

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
 REFINED BROWN ALUMINUM) 731-TA-1022 (Final)
 OXIDE FROM CHINA)

Tuesday,
 September 23, 2003

Room No. 101
 U.S. International
 Trade Commission
 500 E Street, S.W.
 Washington, D.C.

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

APPEARANCES:

On behalf of the International Trade Commission:Commissioners:

DEANNA TANNER OKUN, CHAIRMAN
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 MARCIA E. MILLER, COMMISSIONER
 STEPHEN KOPLAN, COMMISSIONER
 CHARLOTTE R. LANE, COMMISSIONER

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APPEARANCES: (cont'd.)

In Support of the Imposition of Antidumping Duties:

On behalf of C-E Minerals; Treibacher Schleifmittel Corporation; and Washington Mills Company, Inc.:

PETER H. WILLIAMS, President, Washington Mills Company, Inc.
BERND DURSTBERGER, Chief Executive Officer, Treibacher Schleifmittel Corporation; Chief Operating Officer, C-E Minerals
FRED SILVER, Former President, Exolon Company, a Division of Washington Mills Company, Inc.
DON MCLEOD, Vice President, Marketing and Sales, Washington Mills Company, Inc.
HARVEY PLONSKER, President, AGSCO Corporation
WEBB KANE, President, Midvale Industries, Inc.
THOM BELL, Vice President and Sales Manager, Precision Finishing, Inc.
GARY WATERHOUSE, President, Local 4447-06, United Steelworkers of America
LOWELL (PETE) STRADER, Legislative Director, PACE International
ROBERT A. BLECKER, Professor of Economics, American University

ROGER B. SCHAGRIN, Esquire
Schagrín & Associates
Washington, D.C.

APPEARANCES: (cont'd.)

In Opposition to the Imposition of Antidumping Duties:

On behalf of Allied Mineral Products, Inc.; Cometals, a Division of Commercial Metals Company; Saint-Gobain Corporation; Dauber Company, Inc.; Golden Dynamic, Inc.; White Dove Group Import and Export, Inc.; Henan Mianchi Great Wall Corundum Co., Ltd.; Hainan Meida Import and Export Company, Ltd.; China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters:

THOMAS E. GIBSON, Vice President, Corporate Development, Allied

DOUGLAS K. DOZA, Senior Vice President, Manufacturing and Research, Allied

DENNIS GATES, Vice President, Cometals

KELLEEN LOEWEN, Market Manager, Abrasive Materials, Saint-Gobain

JOHN L. REDSHAW, Sales & Marketing, Dauber

DANIEL W. KLETT, Consultant, Capital Trade, Inc.

CHEN HAORAN, Chairman, Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters

LIU ZHIMEI, Director, Bidding Department, China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters

LIU JIANWEI, Deputy Director, Legal Service, China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters

KEVIN M. O'BRIEN, Esquire

STUART P. SEIDEL, Esquire

LISA A. MURRAY, Esquire

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Washington, D.C.

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P R O C E E D I N G S

(9:31 a.m.)

1
2
3 CHAIRMAN OKUN: Good morning. On behalf of
4 the United States International Trade Commission, I
5 welcome you to this hearing on Investigation No.
6 731-TA-1022 (Final), involving Refined Brown Aluminum
7 Oxide From China.

8 The purpose of this investigation is to
9 determine whether an industry in the United States is
10 materially injured or threatened with material injury
11 by reason of less than fair value imports of subject
12 merchandise.

13 Schedules setting forth the presentation of
14 this hearing and testimony of witnesses is available
15 at the Secretary's desk. I understand the parties are
16 aware of time allocations. Any questions regarding
17 time allocations should be directed to the Secretary.

18 As all written testimony will be entered in
19 full into the record, it need not be read to us at
20 this time. All witnesses must be sworn in by the
21 Secretary before presenting testimony.

22 Copies of the notice of institution, the
23 tentative calendar and transcript order forms are
24 available at the Secretary's desk. Transcript order
25 forms are also located in the wall rack outside the

1 Secretary's office. Finally, if you will be
2 submitting information that you wish classified as
3 business confidential, your requests should comply
4 with Commission Rule 201.6.

5 Madam Secretary, I note that we are
6 welcoming Commissioner Lane to her first hearing here
7 at the Commission. Welcome.

8 Are there any other preliminary matters?

9 MS. ABBOTT: No, Madam Chairman.

10 CHAIRMAN OKUN: Very well. Let us proceed
11 with opening remarks.

12 MS. ABBOTT: Opening remarks on behalf of
13 the Petitioners will be made by Roger B. Schagrin,
14 Schagrin Associates.

15 CHAIRMAN OKUN: Good morning, Mr. Schagrin.

16 MR. SCHAGRIN: Good morning, Chairman Okun,
17 members of the Commission.

18 A special good morning and welcome to
19 Commissioner Lane. I understand this is your first
20 hearing. I look forward to seeing a lot of you over
21 the next eight years, and the feeling does not have to
22 be mutual, as I'm sure the others Commissioners will
23 let you know.

24 If you read the prehearing staff report or
25 the Petitioners' prehearing brief, you will find that

1 this is a straightforward case that requires a
2 unanimous affirmative injury determination and an
3 affirmative critical circumstances vote.

4 What are the facts? The staff report
5 concludes that purchasers almost uniformly agree that
6 the domestic and Chinese refined brown aluminum oxides
7 are interchangeable. Purchasers are buying on the
8 basis of price because quality and delivery are the
9 same.

10 Imports from China have been high over the
11 three year period, with the shipments of imports
12 increasing and market share growing rapidly. Any
13 declines in the interim period data were clearly the
14 result of the filing of this case last November and
15 the huge dumping margins imposed in May with the
16 retroactive critical circumstances duties back to
17 February.

18 Import inventories by any measure absolutely
19 as a share of imports or relative to domestic
20 inventories or shipments are absolutely gigantic and
21 explain why these imports have had a long-lasting
22 impact and continue to devastate domestic pricing.

23 The condition of this industry went from bad
24 to worse over the POI with production, shipments,
25 employment and prices all falling and profits, already

1 poor at the outset of the POI, having turned into
2 losses.

3 I must tip my hat to both the petitioning
4 companies and the Commission economic staff for the
5 extensive validation of the lost sales and lost
6 revenues that have occurred over the POI as purchasers
7 of domestic product shifted their purchases to
8 imported product because of lower prices.

9 The extent of these lost sales really
10 document both the injury and causation cases here.
11 The persistent availability of dumped Chinese product
12 caused volume losses and price depression. This is a
13 small domestic industry. They would give their eye
14 teeth for \$7 million or \$8 million of restored annual
15 sales and a few percentage points improvement in
16 pricing.

17 The record on underselling both on a product
18 specific and on an AUV basis, as well as the record on
19 price depression, also support the statutory finding
20 of material injury. The import increase after the
21 filing of the petition by importers who knew they
22 faced large dumping duties and the massive inventories
23 in the market support an affirmative critical
24 circumstances vote.

25 Yesterday, the Department of Commerce

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1 confirmed massive final dumping duties of 135 percent
2 for all Chinese exporters and final affirmative
3 critical circumstance determinations for all exporters
4 and importers.

5 As to threat, first, demand is down.
6 Second, import inventories are very high. Third,
7 there is plenty of excess Chinese capacity, and the
8 exporters who responded were increasing their exports
9 to the United States.

10 Now, we have had so many China cases before
11 this Commission with no cooperation by Chinese
12 exporters that we begin to almost get excited when
13 half the Chinese industry decides to participate and
14 file foreign producer questionnaire responses, but we
15 can't overlook the fact that we're still missing data
16 from half the Chinese industry, including two of the
17 biggest Chinese producers and exporters.

18 Changes in the conditions of competition are
19 relevant in this case. The change in ownership of
20 Treibacher led C-E Minerals to switch from being a
21 major importer to a domestic producer by restarting a
22 facility previously shut down by Allied Mineral. The
23 sale of over 60,000 tons of crude BAO by the DLA gave
24 the domestic industry temporarily lower cost raw
25 materials. That is over. There's no more DLA crude

1 left.

2 In the face of the overwhelming record in
3 support of an affirmative injury determination, all
4 Respondents could do in their prehearing brief and I
5 presume today at the hearing is to engage in mud
6 slinging against the domestic industry and to try to
7 muddy the record before you.

8 Some of these allegations are simply wrong.
9 Others are easily explained. I am confident that when
10 the Commission fully evaluates the data you will find
11 that it strongly supports an affirmative determination
12 in this case.

13 Thank you.

14 CHAIRMAN OKUN: Thank you.

15 MS. ABBOTT: Opening remarks on behalf of
16 the Respondents will be made by Kevin M. O'Brien,
17 Baker & McKenzie

18 CHAIRMAN OKUN: Good morning, Mr. O'Brien.
19 If you can just make sure your mike comes on there?
20 There you go.

21 MR. O'BRIEN: Is that better?

22 CHAIRMAN OKUN: Yes.

23 MR. O'BRIEN: Good morning, Madam Chairman,
24 Commissioners, and again a special good morning to
25 Commissioner Lane. We look forward to working with

1 you.

2 It's not surprising the Petitioner would say
3 this case is straightforward and deserves a unanimous
4 affirmative determination. The Petitioner would like
5 to keep this case cast as simply as possible and not
6 have the Commissioners take a hard look at what is
7 really going on.

8 The reason is because, or one reason is that
9 the activities of the U.S. producers blanket the
10 entire industry. They and their affiliates at least
11 produce the crude product in China, produce refined
12 product in China, import crude and refined product
13 into the United States, manufacture end use products
14 in other countries for sale into the United States and
15 manufacture end use products here in competition with
16 the downstream customers.

17 Now, I say at least because this list is not
18 exhaustive. These U.S. producers are literally
19 everywhere. Every issue, every significant issue
20 raised in this case, has lead to U.S. producers in a
21 very major part.

22 Whether it's price effects at the
23 distributor level, whether it's price effects due to
24 the massive DLA sales during the late 1990s and into
25 the early 2000s, whether it's long-term and deep

1 investments in China, whether it's the introduction of
2 downstream products which erode the customer base for
3 those products, the U.S. producers are in every way
4 deeply and heavily involved in the competitive market
5 conditions.

6 Now, we urge the Commission to review the
7 conditions of competition very carefully in this
8 investigation. The domestic industry is not in a
9 state of injury. With new entrants and healthy
10 investments, they are doing well given the cyclical
11 nature of the business.

12 Nobody can reasonably deny that the economy
13 has slowed down nor that several market segments of
14 this business are strictly tied to the steel and
15 foundry industry. There is no question that it's a
16 cyclical market and that when the steel industry slows
17 down the demand for this particular product will slow
18 down and vice versa. When it picks up, demand for
19 this product will pick up. It's happened numerous
20 times over the past decades and will happen again.

21 Now regarding the definition of the domestic
22 like product, it is interesting that the producers
23 can't agree among themselves who is and who is not a
24 member of the domestic industry. There's a reason for
25 this. The scope of this investigation is a contrived

1 definition.

2 It is not a commercial meaningful definition
3 of what is a refined product versus what is a crude
4 product. It is an arbitrary three-eighths inch, 50
5 percent by weight definition, which is commercially
6 meaningless to purchasers of refined product on the
7 one hand or crude on the other hand.

