

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of: )  
 )  
CIRCULAR WELDED CARBON- ) Investigation Nos.:  
QUALITY STEEL PIPE FROM ) 701-TA-482-485 and  
INDIA, OMAN, THE UNITED ) 731-TA-1191-1194 (Final)  
ARAB EMIRATES, AND VIETNAM )

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 ARAB EMIRATES, AND VIETNAM )  
 Wednesday,  
 October 17, 2012

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

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

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Congressional Witness:

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

In support of the Imposition of Antidumping  
and Countervailing Duty Orders :

On Behalf of Allied Tube and Conduit, JMC Steel  
Group and Wheatland Tube Company :

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GORDON HUNTER, Director of Sales, Fence Tube  
Division, Allied Tube and Conduit  
DAVID SEEGER, President, JMC Steel Group  
MARK MAGNO, Vice President of Marketing,  
Wheatland Tube  
TOM CONWAY, International Vice President, United  
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Energy, Allied Industrial, and Service Workers  
International Union  
ROBERT MOSS, President, Long Island Pipe Supply  
DAVID CLARK, President, Merchants Metals  
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In Opposition to the Imposition of Antidumping  
and Countervailing Duty Orders :

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On behalf of Zenith Birla (India) Limited,  
Zenith U.S.A. Inc. and Conares Metal  
Supply Ltd. :

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JAMES P. DOUGAN, Senior Economist, Economic  
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1 allocations should be directed to the Secretary.

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

10           Mr. Secretary, are there any preliminary  
11 matters?

12           MR. BISHOP: No, Mr. Chairman.

13           CHAIRMAN WILLIAMSON: Very well. Will you  
14 please announce our congressional witness.

15           MR. BISHOP: The Honorable Peter J.  
16 Visclosky, United States Representative, 1st District,  
17 Indiana.

18           CHAIRMAN WILLIAMSON: Welcome back to the  
19 Commission, Congressman. You may begin.

20           MR. VISCLOSKY: Chairman, thank you very  
21 much. I thank the Commissioners for this opportunity  
22 to testify before you. Want to, as always, thank you  
23 for your past consideration and fairness. My purpose  
24 in being here today is to represent to myself, and  
25 also to indicate to the Commission that as vice chair

1 of the congressional steel caucus, the steel caucus  
2 also is securing signatures and will have a  
3 communication delivered to the Commission.

4           In preparation for today's hearing,  
5 yesterday, a member of my staff said, you know, this  
6 is a small case. The fact is the increase in circular  
7 welded pipe from the countries of India, Oman, the  
8 United Arab Emirates, and Vietnam over a three year  
9 period totaled 99,854 tons. To put it in perspective,  
10 several years ago I was here on an oil country tubular  
11 goods case that encompassed 1.5 million tons.

12           In the end, the Commerce Department  
13 certainly believes that there was dumping that has  
14 taken place. Seventy-five individuals in the United  
15 States have lost their job. To each one of them, this  
16 is a big case, it is an important case, and we have to  
17 always be vigilant, so I appreciate the fact that each  
18 of you and your staff have taken your time to consider  
19 this small matter because it is so important to the  
20 industry, to our manufacturing base and to those 75  
21 people that lost their job, and as always, am assured  
22 that you will give this case your serious  
23 consideration. For that and for the opportunity to be  
24 before you today, I thank you very much.

25           CHAIRMAN WILLIAMSON: Thank you very much.

1 Is there any questions for the witness? No. Thank  
2 you very much for coming. Okay. I'm sorry. Ready  
3 for opening remarks.

4 MR. BISHOP: Opening remarks on behalf of  
5 Petitioners will be by Gilbert B. Kaplan, King &  
6 Spalding.

7 MR. KAPLAN: Thank you, Mr. Chairman, and  
8 thank you, members of the Commission, for the  
9 opportunity to present our case to you this morning.  
10 As the Secretary said, I'm Gilbert Kaplan of the law  
11 firm of King & Spalding.

12 Let me begin by summarizing some of the  
13 matters which are not in dispute. Respondents agree  
14 that there was one like product that is co-extensive  
15 with the scope of investigation. Likewise, there is  
16 no dispute that for purposes of present material  
17 injury analysis all subject imports must be cumulated.

18 In addition, all parties agree that the Great  
19 Recession greatly reduced demand for CWP, and that  
20 2009 represents a year in which demand was severely  
21 depressed. I would also venture to say that all  
22 parties are in agreement that price is an important  
23 factor in any CWP sales negotiations. Given the wide  
24 agreement on the underlying nature of competition and  
25 the stark, undisputed data related to subject imports,

1 I submit that this case is quite straightforward.

2           The volume of subject imports was  
3 unquestionably significant and the increase in subject  
4 imports was also significant. Specifically, subject  
5 imports nearly doubled from 2009 to 2011 and those  
6 imports exceeded 206,000 tons in 2011. The market  
7 share of subject imports increased from 8.6 percent in  
8 2009 to 13.9 percent in 2011. During this period,  
9 nonsubject market share was essentially static, that  
10 is, it increased slightly from 20.2 percent in 2009 to  
11 20.7 percent in 2011. Thus, essentially all of the  
12 increase in market share gained by subject imports  
13 came at the expense of the domestic industry whose  
14 market share fell from 71.2 percent in 2009 to 65.4  
15 percent in 2011.

16           The story is just as clear when the ratio of  
17 subject imports to U.S. production is considered. The  
18 volume of subject imports was equal to 12 percent of  
19 domestic production in 2009, but the ratio rose to 20  
20 percent in 2011. Underselling by subject imports was  
21 pervasive and substantial. In 146 of 170 possible  
22 comparisons, subject imports undersold the domestic  
23 like product, with an average underselling margin of  
24 22.7 percent.

25           Respondents contend that there are no

1 negative price effects by subject imports but one look  
2 at the industry's operating margin should be enough to  
3 convince the Commission that prices are not high  
4 enough relative to costs to produce healthy  
5 profitability or profit levels sufficient to support  
6 investment in the industry. The negative volume and  
7 price effects of subject imports are a cause of  
8 material injury to the domestic industry.

9           The Respondents' briefs have emphasized the  
10 importance of nonsubject imports in the market. While  
11 it is true that nonsubject imports are competitive in  
12 the market, that does not deny the harmful impact of  
13 subject imports on the domestic industry.  
14 Respondents' main argument appears to be that  
15 nonsubject imports were just as bad as subject imports  
16 during the POI.

17           We believe the record indicates that the  
18 negative impact of subject imports on the domestic  
19 industry has been considerably greater than the impact  
20 of nonsubject imports. Regardless, under the material  
21 injury standard, including application of a  
22 nonattribution analysis, an affirmative present  
23 material injury determination is warranted.

24           The record also strongly supports an  
25 affirmative threat of material injury determination.

1 Competition among subject imports and the domestic  
2 like product warrants cumulation of all subject  
3 imports. The record establishes that all subject  
4 countries are export-oriented and have a focus on the  
5 U.S. market. Exports from these countries have to go  
6 somewhere.

7 Finally, the industry is vulnerable to  
8 injury from subject imports because demand conditions  
9 remain severely depressed and the domestic industry's  
10 condition is weak. Thus, in the absence of relief,  
11 subject imports are certain to materially injure the  
12 domestic industry in the imminent future. Thank you  
13 very much.

14 CHAIRMAN WILLIAMSON: Okay. Thank you.

15 MR. BISHOP: Opening remarks on behalf of  
16 Respondents will be by Julie C. Mendoza, Morris,  
17 Manning & Martin.

18 CHAIRMAN WILLIAMSON: Okay. Welcome, Ms.  
19 Mendoza.

20 MS. MENDOZA: Thank you. Good morning. I'm  
21 Julie Mendoza appearing on behalf of Respondents,  
22 making the opening statement. It won't surprise you  
23 that after we got done with the cumulation and the  
24 like product discussion, we didn't agree with any of  
25 the rest of it.

1           Many cases on standard pipe have come before  
2 this Commission over the last 30 years. Some went  
3 affirmative, but a fair number -- emphasis on fair --  
4 went negative. What we have all learned, what by now  
5 we all know, are the conditions of competition that  
6 are specific to this industry.

7           First, the performance of these producers is  
8 directly tied to their margin over the cost of hot-  
9 rolled coil. U.S. producers succeeded in raising this  
10 margin over the period. The simplest proof of this is  
11 that raw materials as a percentage of sales value  
12 declined significantly, and favorably, for the U.S.  
13 industry over the entire period, and while U.S.  
14 producers were able to achieve these margins through  
15 price increases, the value of net sales increased by  
16 26 percent. U.S. producers were still able to achieve  
17 volume increases. Production increased by 15 percent  
18 and total shipments increased by 11 percent. Then  
19 again, in the first half of 2012, they increased  
20 again.

21           Of course the economy hasn't exactly been  
22 cooperating. Price increases and volume increases  
23 have been difficult for this industry, for every  
24 industry in America, but fortunately, for this  
25 industry they've actually achieved some real and

1 lasting positive changes over the period. I already  
2 mentioned a few, but in addition, capacity utilization  
3 is up and clearly back into normal territory. Profits  
4 go from very negative in 2009 to a nice profit. These  
5 are all very positive signs and not an indication of  
6 an industry in distress.

7           We also know from these past cases that  
8 imports have held a significant market share in this  
9 market for many years. Cases or no cases, negative or  
10 affirmative, for 12 years the U.S. industry has  
11 hovered around a 60 percent market share or lower, and  
12 during this period they achieved a 65 percent market  
13 share. This demonstrates two things. First, the  
14 domestic industry market share has returned to its  
15 historical levels, or even a little higher, and 2009  
16 was a 12 year exception.

17           Subject imports primarily compete with other  
18 imports in the market, not the U.S. industry. This  
19 makes sense because U.S. producers are clearly the  
20 preferred suppliers and can command a higher price for  
21 their products while maintaining market share. The  
22 price competition in the market is between import  
23 prices, subject and nonsubject prices. Actually,  
24 nonsubject imports have shown a remarkable resiliency  
25 during this period. Nonsubject imports, Korea,

1 Turkey, Thailand, et cetera, have more extensive  
2 networks, a greater range of products and an  
3 established presence in the market, and yet their  
4 pricing is very similar, so it's not hard to  
5 understand why they could replace nonsubject imports  
6 in the market.

7           Petitioners say imports, nonsubject and  
8 subject, behaved very differently, but they didn't.  
9 If you look at volume increases between 2009 and 2010  
10 for subject and nonsubject, they're very similar. By  
11 2012, the only thing that happened was that subject  
12 and nonsubject imports traded shares, a one percent  
13 share.

14           Petitioners also claim that nonsubject  
15 import prices were higher than subject import prices,  
16 but that's wrong, too, because if you look at the  
17 pricing data, which is good, it's not great, but it's  
18 quite good, it shows you that in fact prices for both  
19 subject and nonsubject imports followed very similar  
20 trends and were very similar to each other.

21           What all this means is that the Commission  
22 has to work particularly hard to make sure that any  
23 tangential cause of injury from subject imports is not  
24 conflated with the effects from nonsubject imports.  
25 The reality is that subject imports are just an

1 insignificant sideshow in this market, and many U.S.  
2 producers, in essence, told you exactly that.

3           As to the first half of 2012, it's also  
4 clear that the downturn in pricing coincided with a  
5 dip in the economy. All types of pipe experienced a  
6 price decline in the first half of 2012, and as one  
7 U.S. producer told you, or told the staff, 2012 was a  
8 very volatile year for pricing of hot-rolled coil.  
9 Prices went up and down.

10           Now, the Commission's record is admirably  
11 complete and it demonstrates that subject imports did  
12 not cause material injury because, again, they were an  
13 insignificant sideshow and they don't threaten  
14 material injury for the exact same reasons. Thank  
15 you.

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

18           MR. BISHOP: Would the first panel, those in  
19 support of the imposition of antidumping and  
20 countervailing duty orders, please come forward and be  
21 seated.

22           Mr. Chairman, all witnesses have been sworn.

23           CHAIRMAN WILLIAMSON: Okay. Mr. Schagrín,  
24 begin when you're ready.

25           MR. SCHAGRIN: Thank you very much. Good

1 morning, Chairman Williamson and members of the  
2 Commission. I feel compelled to raise at the outset  
3 of this hearing an issue not yet on the record of this  
4 investigation, but which was raised in the  
5 Petitioners' prehearing brief. As much as those who  
6 represent importers would like to claim that duty  
7 evasion is exaggerated by Petitioners' counsel, I can  
8 tell you that it is an ugly reality that robs domestic  
9 industries of relief both during the pendency of  
10 investigations and after orders are imposed.

11           In Petitioners' Exhibit 1 I have two  
12 pictures that were taken on my BlackBerry in an  
13 Annapolis Home Depot in early August. This was after  
14 imports from Zenith Pipe in India were made subject to  
15 CVD deposit rates of 285 percent and AD deposit rates  
16 of 45 percent. This product is clearly subject to the  
17 scope of this investigation and those duties, even  
18 though it's dual stencil to API, 5L, as well as ASTM  
19 53, by virtue of its length, 10 feet, its outside  
20 diameter, one inch, and the fact that it is threaded,  
21 it is a subject product. I strongly suspect that the  
22 AD and CVD duties were not posted with Customs on  
23 these imports and that the subject imports were not  
24 reported to the Commission.

25           In early September a representative of

1 another importer who had previously imported Indian  
2 CWP prior to the Department of Commerce preliminary  
3 CVD determination but then ceased because of those 285  
4 percent duties contacted me with information that a  
5 third importer of Indian CWP from an Indian producer  
6 called Good Luck Steel Tubes was misreporting subject  
7 pipe as Type 1, not Type 3, entries. That particular  
8 importer has not even filed an importer questionnaire  
9 response with the Commission. I dutifully reported  
10 these violations in an e allegation to Customs.

11 Furthermore, based on meetings I had just  
12 this past Monday with the Customs National Targeting  
13 Center in Miami, I believe that both of these  
14 importers are currently under investigation.

15 As you will hear today, the domestic  
16 industry has suffered material injury during the  
17 period of investigation by reason of accumulated  
18 unfairly traded imports from these four countries when  
19 the Commission takes into consideration the business  
20 cycle and the conditions of competition in this  
21 industry.

22 To the core of my very existence, I hate  
23 cheating. Therefore, I plead with you to make a  
24 finding of present material injury. If you find  
25 threat, you will allow Customs fraud to go unpunished.

1 If you find no injury and no threat, you will force  
2 the closure of numerous pipe mills producing these  
3 products in the United States, with the direct loss of  
4 hundreds of jobs and the indirect loss of thousands of  
5 jobs.

6 With that, I would like to ask David Seeger  
7 to present his testimony.

8 MR. SEEGER: Good morning, Chairman  
9 Williamson, members of the Commission. My name is  
10 David Seeger. I'm the President of JMC Steel Group.  
11 JMC Steel Group is the parent of Atlas Tube, the  
12 largest producer of rectangular and round structural  
13 pipe in the United States, and Wheatland Tube, the  
14 largest producer of standard pipe, or subject circular  
15 welded pipe, in the U.S. I've been in the pipe and  
16 tube industry 34 years and am accompanied today by  
17 Mark Magno, our Vice President of Marketing.

18 JMC Steel Group is the successor company to  
19 the John Maneely Company, a family-owned pipe company  
20 founded in the 1870s in Wheatland, Pennsylvania. Over  
21 the past 20 years, Wheatland and JMC purchased a  
22 number of other producers of subject CWP, including  
23 Omega Steel Pipe, Copperweld Tube, Sawhill Tube and  
24 two facilities of Sharon Tube.

25 Unfortunately, due to the massive influx of

1 Chinese pipe in the middle of the last decade, we shut  
2 down facilities in Little Rock, Arkansas, Houston,  
3 Texas, and Sharon, Pennsylvania. Due to unfair  
4 competition, we shut down some very efficient  
5 facilities and permanently laid off workers that could  
6 have been operating mills and efficiently serving the  
7 U.S. marketplace. The imports from these four  
8 countries, Indian, Oman, UAE and Vietnam, began  
9 increasing after our victory against China and have  
10 achieved significant market penetration.

11 Today, the JMC Steel Group makes the subject  
12 CW pipe at a continuous weld mill in Wheatland,  
13 Pennsylvania, as well as an electric-resistant weld  
14 mills operating in Warren, Ohio, Chicago, Illinois,  
15 and Blytheville, Arkansas. We believe that no other  
16 U.S. company, or any company in the world,  
17 manufactures and distributes such a broad range of  
18 subject circular welded pipe in the United States.

19 Most of the subject CWP products are used in  
20 nonresidential construction, with a smaller portion  
21 being used in residential construction. The products  
22 may also be used in industrial applications. Everyone  
23 is aware how poorly the U.S. construction markets have  
24 been performing since the recession of 2008. While  
25 these markets have probably bottomed out, they

1 certainly have not started rebounding like other  
2 segments of the U.S. economy.

3           As I testified at your preliminary hearing  
4 in November of 2011, we largely failed in several  
5 different efforts to pass along steel cost increases  
6 during 2011. Time and again, marketing people like  
7 Mr. Magno and others within our sales staff have  
8 reported to me our customers were buying imported pipe  
9 at lower prices and we cannot achieve our announced  
10 price increases. The result was a major cost price  
11 squeeze on our profit margins. In fact, our CWP  
12 operations have consistently failed to achieve  
13 earnings before interest, taxes and depreciation that  
14 were greater than our interest expense. In today's  
15 business metrics, that is heavily frowned upon by  
16 business lenders, be they banks or bond holders.

17           In fact, poor profit performance in CWP  
18 products is certainly what led two of our competitors,  
19 Allied Tube and Conduit and Welded Tube Company, to  
20 shut down CWP mills in Morrisville, Pennsylvania and  
21 Berkeley, South Carolina. We would estimate that the  
22 CWP capacity of these mills together was in the range  
23 of 225,000 to 250,000 tons.

24           JMC permanently shut down a former Sawhill  
25 tube plant in Sharon, Pennsylvania in 2006, with the

1 loss of 500 jobs. We cannibalized the mill parts and  
2 demolished the building. In March 2009 we idled the  
3 former Sharon tube facility in Sharon, Pennsylvania.  
4 This resulted in the lay off of 200 workers. However,  
5 we have continued to perform periodic maintenance at  
6 the plant in the hope of someday reopening this mill.

7           We are hopeful that obtaining trade relief  
8 against unfairly traded imports from these four  
9 countries, which represent approximately 206,000 tons  
10 and growing levels of imports into the U.S. market in  
11 2011 when we filed these cases, combined with  
12 decreased capacity from competing U.S. mills can give  
13 JMC the opportunity to reopen this pipe mill.

14           We very much value our employees and think  
15 we have an extremely well-trained, team-oriented and  
16 highly productive workforce at each of our pipe mills.

17    At our single largest pipe facility in Wheatland we  
18 entered into a new five year contract in 2011 with our  
19 local USW. We would of course give priority to  
20 restart the Sharon plant to past USW workers.

21           Our company and our workers must have relief  
22 from unfairly traded circular welded pipe in order to  
23 maintain a viable company. It is very doubtful that  
24 we will get any help in demand from the construction  
25 sector in the next year or two. Given the massive

1 overcapacity in these countries, without relief we  
2 will see continued import surges and this will cause  
3 both JMC and our U.S. competitors to shut down more  
4 facilities and lay off more workers. On behalf of JMC  
5 Steel and our workers, I ask that you make an  
6 affirmative injury determination. Thank you.

7 MR. KURASZ: Good morning, Chairman  
8 Williamson and members of the Commission. I am Ed  
9 Kurasz, Executive Vice President of Sales at Allied  
10 Tube and Conduit, a division of Atkore International.  
11 I've been in the pipe and tube business for 21 years.

12 Allied is based in Harvey, Illinois, where  
13 our company was founded in 1957. For several years,  
14 our parent company, Tyco International, which  
15 purchased Allied in 1987, tried to sell our company.  
16 A manufacturing-intensive business that faced  
17 worldwide massive overcapacity in our product lines  
18 clearly was not thought to fit into a publicly held  
19 company. Increasingly, focused on service businesses,  
20 such as fire protection and security. At the end of  
21 2010, a private equity company, Clayton, Dubilier &  
22 Rice, purchased 51 percent of Allied and then further  
23 increased that share. We now have new management.

24 We have a number of ERW mills, pipe mills in  
25 Harvey, Illinois, Philadelphia, Pennsylvania, and

1 Phoenix, Arizona, that produce the subject products.  
2 In 2008 we permanently shut down a plant in Pine  
3 Bluff, Arkansas which we purchased 10 years earlier  
4 for a substantial amount.

5           We temporarily stopped all pipe production  
6 at our plant in Phoenix, Arizona, but restarted that  
7 operation later in 2009 after receiving relief from  
8 unfairly traded Chinese imports. However, we are now  
9 operating that plant as a one shift operation, and its  
10 continued operation is in jeopardy as the West Coast  
11 market for fence and sprinkler products produced there  
12 have been inundated with the subject imports at  
13 extremely low prices.

14           In 2009 we purchased out of Bankruptcy Court  
15 a plant in Morrisville, Pennsylvania, just east of  
16 Philadelphia, that produced ASTM A53 pipe, as well as  
17 A500 structural tubing. We entered this segment of  
18 the circular welded pipe market having previously  
19 concentrated our efforts on fence, pipe and tube and  
20 sprinkler products. The Morrisville, Pennsylvania  
21 plant has hydrostatic testing equipment which is  
22 necessary to comply with A53 Grade B specification,  
23 and we could also make Grade A specification which  
24 only requires in line AD current testing.

25           While business models normally teach that

1 it's good to broaden your product lines so you can  
2 spread the same corporate overhead and fixed expenses  
3 over more sales, getting into the A53 market at a time  
4 when all these new import sources were flooding the  
5 market was a large risk. The risk did not pay off,  
6 and in March of 2012 we closed the plant and  
7 permanently laid off the remaining 75 employees.

8 Overall, demand for the circular welded pipe  
9 products that Allied makes has shown fairly steady  
10 recovery since the big recession in late 2008 and  
11 2009. Our problem was definitely that the subject  
12 imports were increasing their rates much faster than  
13 the recovery and demand, and that hurt volume. As Mr.  
14 Seeger already testified, the fact that these imports  
15 arrived at prices less than our selling prices in the  
16 market also depressed prices and profit margins, which  
17 have been horrible.

18 As vice president of a division that serves  
19 nationwide markets with plants in the East Coast, the  
20 midwest and the West Coast, the single biggest issue  
21 that the top management of our company faces, whether  
22 we should keep a plant open at a loss trying to  
23 maintain volume at a low price to compete with imports  
24 or to stop production at that plant, take the  
25 severance losses and losses of the appreciating

1 equipment that are not producing anything. It is one  
2 thing to face those issues during a recession or  
3 because of a recession. It's another thing to face  
4 those things because of unfairly traded imports.

5 Our current cost of long term debt is nine  
6 and three-quarters percent. Obviously, two to three  
7 percent operating margins are not very attractive for  
8 investment in our business and make it difficult to  
9 attract capital.

10 I am truly convinced that our company still  
11 has great manufacturing facilities and great  
12 employees. We can be a very successful company if the  
13 unfair trade laws are, excuse me, are enforced.  
14 Without obtaining relief from unfairly traded imports  
15 we will be forced to sever more loyal employees, close  
16 more plants, and eventually, one of the most  
17 innovative pipe and tube companies in the world may  
18 cease to exist. Therefore, on behalf of Allied and  
19 its employees, I ask that you make affirmative  
20 determinations. Thank you.

21 MR. MAGNO: Good morning, Chairman  
22 Williamson and members of the Commission. My name is  
23 Mark Magno and I am Vice President of Marketing and  
24 Sales of Wheatland Tube Company, a division of JMC  
25 Steel Group. I have been in the pipe industry for 29

1 years and spent my entire career in sales for  
2 Wheatland Tube.

3           At Wheatland, we are the largest U.S.  
4 producer of A53 pipe products. We make these products  
5 in size ranging from quarter inch to eight inches OD,  
6 with larger sizes supplied to us by our sister  
7 company, Atlas Tube. We make both black and  
8 galvanized pipe, do our own threading and coupling of  
9 A53 pipe and produce our own couplings to attach to an  
10 A53 pipe. In addition, Wheatland produces fence pipe  
11 and tube, sprinkler pipe, so we cover all of the CWP  
12 product. I'm going to focus my testimony on the ASTM  
13 A53 segment of the market in the United States.

14           ASTM A53 products are the commodity bedrock  
15 welded pipe product used in the plumbing and HVAC  
16 systems of nonresidential buildings and multiunit  
17 residential construction. There has been a well-  
18 established distribution network for these products  
19 throughout the United States, which has not changed  
20 very much through my career.

21           The largest U.S. distributor by far is  
22 Ferguson Enterprises, and there are a number of other  
23 large wholesalers, such as McJunkin, HD Supply, Kelly  
24 Pipe and Wilson Supply. These chains of wholesalers  
25 have supply depots set up where they stock all of the

1 pipe sizes, fittings, hangers, struts, that either  
2 local plumbing, mechanical contractors or HVAC  
3 companies would need to buy to install systems inside  
4 the building during new construction or to make  
5 repairs. They have traditionally stocked both  
6 imported and domestic products.

7           When I started, these distributors probably  
8 stocked 75 percent domestic products and 25 percent  
9 imports. Now it is 50 percent or more of imports.  
10 That is why I've seen somewhere between a half a dozen  
11 and a dozen domestic competitors go out of business as  
12 the share of imports has increased at these  
13 distribution companies.

14           When I call on these customers they don't  
15 say to me, hey, Mark, I have an offer from Zenith at  
16 \$1,000 per ton for galvanized A53 pipe, or I have  
17 Vietnamese product, or I have UAE product. They just  
18 say that I can get import A53 at X price, and if you  
19 want to sell us 10 truckloads next month instead of  
20 two, you need to lower your price by \$80, \$100 or \$200  
21 per ton. That is the main reason why we are not able  
22 to provide the ITC with specific lost sales  
23 allegations in the formula that you would like them,  
24 and that is the case in virtually all of the pipe  
25 cases I've participated in over the years.

1           Competition in the standard pipe business is  
2 based on price. That's it. When I started as a  
3 junior salesman, the vice president of sales said to  
4 me, "you sell pipe on price". When I told him I was  
5 going to get an MBA, he told me I must be planning on  
6 changing careers because you don't need an MBA to sell  
7 pipe, you need the lowest price. I got the MBA, but  
8 he was right: You sell pipe on price.

9           To us, circular weld pipe is the ultimate  
10 commodity. Everyone makes it to the same  
11 specification, and every plumber, HVAC company,  
12 sprinkler and fence contractor, can use the same pipe  
13 regardless of where it's manufactured. As I mentioned  
14 previously, I've seen a lot of competitors making this  
15 product go out of business, and I've seen our company  
16 shut down a lot of mills. I do not want to see us  
17 have to shut down more mills, which is what will  
18 happen without relief from this unfairly traded pipe.  
19 Thank you very much.

20           MR. HUNTER: Good morning, Chairman  
21 Williamson and members of the Commission. My name is  
22 Gordon Hunter and I am the Director of Sales, Standard  
23 Pipe Division, for Allied Tube and Conduit. Allied  
24 has been a leader in the U.S. industry for fence  
25 tubing ever since the founder of the company patented

1 in line galvanizing in the late 1950s. Prior to that,  
2 all galvanized fence products had to have the zinc  
3 applied by dipping them in a hot sink bath. In line  
4 galvanizing enabled us to apply to zinc faster,  
5 without the additional labor of handling the product  
6 again after it came off the weld mill and has allowed  
7 us to apply a more uniform and lighter zinc coating.

8           We make our fence tubing in mills that have  
9 in line galvanizing capabilities in Philadelphia,  
10 Chicago and Phoenix. Thus, we are able to cover the  
11 entire U.S. market with inexpensive freight. As Mr.  
12 Magno in his discussion of the A53 distribution market  
13 noted, there is also both a national and regional  
14 distribution network for fence tubing by fencing  
15 contractors who combine fence tube with wire mesh to  
16 make a fence system.

17           The major national fencing distributors are  
18 Master Halco, Merchants Metals, represented here by  
19 David Clark, and Stephens Pipe. In addition, there  
20 are strong regional players, such as Long Fence and  
21 Sonco on the East Coast and Builders Fence in the  
22 west. These fencing distributors buy both domestic  
23 and imported product. The dumped and subsidized  
24 imported prices are used to beat down our prices. I  
25 think virtually all of our major fence tube customers

1 have bought from Zenith in India, as well as from  
2 producers in the other subject countries. This  
3 displaces our volume, causing us to cut back on shifts  
4 and hours at our mills, as well as pushing down our  
5 prices and margins.

6           Because fence tubing is always galvanized,  
7 the main costs are steel and zinc. Zinc is a  
8 publicly-traded metal on the London Metal Exchange,  
9 and I believe virtually everyone in the world must pay  
10 the same price, plus any additional freight expenses.

11           Steel is different. At Allied, like our  
12 competitors at Wheatland, we are among the largest  
13 buyers of flat-rolled steel in North America. We  
14 should be able to buy steel as well as anyone, and I  
15 think that we do. However, our foreign competitors  
16 are probably eager to buy the massive quantities  
17 available on the world market of Chinese dumped and  
18 subsidized steel, which we do not buy.

19           The imposition of preliminary duties earlier  
20 this year certainly helped our fence business.  
21 Obviously, we are pleased that the final margins  
22 against Vietnam announced yesterday increased  
23 significantly from zero duty rates found at the  
24 preliminary phase. These Vietnamese mills have been  
25 very active in supplying low priced fence tubing to

1 the marketplace.

2           Because demand in the fence business has  
3 been so badly hurt by the downturn in both  
4 nonresidential and residential construction, Allied  
5 needs a fair shot at getting a larger piece of this  
6 now smaller pie. Obviously, our hopes of having a  
7 fighting chance in Allied's fence business is to get  
8 the appropriate unfair trade duties imposed on the  
9 imports from these four countries. For that reason, I  
10 urge you to make an affirmative final injury  
11 determination. Thank you.

12           MR. JOHNSON: Good morning. I'm Jeff  
13 Johnson, Director of Standard and Line Pipe North  
14 America for United States Steel Corporation. I have  
15 13 years of experience selling tubular products, and I  
16 have been in my current position since 2010. My  
17 responsibilities include overseeing sales of our  
18 standard and line pipe throughout the United States.  
19 Thus, I'm very familiar with market conditions for the  
20 circular welded pipe at issue in these reviews.

21           I was here back in May to testify in five  
22 year reviews regarding orders on CWP from Brazil,  
23 India, Korea, Mexico, Taiwan, Thailand and Turkey.  
24 Fortunately for us, you voted to keep those vital  
25 orders in place, and we thank you for those

1 determinations. We also need the additional relief at  
2 issue today. Let me direct your attention to a few  
3 key facts showing why this relief is so important.

4           First, the demand conditions for this  
5 product are still terrible. Data that you collected  
6 during the recent five year reviews showed that from  
7 2006 to 2008 U.S. consumption of CWP averaged about  
8 2.2 million tons per year. In 2009, consumption  
9 plummeted as a result of the economic crisis. Since  
10 then we've seen a slight recovery, but demand remains  
11 well below pre-crisis levels.

12           For example, your data indicates that in the  
13 first half of this year consumption was on pace to  
14 finish just below 1.6 million tons, so the market is  
15 about 600,000 tons smaller than the pre-crisis  
16 average. These just aren't numbers to me. I talk to  
17 our customers and our salesmen about market conditions  
18 every day. Over and over I hear the same story. The  
19 construction market is weak, the industrial and  
20 fabrication markets are weak. These are the sectors  
21 that drive CWP demand. As long as those sectors  
22 continue to struggle, U.S. mills will find it  
23 difficult to sell CWP.

24           Second, the foreign producers at issue here  
25 are extremely aggressive. Consider these facts.

1 Because of poor demand conditions, this market was  
2 almost 24 percent smaller in 2011 than in 2008, but  
3 subject imports rose by 45 percent from 2008 to 2011.  
4 While we were struggling, they gained market share in  
5 2009, 2010 and 2011. I have no doubt that they would  
6 have grown their market share even more this year if  
7 domestic producers had not brought these cases. In  
8 short, their reaction to our economic difficulties was  
9 to flood this market with dumped and subsidized  
10 imports at unfairly low prices.

11 Third, when faced with this type of market  
12 distorting behavior, seeking trade relief is the only  
13 realistic option for the U.S. mills. As you have  
14 recognized in the past, CWP is a fungible commodity  
15 product sold primarily on the basis of price. If  
16 subject imports regularly entered this market at  
17 prices over \$100 per ton below U.S. prices, and your  
18 record shows that's exactly what happened here, we  
19 have no other good options. If we cut our own prices,  
20 we risk suffering heavy losses. If we don't cut our  
21 prices, we'll lose market share. Those are the facts.  
22 The only way to prevent this type of market distorting  
23 behavior from hurting us, the only way to allow for  
24 true market-based pricing in the United States, is to  
25 request trade relief, so that's what we've done.

1           Finally, this product is important to U.S.  
2 Steel. For one thing, we make the hot-rolled steel  
3 that many U.S. mills use to produce CWP. We also make  
4 CWP ourselves, and we would like to make more of it.  
5 We have a mill at Bellville, Texas that was shut down  
6 much of 2011 and it still has unused capacity. We  
7 have a mill at McKeesport, Pennsylvania that makes CWP  
8 and that is suffering from a very weak order book  
9 right now. We would love to make more CWP at those  
10 mills, and we are trying to do so, but our efforts  
11 have been frustrated by prices that are so low we  
12 simply cannot justify increased CWP production. To  
13 get true market-based pricing, we need the trade  
14 relief at issue here.

15           In light of those facts, I urge the  
16 Commission to find that subject imports have caused  
17 material injury to the domestic industry, and that  
18 they threaten us with more injury going forward.  
19 Thank you very much for your time.

20           MR. CONWAY: Good morning, Chairman  
21 Williamson and members of the Commission. My name is  
22 Tom Conway. I'm the Vice President of the United  
23 Steelworkers Union. USW is the largest industrial  
24 union in North America who represents workers, plus a  
25 large portion of the nation's manufacturing sector,

1 including the industry producing the circular welded  
2 pipe in question here today.

3           As the Commission well knows, the  
4 steelworkers have long been fighting against unfairly  
5 traded imports as our USW members take the brunt of  
6 the harm caused from the unfair trading practices of  
7 foreign competitors in the form of lay off, shuttered  
8 plant, reduced hours and benefits. This case in the  
9 industry is very important to our members.

10           USW represents workers of most of the  
11 industry, including the three companies here today:  
12 Allied, Wheatland and U.S. Steel. As you heard,  
13 there's been numerous plant closures in recent years,  
14 including JMC's shut down of mills in Arkansas and  
15 Pennsylvania and Allied's shut down of a facility in  
16 Arkansas. In just 2012, a unionized facility in  
17 Morrisville, Pennsylvania, was shut down by Allied,  
18 and the nonunion facility was shut down by Welded Tube  
19 company in Berkeley, South Carolina.

20           As you can see from the employment data on  
21 the record, even though demand has been recovering  
22 since 2009, employment has fallen by nearly 100  
23 workers, and it's more than 400, or 20 percent fewer  
24 workers than we had in 2008 because the domestic  
25 industry's been losing market share to these new and

1 unfairly traded import sources.

2           Of course welded pipe is made from flat-  
3 rolled steel, and our members have not lost jobs only  
4 at the pipe mills, but at, these plants as well have  
5 gone under. USW members working at flat-rolled steel  
6 operations also see their facilities shut down as a  
7 result. For example, the newest steel mill, the  
8 Allied's Morrisville, Pennsylvania plant with Sparrows  
9 Point, Maryland, they supplied the sub straight.  
10 However, that mill, which had employed hundreds of  
11 recently workers, has been shut down, is now in  
12 bankruptcy.

13           It's my understanding that a pipe mill which  
14 JMC permanently shut down in Sharon in 2006 had the  
15 capacity to make 300,000 ton of pipe annually. The  
16 mill which idled in Sharon in 2009 had the capacity to  
17 make nearly 125,000 tons annually. The former  
18 Wheeling-Pitt and WCI steel plants now shut down used  
19 to supply hot-rolled steel to pipe mills in the Ohio  
20 Valley. Those steel mills may not be restarted  
21 either.

22           Unfortunately, the reality today is instead  
23 of U.S. pipe mills using sheet domestically produced  
24 by USW members, we have foreign produced pipe flooding  
25 into the U.S. market. Some of that pipe may be made

1 with dumped and subsidized steel from China. This is  
2 a horribly vicious cycle which hurts our members  
3 making pipe and making steel.

4 Rest assured, our union, as always, will  
5 continue to work as hard as possible to get a fair  
6 chance to compete and retain their jobs. USW and our  
7 local USW officials have been willing to work  
8 cooperatively with these companies to become more  
9 competitive.

10 As Mr. Seeger noted earlier, steelworkers  
11 entered into a five year labor deal with Wheatland  
12 Tube at the end of 2011. Our members had gained some  
13 annual wage increases, agreed to take on more of a  
14 cost of healthcare and pension benefit over the life  
15 of the contract. The union also agreed to changes in  
16 work rules to increase productivity, and, in return,  
17 for the first time will participate in a gain sharing  
18 agreement which gives hourly workers bonuses for  
19 productivity increasement across various parts of the  
20 mill. We believe this is a great incentive and  
21 provide workers with even more of a stake in the  
22 plant's success and the company's future. At  
23 Wheatland, we agreed to continue reinvesting in the  
24 plants, which is so crucial.

25 We also have some good news. Earlier this

1 month meetings had been held between the USW officials  
2 and Wheatland executives to evaluate the feasibility  
3 of reopening the continuous weld mill at Sharon, and  
4 that would recall USW members, as been mentioned.  
5 These members have been out of jobs for three and a  
6 half years, so clearly, this is an exciting  
7 development for them that literally means a decent  
8 shot at regaining a decent livelihood back in the  
9 middle class, with some dignity for themselves and  
10 their family. It also means over 100,000 tons of  
11 additional steel consumption, which hopefully can  
12 begin to alter a vicious cycle into a virtuous cycle.

13           As the Commission's already heard, time and  
14 again our members have made tremendous sacrifice to  
15 stay competitive over the years, and I'm proud to  
16 represent really a truly and dedicated workforce  
17 producing the circular welded pipe.

18           I would note that the industry had  
19 sufficient supply to supply the entire U.S. market,  
20 but we cannot afford as unfairly traded imports from  
21 India, Oman, the UAE and Vietnam to supply the U.S.  
22 market. Rather, we need American workers using  
23 American-made steel to supply this market, so on  
24 behalf of all our members and the workers in this  
25 industry, I urge you make an affirmative determination

1 in these cases. Thank you.

2 MR. CLARK: Good morning, Chairman  
3 Williamson and members of the Commission. My name is  
4 David Clark and I am President of Merchants Metals, a  
5 position I've held for five years.

6 Merchants Metals is one of the largest  
7 manufacturers and distributors of fence products in  
8 the United States. We have 39 distribution centers  
9 located throughout the country. We sell fence  
10 framework, fabric and fittings to fence contractors  
11 which they use to erect fences for their customers.  
12 We also sell to home center retailers who sell  
13 primarily to do it yourselfers and small contractors  
14 who generally do not buy material from us.

15 Our purchases of fence pipe and tube are  
16 either directly from domestic mills or from trading  
17 companies representing foreign mills. As much of this  
18 material is viewed as interchangeable commodities,  
19 price largely drives our purchasing decisions. While  
20 we do prefer to buy domestic product for a variety of  
21 reasons, we do purchase import fence pipe and tube  
22 when the material is priced attractively as compared  
23 to domestic sources.

24 Over the past several years we have  
25 purchased pipe from one of the Indian companies

1 subject to this case. We bought this product because  
2 it was delivered to us at lower prices than the  
3 domestic offering. In recent months, presumably as a  
4 result of these cases before you today, the prices  
5 quoted us by the Indian supplier have been less  
6 competitive.

7 I understand you are interested in the  
8 demand drivers for our business. Our products are  
9 used in both residential and nonresidential  
10 construction, but nonresidential construction consumes  
11 most of the heavy pipe material supplied by foreign  
12 mills. Residential construction collapsed in 2008 and  
13 2009, and while it seems to be recovering slowly, it  
14 is still well below the peak levels of 2005.

15 In contrast, the nonresidential construction  
16 market did not begin falling until late 2009.  
17 Unfortunately, the decline has continued over the past  
18 three years and we see few signs of recovery in  
19 nonresidential markets.

20 Fencing contractors typically shop around  
21 and obtain quotes from multiple suppliers. For this  
22 reason, Merchants Metals cannot afford to price  
23 significantly higher than other distributors in the  
24 markets we serve, so we always try to have competitive  
25 pricing and purchase material based on our ability to

1 resell at a profit.

2           However, Merchants believes that all  
3 domestic industries should have the opportunity to  
4 compete against imports on a level playing field.  
5 That is why I appear today in support of a fair and  
6 competitive domestic source of pipe and tube for  
7 Merchants Metals. Thank you for the opportunity to be  
8 here today.

9           MR. MOSS: Good morning. Chairman  
10 Williamson, members of the Commission, my name is  
11 Robert Moss. I am President of Long Island Pipe  
12 Supply and a businessman. My business is  
13 headquartered in Garden City, New York. I founded the  
14 company in 1975. We have 17 locations throughout the  
15 United States. We service the entire geographic area  
16 east of the Mississippi, with some sales into Texas,  
17 the eastern Canada market and the West Coast of the  
18 United States.

19           Our specialty is fire sprinkler systems. We  
20 fabricate these products used in fire sprinkler  
21 systems, including cutting, threading, drilling,  
22 welding, for fire sprinkler contractors. We recently  
23 expanded our sprinkler fabrication business through  
24 the purchase of two facilities in North Carolina and  
25 Washington. We also provide a full range of pipe

1 valves and fittings for use in HVAC and plumbing  
2 systems.

3           We compete against other pipe valve and  
4 fitting distributors, as well as other fire sprinkler  
5 fabricators. In terms of pipe utilized in PVF and  
6 sprinkler markets, which is primarily a ASTM A53 or a  
7 ASTM A135 product, we stock only U.S. and Canadian-  
8 made product. We compete with a lot of importers and  
9 distributors of import pipe.

