working in this industry now than

1 there were then.

2 Mr. Schagrin this morning said that these jobs
3 are what these cases are all about and there are more of
4 them now, about 20% of them now, than there used to be
5 despite petitioner's claims of injury by subject imports
6 during the POI.

7 Now from a financial standpoint, no one would
8 argue that the domestic industry has been doing particularly
9 well during the POI but petitioners reference to general
10 manufacturing industry profitability notwithstanding, no one
11 would expect the domestic industry to be doing particularly
12 well in a time of flat demand, falling productivity and
13 steep declines in the key raw material imports that
14 reference prices for the pricing of the end product, welded
15 stainless pipe.

16 The industry's condition is unrelated to subject
17 imports and it would be in the same condition regardless of
18 the behavior of subject imports. As I am sure the
19 Commission is aware, the domestic industry made significant
20 revisions to their questionnaire data between the
21 preliminary and final phases. They have also revised their
22 theory of the case somewhat to fit those new data.

23 At the prelim petitioner's claim the domestic
24 industry ceded market share and on the basis of evidence
25 available the Commission agreed, finding "the subject

1 imports undersold the domestic like product, taking market
2 share away from the domestic industry."

3 In the final phase data which showed domestic
4 producers gaining market share, petitioner's theory is that
5 domestic industry rationally chose to lower prices rather
6 than lose more market share. But what did the data show?
7 As shown on slide 3, domestic sales AUV is changed by
8 virtually the same percentage between 2011 and 2012, 14.7%
9 and 2012 and 2013 14.8%. Between 2011 and 2012, the
10 industry's market share increased from 51 to 52.6% and from
11 2012 to 2013, it's share was effectively flat, down a little
12 to 52.3.

13 This fact pattern doesn't support the theory that
14 the industry at first ceded market share to maintain price
15 levels and then cut prices to regain market share. It
16 shows that the industry more or less maintained and even
17 slightly gained market share in a time of general market
18 price declines. More on that in a moment.

19 Prior to the domestic industry's drastic revision
20 of its financial data between the preliminary and final
21 phases, the trend in the domestic industry's performance was
22 upwards from 2011 to 2012. At the prelim, petitioners were
23 left with explaining this improvement as a variant of
24 survivor bias, owing to their abandonment of the small
25 diameter that is 2 inches and under segment of the market

1 from which they claim to have been forced by fierce price
2 competition from subject imports.

3 According to the domestic industry's revised
4 final phase data, their operating margin now declined
5 between 2011 and 2012 from negative 3.7% to negative 7.1% of
6 sales. While the domestic industry's shipments by size
7 data are incomplete, in part because of Marcegaglia's
8 failure to provide them, this decline happened on slide 4 as
9 the share of U.S. producer shipments of pipe 2 inches and
10 under dropped off from 51.8% in 2011 to 46% in 2012.

11 The industry's operating margins fell again in
12 2013 to negative 12% as domestic producers increased their
13 share of shipments into the 2 inches and under segment to
14 49.9%. So contrary to the arguments presented by
15 petitioners at the prelim phase, the more detailed data
16 available at the final show that there is no apparent causal
17 relationship between domestic producers, relative
18 concentration in certain sizes of pipe and their financial
19 performance.

20 Petitioners claim that changes in raw material
21 prices cannot explain the downturn in market prices for
22 stainless pipe and the resulting drop in industry
23 profitability, because sales prices for the subject
24 merchandise declined by more than costs of goods sold.
25 They also claim that but for increased pricing pressure from

1 the subject imports, they would have had a surcharge program
2 in effect, allowing them to pass along raw material charges
3 to their customers.

4 In its preliminary determination, the Commission
5 indicated its intent to further examine the use of
6 surcharges in the market in the final. It did so by
7 including, among others, question roman 325 in the
8 purchaser's questionnaire and while the purchaser's
9 responses to this question are confidential, I think I can
10 say the purchasers who did mention specific raw materials in
11 the context of pricing and surcharges, were nearly unanimous
12 in mentioning the price as nickel as the primary driving
13 influence on the price of stainless steel pipe.

14 The pre-hearing report at 5-2 states that the
15 price of nickel dropped by 39% between January 2011 and
16 March 2014. Using the same data as the Commission staff
17 shown in slide 5, we calculated the decline through December
18 2013 at the end of the POI, was actually even greater, 45%.

19 What exactly would a nickel surcharge have been
20 passing on to customers when the price of nickel dropped by
21 45%. When the price is dropping there is no surcharge to
22 add.

23 We note also, that the index data corroborate Mr.
24 Jakob's testimony about the increase in nickel prices in
25 2014. And while nickel may be the primary and most

1 frequently mentioned raw material driver of stainless pipe
2 prices, other raw material input prices dropped as well, in
3 particular hot rolled AISI grade 304 and 316 stainless
4 steel.

5 While the specific data are confidential in the
6 staff report, the magnitude of the decline in these prices
7 was similar to the change in nickel prices. What has
8 prevented the domestic industry from implementing a
9 surcharge program over the POI isn't pricing pressure from
10 subject imports, it's the fact that material prices were
11 plummeting over the POI, all while demand for stainless pipe
12 was flat.

13 In their pre-hearing brief, petitioners state
14 that "normally if the cost of raw materials declines,
15 manufacturers can take advantage of this to increase
16 profits. They are not obligated to pass the entirety of
17 cost savings on to their customers" and here operating
18 losses increased over the POI suggesting that this was not a
19 normal situation.

20 Mr. Schagrin said very much the same thing this
21 morning. The fact is this is very much a normal situation.

22 What happened over the POI is precisely what you would
23 expect to happen based on the conditions of competition in
24 this industry. Historically, domestic industry
25 profitability tends to increase when nickel prices are

1 increasing and decrease when nickel prices are decreasing.

2 This relationship is counter intuitive but it is
3 a long standing condition of competition in the U.S. market.

4 The Commission, and I note petitioners themselves,
5 recognized as much in the China case from 2009.

6 In 2006, in 2007, in contrast to the current POI,
7 raw material prices were increasing and the domestic
8 industry reaped the benefit with strong profitability, see
9 slide 6. They had to explain how they were injured despite
10 the increase in profitability for most of the POI.

11 So the staff report in that investigation at
12 pages Roman 63 and 64 summarizes the discussion as follows:

13 "The domestic industry has argued that the apparent
14 improvement in its financial condition in 2006-2007, was the
15 result of surcharge gains caused by rising prices for nickel
16 and molybdenum and that this presents a unique condition of
17 competition that the Commission should factor into its
18 analysis in its investigations.

19 That is, U.S. producers of flat-rolled
20 stainless steel, the input used to produce welded stainless
21 pressure pipe employ monthly surcharges to counter-balance
22 large price swings and the major cost components of
23 stainless steel such as nickel, chromium, molybdenum,
24 vanadium, manganese, iron, titanium and energy.

25 While there were marked fluctuations from

1 month-to-month, these surcharges generally increased often
2 by large amounts from 2005 to 2007. Since there is an
3 approximate two to four month time lag between the time this
4 flat-rolled steel is ordered and the time the finished pipe
5 is shipped, the cost of pipe shipped at any point in time is
6 based on surcharge amounts in effect several months
7 previous. The quote continues on slide 7.

8 Lastly, since price -- pipe producers bill their
9 customers the surcharge amount in effect when the finished
10 pipe is shipped, if surcharges are increasing as they
11 generally did from 2005 to 2007, an important component of
12 reported profits can be the difference between higher
13 surcharges in effect when the finished pipe is shipped, and
14 lower surcharges embedded in the cost of pipe.

15 If surcharges decline as they generally did in
16 2008, then the reverse will be true and pipe producers will
17 be charging lower prices for finished pipe that has higher
18 costs. As a source for this discussion, the staff report
19 cites to the conference and hearing testimony of Mr. Hankie
20 of Felker Brothers, Mr. Cornelius of Marcegaglia and Mr.
21 Schagrin.

22 The scenario described in the bolded text at
23 slide 7 is precisely what has been happening over the POI in
24 this investigation, see slide 8. As nickel prices declined,
25 so did domestic industry prices and profits, that is pipe

1 producers are charging lower prices for finished pipe that
2 has higher costs. In that sense it is not surprising that
3 the decline in unit prices reported by domestic producers is
4 greater than the declines in unit COGS. It's just a
5 characteristic of how this market works. It's a unique
6 condition of competition.

7 It's worth pointing out too, that the discrepancy
8 we are discussing is not a vast one, see slide 9. The
9 domestic industry's net sales AUV decreased by 27.3% while
10 its unit raw materials cost decreased by 25.7%. This is the
11 kind of difference that can be easily explained by the
12 timing difference in raw material purchases and sale and it
13 would be happening with or without subject imports as
14 domestic producers compete among one another and with
15 non-subject imports.

16 Also, now that nickel prices are on the rebound,
17 the outlook for domestic industry profitability is strong.
18 The fact is the domestic industry has traditionally been
19 profitable when raw material prices are increasing and less
20 profitable when they are declining, particularly over a long
21 period of time.

22 This would seem to apply even more so during a
23 time of stagnant demand, such as the period from 2011 to
24 2013. As far as the other record evidence on price effects,
25 the Commission should use caution in drawing a causal link

1 between these data and any injury to the domestic industry.

2 With regard to underselling the coverage is
3 extraordinarily poor, 4.9% of U.S. producers commercial
4 shipments. We understand that additional pricing data for
5 the domestic industry, as well as importers has been filed
6 with the Commission and we hope to receive it as soon as
7 possible.

8 Still, this isn't a product with a high degree of
9 customization nor would anyone argue differentiation.
10 Petitioners presumably selected the pricing products that
11 demonstrate the greatest degree of competitive overlap with
12 subject imports, and this poor coverage actually suggests
13 that the competitive overlap with subject imports is
14 limited. This poor coverage is insufficient factual basis
15 for the Commission to make a finding of, excuse me, adverse
16 price effects.

17 Likewise, as discussed in the pre-hearing brief
18 of Pantek, the combined value of lost sales and revenue
19 allocations is vanishingly small compared to total domestic
20 industry sales. It's truly diminimus. In response to a
21 question about this this morning, Mr. Schagrin claims that
22 the nature of the marketplace overwhelmingly sold to
23 distributors, makes it impossible for them to provide
24 detailed information to support specific lost sales
25 allegations.

1 So in these circumstances, how can a domestic
2 producers be certain that they have lost a sale to subject
3 imports as opposed to non-subject imports or even another
4 domestic producer especially given the relevant comparative
5 market shares.

6 This brings me to the next part of my
7 presentation. While Mr. Planert will be addressing the
8 matter of critical circumstances, I believe the petitioner's
9 arguments with regard to post-petition effects and recent
10 import trends are relevant to the issue of causation, see
11 slide 10.

12 This is from page 8 to the petitioner's
13 pre-hearing brief where they present this graph that
14 purports to show the effect of the petition on import volume
15 and that had the petition not been filed, subject imports
16 would have been far higher in 2013 than they were. We know
17 that this relies on census bureau import statistics and not
18 the monthly import data collected in the questionnaires for
19 critical circumstances.

20 What's interesting is that when you look at this
21 data, there doesn't also appear to be an apparent beneficial
22 post-petition effect for the domestic industry. In fact,
23 the industry's performance as reported declined from 2012 to
24 2013. Petitioners would have you believe that this is
25 because of a surge of subject imports immediately after the

1 filing of the petition.

2 Mr. Planert will address this in the context of
3 critical circumstances, but the evidence is worth examining
4 in the context of causation as well. Petitioner's brief did
5 not provide detailed enough citations for us to be
6 absolutely certain we replicated the results, but we think
7 we have come pretty close, see slide 11.

8 To replicate petitioner's chart we used all 11 of
9 the HTS codes specified at page Roman 19 of the PSR. We
10 don't agree with the use of the HTS categories which capture
11 a great deal of out of scope merchandise, but for purposes
12 of addressing petitioner's argument, we will use them here.

13 So why after the petition was filed and subject
14 imports after a brief spike fell off a cliff, did the
15 domestic industry not see an improvement in its condition?
16 Petitioners again argue that it is because of continually
17 falling prices driven by the subject imports and subject
18 imports being sold out of inventory.

19 As we have shown above, we think the falling
20 prices had nothing at all to do with subject imports but
21 still, even if prices continue to fall, wouldn't the drop in
22 subject import volume provide some benefit to the domestic
23 industry. There might be another simple explanation that
24 fits well with the overall story that respondents have been
25 telling since the prelim and what you have already heard

1 from Mr. Jakob today.

2 Slide 12 presents the same data as the previous
3 slide 11 but on a slightly different scale for reasons that
4 will become apparent in a moment. The purple line
5 represents imports from Taiwan. After the filing of the
6 petition, they spiked by over 80%. They then declined
7 somewhat to a level still near the top of the range for the
8 entire pre-petition period and then spiked again late in the
9 year just as subject imports collapsed to negligible levels.

10 Again, we don't necessarily agree that the
11 commerce statistics are capturing only subject merchandise,
12 though it would be quite a coincidence if there just
13 happened to be such a spike in imports of other products,
14 non-subject products from Taiwan immediately after the
15 filing of this particular case.

16 Petitioners presented these data in their brief
17 and used them not only to make a case for critical
18 circumstances, but also to make a point about the alleged
19 under-reporting of subject imports. How the Commission
20 should use its subpoena power to get the best possible
21 information about subject imports.

22 If the Commission agrees it should also inquire
23 as to the possibility that non-subject imports are equally,
24 if not even more, under-reported. They are certainly
25 under-reported with respect to the final phase pricing data.

1 Whatever the domestic industry panel claimed about common
2 knowledge anecdotally of Taiwan and Korea being higher
3 priced than subject imports, the Commission's data say
4 otherwise.

5 In their pre-hearing brief, petitioners cherry
6 pick one of the six pricing products to argue that
7 non-subject prices are more like domestic prices, while
8 lighting the fact shown in the pre-hearing staff report at
9 table E3 that imports from Taiwan undersold the domestic
10 industry in 9 out of 18 comparisons.

11 At the prelim, limited but still much better,
12 pricing coverage showed that non-subject imports undersold
13 the domestic-like product in 74 of 74 or 100% of comparisons
14 and undersold subject imports in 205 of 222 or 92.3% of
15 comparisons. The fact is the available record evidence
16 indicates that non-subject imports are sold at prices
17 similar to those of subject prices if not even lower and as
18 petitioners argue, while this stainless pipe is a commodity
19 product sold entirely on the basis of price, thus when the
20 Commission considers whether subject imports would have been
21 replaced by non-subject imports during the POI with no
22 benefit to the domestic industry, they need to look no
23 further than this slide and what actually happened in 2013
24 after the filing of the petition.
25 Thank you.

