UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation No.:
SILICOMANGANESE FROM	)	731-TA-671-673
BRAZIL, CHINA, AND UKRAINE	)	(Third Review)

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Wednesday,
September 5, 2012

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

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

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

IRVING A. WILLIAMSON, CHAIRMAN
SHARA L. ARANOFF, COMMISSIONER
DANIEL R. PEARSON, COMMISSIONER
DEAN A. PINKERT, COMMISSIONER
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APPEARANCES (CONT'D)

In Support of the Continuation of the Antidumping Duty Orders:

On behalf of Felman Production, LLC:

VLADISLAV MIKHYEYEV, Chief Executive Officer, Felman Trading, Inc.
BARRY C. NUSS, Chief Financial Officer, Felman Production, LLC
JOHN S. KONRADY, Plant Manager, Felman Production, LLC
ROY F. MARTIN, JR., Treasurer-USW Local 5171, Felman Production, LLC
ROBERT L. POWELL, JR., Vice President, Secretary and General Counsel

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Stewart and Stewart
Washington, D.C.

On behalf of Eramet Marietta, Inc.:

JOHN A. WILLOUGHBY, Chief Executive Officer, Eramet
ROBERT BURDETTE, President and Chief Executive Officer, Eramet North America, Inc.
STEVE BROWN, President, United Steelworkers Local 1-00639
DR. KENNETH R. BUTTON, Senior Vice President, Economic Consulting Services, LLC
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APPEARANCES (CONT'D)

In Opposition to the Continuation of
the Antidumping Duty Orders:

On behalf of Vale Manganes S/A:

THOMAS J. PRUSA, Professor of Economics,
Rutgers University

CRAIG A. LEWIS, Of Counsel
JONATHAN T. STOEL, Of Counsel
Hogan Lovells US LLP
Washington, D.C.

I N D E X

P R O C E E D I N G S

(9:31 a.m.)

CHAIRMAN WILLIAMSON: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigations No. 731-TA-671-673 (Third Review), involving Silicomanganese from Brazil, China, and Ukraine. The purpose of these five year review investigations is to determine whether revocation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine would be likely to lead to continuation, or recurrence, of material injury within a reasonable foreseeable time.

Schedules setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

Speakers are reminded not to refer in their remarks or answers to questions to business proprietary information. Please speak clearly into the microphone and state your name for the record for the benefit of the court reporter. If you will be submitting documents that contain information you wish classified as business confidential, your request should comply with Commission Rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: No, Mr. Chairman.

CHAIRMAN WILLIAMSON: Very well. Let us begin with opening remarks.

MR. BISHOP: Opening remarks on those in support of continuation of the orders will be by William D. Kramer, DLA Piper.

CHAIRMAN WILLIAMSON: Okay. Welcome, Mr. Kramer.

MR. KRAMER: Good morning. The merchandise involved in these reviews, silicomanganese, is a globally traded, price sensitive commodity product. Nothing has changed with respect to the nature of this product since the original investigations. Moreover, there's been no change in the conditions of competition in the U.S. market that make the domestic industry particularly susceptible to import injury.

The U.S. market is highly competitive.

Silicomanganese is sold primarily through a competitive bidding process using a standard specification in which many competing suppliers make price offers. Published spot prices serve as benchmarks. Customers do not care where the competing silicomanganese was produced if it meets the specification or can be used in their process. Extremely small differences in price can determine who gets the sale.

Even with a contract in place, the price normally is indexed or periodically adjusted to reflect the current market price. As a result, even small sales at low prices can drive down prices throughout the market.

Demand for silicomanganese is driven by production of the types of steel manufactured using silicomanganese, primarily long products, construction-related steel products produced mainly by mini mills. Because of the continued weakness of the construction sector, production of steel products made using silicomanganese has recovered more slowly than production of other types of steel. Mini mills also are facing a cost price squeeze that is driving them to purchase inputs at the lowest possible price.

Other difficult circumstances confront the domestic industry. Silicomanganese prices can be volatile. In addition, the production of silicomanganese is a very capital-intensive manufacturing process. For that reason, a producer must maintain the highest possible level of capacity utilization to remain viable. This fact forces domestic producers to lower their prices to meet import competition.

Finally, contrary to Respondents' claims, the domestic silicomanganese industry is vulnerable to injury by a renewed influx of dumped imports. It is true that the protection of the orders, which have resulted in almost complete cessation of imports from the subject countries, has allowed a new U.S. producer to enter the market, a positive development that has increased the size of the domestic industry and its workforce. However, the record facts clearly show that the U.S. industry is vulnerable.

Revocation of the orders would likely result in a recurrence of injury to the domestic industry. The countries covered by the orders account for a very large portion of total global output of silicomanganese. In addition, they have enormous excess capacity. The combined excess capacity of the subject countries has increased greatly since the original investigations. The proprietary record evidence discussed in our prehearing brief demonstrates that this excess capacity is significant both in absolute terms and relative to U.S. production and consumption. The same is true of each subject country individually. Subject producers also have significant inventories that could be shipped to the U.S. market.

The Brazilian industry exports a substantial portion of its silicomanganese output, the Ukrainian industry is highly export-oriented and the Chinese industry has exported very large volumes of silicomanganese for much of the review period. The United States is a major consumer of silicomanganese. Even though steel production in the United States remains below pre-recession levels, steel production is increasing more rapidly than in other countries. As a result, prices in the U.S. market are higher than in Europe, a significant export market for the subject producers. This difference in relative price levels, and other factors, would draw subject imports into the U.S. market.

If the subject imports reentered the market, domestic producers' sales, market share and jobs would be lost. Downward pressure on price would be generated in the competitive bidding process to the detriment of the U.S. industry. Prices would be driven to below cost levels that would severely injure the industry. Given these facts, it is likely that revocation of the Brazil, China and Ukraine orders would lead to continuation or recurrence of material injury to the domestic silicomanganese industry.

CHAIRMAN WILLIAMSON: Okay. Thank you.

MR. BISHOP: Opening remarks on behalf of those in support of revocation of the orders will be by Craig A. Lewis, Hogan Lovells.

CHAIRMAN WILLIAMSON: Welcome, Mr. Lewis.

MR. LEWIS: Thank you, and good morning, Commissioners. For the record, my name is Craig Lewis, and I'm a partner at Hogan Lovells. I'm appearing before you today on behalf of the Brazilian producer Vale Manganes.

Seventeen years is an awfully long time for any measure of trade protection. In 1994, Bill Clinton was President, the Channel Tunnel was just opened, Tonya Harding was stripped of her skating title and my daughter, who just matriculated at college, was not even a year old. It's a particularly long time for trade measures that have such tenuous origins as those before the Commission today.

While we've heard, and will hear again later this morning, how subject imports from Brazil, China and Ukraine have a history of causing injury to the domestic industry, this is simply not so. In 1994, a solid majority, four of the six Commissioners, flatly rejected the U.S. industry's claims that subject imports caused injury by depressing, or suppressing, U.S. prices. This order is in place today against Brazil solely because one Commissioner found that there was a threat of injury from Brazilian imports.

While I cannot undo that vote, I can invite the Commission to carefully scrutinize its basis, and unfortunately, I cannot discuss here the confidential pricing data, but I suggest that a review of the original investigation data will reveal that Brazilian imports posed no threat because they were not a source of price undercutting and were declining in volume. Such tenuous beginnings do not by themselves compel a negative determination in the sunset review, but I would submit that they do compel the Commission to give careful consideration to the credibility of the repeated claims from Petitioners, asserted as if they were fact, that subject imports from Brazil have been the cause of material injury in the past.

As we shall discuss further today, the

Commission should also exercise its discretion not to cumulate Brazilian imports with other subject imports. In 1994, the majority of the Commission likewise found that a cumulation for purposes of threat was not warranted in light of the significantly divergent volume, pricing and other data distinguishing Brazilian imports.

As we shall further discuss, other differences and conditions of competition existing today between Brazilian imports and imports from the other subject countries further support decumulation in this sunset review.

Felman and Eramet both claim that Brazilian imports have significant excess capacity and a strong incentive to export to the United States. Neither contention is true. For reasons outlined in our briefs, Brazilian practical capacity is not nearly what Petitioners claim. Vale has also for more than five years now pursued a marketing strategy of withdrawing from markets outside of Brazil and South America. Exports to Canada, for example, effectively ceased in 2007, despite the absence of any trade barriers, and exports to Japan stopped even earlier. Exports to Europe, which were only made to supplement inadequate production by Vale's Norwegian affiliate, are also winding down as Vale has recently agreed to sell its European ferro alloy operations. Finally, the pricing data collected by the Commission in the original investigation never showed evidence of price suppression, or depression, to begin with.

Lastly, we turn to the condition of the U.S. industry today and the curious competitive structure of the U.S. market. In some respects, the U.S. industry today looks very different from the industry in 1994, the most notable example of this being the entry into the market of Felman. This has significantly expanded U.S. production and market share, and it's widely acknowledged that Felman is the dominant player in the U.S. industry and the undisputed price leader.

While the addition of Felman has undoubtedly strengthened the U.S. industry's position in the market, Felman's dominant role also raises troubling questions, not least of these is Felman Trading's role in importing silicomanganese and the mysterious relationship that exists between Felman and the Ukrainian producers. Eramet's role in U.S. imports also bears scrutiny, as we'll discuss.

Commissioner Crawford in the original investigation expressed frustration and concern that the U.S. producers appeared to be enlisting the U.S. trade laws to help them control both local domestic production and imports of silicomanganese, "creating the potential for manipulation of prices". We submit that the record evidence suggests that the U.S. producers may have largely achieved that objective.

One last comment. There's not one mention in Felman or Eramet's prehearing briefs of one of the most significant developments since the last sunset review, the permanent exit from the market of the South African producer BHP Billiton. Public import data indicates that South Africa was the United States' largest import supplier in 2011, providing over 157,000 short tons, which is about 40 percent of the import market. Given the historic volume of imports from South Africa, this development will have nothing less than a tectonic impact on the industry.

We urge the Commission to explore this factor and the others I've mentioned in this hearing and in its deliberations. Thank you very much.

CHAIRMAN WILLIAMSON: Thank you. Mr. Secretary, will you please call the first panel.

MR. BISHOP: Would the first panel, those in support of continuation of the antidumping duty orders, please come forward and be seated.

Mr. Chairman, all witnesses have been sworn.

CHAIRMAN WILLIAMSON: Thank you. Okay. Mr. Kramer and Mr. Salonen, you can begin when you're ready.

MR. KRAMER: Our first witness is John Willoughby.

MR. WILLOUGHBY: Good morning, Chairman Williamson and Commissioners. My name is John Willoughby. I'm Chief Executive Officer of Eramet, Marietta. Before joining Eramet, I had more than 34 years of experience in the steel and refractory industries.

Eramet Marietta produces silicomanganese and other manganese alloys in our plant in Marietta, Ohio. As I will explain, our plant is an important employer in our area of southeastern Ohio. We produce silicomanganese in submerged arc electric furnaces by smelting together sources of silicon, manganese, iron and carbon. The silicomanganese production process is highly capital-intensive. The major equipment in our plant includes the electric furnaces and their emissions control equipment, the electrical transformers for the furnaces, our electrical substation, and the furnace feeding system, which includes our mix house and conveyor system.

With the antidumping orders in place, we've been able to make substantial investments in our production facility. In 2008, we began a series of investments to improve greatly the operational and environmental performance of the Marietta plant. In the first half of 2008, we rebuilt Furnace 1, the largest of our furnaces, at a cost of more than $8 million. The rebuild was the first phase of a two phase project that also included the addition of a state-of-the-art emissions abatement system to reduce particulate emissions from Furnace 1 by 54 percent, and plant-wide emissions by over 20 percent. The second phase, representing an additional investment of about $10 million, was completed early last year when the system was connected to Furnace 1.

In addition, in 2010 we completed the first two phases of a plant security and rerouting project aimed at making the plant more secure and changing traffic routes to improve production efficiencies and employee safety. This year we've also begun work on an overhaul of our mix house and raw materials handling equipment. This more than $10 million investment should be completed next year. We're also in the process of completing a $10 million project to create a new water delivery system for the service water required for our plant.

All of the investments made to date have been made with the antidumping orders in place. Our ability to sustain these investments, and to make new investments, depends on continuation of the improved market conditions that the orders have made possible. All of the work that Eramet Marietta has done to improve its operations and to become the company it is today would be severely at risk if the orders were revoked.

Our silicomanganese production costs have increased very significantly. Furthermore, the silicomanganese production process involves high fixed costs. To be able to recover these costs, we need to run the furnaces at as high a rate of capacity utilization as possible so that we can spread these costs over a sufficiently large volume of silicomanganese sales.

If we're forced to compete with imports sold at dumped prices, we have two choices: reducing our prices to the level of the dumped imports so that we are able to maintain an adequate level of production, or losing the sales to the dumped imports. Under either choice, our financial performance deteriorates. If we are unable to recover our fixed costs, our decision will not be whether, but when, to shut down our silicomanganese operations. A renewed onslaught of dumped silicomanganese from Brazil, China and Ukraine would place these operations at serious risk of being shut down.

Our plant is one of the largest employers in Washington County, which is part of the Appalachian region. According to the most recent data compiled by the Appalachian Regional Commission, during the period from 2006 through 2010, our county had a poverty rate of 15.2 percent, well above the national average, and in 2010 had a per capita income that was more than 17 percent below the national average. Thus, the continued viability of our operations is important not only to Eramet Marietta, but to our employees and the surrounding area.

We welcome fairly traded import competition; however, as Bob Burdette will explain, the injury we suffered before the antidumping orders were issued demonstrates the devastating effects that revocation of the orders would have on the U.S. silicomanganese industry. Thank you.

MR. BURDETTE: Good morning. My name is Bob Burdette. I am President and CEO of Eramet North America. My company is responsible for selling silicomanganese and other manganese alloys produced by Eramet Marietta. I am a third generation American metal industry veteran, with over 45 years of experience, including 30 years working for three steel companies that went bankrupt by the onslaught of unfairly traded dumped steel products from these and other countries that have devastated many American families, including my grandfather, my father, my uncles, my cousins, my brothers and myself.

The U.S. silicomanganese market is highly competitive. There are now two domestic producers competing for sales, our Marietta, Ohio facility and Felman Production. In addition, there are numerous competing suppliers of imported silicomanganese.

Silicomanganese is used almost exclusively in the production of steel as a source of both manganese and silicon. The domestic steel industry is still in the process of recovering from the great recession. Currently, the average capacity utilization for the U.S. industry is only about 10 to 15 percentage points below the pre-recession level. Although recent growth in the U.S. steel production has outpaced other markets, such as South America and Europe, where production declining in 2012.

Silico is mainly sold to mini mills for use in producing steel long products. Mini mills account for about 80 percent of silicomanganese consumption in the United States. Long products are used in construction and infrastructure projects. They include structural beams, rebar, merchant bar, rails, small tubulars, fence or sign posts and guardrail.

Because the U.S. construction industry remains depressed, long product mills face even greater economic challenges than the steel industry generally. We estimate that these mills are currently operating at only a 60 to 65 percent capacity utilization rate. In addition, operating rates are much worse for mini mills in certain areas of the country. Long product producers also are facing severe cost pressures. For these reasons, they are highly price-conscious in buying inputs, including silicomanganese.

Within this environment, competition among suppliers is further fueled by the fact that silicomanganese is a commodity product that is sold primarily on the basis of price. Our customers almost always purchase silicomanganese using a bidding process in which they issue requests for bids, or RFQs, on a monthly, quarterly, semester or annual basis, typically using an ASTM specification. Once an

RFQ is issued, any supplier with material available may submit a bid. This is true even if the product offered does not meet the specification. In such cases, the purchaser decides whether it can use the product in its operations even though it does not meet the spec. Mini mills have flexibility in using material that doesn't meet the ASTM specifications. For example, some mills are able to tolerate, and may even prefer, high phosphorous silicomanganese.

In the bidding process, suppliers compete for sales on the basis of price. Purchasers typically receive bids from at least four to six suppliers, and a price difference of half a penny per pound or less can determine who gets the sale. This is true even if the purchaser has an established relationship with the supplier. The current supplier is normally expected to meet the low bid in order to retain its relationship with the customer.

Publications such as *Metals Week* and *Ryan's Notes* regularly publish information regarding silicomanganese transaction prices. Buyers and sellers use these published prices as benchmarks in determining sales prices. The availability of such published data and the multiple bids received by purchasers ensure the pricing changes are quickly communicated throughout the market. In these circumstances, low priced sales of even small quantities of imports from Brazil, China or Ukraine would quickly result in lower prices not only for spot sales, but also for most contract sales in the U.S. silicomanganese market.

Purchasers are highly price-oriented. Some purchasers routinely change suppliers whenever they get a lower price, while other companies prefer to maintain longer term relationships with their suppliers. However, while in the past we would engage in price negotiations with long-term customers, now we may, if we're lucky, be given a last look. In such cases, we are expected to meet the lowest prices offered in the bidding process or we lose the sale.

By one means or another, all of our contracts are adjusted on a regular basis, at least quarterly, to reflect changes in a prevailing market price for silicomanganese. All of these factors combine to make the U.S. silicomanganese market extremely competitive and price driven.

If the antidumping orders are revoked in this kind of market environment, it would lead to an influx of silicomanganese from Brazil, China and Ukraine, greater volumes of silicomanganese offered for sale in the U.S. market, more bids in response to to RFQs, and downward pressure on prices. We have seen the effects of increasing volumes of low priced silicomanganese entering the U.S. market during the original investigations. Market prices quickly deteriorated.

The United States is one of the largest silicomanganese markets in the world. While the production steel in the United States has not recovered to pre-recession levels, for the first half of 2012, the data shows that U.S. steel production has been increasing at a rate of more than eight percent, while steel production in the EU, Brazil and South America has been declining. As a result, this year, prices in the United States consistently have been higher than prices in Europe.

In addition, the intensity of silicomanganese consumption, which is the amount of silicomanganese consumed per unit of steel output, has been increasing in the United States, much more than in Brazil, the rest of Latin America, China, the CIS and worldwide. The relative increase in steel production and in Silicomanganese intensity in the United States make the U.S. market particularly attractive and provide a significant incentive for the subject producers to export to the United States.

Each of the three subject countries is a large producer of silicomanganese. China is the world's largest silicomanganese producer, accounting for more than half of the world's production. Both Brazil and Ukraine are major exporters of silicomanganese, and China has demonstrated the ability to export enormous volumes of silicomanganese. All three countries have significant excess production capacity, with the Chinese industry suffering from vast overcapacity and its domestic market currently stagnating, if not declining.

I am certain that if the orders were revoked, the Brazilian, Chinese and Ukrainian producers would aggressively seek to return to the U.S. market and the resulting impact on our company and Felman would be devastating.

The renewed flow of imports from these countries would drive down prices. The domestic industry would lose sales to the imports, which would result in lower revenues and shipments, production cut backs, reduced capacity utilization and job losses. The declines in domestic industry's sales and revenues will have a direct adverse impact on its profitability, as well as its ability to raise capital and make and maintain necessary capital investments. As John Willoughby has explained, the substantial recent investments in our production facility would be jeopardized. Thank you.

MR. MIKHYEYEV: Good morning, Chairman Williamson and Commissioners. I am Vladislav Mikhyeyev, Chief Executive Officer of Felman Trading, which is based in Miami, Florida. Felman Trading trades ferro alloys. In addition to silicomanganese, Felman Trading also trades ferro silicon, high carbon and medium carbon ferromanganese and ferrochrome. We are the exclusive distributor of the silicomanganese that is produced by Felman production. In other words, Felman Trading's, Felman Production's sales arm.

I joined Felman Trading when it was first established in 2008. Prior to joining Felman Trading, I worked in the ferro industry since 2001. In January 2006, I went to Letart, West Virginia to provide consulting advice to Felman Production when the plant was purchased out of bankruptcy from its previous owners. Understanding that the plant was in a state of disrepair and it had not produced any silicomanganese in several years, Felman Production was able to make the necessary repairs and improvements over the next eight months and began producing silicomanganese in September 2006.

Right now, I'll turn to discussing the market for silicomanganese and what makes the U.S. market especially attractive.

First, unlike most other countries that produce or import silicomanganese, the U.S. market, and therefore the domestic industry, is currently protected from unfair import competition from some of the largest producers of silicomanganese in the world. As the public prehearing staff report states, Brazil, China and Ukraine, collectively, have high capacity to produce silicomanganese, but they also have low capacity utilization rates. Consequently, Brazil, China and Ukraine are able to respond to changes and demand with large changes in the quantities of shipments of silicomanganese to the U.S. market.

The orders, however, are preventing the producers in these countries from using their excess capacity to capture market share in the U.S. at very low prices. Because conditions of competition in the U.S. market are not being distorted by dumped imports from these countries, it is often possible to get higher prices for silicomanganese in the U.S. than in other countries.

Second, the demand for silicomanganese in the U.S. is significantly greater than what the industry was able to supply before Felman Production started operating in 2006. Thus, at that time there was every reason to believe that the market would support a second domestic producer. In fact, Felman Production's production, capacity utilization, shipments, employment and sales have increased substantially since production began in September of 2006.

However, when it comes to setting sales prices, Felman Production must follow the market. I completely agree with the statement in the public prehearing staff report that when purchasers were asked to list the top three factors they consider when choosing a supplier, price was quoted most frequently as both the first and second most important factors. Purchasers also made it very clear that they do not perceive any significant differences in silicomanganese from Brazil, China, Ukraine or the United States. Indeed, the prehearing staff report shows that most, or all, purchasers rated domestic silicomanganese as being comparable with silicomanganese from Brazil, China and Ukraine across 19 different factors.

Further, all but one importer, and all purchasers without exception, reported that silicomanganese, whether from the U.S., Brazil, China or Ukraine was always, or frequently, interchangeable. In short, this is an extremely priced competitive market; therefore, Felman Production generally cannot pass along increases in raw material costs or other production costs to their customers in the form of higher prices. This is why it is so important that these orders remain in place.

According to the USGS 2010 minerals yearbook, production of silicomanganese in Brazil, China and Ukraine dwarf that of Felman Production, and we believe the domestic industry as a whole. The USGS reports that in 2010 the combined production of silicomanganese in these three countries totaled over 7.4 million short tons. Given the prehearing staff report's finding that the three countries are operating at low capacity utilization, one can well imagine not only how massive their collective capacity is, but also how they're capable of producing much, much more of silicomanganese if there are new markets to which they can ship their product.

In addition to substantial excess capacity, the IMF projects that the economies in all three countries are slowing. The combination of substantial excess capacity and slow economic growth in their respective home markets, combined with the prospect of higher prices in the U.S. and other countries, will give silicomanganese producers in Brazil, China and Ukraine both the ability and strong incentive to resume shipping silicomanganese to the U.S. at dumped prices. Such a surge in imports would ultimately disrupt the market in the U.S. and quickly displace domestic silicomanganese just as it happened in 1994, 2002.

For these reasons, I respectfully ask you to make affirmative determinations. Thank you.

MR. KONRADY: Good morning, Chairman Williamson and Commissioners. My name is John Konrady. I'm the Plant Manager for Felman Production's silicomanganese plant in Letart, West Virginia. I joined Felman Production in late 2009. Before then, I worked in the steel industry, specifically for United States Steel, for more than four decades and have extensive experience working with furnaces.

Felman operates three furnaces. The largest furnace based on output is 51 MVA, while the other two furnaces are 24 and 27 MVA, respectively. While our furnaces are relatively old, Felman has made significant investments to improve their safety, efficiency, reliability and environmental compliance. For example, in 2010 we installed a new design casting hoods and ladle tilters on two of our furnaces to increase fume capture, improve the production cycle time and reduce emissions. We also redesigned and fabricated a new ladle transfer car to improve equipment reliability which reduces delays and eliminates safety hazards. These improvements cost several million dollars to carry out. Currently, we are in the process of adding automated process controls which will increase productivity, reduce electrode cost and maximize power inputs. We're also looking at ways to further reduce our plant emissions.

As you can see from our U.S. producer questionnaire response, Felman Production experienced significant process in increasing our capacity, production, capacity utilization, U.S. commercial shipments, employment, hours worked, wages paid and met sales by volume and value since the plant began operating in the fourth quarter of 2006. Of course, a lot of hard work went into achieving these results. I'm very proud of what our hourly employees and management have been able to accomplish working together as a team. In 2011, Felman Production's 256 employees accounted for about 35 percent of all the manufacturing jobs in Mason County, West Virginia.

Earlier this year, two professors from the West Virginia University prepared an analysis of the economic impact that Felman has had both on Mason County's economy and the economy of West Virginia. They found that in 2011 Felman's operations generated a total business volume impact of $150 million that supported 369 jobs and over $25 million in employee compensation in the Mason County economy. The absence of Felman's operation would have significantly increased an already high unemployment rate in Mason County. In short, Felman Production has had, and continues to have, a significant and positive impact on the economies of Mason County and the State of West Virginia as a whole.

As I stated at the onset of my testimony, before coming to work for Felman Production, I worked in the steel industry for more than 40 years so I have personally witnessed the disastrous impact that unfair competition from dumped imports can inflict on the domestic industry. Steel mills were shut down and good people, including friends of mine, have lost their jobs. The communities in which they lived suffered economic devastation. I've also seen the beneficial effects that come from strong and effective enforcement of our trade rules and antidumping orders, such as those under review today. Production resumes and employees are called back to work. I'm seeing the benefits today that helped create the conditions which enabled Felman Production to join the domestic industry and become a significant producer of silicomanganese.

There's no doubt in my mind that the antidumping orders under review today, as well as the antidumping orders of silicomanganese from India, Kazakhstan and Venezuela, were essential to the decision by Felman's investors to purchase the Letart facility in 2006 and restore it to operating condition. However, there's also no doubt in my mind that if any of the orders are revoked, the producers in Brazil, China and the Ukraine will resume exporting dumped silicomanganese to the U.S.

The public record indicates that these countries have significant excess capacity, their economies are all slowing down and they can get better prices for silicomanganese in the United States, and they can in other markets. As indicated in our producer questionnaire response, Felman Production strongly believes that the U.S. market will be flooded with dumped product within four to six months. I do not believe that Felman Production would be able to hold out very long against such a flood of dumped imports. I'm very concerned that all that Felman Production and our employees have been able to accomplish since 2006 would simply be washed away. I ask that you not let that happen. Thank you.