10           As a PVF distributor, we sell retailers,  
11 such as Home Depot, Lowe's, Menard's and True Value.  
12 The only thing these retailers care about is price.  
13 Country of origin is not an issue for any retail  
14 customer. Distributors have generally provided some  
15 value added work, such as cutting to template lengths,  
16 threading, adding thread protectors, for sale to these  
17 retailers. We believe that our centers where this  
18 processing is performed, that we do as cost  
19 efficiently as anyone in the United States.

20           However, when we compete with importers for  
21 these sales to retailers, they are generally importing  
22 these products with value added being done abroad.  
23 This means that in order to protect the threads from  
24 water damage, these products are imported in  
25 containers. It's a very expensive means for freight

1 for pipe products.

2           As a result of these cases, we have seen  
3 some improvements in our sales of domestic pipe to  
4 retailers who have been purchasing subject products.  
5 Whether it's sales to retailers or sales to  
6 contractors, Long Island Pipe and myself firmly  
7 believe that if competition is fair, we have the  
8 advantage.

9           Freight is a big cost in pipe and our  
10 outboard freight cost from Wheatland Mills, for  
11 example, as well as our outboard freight cost is much  
12 less than the import materials.

13           As I previously mentioned, I will put our  
14 processing machinery and our workers up against  
15 anybody in the world. It is our belief that if you  
16 make sure trade is fair, then our suppliers, like  
17 Wheatland, benefit, but we also benefit.

18           In total, we employ over 200 workers in 17  
19 locations. During my 37 years in business I've seen  
20 at least a half dozen U.S. supplies of A53 pipe go out  
21 of business. What keeps me awake at night is the real  
22 possibility that unfair trade could push the last  
23 domestic suppliers in the United States out of  
24 business. I don't want to end my career, although I  
25 don't plan on ending any time soon, or see my

1 successors in the company have to turn to foreign pipe  
2 as our only source of supply.

3 I believe the United States has an efficient  
4 steel mill, effective pipe mills and that we are  
5 effective processors and distributors of these pipe  
6 products. If the playing field is level, we will all  
7 benefit. If it's not, we will all suffer. That is  
8 why I'm glad to have the opportunity to come here in  
9 support of affirmative injury determination against  
10 unfairly traded pipe from India, Oman, UAE, Vietnam,  
11 and on behalf of the domestic pipe industry, I thank  
12 you.

13 MS. BYERS: Good morning, Chairman  
14 Williamson and other members of the Commission. My  
15 name is Bonnie Byers and I'm with King & Spalding.  
16 Let me start by reiterating that the information in  
17 the staff report paints a very clear picture of  
18 present material injury. However, the record also  
19 supports a finding that the domestic industry is  
20 threatened with additional material injury that is  
21 both real and imminent.

22 Subject imports meet the standard for  
23 mandatory cumulation for purposes of current material  
24 injury. For purposes of threat, the record also  
25 demonstrates that there are no conditions of

1 competition that differentiate subject imports from  
2 one another. The information provided by Al Jazeera  
3 and Zenith in their case briefs do not support a  
4 finding that their import trends or instances and  
5 margins of underselling differ from those of the other  
6 subject countries. Thus, the Commission should  
7 exercise its discretion to cumulate all imports for  
8 purposes of threat.

9           With respect to the statutory factors, the  
10 trend in subject imports indicates a continuation of  
11 rapidly increasing imports, despite the fact that  
12 demand in the United States remains depressed.  
13 Subject imports nearly doubled from 2009 to 2011 and  
14 continued to increase through the first quarter of  
15 2012 until significant countervailing duties were  
16 imposed against Indian producers which curtailed  
17 imports. The foreign producers' questionnaire  
18 responses also established that subject producers have  
19 significant excess capacity and could quickly increase  
20 their exports to the U.S. market even further.

21           Table VII-8 of the staff report indicates  
22 that reported capacity utilization in these countries  
23 was only 72 percent in 2011, and then fell to only 68  
24 percent in interim 2012. This translates into an  
25 additional 247,000 tons of production that could be

1 directed to the U.S. market, nearly one and a half  
2 times their current export levels.

3           Despite significant unused capacity, subject  
4 countries continue to add new capacity, and  
5 Petitioners have provided evidence of recent capacity  
6 expansions in each of the subject countries. The  
7 record also demonstrates that all this excess  
8 production is likely to be destined for the United  
9 States. Why? This is because the producers of  
10 subject products are highly export-oriented and have a  
11 significant and growing focus on the U.S. market, as  
12 demonstrated in our case brief.

13           Table VII-8 shows that exports accounted for  
14 64 percent of total subject shipments in 2011.  
15 Moreover, exports to the U.S. accounted for 70 percent  
16 of total shipments in 2009, but then jumped to nearly  
17 30 percent in 2011. Importantly, the excess  
18 production in subject countries will not be absorbed  
19 in the home markets of those countries. In fact, as  
20 subject exports to the U.S. grew by 199 percent  
21 between 2009 and 2011, shipments to their home market  
22 actually fell by 10 percent.

23           In addition, information placed on the  
24 record of this investigation by Petitioners indicates  
25 that demand in the subject countries is depressed and

1 is not forecasted to increase in the imminent future.

2 In addition, the Canadian government recently opposed  
3 significant antidumping and countervailing duties on  
4 CWP imports from the UAE, Oman and India, making it  
5 even more likely that exports to the U.S. market will  
6 increase in the future absent relief.

7           Regarding the other statutory factors, the  
8 record indicates that subject imports will continue to  
9 take market share from U.S. producers through  
10 underselling, with average prices that are between \$84  
11 and \$197 below average domestic prices. There are  
12 also substantial inventories of CWP, and subject  
13 products can easily shift from the production of other  
14 products to make CWP. Subject producers also benefit  
15 from a variety of subsidies, including export  
16 subsidies in India.

17           Finally, as parties to this investigation  
18 agree, the demand for CWP in the U.S. market remains  
19 very sluggish at best, with no upturn forecast in the  
20 imminent future. Thus, the industry remains  
21 vulnerable to continued unfair trade. Thank you.

22           MR. SCOTT: Good morning, Chairman  
23 Williamson and members of the Commission. Thank you  
24 for the opportunity to testify today. My name is  
25 Robert E. Scott, and I'm here to discuss the economic

1 impacts of dumping and subsidies in these cases on the  
2 domestic producers of circular welded steel pipe.

3           In my testimony today, I wish to make four  
4 points. First, this is a highly cyclical industry and  
5 firms depend on making substantial profits during  
6 recoveries in order to survive the downturns. Second,  
7 the current recovery is especially weak and is likely  
8 to remain so, leaving domestic producers vulnerable to  
9 further injury from dumped and subsidized imports of  
10 the subject products. Third, the growth of dumped and  
11 subsidized imports has depressed domestic output,  
12 prices, profit employment and wages. And finally,  
13 operating incomes in the range of two to three  
14 percent, which domestic producers have experienced in  
15 the past 30 months, are inadequate given the likely  
16 continuation of weak market conditions.

17           If preliminary duties in these cases are  
18 vacated, rapidly rising subject imports will be  
19 responsible for additional plant closures and  
20 declining production, cash flow, employment, wages and  
21 investment in this industry. The staff report has  
22 shown that much of the demand for the like product is  
23 linked to nonresidential construction activity in the  
24 United States.

25           According to the Census Bureau, U.S.

1 nonresidential construction peaked in 2008 prior to  
2 the POI at an average of about \$408 billion per year.

3 It declined 36 percent over the next two years to  
4 \$260 billion in 2010. On a monthly basis, as shown in  
5 the staff report, nonresidential construction reached  
6 a nadir in January 2011 and increased steadily until  
7 reaching a peak of about \$295 billion in May 2012.  
8 That's 32 percent above the depressed level a year and  
9 a half earlier, but it's still 28 percent below the  
10 2008 peak.

11 However, nonresidential construction has  
12 declined now for the past three months through August  
13 2012, declining 3.6 percent overall on a monthly  
14 basis. Thus, U.S. nonresidential construction remains  
15 severely depressed relative to the previous peak in  
16 2008, and the future outlook is grim. Last week, the  
17 IMF slashed its projections for future growth.

18 It forecast that the advanced economies,  
19 including the United States and Germany, would grow  
20 about 1.3 percent this year, down from 3 percent in  
21 2010. The IMF projects only a slight increase in  
22 growth to just under 1.5 percent for those countries  
23 in 2013. Thus, again, this recovery is weak, and  
24 domestic reproducers remain especially vulnerable to  
25 recurrence of dumped and subsidized imports.

1 U.S. consumption and production of CWP  
2 reached a low in 2009 and began to recover in 2010.  
3 U.S. producers shipments increased 15.3 percent  
4 between 2009 and '11 and an additional 6.3 percent in  
5 2012. However, U.S. producers market shares have  
6 declined throughout the POI. Between 2009 and '11,  
7 the share of U.S. producers of CWP in the U.S. market  
8 declined by 5.8 percentage points.

9 Subject producers' share rose by 5.3  
10 percentage points in the same period, and it accounted  
11 for 91 percent of the decline in U.S. market share.  
12 The nonsubject share rose only 0.5 percentage points  
13 in this period. Market shares in the interim 2012, PO  
14 were volatile due in part to the imposition of duties  
15 in these cases in March on some producers. U.S.  
16 producers' market share fell an additional 1.1  
17 percentage points in the interim POI.

18 The negative impacts of surging imports of  
19 dumped to subsidized imports on U.S. producers of CWP  
20 were greatly magnified by massive underselling of  
21 subject imports. Average unit values of these  
22 products were 16 percent below those of domestic  
23 shipments between 2009 and 2011. Underselling  
24 continued in the interim 2012 despite the imposition  
25 of preliminary duties in March.

1           The data on underselling of individual  
2 products reinforces the findings based on AUVs and  
3 individual price comparisons of producers from each of  
4 the subject countries, subject imports undersold  
5 domestic products in 146 of 170 cases, about 86  
6 percent of the total cases. The average margins  
7 underselling range from 20.6 percent from Vietnam to  
8 24.5 from Oman. On a product basis, the average  
9 margin of underselling ranged from 13 percent on  
10 product 3 to 35 percent for product 2.

11           Rapidly rising imports of subject imports at  
12 less than fair values had injured domestic producers  
13 of a like product. To paraphrase, this Commission's  
14 findings in its recent review of antidumping and CDP  
15 orders on CWP pipe, because subject imports are good  
16 substitutes for the domestic-like product, increases  
17 in subject imports caused declines in the domestic  
18 industry's production, shipments, market share and  
19 employment.

20           Furthermore, significant underselling,  
21 depressed or suppressed prices of the domestic-like  
22 product consequently to compete with additional values  
23 of subject imports, the domestic industry had to  
24 restrain prices in the face of rising costs,  
25 especially for sheet steel, suffering a loss of sales

1 and market share in a recovering market. Weakened  
2 financial performance threatened to result in  
3 additional plant closures, falling investments,  
4 reductions in employment, wages and ultimately losses  
5 in domestic output in the domestic market share.

6           Those were the conditions that you found in  
7 that case. I think those same conclusions could be  
8 drawn about the record in these cases. The comparison  
9 is very clear. The record in this recent CDP review  
10 last spring showed that when duties were imposed on  
11 China in 2008, U.S. shipments increased by more than  
12 300,000 tons in a declining market. Average unit  
13 values also increased sharply as a result of the  
14 withdrawal of less than fair value imports from China  
15 and operating incomes of CWP producers increased to  
16 15.8 percent in 2008.

17           The rapid increase of less than fair value  
18 imports from subject producers in these cases and the  
19 great recession have combined to rapidly depress the  
20 sales, unit values and operating incomes of domestic  
21 producers. After suffering masses losses in 2009,  
22 domestic producers are barely keeping their heads  
23 above water. All available evidence points to weak or  
24 declining market for nonresidential construction  
25 through at least 2013.

1           In these circumstances, the removal in  
2 duties in these cases will result in contingent injury  
3 to domestic producers as subject imports surge again  
4 into the U.S. market. The resulting bankruptcies,  
5 losses of output, profits and injuries to workers,  
6 their families, suppliers and communities would be  
7 substantial. Domestic producers of the like product  
8 are threatened with substantial material injury due to  
9 rapidly growing imports of the subject products if  
10 these orders are lifted. I'd be happy to answer any  
11 questions. Thank you.

12           MR. SCHAGRIN: Chairman Williamson, members  
13 of the Commission. You have now heard from a number  
14 of industry witnesses including by far the two largest  
15 producers in this industry. You've heard from two of  
16 their major customers, and you've heard from Mr.  
17 Conway, who represents most of the industry's workers.  
18 Before this panel begins to answer questions, I would  
19 like to, just as a matter of housekeeping point out  
20 the fact that we just received last night, and  
21 presumably now for this morning's hearing, the  
22 Commission has received the Department of Commerce's  
23 final determinations in these investigations.

24           I point that out because this means that the  
25 market share of imports, which was already nearly 15

1 percent in 2011 will be even higher after yesterday's  
2 Department of Commerce's final determinations and  
3 that's because in those final determinations, the  
4 Department of Commerce found each and every foreign  
5 company in all four countries to either be receiving  
6 countervailable subsidies from their governments or to  
7 be selling at less than fair value.

8           This is different from the Department's  
9 preliminary determinations where certain foreign  
10 producers were found to have both negative preliminary  
11 CVD and antidumping margins. Coupled with the massive  
12 underselling of domestic producer's prices, this large  
13 amount of imports is very significant and injured the  
14 domestic industry. This panel would be happy to  
15 answer the Commission's questions. Thank you.

16           CHAIRMAN WILLIAMSON: Thank you very much.  
17 I want to express the Commission's appreciation to all  
18 the witnesses who have taken time from their daily  
19 activities to come today to present their testimony,  
20 and this morning, we'll begin our questioning with  
21 Commissioner Broadbent.

22           COMMISSIONER BROADBENT: Great. Thank you,  
23 Chairman. As the new person on the panel here, I'm  
24 not sure why I got to start the questioning, but we'll  
25 see. Mr. Schagrin, you had an interesting picture,

1 and it makes me concerned about what's going on in the  
2 market here, except for the fact as I learn my way  
3 through this process, I'm trying to figure out sort of  
4 the conditions that I'm supposed to consider here at  
5 the Commission and how an allegation like this with an  
6 exhibit should weigh in my determination.

7 My sense was that this would be something  
8 that's better taken to the Commerce Department under  
9 the law and also to the Customs Department on fraud,  
10 but I know you had a method and a reason for raising  
11 it, so I just wanted to check.

12 MR. SCHAGRIN: Yes. It's actually been  
13 taken to Customs as I mentioned in my statement. The  
14 significance of the Commission is that you are  
15 required by the statute, and your staff does an  
16 excellent job of presenting to this Commission both  
17 based on Customs data and based on questionnaire  
18 responses information on the quantity of imports  
19 during the period of investigation that you have. In  
20 this case, it is from January 1, 2009, although you  
21 can look back, and you had 2008 in your preliminary  
22 through the first half of 2012.

23 There is, as is shown in the monthly data in  
24 the staff report, a significant drop-off reported in  
25 imports after Commerce's preliminary determinations

1 and when Customs is supposed to be collecting deposits  
2 on these imports. The fact that there have been  
3 significant quantities of imports that occurred in at  
4 least the second quarter of 2012 within your period of  
5 investigation that have not been reported to this  
6 Commission because they are neither in the import data  
7 that the staff has gathered from the normal HTS  
8 categories in which these imports are supposed to be  
9 classified, nor in importer questionnaire responses  
10 means that your import data is understated.

11           Since there are claims by the Respondents  
12 that this industry really doesn't show very many signs  
13 of recovery in the first half of 2012, even though  
14 subject imports are declining, that's part of their  
15 causation arguments, the fact is that this industry is  
16 continuing to lose sales and suffer price suppression  
17 and an impact on volumes and margins because importers  
18 bring in product that under our definition of the  
19 scope or the Commerce Department's definition of the  
20 scope are subject products.

21           They're being sold in the same plumbing  
22 supply houses and big box retailers that they were  
23 sold in prior to the finding in these cases, so the  
24 industry is not getting relief, so I believe it goes  
25 to the data before the Commission, the causation

1 analysis put forth by the parties, and then you're  
2 right, Commissioner Broadbent, it is our duty, and we  
3 have gone. This is certainly a Customs issue, but we  
4 believe that because this Commission is dependent on  
5 using the best data that you can have, it is also  
6 incumbent upon us to point out where we have knowledge  
7 that there is an under-reporting during your POI of  
8 subject imports caused by this Customs fraud.

9 COMMISSIONER BROADBENT: Okay. Thank you.  
10 I guess getting good data is the big challenge here,  
11 but I think it's a bit of a leap to show a picture and  
12 say that we should conclude that the data is  
13 understated.

14 MR. SCHAGRIN: I would beg to differ with  
15 you. I work a lot on Capitol Hill trying to get  
16 better Customs enforcement. I spend inordinate  
17 amounts of time on Customs enforcement issues. We  
18 tried. We gave you a footnote that told you about the  
19 increase presumably in these imports we can't be sure  
20 are now being classified as line pipe rather than in  
21 non-line pipe categories.

22 We're not urging you to do anything unusual,  
23 but I don't think it's a leap to say that where  
24 there's clear evidence that subject products continue  
25 entering into U.S. Commerce without posting the

1 appropriate duties that that is certainly a condition  
2 of competition and an issue that this Commission can  
3 consider within your purview.

4 COMMISSIONER BROADBENT: Okay. This  
5 investigation presents us with an unusual situation in  
6 that a large volume of the nonsubject imports are  
7 themselves already subject to antidumping and  
8 countervailing duty orders. The staff report  
9 estimates that more than 70 percent of nonsubject  
10 imports were already controlled under these orders.  
11 How should I take this element into our analysis? Do  
12 we conclude that the imports from the four subject  
13 countries may be less likely to have a negative effect  
14 on the industry because the industry is somewhat  
15 insulated at this point from the adverse effects of  
16 imports more generally in the market?

17 Does it make any sense to say that the  
18 industry is less vulnerable because it got a  
19 significant level of protection already?

20 MR. SCHAGRIN: No, we don't think that makes  
21 any sense, and, Commissioner Broadbent, by virtue of  
22 you being the new Commissioner, you were not here with  
23 your five colleagues who heard the sunset cases just  
24 three months ago, and even though this is political  
25 season, I always have problems trying to speak out of

1 both sides of my mouth, so I'm going to be consistent.

2 We told this Commission just three or four months ago  
3 that if this Commission did not continue the orders  
4 against the imports, which you referenced cover about  
5 70 percent of nonsubject imports, that injury would  
6 recur, so we're not going to stand before you today  
7 and say that nonsubject imports covered by orders are  
8 not a problem for this industry.

9           However, the Commission's sunset  
10 determination is very applicable to this case. It was  
11 based upon, as Dr. Scott just mentioned, the fact that  
12 this is a commodity-fungible product while Ms. Mendoza  
13 said, and I think it's a huge stretch and completely  
14 unsupported by the evidence on this record that  
15 subject imports only compete with nonsubject imports.  
16 That would mean this is not a commodity product.

17           The definition of a commodity product is all  
18 products compete with each other. Subject imports can  
19 be with nonsubject imports in the domestic industry.  
20 Nonsubject imports compete with subject imports in the  
21 domestic industry. The domestic industry competes  
22 with both subject and nonsubject imports. To allow  
23 these four countries to not have to have their  
24 importers pay antidumping and countervailing duties  
25 just because there are significant volumes of

1 nonsubject imports in the market would just give them  
2 the opportunity to put domestic mills out of business  
3 instead of the nonsubject imports. That would be  
4 completely inappropriate in our opinion.

5 CHAIRMAN WILLIAMSON: Thank you. Again,  
6 welcome to all the witnesses. Mr. Conway, can you  
7 tell us more about the five-year labor deal you  
8 described in your presentation?

9 MR. CONWAY: Typically, we haven't been  
10 doing five. We've been doing sort of four years, and  
11 I just concluded one with U.S. Steel and  
12 ArcelorMittal, which is a three-year labor deal. It's  
13 just harder to look for their output. In this case,  
14 we needed to try and get some stability and put some  
15 length into it and get some CAPEX into the agreement,  
16 and then exchange as sort of a new variable --

17 CHAIRMAN WILLIAMSON: Excuse me. CAPEX?

18 MR. CONWAY: Capital Expenditures.

19 CHAIRMAN WILLIAMSON: Okay. Good. Thanks.  
20 I'm sorry.

21 MR. CONWAY: Some capital money put into the  
22 plant, and there's a gain sharing piece in there which  
23 is a variable form of compensation, and typically in  
24 the plants, they'll look at a couple of key  
25 performance factors from each one of the operations,

1 and the crews will work against those. They have a  
2 rolling base. Typically, it's sort of part of a  
3 continuous improvement program that goes in place, so  
4 we think we've positioned the plant and the labor  
5 agreement well to be able to move forward as long as  
6 we're not cut off at the pass by these, so we need  
7 this determination, but it's been a good round of  
8 bargaining and good labor agreement that we have in  
9 place.

10 CHAIRMAN WILLIAMSON: Okay. And the parties  
11 have entered it as an exhibit. Why isn't the  
12 agreement sort of say adequate enough to protect the  
13 workers from any future injury that may come about?

14 MR. CONWAY: Well, I could write labor  
15 agreements all day long. If they don't have a market  
16 to sell steel pipe, I'm stuck with a labor agreement  
17 and nothing to do with it, so I can go out and tell  
18 people I have labor agreement, but if I have nowhere  
19 to sell pipe, it's not good as any other agreement, so  
20 that's why it's crucial. We try and do ones that make  
21 sense and work both for the enterprise and our  
22 members, but in the end, I can't keep spiraling down  
23 to compete against this sort of stuff.

24 That's what we've been doing for it seems to  
25 me decades now, so we're resourceful and try to do

1 innovative stuff, but a labor agreement by itself  
2 without a company to work for, I might as well join  
3 the Elks Club, you know?

4 CHAIRMAN WILLIAMSON: Okay. Thank you.

5 MR. CONWAY: Okay.

6 MR. SEEGER: Could I follow up on that?

7 CHAIRMAN WILLIAMSON: Sure. Sure. Mr.  
8 Seeger, yes.

9 MR. SEEGER: Of course, that contract was a  
10 JMC contract, and Tom mentioned the capital investment  
11 or the CAPEX involved in it. I think that's a  
12 significant point because we wrestled with that  
13 considerably, and it was referred to earlier in our  
14 opponent's testimony about the nice margins that this  
15 industry is experiencing, and as you can see in the  
16 record, we're in the 2.7 percent. That's above the  
17 cost of our capital.

18 When we go to the banks, and we go to the  
19 bond market, it's 9, I believe Mr. Kurasz, since it's  
20 a public company, it's 9.75 percent, so I have to  
21 subtract that from that two or three percent, so in  
22 order to invest in this business, when we go to the  
23 markets and ask for money, they look at those margins  
24 and say you've got to be kidding me? You're making  
25 two percent. How are you going to cover this nine

1 percent loan?

2           They won't give us money, and so when you  
3 read about all this money that's out there waiting to  
4 be invested, we can't access that at two and three  
5 percent, so it's a bit of a leap of faith for us to  
6 put that in there, and again, as Tom mentioned,  
7 without this protection, we could have a great  
8 contract, but we'll lay those people off if we don't  
9 have the business. Thank you.

10           CHAIRMAN WILLIAMSON: Okay. Thank you. I  
11 started to make a comment about the math, but I won't.  
12 Let's go the next question. I was wondering what  
13 impact, if any, did the removal of the nonsubject CWP  
14 imports from China have on supply conditions in the  
15 U.S., and is that impact still relevant to our current  
16 analysis, and if so, why or why not?

17           MR. SCHAGRIN: Chairman Williamson, I would  
18 just mention because it's clear from the record that  
19 those cases were filed in June of 2007. Imports from  
20 China were approximately 650,000 tons in 2007. The  
21 relief was very effective. The duties were very high.  
22 Other than Customs fraud, the reported imports from  
23 China fell very considerably, and you can see that  
24 with "normal demand conditions" in 2008. This  
25 industry's financial condition rebounded from three-

1 percent margins to 15-percent operating margins, so  
2 there were tremendous benefits from that case.

3           Obviously, from '09 onwards, we had the twin  
4 problems of reduced demand, and, even in light of  
5 reduced demand, increased imports from these subject  
6 countries, but I think that case demonstrates in the  
7 context of the business cycle for this industry where  
8 demand was strong from '06 through '08, the imports  
9 from China forced the industry in '07 to have very  
10 poor results, only three and a half-percent margins  
11 even though they're higher than current margins,  
12 whereas in '06, before that big import surge, and in  
13 '08, after that import surge, was tremendously  
14 diminished by virtue of the imposition of the duties  
15 at the end of '07, this industry benefitted  
16 significantly.

17           I think it tells a very relevant story to  
18 this Commission about the normal operating conditions  
19 for the CWP industry in the context of the business  
20 cycle, which is very important that you take into  
21 consideration in this case not to mention a statutory  
22 obligation.

23           CHAIRMAN WILLIAMSON: Okay. Thank you. How  
24 should we interpret the apparent decrease in subject  
25 imports and the subject importers' market share in the

1 interim 2012?

2 MR. SCHAGRIN: That has everything to do  
3 with the preliminary imposition of duties at the end  
4 of March. That's 100 percent, so as we argued in our  
5 briefs, we believe to the extent the Commission were  
6 to find any improvement in the domestic industry  
7 condition during the interim period that the  
8 Commission take into account under the statute the  
9 effect on the imports of the filing of the petitions.  
10 You see a dramatic drop-off in reported subject  
11 imports after the preliminary CVD determinations at  
12 the end of March.

13 We think that had an impact even though some  
14 countries got zeroes. The fact is that the  
15 possibility, no one knows how CVD cases are going to  
16 turn out against countries that don't have a history  
17 of CVD cases. I know there was probably a lot of  
18 questions on all sides as to how those cases would  
19 turn out. They certainly have an impact, and then of  
20 course the preliminary determinations in the dumping  
21 cases were at the end of May, so that only covered the  
22 last month of the first half POI.

23 CHAIRMAN WILLIAMSON: Okay. Those  
24 reactions, and distributors might be able to answer  
25 this, is it the companies, the producers, the foreign

1 producers saying are we going to slow up, or is it  
2 that the distributors are saying no, we don't want  
3 your product under these conditions?

4 MR. CLARK: In response to that, we have  
5 found that the prices being offered by the subject  
6 countries here are just not as competitive as they  
7 were, so in order to buy import, there has to be a  
8 price differential between the import offering and the  
9 domestic offering. I think that much is clear from  
10 just the common sense standpoint that when I buy  
11 import pipe, I'm buying large quantities, and it takes  
12 longer lead time, so I'm taking a little bit of risk  
13 out there. When prices are less competitive, there's  
14 not a compelling offering there.

15 Since the imposition or the initial duties  
16 were assessed, we have found other sources for pipe,  
17 domestic and other ones.

18 CHAIRMAN WILLIAMSON: Okay. Thank you. Go  
19 ahead.

20 MR. MOSS: We have found is we saw the --

21 CHAIRMAN WILLIAMSON: Identify yourself for  
22 the court reporter?

23 MR. MOSS: What we saw, Commissioner, was  
24 that the -- I'm sorry. Robert Moss.

25 CHAIRMAN WILLIAMSON: Okay. I'm sorry.

1 Thanks.

2 MR. MOSS: What we saw was that the standard  
3 black material, the non-value-added material, has  
4 fallen off dramatically, and there has been an  
5 emphasis on continued dumping on the galvanized  
6 materials and the value-added materials where the cost  
7 of the good of these value added are close to or equal  
8 to the price of the banned material, so they're not  
9 really reflecting. They're trying to continue getting  
10 tonnage in the galvanized and the threaded products,  
11 and by reducing the price on those where they can, so  
12 they're taking that value-added product and cutting  
13 their margins in order to maintain some market coming  
14 in, but the basis product has slowed up.

15 CHAIRMAN WILLIAMSON: Okay. Okay. Thank  
16 you for those answers. Commissioner Pearson?

17 COMMISSIONER PEARSON: Thank you, Mr.  
18 Chairman. My greetings to all of you. Another pipe  
19 case. Another good panel here. What more could one  
20 want? Mr. Conway, I know that you have to take off a  
21 little bit early, so I wanted to mention a couple of  
22 things. One is that if you do working for the  
23 Benevolent and Protective Order of Elks, worse things  
24 could happen. I've had a high opinion of that group  
25 ever since I was an undergraduate when one year I got

1 a very modest scholarship from them, and since them,  
2 I've really held them in quite high regard.

3 MR. CONWAY: And it's boosted you right  
4 along.

5 COMMISSIONER PEARSON: The second thing I  
6 wanted to mention both to you and to the  
7 representatives from Wheatland is that I did have an  
8 opportunity some years in a previous pipe case to tour  
9 the continuous weld mill at Sharon, Pennsylvania, and  
10 I hope sincerely that it is possible to bring that  
11 line back up. A specific question about it, are the  
12 economics of continual weld mills improved as natural  
13 gas prices fall?

14 MR. CONWAY: This isn't gas.

15 COMMISSIONER PEARSON: Isn't it gas-fired?  
16 It's been a long time.

17 MR. SEEGER: It does help our energy costs  
18 to some degree, yes.

19 COMMISSIONER PEARSON: But with electricity  
20 kind of going up and gas going down, you haven't  
21 reached a break point yet where continuous welding  
22 looks like a good alternative in terms of the total  
23 cost?

24 MR. SEEGER: Well, we still do have a  
25 continuous welding mill in operation, not the one, I

1 believe, that you toured years ago. That one is shut  
2 down, in fact has been demolished. We have a third  
3 one that is the one that's in question here we're  
4 talking about.

5 COMMISSIONER PEARSON: Okay. Thanks for the  
6 clarification, but still, natural gas is not a big  
7 enough factor of total costs for a continuous weld  
8 mill that a fluctuation downward in the price makes it  
9 more feasible to run the mill?

10 MR. SEEGER: No. Obviously, steel's the  
11 biggest one. That's about 75 percent. Freight  
12 becomes our second largest, then labor. Well down the  
13 list would be the natural gas, but it's significant.  
14 I don't mean to downplay it.

15 COMMISSIONER PEARSON: Okay. Well, thank  
16 you for that clarification. Mr. Conway, did you have  
17 anything that you would add?

18 MR. CONWAY: No. I think we're beginning to  
19 see it in manufacturing. Maybe, I'm beginning to see  
20 it in the mills that the cost of gas is going to be  
21 significant help to other, but it's hard to track  
22 right now.

23 COMMISSIONER PEARSON: Well, I would note  
24 that the area of the country where we have a lot of  
25 steel production and pipe production, we also have

1 large deposits now of natural gas.

2 MR. CONWAY: Right.

3 COMMISSIONER PEARSON: So if we look ahead a  
4 few decades, we maybe could see some harmonious  
5 alignment of that resource with our industrial  
6 production. Let me ask a demand question. On this  
7 record, there's some conflicting evidence as to  
8 whether demand for a pipe has been increasing or  
9 decreasing. We have an increase in apparent  
10 consumption, increasing average unit values and GDP  
11 growth would suggest that demand has been rising.

12 On the other hand, we have decline in  
13 private, nonresidential construction spending, which  
14 kind of argues the other side, and then we look at the  
15 responses of producers and importers to the question  
16 of what's happening to demand, and we have a majority  
17 of the domestic industry saying that demand is  
18 decreasing or fluctuating while most purchasers  
19 reported that demand is increasing or fluctuating, so  
20 can you help me understand why we have these  
21 discrepancies on the record, and what's the best way  
22 to understand them? Mr. Moss?

23 MR. MOSS: Well, increasing imports have  
24 offset the domestic industry feedback. What we've  
25 done in this country with China, we put our hand in

1 the dyke to stop the flow of imports, but when you  
2 don't fix the dyke, and the system allows other things  
3 to come in, it gets replaced, and that hole inevitably  
4 appears somewhere else, or the leaks get bigger, and  
5 what you're seeing is the use of foreign pipe is much  
6 greater, yet our sales to same customers as the last  
7 five, six years has not gone up at all.

8           Our industry reports usage based on  
9 sprinkler heads, which sprinkler heads are used in  
10 construction, and that industry is off from 2008, I  
11 believe was the best year we had. That is off almost  
12 50 percent and has not recovered but for three, four,  
13 five points at all, so in reflecting in steel, that  
14 would be the difference is the foreign. We've got to  
15 fix the dyke. We can't patch it.

16           We've got to fix it because when a storm  
17 comes from these countries, it trickles, and then it  
18 blows into the country, and it affects all the  
19 markets, and then what we do is we just fix it, and go  
20 through and patch it and go one to one, the mills and  
21 things will move to another country, and we'll be  
22 facing it again.

23           COMMISSIONER PEARSON: Dr. Scott?

24           MR. SCHAGRIN: Thank you. I'll try to shed  
25 some light on this matter. Nonresidential

1 construction spending moves in a different business  
2 cycle from overall GDP. They peak to later than GDP.

3 The recovery has been weaker than gross domestic  
4 product, first of all. Second, there was relatively  
5 strong growth in 2010 in overall GDP because of the  
6 Recovery Act, spending, and that did lead to some  
7 increase in nonresidential spending as I indicated  
8 earlier.

9           However, since that time, there's been a  
10 decline in nonresidential construction, and in fact,  
11 the American Architectural Institute's billing index,  
12 which is the best forecasting tool available for  
13 future nonresidential construction I think declined  
14 for six or seven months in a row and has been negative  
15 throughout most of 2012, so this is just going  
16 forward, nonresidential construction spending is going  
17 to decline, and as I said, in fact over the last three  
18 months, actual nonresidential construction spending  
19 has declined.

20           Lastly, as to your question about this  
21 increase in the average unit values, whether this  
22 indicates some strength in the industry, I would point  
23 out that average unit values are driven largely by the  
24 cost of the import material, which is hot-rolled  
25 sheet, and in turn, that is driven by the major

1 demands for overall steel. CWP is a small part of  
2 that picture. The very big part of that picture is  
3 autos. Auto sales were up tremendously from the  
4 downturn in 2009, increased from 10 million units a  
5 year to 15 million units a year in September, so  
6 that's pulling up the price of the import, and it's  
7 pushing up the price, I think, of the CWP. Thank you.

8 COMMISSIONER PEARSON: Mr. Seeger?

9 MR. SEEGER: Yes, if I could follow that  
10 because it can be a bit confusing, and there have been  
11 a little bit of surges when the stimulus bill picked  
12 up, and the public sector spending was quite high. WE  
13 saw a little surge. Now recently, that's cut back as  
14 the local and federal government have had to cut their  
15 spending and the private sector has not been able to  
16 improve it. If you look at the overall numbers, in  
17 2009, the entire market was 1.2 million.

18 In 2010, it recovered to 1.4 million, so you  
19 would say well, then consumption has gone up, which it  
20 had, but the problem was that the U.S. domestic share,  
21 which was 71 percent in 2009, that would equate to  
22 840,000 tons. It dropped to 65 percent in 2010, which  
23 is equivalent of 780, so even though the total market  
24 did grow with that improved demand, our share actually  
25 reduced, and the balance went to imports obviously.

1           MR. BOHN: Finally, a technical point, this  
2 is John Bohn, apparent consumption can be influenced  
3 by inventories, and there's evidence of buildups in  
4 inventories.

5           COMMISSIONER PEARSON: Thank you, so looking  
6 ahead for the reasonably foreseeable future, what do  
7 we expect for demand? Are we seeing enough GDP growth  
8 so that we're going to expect some incremental  
9 increases in consumption of CWP?

10          MR. MAGNO: Mr. Mark Magno with Wheatland  
11 Tube Company. First, on construction demand, I'd like  
12 to continue to make the point that what happens in  
13 Washington, D.C. is not characteristic of what we see  
14 around the country.

15          COMMISSIONER PEARSON: You can be glad of  
16 that for more reasons than just this.

17          MR. MAGNO: There are more overhead cranes  
18 on construction projects in a five-block radius that I  
19 saw last night that I've seen collectively in many,  
20 many major U.S. cities, so it's different here.  
21 Second, we talk to our customers about what projects  
22 they are seeing come down the pike, what they're  
23 bidding, what their contractors and architects and  
24 engineers that they're calling on every day are  
25 talking about, and for 2013, there are very, very few

1 projects that they're talking about, and if they are,  
2 they're really on a small to medium scale.

3 Over the past couple of years, we did see  
4 some stimulus money help in that, both in schools or  
5 federal buildings, but that money is long gone, and so  
6 we don't see it for at least 2013, which has us very  
7 concerned.

8 COMMISSIONER PEARSON: Okay. Thank you for  
9 those comments. Dr. Scott, my time has expired, so do  
10 you have something very brief?

11 MR. SCOTT: I would just add that in  
12 addition to the risk factors we talked about earlier  
13 on GDP going forward, there's also great concern about  
14 the fiscal cliff and about further instability in  
15 Europe. Those are two big risk factors on the table.

16 COMMISSIONER PEARSON: Thank you. Thank  
17 you, Mr. Chairman.

18 CHAIRMAN WILLIAMSON: Thank you.  
19 Commissioner Aranoff.

20 COMMISSIONER ARANOFF: Thank you, Mr.  
21 Chairman. I join my colleagues in welcoming this  
22 morning's panel. In the direct testimony this  
23 morning, and in the briefs, there's been reference to  
24 events that have happened prior to the three years  
25 that the Commission normally considers as it's period

1 of investigation, which would be 2009 through 2011 in  
2 this phase of the investigation.

3 Respondents in their openings referred to  
4 certain data covering a 12-year period. Various of  
5 the Petitioners' witnesses talked about plant closing  
6 that happened in 2006. In rare cases, the Commission  
7 has considered itself justified in looking at a longer  
8 period of time, and so I have two questions. One is  
9 are you asking the Commission to look at a longer  
10 period of time, and if so, what sorts of things should  
11 we be looking at over a longer period of time?

12 MR. SCHAGRIN: Commissioner Aranoff, we're  
13 well aware that there's a pretty significant factual  
14 and legal burden on an industry to ask the Commission  
15 to look at a longer-than-normal time period. I think  
16 the key in this case, Respondents have put their  
17 entire case, it's almost as if the law were not  
18 changed in the '88 Trade Act on wow, look at how much  
19 things have improved between 2009 and 2011.

20 I can tell you if things had not improved  
21 between 2009 and 2011, we wouldn't be here. No one  
22 would come to the Commission. We'd be talking about  
23 the depression in the United States, so, I mean, in  
24 the context of business cycle, 2009 was not only the  
25 worst year for this industry, and you've been looking

1 at this industry for 30 years as Ms. Mendoza  
2 mentioned.

3 I would point out, even though she said,  
4 sometimes the cases go affirmative. Sometimes, they  
5 go negative on negative on CWP. Well, they've  
6 overwhelmingly gone affirmative as I think she's well  
7 aware rather than negative, but 2009 was so  
8 dramatically bad that to say that look at how much  
9 production, shipments, profits, occurred since 2009.  
10 Therefore, if you just look at arrows, this is a  
11 negative case.

12 It's like come on. I mean, we went through  
13 this in the early '80s. A lot of you are familiar  
14 with this. The Commission sometimes did, prior to the  
15 change in the '88 Act, just say hey, over our POI  
16 things improved. We don't care about the business  
17 cycle in cement. They improved. You're out of here,  
18 so Congress held hearings. There was almost a Trade  
19 Act in '86. It wound up getting postponed and getting  
20 done in '88, and Congress was very clear that this  
21 Commission is supposed to look at industries in the  
22 context of the business cycle.

23 If you want to look at more than three  
24 years, you just looked at the sunset review where you  
25 looked at six year. You have ample evidence that

1 shows that when demand is strong in this product, this  
2 industry makes double-digit operating margins. That's  
3 not in your current three-year POI. What's in your  
4 three-year POI is when demand plummets by 40 percent,  
5 you have 15-percent losses. As demand recovers, you  
6 only have the industry because we argue the subject  
7 imports going back to two- to three-percent operating  
8 margins and in fact net losses.

9           In my old mind as a regular practitioner  
10 before this Commission, I don't feel the need to urge  
11 you in every case that's occurring coming out of this  
12 incredibly deep economic recession to extent your  
13 periods of investigations. All I feel I need to ask  
14 this Commission to do is to do what the law tells you  
15 to do. I know that Congress meant it. They didn't  
16 put an entire new phrase with a lot of discussion in  
17 the statute in the '88 Act saying the Commission is  
18 not just to look at the condition of an industry over  
19 a three-year POI.

20           They said the condition is supposed to do  
21 its injury analysis in the context of the business  
22 cycle and the conditions of competition for the  
23 particular industry being analyzed. That's all we're  
24 really asking you to do, Commissioner Aranoff, and I  
25 think our references to earlier periods is to really

1 give you a context for the business cycle for this  
2 industry.

3 COMMISSIONER ARANOFF: Okay. I'm going to  
4 think about that. I might come back to it. There's  
5 one particular argument that the Respondents raise  
6 with respect to look at a longer period of data that I  
7 want to raise, and that is they talk about the fact  
8 that the domestic industry's market share during this  
9 period of investigation is above historical average,  
10 which I think they gave for about a 12-year period,  
11 and so I wanted to specifically ask how the Commission  
12 should weight that information? I think the argument  
13 was that the average has been around 60 percent market  
14 share except in 2009, and it's higher than that now.

15 MR. SCHAGRIN: In order to do that, I'm not  
16 going to get into this situation about how people can  
17 manipulate numbers. After all, we're in Washington  
18 this is the town where above all number manipulation  
19 is incredible, but let's face it. In order to get to  
20 those percentages, Commissioner Aranoff, they have to  
21 take the fact that the Chinese industry by itself in  
22 the period of 2007 we had 600,000 tons from China,  
23 they almost single-handedly put this industry out of  
24 business.

25 Yes, over a period if you throw in some

1 years in which you have a massive surge of imports,  
2 and you have the industry's share of the market being  
3 extremely low, you're going to come up with some lower  
4 averages for the domestic share of the market. I  
5 mean, the domestic industry share of the market in  
6 2006 and 2007 were 51 and 58 percent, respectively, so  
7 once again, what do we need? We need to get relief  
8 against China.