8 Now, rather than use a meaningful definition
9 such as a product which is fit for use by an end use
10 customer, they use this definition having to do with
11 dimension and weight, which is simply not meaningful.
12 The result has been numerous inconsistencies and
13 ironies that have arisen whereby a customer can buy a
14 product and the specifications overlap the definition
15 of what's crude and refined, so one shipment can be
16 considered crude. The exact same shipment can be
17 considered refined. The reason for that is because
18 the definition is contrived.

19 Finally, you'll no doubt hear vague
20 references to Chinese suppliers during the course of
21 the morning by Petitioners as if to infer that the
22 U.S. producers themselves don't meet this description.
23 They do in a very big way. Keep in mind when issues
24 of price leadership or lost sales are discussed, the
25 facts show that the Petitioners themselves have been

1 deeply and intimately involved in the actions they
2 complain of.

3 In short, the U.S. producers are essentially
4 asking the Commission to stop one small slice of one
5 small piece of this production and sales chain. That
6 is not the role of this Commission, and the petition
7 should be rejected.

8 One final comment, and I'm sure you'll hear
9 the margin and the critical circumstances findings
10 several times today. Please just be aware that they
11 were based on data calculated for one single
12 Respondent company, and it was an adverse facts
13 available findings to the entire Chinese industry.

14 Thank you very much. That completes my
15 opening statement.

16 CHAIRMAN OKUN: Thank you.

17 Madam Secretary, will you please call the
18 first panel?

19 MS. ABBOTT: The first panel in support of
20 the petition, please come forward. All members have
21 been sworn.

22 (Witnesses sworn.)

23 CHAIRMAN OKUN: Looks like everyone is
24 seated. Mr. Schagrín, you may proceed.

25 MR. SCHAGRIN: Thank you. Good morning

1 again, Chairman Okun, members of the Commission.

2 Before introducing the witnesses, let's just
3 take a quick look at Respondent's main arguments.
4 First, they have intimated in their brief that there
5 are numerous problems with Petitioners' data, that
6 Petitioners have been uncooperative with the ITC staff
7 and that Petitioners have been hiding the ball behind
8 their international operations.

9 Nothing could be further from the truth.
10 Petitioners have responded fully and expeditiously to
11 requests from all the Commission staff. Mr. Jee has
12 now verified Petitioners' financial data. The changes
13 he requested have been submitted for the record.

14 I understand that there's some additional
15 changes that he has to work out with one of the
16 companies. They're in conversation, he and the CFO,
17 but the Commission should also be aware that on the
18 whole the changes requested by the Commission staff
19 have strengthened the record for the domestic
20 industry. That's far from hiding the ball.

21 Second, Respondents claim that Treibacher's
22 parent, Immeris, which they repeatedly identify as
23 that French company, as in, you know, the French who
24 didn't support us in the war in Iraq, you know, unlike
25 Saint-Gobain's French parent, of course, is using this

1 case not to get antidumping relief for its U.S. brown
2 aluminum oxide subsidiaries, but instead is in some
3 type of conspiracy to squeeze Allied with refractory
4 exports to the United States. Again, this is not even
5 close to being true. Mr. Durstberger can explain this
6 to you later.

7 Third, they say the domestic industry has
8 poor quality control and can't be relied upon. Wrong
9 again. One of the lead Respondents may complain, but,
10 based on purchaser responses, over 90 percent of the
11 24 responding purchasers, 90 percent, raised no
12 complaint about the quality of the domestic industry's
13 product and overwhelmingly found that Chinese and
14 domestic products were equivalent in quality. That is
15 why 23 of the responding purchasers stated that a
16 lower price was a very important consideration in
17 their purchasing decisions.

18 Fourth, the Respondents try to undermine the
19 record on underselling and price suppression for a
20 coefficient and correlation analysis and claim that
21 the pricing products are unrepresentative. Dr.
22 Blecker will talk about the fallacies of their
23 underselling correlation analysis.

24 As to representativeness of the pricing
25 products, the staff added the big refractory split

1 size that Respondents asked for in their comments on
2 the questionnaire. Covering more than 10 percent of
3 sales in an industry with hundreds of split, grit and
4 table variations is very good coverage for this
5 Commission.

6 However, even if you pick dozens of sample
7 pricing products all you would do -- all you would
8 have done -- is destroyed the lives of your economics
9 staff because the results would have been exactly the
10 same. Consistent and high underselling for all
11 comparisons of domestic and Chinese prices.

12 They also complain about the confirmed lost
13 sales and lost revenue allegations, but this record is
14 replete with information on Chinese prices
15 underselling the domestic industry and the domestic
16 industry lowering prices to compete.

17 Let me conclude with the granddaddy of all
18 the Respondents' arguments. Respondents' ultimate
19 argument is to ask this Commission to essentially
20 rejigger the domestic industry. Not only do they want
21 you to make Great Lakes Minerals a part of the
22 domestic industry, something you rejected unanimously
23 in your preliminary affirmative determination, but
24 they actually want you to count Great Lakes' imports
25 as part of the domestic industry's market share under

1 a new theory of how to assess both imports and the
2 domestic industry.

3 Again and again, just as Mr. O'Brien did in
4 his opening statement, they argue you can lump the
5 whole domestic industry together. Everyone in the
6 domestic industry is a big importer. Look at all the
7 imports from everyone in the domestic industry.

8 The only problem is look at the record.
9 Washington Mills and Treibacher throughout the POI had
10 minuscule amounts of imports just to even out some of
11 their product ranges, in general less than one percent
12 of imports by each of Treibacher and Washington Mills.
13 That doesn't sound like the domestic industry
14 destroying their own industry through their imports.
15 No.

16 Now C-E, whose imports were admittedly large
17 at the beginning of the POI, for reasons unrelated to
18 the filing of this petition stopped importing in mid
19 2002, yet because of increased imports by other
20 importers imports hardly missed a beat.

21 What is at the heart of Respondents'
22 arguments today is that Great Lakes is a part of the
23 domestic industry, and because they're a big,
24 injurious importer the industry is injuring itself.
25 That is the point. If it is Great Lakes' imports and

1 the rest of the imports from numerous other importers
2 that are injuring the industry, that just helps
3 support Petitioners' argument of why Great Lakes
4 should be excluded from the domestic industry.

5 Now, by necessity most of our arguments on
6 not including Great Lakes as a member of the domestic
7 industry must be kept confidential, and we'll argue
8 them again confidentially in our posthearing brief.
9 Nevertheless, let me just say now that Great Lakes was
10 certainly a major importer throughout the POI, and, as
11 to recent imports, Great Lakes' letter in opposition
12 to the Department of Commerce's critical circumstances
13 determination, which interestingly enough was included
14 in both Petitioners' and Respondents' briefs as
15 exhibits, speaks for itself.

16 How often do domestic producers oppose a
17 finding of critical circumstances at the Department of
18 Commerce? That's what importers do, not domestic
19 producers. In sum, there is clearly a substantial
20 difference in sales and production philosophy between
21 Great Lakes and the Petitioners.

22 Not only are all of Respondents' arguments
23 against an injury finding unavailing, but the most
24 amazing thing is that even if you look at the industry
25 the way they want you to there are still significant

1 imports that are increasing, are underselling the U.S.
2 industry and are injuring the industry. Indeed,
3 Respondents' own charts establish a strong correlation
4 between poor domestic industry performance and the
5 increase of what Respondents refer to as "independent
6 importers."

7 One last comment on scope. Mr. O'Brien says
8 boy, the domestic industry really jiggered a funny
9 scope that has nothing to do with the way business
10 occurs in this industry. Well, you can ask all the
11 distributors here as to whether or not our scope fits
12 the domestic industry, and you can look at the
13 products themselves and there are clear differences,
14 but really what Respondents harp on in their brief and
15 what Mr. O'Brien referred to this morning is that
16 domestic producers do have some product sizes of
17 refined BAO that are above our scope.

18 We've checked into it. We'll give you the
19 actual data in our posthearing brief. It amounts to
20 about one-third of one percent of all domestic
21 industry shipments. One-third of one percent. This
22 is what Mr. O'Brien is resting his case on. This is
23 typical of their entire case. They take a one percent
24 number, and they blow it up as if it's a major tragedy
25 occurring.

1 Since they have Mr. Seidel on their team and
2 his experience at Customs, they know as well as you
3 know as well as I know the best thing for Petitioners,
4 particularly in a case like this, would have had scope
5 based on end use customers and end use customer
6 certifications. Commerce and Customs simply won't
7 accept that.

8 We are forced to find a scope that reflects
9 industry realities and to try to find clear,
10 enforceable dividing lines and to make sure that the
11 domestic crushers who need crude didn't have their
12 product covered because the product is not produced in
13 the United States.

14 With that I'll turn to Peter Williams.

15 MR. WILLIAMS: Good morning, Chairman Okun
16 and members of the Commission. For the record, my
17 name is Peter Williams, and I am president of
18 Washington Mills Company, Inc.

19 Washington Mills was founded in 1868. It is
20 still a family owned business. I have been with the
21 company for 43 years. Washington Mills has two
22 domestic facilities where we crush, sieve, grade and
23 package refined brown aluminum oxide or what is
24 commonly known as brown grain.

25 One plant is in North Grafton,

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1 Massachusetts, and the other complex is in Niagara
2 Falls, New York. Nearby, we operate our Exolon
3 Division in Tonawanda, New York. We also have three
4 facilities in Canada where we produce both crude and
5 refined brown aluminum oxide, two of which are
6 currently shut down.

7 Brown aluminum oxide crude ore and refined
8 brown aluminum oxide grain are two different products.
9 First, crude is not produced in the United States. If
10 it were, it would be made in totally separate and
11 different facilities. A company needs an electric arc
12 furnace to fuse aluminum oxide crude ore out of
13 bauxite.

14 Second, as you can see from the samples set
15 out before me, crude ore is physically quite different
16 from refined grain products. There are not less than
17 30 distinctly different standard brown grain sizes.
18 On the other hand, crude ore is simply produced as one
19 inch and finer material.

20 Finally, our customers cannot use crude
21 chunks. Only grain producers with extensive crushing
22 capabilities can convert crude ore aluminum oxide into
23 finished, usable brown grain.

24 There are other varieties of refined
25 aluminum oxide, but they are also distinctly different

1 from brown. White and pink aluminum oxide are much
2 purer forms in terms of chemistry, from 99.5 to 99.9
3 percent pure versus a normal range of 93 to 97 percent
4 for brown grain, for brown crude ore.

5 These different products must be produced on
6 separate and quite different equipment. Because white
7 and pink refined prices are nearly double those for
8 brown, they're only used where absolutely required.

9 Brown aluminum oxide grain is one of
10 Washington Mills' principal products, accounting for
11 about half of our revenues. We believe we are an
12 efficient, world-class producer of brown grain, and we
13 continue to invest in that segment of our U.S.
14 business up until the magnitude of the Chinese attack
15 on the brown grain business became evident.

16 Over the years, we observed companies such
17 as Copperandum Company and Norton cease to invest in
18 their U.S. brown grain crushing businesses. As a
19 result, they eventually closed or sold their brown
20 grain plants. In 2001, 3M Company followed and closed
21 its brown grain plant.

22 By the end of 2000, Exolon Company was
23 clearly in shaky financial condition. We purchased
24 Exolon for a fraction of its asset value in August
25 2001. Had we not purchased it, Exolon would have gone

1 bankrupt. Our plans were to help consolidate the
2 industry, cut costs and make both Washington Mills and
3 Exolon's aluminum oxide business profitable again.