1 MR. SIM: Good afternoon. We can keep that slide
2 up, it's pretty good.

3 My name is Edmund Sim of the Singapore office of
4 Appleton Luff and with me today is my partner Kelly Slater
5 from our Washington, D.C. office. Together we appear on
6 behalf of Pantech Stainless and Alloy Industry Sdn. and
7 Bhd., a Malaysian producer and exporter of subject
8 merchandise.

9 On behalf of Pantech, we would like to comment on
10 where the subject imports threaten material injury to
11 domestic industry both in general with regard to all three
12 southeast Asian countries and in particular with regard to
13 Malaysia.

14 Subject imports do not pose an imminent threat of
15 injury to the domestic industry. As noted earlier, subject
16 import volumes remain stable or declined during the period
17 of investigation. Their market share decreased during the
18 period of investigation.

19 Also capacity utilization for subject imports
20 from Malaysia was high during the period of investigation
21 and is projected to remain high or increase in 2014 and
22 2015. This reflects the 2012 departure from the welded
23 stainless steel pressure pipe industry of Kanzen Tetsu which
24 had been the largest Malaysian exporter of subject
25 merchandise to the United States.

1 Superinox, another Malaysian producer is a very
2 minor exporter to the United States as can be confirmed by
3 the questionnaire response in the preliminary investigation.
4 My firm has served as counsel to all three companies.

5 Domestic shipments of subject merchandise
6 increased in each year of the period of investigation as did
7 exports to third markets while export markets declined in
8 2013.

9 Pantech, the largest Malaysian exporter, has
10 shifted its exports to other market such as Europe which do
11 not impose any trade remedy measures on stainless steel
12 pipe. In addition, Malaysia, Thailand, Vietnam, and seven
13 other southeast Asian countries are members of the
14 Association of Southeast Asian Nations or ASAN. In 2015
15 ASAN is forming the ASAN economic community, a single
16 market, that would expand business opportunities for
17 stainless steel pipe in Malaysia, Thailand, and Vietnam. I
18 note that this market is not accessible to Taiwan, a major
19 source of non-subject imports in the United States because
20 Taiwan does not have a free trade agreement with ASAN.

21 Moreover, we note that in the period inventories
22 declined in 2013 both absolutely and as a share of subject
23 imports.

24 Finally, as noted earlier by Mr. Dougan, the
25 degree and instances of underselling by such imports are

1 much lower by the period -- by the end of the period of
2 investigation than at the beginning. This is a trend
3 indicating a lack of future price effects on the domestic
4 market. The absence of adverse price effects or evidence of
5 adverse impact from subject imports during the period of
6 investigation confirms that there is likewise no basis for
7 projecting such adverse effects or impact on the imminent
8 future.

9 The recent increases in prices of raw materials
10 such as nickel are bell weather indicators that the prices
11 for welded stainless steel pressure pipe will increase for
12 the foreseeable future.

13 In sum, we urge the Commission not only to find
14 no material injury by reason of subject imports, but to find
15 no threat of material injury by reason of imports from
16 Malaysia, Thailand, and Vietnam.

17 Thank you.

18 MR. PLANERT: Good afternoon, Mr. Chairman, and
19 members of the Commission. I am Will Planert of Morris,
20 Manning and Martin appearing on behalf of Allied Fitting and
21 its affiliated importer, Warren Alloy, an importer of
22 subject merchandise.

23 With me today is my partner Julie Mendoza.

24 I would like to address the issue of critical
25 circumstances. This issue is before the Commission in this

1 case because the Department of Commerce reached an
2 affirmative preliminary determination of critical
3 circumstances against three Malaysian exporters of welded
4 stainless steel and pressure pipe. Under the statute
5 Commerce makes an affirmative critical circumstances
6 determination if it finds that there have been, "Massive
7 imports over a relatively short period of time and the
8 importer knew or should have known that the merchandise was
9 being sold at less than fair value."

10 In this investigation, however, Commerce's
11 critical circumstances determination and thus its finding
12 that there have been massive imports following the filing of
13 the petition, was based solely on an adverse inference. It
14 was not based on an analysis of actual import data. This
15 explains why, as I will discuss in a moment, the record of
16 the final injury investigation where the Commission does
17 have actual data on Malaysian imports subject to the
18 critical circumstances finding, fails to show any meaningful
19 surge in imports in the six months following the filing of
20 the petition.

21 In reaching its determination on critical
22 circumstances the statute charges the Commission with
23 determining whether imports subject to Commerce's critical
24 circumstances determination, "are likely to undermine
25 seriously the remedial effect" of any antidumping order that

1 may be issued by Commerce.

2 The statute directs the Commission to consider,
3 among other factors that it deems relevant the timing and
4 volume of imports, any rapid increase in inventories of the
5 imports, and any other circumstances indicating that the
6 remedial effect of the antidumping order would be seriously
7 undermined.

8 The Uruguay Round Statement of Administrative
9 Action explains that in making its determination the
10 Commission is to determine whether the effectiveness of the
11 order would be materially impaired in the absence of
12 retroactive relief and to determine whether the surge in
13 imports prior to the suspension of liquidation is likely to
14 seriously undermine the remedial effect of the order.

15 The Commission's practice is to conduct its
16 analysis by comparing data during the six-month periods
17 immediately preceding and following the filing of the
18 petition and to include the month in which the petition was
19 filed in the prepetition period.

20 In this case, importers' questionnaires requested
21 importers to provide import quantities and ending
22 inventories for the merchandise subject to Commerce's
23 critical circumstances determination on a monthly basis from
24 December 2002 through December 2013.

25 Although these data were not compiled in the

1 prehearing staff report, they are on the record and we
2 believe the Commission should rely on these data for
3 purposes of its analysis of the timing and pattern of
4 imports and for its analysis of changes in the importer
5 inventories.

6 We urge the Commission staff to include these
7 data in the final staff report. In the meantime, Allied
8 compiled these figures which at this point have been treated
9 as confidential in Exhibit 2 to its prehearing brief.

10 What the data show is that there was no surge in
11 subject imports subject to Commerce's critical circumstances
12 determination. Rather the data show, at most, a slight
13 increase in the six months following the filing of the
14 petition, that is, June 2013 through November 2013, compared
15 to the previous six months of December 2012 through May
16 2013.

17 The increase in imports is small whether
18 considered on an absolute basis or a percentage basis. And
19 the net increase, when considered in relation to domestic
20 production or to apparent consumption is miniscule.

21 The monthly critical circumstances data also show
22 that far from the rapid increase in import inventories
23 contemplated by the statute import inventories declined
24 significantly. Thus, there is no basis for concluding that
25 the small increase in import volumes in the six months after

1 the filing of the petition would have had any lingering
2 effects that would undermine, let alone seriously undermine,
3 the remedial effect of any antidumping duty order that may
4 be issued in this investigation.

5 The record in this investigation also shows no
6 other circumstances that would indicate that the remedial
7 effect of the antidumping order would be undermined by the
8 imports during the six months after the filing of the
9 petition.

10 For example, in the recent case on solar cells
11 and modules from China, in which two Commissioners voted in
12 favor of retroactive relief, there was a much more
13 significant increase in imports and evidence that margins of
14 underselling increased during the period in which the
15 imports surged. Here there is no such evidence as margins
16 of underselling, if anything, declined during the
17 post-petition period as demonstrated in Exhibit 3 of
18 Allied's prehearing brief.

19 Furthermore, in the Solar Cells and Modules case
20 subject imports held over 60 percent of the U.S. domestic
21 market which would tend to exacerbate the effects of any
22 post-petition surge.

23 In this case, in contrast, as has been discussed
24 in detail by other witnesses this afternoon, subject
25 imports play a far more limited role in the overall welded

1 stainless steel pressure pipe market.

2 It stretches credulity to argue that the small
3 increase in imports subject to the critical circumstances
4 finding of Commerce would somehow undermine the remedial
5 effects of an antidumping order.

6 The domestic producers in their prehearing brief
7 have elected to ignore the monthly import data on critical
8 circumstances from the importers' questionnaires and instead
9 have relied, for their arguments, on monthly census data.
10 The census data used by the domestic producers, however, are
11 not limited to only the producers subject to Commerce's
12 critical circumstances findings, and as Mr. Dougan has
13 already discussed they include significant quantities of
14 non-subject imports as well. Nevertheless, it is striking
15 that the domestic producers own calculation shows an
16 increase of just over 103,000 kilograms or approximately 114
17 short tons in the six months following the filing of the
18 petition. This is from the domestic producer's brief at
19 page 36.

20 The domestic producers have failed to explain why
21 an additional 114 tons of imports over six months in a
22 market of more than 64,000 tons in 2013 would undermine the
23 remedial effects of an antidumping order.

24 To try to show a bigger post-petition increase,
25 the domestic producers suggest in their brief gerrymandering

1 the analysis by moving May, the month of the petition, into
2 the post-petition period. The petition in this case was
3 filed on May 16th, however, and given the lead times
4 involved in transporting the merchandise from Malaysia,
5 there's no credible basis for arguing that import volumes in
6 May were influenced by the filing of the petition.

7 We are unaware of any previous case in which a
8 petition was filed in the second half of the month where the
9 Commission has treated that month of the petition as part of
10 the post-petition period. And the domestic producers have
11 failed to offer any argument as to why it would be
12 appropriate for the Commission to depart from its settled
13 practice by doing so in this case.

14 With regard to inventories, the domestic
15 producers in their brief wrongly assert that the only
16 information on the record on import inventories is the
17 annual figures in Table 7-5 of the staff report. In fact,
18 as already discussed, monthly inventory figures were
19 provided in the importer questionnaires and we have compiled
20 those in Allied's prehearing brief.

21 Just as with the overall annual figures cited by
22 the domestic producers these data show that the import
23 inventories did not increase rapidly after the filing of the
24 petition, but instead declined. The domestic producers'
25 explanation for this decline in import inventories is that

1 after a brief increase in the months immediately following
2 the petition, import volumes declined rapidly and importers
3 therefore had to sell out of inventory. This is our point
4 exactly. Declining, not increasing imports, in the third
5 and fourth quarters of 2013, resulted in falling import
6 inventories. But where then is the injurious surge of
7 imports? Provisional measures were not imposed until the
8 end of December of 2013, and even accounting for the fact
9 that that was slightly delayed by the result of the
10 government shutdown, exporters seeking to circumvent the
11 impending relief could have continued to increase imports at
12 least through October or early November and could have built
13 up large inventories to carry them through at least the
14 first quarter of 2014.

15 Instead, the opposite happened. Import volumes
16 began to decline significantly after August and import
17 inventories which were never that high to begin with fell.
18 This pattern leaves no basis to argue that the very small
19 net increase in imports during the six months following the
20 filing of the petition would undermine, let alone, seriously
21 undermine the remedial effect of antidumping order. For
22 this reason a negative critical circumstance is warranted.

23 Thank you.

24 MR. SCHUTZMAN: Mr. Chairman, that concludes
25 Respondent's presentation.

1 CHAIRMAN WILLIAMSON: Thank you.

2 And I voice the Commission's position for all the
3 witness who have come to testify this afternoon.

4 This afternoon we will begin questioning with
5 Commissioner Schmidtlein.

6 COMMISSIONER SCHMIDTLEIN: Thank you, Mr.
7 Chairman.

8 First I'd like to thank the witnesses for coming
9 today and for their time in answering our questions is very
10 helpful.

11 I want to start with Mr. Dougan and your analysis
12 and presentation. And I just sort of want to -- because it
13 was a lot of information, and you spoke pretty quickly, so I
14 want to just sort of step back and see if I understand
15 basically your theory of the facts or your theory of the
16 case, if you will, the way I understood you presenting it.

17 And you can stop me at any point as I, you know,
18 walk through this. So if I understand you correctly, what
19 you said was demand was basically flat during these three
20 years, if you look at that. If you then look at the
21 domestic industry's production, capacity, utilization,
22 shipments, market share, there was a little bit of increase
23 in each of those; right? Which I would say those numbers
24 show it was relatively stable.

25 I mean, I don't know if I was an investor if I

1 would get too excited about a 1.3 percent increase in market
2 share. So basically demand is flat, the domestic industry
3 maintains its share, you know, maintains its shipments, but
4 they're losing money. And your theory of that is that the
5 price of nickel is falling and that's being passed through,
6 so they have to reduce the price of the pressure pipe and
7 that's why they're losing money. And it's not because of
8 subject imports. And I guess the alternative argument, if
9 there is a cause, it's because of the non-subject imports.
10 Is that generally it? The reason they're losing money is
11 that the raw material prices were falling?

12 MR. DOUGAN: I think that that's correct. And so
13 the importance of the raw material prices is not only
14 determining what they pay for their raw materials, but the
15 reference point for the sale of their end product is very
16 strong. And, in fact, we heard the same from the domestic
17 producers this morning, that everyone very transparently
18 knows what these things are, they're published, and it's the
19 reference price for the raw material and it ends up being
20 the reference price for the finished good of welded
21 stainless pipe.

22 But because of the disconnect between when they
23 have to buy their raw materials and when they're able to
24 sell the finished good, there's like -- when those raw
25 material costs are decreasing as they have been over the

1 POI, they have a relatively higher cost of goods sold or
2 inventory costs relative to what they're able to sell it
3 for. So those -- the temporal disconnect causes them to be
4 at a disadvantage and their margins decline when the nickel
5 price is declining. And I think the China case showed that
6 historically that was true. The reverse happens when nickel
7 prices are on the uptick. They immediately get the benefit
8 of the price increase because everyone knows what the
9 surcharge is or what the addition increase is, but they are
10 now processing raw materials that they purchased at a lower
11 cost. And so the spread widens when prices are increasing
12 and it narrows when they are decreasing.

13 And the argument being that that is a condition
14 of competition that would exist -- just the way the things
15 work, just the way that the market works, it would -- it
16 doesn't have anything to do with subject imports because it
17 would happen only if domestic producers were only competing
18 with one another the same thing would be happening.

19 COMMISSIONER SCHMIDTLEIN: Okay. But I guess the
20 disconnect for me is why does that translate necessarily
21 into that they're losing money? In other words, so is every
22 -- you know, it's just a weak market, a weak business and
23 that's why these companies are losing money? Does this make
24 sense? Like they're just -- I just can't seem to --

25 MR. DOUGAN: I think that that is the case

1 particularly in a time of flat demand. I mean, I think, you
2 know, maybe it would be a slight different situation if
3 demand were increasing, but raw material prices were not.
4 But what we see here is, flat demand. There's not a
5 burgeoning demand for this product. It's been relatively
6 stable. And so in that situation when you combine that with
7 the raw material prices declining you're going to get the
8 results that you see.

9 COMMISSIONER SCHMIDTLEIN: Okay.

10 MS. MENDOZA: May I add something?

11 COMMISSIONER SCHMIDTLEIN: Sure.

12 MS. MENDOZA: I think the other thing I would
13 just add to that is that what you're seeing is pricing of
14 the stainless pipe declining because all of the market
15 understands that as nickel prices decline, prices have to
16 follow that. So the reason the industry is losing money is
17 because prices are declining and the reason prices are
18 declining is because nickel prices are declining and they're
19 in a situation where they have raw materials that they
20 purchase as Jim was saying -- Mr. Dougan was saying earlier,
21 that they now have a cost for that they cannot pass on.