9 Yes, we've had other years during the Asian  
10 financial crisis when things were very weak. What was  
11 this Commission's response? It gave this industry  
12 safeguard relief in the 201, so, I mean, they're  
13 right. We've been here consistently for this industry  
14 because this is a commodity-fungible product. This  
15 industry has not exactly had, as Mr. Conway well  
16 knows, a bed of roses for the last 20 years. We've  
17 had nothing but mill closures and harm and pain.

18 I mean, their arguments seems to be,  
19 Commissioner, this industry doesn't deserve relief now  
20 because importers almost killed it off in the past.  
21 That just falls on deaf ears with me. I mean, I know  
22 Respondents have to make their arguments, but killing  
23 American industries and American workers shouldn't be  
24 at the heart of those arguments for why the industry  
25 doesn't deserve relief from unfairly traded imports.

1           COMMISSIONER ARANOFF: Okay. Let me switch  
2 gears and go to a pricing question with the time I  
3 have left. A number of the Respondents have argued  
4 that the domestic industry is getting a price premium  
5 which reflects their closer-proximity to customers and  
6 their ability to deliver product with short lead time.  
7 They argue that this premium accounts for the  
8 underselling by both subject and nonsubject imports  
9 that's evident in the record.

10           I wanted to ask you to respond to that and  
11 particularly to respond to the argument, which I think  
12 is at page 12 of Universal's brief, that says that  
13 imports from Korea, Mexico, Thailand and Turkey, which  
14 are all under existing antidumping orders and so are  
15 presumed to be fairly traded, sell at lower prices  
16 than the domestic-like product, and that this in  
17 particular is evidence that domestic product sells at  
18 a premium.

19           Now, I know you've already argued this in a  
20 sense by saying you can't have a premium with a  
21 commodity product, but I want to ask you to sort of go  
22 inside that then and tell me what am I seeing in the  
23 pricing data?

24           MR. MOSS: Robert Moss. We buy mostly  
25 domestic. When you buy the available inventories

1 closer to your distribution points, you're able to  
2 warehouse less material, less costs involved in  
3 handling, less risk of having the offset raw material  
4 at the right time, so what happens is although you'll  
5 pay a premium for location as if we go to a steel  
6 service center to buy, you'll pay a premium, that is  
7 offset by what's called ROI, Return On Investment.

8           If I buy foreign pipe, I would be buying it  
9 four, five times a year, and I would be getting  
10 shipments three and four months out. With domestic  
11 material at a closer location or stock material, I can  
12 get more turns on my dollars, so I'm working on less  
13 percentage, but I get more turns on the dollar, so  
14 from a standpoint they can get a small, ever so small,  
15 because there's a lot of import material on the  
16 grounds here also that is available, so they are again  
17 competing against import.

18           The only premium that comes is from a return  
19 on investment, which means you turn the material  
20 faster, and they have what you need when you need it,  
21 so distributors can use the domestics to fill in the  
22 foreigners. That's the premium.

23           MR. SCHAGRIN: Commissioner Aranoff, your  
24 time if up, but if you can remember on your next  
25 round, I would like to add some analysis in the

1 context of profit margins and a comparison of those  
2 import and domestic prices rather than doing it --

3 COMMISSIONER ARANOFF: Okay. If I forget, I  
4 know you're going to remind me. Thank you, Mr.  
5 Chairman.

6 CHAIRMAN WILLIAMSON: Thank you.  
7 Commissioner Pinkert?

8 COMMISSIONER PINKERT: Thank you, Mr.  
9 Chairman, and I thank all of you for being here and  
10 for helping us to understand this industry. I want to  
11 begin with a followup on some questions that  
12 Commissioner Aranoff was asking. Mr. Schagrin, you  
13 talked about the business cycle and considering the  
14 condition of the industry in the context of the  
15 business cycle for the industry. Where are we right  
16 now in that business cycle? Does the moderate  
17 recovery of demand within the industry explain the  
18 current operation profits for the industry?

19 MR. SCHAGRIN: In combination with the  
20 impact of the subject imports, it's pretty clear from  
21 the data that we're about halfway back to the normal  
22 cycle. I don't know for the U.S. economy in general  
23 or for lots of manufacturing whether we'll ever get  
24 back to the periods we were in between 2005 and 2008.

25 To the extent that we are halfway back in

1 the business cycle between the low of 1.2 and a more  
2 normalized 2.2 million tons of consumption, we're at  
3 about 1.6 right now, we're certainly not halfway back  
4 in terms of profitability because this industry simply  
5 will not survive at two- to three-percent operating  
6 margins. It's going to whither away. It's right now  
7 disinvesting.

8 Capital expenditures are less than  
9 depreciation. Companies will not be able to borrow  
10 money from the capital markets, which is costing them  
11 between eight and 12 percent with two- to three-  
12 percent operating margins. They won't be able to  
13 maintain volume against imports because those, in  
14 part, in response to Commissioner's Aranoff's  
15 questions, imports are underselling by 20 percent.

16 This industry, with the modest recovery, is  
17 only making 10-percent gross margins. These producers  
18 cannot drop their prices by 15 to 20 percent and sell  
19 it below marginal cost, so, I mean, if you don't give  
20 them relief, it's Katie-bar-the-door at a 20-percent  
21 pricing differential which is beyond the industry's  
22 ability to match and to compete. The imports can have  
23 as much as volume as they want to ship, so this  
24 industry is in for tough times even with relief.

25 It's in for tough times because it seems

1 like the cycle, and Dr. Scott talked about this, is  
2 that it's going to take several more years. It's not  
3 coming in 2013 or 2014 for nonresidential construction  
4 demand to return to the '07, '08 levels, so we're in  
5 the third or fourth inning of a game, and what we want  
6 to make sure is that the subject imports don't get to  
7 knock out just our starting pitchers, but the bullpen  
8 and the team put on the bench, so there's a tough row  
9 to hoe for everyone involved in the nonresidential  
10 construction industries.

11 I think, at best, we're halfway back, and I  
12 don't even know that anybody would venture a forecast  
13 as to when we might ever get back to where we were.

14 COMMISSIONER PINKERT: Mr. Scott?

15 MR. SCOTT: I think I'd just add two points  
16 to that. I think that you have to look at 2008 as a  
17 key year. Although, constructions have peaked,  
18 already we were seeing declines in consumption of CWP  
19 overall in the United States. I think that was partly  
20 because of the inventory cycle that was mentioned  
21 earlier. Firms realized the end was coming, and they  
22 stopped buying.

23 They didn't want to end up with millions of  
24 tons of inventories on their hands, and yet because  
25 less than fair value imports from China were removed

1 in that year, industry profitability returned to 15  
2 percent, what I would characterize as a normal year,  
3 the one normal year we've had perhaps in the last five  
4 or six, so this is a very competitive industry. It  
5 can compete even under weak market conditions, but  
6 it's got to have a level playing field.

7           You've got to remove the unfairly traded  
8 imports from the market, and that's what we see.  
9 2008's the only year we did that. Second point I'd  
10 make about this business cycle, I want to put on my  
11 Paul Krugman hat and play an academic economist here  
12 and say you really have to put this business cycle in  
13 context.

14           This is the worst recession we've seen in 75  
15 years, and right now, putting it in a 75-year context,  
16 we're in a territory that approximates 1937 when the  
17 economy was just beginning to recover and Congress  
18 became fixated on deficits, and they cut government  
19 spending and pushed the economy right back into a  
20 second downturn, and that's where we are going into  
21 2013. I think the discussion's going to focus on  
22 cutting deficits, and that's going to be very bad for  
23 the economy.

24           As I say, I think things are going to look  
25 bad for several years here until we get through this

1 period. Thank you.

2 COMMISSIONER PINKERT: Mr. Vaughn?

3 MR. VAUGHN: I'd just like to comment on  
4 sort of the policy matter for the Commission to kind  
5 of keep in mind in terms of how these cases work. I  
6 mean, if you sort of look at the data here, you can  
7 kind of see these guys are coming off of a terrible  
8 year in 2009 obviously, and at that point, the imports  
9 have 8.6 percent of the market. They start to do a  
10 little better in 2010.

11 Now, the imports are 12.6 percent of the  
12 market first half of 2011. Now, the imports are at  
13 14.7 percent of the marketing, and the operating  
14 margin has started to go back down, at least it was  
15 back down for a full-year 2011 because it was only 2.3  
16 percent then. Now, these guys have told you, you have  
17 testimony, they cannot stay in business at 2.3 percent  
18 operating margin. They just can't. They can't raise  
19 the money. They can't make the investments they need  
20 to make.

21 This is a devastating time for them. If the  
22 Commission is sort of going to take seriously  
23 arguments that well, you brought the case at a time  
24 when you were still in the black, and therefore we  
25 can't find that you were materially injured, I think

1 that sends a terrible message to domestic producers  
2 that they have to literally sit out there and just  
3 wait for the imports to keep going up and up and up  
4 until they get to a point where they're actually in  
5 the red.

6 For these guys' purposes, they're telling  
7 you they were in a very difficult position in 2011  
8 when this case was brought. The data bear that out,  
9 and I think these are factors the Commission should be  
10 taking into account as it does its business cycle  
11 analysis.

12 COMMISSIONER PINKERT: Thank you. Now, I  
13 want to stay with Dr. Scott for a second here, and for  
14 purposes of this question, let's just assume Mr.  
15 Schagrin's point that we're about halfway back in the  
16 business cycle for this industry.

17 In the normal course of things, in the  
18 normal experience with the business cycle, would we  
19 see an acceleration of profitability, not a straight-  
20 line increase in profitability, but an acceleration as  
21 you move beyond that 50 percent, 60 percent back  
22 toward the peak apparent consumption, or is this sort  
23 of a straight-line phenomenon, that as you move say 10  
24 percent, 20 percent, 30 percent, you get a 10-percent,  
25 20-percent, 30-percent increase in profitability?

1           MR. SCOTT: I would defer to the industry  
2 expert on that, but I would remark that evidence seems  
3 to suggest that again the role of import pricing is  
4 critical. If you're facing a market that's heavily  
5 saturated with less than fair value imports, it's  
6 going to be very difficult to get prices up, and  
7 that's what determines the ability of firms to achieve  
8 a fair rate of return on their investments.

9           COMMISSIONER PINKERT: Right. But I'm  
10 trying to understand the context so that we can judge  
11 whether or not the subject imports are having that  
12 kind of impact. Do you see an acceleration of  
13 profitability as you move toward the peak of that  
14 cycle in this industry?

15           MR. SCOTT: Holding everything else  
16 constant, if we were in 2008, we had no China unfairly  
17 traded imports, and we didn't have an increase in  
18 imports from these other producers that we're  
19 discussing today, then I think the industry would have  
20 enjoyed a substantial improvement in both sales as  
21 well as prices and profitability. That did not  
22 happen. Prices were restrained because of presence of  
23 less-than-fair-value-imports.

24           So I think you have to construct the  
25 counter-factual. What would have happened? What

1 would the condition be today but for the subject  
2 imports, and of course, the Commission has a model,  
3 I'd be happy to use that to do that exercise, and I  
4 think if you use the Commission's compass model to do  
5 that analysis, you would see that if you remove the  
6 less-than-fair-value-imports here, you would have seen  
7 much stronger pricing and a much larger market share  
8 for domestic producers.

9 COMMISSIONER PINKERT: I understand your  
10 point about counter-factuals, but I'm just trying to  
11 understand the historical context with respect to the  
12 business cycle in this industry.

13 MR. SEEGER: If I could, David Seeger. And  
14 I think I follow your point. We should be much  
15 further along in that recovery of what I would  
16 consider a normal cycle. Normal cycles used to be  
17 seven-year periods, and I use the term normal somewhat  
18 loosely. This market has recovered. It's 200,000  
19 tons stronger than what it was in 2009, but the  
20 largest percentage by far of that has gone to imports.  
21 It hasn't gone to what we would normally see in the  
22 domestic side, but as we do recover, yes, our margins  
23 should recover.

24 Our fear is we're just plodding along on a  
25 flat line at this two and three percent even though

1 the market has recovered somewhat and probably will  
2 going forward. Our fear is we're flat on our back  
3 right now and that improved demand is just going to go  
4 to the imports. We're not going to see it, so that's  
5 what different than what I would consider a normal  
6 cycle, so your premise is correct. It's just not  
7 filtering down to the domestic industry, at least not  
8 so far.

9 COMMISSIONER PINKERT: Thank you. A brief  
10 comment, Mr. Kurasz, because I'm at the end of my  
11 round.

12 MR. KURASZ: Sure. Ed Kurasz. The way we  
13 see it is that we're looking at a base-case growth of  
14 less than one and a half percent for 2013, and as the  
15 economy does strengthen and the steel mills have the  
16 ability to raise prices, the fact that our domestic  
17 share is less is going to be very preventative for us  
18 to raise prices as the steel mills raise their prices,  
19 and what's going to happen?

20 It's going to further depress our margins  
21 and get back into the red area because as long as  
22 there's that one low price out there, it will impact  
23 everybody's price, and our inability to raise prices  
24 as the steel mills will accelerate their selling  
25 prices of coil, the inability for us to raise prices

1 because of the greater share of our imports today, it  
2 will be big impact on our ability to be profitable.

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

5 CHAIRMAN WILLIAMSON: Thank you.  
6 Commissioner, Johanson?

7 COMMISSIONER JOHANSON: Thank you, Mr.  
8 Chairman, and I would also like to thank all of the  
9 witnesses for appearing here today. Just last month,  
10 I had the opportunity to visit two CWP plants operated  
11 by Wheatland, and those plants were in Wheatland,  
12 Pennsylvania, and Sharon, Ohio, and I wanted to thank  
13 the workers there for taking the time to tour those  
14 plants, and I found those tours very informative.

15 I'd like to now begin my questions, and my  
16 first one is what is different about this  
17 investigation in that Petitioners were generally not  
18 able to document lost sales and revenues but were able  
19 to do so in the Chinese investigation?

20 MR. SCHAGRIN: Having participated in both,  
21 Commissioner, I would just say China was so dramatic  
22 that even though in all the cases before China and all  
23 the cases since China in this product, the domestic  
24 industry members were unable to document lost sales.  
25 In the case of China, the China volumes were just so

1 gigantic that many customers were buying pretty much  
2 just Chinese, so producers could say to the Commission  
3 this customer is buying Chinese instead of buying from  
4 us.

5           As Mr. Magno had in his testimony, and he's  
6 been marketing this product for almost 30 years, the  
7 more normal circumstance, and I think it's reflected  
8 in a lot of your purchaser questionnaires is that a  
9 lot of distributors are buying both domestic and from  
10 multiple import sources, and in the Commission's  
11 questionnaire for lost sales and lost revenue  
12 allegations, it asked producers specifically to give  
13 information about when they lost the sale or lowered  
14 their price, who the name of the customer was, how  
15 many tons were involved, what the domestic price was,  
16 what the import price was and who the import source  
17 is.

18           Here, where you've got multiple subject  
19 countries and nonsubject countries, the ability of  
20 folks in marketing, and I could ask either Mr. Magno  
21 or Mr. Hunter or Mr. Johnson to add anything they'd  
22 like, I think their ability to get that information to  
23 the Commission in the form in which it is both  
24 requested and which your staff would need in order to  
25 verify that information is virtually impossible here,

1 and yet because this is a commodity product, every ton  
2 that is imported and purchased at a lower price than  
3 domestic is a lost sale for the domestic industry.

4           This industry's barely above 50 percent  
5 capacity utilization. There's a tremendous amount of  
6 additional capacity. We could satisfy every one of  
7 those commitments. I think, both of our purchaser  
8 witnesses here would tell you that they don't have any  
9 problem buying domestic product. It's always  
10 available, so that's the way we view that issue and  
11 think saying this is different from the China case by  
12 the Respondents is a little bit of the red herring.  
13 This is the norm. The China case, like a lot of China  
14 cases you see was the exception.

15           COMMISSIONER JOHANSON: Thank you for your  
16 response. Yes, Mr. Magno, would you like to say  
17 something?

18           MR. MAGNO: Yes, if I could reiterate a  
19 specific point? in certain businesses, not the  
20 standard pipe businesses, there's very large projects,  
21 so there might be a pipeline project for 15,000 or  
22 20,000 tons, which is very identifiable. You have a  
23 quote, and you could track that as the Commission  
24 would like to see it tracked. The standard pipe sales  
25 are generally almost exclusively to customers'

1 inventory, and then they feed the job sites almost  
2 like hand to mouth out of their inventory, so we lose  
3 that visibility to that end project.

4           When we ask our customers the questions,  
5 because we try to get the information, they say you've  
6 lost it to import because of this price, and we say  
7 well, which country? Many times, they don't even  
8 know. They just know that it's A53 pipe. It has a  
9 continuous hole through it, and it's cheaper than the  
10 alternative pipe.

11           COMMISSIONER JOHANSON: Thank you, Mr.  
12 Magno, and as a followup on that, if you could educate  
13 me on one thing? You stated that generally purchasers  
14 buy to put into their inventory. Does that explain  
15 why there's such a large proportion of this product  
16 sold through the spot market?

17           MR. MAGNO: Yes, very much so. It's sold on  
18 a spot basis because there's not long-term contracts  
19 down the supply chain with our customer base, so if  
20 someone, they had to resell their products on a  
21 contract, then I think they would come up through the  
22 supply chain to us and want to lock in some sort of  
23 contractual price, but no. You're right. Most of  
24 it's on a spot basis, and we're actually fighting for  
25 shelf space, as we call it, although our product's not

1 put on a shelf, we're fighting for the shelf space in  
2 a distributor's inventory.

3 COMMISSIONER JOHANSON: All right. Thank  
4 you for your response. My next question deals with a  
5 COG to sale ratio, and to what do you all attribute  
6 the very high ratio of COGs to sales in 2009 and the  
7 decline in the ratio in later years in the POI?

8 MR. SCHAGRIN: While they're a little less  
9 familiar with COGs as a share, so I gave the data to  
10 look at, Commissioner Johanson, but I'll take a stab.  
11 2009 was a really unusual year. The industry's  
12 capacity utilization fell dramatically as I think the  
13 Respondents correctly point out at the early part of  
14 '09 probably because nobody could see the  
15 repercussions after the end of '08 of the Lehman  
16 collapse and just how steep the recession was going to  
17 be.

18 Producers did have some inventory of steel  
19 that took a lot longer to wear off than normally, and  
20 prices were plummeting. Your '09 prices from the  
21 pricing products are far and away the lowest of the  
22 period of investigation, so having high marginal costs  
23 because you're operating at low rates, having higher  
24 steel prices and having low selling prices is going to  
25 give you that horrible COGs number, which 105 percent.

1 That's unsustainable. The industry had 15 percent  
2 operating losses.

3 As I stated, if that continued, I wouldn't  
4 be here today. I'd rather not be here someday because  
5 of everyone in the U.S. industry doing very well. I'd  
6 rather not be here because everybody in the U.S.  
7 industry has gone out of business because we have a  
8 number of years like 2009. What I would point out,  
9 and this is where we really differ with the view of  
10 Respondents, we don't think the improvements in the  
11 COGs is in and of itself, from the context of the  
12 business cycle, a sign that there hasn't been injury  
13 to this industry because the COGs levels of 88, 89  
14 percent are really bad.

15 I mean, it's 10 percent gross margins.  
16 Imports are underselling the domestic industry's  
17 prices by 20 percent. Ten percent gross with seven or  
18 eight percent SG&A, which is not very high for an  
19 industry like this, these folks are pretty lean and  
20 efficient, means you wind up with two or three percent  
21 operating margins. That also is not sustainable for  
22 this industry. COGs in the period '06 to '08 were in  
23 the 75 to 80 percent range. That is a much better  
24 share and more normal for this industry.

25 I can just tell you that this industry is

1 not composed of folks who don't know how to run a  
2 business. I mean, they would much rather have COGs in  
3 the range of 80 percent, like they were in '06 and '08  
4 than 90 percent as they were during this POI, so  
5 that's kind of it in a nutshell. Ed?

6 COMMISSIONER JOHANSON: Yes, Mr. Seeger,  
7 would you like to add to that?

8 MR. SEEGER: Just specifically for '09  
9 because '09 is an aberration. What occurred was the  
10 collapse of the market. Steel prices had risen in '08  
11 to levels above \$1,000 a ton, and when everything  
12 collapsed, our inventory that normally would be maybe  
13 three months, four months' worth of inventory,  
14 everybody stopped buying. That became almost eight  
15 months of inventory of very high-priced steel that we  
16 had to get through before we could start buying what  
17 be considered normal steel again, so it was quite an  
18 aberration from that perspective.

19 COMMISSIONER JOHANSON: Thank you. Mr.  
20 Kurasz, if you could add something, my time's expired,  
21 but feel free to speak.

22 MR. KURASZ: Sure. Ed Kurasz. The only  
23 thing I'd add to that is the dramatic reduction in the  
24 coil price, so it peaked in the August/September  
25 timeframe, started to slow down, and then when the

1 price of coil dropped, our prices, as we've talked  
2 about today, 75 percent of our cost is steel, so as  
3 steel dramatically dropped, the magnitude from \$1,100  
4 a ton down to \$600 a ton was very detrimental to our  
5 business.

6 COMMISSIONER JOHANSON: All right. Thank  
7 you for your responses. My time has expired.

8 CHAIRMAN WILLIAMSON: Thank you.  
9 Commissioner Broadbent?

10 COMMISSIONER BROADBENT: Thank you. I'm  
11 wanted to talk about China again. The Respondents are  
12 arguing that subject imports grew during this period  
13 because they were replacing the Chinese volumes that  
14 existed the market due to the orders in 2008, and  
15 since China has pushed these imports out of the market  
16 during those three prior years, aren't the imports  
17 from these four new countries sort of filling a void, a  
18 huge void, that was created there?

19 MR. SCHAGRIN: Commissioner Broadbent, Roger  
20 Schagrin. I don't believe, and I don't think I'm  
21 alone, I think almost all members of Congress would  
22 agree, and I think also this Commission would, that  
23 unfairly traded imports have the right, have a legal  
24 right, to fill the void of other unfairly traded  
25 imports. Fairly traded imports have every right to,

1 not unfairly traded imports. With the exception of  
2 India, which by virtue of one company being excluded  
3 from a dumping case in 1985 and some other Indian  
4 producers having low dumping margins, these other  
5 countries were not even in the market.

6 I don't think they came to the market just  
7 because China left. Traders and importers will buy  
8 product from everywhere. I wouldn't say they don't  
9 have a soul. They just follow that Gordon Gecko view,  
10 greed is good. They don't say we want to buy as much  
11 as we can and sell in the United States as long as we  
12 don't injure the U.S. industry. Their job is to make  
13 money, plain and simple. Whether there's U.S.  
14 manufacturers in existence or not, that does not  
15 impact the view of a steel importer or trader, so the  
16 fact that mills were built in the UAE and Oman because  
17 there was a building boom in the Gulf, that's fine  
18 that they built them.

19 If they want to engage in import  
20 substitution whether it's a subsidy or not is a  
21 different issue, that's fine. Then their building  
22 industries collapse, and they say we just built new  
23 pipe mills. What should we do with the pipe. There's  
24 people in the United States who will buy it. The  
25 United States is the most open market in the world.

1 That's why they came here, not just because the  
2 Chinese were out. They had excess capacity. The same  
3 is true of the Vietnamese.

4           The Indian market was also slowing, and I  
5 don't think the Indians returned to some normal level  
6 of imports. They wanted to sell more to the United  
7 States because they didn't have the opportunity to  
8 sell them to other markets, so I do not believe in any  
9 way the imposition of antidumping and countervailing  
10 duties against imports from China provide the subject  
11 imports with a license to dump and sell subsidized  
12 product in the U.S. market, nor do I believe it  
13 shields them from any claims that their imports were  
14 injurious.

15           We had a 600,000-ton decline in imports from  
16 China. We also had a 600,000-ton decline in demand.  
17 As demand started coming back, these imports increased  
18 by 100 percent while demand only came back by 20  
19 percent, and the domestic industry shipments increased  
20 by 10 percent. That was all well after the Chinese  
21 were out, so I think you do at least have a distinct  
22 period of time after the imposition of duties against  
23 China in 2007 to look at. What did these imports do  
24 in the context of the market? On that basis, I  
25 believe you should find that they were injurious on

1 their own without any reference to imports from China.

2 DR. KAPLAN: This is Gil Kaplan. I would  
3 just add that if you look at the capacity utilization  
4 and the overall capacity of the United States  
5 industry, they certainly had the ability to fulfill  
6 the gap that was left when the Chinese went out. The  
7 question is what's going to happen to that  
8 opportunity, that demand opportunity, and if imports  
9 are going to come in that are unfairly traded, that's  
10 not some of excuse. As Mr. Schagrín said, there's not  
11 a right that they had to take that share.

12 COMMISSIONER BROADBENT: I mean, we're  
13 trying to get to the causal link with the injury. I'm  
14 just saying what does it do to all the forces going on  
15 in the market there, and there's a big change here,  
16 and what's it doing?

17 MR. SCHAGRIN: We agree with you,  
18 Commissioner Broadbent. There is a change in the  
19 reduction of imports from China. There's also a  
20 change in the reduction of demand. There is, as Mr.  
21 Kaplan mentioned, the complete ability for the U.S.  
22 industry to supply all of the demand in the United  
23 States after the decrease in imports from China, and I  
24 think over this period of investigation, you can look  
25 at changes in U.S. demand, changes in subject imports

1 versus changes in the domestic industry.

2           To me, this record is it's kind of textbook  
3 for showing the causal link between the increase in  
4 imports and import market share from the subject  
5 countries and the decrease in market share for the  
6 domestic industry. Until we filed these cases in  
7 October 2011 and got the imposition of preliminary  
8 duties in March of '12, I have rarely seen a cleaner  
9 case of causation between what is happening to imports  
10 from the subject countries that the Department of  
11 Commerce has found to be unfairly traded and the  
12 domestic industry.

13           As to every production and volume factor,  
14 that causal link is clear. The only time the  
15 Commission has to look a little bit deeper is looking  
16 at the link to profitability because '09 is so  
17 aberrational that, I mean, in almost every  
18 manufacturing industry in this country, including the  
19 auto sector, everybody was losing money. The question  
20 is the people who can stay in business are the people  
21 who've recovered since the end of the great recession.  
22 The people won't make it, and we'll be talking in  
23 another 10 years about do you remember this industry  
24 or that industry?

25           Those are the people who weren't able to

1 recover after 2009. This industry could have  
2 recovered much more than it did but for these subject  
3 imports, so to me, the causal link is just absolutely  
4 crystal clear between these imports and the condition  
5 of the domestic industry.

6 MR. VAUGHN: Commissioner Broadbent, Steven  
7 Vaughn for U.S. Steel. If I could just add a little  
8 to what Roger was saying? First of all, to me their  
9 argument that they replaced the Chinese imports is  
10 kind of a strange argument in terms of your causal  
11 link analysis because the Commission already found  
12 that the Chinese imports did cause material injury, so  
13 to the extent that they were taking on the role of the  
14 Chinese imports, that would seem to weight in favor of  
15 a finding of material injury.

16 The other thing I would urge you to look at  
17 is that what was going here, it's quite clear. The  
18 Chinese imports leave the market. The industry does  
19 better in 2008. 2009 there's an economic crisis.  
20 Now, then, from 2009, we see the imports start to  
21 grow. They take market share from '08 to '09. They  
22 take market share from '09 to '10. They take market  
23 share from '10 to '11. Now, if you look at your  
24 operating income numbers, you see that the industry  
25 makes three and a half percent in 2010.

1           We make 6.2 percent in the first half of  
2 2011, so things are starting to get better as these  
3 witnesses have testified, but your data plainly show  
4 that in the second half of 2011, if you look at the  
5 data for the operating income for the first half and  
6 compare it to operating income for the full year, you  
7 see that in the second half of 2011, this industry was  
8 losing money, and at that point, they brought these  
9 cases, so I think the causal link that as the imports  
10 went up, the performance of the industry degraded.

11           Finally, the industry was forced to either  
12 seek relief or just watch that import surge get higher  
13 and higher and higher. It think that's how you get to  
14 the causal link.

15           COMMISSIONER BROADBENT: Thank you for that.

16 I'm going to go on because I just am running out of  
17 time here. I was just curious. Oman is a signatory  
18 to the Free Trade Agreement with the U.S. unlike  
19 India, UAE an Vietnam. Can anyone comment on whether  
20 we should take this into account when assessing  
21 whether to cumulate subject imports from Oman with  
22 other subject imports for purposes of threat? Is  
23 there any difference in we treat anything in the law  
24 that you would see, or is it a complete irrelevancy?

25           MR. SCHAGRIN: Commissioner, I believe it's

1 completely irrelevant. My belief is, and I'm not  
2 completely familiar with all of the provisions of the  
3 FTA with Oman, but the normal FTA provisions give our  
4 FTA partners separate treatment in safeguard as to  
5 cumulation. That is, I know, contained in the NAFTA  
6 agreements and in the Israel and Jordan, and I would  
7 presume, since it was already in those, that other FTA  
8 partners would ask for that special safeguard  
9 treatment.

10 Other than the Chapter 19 panels in NAFTA, I  
11 do not believe any of the FTA agreements, including  
12 the NAFTA, our largest FTA, have any special  
13 provisions on cumulation in Title VII cases, so I  
14 think there it's irrelevant.

15 COMMISSIONER BROADBENT: I think there was  
16 one for Israel and maybe Sabera countries, but I can't  
17 remember.

18 MR. SCHAGRIN: It could have been for  
19 Israel, yes.

20 COMMISSIONER BROADBENT: yes.

21 DR. KAPLAN: This is Gil Kaplan. I think  
22 there is something for Israel. I think it would  
23 truthfully be kind of detrimental to the whole  
24 prospect of free trade agreements if we read something  
25 in there that was not agreed to as part of those

1 agreements.

2 COMMISSIONER BROADBENT: No, no. That's why  
3 I'm asking what the law said.

4 DR. KAPLAN: I don't think there is any, but  
5 we can double check, but I think there is something in  
6 Israel, but nothing in Oman about cumulation certainly  
7 for threat purposes.

8 COMMISSIONER BROADBENT: Okay. Let's see.  
9 The Respondents' counsel for Al Jazeera, is that  
10 right? Argues that the pricing trends of domestic-  
11 like products are most closely linked with movements  
12 in the cost of raw materials. I'm out of time. I'm  
13 getting a look I didn't see, so I apologize. We'll  
14 get to that later. Thanks.

15 CHAIRMAN WILLIAMSON: I was about to give  
16 you special dispensation. We have another round. I  
17 was wondering if you could elaborate on your  
18 contention that there's been significant price  
19 suppression. What evidence is there on the record to  
20 support this contention?

21 MR. SCHAGRIN: Chairman Williamson, to me,  
22 the most relevant evidence is the extremely low  
23 operating margins of the industry after a period of  
24 recovery in demand, so while virtually all the  
25 Respondents briefs like to compare the product prices

1 between '09 and the first half of '12 and say look at  
2 how they're going up even though there's underselling  
3 throughout the period, there's no price suppression,  
4 the fact is if you look between early '11 and '12, you  
5 do see prices of virtually all products falling.

6           If you look at the contention, which I  
7 believe Commissioner Broadbent was raising, the  
8 contention in the Al-Jazeera brief that there's no  
9 price effects and that domestic pricing only  
10 correlates to the prices of steel raw materials, that  
11 is contradicted, that argument is contradicted, by the  
12 plain evidence. As I say, the pricing products all  
13 show decreases in prices between early '11 and the  
14 first half of '12.

15           Steel costs reported steel acquisition costs  
16 and the cost of raw materials were level to increasing  
17 somewhat. The COGs data that was referred to, I  
18 believe by either Commissioner Pinkert or Commissioner  
19 Johanson, changed by five points between the first  
20 half of '11 and the first half of '12. It went up  
21 from 83.5 to 88.7, and not surprisingly, operating  
22 margins fell by almost four of those five points.

23           To me, this record is replete with evidence  
24 that the domestic industry experienced cost-price  
25 squeezes, was not able to return to healthy levels of

1 profitability, and we can debate how much of it was  
2 caused by the subject imports, which increased  
3 dramatically over the period of investigation or  
4 nonsubject imports, which were also significant, but  
5 we don't have to attribute any of the cause to  
6 nonsubject imports. It's just a matter of how much to  
7 which issue.

8           Clearly, it can also be materially shown to  
9 be caused by subject imports because they double their  
10 volume and almost double their market share. They  
11 were very significant, and they were underselling, so  
12 once again, everybody can always manipulate data to  
13 look at which period you want. If you want to talk  
14 about just the beginning of '09 to the middle of '12,  
15 you can say gee, there's no evidence of price  
16 suppression, but if you look at '11 to '12, you can  
17 see evidence.

18           I have every confidence in the Commission.  
19 You have lots of advocates come before you. Many try  
20 to play games with this period or that period. I  
21 could even be accused of that. I hope not, but I  
22 could be. In the end, you all have a lot of  
23 familiarity. I admire you for the professionalism of  
24 your work and that of your staff, so you know to look  
25 at these data over time periods, and you can read the

1 arguments in the brief.

2           You can realize someone's just picking this  
3 point and this point instead of also looking at all  
4 the interim points. Hopefully, that answers your  
5 question, Chairman Williamson.

6           CHAIRMAN WILLIAMSON: I think it does, but  
7 to further help us, how would you explain the fact  
8 that subject imports over nonsubject imports in  
9 several price comparisons? Is that relevant to our  
10 price effects analysis?

11           MR. SCHAGRIN: Chairman, I don't think so  
12 because while they might have pointed to several price  
13 comparisons, I think through the majority of the price  
14 comparisons that subject imports were underselling  
15 both nonsubject and the domestic industry, and as I  
16 say, this case is not about a comparison of subject  
17 imports to nonsubject imports and their competition,  
18 but subject imports' impact on the domestic industry.

19           I mean, if there were any way the domestic  
20 industry could lose this case, it is that you believe  
21 with the completely false premonition put forward in  
22 the Respondents' opening statement that subject  
23 imports only compete with nonsubject imports. That  
24 just simply is not true. With this Commission's 30  
25 years of investigations on CWP, saying that these

1 subject imports don't compete with the domestic  
2 industry, there is just not information on the record  
3 to support that.

4           If that's what their witnesses are going to  
5 say today, I'll just be dumbfounded. These subject  
6 imports compete just like nonsubject, just like the  
7 domestic industry. They all go through the same  
8 channels of distribution. It's all about price, and  
9 then it's all about the volumes, market shares and the  
10 inability of this industry to obtain reasonable  
11 operating margins because they can't get their prices  
12 up where they need them to be between their costs and  
13 their selling prices.

14           CHAIRMAN WILLIAMSON: I'm curious about this  
15 question about an inability to raise prices, and I  
16 think Mr. Kurasz mentioned this, and to the extent  
17 it's not business confidential, can you explain? I  
18 guess there have been attempts for price increases and  
19 why hasn't it worked?

20           MR. KURASZ: Certainly, Chairman. Ed  
21 Kurasz, Allied Tube. It's clear that 75 percent of  
22 our cost is steel related, and as steel pricing  
23 fluctuates, certainly when it goes up, we're in  
24 business to make money. We're in business to get a  
25 return on our capital, so we need to maintain that

1 margin or try to get as close to it as we can. As  
2 long as the distribution channel has access to lower-  
3 priced imports, it prevents us from getting either the  
4 full amount or getting that increase at all because  
5 there is an option.

6           If I have an option to purchase pipe from an  
7 import supply that's already 20 percent below, I'm  
8 certainly not going to be able to get a price increase  
9 to maintain that margin and suppress my margin is the  
10 outcome with the greater share of the imports. It's  
11 just no different than four gas stations on each  
12 corner. One of them's 20 percent below the other  
13 three. Where do you think everybody's going to go for  
14 their gas? As long as that option is available of  
15 unfairly dumped imports, that prevents us from  
16 maintaining that margin that we need to get a return  
17 on capital.

18           CHAIRMAN WILLIAMSON: Okay. So most of the  
19 sales are, I guess, a lot of spot market sales? Is  
20 this one of these things somebody puts out a price  
21 increase, and if the others are losing sales, and they  
22 back off?

23           MR. KURASZ: Obviously, we have our daily  
24 metrics. We know what our input, our bookings, our  
25 back log. They're monitored daily to make sure we are

1 (1) in tune to the market to the forecast that we  
2 provide to our production and our procurement on the  
3 steel side, so when we see the bookings drop, we see  
4 our back log drop. Obviously, we have market  
5 information.

6 We have American Metal Market information  
7 coming in daily, and if it's a time we're trying to  
8 raise prices, and our bookings drop, and we hear the  
9 direct input from our customer base that we are not  
10 accepting your price increase, that we have  
11 opportunities purchase elsewhere to offset this  
12 increase, and it's routine. It's daily spot buy kind  
13 of discussion, but it's based on data that's available  
14 from the market, input direct from the customer and  
15 the peer articles that you could read what's going on  
16 in the industry.

17 CHAIRMAN WILLIAMSON: So even though there's  
18 a longer lead time for imports, there's too much  
19 information out there not to --

20 MR. KURASZ: And there is imports available  
21 in inventory.

22 CHAIRMAN WILLIAMSON: Yes, yes.

23 MR. KURASZ: So as long as there's that  
24 option and that threat that we're not going to get the  
25 order, and it's pretty clear when we hold firm, and

1 then the order doesn't come our way, after a couple of  
2 days you need to rescind your price increases so that  
3 you can maintain somewhat volume on your production  
4 equipment.

5 CHAIRMAN WILLIAMSON: Okay. Thank you. Mr.  
6 Seeger?

7 MR. SEEGER: Yes, if could to that because I  
8 know it's a little confusing, and if you just look at  
9 the gross sell price through this period, it does go  
10 up and down, so obviously, price movements are  
11 happening. What occurs is, just as yesterday, U.S.  
12 Steel announced a \$40 a ton price increase, and I'll  
13 look at Mark and say all right. Mark, you're going to  
14 have to get prices up, and we'll put a price increase  
15 announcement out.

16 There's lag effects between when the import  
17 price will move because it is a global market, if that  
18 steel moves globally, the imports usually will go up  
19 also, but what will happen is our steel price will go  
20 up 40, and we'll only be able to collect \$30 of it, so  
21 when you look at the gross sell price, you'll say  
22 well, you guys got a \$30 price increase here. You  
23 should be much better, but my steel went up \$40, and  
24 when you look at our gross margins, that's why they  
25 continue to stay flat even though the prices are going

1 up and down.

2           They continue to stay in that two to three  
3 percent because we're just trading back and forth, so  
4 it's a little bit confusing from just looking at the  
5 gross sell price. I don't know if that confused it  
6 even more, but --

7           CHAIRMAN WILLIAMSON: No. Thank you very  
8 much. I appreciate that further detail. I think it  
9 helps. Okay. My time --

10           MR. SCHAGRIN: Chairman Williamson, I'll  
11 just add we do have confidential information from some  
12 of the domestic producers about their inability to  
13 achieve price increases, and that was on page 15 and  
14 16 of our confidential prehearing brief. Thank you.

15           CHAIRMAN WILLIAMSON: Okay. Thank you.  
16 Good. Commissioner Pearson?

17           COMMISSIONER PEARSON: Thank you, Mr.  
18 Chairman. In my time at the Commission, I've been  
19 privileged to participate in the back and forth  
20 communication with the Court of Appeals for the  
21 Federal Circuit regarding how we handle  
22 nonattribution. I had thought that I might graduate  
23 from the Commission without having to address it again  
24 after the Middle decision, and I'm afraid now that's  
25 not the case.

1           I look at the facts, and it really does look  
2 to me very much like nonattribution is going to be an  
3 issue for us. This is clearly a commodity product.  
4 There are a lot of nonsubject in the marketplace, and  
5 they are price competitive both with domestic-like  
6 product and with subject imports, so I don't think  
7 that we can escape from the challenge of having to try  
8 to follow the Fed Circuit's guidance in how we address  
9 nonattribution here. Is there a way that we can write  
10 an affirmative present that would not fall on appeal  
11 at the CIT or the Fed Circuit?

12           MR. SCHAGRIN: Easily, Mr. Commissioner, if  
13 you'd like, I'll write it for you, and I'll guarantee  
14 you won't have any problem.

15           COMMISSIONER PEARSON: You underestimate the  
16 thinking of opposing counsel.

17           MR. SCHAGRIN: That's okay, and let me tell  
18 you, with some of the current members of the CAFC, no  
19 pun intended, I'm not sure where they learned how to  
20 write opinions and in what law schools, but that's a  
21 different issue. Obviously, it's pretty rare for a  
22 practitioner to see one Court have a decision  
23 overturned 9-0 by the Supreme Court and then go back  
24 for more two years later and have a decision that I  
25 don't think a first-year law student would think was

1 argued very well be reversed by the entire U.S.  
2 Congress within 60 says.

3 COMMISSIONER PEARSON: Right. Right.

4 MR. SCHAGRIN: So for those of us who  
5 practice. Now, notwithstanding the wonderful  
6 commitments to vigorous enforcement of the unfair  
7 trade laws by some members of our Appellate Court,  
8 which of course you are bound by, our view is that the  
9 Middle case largely does release you from having to  
10 worry about that before your retirement, which I know  
11 could be imminent or could not be because we know how  
12 Congress works, but we really view the Middle Point  
13 Leases cases has having tremendously changed the  
14 Court's view of nonattribution from the Bratsk and  
15 Gerald Metals cases.

16 I know there's some differences among  
17 Commissioners on this. However, I know my personal  
18 view is we've gone back to the status quo ante. You  
19 were never allowed to find injury by reason of subject  
20 imports if only the nonsubject imports caused the  
21 injury. This Commission was never allowed to do that  
22 from the time it was created in '75 through the Gerald  
23 and Bratsk. You were never allowed to find injury  
24 that wasn't caused by the subject imports.

25 The question about this weighing of causes

1 or nonattribution of any injury caused by nonsubject  
2 to subject came up through the good efforts of lawyers  
3 and decisions by the CAFC, so we really think the  
4 Middle Point Leases cases takes you back to where you  
5 were that you can enjoy your retirement without having  
6 to worry about Gerald Metals and Bratsk.