4 The Commission will understand these goals
5 as they are similar to the benefits that will accrue
6 to the consolidation of the steel industry that has
7 been the subject of Commission inquiry this summer.
8 In our purchase of Exolon, formerly a publicly traded
9 company, we combined the two largest abrasive grain
10 companies in North America and the two largest refined
11 brown aluminum oxide producers in the United States.
12 In a mature industry, this makes sense.

13 We proceeded to cut costs and rationalize
14 production between Washington Mills and Exolon.
15 Moreover, we ended Exolon's self-defeating price
16 strategy of trying to match Chinese prices to sustain
17 their volume. However, our strategy did not entirely
18 succeed as the surge in imports from China and the
19 growth of their market share driven by their very low
20 prices is now the most significant factor affecting
21 the U.S. market.

22 Indeed, the decrease in volume caused us to
23 lay off a significant portion of our workforce. In
24 1999 and 2000, we were able to purchase large
25 quantities of U.S. government DLA stockpile crude ore

1 at extremely low prices. Much of this low-cost crude
2 was released to us and used in 2001 and 2002. Without
3 this one-time windfall, we could not have withstood
4 the Chinese onslaught. Steep financial losses would
5 have caused us to close our U.S. grain plants. There
6 is no more crude ore remaining in the DLA stockpile.

7 Our vice president of sales and marketing,
8 Don McLeod, will explain marketing of brown aluminum
9 oxide in greater detail. However, in general I have
10 witnessed the Chinese take over much of the refractory
11 market seven or eight years ago. Then three or four
12 years ago we saw the Chinese make major inroads into
13 the abrasive market, selling through trading companies
14 to major producers of grinding wheels and sandpaper.

15 Finally, in just the last year or two, we've
16 seen the distributor market that sells brown aluminum
17 oxide and many other products to the industrial
18 markets also buying more Chinese imports as well.

19 As to the import surge that occurred after
20 we filed the petition and is the subject of your
21 critical circumstances review, let me share one
22 anecdote with you. Norton Sangobane is one of the
23 largest users of brown aluminum oxide grain in the
24 United States. One of their main plants is located in
25 Worcester, Massachusetts, about seven miles from our

1 North Grafton plant.

2 In April, we learned that Norton's warehouse
3 was being reorganized to accommodate 1,400 to 1,500
4 tons of brown aluminum oxide grain imports from China.
5 That is a huge inventory for Norton to stock. After
6 the ITC preliminary determination, our sales staff has
7 heard rumors about various accounts buying Chinese
8 imports who were trying to determine when the duties
9 would be assessed and how much inventory they could
10 get at cheap prices prior to the imposition of dumping
11 duties. This build-up of import inventories has
12 continued to hurt our volume and pricing to this day,
13 five months after Commerce's preliminary dumping
14 determination.

15 If you review our questionnaire response,
16 which combines data from Exolon and Washington Mills
17 back to 2000, you'll see that we have managed to cut
18 our losses in each year over the period of
19 investigation. However, this has been achieved
20 exclusively by cost cutting in spite of significant
21 volume declines.

22 We have increased productivity and
23 significantly reduced selling and general expenses at
24 the combined companies. Two years after the Exolon
25 acquisition, I'm proud to say that our synergistic

1 savings goals have been met, but if you look at our
2 product prices you'll see that they have fallen by at
3 least 10 percent over the past three years.

4 Here is my dilemma. First, the DLA
5 stockpile of crude aluminum oxide is gone. There is
6 no more. Second, we have no further cost cutting
7 within reach, so if the pricing and volume do not
8 improve we will continue to lose money in brown grain.

9 One basic business maxim I learned almost 50
10 years ago is that in a multi-product line business you
11 cannot cross subsidize unprofitable product lines with
12 profitable business segments unless it is to survive a
13 short-term, cyclical downturn. This maxim has not
14 changed and is even more applicable today.

15 We are not in a cyclical downturn. We are
16 on the receiving end of a calculated attack on our
17 very existence. If you do not impose dumping duties
18 against the dumped imports from China, then I know
19 that our refined brown aluminum oxide prices won't
20 increase, the product line will not regain
21 profitability, and I may have to shut down our three
22 brown grain plants with a loss of over 100 jobs.

23 I implore you not to let that happen.
24 Please make an affirmative injury vote. Thank you.

25 CHAIRMAN OKUN: Thank you.

1 MR. SCHAGRIN: Mr. Durstberger?

2 MR. DURSTBERGER: Good morning, Chairman
3 Okun and members of the Commission. My name is Bernd
4 Durstberger. I am the CEO of Treibacher Schleifmittel
5 North America and the COO of C-E Minerals, both
6 subsidiaries of Immeris. Treibacher is a worldwide
7 producer of minerals for the abrasives industry. C-E
8 Minerals produces minerals for the refractory
9 industry.

10 Let me first give you some background on the
11 production facility operated by C-E Minerals in
12 Newell, West Virginia. In the early 1990s, this plant
13 was operated by Allied Mineral Products in a joint
14 venture with Frank & Chulton, the German trading
15 company, and was called Napco. The plant had crushing
16 equipment which could crush brown aluminum oxide into
17 the refractory splits used, amongst others, by Allied
18 Mineral.

19 In the late 1990s, Allied decided to stop
20 operating the plant and instead started to import all
21 of its refined brown aluminum oxide from China. In
22 1999, C-E Minerals bought the assets at Newell from
23 Napco. However, C-E used the plant just as a
24 distribution and warehouse facility. C-E imported
25 refined brown aluminum oxide into Newell and

1 distributed it to a full range of customers --
2 refractory producers, abrasive producers and
3 distributors.

4 In July 2000, Immeris purchased Treibacher's
5 worldwide operations. As part of the post merger
6 business plan discussions, the decision was made to
7 cease C-E's imports of brown aluminum oxide grain for
8 abrasive applications in competition with Treibacher.
9 C-E then made an investment to produce only brown
10 aluminum oxide for refractory customers.

11 In comparison to Treibacher or Washington
12 Mills, which produce hundreds of sizes of brown
13 aluminum oxide grain, C-E produces only very few sizes
14 for these refractory customers. To the best of our
15 knowledge, Allied has imported all of their refined
16 brown aluminum oxide needs from China since they
17 stopped production at the Newell plant, which is
18 seemingly why they have taken the lead in opposition
19 to the duties.

20 The domestic industry, including C-E, has
21 plenty of available capacity to supply the entire
22 demand for refractory splits in the United States.
23 The 2002 change in C-E's business starting to produce
24 rather than import refined brown aluminum oxide has
25 probably had a short-term impact on imports of Chinese

1 grain.

2 However, given the huge excess capacity in
3 China to produce brown aluminum oxide grain and their
4 ridiculously low prices, normally half of our prices,
5 other importers quickly rushed in to more than offset
6 the cessation of imports by C-E Minerals.

7 Treibacher Schleifmittel has manufacturing
8 facilities in Niagara Falls, New York, where we
9 produce refined brown aluminum oxide. I have been
10 with Treibacher in Niagara Falls for nine years. We
11 built a new \$9.5 million crushing and sizing facility
12 that came on line in 1996, which we believe is the
13 most modern and most efficient production facility for
14 brown aluminum oxide grain in the world.

15 In 1999, for financing purposes, the company
16 sold the plant under a sale leaseback plan to a
17 financial services company and leased it back. In
18 2002, we then repurchased the facility for the
19 remainder of its asset value. This is why we now show
20 a significant capital expenditure for 2002. That
21 money was not spent to build a new plant, but to
22 repurchase the already existing facility.

23 This also shifted expenses from cash
24 expenses for monthly lease payments to cash expenses
25 for interest and non-cash expenses for depreciation.

1 These decisions were based on financial reasons, tax
2 planning and changes in interest rates, not on the
3 fundamental decision of whether or not to make
4 investments in our refined brown aluminum oxide
5 business.

6 I have witnessed a tremendous surge in
7 Chinese imports of brown aluminum oxide grain over the
8 past several years. We at Treibacher made the
9 decision to try not to lower our selling prices to
10 compete with low-priced Chinese imports. As a result,
11 we have lost very significant volume at Treibacher in
12 each of the last four years. This lost volume has
13 caused our per unit costs to increase and, therefore,
14 even while holding prices relatively stable our
15 profits have fallen significantly, and we suffered
16 losses in 2003.

17 In fact, our bonded abrasive customers who
18 are producers of grinding wheels and who make up the
19 majority of Treibacher's business reported getting at
20 least one new offer per week from importers of Chinese
21 brown aluminum oxide grain. Unfortunately, we're
22 slowly but surely losing these customers, and our
23 distributors as well, to imports of Chinese brown
24 aluminum oxide grain.

25 If the U.S. Government does not impose

1 antidumping duties on these imports we will not only
2 fail to obtain a return on our investments made in our
3 plants in the United States, but the very continuation
4 of the operation of these facilities is threatened.

5 Aluminum oxide is a very abrasive material
6 which wears out the production equipment. Therefore,
7 continued reinvestment in the equipment is necessary
8 to stay cost competitive and to stay in business.
9 Without dumping relief, reinvestment would be foolish,
10 and our plant in Niagara Falls will be closed.

11 Therefore, I respectfully request that this
12 Commission make an affirmative injury determination in
13 this investigation. Thank you.

14 CHAIRMAN OKUN: Thank you.

15 MR. SCHAGRIN: Mr. McLeod?

16 MR. MCLEOD: Good morning, Chairman Okun and
17 members of the Commission. For the record, my name is
18 Don McLeod, and I am the vice president of sales and
19 marketing --

20 CHAIRMAN OKUN: Mr. McLeod, could you pull
21 your microphone a little bit closer?

22 MR. MCLEOD: Yes.

23 CHAIRMAN OKUN: Thank you.

24 MR. MCLEOD: For the record, my name is Don
25 McLeod, and I am the vice president of sales and

1 marketing at Washington Mills. I am in charge of all
2 sales for Washington Mills and Exolon.

3 After our acquisition of Exolon, we combined
4 the two sales departments into one. I have been in
5 the industry for 29 years and with Washington Mills
6 for the past 16. We sell to three main groups of
7 customers -- refractory producers, bonded and coated
8 customers, i.e., grinding wheel manufacturers and
9 sandpaper manufacturers, and general industrial
10 customers.

11 Virtually all of the customers in the first
12 two categories buy directly from manufacturers or
13 importers, while almost all of the general industrial
14 customers buy from distributors. These distributors
15 in turn buy from either producers or importers.

16 The refractory producers tend to buy a
17 relatively coarse or macro grit group of sizes. They
18 buy in large quantities on an annual contract basis
19 and demand pricing close to or the same as that of
20 Chinese products. After we purchased Exolon, we
21 decided to end Exolon's practice of trying to match
22 Chinese prices to the refractory industry and gave up
23 much of the refractory business.

24 The bonded and coated business is also an
25 annual contract business negotiated prior to the end

1 of the year. The customers buy a range of sizes from
2 coarse to micro grits. During the past three years,
3 we have lowered our prices to many of these bonded and
4 coated customers because of Chinese competition, yet
5 despite lowering prices I would estimate that we have
6 lost one-quarter of our business with bonded and
7 coated customers since 1999.