22 But I think the reason that the nickel price is
23 so important is because the nickel price is driving the
24 prices of stainless pipe and flat rolled and everything else
25 and therefore explains the reason why the industry in a flat

1 demand situation isn't making money.

2 COMMISSIONER SCHMIDTLEIN: So would that mean
3 that the imports and non-subject imports are also -- those
4 companies are also losing money on their -- you know --
5 because they're buying nickel the same prices; right?

6 MR. DOUGAN: I haven't seen profitability data
7 for the producers, I don't know. But I can't imagine that
8 they're doing particularly well.

9 MS. MENDOZA: Obviously I would also -- this is
10 Julie Mendoza -- depend on the demand situation in those
11 countries. But our general understanding from our clients
12 is that demand worldwide has been depressed and nickel
13 prices are obviously depressed worldwide. So I don't think
14 anyone in the industry has been having great years lately.

15 COMMISSIONER SCHMIDTLEIN: All right. Is there a
16 reason -- I'm just curious -- on your chart, this is a small
17 question, but you use raw materials instead of the cost of
18 good sold; is that right? And I know that nickel is the --
19 you know, primary driver of the cost of good sold, but in
20 the staff report there are other elements of the cost of
21 goods sold that frankly does make that gap bigger.

22 MR. DOUGAN: Uh-huh.

23 COMMISSIONER SCHMIDTLEIN: So is this just, you
24 know, for the presentation or is there some other reason
25 that you're excluding those?

1 MR. DOUGAN: Well, it wasn't an omission to, you
2 know, obfuscate. What it is, it does show a level of
3 precision that because the staff report only shows the full
4 cogs level and because the argument is about the primacy of
5 the raw materials in driving the market trends and pricing,
6 that's why I wanted to show that there and to show that was
7 a relatively tighter band than what might have been
8 available or obvious from the compilation in the staff
9 report. And I did get clearance with staff that I could use
10 those numbers.

11 COMMISSIONER SCHMIDTLEIN: Okay. Okay. I was
12 just curious.

13 You know, obviously one of the issues that's
14 troubling, or, you know, vexing everyone in this case is
15 this non-subject import and that we don't have the
16 information from Ta-Chen. One of the things I noticed
17 though was in one of the respondents' briefs. I think it
18 was -- it's the Son Ha brief. There are a number of
19 statements about the pricing of subject imports relative to
20 non-subject imports. At one point there's a statement on
21 page 7 that subject imports and non-subject imports were
22 directly competitive with respect to price. Then there's
23 another -- you know, there's a number of other statements --
24 if you look at page 19 and page 20, the brief asserts that
25 imports from Taiwan and Korea were sold at prices lower than

1 those of the subject imports. And so I'm wondering, but
2 there aren't any cites for these. So I'm wanting to know
3 what the basis of those assertions are.

4 MR. DOUGAN: Commissioner, if I can answer at
5 least part of it without knowing specifically -- and not
6 having the brief, maybe Mr. Marshak can tell you exactly.

7 But, the data that I cited in my testimony about
8 the 205 out of 222 comparisons were non-subject -- were
9 lower priced than the subject imports comes from the
10 preliminary staff report when the importers of non-subject
11 goods did provide pricing data. So that's the record
12 evidence that we have that's at a detailed level.

13 COMMISSIONER SCHMIDTLEIN: Right.

14 MR. DOUGAN: And in terms of, you know, that
15 seems to be the best information that we have available.
16 Now I understand that more questionnaires have been
17 received, so maybe we'll get greater insight from those.
18 I'm not sure about the use of average unit values in general
19 just because, again, there's a product mix, and sizing mix
20 difference. Although in one of the analyses presented in --
21 I forget which brief and which exhibit it appears in, but
22 the data on shipments by size, I think perhaps does away
23 with a little bit of the product mix issues that would
24 hamper a comparison of average unit values. And those show
25 that the non-subject imports were, again, comparable around

1 the same or lower price on the subject imports.

2 COMMISSIONER SCHMIDTLEIN: It was a brief filed
3 by --

4 MR. MARSHAK: The major source is preliminary
5 determination on shipments from Korea where you had a lot
6 more information on the Korean shipments. As far as Taiwan,
7 there's less information on Taiwan. There's some evidence
8 we put in exhibits 3 through 7 where we actually had e-mails
9 from our client competing saying that the Vietnamese price
10 is higher than prices from other countries. And I think --
11 it's confidential, but Taiwan was mentioned in the e-mail.
12 And that's just anecdotal. And basically based on the
13 Korean price, and our understanding is not that much of a
14 difference between the Korean price and possibly the Taiwan
15 price. Because the Korean price there was evidence.

16 MR. DOUGAN: And if I can add something. If the
17 theory is that this is a commodity product that's traded
18 solely on the basis of price and, you know, the non-subject
19 imports have a 25 to 30 percent market share, that can't
20 really be true if they're charging a substantially higher
21 price than everybody else in the market. They have to be,
22 you know, in the range. Otherwise that theory of the case
23 kind of falls apart.

24 COMMISSIONER SCHMIDTLEIN: That it's a commodity
25 price. That it's a commodity. Right.

1 MR. DOUGAN: Right. And, you know, there were
2 some explanations offered as to why Tai Chin was different
3 because they have a different distribution network and they
4 set it up in this way as opposed to that way. But at the
5 end of the day, you know, you turn around and then say, but
6 this is all sold on price, I mean, they have to be selling
7 at a price that is within the range. Otherwise they
8 wouldn't be able to maintain the market share that they have
9 for as long as they have.

10 COMMISSIONER SCHMIDTLEIN: I see I'm over my
11 time. So, thank you.

12 CHAIRMAN WILLIAMSON: Okay. Thank you.

13 You've argued that the domestic pricing data is
14 flawed. And I was wondering, how much did we evaluating
15 allegations of underselling and price depression given the
16 issues you've raised?

17 MR. DOUGAN: Mr. Chairman, if I may respond? The
18 data is flawed only in the respect that it's got relatively
19 low coverage. I don't believe it's erroneous in any way.
20 It's just there's just relative to the amount of sales that
21 they make in the marketplace, it's small. So from that --
22 and we understand the explanations offered by the domestic
23 panel this morning, but essentially what --

24 CHAIRMAN WILLIAMSON: So what do we make of
25 those?

1 MR. DOUGAN: Well, it doesn't really change our
2 response which is to say that, you know, this is a
3 relatively small portion of domestic industry sales and
4 therefore the impact that it can have upon them, the causal
5 link between whatever observed underselling there is and
6 their performance in the marketplace is not a strong one.
7 And it's, again, more easily explained, the pricing declines
8 are very easily and directly explained by the raw material
9 prices which are impacting the import prices as well.

10 CHAIRMAN WILLIAMSON: So it doesn't matter
11 whether or not the price underselling is with respect to
12 products that are very popular as opposed to products that
13 may be very specialized?

14 MR. DOUGAN: It's perhaps more significant for
15 popular products than it would be if it was very esoteric
16 products. But, it's still -- we're still talking about less
17 than 5 percent of sales. So in my mind that is not to be
18 given a great deal of weight.

19 MS. MENDOZA: Commissioner, can I also add --

20 CHAIRMAN WILLIAMSON: Mendoza; yes.

21 MS. MENDOZA: I also think that this is what we
22 heard from Mr. Shagrin this morning was that in fact these
23 particular product categories had been selected because they
24 felt that these were the categories in which the imports
25 were competing the most actively on price. And if that is

1 the case, then this is the only ones that petitioner can
2 find. And I think if you observe that fact that prices move
3 pretty much the same in terms of, you know, the domestic
4 industry and the imports, they maintain a pretty steady
5 relationship to each other, then I'd suggest that their case
6 on price effects is very weak.

7 I mean, this is obviously something that they
8 believe shows their best case possible and they had to
9 restrict it to a very small number of pricing comparisons.
10 And yet, what you see in the record is not a very compelling
11 example of any particular effects of import prices on the
12 domestic industry prices.

13 CHAIRMAN WILLIAMSON: Okay. Petitioners probably
14 in their post-hearing can address this question, the
15 significance of the 5 percent. Right. That seemed like a
16 small number.

17 I think in answer to Commission Schmidtlein's
18 questions you had kind of focused on the -- I think the
19 volume of subject imports. And I was wondering about how
20 the changes in the price of nickel and ferro chromium affect
21 the price of subject imports?

22 I'm sorry, you didn't really focus on the impact
23 on the domestic industry. But what is the effect of the
24 price of nickel and ferro chromium on the price of the
25 subject imports?

1 MR. DOUGAN: I would imagine it has, and I can
2 check, but it looks like their prices were declining too.
3 So they had a similar impact on them. The customers -- they
4 are subject to the same transparent reference points that
5 the domestic industry is. So, the subject import prices are
6 going to be forced down as well.

7 CHAIRMAN WILLIAMSON: Okay.

8 MR. DOUGAN: Sorry, that was your question there?

9 CHAIRMAN WILLIAMSON: Yeah, that's okay. I guess
10 that is my question. I guess the -- okay.

11 And what should I say about that when asked to
12 compete in this market then?

13 MR. DOUGAN: About whose -- did you say about
14 whose willing --

15 CHAIRMAN WILLIAMSON: Yeah, competing in the U.S.
16 market if it's --

17 MR. DOUGAN: If --

18 CHAIRMAN WILLIAMSON: -- if they're going to be
19 making less money doing that?

20 MR. DOUGAN: I think this is a global phenomenon.
21 I mean, the nickel prices, as we heard this morning, are
22 quoted by the London Metal Exchange. So the trends in
23 nickel prices are known by everyone across the globe and I
24 think all the global competitors are subject to the swings
25 and the input prices. That would be true in the U.S. as it

1 would be true anywhere else.

2 CHAIRMAN WILLIAMSON: Okay. Since the producers
3 tend -- everybody knows the surcharges to the producers, but
4 since the producers argue that they basically have to sell
5 it in their price, I mean, they don't break out when they
6 sell to their suppliers the impact of the changing nickel
7 prices, per se. I'm surprised that an industry of this kind
8 has not figured out how to make, you know, to have their
9 price high enough to cover these kind of fluctuations. Is
10 there a reason why that hasn't happened?

11 MR. DOUGAN: Well, in this case -- in recent
12 experience what we're dealing with is, is that price is
13 falling. So they're having to cover less, so they're not --
14 you know, there isn't a surcharge to be added. And what --

15 CHAIRMAN WILLIAMSON: But they're setting a net
16 price. They're not setting a surcharge, they're setting it
17 in general.

18 MR. DOUGAN: Right, but I mean --

19 CHAIRMAN WILLIAMSON: If you know the trend is
20 that the prices are going to be going -- that the raw
21 material prices are going to going down --

22 MR. DOUGAN: Uh-huh.

23 CHAIRMAN WILLIAMSON: -- and that your price is
24 going to have to go down somewhat --

25 MR. DOUGAN: Uh-huh.

1 CHAIRMAN WILLIAMSON: It would seem like you
2 would want to build in some cushion there.

3 MS. MENDOZA: Commissioner --

4 CHAIRMAN WILLIAMSON: Yes. Ms. Mendoza, yes. Go
5 ahead.

6 MS. MENDOZA: Think about it for one second; is
7 that all right?

8 I mean, I think one of the things is that, you
9 know, this morning people were talking about how many cases
10 we've had on stainless pipe products and I think if we look
11 back, even as long ago as the Section 201 safeguard
12 investigation, I mean, what you'll see about this industry
13 is that, you know, since 2001 it's been a very stable, you
14 know, not a lot of activity, but a very volatile pricing
15 situation within this industry. And I think while they may
16 well want to try to establish greater security and
17 stability, the history of this, as we've seen it through all
18 the cases the Commission's considered, is in fact they
19 haven't been able to achieve that and it's an inherent
20 problem with an industry that's very dependent on a product
21 that everybody knows the price of, i.e., nickel. And that
22 everybody knows that you're going to be selling at a certain
23 amount over that nickel price. So everybody just calculates
24 what you should be selling and it's an inherent problem for
25 the industry.

1 And I think if you look at all the cases the
2 Commission has decided, that's kind of where you come out in
3 most of those cases that it is a very volatile industry and
4 it's a hard industry to have solid profits in. If you look
5 at all the decisions, I think you'll see that.

6 MR. DOUGAN: And actually, I have thought
7 about it now thank you, because --

8 CHAIRMAN WILLIAMSON: Nice cover there.

9 MR. DOUGAN: Hey, thanks, yeah, which helps me
10 a lot. The fact is when the prices are increasing, and when
11 demand is solid, they're able to -- they're able to build
12 that in. They're able to recover it. I mean the graph at
13 Slide 7, I don't know, is that Slide 7? The 2007 number,
14 that kind of tells the tale of -- give me a moment -- this
15 kind of tells the tale.

16 When the nickel price is going down, they lose
17 money; when the nickel price is going up, they make money.
18 When the nickel price is going down, they lose money again.
19 I mean that's -- and they provided a very detailed
20 explanation to it, to the staff, and it certainly make
21 sense.

22 So I don't -- I mean I'm not sure that things
23 have changed in the marketplace, that would suggest that the
24 relationship would have changed, other than the fact that
25 now that nickel prices have been going down continuously

1 across the POI.

2 CHAIRMAN WILLIAMSON: Well I guess the
3 question still is, if you know your industry and you know
4 that relationship, it seems like you would be trying to
5 build into your price to your customers, a large margin to
6 take that into account, unless the nickel prices are going
7 to be fluctuating so much that you figure you're going to
8 make as much when they go up as when they're not.

9 But when you have a long term downward trend,
10 it would seem like you would be figuring that, be factoring
11 that in. So I'm asking is there some reason why they
12 haven't been doing that? Now they would probably argue that
13 it's the imports that have been there, that if they weren't
14 there.

15 But anyway, I think it was Mr. Pennington this
16 morning who talked about if one looks at products, the
17 non-subject products that use some of the same components,
18 they weren't seeing the same kind of, I guess you would say
19 losses, and an inability to cover their costs.

20 So I was wondering whether you might take a
21 look at that and see. Do you disagree with that?

22 MR. DOUGAN: I mean the Commission hasn't
23 gathered any data on it so -- and apart from the fact that
24 despite what they said, they're producing relatively more of
25 the subject merchandise now than they were at the beginning

1 of the POI, and why would they do that if these other
2 products were somehow better margin for them? That doesn't
3 really seem to make any sense.