7           Maybe I can enjoy the rest of my life  
8 without having to worry, and I just have to worry  
9 about JPX or Euro Diff or whatever other crazy  
10 decisions come out of our wonderful Court system,  
11 which obviously, from my perspective, virtually never  
12 sees things either my way or the way Congress looked  
13 at things, but obviously there's a lot more free trade  
14 bias than fair trade bias in some of the systems in  
15 which we work.

16           Here, I think you right your decision. The  
17 market recovered by 20 percent over the three-year  
18 POI. Imports increased by 100 percent. That resulted  
19 in the domestic industry shipments only increasing by  
20 10 percent. Nonsubject imports, I think the remark  
21 was made in the opening, once again it's kind of  
22 playing with numbers. I see very clear data on this  
23 record that between '09 and '11 subject imports  
24 doubled. They increased by 100,000 tons.

25           Nonsubject imports, which in '09 were much

1 larger than subject imports, only increased by 50,000  
2 tons or by 20 percent. How can you possibly say when  
3 subject imports are doubling, and okay, if they double  
4 from 10 to 20, it would be one thing, but they  
5 doubled, and they increased by 100,000 tons. The  
6 nonsubject imports only increased by 20 percent and by  
7 50,000 tons.

8 COMMISSIONER PEARSON: Yes.

9 MR. SCHAGRIN: How can you possibly say  
10 nonsubject had more of an impact.

11 COMMISSIONER PEARSON: I think the analysis  
12 is complicated by the changed conditions of  
13 competition with the Chinese imports largely went away  
14 because we have no in this POI a marketplace that's  
15 very much in transition, and we have some considerable  
16 degree among subject and nonsubject imports, even  
17 though I accept the numbers that you've given that  
18 you're stating correctly those facts, I believe, but  
19 still. I'm not getting away from the reality that  
20 based upon my understanding of this record if the  
21 subject imports went away, the nonsubjects could  
22 entirely fill the void that they're creating. Mr.  
23 Vaughn?

24 MR. VAUGHN: Yes, Commissioner Pearson. I  
25 think another thing to kind of keep in mind as you

1 think about the nonsubject imports is that the  
2 Respondents rely very, very heavily, almost  
3 exclusively, on the specific pricing product  
4 underselling data that was collected by the Commission  
5 with respect to certain nonsubject countries, but that  
6 data only applies to four countries.

7           It doesn't apply to all the nonsubject  
8 countries, and I think that when you look at the  
9 overall nonsubject, and that to me is the more  
10 relevant comparison here, in every year, in every part  
11 of this period of review, there's a significant  
12 pricing gap between the AUV of the nonsubjects and the  
13 AUV of the subjects, and also when you look again,  
14 when you look at all the subjects compared to all the  
15 nonsubjects, you see that from 2009 to 2011, the  
16 nonsubjects basically were not gaining market share.

17           The subjects were taking a lot of market  
18 share, so I think those are two major distinctions  
19 between the subjects and the nonsubjects. When you  
20 look at all the nonsubjects and compare them to all  
21 the subjects, you see that the nonsubjects were higher  
22 prices, and you see that the nonsubjects were  
23 relatively stable in the 2009 to 2011 period, and I  
24 think that is a critical distinction for looking at  
25 this case.

1           COMMISSIONER PEARSON: But doesn't the wide  
2 variation of product within the scope suggest that  
3 using average unit values for this analysis is  
4 questionable? I mean, can you be confident based on  
5 the AUVs that what you're telling me is correct and  
6 would hold up in Court?

7           MR. VAUGHN: I think they can't have it both  
8 ways. I mean, they want to argue that it's a  
9 commodity product, and it's fungible, and if it's a  
10 commodity product and it's fungible, then it does sort  
11 of make sense. In fact, if you go through the subject  
12 products, and you compare them, you see they undersold  
13 us on the AUV basis, and then when you look at the  
14 underselling analysis, they undersold us by about the  
15 same amount on the pricing products.

16           The problem is with the nonsubjects, there's  
17 a lot of nonsubject countries that you just don't have  
18 pricing product data for. You've only got pricing  
19 product data for four countries, so you can't do the  
20 same type of comparison, so given the record that  
21 you've got, I think it's very credit comparison, and  
22 what it shows is that if they want to take the  
23 position this is a fungible product, it's a commodity,  
24 there's not a lot of variation here, then I think it's  
25 perfectly legitimate to go back to them and say well,

1 then in that case, the AUV data shows a big gap  
2 between the nonsubject prices and the subject prices.

3 I think, and you have wisely limited your  
4 question to the area of present material injury, but  
5 in the context of threat, the difference between the  
6 type of threat posed by the subject countries, who are  
7 not under order, and the threat posed by the  
8 nonsubject countries, many of which are under order,  
9 is enormous. I mean, the threat the from the subject  
10 countries is virtually unlimited. They went from  
11 eight percent of the market to 13 percent of the  
12 market to 14 percent of the market.

13 We have no reason to know where that's going  
14 to get capped, whereas the nonsubject countries, many  
15 of which are under order, that's a very, very  
16 different situation.

17 DR. KAPLAN: Maybe I can just add? This is  
18 Gil Kaplan. I'm just sure you're aware of the  
19 language is the injury suffered more than incidental,  
20 tangential or trivial? If you look at these  
21 increases, which are very large, from 8.6 percent to  
22 14.7 percent during the period of investigation in  
23 import share, it was significant underselling.  
24 Whatever's happening with the nonsubjects, the subject  
25 imports are having an enormous impact on what's going

1 on in this market. It's no incidental in any sense.

2 COMMISSIONER PEARSON: Well, I'm not sure  
3 that incidentiality is the exact issue here when you  
4 have that close competition between subjects and  
5 nonsubjects, but at any rate, my time has expired. I  
6 will look forward to whatever elaboration you could  
7 provide in the post hearing because this is an issue  
8 that you can tell I'm wrestling with, and I'm probably  
9 losing the match right now.

10 CHAIRMAN WILLIAMSON: Thank you.  
11 Commissioner Aranoff?

12 COMMISSIONER ARANOFF: I know I promised to  
13 come back to price premiums. I did remember, but I  
14 want to ask another question first. In the  
15 Commission's decision this year in galvanized steel  
16 wire from China and Mexico, the Commission declined to  
17 find that a domestic industry which showed signs of  
18 recovery from the recession had been denied the  
19 opportunity for what was described in that case as a  
20 full recovery due to the presence of subject imports.

21 In doing that, the Commission stated that  
22 subject imports had not prevented the industry from  
23 recovering and that the Commission "declined to  
24 speculate as to what might constitute a full  
25 recovery." Can you distinguish that case from the

1 record in the current investigation?

2 MR. SCHAGRIN: Yes, Commissioner Aranoff,  
3 and I read that decision, but I think we'll do this  
4 more fully in the post hearing so that we can compare  
5 the data as well because I believe that most of the  
6 data on the Commission of the domestic industry was  
7 public by virtue of the number of participants in that  
8 industry. We do not believe, in this case, that we're  
9 asking you to find a causal relationship between the  
10 imports and the injury to the domestic industry based  
11 on this industry's inability to obtain a full  
12 recovery.

13 We think here, unlike that case in which I  
14 believe that the increase in import market shares was  
15 less than in this case, I think that the loss of share  
16 to the subject imports, in this case, it's almost  
17 between '09 and '11. It's one from one, so we have  
18 the impact in the context of the recovery of demand.  
19 We have the specific information of the impact of the  
20 doubling of subject imports over the POI and the  
21 production factors in this industry.

22 Then, we have the fact that on any basis,  
23 there's not the absolute need to compare this to where  
24 the industry was during the period from '06 to '08  
25 prior to the beginning the drop-off of demand that

1 this industry's profitability and financial condition  
2 is dismal just on an absolute basis. You've heard  
3 testimony from the members of this industry. You've  
4 got the information in your staff report. This  
5 industry's making two to three percent operating  
6 profits, two to three percent net losses.

7 Now, in the past, the Commission has focused  
8 on operating because particularly in the '80s looking  
9 at the steel industry, you had people constantly  
10 shutting down mills, and you had all these other  
11 expenses, and so you kind of went away from looking at  
12 the net line to the operating line. Here, when I look  
13 over this whole POI, net other expenses, net other  
14 income are pretty equal. The difference between  
15 operating profits and net losses is entirely interest  
16 expenses.

17 The people in this industry are financing  
18 their activities either through bank loans or through  
19 bond offerings. This is not the high-tech California  
20 industry where you talk about this company's got a  
21 \$100 billion of cash on hand. This has \$50 billion.  
22 These companies have no cash on hand. They are  
23 financing their activities by borrowing money.

24 They have to pay interest, so this industry,  
25 and as I say, we'll compare it to the galvanized steel

1 wire, this industry is in a dismal financial condition  
2 in the context of the present conditions. We're not  
3 arguing that we're just not making 15 percent margins  
4 as we were during a period of full recovery and no  
5 unfairly traded imports from China, so I think that  
6 this case is very different from the galvanized steel  
7 wire case, but we'll elucidate further in the post  
8 hearing.

9           COMMISSIONER ARANOFF: Okay. In responding  
10 to the questionnaires, a number of domestic producers,  
11 they answer that question about whether they have  
12 experienced actual negative effects, or they're  
13 anticipating negative effects, and a number of them  
14 stated that they had not experienced any negative  
15 effects from competition with subject imports, and  
16 there were some obviously that reported to the  
17 contrary.

18           What accounts for the difference in  
19 experience within the domestic industry? Is it about  
20 product mix, or is there something else at work?

21           MR. SCHAGRIN: I think a lot of it has, and  
22 I meant to bring the questionnaire with me, but I  
23 didn't, so I'm going to go from memory, that question  
24 essentially says did you suffer these effects? Did  
25 you roll back price increases? Did you have other

1 price effects, and it says if you checked the yes box,  
2 please give us the specifics, and I think based upon  
3 the fact that this is a commodity product, the ability  
4 of somebody in a small company making CWP to try to  
5 figure out how to add in the specifics of that answer  
6 is probably pretty daunting, so I know that --

7           COMMISSIONER ARANOFF: Okay. I think it  
8 goes not so much to price as it does things like  
9 inability to finance capital expenditures, bank loan  
10 issues, things like that.

11           MR. SCHAGRIN: Correct. Yes, it's got the  
12 different boxes, and then I believe there's another,  
13 and it does ask you then at the end, I believe in that  
14 question is asks you to supply further specifics.  
15 Once again, maybe the commodity nature of this  
16 industry, it's difficult to attach specific influences  
17 on your business from just these very specific  
18 imports. I don't know if anyone has anything to add  
19 to that, and there are a lot of members of the  
20 industry, and it may differ, as you said, amongst some  
21 members of the industry reporting those and other not  
22 reporting them.

23           MR. SEEGER: In our case, it would be  
24 difficult for us. We can go out and get capital right  
25 now based on our other product lines within JMC in

1 which we carry numerous products lines, go to the OCTG  
2 or structural tube industry, so at this point, the  
3 fact that those parts of our business are healthy, I  
4 can still go out and get capital.

5           If I were to just segment the standard pipe  
6 product line for us, which is losing money, when I go  
7 to our board and say I need to start financing the  
8 case for a new tube mill because this mill is  
9 depreciating, they look at me and say Dave, at two  
10 percent? Are you kidding? Move on. Find it in a  
11 different area, so within JMC, we would probably  
12 answer that as we can still go out and get financing,  
13 but in respect to this product line, that would not be  
14 the case.

15           COMMISSIONER ARANOFF: Okay. Thank you.  
16 Now, Mr. Schagrín, you wanted to use some time to tell  
17 me something else about the price premium issues, so  
18 I've got two minutes left. Go.

19           MR. SCHAGRIN: I'll do it very quickly.  
20 I'll take a minute, and then you can ask as many more  
21 questions as you want. I would just say it's clear  
22 that if the domestic industry could always obtain any  
23 significant price premiums, you wouldn't see these  
24 variations in profitability over the 30 years the  
25 Commission has been looking at this industry. I mean,

1 unless these people were idiots, why would they ever  
2 lose money or make two-percent margins?

3           Clearly, as has been explained, the question  
4 is how much are their prices above their costs of  
5 steel and their cost of manufacturing, their total  
6 cost of good sold so they can make healthy operating  
7 margins, and I would say that when you have over this  
8 POI a record that's replete with the fact that their  
9 gross margins are only eight to 10 percent and imports  
10 are 20 percent below, no one in manufacturing can  
11 compete at a price that's below their marginal cost.

12           I think that largely explains why you don't  
13 see the steep if imports are at 800 and the domestic's  
14 at 1,000, why don't see you the domestics go down to  
15 850? Well, if their costs are 900, as soon as they go  
16 to 850, they might as well shutter the factory door,  
17 so that's my explanation. I think it's the reality of  
18 this industry. I'm done.

19           COMMISSIONER ARANOFF: One short question  
20 for post hearing, and this goes to threat. Al-Jazeera  
21 argues in their brief that the other identified  
22 produce in Oman, GIPI, produces large-diameter pipe  
23 that's either entirely or at least mostly outside the  
24 scope of these investigations.

25           I just want to ask both parties if they

1 could give us whatever the best evidence that they  
2 could offer on the range of sizes that GIPI's  
3 equipment can produce and its allocation of that  
4 capacity to within-scope products and whatever its  
5 export history has been with regard to those products  
6 because I've got Respondents arguing too that I should  
7 just ignore that company because they're not really in  
8 this business, and I'm not sure how to weight that  
9 argument.

10 MR. SCHAGRIN: Commissioner, we'll do it in  
11 post hearing.

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

14 MS. BYERS: Can I just make one point about  
15 that?

16 CHAIRMAN WILLIAMSON: Sure. The staff  
17 report concluded that they do produce ASTM 53 pipe.  
18 They are in the larger diameters. They're about eight  
19 and a half inch and up, but clearly those are in-scope  
20 products, so I don't think, based on what your own  
21 staff was able to collect, that they are producing in-  
22 scope product. We'll try to dig up some more stuff on  
23 that per your request.

24 COMMISSIONER ARANOFF: Yes, because my  
25 understanding is that those larger sizes are a fairly

1 small part of the market.

2 MS. BYERS: They're still in-scope product  
3 though.

4 COMMISSIONER ARANOFF: Okay. All right.  
5 Thank you very much. Thanks, Mr. Chairman.

6 CHAIRMAN WILLIAMSON: Commissioner Pinkert?

7 COMMISSIONER PINKERT: Thank you, Mr.  
8 Chairman. Staying with threat, does this panel have a  
9 view about whether it would be appropriate to cumulate  
10 India with the other subject countries for purposes of  
11 a threat analysis? The reason I ask that is because  
12 when Mr. Vaughn was speaking a minute about threat, he  
13 emphasized the increase in subject import market  
14 penetration, and so my question is given that emphasis  
15 and his answer, would it be appropriate to cumulate  
16 India?

17 MR. VAUGHN: Well, I will start by saying I  
18 believe it would absolutely appropriate to cumulate  
19 India. I mean, I think that you have a situation here  
20 in which, for purposes of the case, I mean, there's a  
21 producer in India that's not under an 80 order.  
22 Therefore, they have access to this market in the way  
23 some of the other nonsubject countries may not have,  
24 so when you're looking at what is the threat from  
25 these subject countries, I mean, they are a threat in

1 the same way that the other subject countries are a  
2 threat.

3           Given that this is a fungible product, and  
4 it's a commodity product, and there's no reason to  
5 believe that these countries are going to really  
6 compete under different conditions of competition,  
7 then yes, you should cumulate imports from all of the  
8 subject countries both for the material injury  
9 analysis for the threat of injury analysis.

10           COMMISSIONER PINKERT: Just to clarify, for  
11 purposes of a threat analysis in deciding whether to  
12 cumulate, I would be focusing mostly on volume and  
13 price trends.

14           MS. BYERS: Commissioner Pinkert, I think if  
15 you look at the data that's in Table V-VI, you can see  
16 that there really aren't any differences in the trends  
17 from India vis-à-vis the rest of the subject  
18 countries. You have the same number of instances of  
19 underselling. You have very similar, in fact larger,  
20 margins of underselling than you do with the other  
21 subject countries, so I don't think you're going to  
22 find any real discernible difference.

23           COMMISSIONER PINKERT: Mr. Schagrín?

24           MR. SCHAGRIN: Yes, well I think Ms. Byers  
25 already hit most of the point I had. I would say the

1 other things you should look at in terms of volume and  
2 price trends, you can see similar pricing patterns.  
3 Certainly, to the extent India argues we're different  
4 from the other because were here before they started,  
5 you can still see that the Indians were increasing  
6 over the POI, maybe not increasing as much because  
7 they started from a higher base.

8           Then, I think in terms of other cumulation  
9 factors and threat factors, it's not only how much has  
10 their recent import increase been, but do they have  
11 excess capacity, what is happening in their home  
12 market? Unfortunately, for the rest of the world, the  
13 Indian economy is slowing remarkably, and so with the  
14 types of pricing patters that Ms. Byers was talking  
15 about, their ability on the same basis as the  
16 producers in the other subject countries to rapidly  
17 increase their exports to the United States is similar  
18 to the situation with the producers in the other  
19 subject countries.

20           MS. BYERS: This is Bonnie Byers. I think  
21 it's also important to note that there was only really  
22 one Respondent from India that bothered to send in a  
23 form producer questionnaire, but the staff again very  
24 diligently provides information in the staff report  
25 talking about the massive capacity in India. You've

1 got Wellspun that has 1.7 million tons of capacity to  
2 produce pipe, Tata 220,000, Surya 331,000, Jindal  
3 220,000, Sayle 143,000. Sorry. Those are all  
4 thousands, not millions. Wellspun was 1.7 million, so  
5 you have other producers that have very, very  
6 significant capacity as well in India beyond the one  
7 that bothered to respond to the questionnaire  
8 response.

9           COMMISSIONER PINKERT: Thank you. Now,  
10 keying off of some arguments in the Al-Jazeera brief  
11 and in the UAE brief, I'm wondering whether the panel  
12 can talk about how a one-third market share for total  
13 imports in the U.S. market stacks up against the  
14 historical experience of this industry. Is that the  
15 normal? Is that the new normal? Is that the never  
16 was normal? Can you give me some sense of the  
17 historical context?

18           MR. SCHAGRIN: Well, except for Mr. Magno,  
19 who I think even started a few years after I started  
20 in this, so going back to 1982 which is as far back  
21 as, I think there was one case on some product area  
22 that covered this before I was involved in filing  
23 cases in '82. We have seen significant fluctuations.  
24 The Commission has some hold, not surprisingly,  
25 because I think what Respondents want to do is say

1 hey, when I look at sunset reviews and that's in data  
2 on one of the tables at the front of the sunset review  
3 staff report which goes back to various periods,  
4 starting in '83, '84 and shows the domestic industry's  
5 market share, they say look, there were lots of  
6 periods in which this industry's share of the market  
7 was even less than it is today. So what's the  
8 problem?

9 Well, I don't think it's going to come as a  
10 big shock to this Commission that having represented  
11 this industry now for 31 years, that I don't file  
12 cases during the period when the domestic industry has  
13 a very high market share and when imports are somewhat  
14 lower. That's not a great time to come in and argue  
15 causation to this Commission.

16 So for most of the data point time periods  
17 over the last 32 years, when you have data on the  
18 industry because it was filing cases, the industry had  
19 lost significant portions of its market to unfairly  
20 traded imports.

21 So we can go back and do a little bit of  
22 analysis on this, but there were times in the early  
23 '80s when we started filling a lot of cases and then  
24 President Reagan decided, even though the Commission  
25 because of OCTG decided against relief for then what

1 was considered the overall pipe and tube industry,  
2 President Reagan decided there should be VRAs on all  
3 of these products. And not surprisingly, the market  
4 share of the industry grew dramatically over the  
5 period of the VRAs. It was as high as nearly three-  
6 quarters of the market in 1998. Then when the Chinese  
7 hit the market it went down to nearly 50 percent.

8 I hope there's not a new normal.  
9 Unfortunately for the United States of America,  
10 Commissioner Pinkert, we back in the early '80s were s  
11 dramatically different, giving up a third to a half of  
12 the U.S. market to imports when overall manufacturing  
13 imports were maybe just 10 or 15 percent.

14 Now this industry only has 66 percent of its  
15 market. It may be the new norm. That's why the  
16 manufacturing sector has such problems. They can talk  
17 about a renaissance of it. It's not true in any  
18 statistical measure. And we have decided as a country  
19 that luckily not the Commissioners, but as a country  
20 that it's okay for imported manufacturer products to  
21 take a third of our demand. We're the only advanced  
22 industrialized country in the world that has such  
23 massively high market shares in manufactured products  
24 and that's because we don't address the underlying  
25 unfair trade problems like currency manipulation and

1 other issues. We've just chosen not to.

2 I don't think there's the new norm. And the  
3 fact that this industry now has so much more capacity  
4 than there demand, I don't see any reason that this  
5 industry's share of this market shouldn't be 85 or 90  
6 percent. This industry can supply this market.

7 Mr. Cameron is laughing. He just doesn't  
8 think people in America should make things and should  
9 have jobs. We should all be in poverty and we should  
10 have service jobs and change each other's bed pans in  
11 the future. That's simply not the case.

12 This Commission shouldn't find against  
13 injury for the domestic industry because it has a  
14 wonderful 65 percent market share and in the past it  
15 had similar market shares.

16 COMMISSIONER PINKERT: A quick question and  
17 maybe this is more for the posthearing, but do we have  
18 specific evidence on the record as to what caused  
19 those domestic industry plant shutdowns in 2009?  
20 Distinguishing between subject import causation and  
21 just the overall state of demand at that time.

22 MR. SCHAGRIN: I don't think so. We'll  
23 address it in the posthearing. What we do know is  
24 that unlike what was said in the Respondent's briefs,  
25 this industry's problems weren't just plant shutdowns

1 in '09. In 2012 we had two additional plant shutdowns  
2 and we will get you more information on both of those  
3 in our posthearing brief.

4 COMMISSIONER PINKERT: Thank you very much.  
5 Thank you, Mr. Chairman.

6 CHAIRMAN WILLIAMSON: Commissioner Johanson?

7 COMMISSIONER JOHANSON: Thank you, Mr.  
8 Chairman.

9 Respondents argue that the only decline in  
10 the U.S. industry's financial performance since 2009  
11 occurred at a time when there was a significant  
12 decline in subject imports, and that was between  
13 January and June of 2012. How do you all respond to  
14 this argument?

15 MR. SCHAGRIN: We don't think it takes into  
16 account the recovery and demand conditions, first. We  
17 also believe that the industry's loss of market share  
18 in '10 and '11 was significant and had a significant  
19 impact on the industry's inability to generate decent  
20 profit margins. Then we would point out that even  
21 though industry conditions declined between first half  
22 '11 and first half of '12, when the entry of new  
23 imports declined. But you have to remember, there's a  
24 lot of lags.

25 I think you heard from almost all the

1 witnesses, these products are sold in the inventory.  
2 These products don't come off a ship and get used by a  
3 plumber in this building the next day. They go into  
4 inventories. So it's very usual throughout the steel  
5 supply chain to see lag effects. And certainly that's  
6 the case in this product area.

7           So the fact that imports were strong through  
8 March of 2012, the Department of Commerce then imposes  
9 extremely high preliminary countervailing duties  
10 against India and some preliminary countervailing  
11 duties against others and imports then tail off. It  
12 doesn't mean that the imports in the second half of  
13 '11 and the first quarter of '12 weren't significant  
14 contributors and a major cause of the industry's  
15 problems in the first half of '12.

16           So there were lots of imports in this market  
17 throughout the first half of '12. most of them  
18 arrived in the second part of '11 and the first  
19 quarter of '12 and much fewer of them arrived in the  
20 second quarter of '12 after Commerce issued  
21 preliminary determinations.

22           MR. VAUGHN: Commissioner Johanson, this is  
23 Steven Vaughn for U.S. Steel.

24           I would also, in support of that, their  
25 argument really depends on you not paying attention to

1 what happened in the second half of 2011 because if  
2 you look at your record, it's very clear, the industry  
3 made \$34 million in the first half of 2011. It made  
4 \$25.2 million for full year 2011. So the industry  
5 lost money in the second half of 2011.

6           So clearly what you have here is a situation  
7 where the industry makes 6.2 percent operating margin  
8 in the first half of 2011. The industry loses money in  
9 the second half of 2011; and starts to seek relief.  
10 In the first half of 2012, things start to get a  
11 little bit better again.

12           So to just compare first half 2011 and first  
13 half 2012 and say well, we left the market and you  
14 guys got worse, that misses what was really going on  
15 here. What was really going on was, as Mr. Schagrin  
16 was saying, that lag effect and the effects of the  
17 imports were coming in and driving down the market,  
18 you see that in the second half of 2011 data, and then  
19 things start to get a little better in the first half  
20 of 2012.

21           That's completely consistent with the idea  
22 that the subject imports were hurting domestic  
23 producers.

24           COMMISSIONER JOHANSON: Thank you, Mr.  
25 Vaughn.

1 Mr. Scott, if you'd like to respond?

2 MR. SCOTT: Thank you, Commissioner. Again,  
3 Rob Scott, economist.

4 I think we have to again broaden the  
5 definition of injury here. Remember there's a long  
6 list of statutory factors. The domestic producers  
7 lost substantial amounts of market share between 2009  
8 and 2011, if the domestic producers' market share had  
9 remained constant, where it was at about 70-some  
10 percent in 2009, their sales would have been about  
11 nine percent higher than they actually were. They  
12 would have employed perhaps nine or ten percent more  
13 workers. There would have been more people employed.  
14 More wages paid.

15 So I think it's important to keep in mind  
16 all of those statutory factors as indicators of injury  
17 in this case. They're attributable directly to  
18 subject imports. Thank you.

19 COMMISSIONER JOHANSON: Thank you, Mr.  
20 Scott.

21 I'd like to pose a question concerning the  
22 topic of product shifting.

23 In recent years it has been observed that at  
24 times the demand for CWP and the demand for energy  
25 pipe have followed different paths. Have you all

1 observed any product shifting from CWP to energy pipe  
2 or vice versa since 2009?

3 MR. SEEGER: This is David Seeger. I'm not  
4 quite sure I follow you. By product shifting, if you  
5 mean within our mills or different demand patterns  
6 between the two products?

7 COMMISSIONER JOHANSON: Within your  
8 facilities.

9 MR. SEEGER: There would be very little of  
10 that. Of our four producing CWP mills, only three of  
11 them would strictly be CWP. I couldn't shift energy  
12 products to them. Our fourth mill we would have the  
13 ability to do that to some degree, but overall it  
14 would be minimal.

15 I'll let Ed speak to his mills, but I don't  
16 believe that's possible.

17 COMMISSIONER JOHANSON: I'd like to hear  
18 from Mr. Cross, but first of all, I'm relatively new  
19 to the pipe field. I've only been here a few months.  
20 But is that due just to the product characteristics?  
21 Is that why you don't see much shifting between the  
22 products?

23 I know from my plant tour that you have a  
24 seam on CWP. Would that cause problems in the oil  
25 industry?

1           MR. SCHAGRIN: Commissioner Johanson, I'll  
2 answer and then I'll let Mr. Kurasz answer about  
3 Allied's mills.

4           It's mostly related to both product  
5 differentiation and what kinds of products can be made  
6 on the same mill in terms of the wall thicknesses, but  
7 it is mostly related -- That then drives the key  
8 ingredient which is for virtually all the products  
9 used in the energy tubular area, a mill, and it's not  
10 a company, it's each individual mill, must have an  
11 API, American Petroleum Institute, license. So if  
12 your mill, and that's the case with three out of the  
13 four mills in which Wheatland produces CWP and it  
14 applies to all of Mr. Kurasz's mill. If your mill  
15 does not have an API license, you are essentially  
16 barred from the energy products arena. So that's the  
17 key determinant.

18           And most of the CWP in the United States is  
19 made in mills that do not have API licenses, so they  
20 cannot shift to energy products. No matter how strong  
21 the market is, without an API license you cannot make  
22 API products to go into either pipelines or energy  
23 drilling.

24           MR. KURASZ: Ed Kurasz. I concur with  
25 Roger. My only point is we don't participate in the

1 energy sector. Our mills are not API licensed. Our  
2 mix within our business, for example in our Harvey  
3 facility, we have two mills there. The difference  
4 between the sprinkler demand or our fence demand, the  
5 difference is fence is a galvanized coating which we  
6 produce on mills that produce in-line galvanized. Our  
7 sprinkler pipe is a black lacquer. So there's on  
8 galvanizing.

9           So if by chance the fence market grew  
10 dramatically, we wouldn't be able to run those  
11 products on our sprinkler mill because we don't have  
12 that galvanizing process.

13           COMMISSIONER JOHANSON: Thank you, Mr.  
14 Kurasz.

15           I'm now going to pose a question concerning  
16 China. I know a number of my colleagues have already  
17 done so but I thought it would be appropriate to ask  
18 at least one question concerning China.

19           The Indian Respondent has argued that  
20 imports from India represent a return to the pre-China  
21 status quo or business as usual. Do you all have a  
22 comment on that?

23           MR. SCHAGRIN: I think first of all, why  
24 can't the domestic industry return to the pre-China  
25 status quo and make 10 to 15 percent profit margins?

1 Why should there be increased imports from India at  
2 dumped prices buying their way back into the U.S.  
3 market through Indian government subsidies and through  
4 dumping?

5           So once again, I know this Commission has to  
6 find causation. It has to find causation based on  
7 whether imports and the increase in imports have been  
8 significant over the period.

9           To the extent that people return to some  
10 status quo ante and they've never been significant and  
11 they're not significant now, I would suspect that  
12 Petitioners could not come to this Commission and get  
13 relief. To the extent that imports from a country and  
14 other countries on a cumulated basis are doubling over  
15 a period of relatively weak demand and being sold at  
16 dumped and subsidized prices that undersell, I do not  
17 believe that it is an adequate affirmative defense  
18 before this Commission of saying we are just replacing  
19 other unfairly traded imports.

20           If you would like, with a fair amount of  
21 effort but not too much, I will be happy to go back  
22 into the cases on just this one product.

23           This is not a novel. I recognize China is  
24 somewhat unusual, but Mr. Cameron and others and other  
25 CWP cases in the past have come up as we had cases in

1 '83, '85, you could see the spacing of cases in the  
2 sunset review. You would not be surprised to know  
3 that in other case people said what are you coming  
4 after us for? The Thais and the Turks and the Indians  
5 would say, we're just replacing the Koreans and the  
6 Brazilians. I mean people just say, what are you  
7 blaming us for? We just replaced other unfairly  
8 traded imports. And there's this sense that the  
9 importers and the traders get to have a guaranteed  
10 share of the U.S. market through unfairly traded  
11 products and get to make s fortune. And that U.S.  
12 mills shouldn't be allowed to operate and U.S. workers  
13 shouldn't be allowed to make products.

14 I reject that. If you were to follow what  
15 the Indians say, then God help us after all the other  
16 Commission affirmative determinations in China cases  
17 because this is not the only product in which a lot of  
18 other imports are coming in after this Commission has  
19 made affirmative findings on China. Our industries  
20 under the congressional statutes deserve relief when  
21 those products are unfairly traded.

22 I hope I've answered your question.

23 MR. SEEGER: The return to the China era  
24 just scares me to death because our companies, our CW  
25 companies would be out of business today. We were on

1 death's door right then. If we did not get that  
2 affirmative ruling on the Chinese I can assure you  
3 those mills that you toured would be out of business  
4 today. So it scares me to death that that some how  
5 may be termed the norm and returning to that would  
6 some how be sustaining. It would not. Thank you.

7 COMMISSIONER JOHANSON: Thank you for your  
8 response.

9 Mr. Kaplan, very quickly, please.

10 MR. KAPLAN: Maybe it's repetitive, but I  
11 don't think it's the intent of the statute that if we  
12 can deal with the Chinese and big surges of Chinese  
13 imports that other people can come in and take  
14 advantage in much the same way of the fact that the  
15 Chinese are now subject to dumping countervailing duty  
16 cases. That's not the way the statute was written,  
17 that there's some kind of opportunity that other  
18 people can come in and engage in the same unfair  
19 trade.

20 COMMISSIONER JOHANSON: Thank you for your  
21 responses.

22 CHAIRMAN WILLIAMSON: Commissioner  
23 Broadbent?

24 COMMISSIONER BROADBENT: Thank you.

25 On the threat issue, in your briefs you

1 argued that the Commission ought to take adverse  
2 inferences against certain producers in the foreign  
3 industry because they failed to supply foreign  
4 producer questionnaires, responses. You say that we  
5 should infer, therefore, that they have significant  
6 excess capacity and that they will export significant  
7 volumes to the U.S..

8 I'm new here, but my understanding is that  
9 the Commission doesn't usually take adverse inferences  
10 against companies that we would be sort of penalizing  
11 producers and importers who did respond to  
12 questionnaires for the failures of others that didn't.

13 Could you comment on that, please?

14 MR. VAUGHN: Commissioner Broadbent, we were  
15 one of the parties that argued for the adverse  
16 inferences. I'm happy to address this question.

17 I think this is a major problem for the  
18 Commission and I think it's something that you really  
19 have to take very, very seriously.

20 You need the questionnaire data from the  
21 foreign producers. You need a lot of it, you need  
22 complete data. If you do not have that data it  
23 becomes very, very difficult for any of us to have a  
24 realistic assessment of what is going on with these  
25 products in these countries.

1           Those of us in the Petitioners Bar do the  
2 best we can in terms of looking at public sources and  
3 trying to go through the trade press and see what we  
4 can come up with, but I can assure you it's extremely  
5 difficult to find out from a foreign mill how big the  
6 capacity is, how much of the capacity is allocated to  
7 this particular product. So these foreign producers'  
8 questionnaires are very, very important.

9           If you have a situation in which a foreign  
10 producer makes a deliberate decision not to respond to  
11 your questionnaire, that puts us at an incredible  
12 disadvantage. And if you stick to the policy that  
13 well, we don't want to punish the people who did  
14 respond because of the people who didn't respond, then  
15 it seems to me that is an invitation to the foreign  
16 producers to say okay, I have a capacity utilization  
17 rate of 85 percent. You have a capacity utilization  
18 rate of 50 percent. Let me turn in a questionnaire  
19 response. Let those of us who are doing better, we'll  
20 turn in some questionnaire responses. You don't turn  
21 in anything. Then the capacity utilization rate for  
22 the country as a whole will look much higher than it  
23 really is.

24           I'm not saying that that happened here. I  
25 don't know what happened here. But I am saying that

1 the Commission has got to find a way to encourage full  
2 compliance with these questionnaires. Congress has  
3 given you the power and that power involves drawing  
4 adverse inferences.

5 I think it's absolutely appropriate. We  
6 work very hard with our clients in terms of putting  
7 together questionnaire data, and a lot of people work  
8 very hard in terms of putting together questionnaire  
9 data. I think it's important that the Commission make  
10 clear that there are consequences to not submitting  
11 questionnaires. I think it is absolutely reasonable  
12 for the Commission to say we believe that we are going  
13 to infer that this was done deliberately and that if  
14 we had your information the data would support the  
15 domestic industry.

16 So I would urge you to take this very  
17 seriously and to draw the adverse inferences that  
18 Congress has allowed you to draw.

19 MR. SCHAGRIN: Commissioner Broadbent.  
20 First, I agree with everything that was just said.  
21 But to add insult to injury, and I bring this up  
22 because you are a new member of the Commission and  
23 Chairman Williamson, you're a new Chairman of the  
24 Commission.

25 We have had in this particular investigation

1 and in the just-completed sunset review instances in  
2 which counsel for parties to the investigation are  
3 coming to this Commission, entering appearances which  
4 they have every right to do as a foreign producer  
5 subject to the investigation, getting APOs which  
6 requires a promise to this Commission to participate,  
7 and certainly filing a questionnaire response as well  
8 as filing a brief is participation. Then not filing  
9 questionnaire responses.

10 I do believe that as an upstanding member of  
11 our wonderful Bar here, as an attorney, and Chairman  
12 Williamson as the new Chairman, I think it is time for  
13 the Commissioners to work with your General Counsel's  
14 Office, the investigation office, to do something  
15 about this problem.

16 There are tremendous costs to counsel to  
17 constantly furnishing our questionnaire responses, our  
18 amendments to questionnaire responses, our briefs on,  
19 by hand messengers on parties that have APOs. And  
20 look, I want every attorney in Washington to have a  
21 chance to eat. I don't want to deny them a chance to  
22 earn money. But I don't think you should come to this  
23 Commission and say I want to get paid by clients, I'm  
24 just watching.

25 The most important thing is, I believe your

1 own regulations don't have a "just watching"  
2 provision. If you're going to come here and represent  
3 a party and get an APO, you have to promise this  
4 Commission you're going to participate. I find it  
5 offensive and I believe this Commission should take  
6 action when people come on behalf of subject producers  
7 say I'm entering an appearance, I'm filing APOs, and  
8 by the way, I'm not going to file a questionnaire  
9 response.

10 That's occurring in this case and it just  
11 occurred in the sunset reviews. And one of the ways  
12 you can do something about that is to do what our  
13 colleagues from Skadden are suggesting for adverse  
14 inferences.

15 MR. KAPLAN: It's very difficult for U.S.  
16 industries to prove their cases, and I think you have,  
17 it's hard to imagine how difficult it is sometimes. I  
18 think you've got to draw adverse inferences where  
19 foreign producers do not bother to answer the  
20 questionnaires.

21 MR. MCGILL: Brian McGill, King & Spalding.  
22 I don't disagree with any of that as a general matter.

23 I think in this case if you simply take the  
24 reasonable inference from the available information in  
25 the record, I think those inferences would be adverse

1 to Respondents here because I think the record is  
2 clear enough of export orientation, focus on the U.S.  
3 market, sufficient available capacity.

4           There's plenty of record here for you to  
5 make reasonable inferences that are adverse to the  
6 Respondents.

7           COMMISSIONER BROADBENT: Next question.

8           Counsel for Respondents has been arguing  
9 that the subject producers are much more focused on  
10 other markets. The Gulf Coast, Australia, Asia, and  
11 not on the U.S. market. This has been the pattern in  
12 recent years, and it's likely to continue in the  
13 future.

14           Can you address those positions?

15           MS. BYERS: Yeah, I can handle that. Bonnie  
16 Byers.

17           The data just simply doesn't bear that out.  
18 If you look at the chart on page 717, or Table 7-8,  
19 what you can see is that they're very focused on the  
20 U.S. market. In fact for the years 2010 and 2011,  
21 their exports to the U.S. market clearly exceed their  
22 home market sales.

23           For the producer Al Jazeera, for example, in  
24 Oman, they say on their own web site that they export  
25 90 percent of what they make. These companies are

1 very, very highly export oriented.

2 MR. KAPLAN: I would so this systematically  
3 in posthearing, I think, for each one of the separate  
4 countries.

5 MR. VAUGHN: Just to give you some data  
6 points. The data show that in 2009 these guys sent  
7 35.3 percent to home market and 16.5 percent to the  
8 United States. By 2011 it was 29.2 percent to the  
9 United States and 25.6 percent to the home market.

10 So this is a very, very important market to  
11 them.

12 There's no reason to believe that in the  
13 absence of these trade relief they wouldn't ship more  
14 and much greater numbers to this market.

15 MR. KAPLAN: Also many of these markets are  
16 extremely depressed right now, for example in the  
17 Middle East, where construction has come to a grinding  
18 halt in many instances. So these exports have to come  
19 somewhere.

20 COMMISSIONER BROADBENT: Okay. I guess this  
21 will be my last question. Just more on the big  
22 picture again.

23 We're looking at really increasing positive  
24 measures of profitability and so forth. I think if --  
25 I'm trying to get in my mind how, if demand keeps

1 growing like we expect that we may just have a general  
2 positive trend rather than a negative trend if things  
3 continue as they're going now.

4 MR. SEEGER: Once again, Commissioner  
5 Broadbent, I would remind you that the key is to look  
6 at these industries in the context of the business  
7 cycle. But as you can see just on this record, we did  
8 have a continued increase in demand between 2010 and  
9 2011. And yet this industry's profitability fell.

10 We did have a continued increase in demand  
11 between the first half of '11 and the first half of  
12 '12, and yet this industry's profitability fell.

13 So the only way this works for the  
14 Respondents is if you say oh, we have to look at 2009  
15 like it's a regular year. It's not.

16 I know you just saw the solar panel industry  
17 last week. My understanding is two-thirds of that  
18 industry is in bankruptcy and is already pretty much  
19 out of business. I hope that doesn't become the new  
20 standard here. We've got to keep some U.S. industries  
21 and allow them to make reasonable profits as demand  
22 recovers.

23 Two to three percent isn't reasonable, and  
24 the fact is this record shows that unless you say oh,  
25 things improved from '09 to '11, even though '09 was

1 the worst year for the economy in the last 75 years,  
2 the premise that as things recover everything keeps  
3 recovering is just not true on this record.

4 Demand continues recovering but the  
5 industry's condition is worsening. So I think as long  
6 as you look at it in the context of the business  
7 cycle, this is affirmative. If not, I wouldn't say  
8 God help us, that's too extreme, but if you can't get  
9 relief on this kind of record then the bar is just so  
10 much higher than what the Congress said in '79. I  
11 don't want to sound like one of the really elder  
12 statesmen here, but I do think that Congress really  
13 meant it and many of you worked for Ways and Means and  
14 Finance when they said it's just not immaterial,  
15 insignificant, they meant it. The bar doesn't have to  
16 be way up here. It's supposed to be way down here.  
17 We didn't have an injury standard before that.

18 So don't start setting it that you have to  
19 continue to lose money after you exit a recession.  
20 That cannot be the new injury standard or else there's  
21 no more trade practice left except for industries that  
22 are going out of business like solar panels.

23 Thank you.

24 CHAIRMAN WILLIAMSON: I have no further  
25 questions, but Mr. Moss has been trying to get in for

1 a long time. He should be given a right to --

2 MR. MOSS: Just one comment.

3 I think you should all have been very  
4 disturbed over one company says they wouldn't invest  
5 in this industry based on the current return. Another  
6 company is saying 9.5 percent interest they have to  
7 pay for money.

