THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	Investigation No:
	)	731-TA-1206 (Final)
DIFFUSION-ANNEALED, NICKEL-	)	
PLATED FLAT-ROLLED STEEL	)	
PRODUCTS FROM JAPAN	)	

Tuesday, April 1, 2014
Main Hearing Room (Room 101)
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The meeting, commenced, pursuant to notice, at 9:34 a.m., before the Commissioners of the United States International Trade Commission, the Honorable IRVING A. WILLIAMSON, Chairman, presiding.

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P R O C E E D I N G S

(9:32 a.m.)

CHAIRMAN WILLIAMSON: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-1206 (Final) involving Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan.

The purpose of this investigation is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of less than fair value imports from Japan of Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products.

The schedule setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table.

All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony.

I understand that the parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

Speakers are reminded not to refer in their

remarks, or answer to questions to business proprietary information. Please speak clearly into the microphone and state your name for the record for the benefit of the court reporter.

If you will be submitting documents that contain information you wish classified as business confidential, your request should comply with Commission Rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Mr. Chairman, I would note that all witnesses for today's hearing have been sworn in. There are no other preliminary matters.

CHAIMAN WILLIAMSON: Good. Very well. Let us begin with opening remarks.

MR. BISHOP: Opening remarks on behalf of Petitioner will be by James R. Cannon, Jr., Cassidy Levy Kent.

CHAIRMAN WILLIAMSON: Welcome, Mr. Cannon. You may begin when you're ready.

OPENING REMARKS ON BEHALF OF THE PETITIONERS

MR. CANNON: Thank you and good morning. The case is Diffusion-Annealed, Nickel-Plated Steel Products from Japan, a product that we call nickel-plate. Factually the record shows that imports have increased, that imports are a substantial portion of the U.S. market. That as a result the domestic industry has lost market share, its

shipments have declined, its production has declined, its capacity utilization in the most recent year, last year, was less than 60 percent.

Three years ago the domestic producer was making money. Last year they were losing money.

Employment has declined 12 percent. By virtually every statutory factor the domestic industry in this case is materially injured.

I suspect, however, that a lot of today will be devoted to talking about causation. Our opposition which today includes many purchasers in a very small market are arguing that you shouldn't look at the statutory factors or the statistical data or even the C-Tables. They want you to, in their words, sort of dig deeper into the record. We submit that when you do that you will find that the deeper you dig, the more certainty there is that the domestic industry suffered material injury.

At the outset I would mention that you will hear today from Duracell, a major customer. In fact, Thomas is here because Duracell switched its volume of AA batteries to Toyo Kohan, the Japanese supplier. AA batteries made by Duracell are the largest selling battery in the United States. That volume allows a company to load its capacity.

When Toyo captured essentially an 80 percent share of that volume they took needed volume out of Thomas'

capacity causing a cascade of effects leading to injury.

Duracell will argue that they didn't do this because of price. It wasn't the lower price. It was a variety of other factors. I ask you to consider them carefully. One I would mention is their argument is they need two sources of supply. They had two sources of supply.

In 2011 both the domestic industry and the Japanese were supplying Duracell. In 2013 they're both supplying Duracell. They're both qualified, they're both reliable. They both meet all the criteria that Duracell requires. They just changed places. Thomas was selling 80 percent, the Japanese were selling 20, and they switched. Duracell switched its orders to make Toho Kohan the 80 percent supplier; why? Because their price was lower.

The other argument that you will hear a lot about today, and I hope that we make it clear, but you will hear a lot about qualification. The product does take qualification. People that make batteries need to use the metal making battery cans and qualify the suppliers. But what you will find is that it only takes about three or four months, after that point the imported steel is now running on the floor in the commercial production equipment and it's making millions of batteries. And those batteries are sold in the consumer market at Wal-Mart. And so when they talk about qualification what you're hearing about is the formal

qualification, the gold seal at the end of 12 or 18 months. But what's happening in the market is the import volume has replaced the domestic volume at the can makers within about three or four months.

And so with that, I hope we're off to a good day. Thank you.

CHAIRMAN WILLIAMSON: Thank you.

MR. BISHOP: Opening remarks on behalf of respondents will be by J. Christopher Wood, Gibson, Dunn and Crutcher.

CHAIRMAN WILLIAMSON: Welcome, Mr. Wood. You may begin when you're ready.

OPENING REMARKS ON BEHALF OF THE RESPONDENTS

MR. WOOD: Good morning, Chairman Williamson, good morning Commissioners. I'm Chris Wood. I'll present the opening statement on behalf of Respondents.

Let me cut to the chase. I mean, Mr. Cannon began his remarks by saying exactly what we assumed he would, that this is a really simple case. The imports are up, their prices and profits are down, what more do you need to know.

We would contend that there is a lot more that you need to know to reach the decision -- to reach your decision in this case. When you look behind the simplistic formulation of imports up/profits down and unpack what is

really happening in this market, it's clear that subject imports are not the cause of material injury to Thomas and do not threaten material injury.

Let's start with volume where Thomas claims that imports targeted the AA battery can segment at Duracell. They have no evidence of that. It's simply not true. You will hear evidence this afternoon that there was no targeting. That Duracell considers multiple factors beyond price in making their purchase decisions. And, in fact, we would suggest that the confidential record has all you need to know already to realize the decision to award that additional business to Toyo Kohan was not based on price.

Thomas also claims that subject imports prevented them from selling to Panasonic during the period. That isn't true either. We will explain this afternoon how it was Thomas' own inability to qualify at Panasonic that left them unable to sell there.

There's a theme here, when something goes wrong Thomas' first reaction is to look for someone else to blame. But with Duracell and Panasonic we've covered all of the import volumes that you're going to deal with in this case.

Let's look at the pricing data which is critical to understanding the real reasons for Thomas' difficulty. Thomas would have you believe that subject imports drove the prices down over the period. But the most telling fact, we

think, in our brief, is that there are many circumstances where Thomas faced no competition whatsoever from subject imports and the pricing trends are the same.

Think about that. That cannot be reconciled with a claim that subject imports drove prices down. If subject imports were exerting downward price pressure, you would expect to see different trends where Thomas faced competition. You don't see that on the record of this investigation and we hope you keep that in mind when you hear the testimony this morning about import prices.

One thing that we do know affected Thomas' prices during the investigation was falling prices for commodities such as iron ore, coke, and coal and nickel. Why are those commodity price trends important? Because Thomas forced its customers to accept a pricing formula that tied its sales prices for nickel-plated steel to changes in the price for raw material inputs. When raw material prices fall, as they did, over the period of investigation, it meant that nickel-plated steel prices fall too.

Our brief includes the data and the analysis showing the magnitude of these effects. In fact, falling commodity prices explain the vast majority of the decline in price between 2011 and 2012 which is the period when Thomas' profits fell dramatically. You don't have to take my word for it, we can prove this to you through the data from

Thomas' own prehearing brief.

On page 18 of Thomas' brief, they include a table that purports to show declines in their so-called "base prices" outweighing commodity price changes from 2011 to 2012. But when you look at the source for that table, Exhibit 9 of their brief, it's clear that their calculation of the 2012 average base price and the 2012 average total price have a significant math error. When the error is corrected, Thomas' own data show that it was raw material input prices -- declining raw material input prices that account for the vast majority of the price decline between 2011 and 2012.

Commodity prices continued to fall in 2013 and prices continued to go down, but here as well, the record shows that's not due to subject imports. In fact, the subject imports mostly oversold Thomas during this period.

The real problem for Thomas is reflected in its financial data which shows that its costs have been consistently out of line with the prices that it is actually -- prices for raw material inputs going into hot-rolled steel. You know, as iron ore and coke and coal prices fell from 2011 to 2013, those declines are reflected in the nickel-plated steel pricing because of their pricing formula, but not in their costs. If you fix that mismatch -- if that mismatch isn't in the case, Thomas is profitable

throughout this period. We show that in our brief as well.

My last point is that subject imports obviously don't control Thomas' costs for anything. We're not responsible for their hot-rolled steel costs, we're not responsible for the trends in their costs of good sold. And in addition subject imports are not the ones that forced Thomas to introduce a pricing formula that links their nickel-plated steel prices with trends in raw material inputs.

Simply put, those losses resulting from the mismatch between Thomas' formula-driven prices and its divergent costs for hot-rolled steel cannot be attributed to subject imports.

Thank you very much and we look forward to presenting our testimony this afternoon.

CHAIRMAN WILLIAMSON: Thank you.

MR. BISHOP: Would the first panel, those in Support of the Imposition of Antidumping Duty Order please come forward and be seated?

CHAIRMAN WILLIAMSON: I want to welcome the witnesses to this hearing and express the Commission's appreciation for you coming today to give your testimony. And Mr. Cannon, you may begin when you're ready.

MR. CANNON: Thank you, Mr. Chairman.

We will begin with the testimony of Bill Boyd.

Bill.

STATEMENT OF WILLIAM BOYD

MR. BOYD: Good morning. I am William Boyd, President and Chief Executive Officer of Thomas Steel Strip Corporation. I joined Thomas as CEO in 2009, shortly after Thomas was acquired by Tata Steel. Prior to that time, I spent 22 years in the steel industry, firstly selling tinplate and specialty products for British Steel and Corus, then as managing director of a tinplate packaging company.

Compared to tinplate, the nickel-plate market is surprisingly small in terms of the number of consumers and suppliers. We have six major battery customers, and we basically compete with two other suppliers, Toyo Kohan and Nippon Steel. There is also a tightly-knit supply chain, and the purchasing within that supply chain is highly professional.

The qualifications of the product is a significant factor in the nickel-plate market; there is no such requirement in a commodity market such as tinplate. In fact it's a very important hurdle to clear. However, once the product is qualified, competition is all about price.

Both Toyo Kohan and Nippon have qualified at the major customer accounts in the U.S. market. Most importantly, Toyo Kohan is qualified for the largest U.S. nickel-plate consumer, Duracell, and for the highest-volume

product, the Duracell AA battery. Duracell AA batteries are the number one selling battery in America and the world. As a result, when Toyo Kohan seized over 80 percent of the Duracell AA business it sent a shockwave through our business.

Typically about 50 percent of nickel-plate production is used for AA batteries. This is the case at Thomas. As that largest volume product, it's the product that is usually targeted by suppliers. Thomas Steel, Toyo Kohan and Nippon Steel all covet sales of AA battery steel because of the large volume. It allows us to load our capacity to produce long production runs, to operate efficiently and to cover our fixed costs.

From the standpoint of a producer with excess capacity, AA is the optimum target. And, because Duracell is the recognized industry leader, if you capture the AA business at Duracell, all the other battery producers take notice. They assume, implicitly, that you can produce high-quality nickel-plated steel, up to the standards at Duracell.

For these reasons, 2009 was an important year. Up to that time, Toyo Kohan supplied Panasonic Battery Corporation of America and supplied AA and AAA cans to Duracell. In March 2008, Panasonic Battery stopped producing alkaline batteries in the United States. To

replace that business, Toyo Kohan targeted two customers, Rayovac and Duracell.

As you can see in Slide 2, Japanese imports surged in 2009, even though their major U.S. customer left the market in 2008. Toyo Kohan increased its U.S. sales because it captured all of our business at Rayovac, 20 percent of the AA business at Duracell, as well as a share of the AAA business at Duracell.

When Toyo Kohan offered a price cut in 2011, Duracell decided to move 90 percent of its AA business to Toyo Kohan in July of 2012.

In response to the loss of the majority share of the AA Duracell business, I reduced our price to Duracell and then Duracell increased our share from 10 to 20 percent in 2013. Nevertheless, the damage was substantial. As shown by Slide 2, Japanese imports reached record levels in 2013.

As a result, our shipments fell. Even though we cut our prices for other products, and even though we recovered the C can business at Duracell, our production fell by more than 15 percent. Our capacity utilization fell to less than 60 percent and by the end of 2012 we were losing money.

In short, qualification is a threshold requirement, but it has not prevented Japanese imports from

seizing market share or forcing us to meet low prices offered by Toyo Kohan and Nippon Steel.

Thomas is the market leader in the nickel-plate business. We were the first steel producer to introduce diffusion-annealed nickel-plated steel strip on the United States. As shown by Slide 3, we sold nickel plate to a company called Mallory, which later became Duracell. It is our understanding that the development of diffusion-annealed nickel-plated steel was a key advance in technology that allowed the alkaline battery to be produced.

As I said, nickel plate is not tinplate. The specifications are difficult to meet and suppliers must qualify their products. As Mike Hartman will explain, the process can take several months. We know our Japanese competitors sometimes struggle to formulate a process that provides the customer with the performance characteristics for the steel that they need.

For example, Duracell shifted the C can business back to Thomas in 2011 because our material will process better in its equipment. I should note though that we had to match Toyo Kohan's price in order to get the business back. In other words, Thomas and the Japanese producers are all capable manufacturers.

From my perspective, there are essentially three well-established suppliers that compete in the nickel-plate

market. Although Thomas is the leader, with the largest market share in the United States, Toyo Kohan and Nippon Steel have steadily increased their share of the market.

Slide 4 shows the structure of the market. For example, Cly-Del stamps AA, AAA, and AAAA cans for Duracell. We sell the corresponding nickel-plate specification to Cly-Del. And, we are currently qualified to supply every battery specification to Cly-Del.

We also sell certain specifications directly to Duracell. For example, we sell end cap material and C and D can material directly to Duracell, which the customer processes in its own facilities. Similarly, we sell end cap material directly to Rayovac.

Although you must undergo qualification in order to supply these customers, it is common to quote prices even before qualification begins. That is the norm in our industry. Our customers put out requests for quotations for ongoing business realizing this. It makes sense for everyone to supply a quote and compete for that business, even if they aren't currently qualified.

In other words, qualification offers little protection against competition and is certainly no guarantee of being selected as the supplier. When Thomas is the incumbent supplier at a customer account, the customer may still go through the process of qualifying other suppliers.

But once another supplier is qualified, the customer will inevitably purchase at least a portion of the business from the new supplier. At that point you are in a bidding war with the other supplier, driving price down.

If I simply ignore a price quoted by an unqualified supplier, it's a high-risk strategy to gamble that the customer won't give business away to my competition. Even though Thomas is more qualified in the global market, both in terms of customers and battery can types, this does not guarantee we will be chosen over Toyo Kohan or Nippon Steel to supply our customers. It generally always comes down to price.

Our prices typically include three components. There has been a surcharge for nickel since well before I joined the business. In addition, given volatile hot band prices since 2006, we proposed a similar surcharge to address changes in hot-rolled steel costs. This adjustment is based on iron ore and coking coal costs, as reflected in published price indices. We implemented the raw material price adjustment mechanisms or "RMPAM" in 2011. We lag the adjustment by three months, reflecting that we purchase the hot-rolled steel three months before we start nickel-plate production. This lag time allows our customers to anticipate the change in prices due to the RMPAM.

Slide 5 shows all three components for product 1.

As shown, part of the decline in our overall price was due to the decline in the nickel surcharge and the RMPAM. In each quarter, the tall blue bar -- purple on the screen -- is the base price, the red bar is the nickel surcharge and the RMPAM is the green bar.

Our total prices fell by about $400 per ton. The nickel surcharge and the RMPAM accounted for somewhat less than $200 per ton. The majority of the decline in our prices, as shown in the slide you can see, Slide 5, was the result of declining base prices.

In fact, the RMPAM and the nickel surcharge simply pass through changes in raw material costs to our customers. Because these factors reflect lower or higher raw material costs, they do not impact our profitability.

Given the importance of raw materials, one major customer requires us to present our bids using a template or a format that separately identifies the base price. In this manner, the customer can determine if we reduced our base price from year to year. Also, because all suppliers are forced to quote a base price without any surcharge or any RMPAM, all of the bids by all suppliers must be made on the same basis. The customer even states on the bid sheet that this approach produces, and I quote, an "apples to apples" comparison.

I personally call on and negotiate with our

customer. I will visit Duracell, Energizer, and Rayovac several times a year. I also call on Cly-Del, H&T Waterbury, and Panasonic, the can makers for the battery producers. At each and every one of these accounts, I am told that customers have offers from Japanese producers at prices below our price.

Using the prices quoted by the Japanese producers, our customers constantly pressure us to reduce our prices.

Slide 6 provides some examples taken from e-mails that we have supplied to the Commission. In the first example, our customers stated that we were $250 a ton higher than the competition. The customer then insisted that we cut an additional $80 to $100 per ton in subsequent years. That is roughly a 15 percent price cut over two years. If I agree to such a large price cut, my other customers will demand the same. As a result, I would not reduce our price and we did not get this business.

The next quote illustrates the same type of pressure. In this case, I refused to lower our prices in the face of competition from Nippon Steel. Rather than award us a normal, one-year contract, the customer only gave us a six-month contract and we later learned that Nippon was being qualified.

Turning to the next quote, dated June 2012, the

customer responded to our initial offer by calculating the savings it would realize if it switched the entire volume of sales to Japan. Even though the Japanese competitor was not formally qualified, we had to drop our price to keep their business.

Over the period since I became CEO in 2009, I have received this sort of pressure at every customer account. Even our loyal customers tell me they must have price reductions or they will not be able to compete downstream. Our customers are global battery manufacturers and they use every means to force us to reduce our prices. In addition to threatening us with competitive price quotes, they will also offer longer-term contracts if we will reduce prices. The October 2, 2012 quote is an example.

Our customers will also attempt to use prices in Asia as leverage to reduce prices in the U.S. market. Because of its proximity to the two Japanese producers, Asia is the lowest priced region in the world. Customers will attempt to get us to enter global sourcing agreements, offering larger volumes but requiring us to reduce prices to levels set by the Japanese producers in Asia.

Ultimately, the problem with contracting on a global basis is that we are selling nickel plate at a loss. We cannot increase our volume at prices that are below cost. Since becoming CEO, I have never entered a global agreement.

Even when we conduct joint negotiations with our sister company, Hille and Mueller, we offer separate price schedules for sales to the United States, to Europe and to Asia.

After we filed the antidumping petition, we experienced a fairly remarkable turnaround. Our success since antidumping duties were imposed in October last year shows that our product is accepted throughout the market and that we can earn a profit if dumping is eliminated.

The Japanese strategy has been to enter the market, develop significant market share, drive down the prices, and to drive the competition out of business. They have already inflicted severe financial damage on Thomas Steel. If they continue to take U.S. market share and drive down prices, we will be unable to sustain our operations. We're a highly capable operation. We have taken significant and painful steps through the process of restructuring -- reducing jobs, taking way people's livelihoods -- and we've made improvements in productivity and invested where we can to improve our quality. From a customer service point of view, we are better than the competition. We need to protect our workers, to protect our business, and our supply chain. We don't want a free lunch, we just need to compete on a level playing field. For these reasons, we ask the Commission to make an affirmative determination. Thank you.

MR. CANNON: Thank you, Bill.

Next we'll hear testimony from Mike Hartman.

STATEMENT OF MICHAEL C. HARTMAN

MR. HARTMAN: Good morning. My name is Mike Hartman. I am the Director of Quality and Technical Services at Thomas Steel Strip Corporation. I have held this position since 2009, prior to which I was the Director of Battery Sales for North American for five years. In that position, I dealt with our major customers, Duracell, Energizer, and Rayovac, and I am still involved with these customers.

My role involves the qualification process that we must go through to supply customers with our product. If we want to produce nickel-plated steel for a new part or modified batter specification, we start by identifying the customers' needs. Given that most development work initiates in North America, Thomas Steel is almost always the first to supply material for prototype tooling or when design changes are being considered. Our relatively short lead time allows our customers to begin the evaluation as quickly as possible. During this evaluation, modifications can be made relatively easily. Parts or cans are stamped from the material and then built into a cell. Once we deliver the material, each of these steps may take as little as one week to complete.

Slides 8, 9 and 10 illustrate the three stages in the formal qualification for cans. At the first phase of qualification, shown by Slide 8, the volumes are small. This is used to perform an initial evaluation.

Once a customer has our material, they can get a performance evaluation immediately. After the initial evaluation, the customer will stamp cans and then produce batteries. The finished batteries will be tested for shelf life and performance. This first phase process takes about three to three-and-a-half months.

With a brand new supplier, the customer might wait until phase one is completed before moving to phase two. However, in our case, it is common for our customers to move to phase two once they have an initial performance evaluation. If the customer is in a hurry to qualify us, especially if the Japanese price is going to go up because of antidumping duties, this process can be accelerated, and being the local supplier, the feedback loop is short. Also, if you are qualified in a foreign market, you may be able to skip phase one altogether.

Slide 9 illustrates phase two. Phase two is duplication of the process in phase one, but on a larger scale. In this phase the customer is supplied with several coils, which amounts to a week of production. The can maker will produce cans from this material, using its normal

commercial production equipment. In other words, the can maker will take one of its can making lines and stop using the incumbent's nickel plate.

From these coils of nickel plate, a can maker may produce anywhere from 10 to 25 million battery cans. The battery maker will then process these cans into finished batteries. Sample lots will be set aside for testing. The large majority of the batteries made in phase two are sold commercially.

Being a historical supplier will elevate the customer's confidence in the product, especially if you have proven yourself in the past. For this reason, in the case of suppliers like Thomas or Toyo Kohan, the battery producer will have confidence in the performance of the batters and will sell them into the consumer market.

Slide 10 illustrates phase three. Phase three is equivalent to phase two, but involves running an entire months' volume. The can maker will stamp 40 to over 100 million cans. And the battery producer will process those cans into an equal number of batteries. At this point, again, sample lots will be retained for testing but the vast majority of the batteries are sold in normal commercial channels.

In other words, after the first three months of phase one, the new supplier is shipping commercial

quantities. The can stamper is using normal production equipment to make cans, and the battery manufacturer is producing tens of millions of batteries that are being sold to consumers. Although the new supplier may not technically be qualified, it has already replaced the volume that used to be supplied by the incumbent.

We have never failed a phase three qualification, nor can I recall us having failed phase two, although, of course, modifications are sometimes made. But if you offer a lower price, the customers will try harder and almost always manage to qualify your material.

Some cans are harder to produce than others, given the particular dimensions and demands on the stamping equipment. As a result, customers will often ask to qualify the most difficult can material first, on the theory that if you can satisfy, let's say, the C can material, you can supply any material. It is worth noting, therefore, that we were replaced at Duracell by Toyo Kohan for the supply of C can material. We understood from the customer, however, that our nickel plate was superior in producing C cans. And, when we lowered our price for the C can material, we recovered that business from Toyo Kohan.

Qualification occurs separate for each customer location. A can maker can "tool to the steel" or we can make steel to the tool. Generally, though, a little of both

happens. A marginal reduction in cost will motivate a company to adjust its tooling to accommodate a particular producer's nickel plate. If our product is higher cost, however, the customer will typically make little effort to adjust to our nickel plate.

For example, after Toyo Kohan replaced us at Rayovac in 2009, we tried for several years to have Panasonic re-qualify our nickel plate for use in Rayovac cans. Rayovac and Panasonic changed most products to a new specification for nickel plate. We had been qualified to supply nickel plate for the previous specification, but not the new one which was introduced after we lost the account.

Eventually, Panasonic agreed to take a trial quantity in 2011. However, after shipping only a small quantity in 2011, Panasonic did not report the Rayovac results or even ask for a second shipment. Given that our price was 10 percent higher than Toyo Kohan's price, it was simply not worth it for either of us to continue the qualification process. And, we did not receive any orders for the new specification in 2012.

Only when Hurricane Irene hit in 2011 did Panasonic place orders for our material. In this case, Panasonic needed the nickel plate that was still being used to produce D cans. Because we had been the supplier of that material for years, Panasonic purchased several hundred tons

for supply of cans to Rayovac.

Two years later, and only after the antidumping petition was filed, have we begun shipping to Panasonic once again. For the past nine months, Panasonic has purchased product for all can sizes simultaneously. And our material has reached the third stage in the qualification process.

I understand that Panasonic, in particular, has argued that its decision to purchase Japanese material is due to our lack of qualification and poor quality, but it has everything to do with the lower prices offered by Toyo Kohan. In this respect, the next slide provides an indicator of our overall quality performance. These figures include volumes to all automotive fuel line customers as well as direct and indirect sales to all battery producers. As shown, over 99 percent of our shipments are accepted and processed by our customers. Our internal goal is to achieve 99 percent acceptance. Since we installed the Parsytec imaging system in 2010, we have achieved over 99.6 percent acceptance.

In short, we are the largest producer in the United States market. We are fully qualified to supply every batter specification at Energizer and Duracell, as well as every auto fuel line company in North America that uses nickel-plated steel. Over the period of investigation, we have supplied several specifications to Rayovac. And

since the antidumping petition was filed, we have been supplying addition can specifications for Rayovac batteries in commercial quantities.

Our nickel plate is now found in batteries, stamped by Panasonic, that are on the shelves for consumers to purchase. Unfortunately, I suspect that Panasonic will not declare us formally qualified until after there is a vote in this case.

Qualifications is not the real reason that we have had trouble selling to Panasonic. As discussed by Bill Boyd, Panasonic has sought out the lowest prices and insists that we meet the lowest price in the market. If we agree, however, we will inevitably be forced to lower prices to all customers. One the other hand, if we refuse to cut our prices, it is not worth it to undertake the qualification process.

In other words, the dumped imports force us to choose between prices that are too low or sales volumes that do not come close to our capacity.

For these reasons we need relief. Thank you.

MR. CANNON: Thank you, Mike.

Next we'll hear from Jon Jarvis.

STATEMENT BY JON JARVIS

MR. JARVIS: Good morning. I am Jon Jarvis, Vice President of Finance for Thomas Steel Strip Corporation. I

have been the senior financial officer for Thomas Steel Strip since 2004, and I have been in the steel industry for 25 years in various accounting positions. I will address the impact of import son diffusion-annealed nickel plate from Japan on our business at Thomas.

Slide 2 showed the long-term trend in Japanese imports of nickel plate. Based on Census statistics, imports from Japan increased sharply in 2009 and again in 2012 and 2013. Bill Boyd explained that the increase in Japanese imports in 2012 and 2013 is the result of Duracell's decision to shift AA can business to Toyo Kohan.

As shown by Slide 13, as the Japanese imports increased, Thomas Steel's shipments declined. On a quarterly basis, our shipments of nickel plate declined over the period of investigation. The trendline shows the decline in shipments, which corresponds with declining production and declining capacity utilization, all reported in our questionnaire response.

On a quarterly basis, you can see that there is some seasonality. Shipments pick up in the third quarter, as our customer increase battery production for the hurricane season and for the holidays.

The decline in our shipments in Slide 13 contrasts with the increase in import shipments in Slide 2. Since the antidumping duties were imposed, however, our

shipments have increased. In fact, the increase in volume has been substantial and the volume alone will make us profitable in 2014.