4 CHAIRMAN WILLIAMSON: Of course, we're not
5 seeing that big a change, I mean, one or two percent, and if
6 the U.S. demand is --

7 MR. DOUGAN: It's bigger than that.

8 CHAIRMAN WILLIAMSON: Yeah.

9 MR. DOUGAN: It's in the neighborhood of like
10 ten percent shift, I think. But again, it's confidential,
11 so I don't want to get into it today.

12 CHAIRMAN WILLIAMSON: Okay.

13 MR. DOUGAN: The fact is, you know, I don't --
14 we haven't seen data there. The Commission hasn't examined
15 the condition of the competition in those other markets.
16 But they have here, and this is what the history says and
17 this is what --

18 CHAIRMAN WILLIAMSON: Okay, okay. But anyway,
19 if you have anything concrete.

20 MR. DOUGAN: I will think about it some more.

21 CHAIRMAN WILLIAMSON: And I'm sorry I went
22 over, and Commissioner Pinkert.

23 COMMISSIONER PINKERT: Thank you, Mr.
24 Chairman. Of course, as the Chairman, it's not really going
25 over when you go over, but -- but when we do, it's going

1 over.

2 (Off mic comment.)

3 COMMISSIONER PINKERT: That's another two
4 weeks. But anyway, I want to begin with some of the
5 questions that I asked the earlier panel, and see if this
6 panel agrees with what I heard earlier. First of all, would
7 you agree with the notion that the level of capital
8 expenditures for the domestic industry over the period has
9 been low, as would be perhaps expected in the kind of
10 commercial environment that the Petitioners characterize?

11 MR. SCHUTZMAN: Commissioner Pinkert, I think
12 the data are confidential. When you asked that question
13 before, I was looking at the staff report -- but the public
14 staff report, and was unable to find the numbers there.

15 So I don't have things to reference, but my
16 suspicion would be that in a down market, they wouldn't be
17 making a great deal of capital investment. It wouldn't be
18 surprising to me.

19 COMMISSIONER PINKERT: Okay. Well, if you
20 want to comment on that in the post-hearing, that would be
21 fine. If your comment covers it, that's fine too. Now what
22 about any movement in domestic industry capacity. Again, I
23 don't want to get into the numbers, but how does that fit
24 into your argument if you can say in a public hearing?

25 MR. DOUGAN: This is Mr. Dougan or this Jim

1 Dougan again. Looks like the capacity, at least in the
2 public staff report, is flat. I'm looking at the public
3 Table 3-2, and the capacity was 66,000 tons, 66.5, 66.6,
4 66.8. So that seems to be -- the fact that there wasn't
5 additional capacity added seems to be appropriate in a
6 market with stagnant demand.

7 I think, and I don't know, and we can perhaps
8 let Mr. Jakob say what is the long-term outlook for demand
9 for this product. Would it be making sense for folks to
10 invest more? We know that the price outlook is pretty good,
11 because the nickel prices have started to go up in 2014.

12 But in terms of actual aggregate demand, it
13 looks like it's been flat. I don't know if it's up.

14 COMMISSIONER PINKERT: Mr. Jakob, I think you
15 were prompted to talk about demand going forward.

16 MR. JAKOB: What we've seen, the feedback that
17 we get from our customers is that there is somewhat of an
18 uptick. I wouldn't call it a pronounced uptick, but I would
19 categorize it as an improvement in the levels of demand.

20 I can't point to anything specific, but it's
21 just what I'm hearing, and that's levels of demand beyond
22 the price of nickel, which is a determinant that we all
23 talked about in great length.

24 There is, as I mentioned, you know, Synalloy's
25 10-Q indicates that they have some optimism with regard to

1 positive movements in demand. We see the same thing. This
2 is basically from feedback that we get from customers,
3 things -- this is not dramatic change. This is a change for
4 the better.

5 MR. SCHUTZMAN: Commissioner Pinkert, if I
6 may add one more thing. I think it may have been Ms.
7 Mendoza who mentioned earlier on, this is a fairly mature
8 market.

9 So unless there are new applications that are
10 discovered for the subject merchandise, there may not be
11 great increases or decreases on the horizon. It may just
12 continue along as it has been.

13 But what was again surprising to me, and as I
14 mentioned in my testimony, is that the domestic industry's
15 profitability doesn't really seem to be related to its
16 capacity utilization. When the question was asked of the
17 panel in the morning, you know, what was a time of high
18 utilization for you? What was a good period for you guys,
19 and they mentioned the ethanol years in the mid-2000's, as
20 running at higher full utilization.

21 I looked at the data from the China case, and
22 their profitability was really good, but their utilization
23 wasn't any better than it is right now. So -- in fact it
24 was worse. So I mean that was surprising to me as well, but
25 it perhaps weighs in your decision, in terms of the volume

1 effects.

2 COMMISSIONER PINKERT: Thank you. Now another
3 issue that bears on capacity, is whether it's possible for
4 subject producers in Malaysia, Thailand and Vietnam to
5 switch from producing products such as circular welded tubes
6 or other pipe, over to producing circular welded stainless
7 steel pressure pipe.

8 Is it possible, and if it is, how difficult
9 would it be for them to make that switch?

10 MR. SCHUTZMAN: Commissioner Pinkert, I think
11 that's information that we'll have to obtain from our
12 clients, to provide in the post-conference, post-hearing
13 brief, unless somebody happens to have that information at
14 hand. I don't think we do.

15 COMMISSIONER PINKERT: Thank you. Anybody
16 else on the panel? No. So we'll get that in the
17 post-hearing submission.

18 MR. SCHUTZMAN: We will provide it in the
19 post-hearing brief, yes.

20 COMMISSIONER PINKERT: Thank you. Now in
21 Pantech's brief, it says that Malaysian producer Conzen (ph)
22 and forgive my pronunciation, left the welded stainless
23 steel pressure pipe industry in 2012. Is it not producing
24 at all at this time?

25 MR. SIM: That is correct. The company was

1 disposed of at the end of 2012, according to our brief,
2 having been at the factory and the new -- they basically
3 packed up all the lines and moved it to a different physical
4 location. The new physical location has not begun
5 production as of this time, due to commercial issues.

6 COMMISSIONER PINKERT: Mr. Sim, for the
7 post-hearing, could you try to get us some information about
8 when those issues are expected to be resolved?

9 MR. SIM: I think given this situation, it may
10 be difficult to do that. It's kind of like talking to
11 someone in a coma. So you may have to -- I may have to wave
12 some signs at them to wake up. So I'll have to -- if I can
13 get to the receiver, whoever's in charge, I'll do that.

14 COMMISSIONER PINKERT: Thank you. I mean of
15 course as you understand, any information that we can get
16 about the imminently foreseeable future would be very
17 helpful to us. Thank you. Now what are Pantech's export
18 markets, besides the United States?

19 MR. SIM: The export markets are places like
20 Europe, Asia and what I meant by Asia, I'm including
21 Southeast Asia, North Asia, etcetera, other markets on a
22 widespread basis. Basically, as I said in the brief, they
23 have taken over a lot of the markets which had previously
24 been covered on Conzen, and those markets were pretty much
25 the same.

1 COMMISSIONER PINKERT: Thank you. Now our
2 record shows that Malaysian producers project increased
3 imports or I'm sorry increased exports to other markets
4 besides the United States in the near future. Can you help
5 us to understand what the basis of that trend might be?

6 MR. SIM: Well, the basis of the trend, as I
7 said, is that especially in Southeast Asia, you have a --
8 you have basically a single market or something which is
9 intended to be the equivalent of the EU in Southeast Asia,
10 so and Southeast Asia, we're talking about a market with
11 about 500 to 600 million people.

12 So with a single market, you have increased
13 consumption, increased production facilities being built, so
14 increased demand for welded stainless steel pressure pipe.
15 If you look at other markets which traditionally don't have
16 a stainless steel industry, those are also markets that are
17 interested in stainless steel pipe.

18 And finally, of course, Europe is a developed
19 market and to the extent that especially some of the
20 countries which, I believe for example, have large demand,
21 still have demand for stainless steel pipe, they would
22 export there. But I think the prime mover is Southeast Asia
23 and Asia in particular.

24 COMMISSIONER PINKERT: And just to give us
25 some idea, how close are they to that goal of creating a

1 kind of EU in the region?

2 MR. SIM: I could go on for -- I actually
3 teach the subject at the University of Singapore, so if you
4 want the full 36 hours, I could give that to you, or I could
5 sell you the book, but that's not out yet. I would say in
6 terms of a market for industrialized goods, it's there.

7 So you have, you know, if you're talking about
8 people who are going to buy iPods and consumer goods, no,
9 it's not there, and I believe the Commission actually came
10 up with a report two years ago; I actually interviewed with
11 your staff, and we had agreed that, you know, for industrial
12 products it probably would be there by the end of the year.
13 That includes pressure pipe. For consumer products,
14 probably it would take a bit longer.

15 COMMISSIONER PINKERT: Thank you. That's
16 very helpful. Thank you, Mr. Chairman.

17 CHAIRMAN WILLIAMSON: Thank you. Commissioner
18 Johanson.

19 COMMISSIONER JOHANSON: Thank you, Mr.
20 Chairman. I would like to thank the witnesses for coming
21 here today, and in particular Mr. Sim. You came all the way
22 from Singapore?

23 MR. SIM: I live half the year here.

24 COMMISSIONER JOHANSON: Okay, okay. Well
25 anyway, well thanks for being here, regardless of where

1 capacity of pressure pipe, particularly in China, far
2 outstrips any possible economic growth rates, and that
3 dramatic competition from Chinese producers will
4 increasingly pressure subject producers to increase
5 shipments to the United States, where they don't face
6 competition from Chinese product, given the order on that
7 country. What is your response to this?

8 MR. DOUGAN: This is Jim Dougan. To some
9 degree -- so the order on China has been in effect now for
10 four or five years. There's a sunset coming up this year.
11 If that were the case, it would seem that it would already
12 have happened to some degree, and we're just not seeing that
13 surge in imports from the subject countries to the U.S.
14 market. If anyone else has anything else on that.

15 COMMISSIONER JOHANSON: No? So you don't see
16 any evidence to that effect? Okay.

17 MR. SIM: Not during the POI.

18 COMMISSIONER JOHANSON: Okay, I appreciate it,
19 and somewhat falling along those lines, what in general do
20 you see as the role of China's excess capacity in the global
21 market, because China is a major producer?

22 MR. DOUGAN: This is Jim Dougan again. It's
23 difficult to say what is the implication for the U.S. market
24 is, I mean the -- everything's been flat. I mean demand's
25 been flat. The relative shares of non-subject and subject

1 imports have been flat.

2 So if there is pressure globally in different
3 markets, it certainly isn't exercising itself on the U.S.
4 market, not in an observable way from the data that are on
5 the record.

6 COMMISSIONER JOHANSON: All right. I
7 appreciate it. Just FYI. It's an argument I'm going to
8 look further into, so if you have any -- just I think it's
9 -- given that this is a commodity product, I think the
10 Respondents and Petitioners agree that it's a commodity
11 product.

12 This of course -- the Chinese capacity and
13 orders in China would be a factor. So if you all wouldn't
14 mind looking into that a bit more, I'd appreciate it. Along
15 those lines, you all do agree that this is a commodity
16 product?

17 MR. SCHUTZMAN: We do.

18 COMMISSIONER JOHANSON: Okay. That's what I
19 assumed. I know enough about commodities by now to think
20 that pipe is pipe. Well I guess I should say welded
21 stainless pressure pipe is welded stainless steel pressure
22 pipe. How's that? I've been avoiding using those terms.
23 It's a bit much, I have to say.

24 And now I'm going to ask you a question. I'm
25 curious about your answers, although I think I know what it

1 is. What is your position on cumulation for threat
2 purposes? Please explain this, and I haven't -- I'm asking
3 this, as I haven't seen this issue argued in the
4 Respondent's pre-hearing briefs, except that the Pantech
5 brief focuses its arguments regarding threats solely, of
6 course, on subject imports from Malaysia.

7 MR. SIM: Well actually, the argument in the
8 brief and this testimony was for all the imports. We take
9 the position that if you cumulate, there's no threat. If
10 you don't cumulate, well there definitely ain't no threat.

11 So I mean I would say, you know, to us, if the
12 information on the record regarding trends of imports and
13 prices, regardless of whether you cumulate or not cumulate,
14 it's not a -- they're not a threat.

15 Now with regard to specific conditions,
16 accumulation, we would like to go into that in the
17 post-hearing brief.

18 MR. SCHUTZMAN: Commissioner Johanson, we did
19 not address that issue in our pre-hearing brief, but will do
20 so in our post-hearing brief.

21 COMMISSIONER JOHANSON: Okay, I appreciate it.
22 And now I have kind of a very broad question. But Mr.
23 Dougan and others had talked about how demand in the U.S.
24 market is flat. Why is that the case? I mean the economy
25 is picking up a bit now. I would think that demand for

1 welded stainless steel pressure pipe would pick up as well.

2 MR. SCHUTZMAN: I think the testimony was
3 that it was flat over the POI.

4 COMMISSIONER JOHANSON: Okay.

5 MR. SCHUTZMAN: And that it is now
6 increasing.

7 COMMISSIONER JOHANSON: Okay. Well that makes
8 sense. I appreciate that. I'll have to think back to the
9 POI. If imports are concentrated in a small number of
10 products, will the pricing of these affect that of other
11 products? If so and how much, and what is the impact on the
12 U.S. industry of the competition of subject imports in the
13 limited number of products?

14 MR. DOUGAN: That was a two-part question. I
15 think the answer to both parts might be I will look at it.
16 We will certainly look at it more in post-hearing. I
17 haven't really observed anything in the data that would
18 suggest that the concentration of imports has affected
19 prices in different segments of the market more than others.

20 That was a linchpin of Petitioner's argument
21 at the prelim. I don't think that they're arguing it as
22 aggressively at the final. But you know, we will look into
23 that more for the post-hearing.

24 COMMISSIONER JOHANSON: Okay. I look forward
25 to seeing that. You're going to have a pretty long

1 post-hearing brief, and I know you have a limited amount of
2 space. So my apologies for posing these further questions
3 to you, but I do -- it will be useful. I look forward to
4 reading material with regard to these.

5 Insofar as your position is that low price
6 non-subject imports explain the price declines we are seeing
7 on this record in the U.S. market, and if, as you contend,
8 welded stainless pressure pipe is a fungible commodity
9 product, why aren't subject imports also explaining the
10 price declines?

11 MR. DOUGAN: I think our contention is not
12 that non-subject imports are driving the price; I think the
13 nickel prices are driving the price. But they certainly are
14 -- non-subject imports are certainly sold at comparable
15 prices and at significant commercial volume, such that they
16 have, I don't know, a similar competitive effect.

17 COMMISSIONER JOHANSON: All right, thank you.
18 You all have explained my -- have answered my questions. A
19 lot of the answers to my questions have been saved for the
20 post-hearing brief, and so I have no further questions. But
21 thank you for appearing here today. I found your
22 information quite informative. Thanks.