8 In a world of 2.5, 3 and government bonds at  
9 1 percent, it should really draw a focus of how much  
10 trouble our industry is in when they're out there  
11 paying 9.5 percent for funds. And when you hear on  
12 the radio and you hear on the news that funds are so  
13 low, this is an industry in crisis. If we don't  
14 protect it and we don't do something, it's clear, it's  
15 over, and we have lost more jobs and we won't have  
16 anything to defend. And if essentially we don't have  
17 anything to defend, you guys won't have jobs either.

18 It's our duty to do something.

19 CHAIRMAN WILLIAMSON: Spoken as a true New  
20 Yorker.

21 Commissioner Pearson?

22 COMMISSIONER PEARSON: Thank you, Mr.  
23 Chairman. I have just one question. You can respond  
24 to this in posthearing. It follows up on what  
25 Commissioner Pinkert had pointed out before, that

1 there are some differences in import patterns between  
2 subject imports from India and from the other subject  
3 countries.

4 Does anybody know the reason for that? Can  
5 you elaborate on that in a way that would help me  
6 understand it? Either now if anyone wants to comment,  
7 or in the posthearing.

8 MR. SCHAGRIN: I would just point out that  
9 there aren't differences in import patterns over the  
10 POI. Imports from India are increasing just like  
11 imports from the other country.

12 I think what the Indians argue is look,  
13 unlike Oman, UAE and Vietnam which didn't even have  
14 industries ten years ago, we did. India's an awfully  
15 big country. They've had a pipe industry from before  
16 the time I was born. So that seems to be their  
17 argument, is that we've been here since '85 when we  
18 didn't get a dumping duty in another case that Mr.  
19 Schagrin brought. So we have a right to be here.

20 Yeah, we came back much, much bigger after  
21 the Chinese left and that should be expected. Why  
22 should the domestic industry benefit? Why shouldn't  
23 it be us?

24 So I don't think there's any difference in  
25 POI. There are some historical differences in the

1 fact that three of your four subject countries have  
2 very new industries and the Indian industry has been  
3 around for a long time.

4 But during your POI, I don't think there's  
5 any real differences in this record as to the presence  
6 of these imports simultaneously, and similar patterns  
7 of increasing over the POI.

8 COMMISSIONER PEARSON: Ms. Byers?

9 MS. BYERS: I would say the same holds true,  
10 Commissioner Pearson, for the imports from Oman. Al  
11 Jazeera has tried to argue that they have a different  
12 trend in terms of increasing imports and that their  
13 pricing level and underselling are different. But if  
14 you look at it over the period as you do typically in  
15 these cases where you're considering cumulation for  
16 purposes of threat, the patterns are really quite the  
17 same.

18 For example, for all imports, they increased  
19 93 percent over the period. You saw from Oman an  
20 increase of 87 percent, well in line with the increase  
21 of the other countries.

22 The same holds true for their pricing  
23 patterns.

24 They have the same, really the same  
25 instances of underselling over that entire period as

1 the other producers too, and by very similar margins.

2 So you don't really see any discernible  
3 difference with respect to the Omani imports either.

4 COMMISSIONER PEARSON: Okay. Thank you very  
5 much.

6 Mr. Chairman, I believe I have no further  
7 questions. I would just express my appreciation to  
8 this panel.

9 CHAIRMAN WILLIAMSON: Commissioner Aranoff?  
10 Commissioner Pinkert? Commissioner Johanson?

11 COMMISSIONER JOHANSON: Thank you, Mr.  
12 Chairman. I have just one more question.

13 I was wondering if you all could comment on  
14 Zenith's argument that any increase in its volume of  
15 shipments to the United States is due not to price  
16 advantages but to advantages and other aspects of  
17 competition such as shipping costs, customer relations  
18 and customer services?

19 MR. SCHAGRIN: We don't believe that is the  
20 case. We believe that their sales in the United  
21 States are entirely due to price. I can't talk about  
22 their specific information in terms of pricing  
23 practices because it's confidential, but as to their  
24 competition with the U.S. industry, I think we would  
25 like to take the issues they raise in their brief and

1 address them in our posthearing. I think,  
2 commissioner Johanson, we may want to utilize some  
3 confidential information and some of their arguments  
4 are based on their own confidential information.

5 I would like to address that in the  
6 posthearing.

7 COMMISSIONER JOHANSON: Thank you. I  
8 understand and I look forward to reading that  
9 information.

10 That concludes my questions, Mr. Chairman.

11 CHAIRMAN WILLIAMSON: No further questions  
12 from Commissioners. Does staff have any questions for  
13 this panel?

14 MR. CORKRAN: Douglas Corkran, Office of  
15 Investigations. Thank you, Chairman Williamson.  
16 Staff has no additional questions.

17 CHAIRMAN WILLIAMSON: Thank you.

18 Do Respondents have any questions for this  
19 panel?

20 MR. MARSHAK: None.

21 CHAIRMAN WILLIAMSON: It's time for a lunch  
22 break. We will break until 2:15.

23 I want to remind everyone that this room is  
24 not secure. If you have any confidential or business  
25 information, please be sure to take it with you.

1           With that, this hearing is adjourned.

2           I want to thank the witnesses again for  
3 their testimony.

4           I'm sorry, we're not adjourning. We'll give  
5 the Respondents a chance to talk. This hearing is  
6 recessed until 2:15.

7           (Whereupon, the hearing in the above-  
8 entitled matter was recessed, to reconvene at 2:15  
9 p.m. this same day, Wednesday, October 17, 2012.)

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1           The domestic circular welded pipe or CWP  
2 industry is not suffering current material injury by  
3 reason of subject imports, nor is it vulnerable to  
4 future material injury by reason of subject imports.  
5 It has sustained its market share at historical  
6 levels, increased its prices and improved its  
7 profitability over the POI. In any case there is n  
8 causal link whatever between the behavior of subject  
9 imports and any adverse effect that my have been  
10 suffered by the industry.

11           Both sides in this case recognize the  
12 severity of the market downturn that occurred in 2009.

13 While the speed of the economic recovery since then  
14 is not to anyone's preference, the U.S. CWP industry  
15 has performed comparatively well within the context of  
16 the business cycle.

17           As indicated in the staff report, demand for  
18 CWP is driven primarily by non-residential  
19 construction. As shown at slide one, the rate of non-  
20 residential construction declined by 25 percent from  
21 2009 to 2011.

22           Over the same period domestic producers'  
23 U.S. shipments increased by 10 percent.

24           Between the first half of 2011 and the first  
25 half of 2012, non-residential construction was

1 recovering and grew by 22.4 percent while the domestic  
2 industry's U.S. shipments increased by 4.1 percent.

3 Over the full period, non-residential  
4 construction declined by 13.5 percent yet U.S.  
5 producers' shipments increased by 14.8 percent.

6 Thus the U.S. industry out-performed a key  
7 if not the key market demand driver.

8 Domestic industry market share during the  
9 POI has been high from a recent historical  
10 perspective. Average domestic industry market share  
11 from 2000 to 2007 was 57.2 percent, and from 2008 to  
12 2012 it was 66 percent as shown on slide two.

13 Viewed in this context, domestic producers'  
14 2009 market share of 71.2 percent is essentially a one  
15 year aberration caused by the rapid shrinking of  
16 demand during the sudden and severe recession.

17 In any case, this peak market share  
18 coincided with the domestic industry's worst financial  
19 performance during the POI, both in operating income  
20 dollars and percent margin, and shouldn't necessarily  
21 be seen as an indicator of health.

22 The domestic industry has maintained a  
23 consistent share of the U.S. market while imports from  
24 subject and nonsubject sources have battled for the  
25 rest. Subject imports played the minor role in the

1 U.S. market during the POI with market share remaining  
2 below 15 percent for the entire POI.

3 In contract, nonsubject import market share  
4 has remained above 20 percent during the entire POI.  
5 See slide three.

6 Between part-year 2011 and part-year 2012,  
7 subject import market share fell from 14.7 to 10  
8 percent while nonsubject import market share increased  
9 from 21.5 to 27.3 percent, gaining market share not  
10 only at the expense of subject imports, but also at  
11 the expense of the domestic industry.

12 I'll note something said by one of the  
13 attorneys this morning, that the increase in subject  
14 market share from 2009 to 2011 from 8 to 14 points, or  
15 6 percentage points, had very significant effects on  
16 the competitive aspects of the market place.

17 I'll draw your attention to the fact that  
18 between the part-year 2011 and part-year 2012,  
19 nonsubject market share increased from 21 percent to  
20 27 percent, also 6 points. That would presumably have  
21 a similar impact on the competitive dynamics of the  
22 market place.

23 I'll also point out that despite the  
24 statement this morning, the staff report data does not  
25 exclude imports that received de minimis margins at

1 the DOC preliminary. And therefore, the Commission  
2 can rely on the data as presented.

3 Thus the 28 percent decline in subject  
4 import volume between the interim periods resulted in  
5 no real benefit to the domestic industry as that  
6 volume was immediately replaced by nonsubject imports.

7 Purchasers' qualitative responses support  
8 the market share data. As shown at slide four,  
9 roughly 60 percent of purchasers reported that they  
10 did not purchase from any subject import source, and  
11 19 of 28 responding purchasers, roughly 68 percent,  
12 reported that a desire to buy U.S. product was an  
13 important factor in their firm's purchases. Seventeen  
14 of the 19 thus responding of 60 percent of all  
15 purchaser indicated that their customers had a  
16 preference for domestically produced goods.

17 These responses are consistent with the  
18 domestic industry's overall level of market share over  
19 time, not only over the POI but over a longer  
20 historical period.

21 With regard to financial performance, the  
22 domestic industry experienced its greatest improvement  
23 in operating margins from 2009 to 2010, from a  
24 negative 15.1 percent to a positive 3.5 percent, also  
25 concurrent with the largest increase in subject import

1 volume and market share.

2           Between 2010 and 2011 subject imports gained  
3 market share at the expense of nonsubject imports.

4           Staff report data show a slight decline in  
5 the domestic industry's operating margin between 2010  
6 and 2011, but also makes note of several factors that  
7 when taken into account show a more stable  
8 profitability trend. Please see Morris Manning's  
9 confidential prehearing brief for the recalculations.

10           Between the first half of 2011 and the first  
11 half of 2012 when subject import volume and market  
12 share declined, the domestic industry's operating  
13 margin also declined. This lack of causal link is  
14 supported by the confidential prehearing report in  
15 which a majority of responding domestic producers said  
16 that they had not experienced any actual negative  
17 effects on their growth, investment, ability to raise  
18 capital, existing development and production efforts,  
19 or the scale of capital investments as a result of  
20 subject imports.

21           Mr. Schagrin said that these producers'  
22 responses, or lack thereof, are probably attributable  
23 to their inability to identify any source of any  
24 negative effects, which is exactly Respondent's point.

25           In summary, there is no causal relationship

1 between subject import volume and market share and any  
2 adverse effects that may have been experienced by the  
3 domestic industry during the POI.

4           The absence of any causal link between  
5 subject imports and the domestic industry's  
6 performance is further illustrated by the absence of  
7 any adverse price effects, but it's important to  
8 consider certain conditions of competition with  
9 respect to price.

10           First, changes in U.S. producers' prices  
11 track very closely to changes in key raw material  
12 input prices and to prices of other similar pipe  
13 products.

14           Slide five shows that prices for products  
15 one and three, the black plain end black pipe or BPE  
16 pricing products, follow very similar trends to hot-  
17 rolled sheet cost and have correlation coefficients of  
18 .84 and .78 respectively. You can see from the graph  
19 that the trends are very, very close.

20           Slide six which reproduces figure V-III from  
21 the prehearing report, shows that CWP prices track  
22 extremely closely to prices of hollow structurals and  
23 line pipe and followed a very similar trend to OCTG  
24 prices. CWP prices did not demonstrate any divergent  
25 patterns here that would suggest a unique impact from

1 the subject imports in this investigation.

2           Second, domestic producers, not importers,  
3 were named most frequently by purchasers as price  
4 leaders. Seven named Wheatland, six names Allied, two  
5 named Atlas, and two named U.S. Steel.

6           Third, the majority of sales by U.S.  
7 producers are made from inventory with a lead time of  
8 one to seven days. In contrast, the majority of  
9 subject import sales are produced to order with lead  
10 times of 75 to 180 days. These lead times are  
11 characteristic, by the way, of all imports.

12           The short lead times along with the stated  
13 customer preference for domestic merchandise among a  
14 majority of purchasers, as discussed earlier, would  
15 suggest a natural price premium for the domestic  
16 merchandise over subject and nonsubject imports.

17           The distributor witnesses from this morning  
18 confirmed that. As Mr. Clark from Merchant Metals  
19 testified to, purchasers must buy, when they're buying  
20 imports, must buy in large quantities, expect long  
21 lead times, and take some degree of risk. So the  
22 imports essentially must have a lower price if they're  
23 going to buy them.

24           Thus while the staff report shows that  
25 subject imports undersold domestic producers in a

1 majority of instances, this underselling is not a  
2 significant indicator of injury.

3           Petitioners' prehearing brief points to AUV  
4 data to discuss pricing for nonsubject imports, but  
5 this is curious given the rare opportunity to mine the  
6 more detailed nonsubject pricing data compiled by the  
7 Commission in the staff report.

8           Contrary to Petitioners' claim, the AUV data  
9 are not fully consistent with and do not confirm the  
10 Commission's pricing data. In fact the more detailed  
11 pricing data not only provide more precise product-to-  
12 product comparisons, but do so on a quarterly basis  
13 and so provide a more accurate picture of the  
14 competitive dynamics of the market place. What they  
15 reveal is something missing from Petitioners' pricing  
16 analysis.

17           Nonsubject imports undersold domestic  
18 producers at the same relative frequency, 87 percent,  
19 as subject imports, 86 percent. See slide seven.

20           In addition, subject and nonsubject imports  
21 undersold one another in roughly equal proportions of  
22 comparison. Subject imports were lower priced 52  
23 percent of the time. Nonsubject imports were lower  
24 priced 48 percent of the time.

25           This is consistent with the picture

1 established earlier of a domestic industry holding a  
2 majority market share and commanding a price premium  
3 while lower priced imports battle one another for the  
4 rest of the market. And for similar products they  
5 sell for prices within a similar range. This is just  
6 further confirmation that the locus of competition is  
7 between subject and nonsubject imports primarily.

8           Given that CWP is, as Mr. Magno testified  
9 this morning, the ultimate commodity product, the  
10 reality cannot really be otherwise. If it were, given  
11 the high instances of underselling, slide eight would  
12 have shown a consistent downward trend in domestic  
13 industry market share.

14           Instead, apart from the one year aberration  
15 of 2009, domestic industry market share was high by  
16 historical levels and essentially flat from 2008 to  
17 2011, declining only in part-year 2012 when subject  
18 import market share fell also.

19           Moreover, due to a growing market, the  
20 volume of U.S. producer sales increased substantially.

21       In their prehearing brief Petitioners argue that  
22 underselling worsened as the POI progressed. If this  
23 is so, and it's a commodity product, why did the U.S.  
24 industry share not continue to decline after 2010?  
25 The answer is because the locus of competition is

1 primarily between subject and nonsubject imports.

2 For this reason, among others to be  
3 discussed later in this panel, the domestic industry  
4 is not threatened with further losses of market share  
5 by reason of subject imports.

6 U.S. producers command a price premium  
7 because of customer preference and significantly  
8 shorter lead times and hold the dominant market share.  
9 Subject and nonsubject imports sell for lower prices  
10 but they battle over remains of the market.

11 Consequently, there is no price depression.

12 According to the staff report at Roman V-IV, "In  
13 almost all instances prices fell during 2009 and they  
14 increased overall during 2010, 2011, and the first two  
15 quarters of 2012."

16 In other words prices fell when subject  
17 import volume and market share were at their lowest  
18 levels during the POI and then rose as subject import  
19 volume and market share grew.

20 Moreover, the average unit value of domestic  
21 producers' U.S. shipments rose from \$898 in 2009 to  
22 \$1,078 in 2011 -- an increase of 20 percent.

23 At the staff conference U.S. producers  
24 agreed that these increases were largely due to actual  
25 changes in underlying prices rather than any change in

1 product mix.

2           There is also no price suppression. See  
3 slide nine.

4           The domestic industry's cost of goods sold  
5 or COGs to sales ratio was consistent between 88 and  
6 89 percent across 2010, 2011 and the first half of  
7 2012. Even during periods when raw material costs  
8 were rising. But even so, the domestic industry's  
9 total COGs numbers do contain certain aberrations with  
10 respect to other factory costs which are discussed in  
11 Respondents' confidential prehearing briefs.

12           Thus looking only at raw materials as a  
13 percentage of sales, we see that the ratio declined  
14 significantly, from 78.5 percent in 2009 to 68.7  
15 percent in 2010, the year in which subject imports  
16 increased the most, and then settled at around 71  
17 percent in 2011 and 2012.

18           Mr. Schagrin's evidence of price suppression  
19 when asked this morning essentially consisted of the  
20 fact that there's underselling and there was a change  
21 between the first half of 2011 and the first half of  
22 2012. But that change between the interim periods was  
23 largely driven by other factory costs that, as  
24 discussed more in our confidential briefs, even the  
25 domestic producer at issue described as

1 "aberrationally low".

2           So essentially what all this evidence means  
3 is that U.S. producers were able to pass along raw  
4 material cost increases to their customers in the form  
5 of higher prices, and then some.

6           Findings of no price depression and no price  
7 suppression are consistent with the statements of 8 of  
8 12 responding domestic producers who state that they  
9 have not had to lower price or roll back price  
10 increases in response to subject import competition  
11 since 2009.

12           Petitioners' prehearing brief relies on  
13 anecdotal data from two producers, rather than using  
14 any reference to the data compiled by staff. This is  
15 a tacit admission that the record as a whole does not  
16 support their claims with respect to depression and  
17 suppression.

18           The absence of any price effects from  
19 subject imports is further felt in the fact that  
20 domestic producers have made no significant lost sales  
21 or lost revenue allegations. Petitioners claim that  
22 the lack of specific allegations is because most  
23 producer sales are made to distributors and thus they  
24 can't track a specific lost sale to a specific import.  
25   However, in a number of recent ITC cases on this

1 product, a similarly large share of sales were made to  
2 distributors ,and yet domestic producers managed to  
3 come up with many more specific lost sales and revenue  
4 allegations than in the current investigation.

5 Respondents suggest that the Commission view  
6 the near absence of lost sales and revenue allegations  
7 as exactly what they appear to be -- the absence of  
8 lost sales and revenues to subject imports.

9 Petitioners' characterization of the market  
10 has another implication, however. If they cannot  
11 track a particular lost sale to a particular import  
12 source, how can they be sure that any sale if lost was  
13 lost to subject import competition?

14 Mr. Schagrin this morning said that every  
15 import sale is a lost sale to the domestic industry,  
16 but this case isn't about just imports. This is a  
17 case about subject imports. In making its injury  
18 determination the Commission should not attribute any  
19 injury from nonsubject imports to subject imports.

20 For all of the foregoing reasons, the  
21 domestic industry is not suffering current material  
22 injury by reason of subject imports, and after the  
23 panel of industry witnesses, Mr. Cameron will testify  
24 as to why there is no threat of material injury also.

25 Thank you.

1 MR. NATU: Good afternoon, Commissioners.  
2 My name is Pushkar Natu. I'm a Director of Zenith USA  
3 Inc. where I have worked for the past 14 years.

4 Zenith has been making pipe in India for the  
5 past 50 years and has been selling to the United  
6 States for the past 40 years.

7 Zenith is the only known active Indian  
8 producer exporter of CWP from India whose shipments  
9 are not already subject to the constraints of an  
10 antidumping order which has been in effect since 1986.

11 Despite this fact, Zenith has maintained a  
12 steady and responsible presence in the U.S. and has  
13 not attempted to take advantage of its preferred  
14 status.

15 For some customers Zenith India sells  
16 directly to the U.S. customers. For other sales,  
17 Zenith India sells through Zenith USA and Zenith USA  
18 acts as the importer of record.

19 All of our sales are made to order.

20 Commissioners, I am a U.S. citizen, based in  
21 Arlington, Virginia. Zenith USA is a U.S. company  
22 incorporated in Virginia.

23 When I started with Zenith, Zenith had  
24 already been selling pipes directly to U.S. customers  
25 for 25 years. For all of Zenith's U.S. sales I am

1 responsible for servicing customers and making sure  
2 they receive deliveries in a timely manner.

3 I personally visit customers and ports of  
4 entry on a regular basis. I continuously strive to  
5 improve customer service by actively seeking feedback  
6 on our products.

7 I believe that Zenith's success in the U.S.  
8 has resulted from its track record of selling quality  
9 merchandise at competitive prices for the reliable and  
10 consistent delivery with the help of our U.S.  
11 presence. We sell pipe throughout the U.S.,  
12 principally to customers located at the major ports.

13 We have eight major customers including  
14 Allied Tube and Conduit, the Petitioners you heard  
15 from this morning.

16 Some of our current customers were already  
17 buying pipe from Zenith when I joined in 1997. I  
18 developed other customers over the years, but long  
19 before the case was filed.

20 Our sales for the U.S. peaked at the  
21 beginning of the 21st century. Zenith's shipments to  
22 the U.S. increased to meet increasing domestic demand  
23 from our traditional customers.

24 However, between 2005 and 2007 our sales  
25 declined substantially as low priced imports from

1 China flooded the market. The imposition by the U.S.  
2 of an antidumping order on Chinese pipe reversed this  
3 trend. The Chinese exited the market which allowed  
4 Zenith to resume sales to our pre-existing customers  
5 at normal competitive levels. I would like to  
6 emphasize this point.

7           The increase in Zenith's sales to the U.S.  
8 during the Commission's period of investigate was not  
9 a surge of new imports. It was merely a return to  
10 business as usual. Our customers were some of the  
11 same customers with whom we had been doing business in  
12 the past.

13           I do not understand how a return to normalcy  
14 can be perceived as injurious for the domestic  
15 producers.

16           As I mentioned, one of our long-term  
17 customers is Allied Tube and Conduit. Allied buys  
18 pipe from Zenith because they do not make the product  
19 that we supply them. Zenith makes a hot-dipped  
20 galvanized pipe which is a requirement for rigid  
21 conduit as per the UL standards which is the  
22 Underwriters Laboratory.

23           Allied does not manufacture any hot-dipped  
24 galvanized pipe. Allied has been a customer of ours  
25 since 2007 and again, I do not understand how Allied

1 can be injured when it is buying our products which  
2 are complementary to their own.

3 An additional reason why our imports have  
4 returned to normal levels in the past three years is  
5 due to changes in shipping methods.

6 It is our understanding from conversation  
7 with our customers that due to increased fuel costs,  
8 our cost to ship pipe by sea from India to the port of  
9 unloading in the U.S. has become less than the cost for  
10 domestic producers to ship their products over land to  
11 customers in the U.S..

12 Second, we have been able to cut delivery  
13 times as a result of using weekly container shipments  
14 rather than monthly break bulk vessels which we had  
15 used exclusively in the past.

16 Thus the reason we have increased shipments  
17 to the U.S. is not due to decreased prices.

18 Despite our success, there's a large part of the  
19 U.S. market in which we are unable to compete. For  
20 example, all federally funded projects require pipe  
21 that is made in the USA.

22 In addition, our pipe is made to order with  
23 lead times of between three to four months. In cases  
24 where customers require pipe with shorter lead times,  
25 we simply cannot compete.

1           We also cannot sell to many customers that  
2 are located inland.

3           Finally, certain companies simply prefer to  
4 buy pipe that is made in the U.S.. The domestic  
5 industry dominates the U.S. market and will continue  
6 to do so.

7           I would like to speak for a moment about our  
8 production facilities in India which I have visited  
9 numerous times in the past 14 years. I have also  
10 taken our largest customers to our plant in India.

11           We have not substantially increased our  
12 production capacity in India. We sell more pipe in  
13 the Indian home market than we do in the U.S.. We  
14 also have significant shipments to other third country  
15 markets around the world.

16           Selling pipe to the U.S. is not the only  
17 reason for our success.

18           I would also like to say something about the  
19 Department of Commerce proceeding. Our antidumping  
20 margin of 48 percent and our CBD margin of 285 percent  
21 were based on the department's decision that we did  
22 not cooperate to the best of our ability.

23           I know the Commission conducts its  
24 investigation independently and does not examine the  
25 reasons for the Commerce's conclusions. However, I

1 can categorically state that Zenith in fact did  
2 cooperate with the department to the best of our  
3 ability. The reasons why the department decided to  
4 apply adverse facts available in its decision  
5 reflected its extraordinarily short Timeframe required  
6 to submit extensive documentation and our  
7 unfamiliarity with its rules and regulations.

8 The department's decision does not reflect  
9 Zenith's actual commercial reality.

10 Finally, the record will reveal that ours  
11 ales have declined substantially in the past year. It  
12 is important to recognize that our decline in sales  
13 preceded the petition being filed. Therefore, I'd  
14 like to reiterate that Zenith's actions have not been  
15 injurious to the domestic industry and do not threaten  
16 the domestic industry with material injury in the  
17 future. Thank you.

18 MR. SIMON: Mr. Chairman, members of the  
19 Commission, I'm David Simon of the Law Office of David  
20 Simon. I'm accompanied by my wife and partner, Ayla,  
21 by Indranil Chowdhuri, who is the chief of  
22 international marketing of Al Jazeera, and by Bejoy  
23 John, who is the financial comptroller of Al Jazeera,  
24 and they'll be happy to take your questions at any  
25 time but particularly when the panel finishes. I have

1 a few quick comments to make before we hear from Mr.  
2 Chowdhuri.

3 Our prehearing brief at page 10 and page 5  
4 of the economist's tables compares transaction pricing  
5 for sample products with the cost of raw material HR  
6 sheet, that the staff report shows on a quarterly  
7 basis. Our table shows quite definitively that the  
8 domestic producers' transaction prices very closely  
9 track their raw material costs quarter by quarter  
10 across the POI.

11 The Commission regularly includes quarterly  
12 data on raw material costs in its staff reports, at  
13 least for commodity products like pipe. But the  
14 Commission has not, to my knowledge, in the past  
15 directly compared raw material cost movements with  
16 domestic industry price movements on a quarterly  
17 basis. We believe this is an important analysis to  
18 perform.

19 For example, if increasing imports were  
20 suppressing domestic prices you would expect to see a  
21 convergence between price and cost over time as the  
22 domestic prices were pulled down by the import  
23 competition. It would appear visibly on the  
24 comparison table and of course we don't see any such  
25 price suppression or any other external force acting

1 on domestic producers' prices.

2           The high degree of correlation between sheet  
3 cost and pipe price is in our view very strong  
4 evidence that imports are not having an impact on  
5 domestic producers' prices.

6           In our view also, tracking cost versus price  
7 using the pricing tables is preferable to making this  
8 type of analysis through the tables in part three or  
9 part six of the staff report.

10           Part three covers U.S. producers' production  
11 shipments and employment. Part six covers U.S.  
12 producers' financial experience and condition. The  
13 reason the pricing tables are better is that they are  
14 the only tables that operate on a quarterly basis.  
15 That tables in parts three and six are annual and  
16 year-to-date tables.

17           Moreover, the tables in part three and six  
18 do not break out products as between galvanized and  
19 non-galvanized. Tracking the price of non-galvanized  
20 pipe against cost, that is to say black pipe against  
21 cost, eliminates any variability due to product mix or  
22 the cost of galvanization. It is the ideal laboratory  
23 for a cost/price analysis.

24           I'd like to turn the microphone now to Mr.  
25 Chowdhuri who will speak to you about Al Jazeera and

1 their take on this entire situation.

2 MR. CHOWDHURI: Mr. Chairman and members of  
3 the Commission. My name is Indranil Chowdhuri and I  
4 am the Chief of International Marketing of Al Jazeera  
5 Steel Products Company in Oman. I have a university  
6 degree in law and a post-graduate degree in economics  
7 and I've held marketing positions in the steel  
8 industry for nearly 30 years.

9 I am accompanied by Mr. Bejoy John who is a  
10 chartered accountant and the Financial Controller of  
11 the company.

12 We have come here today to explain Al  
13 Jazeera's practices and policies particularly in the  
14 U.S. steel pipe market. Our company was founded in  
15 1996 and it began commercial production of pipes in  
16 1998.

17 We produce ERW circular pipes and tubes and  
18 square and rectangular profiles on the same lines and  
19 we sell principally to Oman and our neighbors in the  
20 Gulf Cooperation Council.

21 Our raw material is raw hot-rolled coil  
22 which we purchase on the international markets. We  
23 also have a bar mill where we produce merchant bar  
24 from billets that we purchase on the local and the  
25 international markets. The bar mill was inaugurated

1 in the late 2009. Our tube mill and bar mill are both  
2 located in Sohar, Oman, and we have an additional  
3 sales office in Sharjah, United Arab Emirates.

4           Regarding ownership, 51 percent of our  
5 shares are owned by a Kuwaiti investment house and the  
6 balance are publicly traded in the Muscat, Oman stock  
7 exchange. We do publish quarterly financial  
8 statements audited by international auditors.

9           From our location in Oman, our selling area  
10 is not only Oman but the GCC area as a whole. In fact  
11 we sell about 80 percent of our output to Oman and the  
12 GCC markets. These pipes are produced to the British  
13 or the European Norm specifications and are sold in  
14 six meter lengths. For the most part, we make these  
15 sales from inventory and ship in truckload volumes  
16 within a few days of receiving an order.

17           As for the U.S., we have had a consistent  
18 presence in the United States almost from the  
19 beginning of our commercial life. I can speak  
20 personally of our sales policies beginning from 2007  
21 when I joined this company as the Chief of  
22 International Marketing.

23           We work with a very small number of U.S.  
24 customers located in various regions of the country to  
25 ensure that our product enters the market in an

1 orderly way.

2           We have a strong sense of mutual loyalty  
3 with our customers and have worked with them through  
4 good times and in bad in order to maintain our  
5 reputation as a reliable and trustworthy supplier.

6           Our U.S. sales are done very different from  
7 the Oman GCC sales. We do not hold stocks of ASTM  
8 pipes as required for the U.S. market and so our U.S.  
9 sales are produced to order.

10           When an inquiry from one of our established  
11 U.S. customers comes to our office, we base our  
12 pricing decisions on the cost of hot-rolled coils at  
13 that time, and we do not book our purchase of coils  
14 until we have a confirmed purchase order from our  
15 customer.

16           Our lead times for coil purchase is  
17 typically one to three months, more often on the long  
18 side of the range. When you add in our rolling  
19 schedule, our lead time from order to shipment may be  
20 four months or even more.

21           Then for shipment the structure of freight  
22 enables us to ship all our pipes by container so we no  
23 longer use ship by break bulk or by charter party.  
24 This has been a real revolution in freight service.

25           In our case we fill those containers in our

1 factory in Sohar, and then they are loaded onto  
2 smaller feeder vessels. For our U.S. East Coast  
3 shipments the feeder vessels go to Jabel Ali in the  
4 Emirates where the containers are transferred to a  
5 mother ship that carries them to the U.S. via the  
6 Suez. For our sales to the West Coast the containers  
7 are again loaded onto feeder vessels for Jabel Ali  
8 where they are transferred for shipment to one of the  
9 bigger ports in China, typically Shanghai, where they  
10 are transferred to larger container ships for the  
11 Pacific crossing.

12           These round-about routes are necessary  
13 because large-scale container vessels do not call at  
14 our port in Sohar.

15           We have explained all this to the Department  
16 of Commerce and they have verified it accordingly.

17           I would like to draw your attention to two  
18 important facts.

19           First, our lead times to delivery for the  
20 U.S. are relatively long and highly variable.

21           Second, our pricing into the U.S. market is  
22 a direct reflection of coil cost at the time the order  
23 is placed.

24           Our lead times obscure this cost/price  
25 linkage but it is very apparent when you analyze our

1 sales on a PO basis.

2           In this way we are very much like the  
3 American producers who we understand also price their  
4 sales according to the cost of the coil. The  
5 difference is that the American producers are able to  
6 sell to their customers directly from inventory on  
7 immediate turn-around, while we always have a  
8 significant lag between order date and the arrival of  
9 our goods at the U.S. port of entry.

10           I have been selling steel products to the  
11 United States and other export markets for my entire  
12 career, and I would like to share my understanding  
13 with you.

14           Foreign producers have their advantages and  
15 disadvantages in the U.S. market. Our advantages are  
16 access to lower cost raw material and the fact that  
17 the transformation cost abroad are far lower than the  
18 United States.

19           At Al Jazeera, for example, we buy our coils  
20 from China, India and Russia and our work force is not  
21 nearly as well paid as American workers.

22           Our disadvantages include much longer lead  
23 times, larger minimum order quantities, and all the  
24 uncertainties that go with international trade like  
25 exchange rate fluctuations, so on and so forth.

1           These circumstances create a two-tier market  
2 in the United States. The domestic producers compete  
3 against each other but generally not against imports,  
4 and the imports compete against each other but  
5 generally not against the domestic producers.

6           I would like to close by addressing a few  
7 specific points made by the Petitioners in the case.  
8 The Petitioners claim that the export capacity in Oman  
9 is understated. That claim is based on the fact that  
10 GIPI did not answer the Commission's questionnaire.

11          However I can tell you from my personal knowledge  
12 that GIPI has never exported really to the United  
13 States and produces only in a size range of eight  
14 inches and above in diameter.

15           Furthermore, their production is in high  
16 pressure, high price for the energy sector and not the  
17 commodity pipes that are subject to this  
18 investigation.

19           As for Al Jazeera's capacity, most of our  
20 sales are directed to Oman and the GCC markets and we  
21 have operated at over 90 percent utilization for the  
22 past several years.

23           We simply do not have the practical capacity  
24 to sell more tonnages to the U.S. even if our  
25 customers were to request substantial increases in

1 volume. While our annual report lists our capacity as  
2 300,000 metric tons per annum, in fact our practical  
3 capacity is considerably less.

4 The difference arises because we have a  
5 bottleneck at our splitting capacity and we do not  
6 expect to see that limitation change in the  
7 foreseeable future.

8 Thank you.

9 Good afternoon. My name is Mervin D'Cunha  
10 and I am the Financial Controller for Universal Group  
11 which includes Universal Tubes, Universal Pipe, and  
12 KHK Scaffolding.

13 Only Universal Tubes exported standard pipe  
14 to the United States. The other two mills produce  
15 exclusively for internal consumption, for home market,  
16 and for third country export markets. Our foreign  
17 producer questionnaire, however, provided information  
18 on the pipe and tube operations of all three  
19 companies.

20 Regardless of the outcome of this  
21 investigation the United States will remain a limited  
22 market for Universal. Our primary focus remains in  
23 the UAE and the countries of the Gulf Cooperation  
24 Council which we regard as a second home market and we  
25 enjoy a natural competitive advantage over other

1 suppliers.

2           Demand within the UAE is improving as  
3 construction projects that were put on hold during the  
4 recession have been resuming. In addition, demand in  
5 the GCC countries is also strong and increasing,  
6 particularly in Saudi Arabia and Qatar. The increase  
7 in oil prices has boosted the economy and the  
8 government is spending heavily n new projects  
9 including hotels, commercial and residential  
10 apartments, shopping malls, schools, universities, et  
11 cetera.

12           These projects all will require standard  
13 pipe for plumbing applications, firefighting systems,  
14 chilled water systems, and structural applications. I  
15 addition with its vast oil and gas production, the GCC  
16 countries are among the largest consumers of line pipe  
17 in the world.

18           Universal Pipe obtained its certification in  
19 May for this year to produce line pipe and we are  
20 focusing our efforts on exploiting that product  
21 sector.

22           With respect to export markets, Universal is  
23 currently in the process of expanding our sales to  
24 third country markets around the world. We have been  
25 expanding our portfolio of certifications for our

1 pipes which make us more competitive in the world  
2 market. We are currently expanding our sales to  
3 Europe, particularly Germany, Sweden and Norway where  
4 we are expanding our sales of sprinkler pipes and  
5 other customized products.

6 We have also established sales offices and  
7 are expanding sales in the United Kingdom, Australia,  
8 and even Africa.

9 Although Universal Group has increased its  
10 capacity, the new capacity in Universal Pipe, which  
11 has no exports of standard pipe to the United States  
12 during the period of investigation. The new capacity  
13 at Universal Pipes is directed at producing line pipe  
14 and large diameter, rectangular and square tubes for  
15 the GCC market. Relatively few mills in this region  
16 manufacture these products.

17 Universal entered the market significant  
18 quantities in 2008 when there was a withdrawal of  
19 Chinese standard pipe from the market allowed us to  
20 compete. We hold only a limited share of the market  
21 and sell only to a few customers. For this reason I  
22 am confident that our exports of standard pipe from  
23 the UAE are not injurious and do not threaten the U.S.  
24 industry.

25 Thank you.

1           MR. SCHRUMPF: Good afternoon. My name is  
2 Peter Schrupf and I'm President of Prime Metal Corp,  
3 USA. Prime Metal Corp. USA is the exclusive importer  
4 of circular welded pipe from the UAE produced by  
5 Universal Tube.

6           Prime Metal Corp. USA was formed in 2000 but  
7 I've been in the pipe and tube business in some  
8 capacity for the past 30 years. In that time I have  
9 seen the domestic pipe and tube industry bring  
10 literally dozens of trade cases against imports of  
11 standard pipe from virtually every supplier country.

12           I'd like to share with you today my  
13 understanding of the U.S. standard pipe market and  
14 role of imports from the UAE market.

15           I have been an importer and distributor of  
16 Standard Pipe from the UAE since 2000. Imports from  
17 the UAE were very small until 2008 when china exited  
18 the U.S. market due to antidumping.

19           Prior to 2008 we were not interested in  
20 competing with the Chinese pricing. At that time  
21 enriching, which had been depressed due to China  
22 improved and we were able to pursue a modest amount of  
23 the market left void by China at prices that were  
24 commercially acceptable.

25           As a relatively recent entrant to the

1 market, we have a limited customer base and a limited  
2 number of products that we distribute. A significant  
3 portion of the pipe we distribute is A-53A,  
4 hydrostatically tested in sizes of between half and  
5 two inches in diameter. We currently have seven to  
6 ten customers.

7           It is important to understand that although  
8 most imported standard pipe is physically  
9 interchangeable and comparable quality with domestic  
10 standard pipe, there is nevertheless a bifurcated  
11 market.

12           Purchasers have a strong preference for  
13 domestic products over imports because U.S. producers  
14 are located closer to the market and are normally able  
15 to ship from inventory. This results in much shorter  
16 lead times and lower inventory cost when purchasing  
17 domestic product. This built-in customer preference  
18 for domestic supply allows domestic producers to  
19 command a price premium over imports. Our lead times  
20 are 90 to 120 days from order placement to delivery to  
21 the customer in the United States.

22           The customer preference for domestic supply  
23 also means that most purchasers are only willing to  
24 purchase a limited volume of imports because they are  
25 unwilling to assume the costs and risks associated

1 with holding large inventories.

2           In addition, domestic producers offer a much  
3 broader range of products including special products  
4 that are only available from domestic producers. In  
5 many cases purchaser make a point of buying at least  
6 some significant percentage of their regular products  
7 from the domestic industry in order to ensure that  
8 they have access to these specialty products.

9           The preference for domestic supply and the  
10 domestic price premium have been in place so long that  
11 today they are a structural feature of the market and  
12 are understood by all buyers and sellers.

13           I know from my personal experience that I  
14 rarely if ever find myself in competition with  
15 domestic mills. My competitors are other importers.  
16 A customer will typically determine a balance among  
17 domestic and imported sources and we compete for the  
18 imported portion of their purchases.

19           Among the imported sources that are  
20 established suppliers such as Korea, Turkey and  
21 Thailand, which have a well-deserved reputation for  
22 quality and tend to have a greater market reach  
23 because they have well established distribution  
24 networks and offer a wider range of sizes and  
25 products.

1           Then there is a second group of suppliers  
2 including the UAE, Oman, Vietnam and India, but also  
3 countries such as Malaysia, the Philippines and  
4 Indonesia.

5           These suppliers tend to be more limited in  
6 the scope of their distribution networks and their  
7 product offerings. Prior to 2008 there was China which  
8 was in a category by itself and was priced much lower  
9 than all other import sources.

10           Since Chinese standard pipe was removed from  
11 the U.S. market the market has stabilized with most  
12 import sources priced similarly and a significant  
13 price premium for domestic product.

14           Given the wide variety of import sources in  
15 the market, I have built my business by emphasizing  
16 reliability and consistency in both pricing and  
17 service.

18           I have done this by building long term  
19 customer relationships rather than trying to be the  
20 cheapest guy on the block.

21           We have built our business slowly and have  
22 focused on products and sizes that are not always  
23 available from other suppliers. For these reasons I  
24 am confident that my imports of standard pipe from the  
25 UAE are not causing material injury or threat to the

1 domestic industry.

2 Thank you.

3 Mr. CAMERON: Don Cameron of Morris, Manning  
4 & Marti.

5 The domestic industry is not threatened with  
6 injury from subject imports period. We're looking at  
7 cumulated imports here.

8 First of all, the domestic industry isn't  
9 vulnerable. As we've heard earlier today, seven out  
10 of thirteen responding U.S. producers stated that  
11 subject imports had had no adverse effect on them.  
12 Eight out of twelve producers say they have not  
13 reduced prices, or rolled back announced price  
14 increases to avoid losing sales to subject imports.  
15 That's not your usual pipe case.

16 Domestic industry market share is relatively  
17 high as a historic matter. Profits rose over the POI  
18 and to the extent that they declined in the first half  
19 of 2012 that decline coincides with the decline in  
20 subject imports.

21 Non-residential construction is improving as  
22 the economy improves. And improvement in the economy  
23 will translate into a stronger market for U.S.  
24 producers.

25 I know that we heard this morning that the

1 domestic economy is not improving. We do not agree.  
2 According to the August report of the American  
3 Institute of Architects, AIA has revised its  
4 projections for non-residential construction upwards.  
5 They now project a 4.4 percent increase in non-  
6 residential construction in 2012 and an increase of  
7 6.2 percent in 2013. This was an August 6th release.

8           As detailed in our brief on behalf of  
9 Universal, the analysis of the statutory factors also  
10 confirm that there is no threat of injury from subject  
11 countries. There are no export subsidies. Capacity  
12 of subject producers is projected to increase by only  
13 12,000 tons in 2013 and capacity utilization in  
14 subject countries is strong.