MR. NUSS: Good morning, Chairman Williamson and Commissioners. I am Barry Nuss, Chief Financial Officer of Felman Production. I joined Felman Production in January 2011. Prior to that, I worked for 30 years as a finance executive in the metals industry, including 23 years with a multinational ferro alloy producer.

I am here today to talk about four issues. First, the production of silicomanganese is highly capital intensive. The submerged arc furnaces that we use to smelt the manganese ore, quartzite, coke and coal and other inputs ideally should run 24 hours a day, seven days a week, 365 days a year, with intermittent, brief planned shut downs for maintenance. Happily, we currently are working close to capacity, but sudden changes in the market, such as a large influx of dumped imports from Brazil, China and Ukraine, can lead to a collapse in expected prices and force shutdown of one, or more, of our furnaces. This, of course, would cripple our ability to cover fixed costs.

Second, as you've heard, the market for silicomanganese is so intensely price driven that we cannot automatically pass along increases in our raw material costs in the form of higher prices. Thus, we are continuously under intensive pressure to keep our raw material costs as low as possible. That said, the reality is that we have little control over actual raw material costs. Just as silicomanganese is a commodity product, so, too, are the raw materials we use to make silicomanganese, such as manganese ore, quartz, coke and coal. The same kinds of market forces that drive the price of silicomanganese also drive the prices of these raw materials.

We do the best we can to use them as efficiently as possible. We use about four tons of material for every ton of saleable product. The remainder consists of such by-products as slag and dust, raw materials that were consumed during smelting and fines that are generated during crushing. We try to recycle as much of our fines as we can. We also sell the slag to a company that processes it for use in the construction of roadbeds. So we are really trying to squeeze every last bit out of every ton of raw material that we can to keep our raw material costs as low as possible.

Next to raw materials, the single largest input in the production of silicomanganese in terms of cost is electricity. It accounts for roughly 25 percent of our total cost of production. As one of the top consumers of electricity in West Virginia, Felman Production is in the process of applying for a special power rate under a recent West Virginia law that is tied to economic conditions and performance. Based on certain metrics, when Felman Production profit margins are high, it would pay more for power, and when its margins are lower, it would pay less.

Our goal is to raise Felman Production to world-class status. Those plans include investment in a new furnace to expand our capacity and production. By doing so, we will have a greater amount of volume to spread across our fixed costs which will bring down our per unit costs and further improve our competitiveness.

Third, our production facility in West Virginia had significant operational reliability issues when we acquired it. By reliability issues, I mean such things as whether a furnace can be counted on to operate reliability, or whether there is a significant risk of unplanned outage. We have invested substantially more than the original acquisition cost in 2006 to address these reliability issues, which means there were fewer resources available for investing in new equipment.

Finally, our operating income/loss position over the period of review as a whole has been in the red. Now, some of this is, of course, attributable to start up costs in 2006 and the collapse of the market and prices in 2009. But the point is that until we can increase our operating returns to where they need to be to justify the investment of tens of millions of dollars to raise Felman Production to world-class standard, those expenditures can't, and won't, be made.

However, we at Felman Production are cautiously optimistic about the future. Prices for silicomanganese have trended upward as our economy continues to recover, albeit slowly, from the effects of the recent economic crisis. Steel production in the U.S. is on the rise, and equally important, the plant's reliability has improved significantly in the last couple of years. In short, we believe we are close to turning a corner.

Whether Felman Production can justify making investments necessary to raise its status to world-class standards depends on a number of factors, including, in particular, whether the U.S. market, which accounts for the vast majority of our sales, will continue to be as attractive a market as the one that Vlad described in his testimony. I can't think of anything that would undo that faster than revoking the orders on Brazil, China and Ukraine and allowing our market to once again be flooded with dumped imports of silicomanganese.

Since customers put a premium on finding lowest price, Felman Production would likely quickly be overwhelmed by dumped imports. Given a choice between trying to sell our products at unsustainably low prices or simply cede market share, we would ultimately be forced to do the latter as we would not be able to afford the cost of our raw materials and electricity. That would mean shutting down the furnaces. Of course, it doesn't have to be that way, and I firmly believe it won't if the orders remain in effect. Thank you.

MR. BROWN: Good morning, Chairman Williamson and Commissioners. I am Steve Brown, President of Local 1-00639 of the United Steelworkers Union which represents the workers at the Eramet Marietta plant. I'm here today on behalf of the United Steelworkers and the workers at the plant who, without a doubt, will be directly affected by the Commission's decisions in these sunset reviews.

The United Steelworkers are extremely concerned about the devastating impact that a new wave of dumped silicomanganese imports would have upon its members and their communities. I've been working at the plant for 24 years. I started as a submerged arc furnace operator, and I'm currently driving a Caterpillar scoop loader to transfer manganese ore from the inventory to our mixing operations. The steady employment at the plant has allowed me to support my family, purchase a home, raise my daughter and send her to college. It's a middle-class life that I'm very proud of.

The Marietta plant is one of the largest industrial plants in Washington County, Ohio. It provides medical insurance to its employees and their dependents. Our plant has been in operation for over 60 years, which we are celebrating an anniversary this year. It has provided generations of workers with the opportunity to earn a good living, support their families. The plant and its workforce are integral to the economy of the community, which would be devastated by job loss.

I saw first hand the devastation that dumped imports did to our people in the early '90s when friends and co-workers were laid off. Their lives turned upside down, and that fact, at that time I found out I was number five from the gate. In other words, I would have been laid off if five more of us would have been laid off. I cannot explain to you how scary that is, trying to raise a family knowing you're going to be possibly laid off.

We workers have sacrificed and sought to help, to improve the efficiency and productivity at the Marietta plant. Our efforts, along with the investments and improvements made by the company, have allowed our plant to make great strides in terms of operating efficiency and environmental protection. Nevertheless, we cannot compete with dumped imports that are sold at below cost prices and are made in plants that are not subject to meaningful environmental requirements and provide no rights or protections for their workers. For this reason, I am deeply concerned that my livelihood, and that of my family, and the livelihoods of other workers at the plant, and their families, would be at serious risk if the antidumping orders are revoked.

I have no doubt that it would be the workers who would bear the brunt of the new wave of dumped imports. We simply cannot afford to lose jobs in Washington County, Ohio. I urge you not to let that happen. We need our government to work for us more now than ever to keep these needed trade remedies in place to maintain an even playing field. Thank you very much.

MR. MARTIN: Good morning. My name is Roy Martin, Treasurer of Local 5171 of the United Steelworkers Union at the silicomanganese plant owned and operated by Felman Production in Letart, West Virginia. I began working for Felman as a machinist shortly after the company purchased the plant in 2006 out of bankruptcy. I'm currently now a millwright. From 2007 to 2009, I was also the president of USW Local 5171.

Since the plant opened in 2006, we went from about 60 workers to now having 256 employees, including 211 USW members. The plant is old, but we are constantly working together with the company to solve problems and implement improvements and increase our company's competitiveness. The company has spent millions to improve the plant, the production, quality, safety, environmental compliance and efficiency. The company also has additional plans for improvements, so it's really an ongoing process for both the workers and the company and something we are all very proud of. I'm also very happy to tell you that there has been no lay offs at the plant, not even during the economic crash in 2008. We all kept working in various ways.

Since 2010, we have what's called a gain sharing program where employees can receive additional wages for gains made in areas like production, furnace up time, safety and quality. Lately, this has been working very well as it provides workers an additional incentive to improve operations and to have even more direct stake in the outcome of our work and the plant's competitive success.

It is because of these antidumping orders have worked that we have been given a fair chance to get these jobs, make improvements to the plant operations and allow the company to grow, but let there be no doubt, if the orders are not continued, we will be right back where we started, with little, or no, chance for a future. On behalf of the workers at the Felman plant and my USW members working there, I urge you to keep this order in place so we can continue to have a future at Felman. Thank you for this opportunity to testify.

MR. BUTTON: Good morning. I'm Kenneth R. Button, Senior Vice President of Economic Consulting Services. There are a number of conditions of competition that characterize the U.S. silicomanganese market. These conditions of competition, which are listed in Slide 1, were cited by the Commission in the prior investigations and continue to be applicable today.

Silicomanganese is a commodity product consumed in bulk form. While produced in grades with slightly different chemistries recognized as ASTM grades *A, B* and *C,* the vast majority of the silicomanganese consumed in the U.S. is Grade B material. Product with a chemistry other than those specified by the ASTM is still viewed by the market as silicomanganese. As a commodity product, silicomanganese from different sources is highly interchangeable. In previous determinations, the Commission has concluded that silicomanganese from the subject countries is fungible among themselves, with nonsubject imports and with the domestic like product. Given the high degree of interchangeability among sources, silicomanganese is sold primarily on the basis of price.

In the original investigation, the Commission found that customers viewed price as a very important factor in purchasing decisions. In this review, purchasers continue to identify price as the most important factor in making purchasing decisions, more important than availability, quality and chemistry.

One important change in supply since the original investigation is the addition of another domestic producer. Felman Production reports that its entry into the domestic industry was made possible by the beneficial effects of the antidumping orders on the countries subject to this review, as well as the orders on India, Kazakhstan and Venezuela.

Silicomanganese is used almost exclusively in the steel industry. Therefore, U.S. demand for silicomanganese normally rises and falls with the level of U.S. steel production, particularly, production by mini mills which use larger quantities of silicomanganese than do the integrated steel producers. Since the cost of silicomanganese accounts for only a small portion of the total cost of producing steel, the demand for silicomanganese is inelastic, and therefore is little affected by the level of silicomanganese prices.

The prehearing report indicates that Brazil, China and Ukraine together accounted for approximately two-thirds of total global production of silicomanganese from 2006 to 2010. There are four producers of silicomanganese in Brazil, 423 producers in China and three producers in Ukraine. In this sunset review, however, the Commission received usable questionnaire data from only one producer in Brazil, one producer in China and two producers in Ukraine; thus, the foreign industry data are very incomplete. The available data show clearly that each of the subject countries has silicomanganese production capacity far in excess of home market consumption, significant unused capacity, the ability to effectively expand capacity by switching furnaces from ferromanganese alloy production, and significant export volumes during the POR.

The record also shows that any claim that the subject producers compete under different conditions of competition is simply incorrect. While subject imports in the U.S. market have been minimal, all three subject countries, for example, have competed extensively in Europe during the POR.

Also, while there may be some differences in product chemistry, the Commission has rejected the claim that higher phosphorous content in the Ukrainian silicomanganese material affected substitutability.

The prehearing report characterizes the Brazilian industry as having, "moderately large capacity, moderate capacity utilization, large share of exports and relatively high inventories". According to the public data in the prehearing report, the volume of Brazilian silicomanganese production was so large as to be 48 percent greater than the total volume of Brazilian apparent consumption.

Slide 2 presents Brazilian export statistics which show that Brazilian export volumes declined from 2006 to 2009, but then increased to 2011 to a level almost equal to 2006 exports. All of these data show that a significant portion of Brazilian exports are to South America. They also that Brazil exports significant volumes to Europe. From 2010 to 2011, exports to the EU nearly doubled, from about 13,000 short tons to 24,000 short tons. In fact, Brazil's second largest export market in 2010 and '11 was the EU, shipping via the Netherlands.

Brazilian producer Vale has not been exporting to the United States, even though it currently is subject to a zero deposit rate. Why? It is clear from the U.S. import statistics that this zero rate was achieved by making small shipments to the U.S. market at AUVs far above the overall import AUVs, and that Vale did not ship true commercial quantities to the U.S. market, and it could not do so without pricing at a far lower level; thus, the absence of shipments to the United States is not an indicator of a lack of interest in the U.S. market or that the order has not restrained the volume of Brazilian imports.

The prehearing report states that, "China's very large and growing capacity and its low and falling capacity utilization increase China's ability to export to the U.S. market". Given the lack of participation by the Chinese industry in this investigation, the Commission should conclude that China would export significant volumes of silicomanganese to the U.S. market if the orders were revoked.

The prehearing report characterizes the industry in Ukraine as having large capacity and a small share of sales to its domestic market. The corrected record shows that Ukrainian industry in fact has substantial unused capacity. Moreover, as shown in Slide 3, Ukraine exports large volumes of silicomanganese. In 2011, Ukraine exported over 720,000 short tons of silicomanganese at very low AUVs.

As others have discussed today, after the Commission's determination in the original investigation, subject imports dropped sharply, U.S. prices improved and the conditions of the industry improved, and indeed, Felman became an additional U.S. producer. Given the Respondents' large capacity, significant unused capacity and large volumes of exports, revocation of the orders would likely cause significant volumes of dumped imports to re-enter the U.S. market.

As shown in Slide 4, in 2012, U.S. steel production, and thus U.S. silicomanganese demand, increased while steel production in Brazil, South America and the EU fell and is projected to continue to be weak compared to the U.S. market for the foreseeable future.

Thus, the differential between silicomanganese prices in the U.S. and the E.U. markets has increased in recent periods, with the U.S. price being higher. As a result, the U.S. market is becoming increasingly attractive as an export destination.

Furthermore, as the Department of Commerce has determined, the subject imports to the United States would likely be sold at dumped prices. Given the commodity nature of silicomanganese, subject imports would of necessity be offered at low prices in order to gain market share.

The U.S. industry would be forced either to lower its price so as to meet import price competition or to maintain price and lose sales volume.

Although data with respect to the domestic industry are confidential, it is clear that the U.S. industry is vulnerable to the continuation or recurrence of material injury.

While the domestic industry has recorded significant improvements in capacity, production, shipments, and employment since the original investigation and subsequent Sunset reviews, the industry remains weakened from the global recession of 2009.

The significant capital investments made by both Eramet to upgrade its plant and by Felman to purchase production assets and to start production would be jeopardized by the resumption of dumped imports from these subject countries. Thank you.

MR. SALONEN: That concludes our presentation, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you. Before we begin questioning, I want to express my appreciation, the Commission's appreciation, to all of the witnesses who have taken time from their businesses to come to present testimony today and also to union representatives. We appreciate your presence here.

We'll begin this morning our questioning with Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you, Mr. Chairman. I would also like to thank all of you for appearing here today. I'd like to begin with a very basic question on the industry and that is the firms responding to the Commissioner's questionnaires indicated that silicomanganese was a relatively small share of the ultimate cost of steel production.

What affect does this relatively small share of end cost have on the demand for this product?

MR. BUTTON: This is Ken Button. Commissioner, with respect to the demand, because it has a small share in the overall cost to produce the product, it's demand tends to be in-elastic. In that sense, the absolute level of the price of silicomanganese as it rises and falls does not have a particular great impact on the volume demanded of silicomanganese.

However, at this point I would make a distinction between the low level of elasticity of demand and the very high level of elasticity of substitution between competing products.

In other words, the subject country product from Brazil, China, and Ukraine is fungible with that of the U.S. produced product, and very small changes in the relative prices of those will switch demand from one to the other.

So although the quantity demanded by the industry will not change because of absolute price levels, there's -- industry selection of a supplier would change very quickly based on price differentials between the difference sources.

COMMISSIONER JOHANSON: Thank you for your response. I'd like to follow-up with another kind of basic question just on a product itself.

Some firms active in U.S. silicomanganese market have indicated that ferrosilicon and ferromanganese can be combined and can be used as a substitute for silicomanganese in the same end-use applications. Do end-users actually use these two products combined as a substitute for the product?

MR. BURDETTE: In my experience, there is only two companies who have made this transition, and it was basically because at various points in time, primarily in 2004 and 2006 where the price of silicomanganese exceeded the cost benefits they would get out of making the switch.

But for the most part, it's a highly suspect practice, and for the most part, the metallurgists in the plants absolutely reject this because, you know, they're very comfortable with the historical makeup of their products.

COMMISSIONER JOHANSON: Yes.

MR. MIKHYEYEV: I would like to add, if you'll allow me, that yes, silicomanganese can be replaced with ferromanganese, high carbon ferromanganese and ferrosilicon, but silicomanganese is more efficient to use because combination of silicon and manganese is more efficient to eliminate oxygen from liquid steel. Because they combine together and manganous silicate which is going into slag, and this process is much more efficient versus if you are going to use ferromanganese or ferrosilicon separately.

COMMISSIONER JOHANSON: All right. Thank you for your responses. I'd now like to turn to a question specifically regarding Brazil. The Brazilian Industry is much smaller than that of China. I think it's something like 28 smaller in terms -- 28 times smaller in terms of production than China and about five times smaller in comparison to production from Ukraine.

Is it fair to say the removal of the order from Brazil would not have as big an impact on the U.S. market if that were to occur as opposed to the other two countries, Ukraine and China?

MR. BUTTON: Commissioner, this is Ken Button. You are correct that the Brazilian Industry is small in absolute size as compared to those of Ukraine and China, but I think it would be not correct to say that suggests that there would be a lower likelihood that Brazil would enter and participate vigorously in the U.S. market.

I would remind the Commission that in 1993, in the 91/93 original period of investigation when those relationships were the same, in other words, Brazil was a much smaller market, the largest single import supplier to the United States was Brazil. Their volume at that time of, you know, I've already said, 71,000 tons was substantially larger than that provided by China or Ukraine.

I would additionally note that they were able to increase their volumes of supply to the U.S. market at that period very rapidly as well, and they did so at declining average unit values throughout that period. So I think that today our view would be that Brazil continues to have substantial excess capacity.

As I cited, perhaps 48 percent greater per total production than their domestic industry steel industries would consume, but they have a great excess capacity which could come to the United States.

COMMISSIONER JOHANSON: Yes. Thank you, and Mr. Salonen, please?

MR. SALONEN: Thank you, Commissioner. Yes. And as you also heard in the testimony from the witnesses earlier, the price sensitivity of the domestic industry for silicomanganese particularly when you have publications such as Ryan's Notes or Metal Week that transmit publicly, you know, the prices in the market throughout make it such that you don't really need a very significant volume of resurgence in dumped imports to have a significant impact on prices.

In fact, in our pre-hearing brief, we relate a story from Ryan's Notes about -- if you'd go back and take a look at what happened to prices during the period of review, there was a large increase in 2008 that started from what was a relatively small, given the size of the market, a relatively small change in terms of a bid from a purchaser that got rid of an inventory overhang.

So as Mr. Button, as Dr. Button has stated, you're absolutely correct. Brazil's industry is smaller than China's. It's smaller than Ukraine, but it won't take a lot of Brazilian imports to have a significant impact on the market.

MR. BURDETTE: In my many years of experience, I have never seen a foreign competitor come into our market and sell at the current market prices. They always come in and they try to buy market share.

So no matter who comes in, whether it's from Brazil, China, or the Ukraine, it's going to be the ultimate and immediate effect which is a downward price or pricing for all of us and small quantities.

COMMISSIONER JOHANSON: Mr. Kramer.

MR. KRAMER: I think a very important aspect of this case is the nature of the product, the nature of the market, and the pricing mechanisms in the market. And because of the way the product is sold, and because of the way prices are tracked, and because of the way prices are adjusted if you have a single sale of a very small quantity of product, that sale is reflected in the benchmark prices, and then the benchmark prices are reflected in contract prices. So it's a market which is highly sensitive to import competition even in very small quantities.

COMMISSIONER JOHANSON: Yes. Thank you, Mr. Kramer. And I'd like to continue speaking on Brazil for a moment or two. Vale argues that it did not export to the United States, it is not exporting to the United States. Even though there are zero duties, it would have to pay a depositor to Euro at this point.

In addition, Vale points out that it's not shipping to Canada. Are you all by chance aware of what the situation is in Canada that might be responsible for that?

MR. BROWN: I believe I can answer that. I'm Steve Brown, President of Marietta local. Vale's got all their employees up there locked out off the jobs. That's why they're not shipping to Canada.

COMMISSIONER JOHANSON: Okay. Perhaps you could elaborate on that in the post-hearing brief. That would be helpful. Thank you.

Now, I was also wondering if you all could possibly discuss the situation regarding South Africa no longer -- the plant close in South Africa, what impact that would have on the U.S. market.

MR. MIKHYEYEV: As we know, BHP Billiton announced at the beginning of this year that they're going to stop producing silicomanganese.

COMMISSIONER JOHANSON: Is that -- I'm sorry. I don't recall. Has that happened yet, or that will occur, they will not --

MR. MIKHYEYEV: No. It happened.

COMMISSIONER JOHANSON: It has happened, okay.

MR. MIKHYEYEV: It happened in the first quarter of this year.

COMMISSIONER JOHANSON: Okay.

MR. MIKHYEYEV: Okay. BHP Billiton in South Africa announced that at their facility Metalloys in South Africa they're going to stop producing silicomanganese because of high prices for energy. But you should know that in South Africa besides BHP, there is two other major producers of silicomanganese, Transalloys and Mogale Alloys and their cumulative capacity, annual capacity, is 160,000 metric tons of silicomanganese. So despite BHP stopping producing silicomanganese, South Africa is still a major exporter and producer of silicomanganese, and they continue to ship it to United States.

Besides BHP, still have facility in Australia, Temco, which is continuously shipping silicomanganese also including United States.

COMMISSIONER JOHANSON: Okay. Thank you. My time -- just real quickly, Mr. Button. My time is expired.

MR. BUTTON: Although they have stopped producing silicomanganese, they are not going out of business. They are going to be producing another ferroalloy product and can switch back, you know, if electricity prices or other economics switch in their favor.

COMMISSIONER JOHANSON: All right. Thank you. I appreciate it. My time is expired. Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you. Just continuing on that line of questioning, did I understand, Mr. Mikhyeyev, that you said that South Africa is still shipping and it's just these other firms that are going to be shipping to the U.S.?

MR. MIKHYEYEV: There are two other producers of silicomanganese, two companies. One is

Mogale Alloys and another one is Transalloys. Their cumulative annual capacity is 160,000 metric tons of silicomanganese, and they continue to produce silicomanganese and they do ship silicomanganese to the United States.

CHAIRMAN WILLIAMSON: Okay. And are they as, shall we say, as well situated to sort of take over the BHP market or?

MR. MIKHYEYEV: We don't know exactly the cost of production of these facilities because it is confidential information, but we assume they have a better situation probably.

Now, this is different companies. We know that BHP is focusing more on manganese ore excavation than on silicomanganese production and they're selling more manganese units in form of manganese ore rather than silicomanganese.

So apparently Mogale Alloys and Transalloys, they have better situation producing silicomanganese; that's why they continuously do it.

CHAIRMAN WILLIAMSON: Okay. Thank you. Mr. Salonen?

MR. SALONEN: Mr. Chairman, thank you. I would also ask Vlad to point out that there are also new suppliers in other countries who are exporting to the U.S.; isn't that correct?

MR. MIKHYEYEV: Yes. This year, in 2012, we saw some shipments from Europe, for instance, from Italy, from Spain, from Macedonia that were coming to United States. So, yeah, besides South Africa, there is plenty of other sources of silicomanganese which is going in United States.

CHAIRMAN WILLIAMSON: And what is incentive for those sources to start coming to the U.S.?

MR. MIKHYEYEV: Price. Price in the United States is higher. At this moment, I can tell you that price for silicomanganese in the United States is above $1,300 per metric ton ex-warehouse when in Europe, for instance, right now price is $1,200 per metric ton ex-warehouse.

So it's better to ship in United States. Freight is insignificant between Europe and United States. That's why they ship into United States.

CHAIRMAN WILLIAMSON: Okay. Thank you. Mr. Burdette?

MR. BURDETTE: Chairman, it's got to be pointed out that prior to the collapse of the global economies, there were substantial investments on a global basis in many countries to increase the capacity of manganese alloy producers.

So I think that you look at places other than -- like in Asia, Korea, and places like that. There's substantial excess capacity for these companies to bring in silicomanganese.

CHAIRMAN WILLIAMSON: Okay. Thank you.

MR. BURDETTE: Oh, and just one other point too that we should bring out that BHP didn't really shut down the furnaces. They just switched the furnaces to another product, and they can switch it back to silicomanganese whenever market conditions improve. I mean, that's a standard practice in the industry today.

CHAIRMAN WILLIAMSON: Okay. Thank you for those answers.

Mr. Martin and Mr. Brown, the domestic industry has testified a lot about and you've also mentioned some of the investments that improving that the companies have made in their plants, new equipment and things like that.

I was just wondering, what investment has been made in the workers in terms of increasing their competitiveness and productivity?

MR. MARTIN: There's been improvements for the benefits for employees, wages increases, and better healthcare, better contract benefit package since 2006. It's continued to grow.

CHAIRMAN WILLIAMSON: Okay. Thank you.

MR. BROWN: At my plant, we have a safety incentive program that's up and running. It's very -- a lot of people have more input than we ever had before. I'm sorry, I'm Steve Brown.

CHAIRMAN WILLIAMSON: I'm sorry. Thank you.

MR. BROWN: But we have a lot more input than we ever did before. The company is really working with us. We're trying to make things go as best we can.

CHAIRMAN WILLIAMSON: Good. Okay. Thank you.

And I think, Mr. Martin, were you the one that mentioned the game program?

MR. MARTIN: That was me. Gain sharing.

CHAIRMAN WILLIAMSON: Yeah, gain sharing. Right. Yes.

MR. MARTIN: Yes. It's a -- there's a calculation of percentage of production, safety, and efficiency. The safety is involved with no loss time, accidents, and no reportable injuries for OSHA.

We've done exceptionally well since 2006. We've gained -- the safety has gotten extremely well. We've done a lot of training, and the employees have put a lot of input in to making the place better and productive.

And anywhere there's a gain, that's the benefit for the employees. The gain is every quarter, three months, the employees get a check. It's the same for every employee.

CHAIRMAN WILLIAMSON: Okay. Thank you.

Mr. Brown, is there a similar program at Eramet?

MR. BROWN: No, sir, there's not. We're getting ready to come up on contract negotiations, and that's one of the things we're looking at.

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

Mr. Salonen, can you explain your relationship with the Ukrainian producers of silicomanganese and who has control over the level of import from the Ukraine?

MR. SALONEN: Mr. Chairman, if I may, Eric Salonen. We have of course laid out in response to questions from the staff and in your pre-hearing brief the circumstances under which Felman Trading trades in Ukrainian and other ferro alloy products from that area of the world.