23 CHAIRMAN WILLIAMSON: Okay, thank you.
24 Commissioner Broadbent?

25 COMMISSIONER BROADBENT: Thank you, Mr.

1 Chairman. Could you talk about what sort of demand your
2 companies are seeing in the future in this product?

3 MR. SCHUTZMAN: Commissioner Broadbent, could
4 you repeat the question?

5 COMMISSIONER BROADBENT: Could you talk to me
6 about demand in the future, what would be happening in the
7 next couple of years?

8 MR. JAKOB: A cloudy crystal ball. If I had
9 to force myself into the role of a prognosticator, I think I
10 would anticipate increases in demand, albeit modest
11 increases. That's what we've seen in 2014. As has been
12 observed, the economy has picked up some. I think that will
13 have an impact on demand going forward, long-term demand.

14 COMMISSIONER BROADBENT: Okay, and what is it
15 driven by, what sort of consumption?

16 MR. JAKOB: Well, it's driven in part by
17 underlying industries and their efforts to make capital
18 improvements.

19 This particular product is used in hundreds if
20 not thousands of end user applications, a multitude of
21 applications, and if you were to interview the General
22 Electrics or the Exxons, Dow Chemicals of the world, I would
23 think that you would see somewhat of a positive turn towards
24 improvements in infrastructure, etcetera.

25 COMMISSIONER BROADBENT: Mr. Dougan.

1 MR. DOUGAN: If I can just refer to -- as I
2 mention in my testimony, there doesn't seem to be much
3 consensus among Respondents to the questionnaires, either
4 domestic producers or importers or purchasers, about what
5 demand even was historically. So there's likely to be less
6 consensus about what demand is going forward.

7 But just to -- I can just tell you some things
8 that are mentioned in the staff report publicly. Reasons
9 given for increased demand during the period included
10 economy improvement, an increased cost of copper has led to
11 increased use of stainless.

12 Reasons given for reduced demand included slow
13 manufacturing growth and reduced construction, and then
14 reasons for fluctuating demand were lack of major projects
15 and demand fluctuates with the level of new plant
16 construction.

17 So that's kind of a cat and dog type of
18 situation. It seems like perhaps different players in the
19 market serve different types of applications. But perhaps
20 what this suggests is that looking forward into the future,
21 the demand picture will be relatively unchanged or possibly
22 up.

23 COMMISSIONER BROADBENT: Okay, yeah. I just
24 hope that maybe some of the industry representatives might
25 have insight on that. Okay. Mr. Dougan on page nine of

1 your slide, why have the domestic industry prices fallen
2 more than the raw material prices?

3 MR. DOUGAN: I think that is a function of the
4 fact that the price at which they sell the finished goods is
5 linked to the current raw material price as an index,
6 whereas their cost of goods sold is linked to the inventory
7 used to produce that finished good, which may have been
8 purchased at a previous -- in a previous period.

9 So in the time it takes to convert it from the
10 raw material to the finished good, they're essentially
11 selling lower priced products with higher priced inputs.

12 COMMISSIONER BROADBENT: Okay, now I know you
13 said that earlier. Um, how long would you say that it
14 takes for the nickel price to be implanted into the price
15 for raw materials and thereafter into the pipe price? In
16 other words, what's the time lag for market prices to
17 influence the pipe prices?

18 MR. DOUGAN: I don't know but I will look into
19 it, perhaps Howard can speak to it.

20 MR. JAKOB: I'd say it's very fast. I can't put
21 a time on it, but it may not be instantaneous but it is
22 pretty quick.

23 MR. DOUGAN: So that would be, the impact on the
24 price of the welded stainless pipe would be very, very fast,
25 but if they had purchased the raw material and it was

1 sitting in inventory for a couple of months before it got
2 turned into welded stainless pipe, there would be that lag
3 which pardon me, which explains the difference in the price
4 versus cost.

5 MS. MENDOZA: I would just add, Julie Mendoza, I
6 would just add that in a situation where demand is pretty
7 flat I would think that inventory periods, you know, how
8 long it is between the time you buy the raw materials and
9 you actually produce the pipe and sell it is going to
10 lengthen, so I would be very surprised if companies are
11 turning over inventories faster than you know, a couple of
12 months and then I would expect that that would extend out if
13 you have a various flat demand situation but I think you
14 know it's a question that we can certainly try to look into
15 for an answer.

16 I would assume petitioners are also going to be
17 responding to that.

18 COMMISSIONER BROADBENT: Okay thank you. Mr.
19 Schutzman, what is your response to the petitioner's
20 statement on page 33 of the pre-hearing brief that the
21 Vietnamese government is also seeking to boost economic
22 growth through increased exports from its low wage economy?

23 MR. SCHUTZMAN: We have actually solicited
24 information from the client on that and I'll prepare to
25 answer that in the post-hearing brief.

1 COMMISSIONER BROADBENT: Okay. Mr. Chairman I
2 don't have any questions at the present time, thank you.

3 CHAIRMAN WILLIAMSON: Thank you, Commissioner
4 Kieff.

5 COMMISSIONER KIEFF: Thank you very much Mr.
6 Chairman. I can echo my colleagues appreciation for
7 everybody's coming today whether from Singapore or DC or
8 places in between and in the interest of efficient I will
9 just try to build upon my colleagues current set of
10 questions and our dialogue this morning with your
11 counterparts on the other panel. So to just dive right in
12 then, if I may.

13 First of all Mr. Dougan your slide 7 please, so
14 just to follow-up on Commissioner Schmidtlein's kind of
15 plain business conversation with you, so that you could make
16 sure that we are really hearing what you want us to hear.
17 I think it's a slide or two before that, maybe it's the one
18 with - there we go.

19 Are you basically saying that the major driver is
20 the nickel price? The major driver of the industry is
21 hype-price is the nickel price and therefore high nickel
22 price, high margin profit, low nickel price, low margin
23 profit?

24 MR. DOUGAN: That is more or less what I am
25 saying and it's been recognized in that decision but it also

1 arises in the comparison of the current POI to the POI in
2 the China case. As I mentioned before they were at similar
3 or poorer levels of capacity utilization. They were at
4 level, you know, even lower amount of market share.
5 They were facing competition from imports in the marketplace
6 at that point, it was China and Taiwan and others. But they
7 were -- so in a lot of respects, the domestic industry is,
8 at least volume characteristics, were not greatly different
9 from what they are in the current POI, but their
10 profitability was wildly different.

11 So what is different between then and now? If it
12 is not volume and if it is not, you know, market share and
13 it is not utilization, what is it? And what explains that
14 difference in profitability?

15 I hardly think that they would say that you know,
16 that the Chinese competitors were more fair competitors than
17 you know the current set of subject countries, so what's
18 different then and now is trends in nickel prices.

19 COMMISSIONER KIEFF: So just to then like are
20 you going so far as to say the subject imports are causing
21 no injury to the domestic industry?

22 MR. DOUGAN: There isn't evidence that they are
23 contributing materially to the domestic industries injury
24 and the point being is that, I think as I said - -

25 COMMISSIONER KIEFF: I'm sorry, I just want to -

1 - you are saying there is no evidence the subject imports
2 are contributing materially and therefore a no answer is
3 compelled by the panel?

4 MR. DOUGAN: That would be my response.

5 COMMISSIONER KIEFF: Okay and so just then for
6 the post-hearing, for the lawyers to give us comfort that
7 the law compels the answer your economist is giving us,
8 because I think the economist is basically saying as a
9 matter of economics, the evidence in the record is not
10 sufficient to compel an understanding of a sufficient
11 materiality of impact on domestic industry and so it would
12 just help us to have authoritative legal citation to explain
13 to us whether that is as a matter of our role, something
14 that requires us to go negative, allows us to go negative,
15 it requires us to go affirmative, allows us to go
16 affirmative, anything in between and then what criteria we
17 should use to help our thinking if it is one of the allowed
18 scenarios, rather than one of the required scenarios.

19 MR. SCHUTZMAN: Commissioner Kieff I assure you
20 that that discussion will be present in the post-hearing.

21 COMMISSIONER KIEFF: That's perfect, that's
22 great and so then just as a very quick follow-up to Mr.
23 Dougan on the economics of that. Just to help me get
24 comfortable that I understand what's actually happening in
25 the business. I think what you are basically telling us is

1 that the accounting procedures used in this business don't
2 accurately reflect the businesses business decisions as a
3 matter of actual economic science.

4 Put differently, as an economic scientist you
5 know that we all make decisions on the margin going forward,
6 so I would never think about yesterday's price only when
7 pricing my -- for my inputs, when pricing my outputs today.
8 I would consider it as relevant the way accountants consider
9 many different things as relevant when booking a price but I
10 would also look to current book prices and opportunity costs
11 and a lot of other factors.

12 Put differently, it sounds like you are telling
13 me this is an industry that resembles the regulated U.S.
14 airline industry in the United States before Southwest
15 Airlines entered. When the price of fuel went up, they
16 charged a fuel surcharge and for a little while Southwest
17 Airlines ate everybody else's lunch by simply buying fuel
18 futures, so that they could in fact be radically more
19 profitable than everybody in the airline industry, not by
20 selling airplane seats, but by buying fuel futures.

21 So it sounds to me like you're describing an
22 industry that trades on the London Stock Exchange by reading
23 the spot market price, but ignores the option to trade on
24 the London Metals Exchange for the futures market component
25 of that exchange and of course it's a big futures market.

1 So it's -- I guess my question is can you just
2 tell me very briefly am I surmising correctly that this is a
3 little bit of an odd -- this is a, this is what we would
4 expect from in effect, a semi-regulated industry rather than
5 an open market transaction, otherwise you wouldn't see that
6 this chart would not look this way.

7 What you described as an odd condition of
8 competition, I don't want to take an evaluative position on
9 it, whether it's good or bad, but it is distinct. It is
10 distinct in characterizing an industry that reflects a fair
11 amount of regulatory apparatus.

12 MR. DOUGAN: Boy, I have to think about that in
13 terms of the comparison to the regulated or semi-regulated
14 industry aspect of it. But in terms of how the industry
15 manages the materials acquisition and how it might be able
16 to improve its position with hedging its raw materials, that
17 makes sense to me, but empirically it doesn't appear to have
18 been the case.

19 COMMISSIONER KIEFF: Right.

20 MR. DOUGAN: Perhaps so long as the upswings are
21 up enough that they haven't minded and the short downswings
22 is short enough they haven't minded, you know, what we have
23 been experiencing over the POI has been three years of
24 nickel prices going down and you know, maybe that has
25 reduced the appetite to continue to operate this way.

1 COMMISSIONER KIEFF: Okay to the extent you
2 could provide anything in the post-hearing just to help give
3 us comfort about what this means about this market, because
4 it is a distinct feature characteristic. It would help.

5 MR. DOUGAN: I will and this isn't you know, an
6 invention of ours, this was essentially the testimony of the
7 petitioners in the China case.

8 COMMISSIONER KIEFF: And we recognize that it is
9 in our, others of our opinions. I am not condemning it, I'm
10 just noticing that it is distinct and so its distinctness is
11 a curiosity and anything you can do to give context will be
12 helpful. Similarly, Mr. Planert, if you could either now
13 or in the post-hearing I guess given the shortness of time
14 in the post-hearing, let us know if there are any lessons we
15 should draw from the practice of adverse inferencing because
16 it seemed to me that part of what you are saying was the act
17 of making an adverse inference left our system in an awkward
18 position later because it turned out the data that came in
19 was quite different than the inference and again, just for
20 the post-hearing if you could fill that out a little more
21 because there might be good lessons that we could draw from
22 that.

23 MR. DOUGAN: You know, I think that maybe the
24 five second version of that answer, it's just that you know
25 I think it's an inevitable function of the fact that you

1 have got different agencies reaching different
2 determinations and you know, as a legal matter, we don't
3 question the fact that you have an affirmative critical
4 circumstances determination by the Commerce department and
5 we are not suggesting that somehow the fact that that was
6 based on an adverse inference makes it any less significant,
7 it just -- I think it helps explain and maybe gives you a
8 comfort as to why when you look at your record, you are not
9 seeing the search the way you would expect to see if that
10 had been a determination based on actual data.

11 I don't think it goes much farther than that, but
12 we will be happy to elaborate.

13 COMMISSIONER KIEFF: Thank you very much.

14 CHAIRMAN WILLIAMSON: Thank you, Commissioner
15 Schmidtlein.

16 COMMISSIONER SCHMIDTLEIN: Okay thank you. I
17 have a few follow-up questions. I want to follow up on what
18 Mr. Dougan just said to Commissioner Kieff that your view is
19 that the subject imports are not a material cause of injury,
20 right?

21 Did I understand that correctly? They are not a material
22 cause so he has asked you all to brief that question, so
23 would you say they are a cause, if you take the materiality
24 standard out of it?

25 MS. MENDOZA: No.

1 COMMISSIONER SCHMIDTLEIN: I'm sorry, I'm sorry.
2 Can you, I'd like to hear from the economist and then I'll
3 talk to the lawyers.

4 MR. DOUGAN: I guess it matters what order you
5 put material in the sentence right.

6 COMMISSIONER SCHMIDTLEIN: Well it does matter.
7 But you put it in front of cause and so I want to focus on,
8 because what we have to find, is if I understand the law
9 correctly and you all can correct me but we just have to
10 find that it is any cause and so what we have here is a
11 commodity product, everyone agrees on that and we have a
12 situation where there is underselling.

13 You know in your brief you said that subject
14 imports and non-subject imports are both being sold at less
15 than the domestic prices, so this is sort of a combination
16 of sort of a factual, in my mind, a factual economic
17 question if you will and then also a legal question, but it
18 looks like we have underselling and when you have a
19 commodity isn't that a cause of injury?

20 And I guess you know, there's a second question
21 of under the statute, do we even have to talk or reach this
22 question of -- we can consider it, but does there have to be
23 price depression or price suppression when you have
24 underselling like this with the commodity product and then
25 we can talk about the Bratz analysis after that and whether

1 or not it looks like the non-subject imports would take
2 these and you know I have a question about that as well.

3 So explain to me how it is that this isn't a
4 cause when it is a commodity product that is being sold on
5 price, and there is underselling.

6 MR. DOUGAN: The Commission's determination at
7 the prelim, as I understood it, would be the underselling
8 led to a change of the market share and that explained the
9 reason -- the finding of reasonable indication of injury. I
10 look at this and I see, I mean I'm not going to argue that
11 the data say that they are underselling on the record, but
12 what did it lead to and

13 COMMISSIONER SCHMIDTLEIN: Wait a minute, you
14 are not going to argue that the data says there is
15 underselling? Do you all dispute that there is
16 underselling?

17 MR. DOUGAN: The staff report counts up
18 incidents of underselling and I mean I don't believe the
19 data are erroneous.