8 Because major importers of Chinese brown
9 aluminum oxide are now stocking inventories in the
10 United States. We no longer possess delivery time
11 advantages over the Chinese.

12 The third segment of the market is served by
13 distributors that stock our product or imported
14 product to sell to industrial users. These users are
15 generally supplying a range of abrasive products for
16 auto, aerospace and consumer good sectors. Prices in
17 the industrial user segment of the market tend to be
18 on a spot basis and change as distributors and
19 customers constantly look for better prices.

20 The Chinese have lowered their prices
21 significantly to distributors in the past few years,
22 and we are faced with decisions about keeping our
23 distributors competitive or walking away from the
24 business.

25 As vice president of sales and marketing, I

1 can just tell you that dumped Chinese material has
2 decimated the market, and without dumping relief our
3 sales force and our company may not be able to
4 continue in this product line.

5 Thank you.

6 MR. SCHAGRIN: Thank you.

7 Mr. Silver?

8 MR. SILVER: Good morning, Chairman Okun and
9 members of the Commission. For the record, my name is
10 Fred Silver, and I represent the Exolon Company, a
11 division of Washington Mills.

12 Exolon was founded in 1914, and I was
13 president from 1996 until June 1 of this year. I have
14 been in the abrasive industry for 34 years. We
15 produce brown aluminum oxide in our Tonawanda, New
16 York, facility and silicon carbide in both our
17 Hennepin, Illinois, and Tonawanda plants.

18 Exolon long pursued a strategy for aluminum
19 oxide sales of offering a broad range of sizes similar
20 to Washington Mills, but we had a larger portion of
21 our sales in the refractory market. Between 1998 and
22 2001, we saw Chinese pricing to our largest customer,
23 Vesuvius, cut from 24.5 cents to 13.5 cents per pound.

24 We reduced our prices by almost a third over
25 this period to try and maintain the business, but by

1 2001 we threw in the towel and lost the business.
2 This lost sale was reported with confidential
3 particulars in the petition.

4 Exolon was unable to renew our credit
5 facilities in 2000 and 2001 because of our poor
6 financial picture, which was caused by imports from
7 China. Our employees and union responded positively
8 and worked with us during these hard times. However,
9 our increases in productivity and cost cutting could
10 not keep up with falling prices in brown aluminum
11 oxide.

12 When we couldn't chase prices down any more,
13 we didn't have the volume to operate efficiently.
14 Having become unprofitable and being on the verge of
15 loan default and bankruptcy, we were happy to arrange
16 a merger with Washington Mills. Since that merger,
17 facilities and production have been rationalized, and
18 our employment has been drastically reduced, as Gary
19 Waterhouse will testify later.

20 Exolon was a petitioner in a silicon carbide
21 case in 1994. We lost the final ITC vote. The
22 Commission should know that the result of this
23 negative vote was a surge in imports from China that
24 has caused our silicon carbide sales to drop by a
25 half.

1 If we lose this case, the end could be near
2 for a 90-year-old company that occupies an important
3 place in western New York's manufacturing sector.
4 Thank you.

5 MR. SCHAGRIN: Thank you.

6 Mr. Kane?

7 MR. KANE: Good morning, Chairman Okun and
8 members of the Commission staff. For the record, my
9 name is Webb Kane, and I am president of Midvale
10 Industries, Inc. based in St. Louis, Missouri.

11 Our company was founded in 1901 to provide
12 raw material and abrasives to the foundry industry.
13 Today, the majority of our business involves the
14 distribution and sales of abrasives. We sell to a
15 broad range of industries, including aircraft
16 manufacturers such as Boeing and Raytheon, automotive
17 parts producers such as Timken, Parker Hannifin, as
18 well as numerous other large and small companies
19 making a wide variety of metal parts.

20 We have 11 stocking locations throughout the
21 United States. We do not buy Chinese aluminum oxide
22 grain, yet have to compete with other distributors
23 selling Chinese aluminum oxide grain.

24 For example, last year in a request for
25 quote from a power turbine repair company, we quoted

1 48 cents a pound and lost the business to a
2 distributor selling Chinese grain for 35 cents a
3 pound. To add insult to injury, this was a small user
4 buying only one ton of material.

5 We have been losing business to other
6 distributors over the past few years as well. As our
7 business declines, Washington Mills' business
8 declines. I am extremely concerned that if something
9 is not done about aluminum oxide dumped on the market
10 from China that we will lose our domestic supply
11 availability.

12 Thank you for your consideration.

13 CHAIRMAN OKUN: Thank you.

14 MR. SCHAGRIN: Thank you.

15 Mr. Bell?

16 MR. BELL: Good morning, Chairman Okun and
17 members of the Commission. For the record, my name is
18 Tom Bell, and I'm vice president and sales manager at
19 Precision Finishing, Inc.

20 The company was founded in 1955. I've been
21 in the business for 25 years. Precision Finishing is
22 a distributor of equipment and supplies to
23 manufacturers that use metal finishing in their
24 processes located in the Mid-Atlantic area. We are
25 also a user of abrasives as a metal finisher. As an

1 example, we sell to companies that manufacture
2 automotive parts for the car companies.

3 I have a number of salespeople on the road
4 who report to me. About five years ago, a lot of
5 sales reports were coming back reporting competitive
6 price quotes from other distributors to our customers.
7 These competing quotes were for Chinese brown aluminum
8 oxide grain that was available at much lower prices.

9 As a result, we decided we had to buy
10 Chinese abrasive product to stay competitive and keep
11 existing customers from going elsewhere for their
12 abrasive needs. We were able to sell the Chinese
13 product to our customers at prices that were less than
14 our cost of materials from Washington Mills.

15 After Washington Mills lost so much of our
16 business and after we shared the cost of our purchases
17 from China with them, they lowered their prices to us.
18 Because they lowered their prices, we were able to
19 resume selling Washington Mills' products.

20 The good news is that after the dumping
21 duties went into effect in May, Chinese importers
22 stopped contacting me with new offers on brown
23 aluminum oxide. The bad news is that distributors who
24 handle the Chinese product still have plenty of
25 inventory. As recently as two weeks ago they were

1 still offering extremely low Chinese product to their
2 customers.

3 With Chinese prices as Peter testified, I
4 don't know how long the domestic producers could
5 continue to lower prices and still stay in business.

6 Thank you.

7 CHAIRMAN OKUN: Thank you.

8 MR. SCHAGRIN: Mr. Plonsker?

9 MR. PLONSKER: Good morning, Chairman Okun
10 and members of the Commission. For the record, my
11 name is Harvey Plonsker, and I am the president of
12 AGSCO Corporation.

13 We are a processor and distributor of
14 industrial minerals. Our company was founded in 1888.
15 I have been with the company since 1980. We have two
16 locations, one in the Chicago area and one in New
17 York.

18 As a distributor, we purchase in bulk from
19 the abrasive grain manufacturers and then sell to
20 industrial users generally in less than truckload
21 quantities. We distribute brown aluminum oxide
22 typically in 50 pound bags or 400 pound drums. As
23 long as we ship the correct grain sizes in the right
24 amount, most of our customers do not care and in fact
25 do not even know who produced the brown aluminum oxide

1 they are receiving.

2 One thing they do care about very much is
3 our price. We have purchased both domestic and
4 Chinese brown aluminum oxide. The reason we have
5 purchased Chinese grain is because their prices are
6 much lower than our principal domestic supplier,
7 Washington Mills.

8 We asked Washington Mills to reduce its
9 price to us, and over the past few years Washington
10 Mills has lowered prices to us in order to keep us
11 competitive with distributors who are selling Chinese
12 brown aluminum oxide.

13 Having been in this business for over 20
14 years, I would offer the following generalizations.
15 Fifteen years ago, when brown aluminum oxide grain
16 from China was first introduced to the U.S. market,
17 there were quality issues with Chinese product and a
18 significant amount of problems with inconsistent size
19 grading of the Chinese products. In the past several
20 years, most of these problems have largely
21 disappeared.

22 The Chinese product is essentially
23 equivalent in quality to the domestic product and is
24 being delivered according to the sizes ordered. Thus,
25 at this point in time brown aluminum oxide grain is

1 strictly a commodity product sold on price.

2 Virtually all our customers are willing to
3 buy Chinese brown aluminum oxide grain at lower
4 prices. In fact, large industrial users, even General
5 Electric, have switched from only buying domestic
6 brown aluminum oxide to buying Chinese brown aluminum
7 oxide for large portions of their needs.

8 I can also tell you that there is an ever
9 growing plethora of sellers of Chinese brown aluminum
10 oxide grain. Until the preliminary Commerce
11 Department determination this spring, we were
12 constantly receiving new solicitations from Chinese
13 firms and U.S. importers offering us extremely
14 attractive prices for Chinese brown aluminum oxide
15 grain.

16 Thank you for the opportunity to present my
17 testimony.

18 CHAIRMAN OKUN: Thank you.

19 MR. SCHAGRIN: Thank you.

20 Mr. Waterhouse?

21 MR. WATERHOUSE: Good morning, Chairman Okun
22 and members of the Commission. For the record, my
23 name is Gary Waterhouse. I am president of Local
24 4447-06 of the United Steelworkers of America. We
25 represent the workforce at Exolon.

1 I've been with the company for 18 years.
2 Over the past two years, total employment at Exolon in
3 Tonawanda has fallen from 125 to 34, and the union
4 workforce has fallen from 75 to 28.

5 As you know, dumped imports from China have
6 increased over this period and robbed us of our jobs.
7 In fact, in 2002, the Department of Labor certified
8 that increased imports were the cause of our job
9 losses. Therefore, we qualified for trade adjustment
10 assistance.

11 As Fred told you, our union did everything
12 possible, working with management, to increase
13 productivity, reduce cost and save jobs. We were
14 unsuccessful because of the imports from China.

15 These were not hamburger flipping jobs.
16 These are jobs that pay decent wages with important
17 social benefits such as health care, 401(k), pensions
18 and vacations. Jobs like this are hard to replace in
19 the Buffalo area today.

20 I am here today to ask for relief from
21 dumping so that we can keep our 28 jobs, but, most
22 importantly, so laid off workers can be rehired to
23 replace Chinese imports with products made at Exolon.

24 Thank you.

25 CHAIRMAN OKUN: Thank you.

1 MR. SCHAGRIN: Thank you.

2 Mr. Strader?

3 MR. STRADER: Good morning, Chairman Okun,
4 members of the Commission. For the record, my name is
5 Lowell (Pete) Strader. I'm the legislative director
6 for the Paper, Allied Industrial, Chemical and Energy
7 Workers International Union, more commonly known as
8 PACE.

9 PACE is a union that represents workers at
10 the Washington Mills and Treibacher plants in Niagara
11 Falls, New York. It is my understanding that both of
12 these plants are in serious danger of being closed if
13 dumping relief is not given. This is unfortunate.

14 These are good paying manufacturing jobs,
15 good benefits that provide a good quality of living
16 for workers in their community. These companies are
17 good employers. It has been over eight years since
18 there was even an arbitration case at Washington Mills
19 or Treibacher. It has been so long since there was a
20 labor dispute, I could not find one in the record.

21 Many employers today tell the unions to take
22 wages and benefits concessions or they will move our
23 jobs to China. Instead of engaging in that type of
24 economic terrorism, Treibacher and Washington Mills
25 have chosen to fight the dumped imports and the unfair

1 trade practices of the Chinese industry in order that
2 they can keep good U.S. manufacturing jobs in the
3 United States.