15           The rate of increase in volume of import  
16 penetration is not indicative of a likelihood of  
17 substantially increased imports. The largest increase  
18 in subject imports came between 2009 and 2010 when  
19 U.S. producers had their most successful year.

20           Subject imports lost market share in the  
21 interim 2012 as subject imports declined, and all of  
22 that share went where? To nonsubject imports.

23           Subject import prices are not depressing or  
24 suppressing domestic prices. And domestic prices  
25 increased throughout the period.

1           Finally, there are no significant  
2 inventories for subject producers. Inventories are  
3 down. There's no evidence of product shifting. And a  
4 majority of domestic producers conceded that subject  
5 imports have had no negative effects on development  
6 and production efforts nor are adverse effects  
7 anticipated in the future.

8           Okay, so we heard this morning that these  
9 guys say that they should be earning double digit  
10 profits based, of course, upon 2008, the model year.  
11 That was a model year for my 201K before 2009 hit too.

12       This is their expectation coming out of what they  
13 described and we agree is the worst  
14 recession/depression in 75 years.

15           Now coming out of the worst  
16 recession/depression in 75 years, they then suggest  
17 well, of course the next year, two years, everything  
18 ought to be normal, right? Okay. And my question is  
19 this. Exactly why is it that this cycle would be  
20 "normal" if we are emerging from the worst  
21 recession/depression in the last 75 years?

22           There is a fundamental inconsistency in this  
23 theory here. Yes, we agree, it was the worst  
24 recession/depression in 75 years. Everybody here was  
25 there. Everybody experienced it. Nobody's going to

1 argue that point. It's also the case that nobody's  
2 going to argue seriously that subject imports were  
3 somehow responsible for what happened to the U.S.  
4 industry in 2009. Even they aren't saying that.

5           Okay, since that time, all right, after 2009  
6 we're climbing out of the recession, but it's been  
7 slow. Fair enough. And yet what we have heard this  
8 morning is but for subject imports in this recovery  
9 period, this slow anemic recovery period, we should be  
10 making double digit profits, but for subject imports.

11           I mean are you serious? That is the  
12 suggestion of the U.S. industry.

13           They keep talking about the sunset case  
14 because in that case they had evidence of the impact  
15 from covered imports. The same with the Chinese case.

16           Anybody here dispute the fact that the domestic  
17 industry was able to say sure, this was where I got  
18 injured in that case. This is where I got injured in  
19 that case. Well, where are we now?

20           The answer is that they don't have that  
21 evidence here. That's their problem.

22           Their economic witness this morning can't  
23 really find any direct evidence regarding subject  
24 imports so they want to talk about 2008 and the sunset  
25 case. But that's really the problem. Let's talk

1 about this case, let's talk about subject imports.

2 The issue isn't 2008, and the issue isn't  
3 2009. The issue is the impact of subject imports  
4 during the POI. The majority of the U.S. producers  
5 said subject imports had no adverse impact on them.

6 Now this is exactly the question that  
7 Commissioner Aranoff asked this morning to Mr.  
8 Schagrin and Mr. Schagrin never really did answer the  
9 question except to say well you know, it was just too  
10 much of a pain for them if they had said yes, and  
11 therefore they said no. That was his answer.

12 I mean, I suppose if you're desperate that's  
13 what you can say, but the reality is, the majority of  
14 producers said they had no impact and it wasn't the  
15 only question.

16 They were then asked about price roll-backs.  
17 They were then asked about well, did you have to  
18 reduce your prices?

19 And 8 of 12 said no. That simple.

20 One reason we would suggest that we didn't  
21 have that issue is if you look at chart number four  
22 that we handed out this morning, and you look at the  
23 number of U.S. purchasers that did not purchase from  
24 subject producers, it's a pretty stark chart. No  
25 wonder they can't figure out where this is going.

1           So at the end of the day Petitioners are  
2 left saying well, look, we know they're here and  
3 therefore there must have been an adverse impact. I  
4 mean we know that intuitively. We just can't identify  
5 it. But unlike all of the other standard pipe cases  
6 that we have done over the past 30 years, I mean it's  
7 not really their first rodeo, right?

8           In our opinion when you look at the  
9 situation and you look at the economy and you look at  
10 the fact that they can't identify anything about what  
11 is happening with respect to subject imports in their  
12 industry. The fact is that in 2010 to 2012 this  
13 industry actually didn't do too bad. And no, we don't  
14 agree that they have been injured. Actually in the  
15 context of this business cycle, coming out of the  
16 worst depression in 75 years, yeah. They actually  
17 have done pretty well.

18           Finally, going forward, no, we do not agree  
19 with them that there is "no upturn in the immediate  
20 future." Again, we would cite to the American  
21 Institute of Architecture and its revised projections  
22 for the economy and they are projecting upwards of six  
23 percent in 2013 and they have increased their  
24 projections for 2012.

25           So that's our story. We appreciate the

1 patience of this panel. We appreciate your listening  
2 to us and we welcome any questions. Thank you.

3 CHAIRMAN WILLIAMSON: Thank you very much.

4 Before the students from American University  
5 leave, I just wanted to welcome them because they have  
6 been in the back of the room. I hope they have  
7 learned something about trade policy here.

8 Mr. CAMERON: It's a good thing we kept the  
9 language clean, isn't it?

10 CHAIRMAN WILLIAMSON: Yes. But you did wake  
11 them up.

12 I want to thank them very much for being  
13 here.

14 With that we'll now turn to this panel, and  
15 I want to thank all of the witnesses for coming today  
16 and presenting their testimony.

17 I guess the questioning begins with me.

18 What impact if any did the removal of the  
19 nonsubject CW imports from China have on supply  
20 conditions in the U.S.? This has been discussed quite  
21 a bit. And I was just wondering how relevant is that  
22 analysis, what we're doing now?

23 Mr. CAMERON: I think other people are going  
24 to want to comment on this, but if you look at it,  
25 imports from China really left in 2007 and in 2008

1 imports from China went from 2007, roughly what,  
2 650,000 tons, 700,000 tons? Something like that.  
3 Down to 12,000 tons. In 2008.

4           So it was significant. And yeah, sure,  
5 taking that out of the market, it helped everybody  
6 because the problem was that a lot of people including  
7 imports -- Imports were the primary people that could  
8 not compete with the Chinese in that market. But that  
9 was a significant market share and taking the Chinese  
10 out was a significant thing for the market. It put it  
11 back into a normal condition where people could  
12 compete.

13           But what we are saying is that in a sense  
14 there are three tiers. There was the domestic  
15 industry, there is all other imports competing on a  
16 price basis with each other. Then there was China who  
17 was crushing the market.

18           Fair enough. I don't think anybody disputes  
19 that.

20           MR. NATU: Pushkar Natu from Zenith.

21           Regarding the Chinese case, it was almost  
22 instantaneous after your verdict here in this same  
23 room I think it was, my phone started ringing from  
24 exporters and traders who wanted to buy from me again  
25 after three years of an absence. That's the kind of

1 result the Chinese case had.

2           Mr. CAMERON: It's important to point out,  
3 though, we are not suggesting that the domestic  
4 industry market share of 49.3 in 2006 and 55.2 in  
5 2007, that that's what everybody should be looking at  
6 in terms of the norm. Nobody's suggested that. The  
7 reason that, and this gets to Commissioner Aranoff's  
8 question earlier this morning with respect to  
9 presenting data from earlier periods.

10           The reason for presenting market share data  
11 for the 12 year period back to 2000 is simply to give  
12 context to what the market share is, what it's been  
13 historically.

14           We're not talking about an industry that has  
15 not had protection for 30 years. They have had  
16 protection since 1992 when the first tranche of big  
17 cases went into effect. And with India they've had it  
18 since 1986.

19           If you look at the chart and market share,  
20 it's really kind of interesting. The period of 2000  
21 to 2003, what was going on then? We had the safeguard  
22 case in which there were safeguard duties that were in  
23 place on standard pipe and their market share was 60  
24 percent, 60, and 61.5 when safeguards went off in 2003  
25 because the United States industry was in good shape

1 and they terminated the, President Bush terminated the  
2 safeguards.

3           What are we at now? We're talking 65  
4 percent, and 65 percent is a good market share in this  
5 market. That's the reason that we're trying to  
6 present a historical, just so people would have a  
7 contest reviewing the market share.

8           CHAIRMAN WILLIAMSON: Anyone else on this  
9 point?

10           How should we interpret the apparent  
11 decrease of subject imports and the subject importers'  
12 market share in this interim 2012 period?

13           MS. MENDOZA: I think we would agree that  
14 there may have been some effect from the case.  
15 Certainly the market share for subject imports went  
16 down.

17           I would note, however, and this is pretty  
18 important, that when the March CBD results came out,  
19 most of the countries, I believe every country other  
20 than India, had a zero margin. So it really wasn't  
21 until May, the end of May, that there were really  
22 margins found at all, and even then the dumping  
23 margins for most of these countries were very small  
24 and remain very small.

25           So I think that the more likely explanation

1 is that nonsubject imports, which as we mentioned have  
2 a number of stronger features because they have more  
3 sales networks, they've been here longer, they sell a  
4 more diversity of products. Korea, Mexico, those  
5 suppliers in fact saw the opportunity to take back  
6 some market share in what as an uncertain market, and  
7 therefore what you saw was nonsubject imports actually  
8 increasing significantly their market share.

9           So I think it was more an effect of  
10 nonsubject imports increasing and taking advantage of  
11 uncertainty rather than any real effect from the  
12 order. At that point in time. Because frankly, the  
13 margins still are not very large.

14           MR. MARSHAK: In the exit of the market the  
15 Department of Commerce, when adverse facts were  
16 available against India for reasoning that you don't  
17 consider but we don't like. An within the exit of the  
18 market, and they exited the market completely. What  
19 happened to the India sales? They went directly to  
20 nonsubject imports.

21           The data was very stark. you go right from  
22 India right to nonsubject because nonsubject goes way  
23 up. And that's what happened. That shows really that  
24 there's no injury by the subject imports.

25           CHAIRMAN WILLIAMSON: I'm a little

1 surprised. You keep talking about lead time, six,  
2 eight weeks, and yet the margins came out in what,  
3 May? You'd think there would be a lot of stuff on the  
4 water. And yet --

5 MR. SIMON: I wanted to speak to that.  
6 David Simon.

7 You can't turn this off like a light switch.  
8 Whatever the events are, the CBD where we got de  
9 minimis, the dumping where we got a commercially  
10 viable market. I mean they could continue that way.  
11 Whatever is going on, they have orders on their books  
12 and the customers are not going to let them cancel  
13 those orders just because of an adverse impact from  
14 the Commerce Department. It's not a force majeure  
15 event.

16 So you can't just turn off your imports  
17 overnight like that. If you're going to something  
18 it's going to happen over an extended period of time  
19 as the orders get filled.

20 If you have three month lead times, you're  
21 still going to have three month lead times. If  
22 something ugly happens in May it's going to take you  
23 June, July and August to work those orders out even if  
24 you decide you have to withdraw from the market for  
25 reasons of prudence.

1           CHAIRMAN WILLIAMSON: So why is there such a  
2 big impact in the first six months?

3           MR. SIMON: I can't speak to the Indian  
4 situation. They had an inkling what would happen of  
5 course because they knew they hadn't complied with the  
6 requirements sometime earlier than Jazeera knew what  
7 its margins would be.

8           The imports from Oman, I'm taking a look at  
9 the data here, did not go down period to period. In  
10 fact they went up. I can't speak to third countries.

11          MR. NATU: Commissioner, in our case, and  
12 you've seen the confidential briefing, right? Our  
13 sales declined even prior to the petition being filed.  
14 So there was no switchoff as such. We already had a  
15 low order book.

16          CHAIRMAN WILLIAMSON: Okay. Does anyone  
17 else want to add to that?

18          MR. DUGAN: Chairman Williamson, this is Jim  
19 Dugan from ECS. I think it's worth pointing out that  
20 while the volume of subject imports went down by about  
21 30,000 short tons, nonsubject imports went up by about  
22 50,000. So they more than replaced whatever volume of  
23 subject imports that didn't enter the market. I think  
24 that speaks a little bit to what Mr. Marshak said  
25 about taking advantage of an uncertain commercial

1 situation to their advantage. So they essentially  
2 more than replaced the subject imports in the market  
3 and also took share from the domestics.

4 MS. MENDOZA: Chairman, one more?

5 CHAIRMAN WILLIAMSON: Sure. Go ahead.

6 MS. MENDOZA: My final comment would just be  
7 with respect to table 4-3. I think if you look at  
8 where the declines came from in terms of the subject  
9 imports -- so if you look at that, I think you can see  
10 where the declines were and -- no, I'm sorry, that's  
11 not the right one.

12 CHAIRMAN WILLIAMSON: If you want to address  
13 it posthearing --

14 MS. MENDOZA: No, no. It's all right.

15 If you look at the circular welded pipe  
16 where they break it down between subject imports and  
17 nonsubject imports, it's on page 4-14 of the  
18 confidential report.

19 You can see that in fact, and I believe  
20 these numbers are all public. You can see that in fact  
21 it is almost all India.

22 CHAIRMAN WILLIAMSON: Okay.

23 MS. MENDOZA: If you look at those two  
24 periods.

25 CHAIRMAN WILLIAMSON: Okay. Thank you for

1 those answers.

2 Commissioner Pearson?

3 COMMISSIONER PEARSON: Thank you, Mr.  
4 Chairman. Greetings to all of you on the Respondents'  
5 panel. It's good to have you here today.

6 First, demand. You have a different view of  
7 the demand outlook than does the domestic industry.  
8 You referenced some projections by the American  
9 Institute of Architects. Do we have those on the  
10 record already?

11 Mr. CAMERON: I don't know whether you do or  
12 not, but we will submit them with our posthearing  
13 brief. What we have is the August 6th announcement.  
14 We also have an article on the same thing that was  
15 dated August 27th. And then we have another study  
16 that is similar. We'll put these both on the record.

17 COMMISSIONER PEARSON: Do they offer any  
18 caveats in their projection regarding the fiscal  
19 cliff, what's going on in Europe, the election --

20 Mr. CAMERON: The so-called fiscal cliff  
21 involving the effects of federal tax and spending  
22 policy could undermine the projections? I guess  
23 that's a truism, right? That's true, it could. But  
24 what we're talking about is what the projections are  
25 right now, assuming that people in this town are going

1 to be rational at some point.

2 COMMISSIONER PEARSON: So they are making a  
3 conscious assumption that we won't fall off the cliff  
4 then.

5 Mr. CAMERON: That is correct.

6 MR. DUGAN: Even with that caveat, I think  
7 the fact that they not only have a healthy project for  
8 increased non-residential construction in 2013, but  
9 that they've revised the 2012 figure upward. The  
10 original projection in January of this year was growth  
11 of 2.1 or 2.2 percent, and they've since revised it to  
12 4.4, and then said okay, and next year it will be  
13 better still.

14 So absent the fiscal cliff, I think the fact  
15 that they're not only sort of retroactively revising  
16 upward, but projecting better still is indicative of a  
17 trend.

18 COMMISSIONER PEARSON: Can we impute  
19 directly from the architect's figures what the effect  
20 would be on demand for this variety of pipe?

21 Mr. CAMERON: This is not -- The correlation  
22 between non-residential construction and standard and  
23 structural pipe is not the same as OCTG and drilling  
24 rigs, so we concede that.

25 But as you know from doing these cases in

1 the past it is a strong demand indicator. Therefore  
2 the strong growth in the non-residential construction  
3 also has implications for GDP and has implications for  
4 demand of this product. I think that is a fair  
5 statement. But to say that okay, we're going to be at  
6 6.62 or whatever and therefore it's going to -- WE'RE  
7 not saying that.

8 COMMISSIONER PEARSON: But you are basically  
9 saying you do expect some continued reasonable growth  
10 --

11 Mr. CAMERON: Absolutely, and I think most  
12 economists do expect reasonable growth in this  
13 economy. I don't think that's a big surprise.  
14 Actually I was rather surprised to listen to what was  
15 being stated earlier today.

16 COMMISSIONER PEARSON: Shifting gears, am I  
17 correct to understand that in the severe downturn in  
18 2009 that subject imports lost more market share than  
19 the domestic industry? Or did total imports lose more  
20 market share than the domestic industry? Or does it  
21 matter?

22 Mr. CAMERON: In 2009 the U.S. industry  
23 gained market share. Actually it peaked. Look,  
24 everybody lost in terms of absolute tonnage, right?  
25 What happened was that the domestic industry lost less

1 than everybody else. That's fine. But that's the  
2 reason we said it was --

3 COMMISSIONER PEARSON: So help me understand  
4 why, in a downturn in the market like that, why should  
5 imports lose relatively more market share than  
6 domestics? What's happening in the market place that  
7 must shift the advantage to the domestic --

8 Mr. CAMERON: I think that actually what  
9 happened in 2009, I'm not sure that you can actually  
10 plot it that rationally. I think it was a freefall.  
11 I think that is pretty clear, that it was a freefall.  
12 And to the extent that -- I will tell you what did  
13 happen. To the extent that you've got long lead  
14 times, I can tell you that people did cancel orders on  
15 the water. They did that with every pipe product  
16 there was and every steel import product there was.

17 On the other hand, if you've got a short  
18 lead time, I mean why is it that people want just in  
19 time delivery? Why do you want low inventory? Well,  
20 one thing you heard earlier this morning was well, we  
21 had steel coil and the steel coil that we had was  
22 built up for a three month -- which would be our  
23 normal turnover. And three months became nine months  
24 because the market collapsed on us. Therefore, our  
25 profitability went in the tank. Fair enough. That's

1 absolutely right.

2           Now you're talking about the purchasers of  
3 standard pipe. And what are they doing? Well, if  
4 they're buying from the domestic industry they've got  
5 a lead time of not, they're not keeping three months  
6 of inventory. They're keeping one week of inventory.  
7 Therefore, they didn't have to go out on a limb and  
8 therefore the domestic industry is in a stronger  
9 position in a tight period like that to be able to  
10 supply what is left of the market, right? Therefore  
11 it would be reasonable to assume that the domestic  
12 industry would be in a superior condition in a  
13 freefalling demand. But I'm not an economist. I did  
14 stay at a Holiday Inn last night, though.

15           COMMISSIONER PEARSON: That works perfectly  
16 well in theory. But do those of you who actually  
17 participate in the market place have some insights on  
18 why there was such a significant contraction in  
19 imports in 2009? What was going on that caused you  
20 folks to lose market share relative to the domestics?

21           MR. NATU: It's possible that there was  
22 still some lingering effect of China because the case  
23 was filed and the final decision came out. There was  
24 700,000 tons that are going to China. And slowly the  
25 customers were realizing what was happening and that

1 there was no more possibility of bringing Chinese pipe  
2 and they were slowly turning over to the other  
3 imports.

4 COMMISSIONER PEARSON: Any other thoughts on  
5 2009? Or we just accept the numbers as we see them  
6 and not worry about it anymore?

7 Okay, we'll do that. I'll do that anyway.

8 Mr. Natu, what accounts for the fact that in  
9 2011 subject imports from India fell whereas those  
10 from other subject countries continued to increase?  
11 You know from the Indian side what was going on. What  
12 happened there?

13 MR. NATU: We just heard form our customers  
14 that we were not being competitive any more. And we  
15 were losing orders to other suppliers.

16 COMMISSIONER PEARSON: So you were a bit  
17 surprised to see the decline in shipments to the  
18 United States in 2011?

19 MR. NATU: Yeah, we were surprised. It was  
20 our regular customers and they said sorry. We lost  
21 the order.

22 COMMISSIONER PEARSON: You don't have any  
23 knowledge of to which suppliers you were losing sales?

24 MR. NATU: Normally they keep that  
25 confidential. But in our brief, in the confidential

1 brief you have some --

2 COMMISSIONER PEARSON: Thank you. I will go  
3 back and look at that again.

4 If there's anything more we should know in  
5 the posthearing go ahead and augment what you've  
6 provided.

7 Mr. CAMERON: Fair enough.

8 I will say that we -- I think the freefall  
9 of 2009 is the main explanation though, and in a  
10 freefall a lot of things --

11 COMMISSIONER PEARSON: But we're looking now  
12 at 2011 and the drop off of Indian sales in 2011 which  
13 is a different pattern than the other countries.

14 Someone spoke earlier about the advantage of  
15 importing pipe in containers. Could you please  
16 elaborate on that point? Why is it an advantage to  
17 import in containers compared to bringing in product  
18 break bulk or whatever other method you'd have?

19 MR. NATU: Traditionally we've been bringing  
20 by break bulk because it was more economical and  
21 containers were very expensive prior to about 2008.  
22 In 2008, 2009, the container freight came down  
23 drastically, and came almost comparable to break bulk.  
24 The difference is in a break bulk vessel we could only  
25 ship maybe once a month, once in two months. So we

1 had to load up and put all the cargo ready as soon as  
2 the ship came, we put it on the ship and it would come  
3 to the United States.

4           There were times when a break bulk vessel  
5 would go into maintenance and then that could be a two  
6 month lag where we couldn't ship any product. With  
7 the new container vessels coming on board in about  
8 2008, 2009, we could ship on a weekly basis. Load a  
9 vessel every week. So we didn't need to make the big  
10 tonnage, hold it aside of all the orders. We could  
11 just partial ship on each order every week. So the  
12 customers would have some product instead of waiting  
13 for two months for any product at all.

14           COMMISSIONER PEARSON: So the container  
15 shipment really provides improved service both to you  
16 as a supplier and to the customer on the other end  
17 because you have --

18           MR. NATU: Exactly.

19           COMMISSIONER PEARSON: My time has expired,  
20 but if there's another response --

21           MR. CHOWDHURI: I would like to add to what  
22 Mr. Natu said. We are from Sohar and Al Jazeera,  
23 Oman, and we do not have the facility of the break  
24 bulk so easily as India has. The break bulk charter  
25 ships are diverted to our country if we have, and it

1 is very arbitrary. It could be once a month. Then we  
2 need to collate up cargo and make a big parcel which  
3 always is not feasible.

4 So we have to reengineer our entire  
5 procedure. We have to radically redefine it.

6 So we designed a boom to put in a container  
7 which we put here in the ports of U.S. and in our  
8 yard, and then container service was far better. The  
9 pipes came in far better. And they had no scratches,  
10 no dents. It came in fresh, almost like from new.

11 COMMISSIONER PEARSON: Thank you for that.

12 Mr. Chairman, my time has expired.

13 CHAIRMAN WILLIAMSON: Commissioner Aranoff?

14 COMMISSIONER ARANOFF: Thank you, Mr.

15 Chairman.

16 Welcome to all of the witnesses on this  
17 afternoon's panel.

18 A couple of quick follow-ups from the direct  
19 testimony of some of the witnesses.

20 Mr. Natu, I think you said that after China  
21 left the market Zenith was selling to pretty much the  
22 same customers that it had been selling to before. I  
23 just wanted to nail you down on that a little bit.  
24 Pretty much the same customers or exactly the same  
25 customers?

1           MR. MARSHAK: In our prehearing brief we  
2 have all sales to all customers from 2003 to the  
3 present by tonnage, so you have the exact data to  
4 answer your question in the brief. You're going to  
5 see the big customers are basically the same. There  
6 are some small ones. But the data is right in your  
7 hands in the confidential version of our brief.

8           COMMISSIONER ARANOFF: Okay.

9           Mr. Schruppf, you testified that you had  
10 built your business by trying to sell products that  
11 were maybe not as available in the U.S. or maybe not  
12 available in certain sizes. I wanted to ask you to  
13 give a little more detail on that. We're talking  
14 about A-53 pipe which my understanding is, it's a  
15 pretty commoditized product. Is there really a  
16 special niche here?

17           MR. SCHRUMPF: There can be. The different  
18 producers today like Allied Tube produces in-line  
19 galvanized and doesn't do a hot dip. And as Zenith  
20 has mentioned, they sold them the hot dip galvanized.  
21 So they provided a niche for allied.

22           We did not do that. But there are other  
23 smaller customers that we sell to or the seven  
24 customers we sell to, that have needs that the  
25 domestics cannot as easily supply. We can't. Such as

1 cut to length and hot dip galvanized products.

2 There's not much differentiation. Pipe is  
3 pipe, basically. But there are some differences.

4 COMMISSIONER ARANOFF: I'm going to go back  
5 to the question that I asked this morning about what  
6 the period of investigation should be.

7 I think the answer I got this morning which  
8 was a little meandering, was 3 years is fine, but  
9 maybe it's okay to look t some older things to the  
10 extent that they give the Commission context about  
11 conditions of competition or the business cycle.

12 Do you guys have a different answer?

13 MS. MENDOZA: No. I didn't get quite as far  
14 as you did with their answer, but certainly our answer  
15 is that we're very -- We've read the Commission's  
16 decisions recently. We understand the Commission's  
17 interest in keeping the period to three years. We  
18 agree with that.

19 But we do think that this is a very unusual  
20 case in the sense that we had two factors here that  
21 are pretty different. One, we had a huge decline in  
22 2009, so we have to somehow get a sense of what the  
23 market Normally looks like.

24 And we had nonsubject imports playing a very  
25 big role in the market during a very extended period

1 of time.

2           So if the Commission wants to understand the  
3 conditions of competition that are currently facing  
4 the industry, I think it's helpful to look  
5 historically. Let me just give an example.

6           Capacity utilization. Does it mean that if  
7 they're at 65 capacity utilization that that's a low  
8 rate of capacity utilization?

9           I would suggest that if for 12 years you're  
10 at that rate of capacity utilization, it probably  
11 means that it's not -- to me it's probably not your  
12 actual capacity. It's more like your name plate  
13 capacity.

14           So I think those kinds of comparisons can be  
15 helpful. Or market share. What does it mean to have  
16 nonsubject -- Have subject imports have a certain  
17 market share in this market.

18           Let's look at periods when they had no  
19 market share. Or very little market share. And see  
20 sort of what was going on in terms of imports overall.  
21 That's all we're saying. I hope that's direct  
22 enough. We're not asking you to extend the period.

23           COMMISSIONER ARANOFF: I'm thinking I should  
24 have our attorney from the General Counsel's office  
25 have both sides sign a little waiver saying the

1 Commission can look at anything it wants from before  
2 the period of investigation, as long as we've  
3 decided, provides context and nobody can complain  
4 about it.

5 Mr. CAMERON: Commissioner, if I could just  
6 add one thing. The other suggestion that was being  
7 made this morning was well wait a second. They're  
8 arguing 2009 because it is the absolute low point and  
9 therefore everything is better, and therefore  
10 everything's okay.

11 Part of the reason that we were providing  
12 context is no, we're not making a simplistic argument  
13 that well, it's better than 2009. What are you  
14 complaining about?

15 What we have said is let's look exactly  
16 where we were in 2009. In 2009 we were on the verge  
17 of a depression. All of us were in hearings around  
18 that time and the D word was on the tip of everybody's  
19 lips. This was a problem.

20 So we're not suggesting that well,  
21 everything was all normal, everything's fine, and  
22 therefore because it's up -- no. But we're suggesting  
23 that if there was a 16 percent loss in 2009 and it  
24 turned into a profit in 2010, however modest, that  
25 yes, that's significant and we tried to put 2009 into

1 a reasonable context so that we could analyze the  
2 period of investigation. But we have never suggested  
3 that the period of investigation is anything other  
4 than what the Commission does, and we'll sign your  
5 waiver.

6 MS. MENDOZA: Can I just say one very quick  
7 thing?

8 There is a factor in this case, and it's the  
9 role of nonsubject imports, a commodity product that  
10 are competing directly and at larger quantities. I  
11 think in a case like this when you're really trying to  
12 determine whether there's more than tangential injury,  
13 I think things like market share during prior periods  
14 actually have a degree of relevance. It may not be  
15 typical in all cases. I don't think this is a very  
16 typical case.

17 COMMISSIONER ARANOFF: Fair enough.

18 It is true that the Commission has history  
19 with this product. It must be true because when I  
20 tell my teenage children that I have a hearing today  
21 they ask me is this steel pipe or another product?

22 (Laughter.)

23 Let's move on.

24 Commissioner Pearson was asking some  
25 questions about demand projections and the discussion

1 there focused on demand in the U.S. market. But  
2 Petitioners have also made some arguments about less  
3 than robust demand in some of the other markets that  
4 subject imports serve.

5 I was looking around in the record for what  
6 we have, for example, about markets in the Gulf or the  
7 Middle East. The only thing I saw was a cite in  
8 Universal's brief to something that came out earl yin  
9 2011, so I wanted to ask if there was anything more up  
10 to date. Maybe I missed it or maybe someone could  
11 find it, about demand in that region.

12 We also have arguments on the part of the  
13 domestic industry that demand is likely to fall off in  
14 Europe. I know the witness from Universal testified  
15 that that's a market that they've been pursuing. Then  
16 of course we have the trade remedy proceeding in  
17 Canada.

18 So any comments on any of those markets?

19 MS. MENDOZA: We definitely are going to be  
20 submitting for the record information on demand in the  
21 GCC countries with our posthearing brief. And also I  
22 would just clarify that really, they're not,  
23 Universal's focus is on the UK. And not Europe in  
24 general. And again, I think that's a little bit  
25 different situation.

1           Again, their primary, almost like their home  
2 market, is the GCC countries. They can ship stuff by  
3 truck. There's no duties. It's a customs territory.  
4 It makes things much earlier for them to sell into  
5 those markets.

6           Mr. CAMERON: It would also be useful for  
7 you to talk to the other producers about the relevance  
8 of Canada. I believe in most cases one of the reasons  
9 the producers did not participate in the Canadian and  
10 investigation is it was not really a strong market for  
11 them.

12           But I think they can answer themselves.

13           MR. MARSHAK: As far as Zenith toes, it's  
14 negligible. Canada really has no importance at all.

15           MR. CHOWDHURI: The same goes for Al  
16 Jazeera. Canada is too small a market for us. Our  
17 real core competency lies in our home market, which we  
18 consider Oman and the GCC where the projects are  
19 there, specific projects, big projects and everything  
20 is focused there.

21           MR. D'CUNHA: There was negligible  
22 quantities sold to Canada.

23           COMMISSIONER ARANOFF: Okay. I think I'm  
24 going to stop there for now and I'll come back in the  
25 next round. So thank you, Mr. Chairman.

1                   CHAIRMAN WILLIAMSON: Commissioner Pinkert?

2                   COMMISSIONER PINKERT: Thank you, Mr.

3 Chairman. And I thank all of you for being here today  
4 to help us to understand these issues. I want to  
5 begin with a question that you heard me ask this  
6 morning about the relationship between apparent  
7 consumption and profitability in the industry. What  
8 we're talking about this morning was the contention  
9 that the Petitioners made that basically they're  
10 halfway back on apparent consumption from the trough  
11 that they experienced because of the great recession.

12 And I asked the question, well, if you're halfway  
13 back in apparent consumption, does that mean you  
14 should be halfway back in terms of profitability or  
15 what's the relationship? In particular, I was asking  
16 whether, in the context of the business cycle in this  
17 industry, should you be seeing more of an acceleration  
18 or profitability as you get toward the peak or is this  
19 just kind of a straight line thing where you're 50  
20 percent back in terms of apparent consumption, so you  
21 should be 50 percent back in terms of profitability.

22                   Now I want to break this down into two  
23 parts. First of all, do you accept the proposition  
24 that the industry is basically 50 percent back. And  
25 then secondly, if you do, other things being equal, in

1 other words no -- leaving aside this whole question of  
2 what the impact of the subject and the nonsubject  
3 imports has been, should you -- is there some  
4 relationship between the apparent consumption recovery  
5 and the profitability?

6 MR. DOUGAN: This is Jim Dougan from ECS.  
7 Commissioner Pinkert, I think an important  
8 consideration within the discussion about the  
9 improvement in profitability as well, particularly for  
10 this product, has to do with what's going on with the  
11 input prices and steel prices. So while the demand  
12 for this product and the apparent consumption for this  
13 product, the rate at which it's increasing, the  
14 ability of the industry or any industry to sort of  
15 translate that into increased margins may have to do  
16 with what their input costs are doing. And I think  
17 we've shown that they've been very successful at  
18 passing these along. But the change in their input  
19 price may not be moving at the same rate as a change  
20 in apparent consumption.

21 So in terms of a relationship of how the  
22 growth in apparent consumption would relate to a  
23 change in their profitability or a widening of their  
24 operating margin, I think that there are things at  
25 play there that could assist in that or it could

1 diminish that. It's unclear. But certainly if the  
2 demand is increasing, they're not only producing more  
3 and being able to sell more and spread their fixed  
4 costs over a broader base of production. That would  
5 amplify the beneficial profitability effects of them  
6 being able to pass through the cost of the raw  
7 materials.

8           COMMISSIONER PINKERT: Let's start with the  
9 premise though, does everybody accept the premise that  
10 the industry is basically halfway back in terms of  
11 apparent consumption from the trough?

12           MR. CAMERON: Based on what? Well, but I  
13 mean that is the question. I have difficulty  
14 accepting this 50 percent thesis when I don't really  
15 have a basis for saying that. So I guess the answer  
16 would be no. I mean, if it works out that way, great,  
17 but I don't know what basis there is for saying that.

18           MR. MARSHAK: We've put on the record  
19 apparent consumption figures going back to 2000. So  
20 if you just look at the data, they're probably not  
21 halfway back, back again. As Don said, back to where?  
22 I mean this was a free fall from 27 -- 2,500,000 to  
23 1,200,000 short tons of apparent consumption. So it's  
24 straight down. Now it's back, but if you look at the  
25 mid level, it's not back to the mid level yet between

1 the 2.5 and the 1.2 or the 2.7. Hopefully it will go  
2 much further back.

3 MR. CAMERON: Right.

4 COMMISSIONER PINKERT: Thank you. In the  
5 posthearing if you could give me some kind of context  
6 for what the experience of this industry would be  
7 expected to be in the context of the business cycle  
8 coming out of the great recession, as you've testified  
9 to, Mr. Cameron. I know that you said in your  
10 testimony that one shouldn't expect miracles overnight  
11 coming out of the greatest recession that we've seen  
12 in such a long period of time. But I'm trying to  
13 understand what should be expect.

14 MR. CAMERON: Fair enough. But I think that  
15 it's somewhat problematic to be referring to, okay, so  
16 what should the business cycle that we're having. And  
17 the implication there again is that while we're  
18 dealing with the normal business cycle -- and I guess  
19 we don't really agree with that premise. Obviously it  
20 is part of a cycle, but how do we gauge this? I mean,  
21 obviously there's a lot of economic talk around town  
22 that clearly is still not been able to get a good  
23 handle on how it has been. I mean, that has been the  
24 problem.

25 So we understand your problem and we'll try

1 to do that. But I do think that it's clearly not the  
2 normal business cycle. And, therefore, to suggest  
3 that, well, in the last three recessions when we came  
4 out of it, this is where we were and therefore this is  
5 where we ought to be now is absolute mindlessness.

6 MS. MENDOZA: Commissioner Pinkert, if I  
7 could just add one thing and obviously we'll address  
8 in our brief, but one thing we were trying to do by  
9 showing the figures on nonresidential construction and  
10 the recovery in that was to show you that in fact if  
11 you compare the rate of recovery in this industry,  
12 right, to the rate of recovery of nonresidential  
13 construction generally, they actually outperform that  
14 industry. So, I mean, I think that gives you some  
15 indication that they've come back, but that due to  
16 economic conditions things are still very much influx.  
17 And it's very difficult to determine exactly where  
18 anybody is right now in the business cycle, other than  
19 by comparing it to some other standard of where they  
20 normally are relative to that standard.

21 COMMISSIONER PINKERT: Mr. Cameron, did you  
22 see the vice presidential debates?

23 MR. CAMERON: I did.

24 COMMISSIONER PINKERT: Were you offended by  
25 the benchmarking of the current recovery against the

1 recovery in 1981-82?

2 MR. CAMERON: Well, now that you suggest  
3 that -- now that you ask the question, I mean, I was  
4 surprised. But I actually enjoyed the vice  
5 presidential debate.

6 COMMISSIONER PINKERT: Okay. Now, Mr.  
7 Marshak, you point to a one-to-one relationship  
8 between lost market share for India and increase in  
9 nonsubject import market share during the recent  
10 period. Do we really know who got those sales? I  
11 know that there's a quantitative relationship between  
12 those market share numbers, but do we really know who  
13 got those sales?

14 MR. MARSHAK: We can't point to the exact  
15 mills who got the exact sales when India left the  
16 market or was reduced in the second half of 2011 and  
17 2012. It went from India to somebody else. But when  
18 you look at the data, the only data we have and we  
19 believe we have on the record, when you look at the  
20 data, it shows that nonsubject imports are going way  
21 up. So we have to assume that those sales go to  
22 nonsubject imports. That's what the data shows from  
23 what we know what's on the record.

24 Could we tell you exactly who got the sales?  
25 That, we don't know. The customers, you know, may

1 know. We don't. The data shows it's nonsubject  
2 imports.

3 COMMISSIONER PINKERT: Thank you. Now I'd  
4 like to turn to another issue related to causation.  
5 And I don't want to get into an interpretation of the  
6 various Federal Circuit decisions in this area, but  
7 simply to ask a question about what I'm going to call  
8 counter-factual causation issues. If the subject  
9 imports had left the U.S. market during the period and  
10 there had been replacement by nonsubject imports,  
11 would there have been a pricing benefit to the  
12 domestic industry?

13 MR. CAMERON: Well, the evidence on the  
14 record suggests that the answer to that is no, I mean  
15 and that is exactly the point that we were trying to  
16 make with respect to the price premium. The price  
17 premium argument goes not to the difference between  
18 the domestic industry and subject imports. It goes to  
19 the issue of the premium between the domestic industry  
20 and imports were at large because import were at large  
21 actually have this lead time and they have common  
22 characteristics. And, therefore, the removal of  
23 subject imports and replace them by nonsubject  
24 imports, they compete -- they're still competing and  
25 they are going to be competing at the same price level

1 based upon the same price premium consideration. So  
2 our suggestion would be the answer to that would be  
3 no.

4 MR. DOUGAN: This is Jim Dougan from ECS.  
5 And my response to that is we do have something of a  
6 test case which to look at the change between the part  
7 year periods. And the experience there and the data  
8 on the record there would suggest also that the answer  
9 is no.

10 COMMISSIONER PINKERT: For purposes of the  
11 posthearing or if you want to answer briefly right  
12 now, should I be looking at AUV data in trying to  
13 break down this issue?

14 MS. MENDOZA: No. We believe that the  
15 Commission uniquely and admirably in this case  
16 actually has a good record on nonsubject imports and  
17 their quarterly prices. You don't have product mix  
18 issues with them and they very clearly show the trends  
19 over the period. They're not perfect, but they're  
20 very good. So we're suggesting that the Commission  
21 should use what they usually use, which are the  
22 pricing comparisons.

23 I think there's another point about the AUV  
24 data we'll be addressing, which is if you look at the  
25 category of sort of all other, averaging of values are

1 really, really high, suggesting there's something  
2 strange and that's clearly affecting, you know, the  
3 overall averages for AUVs for nonsubject and subject  
4 imports. Do you know what I mean?

5 MR. MARSHAK: I think if you --

6 MS. MENDOZA: If you look at the other one,  
7 you know, the price -- the average unit price for all  
8 other, it's like \$1,500 or something like that. It's  
9 much higher. So what's happening by including that in  
10 the average, you're really distorting the AUV prices.  
11 So that's in addition to all the normal problems that  
12 you have with AUV data, which is that it's a product  
13 mix and it's changing and you don't know who is  
14 importing what and all of that.

15 And the pricing categories on the other hand  
16 are very specific. Plus in addition in this case, you  
17 have a problem because the AUV data itself isn't very  
18 good.

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

21 CHAIRMAN WILLIAMSON: Commissioner Johanson?

22 COMMISSIONER JOHANSON: Yes, thank you, Mr.  
23 Chairman, and I would also like to thank all the  
24 witnesses for appearing here today. How should the  
25 Commission interpret the apparent decrease of subject

1 imports and subject import's market share in interim  
2 2012? Yes?

3 MR. MARSHAK: This is Ned Marshak. The  
4 first thing, interim 2012, you know, as we've  
5 mentioned, it's basically India. It's India leaving  
6 the market. India started leaving the market in 2011  
7 just because of price problems. India was totally out  
8 of the market in 2012 because of the early CVD order.  
9 So India is out. And when you look at India going  
10 out, you see where did those sales go to. The data  
11 that you have shows that they go to nonsubject  
12 imports.

13 MR. DOUGAN: Commissioner Johanson, Jim  
14 Dougan from ECS and I will add to this. As I said  
15 earlier, the increase in the volume of the nonsubject  
16 imports not only replaced any decrease from India, but  
17 also took some share away from the domestic industry.  
18 So that's worth noting with respect to that as well.

19 COMMISSIONER JOHANSON: Thank you. And  
20 maybe, Mr. Marshak, this might be for you. Why did  
21 the imports from India decrease so drastically?

22 MR. MARSHAK: Well, there are two reasons.  
23 One, as Pushkar said before, just they were priced out  
24 of the market at the end of 2011. Customers who were  
25 buying from India before stopped buying from India

1 because of high prices.

2           The second reason was that the Department of  
3 Commerce issued an early countervailing duty  
4 preliminary determination to India based on adverse  
5 facts available of 285 percent. And once that was in  
6 place, nobody is bringing in India CWP anymore with  
7 that type of potential duty liability.

8           So those two factors basically drove India  
9 out. But it started before the CVD preliminary  
10 determination because they were priced out. And then  
11 once the determination came down to 285 percent, you  
12 know, it's all over from India. So we look at the  
13 data, you have what we call the normal shipments from  
14 India 2009-2010 and then 2011-2012, it's gone.

15           We've also given you in our confidential  
16 brief quarterly data from India, exports from India,  
17 so you can see exactly what happened with the Indian  
18 exports over the POI.

19           COMMISSIONER PINKERT: All right. Thank you  
20 for your explanation. China's economy has been  
21 slowing down and we also had this 2008 order on  
22 Chinese CWP. Have exports from China to subject  
23 countries increased during the past several years and  
24 have they possibly displaced some home market  
25 shipments?