20 COMMISSIONER SCHMIDTLEIN: Okay, all right, I
21 just didn't know that was a dispute.

22 MR. DOUGAN: It's significance or its weight I
23 will debate, but in terms of that it exists, I'm not going
24 to dispute that. But what does it lead to and is it, you
25 know is there an indication to me that it led to injury,

1 that it contributed to the financial condition of the
2 domestic industry in a negative way and you know, I don't
3 see it.

4 With all else going on in the marketplace, had
5 this been a situation where demand was booming, where nickel
6 prices were up, all the things that had tended to drive the
7 condition of the domestic industry in the past, had been in
8 an upward direction and they were showing poor financial
9 results, that would be something you would have to consider.

10 Here, demand is flat, the main driver of prices
11 is down, it doesn't seem to me that the evidence as you
12 know, suggests that the subject imports were a contributor
13 to that.

14 COMMISSIONER SCHMIDTLEIN: Ms. Mendoza do you
15 want to say something?

16 MS. MENDOZA: Mr. Planert answered, but I would
17 just say that I think this is really a legal question as
18 opposed to an economic question and I think our, what we
19 will address is that.

20 MR. PLANERT: Yeah, I mean if your question is
21 that if I have got a commodity market and I have got
22 underselling, is that all I need to find injury, I think our
23 answer is emphatically no. Underselling is a factor in the
24 sense you could look at, but in order to find material
25 injury, you have to find that that underselling is

1 manifesting itself either in some sort of volume effect, in
2 some sort of price effect suppression or depression or in
3 some other adverse impact and we don't think you can just
4 presume from the nature of the market and the fact that they
5 are losing money, that that is a causal relationship.

6 It requires -- you know the old line that
7 everybody forgot, you know, coincidence is not causation and
8 I think the thrust of our argument today is that what
9 explains really the sort of really the most powerful adverse
10 indicator during this period, which is the very poor
11 profitability is fully explained by what was going on with
12 demand and what was going on with nickel prices and that you
13 cannot just attribute it to the underselling just because
14 you have underselling and you have a "commodity product".

15 MS. MENDOZA: I would just, this is Julie
16 Mendoza, I would just like to add to that that the
17 Commission has, on frequent occasions, found in fact that
18 imports do tend to be priced below domestic product for
19 reasons including most recently in your decision in Standard
20 Pipe in January of last year, where you found no injury and
21 which in fact in a case in which in fact there was
22 underselling or pricing --

23 COMMISSIONER SCHMIDTLEIN: Was that a commodity
24 case?

25 MS. MENDOZA: Yes, of Standard Pipe. So I mean

1 in that case you found and in fact the domestic industry
2 testified that there was an advantage to domestic producers
3 in being located in the U.S. and being able to service the
4 client and that in fact imports had to be priced at a
5 somewhat lower level in order to be competitive, given all
6 of the problems and disruptions and delays involved with
7 that.

8 And in fact, that was a central part of your
9 decision so I think on its face, the fact that imports are
10 priced lower than the domestic product doesn't mean much
11 unless you can see, as Mr. Planert was saying, some affect
12 under the statute from that situation and what we are saying
13 is you don't see that here because you can explain exactly
14 what was going on in this industry by looking at what was
15 happening to demand and what was happening to nickel prices,
16 which are communicated throughout the market and that the
17 Commission for thirty years at least has found in this
18 industry is the driving factor in terms of their
19 performance, so --

20 COMMISSIONER SCHMIDTLEIN: Well I'm sure you
21 will address this in your brief.

22 MR. SCHUTZMAN: Commissioner Schmidtlein, in
23 that particular case that Ms. Mendoza is referring to, which
24 is circular welded carbon quality steel pipe, the Commission
25 found pervasive underselling and yet still went negative,

1 so.

2 COMMISSIONER SCHMIDTLEIN: Okay, I have to,
3 since this is maybe sort of deals with the second, let me
4 look at my time, okay I have got a couple of minutes, you
5 know this Bratz question, since we have a commodity product
6 and we have non-subject imports and maybe this is sort of a
7 legal question as well, but does it make a difference given
8 that the non-subject imports are such a stable presence in
9 the market to the Bratz analysis and if you know, you don't
10 have to answer me now, but since the market share has been
11 pretty constant across the period of investigation for
12 subject and non-subject and --

13 MS. MENDOZA: I guess what I would suggest to you
14 is that what that evidence is, as Mr. Dougan says is the
15 market that is very mature in which imports have
16 participated greatly, over a very extended period of time
17 and what you are saying is shifting import shares. So I
18 think it doesn't have, in fact it probably is a confirming
19 factor for the Bratsk analysis in the sense that it suggests
20 that imports are fungible in this market and that you can
21 observe it over a period of time.

22 The import market share stays pretty stable and
23 what happens is that import sources just switch places. In
24 fact the slides suggested after the preliminary measures
25 were imposed that that's exactly what happened. The Taiwan

1 share actually increased pretty significantly at that point
2 and then kind of started going back down onto another level.

3

4 You saw the same thing after the China case. You
5 know China was taken out of the market and in Standard Pipe
6 and in Stainless Pipes, same exact situation.

7 COMMISSIONER SCHMIDTLEIN: So do you still stand
8 by the statements in the brief regarding that the
9 non-subject imports were priced below the subject imports?

10 MS. MENDOZA: I think that one problem with the
11 record is that there is not a lot of data on the record to
12 make that conclusion. However, I think what we are seeing
13 is certainly competitively priced imports. You know, how
14 much we can document exactly, what difference there was,
15 since we have to depend on things like unit values, there
16 from the preliminary report or whatever. I would say it is
17 sufficient for us to demonstrate that in fact the prices are
18 very comparable.

19 And as Jim was saying, that's what you would
20 expect with a commodity product over time so I think our --

21 COMMISSIONER SCHMIDTLEIN: So why did you say
22 that in the brief?

23 MS. MENDOZA: We did not.

24 COMMISSIONER SCHMIDTLEIN: Well then Mr.
25 Schutzman, like why was that statement that they are below?

1 MR. SCHUTZMAN: I think we addressed that
2 earlier, Mr. Marshak talked about that. It was taken from
3 the preliminary record.

4 COMMISSIONER SCHMIDTLEIN: Okay, okay, the
5 preliminary, okay.

6 MR. MARSHAK: This was the evidence of record in
7 the preliminary. It was significant coverage of the Korean
8 product and it was underselling in over 90% price.

9 COMMISSIONER SCHMIDTLEIN: So that was really
10 referencing the Korean product not the Ta-Chen?

11 MR. MARSHAK: Well we think the Taiwan is
12 similar to the Korean, but if the staff found the Korean
13 product was underselling I believe Taiwan is very similar.

14 COMMISSIONER SCHMIDTLEIN: Okay, all right, my
15 time is up. Thank you very much.

16 CHAIRMAN WILLIAMSON: Thank you. Now you argue
17 that the low coverage that U.S. producers in pricing
18 products, that you show there is little overlap in
19 competition and I was wondering, could this also be due to
20 subject imports preventing the domestic industry from
21 selling these products?

22 MR. DOUGAN: The, this is Jim Dougan, this was,
23 and we can look at this more for the post-hearing and show
24 what was going on, at least with respect to the pricing
25 products and if you treat each pricing product as its own

1 market right and compare it to consumption and what do the
2 relative shares look like over time, we have to look into
3 that more. We can get more to you on that.

4 But a big part of the petitioner's argument at
5 the prelim was that they were forced out of the lower
6 diameter pipe and the data on the record in the final does
7 suggest that was the case. They are pretty much where they
8 started. They went down a little bit and then it went back
9 up so I'm not seeing evidence that suggests that they are
10 being prevented from selling these products that they have
11 exited certain segments of the market.

12 It just doesn't appear in what I have seen.

13 CHAIRMAN WILLIAMSON: Okay now do prices for one
14 product, say one-quarter inch, one inch diameter affect
15 prices for other pipe with different diameters?

16 MR. DOUGAN: I don't know the answer to that, I
17 will, I think Commissioner Johanson asked that question as
18 well. Perhaps Mr. Jakob if he has an answer, otherwise we
19 can try to get it in post-hearing.

20 CHAIRMAN WILLIAMSON: Okay, I'm sorry if it was
21 asked already.

22 MR. SCHUTZMAN: Mr. Jakob
23 doesn't have an answer.

24 CHAIRMAN WILLIAMSON: You will endeavor to
25 provide that information. Okay, thank you. The
petitioners argue that foreign capacity is significantly

1 understated and that ample excess capacity only expand the
2 opportunity for subject producers to export to the U.S.
3 market, how do you respond to this argument?

4 Mr. Sim?

5 MR. SIM: Well as indicated earlier, Pantech is
6 the largest and pretty much the dominant exporter-producer
7 in this market because of the demise of Kanzen so I think we
8 have very good coverage for Malaysia.

9 MS. MENDOZA: We are obviously representing the
10 importer here, Allied or Warren Alloys, but the only producers
11 that we are aware of in Thailand, that is Ametai which
12 also is known as Thareus, did respond to the Department's
13 questionnaire, that was the company that was investigated in
14 Thailand and also the overwhelming majority of imports from
15 Thailand so I'm not exactly sure why petitioners are saying
16 there is not good coverage from the subject countries.

17 MR. SCHUTZMAN: Commissioner, we represent Son
18 Ha, the sole Vietnamese producer. Son Ha has filed a
19 questionnaire response with the Commission.

20 CHAIRMAN WILLIAMSON: Okay so based on the, you
21 had three submissions, you are saying you don't think there
22 is excess capacity?

23 MR. SCHUTZMAN: We have pretty much full coverage
24 in the foreign producers in the three countries.

25 CHAIRMAN WILLIAMSON: Okay, thank you. One

1 other question, I think someone this morning said that, I
2 guess for a number of the producers is obviously Asian, they
3 would be using hot roll from China that was subsidized and I
4 was just wondering, your comments on that. Is there a
5 difference in the cost, we have talked about the chrome,
6 nickel and ferro chrome costs and the importance of that,
7 but is there a difference in the cost of the raw material
8 for the producers from Southeast Asia?

9 MR. SIM: Well first of all I would like to
10 dispute the theory that all of the raw material from the
11 ASIAN producers comes from China. There are very large
12 producers of hot rolled in Thailand and Malaysia and also
13 Taiwan, Indonesia so it's not like we have this, you know,
14 we are beholden to the Chinese in this trade for better or
15 for worse, we're not.

16 We actually have other suppliers. And so to the
17 extent that there is a seculars world-wide effect for the
18 raw material price on Southeast Asia, it is not limited to
19 the Chinese, it's everybody. So I would say that, I would
20 also say that you know, efforts to try to I mean, of all
21 things, you know last week we had people in Vietnam throwing
22 eggs and stones at the Chinese embassy, but an effort to try
23 to link our clients with the Chinese is a little
24 disingenuous when a lot of our supplies don't come from
25 China.

1 CHAIRMAN WILLIAMSON: Okay, thank you, that
2 answers that. Okay, with that I have no further questions,
3 Commissioner Pinkert.

4 COMMISSIONER PINKERT: I just have one or two
5 more questions. We are going to stay with the economists on
6 this one, Mr. Dougan. Trying to understand the economics
7 that you have testified to today, I'm given to think about
8 the role of elasticity of demand in this scenario.

9 It looks like we are in a situation where at
10 least according to your testimony, the domestic industry
11 can't cover the cost situation that's occurring in the
12 nickel market. Would you expect that given the level of
13 elasticity and demand in this market? And if not, then
14 what is it that we need to include in the analysis to make
15 it all fit?

16 MR. DOUGAN: So, would you expect that these
17 producers would be able to charge prices sufficient to cover
18 any costs, including any temporal disconnect based on the
19 elasticity of demand for the product?

20 COMMISSIONER PINKERT: Right. So, I know we're
21 talking about counterfactuals here, and I apologize for
22 that, but it's the only way to get at this question it seems
23 to me.

24 Would we, based on this elasticity of demand in
25 this market expect that the U.S. producers would be able to

1 come up with some mechanism that would adequately reflect
2 those movements and costs, particularly with respect to the
3 nickel?

4 MR. DOUGAN: I think on the one hand, given the
5 nature of demand and the competitive nature of the market,
6 their ability to -- I think you've identified it correctly
7 in that their ability to manage this more effectively I
8 think would rely on managing their costs, as Commissioner
9 Kieff mentioned, perhaps with some sort of hedging mechanism
10 for the raw materials. That would allow them to, perhaps,
11 smooth out the disconnects between what their reference
12 price for the welded stainless pipe would be and what
13 they're going to be able to charge in a market where
14 everybody sees transparently through to the inputs and what
15 they've actually paid for the steel that they're using to
16 make the pipe at that point in time.

17 Their ability to influence the end price that's
18 charged for the finished product seems to depend,
19 historically, on, "A," what the nickel prices are doing, but
20 "B," just demand characteristics. But when things are
21 trending downwards or flat in both respects, I think their
22 ability to manage that is going to have to come from
23 managing the cost, and that would have to be some kind of
24 hedging mechanism. So, they can probably do it on the
25 backend better than they can on the customer facing end, I

1 would say. Does that answer your question?

2 COMMISSIONER PINKERT: It helps. But let me try
3 to reframe my question a little bit.

4 Given the characteristics of demand in this
5 market, and I'm talking about elasticity here, would you
6 agree that the domestic producers would normally expect to
7 have a large influence over the prices that they could
8 receive for their product? And if that's correct, then
9 doesn't that put us back into the question of why aren't
10 they able to craft a mechanism for dealing with this raw
11 material issue?

12 MR. DOUGAN: I think every producer would like to
13 be able to exert influence on the price that they're able to
14 get.

15 I think it does appear to be a function where
16 they are able to exert that influence at times when demand
17 is improving or when the raw material prices are improving.
18 I think their ability to influence that is less at a time of
19 flat or stagnant demand, and very, very severely declining
20 raw material costs.

21 I mean I think 45 percent over three years is a
22 lot. If we were talking about 5 and 10 percent declines,
23 those are much more moderate. We're talking about a very,
24 very substantial decline here. So, they're ability to
25 influence that at a time of flat demand I think would be

1 limited. But it does appear that their ability to command
2 better price in the marketplace, they do appear to be able
3 to get it. They were able to get it in 2006 and 2007.

4 So, I'm not sure that it's a permanent condition
5 of competition that their influence on being able to command
6 a price in the market is limited. I think it may be limited
7 to this POI, but it certainly doesn't seem to have been the
8 case throughout history.

9 COMMISSIONER PINKERT: Thank you.

10 Now, Ms. Mendoza and Mr. Planert, you had some
11 very interesting things to say about causation and how
12 underselling might relate to the overall picture, the
13 overall issue that we have to address here in this
14 investigation. But I wanted to give you a chance to look
15 specifically at this issue that I raised earlier today. And
16 that is, where you have underselling, but it doesn't appear
17 -- and this is an assumption here, so you can question it
18 and the other side can question it as well.