4 PACE, like other unions, has seen tens of
5 thousands of jobs lost over the last three years, many
6 to imports from China. The Buffalo/Niagara Falls area
7 can be compared to an economic disaster zone, having
8 seen so many manufacturing plants shut down and
9 leaving countless numbers of unemployed workers.

10 It's my understanding that the unemployment
11 rate in that area is 6.8 percent. However, the real
12 rate is actually in double digits with the number of
13 unemployed workers whose benefits have already expired
14 factored into the percentage.

15 To add insult to injury, it was announced
16 last week that the Globe Manufacturing Company, whose
17 facility is organized by our brothers and sisters in
18 the United Steelworkers of America, will close its
19 doors, and this will forever add another 100 Niagara
20 Falls workers to the unemployment line. Not counting
21 these individuals, the Niagara Falls area has lost
22 over 2,000 jobs in just the last three years.

23 On behalf of our union workers in Niagara
24 Falls, we ask you to make an affirmative injury
25 determination so that Treibacher and Washington Mills

1 do not join the list of closed facilities, and our
2 hardworking, productive members don't lose their jobs.

3 The Commission should know that if workers
4 lose a job like this in today's market, life as they
5 know it is over. There is very little chance that
6 these workers will find another manufacturing job at
7 similar wages or with benefits. We need to keep these
8 manufacturing jobs.

9 Thank you very much.

10 CHAIRMAN OKUN: Thank you.

11 MR. SCHAGRIN: Thank you.

12 Dr. Blecker?

13 MR. BLECKER: Good morning, Chairman Okun
14 and members of the Commission. For the record, my
15 name is Robert Blecker, and I am a professor of
16 economics at American University.

17 I would just like to comment on a few of the
18 economic issues in this investigation. One of the
19 most unusual features in this case is the very large
20 volume of subject imports held as inventories by U.S.
21 importers. Although I cannot discuss the exact
22 numbers in this public hearing, these inventories of
23 subject imports amount to very large percentages of
24 domestic output and shipments and are large relative
25 to the U.S. producers' own inventories.

1 The large importers' inventories are
2 significant because they imply the easy availability
3 of dumped imports from China in the U.S. domestic
4 market. Essentially there is no difference to a U.S.
5 purchaser in terms of the lead time for obtaining
6 supplies of Chinese imports versus domestic RBAO
7 product.

8 This easy availability of Chinese import
9 supplies, combined with the fact that refined brown
10 aluminum oxide is a commodity product sold to
11 identical technical standards, implies a very high
12 degree of substitutability between subject imports and
13 the domestic like product.

14 In the context of these conditions of
15 competition, the low prices of the readily available
16 dumped Chinese imports have had a severe negative
17 impact on the U.S. producers. With no advantages in
18 either product quality or supply availability, U.S.
19 producers face the unenviable choice of either cutting
20 prices to the point where they are losing money on
21 every ton sold or else giving up volume and suffering
22 reduced sales revenue and market share. Either way,
23 they lose.

24 The overwhelming evidence of persistent
25 underselling and significant lost sales in this

1 investigation, along with a high and steady supply of
2 subject import shipments and the deteriorating
3 performance of the domestic industry, establishes that
4 subject imports have depressed domestic prices,
5 shipments, revenue and profits for the domestic
6 producers.

7 In response to this overwhelming evidence,
8 Respondents have argued in their brief that there is
9 no positive correlation in the data between U.S. and
10 Chinese prices for the four specific products shown in
11 the staff report. This is like saying that because
12 Hurricane Isabell passed through the Washington area
13 by Friday morning it can't explain the continued power
14 outages over the weekend and since that time.

15 One variable can have a significant and
16 persistent causal effect on another variable even if
17 the two variables do not move in exact synchronization
18 with each other. In the price comparison data, the
19 important point is that the dumped Chinese product
20 began the POI at significantly lower prices, and
21 regardless of the fact that these Chinese prices did
22 not fall any further, they effectively pulled down the
23 prices of domestic product and also took away sales
24 from domestic producers throughout the entire period
25 of investigation.

1 Indeed, the data of record demonstrates that
2 subject imports which entered the United States in the
3 largest volumes since 2001 continued to be shipped to
4 purchasers in large quantities in 2002 and interim
5 2003, causing further material injury to domestic
6 producers in the remainder of the POI.

7 Because so many of these importers were
8 stocking inventories, they continued to take sales
9 from domestic producers and to depress domestic prices
10 well into this year, along with later imports that
11 arrived in 2002 before the Commission's affirmative
12 preliminary determination. Also, purchaser
13 questionnaire responses showed continual increases in
14 sales of subject imports at the expense of domestic
15 product.

16 Madam Chairman, this month marks the
17 eleventh anniversary of my first appearance before
18 this Commission as an economic expert witness for Mr.
19 Schagrin. In all these years, I have never
20 participated in a case in which the very existence of
21 the U.S. domestic industry was more threatened by
22 subject imports than in the present investigation.

23 Without the relief from unfair Chinese trade
24 practices sought by the Petitioners, few, if any of
25 them, will be able to remain profitable as domestic

1 producers of refined brown aluminum oxide.

2 It is no exaggeration to say that the fate
3 of an industry lies in your hands, and I urge you to
4 make an affirmative determination.

5 Thank you.

6 CHAIRMAN OKUN: Thank you.

7 MR. SCHAGRIN: Chairman Okun, members of the
8 Commission, before we turn it over to answer your
9 questions, which we eagerly await, I would like to
10 just point out that we have brought some samples, and
11 I think they would be helpful in your deliberations.

12 We've got five pounds of crude brown
13 aluminum oxide here, and we've also got five samples
14 of brown grain. I think we've covered three or four
15 of the pricing products with samples here, as well as
16 some pink and white.

17 Really I think if you look at this crude,
18 which is kind of like the gravel that's poured onto
19 your driveway, you can see it's mostly big pieces of
20 rock about one inch in size, and then there's a lot of
21 smaller pieces and even a fair amount of dust in it.

22 You know, really in dealing with the three
23 Petitioners, as well as a number of distributors,
24 these three, and I've talked to several others during
25 this investigation, I really believe that the

1 Respondents' arguments that it's really difficult to
2 differentiate between crude and grain are clearly
3 without foundation. I don't think anything could be
4 clearer in terms of differentiating between products
5 between this crude and all these grain sizes.

6 CHAIRMAN OKUN: Mr. Schagrin, maybe we could
7 ask the Secretary to bring those up and let the
8 Commissioners examine them during the questions.

9 MR. SCHAGRIN: That would be our pleasure.

10 CHAIRMAN OKUN: Okay.

11 MR. SCHAGRIN: I would also invite any of
12 the members, the six Commissioners or any of the
13 additional staff, to visit any of these plants.

14 It's a beautiful time to go to Niagara Falls
15 or North Grafton or Newell, West Virginia. The colors
16 are changing. Trust me, it's much better than during
17 the heart of the winter when I made a number of my
18 visits, which is a horrible time to visit Niagara
19 Falls.

20 I really think that even a small amount of
21 inspection of these products and visits to these
22 plants would make it very clear that in this industry,
23 it's known differences between crude and grain, and
24 the only reason that the crude exception needed some
25 additional defining in the scope is that crude does

1 come in a mumbo-jumbo of sizes in this gravel, and it
2 was important to us.

3 Particularly, I've seen recent Commission
4 determinations where there was a party that had
5 feedstock and other parties -- I think that party
6 might have been Ciba that produced feedstock, and the
7 other U.S. producers couldn't purchase feedstock from
8 them.

9 We wanted to be careful. We do not produce
10 any crude in this country. We need to make sure that
11 we did not cover with dumping duties products not
12 produced in the United States.

13 With that, we'd be very happy to answer the
14 Commission's questions. Thank you very much.

15 CHAIRMAN OKUN: Thank you very much for that
16 testimony.

17 Before we begin our questions, let me take
18 this opportunity to thank all the witnesses for being
19 here. We always appreciate the efforts of businesses
20 to take time away from their businesses to travel to
21 be with us and also to the representatives from the
22 USW and from PACE for being here as well. We
23 appreciate it.

24 Mr. Blecker, I don't know if we congratulate
25 you on your eleventh year. I'm not quite sure what to

1 say to people when they tell us how long they've been
2 practicing here.

3 With that, I do want to remind witnesses
4 that with the number of tables we cannot see all of
5 your nameplates so that if you can repeat your name
6 when you're responding to questions it helps us and
7 the court reporter very much.

8 With that, we will begin our questioning
9 this morning with Commissioner Koplan.

10 COMMISSIONER KOPLAN: Thank you, Madam
11 Chairman. I want to as well thank you all for your
12 direct presentation. It's been extremely helpful for
13 me.

14 Just a housekeeping matter. Mr. Blecker, I
15 just want to ask you. You summed up by using the term
16 threatened. Were you conceding the issue of material
17 injury at that point?

18 MR. BLECKER: No, sir. That was not my
19 intention. I was using the term in its more literary
20 meaning.

21 COMMISSIONER KOPLAN: I just wanted to
22 clarify that. That was my easy question for you.

23 Let me start with this. On page 21 of your
24 brief, you state that: "Subject imports and domestic
25 production are fungible." In support of this you

1 allege that: "Refined brown aluminum oxide products
2 are made to American National Standards Institute
3 specifications, and many customers ask for quality and
4 sizing certifications."

5 As I understand your position, it is that
6 Chinese subject RBAO is of comparable quality to the
7 domestic product and that ANSI certifications relating
8 to sizing and grit size are used by both U.S. and
9 Chinese producers to satisfy potential customers that
10 a particular product meets U.S. industrial standards.

11 My question is is there a different
12 certification process when, for example, Washington
13 Mills exports its RBAO rather than ships it
14 domestically? Mr. Williams?

15 MR. WILLIAMS: The certification would be
16 the same, Mr. Koplan. In this case, though, our
17 exports of brown aluminum oxide are minimal so it has
18 little application.

19 COMMISSIONER KOPLAN: Thank you.

20 Mr. Schagrin, does Commerce's scope of the
21 Harmonized Tariff Schedule for RBAO, subheading
22 2818.10, .20 or both frame the test to be applied by
23 ANSI?

24 MR. SCHAGRIN: No. I believe that ANSI
25 specifications are separate from the tariff

1 classification nomenclature, and the ANSI
2 specifications are independent of that HTS
3 classification language.

4 I would invite the producers to --

5 COMMISSIONER KOPLAN: Mr. Durstberger?

6 MR. DURSTBERGER: Yes. I concur with Mr.
7 Schagrin. The ANSI specifications provide further
8 subgroupings, if you wish, of refined grain. We call
9 them a certain grit size, like grit size 80, which is
10 the sandpaper you buy at the hardware store.

11 COMMISSIONER KOPLAN: Thank you for that.

12 Let me ask. Does the producer
13 certification, once obtained, carry forward to its
14 subsequent transactions with other customers?

15 MR. SCHAGRIN: Mr. Koplan, why don't I
16 invite the distributors to answer that question to you
17 since they buy from the producers and then they pass
18 on this product to end users.

19 Could I invite any of the distributors to
20 answer that question, please?

21 MR. PLONSKER: If I understand your
22 question, you were asking if a certification from
23 Washington Mills is then transmitted on to one of our
24 customers. The answer is yes.