We're happy to address any further

questions, but those obviously get into areas that are business confidential, and so we prefer, if we may, to address those in any detail that the Commission would like in a post-hearing submission.

CHAIRMAN WILLIAMSON: Okay. Thank you. What about -- does the same reply to the relationship with the Georgian producer and the relationship between the Georgian producer and the Ukrainian one?

MR. SALONEN: Yes. We're happy to address that in the post-hearing.

CHAIRMAN WILLIAMSON: Okay. The same may apply to this too. Their purview group controls or has ownership interest, and there are a number of producers, you know, globally around -- you know, a number of countries, including Ukraine, Romania, Georgia, and the U.S., and what level of control do these owners exercise over marketing supplier arrangements of their assets? It's the same answer?

MR. SALONEN: If you don't mind.

CHAIRMAN WILLIAMSON: Okay, good. Well, good. Well, all those questions you can deal with post-hearing.

MR. SALONEN: Very good. Thank you, sir.

CHAIRMAN WILLIAMSON: Okay. Thank you.

I don't know whether Eramet would have the same response regarding the relationship it has with two Chinese producers or whether -- can you describe those now, or do you want to do it post hearing?

MR. KRAMER: We'd be happy to respond to that post-hearing.

CHAIRMAN WILLIAMSON: Okay. If the Commission were to determine that either Eramet or Felman or both had, you know, related to the subject producers are importers and exporters but that the appropriate circumstance does not exist to exclude them from the domestic industry, please discuss whether the Commission should consider this relationship in conducting its analysis how subject imports are likely to compete in the domestic market for purposes of its cumulation analysis and then likely volume import analysis.

MR. SALONEN: Eric Salonen for Felman. As we laid out in our brief in the public version, you know, whether or not Felman Production is considered to be a related party, we don't believe that that has any impact on the case because there's no basis to exclude them from the domestic industry, again, for reasons that we're happy to discuss in the post-hearing.

We also don't believe it should have any impact on the Commission's cumulation analysis. All of the factors that the Commission traditionally considers are fully supported here, and so we don't see that that has any bearing or would have any reason to believe that it would lead the Commission to not cumulate imports from one country with any of the other countries.

CHAIRMAN WILLIAMSON: Okay. Do you think these relationship should be any bearing at all on our -- should be taken into account in any way in our analysis?

MR. SALONEN: I think that when the commission has a full record before it, it will see that you can obviously take them into account but that it will not affect your analysis.

CHAIRMAN WILLIAMSON: Okay. Does Eramet have a, Mr. Kramer, comment on this issue?

MR. KRAMER: With respect to Eramet's affiliate in China, in that case, it's a single company out of more than 420 producers in China. Yes, so whatever the relationship is would not have a material affect on the analysis. Also, this company does not export to the United States.

CHAIRMAN WILLIAMSON: I'm sorry. I didn't hear that last part.

MR. KRAMER: The company also does not export to the United States.

CHAIRMAN WILLIAMSON: Okay. Okay, if anything further you want to say about this issue of how we should take these relationships into account in post-hearing, we would appreciate it. And my time has expired.

Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Mr. Chairman. I would just note that in my nine years here, this is the first time I've gotten to participate in a full hearing on silicomanganese.

I mean, we've done expedited reviews, and as a Commissioner, it's really hard to learn very much in an expedited review, so I thank you for coming to teach me something about this product today.

Dr. Button, let me begin with you. You earlier had referenced Brazil's large exports in the early 1990's, and I was wondering whether you had an opportunity to consider the inflation rate in Brazil in those years and whether that had an influence on the level of exports from Brazil to the United States.

Now, I could clarify that based on the information that I have available, Brazil was really wrapped up in extraordinarily high inflation at that time. Hyperinflation in which the rate got close to 3,000 percent for the year 1990.

Fell all the way back to somewhere around 400 percent in 91. Then in 92 it was a little below 1,000 percent. 93 a little below 2,000 percent. By the time you get to 94, it's over 2,000 percent. And then the Reale plan was put into affect in 1995, and Brazil was successful in ringing the hyperinflation out of their economy.

But the reason that I'm curious about this is that my own experience with commodity markets and countries with hyperinflation, and these would be primarily Argentina and Brazil, is that you really have a difficult time running a business effectively in a hyperinflationary environment.

It's very difficult to invest in that country because you can't project the future. It's difficult to borrow money at a commercial rate. It's just very hard to do that.

So what I have seen in other products is that there's a tendency to produce something that can be produced and exported and to get a stable currency.

So in my experience, hyperinflation has encouraged more exports than otherwise would be the case. And I'm wondering whether you had a chance to consider if that was an issue at the time of the original investigation.

MR. BUTTON: Commissioner Pearson, thank you for the question. I have, I guess, two pieces to the response. One is with respect to preparations for today. No, I have not assessed the issue of hyperinflation, but I'd be happy to do so for the post-hearing brief.

And with respect to the potential impact of that on Brazilian behavior during the original period of investigation and its relevance for today, I'm happy to comment on that as well, although I would have the following initial thoughts is that some of the things that existed then that exist now which do not include hyperinflation today is export orientation.

Fundamentally, the Brazilians produce a lot more than their own market can absorb. Secondly, they have substantial unutilized capacity -- the figure is confidential -- today as they did then. And they continue to export, not just in their local markets but they go elsewhere such as the European Union which has, of course, a major steel industry and go to the markets where the product that they sell has -- can find attractive prices which I think now and is increasingly with the United States. And it was at that point, also, the United States was very attractive.

So I think today it has many of the same factors that -- to draw the Brazilian volumes to the United States, but I will be pleased in the post to address specifically the issue of the hyperinflation that you raise.

COMMISSIONER PEARSON: Okay. Thank you because I'm hoping that hyperinflation doesn't recur, although certainly we can't completely rule that out. But if there was -- if you have a projection that it will recur within a reasonably foreseeable time frame, then I might factor it into my thinking in a different way than I would otherwise.

MR. BUTTON: Yeah. I don't have a basis for at this point suggesting that it is going to occur, but I will be happy to take a look at some of the IMF and other data and see if there's any -- those who were suggesting it might.

COMMISSIONER PEARSON: Yeah, one by Orin Moore about Argentina, but that's a different story.

But no, it just seems to me that the conditions of competition with regard to imports from Brazil are rather different now than pertained in the original investigation, so that's why I wanted to raise this issue.

MR. BUTTON: Right. And my point is I was trying to distinguish there would be some that were different, but there are some which I believe continue to be germane, the same, today.

COMMISSIONER PEARSON: Right. Now, you earlier made the case that despite the fact that Vale has had the zero duty rates since 2006 and has not exported to the United States that we should not take that as guidance that they would be unlikely to export if the duty was revoked, the order was revoked.

Could you elaborate on that, please, and then help me understand why that's the case because, of course, it would be easy for me to look at that simple fact and reach the opposite conclusion.

MR. BUTTON: Yes, Commissioner Pearson, the economic relevance, the economic meaning in a zero deposit rate is weakened if the volumes involved are very small and they're not truly commercial quantities in the commercial sense of an ongoing business.

It is not uncommon for us to see in our business here, in our trade, exporters provide small volumes to the U.S. market relatively high prices and get a low margin.

It's a far different cry for them to engage in a sustained commercial relationship with real commercially meaningful volumes and to do that at non-dumped prices.

Brazil has not done that. The volumes that they've sent which were the basis for the margins that they got were not substantial in that sense, and not commercial -- you know, and commercially sustainable relationships. Therefore, I don't think that is a good predictive basis for you to come to a conclusion that they wouldn't dump in the future.

COMMISSIONER PEARSON: Right, right, but are we conflating the question of what they may have done over a period of time in the mid 2000's in order to persuade Commerce that they deserve a zero duty rate and how they actually have behaved since -- because I understand what you're saying. If you want to get a zero duty rate, it's easier to do it by shipping a modest quantity of stuff at a price that's somewhat either at or above the U.S. market. Then you can prove your point that you're not dumping and then you're released from -- or then you have the zero duty rate. You're not released from the order, from the discipline of the order. Okay.

But given that after they achieve that zero duty rate, Vale did not do anything to take advantage of it, shipping in either large or small quantities. It just seems to me -- you know, I hear what you're saying about what they might have done to get the rate, but it's their lack of action since then that I find curious.

MR. KRAMER: May I speak to that?

MR. BUTTON: It's the, well, the dog that didn't bark. The absence of action suggests that they couldn't do it. In other words, if there's an economic incentive here, you have a higher price in the U.S. market. You have expanding demand on U.S. market, a more buoyant steel industry than compared to others.

They haven't entered, and if they were to do so with a fungible commodity product, what would their pricing need to be? And indeed, they would have to basically buy themselves a place in the market, and there is a danger of underselling.

Now, I would note, if I would note that Respondents' have said in their brief and this morning in the introductory remarks that there was no finding of underselling by Brazil in the original investigation in 1993.

However, I think that was an incomplete

statement because particularly with respect to the decision then, two commissioners found current injury, Commissioners Rohr and -

COMMISSIONER PEARSON: Newquist, I think.

MR. BUTTON: And Newquist found current injury at that time, and Chairman Watson found threat. And when he came to -- a threat decision.

What he said is that, he said something which I think was salient is that "although Brazil's U.S. penetration declined slightly overall from 91 to 93, in this instance, I place more weight on the absolute volume changes as a predictor of future Brazilian presence in the U.S. market, since growing demand over the period of investigation attenuated significant redistribution of market shares during the POI. Accordingly based on the growth in the absolute volume of Brazilian imports during the POI, I find it likely that Brazilian import penetration will rise to an injurious level in the near future."

COMMISSIONER PEARSON: Right.

MR. BUTTON: So I thought the comments that we heard this morning didn't have exactly the correct cast on the Brazilian pricing at that time.

COMMISSIONER PEARSON: Right, but you have to admit that it's an unusual fact pattern relative to what we see in other cases where a firm achieves a zero duty rate and then leaves the market. More commonly, once they get a zero duty rate, they continue to sell oftentimes at increasing volumes.

Mr. Kramer, I'm almost out of time. Please go ahead.

MR. KRAMER: I think that the fact that they didn't ship after achieving zero rates very clearly indicates that the order has had a restraining effect and that they couldn't ship without dumping for the following reasons.

They participated in a series of administrative reviews in which the domestic industry participated and contested their efforts to get a lower rate. In those reviews, they shipped very small quantities, and they shipped the product at prices far above, you know, the competing import AUVs.

Having done that, they achieved a zero rate, you know, through transactions that aren't representative of commercial conduct.

COMMISSIONER PEARSON: We're over my time. If you have evidence that they were trying to sell in the United States at prices that were too high, that would be of interest.

MR. KRAMER: Okay.

COMMISSIONER PEARSON: But what the record tells me is they got a zero duty rate and they left the market, and that's an incongruous situation.

Mr. Chairman, my time has expired.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Aranoff.

COMMISSIONER ARANOFF: Thank you, Mr. Chairman.

I want to add my welcome to that of my colleagues to everyone who's here today. A special welcome to any of you who, like me, were here for the Commission's hearing in the original investigation when I was the Commission staff attorney on this case. Some things stay with you a long time, and Mr. Lewis, my children weren't even born yet then, but they're in highschool now.

Let's start with some questions about conditions of competition. Is it true that the silicomanganese intensity of U.S. steel production is increasing and, if so, why is that and how big an effect on demand can we expect from that phenomenon? So what I mean is more silicomanganese per ton of steel.

MR. BURDETTE: I would say that it is increasing, and a lot of it has to do with improved grades of steel that's being produced that demand more manganese products, but once again, the capacity utilization rate of the long steel producers in the U.S. is still very low at 60 to 65 percent.

COMMISSIONER ARANOFF: So is it in particular the highest strength alloy steel that's using more silicomanganese?

MR. BURDETTE: Well, the high-strength steels use more manganese-related products, silicomanganese, yes.

COMMISSIONER ARANOFF: Okay. Is it a global phenomenon that there's an increased use of silicomanganese per ton for these kinds of products or is it particularly in the U.S.?

MR. MIKHYEYEV: If I may answer this question. We know that it is global because the higher manganese amount in steel of manganese and steel makes steel more solid and hard, and in that case, especially for automotive industry to consume less fuel, you need a vehicle to be lighter, and in that case, you can produce plate sheets which are lighter. At the same time, they're stronger because of manganese content.

So yes, we believe and we see some evidence on the global scale that manganese specific consumption per ton of steel is increasing.

MR. KRAMER: It's increasing at a faster rate in the United States than elsewhere.

COMMISSIONER ARANOFF: Dr. Button?

MR. BUTTON: Thank you, Commissioner. I would just point -- direct the Commission on that issue to Eramet's pre-hearing brief at Exhibit 7 which has a table giving global trends in this.

Although it is, indeed, a global trend that the intensity is increasing, the fact that the intensity is increasing most relatively rapidly in the United States economy as opposed to other industries means that for a seller of silicomanganese following trends in U.S. steel production, you get more bang for your buck by selling in the U.S. market because not only do they have a more robust steel industry, but for each ton of steel, over time they are using more silicomanganese product to make it.

COMMISSIONER ARANOFF: Okay. Thanks.

A staff report indicates that silicomanganese is sold in the U.S. market through a mix of spot sales, short-term contracts, and in some long-term contracts.

Over the period of review, have there been any changes in the prevalence of any of these three sales methods or is it just a mix that hasn't changed in any significant direction?

MR. BURDETTE: Well, I would say that since the mid-nineties, there have been multiple changes in the way that silicomanganese is bought just primarily because of the many changes in the global economy.

But today in our industry on silicomanganese, the vast majority of sales that we have are formula based and they're discounts to formula based.

A lot of that has been mandated to us because of foreign competition coming in buying their way into the marketplace, and by doing that they offer lower prices and the prices are always predicated on the publications.

COMMISSIONER ARANOFF: And for something to be formula priced, does it have to be subject to a contract or are spot sales also formula priced?

MR. BURDETTE: It can be both. If there's a spot sale made of maybe only one or two trucks of silicomanganese and it's reported to the publication such as Ryan's Notes or Platt's Metals Week, then it has a downstream and sometimes almost immediate effect on practically all the contract sales that we have that are formula based.

COMMISSIONER ARANOFF: Okay. Does Felman want to add anything to that?

MR. MIKHYEYEV: Yes. We have both. We have spot sales. We have long-term formula-based agreements. If we are talking about long-term agreements, the most convenient pricing mechanism is formula because in that case you can adjust your price on a monthly basis or weekly basis, depends on conditions of agreement.

And the formula is always connected to publications like Ryan's Notes, or Platts, or AMM, or CRU. And the insignificant sale of, maybe 10 trucks or a quantity less than a barge load can influence this price immediately because it will be reported to the publication. Publication will publish it, and then it will reflect itself in the formula.

COMMISSIONER ARANOFF: Have there been any changes in U.S. environmental regulations during the current period of review, or are there any changes likely in the reasonably foreseeable future that would affect the cost of production of silicomanganese in the U.S. and consequently the competitiveness of the U.S. industry?

MR. SALONEN: I think perhaps Felman's general counsel, Mr. Powell, would be in a good position to answer that.

MR. POWELL: Yes, hi. Robert Powell, general counsel for Felman.

There are current regulations. The EPA has proposed new NESHAP rules that would affect the manganese ferro alloy producers in the U.S. of which there are two, Felman and Eramet.

So we are -- there are proposed rules in place now. We're working with EPA to refine those rules, and the date -- we've got an extension to the end of December for a final rule, and we expect to get further extensions after that.

So there will be changes. What those changes will be, we just don't know at this point but we would assume that there would be additional costs for compliance.

MR. WILLOUGHBY: If I could comment on that as well. Clearly our industry as well as most heavy industries is regulated in many different ways. We have tried to stay ahead of the regulations at our facility as I mentioned in my testimony through the investment of state of the art emissions control devices that have put us in a position where, even though there are pending additional regulations, we feel that in working with the EPA we'll be able to continue to be able to comply. But there will be some additional costs for sure.

COMMISSIONER ARANOFF: Some of my colleagues asked questions about the cessation of production of silicomanganese by BHP in South Africa, but the question that they didn't ask but I wanted to follow up with is has there been a price effect in the U.S. market from that closure, and if there is a price effect, given that you've all testified that you've all testified that there are other sources of supply, how long would you expect a price effect to last?

MR. MIKHYEYEV: Yes. Indeed, after the announcement of BHP that they're going to convert production, for instance, from silicomanganese to ferromanganese, there was a sudden shortage of silicomanganese on the market.

And beginning from March until approximately June, the price was increasing. It went up to approximately 72 cents per pound. But then imports from Europe and from all other markets came into United States and reduced price down, and now we experience price at the level of 58, 59.5 cents per pound.

COMMISSIONER ARANOFF: Okay, so you think the market has already adjusted?

MR. MIKHYEYEV: Yes. Market adjusted.

MR. BURDETTE: It's just like the recent democratic and republic conventions. There was always an immediate bounce, but then reality very quickly returned to the marketplace.

COMMISSIONER ARANOFF: Interesting analogy. Thank you very much.

Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Mr. Chairman, and I join my colleagues in thanking all of you for being here today to help us understand this industry.

I want to begin with something that Mr. Burdette said earlier. You were talking about how you didn't think that foreign companies or foreign countries could come into this market and observe the price that was prevailing in the U.S. marketplace.

I'm wondering whether you can testify to whether Brazilian imports have ever undersold in the /U.S. market. I'm not talking about dumping which is something that the Commerce Department makes a determination about but underselling.

MR. BURDETTE: Well, that was back in the 1990's. That was before I became part of this industry, but I do know that at various times they have tried to come in and, you know, they haven't been very successful, but invariably, every competitor comes into the marketplace. There's only one method of operations that they can follow that would be successful in obtaining any sort of market share, and that's lowering the priced.

COMMISSIONER PINKERT: Dr. Button.

MR. BUTTON: Yes, Commissioner?

COMMISSIONER PINKERT: I'm wondering if you have any comment on that issue.

MR. BUTTON: Well, the record on underselling is confidential and throughout this period. I read to you a comment from the original investigation period by Chairman Watson at that time the expectation that there would be underselling at that circumstance and it was in a commercial context which, you know, was in that sense a little bit different then. They had the rapidly expanding U.S. market and he described the situation which attenuated some of those effects.

I would note that simply as to that historical period which is when we last had real commercial volumes from Brazil entering the U.S. market, it was doing so at a situation where the average unit values or the import values -- these are public -- were declining rapidly and that the values of Brazil's products were coming in below, that is to say they were underselling. Those are the non-subject import volumes.

Now, what would have happened next, you know, that was the issue of Chairman Watson's point in terms of threat. So, as to the other aspects of the record, they're confidential. I can't comment further.

MR. BURDETTE: I'd like to make one more additional comment. As we testified, you know, whenever a competitor comes in the marketplace and they invariably offer lower prices, the existing supplier always gets a chance to match that price in order to retain the business.

And in my memory, there's been at least three or four attempts by the Brazilians to do that, and each time the existing supplier decided to match the prices so naturally there wouldn't be any record of the lower prices, but it had an immediate affect on the marketplace.

COMMISSIONER PINKERT: Mr. Salonen.

MR. SALONEN: Thank you, Commissioner Pinkert. I'd also point out that in the first Sunset review which was a full review, the Commission concluded that the subject imports would come into the U.S. market at initially aggressive prices but that they did not anticipate that the underselling would have to occur or would have to persist for very long before prices in the rest of the market came down to where they were because of the nature of the market, the nature of the product, the conditions of competition, and the rapidity with which pricing information is disseminated through the market.

So the fact that there may not have been a -- and of course, Felman wasn't around during the original investigation, so I only know what I know from the confidential record, but whether or not there was any extensive period of underselling is not particularly germane, I think, to this particular product and the conditions of competition under which it is sold.

COMMISSIONER PINKERT: Perhaps you could expand on that either here or in the post hearing. If there's not a period of underselling, then how does that information get transmitted throughout the marketplace? I'm having a little difficulty understanding what you're saying.

MR. SALONEN: I'd be happy to elaborate on the post-hearing.

COMMISSIONER PINKERT: Mr. Kramer, any thoughts about that?

MR. KRAMER: I think that's a very important point for this investigation. This is an unusual market in that, you know, without regard to the form of the sale, the price is quickly driven to whatever the lowest offer is because every purchaser, you know, is purchasing through this formal bidding process. Suppliers are offering what's essentially identical product, and then -- so the purchaser makes the decision which supplier to select based on the lowest price.

That price then gets transmitted to a publication, so it affects the spot price, and then there also are these adjustment mechanisms in contract prices, so many of them have a formula mechanism that, you know, ties -- each month that automatically resets at the published price.

In a circumstance when it's not that, they have a negotiation which is based on the benchmark, you know, on a regular basis, and there may be a -- if there's a negotiation, maybe a fallback price which is set in relation to the published benchmark.

So it's a market in which, you know, a

single transaction quickly affects price and draws all the other prices throughout the market to that level and where the only way in which you can make a sale is, you know, of an essentially identical product, in a formal bidding process is to offer a more attractive price.

So I think it's, you know, the Commission's seen things like this, but this is kind of an extreme example.

COMMISSIONER PINKERT: Thank you. Now, my next question also may be viewed as touching on business proprietary information and, of course, I don't want you to answer at the public hearing by referring to proprietary information, but I want to ask the general question anyway and see if I can get a general answer.

We've talked about the allegations about Felman's involvement in importation from Ukraine, and I'm wondering, does having an order in place on Ukraine benefit in anyway Felman's imports from Ukraine if Felman has any?

MR. SALONEN: Commissioner, Eric Salonen. Well, Felman Trading has not, in fact, imported from Ukraine, you know, in any sort of commercial quantities, and so it's not clear to me -- maybe I'm not understanding the question, but how the order would benefit Felman Trading?

COMMISSIONER PINKERT: I think there was a suggestion in the opening statement this morning from Respondent that somehow there's a manipulation going on where having an order could be used to benefit operations involving importation, and I want to give you an opportunity to respond to that without touching on proprietary information here in the public forum.

MR. SALONEN: I can say for the public record that Felman Trading does not exercise control over any Ukrainian export of silicomanganese. We address that specifically in our pre-hearing brief. I don't have the page in front of me, but we do explain these contracts that Felman Trading has for marketing this product in the western hemisphere in North, Central, and South America.

And we're happy to elaborate on that in the post-hearing but for purposes of the public record, I can tell you that Felman Trading does not exercise control over where Ukrainian product is shipped. Does that answer your question?

COMMISSIONER PINKERT: Thank you. And in the post-hearing, if you could specifically address what I thought I heard, that there's some sort of a manipulation that enables there to be a benefit with respect to import operations from having an order.

Normally you would think that not having an order would be of greater benefit to import operations, but there seemed to be an intimation that there was a manipulation going on that involved having an order.

MR. SALONEN: We'll be happy to address that in detail.

COMMISSIONER PINKERT: Thank you. And with that, I've come to the end of my 10 minutes, and I thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Johanson.

COMMISSIONER JOHANSON: Yes. Thank you, Mr. Chairman. I appreciate it.

Could you all please comment in the post-hearing brief on the Brazilian Respondent's analysis of prices in the United States versus Brazil. I think this is confidential data, so I don't expect an answer now, but you all addressing that would be appreciated.

MR. KRAMER: We'd like to do that.

COMMISSIONER JOHANSON: Okay. Thank you, Mr. Kramer. I appreciate it.

I have one more question, and that is what roles for the pricing data for Brazil in the original investigation play in our analysis in this current review insofar as the product oversold, the domestic product. The Brazilian product oversold the domestic product prior to the imposition of the order.

Yes, Dr. Button, please?

MR. BUTTON: Commissioner, I would simply say without going into confidential record that the issue -- whether or not there was exclusively overselling by Brazil is a point that we would have to address specifically in the post-hearing brief. Let me make the point that way.

COMMISSIONER JOHANSON: Okay. I appreciate it. Thank you, and that concludes my questions.

CHAIRMAN WILLIAMSON: Thank you. Given the fact that even when operating in full capacity U.S. producers are not able to supply the entire U.S. market for silicomanganese, what is the role of U.S. imports from non-subject sources in the U.S. market?

MR. BURDETTE: Well, it's just like the industries we serve which is the steel industry. I mean, if there was capacity utilization in the steel industry of 100 percent, that would still fill only 80 percent of the normal American requirements during times of normal economic growth.

We have the same dynamics in the manganese alloy industry too. I mean, we welcome fairly-traded material into our marketplace because we're very cognizant of, you know, how our customers need this vital raw material in order to produce the materials that they need, you know, for our homes, our highways, our cars, and things like that. So we welcome fairly-traded foreign competition.

CHAIRMAN WILLIAMSON: Okay. Anyone else want to add anything to that? Okay. Thank you.

Various producers are also importers of silicomanganese. Can you comment on how prices are set for domestic versus imported silicomanganese?

MR. MIKHYEYEV: There is no difference since material is the same. Produced in the United States or imported from outside of United States, it is still silicomanganese, therefore, when you have negotiation with a customer, there is no difference. And they don't require specific origin of silicomanganese to be supplied, just the silicomanganese. Therefore, price is negotiated in the same way for silicomanganese domestically produced or imported from outside.

CHAIRMAN WILLIAMSON: Okay. Mr. Salonen?

MR. SALONEN: Mr. Chairman, I would just add to that, of course, that I think Vlad is speaking for Felman Trading specifically. He obviously doesn't know, necessarily, what other traders might be doing; is that correct?

MR. MIKHYEYEV: Yes. I was talking about our experience on this market.

CHAIRMAN WILLIAMSON: Okay. So things like the greater transportation costs, they -- in other words, the seller in the U.S. is going to source where ever he thinks he can make the most sense for him. It's not a --

MR. SALONEN: Mr. Chairman, if I may, I think one of the things there as was pointed out earlier, transportation costs for shipping silicomanganese are relatively insignificant.

That said, companies such as Felman Production import a significant amount of their raw materials such as manganese ore, for example, and so they're incurring transportation costs to bring those imports into the U.S., so there's an offsetting effect.

CHAIRMAN WILLIAMSON: Okay. Thank you. How are prices reported by Ryan's Notes or Metal Week collected in the United States?