19 But if you have underselling and it doesn't
20 appear that the underselling is causing the gap to close or
21 causing the gap to open, then is that a sign of price
22 depression or price suppression?

23 MS. MENDOZA: Julie Mendoza.

24 Yeah, I listened to you ask that question this
25 morning, and I looked at the tables in the staff report.

1 And it's actually very striking that you see a pattern of
2 pretty constant movement by both import prices and domestic
3 producer prices.

4 I mean you don't see the gap tightening and
5 widening, tightening and widening the way one would expect
6 if you were seeing some price effects going on. And in
7 fact, that's very similar, I think, to the example I was
8 talking about earlier, which is in the Circular Welded
9 Standard Pipe case where, in fact, you did see some of that
10 same pattern.

11 In other words, that imports were, by their
12 nature, just charging a lower price than the domestic
13 producers, but there wasn't any particular movement in that
14 respect so that you could draw any conclusions about import
15 pricing having any effect at all on domestic industry
16 pricing or sales.

17 MR. PLANERT: I mean I guess I would just add
18 that if it were really the case that the observed margins of
19 underselling were really reflecting comparable prices for
20 comparable products and comparable conditions, and if there
21 wasn't something structural about the market that explains
22 at least a part of that gap, it seems to me very hard to
23 understand how during a time of pretty stable flat demand
24 you wouldn't have seen more movement in the relative market
25 shares because that's a big gap in the prices.

1 MS. MENDOZA: And a consistent one.

2 MR. PLANERT: And a consistent one. And what
3 evidence there is by non-subject imports suggests that
4 they're priced comparably as well. And yet, the shares of
5 the domestic industry, non-subject and subject, were really
6 pretty stable. So, we think it does suggest that there's
7 something structural that explains that gap. And as Julie
8 was suggesting, at least in the Standard Pipe case, there
9 was a lot of evidence that there are reasons why imports
10 generally would be priced lower. So, it gets back to the
11 point I was making earlier that it's hard on this record, I
12 think, to connect underselling, which is just a fact.

13 This is what the prices were. This is what the
14 import prices were. But to connect that to something that
15 explains either an adverse volume impact, price depression,
16 price suppression, or even links it to the industry's
17 profitability and that's why we really think that you don't
18 get to -- there really isn't causation on this record.

19 COMMISSIONER PINKERT: Thank you. I know I
20 addressed that question to Mr. Planert and Ms. Mendoza, but
21 if anybody else would like to address it here or in the post
22 hearing that would be fine.

23 MR. MARSHAK: We'll put it in our brief.

24 COMMISSIONER PINKERT: Thank you.

25 MR. DOUGAN: I'll help.

1 COMMISSIONER PINKERT: Thank you. That's always
2 good. Thank you.

3 And with that, I have no additional questions for
4 this panel. I appreciate the testimony, and I look forward
5 to the graphs and other things that'll be supplied
6 post-hearing.

7 CHAIRMAN WILLIAMSON: Okay. Thank you.
8 Commissioner Johanson, any further questions?

9 COMMISSIONER JOHANSON: No further questions.
10 But I would like to thank you all again for appearing here
11 today?

12 CHAIRMAN WILLIAMSON: Commissioner Kieff?

13 COMMISSIONER KIEFF: Yes, please. Thank you very
14 much. Just I hope some quick ones.

15 For the post-hearing -- I think there's no need
16 to go into this now, but for the post-hearing, and for both
17 sides if anyone would like, if you could help us understand
18 some alternative states of the world.

19 What should we do if we get questionnaire
20 coverage that's similar to what we had in the preliminary?
21 Will that questionnaire data be sufficiently complete to be
22 reliable? If we don't get equivalent coverage, should we
23 still rely on the questionnaire data? Should we look to
24 Appendix D of the pre-hearing report, and what about
25 non-subject pricing data in the pre-hearing report? So,

1 just in the post-hearing briefing, whoever would like to
2 answer those questions, I will enjoy analyzing those
3 answers. They'll help me.

4 Very briefly, for here, is there anything that we
5 should be keeping in mind about current events in Thailand,
6 interactions between China and Vietnam, et cetera? Is there
7 any broad context we should keep in mind from any of this,
8 or do you think this is afield from the focus of today?

9 MR. SIM: As I said earlier, in my response to
10 Chairman Williamson's question, I think all that goes to
11 show that Asia is not a monolithic. Asia is not something
12 controlled out of a central office in Beijing. And our
13 clients, or at least my clients and those of Vietnam and
14 such, we're not Chinese. So, to assume that conditions in
15 China directly influence what's going on in Southeast Asia
16 is not correct. So, that's how I'd respond to that.

17 And I think the events over the past few days and
18 few months, all platforms in the South China Sea, I mean in
19 the oceans, things like that show that it's not a
20 monolithic. And I think that's what you should take away
21 from that.

22 COMMISSIONER KIEFF: Okay.

23 And then Mr. Jakob, in your opening remarks, you
24 spoke about who you thought, in effect, an affirmative would
25 benefit. And you pointed out that it would like in the end

1 benefit Ta-Chen. And just in a very brief way, I just want
2 to ask you or anyone else on the panel if they're something
3 we should draw from that.

4 So, in particular, the morning's panel brought
5 forth a number of captains of industry, two members of the
6 United States Congress, none of whom, I think, works for
7 Ta-Chen. So, presumably, they were acting out of their own
8 best interest, or in the case of the two representatives,
9 two members of Congress, what they thought was in the best
10 interest of their domestic constituents.

11 I guess what I'm just really just asking is, is
12 that color or is it context or is it relevant to our core
13 question of causation about injury, which was the focal
14 point of the discussion between, most recently, Commissioner
15 Pinkert and Ms. Mendoza and Mr. Planert.

16 Just if you could very briefly put the benefit to
17 Ta-Chen in that context, that would help me so I can
18 understand what to do with it, if anything, for our
19 analysis.

20 MR. JAKOB: We'll deal with this question, good
21 question, more fully. But to me, to a layperson, the thrust
22 of the panel's determination of the Commission's
23 determination should be economically who's going to benefit
24 from this effort? Where will the preponderance of the
25 benefit fall?

1 COMMISSIONER KIEFF: And just to save you the
2 time, I think that's a great question the way you phrased it
3 for the policymakers, but I think that the current law
4 requires us to find an affirmative so long as there material
5 injury on a domestic industry, even if, collaterally,
6 massive benefit on your favorite bad guy.

7 I think, unfortunately, that massive benefit on
8 Uberbad would be not -- I'm not sure we're empowered to
9 seriously weigh that in our decisions. But if we are,
10 please just brief us on that so that we know how to put it
11 in.

12 I'm trying to elide the seriousness of the
13 concepts you're raising for a productive conversation about
14 civil society. I'm just trying to focus in on how we are
15 restrained by law to do what our mission is here, and if you
16 just in the post-hearing put that in that context it will
17 really help.

18 MR. SCHUTZMAN: Certainly, we will do so.

19 MR. MARSHAK: I'd just like to make a quick
20 comment.

21 COMMISSIONER KIEFF: Yeah, sure.

22 MR. MARSHAK: Just a quote from Mittal, which is
23 the guiding federal circuit decision, and I'll quote. It's
24 page 5 in our brief.

25 It says, "Baratz, just Mattal directs that a case

1 involving commodity products of which non, less value
2 imported goods are present in the market, the Commission
3 must give consideration to the issue of "but for causation,"
4 by considering whether the domestic industry would've been
5 better off if the dumped goods had been absent from the
6 market."

7 So it says you must give consideration to "but
8 for," which means to what happens, and we're saying it's
9 going to go to Ta-Chen.

10 COMMISSIONER KIEFF: I see. So, you're saying
11 it's relevant because it all would go to Ta-Chen. In other
12 words, you're not highlighting -- it's not the fact that
13 Ta-Chen is good or bad, and it's not the fact that they're
14 domestic or foreign. It's the fact that they're not the
15 covered domestic industry, and absent good evidence that an
16 affirmative would remedy a specific injury we can't reach an
17 affirmative.

18 MR. MARSHAK: You absolutely have to consider.

19 COMMISSIONER KIEFF: Gotcha. So, it sounds like
20 then to tie this in with Mr. Dougan's dialogue that he's had
21 with a couple of us, it sounds like part of our thinking,
22 you're saying, should be how comfortable are we that there
23 is evidence, how comfortable are we that the evidence is of
24 material injury, and how comfortable are we that an
25 affirmative would remedy the material injury to the domestic

1 industry. Is that a fair summary?

2 MR. MARSHAK: These are all factors you
3 absolutely have to consider.

4 COMMISSIONER KIEFF: Gotcha. That's very
5 helpful. Thank you.

6 Just again, in the post-hearing, if you highlight
7 those connections, that will be very helpful. Thank you.

8 Mr. Chairman, no further questions.

9 CHAIRMAN WILLIAMSON: Thank you. If no further
10 questions from Commissioners, does staff have any questions?

11 COMMISSIONER SCHMIDTLEIN: I have one actually.
12 Sorry. I didn't until someone made a comment a few minutes
13 ago. And maybe, again, this would be easier. You can put
14 it in the brief, but when somebody said it, and I don't even
15 know who said it. But in referring to this case where there
16 was a commodity and the Commission went negative and there
17 was underselling in the market and somebody had just said,
18 well, there was a lot of evidence on the record as to why
19 those imports were priced lower. And that immediately
20 caused me to ask myself, well, then because the nickel
21 prices are -- and I'm using that in a -- nickel, chrome, the
22 raw material prices drive the price for all producers,
23 right? So, what evidence is on the record here for why
24 these imports are lower?

25 MS. MENDOZA: What I specifically was mentioning

1 was that in various cases the Commission has found that
2 imports generally tend to sell at lower prices than domestic
3 producer prices for the simple reason that whenever there is
4 a domestic producer is able to supply more quickly, more
5 reliably, all of those kinds of factors, and the Commission
6 in many of the previous cases has concluded that therefore
7 the mere distinction in price between imports and the
8 domestic product is not sufficient to find injury, and
9 that's what I was referring to, not case-specific facts, but
10 simply the fact being that imports generally in the markets
11 are priced at lower prices.

12 That's not a surprising thing because they have
13 to compete with domestic producers who have distribution
14 networks and can supply just in time, all of that. That was
15 my reference.

16 COMMISSIONER SCHMIDTLEIN: Okay. Thank you. I
17 don't have any further questions. Thank you.

18 CHAIRMAN WILLIAMSON: That answer didn't generate
19 any further questions from the Commissioners. Does staff
20 have any questions?

21 MR. RUGGLES: Fred Ruggles, Office of
22 Investigations.

23 Staff has no questions, however, parties there is
24 an APO release waiting for you when you get out of here this
25 evening, okay?

1 CHAIRMAN WILLIAMSON: Thank you.

2 Do Petitioners have any questions for this panel?

3 MR. SCHAGRIN: Mr. Chairman, no we do not have
4 any questions.

5 CHAIRMAN WILLIAMSON: Okay, in that case, I want
6 to thank this panel for their testimony, and I'll dismiss
7 you now. We'll come to closing statements. And those in
8 support of the petition have 29 minutes from direct and 5
9 for closing, for a total of 34 minutes. And those in
10 opposition have 13 minutes from direct and 5 for closing,
11 for a total of 18 minutes. And as normal, we'll combine
12 those, and you don't have to take all the time. So, thank
13 you.

14 MR. SCHAGRIN: Mr. Chairman, can we just have
15 about a five-minute break to organize those closing
16 statements.

17 CHAIRMAN WILLIAMSON: I think we all would
18 appreciate that. Thank you.

19 MR. SCHAGRIN: Thank you.

20 (Whereupon, a brief recess was taken.)

21 CHAIRMAN WILLIAMSON: Mr. Schagrin, you may begin when
22 you're ready.

23 MR. SCHAGRIN: Thank you very much Chairman
24 Williamson and members of the Commission.

25 I think you remember the last time I was here I

1 gave no rebuttal or closing arguments because the other side
2 on that sunset review hadn't shown up.

3 I think everyone at the Commission, as well as
4 Petitioners and myself as Petitioners' counsel are overjoyed
5 that the Respondents were here. They have representatives
6 of producers in foreign countries as well as major company
7 importers. That makes for a more fulsome record. We have
8 representatives from the domestic industry today, and I
9 think makes for a better process here and a better record.

10 But because of that, I have a few arguments to
11 make in rebuttal. While I think the Respondents did a good
12 job with the facts that were available to them, you will not
13 be surprised to find that I disagree with many of the major
14 points that they made.

15 Let's start with non-subject imports. You had
16 the Respondents saying, look, they're the elephant in the
17 room and the domestic industry in their petition and in
18 their case are kind of avoiding them.

19 Of course, that's not true. We talked about a
20 volume of non-subject imports in our original petition, as
21 we have to. You heard executives today tell you everything
22 they know about Ta-Chen, which is not only a competitor of
23 theirs, but also a major customer of theirs. They told you
24 how Ta-Chen differed from the foreign producers that are
25 subject to this investigation.

1 The one thing that really hasn't been mentioned,
2 thus far, and it came to me, as sometimes things do, is that
3 there's another way that Ta-Chen is different.

4 The Commission is aware that in 2000 the Commerce
5 Department revoked the order, as to Ta-Chen, after they
6 demonstrated three successive administrative reviews that
7 they were not dumping. I think many of you will remember
8 because you don't have to know every rule of the Commerce
9 Department as members of the Commission, but you remember in
10 the Thai Hot Rolled case there was an order that was revoked
11 as to the largest Thai hot rolled producer. Two years
12 later, the U.S. industry brought evidence that dumping had
13 resumed.

14 Now, the good news for the Commission is that
15 Ta-Chen if Ta-Chen begins dumping again you have no further
16 work. We don't have to come back with a new case to you.
17 What Commerce used to do, and now they've changed their
18 regulations so they no longer revoke orders as of last year,
19 but they make a firm producer at the time of revocation,
20 give them a letter saying that if that company resumes
21 dumping again that they will -- and evidence is proffered to
22 the Department that the company's resumed dumping that they
23 will cooperate in an investigation. And if found to be
24 dumping again, they will become subject to the order again.

25 So, there is some more discipline as to Ta-Chen

1 than there would be as to any non-subject producer who had
2 not been at one time subject to an NAWD order.

3 Now, I can't tell you whether with my clients we
4 haven't investigated whether Ta-Chen is selling at dump
5 prices or not. That's attorney/client privilege. Only
6 myself and my clients and the Chinese Army knows what's been
7 done in that regard. But I think that's a factor that
8 certainly, once again, makes Ta-Chen different.

9 Mr. Jakob actually made the statement that
10 imposing duties on these imports from Malaysia, Thailand,
11 and Vietnam would hurt the U.S. industry more than it would
12 help. We just completely disagree with that statement.
13 It's going to really hurt Mr. Jakob's company. That's the
14 way it goes for international trading companies.