Slide 14 shows our actual quarterly shipments through 2013 and our orders for 2014. Also shown is the same data without the volume that we recovered due to the antidumping case. The red line, starting in the fourth quarter shows our shipments without the additional volume we recovered at Duracell and Rayovac. As you can see, without the preliminary antidumping duties, we would have lost about 2,500 tons a quarter since the fourth quarter of 2013.

A major component of the lost sales volume was our sales to Duracell for the AA battery. As Bill explained, the loss of that account was critical to our business. Slide 15 shows the decline in our shipments and prices of Product 1 reported to the Commission. As you can see, starting in the fourth quarter 2012, our volume dropped remarkably. This coincides with Duracell's decision to shift its AA volume from Thomas Steel to Toyo Kohan. We then cut prices, trying to regain a portion of the business. You can see this in the line plotted on Slide 15, which shows the downward trend in our prices for this product.

I mentioned that our loss of sales volume translated into declining production and underutilized capacity. Slide 16 shows our capacity utilization on a

historical basis. Going back to the 2005-2008 period, just after I joined Thomas, we generally operated at about 80 percent capacity utilization. When Panasonic Battery left the U.S. market and Toyo Kohan shifted its sales to Duracell and Rayovac, our production fell and our capacity utilization fell sharply. In 2010 and 2011 we recovered C can business.

Since 2011, our capacity utilization has fallen to its lowest level in ten years.

Capacity utilization is vital to our business because our fixed costs are high. Slide 17 shows our fixed costs, excluding raw material costs. As shown by this chart, our fixed costs account for over 70 percent of our non-material costs. Because our prices generally adjust for any changes in raw material costs, we normally analyze our fixed costs in this manner. It is essential for us to produce at healthy levels of capacity utilization in order to spread those fixed costs.

Turning to Slide 18, you can see the decline in our capacity utilization from 2011 to 2013. As shown our capacity utilization is below 60 percent. It may be noted t hat because of the antidumping duties since October of 2013, our capacity utilization has improved. Without antidumping duties we would have been at 44 percent utilization in the first quarter of 2014. With the added volume from Duracell

and Rayovac, we are instead at 61.5 percent.

The decline in production has a human dimension, as well. Turning to Slide 19, you can see that our employment levels fell sharply in 2012 and 2013. When we were forced to cut production in 2012, we lost 8.5 percent of our workforce. Because Toyo Kohan was supplying AA material to Duracell, and because we were unable to recover sufficient volume at other customer accounts, we lost more workers in 2013.

I will note that we tried to soften the blow to our workforce. We did not have any permanent layoffs, but instead encouraged voluntary retirements and did not replace the retiring workers.

Apart from reducing our workforce, we shut down our plant for one week in April of 2013 due to a lack of orders for nickel plate.

By the end of 2012, although we had regained a portion of the volume lost to Toyo Kohan, our overall shipments were down, our capacity utilization was impaired and we were suffering operating losses.

Slide 20 shows our operating income as a percent of sales during the period 2011 through 2013, and including the first quarter of 2014. During this period, our shipments fell more than 15 percent. Our average prices fell $400 per ton. As a result, from a healthy level in

2011, our operating profits became losses in 2012. And those losses became even worse in 2013.

Slide 20 also shows the impact of relief from dumping on our business. Although antidumping duties have only been in place since October 2013, our sales volumes have increased. The added volume has returned our operations to profitability in the first quarter of 2014, even though we have been unable to significantly increase prices.

Slide 21 shows the impact of lost volume and declining prices on our operations. In Slide 21, we compare our operating profits in 2011 with losses in 2013. As shown, in 2011, our operating profits were significant. In 2013, we incurred a loss. Roughly half of that decline was due to loss of volume -- our shipments fell over 15 percent between 2011 and 2013. About a third of this decline was due to the decline in average revenues per ton. Our prices fell $400 per ton.

Finally, the last portion of the graph shows the increase in other costs. Taken together, these three factors account for our losses in 2013.

We have already discussed the impact of our lost sales volume on fixed-cost recovery. We have also seen that even without any price increase, recovering the lost volume will return us to profitability.

As Bill explained, the nickel surcharge and RMPAM mirror changes in our raw material costs. When the surcharge or RMPAM decline, our costs also decline. Thus, these elements of the price do not affect our profits.

On the other hand, changes in the base price directly impact our bottom line. Our base prices fell by $200 per ton over the period 2011 to 2013. This decline in revenue has nothing to do with changes in nickel or RMPAM. It reflects the fact that we had to reduce prices to compete with dumped imports.

Knowing that we had lost major sales volume to Toyo Kohan, we cut costs throughout 2012 and 2013 to remain competitive. For example, we cut back on maintenance over the course of 2012 and 2013, although this is hardly a long-term solution. We also improved our energy efficiency. In addition to the reductions in the workforce, I have already identified, we subcontracted shipping and IT support functions and shifted logistics to a third-party provider.

Despite the continuous cost cutting, the operating losses in 2012 and again in 2013 forced us to cut back on important functions. We had to cut our PMD expenditures, or product market development costs. We cannot cut product development costs over the long-term and remain competitive in the market.

As a consequence of the losses, our return on

investment is inadequate to fund necessary capital projects. We have identified these projects in our questionnaire response. Among other items, we need to make capital improvements to an annealing furnace in order to increase our yields. However, our total capital spending for 2014 will be only a fraction of the amount needed for this project alone.

Relative to depreciation, our capital spending is not sufficient to refresh our equipment and assets. We are not making sufficient capital investments to maintain our asset value.

In short, in little more than three years, we have seen our production fall, our shipments decline, our prices erode and our profits disappear. In the U.S. market, the only qualified, experienced and longstanding suppliers are Thomas Steel and the Japanese producers. But for the low prices set by those dumped imports, I have no doubt that we would have been able to sell nickel plate and make a profit. The proof is in the fact that our performance sharply improved as soon as antidumping duties were imposed. Without those duties, we will again lose sales volume, prices will decline and our profits will disappear.

For these reasons, we request that the International Trade Commission make an affirmative determination and provide relief to our industry. Thank

you.

MR. CANNON: Thank you, Jon. Next we'll hear from Tom Jones.

STATEMENT OF THOMAS JONES

MR. JONES: Good morning. My name is Tom Jones and I am President of the United Steel Workers Local 3523 at Thomas Steel Strip Corporation in Warren, Ohio. I would like to start by thanking the commission for visiting our mill and for giving organized labor the opportunity to speak here today.

I've been with Thomas Steel now for almost twenty-five years and for the past five years I have worked on the entry end of the pickle line, which is the very start of our operation. I'm also qualified to work as the operator on that same unit.

I understand that your plant tour started at this point in our operation. Before working on the pickle line I worked on the hot band slitter, which is in the same area, for thirteen years. The last six of which I was the Operator.

When I started at the mill in 1989, we had approximately 450 hourly workers and over 250 salaried employees, that's over 700 positions, all of which were good paying jobs with good benefits. Today we have about 250 hourly and salaried employees combined.

The hourly workforce at Thomas Steel takes great pride in what they do. We are a specialty strip mill that performs high-quality work and we're good at it. None of the other mills in our area that I have had the opportunity to visit have performed the same type of work that we do. It is high-end work that requires highly skilled personnel.

Because we are responsible for the quality of our product, we do not outsource any part of the operation. Even our maintenance is done in house by highly-skilled trade and craft journeyman employees. My point is that everything is done under one roof.

There is a process in place now at Thomas Steel called the "Daily Management Board." This is a meeting where the workers can interact with Management if they have ideas of suggestions for improvements on everything from the processing of the material to which maintenance tasks should take priority on that unit. I have always stressed to our membership to take ownership in what they do -- if we make a poor product, in the end the Company will not need us and certainly there would not be any need for the Union.

We do take ownership of our work and we relay this to Management. The Daily Management Board meetings gives us an even greater opportunity to do just that - take price and ownership in what we do every day.

I became Union President in May of 2009, about

the same time that William Boyd became President of Thomas Steel. This was a difficult time as our business volume fell off sharply. I myself was laid off for fourteen weeks in 2009 in the wake of the volume losses that we suffered.

These losses also led to several retirements throughout 2008 and 2009 and most of those jobs were never replaced. We began using voluntary layoffs so that the younger employees could keep working but there were several times in 2009 when the whole mill was laid off -- meaning that there was no production whatsoever. That never happened before in my time at the mill.

Since then, we haven't been able to hire as many people as we would have wanted. We're down to about 190 employees, hourly employees now and I expect us to lose close to 10% of that number this year alone. Unless the business volume is there, we're not going to be able to replace those employees.

The shrinking of our volume is out of our control. It is not from a poor product but from the unfair trade practices. A shrinking workforce, or an underused workforce, not only affects the people at Thomas Steel but it impacts the community as a whole. Warren, Ohio has two steel mills that you toured last week. As recently as 2012, we had a third steel maker in town. That business went bankrupt and now it's gone. Our community has already

suffered the effects of exports competition.

Anytime I don't have extra money in my pocket because I'm not working enough hours, that's money not spent in the community. It doesn't go to the local tax base or to support the local school systems, it doesn't go to the lady who cuts my hair, or the local diners who make their living off of our so-called disposable income. Most people probably don't understand this, but there is a tremendous impact beyond just the workers. Every dollar not made in our community has a negative impact on everyone that lives there.

This is a job where you could have one person in a household working, have two or three kids and still have a comfortable life. You won't live in a mansion, but it will sustain a good middle-class environment. We get paid holidays and vacations. We have a good health care plan and a good pension. Our jobs at the mill are the prototype "middle class" jobs that the politicians so often talk about and claim they want to protect.

If we keep losing manufacturing jobs to low-priced imports, we will lose those middle class jobs, and the middle class as a whole. To quote former Governor of Ohio, Jim Rhodes, "we all can't cut each other's hair." We cannot be solely a service based economy, somebody has to product an actual product.

Unless these unfair imports stop, it will only contribute to the squeezing of the middle class. I work for a living and I want to continue to do so. I want to do it for a wage that lets me keep my house, drive my car, keep food on the table, and help my daughter when she needs it. I, along with everyone else at the mill, want to continue to provide for my family. Everybody should be able to do that.

For these reasons I ask the Commission to relieve our industry from the effects of unfair trade. Again I thank you for your time.

MR. CANNON: Thank you Tom. Could I ask how much time we have?

MR. BISHOP: You have 17 minutes remaining.

MR. CANNON: Okay, I will do a little housekeeping. All the slides we deleted the numbers from the left hand bars so that they can be shown publicly, to show the trend. We will give you the confidential versions with the post-hearing brief so you will actually have the figures.

We also handed out an exhibit in pink and I would like to turn to this briefly. These are Thomas Steel's offers to sell product which are submitted to a customer and the first page what you see is the offer that was made, back in December 2011, for the AA business that Thomas lost to Toyo Kohan. At that time we had 80% of the market of this

product, I'm sorry not of the market, but 80% of this product.

What you see in the middle, you see the destination, the first one there in the USA, that's the can maker location. Under that you see the type of steel and you see the identifier reading across left to right, gauge thickness, that's how thick the nickel plate is. You then see the strip width, that's how wide the nickel plate is, you then see the nickel layer, that's how much nickel is on the product, how thick the layer of nickel is and the estimated volume.

If you pause at the estimated volume and just sort of scan down, what you see is that basically the second, third and fourth items are the big volume items on the page. The second and third items, looking at the gauge thickness, that's the product we are talking about, the second and third items.

Moving to the next column in bold, you then see our base price to this customer. So you can get a concept of the magnitude of that price, December of 2011. Now, the way this table works is next to the base price, in the next column, that is actually the full material price. So this price is the real price that we talked about, so if you go back in the slides to the slide that shows the RMPAM and the nickel price adjustment, okay.

Base price, which is essentially the blue bar right, the price next to that is our actual price, so to get to the price called the full material price, you have to add the hot band price and the nickel. Now what this customer does is next to the full material price they have what they call a "benchmark price". What they do is they make us put into that number fixed assumptions, what will nickel cost and what will hot band cost, and they hold this constant for all suppliers, so everyone who quotes them has to quote the same amount of nickel and the same amount of hot band for, it's actually iron ore and coking coal, better reflects the hot band cost of the raw material.

So what they are doing is, they are making all their suppliers expose this base price so that they can compete on an equivalent basis. Showing on one end that price is very important to them. Now if we look at that price in bold and go back to the column base price, and you flip two pages and you look at the same thing, I'm sorry, you have got to flip three pages, it's even smaller, it's really a challenge for me.

You've flipped through the really tiny one, and you scan across, you will find a base price underneath where it says Tata FY 13-14 proposal, you will see the base price. Look at the second one down, that's the material, that's where all the volume is. Look at that number, right, that

number is basically $300.00 a ton almost less than the number back in December.

In December we had 80% of this product and we quoted the price shown on the first page and they took us out and the Japanese got 80% and we were pushed down to 20%. We came back and here you see us $300.00 a ton lower on the base, we had to cut the base $300.00 a ton. This price-cut has nothing to do with nickel, the nickel was taken out. It has nothing to do with hot rolled iron ore, it has nothing to do with coking coal, those elements are taken out of the price.

So when the Respondents tell you that our formula that we use caused the harm, it forced our prices down, don't be fooled. Our formula did not cause prices to decline, it's the base price that declined. Our injury is not self-inflicted, we didn't invent a formula to have our prices fall faster than our own costs and that's not what happened.

Now there is another point I would like to make about this chart. If we go back to that third page, is that the third page? No, you see the location, the location destinations. I am on the page, I should have put numbers, I'm sorry. So I'm on the page where the destination is China, okay. These are shipments to China. It's I think the third one, the prices there are uniformly lower by about

the same $200.00 or $300.00 a ton than the prices in the United States.

You are going to hear that Asia is this growing market. There is no threat from these imports because they can sell them to Asia and it's expanding. I submit to you that do you want these prices or these price levels in Asia? Or would you rather have the price levels in the United States? And I think the answer is obvious, you would rather go for the high price market which is the U.S. market and that is why these imports are a threat to us.

They would prefer to sell here where prices are higher. They would prefer to sell here because the United States accounts for 50% of the world market in terms of battery production it is the largest market. Demand in Europe has been declining, Volt, Eveready and Duracell have moved production out of Europe. Eveready, I think, left Europe altogether so within the global market, the imports are focused on the United States.

It was the market where the high prices are, it is the market where all of the volume is. Now if you look at the staff report, on page VII-6 you don't have to do it right now, what you will see though is how much capacity they have, it's idle in Japan. We have another slide that shows capacity in the world. They have an amount of idle capacity just like we are, you need to fill that capacity to

cover fixed costs, so they are motivated to fill that capacity, to come to the highest priced market in the world and that's essentially why there is a threat of injury, if there is not already injury.

This chart shows global demand. If you add everyone up in the world who makes nickel-plate that's the far left bar, the total amount of capacity on the bar on the far left is about doubled the total amount of demand in the world. So perhaps it's no surprise that the manufacturers here are operating at low capacity utilization levels.

What that tells you is that there is intense pressure on prices because this is a situation where there is excess supply available for a far lower level of demand. For this reason too, it's closed for the record, even the public parts, but there is a threat of injury as well as present material injury.

Finally the last housekeeping thing I would like to cover is that we think there is one like product co-extensive with the scope of the merchandise defined in the Petition and used by the Commerce Department and with that we are happy to take questions, thank you.

CHAIRMAN WILLIAMSON: Thank you very much. I would extend the Commission's appreciation to the witnesses for coming here this morning and this morning we will begin our questions with Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you Mr. Chairman and I thank all of you for being here today. I would also like to thank you for hosting many of us, including myself at the plant for Thomas Steel, it was very, very interesting and informative and I want to begin with a question that I believe you have already answered Mr. Cannon in your discussion of the pricing data that you included in your exhibits.

We have the challenge here of trying to distinguish between lower prices that are caused by lower input costs and lower prices that are caused by subject import competition and based on what you just testified to, I take it that you would have us look to the base prices to try to distinguish between those two causal factors, but I want to give you the opportunity to expound on that at greater length if you wish.

MR. CANNON: Thank you. I think I can expound at greater length in a Brief and write it, but I think the fellows in the market would probably be more useful expounded here for you so if you want to address them.

MR. BOYD: In answer to your question Commissioner, I would be responsible for all of the price negotiations for Thomas Steel over the past five years so I have been there and I have been responsible for every price negotiation. On the price negotiation it has always been

about the base price. I mean the pressure has been consistently for my customers, downward, but the discussion and the dialogue has always been about the base price. There has never been any significant dialogue or debate about the raw material price adjustment mechanism or the nickel surcharge, so negotiations are all about the base price, and we are always being bench-marked against the lower prices coming from Toyo Kohan and Nippon Steel.

The slides I showed earlier on, slides 6 and 7 show the quotations as evidence of the kind of competition we are up against. It is always low prices from the Japanese and we are always being pushed and pressured to reduce our base prices in response to those low prices from the Japanese.

COMMISSIONER PINKERT: Do we have another comment?

MR. WILKES: Stephen Wilkes for Thomas Steel, Commissioner Pinkert my colleagues are the numerous folks around here, if I can try to address your question a little more conceptually. I would urge you to look at really what these formulae do. They, in fact are designed and do insulate Thomas Steel from the effects of volatile price movements for raw materials and as a result of that, I would urge you and your colleagues to focus indeed on base prices and the competition that exists when comparing those base

prices.

COMMISSIONER PINKERT: Thank you and just to stay with the formula for a second and I understand that your testimony about the purpose of the formula, but I would like to get your comments on the panel about whether the formula is, in some sense, not worked or has led to lower prices than otherwise would have been the case for the company.

MR. CANNON: So the initial answer to that is that the formula, the green which is the RMPAM, that's RMPAM, that's what we call the hot band factor. That's based on published index for iron ore and for coking coal, so it sort of reflects the cost movement in hot rolled. It is, what you see is hot rolled prices went up quarter one to quarter two, quarter two to quarter three in 2011, and then they have come back down.

And the red bar shows nickel, that's the LME nickel price, and you see the trend in that. Now, these mechanisms, nickel surcharge has been around forever, they are intended to, they are designed to and they do, cause the cost to be passed from the manufacturer to the customer. In other words, when our costs go up, our prices change. When our costs go down, our prices change. So when our costs decline, the customer gets lower prices and when our costs go up, the customer's prices go up.

It's actually pretty straight forward. And so over this period, our total price if you were to stack those, went down $400.00 a ton roughly, and about half of it was this piece which is the RMPAM plus the nickel and our costs moved in the same direction. But the base price has nothing to do with those adjustments and that's what we are forced to constantly reduced. And it is the reduction in the base price that forced our profits to disappear over the period.

Now John, do you want to correct my paper?

MR. JARVIS: No, that's correct in terms of the prices that we are invoicing the customer, that will reflect movements in those three elements, the base price, the RMPAM and the nickel, the cost we pay for our raw material or the hot rolled coil which is our input material, that will move by the RMPAM and the nickel we will buy that based on what we pay for the LME published.

So first there's Thomas Steel, it's mutual, maybe a slight difference between in terms of timing because inventory you have, that's marginal, so the whole mechanism is supposed to insulate us from profitability point of view so that if the costs fall down, we will pass on those cost reductions to our customer like for like and conversely if they go up, we will pass those costs on, so it is mutual to us in terms of our overall performance.

MR. CANNON: Bill, would it be helpful to explain a little history about why you guys went to the RMPAM?

Mr. BOYD: The background to the introduction of the RMPAM was because in about the mid 2000's the prices that we were paying, that our steel maker was paying for iron ore and coking coal became very volatile, mostly going up. The drama for that was the industrialization or the increased steel making capability of China. China started to build a lot more steel works and they consumed the available iron ore and coking coal and pushed up the price.

Once prior to the mid 2000's, large steel makers would contract a deal for iron ore or coking coal on a twelve month basis so they have had security of price for twelve months and that would be reflected in their ability to offer fixed prices to customers for that period of time.

Because of the volatility of raw material prices, there are three and there are only three major producers of iron ore and coking coal and the world saw this as an opportunity to say well we are not going to offer you steel makers annual deals, we are going to offer you prices on a monthly basis because we are going to ride the market upwards as demand pushes up prices. So that caused the dilemma for us as a company because our customers were clearly used to and demanded six to twelve month prices.

Because of the volatility and the prices of hot rolled coil, the only way that we could give customers that price stability which they needed, was by having a mechanism whereby we could pass on, put downwards the increase or decrease of raw material prices, so that's the background of the driver, which led us to the point in 2009-2010 when we introduced that mechanism.

COMMISSONER PINKERT: Thank you very much. For the post hearing, keying off of what Mr. Jarvis just testified to, if you could look at whether there was any mismatch as far as timing, that was costly to the company because the sur-charges didn't reflect the actual costs in the marketplace, I think that would be helpful.

Thank you and the other thing I would ask for the post hearing, is to specifically address the Japanese producers arguments regarding Product 5 in our product pricing comparisons and to state whether or not you believe we should disregard the pricing comparisons for Product 5.

Mr. CANNON: Thank you, we will do so and we don't think you should disregard Product 5, thank you.

COMMISSIONER PINKERT: Thank you Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you, Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you Mr. Chairman. I would also like to thank the witnesses for appearing here

today and I would like to thank you again for giving us the side visit last week, I found it very informative.

I would like to continue on with the formula, the pricing formula that Commissioner Pinkert was speaking on a moment ago. Respondents contend that falling commodity prices and Thomas's pricing formula are linked to these prices, the falling commodity prices, resulted in price inclines for Thomas. If that in indeed the case, can't these contracts be negotiated and if what the Respondents allege is correct, can't the pricing formula be changed?

MR. BOYD: The answer to your question, Commissioner, is yes we could by joint agreement change the formula but as long as the -- there is a significant volatility in the global market for the raw materials of iron ore and coking coal, we are certainly not going to recommend that we change the current formula or the current approach.

COMMISSIONER JOHANSON: So you see and perhaps your purchasers benefiting, still benefiting from this formula?

MR. BOYD: Yes we do. I think one of the big benefits, in terms of the, certainly in terms of the negotiation prices, is the visibility of these movements because prior to the introduction of the raw material price adjustment mechanism, negotiations and prices and certainly

the battery quality hot rolled coil is a significant part of the total cost buildup. Those negotiations revolved around where are prices going and if prices are moving upwards for this, hot rolled prices, moving upwards or downwards, by how much are they moving?

And there isn't a publicly published index for the specialized battery quality of hot band still. What we use is the raw material to make nickel-plated steel. So by instituting with our customers the raw material price adjustment mechanism was removed that uncertainty and it didn't cause a certain amount of, I don't say digitials here, interesting negotiations and we now actually manage our prices by reference to a publicly published index. There is clarify and there is visibility and I think this is a huge benefit for both parties, both buyers and sellers, by adopting that approach.

MR. HARTMAN: I would like to also add to that that occasionally we will have discussions with our customers that will enable us to walk in to a given raw material component for longer than a quarter and in every instance they have declined that option and you can see that based on the trends of the green markers there.

Why would you lock in in the outlook of those indicators are going to be in a downward direction? So we have offered them, no one has accepted it.

COMMISSIONER JOHANSON: And once again, historically, I think you might have discussed Mr. Boyd, and I know this from reading the newspapers, back in 2010 or so I think you stated that iron ore producers, major ore producers went to spot sales from contract sales and so you were in effect trying to perhaps replicate what was done earlier by creating more certainty in what the prices would be, or pricing formula would be.

MR. BOYD: That's right sir. Before that, with the large swings, and I think what we, when I show the slide of raw materials you can see the upward movement. It was a very difficult time for us as a producer because we could be locked in to a twelve month contract and during the time period the raw materials could move rapidly and our costs would increase significantly and we couldn't recover that cost increase during the time of the fixed price deal and so come the next price negotiation we would be endeavoring to retrospectively recover that cost increase.

This posturing mechanism with visibility, there's no debate about the actual size of the movements of iron ore and coking coal, I think is a far better system.

COMMISSIONER JOHANSON: Yes, Mr. Jarvis?

MR. JARVIS: Just to add to that, we also provide to our customers the service of hedging forward nickel so the customer and quite a few of them take up that

to hedge forward multiple years that they can lock in the price of nickel.

COMMISSIONER JOHANSON: All right, thank you for your responses. The Petitioners have argued the prices for nickel-plate differ by region and that the prices in Asia are substantially lower than prices in the United States. Why are there these regional price differences and I am somewhat surprised -- one reason I'm asking this is that I see this product as a cause and commodity product and so the difference in price is something that I am interested in hearing more about, thank you.

And I believe that Respondents earlier, perhaps you all, it must have been the Respondents stated that the reason for the price difference was the proximity of Japanese producers to the major markets in Asia, can you all comment on that please?

MR. BOYD: Yes I will sir, there are and you have the opportunity with the exhibits which we circulated, you have the opportunity to see in detail the significant differences in regional market price levels between the United States, Europe and Asia and you can see the Asian market price for our product is significantly lower than the price that we can achieve in the United States.

Yes, picking up the commentary, what I said in my Brief, the price levels in Asia are driven by the proximity

of the Japanese nickel-plate producers into that market. It's a highly competitive market, it's a growing market where the -- our understanding, our experience is that the Japanese nickel-platers are seeking to further business and I think that is a significant factor in driving down prices in that market.

COMMISSIONER JOHANSON: Okay and you all contend that the Battery Association of Japan supported the decline in battery sales by volume in 2011 and 2013 and that their forecast for a consistent decline in alkaline battery sales for 2013 and 2014, could you all talk on that for a moment? I mean if, is there indeed a decline in battery sales in Japan, from what you can see and isn't it also true that in the United States?

MR. CANNON: The article that you are referring to with regard to the Japanese Battery Association is talking about consumption in Japan of AA batteries and it does appear that there is a decline in battery sales in Japan. In the United States however, I think our demand trend is different and I am sure they will talk about it.

That article which speaks about the battery market and the decline doesn't address the lower priced automotive market, so there is another market for nickel-plate, it is a thicker product. It is not at this price point that we are talking about here. In the U.S.,

something like 90% of the market is for batteries but there is a market for fuel lines for automobiles in Japan and so much of the whole market sales by the Japanese producers is serving that market as the battery market shrinks.

So they have a whole market, it's not -- you can see from the confidential record, from the staff report at Page VII-16, Roman VII-16, you can see how large their shipments are to Japan. If you are trying to relate that to this trend, the problem with this data is they are not separating battery from auto and batteries, the market here in the United States that we are talking about and maybe you all can talk about the trend in battery demand?

MR. BOYD: The trend in battery demand in the United States, we project over the next few years is going to be flat to potentially slightly declining and the main reason for that is the reduction in the uses of disposable batteries. Increasingly we will know this from our own experience. Our electronic products have batteries involved so we see flat to maybe a slight decline of 1% over the next four to five years, but still otherwise a significantly large market.

COMMISSIONER JOHANSON: So you see compared to Japan, the U.S. market flat or or possibly going up and Japan trending downward?