MR. BURDETTE: Well, I'll try to answer that question. Mr. Pat Ryan, I believe, is in attendance at this hearing, so you may want to talk to him off the record, but for the most part, Pat has been involved in our industry for many, many years, and he has an ongoing relationship with both buyers and sellers, and he publishes his price on a twice weekly basis, and he talks regularly to both buyers and sellers, traders and producers, and he follows each transaction.

He's well in tune to the marketplace. He knows whenever there's a sale of a single truckload of material, and from what he tells me, and I believe him, he basically validates any of the prices from both the buyer and the seller's point of view, but for the most part, the information is very quickly disseminated to the entire market, whether it be a buyer or a seller, and the effect is immediate.

VICE CHAIRMAN WILLIAMSON: Now, is he reporting both spot and contract prices?

MR. BURDETTE: The majority of the prices that you see listed are spot prices. The spot prices have more an effect on the contract prices, but as Vlad very clearly pointed out, the majority of contract prices that we have are on a formula basis, so there's a downstream effect.

VICE CHAIRMAN WILLIAMSON: Okay. Any difference in the way he collects the data on sales in

Europe or in China, and how reliable are the prices reported for Europe and China?

MR. KRAMER: Could you repeat the question, please?

VICE CHAIRMAN WILLIAMSON: I was wondering if there was any difference in the way prices, and we're talking about *Ryan's Notes* now.

MR. KRAMER: Yes. Right.

VICE CHAIRMAN WILLIAMSON: Are there any difference in the way that he collects data prices in Europe or in China, and are those prices as reliable or is that reporting as reliable as it is to the U.S. market?

MR. BURDETTE: Well, I can't speak for China even though we have production facilities over there, but in Europe, I mean, we're pretty fairly embedded in that marketplace, and *CRU* has historically been the reporter of market prices, and I'm sure that's going to change and some of the methodology because recently, *Ryan's Notes* has merged with *CRU*, so we'll see more similarities going forward than differences in how the information is collected.

VICE CHAIRMAN WILLIAMSON: Okay. Now, are there any differences with *Metals Week*, the prices that are collected by that either in parts of the U.S.

or Europe or China?

MR. BURDETTE: I would say as a whole there's a trend that usually there's a leader in the changes of market prices, and that's usually *Ryan's Notes*, and that's very quickly validated by both *Metals Week* and by *American Metal Market*. In the industry today, I think most people place *Ryan's Notes* on a much higher basis with *Metals Week* next and the *American Metal Market* last, and that basically has to do with the continuity of the reporters. Pat's been doing it for a long period of time. There's been changes in the reporters in the other publications, so when that happens, you always lose a little bit of continuity.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. Does anyone want to add anything to that? I appreciate that complete answer. I was just wondering, of course you're now only representing one of the four major Brazilian producers who's given us any data, is there anything that you all want to say about the other producers that we might not know about that should be taken into account? I'm just giving you this opportunity since we'll be hearing a lot this afternoon.

MR. SALONEN: Mr. Chairman, we'll see what information we may be able to supply in the post-hearing brief.

VICE CHAIRMAN WILLIAMSON: Okay. And I was also wondering about, I was on the Brazil desk in the State Department many years ago, and at that time, Brazil's competitors would hurt by the state of the shipping facilities, the ports and all, and imagine all that's been cleared up, but I was wondering is there any difference in terms of their ability to ship or cost of shipping out of Brazil compared to say some of the other markets that might be relevant here?

MR. MIKHYEYEV: Yes. We have a true detailed information on shipments from Brazil, and quite quickly we can deliver material from Brazil to United States. It take approximately 15 days to ship material from Brazilian ports to New Orleans and approximately 17 days to ship material from Brazil to Port Rotterdam in Netherlands, so material once accumulated in Brazilian port can be within one month in United States, in warehouse in United States, available for sale on the market, and if you ask about cost, the cost is also insignificant.

You have to spend approximately $35 to ship material from Brazil to New Orleans, then approximately $2.5 dollars to transload into barge and approximately $15 to deliver to U.S. warehouse, so conclusion is material can be delivered to United States relatively quickly and at the cost which is acceptable.

VICE CHAIRMAN WILLIAMSON: Okay. So Brazil doesn't have any infrastructure disadvantages in terms of being able to service the U.S. market compared to say other foreign suppliers?

MR. MIKHYEYEV: We don't know about any disadvantages. I would add that as far as we know from open sources, from certain publications, we know that Vale even has its own fleet, which was built recently in China. They built huge vessels they call Chinamaxes with a capacity up to 400,000 tons each, so basically Vale in particular also can ship material around the world quite efficiently just using its own resources, not to buy the service from outside.

VICE CHAIRMAN WILLIAMSON: Okay. Okay. Thank you for those answers. That's helpful. Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman. I'd like to follow up on an issue raised by Commissioner Pinkert. Mr. Mikhyeyev, our staff tell us that Felman Trading's website indicates that it has an exclusive marketing agreement with the three

Ukrainian producers for their exports of silicomanganese to the Americas, including the United States, so I read that, and my interpretation of an exclusive marketing agreement would mean that Felman Trading has the ability either to make the decision to bring product into the United States or not bring it into the United States, and are you able to say in public whether that's the case, or is that something that it would need to be responded to post hearing?

MR. SALONEN: Commissioner, if I may? Eric Salonen. I can tell you that the way that you described that statement, the nature of the agreement, is inaccurate, but because these are confidential agreements, again happy to address those in detail in the posthearing. But for the public record, Felman Trading does not have exclusive marketing agreements with the Ukranian producers.

COMMISSIONER PEARSON: So your view is the information in our staff report is not correct?

MR. SALONEN: If that is how it is described, then yes, that is not correct, and in fact, we attempted to give you an accurate depiction in our prehearing brief, and we'll elaborate further in the post hearing.

COMMISSIONER PEARSON: Okay. Mr. Mikhyeyev, because the Felman Trading website is in public, are you able to tell me what it ought to say? Why is it confusing me? I guess that's what I'm wondering, and again, maybe you can't answer that in public, and if you can't don't, but you can understand why I'm asking. It's there in public. We can read it. We try to understand it.

MR. MIKHYEYEV: If you allow us, we are going to address this issue in detail in post-hearing brief.

COMMISSIONER PEARSON: Okay. Fine. I accept that. Let me just observe on this issue that if indeed Felman Trading has an ability to substantially control the import of product from Ukraine, it's not at all clear why there would be a need for an anti-dumping duty order. That would seem to be a redundancy in the marketplace, government intervention that isn't needed to maintain the same degree of control over imports that the private sector could do quite comfortably and for their own best interest, so that's why I'm really curious about this and would like to understand it better, and I understand that I will have to wait until the post hearing unless you've decided there's more you should say now?

MR. SALONEN: No, Commissioner Pearson. I would just reiterate what I said earlier is that these agreements do not give Felman Trading exclusive control over Ukrainian exports of silicomanganese.

COMMISSIONER PEARSON: Okay. Well, I'm sure our staff also will be interested in those explanations. Mr. Willoughby, in your statement, you discussed a number of investments that Eramet has made in recent years to bring the plant up to a better condition. For purposes of post hearing, could you please explain going forward whether or how those investments will influence Eramet's production in the reasonably foreseeable future? We send the trend in production that we have on the record. We hear of investments. I'm curious whether anything can be said about the likely trend in production going forward?

MR. WILLOUGHBY: Yes, we'd be happy to elaborate on that. I can say that the investments that I described specifically do not substantially increase our production capacity. It improved our operating performance and our environmental performance, not necessarily the increased productive capacity, but there are additional investments that are being evaluated that could and would increase our production capacity, which will only be possible if the current market situation is continued, and the competitive nature of the marketplace is maintained.

COMMISSIONER PEARSON: Okay. Thank you. We haven't talked a whole lot about China. Does anyone know how long China's 20-percent export tax has been in place on silicomanganese?

MR. KRAMER: I think I can answer that. It was put in place through a series of steps. At the beginning of the period, there was a five-percent rate in place, and on November 1, 2006, it was increased to 10 percent, and June 1, 2007, it was increased to 15 percent, and on January 1, 2008, it was increased to 20 percent, so it's been in place at 20 percent since the beginning of 2008.

COMMISSIONER PEARSON: Okay. And do you have any information regarding possible future adjustments in the rate, if any?

MR. KRAMER: There are published reports indicating that the government of the People's Republic of China is looking at either eliminating or reducing that export tax as well as others on Eramet Marietta products, and I think that's a function of, first of all, declining conditions in China, which are resulting in inventory buildup and perhaps unsustainable government effort to prevent exports.

In addition, the United States and other countries through the WTO have been challenging Chinese export restraints on materials with the result that the WTO has found that such restraints with respect to a number of products violate China's international obligations, and so I think China is perhaps taking into account the possibility of future WTO actions and the concerns about the international community concerns with those restraints.

COMMISSIONER PEARSON: Is it correct that silicomanganese was not one of the specific products on which the export controls were challenged by the United States in the WTO?

MR. KRAMER: That's correct that they were not among the initial products.

COMMISSIONER PEARSON: Okay. So based on what you've said, we would not do well to assume the continuation of the current export tax rate on the product. Are you able to provide any article or any information for the post hearing that would indicate discussion within China about reducing it?

MR. KRAMER: Yes, we can.

COMMISSIONER PEARSON: Okay.

MR. KRAMER: I think it's also worth noting that the rate has changed three times during this period.

COMMISSIONER PEARSON: Yes. No. Thank you for providing that information. It doesn't look to me like it's been at all stable except for the past four years, I guess, but it has a history within this period of review of being adjusted as suits the interest of the Chinese, and one would not do well to build a U.S. decision around any expectation of continuity in the Chinese export duty rate.

MR. KRAMER: That's exactly right.

COMMISSIONER PEARSON: Okay. Good. Thank you very much. Mr. Chairman, I think I have no further questions for this panel. I would like to thank all of you for being here, and I appreciate very much your answers.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. Just following up on the line of questioning that Commissioner Pearson was just on, would you say that the existing export duty in China is the reason that the data in our staff report show China's silicomanganese exports as a share of total production declining to a very low level during this period of review, or are there other reasons that we should be aware of?

MR. KRAMER: I don't think anyone knows for certain, but there certainly was probably a combination of the increase in domestic steel production in China and the imposition of the export tax, and specifically, moving the tax from 15 to 20 percent would seem to have been a tipping point.

MR. MIKHYEYEV: Yes. We have also some evidence that steel production in China is increasing, and this July, for instance, they produced cumulatively more than 61 million tons of steel, which is a record number, and we may assume that exports of silicomanganese were reduced due to increased internal consumption, but at the same time, we expect the Chinese economy is going to slow, and you can imagine what is going to happen with all this excessive quantities of silicomanganese if it's not going to be consumed in China.

I think we know, we don't have specific information, but just some information that some provinces in China, they may be exempt from export duty. Therefore, there is a potential risk that huge volumes of silicomanganese under certain circumstances may go outside of China and to reduce price of silicomanganese everywhere.

MR. BURDETTE: I'd just like to add one comment. I mean, I've been involved in this industry for a long period of time, and up until about five or six years ago, you would not be able to convince anybody, whether they're a steel producer or a raw material producer like ourselves, that China would not continue to be a massive exporter of material, and then all of a sudden the world changed just because of a government policy that was enacted, and we're astounded.

I think all of us would be naive if we didn't believe that at some point in time China could return to past practices, and in fact, I think it's realistic that could happen based upon the massive growth in their industry.

COMMISSIONER ARANOFF: Okay. Do any of the subject producers in any of the three countries currently have customer ties or importer or distributor relationships in the United States, either for the subject product or for a closely related product that would allow them to make a quick entry into the U.S. market, and if not, how long would it take to develop those relationships if the order were revoked?

MR. MIKHYEYEV: We know that Vale has a

trading company in San Antonio in United States, and they can easily and quite quickly start to trade silicomanganese in United States. Even if not mention its own subsidiary in United States, they can offer silicomanganese for United States through trading companies, and these trading companies have long-term relationships with existing consumers in the United States, so we don't see any reason why material wouldn't go to United States immediately. It can go both ways through existing subsidiaries in United States and through trading companies.

MR. BURDETTE: As we know, Vale is a Brazilian company. Their biggest customer in Brazil is Gerdau. Gerdau, because of consolidation in the steel industry since the collapse of the steel industry in 2000, is now the second largest mini-mill producer in North American, and they currently don't sell anything to Gradow, but I think all of us believe that if these duties are lifted, then they would basically extend the relationships that they have in their home country into the U.S.

COMMISSIONER ARANOFF: Okay.

MR. MIKHYEYEV: Gerdau in United States consumes approximately 70,000 tons of silicomanganese, and that most definitely if orders are revoked, certain quantity will go from Brazil directly to Gerdau in United States.

MR. SCHAEFERMEIER: Martin Schaefermeier on behalf of Eramet. Just to add, this is one example the steel industry is more and more global, so many of the silicomanganese in Europe or even in Asia are made to companies that have affiliates in the United States. The steel consumers, the silicomanganese consumers, the steel producers in the United States, through their affiliated entities in other markets are already familiar with the product that's going to come into the U.S. market.

COMMISSIONER ARANOFF: Okay. I appreciate those answers, and we talked about lead times with respect to potential imports from Brazil. With respect to Ukraine or China, is there any reason why lead times or logistics costs would be a disincentive to U.S. purchasers to buy imports from those countries?

MR. MIKHYEYEV: We see no difference, for instance, for shipments between Brazil and Ukraine. It takes also approximately 20 to 25 days to ship material from Black Sea to New Orleans, and the cost is also approximately $40 to $45 per metric ton, so material from Black Sea area can be easily shipped to the United States without any obstacles.

We don't have any specific information about shipments from China, but we know that shipments in containers from China are extremely cheap into United State because we receive some raw materials from China in containers, so we may assume that shipments from China to United States also are cost efficient, at least in containers.

MR. BURDETTE: And there's also a logistical issue that should be taken into account by the Commission is that both Felman and Marietta are domestic companies. Our plants are located primarily right in the heart of the steel industry. If you draw a 500-mile radius around there, we cover 95 percent of the steel producing plants, and we have to ship all our products out of these plants via truck.

As you know, over the last years because of the escalation of gasoline prices and things like that, that's basically a cost that we have to incur that our competitors don't, and a lot of times, it can be just as cost efficient to ship material in from Asia or South America as it is to ship material from Marietta to say Charleston, South Carolina.

COMMISSIONER ARANOFF: Okay. I appreciate those answers. We've talked about issue of relative prices in the U.S. versus other potential markets for subject producers, and we've talked about the fact that U.S. prices in the most recent period have been high relative to other markets, but the staff report indicates that has not consistently been the case during the period of review. How long do U.S. prices have to remain advantageous relative to prices in alternative markets in order to draw additional imports into the U.S. market taking into account shipping lead times, the existence of contracts and any other factors?

MR. MIKHYEYEV: Well, we have example of this year when the price went up to the level of 70 cents. It took just a couple of months to stay at that level after the imports from Europe especially came into the United State and pushed price down to the level of 58, 59 cents, so basically, it's within two to three months price is going to readjust itself to the lower level.

COMMISSIONER ARANOFF: I imagine we're going to hear this afternoon arguments with respect to why the Commission should not cumulate subject imports from Brazil, and you've seen the arguments that are in the prehearing brief. I know you'll respond in more detail in your post-hearing brief, but if there's anything that you'd like to say in the last minute of my time with respect to the Brazilian arguments regarding cumulation, I'd invite you to do that. Mr. Salonen?

MR. SALONEN: Commissioner, not to be flip, but we don't believe any of those arguments have much merit. You take a look at their claims about no likely discernible adverse impact based on their export orientation and so forth, but as Dr. Button pointed out and as we'll be elaborating later in our brief, and as we also have discussed in our pre-hearing brief, you see exports from Brazil to Europe going from zero tons in 2006 to over 20,000 tons and becoming their second largest export market, particularly the Netherlands, in a very short period of time.

If they can do that, they can cover any logistical hurdles in order to accomplish that, and they could certainly do that coming to the U.S.

COMMISSIONER ARANOFF: Okay. I appreciate that answer, and note for myself if you could in the post hearing look at all of the discretionary cumulation factors that Brazilian producers suggested and respond to them one to one that would be very helpful to me.

MR. SALONEN: We'll be happy to do that.

COMMISSIONER ARANOFF: Thank you very much. That concludes my questions, so I want to thank all witnesses. Thank you, Mr. Chairman.

VICE CHAIRMAN WILLIAMSON: Commissioner Pinkert?

COMMISSIONER PINKERT: I just have one or two additional questions. Looking at 2009, we know that was a bad year for the overall economy. Why didn't the recession drive down U.S. industry shipments at that time?

MR. BURDETTE: Well, my point is there's probably a four- or five-month pipeline of materials into the U.S., so in that period of time, material was already heading into the U.S. shores prior to the collapse because as we know, it became prevalent to most of the steel producers in late 2008 that the economy was collapsing, and there was a lot of material sitting in warehouses. The warehouses were overloaded, and a lot of material sat there for a very long period of time.

The original intent of the sellers was to make a substantial margin, and what happened was that the majority of them lost substantial margins because they had to sell the material at some point in time because steel companies just weren't buying materials because they themselves had substantial inventories of raw materials. I hope for the sake of everybody at these hearing that it never occurs again.

MR. MIKHYEYEV: To be more specific, I can give you exact details. Price before crisis in October 2008 was approximately $2,500 per metric ton, and in May 2009, price went down to 35 cents per pound, which is $900 per metric ton, and it was down primarily because of abundance of imported silicomanganese in prior year, and traders were forced to dump material and to sell it to recover some losses, and price went down to 35 cents.

COMMISSIONER PINKERT: Thank you. And please don't misunderstand my last question. I'm not saying that there's an effects test required by the statute, but give recent profitability trends in this industry, can one say that the orders are having a positive effect on the fortunes of the domestic industry?

MR. MIKHYEYEV: Yes. I would like to say that orders have positive effect on domestic industry. First of all, you have to understand that U.S. produced silicomanganese is not competitive on outside markets. Why? Because to ship it outside, you have additional costs. For instance, you have to move it to port, and you have to spend money on trucking. You have to pack materials sometimes. You have to stuff material into containers, and these expenses are times and times more than in other markets.

For instance, to pack silicomanganese or similar material in bulk into one super sack, you have to spend between $70 and $150 if sack is smaller. At the same time, in markets like Ukraine or Saudi Arabia or Poland and Macedonia, you have to spend just $10 to pack material and to ship it outside, so services in United States are expensive, and we cannot ship from United States to other markets. Therefore, having orders in place, we can sell material domestically, and we can, in that case, have a profitable business.

MR. WILLOUGHBY: As we tried to indicated --

COMMISSIONER PINKERT: Mr. Willoughby?

MR. WILLOUGHBY: Yes. Thank you. As we tried to indicate, the orders have set the foundation for our ability at Eramet to make investments that have allowed us to survive and hopefully prepare ourselves for the future. The orders being removed would change that dynamic as has been testified to almost overnight and put us in a very precarious situation, could put all those investments at risk and any future investments that we might have planned to increase our productive capacity. The costs are high. Our input costs are high. We've talked about the environmental costs that we're subject to in the U.S. We've designed our business to be able to absorb those. However, we can only absorb so much when it comes to the pricing of our material, and if we go under water, the ability to remain competitive within our own market is eliminated.

COMMISSIONER PINKERT: I thought I saw somebody else on the panel wanting to testify on this?

MR. SALONEN: I think Mr. Willoughby addressed it. I have nothing to add to what Mr. Willoughby had to say.

MR. BURDETTE: I would say too just because of the fact that Felman and Eramet is here today is proof, documented proof, that the orders have done what they were intended to do. If you look at the history of the ferroalloy industry in the United States, over the past 50 years, there were a lot of producers at one time, and because of the lack of the orders over time, these companies have failed, and Eramet was successful in getting the orders, and it allowed us to take and remain an ongoing concern in the U.S., have money to make investments and to serve our American customers, so we do thank the commission for their support of these antidumping duties, which we consider to be vital to our success.

COMMISSIONER PINKERT: Thank you, and with that, I have no further questions for this panel, and I look forward to the information to be supplied in the post hearing.

VICE CHAIRMAN WILLIAMSON: Does any other Commissioner have questions? Does staff have any questions for this panel?

MR. MCCLURE: Thank you, Mr. Chairman. Jim McClure, Office of Investigations. Staff has no questions.

VICE CHAIRMAN WILLIAMSON: Thank you. Do Respondents have any questions for this panel?

MR. LEWIS: Mr. Chairman, no, we do not.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. With that, I think it's time to take a lunch break, so we'll take a break until 1:10. I just want to remind the parties that they should not leave any confidential business information in this room during the break because the room is not secure, so we'll reconvene at 1:10. Thank you.

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(Whereupon, at 12:01 p.m., the hearing was recessed, to reconvene at 1:10 p.m. this same day, Wednesday, September 5, 2012.)

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A F T E R N O O N S E S S I O N

(1:10 p.m.)

VICE CHAIRMAN WILLIAMSON: Please come to order. Okay. Let's see. Are there any further matters before?

MR. BISHOP: No, Mr. Chairman. Our second panel, those in opposition to the continuation of antidumping duty orders have been seated. All witnesses have been sworn.

VICE CHAIRMAN WILLIAMSON: Okay. Mr. Lewis, you may proceed.

MR. LEWIS: Thank you. Good afternoon, Chairman Williamson and Commissioners. Again, for the record, my name is Craig Lewis, and I'm appearing before you today on behalf of the Brazilian producer Vale Manganese. Appearing with me today is my partner Jonathon Stoel and Dr. Thomas Prusa, Professor of Economics at Rutgers University and a regular witness before the Commission in these proceedings.

I'd like to begin by thanking the Commission staff for the hard work that went into preparing the staff report. As usual, the staff report's an impressive document prepared in an uncomfortably short period of time. I also want to express my regret that we're unable to have our company witness from Vale here with us today. Mr. Oderlay Olivera, the marketing manager at Vale, had a last minute scheduling conflict that prevented his appearance at this hearing. I fully understand the Commission would prefer to have company officials to answer questions and therefore regret his absence. I share that preference.

That said, to the extent we're unable to answer any questions the Commission may have wished to ask Mr. Olivera today, we would obviously be pleased to do so in our post-hearing brief. I also know that we have obtained and will submit with our post-hearing brief a declaration from Mr. Olivera supporting the statements we will be making today and supplying additional detail.

With that introduction, I will begin our presentation with a discussion of the Commission's original determination. This will be followed by Mr. Stoel, who will address the issue of cumulation and Dr. Prusa, who will address market conditions. Finally, I'll speak briefly to questions concerning Brazilian capacity and the potential to export to the United States. I note that we've prepared some accompanying slides. Copies of these slides have been distributed to the Commission and are available to the public on the table in the back of the room.

As noted in my opening statement, the orders in this case, particularly the order on Brazil, have tenuous origins. The statute directs the Commission to consider its original determination in its five-year sunset review. The state of administrative action explains that the original investigation period is important because it's the most recent period of time in which subject imports have competed without the discipline of the order.

Ordinarily, counsel on my side of the room would be fleeing from the original investigation. Not so in this case. We invite the Commission to carefully scrutinize both the data from the original investigation period, particularly as it pertains to Brazil, and the findings of the Commission. As I noted in my opening statement, four of the six Commissioner rejected Petitioner Alchem's injury claims and made negative present material injury findings on the basis of the investigation period.

It's worth spending a few minutes examining why a majority of the Commissioners reached this conclusion. First, with respect to volume, three of the Commissioners concluded that cumulated subject imports from Brazil and China were not significant.

In particular, while subject import volumes did indeed increase during the investigation period, this did not result in significant increases in market share. Instead, as three of the Commissioners stated, "Subject imports served largely to satisfy increases in U.S. demand, which rose steadily throughout the period."

These Commissioners concluded that subject import volumes were not significant (1) in light of the relative stability of their cumulated market share, particularly in the latter part of the period examined, (2) in light of the absence of price affects, and (3) in light of the presence of large quantities of non-subject imports.

The fourth Commissioner, Vice Chairman Newsome, found that the subject import volumes were significant in absolute terms but also concluded importantly that increases in subject import volumes "did not appear to displace the domestic industry's market share to a significant degree but rather displace non-subject imports." The underlying data on market shares is confidential.

However, the figures are summarized in our prehearing brief. However, the original investigation was not really about import volumes. The real issue in the original investigation was pricing. The U.S. industry experienced declining financial performance during the period of market expansion principally as a result of declining prices. Alchem argued vociferously that the price declines experienced in this period were attributable to competition to subject imports. Four of the six Commissioner did not buy that claim.

Chairman Watson and Commissioners Crawford and Bragg observed the underselling data was mixed as one would expect in a commodity market but that there was "no consistent correlation between trends in the volume of Brazilian and Chinese imports and the price of U.S. silicomanganese." They also noted that "most purchasers indicated that there's no clear price leader in this market, and the lowest price source varies from purchase to purchase" and that "the very large presence of non-subject imports in the U.S. market would have significantly limited any further price increases by the Petitioner even in the absence of Brazilian and Chinese imports."

On the basis of these facts and other findings, these three Commissioners concluded that "the record in these investigations does not support Petitioners' assertion," and I stress that again, "does not support Petitioner's assertion that subject imports including Brazilian and Chinese imports depressed prices for the domestic product during the period of investigation.

The fourth Commissioner, Vice Chairman, Newsome, rounding out the Commission majority reached the same conclusion that "the pricing data do not establish a clear causal relationship between subject imports and domestic prices. Accordingly, I find the record does not support the conclusion that subject imports add significant price depressing or suppressing effects on domestic prices."

Based on these findings, Chairman Watson and Commissioners Crawford and Bragg found that LTFV imports from Brazil and China have had no significant impact on the domestic industry. Observing that U.S. producers maintained relatively steady market share, the fact that virtually all indicators of the condition of the domestic industry other than financial performance were strongly positive, and the fact that Alchem's inability to raise prices higher to offset costs "was not by reason of subject imports" reached a negative determination.

Again, rounding out the Commission majority, Vice Chairman Newsome reached the same negative conclusion that subject imports did not have significant adverse volume or price effects on the domestic industry, nor did she find other evidence that subject imports were having a significant adverse impact on the industry.