25 COMMISSIONER KOPLAN: But I'm also asking if

1 on a subsequent sale or a subsequent purchase do you
2 have to be recertified, or does the certification
3 continue for a period of time or indefinitely?

4 MR. PLONSKER: It's typically for a specific
5 lot of material.

6 COMMISSIONER KOPLAN: A specific lot, so
7 you'd have to come back again.

8 How long does it take to get certified, to
9 get an ANSI certification generally?

10 MR. PLONSKER: Well, typically if you're
11 working with either an ISO type of system, the
12 certifications are coming from the manufacturer as you
13 receive the product.

14 You then track that lot number, and when a
15 customer asks for a certification you know what you
16 shipped them. You therefore provide them with a
17 certification.

18 COMMISSIONER KOPLAN: Does ANSI have a role
19 if a domestic company is exporting the product?

20 MR. PLONSKER: Well, ANSI standards really
21 define the size distribution of the particles, of the
22 grit, so that if you're certifying that you're making
23 80 grit it has to meet those standards.

24 COMMISSIONER KOPLAN: Okay. So there is no
25 separate certification process for exports?

1 MR. PLONSKER: Well, the product is what it
2 is based on it meeting these industry standards.

3 COMMISSIONER KOPLAN: Okay. I appreciate
4 that. The reason I was asking these questions is
5 because responding purchasers list quality right along
6 side price as very important issues in their decision
7 making process, so I just wanted to follow up on that
8 with you. I do appreciate your responses.

9 MR. WILLIAMS: Commissioner Koplan, if I
10 could just add in terms of clarifying things for you?
11 I think that the ANSI system of standards here is much
12 like the ASTM standards in pipe.

13 COMMISSIONER KOPLAN: Okay.

14 MR. WILLIAMS: i.e., you certify your
15 product meets the standard, but ANSI does not certify
16 like U.L. or the American Petroleum Institute. They
17 do not certify a producer meets the standards.

18 It's a self-policing system for the industry
19 where the producers certify that their product meets
20 an industry standard in this case established by ANSI.

21 COMMISSIONER KOPLAN: Thank you. That's
22 helpful. I appreciate that.

23 Let me stay with you if I could, Mr.
24 Schagrin. You've touched on this in your direct
25 presentation. On pages 10 and 11 of their prehearing

1 brief, Respondents argue that these products are
2 offered for sale on a continuum of sizes that include
3 both in-scope and out-of-scope merchandise and that
4 any sales of such products should be part of the
5 domestic industry.

6 Alternatively they argue that if the
7 Commission maintains the current definition of like
8 product then those non-conforming sales must be
9 removed from the data submitted by the domestic
10 industry to the Commission.

11 Respondents allege that there has been no
12 attempt by the domestic industry to separate the in-
13 scope sales from the non in-scope sales in the data
14 submitted in this case and that it follows that all
15 BAO crushed in the U.S. is part of the domestic like
16 product whether or not the BAO being crushed itself
17 meets the definition of subject merchandise. Finally,
18 they allege this applies to the crushing operations at
19 Great Lakes, Detroit Abrasives, Washington Mills,
20 Treibacher and C-E Minerals.

21 I think you said earlier that you have
22 looked at this issue and that, if I remember
23 correctly, you said one-third of one percent of your
24 data would be subsequently removed, or you'd be
25 submitting something to us on that.

1 MR. SCHAGRIN: That is correct, Commissioner
2 Koplan.

3 After we saw the allegations, and it's
4 unfortunate we didn't get the -- because of the
5 hurricane, we got the public version yesterday, but
6 each of the three mills that we represent, the
7 Petitioners who other than Great Lakes are really the
8 whole industry here, they checked, and the numbers are
9 it's approximately one percent from Washington Mills,
10 zero for Treibacher, and it's about one-third of one
11 percent for C-E Minerals.

12 It has no effect clearly on the data. It's
13 in the data. We would take no exception to including
14 this in the like product because it just doesn't make
15 a difference, but the line was drawn, as I stated
16 earlier, and I don't want to become repetitive,
17 because we had to find a way to draw a line so that
18 Customs can enforce the exemption for crude.

19 We had to draw a line that was commercially
20 reasonable for the industry, so we did not cover
21 imports of crude product with dumping duties because
22 the product is not produced here.

23 COMMISSIONER KOPLAN: I appreciate that.

24 MR. SCHAGRIN: We will furnish that in our
25 posthearing brief, Commissioner Koplan, as I stated.

1 COMMISSIONER KOPLAN: I do appreciate that.
2 They made the allegation, but there was no
3 quantification of amounts in their brief, so if you're
4 going to provide the specifics that would be helpful.

5 MR. SCHAGRIN: We will do so.

6 COMMISSIONER KOPLAN: Thank you.

7 At pages 10 and 11 of your prehearing brief,
8 you state that there are no facilities in the United
9 States that produce crude aluminum oxide, and the
10 machinery used to fuse bauxite ore in an electric arc
11 furnace that ultimately results in crystallized ingots
12 is different than that used to produce refined brown
13 aluminum oxide.

14 Mr. Williams, you actually testified on this
15 issue I think in your direct presentation.

16 MR. WILLIAMS: Yes, sir.

17 COMMISSIONER KOPLAN: I'd like to ask
18 whether there are any domestic facilities that make a
19 more refined crude product from a coarser crude
20 product. Is that done domestically? Does that
21 happen?

22 MR. WILLIAMS: When you say a coarser
23 refined product, I'm not quite sure what you mean, Mr.
24 Koplan.

25 COMMISSIONER KOPLAN: It's brought closer to

1 RBAO, but perhaps from your standpoint you don't quite
2 get there.

3 The reason I'm asking that is if the answer
4 is yes then my question would be couldn't such
5 activity constitute domestic production of crude
6 aluminum oxide that should be included in the domestic
7 industry's performance calculation?

8 MR. WILLIAMS: To answer the first part of
9 your question, offhand I cannot think of anyone that
10 would fill that bill, but, secondly, in order to make
11 crude aluminum oxide you must have an arc furnace very
12 similar to a steel mill arc furnace.

13 COMMISSIONER KOPLAN: I understand that.

14 MR. WILLIAMS: Without that piece of
15 equipment, which is a large capital expenditure, it's
16 simply impossible to transmute bauxite, which is the
17 raw material, into crude aluminum oxide.

18 COMMISSIONER KOPLAN: Thank you for that. I
19 see my red light has come on. I just want to make
20 sure. Does that answer comport with the other
21 domestic producers?

22 MR. DURSTBERGER: Yes. I agree with that
23 answer.

24 COMMISSIONER KOPLAN: Okay. Thank you very
25 much.

1 Thank you, Madam Chairman.

2 CHAIRMAN OKUN: Commissioner Lane?

3 COMMISSIONER LANE: I'm happy to be here
4 today for my first hearing, and I'd like to note for
5 the record, Mr. Schagrín, that any time of the year is
6 a great time to visit West Virginia.

7 MR. SCHAGRIN: I'm all for that. I agree
8 with you completely, Commissioner Lane.

9 COMMISSIONER LANE: My question is that on
10 page 43 of your prehearing brief you argue that, as
11 indicated earlier, importer inventories continue to be
12 huge. You later state on the same page that these
13 large inventories of subject imports pose a continuing
14 threat to the domestic producers.

15 However, on page 57 of their prehearing
16 brief Respondents argue that to the extent that U.S.
17 producers have ordered the RBAO held in importer
18 inventories, it poses no threat to their future
19 financial condition.

20 Can you explain why U.S. producers would be
21 holding such inventories of subject merchandise over
22 the POI?

23 MR. SCHAGRIN: Yes, Commissioner Lane. Two
24 parts to the answer.

25 First, I think really what Respondents are

1 referring to are the inventories held by one
2 particular company that we do not believe is part of
3 the domestic industry, and it comes to this lumping
4 problem again that they refer to inventories held by
5 the domestic industry when they're really only
6 referring to one alleged member of the industry.

7 Secondly, any minuscule amounts of
8 inventories held by the Petitioners would be related
9 to the fact that over the POI they purchased very
10 minuscule amounts of Chinese product in order to even
11 out inventories that they held of this range of
12 products so that they have inventories of dozens of
13 products, but they're out of one.

14 Instead of crushing something, they can't
15 crush the only product they need. When they crush the
16 crude aluminum oxide, they wind up with 30 or 40
17 products. That's the nature of the production
18 process. It's actually very unusual, but that's the
19 nature of the production process.

20 They could buy an import either from China
21 or from another country of this product that they're
22 missing in their inventory group rather than crushing
23 it themselves, but for the Petitioners, for really the
24 entire domestic industry as the Commission should
25 define it, inventories held of Chinese imports are

1 very minuscule, probably less than one percent of the
2 inventories of total imports held.

3 COMMISSIONER LANE: Okay. Thank you.

4 CHAIRMAN OKUN: Thank you, and again thank
5 you to all the witnesses for your participation here
6 today.

7 In both your testimony and brief, you have I
8 think done a good job in trying to describe what's
9 going on in the industry because there have been a
10 number of changes over the period of investigation. I
11 wanted to go back to a couple of those just to make
12 sure that I understand the significance of some of
13 these changes.

14 Mr. Durstberger, let me just start with you.
15 I think you answered this specifically, but I want to
16 make sure that I understand it. In terms of the
17 business model now and the relationship between C-E
18 and Treibacher, go through again for me where the
19 focus is.

20 I think you had said that C-E now has fewer
21 sizes for refractory, and Treibacher concentrates on
22 the others. If you could go through that for me
23 again?

24 MR. DURSTBERGER: What I had mentioned is
25 that basically since July 2000, Treibacher and C-E

1 Minerals are sister companies, affiliated companies
2 specializing in different downstream markets.
3 Treibacher is specializing to sell to abrasive
4 customers making grinding wheels and sandpaper. C-E
5 Minerals sells to the refractory industry.

6 Pre the acquisition of Treibacher by our
7 joint parent company, Immeris, C-E Minerals sold both
8 abrasives and refractory. They exited the production
9 -- I'm sorry. The import at that point, and
10 Treibacher has taken over the production of brown
11 alumina grain for abrasives.

12 CHAIRMAN OKUN: Okay. I appreciate that. I
13 just wanted to make sure that I had heard that
14 correctly and understood it.

15 Let me turn I guess or let me ask the
16 distributors perhaps this question. I'm not sure from
17 the testimony I heard whether you'll be able to
18 necessarily answer these, but just let me make sure I
19 understand.

20 Mr. Kane, you had noted that Midvale
21 Industries buys from Washington Mills, but not from
22 China. If you can say in public session, I wondered
23 whether you have an exclusive arrangement with
24 Washington Mills?

25 MR. KANE: We have done business with

1 Washington Mills for a number of years. We have
2 chosen over the years to sell Washington Mills'
3 products because they were great products, but the
4 reason I'm here is we're finally to the point where we
5 absolutely cannot compete with other distributors
6 selling these products.

7 Washington Mills has worked very closely
8 with us trying to help us, but we're to the point
9 where something has to be done. If we lose this
10 supplier in Washington Mills, we'll have to do
11 something else.

12 CHAIRMAN OKUN: Okay. Just so that I
13 understand because it's the type of material you're
14 marketing. Would there be other U.S. companies? Do
15 other U.S. companies approach you, or have they
16 approached you to sell their product?