1           MR. D'CUNHA: China has never been -- Mervyn  
2 from Universal. China has never been a big factor  
3 selling a lot of pipes and UAE especially because  
4 basically first of all UAE market does not like  
5 Chinese products. And secondly, it's way difficult  
6 for them to bring in the materia, pay five percent  
7 duty, and then be competitive in the market here.

8           COMMISSIONER JOHANSON: How about with  
9 India? I know India --

10          MR. D'CUNHA: India --

11          COMMISSIONER JOHANSON: Yes?

12          MR. NATU: Yeah, Commissioner. There's a  
13 duty on Chinese pipe in India too, so -- I believe  
14 it's 10 percent. So it makes it unviable to bring  
15 Chinese pipe into India.

16          COMMISSIONER JOHANSON: All right. Yes, Mr.  
17 Simon?

18          MR. SIMON: David Simon. There's no Chinese  
19 pipe coming into Oman. It's a small market anyway,  
20 but there isn't any.

21          COMMISSIONER JOHANSON: Do you all know  
22 where Chinese pipe is going currently, what the big  
23 markets are for Chinese pipe?

24          MR. CHOWDHURI: Of late I've been seeing a  
25 lot of Chinese pipe going to Africa, both on the east

1 and the west coast. They've been finding alternate  
2 markets once they were out of the United States  
3 market. China has been a big destination. Now  
4 they're making their way into Europe.

5 MR. CAMERON: I think it's primarily going  
6 to China actually.

7 COMMISSIONER JOHANSON: Just staying in  
8 China?

9 MR. CAMERON: I believe so. I mean most --  
10 a lot of that capacity, actually most of that capacity  
11 was built on the premise that the Chinese market  
12 wasn't built with the premise of exports and I think  
13 that that's exactly where most of it's going.

14 COMMISSIONER JOHANSON: Okay.

15 MR. CAMERON: I don't know that we could get  
16 good data on it. If you want, we can try, but getting  
17 data on internal consumption in China has not always  
18 been the most fruitful of exercises.

19 COMMISSIONER JOHANSON: I understand. If  
20 you do find information out, that would be interesting  
21 to see just because --

22 MR. CAMERON: Sure.

23 COMMISSIONER JOHANSON: -- I mean, it's  
24 China, its presence in the U.S. market is very low now  
25 from what I understand.

1 MR. CAMERON: Yeah.

2 COMMISSIONER JOHANSON: Okay, thank you.

3 I'd like to move on to a price trend question. Why do  
4 you all think that underselling margins tend to be  
5 larger later in the period of investigation and what  
6 do increasingly large margins mean for a forward-look  
7 analysis in the context of a threat determination?

8 MR. DOUGAN: This is Jim Dougan from ECS.  
9 The difference in the underselling margins later in  
10 the period perhaps attributable to differences in coil  
11 costs in the foreign markets and within the U.S. In  
12 terms of its relevance, I don't know that it has  
13 relevance. I mean we've been arguing that it's not a  
14 significant factor. It hasn't led to shifts in market  
15 share and we wouldn't expect that it would going  
16 forward either.

17 COMMISSIONER JOHANSON: Thank you.

18 MR. SIMON: I'd just like to say on that, if  
19 I may, David Simon, that there is no divergence  
20 between cost and price for the domestic producers  
21 toward the end of the POI. And so whatever is going  
22 on with import prices is not having an impact on the  
23 domestic's ability to charge through their cost  
24 increases to their customers.

25 MR. CAMERON: Speaking historically and I

1 realize that we're only going to be speak historically  
2 in isolated circumstances, but there have been an  
3 awful lot of pipe cases in the past where we've heard  
4 about the cost-price squeeze. And, you know, the coil  
5 cost and we're being squeezed. Actually 2009 would  
6 have been an example of that.

7           It's really fairly striking that that isn't  
8 the situation with respect to his industry. There is  
9 no price suppression or price depression here. They  
10 are covering their costs and they are able to -- the  
11 domestic industry prices have been able to increase  
12 and I believe that that actually does get to the  
13 answer to your question in terms of the relevance of  
14 it.

15           MS. MENDOZA: Commissioner, could I make one  
16 --

17           COMMISSIONER JOHANSON: Yes, Ms. Mendoza?

18           MS. MENDOZA: Thanks. I just wanted to --  
19 so we can address it in our posthearing brief, are you  
20 referring now to the AUV data showing more  
21 underselling at the end of the period or the pricing  
22 data showing more underselling at the end of the  
23 period?

24           COMMISSIONER JOHANSON: I think it would be  
25 both actually. Maybe I'm wrong on that.

1 MS. MENDOZA: Okay, all right. We'll  
2 address both then.

3 COMMISSIONER JOHANSON: If you could just  
4 look at it, I would appreciate it.

5 MS. MENDOZA: Yes, thanks.

6 COMMISSIONER JOHANSON: Yes, thank you. Al  
7 Jazeera indicates in its brief that one reason why  
8 subject imports did not suppress prices is because  
9 subject imports oversold nonsubject product during the  
10 period of 2009 to 2012. And Kinnaris makes a similar  
11 argument in its brief. This is probably best  
12 addressed by the attorneys, but can you provide any  
13 examples of when the Commission has cited subject  
14 imports overselling nonsubject imports as a reason for  
15 not finding price suppression?

16 MR. SIMON: David Simon. We're happy to put  
17 that in our posthearing brief. But again it goes to  
18 the same issue of a two-tier market in which imports  
19 are fighting with each other and domestics are able to  
20 passthrough their cost increases in increased prices.  
21 But we'll address it in our posthearing.

22 COMMISSIONER JOHANSON: All right. I would  
23 appreciate that. I now would like to move on to kind  
24 of a different area and that concerns what is going on  
25 in other parts of the world, namely in Egypt and

1 Syria. Have you all adapted or adjusted due to the  
2 ongoing political situations in those countries? And  
3 I'm thinking of Egypt because I used to meet with  
4 Egyptian businesses every year. Once a year they  
5 would come into town -- this is when I worked on  
6 Capitol Hill -- and they were telling me how their  
7 economy was doing so well. Then all of a sudden I  
8 guess a year or two ago they just quit showing up. So  
9 I'm wondering if you all had a presence in the  
10 Egyptian market and in the Syrian market as well and  
11 that has disrupted your shipments to those countries  
12 if that is the case?

13 MR. NATU: Commissioner, Pushkar from  
14 Zenith. We don't have any presence or exports to  
15 Egypt and Syria. But from just my general knowledge,  
16 I know Egypt, the biggest supplier to Egypt is Turkey,  
17 so it possibly affected Turkey's business.

18 MR. CHOWDHURI: Al Jazeera doesn't do much  
19 in Syria, but we had a very, very small presence in  
20 Egypt. But when the political situation turned  
21 volatile, we took off our footprint.

22 COMMISSIONER JOHANSON: All right. Thank  
23 you for your responses. I only have about 25 or  
24 actually about 20 seconds left, so I will conclude for  
25 now. I have a few questions in the second round

1    though.  Thank you.

2                   CHAIRMAN WILLIAMSON:  Thank you.

3    Commissioner Broadbent?

4                   COMMISSIONER BROADBENT:  Thank you.  I  
5    appreciate all the work you guys done in your  
6    statements and I loved getting the written statement.

7    It's really helpful to me as I try to catch up here.

8                   I guess this is probably for Don, but  
9    whoever, Mr. Cameron.  In your arguments that the  
10   subject imports are not causing material injury to the  
11   industry, you note that the industry's condition has  
12   generally improved over the period of investigation.  
13   However, the industry appears to have lost about, I  
14   guess about five percentage points of its market share  
15   to the subject imports over the period and has done so  
16   when subject imports have been underselling them in a  
17   majority of instances.  Moreover, the industry's  
18   profitability levels are not exactly very healthy even  
19   in the last year of the period.  Can't we look at this  
20   as a fairly straightforward case of material injury  
21   resulting from a lost of market share due to subject  
22   underselling?

23                  MR. DOUGAN:  The answer is no.  This is Jim  
24   Dougan from ECS and I'm sure Mr. Cameron will have  
25   something to add.  But one of the things that we've

1 stressed to the Commission is that there has been an  
2 improvement since 2009, which has been a very bad  
3 year. Petitioners would argue that you can't use 2009  
4 as a benchmark. It's the worst year in 75 years and  
5 it's horrible and you can't show improvement, you  
6 know. That shouldn't be your benchmark for  
7 improvement in our profitability and other indicators,  
8 but you should use it as the benchmark for market  
9 shares. And those things are I think fundamentally in  
10 conflict from our point of view.

11           And I think, you know, we're saying is that  
12 the improvement in profitability was greatest at the  
13 time of the greatest increase in volume and market  
14 share of the imports and it's essentially been  
15 relatively -- the financial performance anyway has  
16 been essentially relatively flat since then. They've  
17 been able to pass through their cost increases. There  
18 have been some aberrational changes in the factory  
19 costs and SG&A. One time charges that we can't get  
20 into. But generally they're apart from 2009, which,  
21 you know, if it's not a benchmark for profitability,  
22 it shouldn't be a benchmark for market share.

23           2010, '11, '12, fairly consistent in a lot  
24 of different indicators regardless of the presence of  
25 the subject imports in the market. And when the

1 subject imports' market share and volume declined in  
2 the part year 2012, it didn't seem to help the  
3 domestic industry very much there. Their  
4 profitability went down as well.

5 COMMISSIONER BROADBENT: Okay. Both sides  
6 seem to agree that consumption remains rather  
7 depressed, although it is growing slightly. Doesn't  
8 this place the industry in a more vulnerable state  
9 compared to where it might be in a more robust market  
10 situation?

11 MR. CAMERON: Well, actually we don't agree  
12 with that. Consumption is growing slowing and in fact  
13 the fact that consumption is growing and it is  
14 improving in not a declining market. And the reason  
15 for citing to the AIA projections on growth in  
16 nonresidential construction again is to say, no,  
17 they're not vulnerable. Actually conditions of  
18 competition in this industry are improving and they  
19 are profitable. And we take the position that the  
20 profitability is not an unreasonable level of profit  
21 given the economic -- the position in the business  
22 cycle however normal this business cycle emerging from  
23 the great recession is.

24 And this gets back to the point that Jim was  
25 just making. If you're the domestic industry, you

1 really can't have it both ways, but they are trying to  
2 have it both ways. You can't talk about how bad 2009  
3 was, that it was the worse in 75 years, et cetera, et  
4 cetera. We agree with that. There's no question  
5 about that. But then when you're talking about what  
6 would be the expectations coming out of that,  
7 especially if overall economic growth and  
8 nonresidential construction growth is relatively slow  
9 because it's a -- you're coming out of an incredible  
10 economic time, why is it that one would think that  
11 things would be so much different and all of a sudden  
12 things are supposed to be normal like it's flicking on  
13 a light switch? That simply doesn't -- that's simply  
14 not credible.

15           So, yeah, I mean I think that what we're  
16 saying is actually they are doing pretty well. And  
17 the fact is that the projections are not to go into a  
18 double dip recession. The projections -- I grant you  
19 there is the possible fiscal cliff. There's a  
20 possible war in the Middle East. There's -- you know,  
21 there's war, pestilence, and death too, but that's not  
22 imminent, right, hopefully. So I mean what we're  
23 talking about is we're trying to make normal  
24 projections based upon the facts that we have and  
25 those facts indicate that the economy while slowly

1 growing is still growing and it is going to grow  
2 further. That's the reason that AIA revised their  
3 projections and that would be another indicator that  
4 they're not vulnerable.

5 MR. MARSHAK: It's going to grow no matter  
6 who gets elected President.

7 MR. CAMERON: We're not going to go there  
8 though.

9 COMMISSIONER BROADBENT: You argue that nons  
10 subject imports have had a more significant share of  
11 the market during the period than the subject imports,  
12 that they are priced either at the same pricing levels  
13 as subject imports or at lower price levels. As a  
14 result, you argue that the existence of these  
15 significant volumes of low-priced nonsubject imports  
16 breaks any causal link between the subject imports and  
17 material injury. However, isn't it possible that both  
18 the nonsubject and the subject imports could be having  
19 significant adverse effects on the industry at the  
20 same time? In this regard, isn't the issue whether  
21 the subject imports are a significant cause of  
22 material injury, not the most important, the largest,  
23 or the principal cause of material injury?

24 MR. CAMERON: Well, I guess first of all,  
25 this was why we -- just to get back to the issue of

1 whether or not the industry is suffering material  
2 injury and our position is that actually they are not  
3 and that is exactly the point in looking at what is  
4 the performance of the industry.

5           Secondly, it is relevant the questionnaires  
6 that the Commission collects. I mean I think that  
7 it's a reasonable question, so that's not my point.  
8 But when you're collecting questionnaires and you are  
9 asking all domestic producers, not just the people who  
10 have an interest and have counsel and have an interest  
11 in the answer, right, but all domestic producers, hey,  
12 what's the impact of subject imports on your facility.  
13 What is the impact? And just all you've got to do is  
14 check it off. I mean I don't need a five-page thesis.  
15 I just want you to check off what it's going to be.  
16 And when you've got seven out of 12 or seven out of 13  
17 who say, no, there is none, that's kind of an  
18 indicator that there is something very strange going  
19 on here.

20           And I say that because we've been involved  
21 in a lot of pipe cases in the past and generally  
22 speaking, you don't get that no in the has there been  
23 any adverse impact. Do you expect any adverse impact?  
24 Again when the answer is no from a broad swath of  
25 domestic producers, it kind of raises a serious

1 question.

2                   And then you look at the next question about  
3 the prices, the price rollbacks, the price reductions.  
4 Have you had any price reductions because of subject  
5 imports? I guarantee you that in the Chinese case,  
6 which I was not a party to, I guarantee you that you  
7 didn't have very many nos checked off by domestic  
8 producers in response to that question. And I'm sure  
9 there wasn't one concerning price reductions. But you  
10 have eight out of 12 here. Now again that's strange.

11                   MS. MENDOZA: And Commissioner, the only  
12 thing that I would add to that is that in addition to  
13 those other producers making those statements, what  
14 you also have here is that most of the nonsubject  
15 imports are actually subject to an order. In other  
16 words, the Commission has to assume that they're  
17 fairly traded. And I think it's clearly our position  
18 that during this period there wasn't material injury  
19 to the domestic industry from imports at all. In fact  
20 if you look at their ability to raise their prices and  
21 reduce the amount that the raw materials constituted  
22 of their sales value, that's a very good indicator  
23 that in fact they were doing quite well under the  
24 conditions of this market.

25                   MR. DOUGAN: Commissioner Broadbent, if I

1 may add something to that. And in addition to what  
2 Mr. Cameron and Ms. Mendoza have said, the fact that  
3 there haven't been significant lost sales and lost  
4 revenue allegations, it is important towards this end.  
5 It sort of dovetails with the qualitative responses to  
6 the no rollbacks and the no negative impact. And I  
7 think again those answers would have been very  
8 different in the prior cases.

9 But it also goes to the larger sense of, you  
10 know, they don't -- the domestic producers don't have  
11 a sense that this can be tied to a particular source.  
12 And even by Mr. Schagrin's own admission this morning,  
13 the reason that these producers may have responded  
14 that way is, well, you know, we can't really tie this  
15 to any particular source. So I think it all leads to  
16 a very unclear picture.

17 MR. CAMERON: The one thing is Chart 4 that  
18 was part of the handout this morning, which is the  
19 changes in purchase patterns from U.S. subject and  
20 nonsubject and the number of responding purchasers who  
21 did not purchase from subject producers. And again,  
22 it's very rare that we see this. That's the reason  
23 that in nonsubject, it's only eight percent, right,  
24 and for the United States industry it's only 12  
25 percent for the purchasers. But for the purchasers,

1 it's roughly 60 percent for the entire subject  
2 countries. Again, this is another indication that  
3 understanding the premise of your questions, where are  
4 subject imports here, because they are not -- they  
5 couldn't pinpoint it and really it's not self-evident  
6 in the record.

7           So I understand their argument that, hey,  
8 this is another pipe case. We're a petitioner.  
9 You've got to give it to us because we're a pipe  
10 industry. Well, frankly the data doesn't support it.

11           COMMISSIONER BROADBENT: Well, I guess I'm  
12 looking at these market share numbers just as we try  
13 to parse out the difference between subject and  
14 nonsubject. So the subject imports were able to  
15 increase their market share by five percent to 2009 to  
16 2012 and that the nonsubject were stable at about 20  
17 percent. So this kind of suggests that the subject  
18 imports are competing more aggressively in the market  
19 as compared with the nonsubject imports and having a  
20 more significant impact on the domestic industry's  
21 market share and other related indicators.

22           MR. SIMON: If I could just add -- David  
23 Simon -- a small piece to this. You don't see it in  
24 the Commission's analysis so much, but if you look at  
25 the import statistics, the actual HTS 730630 import

1 statistics, Canada is about a third of -- Canada is  
2 like 222 out of 714,000 tons and that goes into the  
3 market in the same way pretty much the domestic  
4 product goes into the market. So you have to take the  
5 overall import picture with a bit of a grain of salt.

6           If you look at nonsubject imports and  
7 subject import penetration, even giving you the 2009  
8 baseline, which I would suggest to you is an  
9 aberration, but even given that, I would suggest to  
10 you that between 2009 and 2012, they're the same.

11           MS. MENDOZA: One other thing, I think if  
12 you look at the absolute volumes of imports, you can  
13 see the growth between 2009 and 2010. The amount, the  
14 absolute amount of the growth is very similar of  
15 subject and nonsubject. And that's actually the year  
16 where they recover, right. They recover from that  
17 2009 loss and they start showing a profit.

18           Then what you have is in 2011, that's when  
19 subject imports increase more than nonsubject imports  
20 and actually their profit stayed very well. I mean I  
21 can't go into -- we have sort of redone the data  
22 because we think there are some issues that staff has  
23 identified that we very much agree with. But let me  
24 just say, I mean, it's pretty level. And that's the  
25 time, 2011, that's when subject imports on an absolute

1 level increased more rapidly than nonsubject imports.  
2 I mean there just is not much difference between 2009  
3 and 2010.

4           So I think you can't attribute -- I mean you  
5 can talk about, you know, percentages and how much  
6 they increased, but the absolute volumes really do  
7 matter. And if you look at that indicator in 2011,  
8 what you see -- I mean in 2010, what you see is both  
9 of them -- I think one increases by 70,000 tons and  
10 one increases by 60,000 tons. So there's really not  
11 that much of a difference.

12           COMMISSIONER BROADBENT: Thank you, Mr.  
13 Chairman. Sorry.

14           CHAIRMAN WILLIAMSON: Thank you. I'm going  
15 to be skipping around because there's a lot of issues  
16 out there. Mr. Dougan, this morning the Petitioners  
17 talked about in thinking about profitability, you've  
18 got to take into account cost of capital and they were  
19 talking about eight, nine percent cost and that if  
20 you're going to look at their profitability, you have  
21 to take that into account. And no one this afternoon  
22 has said anything about that. So how would you  
23 comment on that?

24           MR. DOUGAN: We haven't said anything about  
25 it mostly because it's certainly a novel argument on

1 their part I think because perhaps the numbers aren't  
2 working out on the operating level the way that they  
3 would prefer.

4           Typically, and this is the Commission's  
5 typical practice, is to look at the operating margin  
6 because that reflects conditions of competition in the  
7 marketplace and anything below that has to do with  
8 firm's respective capital structures and how they  
9 decide to finance themselves. And that is a different  
10 issue than what's going on in the marketplace and  
11 what's relevant to the competition between subject  
12 imports and the domestic industry.

13           So we can talk a little bit more about this  
14 in the posthearing brief. I'll give it some more  
15 thought. But to me it's something of a side issue  
16 that is detracting from what's at issue here, which  
17 has to do with the competition and the causation  
18 between any injury that they may be suffering and  
19 whether it's been caused by subject imports. So, I  
20 mean, financing issues that the domestic industry may  
21 or may not be experiencing, it's difficult to say that  
22 that is in any way caused by subject imports.

23           CHAIRMAN WILLIAMSON: But it does address  
24 the question of the company's vulnerability, ability  
25 to go forward, ability to make investments, capital

1 improvements, and to stay competitive. Is that true?

2 MR. DOUGAN: Financing is a consideration in  
3 moving forward with capital investment and I'll have  
4 to give it some thought for the posthearing about how  
5 relevant that is and whether that's something that  
6 weighs -- or how that weighs for the Commission's  
7 determination.

8 CHAIRMAN WILLIAMSON: Because if the  
9 importers -- or the foreign exporters are getting  
10 heavily subsidized loans and all that, you're going to  
11 be here screaming about, hey, this affects  
12 competition. I'm not saying they are. What I'm just  
13 saying is that --

14 MR. CAMERON: Thank you, thank you.

15 CHAIRMAN WILLIAMSON: -- but I'm just saying  
16 is that it would seem like it is relevant here.

17 MR. CAMERON: Well, I mean, we'd also like  
18 to look at the 10 percent cost given what interest  
19 rates are today. That did seem a little bit high to  
20 us.

21 CHAIRMAN WILLIAMSON: Okay, thank you.  
22 That's fair enough.

23 MR. CAMERON: But it's not our data either.  
24 So --

25 CHAIRMAN WILLIAMSON: I just didn't want you

1 to ignore that.

2 MR. CAMERON: We will not. Okay.

3 CHAIRMAN WILLIAMSON: Okay, thank you. The  
4 other thing I was kind of wondering about is you've  
5 kind of suggested that there's almost like three-tier  
6 markets and really that the imports -- subject and  
7 nonsubject imports are sort of competing down here in  
8 one class and the domestic industry is off there in  
9 another class and there's a premium for domestic  
10 product. And yet nobody has ever attached any value  
11 to how much of a premium there is or how you measure  
12 it. And also in terms of what we got when we looked  
13 at purchaser, the data about purchaser preferences and  
14 how they evaluated imports, both subject and  
15 nonsubject, to domestic product. You don't see any  
16 kind of shall we call it tiers or clear  
17 categorizations here.

18 So what's the basis for saying that we  
19 should sort of think of subject and nonsubject as  
20 being one place and the domestic industry off in a  
21 class by itself?

22 MS. MENDOZA: Well, I mean, I think that --  
23 Commissioner Williamson, this is Julie Mendoza. I  
24 think that we actually did hear that today from the  
25 domestic industry panel. I mean we had two

1 distributors who testified to the fact that there  
2 were, in fact, price premiums for domestic products  
3 because they had just-in-time delivery, they didn't  
4 have long lead times, they didn't have to keep all the  
5 inventory. I mean two different witnesses at two  
6 different points both said that and that they would  
7 prefer to buy from domestic producers because of all  
8 of those natural advantages. In fact, I think they  
9 even made a point about how imports weren't even cost  
10 competitive based on those factors. So I think that  
11 they, themselves, have agreed to that.

12 CHAIRMAN WILLIAMSON: I don't remember them  
13 going that far. I think what they are saying is even  
14 with all these advantages, we're still getting  
15 undercut. That's what I heard from them.

16 MS. MENDOZA: Well, I mean if you look at  
17 their pricing over the period, I mean it's going up.  
18 So I mean it's not being depressed and I don't think  
19 there's any real evidence that it's being suppressed  
20 either. I mean you saw prices really increasing. I  
21 mean the value of shipments went up a very significant  
22 amount over the period.

23 CHAIRMAN WILLIAMSON: But then you'll argue  
24 that really the price is very much determined by the  
25 cost of the hot-rolled steel, that was the primary

1 driver.

2 MS. MENDOZA: I think that that is the  
3 primary driver. I think they said that. I mean even  
4 in their petition they said it, right? I mean they  
5 said, look, to know how we're going to do, we look at  
6 coil prices and the question is how much can we price  
7 above that. And if you look at the raw material costs  
8 compared to the value of sales of the period, it got  
9 really good for them. I mean you saw the slide that  
10 we had and it really improved. So I think that's the  
11 evidence in the record and not sort of what they say  
12 about what they think is the right answer.

13 MR. DOUGAN: Chairman, if I may just add to  
14 that --

15 CHAIRMAN WILLIAMSON: Go ahead.

16 MR. DOUGAN: -- in response to both what Ms.  
17 Mendoza and you said, you said that what you thought  
18 you heard from the distributor witnesses was, you  
19 know, despite all these advantages to domestic  
20 production, we're still getting undercut. What I  
21 would say is it is because of the advantages to the  
22 domestic producer's supply that they are undercut in  
23 the sense that of course it's going to be a cheaper  
24 price for the import with the length of the lead time,  
25 the size of the purchase they have to make, and the

1 amount of risk that they take with respect to that and  
2 changing prices in the interim.

3           One of the witnesses said, and I don't have  
4 a transcript, so I can't quote directly, but he said  
5 something about the increased -- the lower inventory  
6 carrying cost and the amount at which they're able to  
7 turn their inventories more rapidly using a domestic  
8 supply is the reason that they would pay the premium  
9 because they get a return on that investment that  
10 would offset any price differential, a lower price on  
11 the import side and that when there was a narrowing  
12 gap between the domestic price and the import price,  
13 once that undercutting got less, then it ended up sort  
14 of being less of a premium. So the idea that the  
15 premium exist and that this is something consider I  
16 think was substantiated.

17           CHAIRMAN WILLIAMSON: Okay. Well, I'll  
18 allow them to maybe posthearing address what --  
19 because I sure didn't hear anything about premium  
20 percentages. And if it was advantageous --

21           MR. CAMERON: There were no percentages.

22           CHAIRMAN WILLIAMSON: -- for them, they sure  
23 were complaining this morning. Where's the advantage?

24           MR. CAMERON: Well, there were no  
25 percentages that were attached, but for certain they

1 did agree -- well, I thought they agreed and we'll  
2 check the transcript as I say, but that there is a  
3 lead time advantage and there was a premium that goes  
4 with that. And moreover because of that lead time,  
5 there's also the issue of the inventory turnover time.  
6 And what they suggested was because we can turn over  
7 inventory more than five times, we can do it pretty  
8 rapidly. By being able to do it pretty rapidly, they  
9 can get more of a return on their investment. That  
10 also is part of the premium.

11 So they identified the concept. They didn't  
12 put a number on it, but I think that it was pretty  
13 clear this morning. We'll be glad to check and we'll  
14 elaborate in our posthearing brief.

15 CHAIRMAN WILLIAMSON: So what conclusions  
16 can we draw from this --

17 MR. CAMERON: Sure.

18 CHAIRMAN WILLIAMSON: -- because I think  
19 they were drawing different conclusions.

20 MR. CAMERON: Okay. I don't think they drew  
21 different conclusions. I think they said, yeah, this  
22 is an -- that this exists. That doesn't mean that  
23 we're not being, you know, injured by imports.

24 MR. SIMON: David Simon. I mean I think  
25 that the distributor witnesses testified that there is

1 a two-tier market structure.

2 CHAIRMAN WILLIAMSON: Okay. Well --

3 MR. SIMON: That's the point.

4 CHAIRMAN WILLIAMSON: Okay.

5 MR. SIMON: And when there's a two-tiered  
6 structure, the tiers are not competing directly  
7 against each other. There's competition within each  
8 of them.

9 CHAIRMAN WILLIAMSON: Well, I will leave it  
10 to the Petitioners to clarify whether or not that was  
11 what they were supposed to be saying.

12 MR. CAMERON: Fair enough.

13 CHAIRMAN WILLIAMSON: Because that's not  
14 what I heard. Mr. Schrupf, you talk about  
15 specialized products and that there's some things that  
16 domestics don't produce. I was just wondering, how  
17 large is this because sometimes we've heard people  
18 talk a lot about a whole lot of specialized things and  
19 then you look at the numbers. You know, it's a  
20 commodity product and it's really pretty small. In  
21 other words, what I'm trying to do is evaluate how  
22 significant or how much weight to attach to this.

23 MR. SCHRUMPF: I'm misunderstanding, I'm  
24 sorry.

25 CHAIRMAN WILLIAMSON: Okay.

1 MR. SCHRUMPF: Just give me one second.

2 CHAIRMAN WILLIAMSON: Counsel is giving you  
3 good advice there.

4 MR. CAMERON: Well, he's asking how  
5 significant are the niche products that you're saying  
6 that you sell and to the extent that that figure is  
7 going to be confidential in terms of tonnage or in  
8 terms of the percentage of your sales, then just tell  
9 him that you'll give it to him in the posthearing  
10 brief.

11 MR. SCHRUMPF: I would assume that my  
12 counsel would be correct there.

13 CHAIRMAN WILLIAMSON: Good follow, counsel.

14 MR. CAMERON: Thank you.

15 CHAIRMAN WILLIAMSON: Okay, thank you. My  
16 time has expired. Commissioner Pearson?

17 COMMISSIONER PEARSON: Thank you, Mr.  
18 Chairman. Mr. Dougan, if in response to the  
19 Chairman's question about the returns to capital for  
20 the domestic industry, if you have a chance to take a  
21 look at that, you might do so in the context of an  
22 industry that has only a 50 percent capacity  
23 utilization rate because we see many cases here where  
24 if the throughput of an industry is so low, we would  
25 expect lots and lots of red ink in terms of the

1 operating margin. And we're not observing that here  
2 in the most current periods. And so you would want to  
3 help me understand whether there's consistency or  
4 incongruity in that. And frankly if the domestic  
5 industry wishes to elaborate on that, I'd be most  
6 happy to see your thoughts also.

7 MR. SIMON: Commissioner, if I can be heard  
8 on that real briefly?

9 COMMISSIONER PEARSON: Certainly, Mr. Simon.

10 MR. SIMON: Different producers are claiming  
11 different hours per week, widely different hours per  
12 week as their basis for their capacity figures and I  
13 would suggest to you that those capacity utilization  
14 figures are very soft.

15 COMMISSIONER PEARSON: Not exactly a unique  
16 observation for a pipe case.

17 MR. SIMON: Of course, I understand.

18 COMMISSIONER PEARSON: I've never been able  
19 to make sense of it. But if indeed the industry has  
20 that much unused capacity, how anybody in the domestic  
21 industry can make any money is just beyond me.

22 MR. SIMON: They've always had that much  
23 unused capacity.

24 MR. DOUGAN: Jim Dougan from ECS. And  
25 Commissioner Pearson, one thing I would add, this is

1 something that you're of course I'm sure aware of,  
2 when you look at the data about the different  
3 varieties of products that are made on the same plant  
4 and equipment, over the POI the subject merchandise  
5 was only about 25 percent of the total. So presumably  
6 these plants and these mills that they're making this  
7 on, I mean, they're running a majority of something  
8 else here. And so the conditions of competition and  
9 the profitability in those sectors obviously would  
10 have something to do with not only just their  
11 performance overall, but what their outlook is for  
12 profitability and ability to borrow.

13 COMMISSIONER PEARSON: Okay.

14 MR. SIMON: If I could make one more small  
15 point. This case covers not just A53 for carriage of  
16 -- low pressure carriage of liquids and gases, it also  
17 covers non-hydrostatically tested pipe. But we heard  
18 testimony today that there are -- that the capacity  
19 utilization for structurals is better than it is for  
20 standard pipe. This is not just standard pipe that  
21 we're talking about in this case. I'm not sure  
22 whether the domestic industry has answered their  
23 questionnaires in that way.

24 COMMISSIONER PEARSON: Thank you. There  
25 already have been some comments relating to non-

1 attribution and what we do in this case with Bratsk  
2 and Mittal. I guess my basic question to you is  
3 similar to what I asked to the domestic industry. Can  
4 we write a negative on the basis of Mittal and get it  
5 to survive at the Court of International Trade or at  
6 the Fed Circuit?

7 MR. CAMERON: I mean, we think so. I mean I  
8 think it's pretty fundamental, but -- Will, do you  
9 want to add to this?

10 MR. PLANERT: Well, yeah, I think that what  
11 Mittal makes clear is you still -- at the very least,  
12 you have to be able to have some actual connection  
13 between the subject imports and the supposed injury  
14 and I think what we're seeing here is that it's very  
15 hard to find that on this record. That's why this  
16 morning they read to you your findings from the recent  
17 sunset case where it was much easier. And basically  
18 the inference they wanted you to make is, well, you  
19 know, and you look the sunset case, which dealt with  
20 what for this case are the nonsubject imports, you've  
21 made all these findings about what adverse effects  
22 were flowing from those imports and would continue to  
23 flow from those imports if the orders were removed.  
24 And the unspoken implication is, well, and it's the  
25 same thing here.

1           But you kind of have to demonstrate that on  
2 the record and I think our point is that we don't  
3 think that's been done here. The volumes here are  
4 smaller. The connection between -- the trends  
5 analyses are not coinciding in a way that suggests  
6 causation. So, yes, we think that you can write a  
7 very strong opinion that would basically say that  
8 given among other things the presence and the behavior  
9 of nonsubject imports, you really don't have a basis  
10 for finding a causal connection between the subject  
11 imports and whatever negative consequences have taken  
12 place during this period.

13           COMMISSIONER PEARSON: Okay. Well, those of  
14 you who have appeared in front of me often enough can  
15 figure out that this is one of those cases where I can  
16 see losing it either way and it's a very intriguing  
17 case in that respect.

18           MR. CAMERON: I will suggest to you that --  
19 and this Commission has always followed this and I  
20 happen to believe they're right in this, you make the  
21 decisions that you think are right, not what you think  
22 that is going to be upheld by the court. You're  
23 making your decisions based upon your analysis of the  
24 law as you see it, as the courts have interpreted it.  
25 And yeah, you're right, you know, you can always lose

1 in court, okay. I mean, there are worse things that  
2 happen, but you've got to make the best decision you  
3 can.

4 COMMISSIONER PEARSON: Yes. This is I think  
5 though the first case where we have had the occasion  
6 so directly to apply the guidance that you received in  
7 Mittal, okay.

8 MR. CAMERON: That, I don't disagree with.  
9 I mean this is a clear -- this is the strongest case  
10 you've had to date and it's actually a fairly stark  
11 case. We do agree with that.

12 COMMISSIONER PEARSON: And I just know lots  
13 of ways to do things wrong, that's all. This may be  
14 my final question and perhaps you've answered this in  
15 your prehearing brief and I need to go back and look  
16 at it. But assuming we get to the issue of threat,  
17 are you recommending that we cumulate or is there a  
18 basis for decumulating that you have suggested or  
19 would suggest?

20 MR. MARSHAK: For India, we suggest  
21 decumulation. When you look at the historical pattern  
22 of Indian shipments into the United States and  
23 conditions of competition regarding the Indian  
24 product, we believe there's a significant difference  
25 between India and the other three countries. But even

1 if you cumulate it, we believe there's no threat. So  
2 it's either way, but just from our perspective, India  
3 should be looked at separately because it really had a  
4 different presence in the market than the other  
5 countries from the beginning and it has different  
6 conditions of competition and a different reaction in  
7 2012. So we'd like you to look at India separate, but  
8 overall we think cumulated also no threat.

9           The other point, a little totally different  
10 in this case, there's an order -- an antidumping duty  
11 order in effect on India CWP. So basically, this case  
12 is about one company, you know, our client Zenith.  
13 It's about their capacity, their capacity utilization.  
14 You know, we're talking about a one company case,  
15 which is unique, and another reason in our mind to  
16 decumulate.

17           COMMISSIONER PEARSON: MR. Simon?

18           MR. SIMON: Yes, David Simon. Oman is  
19 definitely arguing that you should not cumulate for  
20 purposes of threat. Our patterns are somewhat  
21 different and our conditions of competition are  
22 completely different, particularly with respect to our  
23 competitors in India and Vietnam.

24           COMMISSIONER PEARSON: Okay. Ms. Mendoza?

25           MS. MENDOZA: I mean, basically for the UAE,

1 we're arguing it on a cumulated threat basis because  
2 we believe the evidence is so compelling that there's  
3 no reason really to look at anything beyond threat on  
4 a cumulated basis.

5 COMMISSIONER PEARSON: Okay. With that I  
6 think I'll pass for now. Thank you, very much, for  
7 your contributions here today and I look forward to  
8 the posthearing briefs. Thank you, Mr. Chairman.

9 CHAIRMAN WILLIAMSON: Thank you.  
10 Commissioner Aranoff?

11 COMMISSIONER ARANOFF: Thank you, Mr.  
12 Chairman. Commissioner Pearson just took most of my  
13 remaining questions. Going at the non-attribution  
14 question in a slightly different way, if the  
15 Commission were to conclude that nonsubject imports  
16 and subject imports have been the lowest priced in the  
17 market with about equal frequency during the period of  
18 investigation, which is what you argue, would that  
19 preclude a finding of injury based on either adverse  
20 price effects from subject imports, which we've had  
21 some argument about, or alternately loss of domestic  
22 market share due to significant underselling by  
23 subject imports, which I know was my basis for my  
24 determination in the preliminary?

25 MR. DOUGAN: With respect to the loss of

1 market share, I mean I think our kind of argument was  
2 that we're not entirely conceding on the benchmark of  
3 2009 as the loss market share. So with that respect,  
4 I would say that the underselling didn't lead to any  
5 change of that nature and so it would -- making sure I  
6 get the double negative right -- preclude an  
7 affirmative finding on price effects in that aspect.

8 Did I answer that half of the question?  
9 Could you repeat -- the first one had to do with just  
10 adverse --

11 COMMISSIONER ARANOFF: The first one had to  
12 do with a finding adverse price effect and the second  
13 one -- injury based on adverse price effects and the  
14 second one had to -- which you've already answered,  
15 had to do with finding injury based on a loss of  
16 market share due to underselling. And I think you  
17 answered the second one.

18 MR. DOUGAN: Okay. I would say that it also  
19 precludes an affirmative on price effects because --  
20 on adverse price effects rather because it's -- I  
21 think it would be just difficult to attribute that and  
22 prove that any adverse price effects first of all had  
23 occurred because I think we're seeing no depression  
24 and no suppression. And so in some sense, the adverse  
25 price -- any adverse price effects from subject

1 imports have bene felt by nonsubject imports as  
2 opposed to the U.S. industry itself. That would be my  
3 interpretation and that's what I think a lot of the  
4 evidence on the record does show.

5 COMMISSIONER ARANOFF: Okay. I would only  
6 comment as you're thinking posthearing about  
7 Commissioner Pearson's questions on non-attribution,  
8 that I think is a case that posits the age-old  
9 question, what does it mean to be more than de  
10 minimis.

11 Okay. By the way, Mr. Chairman, I have  
12 absolutely no idea how much time I have since the dust  
13 cleared.

14 CHAIRMAN WILLIAMSON: I figured you got  
15 about eight minutes.

16 COMMISSIONER ARANOFF: All right.

17 CHAIRMAN WILLIAMSON: Okay.

18 COMMISSIONER ARANOFF: I only have on more  
19 question. I almost hesitate to ask this, but I think  
20 it's only fair to ask it and that is to task this  
21 panel whether any of you wanted to respond to the  
22 exhibit we saw this morning with the Blackberry  
23 pictures of the pipe from India. I see we have a  
24 volunteer.

25 MR. MARSHAK: As counsel for Zenith, we can

1 categorically absolutely say that's not our product.  
2 We have not shipped. We have not transhipped.  
3 There's no evidence of transshipment. Just looking at  
4 India in general though, even more, you know, there's  
5 no evidence when that merchandise came into the United  
6 States, when it was imported. It's sitting in a  
7 store, somebody takes a picture in a store. That  
8 could have been imported in the United States a year  
9 ago, six months ago, two years ago.

10 As to the quantity of the merchandise, no  
11 evidence. And frankly, you know, we don't think they  
12 should be making statements like this, allegations,  
13 totally unsubstantiated allegations to the Commission  
14 in a case like this. If they have a problem, take it  
15 to Customs, make their allegations, but it has no  
16 place on the public record. We categorically deny  
17 that for our client and we believe that, you know,  
18 just ignore it. You know, I'm not going to say you  
19 should look from where it came from and say something  
20 bad about them. Just ignore it.

21 MR. CAMERON: Commissioner, just one thing  
22 about that. Frankly, we take allegations of fraud  
23 seriously and Mr. Schagrin says that he has taken this  
24 to Customs. That's what he should do. Frankly, fraud  
25 hurts every legitimate producer here, foreign,

1 domestic, subject merchandise. It doesn't occur in a  
2 vacuum. It is a problem. I'm not sure it's as  
3 widespread as Petitioners believe.

4 But there's a separate question here, and  
5 that is what is the relevance of that picture and that  
6 issue to this proceeding, and I would suggest to you  
7 that it's a red herring and, you know, I mean, it was  
8 kind of thrown out there to provoke a reaction, but I  
9 don't see the legal relevance of it to be frank with  
10 you. So I think that fraud is relevant to a lot of  
11 things, but that's not what this issue is here.

12 COMMISSIONER ARANOFF: I think the  
13 allegation is that the decline in imports from India  
14 that we seen in the data --

15 MR. CAMERON: It's not real.

16 COMMISSIONER ARANOFF: -- interim period is  
17 not real or is --

18 MR. CAMERON: Okay. This is the guy behind  
19 the tree issue on taxes. Don't tax you, don't tax,  
20 me, tax the guy behind the tree. That's what this is.

21 The imports from India can't be, and as a  
22 matter of fact China either. If he's got record  
23 evidence to suggest that, if he's got quantities and  
24 values, put them on the record. If not, I don't want  
25 to hear about it.

1 VOICE: I just want to say one thing more  
2 about India. Again, India is about one company. It's  
3 about Zenith. Any fraud allegation about Zenith is  
4 totally and completely incorrect and improper.

5 So the Indian case is a Zenith case. That's  
6 what you're looking at. You're looking at imports  
7 from Zenith, the only company that's not subject to an  
8 order already. Just, we'll be charitable and ask you  
9 to ignore it.

10 COMMISSIONER ARANOFF: Okay. With that I  
11 don't have any further questions. But I do want to  
12 thank this panel for all your answers. Thank you, Mr.  
13 Chairman.

14 CHAIRMAN WILLIAMSON: Thank you.

15 Commissioner Pinkert?

16 COMMISSIONER PINKERT: I just have a couple  
17 of follow-ups.

18 Going to this question of whether the  
19 domestic industry is vulnerable, the domestic industry  
20 argues that recent plant closures demonstrate that the  
21 industry is having difficulties in raising its prices  
22 to match costs. Do you agree with that allegation?

23 I know you said that the industry is not  
24 vulnerable, but how do the recent plant closures fit  
25 into your argument?