15 He's got offices, got a briefcase; he's got a
16 cell phone. They are owned by Ta-Chen. They don't have
17 eight major distribution outlets with all kinds of cutting
18 and finishing equipment and ability to deliver all these
19 products to end users. They're a trading company. There's
20 nothing wrong under U.S. law with being a trading company.

21 They get hurt when duties are imposed. Just look
22 at the numbers. They're on your record. The U.S. industry
23 now has about half the market, and non-subject imports, and
24 everyone knows Ta-Chen is the largest portion. They're not
25 the only portions of non-subject are imported, but the

1 simple math is, of course, the larger group is going to
2 benefit more than the smaller group. And I'll get to some
3 other counterfactual pieces of evidence later in my closing
4 statement.

5 Now, let's address the main point made by the
6 economist, Mr. Dougan. His argument seems to be this
7 industry clearly has suffered material injury 'cause they're
8 losing so much money, but the cause is not imports. The
9 cause is falling nickel prices. And so his factual
10 predicate for that, which was on, I think, Exhibit 7, was
11 that, of course, nickel and pipe has to move together
12 because of the surcharge mechanism.

13 And he used that something from the final
14 determination of the Commission in the China case. And the
15 quote, which is absolutely accurate on the first sentence of
16 his chart is, "Lastly, since pipe producers bill their
17 customers the surcharge amount in effect when the finished
18 pipe is shipped." If the surcharges are increasing as they
19 generally do, then an important component, report of
20 profits, blah, blah. It goes on and on.

21 He should have been aware, and I'm not taking him
22 to task. He's done the best that he could. The evidence in
23 the transcript of the preliminary conference, which you
24 heard again today, is that in approximately 2010 or 2011
25 after years and years and years of the domestic stainless

1 pipe industry using surcharges on their invoices to their
2 customers they had to abandon that practice.

3 And they had to abandon that practice because the
4 trading companies like Silbo and Allied and Warren Alloys
5 and all of them were getting fixed incredibly low dump
6 prices from producers in Malaysia, Thailand, and Vietnam,
7 stocking lots of product in the United States for immediate
8 delivery and telling the entire U.S. distribution network
9 when you buy from us no surcharge.

10 And we're not going to say there's no correlation
11 at all. Obviously, raw material costs have an impact on
12 finished product pricing, but they're not going to move in
13 lock step when you no longer have the surcharge mechanism.
14 And if you look to this other chart, yes, nickel generally
15 declined over the POI, but there were times when nickel also
16 went up. It wasn't always down, down, down. It was
17 generally down, but some up, and the domestic industry would
18 never benefit from any of those ups because they had no
19 surcharge mechanism, and that's because of the unfairly
20 traded imports.

21 When the distribution network has access to one
22 quarter of its supply from folks who say no surcharge from
23 us, it forces a change in the marketplace.

24 We already discussed earlier today the domestic
25 industry are not a group of idiots. They do not want to

1 lose more and more money all of the time. And so, they are
2 not going to continue to charge ever-lower prices for their
3 products by amounts even greater than their costs are
4 falling. And there's probably no better evidence of that,
5 which was already stated on the record today, and we'll give
6 you more information in our post-hearing brief, this case
7 covers the sizes up to 14 inches in outside diameter.

8 We'll give you the import data as well in our
9 final, but you heard the domestic industry, three of whom
10 make products greater than 14 inches that profitability is
11 much greater. In fact, the products are profitable, so you
12 know it's much greater than the massive losses they have on
13 the subject product, even though they use the same raw
14 material input that have the same nickel that fell during
15 the period of investigation.

16 So, you've got the same producers making products
17 of different sizes using the same inputs that are subject to
18 the same changes in raw material inputs, but because there
19 aren't massive imports of products greater than 14 inches
20 from Malaysia, Vietnam, and Thailand selling at prices 15
21 percent below the domestic industry -- in fact, to the best
22 of my knowledge, there are no imports in those sizes -- the
23 domestic industry makes profits on those products.

24 I don't think anything could speak to the fact
25 that it's simply cannot be economically true that the only

1 reasons the domestic industry had their losses double over
2 the POI is because nickel prices were falling.

3 Let me address one other issue that was being
4 brought up by the Respondents before I get to a couple of
5 threat issues and then a summation, and that was, well, the
6 domestic industry has really shifted their tone in this
7 case.

8 You know, at the preliminary stage they were
9 talking a lot about lost market share, and now they're
10 talking about increased losses as well. Of course, we were
11 talking about increased losses, and they say, you make it
12 seem like, wow, this industry I mean they'll say anything.
13 They'll change their story.

14 Well, you're all very much aware of the fact, and
15 I don't have to explain this to lawyer friends who don't
16 practice trade, they file contract dispute cases or whatever
17 kind of cases, and the record is pretty much frozen at the
18 time the case is filed.

19 Here at the Commission we file cases and we start
20 with a totally different record in the final compared to the
21 prelim. But your data in the "C" tables in the prelim
22 showed that between 2010 and 2012 the U.S. industry lost
23 about 10 points of market share. And the Commission went
24 affirmative at the preliminary stage in large part because
25 you found most of that loss in market share was due to

1 subject imports.

2 Before jumping back to the benefits and the
3 record on injury, a couple of quick comments on threat
4 issues and the coverage of the record for those
5 Commissioners who decide to look at threat. I think Mr.
6 Schutzman's statement near the end of what was a long series
7 of questions that Soha was the only Vietnamese export to the
8 United States was a misstatement. I'm sure he did not
9 intent it, but as the Commission is aware, and the record
10 clearly states on page 7-7, at the preliminary stage useable
11 response to the Commission questionnaire received from two
12 firms, Majashon and Soha International. Soha was the only
13 responding Vietnamese producer.

14 I can't talk about a single response. I will
15 just generally characterize it as saying the other
16 Vietnamese producer was also a major exporter. So, once
17 again, as to Vietnam you lack a response from one of the two
18 producers that gave you responses at the preliminary phase.

19 Mr. Sim said -- and I'm glad he came all the way
20 here from Singapore, Washington, I don't care. He's a nice
21 guy -- he's counsel to all three Malaysian producers. All
22 three of those Malaysian producers maybe things from the
23 prelim and the final, but all three responded at the
24 preliminary phase, only one respond at the final phase. The
25 same is true as to Thailand. Two producers respond at the

1 preliminary phase, only one at the final phase.

2 You know the other threat issue, as to China,
3 after China exited the U.S. market the data, which is in
4 your staff report, shows that they have continued increasing
5 their exports of welded stainless pipe to the rest of the
6 world. The imports from these three subject countries,
7 which were very small at the time the Chinese were in the
8 market, only a few thousand tons, have mushroomed over
9 13,000 tons. Clearly, the trading companies shifted from
10 China to foreign producers in Thailand, Vietnam, Malaysia.

11 We have not seen any significant changes over
12 that same time period in the imports from non-subject
13 countries. And I think the domestic industry explained to
14 you today why Ta-Chen would not want to ruin the U.S.
15 market. They probably have more inventories held in the
16 U.S. than any other distributor, both their own and domestic
17 product inventories. And as you know, the Koreans are still
18 subject to an anti-dumping duty order.

19 As to the issue of who will benefit in any type
20 of Bratz/Mittal, we have taken the position throughout, it's
21 why the domestic industry is here. They've told you, given
22 their massive losses, that relief is essential to keeping
23 their plants open. After the high import levels from these
24 countries in the third quarter of 2013 that made their way
25 through the distribution market in the fourth quarter of

1 2013, and have basically now almost disappeared from the
2 market, domestic shipments for products 6 inches and under,
3 which is where the bulk of the imports were focused and is
4 the largest share of this overall subject market, have
5 increased in the period January to April 2014 by 21 percent.

6 That is really significant. That's why these
7 producers are here. They can see that the imposition of
8 these duties at the beginning of January, which already had
9 an impact, starting in October of last year, are their
10 lifeline. It's the only way they can stay in business.

11 Our understanding is that everyone in the
12 domestic industry reports to some impartial gatherer of data
13 which then gives them back this aggregate, and we used it at
14 the Commerce Department as the basis for showing standing.
15 We used it recently in the sunset review of China for
16 purposes of arguing adequacy. So, we're going to give you
17 that data.

18 If you believe Mr. Jakob and the Respondents,
19 then ask yourselves once the imports from Malaysia,
20 Thailand, and Vietnam plummet if the only beneficiary is
21 going to be Ta-Chen why did domestic shipments increase by
22 21 percent in the four months after the preliminary
23 imposition of duties?

24 I know its counterfactual. I know not everybody
25 agrees with counterfactual. It's reality. It shows the

1 domestic industry's benefiting. That's why they're here.

2 Hopefully, they chose the right counsel to argue
3 the facts and the law in this case. I'm doing my best, but
4 I think the record is indisputable no matter who argues the
5 case.

6 So, what do we have on the record, to conclude my
7 final comments? You have information on massive
8 underselling throughout the POI, and imports which just
9 absolutely blew up in volume from 2009 through 2010 and '11
10 and didn't start to recede until several months after the
11 case was filed, causing price depression for the U.S.
12 industry.

13 We know there's price depression because COGS
14 increased by several points and the industry suffers
15 increasing losses. They don't do this because they think
16 losing money is fun. They would rather charge higher prices
17 and make profits. Whether nickel is going up or down they
18 want to charge a higher price to their customers than their
19 total cost of goods sold. That's why people go into
20 business in the United States. And if they can't do that,
21 they will shut their plant down.

22 So, I believe that there's massive evidence on
23 this record that dumped imports from Malaysia, Thailand, and
24 Vietnam were a cause of this material injury, and I ask this
25 Commission to make an affirmative final determination to

1 save the jobs in this industry, including Mr. Norman's job.
2 Thank you very much for your time and patience with me
3 today. Thank you.

4 CHAIRMAN WILLIAMSON: Thank you.

5 Mr. Marshak, you may begin when you're ready.

6 MR. MARSHAK: Good afternoon. This is Ned
7 Marshak for Respondents.

8 As always, we thank the Commission and staff for
9 the courteous and probing manner in which you conducted a
10 hearing and investigation on your desire to understand the
11 real and very unique conditions of competition in the WSSPP
12 industry, and the reason why domestic producers are, or in
13 our opinion are not materially injured or threatened with
14 material injury by reason of subject imports from Malaysia,
15 Thailand, and Vietnam.

16 As you heard today, this case is about causation.
17 The parties agree as to the definition of like product in
18 domestic industry. We are not arguing against cumulation
19 with respect to current material injury. Both sides agree
20 that we are dealing with a fungible commodity product and we
21 acknowledge that during the POI, 2011 to 2013, prices have
22 declined and industry members have operated at a loss; thus,
23 we assume that this Commission will conclude that the
24 industry is experiencing material injury.

25 The question is why? Mr. Schagrín argues in his

1 brief, and again today, that your task is simple. All you
2 have to find is that subject import contributed to the
3 losses suffered by his clients. He argues that, of course,
4 they contributed given their market shares on your pricing
5 analysis, which shows underselling. It's not that simple.

6 We agree that you cannot weigh the causes of
7 injury, but you nevertheless cannot reach an affirmative
8 determination without finding that there's a causal as
9 distinguished from a temporal relationship between subject
10 imports and domestic industry performance. And also,
11 without considering the issue of "but for causation." That
12 is whether the domestic industry would've been better off if
13 the dumped imports had been absent from the market and
14 whether non-subject imports would have replaced subject
15 imports during the POI without a continuing benefit to the
16 domestic industry.

17 We trust that the Commission will now look at the
18 entire record, including the data which was received to late
19 to analyze in the staff's pre-hearing report and our
20 pre-hearing brief and will remember what you heard today.

21 What are the facts? What are the real driving
22 forces in this industry? During the POI, 2011 to 2013, and
23 that's the period of time which the Commission will be
24 analyzing in this case, not 2009 and not 2010. During 2011
25 to 2013, domestic production it was stable. Domestic

1 capacity utilization it was stable. Employment, there were
2 more workers at higher wages, demand was flat, market share
3 was flat, domestics around 50 percent, subject imports
4 around 25 percent, non-subject imports also around 25
5 percent, and very, very significantly concentrated in one
6 dominant player in the market, Ta-Chen. These factors
7 standing alone do not support an affirmation determination.

8 So, what is the basis for Petitioners' case?
9 What is their theory of the case? Prices declined, as did
10 profits. The question is why? We believe that answer is
11 found in Mr. Dougan's economic analysis and Mr. Jakob's
12 personal experience.

13 In his brief, and again today, Mr. Schagrin
14 argues that it is "normal" for profits to increase when the
15 cost of raw materials declines. And he argues that the
16 selling price of this merchandise is determined by supply
17 and demand and the level of price competition rather than
18 the cost of raw materials.

19 These statements maybe accurate in other cases
20 with respect to other industries, but they simply do not
21 apply to WSSPP. As Mr. Dougan explained, and as Petitioners
22 themselves recognized, in 2006 and 2007, when prices for
23 nickel rose so did prices for the product, resulting in the
24 improved financial performance of domestic producers; thus,
25 conversely, for 2011 to 2013, when prices for nickel and

1 other raw materials declined, so did prices of WSSPP,
2 resulting in declining financial performance of domestic
3 producers.

4 In 2008, Petitioners argued that nickel prices
5 were the reason for their improving performance. And now
6 2014, they would like the Commission to believe that nickel
7 prices do not matter. They want to flip the nickel. Heads
8 I win, tails you lose. Neither fundamental fairness, nor
9 common sense nor the facts in this case support this
10 results.

11 What's the proof? Look at what happened in 2013
12 and look at what's happening in the market today. Subject
13 imports effectively exited the market in the middle of 2013.
14 Did prices increase immediately? No. Did profitability
15 improve? No. Why? Nickel prices remained low. And in
16 2014, prices have rebounded, and we hope that profitability
17 has followed. Why? As Mr. Jakob testified, nickel prices
18 have increased by a very, very substantial amount, and if
19 the price of nickel, which is the driving force in this
20 market, and not the presence of subject imports.

21 So, getting back to the question before the
22 Commission, has there been a causal as distinguished from a
23 temporal effect of subject imports on the domestic industry?
24 And second, would the domestic industry have been better off
25 if subject imports had exited the market? The answer is no

1 and no.

2 And for these reasons, we are requesting that the
3 Commission reach a negative determination in this case.

4 Thank you.

5 CHAIRMAN WILLIAMSON: Thank you. And again, I
6 express the Commission's appreciation to everyone who's
7 participated in today's hearing.

8 Your closing statement, post-hearing briefs,
9 statements responsive to your questions and request of the
10 Commission, and corrections to the transcript must be filed
11 by May 30, 2013. Closing of the record and final release of
12 data to the parties is by June 18, 2014. Final comments are
13 due June 20, 2014. And with that, this hearing is
14 adjourned. Thank you.

15 (Whereupon the hearing adjourned at 4:36 P.M.)

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