MR. BOYD: Yes that's right sir.

COMMISSIONER JOHANSON: Okay, well my time is almost up so I will stop at that but thank you for your responses.

CHAIRMAN WILLIAMSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: And just on the demand question, what are you all predicting for future demand for nickel-plated products that you can produce, is there any new innovative consumption at all, because I'm guessing the battery market is with the rechargeable batteries is going to kind of steady out, is that correct?

MR. HARTMAN: Yeah, we've looked at alternative applications for nickel. We do have some ongoing developments in the electrical industry for actually connectors and things of that nature. The volumes are relatively small.

COMMISSIONER BROADBENT: Yeah.

MR. HARTMAN: In the short term we don't have any substantial volumes that are going to require nickel unfortunately, so we have tried to book our efforts on higher strength opportunities that could provide you know more or less, displacement of some of the current thicknesses that we have, but there is really not any substantial developments that we are working on right now that even come close to, I would even say a thousand tons of demand.

COMMISSIONER BROADBENT: What about the batteries that are blowing up in the Tesla's? Would you have anything to offer there in terms of protection?

MR. HARTMAN: No, I don't have extensive knowledge about that. We did come across an article a short time ago that talked about the Teslas in reference to 2020 expectations they are looking to get, you know potential facilities in North America that they would open up to produce the battery packs, but at this point in time that's still out there.

COMMISSIONER BROADBENT: Is that, would that type of battery, Denodo, be covered with nickel, I mean could you use that as the can for the battery?

MR. HARTMAN: You could right. The purpose of a battery pack of that nature is to provide a container, and obviously the steel, nickel-plated steel will provide that rigidity that container for containment and that's certainly, it may provide an opportunity down the road for a new opportunity development.

COMMISSIONER BROADBENT: Okay.

MR. CANNON: We would be happy to submit as an exhibit the article that we are talking about. There is an article "Tesla Gigafactory Full Tilt by 2020".

COMMISSIONER BROADBENT: Okay.

MR. CANNON: And so we can attach it and its

analysis, but I think the point is really that its somewhat speculative now in 2014 whether they will get the financing, whether Tesla will go this route, and whether it will happen by 2020 and whether we will still be here.

COMMISSIONER BROADBENT: Right, yes, no, I understand.

MR. HARTMAN: I guess a good example of that would be we had some folks several years ago that were looking at the solar panel industry.

COMMISSIONER BROADBENT: Right.

MR. HARTMAN: And that was an up and coming market, and we thought there was going to be a solid opportunity for us. The market has never developed, the battery or the producers of the solar panels would require very thin material and those applications the funding, when the government funding is lifted, or taken away, those companies cannot support the, really the costs that the power output is capable of delivering in those solar panels, solar markets, so it is still an upcoming market, potentially that may reach some volume somewhere in the world, we just don't see that happening in the US.

COMMISSIONER BROADBENT: Okay, yeah, because we had a -- I wanted to thank you all for hosting us there last week because we had a great, great tour. Mr. Boyd you were really and all of your team is terrific, and it was a very

impressive product, I mean it looks beautiful in terms of coming off the line and I guess it just looks like it can be used for something good, I have no idea. I'm sure you have thought about this, I was just wondering about the future battery market, because I understand it is an area of sort of competitive research that the U.S. is doing overall and we really do need to develop some innovations in that area.

Okay, I want to talk about this chart 5 again just for a minute. I wanted to ask just a little bit more about the relationship between the raw material price and the raw material price fluctuation and the price. I know that the RMPAM gives you a buffer there to allow to product against price fluctuations and ask you have described, but it is not a great, I mean it's a thin buffer I guess is what it looks like to me.

In order to preserve this buffer, wouldn't you moving your price, your base price downward, when you are looking at the long-term trends that point towards continued declines in raw material prices?

MR. BOYD: My response to that matter is that I guess we can't predict which way the raw material prices will go. I mean they have been, and certainly when you look at the slide you see that for most of the period within which the raw material price mechanism that has been working, the trend has been downwards but we can't predict

how long that is going to continue.

MR. CANNON: Maybe Jon can comment, but I think that the mere fact that the RMPAM and nickel surcharges move up or down, wouldn't have any effect on a base price or create any pressure. So over the long-term, there would be no pressure to reduce base prices because of RMPAM and nickel. Those elements pass through our costs so our raw material costs are just passed through to the customer. The rest of our costs we need to cover with our base price and so we wouldn't in some sense, just naturally reduce prices unless our costs went down.

In fact we have reduced them now to the point where we are losing money and we wouldn't rationally do that but for the import competition, we certainly wouldn't do that so.

MR. JARVIS: As I mentioned, we looked a lot at our costs and things that we can control and our costs would continually, we have thirty initiatives that we as a senior management team, review every week in terms of how do we maintain cost competitiveness. We also do job projects with a lot of our customers to say can we take costs out of the supply chain and that may result in base price reduction, but I agree with what Jim says, that there is a lot of pressure on electricity prices going up.

You've seen our facility, heavy uses of

electricity. We try to compensate that with cost reductions so we don't have to increase the base price.

COMMISSIONER BROADBENT: Okay. Mr. Cannon, if you could, it would be helpful if we could have some maybe quarterly broken out prices so we can just sort of see what the trends --

MR. CANNON: This chart like for all of the products, would it be something like that?

COMMISSIONER BROADBENT: Yeah.

MR. CANNON: Okay.

COMMISSIONER BROADBENT: I think that would be helpful, just so we could see, by quarter, you know we are going to have to really drill down on this, it would be helpful.

MR. CANNON: It will illustrate some other points we want to make when we get to rebuttal too.

COMMISSIONER BROADBENT: Okay.

MR. CANNON: So I would be happy to do that.

COMMISSIONER BROADBENT: Okay on page 14, can somebody put that slide up, would that be possible? And then can you just give us some sense of how you calculated what you recovered based on the imposition of the antidumping duties?

MR. JARVIS: Q4, Q1 of 2014 we can see, we can use actual data for that so we can see what we have sold to

Panasonic, that we can see what of the AA extra that we have sold as well to Cly-Del, the can maker for Duracell and then for the three last quarters of 2014, we have taken our customer's forecast, we do an annual plan process. We have taken that forecast basically.

MR. CANNON: So the confidential data show that after the dumping duties were in effect in October last year, that AA volume that we lost to Japan on Duracell switched back, we got back the major portion of the business that we flipped and the Rayovac business that for two years they argued we weren't qualified, we are now shipping that to them too.

So we took that Rayovac business that we got back where we know have, we took the AA that we got back and that's the difference in those, in the fourth quarter of 2013 is actual and the first quarter, 2014 is really almost actual and the rest is the forecast numbers which are based on our order book and that's in our questionnaire response.

COMMISSIONER BROADBENT: Okay, great. Let's see, in terms of Thomas Steel's production of nickel-plate, what are the practical advantages and disadvantages of having hot rolled steel sourced from the foreign affiliate?

MR. BOYD: Mostly, if not all advantages by having it supplied by a sister company in house because the technical requirements for the steel are very demanding.

You have seen the, I think, you've seen batteries and certainly you would be aware that it's a very severe draw when the can is drawn. Any imperfection, any impurity in the steel would manifest itself at that stage and so you need to have a steel maker that is prepared to make this high quality, highly demanding battery steel and there are only one, two, three, four steel makers in the world, it's a small club, who are capable and most importantly willing to make the specification, because in steel making terms, when you are looking at integrated steel works making millions of tons, we are talking about tens of thousands of tons and it is not, it is not an attractive product per se, unless you have some kind of relationship, so we benefit by having a close relationship to our battery quality hot banned steel supplier.

COMMISSIONER BROADBENT: Okay.

MR. WILKES: Commissioner Broadbent, Stephen Wilkes for Thomas Steel, if I might just add to what Mr. Boyd has said. I guess you know, one very practical advantage is that we have been unable to convince any domestic supplier to commit to what's needed to produce and supply this product, and we do buy for other applications, hot banned from domestic suppliers.

COMMISSIONER BROADBENT: So you have made an adjustment to get a domestic supply of hot banned?

MR. WILKES: Yes we have.

COMMISSIONER BROADBENT: Thank you Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you, Commissioner Kieff.

COMMISSIONER KIEFF: I join my colleagues in thanking all of you for the great presentations as well as for hosting the Commission to the visit. I, myself, greatly enjoyed four years at a technical school and therefore every second of my Ohio steel tour, it was just a treat and I'm really sorry I didn't get to see your particular facility but more machines, more trains, what could make a little kid happier, so anyway, they are great facilities and then of course as someone who has long studied industrial organization, it is also very nice to see labor and management working together and my colleagues have told me so much about the visit to your facility in particular, so thank you very much.

To ask some substance questions if I could, can you either here or afterwards in the post hearing give us a little bit more detail to the 2012 data on raw material costs and where, I think this is part of what some of my colleagues may have been asking about as well, in particular Commissioner Pinkert, but just to kind of more precisely put my finger on it, I think it at least looks a little bit like your raw material costs were going up while others raw

material costs were going down and could you just explain a little bit more if that's a correct perception and then if there is any other information you should pass along that will help us understand that.

MR. CANNON: So it does have that impression. If you look at the unit costs, they appear to go up in 2012 and the Commission will appreciate that you in your questionnaire instructions require us to eliminate inner-company profits. So our raw material costs are not really our raw material costs. In those numbers they are burdened with our foreign sister companies profit and loss, because it had to be eliminated and so it creates this appearance that our costs were a little higher in 2012 than they really were.

If we took that line item and separated it from the raw materials and put it as a separate alignment item in our P&L, you would then see that our raw material costs trend in the manner in which everyone would expect.

COMMISSIONER KIEFF: That makes sense.

MR. CANNON: I'm just trying to give a preview of what the record will show.

COMMISSIONER KIEFF: Perfectly cogent.

MR. CANNON: And you have seen this in other steel cases I think where you have a U.S. producer of hot rolled selling to someone who makes for example, corrosion

resistant, you eliminate inner-company profits. Here, it's a foreign operation one could argue you shouldn't do it at all because you don't care about injury to our affiliate in Europe, we only care about injury to our plant, but if we isolate that I think you will see, that's in essence the noise in the data.

I will further state that even if you eliminate that and see the pass through of our profits, I mean I'm sorry, of our costs to the RMPAM and the nickel, we are still going downhill, right, we are still going from the high level profits, our 2012 results will be better if you take out this inner-company noise, but still marginal break even, and there is no inner-company issue has no effect on 2013 because our foreign supplier was essentially break even in 2013, so there is no effect at the end of the period.

COMMISSIONER KIEFF: Let me, that's very helpful, let me ask, change gears and ask a slightly different question. You've talked about um -- Duricell's decision to shift in effect away from you, if we were to decide that that decision was not based primarily on price or maybe even in any material way on price, and those are big ifs, but help me understand, assuming that those ifs were satisfied, whether that should matter at all, the analysis, because it might turn out that it shouldn't, but it would help if you could explain how we should think about

that.

MR. CANNON: So if we look at the slide that has the components of profit in it, it shows the volume effects and the price effects, so if you concluded that the loss of volume had nothing to do with the dumped imports, our position would be a big chunk, a third, a half of our loss is price facts through the market. So we will maintain we are still materially injured, all right. Beyond that, having lost that volume, for whatever reason, we are vulnerable.

We are operating at less than 60% capacity. Without having the preliminary dumping duties, we would be down in the 40% capacity and by the fact of what happened when the dumping order came in, you can see what was about to happen, what's going to happen, the threat is imminent and real and so if you were to find that this particular chunk of volume was not lost for price reasons, and I think couldn't possibly be bad, I am going to say April Fools.

COMMISSIONER KIEFF: I get that.

MR. CANNON: And if you found that the price effects are alone, this is sufficient to find injury and having lost that volume there is clearly a threat, because we are just going to head down that road and lose additional volume and if that incident wasn't based on price, we have now had to sharpen our prices at every customer, at every

account and cut prices. And if we were unable to get back this Rayovac business, which we got back because we cut our price, if we were unable to get the AA business back, which we got back because we cut our price, because the dumping order is in effect, we were clearly threatened with injury.

COMMISSIONER KIEFF: So follow-up, and again I hope that come de-coupling pieces of the logic is a helpful exercise, even though I recognize that it is painful, especially to an advocate who has constructed a brief where they are coupled, but if we could go, please to slide number 5. Let's go with the other piece of what I think is in your, the coupling.

If I understand that basically your base price number is essentially your value add and therefore your cost, whereas the RMPAM and nickel items are essentially the pass through costs, is that maybe a reasonably accurate thumbnail sketch of it?

MR. CANNON: We hope in the base price it isn't just our cost, that there is actually a margin for profit.

COMMISSIONER KIEFF: Correct.

MR. CANNON: We note that in 2013, it wasn't.

COMMISSIONER KIEFF: Yes, that's what I meant to say, great. So then we are talking about the same thing, now in one of your, in a prior dialogue, I think it was with Commissioner Broadbent, you mentioned that you think that

there is no natural reason to think that for example, your, let's call it base price, should be decreasing. There is no natural reason for a decrease and therefore if there is a decrease, we should be suspect in some way, that's evidence of a problem.

Can you either now or later, and I see that my time is up, but maybe explain a little bit more about how strongly we should adhere to that proposition and whether that proposition should be softened to some extent to build in some sense of efficiency growths over time so that maybe there really, every, I hope that the next time I will end not nine minutes and 19 seconds because now I'm at ten minutes and 19 seconds, so in other words, that each time I will get better at it.

MR. CANNON: Yeah, we would be happy to do that and reflecting my answers simplistic because it's really the relative distance between price and cost, in other words, non-raw material costs and to amend my earlier statement.

COMMISSIONER KIEFF: Great, that's very helpful, thanks so much.

MR. CANNON: Thank you.

CHAIRMAN WILLIAMSON: We'll try to help you with that goal. Thank you, Mr. Jones, thank you very much for coming here today actually, I appreciate your testimony and I was wondering if you could tell us a little bit more about

the nature of the work force. I mean you said it is a small, highly skilled and explain why it is highly skilled and yes.

MR. JONES: Yes sir, it takes a while for people, we have with the basic labor agreement, it is called lines of progression. You start at an entry level position and you train and there is seniority, your seniority permits you move up the food chain so to speak to become an operator and that's the pinnacle of what you would do and hopefully your years of experience to the other positions will aid you in that, when you become an operator, you will know what defects you want for and that type of stuff, so it is just the experience involved in it, helps out a ton. Did I answer your question sir?

CHAIRMAN WILLIAMSON: Yes, that's helpful and I'll tell you one reason why I'm asking this question. This is not like a case of still China where they can talk about the low wages, work force. I assume that your competitors, Japan, highly unionized too, highly skilled work force, maybe making more money, I don't know, but I don't know whether you or anyone else wants to address that fact, because as I said, this is not the case where you can just play ball, they just don't want to let you play.

MR. BOYD: I'll try and address and answer that question. When we are talking about Thomas Steel and the

men and women who work there, we are talking about a company that founded in the 1920's and invented the nickel-plated diffusion-annealed process. We were the market leaders, we were first in true market and I guess we have attracted competition.

When you are comparing the conditions Thomas Steel, a strip corporation in Warren, Ohio with our competitors in Japan, it is very important that we understand we are not comparing with apples with apples, we are not comparing like with like, because my competitors in Japan's primary product, primary business, is template. And you may recall when I introduced myself, I come from a templating background.

CHAIRMAN WILLIAMSON: I don't think I appreciate the significance of that, but you may.

MR. BOYD: And therefore they are producing hundreds of thousands of tons of template against tens of thousands of nickel-plate. They are able to allocate their fixed costs across a far-wider volume of steel than we are. So when we are looking at what we are trying to compare the like with like, yes it is, and I don't know the -- , it's likely because it's a developed nation that Japan will have higher labor costs than say the emerging economies.

But when we are looking for like for like, and maybe my colleague Jon will help me, the fixed costs

associated and the recovery of those fixed costs associated with the template operation, compared to a smaller, specialized operation like Thomas Steel, that's not a like for like comparison Jon.

MR. JARVIS: Building on what Tom said in his testimony about the packages that we offer to our workers, I think I wouldn't want to disclose how much costs, you would probably see that in some other packages, we can give you the details of that, that we offer good medical, good pensions and good wage, including incentives, profit-sharing, equality bonuses so we can share that with you, some specifics on that.

CHAIRMAN WILLIAMSON: I don't know what your competitors are paying for stuff like that, I'm assuming it's probably comparable given well organized unions. Yes sir.

MR. JONES: I would like to add to my answer that just because you have that seniority and you have moved to that position doesn't mean that it's a free ride. You have to do that job and you have to be good at it or you are taken off that job. You don't just segway to that position and then say, "okay I made it here I don't have to do anything else". If you don't do your job the way it's supposed to be done, the way the company needs it to be done, they take you off that job, it is not a free ride at

that point, you still have to maintain those strict standards and do the job correctly.

CHAIRMAN WILLIAMSON: Okay.

MR. WILKES: Mr. Chairman, Stephen Wilkes with Thomas Steel, if I can add to what my colleagues have said, maybe another way of looking at this is I think we have no doubt about the skills and the quality of our competitors product and environment, I think the point is here there are very few of us doing this in the world. We all have the qualifications to do this, we all have an excellent highly skilled, highly dedicated work force that we are proud to have with us say here today and we play in that same sandbox.

CHAIRMAN WILLIAMSON: Okay and I guess we would probably still have a more flexible labor market than they do and that kind of helps us competitively, and some of that is a fair slate, but I don't know you may know.

MR. WILKES: I can't speak to that sir, but perhaps we can try to address that in post hearing.

CHAIRMAN WILLIAMSON: I'm just trying to understand the nature of competition. It is helpful to understand this, you have a company that has got a ladder base of manufacturing like doing the template that does help explain something.

MR. BOYD: I think one thing I would say,

because Commissioner Kieff touched on what are we doing to help ourselves in terms of are we looking for the free lunch to use the terms I used or not, we are not, and if I look and I ask how we manage our operation to be more productive, given that we are in the United States and so we are actually rightly proud that we have a work force with a pretty decent wage with good benefits, but there is a flip side of the coin, as Tom Jones has said, we are quite demanding, you have to cut the mustard, you have to make the grade in terms of how you work and we are constantly engaging our work force to get a greater contribution from the men and women who man the operation, so we are looking into leverage our investment in the work force, to make ourselves more competitive, because it is a very competitive market.

We can't stand still and rest on our laurels and so the way we deploy our labor, the way we motivate trade and incentivize to continue to improve the operation is a big part of the way that we strive to be more efficient.

CHAIRMAN WILLIAMSON: Thank you. Another area that has been sort of bothering me, the Respondents have said that you are using a pricing formula that is hurting yourself, and I just want to understand what pricing formula do they use? You are relatively small producers, have they come up with some magic bullet that no one knows about, can

you explain that?

MR. BOYD: They use the same one, with benchmarks on a base price, I think as described earlier on, by using a particular format with certainly one of their supply chains, but also benchmarks with another supply chain. If there is a silver bullet out there I would like to find out where it is, but I don't think there is a silver bullet, we are benchmarked purely against price, it's price all the time which is the major determinant, in fact, I had said mostly the sole determinant after qualification, which determines volume allocations in business.

CHAIRMAN WILLIAMSON: Okay so when they go up against, excuse me, again to customer, they are going to use a similar pricing formula?

MR. BOYD: Absolutely. They use, we are benchmarked using the same formula so that customers can compare apples with apples and it strips out for the purposes of this process, this quotation process, strips out for the purpose of benchmarking the raw material price adjustment mechanism and then it's a surcharge, so it is the comparison, the benchmark is based purely on the benchmark, the basic price and that's the -- that determines where the volume goes.

CHAIRMAN WILLIAMSON: Okay thank you, Mr. Cannon?

MR. CANNON: So the format that we fill out, we put in our base price and we fill in the other cells, they submit the identical format. They put in their prices and it fills out the other cells. They literally use the same form that we do.

CHAIRMAN WILLIAMSON: Okay, thank you. Mr. Cannon this may have to be answered post-hearing during the conference. The staff report states the estimated share of the final cost of nickel-plate, that is accounted for by raw materials, now of course the valuation cost staff report is confidential. Your slide at page 5 suggests a much smaller share of raw material costs that are covered by the RMPAM and the nickel surcharge. Are these two estimates inconsistent? Are there some things missing?

MR. CANNON: Yes, so in our base we assume a certain amount of nickel, that is not part of the formula, the floating nickel surcharge. There is a flat amount of nickel built into our base and it is identical every year, it is the same. And the RMPAM reflects the change in the hot rolled price. We only adjust when the price goes up and down and so there is also in our cost, our cost is going to be a little higher than the RMPAM.

Another way of thinking about that is the RMPAM is iron ore and coking coal but buying hot band and there is more in hot band than just iron ore and coking coal so there

is another element of our cost that is not captured by RMPAM and nickel.

CHAIRMAN WILLIAMSON: Okay, thank you for that, Mr. Pinkert?

COMMISSIONER PINKERT: Thank you Mr. Chairman. I have just a few follow-up questions. First of all, again I find the information on the pink sheets that you have pointed to Mr. Cannon, to be very helpful. I just want to get you to offer any comments you might have on the price comparison data in the staff report. Now I understand that we have already talked about Product 5 a little bit, and you are going to follow up in the post-hearing, but is there an issue with the data in the staff report because it does not reflect some of the adjustments that you are talking about or is there some other issue that you might want to highlight?

MR. CANNON: The pricing data and the staff report compare the full price to the full price. So the full-on price with all of the adjustments, us and the Japanese, and not -- this is one of the customers that uses this particular format, it's not identical for all of the customers so there wasn't a way to for example, go for just the base and the pricing products, because there are six different companies, essentially buying battery product, so we just took the total price to the total price and we think

that the trend that it shows is going to be the same as the trend and the base price, because everyone is making very similar adjustments for iron ore, coking coal and nickel,'

There can be a little bit of noise there because I don't think the company knows exactly which index the Japanese use for iron ore or coking coal and we use a particular index and that's confidential so the indices might not be the same source, right, they might be looking at Tokyo index price and we might be looking at -- , whatever, so they might be slightly out, so the prices therefore, we might see a little variation, but the trend is quite accurate at the whole price level and it is the best we can do given the complexity of this.

COMMISSIONER PINKERT: I understand that there are trends in the price comparison data that we have in the staff report and I am not going to go into what those trends are, but it is really the issue of underselling that I want you to comment on if you would and again I understand that Product 5 is an outstanding issue, but leaving aside Product 5, is there anything that you could say about underselling as it might appear in the price comparison data?

MR. CANNON: Well I think, the underselling data are exactly consistent with the fact that in the beginning of the period, I mean I could expand it to the 2010 data from the prelim as well. At the beginning of the period

there is a lot of underselling, Thomas loses the major volume of business of AA and therefore takes very seriously the threat that the imports are going to come and take volume and cuts it prices, then the prices go together so there is mixed underselling and overselling by certain amounts and that is the reflection in the data of what the narrative is that you are hearing from the witnesses of what they experienced in the market and so the data bear out what you would expect in the sequence of events and they show how important price is.

If price really wasn't important, there would be a margin right? There would be a big difference between prices, but there is not and finally the data show, I think that there is price depression and that's clearly a statutory factor, I'm not talking cost price squeeze or any of that, just actually various sort of simple old-fashioned price depression.

COMMISSIONER PINKERT: Thank you, not turning to the effect of the Antidumping Petition, Mr. Boyd you testified a little bit about that and I'm going to quote from the written statement, "After we filed the Antidumping Petition, we experienced a fairly remarkable turnaround. Our success since antidumping duties were imposed in October last year, shows that our product is accepted throughout the market and that we can earn a profit if dumping is

eliminated."

Now what I want to get some testimony on is precisely how that Petition effect occurred. Mr. Cannon knows quite well the mechanics of duty deposits and so forth but I am trying to get, what actually happened in the marketplace after the antidumping Petition was filed that enabled you to experience that fairly remarkable turnaround that you testified to?

MR. BOYD: What happened after the Petition was filed is that we had a more serious dialogue with one supply chain, the Rayovac supply chain, where we struggled to get through the door. We struggled to engage them to get them to commit results to qualify our products. It might be helpful actually to have slide 5 and 6, sorry, 6 and 7 because the prices that we were being quoted, being benchmarked against were $150.00 higher. We were being asked rather to reduce our price offered by $150.00 or more. We weren't prepared to do that.

Things changed with this supply chain because the launch of the Antidumping Petition because I guess the customer realized that the supply of this dumped liquid-plated steel was going to be less attractive in the future. I guess they determined that they were paying more for this dumped liquid-plate and therefore because our product, the determinant when it comes to giving volume of

this product is price, they rationally decided to suddenly engage in qualification efforts and then given there was significant trial volume, as my colleague Mike Hartman described over this trial volume has already gone to the marketplace because they see the benefit in price of moving business to us which we didn't have before.

And another major supply chain, the Duracell supply chain, where we had no immediate expectation of recovering the AA business, that material was offered back, in fact it was in the middle of a price product period, the volume had already been agreed and plus the successful preliminary ITC hearing, that AA volume was offered back to us plus the imposition of the antidumping duties in October.

Not only did we get the volume back for the product financially of 13-14, we are also invited to have, to extend that volume up to the end of June, 2015. Evidence and demonstration of that, if we are playing on a level playing field and we are not competing with dumped imports of nickel-plate, people want to buy our material.

COMMISSIONER PINKERT: Thank you any other comments on the panel about what occurred after the Petition was filed or after the preliminary?

MR. JARVIS: I think just going over what I said earlier, the extra volume because it was so susceptible to volume with our high fixed costs proportion, that helped us

start it in October and we are seeing it continually through there and that's why we are seeing the return on sales in Q1 2014 return to the black.

COMMISSIONER PINKERT: Did you raise your price to get the volume back?

MR. JARVIS: No. No. It was purely volume impact.

COMMISSIONER PINKERT: Thank you very much. Thank you Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you Mr. Chairman. To what extent has demand declined as a result of the use of thinner and wider steel?

MR. HARTMAN: The producer questionnaire, it sort of gives you some insight into what's going on by battery type. The volumes that we experienced in the POI were not affected at all by any change in material thickness. It may be different from what our competition may experience, but in that timeframe, that did not have an impact on us, and it wasn't until, really the 2013 timeframe when a significant change in one of our customers moved into a different product that would require a different width, but outside of that factor there was no impact to our production or our volumes associated with the down gauging effect.

COMMISSIONER JOHANSON: Yes, Mr. Wilkes?

MR. WILKES: So if I could, summarize that to be quite clear Commissioner, during the period of investigation, there were no reductions in material thickness in respect of our business and the orders that we got from our customers, so you are correct sir, that such a reduction of thickness for example, would have an impact on the margin, at the margin I should say on total volume by weight supplied during the POI, the impact was zero for Thomas Steel Strip.