As my colleague Jonathon will be discussing, these same four Commissioners went on to consider threat of injury and in each case found that diverging supported the exercise of their discretion not to cumulate Brazilian imports with other subject imports. On the basis of this decumulated analysis, three of the four Commissioners concluded that Brazilian imports pose no threat of injury citing the favorable volume trends particularly at the end of the period and very strong pricing comparison data for Brazil. The confidential data is discussed in greater detail in our prehearing brief.

In summary, the Commission's original determination was as tenuous as is possible under the statute. Most significantly, a majority of the Commissioners looking at the investigation data concluded that subject imports had not caused material injury, and three of the four considering threat reached negative determinations with respect to Brazil.

Again, the Commission is not compelled to agree with the Commission majority that subject imports have no history of actually causing material injury to the domestic producers. On the other hand, the statute and SAA clearly invite the Commission the consider the facts and reach its own conclusions. We submit that the majority of Commissioner that found no present injury from subject imports got it right, and this fact should weigh heavily on the Commission's decision on whether it's appropriate to extent the order against Brazil into now it's third decade.

I will now turn it over to Jonathon to discuss cumulation.

MR. STOEL: Good afternoon, Chairman Williamson and members of the Commission. For the record, my name is Jonathon Stoel with the law firm Hogan Lovells, and I'm appearing before you today on behalf of the Brazilian producer Vale Manganese. It is good to be before the Commission once again. I will first address the reasons supporting the decumulation of Brazilian imports in this sunset review, and I will then turn to certain structural aspects of the domestic industry.

First, with respect to cumulation, the Commission has broad discretion in this proceeding to decumulate Brazilian imports from imports from China and Ukraine. Preliminarily, as Mr. Lewis just mentioned, the Commission's original investigation findings remain instructive for the Commission today. The four Commissioners that considered threat of material injury exercised their discretion not to cumulate Brazilian imports with other subject imports.

The Commission majority conducts a forward-looking analysis of the likely behavior of subject imports from Brazil, China and Ukraine and found that the volume and pricing patterns of Brazilian imports distinguished them from Chinese and Ukranian imports. In so doing, Chairman Watson, Commissioner Crawford and Commissioner Bragg cited "divergent price patters of the Brazilian and Chinese imports, and the fact that imports from Brazil declined in interim 1994 while imports from China continued to rise."

The Commission's discretionary cumulation analysis in a sunset review requires a similar forward-looking exercise. That is, as in threat determinations in original investigations, the Commission has broad discretion to determine whether a cumulated analysis is appropriate. Although the briefs and the hearing testimony submitted by Eramet and Felman have focused on the statutorily mandated cumulation factors at issue in this review, neither brief nor the testimony address the Commission's broad discretion not to cumulate subject imports when "conditions of competition" differentiate how they will behave in the U.S. market.

The Courts have repeatedly affirmed the Commission's discretion in this regard. In fact, in a very recent August 14, 2012, decision, United States Steel Corporation v. United States, the Court of International Trade summarized the legal state of play with respect to cumulation as follows: Even if the subject imports meet the statutory elements of cumulation, the ITC has discretion not to cumulate them in a sunset review.

Pursuant to statutory authority, the ITC has wide latitude in selecting the types of factors it considers relevant in undertaking its cumulation analysis, and in each sunset review, the ITC retains its discretion not to cumulate its analysis. The ITC may exercise not to cumulate imports where it finds imports relegated to operate under differing conditions of competition. Such differing conditions of competition are clearly present in this sunset review and support a decumulated analysis of likely Brazilian imports.

As I discuss the specific factors affecting the Brazilian, Chinese and Ukranian industries, I would like the Commission to keep the following fact in mind: The Chinese industry is 27 times as large as the Brazilian industry, and the Ukranian industry is 4.5 times as large. These subject size disparities mean the conditions of competition affecting possible Brazilian exports to the U.S. market will be very different than those likely to affect Chinese and Ukranian exports.

Turning now to country-specific differences among Ukranian, Chinese and Brazilian exports, let me first highlight that unlike both Brazilian and Chinese producers, the Ukranian industry is unique because the Ukranian producers have very close ties with the leading U.S. producer, Felman. In fact, as the public staff report notes, Felman Trading has entered into "exclusive" delivery contracts with the largest Ukranian producers to supply the North, Central and South American markets.

Moreover, other publicly available evidence connect Felman and the Ukrainian producers through common ownership interests. In sum, absent further evidence to be developed in this proceeding, and Felman does not appear willing to address this clerical issue, at least not in public, Vale respectfully submits that Felman is able to determine the volume and timing of most, if not all, Ukrainian imports. This fact alone distinguishes the conditions under which Ukrainian imports will compete in the U.S. market from the conditions likely to affect Brazilian and Chinese imports.

Moreover, Ukrainian imports have a distinctive product characteristic, high phosphorous content, that distinguishes them from both Chinese and Brazilian imports. This fact was considered to be important by four of the Commissioners in the original investigation due to the reduced substitutability of the Ukrainian imports for other supplies of silicomanganese.

We note that the Commission concluded in the first sunset review that while the use of Ukrainian silicomanganese could be limited for certain applications, it is generally fungible with other supplies of silicomanganese. However, evidence presented in this review demonstrates that the high phosphorous content of Ukrainian imports would cause them to compete differently in the U.S. market than Brazilian imports.

I'm now going to turn to Chinese exports.

Unlike both the Brazilian and Ukrainian industries, the Chinese industry is severely impacted by government restraints on exports. In fact, the Chinese government has imposed both a 20-percent duty on the exports of silicomanganese and minimum export prices. The minimum export prices imposed by the government appear to be very high, so high in fact that they make Chinese exports unattractive to U.S. and other global purchasers.

As a consequence, these policies have had dramatic restrictive effects on exports of silicomanganese from China. Indeed, publicly available data demonstrate that Chinese exports of silicomanganese account for a very small percentage, only 0.2 percent of the total volume of global silicomanganese exports. Finally, I would like to turn to specific conditions of competition that distinguish Brazil's industry and possible exports to the U.S. market from both the Chinese and Ukrainian if the anti-dumping duty order is revoked.

I would like to emphasize to the Commission that Vale and other Brazilian producers and exporters are focused on the growing and proximate Brazilian and South American markets. We address this issue in detail in our brief, but let me highlight four facts for your consideration today. One, there have been no exports from Brazil to the U.S. market during the sunset review period even though Vale qualified for a zero percent antidumping deposit rate. Deposit rates for Chinese and Ukranian imports, on the other hand, have exceeded 100 percent.

Two, Brazilian exports have been nearly exclusively to other Latin American markets where duty barriers are low and transportation costs are moderate. In this regard, Brazilian U.N. comp trade export statistics data show that in 2011, for example, more than 70 percent of all Brazilian exports were targeted to Latin America. The only other significant exports from Brazil in 2011 were to the Netherlands, and these exports, approximately 20,000 short tons, were targeted in meeting the obligations of Vale's European operations. Mr. Lewis will provide additional information on these exports later in our presentation.

Three, Brazilian producers face substantial logistics costs, three times the logistics costs of shipping to the Brazilian and American store markets if they were to decide to export to the U.S. market. Finally, I would point the Commission to Vale's recent behavior in other export markets as a key distinguishing factor between the Brazilian industry and the industries in Ukraine and China.

That is, as part of a concerted marketing policy to focus on more profitable markets, Vale has abandoned several major export markets for silicomanganese, mostly notably Canada and Japan, in order to focus on regional markets, closer to Brazil's production facilities for silicomanganese. The bottom line is that even if the order as to Brazil is revoked, Vale and other Brazilian producers have limited interest in the U.S. market. For all of these reasons, we respectfully submit that imports from Brazil should not be cumulated with imports from China and Ukraine.

Before turning it over to Dr. Prusa to discuss the specifics of the condition of the domestic industry, I wanted to call one important issue to the Commission's attention, and you've already asked several very pertinent questions this morning. That is, this is a uniquely structured domestic industry. There are only two domestic producers, Eramet and Felman, and they're also significant importers of silicomanganese.

As such, the Commission must carefully evaluate whether an industry can be vulnerable to any possible Brazilian imports when, as *Metal Bulletin* reports, "With the lack of supply, Felman now has total dominance over the U.S. market, so they have the power to raise prices." First, with respect to Eramet's structure, the company acquired a controlling share in Norwegian silicomanganese producer Tinfos in 2008 and 2009.

Eramet has asserted that because Tinfos previously exported to the U.S. market, this acquisition does not bear on the Commission's analysis here. We respectfully submit that this is incorrect. Silicomanganese imports from Norway have accounted from between 10 and 20 percent of all imports into the U.S. market during the review period. Eramet's acquisition of Tinfos does provide Eramet with the ability to use both its domestic production and its imports to affect U.S. supply and market prices.

Felman controls an even more substantial portion of the U.S. market. As discussed in the staff report, in addition to its domestic production, Felman has "exclusive contracts with the Ukrainian as well as the Georgian and Romanian producers for ferrous alloy deliveries in the markets of North, Central and South Americas. Moreover, *Metal Pages* reports that "Felman supplies more than half of the U.S. silicomanganese market from its domestic plant as well as its ferrous alloys plants in Georgia, Romania and Ukraine."

Given these public statements, I share Commissioner Pearson's confusion about Mr. Salonen's comment this morning that Felman does not control imports from Ukraine. One aside about Georgia, Georgia was the second largest import supplier of silicomanganese in 2010 and 2011. We've highlighted the data for the Commission's attention in red. Imports from Georgia accounted for 25 and 30 percent of all U.S. imports. We've also highlighted the data about imports from Norway. As I previously discussed, those imports are from Eramet's acquisition.

We respectfully submit that Felman has not been entirely forthcoming with the Commission about its deep relationships with foreign suppliers of silicomanganese to the U.S. market, especially its relationship with Ukrainian producers. In particular, we note that Plats recently reported that Felman is part of the Ukraine Private Banking Group. The public staff report also observes that the Privat Group is currently the majority shareholder in all of the Ukraine-based ferrous alloy enterprises.

Regretfully, we also call to the Commission's attention that Felman's behavior in this regard appears to be similar to the stance taken by the company in litigation before the United States District Court for the Southern District of West Virginia. Specifically, after availing itself of that Court to recover on an insurance claim, U.S. District Court Judge Chambers found in September 2011 that Felman "actively concealed its relationship with Privat."

In addition, in granting a motion for sanctions against Felman, Judge Chambers concluded that "Privat controlled Felman's pricing and other features of the business, including balancing Felman's sales with other Privat-related holdings." Felman thus should explain its corporate structure in detail to the Commission. Otherwise, the Commission must consider that Felman's combined U.S. production and import operations and close relationships with non-U.S. producers will permit to retain significant control over the U.S. market, even if the order as to imports from Brazil is revoked.

MR. PRUSA: Good afternoon. My name is Tom Prusa. I'm a professor at Rutgers University, and I'm appearing before you today on behalf of the Brazilian producer Vale Manganese. I will continue Jonathon's discussion of the conditions of competition and discuss the overall economic condition of the U.S. industry. Much of what I will discuss involves issues surrounding the structure of the domestic silicomanganese industry and how these issues complicate your economic analyses of causation, injury and vulnerability.

I want to begin with an important disclaimer. My public comments today will relay on press reports because much of the key industry details involve BPI information. As a result, some of the precise figures I quote will differ from data in the confidential staff report. Let me reiterate a comment made by Jonathon a few minutes ago. The two domestic producers, Felman and Eramet, dominate the U.S. industry.

Jonathon and I are not the only ones with this opinion. *Metal Bulletin* quoted one buyer who stated in reference to Felman, they now have total dominance over the markets. They have the power to raise prices. Another buyer spoke about Felman's pricing power and said "If Felman sets a price at $80, it's going to go there." The notion the domestic has so much pricing power might seem surprising in light of the relative size of domestic production to the size of the market.

In a July 2012 article, the industry news source, *The Manganese Mission,* stated that overseas manufacturers controlled 80 percent of the market, but if this is the case, then how can domestic producers dominate the domestic market? The reason is that domestic production is only one aspect of their business. As Jonathon noted in his testimony, press reports indicate that import operations are important to both domestic firms. The inter-related nature of silicomanganese imports and domestic production was conspicuously absent in the domestic industry briefs.

Confidential data makes it difficult to say much more. Nevertheless, public reports make it clear that silicomanganese buyers in the market know who is bringing in the imports. I suggest the Commission carefully review Tables 3-7 and 3-8 in the confidential staff report to get a precise sense of the magnitude of this volume. The public press reports in conjunction with the data in the staff report give the Commission a sense of the true control Felman and Eramet exert over the domestic market.

While the figures in the confidential staff report may differ from the public press reports, the most reasonable interpretation of the public information is that domestic firms dominate the U.S.

market. Given that the staff report contains information on imports by the domestic firms, the Commission must carefully evaluate all staff report tables and discussion referring to market shares and imports.

I'm not saying that imports are the same as domestic production. Rather, the fact that some of the imports are controlled by the same people who claim their facilities are vulnerable if these orders are revoked means that one must be very circumspect about what exactly is vulnerable. What is being protected here? The firm's importing operations, or their domestic production. Public reports about the extent of importing by the domestic industry make this a rather unusual case.

Such imports might mean one thing if the domestic industry were comprised of a dozen domestic producers in a subset of those firms imported a significant volume imports. In this case however, there are only two domestic firms. The existence of this duopoly and the volume of imports controlled by the duopoly certainly is an important condition of competition with substantial on when things will happen if the order were revoked.

The domestic industry would prefer you to completely separate their domestic production from imports whether the imports are theirs or other parties. Domestic briefs give little indication there is any connection. Yet, the intertwined nature of the domestic firm's production and pricing decisions and their decision to import must be addressed. Let me discuss five complicating aspects of the domestic industry's unusual production and importation business model.

Issue No. 1, their business model challenges the Commission's normal methods for evaluating the metrics for efficiency of the domestic industry's operations. This morning, the domestic industry spoke of how revocation would mean decreases in domestic production. As we have argued in the brief, this is not likely to happen, but even if you think it might happen, how does one contemplate the meaning of change in U.S. production or a change in U.S. producer's share of shipments when the domestic industry itself chooses to import rather than maintain domestic production.

What does capacity utilization mean when the domestic industry chooses to import rather than fully utilize their domestic facilities? How does one interpret soft prices when, as the domestic industry suggests, imports have an effect on prices, but the domestic industry itself is responsible for the imports?

Issue No. 2, as collected, the domestic industries reported profitability tells us very little about the true profits from the domestic industry's overall silicomanganese operations. Due to confidentiality concerns, I cannot talk with much more specificity, but the public press reports make it clear that the domestic industry is willing to import tons of silicomanganese. It's not clear how such imports affect their domestic operations, but there's little double that the firms have a broader view of profitability of their overall silicomanganese operations.

Arguably, the better metric of their profitability is the combined profitability of their trading and domestic operations. Suffice it to say the issues in this case go beyond the Commission's normal methods and analytical framework. As an economist, I believe the two companies are clearly rationalizing profits between both operations and that the Commission could consider that in its analysis.

Issue No. 3, how does the Commission think about causation in this case? What is causing what?

What role do own imports play? One must consider the answer to that question and compare that with the speculation about what role subject imports might play in the foreseeable future. On the likelihood of an increase in imports with respect to Brazil, Vale has provided company-specific information as to the significant difference in logistic cost involved in servicing the North American markets as compared to other markets.

Ample empirical evidence supports the accuracy of Vale's statements. Vale stopped shipping silicomanganese to Canada years ago and has shipped very little silicomanganese to Mexico in the last five years. With respect to China, Jonathon has already noted the government policies toward silicomanganese exports. I believe the domestic industry uses China's capacity to distract from the relevant issue, which is the fact that China simply does not export a large volume of silicomanganese. As for the Ukraine, I will defer to Felman as they have the exclusive contracts, and they are best suited to tell you what would happen if the order on Ukraine were revoked.

Issue No. 4, the industry asserts that some increase in imports from subject countries would come at the expense of domestic production operations.

Yet, the evidence on the record does not support this claim. First of all, take a look at what table 1-5 of the staff report reveals about what happened during the great recession. In other steel cases that have come before the Commission in recent years, the great recession was associated with a decrease in domestic production.

More illustrative of market dynamics is the domestic industry's market share during the great recession. The staff report makes it clear that domestic production has a decided home court advantage. This is despite the fact that silicomanganese is often referred to as a commodity product. Clearly, the economic dynamics in this commodity industry are not the same as in the standard textbook story.

Even if subject imports were to increase, the most likely impact would be on non-subject import suppliers. I believe the reason the domestic industry is so passionate about the continuation of this order is not because of any possible ramification on their domestic production facilities but rather because of the possible ramification on their importing operations. The concern about non-subject imports harkens back to the concerns raised by the majority of the Commissioners in the original investigation.

In this case however, this concern goes well beyond the standard brass-type arguments. We're talking about domestic producers using trade laws to protect their importing operations, not their domestic facilities. As Craig mentioned earlier, in the original investigation, Commission Crawford had specific concerns about the motives and economic consequences of the order. Her views seem prophetic today.

Even if one ignores the domestic industry's intertwined relationships with foreign suppliers, there's overwhelming evidence that serious shortages in the silicomanganese market are on the immediate horizon. As has been well documented in the press, BHP Billiton has announced the permanent shutdown of its South African silicomanganese operations. In fact, BHP Billiton has more than announced the shutdown. The process already is well along the way. This development, along with Felman's, entry into the market are clearly the two most important events in the silicomanganese market since the last sunset review.

Table 4-1 of the public staff report indicates that South Africa was the U.S.'s largest import supplier in 2011, providing over 150,000 short tons, or about 40 percent of the import market, the vast majority of that by BHP Billiton. In fact, South Africa has been the largest import source in every year.

BHP Billiton's decision to shut down its South African facility will create a yawning gap in the necessary import supply. Given the U.S. industry's imported operating capacity, I ask the Commission to consider whether the U.S. producers can fill the void. In my view, there will be a need for silicomanganese imports from other suppliers to make up for the loss of South African supply.

In fact, at lunch I went to the ITC data web and checked out what has happened in the last few months. The two largest import suppliers other than South Africa are Geogia and Norway, imports from Geogia controlled by Felman, imports from Norway controlled by Eramet. BHP's decision means the domestic industry's production facilities are not vulnerable.

Issue five. What will BHP's shutdown mean for prices? The public UN Comtrade database indicates that South Africa is the fourth largest exporter of silicomanganese in the world, accounting for over 7 percent of all worldwide silicomanganese exports. BHP Billiton's decision will push up silicomanganese prices around the world.

Using the staff report's reported elasticities, a 7 percent decrease in silicomanganese supply will lead to a 10 to 17.5 percent increase in prices around the world.

I have just two final comments to make. First, on the issue of whether the industry is vulnerable, as I explained a few minutes ago, it's not obvious how probative the standard metrics used by the Commission are in this case. Even with this caveat, the data shows the domestic industry has performed better than historical standards during this sunset review period.

Today's domestic silicomanganese market is very different and inherently more competitive than the industry that was examined by the Commission more than 17 years ago. This is best evidenced by the emergency of Felman as a major player in the U.S. silicomanganese market.

The industry now has greater production capacity, higher production volumes, and greater domestic shipments. Prices in the U.S. market are also dramatically higher than earlier periods. The financial performance of the U.S. producers, especially prior to the Great Recession, reflects their enhanced competitiveness.

Second, the domestic panel spoke of how the commodity nature of this product means that prices are very apt to be depressed or suppressed if this order is revoked. As Craig mentioned earlier, this is not what the clear majority of commissioners determined in 1994. Moreover, the price effect they were referring to stems from world prices.

Data in the staff report and publicly sourced pricing data indicate prices around the world largely move together. There are some periods where U.S. prices are higher, and other periods of time where U.S. prices are lower. Therefore the world market is relevant. And again, in this regard the most important pricing issue is the impact of BHP's shutdown of its South African operations.

As I mentioned above, the removal of so much productive capacity and exports will have a double-digit effect on price. Thank you.

MR. LEWIS: I will now briefly discuss the issue of Brazilian exporters' capacity and incentives to export subject imports from Brazil. As the Commission is no doubt aware, exports of subject merchandise from Brazil have been minimal since the orders were first imposed.

Initially the decline in exports from Brazil was influenced by the substantial duty deposit requirements imposed under the order. However, duty rates on imports from Vale's facilities were reduced to zero by 2005, yet Brazilian exports did not resume. Why is this?

As explained in Vale's foreign producer questionnaire and in our prehearing brief, the continued absence of imports from Brazil reflect several important factors. First, Vale is by far Brazil's largest silicomanganese producer and the only Brazilian producer that has ever made any significant exports to the United States. The other Brazilian producers are relatively minor local players focused exclusively on serving the Brazilian and South American markets where they face no import duties, low logistics costs, and have established long-term commercial relationships with end users.

Accordingly, analysis of likely exports of subject merchandise from Brazil requires an examination of Vale's policies and capabilities. The continued absence of significant import volumes from Brazil to the United States is a function of the economic incentives Vale faces and Vale's corporate and marketing policies developed in response thereto.

First, as to the broader corporate policy, as the Commission is aware Vale is principally a mining operating. It is the largest producer of iron ore and the second largest producer of nickel in the world. Over the years, the Vale group has expanded its operations through acquisitions into other areas, including manufacturing and ferro alloys and even the production of steel.

However, the group's core focus is on minerals mining and distribution, not manufacturing. In keeping with this core focus of the group, Vale has taken steps to divest itself of ferro alloys manufacturing operations. Accordingly, just this last July Vale agreed to sell all of its ferro alloys production assets in Europe to the Swiss commodities trading company, Glencore International.

This deal includes Vale's silicomanganese operations in Norway as well as ferro alloy production facilities in France. As a result, Vale's silicomanganese and other ferro alloy production facilities will now be concentrated in Brazil only. Even before divesting itself of ferro alloy production capacity in Europe, Vale adopted a marketing policy for silicomanganese focused on local supply to the Brazilian and America Sur region.

As discussed in Vale's foreign producer questionnaire and prehearing brief, this marketing policy is driven principally by financial considerations relating to relative pricing and logistics costs. For one thing, pricing in Brazil has tended to be higher than in other export markets, and we have supplied data in this regard.

More importantly, however, is the significant variance in logistics costs to different markets. Exporting silicomanganese to end users in the U.S. market is particularly expensive for Vale. Not only are ocean freight rates from Brazil to the United States higher than to local South American destinations and even to Europe, but Vale would also face the considerable additional expenses of barge transportation and the associated loading and unloading charges and the necessity to obtain warehousing and handling services.

I would note that Mr. Mikhyeyev, in his testimony earlier this morning acknowledged the same type of logistics costs, albeit in the opposite direction in terms of exports by U.S. producers outside of the United States. He testified, I think, eloquently to the prohibitive nature of those logistics costs.

Vale estimates that these logistics costs are in the range of $194 per ton, in contrast to local distribution costs of only $48 to $64 per ton in Brazil and America Sur regions, and significantly lower costs per ton to Europe.

It is therefore on balance a losing proposing for Vale to consider exporting outside of the America Sur region in North America in particular. The evidence that this marketing policy exists and has been implemented is already before the Commission. Publicly available trade data shows that Vale effectively exited the Japanese market in 2005, and more importantly in terms of a focus on the U.S. market effectively exited the Canadian market in 2007, completely out of the market by 2008.

Importantly, the change in Brazil's export market has nothing to do with the effect of the antidumping order. The trade data entirely reflects Vale's changed economics. The data supports the conclusion that there would be no surge in imports from Brazil if the order were revoked, just as there was none in 1994.

Until recently there have been exports to

Europe, and this has been discussed a lot, that were shipped principally to support Vale's struggling Norwegian affiliate in meeting its local supply commitments for silicomanganese. However, now with the sale of its silicomanganese operations in Europe, Vale is exiting that market as well.

I hasten to note that there are no trade barriers to Brazilian silicomanganese imports into any of the markets I've just discussed. I should also mention that Vale's arrangements with its European affiliates called for the shipments of silicomanganese to Europe to be balanced by shipments of ferromanganese back to Brazil from the facility in France.

With the sale of the facility in France, Vale will now have to make up the shortfall in ferromanganese by devoting more of its Brazilian capacity to ferromanganese production, thereby further limiting capacity.

As a result of these changes, if exports to Europe are excluded, Brazil's exports outside of South America have been negligible since 2008, and there were no exports specifically to Canada or the United States.

Lastly, I'd like to say about a word about production capacity and potential for product shifting from ferro alloys production. The Commission should approach these data very cautiously. Eramet and Felman, naturally enough, urge the Commission to assume that excess silicomanganese production capacity and ferro alloy capacity should be assumed available for exports to the United States. However, this is not the case.

First, for reasons discussed in greater detail in our prehearing brief, the actual amount of available capacity in Brazil is limited. This is because a significant percentage of the capacity reflected in the staff report figures have been permanently taken offline as Vale retrenches and rationalizes its Brazilian production.

Also, shifting from ferro alloys to silicomanganese does not work in just one direction, as Felman and Eramet have suggested. To the extent that Vale can switch production at certain furnaces -- and I should note there are some serious technical constraints to doing so, as discussed in Vale's questionnaire response -- Vale will inevitably face the opportunity cost of lost production of ferro alloys. Because ferromanganese operations have tended to be more profitable, it makes little sense for Vale to increase silicomanganese production at the expense of ferromanganese.

Certainly when faced with the high logistics costs and relatively lower prices in the United States, there is very limited incentive for Vale to shift productive assets to export to the U.S. market. It also bears repeating that even if Vale has had significant excess capacity, as Petitioners allege, the company has faced no antidumping duty deposit requirements in the U.S. market since April of 2005. But even in the period of runaway demand in prices that existed in the first three quarters of 2008, Vale exported nothing to the United States, Canada, or Japan.

In summary, it's simply not credible to claim that producers in Brazil are likely to export significant volumes of silicomanganese to the United States if the order is revoked. Revoking the order on Brazil will not alter Vale's marketing policies. Revoking the order on Brazil will not alter the logistics cost to the U.S. market. And revoking the order on Brazil will not create a more favorable price differential.