1 MR. DUGAN: Jim Dugan from ECS.

2 The idea that the domestic industry is  
3 having difficulty recovering their costs certainly in  
4 the aggregate is not substantiated by evidence on the  
5 record. The COGs to sales ration and the raw  
6 materials to sales ratio are pretty black and white on  
7 that point.

8 When you look at -- Anyway, I think that  
9 answers that part of it.

10 With respect to what indication it has for a  
11 vulnerability, I think we'll have to look at more --  
12 there is some discussion in the public press and so on  
13 for the reasons that one thinks that some of these  
14 plants were closed. And if it's a consolidation of  
15 capacity to be more competitive and effective, that's  
16 something that would suggest the industry is less  
17 vulnerable, not more vulnerable.

18 I don't have it in front of me but I think  
19 there are at least some articles we'll put in the  
20 posthearing that suggest pretty much exactly that.

21 COMMISSIONER PINKERT: Thank you.

22 Mr. Schrupf, I saw you shaking your head or  
23 gesturing in some way. Can you give us some --

24 MR. SCHRUMPF: I'm agreeing with what he was  
25 having to say. I think commercially in our industry,

1 just word that these mills wanted to shut down and  
2 they wanted to consolidate and the changes of  
3 ownership of the different companies have been the  
4 reason why these closed down. It was more for  
5 corporate greed of the corporations that are against  
6 us and the closures of some of these mills.

7 COMMISSIONER PINKERT: So you were agreeing  
8 with him.

9 MR. SCHRUMPF: I'm agreeing with James.

10 VOICE: Not related to import competition.  
11 But to competitiveness in general.

12 MR. DUGAN: It's competitiveness here.

13 MR. MARSHAK: If you just look at page VI-4,  
14 the data, 2009. You had the greatest recession in 75  
15 years, and you had 11 companies, 16 with losses. You  
16 compare it to 2012, 3 out of 15 with losses, 12 are  
17 profitable now. They've done very well compared to  
18 the rest of the economy to come out of the great  
19 recession. Just look at them compared to everybody  
20 else. We're all vulnerable. I would suggest that  
21 they're less vulnerable or better off or stronger than  
22 a lot of other industries and a lot of other people in  
23 this country. They've done great compared to  
24 everybody else. It was a horror show, what happened  
25 in 2008, 2009. They've done tremendously compared to

1 what could have happened. That's not vulnerability in  
2 my opinion.

3 MR. SIMON: Commissioner, you asked your  
4 question in the context of a cost/price squeeze, but  
5 if you look at the ECS Exhibit 5, the chart between  
6 costs and price, the cost of coil went down in 2012 by  
7 a lot more than the price went down. So prices are  
8 stronger than their underlying cost structure.

9 COMMISSIONER PINKERT: Are you speaking now  
10 in the aggregate?

11 MR. SIMON: I'm speaking with respect to the  
12 prices in the price table which is the quarterly data.  
13 I'm not sure how you mean in the aggregate.

14 COMMISSIONER PINKERT: Of course my question  
15 had to do with the specific plant closures. Can you  
16 kind of break down the data so that we could see  
17 whether what you're saying about the industry as a  
18 whole is also true about those plant closures?

19 MR. SIMON: I don't have any way to do that.  
20 When you asked the question you said in the context  
21 of this inability to recover costs. I just wanted to  
22 point out that there is an ability to recover costs.

23 Mr. CAMERON: We'll see if we can find some  
24 information with respect to the plant closures and try  
25 to address the question more specifically in the

1 posthearing brief if that will help.

2 COMMISSIONER PINKERT: Thank you. It always  
3 helps to have information that is relevant to the  
4 issues that we have to deal with.

5 MR. CAMERON: I agree, but it's a problem of  
6 not actually our data, so it's very difficult to get,  
7 but we will do the best we can. We hope that the  
8 other side will put data on the record too.

9 COMMISSIONER PINKERT: I would ask the other  
10 side to address this issue as well in the posthearing.

11 Finally, going back to Zenith for a second.

12 You've made the argument, and you've  
13 reiterated the argument that the issue before us with  
14 respect to India is a one producer issue. The  
15 Petitioners on the other hand argue that if Zenith is  
16 the only Indian producer not subject to a duty in the  
17 United States, then that makes them more likely to  
18 ship to the United States because they face  
19 competition in the Indian market from other producers.  
20 Even though those producers would not be before us in  
21 this particular proceeding.

22 Can you address that argument?

23 MR. MARSHAK: This is one of the reasons  
24 we've given you information going back to the late  
25 1990s regime. If you want to put Zenith in a

1 historical context, they've not been subject to the  
2 order from India since 1986. So they've had this  
3 tremendous advantage over all these other Indian  
4 companies and look what they've done. They have  
5 responded very responsibly. They did not all of a  
6 sudden become the dominant player in the U.S. market.  
7 They sell in the home market, they sell to third  
8 countries, they sell to the United States, they have a  
9 small market share, they have a relatively stable set  
10 of major customers over time. So we want you to look  
11 at Zenith in the historical perspective of how they've  
12 been operating for the past 12 years, the past 15  
13 years, as a responsible, small, relatively small  
14 supplier to the United States market. When they had  
15 the opportunity years ago to increase their capacity  
16 because they had this advantage over many, many other  
17 companies in India. They didn't take advantage. They  
18 have their customers, they don't go to flood the  
19 market, they have responsible pricing, always selling  
20 in the home market, relatively the same percentage  
21 home market to the United States. When China came  
22 into the U.S. market they were creamed. They were  
23 totally out of the market.

24 Now when China's out they came back, and  
25 they came back through their long-time steady

1 customers coming back to them, not with them when  
2 China's gone, not with Zenith going and seeking out  
3 all these new customers to take additional market  
4 share. They just go back to where they were before,  
5 the same steady, responsible presence in the United  
6 States market. We're saying, looking at the history  
7 and all the data that we've given you, more than we  
8 would usually do for most Respondents because we  
9 wanted to look at historically.

10 They're responsible, they're steady, they're  
11 non-injurious.

12 COMMISSIONER PINKERT: Thank you. I have no  
13 further questions for the panel at this time.

14 CHAIRMAN WILLIAMSON: Thank you.

15 Commissioner Johanson?

16 COMMISSIONER JOHANSON: Thank you, Mr.  
17 Chairman.

18 The fact that several domestic producers  
19 reported neither actual nor anticipated negative  
20 effects from subject imports has been raised today. A  
21 straight count of the companies reporting no negative  
22 effects may show a majority, but does the size of  
23 these companies matter? In other words, should all  
24 responses be weighted equally? If only small  
25 companies answered no, does that support the

1 Petitioners' position? And if that is the case, could  
2 it be that the smaller producers do not have the same  
3 information or as good information as to the larger  
4 producers?

5 MR. CAMERON: I think there are two ways to  
6 look at it. We have looked at that issue. The reason  
7 we thought it was fair to look at it in terms of the  
8 number of producers is that you have a finite number  
9 of producers and you're asking to try and find out  
10 what impact do you have and what have you seen in the  
11 marketplace.

12 The answers actually are even funnier than  
13 that when you look at some of the responses. There's  
14 actually some fairly significant producers in this  
15 market. I think we have described some of those  
16 responses in our prehearing brief and we'll discuss  
17 them further in the posthearing brief.

18 I don't think there's any validity to doing  
19 a weighted average on that. All you're doing is doing  
20 a survey. You're doing a survey of okay, so for your  
21 product, for your company, have you seen any?

22 I will agree with you to the limited extent  
23 that if one producer, and there is a producer with an  
24 extraordinarily small percentage of its production of  
25 this product, that okay, we can -- I would concede to

1 you that all right, maybe they are not going to be as  
2 aware because they don't care. Right? It's not that  
3 significant.

4 But that's not characteristic of all of the  
5 producers that replied negative to that question which  
6 is the reason that when responding to the question  
7 posed by Commissioner Aranoff this morning we got this  
8 long exegesis that essentially was either the dog ate  
9 his homework or well, I mean if they said yes, they'd  
10 have a lot more work to do.

11 Are you serious? I've never heard an answer  
12 like that in my life and I've been doing this 30  
13 years.

14 I guess at the end of the day there's a  
15 number. The reason that you guys take these surveys  
16 is to say okay, this was the industry. So who's  
17 finding impact and who isn't?

18 Then you can draw the conclusions that you  
19 want to.

20 What we're suggesting is no. That answer to  
21 that one question does not determine the answer to  
22 this case.

23 What we are suggesting to you is that it is  
24 more relevant information, which of course is exactly  
25 the reason that you have these questionnaires in the

1 first place. It is simply one more data point to put  
2 into this and ask, geez, I mean is that normal in  
3 these cases? That's really the question that you're  
4 asking. And is it the only question on there that  
5 came out that way?

6 If it were you said okay, maybe, but then  
7 you get into the prices and it's the same thing. You  
8 actually have one more producer that says it.

9 It starts to be a cumulation of indicators.

10 Again, the lack of any lost sales. Any lost  
11 sales by who? By the domestic industry and  
12 specifically the Petitioners. The Petitioners in most  
13 of these cases, including most pipe cases, put in a  
14 long list of lost sales and lost revenue. I mean it's  
15 lengthy. It doesn't usually get confirmed but it's  
16 lengthy. A lot of it ends up being domestic industry  
17 on domestic industry. Fair enough. But we have zero  
18 in this case. That is a stark number. Zero is a  
19 surprising number.

20 Again, we're looking at all of these  
21 factors. Then you also put on chart four where it  
22 talks about the number of purchasers who are actually  
23 purchasing subject merchandise from these guys. Well  
24 geez, we're taking 57 to 62 percent for subject  
25 merchandise. Gee, I don't see them in the

1 marketplace. I don't buy from them.

2           Again, that's not normal. So all of these  
3 factors actually do seem to at least be relevant to  
4 this question.

5           I understand your point, and in fact it's up  
6 to the commission to make those determinations but I  
7 think that in a poll like that, it' s a polling  
8 question, and this Commission historically on polling  
9 questions have taken a numerical number of companies'  
10 attitudes toward, and I think that happens to be  
11 appropriate here.

12           MR. DUGAN: Commissioner Johanson, if I may  
13 add to what Mr. Cameron has said. Jim Dugan from ECS.

14           First of all, these are surprising  
15 statistics in my experience, to have this number of  
16 responses, regardless of the size of the producers who  
17 are making them.

18           But along with some of the purchaser  
19 responses that Mr. Cameron has mentioned, is  
20 indicative of what we've characterized consistently as  
21 a very, very muddy at best causation picture here. We  
22 don't believe there's any causal relationship. And  
23 when producers can't identify negative effects, when  
24 they can't identify lost sales, when the purchasers  
25 aren't seeing the subject imports in the market, and

1 then you see the trends in import volume and financial  
2 performance of the domestic industry move the way that  
3 they do, you put all this together. Again, it's not a  
4 single data point, but when you paint the picture  
5 using all of the colors in the pallet, it does lead  
6 one to question whether there's any causal link at all  
7 here.

8 MR. CAMERON: The one other thing I'd say  
9 about the producers with a very small percentage of  
10 subject merchandise. They did take the time to  
11 actually do a very careful questionnaire. Think about  
12 it. They didn't blow it off. they didn't just say  
13 it's not important to me. It's not a big product for  
14 me. They went through the whole thing. They actually  
15 did the entire questionnaire. That takes time. And  
16 they took it seriously. So when their purchasing guy  
17 says no, this doesn't have any impact on me, the  
18 subject imports don't have any impact on me, I think  
19 it's a meaningful answer.

20 How meaningful is up to the Commission, but  
21 it's a meaningful answer. And the number of producers  
22 who said that I think is significant.

23 MR. DUGAN: One more thing, Commissioner  
24 Johanson. I just remembered that there is one  
25 domestic producer, and I don't want to get into

1 anything confidential. That at least with respect to  
2 a prior case, this is a different, as far as we can  
3 understand from public information, this is a  
4 different response and a different position in this  
5 case with respect to these countries than it was with  
6 respect to other countries. So we believe that's  
7 relevant. We can get into that in posthearing.

8 COMMISSIONER JOHANSON: Thank you for your  
9 responses.

10 The Universal Respondents argue that  
11 nonsubject imports will quickly replace subject  
12 imports if an order is issued. Why wouldn't the  
13 domestic industry reclaim that lost market share?  
14 After all, capacity utilization by the domestic  
15 industry is low.

16 MS. MENDOZA: I guess the best proof of it  
17 is actually what happened during the period. Because  
18 what you saw at the end of the period was that as  
19 subject imports declined, nonsubject imports took  
20 their share. That's record evidence.

21 They do have capacity utilization, but I  
22 think we talked again about the fact that viewing that  
23 in a historical perspective is very helpful. It's not  
24 really low.

25 You can claim capacity and as people have

1 joked here, this has been a longstanding issue in all  
2 the pipe cases about what capacity utilization really  
3 means. But if you go for 12 years and you never reach  
4 more than 60 percent capacity and you continue to buy  
5 companies, consolidate, all of this. Then I think the  
6 answer to that is that's really name plate capacity,  
7 or that's some calculation of capacity that really  
8 doesn't represent your real capacity.

9 I think that the answer is that the U.S.  
10 industry is very unlikely to be able to recapture that  
11 share, and if you look at what happened during 2012, I  
12 think that's our best proof.

13 COMMISSIONER JOHANSON: Thank you. My time  
14 is about up so I'm going to go ahead and stop with my  
15 questions here, although I will have another one or  
16 two at the end. I apologize to my fellow  
17 Commissioners, but I don't know that much about pipe,  
18 so I have to learn.

19 CHAIRMAN WILLIAMSON: Commissioner  
20 Broadbent?

21 COMMISSIONER BROADBENT: I just had one  
22 final question on capacity utilization of the subject  
23 countries, what capacity is there. I think we have a  
24 sense that there's probably enough to double their  
25 exports to the United States. Is that true or would

1 you argue that they aren't likely to do that?

2 MR. SIMON: It's certainly not the case for  
3 al Jazeera. We're at 90 percent capacity.

4 MS. MENDOZA: Our argument is basically that  
5 to some extent I think you have a little going on,  
6 this name plate capacity issue as well. But we see  
7 other markets getting much stronger and much faster.

8 One of the reasons that this market in the  
9 GCC is so attractive is it's really one of the biggest  
10 consumers of line pipe and oil-related pipe in the  
11 world.

12 So this is a very positive market when  
13 conditions recover.

14 Now they went through a very bad period as  
15 well. But what I think we're hearing is that in fact  
16 things are definitely getting better, things are  
17 improving.

18 The cost of oil going above \$30 a barrel, I  
19 mean once it goes over \$30 a barrel you're talking  
20 about pure profit.

21 I think we're seeing in those markets things  
22 really recovering. I don't know if you agree with  
23 that.

24 COMMISSIONER BROADBENT: So you're seeing  
25 recovery in GCC and where else are you seeing good

1 prospects?

2 MR. D'CUNHA: Basically GCC countries. We  
3 are also expanding into Australia. UK we've got a  
4 steady market, too. So we are selling a lot of pipes  
5 to all these places. This is our export side.

6 Our local side, which we also consider GCC,  
7 as a local, it is improving.

8 MR. MARSHAK: As far as Zenith goes, again,  
9 we've given you our historical performance. We don't  
10 have the capacity. We sell in the home market, we  
11 sell to third countries as far as doubling our exports  
12 to the United States. It wouldn't happen if there's  
13 no water. Historically we've been the same, the last  
14 ten years.

15 MR. CAMERON: The other evidence of that, to  
16 the extent it's relevant is the first half of 2012.  
17 To the extent that virtually all of the loss of market  
18 share was because of India. It wasn't the other  
19 subject imports that filled that void. It was  
20 nonsubject imports. So again, it's a small sample,  
21 but it would seem to indicate that the capacity  
22 utilization of subject imports is relatively high.  
23 It's hither than the U.S. industry collectively. And  
24 there's no evidence that exports to the U.S. would be  
25 doubled. I don't see any evidence of that whatsoever.

1           COMMISSIONER BROADBENT: Thank you, Mr.  
2 Chairman.

3           Thank you. I really appreciate all the time  
4 and your preparation.

5           CHAIRMAN WILLIAMSON: Thank you. I just  
6 have a few more questions too.

7           Mr. Marshak, I was just wondering, the  
8 domestic industry this morning, they explained why  
9 they felt they couldn't produce lost sales allegations  
10 and things like that given the nature of the market.  
11 But when we asked Zenith earlier about where -- the  
12 lost sales. When they stopped shipping and where it  
13 went. I wondered if you can look at the numbers and  
14 see that the nonsubject went up but couldn't say  
15 where.

16           Is it the same situation there? Is there  
17 something about the way this industry --

18           MR. MARSHAK: We assume they have the  
19 responsibility to check because they want to give you  
20 the information. We've never bothered to ask. We  
21 will ask now to see if we get an answer from our  
22 customers. They should have asked because they knew  
23 what you were asking for.

24           CHAIRMAN WILLIAMSON: That's fair. The  
25 incentive was different. I understand that.

1           MR. MARSHAK   We'll ask.  If we can get the  
2 information we'll give you the information.  If we  
3 can't in a short period of time we won't, but they had  
4 a totally different incentive going into this and they  
5 knew better.

6           CHAIRMAN WILLIAMSON:  But they did have an  
7 explanation of the nature of the industry.  The way  
8 the distribution of marketing goes.

9           Anything that would shed some light on this,  
10 that would be helpful.

11           This you may want to do posthearing.  I was  
12 wondering if there were negatives in this case, what  
13 might Zenith do in the future?  When China left the  
14 market, came back in.  But as I say , you can address  
15 it posthearing if you want.

16           MR. MARSHAK:  We'll do it posthearing, but  
17 we had our traditional place in the market, we would  
18 keep our traditional place in the market.

19           CHAIRMAN WILLIAMSON:  Thank you.

20           Also, this is the first time I've seen a  
21 case where you've had one company only from a country,  
22 as the only subject importer in an investigation.

23           MR. MARSHAK:  We're unaware of any case  
24 that's like this where you have an order on the entire  
25 country.  You have one company that was excluded and

1 now the case is being brought against basically the  
2 one company.

3 MR. SIMON: David Simon. I think it  
4 happened in the Buttweid Pipe Fitting Case from  
5 Thailand in the early '80s.

6 (Laughter)

7 MR. SIMON: You asked.

8 CHAIRMAN WILLIAMSON: Okay. No, I asked.  
9 Thank you. That's helpful. That's what I wanted to  
10 know. We can look that up.

11 Okay. The other thing I was just sort of  
12 wondering about is that I understand given the depth  
13 of the recession, how extensive it was, talking about  
14 profitability, measuring profitability from that point  
15 forward is problematic. But if you take a look at  
16 market share, given that everybody knows the recession  
17 was global and I won't say it hit everybody equally,  
18 but the nature of it. Is the market share of imports  
19 versus domestic industry, subject imports or  
20 nonsubject imports versus domestic industry market  
21 share. Could 2009 still be a relevant number to look  
22 at?

23 MR. CAMERON: We stand by our position that  
24 it's an aberration.

25 CHAIRMAN WILLIAMSON: You mean the market

1 share. Okay.

2 MR. CAMERON: The market share. Well,  
3 certainly.

4 CHAIRMAN WILLIAMSON: Yes.

5 MR. CAMERON: You had a freefall in terms of  
6 the market itself, right? Imports went down, subject  
7 imports went down, nonsubject imports went down,  
8 domestic shipments went down.

9 CHAIRMAN WILLIAMSON: Right. Yes.

10 MR. CAMERON: It's not like it was an  
11 organized occurrence. So the reason that we presented  
12 historical data, I mean there are a couple of reasons,  
13 but one is to look at it and say, well, okay, does  
14 that make sense to you as being the norm? I mean  
15 you've got 10 years, you've got 12 years. Three of  
16 those years the U.S. industry had safeguard relief and  
17 they didn't penetrate 65 percent, so all of a sudden  
18 71 percent is the norm? That's tough to get. That's  
19 tough to buy.

20 So that would be our position, that -- I  
21 mean I understand what you're saying, but there is a  
22 reason for saying that it's aberrational, and you can  
23 see what happened in the marketplace and you can draw  
24 a logical conclusion.

25 For the Petitioner to say everything else in

1 that year is aberrational except for the market share,  
2 it's like, well, okay, let's look what happened and  
3 see whether you think so. I mean I actually don't  
4 think that anybody's going to buy that. It just  
5 doesn't, it doesn't follow. When you put it into  
6 historical context, I think that that's true. So I  
7 understand the question, but that's our answer.

8 CHAIRMAN WILLIAMSON: Do some folks free  
9 fall differently than others, though?

10 MR. CAMERON: Well, I mean -- well, but  
11 yeah. I mean, but that's true. There may be reasons  
12 because of inventories, et cetera, and, you know, less  
13 lead times that you are going to fall less than  
14 anybody else, but again, in an environment like that,  
15 that simply wasn't normal. None of us who were  
16 sitting around at the time that it was occurring  
17 thought it was normal either, either in our own  
18 personal lives or in the cases that we were dealing  
19 with.

20 CHAIRMAN WILLIAMSON: Yes. And we don't  
21 want to go through it again.

22 MR. CAMERON: And we don't want to do it  
23 again. Yeah. We don't want to do it again. I'm with  
24 Roger on that. Absolutely.

25 CHAIRMAN WILLIAMSON: Okay. Thank you.

1 With that, I have no further questions. Any fellow  
2 Commissioners have additional questions? Does staff  
3 have any questions?

4 COMMISSIONER JOHANSON: I have one more  
5 question. Actually, I had two questions.

6 CHAIRMAN WILLIAMSON: Right. Okay. Sorry.

7 COMMISSIONER JOHANSON: Commissioner  
8 Williamson just asked one of them so I just have one  
9 question left. This goes to the capacity question of  
10 Al Jazeera. I believe Mr. Simon just addressed that a  
11 moment ago, but I had one more question as a follow up  
12 to what you said. Mr. Chowdhuri earlier stated that  
13 there is a bottleneck to increasing production at the  
14 Al Jazeera plants related to splitting capacity. What  
15 would be required to remove this bottleneck in terms  
16 of cost and timing?

17 MR. CHOWDHURI: We have four lines but one  
18 splitter, and it's one splitter that creates a  
19 bottleneck. To get rid of this bottleneck we require  
20 another splitter, which is cost-intensive presently,  
21 and in the foreseeable future, not feasible, so we  
22 have kept it in the back burner. So unless we get  
23 that splitter, we still remain status quo. We do not  
24 see the splitter coming in the very short future.  
25 I've been hearing of it for the last six years.

1 Possibly for the next five years I'll be hearing of  
2 it, too.

3 COMMISSIONER BROADBENT: Can I follow up on  
4 that?

5 COMMISSIONER JOHANSON: Yes. Go ahead,  
6 Commissioner Broadbent.

7 COMMISSIONER BROADBENT: You mentioned that  
8 the capacity, you still list that as capacity in your  
9 annual report.

10 MR. CHOWDHURI: I beg your pardon?

11 COMMISSIONER BROADBENT: I think I heard you  
12 say when you, during your statement that that was  
13 listed as capacity in your annual report.

14 MR. SIMON: The 300,000 tons is the capacity  
15 in the annual report, and that's the capacity of the  
16 forming machines. It does not take into account the  
17 fact that there's a bottleneck. You have their  
18 practical capacity figure in their foreign producer  
19 questionnaire response.

20 MR. CHOWDHURI: We have an in store capacity  
21 as per the machine performance, and we have an actual  
22 production figure, or a capacity what we actually do,  
23 so this is an actual capacity and an in store  
24 capacity.

25 COMMISSIONER BROADBENT: Okay. Thank you

1 very much.

2 MR. SIMON: To say it a little differently,  
3 they know how much coil they can slit in a month and  
4 that's the basis for the reported capacity in the  
5 producer, foreign producer questionnaire response.

6 COMMISSIONER JOHANSON: That concludes my  
7 questions, although I would like to add that once  
8 again I have found this hearing quite informative.  
9 It's one of the interesting things about this job, and  
10 I've been here only for about only a few months, is  
11 that you get to learn about all sorts of products you  
12 never really think about.

13 I was at a little league game two weekends  
14 ago and found myself inspecting the fence posts. It's  
15 really interesting because I actually knew where one  
16 of these was produced. The other ones I don't know,  
17 but there are plenty of them out there. It's  
18 something I never would have thought about. So thank  
19 you again today for all the information that both  
20 Respondents and Petitioners provided to us.

21 CHAIRMAN WILLIAMSON: Okay. It leaves us to  
22 look at new things. It's true. Good. Does staff  
23 have any questions for this panel?

24 MR. CARLSON: Thank you, Mr. Chairman. Just  
25 one quick question from staff, please. This is

1 Geoffrey Carlson, Office of the General Counsel. Just  
2 for Petitioners, just to confirm, if you would please  
3 make a statement or to have a discussion in your  
4 posthearing brief relating to Commissioner Broadbent's  
5 question as to whether you believe that the UAE free  
6 trade agreement has any effect, or should have any  
7 effect, on the Commission's decision to cumulate in  
8 this case. I would also invite any Respondent parties  
9 who believe that it should to include those arguments  
10 in their posthearing brief. Thank you.

11 MR. SIMON: I'm sorry, but that's -- I  
12 believe you mean the Oman --

13 MR. CARLSON: I'm sorry. I misspoke. The  
14 Oman. Correct.

15 MR. SIMON: I did look at this. This is  
16 David Simon. I represent Oman. There's nothing in  
17 the Oman FTA that would give Oman an out on threat or  
18 an out from dumping law, as much as that would be  
19 something they might think about.

20 CHAIRMAN WILLIAMSON: Thank you very much.

21 MR. SCHAGRIN: Just to tell the staff since  
22 you asked, Commissioners, first, we'll agree with Mr.  
23 Simon, but we'll also address it in the posthearing  
24 brief.

25 MR. CARLSON: Thank you very much. That

1 concludes staff's questions. Thank you, Mr. Chairman.

2 CHAIRMAN WILLIAMSON: Okay. Do Petitioners  
3 have any questions for this panel?

4 MR. SCHAGRIN: No, Mr. Chairman, we do not.

5 CHAIRMAN WILLIAMSON: Okay. Thank you.  
6 With that, we can dismiss this panel and we will get  
7 ready for our closing statements. I want to thank you  
8 all for your testimony and for coming so far to  
9 present it. Okay. Now, Petitioners have seven  
10 minutes direct, and closing, five minutes, so a total  
11 of 12 minutes, Respondents have seven minutes from  
12 direct and the closing for five minutes, so each side  
13 has equal time, 12 minutes each. As we traditionally  
14 do, unless there's objection, we'll combine that time.  
15 So as soon as the panel has gotten seated, we will  
16 have closing statement. Shall we begin? Thank you.

17 MR. SCHAGRIN: Thank you, Chairman  
18 Williamson and members of the Commission. Roger  
19 Schagrin for the Petitioners. Yes, I'm glad that  
20 Commissioners Johanson and Broadbent have a chance to  
21 learn about pipe, and you'll be seeing pipe and steel  
22 products many times, I'm sure, before the, during your  
23 time on the Commission, and that's for a good reason.  
24 It's because pipe and steel products are commodity  
25 products, and there's a great deal of world

1 overcapacity, and the U.S. is a very large market, and  
2 it's a very open market and we get a lot of imports in  
3 the U.S. That's what companies do with their excess  
4 capacity. They ship them to the U.S.

5           Now, you would think the Commission, having  
6 looked at this product probably some 25 times over the  
7 last 32 years, would have seen it all, and yet it's  
8 good to know that old dogs can learn new tricks. I  
9 don't think they're very good tricks, but it's an  
10 interesting trick. So we've never before in a case on  
11 circular welded pipe heard an attenuated competition  
12 argument that imports only compete with other imports  
13 and the domestic product only compete with other  
14 domestic products. That was the main argument put  
15 forth by the Respondents today.

16           I would say to you this Commission has not  
17 gotten it wrong for the past 32 years. You have, in  
18 fact, gotten it right. These products are commodity  
19 products. They are made to common specifications,  
20 ACMA53 for plumbing, A795 for sprinkler, fence  
21 products either A1097 or to their own specifications.

22           If you make a negative vote in this case and  
23 you write your decision and say you found that imports  
24 only compete with imports and domestic products only  
25 compete with domestic products, and there's, I'll

1 discuss this price premium allegation shortly, then  
2 I'd call Mr. Conway and tell him that he should tell  
3 his union members it's time to hunker down. They  
4 better get whoever the next President is, Obama or  
5 Romney, and say they need a lot more trade adjustment  
6 assistance, they need extended unemployment insurance,  
7 because that's the end for the steel industry. We'll  
8 have pipe mills shutting down. The steel mills that  
9 supply these pipe mills will shut down.

10           You may have read over the last three days  
11 articles, a three part series featured on the front  
12 page of *The New York Times* about Elyria, Ohio. I used  
13 to have clients in Elyria, Ohio. There used to be a  
14 CWP mill in Elyria, Ohio run by LTV Tubular, and it  
15 has been shut down over the course of these things.  
16 That's a very sad town. I've been to Elyria. I don't  
17 want to see this Commission turn Sharon, Pennsylvania  
18 into Elyria, Ohio. The people there don't deserve  
19 that from this Commission.

20           So the corollary to their argument that  
21 there's no competition between imports and the  
22 domestic is that they say that the domestic industry  
23 can get this price premium and that's why the domestic  
24 industry is making profits hand over foot. They just  
25 have to look at the data on the record to see that's

1 just simply not true. If there was always a set  
2 amount between hot-rolled sheet and pipe, then cost of  
3 goods sold as a share of selling price would not now  
4 be near 90 percent instead of 80 percent. That's a 10  
5 percent change in gross margins compared to  
6 traditional margins.

7           They say, look, we'll agree 2009 was bad  
8 because of the recession, and we're not saying just  
9 compared to that, but, you know, these two percent  
10 margins, this just shows these guys get this super  
11 price premium. Well, you know, they put together a  
12 lot of data from lots of different staff reports. I'm  
13 looking at Table I-1, so the first major table in the  
14 sunset review. It's got various data points from 1983  
15 through 2011, and in particular, 1991, '98, 2005, on  
16 and on. I'm looking at operating income levels. You  
17 know, they were 5.7 percent in '91, nine percent in  
18 '98, 8.8 in '05, 11.2 in '06, 3.3 in '07, 15.8 in '08.  
19 Then, after the Great Recession, they come back to  
20 3.7 and 2.9. So I'm happy.

21           Commissioner Aranoff, we'll address this in  
22 our posthearing. You asked should you look at a  
23 longer time period. Still thinking about that. We've  
24 got a week for the posthearing brief and got a weekend  
25 to think about things. I hope I don't have Schindler

1 guilt syndrome, I refer to it. When I lose cases and  
2 mills close down and thousands of people lose their  
3 jobs I don't say, God, I'm sure it was my fault, if I  
4 just worked 22 hours a day instead of 15 hours a day,  
5 I could have saved all those employees, but a weekend  
6 is an opportunity to think about these things and  
7 think about what you ought to look at.

8           They go on with their attenuated competition  
9 argument and give you this chart on page 4 of their  
10 presentation today, and they say, look, the domestics  
11 and the imports aren't competing with each other.  
12 Upwards of 60 percent of U.S. purchasers who responded  
13 aren't buying product from some of the subject  
14 countries, i.e., only 40 percent -- only 40 percent --  
15 like that's some minuscule amount, are actually  
16 purchasing from one of the four, or multiple of the  
17 four, subject countries, and of course 88 percent are  
18 buying American, so you can reasonably assume that  
19 there's an overlap of, 40 percent of the purchasers  
20 are deciding should I buy domestic, should I buy  
21 import from one of these four countries, let's see how  
22 much cheaper the import is. Every time they buy an  
23 import, because there's plenty of domestic capacity,  
24 they're not buying domestic.

25           Now, for them 40 percent is immaterial. I

1 grew up on a statute that says material is anything  
2 that's not immaterial, inconsequential and  
3 significant. Can anyone on this Commission tell me  
4 that this Commission could decide that a 40 percent of  
5 the purchaser overlap between subject imports and the  
6 domestic when the imports were gaining market share is  
7 not material? I don't think so. I know it's the  
8 Respondents' job to keep raising the bar for injury.  
9 This Commission cannot possibly raise it that high, as  
10 high as they would like it.

11           So now let's look at how the domestic  
12 industry is doing. First of all, let's look at some  
13 of the causation arguments. There is no doubt that as  
14 we come out of '09 to '10, as things start recovering,  
15 imports are increasing much faster than domestic  
16 shipments. Okay. When you get to '10 to '11, the  
17 rate of increase in demand is a lot smaller, but you  
18 see that subject imports, who are a much smaller share  
19 of the market, are actually increasing as much as the  
20 domestic industry. What happens between 2010 and  
21 2011? The domestic industry's profits fall. We're  
22 not blaming imports for all of that, but the imports  
23 are a cause of that injury.

24           Now, as to some of the, you know, let's look  
25 at profitability. The point was made, God, now all of

1 a sudden Schagrin is the old dog with new tricks. Why  
2 does he want to talk about interest expenses? Why  
3 should the Commission think about that? That doesn't  
4 sound like anything in the statute. Well, let's face  
5 it. The statute says, in terms of impact on affected  
6 domestic industry, you should look at actual potential  
7 decline and output, et cetera, et cetera, and profits.  
8 Now, I'm not saying you can't focus on operating  
9 profits, but I don't think it's a stretch to say you  
10 can include looking at net profits within the  
11 definition of the word profits. Then the statute  
12 actually directs you to look at the ability to raise  
13 capital and investments.

14 So when the two biggest members of the  
15 domestic industry say to you, look, our average profit  
16 margin is in the range of two to three percent, I  
17 almost literally, I don't like to cackle publicly  
18 during hearings, so I restrain myself, but when their  
19 economist said, man, these guys are doing great, in  
20 the context of coming out of the recession, they're  
21 making two to three percent, I mean don't they  
22 realize?

23 I watch CNBC every morning. Corporate  
24 profits in the United States are at their highest  
25 levels as a share of GDP ever. Most corporations are

1 making 15 to 20 percent operating profit. That's why  
2 the stock market's at new highs. Where's the steel  
3 industry? Most of the steel industry are at multiyear  
4 lows because nobody in the market wants to buy  
5 companies making two to three percent margins.

6           So I mean, really, when these producers say  
7 to you two to three percent with interest expenses  
8 that are greater than our operating margins means that  
9 if we can't make improvements, we will shut down  
10 mills, we cannot continue to get capital investments,  
11 capital in order to invest, we are actually reducing  
12 our investment in this industry by investing less than  
13 our mills are depreciating, that is an industry that  
14 is on the edge of oblivion. I've seen it many times  
15 in my career. This industry is hovering at the edge.

16 We don't need subject imports both contributing to  
17 present material injury and threatening.

18           On the halfway back issue, this industry  
19 should have improved much greater. I mean the numbers  
20 are the numbers. Consumption in 2008 was two million  
21 tons, it fell to 1.2 million, it was just below 1.6 in  
22 '11, it's going to be over 1.6 in '12. Look, I mean  
23 we're halfway back. Profits margins shouldn't be two  
24 to three percent.

25           On the point you made, Commissioner

1 Johanson, we will put it in our posthearing brief. We  
2 do believe that it's a very small portion of the  
3 industry, probably less than a quarter, that didn't  
4 check the boxes on importance.

5 In terms of thread issues, Canada is not a  
6 very big issue in this marketplace. Most of those  
7 imports in 730630 are as welded mechanical. They're a  
8 huge supplier to our auto and auto parts industries,  
9 as we are to theirs. They're very connected to  
10 industries across the U.S. and Canadian borders.

11 This is really an injury case. These  
12 imports dramatically increased their volumes and  
13 market shares over your period of investigation at the  
14 expense of the U.S. industry's volume. They did  
15 suppress U.S. prices, which is why profit margins  
16 stink. That's the heart of the injury case.

17 On threat, the numbers are the numbers. All  
18 the anecdotal information today was nice: All they  
19 care about is their home markets, all they care about  
20 is other export markets. The data which Ms. Byers  
21 discussed demonstrably shows that on a cumulative  
22 basis their exports to the United States were more  
23 than their shipments to the home market. They grew  
24 dramatically over the period. We think world  
25 construction markets are pretty lousy, and this is the

1 outlet they want which is why they are fighting so  
2 vitriolically to keep you from imposing duties.

3 We thank you very much for your time today.  
4 Thank you.

5 CHAIRMAN WILLIAMSON: Thank you, Mr.  
6 Schagrín. Okay. The Respondents? You may begin.

7 MR. CAMERON: Mr. Chairman, Ms. Mendoza is  
8 accompanying me, too, for many reasons, mostly to make  
9 sure there's somebody intelligent up at this panel  
10 talking to you. We really have said what we have to  
11 say, and we don't have that much more to say. It's  
12 getting late and we sincerely appreciate the patience  
13 of this, of the Commission.

14 I'm stunned that you were able to get as  
15 much information as you were at the little league game  
16 about pipe and tube. I've been too close to this  
17 problem for too many years to -- but I mean I'm with  
18 you on that. It's just it brings back bad memories  
19 for me.

20 Look, just a couple of points. Again, Mr.  
21 Schagrín repeated the idea that we are saying that  
22 subject imports only compete with nonsubject imports  
23 and don't compete with the domestic industry. We  
24 didn't say that. We're all in a marketplace. We  
25 understand that it's a commodity product. What he has

1 not answered is the following question. Why is it  
2 that the domestic industry has sales in a commodity  
3 product at the prices that they are selling which are  
4 higher than the import prices in 90 percent of the  
5 cases? I mean how is it that that works if it's a  
6 pure commodity product and they're able to do that?  
7 That model also doesn't work, so how is it that that  
8 occurs?

9           What we've explained to you, and it is  
10 substantiated by the two distributors that he had  
11 sitting here as witnesses this morning, is that, well,  
12 yes, there are differences in the marketing of the  
13 products of imports vis-a-vis the marketing of the  
14 products from the domestic industry, there are  
15 differences in lead times, there are differences in  
16 that, and that, in and of itself, does create a price  
17 premium. That's what we have said. We have not said  
18 that we can quantify it, we haven't said that it's 10  
19 percent or that it's -- that's not what anybody has  
20 said.

21           We heard this morning that, well, no, this  
22 is a commodity product. It's like having four gas  
23 stations on the corner. I mean what's the difference?  
24 Well, I'll tell you what the difference is. If three  
25 of those gas stations are going to charge you \$4 a

1 gallon and you can fill it up right now, that's one  
2 thing. If that fourth gas station says I'll tell you  
3 what, I'll sell it to you for \$2 a gallon, great deal,  
4 but you're going to have to wait 75 days to get it, if  
5 you just leave your car here, I'll fill it up for you  
6 and I'll bring it to your garage.

7           Now, let me ask you a question. Do you  
8 think those are the same? I don't. Is it still a  
9 commodity product? Yes, it's still a commodity  
10 product, but it's competing on different terms, and  
11 that's the point. That actually is what his witnesses  
12 were substantiating. Frankly, I believe that the  
13 questionnaire responses that we have will also  
14 substantiate that. All we were trying, all we were  
15 doing was explaining the reason that there is a  
16 difference.

17           The other reason that we thought it was  
18 significant to look at the price of nonsubject imports  
19 as opposed to subject imports was, well, okay, I mean  
20 is there a big difference between the two? Because if  
21 there's a big difference between the two, then you're  
22 concluding, well, I guess it's not imports, per se, it  
23 has something to do with the identity of the import,  
24 but then when you look at the data that you have  
25 collected with respect to the quarterly pricing data,

1 the quarterly pricing data would indicate to you that,  
2 well, actually, they're underselling the same amount  
3 of time and 50 percent of the time they're  
4 underselling each other, 50 percent of the time  
5 they're not, something like that. I mean those are  
6 rough figures. So we think that it is a valid  
7 conclusion to draw from that data, and that's an  
8 important thing.

9           That doesn't go to their profitability, it  
10 goes to the issue of how you look at the price  
11 comparisons and whether or not the mere fact of  
12 underselling in and of itself is proof that the  
13 subject imports are doing something to these guys, and  
14 the answer is that, no, actually, it's not.

15           He said just a moment ago that subject  
16 imports suppressed prices. Well, that's very  
17 interesting because your staff has not concluded that,  
18 and there's no evidence on the record that there's  
19 price suppression from subject imports. So, again,  
20 that's what we're getting at.

21           Finally, our case is that actually this  
22 industry is not being injured, it's not suffering  
23 material injury. This industry actually is coming out  
24 of the recession/depression pretty well given where  
25 they started. Yes, I mean everybody wants to have

1 higher profits. That's not the issue. The question  
2 is can they get higher profits? We're not the ones  
3 that are keeping those profits down. We lost market  
4 share in 2012.

5           So I mean, but as far as we're concerned,  
6 number one, there is no material injury to this  
7 industry. The indicators are up, and actually,  
8 relatively speaking, they are doing well. Secondly,  
9 subject imports are a bit player in this market to the  
10 extent that the domestic industry really can't  
11 identify them and they can't identify any impact from  
12 them.

13           So Julie said, finally, that's it. So we  
14 are done. we would like to thank you for your  
15 patience and your consideration. These hearings are  
16 hard. We understand that. We admire you for the fact  
17 that you stay awake, so thank you, and we actually do  
18 appreciate the fact that this Commission thinks about  
19 things, and we'll put our posthearing brief in and  
20 let's see where we go. Thank you very much.

21           CHAIRMAN WILLIAMSON: Okay. Thank you. I  
22 want to thank both Petitioners and Respondents for  
23 being with us today and making it interesting.

24           Closing statement. Posthearing briefs,  
25 statements responsive to questions and requests of the

1 Commission, and corrections to the transcript must be  
2 filed by October 24, 2012. Closing of the record and  
3 final release of data to parties is November 7, 2012.  
4 Final comments are due November 9, 2012. With that,  
5 this hearing is adjourned.

6 (Whereupon, at 5:38 p.m., the hearing in the  
7 above-entitled matter was concluded.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Circular Welded Carbon-Quality  
Steel Pipe

**INVESTIGATION NO.:** 701-TA-482-485, 731-TA-1191-1194

**HEARING DATE:** October 17, 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: October 17, 2012

SIGNED: LaShonne Robinson  
Signature of the Contractor or the  
Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 600  
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Rebecca McCrary  
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: W. Andre Bellamy  
Signature of Court Reporter