COMMISSIONER JOHANSON: All right, because as you know the Respondents alleged quite differently.

MR. CANNON: So in their Brief they said there was an "x" percent reduction because of thinner material. The specifications with the thinner material before the period of investigation, right, so it happened historically, if you think back in 2010. So the whole time we are talking about here, everyone is buying the same thickness material and the only issue is there is a change to a wider, you saw, none of this is very wide, so it went from this wide to this wide, but wider material, but we are supplying the wider material too, that's Duracell where we both supply, we are just twenty and they are eighty, so the impact of this decline is trivial.

COMMISSIONER JOHANSON: Looking forward, is

there any reason to conclude that efforts to reduce the amount of nickel-plate used in batteries would impact Thomas Steel more or to a greater extent than it would Japanese producers?

MR. BOYD: No, I don't think it would be any difference in the impact for any supplier if you were to down gauge. Down gauging is still an offering customers like a stronger steel has been a feature of my twenty-seven years in the steel industry and that's been the trend. If you are on the ball commercially, then you aim to recover the lost volume through the mechanism of price and you strive to get a balance whereby the consumer achieves better value in use for its product and you as the producer don't lose significant revenue.

COMMISSIONER JOHANSON: Thank you, Mr. Cannon, you earlier stated that demand is declining in Europe, do you know why this is the case?

MR. CANNON: Yea, Bill will tell us, but I think Eveready shut down a factory and Duracell moved some product back to the U.S.

MR. BOYD: Yes I think off the record I can confirm later if you need the exact numbers. Three years ago Energizer closed their factory manufacturing facility in Switzerland and I believe some of that business was relocated to the Far East and Duracell discontinued making C

and D batteries in Europe and the United States was the beneficiary of that business so it migrated to the United States.

COMMISSIONER JOHANSON: Is battery consumption itself down in Europe, is that a reason for the decline in production there?

MR. BOYD: Battery consumption in Europe is broadly flat, probably a slightly steeper decline over time than in the United States. No I believe the primary motivation for the migration of the battery-making facilities in Switzerland and the reduction in battery-making in both was because of the relatively high costs of doing business and manufacturing in Europe.

COMMISSIONER JOHANSON: Who is supplying the European market right now then?

MR. BOYD: The European market is supplied by our sister company, I made reference to them earlier on, Hille and Mueller, based in Dusseldorf and a Japanese competitor also has a market share position.

COMMISSIONER JOHANSON: Are they producing in Europe, I'm sorry, are Japanese producers, companies producing in Europe?

MR. BOYD: There is a Japanese battery manufacturer producing in Europe, Panasonic manufactures batteries in Europe.

COMMISSIONER JOHANSON: Okay.

MR. JARVIS: They are not nickel-plated.

MR. BOYD: No, not nickel-plated, no.

COMMISSIONER JOHANSON: Non-nickel-plated okay. On the whole, just looking at battery consumption overall, since that is what your product goes into, is it common to for Japanese suppliers to supply the Japanese market, of the actual battery itself, and European producers to supply the European market, the U.S. producers to supply the U.S. market? Do batteries travel well?

MR. BOYD: They can travel well. They certainly, and I don't have exact numbers in front of me, but there certainly is significant import penetration of batteries in Europe and there is some import penetration in the United States.

COMMISSIONER JOHANSON: Batteries are included, alkaline batteries are popular consumer products. Why is there only one U.S. producer of nickel-plate and just a handful of other producers around the world? I'm kind of curious about this product?

MR. BOYD: The barriers to entry in terms of the, I call on Jon Jarvis to help me in terms of the total investment required, but the barriers to entry are quite significant and if you were to recreate our manufacturing capability that we have in Warren, Ohio, Jon help me, we

will be talking a large number.

MR. JARVIS: Several, multiple millions, hundreds of millions, I will give you an exact number. Several hundreds of million, we can give you the exact figure in terms of the investment, using the facility.

COMMISSIONER JOHANSON: You don't need to provide that information.

MR. BOYD: The other point to make is too, when we showed the slides earlier on, showing the capacity utilization, global capacity utilization of nickel-plated, nickel-plated steel manufacturers and you can see the significant global over-capacity as template, covert template lines to nickel-plates so again the high cost of entry, plus global over-capacity acts as a huge disincentive for new players to come into the market.

COMMISSIONER JOHANSON: Right, okay I understand. Do you know the status, what the current status is, of the Energizer facilities in Marriotsville, St. Albans and Asheboro? Has production actually halted at those facilities, as far as you know?

MR. BOYD: I think it's on the public record, yes, the manufacture is concentrated now on one site in the United State.

COMMISSIONER JOHANSON: Okay. Just another background question, why are certain batteries being

replaced with alkaline batteries? Or largely replaced alkaline batteries? Are they just better products?

MR. BOYD: Sorry I missed that.

COMMISSIONER JOHANSON: Why are certain batteries being replaced by alkaline batteries?

MR. HARTMAN: Yes, it's a better question to have the battery manufacturer's answer but the easy explanation is the output ratio of an alkaline compared to zinc carbon is much, much higher and therefore the consumer value is more prevalent on an alkaline so.

COMMISSONER JOHANSON: So simply a better product.

MR. HARTMAN: A better product, absolutely.

COMMISSIONER JOHANSON: Okay and another real basic question for you is probably in the staff report but I don't recall, do zinc batteries use nickel steel?

MR. HARTMAN: No, there is no need for nickel-plated steel in that application.

COMMISSIONER JOHANSON: Okay, well thank you all for answering my questions, my time is about to expire, so I'm going to let you stop at that, thank you.

CHAIRMAN WILLIAMSON: Thank you, Commissioner Broadbent?

COMMISSIONER BROADBENT: Which of your customers drive the purchasing decisions and price negotiations for

your sales? Is it the stampers or the battery users?

MR. BOYD: It's the battery manufacturers drive by and large and control, I believe, the price negotiations for nickel-plated steel, not the cans.

COMMISSIONER BROADBENT: Not the stampers?

MR. BOYD: No.

COMMISSIONER BROADBENT: What, can you tell me a little bit about the relationship between the battery producers and the stampers? Are these sort of set in stone? Can a stamper, can a stamper were to gain the business of an additional battery producer, would it have the ability to bring its existing qualified sources of steel supply with it, the nickel-plated steel supply with it?

MR. BOYD: Yes, they could. A battery can stamper could bring their existing qualified nickel-plate supplier but the purchasing decisions therefore the volume allocations, the decision which nickel-plate skilled manufacturer to use is primarily driven by the battery-maker.

COMMISSIONER BROADBENT: Okay.

MR. CANNON: There's, we can comment on this in brackets, in post-hearing on that question about whether a battery producer can use a different stamper and migrate.

COMMISSIONER BROADBENT: Okay, the public staff report on page 233 notes that purchases more likely to rank

Japanese product as higher quality than the U.S. product, do you have a response to that view? And is there other information you can put on the record?

MR. BOYD: I think that you could show the slide where we illustrated our quality performance, and you could see that our quality performance in terms of volume of material shift against rejections as being a steadily improving trend above 99% which we are targeting. 99% quality, acceptable to the customer and we are over-achieving, so we are currently running at an acceptance rate of greater than 99.5%, I mean that's, in my experience and I have got significant experience in the steel industry, that's world class. I don't think, I mean, I certainly acknowledge that we have very competent competitors, they make a good product.

The quality in this club, there are three or four manufacturers of nickel-plated steel globally, really that's an entry ticket, that's a given, that's not the differentiation when it comes to making purchasing decisions, that's just a qualification to be in the club, to be eligible for qualification for the battery can product.

COMMISSIONER BROADBENT: You are really differing with what the staff report says that the Petitioners are -

MR. CANNON: I don't think we differ, the numbers I think you are talking about are that seven people

responding said quality was number one, and five, or 1, 2, 3 and five said price, all right, so quality showed up at the top of the level when you list then and price showed up second. I think what we are saying is that once you make the quality then competition takes place on price and that, beyond that, we make the quality and so do the Japanese so yes it's true, quality is important but we passed that threshold and then it becomes all about price and we don't just say it right. We are qualified at all these customer accounts for all of these batteries, right, we were supplying, we are the number two supplier of the Duracell AA when they switched the volume on us, but we are still supplying it.

We are literally qualified, so to rank that first, it is neither here nor there, we are qualified and we are now, as soon as the dumping duty is going qualified or any way we are shipping at Rayovac, so our point is not quality is unimportant. Indeed it is. We passed that threshold and it's all about price.

COMMISSIONER BROADBENT: Okay, all right, and what is the role of the parent company in the price negotiation? I know it is one of your quotes from your customers was noting Tata, how do you, how are they involved and how does it take place, the conversation?

MR. BOYD: I personally do all the negotiations

on behalf of the Thomas Steel. As President and CEO of Thomas Steel I have the sole responsibility for the financial performance, for the bottom line performance of Thomas Steel, so those decisions in relation to price are made by me and me alone. I don't make those decisions in concert with anybody else. I don't make those decisions by benchmarking, comparing what prices or what sister companies prices they are achieving in other regions. I focus purely on the price that I need to, and can achieve in the United States market in order to sustain my company to give an exceptional return to my shareholders and to keep my workforce employment.

MR. CANNON: You'll appreciate at the plant where there is a sign out front that says Tata, and they are all wearing jackets that say Tata Steel, so there is a branding element of this and the customers receive them as Tata. They have been through a lot of ownership, so far as I know. The Commission hasn't really punished the U.S. businesses for having foreign investment, at least not since Smith-Corona.

COMMISSIONER BROADBENT: No, I'm just interested in what, whether you are quoting global prices or you are quoting prices here in the U.S.

MR. BOYD: I'm always quoting prices in the U.S. I command a lot of consistent and sustained pressure from

all of the my customers to offer global prices. My customers are all global battery manufacturers, so their preference would be to have a global price. I'm sure when considering, they are asking me for a global price, they are probably looking for a global price based on low agent prices and not higher North American prices, but I resist that and I won't and I don't offer a global price.

COMMISSIONER BROADBENT: Okay, how do you characterize the price that you pay to Tata for the hot rolled steel, is that a marketplace?

MR. JARVIS: We base it, it's a starting point, we have movement each month, each quarter, sorry, based on the RMPAM. It lines up with what you would see on the domestic steel that we buy. We buy some of the subject material, we buy material from the U.S. steel and from Mittal to some of the applications, we also have to go through every two years of transfer price with the IRS to ensure that we are doing it at an arms-length transaction and we pass that every time. So it's an arms-length deal and then there is movement each quarter, based on the RMPAM that we talked about earlier.

MR. WILKES: Commissioner Broadbent, Stephen Wilkes of Thomas Steel. If I can offer an additional perspective on that, because markets are regional and that goes for hot rolled coil as well, yes we do have a market

based price from our sister company overseas. It is just a little difficult to give you a solid comparison to that because there is no supplier. The battery calling hot bend in the United States.

COMMISSIONER BROADBENT: Right, okay. This is sort of old grand, but I just want to make sure we get a good question, I mean a good answer. Our staff reports reflects the financial results with and without the adjustment for the related company process and loss on import transfers. From the company's perspective, which set of financial results is more meaningful for purposes of the Commission's analysis? Mr. Cannon?

MR. CANNON: In my view, on either scenario, we have established material injury so, but in terms of the meaningfulness of the looking at some of these arguments about the price impact of RMPAM and nickel, I think you should strip out the inner-company profit to see the trend because that particular piece got, it was laid into the spread sheet in our hot rolled line or in our raw material line, in our cost statement. That is where the adjustment was made. So if you look at our profitability with the help of that, I think you get a cleaner picture and John said our hot rolled price uses the RMPAM just like our price to our customers use the RMPAM.

COMMISSIONER BROADBENT: Great, thank you very

much.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Kieff?

COMMISSIONER KIEFF: Thank you, Mr. Chairman. Would either now or later in the post-hearing, I wonder if you could tell us a little bit more about the qualification process as it affects not only you, but others. So in particular, I'm curious what's the longest or most difficult qualification process you have been through?

MR. HARTMAN: Sure. I would say any time you are involved in a qualification process where more than one aspect is being considered in either the design change or in the material, those tend to prolong or extend out a qualification effort. There are obviously developments that all battery manufacturers would like to drive towards, obviously increase performance, increased output of certainly some of their designs.

Some of them may never reach to fruition for whatever reason, the pressures may be too high. You may have battery not performing the way that they would like or essentially you know, leakage concerns that would exist out there. I would say the longest is typically, you know, twelve months, maybe eighteen months. It is normal if you make it all the way through to a formal-type scenario.

I can't recall any, off-hand, that have reached

longer than let's say, that timeframe. There has been ones that have been implemented sooner than that, based on just the deliver cycle of when and order, or orders are reoccurring, because once you initially submit material and the parts are made or evaluated, if you have an idea at that stage, you will then accelerate a backup order or, in some instances, you will still have some supply of that initial production material that is available, that they can continue to work with so.

COMMISSIONER KIEFF: When you set out down the path of qualification, do you tend to generally have a well-founded optimism, a well-founded apprehension, fingers crossed, shake the magic eight ball, see what comes out, like what, do you -- help us understand the sense of risk and the business decision to engage and the qualification process.

MR. HARTMAN: Sure, a lot of it comes down to actually having the proper specification, knowing up front what the expectations are that the customers are after. It's a material thickness optimization what we are trying to work on, a development to take cost out for nickel reasons. You may not exactly know what the optimum result may be, but you sort of have an idea of the experience and the communication between yourself and the can stamper or the battery manufacturer as to some things that might have

changed in the design on their end and also the experience that we have had as a manufacturer in those processes, so we do have, relatively good relationships with the technical groups that will gear, or steer those developments forward.

MR. BOYD: I would like to add to my colleagues comments that in terms of qualifying products with more qualifying products, with the major battery manufacturers in the United States, and everybody else, would qualify for all products with the Duracell and Energizer supply chain and Mike described earlier on that we very quickly progressed with the qualification by Panosonic for Rayovac to a stage within three and a half months, where the nickel plates that we have supplied was ending up as a form finished battery being sold in Walmart, so we are by far the best qualifying when it comes to this process than any of our competitors.

COMMISSIONER KIEFF: When we looked, I think it's on Table 2-6, there are essentially qualification indicators and it looks like if I'm reading and remembering correctly, there are in effect, gaps. What gives rise to a gap in qualification, if that, as you or one of your competitors starts down the path, you realize not worth going any further, or is it in effect, tried and failed?

Help us understand why folks end up finding themselves not qualified?

Is it just -- what explains that?

MR. BOYD: I think I can explain it very simply. It's about price, we tried for many years to get qualified with Rayovac, via Panosonic, but we couldn't meet their price expectations. Their price expectations were way below what we would count on selling at therefore there was no financial incentive for the manufacturer, for the battery manufacturer, to go through that process.

As soon as the playing field that they leveled with the initial imposition of dumping margins, then all of a sudden that resource and that capability was being offered to us, it wasn't before. It's all about price.

COMMISSIONER KIEFF: So in effect this may be too simplified but are you basically saying, to the extent there are gaps in qualification, they are -- am I hearing you correctly as suggesting that they should be seen as symptoms of the pathology that is the gravamen of your Complaint, rather than as indicators that there is some other factor causing the harm you are experiencing?

MR. BOYD: Absolutely. We have every expectation, in fact we believe, Mike could help me, as good as qualified for the specifications for Rayovac already and we believe that this process is actually holding up to use Jim Cannon's words, "the gold seal of approval". But I make the point that our batteries are actually, Rayovac batteries with our steel as the sub-straight, are actually marked up

already. It's a pretty good indication that when the price is right, the qualification process goes pretty smoothly and fairly quickly.

MR. WILKES: Commissioner Kieff, could I add to that, and I think Mr. Boyd or one of my colleagues spoke to that in their testimony. When Hurricane Irene caused a spike in demand, we stepped in and to the best of my knowledge, I don't think we were technically qualified at that point, but it was clear very high understanding of capability on the part of the customer.

COMMISSIONER KIEFF: Thank you very much. No further questions, thank you.

CHAIRMAN WILLIAMSON: Thank you. Mr. Cannon, in his opening remarks, Mr. Wood referred to a math error that he, I think he said would affect your calculation on page 18 of your Brief. Have you had a chance to check the calculation he is referring to and if so would it affect the way, affect your argument in any way?

MR. CANNON: No, I just heard about it and so you never know, I had to go to do the plant tour the day when the Brief was due, so I was working late the night before, so if there is a math error, it is on me and I will certainly look at what they have to say and see if there is a math error, but I don't -- I mean we came at this issue multiple ways, right, we showed the bar graphs with the

RMPAM and the nickel, and that came out of, straight out of their SAP system right out of their pricing.

We showed the bid sheets and so I, whether or not in calculating some trend out of the spreadsheets Mike gave me, I made a math error, I think that the point will still hold at the end of the day and we will see.

CHAIRMAN WILLIAMSON: Just wanted to give you a chance to address it. I will hear about it later. I was wondering if, and of course, this is confidential, but on footnote 1 associated with Table 6.1, does, is that effectively dealing with the profit issue that you have explained in response to Commissioner Kieff and Commissioner Broadbent's question? And you may want to address it in post-hearing, but I was just wondering since that footnote is there.

MR. CANNON: That's part of it, because it shows the bottom line impact I think on the operating profit, but it doesn't go back and you might say unpack the raw material cost item, so there would need to be a little bit more calculation, but we would proceed from this and certainly double-checking our math, to create the proper table.

CHAIRMAN WILLIAMSON: Okay, thank you. Mr. Boyd, I just can't get this out of my head. I didn't hear the full statement, but I think you said at one point, you never do a global agreement or a global agreement wouldn't work,

and since my idea of globalization was always that you made global alliances, I was just trying to figure out what was that in reference to? What was the context?

MR. BOYD: The context is my customers are global battery manufacturers and they are pushing me to offer a global price and I resist that because the, I can't produce steel prices that are obtained in the Asian market and make a profit and certainly not make sufficient profit to cover, to fund our business on a sustainable basis so and I will explain a little bit better.

Prices in Asia are a low because it is the cockpit, if you like, of the Japanese nickel. It is the backyard of the Japanese nickel-plated producers. They competed there for market share. They are also competing with nickel post-plate manufacturers who adopt a different manufacturing process. They basically stamp out battery accounts from coal rolled material and then post plated dip it into a vat of nickel and that's the cheaper product, so for a variety of reasons, the market price in Asia is lower and when my customers say we would like a global price, what they mean is we would like the lowest price in the globe and I am not prepared because it doesn't make business sense for me to offer that kind of global price.

CHAIRMAN WILLIAMSON: Are they asking you to make that, to use that cheaper process to sell and supply them in

the U.S.?

MR. BOYD: Well no they are not because and Mike can help me, but in terms of quality, a post-plated can currently, or the product, the battery made from that, doesn't have the same performance characteristics as the pre-plated, nickel-plated steel does. So they are not. They are certainly, I'm sure in that market, they would be looking for their suppliers to offer competitive price, a price competitor with a post-plated nickel offering, but with this same enhanced performance characteristics of the more expensive version, so that's I think a significant factor as to why prices in Asia are at a low level and I am not prepared to offer prices at those levels. I can't afford to do that.

CHAIRMAN WILLIAMSON: So you, I assume that means that you wouldn't think the Respondents can't accuse you of not being flexible and adaptable on a global market, or at least in the U.S. market.

MR. BOYD: Well we're certainly, committed to making sure that all of our customers are competitive on a global basis. I would have to insure that our product offering in that product package enables the domestic manufacturers to fend off imported batteries so I am ever mindful of that, in terms of our business relationship that we would have to get that balance right.

CHAIRMAN WILLIAMSON: Okay thank you, I just had to get that question in. Let's see, should the Commission conduct a pricing analysis, considering products 1A and B together or separate and why?

MR. CANNON: Yes, we think it should be conducted together. Technically, the only difference between 1A and 1B is the width of the material and so we are supplying the product up until, I don't know, 2012 in the narrow material and in 2012, the wide material comes in place. We lose some central volume and only supply a small portion of wide material and the Japanese on the other hand, capture that volume but the material other than the width, is the same.

In fact you just take the coil and slit it, we have a slide which shows the slitting process which you saw at the plant tour if you were there, but we think really what was happening here was the Respondents asked you to split these two products apart based on widths because they really wanted to try to disconnect the story because then there is sort of no flow. There is just a pan, table where there is nothing at the top half of it on the wider product, so it essentially obscures what's happening and so we think just seeing what's happening, you need to put it back together, both 1A and 1B are Duracell AA, it's just at a certain point in the course of events the can stamp went to a wider material.

We are making the wider material, we are supplying it to the can stamper before they could take it, before the can stamper could take it, we had to literally take the wide coil and cut it into narrower coils and then you ship two. And then later they are able to take a wide coil and insert the whole thing. To us, it is an artificial distinction, so we did not suggest it should be a separate product on there.

CHAIRMAN WILLIAMSON: Thank you. Could you please describe Thomas Steel's exports in nickel-plate, what, who does Thomas export to, what types of products are these exports used for, and does Tata Steel direct the volume and pricing of these exports and whatever you want to address post-hearing you can.

MR. HARTMAN: Maybe just a clarifying question is that just in regards to nickel-plate or is that in some of the other product.

CHAIRMAN WILLIAMSON: Nickel-plate.

MR. HARTMAN: Okay. Yeah, I'd say we export material to Canada, and also we export a little bit of material to the Singapore region. Most of the business that we have is in the U.S. and that's why we are really dependent upon what happens in the U.S. market, but we can address maybe some of the specifics on where we are shipping that in the post-hearing Brief.

CHAIRMAN WILLIAMSON: Okay, thank you.

MR. JARVIS: It is a very small amount, it is a quarter of one percentage.

CHAIRMAN WILLIAMSON: Okay, thank you. Just one last question, I guess the last picture would be page 42, what is super nickel?

MR. CANNON: So Nippon came out with this brand of product called super nickel and they had this sort of glossy brochure and they put it out into the market. Everybody called their product nickel-top or NI-Top and they have glossy brochures. During, or shortly before we filed the case, Nippon rolls out their brochure, and there glossy name they call it super nickel and I will make sure in the post-hearing to give you a copy of that brochure so that you can see.

CHAIRMAN WILLIAMSON: Okay, marketing, thank you. I have no further questions. Commissioner Pinkert?

COMMISSIONER PINKERT: I have no further questions, thank you very much.

CHAIRMAN WILLIAMSON: Commissioner Johanson?

COMMISSIONER JOHANSON: No further questions.

CHAIRMAN WILLIAMSON: Commissioner Broadbent, any further questions? Oh, the Commissioners have no further questions for this panel.

MR. CORKRAN: Douglas Corkran, Office of

Investigations, thank you Mr. Chairman. Just one question and that is to follow up on a couple of different strands of questions that were asked this morning. One of which had to do with our, is the European Market supplied primarily by European producers, the North American market by North American producers, and the Asian market by Asian producers, and then the question that was just asked about the role of Tata in directing volume prices of exports. Can you explain a little bit more about how particular volumes are designated for markets outside of the United States? Is that a Tata decision or is that a Thomas Steel decision?

MR. BOYD: In terms of where the two, the Tata owned, ultimately owned manufacturing, the places of manufacturing, so Thomas Steel obviously, you know that, and our sister company, Hille-Mueller. We, in terms of market allocation, we focus our efforts on the Americas, North and South and our sister company in Europe focuses efforts in Europe and Asia.

The main driver for that -- oh there's some overlap, we might touch -- we are capable and we do, we are currently supplying some volume into Asia as needs, but the primary determinant of that is freight rates. The freight rates from the U.S. are far higher than the freight rates from Europe, so it is mostly driven by economics.

MR. CANNON: I think in the post-hearing, we can

give you the volumes divided by region so you can see the relative importance of the U.S. to the other markets and also the local, extended local suppliers or shipping into the local region.

MR. CORKRAN: Thank you very much, I appreciate that, staff has no further questions.

CHAIRMAN WILLIAMSON: Do Respondents have any questions for this panel? No, okay, thank you. Well gee, this is one of the earliest times we have concluded a morning session, so we will have sixty-five minutes for lunch, so the Commission will re-convene at 1:30 and I want to thank the panel very much for your testimony today and we will re-convene at 1:30 and I just want to remind everybody that this room is not secure, so please take any business proprietary information with you and we will see you at 1:30, thank you.

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

CHAIRMAN WILLIAMSON: Good afternoon. Welcome to this afternoon's panel. And you may begin when you're ready.

MR. WOOD: Good afternoon, Chairman Williamson. I am Chris Wood from Gibson, Dunn and Crutcher.

I just wanted to give a very brief introduction and we'll move right into our witness testimony. I just wanted to highlight for the Commission that we have

extraordinarily, almost uniquely robust representation on this panel today. We have representatives from both of the foreign producers that supply the U.S. market. We have representatives of all the people who import the product into the United States and market it, and most importantly we have the people who purchase the products who are actually making the decision about, you know, among suppliers in the U.S. market with our representatives from Procter and Gamble and from PECA.

I think you will find that on the purchasers' side we have quite a different view of some of the issues that you heard this morning including qualification and how pricing negotiations are conducted. So without further adieu I'm going to turn it over and let our witnesses from Procter and Gamble begin the presentation.

Thank you.

CHAIRMAN WILLIAMSON: And before you begin, I just want to say, on behalf of the Commission I want to thank all the witnesses for taking time from their businesses and from traveling quite a ways to come here.

You may begin.

STATEMENT OF NITESH SINGH

MR. SINGH: Okay. I'll Start.

Good afternoon, I'm Nitesh Singh, Senior Purchasing Manager for Global Specialty Steel at Procter and

Gamble. I originally served in this role through mid-2011 and have recently returned to the position. I am joined this afternoon by Linda Jacobsen, associate director for purchases at Procter and Gamble and Melissa Salo, purchases group manager at Procter and Gamble.

P&G sells batteries under the Duracell brand. DANP, the product covered by this proceeding is used to make battery cans and is known informally within the industry as battery steel.

My colleagues and I appear before you today because the Commission's determination in this matter will have a direct impact on P&G's battery manufacturing operations in the United States which provide employment for over 1,550 U.S. citizens. While other battery manufacturers have moved production operations offshore, P&G has continued to invest millions in its U.S. facilities. However, this kind of investment only makes sense if the U.S. market continued to operate as a free and fair market.

We are here today because we know that Thomas Steel has not been injured as a result of unfairly priced Japanese imports. As an initial matter, it should be observed that there is a single market -- global market for batteries and battery steel. Major battery manufacturers such as Duracell, Energizer, Rayovac, and Panasonic operate production facilities around the world. Other off-brand

manufacturers also compete rigorously for global market share.