We respectfully urge the Commission to reach a negative determination in this case with respect to

Brazil. And with that, this concludes our direct presentation, and we would, of course, be pleased to answer any questions the Commission may have.

CHAIRMAN WILLIAMSON: Thank you for your testimony and for coming today. I realize the company representative couldn't be here.

I will begin the questioning this afternoon. As my colleagues often have in the past, I realize Vale is a large conglomerate. But do you have any business plans or documents like that that at least with respect to silicomanganese shows this strategy of focusing on the Latin American market, to substantiate that?

MR. LEWIS: Let me begin by again expressing our regret that we don't have a company witness here. And I mean that sincerely. I think it was in our interest to have him here, and I do regret that.

But in answer to your question, we don't have in our possession a memo or marketing plan that's responsive to your request. We can request that for posthearing, if it exists. But I would note -- it's not what you've asked for, but I would note that the export statistics do speak for themselves. The exiting from the Canadian market in 2007, Japanese market even earlier than that, speaks volumes for the strategy that they're pursuing. But we will, of course, see if we can find --

CHAIRMAN WILLIAMSON: Yes.

MR. LEWIS: -- ask the client to provide that.

MALE VOICE: I'd just also like to second Craig's comment that the affidavit that Craig mentioned also discusses this plan in detail, and explains -- some of this, as you can imagine, is confidential information. So it explains the strategy and also provides precise times about the withdrawal from certain markets that we've mentioned during the presentation.

CHAIRMAN WILLIAMSON: Okay, yes. But to the extent you can provide something -- you know, of course, we understand it will be confidential -- that would just substantiate that. I guess in regards to the Canadian market, wasn't there a question raised about a strike this morning? I didn't catch that fully, but if --

MR. STOEL: Chairman Williamson, I didn't catch it either. I didn't hear what it was that was said there. I'm not familiar with how a strike would be affecting exports of silicomanganese from Brazil to Canada. But, of course, if this could be articulated more clearly, we could respond to it.

MR. PRUSA: Especially because -- Tom Prusa. Especially because the exports to Canada ceased years ago, right? It was not just a 2011 event where it dropped off or interim period 2012. The timing of this seems impossible to explain by a strike in a facility when in fact it has gone on for almost the entire period of review.

CHAIRMAN WILLIAMSON: Okay. Well, maybe if Petitioners can provide something posthearing that you could comment on in the posthearing submissions, that would help clarify this issue.

MR. LEWIS: Just to state the obvious, as a logistical matter, we won't see that until we get their brief. But we could add, you know, comments in our final comments to the Commission.

CHAIRMAN WILLIAMSON: Okay. And I realize there is a timing issue here.

MR. LEWIS: Yeah.

CHAIRMAN WILLIAMSON: I was also wondering whether you could address posthearing -- this morning there were some comments about the cost of shipping from Brazil to the United States compared to other markets. And I got the impression that from what was offered this morning that the difference in cost was not that great, and that the cost of shipping to Europe versus the U.S. was not as great as you seem to imply here.

So Petitioners can also comment on your data, and maybe you want to give some further support for this rather large difference here.

MR. LEWIS: Well, just to respond to that briefly, the figures we have, and I'll repeat them to you --

CHAIRMAN WILLIAMSON: No. I'm looking at them now, so my question is what is the basis for the figures.

MR. LEWIS: They came from our client as estimates from their knowledge of logistics costs. And I would note again, as I said in my direct testimony, that the severity of this logistic cost seemed to have been endorsed by the domestic industry's witness, who discussed how prohibitive those transportation costs are for their own exports from the United States. These would obviously be flowing through the same channels of trucking, barges, et cetera.

MR. PRUSA: I think that --

CHAIRMAN WILLIAMSON: Go ahead. I'm sorry.

MR. PRUSA: I'm sorry. The logistics costs to Europe, again the shipments -- we do have the data from Brazil to the Netherlands. Again, I think it's going to be discussed in this confidential affidavit that is going to be submitted to you. This was part of an affiliate need for silicomanganese.

The issue that you say, well, they ship to Europe, why wouldn't they ship here, they were shipping to Europe part of a corporate need in Europe that's no longer part of Vale. So the fact that, well, they shipped to Europe in the past must mean they're willing to ship in the future, that's actually -- that was again part of a greater issue that they're having. That was not necessarily because they were desiring to make profits on European. Rather this was servicing a European affiliate.

CHAIRMAN WILLIAMSON: I understand that. But I'm just going to the question of the relative shipping costs. And it is an issue. I used to be on the Brazil desk of the State Department, and they were fussing back -- and this was back in the eighties -- that it was a lot cheaper to ship stuff up north from Brazil because they're exporting a lot more, and there seems to be a lot more availability than to ship things south. And this happens in other -- so there are -- sometimes commercial reasons are, you know, having to do with volume capacity and all of that that affects how much it costs between two different markets. And that's the question I'm getting to here.

So if there is anything you can provide posthearing -- of course, Petitioners can do the same -- that would clarify that.

MR. LEWIS: We'd be obviously happy to flesh that out further in the posthearing brief. I just would like to add a couple of additional comments. One is that the logistics costs to Europe -- again this is based on Vale's declaration and the information they've given us. The costs of shipping to Europe are substantially lower than to the U.S. And I think part -- my understanding, as I said in the direct testimony, the reasons why the U.S. logistics costs are as high as they are, first of all, the ocean freight itself is higher.

But even more so, or at least it's contributing to that differential, is the need to unload the product from ocean vessels to barges. So you've got the unloading and reloading costs, the shipment on the barges, and then you've got the trucking costs, and then you've also got the additional costs of warehousing as well.

You put all that package together, and just to be perfectly clear, that $194 figure is not this is how much the ocean freight is from the port in Brazil to New Orleans. This is all the way through to the end customer. So it accumulates all of those costs. And again, I would suggest that the testimony from the domestic industry this morning appears to corroborate that these are significant.

CHAIRMAN WILLIAMSON: Okay. Well, you can clarify because, I mean, when you ship it to Europe, to Rotterdam or someplace like that, it usually goes someplace else, and you've got to unload barges and all that kind of stuff.

MR. LEWIS: Actually, I'm glad you mentioned that because it reminded me of another factor in that, too, which is at least during the historical period when these shipments were going to Europe, as the import statistics show, they were going to the Netherlands. And Vale's operations in Europe before they sold them included substantial warehousing and logistics facilities, on-the-ground facilities, in the Netherlands. That's why the product was going to the Netherlands.

So that's already a captive facility. So they're not having to pay somebody else for the use of those facilities. So that also contributes to the lower logistics costs to Europe.

CHAIRMAN WILLIAMSON: Okay, good. Well, thank you for all of that. And if there is any additional clarity either side can offer on this, it would be helpful.

This morning, the investigator said if there is anything they can tell us additional about the other producers in Brazil and their capacity to ship to the U.S. -- and I was wondering if there was anything -- I think you did say some things that they traditionally said other Latin American markets. But is there anything more you could add?

MR. LEWIS: To be perfectly honest, we have limited information on the other producers. You know, the reality is that we made, as the legal team on this case, actually made substantial efforts of outreach to the other Brazilian producers to obtain this information because we anticipated you'd be interested in that information, as we were.

They are obviously not interested in the U.S. market because we frankly weren't able to get information from them. So what we've had to rely on is Vale's own market intelligence and its understanding of, for example, the capacity figures that we gave in the response to the notice of institution or from Vale's own marketing intelligence.

So, you know, our access information on them is limited. Now, that said, I think it does speak volumes that they aren't interested in this case at all and have not had a history of exports to the United States, and are focused on their supplying to established customers in Brazil.

CHAIRMAN WILLIAMSON: Okay.

MR. LEWIS: But that said, again if we can gather any further information, we will of course provide that.

CHAIRMAN WILLIAMSON: Switching to South Africa for a moment -- and I know you did some calculations on what you thought would happen to prices in the U.S. But I didn't hear any discussion of whether or not other South African producers might move in. And I think this morning they were was some testimony about other third-party -- other countries that also might move in to fill this gap.

MR. STOEL: Chairman Williamson, I think if you look at page 52 of our brief, again to confidential information, but I think we supplied data that demonstrates why we were so heavily focused on BHP Billiton. And obviously as part of our posthearing -- we heard the discussion this morning, and we'll take a look at the other ostensible producers. But I think the data concerning BHP Billiton is significant and speaks for itself.

MR. LEWIS: If I might add to that, too, we'll look into this further for the posthearing submission. But I believe the testimony this morning acknowledged that it's energy-cost related reasons that are a significant cause for BHP to shift out of this product line. And I would submit that those same energy costs likely are facing other producers in South Africa. But we'll address that in our posthearing.

CHAIRMAN WILLIAMSON: Okay. Thank you. My time has expired. Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Mr. Chairman. Allow me to compliment you for the efficiency of your group, just three of you covering all the bases. You know, one does what one has to. Professor Prusa, I discussed with the morning panel the issue of hyperinflation in Brazil. Is that something that's relevant to our consideration of the possibility of resurgence from Brazil, or am I barking up the wrong tree?

MR. PRUSA: Well, like Ken Button, their economist, I had not pondered your question until you posed it. But I think it's obviously relevant. That's something that has clearly changed from the economic motivations the Brazilian firms had in the early nineties shipping to the United States. And those issues which were motivating forces are not relevant anymore.

So I think it is relevant now in terms of what would be their motive, if that was part of what was driving them to export -- good for Brazil, good for the world. They don't have hyperinflation right now. So I would think that explanation is no longer -- and it would be a reason why to think the circumstances are different now.

COMMISSIONER PEARSON: Okay.

MR. LEWIS: If I could just add briefly to that, too, that the import volumes actually trailed off at the latter end of that investigation period, too, which I think dovetails very nicely with your observation about getting hyperinflation under control at the latter end of that same time period.

MR. STOEL: Commissioner Pearson, if I could just add, I think your question actually also dovetails with our broader point in this case, which is, you know, Brazil at that time was obviously struggling in a number of ways economically. That situation is clearly not true today.

While their GDP has slowed from 7.5 growth to this year maybe 2 or 3 percent, looking forward they're looking at, you know, 4 or 5 percent growth. They're going to be hosting the Olympics, the World Cup. Brazil has emerged as a very strong player on the global economy.

So the situation that Vale was facing and really other economies were facing at that time is not present today.

COMMISSIONER PEARSON: Well, perhaps one or more of your contacts at Vale would have been around during that time period and might have recollections of whether the inflation did influence their export trading. And if they could put something on the record in that regard, that would be interesting because --

MR. LEWIS: I can say Mr. Oliveira, who again I very much regret was not here to participate, he has been with the company since before that time. So we'll get him to speak to that question for you.

COMMISSIONER PEARSON: Okay.

MR. LEWIS: Thank you.

COMMISSIONER PEARSON: I'm still trying to make sure I understand the issue of the zero duty rate that Vale has enjoyed for a number of years, and then the fact that there have been no shipments. This morning's panel was focused on the size of the shipments that had occurred in the process of obtaining the zero duty rate, and then I think the inference was that it was not possible to ship commercial amounts after the rate went to zero without dumping and thus triggering a review and a reapplication of a larger antidumping duty rate.

Can you comment on that at all?

MR. LEWIS: Yes, I'd be happy to. I think those are two completely unconnected points. Whether or not the volume of imports that were the basis for the Commerce Department's dumping analysis as large or small is beside the point. The question is -- and I think you alluded to this yourself this morning -- is what did the company do to take advantage of that or not do to take advantage of that. And the question that is most pertinent to your analysis is why didn't they take advantage of that.

And I think we have supplied the answer to that, which is that it wasn't in Vale's economic interest to be devoting capacity to exports to a less profitable market, which the United States represent for them because of the logistics costs. And there is no question that the pattern is -- I mean, the whole reason to go through an administrative review, particularly, frankly, if it was a small quantity -- you're not really that concerned about getting a large refund of duties back. You're doing it in order to establish a low deposit rate to move forward with it.

So I think that -- and also, I'm, you know, really looking forward to seeing their brief where they're going to document that these were unreal prices. Or I forgot exactly what they said this morning that were used as the basis of the dumping calculation. I think the Commerce Department has very rigid policies that it follows in terms of vetting the reliability and the reality of the data that is provided to them that led them to find a zero dumping margin.

Sorry. I'm straying a bit on that point. It's not really your question. But I think the relevant point, just to reiterate, is, you know, why didn't they exploit it. I think the answer is there were other reasons that we've discussed here for not exploiting it.

COMMISSIONER PEARSON: Well, with respect to Commissioner Pinkert, we will observe that Commerce always operates very thoughtfully and in accordance with the law. And we do not as a commission look behind their findings.

MR. LEWIS: I won't comment further on that point.

COMMISSIONER PEARSON: I learn much from my fellow commissioners, believe me. You spoke in regard to imports from Ukraine about the exclusive marketing agreement. Is it your sense that that agreement is strong enough that all of the imports, if any, from Ukraine in event of revocation would be controlled effectively by the Felman corporate entity?

MR. STOEL: Commissioner Pearson, first of all, I think obviously there is a lot of confidential information, so we've only been citing to the public data in terms of our testimony and things like that. But I think it's very difficult for us to say exactly what is happening. But clearly there have been zero or very small quantities of imports from Ukraine. And I think given the public documents that I've cited this afternoon and we've heard about, clearly there is a strong relationship between Felman and Ukraine producers.

I think the biggest question for us as Vale's counsel is that clearly that's a distinguishing condition of competition. And we submit that means that you really ought to be looking certainly at Brazil separately from Ukraine. I don't think it's fair to be saying when clearly some relationships -- we'll look forward to Mr. Salonen's comments about exactly the depth of those relationships among these producers and Felman.

I think it's not fair to be considering Brazil and Vale in the same basket as Ukraine and their relationship with the U.S. So I think you have to look at them separately. There was a very good question this morning about whether they were a related party. And the Commission in the past has looked at whether a producer's real interest or greater interest is here in the United States or with its imports.

Again, I don't think we can really answer that question. I'm not frankly sure if the Commission can, based on the information before it. But it clearly has a bearing on the condition of competition and a bearing on what would happen if the orders were revoked.

COMMISSIONER PEARSON: Okay. So from the standpoint of your client, it's a cumulation issue rather than -- you're not inclined to take any substantive position with regard to issues with

Ukraine.

MR. PRUSA: I think Jonathan is saying that it's clearly -- right. So I think what we're going to get is legal wordsmithing about what the term exclusive means. That's what I was hearing this morning, that exclusive on the web site is not how you and I read into exclusive and what the staff read. There is going to be some type of subtlety there that gives the impression that there is Ukranian imports that can flow to the United States.

So I think it's clear, though -- I don't there is any disagreement that there is a relationship between Ukranian -- a large amount, if not all Ukranian supply with Felman. I myself am not comfortable with the idea that it's only a decumulation issue.

So I think it goes more than that. I think to the extent that Felman controls -- now, whether we're going to say it's 100 percent, is it 93 percent, is it 80 percent -- I'm not sure how the argument is going to go. But what is on the public web site is either incorrect, or my understanding of exclusive, not being a lawyer, is incorrect. Nonetheless, we know that Felman would not bring imports from the Ukraine at dumped, injurious prices to the Felman facility here. I'm willing to -- I understand that's not their interest.

That would therefore reduce the vulnerability or the extent that these imports from Ukraine could injure the United States.

COMMISSIONER PEARSON: But I am correct to understand that you're asking us to vote negative only with respect to Brazil in terms of how we would treat Ukraine and China. We have to sort that out for ourselves, or will we have guidance?

MR. STOEL: No, Commissioner Pearson. That's what I want to say with reference to dear friend to my left, which is we're really only interested in Brazil. So frankly we're not here to espouse what might or might not happen with respect to, you know, Ukraine and China. Our interest is having the order revoked as to Brazil.

COMMISSIONER PEARSON: Did you have anything to add, Mr. Lewis?

MR. LEWIS: I was just -- this may be not your question, so that's why I was hesitating.

COMMISSIONER PEARSON: Well, I've just gone over ten minutes, so let it be brief.

MR. LEWIS: Well, I was getting to the question, and I'm sorry if it wasn't you that had asked it before, as to, well, why doesn't Felman want to see the order lifted from Ukraine in this situation. And the reason is to the left -- or was it to the right -- of them at this table -- at the table behind us, which is that they're not in control of this order. Eramet also has an interest, and I think they can veto any possibility of that.

So I just don't think it's within the scope of possibilities for them to have it revoked. But I speculate as to whether they'd want it revoked. But I don't think it's an option for them.

COMMISSIONER PEARSON: Okay. Thank you. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Aranoff.

COMMISSIONER ARANOFF: Welcome to the witnesses on this afternoon's panel, and thanks for your patience. I'm trying to see which of my questions my colleagues haven't already asked.

I did want to follow up. My colleagues you about the effect of BHP's withdrawal from the market. And, Professor Prusa, you had put on some analysis showing that there was going to be a substantial price effect. But what you didn't tell us was how long there was going to be a substantial effect, whereas the domestic panel this morning testified that there was in fact an intense price effect, but that it only lasted a few months and that the market has now adjusted. So I wanted to ask you to respond to that.

MR. LEWIS: Well, Craig Lewis again. I'll invite my colleagues to jump in as well on this. But two things. One is that my understanding is prices are going up again now. So perhaps it's subsiding. It was mentioned maybe temporary itself.

But more importantly was the fact that my colleague Dr. Prusa mentioned when we looked at the import statistics during the lunch break, I was speculating and was not surprised to find that, yes, indeed as the domestics had testified this morning, imports flowed in from Europe. But lo and behold, what countries did they flow from in Europe? Norway, related to Eramet. And was it Rumania or --

MALE VOICE: Georgia.

MR. LEWIS: Georgia. Excuse me, Georgia, related to Felman.

COMMISSIONER ARANOFF: Right. But, I mean, that tends to support -- I understand what you're saying. But that tends to support their argument that there is plenty more supply in the world, and so the exit of BHP isn't going to have an effect on pricing.

MR. LEWIS: Well, but -- yeah, go ahead.

MR. PRUSA: So, right. So if you have the removal, if not all of South Africa's silicomanganese, but a large share of South Africa's silicomanganese production, all right -- so the press reports that I've read don't give the impression that BHP is considering coming back into this business. BHP in their press reports indicated they're interested in focusing on their core mining operations. That's similar to Vale.

And I think, if you look at this data, and if you look at the UN Comtrade data, which is on South Africa's exports to the world, that for me at least whether or not the price effect is going to end up being met by increase in exports from the Ukraine, Rumania, and Georgia, the reality is we've had a huge amount of tonnage come off the market.

That I think is clear the press reports are indicating. All right? So for me, how long it is before other facilities will ramp up, that is less capacity that the staff report reported that was available. We could basically take away BHP's capacity for these purposes from the Ukraine or from Brazil then because this capacity is now gone from the world.

COMMISSIONER ARANOFF: Okay. I also wanted to follow up on the issue of shipping costs and relative shipping and logistics costs. As I look at the record right now, we've had testimony from both sides today, one saying it's not really a problem or a disincentive to ship into the U.S., the other saying it is, both based on people's basically professional experience and knowledge.

You know, the way I look at it right now, it's kind of a wash. I don't know that there is anything that the Commission can do to resolve that. But one comment that the domestic producers did make this morning that I haven't heard a response to yet, they mentioned specialized ships that Vale had had commissioned and had delivered.

Now, I am sure those don't exist just to ship silicomanganese because it's too small a product, and they are a very big company. But if you would comment on that.

MR. LEWIS: Unfortunately, I'll have to comment on that in the posthearing just because I don't know the answer to it. But I would make an educated guess, which is probably not what you want to hear, but that, you know, it is a principally iron-ore focused company. And I believe that the answer is going to be that these are ships that are specially constructed for iron ore transportation. Whether they could be used for silicomanganese I don't know.

But I also suspect it's being used in established routes to Europe and other -- you know, the other major markets where they ship the ore.

COMMISSIONER ARANOFF: Yes. And then one could likewise speculate that it would make the marginal shipping cost for storing a little silicomanganese in to any port you're already going to zero.

MR. LEWIS: One could, and hopefully that's not the answer. But I think what that won't address, though -- and that's what I tried to emphasize before, is that once you arrive in New Orleans, there is a stack of additional logistics costs that really account for -- you know, my understanding is that the ocean freight costs are higher to New Orleans than to Europe, for example.

But what really counts for that large disparity that we're discussing, which the other side is not, my understanding comes from the follow-on costs, including warehousing, barging, trucking, loading, unloading, et cetera.

MR. PRUSA: Commissioner Aranoff, I think it might be the case that two different companies have different views on logistic costs. I actually could imagine the Ukranian producers would agree that there is higher logistic to shipping to North American than if they could ship the silicomanganese just to Ukraine.

But the data shows that those higher logistic costs are not obstacle for the Ukraine to ship to the United States or to Canada. It came up this morning. Look at the data right here. This is Brazilian exports to Canada. We can see them. Ukraine is the single biggest supplier to Canada.

So clearly for them to say logistic costs, we don't see why that's a problem to export, I understand for the Ukranian producers, given their overall costs of production, they can incur these higher costs to ship not just to the United States without the antidumping order. They ship to Canada without an antidumping order and incur the logistic cost.

Brazil looks like Canada, no antidumping order. They say we don't want to ship to Canada. So whether there is a difference of agreement whether it should have been $72 and they say it's $63, I think the data speaks to the fact that Ukraine can ship to

Canada, specifically the single biggest supplier. Norway, number two, they can incur logistics cost to ship to Canada. Brazil can't. Georgia, the fourth largest, can incur transportation costs to send to Canada. Brazil can't.

So I think to me it's clear that something is happening that they're willing to export to Canada, a market similar at least geographically to the United States compared to these source markets. But Brazil is saying we don't want to ship to that market.

MR. LEWIS: If I could just add to -- I, naive me, hadn't anticipated we would have this much of a dispute between the two sides as to what the logistics costs really are. I would have thought that would be a fairly objective factor. But we'll do our best to provide a breakdown so you can, you know, evaluate the credibility of our calculations posthearing.

COMMISSIONER ARANOFF: Okay. I certainly invite both sides to do that for posthearing. One of the arguments that you made in your brief was that Vale would have to incur additional costs to produce a product in a grade suitable for sale in the U.S. market. However, as the domestic producers testified this morning -- and I think there is evidence on the record to suggest that U.S. purchasers simply look for the best price for a given amount of silicomanganese and aren't that concerned about whether the product meets the ASTM specification for grade B or anything else.

MR. LEWIS: This is another area where I'm a little loathe to go too far because I'm not an expert on this. But what I can tell you from having discussed this point, this very point, with the client, what he said to me, Mr. Oliveira, was a couple of things. One is that while there is some -- there is variability in the specifications from one end user, Newcor versus, I don't know, the other one, Gerdau, Steel Dynamics.

That said, each of those suppliers -- and this is my understanding, and maybe my colleagues behind me can correct me if this is wrong -- that these end users actually do seek proposals for product meeting their specifications. And there is some truth that the origin of the product probably doesn't matter that much to them as long as it meets the specifications and the quality issues. By the way, sulphur is one of those quality figures. But it's not as if they're willing to, in my understanding, to vary their specs to accommodate a supplier of the --

COMMISSIONER ARANOFF: Okay. Well, for posthearing take a look at the staff report because I don't think the way you've just said is consistent with what we have in the staff report, where at least some customers said, yeah, we do go out with a spec, but if we get back something that doesn't meet the spec, but the price is good per amount of contained silicomanganese, we might go with it anyway.

MR. LEWIS: Okay. Well, we'll follow up on that.

COMMISSIONER ARANOFF: Okay. Thanks. With that, my time is up. So thank you for this round. Thanks, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Mr. Chairman. And I thank all of you for being here today and helping us to understand these issues.

I want to begin with a comment that Mr. Lewis made just a few minutes ago this issue of whether Felman has an interest in keeping an order on with respect to Ukraine. And I had thought, albeit with some speculation on my part, that what the references to manipulation might mean is that there was some manipulation going on to keep rates on some Ukranian producers high and on other Ukranian producers not so high. And I just want to give you the opportunity to specify what you might have meant by manipulation on that point.

MR. LEWIS: Well, I'll also invite my colleagues to weigh in on this one, but I can speak for what I understood. The basis of my comment, frankly, was the observations of Commissioner Crawford in the original investigation, where to quote Dr. Prusa it sort of prophetically suggested that what bothered her -- and it bothered her because it didn't seem to be addressable under the trade statute -- was that what Elkem was trying to do was to basically corner the market by a) giving itself protection as a domestic producer, and then b) limiting imports from all sources except for the ones that it controls.

And that's what I meant by manipulation because if you had basically taken care of -- if there is only A, B, and C as possible sources, and you're A, and B is an affiliate and you control them, and then you use the trade laws to take care of C, or you control C, you know, all three elements -- I think I'm confusing myself here. You got that point. That's what I meant by manipulation. And that's what I think troubled Commissioner Crawford. And I think that it's pretty close to in fulfillment at this point.

MR. STOEL: Commissioner Pinkert, if I could just add to that. I mean, if you look at these data, look at the imports from Georgia and Norway, especially in 2010 and 2011 -- and I think we respectfully suggest that that give you a sense of what the domestic industry -- and I speak broadly of the domestic industry. I think Felman Trading, which we heard from this morning, they're controlling the imports clearly from Georgia. I think that hasn't been in dispute.

And as we know, Eramet acquired Tinfos, and Norway's imports are quite large also. So when you combine all of those things between production and their imports, that gives you a very good sense of why *Metal Bolt* and other publications are saying that Felman in particular, but the domestic industry is the one controlling the pricing, and they're setting the market. They're, you know, establishing what the volumes should be and what the prices should be.

So I think when we're talking about manipulation, I think that's what we're talking about.

MR. LEWIS: If I can add --

COMMISSIONER PINKERT: Thank you.

MR. LEWIS: -- on a related point, too, going back to this question about exclusion of Felman as a related party. You know, when we looked at that question, we're fully aware that where efforts on our side too have tried to argue to exclude a party typically founder is on the question of where does the Petitioner's interest lie, as a domestic producer or as an importer.