17 MR. KANE: We had been approached some time
18 ago by some of the importers to sell these products.

19 Our company sells in a little bit of a
20 unique way. We consider ourselves a technical sales
21 company. We work very hard on applications and trying
22 to lower customers' total cost, being the use cost in
23 application of these materials.

24 Because of changes in the market, and the
25 quality of the Chinese material appears to be there,

1 our customers don't seem to have any issues with it at
2 all. We're losing share.

3 CHAIRMAN OKUN: Okay. I have another
4 question, but --

5 MR. KANE: Sure.

6 CHAIRMAN OKUN: -- let me turn, if I could,
7 to Mr. Bell for a moment.

8 You had noted that Precision Finishing
9 shared its purchase price for brown grain from China
10 with Washington Mills, and I was curious whether that
11 type of price sharing is common practice.

12 MR. BELL: It's not very common. What I
13 really wanted to do was get away from having to
14 purchase the Chinese abrasive.

15 I really didn't want to get involved in
16 that, but the only way we could keep our customer base
17 was to go to the Chinese and get the abrasive so we
18 can keep our customer base underneath our umbrella.

19 I was not really giving them direct pricing.
20 I just needed lower prices. I can still buy Chinese
21 abrasive at a lower price than I'm getting from
22 Washington Mills. I've taken a hit when I stopped
23 buying from China, but I have not taken such a big hit
24 because they lowered their price.

25 I just think it's important that you find in

1 favor of this.

2 CHAIRMAN OKUN: Mr. McLeod?

3 MR. MCLEOD: Yes, Chairman Okun. We do not
4 have exclusive arrangements with our distributors.
5 However, we have good working relationships with our
6 distributors, and a normal course of action when you
7 run into a competitive situation is to ask the
8 distributor to get competitive information, and to
9 share these prices with us; either verbally, either
10 through an invoice or a price letter quotation. So,
11 in working with our distributors, we do share this
12 information, and it's important in making the
13 decision, the final decision on whether or not we're
14 going to meet a certain situation.

15 CHAIRMAN OKUN: Would that apply to other
16 domestic producers' prices as well?

17 I mean, I guess the question I'm asking, and
18 I would like Mr. Kane too, just trying to understand
19 how price information is shared in this industry, and
20 it just struck me, I was trying to figure out if you
21 see all of them?

22 MR. MCLEOD: Yes, it would come from
23 domestic suppliers who are competitors and offshore
24 suppliers --

25 CHAIRMAN OKUN: Okay.

1 MR. McLEOD: -- who are competitors.

2 CHAIRMAN OKUN: Okay. And Mr. Kane, is that
3 the same practice?

4 MR. KING: Yes, if we find ourselves in a
5 competitive situation, we will do our best to give
6 some idea of where the price is, and then we'll pass
7 that information along.

8 Part of what's difficult to understand,
9 Midvale is a 26-employee company. We are not Wal-
10 Mart. We don't go out for bids every year on all the
11 products that we sell. We found, and it's our
12 philosophy, and again it's something that's been
13 perpetuated for the 23 years that I have been involved
14 with the company, that we found our best course of
15 business is to pick some leading companies and
16 represent their products as best we can in the
17 industry. But of course, that game is in question at
18 this stage of the game.

19 CHAIRMAN OKUN: Okay. Well, the other
20 question I had, and again, I guess that's to the
21 distributors on, you know, helpful, relevant
22 purchasers always played is helping us better
23 understand how the market is operating, and one of the
24 questions that I am curious about is what changes you
25 have seen over this period.

1 In other words, we have heard the
2 description of what's gone on the market and the
3 changes with C-E and Treibacher. There are other
4 changes that have taken place with others. And I
5 wondered if you could give me any sense of how you see
6 that as a distributor. Is it really what you have
7 just said here, which is you still see, or what you
8 have testified to is just seeing the Chinese price,
9 price continue in the market, or Chinese quotes? I
10 mean, is there anything else you can say about the
11 domestic industry and what it's marketing or how?

12 MR. PLONSKER: My name is Harvey Plonsker.

13 I would offer a couple of observations. In
14 1980, we were buying a particular grit of aluminum
15 oxide, let's say 220 grit. We were paying 42 cents a
16 pound. We are now paying in the low thirties for that
17 same product from domestic producers.

18 We could pay a lot less for that same
19 product if we were buying directly from China.

20 CHAIRMAN OKUN: And I'm not -- can you speak
21 more specifically for us just in terms of the more
22 recent period?

23 Again, what I'm focused on is just the
24 changes that have taken place in the domestic
25 industry.

1 MR. PLONSKER: Well, what's taken place in
2 the domestic industry is that in general volume is
3 down because a vast amount of industry has left the
4 United States. There are far fewer customers that we
5 all are now trying to fight over because parts and
6 products are just gone. Manufacturers have closed
7 plants, so there is just a lot less opportunity to
8 sell the product, and because of the low blanket on
9 pricing that the Chinese have put in, it has basically
10 forced the whole industry level down.

11 People are paying -- end-use customers are
12 now paying a lot less for the products than they were
13 paying three years ago, four years ago.

14 CHAIRMAN OKUN: Okay.

15 MR. PLONSKER: And it's basically because
16 they can get the product directly from Chinese
17 suppliers.

18 To give you an example, I was at a small
19 user buying 500 pounds of aluminum oxide, 80 grit at a
20 time in South Carolina, and this is 10 years ago, and
21 the bags were from China. Already it had started
22 occurring, and those were at very low prices. That's
23 the only reason that the -- the distributor at that
24 point, it was not ourselves, another distributor in
25 South Carolina had already started stocking and

1 selling Chinese product in small quantities. Five
2 hundred pounds is a small quantity.

3 CHAIRMAN OKUN: Okay. Mr. Schagrín, my red
4 light is going to come on. I can come back on these
5 questions.

6 Vice Chairman Hillman.

7 VICE CHAIRMAN HILLMAN: Thank you very much,
8 and I would like to join my colleagues in welcoming
9 all of you here this morning. We very much appreciate
10 your taking the time to be with us and your
11 willingness to answer our questions.

12 Let me start first with this issue of the
13 like product. And Mr. Schagrín, in your comments you
14 said you were trying to choose a commercially
15 reasonable place to draw this line. But I guess I
16 want to hear from the industry.

17 I mean, Mr. Williams, in your testimony you
18 said there is, you know, crude product and there is
19 grain product, and you used the term "one inch or
20 finer," I think was the language that you used in your
21 testimony.

22 I'm trying to understand from the industry's
23 perspective, you know, is there a clear place in which
24 you draw the line between a crude product and grain
25 product?

1 MR. WILLIAMS: Yes, there is, Ms. Hillman.
2 My first job in the industry was to shovel
3 crude ore out of box cars into the crushers at
4 Washington Mills, and so I had a firsthand experience
5 with finding out what crude ore is.

6 There is absolutely no doubt in my mind or
7 any other producer that crude ore as it comes from the
8 crude ore furnaces and crushing is one inch and finer
9 material. What you saw in that plastic bag with the
10 chunks of aluminum oxide, that is crude ore.

11 VICE CHAIRMAN HILLMAN: Okay. Then when you
12 go on the grain side, I'm trying to understand sort of
13 how large a particle can be. Again, is there an
14 industry standard of how big a particle can be to
15 still be considered a grain product?

16 MR. WILLIAMS: The commonly accepted
17 definition is three-eighths inch.

18 VICE CHAIRMAN HILLMAN: Okay.

19 MR. WILLIAMS: Finer than that, you're into
20 the grain sieving and processing plants.

21 VICE CHAIRMAN HILLMAN: Okay. If I were to
22 look at the ANSI standards, how high -- how large a
23 particle would ANSI still recognize as an ANSI
24 certified grain product? How big a particle?

25 MR. WILLIAMS: I'm sorry. I can't answer

1 that.

2 MR. SCHAGRIN: Mr. Durstberger will answer
3 that because he has a copy of the ANSI standards with
4 him.

5 VICE CHAIRMAN HILLMAN: Okay. Okay. But
6 clearly, I'm just trying to make sure I understand the
7 relationship between the ANSI standards and this
8 general sort of industry wisdom as to where is this
9 line between crude product and grain product.

10 Would most of the industry look to ANSI
11 standards as anything that is covered by an ANSI
12 standard is a grain product?

13 MR. SCHAGRIN: Yes, Commissioner. Let me
14 try as someone who had to learn this as a layman, who
15 never did well in chemistry, who doesn't do well with
16 minerals. Since I learned it, maybe I can help
17 translate it for you.

18 Essentially the grain products are sold to
19 specific sizes. The grits are all the same. The
20 refractories use what are called splits, so that the
21 sample you have is a one to three millimeter. It's
22 the same as the pricing product.

23 That means that actually within that size
24 you have a range of split sizes that will go from one
25 to three millimeters. But everything in there is one

1 to three millimeters.

2 The specific grit sizes are all -- when I
3 say "all," I think ANSI requires 80 or 90 percent to
4 all be of a specific grit, whether it be four, or 10,
5 or 26, or 60, 82, 20, and that's what really separates
6 into this industry is that the users of refined
7 product order their refined to a specific size that
8 they need. The refractories order the specific split
9 sizes. The grinding wheel producers order their
10 specific grit sides. The distributors order their
11 specific grit sizes.

12 VICE CHAIRMAN HILLMAN: That I understand.

13 MR. SCHAGRIN: Okay.

14 VICE CHAIRMAN HILLMAN: I'm trying to
15 understand where ANSI standards pick up.

16 MR. SCHAGRIN: And Mr. Durstberger will
17 answer that.

18 VICE CHAIRMAN HILLMAN: All right.

19 MR. DURSTBERGER: I would suggest that the
20 coarse grade that we probably sell in commercial sizes
21 would be an eight grade, Peter. Would that be proper?

22 Eight grade has a 50 percent of its
23 particles are between two and three millimeter. The
24 crude that we're talking about has to be basically 50
25 percent is larger than 10 millimeter.

1 VICE CHAIRMAN HILLMAN: Okay.

2 MR. DURSTBERGER: And that is the coarsest
3 size that we commercially sell under the ANSI
4 standards.

5 VICE CHAIRMAN HILLMAN: Okay. No, that's
6 helpful.

7 MR. WILLIAMS: I would agree with that.

8 VICE CHAIRMAN HILLMAN: I mean, obviously
9 I'm trying to correlate this too. I mean, Mr.
10 Schagrin, you have --

11 MR. SCHAGRIN: Understood.

12 VICE CHAIRMAN HILLMAN: -- testified that
13 this three-eighths-inch line, which is again not in the
14 tariff schedule, and part of the reason I'm struggling
15 with this is, you know, you have put in a definition
16 that is not in the tariff schedule for the scope of
17 this case. Fair enough, you know.

18 But obviously the tariff schedule has
19 accrued an HTS number for crude and an HTS number for
20 refined, but with no measurement criteria in them.

21 MR. SCHAGRIN: That's correct.

22 VICE CHAIRMAN HILLMAN: And I'm just trying
23 to make sure that when you tell me that this is a
24 commercially reasonable price to draw this line, that
25 the industry sees -- really does see it that way.