Batteries produced at one site frequently sold in numerous countries and regions. For example, C and D Duracell batteries produced at a plant in Cleveland, Tennessee are distributed on a worldwide basis. There is no closed American market for these products. We face strong competition from foreign-produced batteries on a daily basis. This is also true with respect to battery steel, a niche product offered by relatively few steel manufacturers. Those in the market can do and ship battery steel at competitive prices around the world.

For example, the Tata Group currently produces battery steel in Europe that is sold to Duracell in China. Tata is able to do so at prices significantly below those charged in Europe itself. This has nothing to do with proximity to the market.

In short, the market for battery steel is also global in nature. This is perhaps best illustrated by the petitioner itself.

Thomas Steel is a wholly owned lower tier subsidiary of Tata Steel Europe Limited, formerly Corus. Thomas Steel has described the production process for battery steel in the petition. The key starting input is hot-rolled steel coil. It is our understanding that Thomas

obtains 100 percent of its coils from Tata Steel Europe. We have asked Tata to explore other domestic sources but they flatly refused.

Moreover, the feed stocks for producing that steel, coking coal, iron ore, and nickel are globally traded commodities, some of which are produced by other members of Tata Group in India and elsewhere.

The Tata Group clearly views the production of coils and finished battery steel as two halves of an integrated operation. Although the Thomas Steel prehearing brief seeks to leave a contrary impression for the vast majority of the U.S. sales, during the period of investigation, we negotiated prices and other commercial terms not with Thomas Steel but rather with Tata's commercial director of global markets for steel plating, an employee physically located at Tata affiliate, the German company Hille and Mueller, it was the commercial director for global markets who signed Tata Steel bid quotations and various other commercial documents.

And indeed it is Tata Steel in Europe that dictates which operating subsidiary Thomas Steel or Hille-Mueller will supply battery steel to P&G's facilities around the world.

While we did have interactions with Mr. Boyd and others at Thomas Steel on technical and other issues, we

were explicitly told that all pricing and other bid-related decisions were to be made by Tata's commercial director. We believe that Tata approaches negotiations by seeking to maximize the overall profit of the group, not those of Thomas as a standalone entity. Thus, for example, we have repeatedly sought to purchase Thomas battery steel for use in our European battery operations. However, Tata has refused to discuss such export sale, presumably because it is then able to charge us higher prices for battery steel produced in its European facilities.

The key point here is that Tata has the ability to shift business and profits within the group. Including profits on U.S. sales where the reported Thomas data is directly affected by related party transfer price for hot-rolled steel coil.

This point is underscored by a key aspect of allocation agreements. Starting in 2010, Tata forced us to include a price change mechanism tied to movements in the price of iron ore and coking coal as well as nickel prices.

If the prices of these input commodities increased beyond a set range, Tata is entitled to add monthly surcharge to the price of our battery steel. Conversely, if the prices of the raw materials fall below the set range, P&G is entitled to monthly price reduction.

In other words, the risk of key commodity price movements has been shifted from Tata to P&G. Tata was able to do this because Tata group including Thomas Steel and not P&G is the dominant player in the battery steel market.

It is interesting that Tata insisted that iron ore and coking coal be included in this mechanism. Since these inputs are directly relevant to the steel coil manufacturers rather than platers such as Thomas one would have thought if the mechanism had been constructed to protect Thomas it would have focused on prices of nickel and hot-rolled steel coil, the two key inputs for Thomas.

Moreover, the Tata group produces iron ore and coking coal in India and was therefore in a position to manage the volatility associated with these inputs without passing that volatility on to P&G and other customers.

The price change mechanism is important for another key reason, its impact on reported prices during the period of investigation. After Tata implemented the price change mechanism P&G required Japanese suppliers of battery steel to include similar raw material pricing mechanism in their agreements.

During 2010 through mid-2011, the prices of iron ore, coking coal increased dramatically reaching all-time high. The price for nickel also increased to its highest level in over four years; the higher raw material prices

reflected in higher prices for battery steel.

However, beginning in June 2011, the trend in commodity prices reversed in a response to lower steel production levels in China. As a result of the falling commodity prices, U.S. prices for battery steel also declined during the second half of 2011 and 2012 and 2013.

We attached a confidential exhibit to our prehearing statement which clearly demonstrates this downward trend during the period of investigation.

Turning now to volume and market share issues. It is axiomatic that the demand for battery steel is dependent on the demand for batteries. Like other areas of the economy, U.S. battery sales were adversely impacted by the great recession. When sales of batteries declined, demand for battery steel also fell. This undoubtedly had an adverse effect -- impact on Thomas Steel and other suppliers. This was not due to Japanese imports, but rather the difficult economy affecting us all. We are all climbing back from the lows of 2009.

Moreover, other U.S. battery producers have moved some of their operations overseas. Because of these factors, factors unrelated to Japanese imports have undoubtedly affected Thomas' capacity utilization numbers and other indicia of financial health.

Moreover, based on data presented by Thomas

Steel, at the staff conference and our own estimates for 2013, it appears that the volume of Thomas Steel sales closely tracked overall demand for the battery steel in the U.S. throughout the period of investigation. And that company's overall share of the U.S. battery steel market remained relatively steady over the period of investigation.

Though, P&G estimates that it rose to its highest levels in 2013. The relevant data were also submitted in a confidential exhibit to our prehearing statement.

These results are not surprising. As discussed in detail in our questionnaire responses, it is P&G's understanding that not only is Tata the dominant supplier of battery steel in the United States, it's also the price leader in this market segment. Our data shows that over the period of investigation Tata made the first move up or down with respect to prices only to be followed thereafter by one or both of these Japanese suppliers. Because there are no published price lists or other publicly available information on battery steel prices, the price movements are directional in nature and not necessarily perfectly identical in size.

Nevertheless, it is clear to us that Tata is the leader and that Japanese suppliers are the followers.

Moreover, during the period of investigation movement in Tata's pricing proposals for battery steel in

the various global markets, America, Europe, and Asia, typically moved in the same direction and in at least some instances were virtually identical in size regardless of the market in which the sales occurred. The overall pattern strongly suggests that Tata's pricing proposals were largely driven by global market factors rather than Japanese imports into the United States.

I want to emphasize that while important, price is not the only factor that P&G considers when making purchasing decisions. As an initial matter P&G will only purchase battery steel from suppliers that have passed the qualification process for a particular specification. For Duracell qualification is on a specification by specification and plant by plant basis. As supplier that is qualified for one specification is not automatically qualified to sell other specifications to Duracell.

Moreover, a supply qualified at one of our plants is not automatically qualified to sell the very same specification at another Duracell facility.

As discussed in detail in our confidential submissions, this is a costly and time-consuming process. Contrary to the testimony this morning, the qualifications process for Duracell takes six to 18 months. We do not enter into commercial contracts or produce in commercial quantities until after a supplier has been successfully

qualified.

Thomas Steel is the only qualified supplier of steel for P&G C and D batteries. Accordingly P&G has no choice but to purchase these specifications from Thomas Steel. As discussed in our questionnaire response, this is also the case for various other battery steel specifications. It is hard to understand a claim of injury for specifications as to which Thomas is the only qualified supplier.

Moreover, even when more than one steel producer is qualified to supply a particular specification of battery steel, P&G relies on a range of factors in making purchasing decisions as reflected in company's best value principles. We train on these principles and a summary slide from that training was attached in exhibit to our prehearing statement. Best value is one of the foundations of our sourcing processes and includes such nonprice factors as quality, supply assurance, customer service, responsiveness, and innovation. Price by itself is never the determining factor in P&G's purchasing decisions.

Contrary to the petitioner's assertion, we never share bid prices obtained from one potential vendor with others or with the public at large. Moreover, we don't know the prices paid by other battery manufacturers or can fabricators for battery steel, therefore cannot take them

into account in our own purchasing decisions.

One of P&G's most important considerations in making purchasing decisions is supply assurance. Given the critical role that batteries play in flashlights and other emergency equipment, we work very hard to minimize the possibility of production line disruptions. To meet this objective P&G opts for dual sourcing, multiple suppliers whenever possible.

At present only three companies are qualified to supply battery steel to P&G; Tata Steel, Nippon Steel, and Toyo Kohan.

When making global purchasing decisions, we work to ensure that all three companies have sufficient business to remain viable future suppliers for this specialty niche product. Thus, for example, if Tata Group loses market share in Europe or Asia, we might award Tata a greater share of our business in the United States than their price would otherwise justify. The same approach is also true with respect to the two Japanese suppliers, and in fact thus played a role in some of our sourcing decisions during the period of investigation.

This brings me to another very critical point. For those specifications where we have dual sources qualified, we typically award business to suppliers on a percentage allocation basis. For example, we might

potentially award 70 percent of our volume to one supplier and the remaining 30 percent to another supplier. By definition this means that some of the purchases will be made at prices that are higher than those offered by the lowest bid suppliers. This is a very common scenario and is perhaps the clearest illustration of the fact that P&G takes into account of a variety of nonprice factors in its purchasing decisions. Otherwise we would always award 100 percent of the business to the supplier providing the lowest bid.

Finally, I want to turn briefly to the future of battery and battery steel markets. As previous discussed, this industry, like many others, is still recovering from the great recession. While that may continue apace P&G anticipates that batteries -- that demand for batteries and therefore the demand for battery steel in the United States and other developed countries will likely be fairly steady over the coming years. The greatest growth is likely to take place in developing countries including those in Asia.

Moreover, P&G anticipates that as economies mature and consumer become more sophisticated, they will demand higher quality batteries that is those produced from DANP battery steel as opposed to the other types of nickel-plated steel.

We look forward to working with all of our

suppliers to meet this growing overseas demand.

Thank you and now my colleague Linda Jacobsen would like to make three discrete points.

STATEMENT OF LINDA JACOBSEN

MS. JACOBSEN: Good afternoon. There's been significant discussion regarding Thomas' loss of AA business from the

MS. JACOBSEN: -- from the OND 2011 period to the JFM 2012 period. I would like to highlight that Toyo did not change their base price during this period. The same is true for Thomas. However, we did make an allocation shift where Toyo gained significant volume. This clearly shows that our allocation decisions are based on nonprice factors.

For my second point, I would like to reference the Tata presentation on Slide 6. We recognize the quote on the bottom right of the page from one of our award letters. I feel it was important to put it in context around this quote. This comment referenced three different products. One that was in Europe, one that was in Asia, and one in the U.S. For the U.S. product this was the D can product. I want to highlight that Thomas received 100 percent of this volume and have kept 100 percent of this volume, and in fact are the only qualified source.

I am disappointed with Thomas for taking this comment out of context and for not providing the Commission

with the complete picture.

My last point is regarding the change of allocation this past summer. When we make an award, we honor the award. We only change an allocation in exceptional circumstances such as those that can impact supply assurance. In the summer of 2013 we faced such an event. Due to these proceedings we were concerned that the Japanese suppliers may choose to significantly reduce or eliminate supply into the U.S.

Since this would put our business at risk, we worked with each supplier to adjust our global allocation. We increased the U.S. allocation of AA to Tata and reduced their AA allocation in other regions for a comparable volume overall globally.

We also work with the Japanese suppliers to adjust their allocations to compensate for the change. It is important to note that during this period, prices were not changed.

Thank you very much. We look forward to answering your questions.

STATEMENT OF CARL WALTON

MR. WALTON: Good afternoon, my name is Carl Walton. I'm the Director of Operations at Panasonic Energy Company of America's Materials Division or PECA for short.

I began working as a Manufacturing Engineer with

PECA in 2001 and later became a production manager before assuming my current role of plant manager in 2009. Previous to working at PECA, I worked at Panasonic Battery Company for close to nine years designing production machinery for making alkaline batteries. So all in total, I have around 22 years in the battery making business.

I am joined today by my colleague Miki Nakai, the purchasing manager for my company. She has been with PECA since it was founded in 1995 and has served in the purchasing and planning role the entire time. She is knowledgeable about all aspects of our purchase of the steel product subject to this investigation.

Let me start with a very important refutation. In its brief, Thomas submitted various written declarations of Michael Hartman, in which Mr. Hartman accused our company, PECA, of providing incorrect and misleading statements to the Commission during the preliminary phase of this trade case. Mr. Hartman's accusation is wrong and should be ignored. At all times our company has provided accurate information. Indeed, virtually all of our factual statements provided to the Commission were supported by ample documentation.

We understand that Thomas may have been upset and embarrassed by our explanation that, despite repeated attempts, they have not been able to pass the rigorous

qualification processes that both our company and our customers demand of all suppliers. Such embarrassment, however, does not justify challenging the integrity of our company and we strongly resent those claims.

Now please allow me to jump right to the most important fact about PECA for your consideration. Although Thomas had been one of our suppliers in the past, during the entire time period of your examination for this trade case Thomas was not one of our qualified suppliers of nickel-plated steel. This is because Thomas has not yet satisfied our qualification process. And more important they have not satisfied the separate qualification process of any of our customers that use our cans to make batteries.

What this means is that during the entire period you are examining, there was no head-to-head competition at PECA between Thomas and Toyo Kohan. Rather, with the exception of limited emergency situations, all of our purchases from Thomas over the last three years have been solely for the purpose of evaluation under the qualification process.

Let me repeat this important point. With respect to PECA's purchase of nickel-plated steel over the past three years Thomas was never able to compete for our purchases because Thomas was not an approved, qualified supplier. Thomas was not approved by any of our customers,

including our largest domestic customer and so we were not able to purchase qualified steel from Thomas and therefore we never engaged in serious commercial negotiations with Thomas for their nickel-plated steel. Indeed, we were ever told point blank by Thomas that the pricing currently offered from them is for this qualifying stage and commercial pricing can only be negotiated after ongoing commercial quantities of steel are decided on.

I will now explain our history of nickel-plated steel sourcing.

As of part of PECA, the Materials Division, was founded in 1995 and began producing battery cans in 1996 at a production factory located in Columbus, Georgia. The battery can production operation was originally established to supply battery cans to our Panasonic sister factories that produced batteries in North and South America. One of our major customers was the Panasonic-Kodak joint venture to produce batteries and was located right next door to us. In 1999, after increasing its battery can production capacity, PECA also began supplying battery cans to one of the three major battery producers in the U.S. When we began production in 1996, we sourced the steel used to make our battery cans from Worthington Steel located in Pennsylvania. They were one of only two nickel platers in the U.S. producing steel for the battery industry. Unfortunately,

Worthington closed and stopped producing nickel-plated steel in 2002.

As a result of that closure, we needed to find a new source of steel to make our battery cans. At that time, we decided to employ a dual sourcing strategy. The decision to switch to sourcing steel from two suppliers rather than a single supplier was based, in large part, on the increased production that we were experiencing at the time. By 2002, our annual production of battery cans had increased six-fold since our first full year of production, and had exceeded the one billion can market for the first time. Given that large volume, it made business sense to explore dual sourcing.

And so to replace Worthington Steel we chose to purchase steel from two producers -- Thomas, located in Ohio, and Toyo Kohan, located in Japan. Our steel from Toyo Kohan was imported through the trading company, Metal One. At this time, these were the only two viable sources for us to purchase battery grade steel. From 2002 to 2008, we sourced steel from both Thomas and Toyo in roughly a 50/50 ratio.

In the fall of 2007, due to declining battery sales, Panasonic decided to close our sister alkaline factory which was located right next door to us. Losing this customer caused a huge reduction in our production

volume of battery cans. Around the same time, our other large U.S. customer, which comprised around 50 percent of our sales at that time, had begun shifting part of their battery production to offshore as well. These two events reduced the volume of battery production by our customers in the U.S. and resulted in a decreased volume of steel needed by PECA.

And so with a significant decrease in sales and production of battery cans, in the 2007 to 2008 timeframe, we decided that we needed to switch to a single steel supplier. With the reduced volume, it no longer made business sense to continue dual-sourcing, since the reduced purchasing volume would have given us less bargaining leverage with either of the two suppliers.

After consultation with our customers, we ultimately decided to continue sourcing steel only from Toyo Kohan. There were various reasons. One key factor was that Toyo Kohan was already supplying most of the other Panasonic battery can production factors around the world, and we would be able to utilize the leverage of Panasonic's global sourcing, and not just our own now limited production volume.

Another key factor in selecting Toyo Kohan to be our sole supplier was steel quality. Defects in the steel such as holes and other types of material defects can result

in serious accidents and personal injury when used in batteries. Additionally, inconsistencies in the mechanical properties and surface finishes create very challenging production conditions for can makers.

Our assessment of steel quality was based on our six years of experience with dual sourcing from Thomas and Toyo Kohan. The data from that time period clearly showed that Toyo Kohan was by far the more reliable supplier in terms of supplying defect-free steel. On average, with steel sourced from Thomas, for every 100 coils used, which is equivalent to four to five days of production run time for us, we would have one defective coil that resulted in a production interruption and material being rejected. This was a huge burden on our limited staffing. On the other hand, the defect rate for steel from Toyo Kohan was significantly less. There were numerous years where we only had one defective coil the entire year. As you can imagine, a defective coil once a week is very different from a defective coil once a year. The actual data from this time period has been submitted to the Commission as part of our ITC Preliminary Hearing submission.

This difference in quality defects, once per week versus once per year, was very important to us. Even though both of the steel suppliers were qualified by our customers during our dual sourcing period, that does not make their

quality equivalent. Battery producers expect us to make sure the quality of the battery can meets their needs. If defective coils stop our production, we have to fix the problem and remove the defects from our production process. That our customers receive a high quality battery can does not mean that the defective steel that we have to deal with was not a very serious problem for us as a battery can maker.

And so, the combination of being able to leverage the larger volume purchased from Toyo Kohan by Panasonic factories around the world, and the superior quality of the steel from Toyo Kohan, supported our decision to select them as our single source for steel beginning in 2008.

After the 2008 timeframe, as our sales and production volume bounced back over the next couple of years, we began studying dual sourcing, again, for our steel needs. But we cannot just start buying steel from a supplier. In the battery industry, it is necessary to re-qualify materials that have not been used for some time. Requalification is necessary to account for changes in battery specifications and/or changes in steel production. And indeed, from 2009 to 2012, our can specifications for alkaline batteries underwent a significant change in the required specifications for the steel. These changes included a significant thinner gauge of steel. Accordingly

our steel supplier had to be re-qualified for each specific product to ensure that they could produce acceptable steel with the new thinner gauge. I note that this change in gauge specifications is reflected in the pricing products established for this case. Product 5 is the older thicker gauge product and Product 4 is the new thinner gauge product.

In the case of steel for battery cans, the qualification and lead time for steel generally takes 12 to 18 months. The reason that it takes so long is that testing is a multistep process. For quality reasons our company and our customers require assessing of separately produced steel coils. For each steel coil, we need to produce and evaluate the cans, and then the cans get made into batteries and undergo extensive performance and reliability evaluation by our customers, the battery makers. This process is repeated several times with increasing amounts of steel, cans, and batteries. That is the reason why the qualification process takes a long time.

So beginning in 2010, we began testing small quantities of Thomas material. Unfortunately, we again experienced quality issues with the steel from Thomas. We have documentation from 2010 indicating that Thomas had difficulty meeting the new specifications for the thinner gauge steel. Unfortunately, we were not able to qualify the

Thomas material in 2010, and so we were not able to purchase more than these test quantities.

Then, as you know, a large earthquake and tsunami occurred in Japan in 2011. This provided additional motivation for us to resume our plan to qualify a back-up supplier for our steel, despite the quality challenges that we had with Thomas in the past. In this regard, Panasonic was like all manufacturers around the world that saw the earthquake and tsunami as a reason to re-evaluate sourcing strategies. In 2012, we again tested a small quantity of Thomas material. As a part of our re-qualification process, we even travelled to the Netherlands to visit Thomas' parent company where the base steel is produced. Unfortunately, when we ran the tests, once again there were problems with the test coils supplied from Thomas.

In its prehearing brief Thomas provided written declarations from Michael Harman, the public versions of which seem to suggest that PECA was exaggerating the quality problems with Thomas Steel so that we can continue only sourcing from Toyo Kohan. Thomas' suggestion is just plain wrong.

It is a simple fact that over the past few years the Thomas steel that we have tested had significant quality problems. In response to a specific question from the Commission staff at the preliminary conference, we provided

copies of reports from our quality and testing department about the results of testing Thomas steel. These are actual test results undertaken in the ordinary course of business before the petition was even filed. These test results detail the quality problems encountered with Thomas' nickel-plated steel. And, indeed, these test reports included photographs of the defective steel; which we also provided to the Commission Staff. We ask that you, Commissioners, examine these PECA test reports for yourselves which are included in our submission to the Commission dated April 23rd, 2013.

Thomas also suggests that because they are an approved supplier for other can stampers, there is no reason that Thomas shouldn't be qualified at PECA as well. Thomas' suggestion is factually wrong. Qualification is a process that very much depends on both the specific battery cans being produced and the machinery that is used to produce the battery cans. This is precisely why the battery makers require that all steel suppliers pass both the qualification process for the battery maker and the qualification process for the can stamper. Each steel supplier needs to meet the battery maker's quality control standard using the particular can stamper's machinery.

In addition, each battery maker has their own unique process and recipe for producing batteries. Simply

put, each battery maker puts different ingredients into their batteries. The different ingredients react differently with the battery cans. That is why each battery maker must test and ultimately approve the steel used for their batteries.

Given all of the problems with the Thomas steel, we also find it rather ironic that Thomas is now arguing that the increased quantity sold to PECA during the qualification testing over the past year demonstrates that their steel is fine. In fact, just the opposite is true. The reason that we have increased our purchases over the past year is that we had to undertake even more testing because Thomas' previous shipments had so many problems.

Please understand that perhaps the key component of the qualification process, both for us and for the battery maker, is consistency of defect-free steel. Any defects in the steel can cause enormous problems for both us and the battery maker.

This is precisely why our qualification process requires repeated clean runs of the test material without any quality or processing issues, usually of two weeks in duration. If there are issues, then testing institution normally repeated and the length of the test run can be extended up to one month to ensure that the quality of the material is stable.

And so, if there are any problems with the steel, we essentially need to repeat the entire process. This is precisely what happened to Thomas over the past year. Because the Thomas steel had serious quality problems, we were required to repeat many of the tests, and so it is just downright ludicrous for Thomas to claim that because it sold more steel to PECA last year, its steel is acceptable. In fact, just the opposite is true. Thomas also does not point out that we were testing their steel that is made in two different ways. As such, we needed to purchase coils of each type of steel. It is also important to note that even though there is a significant price difference between the two types of steel offered by Thomas, testing for the less expensive type of steel has been stopped due to its poor level of quality. This is a real world example that demonstrates that the lowest price steel always gets qualified just is not true. At the request of our customers we are still testing the more expensive steel because it is closer to meeting their quality requirements.

I now want to address an important steel pricing issue. In the public version of its prehearing brief, Thomas chose to make public the content of an e-mail dated June 2011 from my colleague, Miki Nakai. This is our e-mail and we recognize the quote identified as from customer A on page 6 of Thomas' slides that we saw this morning. The

Thomas prehearing brief quotes snippets from the e-mail to suggest that PECA was demanding that Thomas reduce its proposed offering price by $250 per ton. We will leave aside the procedural question as to why Thomas chose to make the content of this e-mail public, while claiming confidential treatment for the content of many other e-mails. Rather, we want to address the wrong implication that Thomas is trying to convey.

The time was June 2011. We had just received Thomas' new pricing which indicated that their new pricing was more than $200 a ton higher than their previous pricing sheet in December 2010. As importantly, this e-mail was sent after a customer meeting about overall market conditions. Our customer made it very clear that they could not accept automatic pass through of raw material cost increases and strongly demanded that we push back on any attempts from our steel suppliers to increase their prices. And so, Miki's e-mail was faithfully following the demands of our customer.

The important point is that Miki's e-mail had nothing to do with prices offered by Japanese suppliers. Rather, the e-mail reflected our attempt to push back on our suppliers' desire to automatically pass through raw material increases. Indeed, I note that the last sentence of this very e-mail notes our understanding that Thomas had been

telling us about their efforts to reduce their cost structure in order to minimize the need for such price increases. And finally, Thomas ignores Miki's e-mail was asking Thomas what had happened to shoe improvements. And finally, Thomas ignores the context that the e-mail -- especially the additional $80 to $100 per ton -- was about much longer-term efforts to reduce their costs. Our customers expect us to practice continuous improvement and reduce our costs over time, and so we have to expect our suppliers to do the same.

This concludes my testimony. Thank you for your time and attention.

STATEMENT OF TAKAHIRO AIMOTO

MR. AIMOTO: Good afternoon. My name is Takahiro Aimoto. I am the Group Leader of the Thin Steel Sales Group at Toyo Kohan, which is responsible for our worldwide sales of nickel-plated steel. I am joined today by my colleagues Motoko Yamashita and Naoko Kwaguchi. I appreciate the opportunity to appear at the hearing.

I would like to address the claim by Thomas that Toyo Kohan "targeted" the double-A battery can business at Duracell with aggressive low prices. There are two important reasons why this claim is not correct.

First, I have reviewed the details of our RFQ response to Duracell in December 2011, when Toyo Kohan was

given additional AA can business in the United States. We did not make any special offer to win this business. In preparing our response to Duracell's RFQ, we used the same pricing formula for every Duracell specification and every region. Other than reflecting changes in our price for raw material inputs, we did not make any price adjustments in responding to this RFQ. We did nothing to specifically target the AA can business in the United States.

Second, negotiations for nickel-plated steel are not just about price. Nickel-plated steel is important for our customers' manufacturing efficiency, for battery performance, and even for consumer safety in using batteries. In our experience, our customers are very concerned about quality, product consistency, and reliability of supply. We also try to partner with our customers to propose creative ideas to improve efficiency and reduce costs. Our customers typically rate us highly on technical collaboration and quality, but we often get feedback that our prices are not very competitive.

Our shipments to the United States are not likely to increase anytime soon. We understand that Duracell's nickel-plated steel allocations are already set through the middle of next year. We have no history of supplying any nickel-plated steel to Energizer, and are not engaged in any qualification testing.

The main opportunities for our nickel-plated steel business for the future is in Asia. Our data indicates that overall market for battery steel in Asia is large and is growing quickly. Our customer Panasonic is expanding its capacity in Japan to produce rechargeable lithium-ion batteries, which use our nickel-plated steel. Our customers are also building new capacity to produce batteries in China and Asia. We also expect that more of these batteries will be produced using diffusion-annealed nickel-plated steel, both for better performance and for environmental considerations in Asia.

We already have a joint venture in China called Toyo Leeds producing nickel-plated steel, and we are well-positioned to compete for business in Asia. We know the market and we know the customers.

Thank you for your attention. We will be pleased to respond to any questions.