This is a curious case because this is one where I think that's a really valid question for you all to consider up there, is where do their interests lie here. As Dr. Prusa said, are these companies that are really interested in protecting trading operations for this globally traded commodity, or are they really, as they are coming in here telling you, trying to protect, you know, jobs in Ohio and West Virginia or wherever.

COMMISSIONER PINKERT: For the posthearing, please try to fill in the issue in this discussion that I think is somewhat troubling, which is why under those circumstances would they wish to keep an order going on Ukraine. If it's not some low rate for the particular affiliate or related entity, then what is it? And I understand that you tried to answer that question earlier, but I'd ask that you go back and take a look at that.

MR. STOEL: We'd be happy to do that,

Commissioner Pinkert. We'll do that for you.

COMMISSIONER PINKERT: Thank you. Now, you heard the arguments earlier today on the issue of underselling. I had asked a question about whether there had been underselling by Brazil, either back in the original investigation or at any other time. And one of the responses I got to that was, well, they don't need to be underselling to cause price effects in the U.S. market. And I wanted to give you an opportunity to respond to that.

Obviously, there may be some situations where an increase in volume could cause price effects even without underselling. So I wanted to give you some opportunity to respond.

MR. LEWIS: Well, I guess I'll start in answering that. I mean, I think one thing, just to state the obvious, you're asking -- or the reason for asking that question is because they're really -- well, I'm trying to restrain myself from going into confidential information. But let me put it this way. The record of the original investigation is not supportive of a claim that there was price underselling by Brazilian imports, particularly if you look at -- and this is something I want to emphasize. We tried to emphasize this in our brief.

If you look at contract sales, which back in '94 as well as today account for the overwhelming majority of how this product is sold, to my understanding -- but as to whether -- aside from underselling, simply introducing additional volumes could cause prices to decline in the market. That's your question.

MR. PRUSA: Yeah. I'm not sure. Is it this idea that simply the existence of an offer -- I'm trying to understand -- I was actually trying to understand the argument earlier this morning, the idea that there is somebody out there who never actually gets the sale, but he is having an effect on prices even though the data shows that he has never actually sold any product. Is that kind of the idea, that maybe there is this person out there that might lose bid after bid, but -- is that the idea?

COMMISSIONER PINKERT: I don't think that was the idea. And obviously you have to interpret the testimony you heard earlier yourselves. But what I was hearing was that you could be driving down prices so instantaneously in connection with your activities in the market that it wouldn't show up as underselling. It would just show up as a price decline.

MR. PRUSA: Oh, I see. I see. Okay. Thank you. That actually -- now I understand. Well, I'm not sure -- okay. So Craig just spoke to the original investigation data. All I can speak to is the data. As you look at Brazil's exports around the globe, this to me seems like they're throwing out a hypothetical, which there is no evidence right now that Brazil is exporting any volume to Canada and anything more than 100 tons or so over a five-year period to Mexico.

So I just don't see this as a hypothesis that we should need to be concerning too much about it because the data is not showing that Brazil is interested right now in North American markets.

MR. STOEL: Commissioner Pinkert, if I could just add, I mean, I think one important thing to consider about this market is the data right there, which is there is tremendous volume of nonsubject imports in this market. So if there is an indication that somebody is driving down prices, somebody else is going to come in and try to seize market share.

I mean, I don't think this is a market where you're going to have one company that's able to -- you know, there is pretty significant competition, as evidenced by the table. So I think, you know, I think the ability of just one sale to influence prices, it doesn't seem realistic.

COMMISSIONER PINKERT: Thank you. Now, my next question calls for a little bit of tolerance of hypotheticals, but I'm going to go ahead and ask the question, and if you can't answer it, maybe you can address it in the posthearing.

But in your brief, you argue that China actively discourages exports of silicomanganese. Assume that that is an issue that goes to cumulation, and assume that we decumulate China and Brazil, at least at part, on that basis. Would it be perverse then to go affirmative on China and negative on Brazil in light of that reason for not cumulating the two countries?

MR. STOEL: If I could make one comment on that. I think this is an interesting discussion that was had this morning. I think it was between Commissioner Pearson and some of the counsel. I mean, one comment on that is I think it is clear today that there is a condition of competition affecting the market in which there are restraints on Chinese exports.

I think what is going to happen in the future, one year, two years, three years, we can speculate but we can't be clear about exactly where those policies are going. We heard testimony this morning that maybe they're going to be taken away. I think you can find other articles -- and provided the Commission with some evidence -- that perhaps they're going to be continuing.

Obviously the Chinese government has the most important say in that. I think my point is you can look at the narrow issues of the legal question about whether it's a condition of competition and consider, yes, it is, but then as to whether or not you find that it's something so strong that you want to revoke the order as to China, I'm not sure about that when you balance all the factors, such as China's capacity, capacity utilization, et cetera.

MR. LEWIS: Well, I think I'd like to address that one posthearing as well as give you a brief answer. I mean, I don't think -- we're not here to argue for China being excluded. That said, I can relate -- I assume this is not an issue to mention this -- that my client had said to me, when we discussed this case, they weren't particularly concerned about China. And I think the reason why I'm understanding better now the more I've learned this industry probably is because they're just not exporters.

COMMISSIONER PINKERT: Thank you. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Okay. Thank you. Commissioner Johanson.

COMMISSIONER JOHANSON: Yes. Thank you, Mr. Chairman, and thank you all for appearing here today as well. And I'm sorry that Bole could not appear. I know that you are too.

I believe, Dr. Prusa -- you, Dr. Prusa, or Mr. Lewis stated a few moments ago that Vale is getting rid of its operations in Europe because prices are more attractive in Brazil. Is that one of the reasons?

MR. LEWIS: Well, that is one of the reasons, yes. But I think more importantly is to understand that the exports to Europe really were driven predominantly the relationship with its affiliates in Europe. Specifically there were some issues, which I can't go into in a public hearing, to do with the performance of its Norwegian affiliate, which was the silicomanganese producer in Europe. And that's what really accounted for the substantial volumes going to Europe.

I mean, I'm not arguing that there would not be, you know, negligible or trace amounts going to various countries. There probably would be. But when we're talking about the bulk of the exports to Europe, they're accounted for by this circumstance with its affiliate.

COMMISSIONER JOHANSON: Okay. And I should have stated a moment ago that Vale is selling its operations, not that it's getting rid of its operations. That's sort of for the record.

MR. LEWIS: That's right. And, you know, as I said, corporate policy -- more broadly speaking, I was trying to make that point, that Vale sees itself as a mining operation principally, you know, or a trader or ores. And this sale -- I mean, I'm going far afield from direct knowledge on my part. But I believe that the decision for the sale of the European assets had to do with a kind of retrenching back to more of the core focus of the company.

COMMISSIONER JOHANSON: Well, right. But getting back to the whole prices being more attractive in Brazil and in South America in general, why are prices more attractive in South America at this point in time?

MR. LEWIS: You know, I think -- I guess we don't want to overstate that point. You know, the staff report data I think supports our statement that they were more attractive. So I think it's just an objective fact that that's the case. And, you know, I would have to speculate as to the reasons why may have to do with a stronger demand. You know, it has been a relatively strong steel market in Brazil, and maybe other competitive factors in South American markets that explain that.

But that said, what I don't want to overstate, though, are those differentials because as Dr. Prusa said, you know, prices generally have been fairly in line globally speaking for silicomanganese. So it's not like there is huge disparities persisting over extended periods of time, sometimes up, sometimes down.

COMMISSIONER JOHANSON: Yes. Thank you for your explanation because my next question was going to be -- I wasn't -- I've been somewhat unclear on this whole issue, on the issue of price. My next question was going to be why is there no more of a world price, but obviously there is. I mean, it's a commodity product from what I can see. Just the name silicomanganese tells me it's a commodity product. So that's why the whole pricing issue had me a little bit confused. Thanks.

And going back to the issue of Vale selling its operations in Europe, do you have any information you can provide to the Commission explaining why it did sell its operations there? If you could provide that, that would be great.

MR. LEWIS: Yeah. We can try to provide you more. To be honest, I scoured web sources on both sides --

COMMISSIONER JOHANSON: Okay.

MR. LEWIS: -- frankly on the Glencorp side as well. Why was Glencorp interested in this, you know, purchasing the assets? Unfortunately, at least the press reports on both sides are pretty limited. I think, and I'm going from memory here, the press release on Vale side when this deal was announced said that it was part of their -- this is probably corporate jargon -- part of their continuing rationalization policies. I think that's code word for -- and this was endorsed by the declaration received from Mr. Olivera, it's code word for retrenching back to their core operations. They're trying to get out of the manufacturing of ferroalloys.

COMMISSIONER JOHANSON: All right. Thank you for the explanation. And now I'd like to ask another question. It's probably not the best question for you all, but I'm going to ask it anyway. And if you don't want to respond at length, that's fine. And if you want to respond perhaps in the post-hearing brief, that's fine as well. But the Ukrainian producers in their pre-hearing brief claimed or contended the financial industry -- that any financial injury to U.S. producers in recent years were self-induced. Do you all have a view on that from what you know of the domestic industry?

MR. LEWIS: I'm sorry, I don't know if I spaced out for a second. Could you repeat that?

COMMISSIONER JOHANSON: Okay. It was a confusing the way I put it. The Ukrainian producers in their pre-hearing brief stated that any financial injury to U.S. producers in recent years was self-induced. And once again since this came from the Ukrainian's pre-hearing brief, I would understand if you don't want to speak at length on this.

MR. LEWIS: I can't speak for my colleagues, but I'd be very loathed to try to interpret what the Ukrainians meant.

COMMISSIONER JOHANSON: Okay.

MR. STOEL: I think that's probably best left alone.

COMMISSIONER JOHANSON: Okay. Thank you. The domestic industry has predicted that there will be modest growth in U.S. demand in the near future whereas demand in other markets including Europe is not likely to increase significantly or at best will grow even more modestly than in the United States. Do you agree with the domestic industry's forecast as for growth around the world, in the United States and in Europe?

MR. STOEL: I think in terms of Europe, we generally actually I think do agree with them. I think, and again probably shouldn't speculate, but that's probably one of the reasons why Vale is exiting that market. It's probably has not been as profitable as they had hoped it would be.

I would note that for us, I think the comparison that we've tried to drawn is that Brazil has had a slowdown, but if you look forward their growth is going to be pretty strong. As I commented, they have some very large infrastructure projects that are coming up, the World Cup and the Olympics and things like that. So when you compare that to the U.S. market, I think it's about relativity of growth. I think the U.S. market unfortunately for all of us is -- you know, we're not as strong economically as we'd like to be and we certainly hope that changes. But compared to Brazil, Brazil right now is projecting stronger growth. And with it, I think people are projecting stronger steel demand than here in the United States.

MR. PRUSA: I guess my comment on that is if you look at the share of domestic consumption domestically produced, again this is confidential data, it's clear that even with slow growth in the United States the domestic facilities, if they chose not to bring so much product in from Georgia and Norway, the changes could be absorbed by non-subject imports. So if there's changes in demand, I know I think they're saying is, well, the U.S. is the highwater market. Everybody is going to want to come here. But the reality is, is the producers this morning in fact control a large amount of these imports that are in the market. So I think the idea that domestic facilities can still operate at high rates of capacity utilization, I just think if you look at the data, you can see that there's plenty of market for the domestic producers here.

COMMISSIONER JOHANSON: All right. Thank you for your response. And in Brazil, you have quite a bit of competition, right, as far as other producers, other Brazilian producers go?

MR. LEWIS: There are, was it four producers of any significance and Vale is by far larger than the other ones. But, you know, there are multiple suppliers in that market, that's true.

COMMISSIONER JOHANSON: Thank you. And I'm just trying to get my arms around the whole strategy of Vale in pulling back so much into its home market, into its home region, and that's something that I will have to ponder. But it does seem to me that once again this is a commodity product. There's a world market for it. So I think that Commissioner Pinkert or perhaps it was Commissioner Williamson earlier asked for information describing -- if you had any information describing that this is indeed the policy of Vale. If they spell that out anywhere, that would be great if you could get that to the Commission.

MR. LEWIS: Be happy to do so. And I would just reiterate that logistics costs are a huge part of the answer to you, that it is just more -- is less costly to sell within the Brazilian and South American, Mercosur and particular markets. As a result, it's more profitable to do so. And with the capacity they have, it makes sense for them economically. The incentive is to sell where it's more profitable.

COMMISSIONER JOHANSON: Okay.

MR. LEWIS: So even with prices, if they were absolutely equal across all markets or even a little higher or substantially higher in the U.S., it would still be a more profitable prospect of selling in the Brazil and Mercosur region.

COMMISSIONER JOHANSON: Okay, well thank you. I'm sorry, do you want to say anything, Mr. Stoel?

MR. STOEL: I mean I think the historical data supports that because again exporting Canada, exporting -- excuse me, exiting Canada, exiting Japan, the reasons for that are pure and simple, profit. And they're exiting those markets so they can sell it to where it's more profitable. And I think that's one of the reasons why one of the questions earlier, they did receive a zero percent antidumping duty rate, but they decided it was not going to be profitable to ship to the U.S. just like it wasn't going to be profitable to ship to Canada, so they decided not to do so.

COMMISSIONER JOHANSON: All right. Well, thank you. My time has expired and I think you all for appearing here today.

CHAIRMAN WILLIAMSON: Thank you. Vale believes that its capacity utilization is effectively higher than what has been reported -- than what it reported and what is reported in the staff report. Should the Commission rely on what has been reported or should it adjust Vale's capacity?

MR. LEWIS: Well, not surprisingly, we think you should adjust the capacity. We reported it the way we did actually for transparency reasons. We wanted it to be clear -- you know, we didn't want not report the existence that capacity is actually physically there. But what we did want to do at the same time though was to point out, as we're pointing out now, that that capacity -- that a management decision has been made to close that capacity. And as a result, the Commission's figure should be adjusted.

I have to say, it doesn't dramatically alter the picture. I think the capacity utilization rates are still high as we perceive them with or without that adjustment. But I do think it's a more accurate picture for the Commission if it would be adjusted, yes.

CHAIRMAN WILLIAMSON: Okay.

MR. STOEL: Chairman Williamson, I could add one point on that. There's been a lot of discussion about product shifting. I think it's plainly clear from the record that ferromanganese for the moment at least is a more profitable product than silicomanganese. As we talked about earlier, Vale unfortunately had to dedicate more of its manufacturing to silicomanganese to supply Europe. That's what Mr. Lewis was referring to earlier. And as we will provide data to the Commission, they got ferromanganese actually from Europe in order to supply the Brazilian market. They would have loved to be able to do that obviously from Brazil. Why incur the logistic costs both ways of doing that?

So one of their future plans is to cease the import of ferromanganese and to increase ferromanganese production in Brazil. That will obviously make the capacity utilization rate for all of its facilities even higher than they are today. So that's a pretty important development that is related to the restructuring that we've been describing. And we'll provide additional information on that to the Commission.

CHAIRMAN WILLIAMSON: Thank you. But in terms that the capacity has been closed, it can be restarted, can't it?

MR. LEWIS: As a purely physical matter, yes, but a management decision has been made not to reopen it. And I can't go into the confidential --

CHAIRMAN WILLIAMSON: Okay.

MR. LEWIS: -- details as to why that is, but there are some very particular reasons that are outlined in their questionnaire. We'll reiterate them in our post-hearing --

CHAIRMAN WILLIAMSON: Okay.

MR. LEWIS: -- submission as to why they would not reopen them.

CHAIRMAN WILLIAMSON: That will be helpful because you can say it's been a decision not to reopen them for now --

MR. LEWIS: Yeah.

CHAIRMAN WILLIAMSON: -- but things can change.

MR. LEWIS: Right. I think these factors are more of -- the decision is permanent and the factors that led for that decision I think will explain why they're permanent.

CHAIRMAN WILLIAMSON: Okay. I'm questioning whether the decision is permanent, but let's not -- I'll just wait until you get the post-hearing.

MR. LEWIS: I mean what I meant by that is the decision has been made to permanently close them and the reasons to permanently close them I think --

CHAIRMAN WILLIAMSON: Okay.

MR. LEWIS: -- those are confidential, but we'll --

CHAIRMAN WILLIAMSON: Okay, okay. Thank you. We'll wait until I see what you have for post-hearing.

On page 27 in your pre-hearing brief, you argue that the Commission should decline to cumulate subject imports from Brazil with those from Ukraine based in part on the different product properties, you know, this high phosphorous content. However, you acknowledge that in the previous -- that the Commission found in prior reviews that Ukraine silicomanganese was substituted with other subject imports. Has the substitutability changed so as to warrant a different finding?

MR. LEWIS: No. I don't think we're going that far. Just to clarify, it's more of a nuance position we have on that. We're not saying that there's no overlap of competition because it's completely a non-fungible product because of the phosphorous content, which I think is what the argument that was being made in the original investigation and in the first review.

We acknowledge, as the Commission has found and found particularly in the first review, that there are particular end users in the U.S. that can use it and maybe in some cases would prefer to use it because of the phosphorous content. I understand for high-strength steels, if I'm not getting that wrong, that's one of the uses for it.

But even with that being the case though, the fact that you've identified appropriately niche users or niche uses or limited users that can utilize the product, that's fine and true that has implications for whether there's a complete lack of fungibility of the product. But don't forget the other side of it, which is that's also made the case that there is a limited sphere of uses for this product. It's not universally usable. There's particular uses for it. That spells limited fungibility in our view.

So it's an attenuated competition point is what I mean by saying it's a more subtle point. We're not saying it's completely non-fungible or a separate class or like product, but it is limited in its fungibility.

CHAIRMAN WILLIAMSON: And you're saying it's attenuated enough to decumulate?

MR. LEWIS: It's attenuated enough that it should be a factor to consider in the context of cumulation for certain -- that is what we're saying, yes.

CHAIRMAN WILLIAMSON: Okay.

MR. LEWIS: It doesn't compete -- you know, it competes differently. It's targeting different customers to be real specific.

MR. STOEL: I think it's important to point out that -- I'm not an expert on this -- but I understand that the phosphorous content goes to the brittleness of the steel and I can imagine that for certain types of steel, having brittle steel would not be a good thing. So I think even in the first -- in the Commission's sunset reviews, the Commission acknowledged that there were, in fact, some applications that Ukrainian's silicomanganese was not particularly desirable.

And as one on echo of Craig's comments, we actually had quite an internal debate among ourselves about exactly how much we should be talking about phosphorous. But we do believe that it is a difference between the way the Ukraine product competes with other products because you have to take it into account when you're deciding whether to buy Ukrainian or Brazilian or Chinese or U.S. It is clearly something that affects Ukrainian product differently than the others.

CHAIRMAN WILLIAMSON: Okay. Thank you for those answers. I have no further questions. Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman. I believe I have two questions still. The first is just to follow up on what you were asking a minute ago about the capacity utilization number. Oftentimes, we ask for business plans or internal memos or other things that undergird a company's decision making. Obviously that would be confidential. But if you have anything that formal to put on the record, that obviously would strengthen the case.

MR. LEWIS: We'll do our best to get something for the post-hearing.

COMMISSIONER PEARSON: Okay. My last question then has to do with vulnerability. There have been times when I've -- I know you're asking us to vote negative with respect to Brazil and there are times when I've voted negative in reviews when I found the industry not vulnerable and sometimes when I have found it vulnerable. And so given that we will need to make such a finding in this case, what's your guidance?

MR. STOEL: Commissioner Pearson, I think you're asking a very interesting question and one that we've actually struggled with when we looked at the confidential data because I think when you look at the confidential data and then you look at the public data, you see that there are rises in a lot of the Commission's traditional indicators. So that would suggest an industry that is not vulnerable. But the confidential data and also the testimony this morning about -- I think somebody testified to profitability in the red, that suggests something different.

I think where we come out though is that when you look at the U.S. market, it's clear, as some of these quotes say, that they're able to control what prices are. And when I say "they're," I'm not just talking about them as producers, but their combined operations, producers, and importers are able to control the market. When you're able to do that, that suggests you're able to rationalize production, as Dr. Prusa testified. You're also able to decide exactly how you want to operate. Do you want to have full capacity? Do you want to have less than full capacity? Do you want to operate a new plant?

Some of the things that were discussed by the domestic producer this morning and as somebody who certainly wants a strong America, I want a strong domestic industry. They're the ones who are able to decide that because they control the market. They can decide how much should be coming in, how much should be produced here. And so I think in that situation, I would I think respectfully suggest that it's really hard to see how this industry is vulnerable despite some of the data that we do see.

COMMISSIONER PEARSON: Okay. I hear your argument. And my colleagues could quote the statute better than I can, but as I recall, we are required to make our injury determination on the basis of the domestic industry as we find it regarding their domestic operations and not other factors.

MR. STOEL: I guess the last point on that though and you're obviously absolutely right about the statute, but I think it is vulnerable to what -- I mean, vulnerable to subject imports. Well, given the volume of non-subject imports, I'm not sure that I would they're vulnerable to subject imports, certainly not to the very small quantity of Brazilian imports that might be available. If there are other reasons why they're not being successful, then I'm certainly interested in seeing those in their post-hearing submission.

COMMISSIONER PEARSON: Dr. Prusa, did you --

MR. PRUSA: It's repeating some of what I had said in testimony. I don't know how many years that I've come before the Commission, I've never -- and you've surely seen more cases than I have, but I've never seen a case that has these kind of complications. You're right, if you want to look -- if you want to peel away and look at this, your question about what they're vulnerable to, there is certainly confidential data that would make it suggest that the industry is weak.

But on the other hand, if you take the bigger picture and understand what the domestic firms are doing themselves, I think your vulnerability analysis in this case is extremely complicated. It's really a problem. I don't see how in light of what the data shows what's actually happening within the industry, how you can't discount some of the data, at least try to understand the greater picture of what the firms are doing.

COMMISSIONER PEARSON: Okay. Well, thank you. I agree with your assessment, that it's a complicated analysis. If you have anything for post-hearing on this, please let us -- did you have anything to add, Mr. Lewis?

MR. LEWIS: Well, I was just going to add that I think -- I can't discuss this in detail publicly, but I think we laid out in our brief some compelling reasons to suggest that they are not as weak as they are portraying themselves to be. There are some -- and I don't think I'm saying anything confidential, there's some internal reasons why things look worse than they really are for the U.S. industry. That's one point.

I think the other thing just taking your question as having been more philosophical, what do you do with this type of situation, I think it's similar to what the Commission faced back in '94 in some respects. I think this is a causation issue in the sense of if you lift the order and you look at the condition of the U.S. industry and it's not great after you've lifted the order, the thing you've got to ask yourself, would that be true by reason of subject imports.

I know it's very hypothetical and forward looking, but that's what we're engaged in here with the sunset review. But I think that's the issue and, you know -- so you have to ask why are they vulnerable if you determine that they were. I don't think they were for the reasons I just mentioned. But even if they were, then you're still left with the question of, you know, is there really a causal relationship here. Has that been established? I don't think it was in '94. I don't think it is today either.

COMMISSIONER PEARSON: Okay. Well, thank you very much for those thoughts. With that, I have no further questions. Mr. Chairman, back to you.

CHAIRMAN WILLIAMSON: Commissioner Aranoff?

COMMISSIONER ARANOFF: Thanks, Mr. Chairman. We've talked about the current Chinese export restrictions. And I just wanted to ask both this panel and also the domestic producers for purposes of post-hearing, the Commission needs to determine what's likely to happen in the event of revocation. In doing that, we're really going to have to make an assessment of whether we expect the Chinese export restrictions to remain more or less the way they are or to significantly loosen up, to loosen up in some meaningful way that would affect the incentive to export from China. If you're looking at likely as basically 51 percent, I guess I'm interested in both sides' assessment of which way we need to go from both the factual and legal basis.

MR. LEWIS: We'll be happy first of all to expand on that in the post-hearing. But I can tell you just from a discussion with one of my colleagues during the break on this issue, having heard it come up in the morning session, my understanding is that there are some objective reasons to believe that it's more than the 51 percent that it is likely that these restrictions will remain in place for the foreseeable future, as the Commission generally views that. But we'll substantiate that in the post-conference submission.

COMMISSIONER ARANOFF: Okay.

MR. STOEL: If I could just add, Commissioner Aranoff, I wanted to go back to Commissioner Pinkert's earlier question and criticize myself for not saying, it would be perverse to allow China out, but not to allow Brazil out, in order to cumulate an analysis. I think we have made a pretty strong case for why Brazil should on a decumulated basis be -- the order should be lifted. But we will, of course, provide additional information on China, although I don't envy your decision on that particular issue.

COMMISSIONER ARANOFF: Okay. I appreciate that. I have a couple of questions that I wanted to just clarify about slide number 22 in your presentation. It's the one that has the U.N. Comtrade data on Brazilian exports. That one, yeah. Looking at that and also at staff report Tables 4-6 and 4-7 on Brazil, my first question is can we be confident that the U.S. Comtrade data here are representative of total exports for Brazilian producers and not only for Vale?

MR. STOEL: I think we believe that they are in fact all exports and we will confirm with Vale. But I don't believe there have been significant exports from the other Brazilian producers, but we'll confirm that as part of post-hearing.

COMMISSIONER ARANOFF: Okay. Now the two staff report tables do show exports by Brazilian producers other than Vale. And so I'm interested in what we know or can know about those exports based on either the Comtrade data or the data that the Commission have or another source about where those exports were going and what we can say we can reasonably predict about the exporting conduct of the other three Brazilian producers in the reasonably foreseeable future.

MR. LEWIS: My understanding is the Comtrade data is for all exports, so I think that does answer that. It does cover the others and so you can sort -- you can see where all Brazilian exports were going. That said, I do -- one of the things I'm taking away from this hearing is that we would like to elaborate a bit further about the remainder of the industry. Again, we face some constraints, as I mentioned earlier, that we just couldn't get this information. But I recognize the Commission's interest in this and we'll endeavor to try to flush that out further.

COMMISSIONER ARANOFF: If you know where this company's exports are going and you know where all Brazilian exports are going, ergo, you should know something about what's left and where it's going.

MR. LEWIS: Exactly. I think we can probably get more of the story from our client on that to help you with that question.

COMMISSIONER ARANOFF: Okay. So final question, if export shipments from Brazil overall fall, as they did for example in 2008-9 when the economy was bad, can we conclude that in the reasonably foreseeable future the Brazilian home market will be able to absorb any excess volume?