STATEMENT OF KANTA KURODA

MR. KURODA: Good afternoon. My name is Kanta Kuroda, and I am the General Manager of the Tin Mill Products Global Marketing Department at Nippon Steel & Sumitomo Metal Corporation in Tokyo. With me is Mr. Hiroya Ohori, my marketing counterpart for nickel-plated steel products in China, Asia, and Western Europe, who also supplies many other battery raw materials. Thank you for

the opportunity to participant in today's hearing.

I would like to make four brief points in my testimony and then I would be happy to respond to any questions.

First, our sales of nickel-plated steel in the United States have always been very small volumes. We have qualified to supply only one specification of nickel-plated steel to Duracell, which amounts to a few hundred tons per year. We are not qualified and are not engaged in the qualification process with either Panasonic or Energizer in the United States.

Second, we increased our production capacity by 2012 by dedicating one line to produce only nickel-plated steel. Before we had produced both tinplate and nickel-plated steel on the same line. We had two reasons for the change: One is production efficiency. We could improve the overall utilization rate for the line by continuously producing one product rather than switching back and forth. But the main reason is that we wanted to be in position to take advantage of growing demand for nickel-plated steel in Asia.

My third point relates to these markets in Asia. Nickel-plated steel is used to produce both primary alkaline batteries and secondly lithium-ion batteries. The outlook for both markets is very strong in Asia. For alkaline

batteries, an increasing share of total world production is in Asia -- the share is now around 50 percent and rising. There is also a transition underway toward using more diffusion-annealed nickel-plated steel to replace "post-plated" cold-rolled steel in alkaline battery production. We would be happy to explain this in more detail during the question period. The other favorable trend is demand growth for lithium-ion batteries. This technology is increasingly used to power electric vehicles, energy storage systems, and other devices where higher storage capacity and higher voltage output is needed. For all these reasons, we believe that Asian markets will remain our top priority for export sales.

Finally, I would like to address the claim in the Thomas brief at page 42 that the merger of Nippon Steel and Sumitomo Metal means that we intend to target the battery market. This allegation is completely incorrect. Sumitomo Metal never produced nickel-plated steel and the merger had no effect on production. When we refer to the energy market as a priority, we mean steel plate and high-quality pipe and tube product, not battery steel.

Thank you for your attention. I would be pleased to answer any questions.

STATEMENT OF JAMES DURLING

MR. DURLING: My name is James Durling with the

law firm of Curtis, Mallet. As part of the closing part of Respondent's presentation I just want to add a few thoughts informed by my ability to see the proprietary records, something which the industry witnesses at the table have not had the benefit of.

With respect to volume, I would just call the Commission's attention to a very important aspect of this and that is, you have the information and you should look at the pattern and volume from the different customers that Thomas is supplying. Because as we've explained confidentially in our brief what it will show is that when you kind of break down their shipments, much, indeed, the vast majority of their alleged decline in quantity during this period, shipping quantity during this period is entirely a function of factories that have shut down in the U.S. and shifting supply patterns by battery companies supplied exclusively by Thomas. And so if Thomas' customers that are buying only from Thomas are off shoring battery production, that has nothing to do with import competition.

With respect to price, what the confidential record shows, some of the questions from this morning indicate is a mixed pattern of underselling, but even more importantly when you look at the difference between the pattern of overselling and underselling for the products other than product 5 which has its own issues that will be

discussed confidentially in the briefs, other than product 5, the more dominant pattern is overselling. The impression you had this morning was the Japanese prices were constantly undercutting Thomas' prices that is directly contradicted by the record evidence that the Commission has collected.

With respect to the price trends, and counsel for Petitioner said, well, this is just an old-fashioned case of price depression. Again, when you disaggregate the price trend, as we showed confidentially in our brief, the vast majority of the price decline over this period can be linked to declining raw material prices.

Another issue that came up in this morning's session was, well, the base price is going down, but aren't there lots of reasons why the base price might be going down? Absolutely. I can tell you of at least three.

The first, and you've heard a lot of testimony about it already, and I urge you to come back to this question in your time with this panel, and that is the intense downstream competition with imported batteries. Think back to my volume point, the reason Thomas is having a challenging time is the customers that it traditionally supplied have shut down factories in the U.S. and moved them off shore. Companies like Duracell that are struggling to maintain viable battery production in the United States, companies like PECA, trying to stay in the United States are

facing very, very intense pressure. And putting aside whatever may be happening with their suppliers, there is intense downward pressure on price. It has nothing to do with the imports of nickel-plated steel from Japan.

Reason number two, in this industry the customers, the battery producers, expect continuous improvement. You can't just keep doing the same level year after year after year, and expect to satisfy your customers. Contracts in this industry often quantify specific expectations for how much a battery company expects its suppliers to improve and cut its costs over time. It's not about competition for the input supplier, it's about you're constantly expected to look for ways to lower your price. That's the way the business works. Which comes back to another key point about the decline in the base cost trend which is, as you heard this morning, a big part of the base cost is the base cost of hot-rolled production at Tata Steel the parent company for Thomas Steel.

So all of these pressures for continuous improvement, it's not just continuous improvement for the battery steel producers, its continuous improvement for Tata as well. And since a big chunk of the base price that Thomas is reporting to you reflects the base cost of hot-rolled at its parent company taking out the iron ore and the coking coal prices, the continuous improvement applies

there as well.

So, you have predominant overselling for the products that matter the most for the Commission's analysis, you have price declines that are predominantly explained by declining raw material prices. What this case really comes down to and they didn't quite say that this morning, but, their testimony all but said as much, this case really comes down to what you think about why Duracell made a business decision.

And I guess I would like to close my part of this panel by simply noting, Duracell hasn't had the benefit of all of the information that Thomas submitted confidentially in its brief and refuses to release even though there may be documents that Duracell already has, but putting that question aside, Duracell has given you extensive documentation about why they made their business decision. But more importantly, they're here to explain it to you, they're here to answer your questions.

At the end of this proceeding you will have a completely adequate basis to conclude that the business decision by Duracell to switch its supplier allocation had nothing to do with the alleged dumping or low pricing or targeting by the Japanese suppliers in this case.

Thank you.

MR. WOOD: Thank you Commissioners, that

concludes our prepared testimony for this panel.

CHAIRMAN WILLIAMSON: Good. Thank you. Again I want to thank all of the witnesses for their testimony and for having such a full panoply of witnesses this afternoon and we will begin our questioning with Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you Mr. Chairman. I would also like to thank all of the witnesses for appearing here today, especially those of you who came a long distance to be here. Mr. Durling, I am going to follow-up with what you were speaking on just a minute ago. I believe you stated that the United States is increasingly importing batteries to make up for less production in the United States, is that correct?

MR. DURLING: Actually my point was yes, they are increasing battery imports, but more importantly, there has been a changing pattern in battery production in the United States. Factories have closed down, and as you can imagine, once a battery producer begins to establish off-shore production facilities, it becomes much easier for them to kind of flexibly decide well where are we going to produce certain specs, certain points in time and so that over time effects the quantity of battery steel they are going to need to purchase in the United States.

COMMISSIONER JOHANSON: Just out of curiosity,

with decreased production in the United States, where are the batteries coming from, I don't recall anything of record dealing with the importation of batteries? Maybe there is something there but I just don't recall it?

MR. DURLING: Certainly we could get data for you, but actually this may be something that battery producer here, Duracell could speak to already.

COMMISSIONER JOHANSON: Or we could probably just use our system here, we have some pretty neat ways to get information, so don't kill yourself on that one, I will talk to staff to try to get information from me on that, I know that these cases are pretty expensive anyway, so I could probably do that in ten minutes at my own desk.

MR. SINGH: If you would like, I could tell you a little bit. A lot of the batteries today are being imported from Asia, which is coming from either Indonesia or from China.

COMMISSIONER JOHANSON: Okay do you have any idea about approximately what percentage of the U.S. market those would comprise?

MR. SINGH: I would not the exact percentage, but roughly I would say 8 to 10% would be a good number. We would have some kind of data that we could provide to the fullest getting. We could even give you a segmentation by which, which unit, like drug and retail, which retail units

is using how much so we could tell you that kind of thing.

COMMISSIONER JOHANSON: Okay because of course that would have an impact on the consumption of nickel steel here in the United States if we are bringing more product in from other countries. I would like to return to something which was discussed this morning. You all might have addressed this this afternoon, but I apologize if I did not fully get it.

The Petitioners today contended that Japanese nickel steel producers use the same pricing formulas, or pricing formula as does Thomas, is this indeed the case?

MR. SINGH: It is sir, and once Thomas kind of forced us, to use this formula, we never used to use this formula and every steel supplier used to have their own kind of formula. Once we had this, we kind of had to ask Thomas, the Japanese producers even to kind of give us the same benchmark so that we can compare apples to apples, but it is not the same, it is not identical. Yeah, it's similar.

COMMISSIONER JOHANSON: Would this have been a natural thing to do though following what happened with iron ore producers around 2010 or so when they started relying increasingly on the spot market, would you all have come up with this type of formula anyway on your own?

MR. SINGH: Not really. The Japanese were still willing to --

MS. JACOBSEN: Yeah, if I could add, the formula passes on that risk to the customer so that is one of the benefits that the supplier has is that any ups and downs in the cost, they don't have to manage, they just pass it on to us and they don't have to do anything with it, so it's not something that we would naturally go out and have someone do, so when we went to the Japanese it was so that we could be fair as we looked at prices and you saw the bid sheets.

We were trying to be fair to make sure that we didn't give someone else an advantage just because we were looking at it differently or because they used some different type of mechanism, that's why we did that was so that we could look at it on a similar basis and be fair when we made our decisions, looking at the overall picture.

COMMISSIONER JOHANSON: Do any of the battery producers who are witnesses here today wish to comment on this issue, the formula? And how you began using a similar type of formula if you indeed did as Thomas?

MR. PORTER: This is Dan Porter with Curtis. I'm working on this sort of very question with PECA and as I believe you could see in PECA's questionnaire response that was submitted for the final proceeding, PECA has sort of just started down this market trend of using a sort of formula in the pricing discussions. But PECA has just started that and doesn't have as much history as Duracell

with this.

COMMISSIONER JOHANSON: All right, yes.

MS. YOMASHITA: Toyo Kohan. We introduced a similar pricing formula because P & G requested for us. And the reason for requesting it is that Thomas introduced it.

COMMISSIONER JOHANSON: Okay, so I think what I am getting here collectively, there are a lot of you here today is that Thomas started this process and other producers followed, so they indeed set the trend. Okay, thank you on that.

Mr. Singh you spoke about how P&G began to develop a dual sources strategy, why did P&G not do that before? What instigated this? If Thomas had been the supplier prior?

MR. SINGH: We had a dual sourcing since 2004. We also got emphasized, some of it our Panasonic friends said, in 2009 Thomas Steel had a strike at a point where we were at risk of our supply assurance for our own plant and then we had subsequently in these two years I was managing the desk, 2010 Thomas Steel, not Thomas Steel, Thomas Steel Europe, one of their Hille-Mueller operations had a fire and as a result we had again supply assurance issues and we had to use Japanese steel. So that kind of -- it was more as a business contingency planning for Duracell to have dual sourcing.

COMMISSIONER JOHANSON: All right, once again, I believe you say this began in 2004?

MR. SINGH: Yes.

COMMISSIONER JOHANSON: Okay so it's been a full decade then?

MR. SINGH: Yes.

COMMISSIONER JOHANSON: Okay so if the United States, let me back up here. I believe the United States is the largest battery consumer in the world, or the largest batter, is the United States the largest battery producer as well? Or is that Japan?

MR. SINGH: No, I would assume the United States.

COMMISSIONER JOHANSON: Okay so the United States.

MR. SINGH: For the alkaline batteries.

COMMISSIONER JOHANSON: Right, let's say the United States -- okay, so the United States is the largest alkaline battery producer in the United States, and so it is also most likely the largest nickel steel consumer in the world?

MR. SINGH: The U.S., yes, nickel plated steel for battery industry.

COMMISSIONER JOHANSON: Yes, if that is the case, why are prices here lower than in Asia, than in Japan?

MR. SINGH: Because and again it's my understanding is that the competition over there is more severe in terms of you have more post-plated technology. It's post-plating, people are still in Asia coming out of as I said in my testimony, we are still using a large portion of zinc carbon and as consumers are using, converting to nickel-plated steel, the cost of batteries are probably cheaper in Asia than in the United States today. Prices are more in Asia than in the U.S.

MS. JACOBSEN: Yes, so to be clear, the prices in Japan, if that was your question, okay, so those are higher if you look at the types of battery steel, it is must more segmented, much fragmented, so they don't get long runs, so when you do that you build up, there are a lot of costs in there that you can't push out when you have longer runs you can be much more efficient, so their costs could be higher there.

In Asia these same prices are much lower than the U.S.

COMMISSIONER JOHANSON: In Asia, ex-Japan?

MS. JACOBSEN: Ex-Japan.

COMMISSIONER JOHANSON: Okay, why is the process more segmented in Japan? Is that because there is a higher percentage going into automotive purposes?

MS. JACOBSEN: I'm not completely sure, I think

the buyers are just relatively smaller, so there is a lot more buyers, there are a few big players, there is a lot of small players in my understanding.

COMMISSIONER JOHANSON: Japan is a sizable producer of nickel-plated steel, do you know why there are a relatively large number of producers in Japan vis- -vis the United States? Does anyone happen to have an answer to that question? Is it just historical, it's just been there a long time and it's hard for others to enter the market?

MS. KAWAGUCHI: If I understood your question correctly, your question was, are there any producers in Japan.

COMMISSIONER JOHANSON: No, I was wondering why there are a larger number of producers in Japan vis- -vis the United States? There are three producers in Japan, opposed to one in the United States, I'm just kind of curious as to why that's a fact when the Japanese market is quite a bit smaller than the United States.

MR. OHORI: I'd like to reply to you on that.

COMMISSIONER JOHANSON: Okay, that's fine, yes.

MR. OHORI: In Japan, we use to have seven battery companies, now we only have three and two of them have shifted their main production capacity offshore. And also we still have a huge demand for the rechargeable batteries, such as lithium ion and nickel metal hydride. So

that's the background that you know, Japanese consume a lot of nickel-plated steel and now half of them have shifted outside but still there is some demand locally now, a little background all right.

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

CHAIRMAN WILLIAMSON: Thank you, Commissioner Broadbent.

COMMISSIONER BROADBENT: Could you tell me where the Japanese companies moved?

MR. OHORI: The one company moved out to Thailand and one, the other one moved out to Indonesia.

COMMISSIONER BROADBENT: Thank you. This is for a battery producer, in a time when a lot of U.S. manufactured products have moved offshore, why has alkaline battery production stayed in the U.S.?

MS. JACOBSEN: The Duracell and P&G business is very committed to the U.S. consumer and we feel it really is to an advantage to our consumers, our workers, our employees to make local production and to really make that product for the U.S. consumers and we have been able to work on efficiencies and trying to drive that efficiency and drive costs out of our system with a lot of investment but we believe in the American people.

We believe in manufacturing here in the U.S. and

that's why we are here with our plants and we feel very confident that they can serve the American consumer extremely well.

COMMISSIONER BROADBENT: Okay so you expect it to stay here in the U.S.?

MS. JACOBSEN: Yes, we are making significant investments, speeding up our lines and making a lot of improvements, again to try to get more efficient to make sure that we can compete with those that are coming in from outside.

COMMISSIONER BROADBENT: Right, will lithium battery production supplant alkaline batteries in the same end uses like flashlights and toys and household appliances?

MR. SINGH: Generally no. Lithium ions will be more in high end energy users, cars or even like cell phones and those kinds of uses. Nickel, whereas alkaline batteries are more like a household product which we recall would be in kid's toys or flashlights or in other household operations that you would see.

COMMISSIONER BROADBENT: For the alkaline?

MR. SINGH: Alkaline.

COMMISSIONER BROADBENT: Yeah, because it just seems to me that you folks are, at least in my household, we are switching to the rechargeables.

MR. SINGH: The two types of rechargeables, one

is the lithium ion, which was mainly used in your cell phones, are used in these high electric vehicles. The other is the nickel metal hydride that you could put in the same light, alkaline and you put it and recharge it overnight probably with a charger or something and then you put again use it. It has more cycle times.

COMMISSIONER BROADBENT: So you don't see any, there's no trends there that would imply a decrease in demand for the nickel-plated product, for the steel product, the nickel-plated steel? Right, but you know if you are using rechargeable, then you are not using as many batteries, so it would be less, I don't know, I'm just asking?

MR. SINGH: Again we don't have, I don't have that data, but we could probably look into that.

COMMISSIONER BROADBENT: Okay.

MR. SINGH: But as we testified in our testimony, we are forecasting, like it would be fairly steady, that the demand for batteries, alkaline batteries in the United States and all the developed world would be fairly steady in the coming years.

COMMISSIONER BROADBENT: Good, thank you, I appreciate it. And then do you all have information on what's the status of the Energizer, excuse me, I think I won't say that one, excuse me. Does production or diffusion

in the old nickel-plated steel require particular grades of hot rolled steel and how many mills in the U.S. can supply that kind of steel?

MR. SINGH: So again, I'm addressing, our understanding is that yes, for the diffusion of the nickel-plated steel that is used in battery, there is a high grade of hot band, it is not the regular market grade, but our understanding that there are one or two domestic sources like probably U.S. Steel that could fulfill that demand and we have asked Thomas to explore that but we haven't got much from there.

COMMISSIONER BROADBENT: You asked Thomas to explore that?

MR. SINGH: To buy U.S. steel, domestic source and they have said no, they would like to buy it from the parent company. They would like to buy the hard rolled coil from their parent company in Europe.

COMMISSIONER BROADBENT: Right, do you have the sense that U.S. Steel is bidding for that business or asking if you know?

MR. SINGH: Again, it's outside our people like who that goes and buys the hot rolled coil because that's an import to their feedstock.

MS. JACOBSEN: This is Linda Jacobsen. We did ask them to go and explore it and Thomas Steel said "no" and

so that's all we can do from that standpoint is request that our supplier look at alternate feedstocks and they refused.

COMMISSIONER BROADBENT: Where would U.S. Steel produce this steel if they were to get a contract?

MR. SINGH: I'm not exactly sure but I do know that U.S. Steel has productions in the United States, probably in Pennsylvania, but again, not confirmly sure, we could confirm that data.

COMMISSIONER BROADBENT: Okay, thank you that would be helpful. Can you tell me what the Chinese competition is like in this segment of the market, both in the steel production and the battery production, and why the Chinese aren't more in evidence?

MR. SINGH: Um, again, as I said, and when I said Asia, I probably meant Chinese. The Chinese batteries that you get is, I would say, a little inferior to what they use in the United States. The qualities of the batteries in the United States are superior to what we have and I think that's one reason why you are not seeing as many batteries coming out of China into the United States, because companies like Duracell are very high quality product, where consumers want that kind of quality, so I would say that the consumers in the United States are more sophisticated and want a better quality product.

COMMISSIONER BROADBENT: Where are most of the

Chinese produced batteries sold? What kind of retail outlets?

MR. SINGH: Most of them are probably sold in China. China is China, India, is one of the biggest growing, biggest consumers of batteries today, just by sheer population.

COMMISSIONER BROADBENT: Right, and then when they are imported into the U.S. and that 8 to 10% of the market, I think you said, where are they sold retail in the U.S.?

MR. SINGH: Again, various retails.

MS. SALO: We have some import data from our direct competitor, the second largest brand in the U.S. showing that they are importing batteries from Indonesia, not from China, for alkaline cells and that's a recent shift, as they have closed some of their manufacturing operations in the United States. I don't have any more elaborate information to share, it's outside of Duracell's control, but I did want to offer up that fact.

It's coming from Indonesia though, versus China.

COMMISSIONER BROADBENT: Okay, well where is the Indonesian battery sold in the U.S.?

MS. SALO: It is sold under the brand name of our direct competitor. It is labelled with one of their labels, in the United States, in retail markets, Walmart, other

stores that you are familiar with.

MR. SINGH: We don't know exactly which retailer probably, but it is in the distribution in the United States.

COMMISSIONER BROADBENT: Can anybody tell me? We are waiting for the record -

MS. JACOBSEN: I think only the competitor, our direct competitor would know exactly where they went.

COMMISSIONER BROADBENT: You don't notice when you go to the store?

MS. JACOBSEN: The direct competitor's batteries are certainly on the shelves, but we don't know if they came from Indonesia or one of the U.S. facilities that is still in place.

COMMISSIONER BROADBENT: But they need to be marked country of origin?

MS. JACOBSEN: That would be right, they should be, so we can certainly check, but that is something --

COMMISSIONER BROADBENT: Thank you. For the battery producer, do stampers negotiate separately from the battery producers?

MR. SINGH: In general because this is such a critical portion of our cost, we would like to negotiate but there have been instances in the past, where we have had can stampers negotiate separate prices from these battery steel

producers.

COMMISSIONER BROADBENT: So for you, what percentage would be direct negotiation and what percentage would be the stampers?

MR. SINGH: So during the period of investigation for this one, all of the battery steel that was bought was negotiated by P&G.

COMMISSIONER BROADBENT: By?

MR. SINGH: P&G. Okay, thank you Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you, Commissioner Kieff.

COMMISSIONER KIEFF: Thank you Mr. Chairman and thank you each for coming and presenting. I just want to commend both the morning and the afternoon groups for such a cogent and helpful discussion. Let me ask a couple of questions at different levels of detail.

First to what extent are environmental concerns, including regulatory environmental approaches relative to this case, if at all? Is there a difference in the way alkaline batteries are dealt with in the United States versus the rest of the world, that somehow should inform our thinking?

MR. SINGH: Unattached things from P&G, I think there's a huge difference in the way we use the process today, in developing countries, in the United States or in

Europe, the process that is being used to produce batteries and battery steel is significantly more environmental friendly and more sophisticated than some of the processes that are being used in developing countries where there is a technology called post-plating where you have a cold rod steel, the main part, the flat part of the can and then you plate the nickel on it which is significantly, I would say it is not a very environmentally friendly art, employee-friendly process.

COMMISSIONER KIEFF: And how about the overall mechanical, electrical and chemical attributes of the can to hold the battery contents? My understanding is that disposing of batteries is a, and just simply keeping, simply storing batteries is a non-trivial risk, even if you are not on a 787 and I am just wondering, does that somehow impact which batteries end up where in the world?

MS. JACOBSEN: I would say no, I mean not for the alkaline batteries that we produce.

COMMISSIONER KIEFF: Okay.

MR. SINGH: However, to add to her point, if I understood, you were also asking does that have an impact on how we produce the product?

COMMISSIONER KIEFF: Yes.

MR. SINGH: Definitely, as I said earlier, the Commissioner, that the product today in the United States,

because of the pre-plating and using this diffusion and the nickel-plated, the quality of the battery, the performance of the battery is better than a force-plated can and corrosion and everything, the leaking of batteries.

COMMISSIONER KIEFF: Let me ask for later in the post-hearing if the folks this afternoon could present to the extent possible, some, any documents you have to provide corroboration and detail of the initial phases of your discussions this afternoon. So in particular, from P&G, you talked about how you negotiated with Tata, rather than with Thomas Steel, could you, if to the extent you can, could you show us letters, emails, faxes, whatever you have got, so that we could best understand that occurred, if it occurred, to the extent that it occurred, time, place and manner, degree, etcetera.

And then from the Panasonic Energy, the PECA, if you folks, we have some summary tabled information about which Thomas Steel qualifications exist and which ones were not, have not yet come into fruition, but if you could provide information that would elucidate attempts and failures, reasons for failure, that will give us a better understanding of what is going on in that interaction and they are in the room, they are not out on these tables, but just of course to invite the same from the so-called other side so that we can have a full-some picture and an

understanding of all of those facts that would help us a lot.

MR. WALTON: And certainly, we have some of it, some information, but we have much more available, especially over the more recent time period that demonstrates a lot of issues, that we will submit.

COMMISSIONER KIEFF: So then let me end my questions with a very macro question and maybe it's more directed to the lawyers in the room and maybe most suited for post-hearing but isn't it possible that in effect much of what both sides have said is true and just and good and yet puts us in a difficult decisional posture because of the nature of the parties in this case where you have in effect, I think to use Mr. Singh's language a global market, and a large player in the global market, Tata, that you could be interacting with them in a way that was very real, the way you described it, while simultaneously their U.S. subsidiary, Thomas Steel, could be perceiving a set of facts that are as real to them that would totally match the legal requirements for a U.S. Title 7 case.

So the question I have is, is there something special to that relationship that we should better understand that for the afternoon group allows us to conclude that this is not an appropriate Title 7 case and for the morning group, that this allows us to conclude that

it is an appropriate Title 7 case.

In other words, is there something, can you help us better understand that interaction, because it seems to me in the narrative this afternoon, that's a big part of the narrative, that fundamentally Tata Worldwide is the entity you are dealing with in your mind, not Thomas Steel Domestic and of course Thomas Steel Domestic sees itself as itself, not as just a mere arm of Tata Worldwide.

MR. PORTER: Commissioner, allow me thirty seconds to take a stab at answering?

COMMISSIONER KIEFF: By the way, I am asking because I believe deeply in helping the parties and future parties understand what I'm thinking about when I wrestle with the decision.

MR. PORTER: I believe I understand your question and I think it actually in this case you have less of a situation that everyone can be right and as we heard this morning, we heard today, my colleague Jim Durling sort of summarize a huge part of the case is whether when Duracell made their decision to switch their allocation, was it because of the price from Toyo Kohan and that is a factual question and the question for you, you have one side saying yes, one side saying no.

What you don't ordinarily have in cases is you don't have the entity making the decision before you at the

hearing saying let me explain. So I really do urge you to take advantage of that because you know, they are the ones who made the decision and so the question is why did they make the decision.

COMMISSIONER KIEFF: And that is extremely compelling as advocacy if correct and so I understand that if I conclude, if we were to conclude those facts we would be compelled to that outcome.

MR. PORTER: I didn't mean to veer off into excessive advocacy, I just wanted to say in that situation both sides can't be right and so that's why. The other one is then I think it's a little bit more where you are getting at, which is how you interpret the data that is before you, okay.

As Mr. Wood noted this morning, it's obviously sort of a big part of our Brief, the data that you have is that you have a change in profitability, okay, I can't go too much more than that, but you have a change in profitability over the period. The question is why.

The other side is saying it is solely because of the lower prices from the Japanese and submit that we have offered an alternative interpretation that is based on the data and that essentially is called the mismatch between the required decline in prices, from the formula that Thomas imposed and Thomas's actual cost of hot rolled steel

purchasing from their parent and so again, there you have the situation, you have data.

The question is why is it occurring and you have different things and again I submit it is possible that both sides can be right, but I am not so sure.

COMMISSIONER KIEFF: My time is expired, thank you Mr. Chairman.

CHAIRMAN WILLIAMSON: You tried to hit 9:59, but - (laughter) okay. Thank you. That contrast, I just saw contrast in the panel, in this afternoon's panel, I thought it might, excuse me, want to ask them to address, excuse me.

I have got a cold, and I got so excited for the questions. Let's just say I think you made the point that first, the first question, no one has mentioned this. What percentage the end cost of batteries, and it probably varies, is the subject product here, the product that Thomas makes?

Is there any guide, general approved guide, or is this I understand, and it probably varies, product to product, but just roughly what are we talking about.

MR. SINGH: We have submitted this in our confidential, the significant portion if you can think about us qualifying as one raw material, this would be the biggest raw material and we can submit you the details.

CHAIRMAN WILLIAMSON: Okay but if you have

already submitted, that's fine.

MR. PORTER: Excuse me Commissioner, are you asking what is the cost of the battery can or the battery? Because PECA makes battery cans, I guess I'll make batteries.

CHAIRMAN WILLIAMSON: We have the product that Thomas produces. Then we have the product that the can makers sell to the battery product.

MR. PORTER: The cost of the nickel-plated steel for a battery can?

CHAIRMAN WILLIAMSON: Yes, that's fair, yes.

MR. PORTER: If you would have asked what was the cost of the battery, that would be a different answer, than the cost of the battery can, so I just wanted to make sure which one you wanted.

CHAIRMAN WILLIAMSON: What I was trying to get at was how significant is what Thomas is producing, the subject product here, to the total cost of the end product? And the reason why I am getting at that is because of, I think, you had mentioned very important to you, how you allocate it globally is very important you almost indicated that was and maybe even more important to you than the end price of what the product that Thomas produces.

MR. SINGH: Absolutely, it is. It is very important and there is more to P&G's sourcing strategy would

look at a long-term strategy. It wouldn't be a quarter to quarter or a six month allocation decision we would like to make as Linda said, we would like to invest, we are investing in this business, in these businesses, in these regions, so for us we would look at global allocation.

When we do steel allocations, generally we tie it out for the global VCR totally global requirements and then we try to give a fair share to everyone.

CHAIRMAN WILLIAMSON: But then Mr. Durling at the end of the hour played out that you know, you have competitors and every company is trying to keep its price down and that therefore as the ultimate consumer of the subject product, you were putting pressure for the price and generally I think you were saying that you thought price was very, very important here, in this region.

MR. DURLING: Actually we were addressing different issues. My point was trying to explain why there is pressure on pricing that existed for reasons completely unrelated to the price of the steel. There are much broader forces at work here and in a sense it goes to the question that Commissioner Kieff was just posing as well, that in a global market where you are facing pressure from a lot of different sources, how is that playing out in the particular market here.

I think there has been extensive testimony, both

in the document submitted, in the per-hearing briefs, what you are hearing today and what you will hear in the post-hearing that Thomas's view of the world that this decision is entirely about the price of the nickel-plated steel is a very, very simplistic and misleading view of how these decisions are being made.

It's far more complicated, we haven't really even begun to explore the whole issue of quality and qualifications. I would encourage you to take advantage of this panel to explore that as well because there, this isn't like other steel products. This morning you saw a slide where the domestic industry was taking essentially taking pride in a success rate of 99%.

If this were your generic steel product, that would actually be a pretty good number. For this industry, that's a terrible number. The notion that their internal benchmark for quality performance is only 99% that they are willing to accept a 1% failure rate and that's the way they define success. I don't know that they want to discuss it publicly but I urge you to ask the parties to share with you confidentially.

1% in this industry is a disaster, not success.

MR. WOOD: If I may add Commissioner Williamson, we were struck by that this morning too, and I actually asked the folks at Toyo Kohan, do you have a similar

internal metric, a success rate that you are aiming for on your quality day in and day out and I will ask Ms. Yamashita to maybe explain what that is because they do.

MS. YAMASHITA: It's, Toyo Kohan internal figure is 99.8% and I would like to say our, sorry, 99.97%.

MR. WOOD: So that's about a thirty times difference if I am doing the math correctly and it goes really, it's very consistent with the testimony you heard from Mr. Walton earlier this afternoon, it's the different between a coil a week and a coil every year in terms of failure rate.

CHAIRMAN WILLIAMSON: Okay, I'll ask Petitioners to respond to that this morning, because I was struck by the fact that they put it out there so I assumed it was good for the industry, but -

MS. JACOBSEN: One other thing I would like to add is on the cost reductions, we do work with our suppliers on trying to find ways to reduce costs, its costs, not price. Cost is how can we work together? Are we asking something of the supplier that is making their costs go up, because if we can work together to figure that out, we can reduce the costs, and take the costs complete out, so that's what we do.

We expect our plants to find ways to reduce their costs and that's what we try to work with our suppliers to

reduce costs, take them completely out of the system, not to cut their margin, that's not what we try to go after because it doesn't keep a supplier viable, we try to work with them on getting more efficient.

CHAIRMAN WILLIAMSON: Thank you for that clarification.

MR. PORTER: Yes, May I go back to your original question and make sure it was answered.

The answer is they are not inconsistent with what you heard, when you pause it, I could see the appearance and the reason is there are two things going on. What Mr. Durling was talking about was pressure for Duracell, for all of their suppliers to keep prices as low as possible. At the same time Mr. Singh was talking about was he needs the matter of logistics, he needs to have two suppliers, and so he is willing to make sure that someone doesn't pack up their bags and go home, he is willing to make sure they have volume to stay in the game.

So what he is basically saying, I'm watching the game, the one hand, the other hand I'm going to beat you up, give me the lowest price, both those things are going on at the same time, they are not inconsistent.

CHAIRMAN WILLIAMSON: Good, let's get more clarification on that need for two suppliers. I didn't hear it this morning, but I guess there was one about a strike

and what year was that?

MR. SINGH: That was in year 2009 I think.

CHAIRMAN WILLIAMSON: 2009 and that was -

MR. SINGH: A strike in the United States.

CHAIRMAN WILLIAMSON: And how long did that last for?

MR. SINGH: I think three months, but I could check exactly and get back to you on that.

CHAIRMAN WILLIAMSON: And wasn't that the depth of the recession?

MR. SINGH: It could be.

CHAIRMAN WILLIAMSON: I was just wondering, because that's a strange time to have a strike. What was the other, the fire?

MR. SINGH: In 2010 there was a fire at one of Thomas's facilities, and as a result they were not able to, in Asia, in Europe, their facility in Europe and they had a fire there, because of it they could not supply to my, to our plants in China, and as a result I had to change our allocation and guideline and allocate a fixed allocation and had to ask Japanese suppliers to help us out.

CHAIRMAN WILLIAMSON: Now were you maintaining a multi-sourcing policy prior to those events or how did - ?

MR. SINGH: Yes, we always, so I think this is nothing I would say, going back a little agenda, not just

for Duracell, in almost all markets that P&G sources, we would like to have two sources, or multiple sources. We have had issues that are being single-sourced and putting all eggs in a basket, we have gone into a problem and we would not ever like to have the situation where we don't have end products for the consumers.

CHAIRMAN WILLIAMSON: Okay, my time is running out, I do want to ask you a question, how big is the basket? Is it a global basket you need to have multi-sources or is it a national? It may vary.

MS. JACOBSEN: It can depend. The key thing is if you have it globally, you have long supply chains, if you have it regional they are closer, but you work with what you have and in this industry there is only three, so we do what we can to maintain those dual sources.

MS. SALO: From a qualification standpoint, just to add to that Linda, each site and each battery type has to be qualified for it to be considered dual qualified. They have dual sources qualified, so if we were running AA batteries in one of our sites, it would need to be qualified by two different vendors, the same for the European site and the same for our China site. Duracell has five manufacturing sites and in order to be classified as dual source, it would need to be duly qualified by site.

CHAIRMAN WILLIAMSON: Are you saying you would,

that's what you prefer to have?

MS. SALO: That is our sourcing strategy.

CHAIRMAN WILLIAMSON: That is always a risk based assessment. Okay, thank you anyway, I have gone over my time sorry. Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, I would like to thank all of the members of this panel for being here today to help us understand these issues. I apologize in advance for my first question, Commissioner Kieff often brings up the philosophical in the end and I just have to ask this question, came off of Mr. Porter's testimony.

He said earlier and forgive me if I misquote, but he said, "On the particular issue of the reallocation decision, that all sides can't be right," and what I want to ask you is given that we have testimony about why that reallocation decision was made, isn't it possible that the Petitioners could still be right in this sense, that if the pricing had been different, in other words, counter-factual, that the re-allocation decision would not have been made the way it was. Even though we have testimony, direct testimony that the thinking, the intention of the company was different from that.

MR. PORTER: I'm not exactly sure how I'm following you. I guess we're, let me just clarify what I said and that is the claim, the claim is that the reason for

the switch was the lower price from Japan but you just heard Duracell say there was not a change in price from Japan so I guess I'm sort of, if there was not a change in price from Japan, how could the reason for the switch be the price, that is why I am saying it sort of is or it isn't question.

COMMISSIONER PINKERT: Okay, I appreciate that. Now let me read you a statement that was made earlier today by Mr. Hartman. He says, "it is worth noting therefore that we were replaced at Duracell by Toyo Kohan for the supply of C can material. We understood from the customer, however, that our nickel-plate was superior in producing C cans and when we lowered our price for C can material, we recovered that business from Toyo Kohan." So what I'm ask you is should we stop merely with what we have in front of us on this panel, or do we have to examine alternative scenarios here.

MR. PORTER: Commissioner Pinkert, as you know well, your responsibility is to come up with substantial evidence and as we all know well, the evidentiary record includes sort of everything before you so of course, as part of your evaluation, you are certainly permitted to look at everything.

I just want to add in and I am really going to give the microphone back over to Duracell but the question is this is one of these rare cases and a single event and

it's a single event for a single type of battery steel, that for AA, and so the question is, is something happening and whether it did or did not happen with C how relevant is that to the direct evidence you have with respect to AA, but I actually wanted to pass it over to Duracell to respond, thank you.

MR. SINGH: Nitesh Singh again from P&G, that particular instance, even if, first of all, we had to make a change in allocation on the C can from Toyo Kohan to Thomas Steel because Toyo was not being able to meet our specification. We were having significant quality issues on our lines and even though we did not want to commercially make a change, we had to because it was just not a viable product to run on our lines, so it had nothing to do with pricing.

I would go back, Commissioner, and look at the data, but I don't think that sourcing decision had anything to do with pricing. It was absolutely, Toyo in fact is here and they can testify. They made multiple visits to our plant to correct the issue and since they could not fix that issue, we had to move it to Thomas Steel.

MS. JACOBSEN: I would like to add on that one because we have talked about the quality piece. I would like to share that in our facility that makes cans, it has a very old piece of equipment and it is very difficult to make

cans on that equipment and partly even have Thomas, that is qualified and has been qualified on that equipment, so I wouldn't want you to take the fact that Toyo was having problems running on that equipment as having quality issues.

The equipment is very old and very sensitive to run. It is very difficult and so the Toyo product was just not able to be run on that equipment.

COMMISSIONER PINKERT: Okay well just staying with this issue again on the C product, why would the supplier feel the need to change their pricing if the decision to switch back to them had nothing to do with price? I'm just trying to get at what looks to be a disputative fact here and just try to get as much information as I can about that.

MS. JACOBSEN: Can you remind us what point in time that you are referring to?

MR. SINGH: I would have to go back and again reconfirm but I, to the best of my knowledge as I would testify here today, we did not make that anything, that allocation changes were made in between allocation, we had to switch just because Toya could not, we could not run Toyo product on our lines.

COMMISSIONER PINKERT: Okay, thank you.

MR. DURLING: Commissioner Pinkert, Jim Durling, Curtis, I'm just one point of reminder. Part of the problem

is what some have called the "fog of war" and you make decisions when suppliers are competing for business at a battery producer, they don't know what their competitors are charging, like Duracell explained to you that they are not passing on that information.

They may have a rough idea, but there is substantial potential for kind of misreading, thinking your competitor is offering one price, or that you really are facing a lot of pressure and you are not so it's important to keep in mind that what you hear from individual suppliers about the pricing of their competitors is clouded by this "fog of war", you have data on kind of quarter-by-quarter, spec-by-spec, price comparisons and you have testimony by the one party that actually saw both prices, which is the customer.

The customer knows what competing bids they were getting, so at least on this issue, I think testimony by the party that actually had access to both of the prices, should carry more weight than testimony by the party that only saw one side of the equation.

COMMISSIONER PINKERT: I understand your answer there Mr. During, and what I would suggest is that maybe in the post-hearing if you could put all of that evidence before us, then we could see whether there was a difference in price, or whether price might have had anything to do

with that.

MS. JACOBSEN: Can you confirm the time period, because I think I'm still confused, you were looking at me.

COMMISSIONER PINKERT: Well the statement simply says, "when we were placed at Duracell by Toyo Kohan for the supply of C can material". Mr. Singh appears to know what period of time we are talking about.

MR. SINGH: To the best of my knowledge again, I think if I'm thinking right, it is 2010 when we had a significant, as I mentioned earlier, we had a problem on the lines, running Toyo material and if I remember that year we just bought a very little amount and then we had switch to Thomas. Since then we have stayed with Thomas.

COMMISSIONER PINKERT: Thank you very much. There's another area, I think, of disputed fact. I'm hoping that it's not simply different characterizations of the same facts, but it has to do with whether or not quotes are taken before the qualification process begins, and that's something that I heard earlier today from the domestic panel and I just want to give you an opportunity to tell me that it is a disputed fact, it isn't a disputed fact, how should I understand this issue?

MS. JACOBSEN: Sorry, what we do is we would do an RFI for some sort of information for a benchmarking. We would say this is for benchmarking purposes only, we would

ask people to provide prices, because what we need to know is, are people even in the ballpark to spend all the money that we need to spend on qualification?

Does someone even have a chance of earning business? So we wouldn't want to have them spend all the time and money, us spend all the time and money and have their price find out later that it is so exorbitant that we couldn't possibly even use it in our product, so we do try to get a benchmark price, just to understand, are they, is there a reasonability that they could earn business in the future.

But this does not say that we get the price and then we qualify later. We make sure that we understand the ballpark that we do a qualification and then they would be included in the bid process.

COMMISSIONER PINKERT: Thank you very much again for the post hearing. If you can give us some documentary information on the let's call it the quotes that occur before qualification, or the ballpark quotes that occur before qualification and I don't want to use some characterization that's biased in one way or the other. I just want to know whether we can get some documentary information on that. Thank you, thank you.

CHAIRMAN WILLIAMSON: Thank you, Commissioner Johanson.

COMMISSONER JOHANSON: Thank you Mr. Chairman. Petitioners explained this morning that the nickel surcharge and the RMPAM, I believe I'm pronouncing that correctly, I guess it's not a real word, but the RMPAM and changes in the raw material costs. When the surcharge or RMPAM declined, their costs also declined.

These elements do affect their profits. Changes in the base price on the other hand, directly impact their bottom line and they reported that their base prices fell by $200.00 per ton during the period of investigation. This decline, they contend had nothing to do with changes in nickel or RMPAM and instead reflects the fact they had to reduce their prices to compete with dumped imports.

Could any of you possibly respond to that? Because they did demonstrate a $200.00 per ton drop in price.

MR. PORTER: Let me take a start, Commissioner Johanson, and I have to tell you this aspect of the effect of the changes in raw material costs and how the formula works and translating that to their profitability and then further translating that into pricing is actually quite an undertaking.

Let me give you a very clear example of why that is and that how this is difficult and we are not exactly sure we agree with Petitioners numbers and if you remember

they admitted that some of those same raw materials, sort of like there's a nickel base in their base, so they are, on the one hand they are saying, oh all raw materials sort of changes by this RMPAM, but then they are saying there is some amount of nickel that is still in the base.

Well if there are changed in nickel pricing that's affecting both the adjustment and the base and so how do you disentangle that?

COMMISSIONER JOHANSON: Thank you, I understand the difficulty there. Would anyone else like to respond? I know it's not an easy question, but you all probably know the answer better than we do up here.

MR. WOOD: This is Chris Wood from Gibson, Dunn, I'll add a little bit to Dan's comments and see if this is helpful.

I agree with the evidence. It is quite a complicated mechanism, but understanding on the one hand the effect of changes in commodity inputs on sales prices on the one hand and then looking to see whether the cost trends mirror those commodity index trends, it's a very important aspect, I think of this case for your analysis.

In the ideal world that Thomas laid out this morning they would say look, this is just a pass through mechanism that yes, our prices are going to go down a bit when commodity prices decline, but that should be, that

exactly reflects what's going on with our costs. What we have shown you in our Brief, it is not what is going on in their costs as reported to the Commission.

We had a lot of discussion this morning about whether, well, how much of that is due to purchases from affiliates and the like but the Commission has a very established, long-established process for this and so I think you have to grapple with this idea that as their prices went down based on this formula, at least in part, their costs went in a different direction, and that is responsible for a huge amount of the injury they alleged to be suffering.

The only other point I would make is when we took a shot at this, modeling this in our pre-hearing brief, we tried to be as transparent as humanly possible. We have given you all of the data on these commodity series, so you know exactly where our numbers are coming from, what we have calculated and how we did it.

You know I've look at the numbers in the Thomas brief, I can't tell you, maybe they come out of their system, but I can't tell you what the back-up is for those and I don't think we have got any way to do it so, you know I think everybody agrees that there is a fairly substantial price decline that is coming from these commodities indexes, and we are arguing around the margins.

The last point is just on the base price declines, I think you have to be very careful not to simply assume that any decline in base price is related to competition from subject imports. Mr. Durling, in his testimony, laid out several reasons why that is not necessarily the case.

And I would further add that it actually can't be the case because when you look at the pricing trends across the market, right, depending on where there is import competition, where there is not import competition, you are seeing the very same trends. That should suggest to you that something other than imports is what is driving the base price or any price that's down here, thank you.

MR. GRACE: I'm David Grace from Covington and Burling. We have not seen the confidential information. And I defer to the other counsel on their analysis. Just a very basic point. If you were to take Chart 5 that was put up on the screen this morning and go back a quarter into the fourth quarter of 2010, you would see a very substantial unilateral increase in the base price they imposed on Duracell and presumably on others during that period which leads us to analyze the trend that even they've shown as a trend back to normalcy. They had a one-time a huge bump up that they unilaterally imposed -- well, that they imposed without explanation. And then it is now the base price. He

was just using their numbers as back to what we would see as a normal level in the market. And we'll provide our information in confidence in the post-conference brief.

COMMISSIONER JOHANSON: Thank you for your responses there. Thomas Steel argues that the need to qualify nickel-plate for different battery applications has not insulated Thomas Steel from import competition or prevented it from competing against subject imports from Japan. Do any of you happen to have a response to that?

MR. WOOD: Well, this is Chris Wood from Gibson Dunn. You know, again, just to start with, you heard testimony from both of my clients who told you exactly where they're qualified and exactly where they're not, and where they're not even attempting to become qualified. And so I have yet to see a coherent explanation for how Japanese imports can be exerting price pressure in customers and for market segments where not only are they not qualified, they're not even attempting to become qualified. So, that would be, you know, my first response.

We can get into more detail in the post-hearing, of course.

COMMISSIONER JOHANSON: All right. Thank you. And in the Respondent brief you all discussed at some length the impact of light weighting of using less fuel in the production of batteries. Wouldn't that harm Japanese

producers as well as Thomas Steel? It seems to me both parties would be negatively impacted there. Mr. Singh.

MR. SINGH: Absolutely. That would just reduce globally the amount of steel that we would use, the amount of nickel that we would use. So it would -- it is not like Thomas would get adversely affected while the volumes are increasing of won't impact. It would have the same impact on both of us. Yeah, as long as both can meet our specifications in a gauged product.

COMMISSIONER JOHANSON: Okay. And Mr. Singh, while you're speaking, this is a very simple question and I think I know the answer, but I'll go ahead and ask it anyway. You stated that P&G had asked for Thomas to look into purchasing non or a different -- obtain a different source of steel; why was that the case? Was that to lower prices for you all?

MR. SINGH: It was just a -- because we had been hearing -- so typically if you say steel produced in Europe is much more expensive than the steel in United States, the way the regional market pricing is, Europe is the most expensive and then North America and then Asia. And also we wanted to have a dual source qualified for Thomas Steel because Thomas buys only from their mother -- parent company. We were wondering if something ever happens or they have shipments coming from overseas, if something ever

happened to that, they would not end product battery steel in the United States.

COMMISSIONER JOHANSON: All right. Yes, Mr. Porter?

MR. PORTER: Yes, I just want to respond to your earlier question about the increasing use of thinner steel and won't that have an effect. The answer is, yes, but there's a part that's no and that's because by practice you're looking at a finite period of time. You're starting with 2011, you're going through 2013. And so what we're attempting to do is that at Thomas was saying there was a decline in their production. They said this morning, decline in their shipments. And the question is, why that was. And the staff report at 218 which was talking about this very period of time noted the effect of switching from sort of -- to thinner steel during this period of time and they gave -- I can't repeat it because -- they gave a percentage. The staff report on page 218. And so we were -- and we were saying that the staff -- ergo, that was part of the reason for the decline in Thomas' shipments, that shift from thicker to thinner steel.

The other thing I note is that while in general it will affect everyone, it may affect different people at different points in time. So if Toyo Kohan is already shipping the thinner steel, but Thomas is not and they're

just transitioning during this period, you would see more of an effect on Thomas than you would on Toyo. And in fact, product 5 to product 4 at PECA which was Thomas was trying to qualify was from a thicker to a thinner steel. So that -- it actually holds together.

COMMISSIONER JOHANSON: If you would clarify something for me and I'm sorry if I didn't get it. You might have already stated this, but the period of time you're referring to, when was that?

MR. PORTER: The POI.

COMMISSIONER JOHANSON: During the POI?

MR. PORTER: Yeah. I'm just talking that by -- you obviously have a POI and what the -- when in the brief when we were developing this, we were using the staff reports discussion of the effect of going from thicker to thinner steel and they were obviously talking about the POI because that's what they're required to do. So the point is, there is in the staff report an actual effect of on production from going from thicker to thinner steel, and that's what we used.

COMMISSIONER JOHANSON: During the POI?

MR. PORTER: Yes.

COMMISSIONER JOHANSON: Okay. I think this morning I might have heard it -- I'll have to check the record.

MR. PORTER: There's no question this morning they gave the impression that it happened before. All I'm saying is that our number came from the staff report and their statement was talking about the POI.

COMMISSIONER JOHANSON: All right. You know, my time is expired. Mr. Chairman, I'm going to ask one more question, if I can, just to wrap up my time here today.

This is probably not a happy question for anyone, but when do you all anticipate that China will become a competitive producer of -- or do you predict that they will indeed at some point become a competitive producer of nickel steel that would impact both the petitioners and the respondents?

Has anyone looked into that by chance?

(No response.)

COMMISSIONER JOHANSON: If you haven't that's okay.

(Pause.)

COMMISSIONER JOHANSON: Okay. No one seems to have an answer, that's fine.

Well, with that, I'll wrap up there unless --

COMMISSIONER BROADBENT: I think I'll begin my questioning with the same question.

COMMISSIONER JOHANSON: Because several of you are leaning towards your microphones. I don't know what

that means. Maybe you're just drowsy.

(Laughter.)

COMMISSIONER JOHANSON: Okay. I will conclude there. This has been -- both panels today have been very informative. I'm actually a little drowsy myself which means I've been thinking overtime. So these are difficult issues and we will be looking further into them.

Thank you for appearing here today.

CHAIRMAN WILLIAMSON: Thank you. Commission Broadbent.

COMMISSIONER BROADBENT: One more time, can someone answer the China question? When will China become a major player in the nickel-plated steel market?

MS. JACOBSEN: Let me just share, we can't predict the future. And at this point they have not been producing the quality product that is needed for Duracell.

COMMISSIONER BROADBENT: Right.

MS. JACOBSEN: So, I mean, what happens in the future we can't say. I think that's why we're sitting here going, we don't really know, is the problem.

Right now we are working with the three suppliers that we have --

COMMISSIONER BROADBENT: Right.

MS. JACOBSEN: -- to really drive our business.

MR. OHORI: This is Hiroya Ohori from HSL. I

would like to comment something on China. China they're alkaline production about 60 percent is exported from China to Europe and the U.S. and some other countries. And now they are still using post-plated cans. So the quality is inferior, but they are trying to catch up. And that will boost up the demands for nickel-plated steel in Asia. So that's what Toyo and Nippon Steel testified on their testimony.

COMMISSIONER BROADBENT: Thank you.

So that's in the battery exports. Yeah, got it, great. Thank you.

All right. This is for the P&G team. We had just heard from the Japanese suppliers that their acceptance rate is 99.97 percent. Is the only U.S. purchaser that actively sourced from both Toyo Kohan and Thomas in the period of investigation, you're uniquely positioned to answer our questions on the relative quality and consistency. Either here or in the post-hearing brief, can you provide data on your acceptance rates for both Thomas and Toyo Kohan?

MR. SINGH: So we would address this more with statistics and data. I will try to -- we will give you more facts. But when I had this task I had multiple requests from my can manufacturers and my plants that they would like to run Toyo material because it was a superior quality and

would run better on the lines on the can manufacturing. Even though they had this, they did not like the fact that there was a six-month long lead time to bring material from Japan which was a big annoyance for a plant or a can maker because they would like something that is readily available material, but they would many times want me to switch allocations or something because they would feel Toyo would run much better.

COMMISSIONER BROADBENT: Okay.

MR. DURLING: Commissioner Broadbent, just one point of clarification. The 99.97 percent is actually the internal target. It's not a representation about what was actually achieved.

COMMISSIONER BROADBENT: Right.

MR. DURLING: So the comparison is the target being 1 percent versus the target being .03 percent and then the actual experience for both. The record already has quite a bit of information on this that PECA submitted in the preliminary phase and without getting into the specifics, I can tell you that there is already information on the record that largely corroborates the number that you've heard from Toyo Kohan today, but we'll go through our materials and try to provide more comprehensive information on that.

COMMISSIONER BROADBENT: Okay. Great. Thank

you.

In the morning session I thought that I heard that Thomas had become qualified for Rayovac and was selling commercially there this year, 2014. Anyone know if that's true?

MR. WALTON: Certainly we're not in a position to speak for Rayovac, but I will say that for cans that we provide to our customer, they're not qualified yet.

COMMISSIONER BROADBENT: They're not?

MR. WALTON: That is correct.