MR. STOEL: I think, Commissioner Aranoff, the answer to your question in large part goes to what I believe I was explaining to Chairman Williamson, and I have to be careful about not revealing confidential information, but there was in fact this swap between Europe and Brazil pertaining to ferromanganese and silicomanganese and we'll document that post-hearing. But I think that explains a lot about what Vale would like to do now that it no longer intends to be shipping to Europe.

So as I said, I think it's -- everybody said, I think Eramet said it this morning, I think it's universally acknowledged that ferromanganese is a more profitable product. So if you could make ferromanganese, then you would gladly do so. And so that's certainly what our client would like to do as part of that.

MR. LEWIS: I would just add to that, my understanding on that point too is that regardless of the relative profitability, silicomanganese and ferromanganese I think are sold -- what was the term you used -- like a portfolio products that are required by the steel-producing consumers of the product. And companies like Vale and I assume the domestic producers entrance to supply commitments -- well, maybe I shouldn't speak for them. I don't know if it's true of the domestic producer. But certainly Vale has told me that they have entered into commitments to supply both products.

So would this shift of ferromaganese from Europe -- you know, the supply no longer being there, they still have the commitments to fulfill. So that has to be filled from domestic sources because that's all that's left.

COMMISSIONER ARANOFF: Okay. Well, I look forward to what people can add on that in the post-hearing. In the meantime, I don't have any further questions. I do want to thank this afternoon's panel for your testimony. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman. I just have a couple more questions. First of all, as to the current state of the domestic industry, I'm wondering if the capital expenditures by the domestic industry are part of your argument that the industry may not be as vulnerable as it might look at first glance.

MR. LEWIS: I'm feeling nervous about confidential information in responding to that question, but I would nod affirmatively to it. Yes, that's part of it. That's not all of it.

COMMISSIONER PINKERT: Perhaps you can take a look at those numbers and address it in the post-hearing.

MR. LEWIS: Yeah, be happy to.

COMMISSIONER PINKERT: And then finally, the argument about the size of the Brazilian industry. I'm particularly focused on the matter of cumulation for purposes of this questions and what I'm endeavoring to discern is whether the size of the Brazilian industry goes more to the no discernible adverse impact issue than it does to the exercise of discretion not to cumulate if the whole idea is that a smaller industry is likely to produce a smaller impact in the United States.

MR. STOEL: I think our answer particularly perhaps would be both. I mean, I think we think that the smaller industry, at least in terms of just aggregate -- you know, just the quantities available, it has a smaller amount to ship to the U.S. market and thus, as a matter of negligible impact, I think we would say -- or no discernible adverse impact, I think we would say that suggests that it's not likely to have a discernible adverse impact.

I would suggest that we actually -- its another issue we had a debate amongst ourselves and we know how exacting the Commission's standard is on that particular front. And so while we believe that Vale would not ship here, we recognize that that has not historically been something the Commission has very readily recognized.

So in terms of condition of competition, we also believe that the size of the industry and it might be just the sure capacity of the other industries compared to Brazil is in fact a very important difference in conditions of competition that we think the Commission should recognize as part of its cumulation analysis, discretionary cumulation analysis.

COMMISSIONER PINKERT: Go ahead.

MR. LEWIS: I was deciding whether to add anything to that. I think it does go to discernible adverse impact, but just to echo what Mr. Stoel said. My sense from experience in a hearing before you all in these proceedings is that the discernible adverse impact threshold is pretty low. That's not really our principle argument here. I think as you've correctly identified, we're looking at it more in terms of a condition of competition. And I think it is one. It's one of many, by the way. It's not like our argument on cumulation hinges on this one question. But I do think it has to do -- it is a condition of competition because it does suggest a different -- I don't know how else to say it, a different capacity to export.

Brazil just had -- it's just got a smaller capability of serving the U.S. market. I think that's got to influence their likely export volumes and that's the difference between them. But it's not the only issue for us on cumulation.

COMMISSIONER PINKERT: I apologize for trying to drag you into an issue upon which the Commissioners may have differing points of view. But in any event, I appreciate the answer and I have no further questions for this panel.

CHAIRMAN WILLIAMSON: Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Chairman Williamson. Well, I'm the last Commissioner at the end of two answered questions and to be honest with you, I don't think I have any more questions. But I will review the record thoroughly and thank you again for appearing here.

CHAIRMAN WILLIAMSON: Thank you. Does any other Commissioner have questions?

(No further questions from Commissioners.)

CHAIRMAN WILLIAMSON: Okay. Does staff have any questions for this panel?

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

CHAIRMAN WILLIAMSON: Okay. Does those in support of continuation have any questions for this panel?

MR. SALONEN: We have no questions on behalf of Felman.

CHAIRMAN WILLIAMSON: Okay. Thank you. Then it's time for closing statements. Let's see, those in support of continuation have 14 minutes of direct and five minutes for closing, so a total of 19 minutes. Those in opposition to continuation have 17 minutes of direct, five minutes for closing, for a total of 22 minutes. Our tradition has been to combine the time and if there's no objection, that's what we'll do this time. So I'll dismiss this panel. Thank you. And we'll have closing statements.

MR. SALONEN: Mr. Chairman, may we request a two-minute recess just to confer?

CHAIRMAN WILLIAMSON: Yeah. It's going to take about two minutes to get back to us. Yes.

MR. SALONEN: Thank you.

(Whereupon, a brief recess was taken.)

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

CHAIRMAN WILLIAMSON: You may proceed.

MR. SALONEN: Thank you, Chairman Williamson and Commissioners. Good afternoon. While we wait for the projector to warm up, just a couple of points.

I'll be making a short PowerPoint presentation and then turning the floor over on rebuttal to Dr. Button and then I'll come back for the closing statement.

The question as to where does, at least speaking for Felman Production, but also listening to the testimony of Eramet's witnesses this morning as to where their interest lie, if their interest did not lie in domestic production, then it begs the question of why would they have made investments of millions of dollars to improve their facilities, to deal with reducing emissions. Why would they have the gain-sharing program you heard about from Mr. Martin this morning? All of that points to the fact that these companies have a keen interest in domestic production and I think that Ken will have a couple more points on that.

Turning to our PowerPoint presentation, let's first begin with Vale's arguments concerning likely discernible adverse impact and cumulation. First, Vale contends that imports from Brazil are unlikely to have a discernible adverse impact because the Brazilian industry is heavily focused on its home market and markets in South America. But as we've seen, the U.N. trade data shows that in 2011, the Netherlands was Brazil's second largest market.

Indeed, Brazil was able to increase its exports to the Netherlands from zero tons in 2006, to more than 20,000 tons in 2011.

Now the fact that this may have been to meet commitments that Vale had that it was not able to supply by its European operations and that it's now suddenly going to stop exporting to Europe and it's going to bring that volume home, if you take a look at the data that the International Magnesium Institute has as to home market consumption, there's no room for it. There's no room for it. It has to find another home.

Vale contends that imports are unlikely to have a discernible impact because of the high logistic cost for shipping Brazilian product to the U.S. But again that claim was -- first of all, you heard Mr. Mikhyeyev this morning telling you that in fact the logistics cost from Rio to New Orleans versus Rio to Rotterdam are in fact very, very similar, and we'll provide information in the post-hearing on that.

Moreover, the Netherlands largest port Rotterdam is 1,350 miles more distant from -- we looked at the Port of Santos because Santos is Brazil's largest port and the port of New Orleans, which was the largest port of entry for silicomanganese in 2011. So New Orleans is much closer. The notion that somehow they can afford to ship to the Netherlands, but they can't afford to ship to New Orleans is simply not credible.

Vale argues that the Commission should not cumulate imports from Brazil with imports from China and Ukraine because the imports from Brazil face different conditions of competition, including export orientation and differing levels of available capacity. But Brazil made these very same arguments in the first review. The Commission rejected them there, finding that those considerations were outweighed by the considerations of the commodity nature of the product, the high degree of substitutability, and the existence of excess capacity in all three countries. And of course we have those very same facts in this case today.

Moreover, in terms of looking at the traditional factors that the Commission looks to with respect to likely geographic overlap of the imports, exports from all three subject countries have significant overlap in the EU going back as far as 2000. That's been a significant market for all of them. The U.S. was a significant market for all of them in the original investigation. There's no reason to believe that it would not again be a significant market for them if the orders are revoked.

As for likely import volumes, Vale contends that imports from Brazil are unlikely to be significant because of allegedly long lead times to ship to the U.S. But producers in other countries far more distant don't appear to have any -- far more distant than Brazil from the U.S. apparently don't have any difficulty competing in the U.S. For example, Australia, which was the third largest source of imports into the U.S. in 2011 is nearly 2,500 miles further away from a major U.S. port, Los Angeles, than Brazil is from the U.S., New Orleans. So if the Australians can ship that far and compete successfully in the U.S., there's no reason to believe the Brazilians can't do the same.

Vale also claims that import volumes are unlikely to be significant because of the cost of processing its product to meet U.S. customers' requirements. But that claim is not credible when you consider that Vale itself says that its ore has high manganese content of at least 40 percent. And my client tells me that that is comparable to the manganese ore content used by the domestic industry.

Vale claims that imports from Brazil are unlikely to have adverse price affects because the Commerce Department found no dumping of Brazilian imports in two administrative reviews. But not to -- and I think Dr. Button will address in further detail some of the questions raised by Commissioner Pearson on that point. But the other point to keep in mind is for purposes of the Commission's analysis, the relevant issue is not what dumping margins were in effect while the orders -- were in place when the orders were in effect. The question is, is what are the likely dumping margins going to be and Congress has given you that answer, anywhere from 17 to 65 percent.

Finally, responding briefly to the brief by the Ukrainian Ferroalloy Association, again here most of their arguments were simply restatements of arguments they made in the first review, including the high phosphorous content of their production. The Commission didn't find those persuasive then. They have added no evidence to make those more persuasive now. And I would just comment, with respect to the question of phosphorous content, that apparently did not prevent them from increasing their imports into the U.S. during the original period of investigation, from zero to 41,000 tons over a period of three years.

With that, I'll turn it over to Ken.

MR. BUTTON: Thank you. Good afternoon. I'm Ken Button of Economic Consulting Services. A short time ago, we heard the Respondents state that the U.S. industry has the power to raise prices in the U.S. market or words to that effect. I don't believe that's an accurate description of the economic reality. We are dealing here with a fungible commodity product with excess global capacity. There's been reference to South Africa. We have multiple South African producers. And there's been discussion that we have additional capacity with other countries around the world.

Purchasers are willing to switch from one producer to another. I would note the purchaser comments in the questionnaires and those quoted in the staff report that indicate how rapidly purchasers will switch to find higher -- to find lower prices and avoid higher prices.

The U.S. industry has made massive recent investments in its facilities in the United States. The investors in Eramet and Felman will require financial returns on those investments and they are unlikely to make and then sacrifice these expensive investments for the sake of supporting a business of importing product from elsewhere. I believe that a more accurate economic assumption would be that the domestic industry has made these investments with the intention of a long-term gain and they will produce them as they are doing in this proceeding before the Commission.

We were told as well that in the original investigation, that the Commission found that the volume of imports from Brazil was not significant. I don't believe that's an accurate statement. There was a reference to market share. But the volume indeed was significant and three Commissioners found that it was quite significant, being the largest volume supplier to the United States as having increased by 38 percent during the period of investigation.

With respect to the motivation of the Brazilians, I indeed will address the issue of hyperinflation. However, in the interim, I would suggest that the motivation of the Brazilian exports could perhaps best be found in the original staff report in Table 17, which gives the capacity utilization level of the Brazilian producers in 1993, and you will find that that is a very low number.

The current issue before the Commission I believe is the likely volume and likely pricing of the

Respondents. In this case, in that sense it's essentially a threat issue, and the original investigation likewise. We had two Commissioners that said, yes, they are likely to increase volume and they're likely to undersell and one Commissioner saying in the threat context, specifically said this is what he thought that -- what would occur.

With respect to the issue of the deposit rates, the zero deposit rates, I would note that an administrative review, we are facing here an issue of artificial quantity and artificially high pricing; artificially low quantity, artificially high pricing and they go together. If we would take for example the 2004 period, you will note that in 2004, 60 tons were imported, as opposed to the original period of investigation when it was 71,000 tons. And the original period of investigation average unit value was 21 cents. In this 2004 admin review, it was 86 cents.

Well, what were the others, the non-subject suppliers selling into the U.S. market in 2004 when the Brazilians were 86 cents? They were less than half of that. They were at 42 cents. So you have 60 tons and 86 cents, that is how they got the zero margin.

As to underselling, we are not saying that there is no underselling. The actual record in the original investigation is that the three Commissioners expected future underselling to occur and that is, I guess, one of the things that you were facing here today, what's going to happen in the future. And additionally the question has arisen, can you have a price effect without actual transaction underselling and you can. How? Somebody can offer to sell at a low price, not get the sale because they caused perhaps the incumbent U.S. supplier to cut price. You don't have an undersold transaction, but you do have a negative price impact.

Finally with respect to the vulnerability, I believe one of the things that the U.S. industry is very vulnerable to is declining price, and the profit and loss data I think substantiate that. And I would look in particular to the variance analysis from 2010 to 2011 in the staff report, which indicates the key role of lower price and the vulnerability of the industry to declining price going forward. Thank you.

MR. SALONEN: In beginning my closing statement, I would also like to extend thanks of our witnesses and the workers in Felman and in Eramet, for the hard work that the staff has done in collecting the information in this, and your attention and time and the penetrating questions today. And we will obviously endeavor to do our best to answer them as fully and as helpfully as we can in the post-hearing submission.

When comparing the record of the current review and the record of the first review, which we heard very little discussion about from Vale's counsel, it is striking how for the most part little has changed. With respect to the conditions of competition, silicomanganese is still a fungible commodity product. Once the product meets a purchaser's qualifications, domestically-produced silicomanganese and silicomanganese from Brazil, China, and Ukraine are all interchangeable and purchasers neither know nor care where the product is from. That was true then, that's still true today. As a result, the driving consideration for purchasers has been and continues to be price.

In addition, here as with the first review, the staff report makes clear that there is significant excess capacity in each of the subject countries. Going to the question of the argument that Vale's counsel makes about the different levels of capacity in each of the countries, that's not really the relevant test. The relevant test is what is the excess capacity in the other available supply relative to the U.S. market. How much market share could they get? The fact that the Chinese industry and the Ukrainian industry may be much larger than Brazil is neither here nor there.

As stated in the staff report, producers of silicomanganese in Brazil, China, and Ukraine have the ability to respond to changes in demand with large changes in the quantity of shipments of silicomanganese to the U.S. market. It is also the case that the subject countries have historically been and continue to be highly export oriented. That was true then and that's true today.

As the data from the International Manganese Institute shows in the public pre-hearing staff report, the producers in the subject countries have consistently produced at levels that significantly exceed the subject countries' apparent consumption. I think that with one exception for Brazil was 2009 when we had the economic collapse.

With respect to the domestic industry as we reviewed in our pre-hearing brief at pages 58 to 60, the industry is in a weak financial position. When you look at the confidential data that is -- by any reasonable measure, that is the conclusion that one has to draw. While there were positive trends in some of the industry's performance indicators, not surprising since you have a new domestic producer in the industry, many other indicators declined during the period of review.

Respondents point to the positive trends in the domestic industry indicators as evidence that the industry isn't vulnerable, but this isn't the first time the Commission has had this kind of a fact pattern. It had a similar fact pattern in solid urea from Russian Ukraine and from fresh garlic from China. And there the Commission found that even though the respective -- even though there was the existence of improvement in such factors as production, shipments, and et cetera, that those trends were not outweighed by evidence of the weak financial position of the industry and in both of those cases, the Commission found the industry to be vulnerable.

With respect to the likely volume, price effects, and impact of subject imports, were the orders to be revoked, the subject countries have both the ability and the incentive to resume exporting to the United States post-revocation. Were the orders to be revoked, import volumes would likely increase significantly. As noted in our pre-hearing brief, given the magnitude of the cumulative excess capacity, and I think this is an important point, they don't need to shift a lot of product to this market in order to inflict material injury on the domestic industry. They don't need to shift a majority or even half. A relatively small share of their excess capacity being shifted to the U.S. market is all that it would take.

The record also suggests that subject imports would enter the U.S. market at aggressive prices. As was explained in the first sunset review, "in the short run such imports would have to undersell the domestic like product in other subject imports to a significant degree in order to gain market share. Because of the rapid way in which price changes are communicated in this market, however, we would not expect any underselling to persist" -- this is the point I was trying to make earlier this morning -- "rather we would expect price declines triggered by the likely large volume of subject imports to depress or suppress the overall price levels in the United States to a significant degree if the orders were revoked." And this goes back to a point that Ken was making is that in the original investigation, three Commissioners found that likely adverse price effects were imminent and met the test for threats.

Were the orders to be revoked, there is simply no evidence to suggest that what the Commission found in the first review does not continue to be the case in 2012. Were the orders to be revoked, the combination of increased imports and severe adverse price effects would force the domestic industry to choose between trying to meet subject imports prices or ceding market share. Resulting adverse impact would likely lead to the domestic industry shutting down furnaces, laying off employees, and with the reasonably foreseeable future completely collapsing.

And so according we respectfully request that the Commission make affirmative determinations in all three reviews in order to keep these orders in place, in order to give the domestic industry the opportunity to continue to progress. Thank you.

CHAIRMAN WILLIAMSON: Thank you. Mr. Lewis?

MR. LEWIS: Thank you, Commissioners. This is Craig Lewis again from Hogan Lovells on behalf of Vale. And I am going to be combining closing statement and final comments here. Mercifully, I'm going to keep this extremely brief. I'm assuming everybody is as tired as I am. I also want to just reiterate my thanks to the Commission staff for their work in this case. It's an impressive staff report and I think it places a lot of good information before the Commission.

I'd like to start where I started my opening statement and frankly where the Commission started, which was 17 years ago, the original determination. This order should never have been imposed on Brazil. As I stated at the outset, a majority of the Commissioners found no present injury and a majority of the Commissioners who considered threat found no threat of injury.

Now I understand fully the statute permits an order to be imposed under those circumstances where two Commissioners found material injury and one Commissioner found a threat. But as I stated at the outset, I think this unusual circumstance, this most tenuous of possible circumstances under which an order can be imposed on a country's exports should be looked at very carefully by the Commission. And it's not just because I want you to look at that, it's because Congress has asked you to do exactly that.

The statement of administrative actions says that you should consider carefully the original investigation. Why? Because that is the only evidence you have in front of you of what the behavior of Brazilian imports has been absent the restrictions of a dumping order. And what did the Commission find there? A majority found that the volume of subject imports from Brazil were not significant. There was some dispute with Mr. Button or Dr. Button about exactly what Commissioners used the word significant or which ones did not. I ask you to take a look at the Commission to see whether the way we represent it is accurate or not. I think we've described it correctly in our written testimony.

The point is, however, what the substance of the Commission's finding were, which was that the volume of imports from Brazil followed increases in demand and market share increases were marginal at best and were really at the expense of non-subject imports, not the domestic industry, and that's talking Chinese and Brazilian imports on a cumulative basis. So we didn't have volume.

But as I said at the outset, that case wasn't about really volume to begin with. It was more about price. But here again four of the Commissioners that looked at this issue found no evidence and rejected Elcam's claims that subject imports from Brazil were depressing or suppressing U.S. prices. They couldn't find a correlation between those prices and import volumes and I would submit, while I'm constrained by confidentiality, the pricing comparison data that the Commission collected is overwhelming, it's devastating to the repeated claims of the domestic industry that Brazilian exporters were -- and we're really talking about Vale as predecessor companies have a history of undercutting and suppressing domestic prices. There is no such history.

We've also argued and for purposes turning now to this review that the Commission should examine Brazilian imports separately on a decumulated basis. I will not in the interest of time go through all the factors. There are multiple factors that support that. Our argument is based on differences in conditions of competition. This is an area where the Commission's discretion under the statute is at a maximum and we believe there are more than ample grounds for the Commission to examine Brazilian imports separately. And that includes the fact that the Brazilian industry is a fraction of the size of the other two countries' industries. But there's a myriad of other additional factors that we outline in detail in our brief that support that decumulated analysis.

Turning to the condition of the U.S. industry and its vulnerability, again I'm constrained by the confidential record here to speak in detail about the condition of the U.S. industry, but I go back to my previous comment that it is not as weak as they are portraying it to be. I think it is a fundamentally stronger industry than has been portrayed.

And you cannot speak of the domestic industry in this case without addressing the 500 pound gorilla that's in the room, which is the unusual relationship between the domestic producers and non-subject and subject sources of imports. When you saw those import volumes projected on the screen into the United States, all of the major foreign suppliers with the exception of South Africa, which I'll get back to in a moment, are affiliated with and I think it's fair to say presumed to be controlled by the two domestic producers that are in front of you asking for another five years of protection.

They can make the decision whether to import or to produce domestically. And a rather telling example of that is the incident of -- incident is not the right word, but the development with respect to South Africa. Testimony was provided earlier today about how, oh, this was a temporary phenomena. Yes, prices spiked when the South African producer said it was exiting the market. But European imports quickly flooded the market and it filled the gap and brought prices back down. Well, of course, they're rising again now, but more importantly where did those imports come from? They came from affiliates of the domestic producers. So if those prices declined, one has to question where the blame for that lies.

Turning to Brazil itself, again I think the original investigation record is very clear that Brazil was not a source of injury in the original investigation and there were some unique circumstances not least of which being the unusual hyper-inflationary conditions in Brazil at that time. But regardless, again the volume and pricing analysis by a majority of the Commissioners did not support the view that there was injury.

Now looking to the present circumstance, the economic incentives faced by Brazilian exporters simply do not support the claim that lifting this order will lead to a flood of imports into the United States or even a trickle of imports into the United States. Why do I say that? This isn't hypothetical. Look at Canada. Steel producers just like they are here in the United States north of our border and yet with no trade barrier whatsoever, as predicted by Vale's policy of retrenching its activities and focusing on the domestic market in Latin America, exports to Canada ceased in 2007 and haven't recurred.

And this isn't because they stopped producing steel in Brazil -- excuse me, in Canada and it isn't because Canadian steel producers no longer use silicomanganese. The affiliated companies related to the domestic producers behind me have rushed in to fill -- to ship product to Canada. They're supplying it. Vale is not. And it's impossible to square this argument that Brazil is just waiting for you to lift this order to flood the U.S. market with this product if they're not touching the Canadian market. I think if you're going to accept their arguments, you're going to find someway to reconcile that fact and I don't think you can.

Europe, their next line of defense, well, they ship to Europe. Europe is far away. So if it's far away, let's get out our measuring tape and see how far away the United States is. Oh, it's further than Europe is, so they must be ready to export to the United States if they export to Europe. Well, it's not that simple. As we said before, frankly, while prices have been higher in Brazil, in general there's world prices for these products. They rise and fall, but they're -- you know, the data in the staff report shows this. There's a band of very closely -- a close series of bands of prices around the world for these prices. They go up and down together.

What affects trade flows and what was a recognition of Vale is that logistics costs are a huge factor that eat into the profits in selling silicomanganese. And they've made a rational decision and the fact that they've implement it is evidence by the import data that the Commission has in front of it to drop markets that aren't profitable, and that's Canada and for this very same reason that's the United States. And there's been some issue as to whether our estimates of the logistics costs are accurate or theirs are. I don't think I heard anything further on that in their closing statement or rebuttal, but we'll address that and give the detail that you looked for in our post-hearing brief. The bottom line is that those logistical costs are a serious economic consideration for Vale, which makes the United States not a relatively attractive market for their exports.

There are several things that have not been explained or addressed adequately in this hearing. I think repeatedly confidentiality was invoked for what I would have thought was a fairly simple and public matter, which is what is the relationship between Felman and the Ukrainian producers and the Georgian producers for that matter and just to get a better understanding of how this all fits together. This was the opportunity for us to understand that and to hear what's going on with that. We've been promised that we'll get that explanation in the post-hearing brief. I'm not holding my breath for the level of detail that I expect to see in that brief on that subject.

And that's troubling to me and it's troubling to me for the same reasons it was troubling to Commissioner Crawford in the original investigation. Because there is something going on in this circumstance that is questionable in my view, which is that it appears, as it appeared to Commissioner Crawford, that the trade laws are being used in this case in a manner that appears at least to be intended to and designed to benefit a company's import operations, rather than its domestic production operations, which is the statutory focus. And I think Commissioner Crawford felt that her hands were tied under the statute. She had to focus on the impact on the domestic industry notwithstanding that four out of the two found no injury.

Be that as it may, I think it's a factor for the Commissioner to consider here, what is really -- and Dr. Prusa spoke to this point as well, you know, when you're talking about the health of the industry and profitability and where products are being produced, you can't just simply set that aside the way that the domestic industry is asking you to do in this case. It is a big front and center issue for you as you reach your determination.

And then finally, of course, is the issue of South Africa's BHP Billiton's exit from the market. We'll look further into this notion that there are other South African producers who are going to quickly step in to fill the void. I don't think that's true and we'll substantiate that in our post-hearing brief.

I won't walk through the various so called errors and omissions in Vale's submission. We'll address those as well in our post-hearing brief. I don't think any of those are errors or omissions.

Again, this case in our view, you can't go back and re-vote on what happened 17 years ago. They've enjoyed 17 years of protection from imports. It was a tenuous case to say the least 17 years ago. It is far more tenuous today. And for the reasons we've outlined, we respectfully request that the Commission reach a negative determination in this case. And I thank you for your time.

CHAIRMAN WILLIAMSON: Thank you. Post-hearing briefs, statements responsive to questions, and requests of the Commission and corrections to the transcript must be filed by September 14, 2012. Closing of the record and final release of data to parties, October 2, 2012. Final comments are due October 4, 2012. And with that, I want to thank all the witnesses for their testimony today and this hearing is closed.

(Whereupon, at 3:51 p.m., the hearing was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Silicomanganese from Brazil, China, and Ukraine
INVESTIGATION NO.: 731-TA-671-673 (Third Review)
HEARING DATE: September 5, 2012
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: Lashonne Robinson

SIGNED: September 5, 2012
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos E. Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Gabriel Gheorghiu
Signature of Court Reporter