MR. DURLING: Commissioner Broadbent, this is Jim Durling from Curtis. An important distinction here is to remember qualified at Rayovac for what? And is it being supplied to a can stamper or is it being supplied to Rayovac itself? My understanding from lots of conversations in the industry is that Thomas has been supplying end caps and may be providing some other products. But that's a very, very important distinction because I think you've heard a lot of testimony about how specific the qualification is. It's not about are you a good supplier or a bad supplier when even Toyo Kohan which is an extremely high-quality supplier can't qualify for C business at Duracell. Conversely, I think everyone here would agree that the least demanding product to qualify for is an end cap. Why? Because an end cap is not -- you're not punching a can, you're not doing the deep

drawing that is a much more complex process than just sort of stamping out the top of the can. And so, saying that you're qualified for an end cap is very different than saying you're qualified to produce a can. And even if you were qualified for one type of can, that doesn't qualify you for another type of can. And even if you're qualified for AA battery cans at one plant, you're not qualified at other plants. So it's a very specific individualized determination.

So it's very important if you're posing questions not sort of are you qualified at Rayovac because saying yes, I'm qualified at Rayovac when all you are qualified for are end caps at one particular facility is a very incomplete and, in our view, misleading statement for them to make.

COMMISSIONER BROADBENT: Okay.

MR. SINGH: That we be our experience as well that a supply could be easily qualified at end caps. End cap qualification could be much easier than a can qualification.

COMMISSIONER BROADBENT: Okay. This is a question for PECA. Does Panasonic plan to resume battery production in the U.S. in the reasonable foreseeable future?

MR. WALTON: Regarding alkaline batteries, to the best of my knowledge that is not going to happen.

COMMISSIONER BROADBENT: Okay. And why not?

MR. WALTON: The amount of investment now after taking apart the factory and everything else is just too great and it doesn't make any business sense to do that.

COMMISSIONER BROADBENT: Okay. For the battery producers, does your firm drive the purchasing decisions and price negotiations when sourcing nickel-plated steel or is that your can stampers?

MS. SALO: We negotiate on behalf of our can stampers.

COMMISSIONER BROADBENT: Right. Okay. And then PECA, could you answer that?

MR. WALTON: I'm sorry, could you repeat the question?

COMMISSIONER BROADBENT: Yeah. Does your firm drive purchasing decisions and price negotiations when sourcing, or is that your stampers?

MR. WALTON: We are the can stamper and we have the negotiations with our steel suppliers. And obviously we communicate pricing with our customers.

COMMISSIONER BROADBENT: Okay. I think I'm done. Thank you.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Kieff.

COMMISSIONER KIEFF: I just join my colleagues in thanking everybody from the morning and afternoon panels. I

think you have a sense of, everybody where to follow up and we look forward to that. Thank you all very much.

CHAIRMAN WILLIAMSON: Okay. Thank you. Some follow up questions. I think Commissioner Johanson had asked, I think this afternoon or this morning about the Energizer facilities in Merryville, Saint Albans and at Asheboro and confirmed that they are closed. One thing I wasn't clear about, does anyone know when they closed? If not, if you know, or I can find out post-hearing.

MS. JACOBSEN: We don't know specifically when they closed, but our competitive analysis organization has noted that -- like I said earlier, the imports that we're seeing for Energizer have increased for alkaline batteries.

CHAIRMAN WILLIAMSON: Okay.

MS. JACOBSEN: So we suspect they're moving -- they've moved more and more production overseas.

CHAIRMAN WILLIAMSON: Okay. Thank you. Petitioners know they can file post-hearing to let us know. Thanks.

Let's see, I was just -- we know that the general global trend towards the -- you know, I think the diffusion-annealed nickel-plate and that's probably less used post-plated cold-rolled steel or that production process. Is that true, there is a general global trend, you would say, going away from that, or is it more that it's not

something that's going to happen in this market along with time? Stopped using that process here a long time ago? And the reason I'm asking, I'm trying to get an idea of what impact might that have on the demand for nickel plate globally?

MR. SINGH: I think more and more, as I said, these consumers become the economies of much and consumers become more sophisticated, they will ask demand for a better quality product. And we see eventually there would be more conversion to diffusion nickel plated. But I think the steel guys could forecast that better like when do they see that change happening. Duracell as a company already uses the high quality product.

CHAIRMAN WILLIAMSON: Okay. Thank you, Mr. Wood.

MR. WOOD: Yes, Commissioner or Chairman Williamson, we've actually given you the best data that we have available to us which is a summary of demand for battery steel globally. And we've, in our brief we've taken that and we've focused on Asia and we've shown you that there's an extremely large market out there for battery steel which includes both the post-plated and the diffusion-annealed nickel-plated steel. And one of the points that we're hoping to impress on you is for exactly the reasons that Mr. Singh just stated is that we think there is an ongoing shift in favor of diffusion-annealed

nickel-plated steel, the higher quality stuff. And what we hope you see from the numbers is that even a small shift, because it's an enormous market for battery steel overall, even a small shift has very important ramifications for this particular product.

I mean, I'm fortunate that I've got a couple of folks here today who really do look at this stuff very closely and so I'm going to ask maybe Mr. Ohori, first, if he can give you a little more local color on why we think that shift is occurring and what's driving it.

MR. OHORI: Ohori from HSL. I would like to give you some reasons why the battery steel demand is going to increase. The first is in Japan, we are going to have a lot of increase in production, volume of electric vehicle and hybrid electric vehicle. Those use a lot of batteries inside, and then supported by the government fundings.

CHAIRMAN WILLIAMSON: Excuse me. Are they using a lot of nickel-plate --

MR. OHORI: Nickel-plate, yes.

CHAIRMAN WILLIAMSON: Okay. Good

MR. OHORI: Yeah, the battery in nickel-plated steel cans. And also there are the smart houses which comes with energy storage generated by the solar power that also has nickel-plated steel cans goes into it.

And our government is assuming that the commodity

will be five to ten times more in coming eight to ten years.

And secondly is China, as we have been explaining to you that migration from post rate -- post rated cans to diffusion-annealed nickel-plated steel cans is happening now. Because you know that to compete in the export market Chinese have to upgrade their battery performance and extend their shelf life. And also that's for alkaline portion of the battery, and also because of the very heavy pollution in China, the government is exporting the development of electric vehicle and electric vehicle bus into mass production for public transportation, especially in the big city. So this is happening very quickly and in Korea the big company, big battery companies like LG and Samsung, they are trying to follow Japanese in order to grab the electric vehicle and hybrid electric vehicle global market.

And lastly, the United States they're the -- excuse me -- manufacturer called Tesla Motors, they produce a lot of electric vehicle and their vehicle uses 8 to 10,000 pieces of lithium-ion batteries per car which is about three to 4,000 laptop PCs. And the weight of the nickel-plated steel consumed per vehicle will be something about 220 pounds. And they recently agreed upon extensive supply with Panasonic in Japan for the lithium-ion battery supply. So that is going to -- that is also going to boost up the battery grossing agent.

So with all those increases we are expecting a huge demand for the nickel-plated steel coming up in -- in the coming five to ten years.

CHAIRMAN WILLIAMSON: Okay. Thank you for the comprehensive reply.

Go back to the bid process. How long after a nickel-plate producer bids on a contract does it typically take for, one, the bid to be awarded; two, the nickel-plate to be exported to the U.S.; and three, the nickel-plate to be inventoried in the United States; and four, nickel-plate to reach the final customer? So how long does each of these stages take? Time for the bid to be awarded, from the time that --

MS. JACOBSEN: After qualification, of course.

CHAIRMAN WILLIAMSON: Yeah. Go ahead, yeah. Give me the timeframe and the qualifiers --

(Simultaneous conversation.)

MS. JACOBSEN: Qualification is the six to 18 months.

CHAIRMAN WILLIAMSON: Yeah. Uh-huh.

MS. JACOBSEN: And then conducting a bid, it can be, you know, four weeks, six weeks for a bid process, maybe shorter, it depends on the situation.

CHAIRMAN WILLIAMSON: Uh-huh.

MS. JACOBSEN: And then depending on the length

of the supply chain, it can be months before that specific product ends up at the can stamper and then to the actual battery can. So it can be four months.

CHAIRMAN WILLIAMSON: Okay. So you got four to six --

MS. JACOBSEN: Yeah, the bid process is four weeks, four to six weeks. I mean, you send out the information, you give them time to evaluate. It could be, if we did it in November, it might be effective in January. But, again, we give it time to run out. If there's been an allocation change, we give it time to run out that allocation.

CHAIRMAN WILLIAMSON: Uh-huh.

MS. JACOBSEN: And I think that was clearly stated in some of the award letters that you've seen that there's a run-out period.

CHAIRMAN WILLIAMSON: Okay. And then once you awarded if it's an imported product, how long might you expect before you expect to be -- like a ship to the U.S.?

MS. JACOBSEN: Right. If we award on January 1, it might be months before we actually get that product into the can stamper because of the long supply chain.

MR. SINGH: Anywhere between four to six months.

CHAIRMAN WILLIAMSON: Okay.

MR. SINGH: To bring it into United States.

BY JACOBSEN: That's why there's a lag.

CHAIRMAN WILLIAMSON: Okay. When you award is it like maybe a year -- what type of contract, is it a year time period or quantity?

MS. JACOBSEN: Six months to a year. We have had discussions about entering into longer-term discussions and agreements with suppliers. Thomas didn't want to do that, so they wanted to drive the shorter time period of six months to a year.

CHAIRMAN WILLIAMSON: Okay. So you might say I want X amount per month or something like that?

MS. JACOBSEN: Right. Right. Right. We have a whole planning process that sends them 12-week outlooks and things like that so that they can plan.

CHAIRMAN WILLIAMSON: Okay. And good. I think I got the answer to that. Thank you.

We've talked about I guess it was the size change. But I was wondering, how often do product requirements change that would necessitate a requalification of a supplier? I think you've touched on this before, but give some idea on that and then how long does this process take?

MR. SINGH: So, Chairman, our R&D department is continuously working on like how to improve the product to make it performance better. And that could result as of --

so ongoing we are doing some kind of testing with our suppliers in how to either run our lines betters or how to -- as Linda mentioned earlier -- how to take costs out of the supply chain. And so generally the big projects that you could see where there's a gauge reduction or something like that, that happens once in three years, five years, something like that. Those are not -- those are not easy to come. But small here and there, some type of -- some kind of composition, variation or something like that, we are continuously working with our suppliers.

MS. JACOBSEN: But as we also said, it's both the can and the chemistry inside. So as we look at different projects and different innovations to drive the performance, it could be one or the other that's happening that can cause a supplier that if they haven't provided supply or been awarded business for six to 12 months, they might have to be qualified because we've made a change.

CHAIRMAN WILLIAMSON: Okay. Good. Thank you.

Let's see, should the Commission conduct its pricing analysis considering product 1A and B together or separately and why?

I asked that this morning too.

MR. WOOD: This is Chris Wood from Gibson Dunn.

CHAIRMAN WILLIAMSON: Yeah.

MR. WOOD: I can take a first shot at that.

CHAIRMAN WILLIAMSON: Sure.

MR. WOOD: Unless you want to, David. Okay. Now, I mean, look, we had a very straightforward reason for recommending that products 1A and 1B be separated. As you heard, the products have very different widths and that entails at least two significant differences. One, there's a difference in processing costs. You have to split -- you start with a coil and you have to slit the coil to get down to the narrower width. That involves costs that's reflected in the -- you know, on the suppliers costs and the prices they charge.

The second issue is that the wider coils are larger coils. You can ship more in a single coil and it has -- I mean we can get more detail if we need it, but my understanding is that the packaging is quite different and that you have lower packaging costs for the lower coils. So it seemed to us that if you're actually trying to do an apples to apples comparison, compare like products, it's not just the chemistry it's also, you know, the size and the processing that goes into the product.

I mean, yeah, I want to respond just briefly to this idea that we did it to somehow, you know, mislead the Commission about what the volume trends were. I mean, that's ridiculous. Everybody on both panels today has openly acknowledged that there's a volume shift. That's a

big -- you know, that's a big part of the reason that we're here is that one decision. We're trying to get you the best data you can to actually compare the products that are being sold to Duracell by both Toyo Kohan and Thomas on a quarterly basis.

Thank you.

CHAIRMAN WILLIAMSON: Okay. Thank you. And it's I think I have just one other question. And let's just say, we talked about the allocation and you talked about the goal of, no, having two suppliers and part of it is based on a risk. And I guess the question is, how often in general are you successful in achieving that goal?

I'm sure the risk drive, you know, how hard you might fight, but you have so many different products, so many different plants.

MS. SALO: I run our business continuity planning.

CHAIRMAN WILLIAMSON: Yeah.

MS. SALO: For our Duracell and Shave Care businesses and our leadership in both businesses have specifically requested since there's been events that have occurred, in other areas of Procter and Gamble's business that we have dual sources qualified on all key materials and all key sites. So if we work to do that across all key materials especially where there's a longer qualification

period of six to 18 months like in steel.

Things like packaging are usually very easy to switch. So, you know, when we look at a carton or a corrugated container, those are very easy to qualify an alternate source. But key -- key components like steel, like some of the chemicals that go into batteries, very difficult. And therefore we do look to have dual sources qualified.

CHAIRMAN WILLIAMSON: Okay. Thank you.

Let's see, anything else? Okay. I guess I have no further questions.

Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Mr. Chairman. I just have a couple of follow ups.

First of all, for the post-hearing, and this is for the Japanese producers, could you break down your 2013 production by its end-use product? For example, AA cans, AAA cans, et cetera.

MR. WOOD: Yes, we'll endeavor to collect that data for the post-hearing.

COMMISSIONER PINKERT: Thank you very much.

And then, finally, Mr. Durling, I note the testimony that you gave about the price comparisons in the staff report. And you may recall that Mr. Cannon testified about that issue earlier today and in particular what I

heard -- I always refrain from direct quotes. What I heard was that there was a gap opened up early in the period for several of the pricing products and that that gap, that underselling gap then closed later. Is that consistent with your understanding of the data? And maybe you want to answer that in post hearing.

MR. DURLING: Commissioner Pinkert, it's better to address post hearing because I could make a characterization now, but then we'd be arguing about the characterizations. The data is the data. Each side can discuss it and then you can look at the data yourself. So, I'll just leave it at post-hearing.

COMMISSIONER PINKERT: That works for me. And I thank the panel and I look forward to the post-hearing submissions.

MR. WOOD: Commissioner Pinkert, I'm sorry, this is Chris Wood. Just to go back to your earlier question for one second, the breakout that you would like on the shipments by the producers, is that for the United States or did you have a different target in mind?

COMMISSIONER PINKERT: I was looking at production by the Japanese producers, not the shipments.

MR. WOOD: Okay. Production in 2013.

COMMISSIONER PINKERT: Right. So just a breakdown of the production.

MR. WOOD: Okay. Thank you.

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

CHAIRMAN WILLIAMSON: Do any other Commissioners have questions?

(No response.)

CHAIRMAN WILLIAMSON: No? Does staff have any questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Mr. Chairman and thank you to the panel. Staff has no additional questions.

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

MR. CANNON: No, we don't. Thank you.

CHAIRMAN WILLIAMSON: Thank you. Thanks to the panel for their testimony.

And appreciate especially given the many who traveled a long way here. And now it's time for rebuttal and closing statements. And those in support of the petition have seven minutes for direct and five for closing for a total of 12. And those in opposition have two minutes of direct time and five of closing for a total of seven. And we just need to combine those times. So we'll ask this panel to take their seats in the back and then we'll have closing statements.

CLOSING STATEMENTS

CHAIRMAN WILLIAMSON: Mr. Cannon, you may begin when you're ready.

ON BEHALF OF THE PETITIONER

MR. CANNON: Thank you.

So we heard the whole argument. We heard all day and they made a bunch of really good points and I guess we didn't lose the Duracell on AA because of price. And so we can withdraw, April Fools.

(Laughter.)

MR. CANNON: First with regard to Duracell there's been a lot of focus on Duracell and I am intrigued by the notion that perhaps both sides could be right. There are some facts though that we can point to that can help at least inform the decision. Duracell has argued -- actually it's in the testimony by Toyo that they did not make any special offer to win the business. In preparing our response to Duracell's RFQ, we used the same pricing formula for every Duracell specification in every region. What they're saying is that back in December of 2011 when they submitted the bid, it resulted in winning the AA business, they quoted the same price they had been quoting.

So you can look in the pricing tables, you can look at Product 1A and you can see whether they were underselling us at that time. You can see in the preceding

quarters whether the Japanese price, the same price which didn't change was below ours and whether that didn't motivate the shift where we went from the 80 percent supplier to the 20 percent supplier.

Duracell has also argued that they use best-value principles. We don't disagree with that. There's a whole host of them. Principally dual sourcing, but there were two sources. We were the two sources, we provided the quality product, we provided a reliable product, there hasn't been any innovation, no specification has changed at all during the period. There's no question about our reliability and in fact we supplied reject rate data at the preliminary stage on our rejects from their can stamper.

The fact is, we met every best value principle, both of us, in fairness, both of us. So the question for you is then, did the lower price matter? Is that what caused them to shift 80/20 to 20/80? And I think you can't ignore that that had an impact.

Now, with respect to Procter and Gamble driving prices down, there was testimony, it was admitted that they are in a competitive environment. They are competing against other battery producers, and they absolutely pressure us to cut prices. And you see it. The record is replete with evidence of it. So in our prehearing brief we attached the first exhibit, the first declaration of Bill

Boyd. And behind it is the e-mail correspondence. There are the presentations when he personally went to Boston to meet with Duracell and present our prices. And that story is backed up by documentation that you've been seeking. And it tells you that in fact it's true Procter and Gamble is trying to get lower prices. What they can't do legally, at least in the context of the dumping law, is use dump prices to leverage our price down and cause us to lose volume to dumped prices.

Now, there was a question by Commissioner Johanson about this. This isn't a China case nor is this a case in which the foreign producers got adverse facts available from Commerce. This is a case in which it was price to price. They compared the prices in Japan and the prices in the United States and they're going to find a dumping duty margin of 40 or 50 percent on Friday. And that means that in Japan prices are far higher than they are in the United States. And so in classic economic terms, you have a company that enjoys profits at home and it can sell at marginal cost in foreign markets. It's rational to do that and they are doing that and they took our sales volume and that's the purpose of the law and it's not really a question of did the actors make bad decisions or lie, or are they misleading you? The facts tell you that that's what happened in this case. That lower-priced, dumped imports

were attractive. And so Procter and Gamble was rational as a business entity. They picked the lower price. What's not supposed to happen is that is not supposed to be the choice when they're able to make profits at home due to price discrimination. That's the purpose of our law.

Now I'd like to turn to -- oh, I'd like to actually make one point. In the testimony of Mr. Walton, he states, and I quote, "That with the reduced volume" this is Mr. Walton is from PECA. He's talking about the history and how they had dual sources and they dropped to one. And he says, "With reduced volume it no longer made business sense to continue dual sourcing since the reduced purchasing volume would have given us less bargaining leverage with either of the two suppliers." What is he talking about? Bargaining leverage. He's talking about using one supplier's price to drive the other supplier to a lower price. That's the quote up on the board. When they tell us, your price is $250 too high. That's what they said here right toward the end when they said in testimony that they have a sort of a prebid or an offering, because qualification is expensive. And so first they want to find out what your price is.

In fact, the testimony confirms that there's pretty good discovery of prices in this market. The customers are somehow signaling pretty well. This is not

the case which was sort of speculated by counsel that somehow we wildly missed the mark. We cut our price and we didn't need to. Or somehow the two sides don't really know where the prices are. In fact, when you look at the pricing products, margins of underselling and overselling, judge for yourself, how close are they? How well do these companies know what's going on in the market? How well do they understand how important it is to have a lower price?

Turning to the quality arguments. It's cited that we had a disaster. We had a fire in Europe. That's not Thomas. Sister company Hille and Mueller has nothing to do with Thomas. It's argued that Thomas is not qualified, yet the quote, they want to use one producer against another to gain bargaining leverage. So clearly they're inviting us to try to qualify.

Then they make the argument that, well, Thomas is only qualified at some products, customers, the imports are qualified at others, so they don't really compete. Think about that. You have documentary evidence, e-mails from purchasers, quoting prices, telling us, if you'll cut your price we'll give you the business. Clearly whether or not you are dual sourcing or single sourcing, you have the opportunity to offer and offers are driving down prices in the market.

Now, you've heard a bit about us using Tata steel

to make our product.

In fact, it was argued that we refused to qualify U.S. steel or Arcelor and Mitall. We use U.S. steel and Arcelor and Mitall hot rolled to make nickel plate. We were told to qualify U.S. steel or Arcelor by PECA back in 2008 and 2009 in the context of a discussion in which they wanted us to reduce our price. Well, if your price is here, why don't you go see if you can get U.S. steel or Arcelor and then you can reduce your price. That was the context of the discussion. We can supply more backup evidence to show this.

The point is that it's not about the producers of our substrate, it's really about getting the lowest price. And that's what the testimony teaches you. And so the arguments that nonprice factors are the most important issue for you don't ring true. They don't really hold up.

Next I would like to turn to the volume. On page 20 of the Respondent's brief, they have this argument where they take the loss and volume and they say, Thomas lost ten tons, pick a number, of volume. But five of it or seven of it is really due to other things. For example, one of the U.S. producers purchased less. So basically what they're arguing is our volume loss is not the AA. It's that the totally different, unrelated customer purchased less. Let's think about the argument. In this C Table, on the top line,

you can see apparent U.S. consumption. If you look at the quantity, and especially the quantity between 2011 and 2013, which they're relying on in their brief, there's a decline, fair, but it's pretty flat. It's pretty flat. It's nothing like the decline that they have on page 20. That's because what they're doing is they're acting as if a loss by one customer is in the context of a void. In fact, when one customer loses volume or purchases less, another customer buys more; right. So let's say, Energizer sold fewer batteries, Duracell sold more. Because you see, consumption is pretty flat. So it's essentially a zero sum game. You can't monkey around with the volume numbers in the manner which they've done on page 20, not in a rational manner.

And, oh, by the way, Energizer closed in October 2013, I think in response to one of the questions.

Next, there's the argument that's been going on all day that somehow price is disconnected from the movement in our costs and that this is meaningful. And it's kind of interesting, if it weren't complicated, if our costs were just going up, and the prices were going down, we would be the ones talking about a cost price squeeze. Instead, attention is being diverted from our losses to the formula in which we set prices. I ask you to resist that. And I saw the red light came on. So I shouldn't have said anything about April Fools, or I would have been able to say

a little more.

Thank you.

CHAIRMAN WILLIAMSON: Thank you.

Mr. Durling, you may begin when you're ready.

CLOSING STATEMENT ON BEHALF OF THE RESPONDENTS

MR. DURLING: Well, since I can't make the April Fools joke, I'll just promise not to spill water this time. So that's the best I can do.

Let me open with a procedural request. I really do feel that given the presence, the active presence of Duracell in this proceeding, in fairness to Duracell, they ought to be allowed to look at the Duracell documents. Either Duracell generated documents, or documents that Tata has given to Duracell, and to be able to react to what petitioners are arguing. In my view that doesn't require a rewriting of the APO rules, it simply requires recognizing that in the particular circumstances of this case, namely that Duracell is here actively participating, but is being assisted by counsel that under the rules doesn't have access to the APO it is appropriate in this case to allow Duracell to look at the documents and to respond.

Yeah, it's an important enough issue, Commissioner, that I felt it was important to raise it before the entire Commission.

What you just heard was an argument that somehow

Toyo Kohan has always been underselling. But if that's true, why didn't Toyo Kohan get the business earlier in time? The argument Mr. Cannon just presented was Toyo Kohan is aggressively underselling, they have always been underselling, but if that were true, and it's not really consistent with the evidence in the record, but let's assume for the moment it's true, all he's argued is that Toyo Kohan was always underselling and for quarter after quarter after quarter it had no effect on Duracell's decision. All of a sudden he's saying that now because a switch is made, it's because of the underselling. But if it wasn't having any effect before, why draw the conclusion that all of a sudden it's having the effect now?

I think on its face, that scenario much more clearly suggests that there's some other factor at play and that's in fact what has been motivating much of our presentation in this proceeding.

But I would like to close by just focusing the Commission's attention on a very important difference between quality and qualification. Those two words have been thrown around a lot today. But I think it's important to close reflecting on kind of the difference between those -- those two words.

Saying that you're a quality producer does not mean that you are qualified to produce any particular

product. I think some of the most important testimony today was about the nature of the qualification process. That Toyo Kohan couldn't qualify for Duracell C batteries at a particular plant because the machinery happened to be older or Thomas may be a perfectly fine supplier for many Duracell applications, but for the particular facilities being used by Panasonic it's not a good supplier because its steel just doesn't work as well.

This is a very specialized product that its production process is very sensitive and so steel that works in some situations simply doesn't work in others. So even if Thomas is consistently achieving 99.6 quality according to their chart, that doesn't mean that they're going to be qualified at all of the particular applications. It's important in this case because when you start looking at exactly where are they qualified, where are they not qualified, it has a significant impact on the degree to which there's really head to head competition here.

Qualification is a very different concept. Qualification means that you have the base level of quality, that's why you're allowed to bid in the first place, and you have a price that's kind of in the ballpark and you heard a lot of testimony about needing to be in the same ballpark. But qualification is not about price. Yes, you have to be in the ballpark. Yes, you have to have some history of

having produced this product, but it's not about price. You qualify and you either are qualified or you're not qualified. It's a pass/fail determination. If you are qualified, then you can have head to head competition based on price because it's then and only then that the bidding process really kicks into place.

And that's why it is so important for you to understand exactly who is qualified, where, and for what and at what points in time. Because when you kind of break the market down to understand the extent to which there are major portions of the market where for either because of lack of qualification or because of the complete lack of any supply, some battery makers think it's important to have multiple sourcing. Other battery makers pursue different strategies. And if you -- if a particular supplier is not qualified, that supplier cannot exert direct head to head competition for that particular volume at that particular location.

Conversely, if a particular battery company only has one supplier and has only historically dealt with one supplier, any competitive effects there are going to be extremely attenuated. That's just the way this particular market works because this isn't like commodity steel products. This product has its own special unique characteristics. You've had the benefit of a lot of

testimony about that. You'll be getting additional information and documentation from all of the parties.

And so I guess I would like to close with the -- I think the point we made in our brief is very much correct, that this is one of those cases where you really do need to go beyond the C Table. Okay. This isn't commodity steel. You can't just look at at C Table.

I found it interesting there were so many questions about China because so much of the Commission's docket has been about China cases. Maybe that's the most important closing cost thought. Although there were a lot of questions about China and China may be part of how you think about markets -- the most important closing thought I can leave you with is, this isn't a case about Chinese steel. It's very, very different.

Thank you.

CHAIRMAN WILLIAMSON: Thank you.

It's time for closing statement. Post hearing briefs responses to questions and requests of the Commission and corrections to the transcript must be filed by April 8, 2014. Closing of the record and final release of data to parties is April 24th, 2014. Final comments are due by April 28th, 2014.

And before I adjourn, I want to thank all the witnesses for their testimony today and spending the day

with us. We appreciate you very much. And this hearing is adjourned.

(Whereupon, at 4:27 p.m., the hearing was adjourned.)