1 MR. SCHAGRIN: I can swear to you that the
2 industry does see it that way.

3 VICE CHAIRMAN HILLMAN: Well, again it's not
4 that --

5 MR. SCHAGRIN: But also one of our problems,
6 and I am sure that it is very likely that respondents
7 will mention this, is that HTS codes only say crude
8 and refined. And what we also had a concern that
9 maybe at customs if you don't give them a measurement,
10 and if importers decide, how is customs going to know
11 whether it's crude or refined?

12 I can call it crude because I see it as
13 crude. I can call it refined because I see it as
14 refined.

15 There has been mistakes made on imports here
16 by both domestic producers importing crude, and by
17 some importers about classification. And so we
18 definitely had concerns at the outset of this case
19 about just broad definitions that we know everybody in
20 industry knows. Everybody in the industry knows what
21 is crude and refined.

22 Customs brokers may not, and customs may
23 not, and we were worried about just having a scope
24 that went according to HTS items.

25 Don't forget when you get huge dumping

1 margins there is a huge incentive for importers to try
2 to find a way around.

3 VICE CHAIRMAN HILLMAN: No, I understand. I
4 understand.

5 On the refractory side, is there a particle
6 size that is too large to be used in the refractory
7 process? I mean, for those that are purchasing again
8 in the refractory segment of the market, again is
9 there a particular particle size that would be too
10 large to be used?

11 MR. DURSTBERGER: I'm sorry. I don't quite
12 understand. A particular particle size of?

13 VICE CHAIRMAN HILLMAN: I'm looking at your
14 splits.

15 MR. DURSTBERGER: Yes.

16 VICE CHAIRMAN HILLMAN: Your jar of splits,
17 and you know, I can see the size of that product.

18 MR. DURSTBERGER: Right.

19 VICE CHAIRMAN HILLMAN: I'm saying if the
20 particles, if the individual particles were
21 significantly larger, is there a kind of ceiling on
22 the particle size at which the refractory industry
23 cannot use the product?

24 MR. DURSTBERGER: Yes, there would be.

25 VICE CHAIRMAN HILLMAN: And what is it?

1 MR. DURSTBERGER: The largest refractory
2 size that we sell, but again it's less than one
3 percent of our sales, is one and a quarter by one
4 inch, I think.

5 VICE CHAIRMAN HILLMAN: One and a quarter by
6 one inch, that is the largest size that you know of
7 that can be used in the refractory industry?

8 MR. DURSTBERGER: Yes.

9 VICE CHAIRMAN HILLMAN: Mr. Plonsker, you
10 look like you were nodding your head at one point to
11 this. Did you have something you wanted to add to
12 help me understand this issue of --

13 MR. PLONSKER: Well, I was just going to say
14 that as a distributor to the general industrial users,
15 we have never ever sold a pound of crude. It's always
16 finished grain.

17 VICE CHAIRMAN HILLMAN: Okay. And when you
18 say that, I mean, is it clearly understood in your
19 mind exactly where the line is drawn between crude
20 product and grain product?

21 MR. PLONSKER: Absolutely.

22 VICE CHAIRMAN HILLMAN: Okay, and what is
23 that?

24 MR. PLONSKER: A grain product has been
25 further processed so that the size distribution of the

1 particles has been narrowed significantly.

2 If you look at that bag of crude, you will
3 see everything from one inch all the way down to dust.
4 Well, general industrial users don't want a product
5 like that. They want something that is very
6 specifically sized. It might be very, very fine, or
7 it might be quite coarse, but they don't want the full
8 range.

9 VICE CHAIRMAN HILLMAN: Okay.

10 MR. PLONSKER: They can't use it.

11 VICE CHAIRMAN HILLMAN: And in your view, is
12 that issue the consistency of the sizing more
13 important than the actual size of the particle itself?

14 In other words, you are saying that you
15 could sell something as big as an inch or an inch
16 and a quarter, as long as it was consistently sized,
17 and have that still be treated as a refined product.
18 Is that what I'm --

19 MR. PLONSKER: Yes, absolutely.

20 VICE CHAIRMAN HILLMAN: Okay.

21 MR. PLONSKER: It's the refining of the
22 screening process that is defining the difference
23 between a crude and a finished product.

24 VICE CHAIRMAN HILLMAN: Okay. All right.

25 MR. PLONSKER: Crude is just not a finished

1 product.

2 VICE CHAIRMAN HILLMAN: Okay. And obviously
3 for Mr. Schagrín, this is this issue of sort of say to
4 the Customs Service, you know, crude is not our
5 finished product is going to be tricky.

6 MR. SCHAGRIN: Mr. Williams wants to just
7 add one thing under refractory.

8 VICE CHAIRMAN HILLMAN: Mr. Williams, go
9 ahead.

10 MR. WILLIAMS: If I may just add quickly
11 something to add to Mr. Durstberger's comments.
12 Although there are a very small number of large
13 refractory splits, by far the overwhelming
14 preponderance of refractory usage is in the finer
15 splits; say finer than one to three millimeters.

16 VICE CHAIRMAN HILLMAN: Okay. Mr. Schagrín,
17 given that this testimony that there is some product
18 that, you know, the industry would define as a refined
19 product, but then nonetheless has particle size in
20 excess of your three-eighths of an inch line, if there
21 is data, and it may be one and the same of the data
22 that you were talking about earlier with Commissioner
23 Koplán, but it may not be, and I'm not sure exactly
24 what set we're talking about here, if you could tell
25 us for the record, you know, again how much product is

1 sold that you consider refined above this three-eight-
2 inch size line; this product, for example, that Mr.
3 Durstberger just testified to. If we could get, you
4 know, data in the post-hearing that would indicate
5 again who is selling it, who is making it, and how
6 much of it does exceed your three-eighths-inch size
7 limit in the scope of the petition, that would be very
8 helpful.

9 MR. SCHAGRIN: We will do so, Commissioner,
10 and it's the same data that Commissioner Koplan was
11 referring to.

12 VICE CHAIRMAN HILLMAN: Okay.

13 MR. SCHAGRIN: We have that data already.

14 VICE CHAIRMAN HILLMAN: I wasn't sure
15 exactly how you split the data. Thank you.

16 MR. SCHAGRIN: And as I said, it's already
17 in the petitioners' data, and we will give you the
18 exact volume for each year. We will give you
19 everything we have on that, and it's very, very tiny.

20 VICE CHAIRMAN HILLMAN: Okay, appreciate it.

21 CHAIRMAN OKUN: Commissioner Miller.

22 COMMISSIONER MILLER: Thank you, Madam
23 Chairman, and thank you as well to all of the
24 witnesses. Your testimony today has been very
25 helpful, at least for me, in understanding the way the

1 industry operates. So we appreciate your willingness
2 to be here and to answer questions as well.

3 I'm going to continue a little bit on some
4 lines similar to Vice Chairman Hillman, mostly because
5 I want to make sure I understand the industry and the
6 manufacturing process, and step back a little, a
7 little bit of history again, or big picture here.

8 The crude ore, which you all use to produce
9 the refined, it's not produced in the United States.
10 That point is clearly on the public record.

11 Has that always been the case? And where
12 are the global sources of crude?

13 We obviously know that China is a source. I
14 think I have heard that Canada is a source. Are those
15 the only two or are there others as well? Mr.
16 Williams?

17 MR. WILLIAMS: I repeat the obvious. There
18 is no crude manufactured in the United States, and to
19 my knowledge, there never has been. The crude ore
20 plants were always located in Canada for the domestic
21 industry here.

22 There are many plans making crude ore over
23 the world today. There are several in Europe that
24 make crude ore. There is a Brazilian company that
25 makes crude ore. There are many plans in China,

1 multitude of plants in China making crude ore, and
2 they now have the world's largest capacity and
3 production of brown aluminum oxide crude ore in China.

4 COMMISSIONER MILLER: Okay. And Canada is
5 the source, where the sources are. Is it essentially
6 because of the need for the bauxite?

7 I mean, what is that globally is defining
8 where the crude ore is being produced?

9 MR. WILLIAMS: The reason that the industry
10 originally concentrated in Canada was to use the
11 hydroelectric power that was developing in the late
12 1900s, mid-1900s in Niagara Falls, in and around
13 Niagara Falls, Canada.

14 COMMISSIONER MILLER: I see. And
15 historically U.S. producers have primarily relied on
16 the Canadian ore, but when or in what kind of time
17 frame, if it was a shift to using more of the Chinese
18 ore, did that occur?

19 MR. WILLIAMS: U.S. manufacturers have
20 relied primarily on Canadian crude ore until after
21 World War II when the DLA, or as it was called then
22 the General Services Administration, the GSA, was
23 charged with the responsibility of putting in a
24 stockpile of crude ore.

25 And we watched that stockpile go in. It was

1 approximately a 250,000 tons of crude ore. That put
2 fear in our hearts because it went in very cheaply,
3 and our then president then predicted to me it would
4 come out even cheaper still, and that has been the
5 case.

6 So the interim moves that affected the crude
7 ore industry were, number one, the release of the
8 Defense Logistics Agency's stockpile, and then, number
9 two, the arrival of very cheap Chinese crude ore on
10 the scene, cheaper than we can produce it ourselves.

11 COMMISSIONER MILLER: And the DLA purchases
12 and decision to stockpiling, and the decision to let
13 go of those stockpiles, help me understand that, I
14 mean, from a bigger perspective.

15 Why in the first instance to develop them,
16 and then and then now why don't we need them anymore.

17 MR. WILLIAMS: Well, Ms. Miller, I was a kid
18 when that all happened, so you will forgive me if I
19 don't have my facts completely straight. But my
20 understanding is that the Congress wanted to have a
21 stockpile of strategic raw materials which World War
22 II had demonstrated we were lacking in, enough to
23 sustain this country for, I think it was a three-year
24 war, and various materials, tantalum and columbium,
25 and many other things, including brown fused aluminum

1 oxide, were designated a strategic materials, and
2 brown crude aluminum oxide was accorded a stockpile
3 goal of 250,000 tons, and that was implemented over
4 the years, and held in stockpile until roughly
5 somewhere around the 1980s, and then was commenced to
6 be released for sale.

7 MR. SCHAGRIN: If I could just add,
8 Commissioner Miller.

9 COMMISSIONER MILLER: Yes, Mr. Schagrin.

10 MR. SCHAGRIN: I think one of the reasons
11 that crude BAO was decided to be a strategic material
12 is, first, we don't really have the aluminum oxide
13 grade bauxite in North America, so it was thought that
14 because it comes from places like Brazil or China or
15 Russia or Africa or Australia, that it wasn't a
16 product you could easily get your hands on because the
17 mineral itself to make the aluminum oxide wasn't here.

18 Secondly, as I think these distributors and
19 others in the industry can testify to you, even today
20 you cannot really make a jet engine without BAO.
21 That's still the main abrasive for finishing the metal
22 in parts like jet engines, submarine parts. The naval
23 shipyards still use large quantity of this product
24 because it's still your main abrasive for doing a good
25 job of blasting smooth metals. So that's why it was

1 thought to be important to our defense . It's because
2 it really is a critical abrasive material.

3 COMMISSIONER MILLER: Okay. Well, thank
4 you. I needed little history and perspective. It
5 helps me, I think, at least my aim is I hope it will
6 help me.

7 Now, you know, I have sort of a general
8 question of wanting to understand the value added in
9 the process of converting the crude to a refined
10 product. I mean, there may be company-specific. I'm
11 not asking for company -- any proprietary company
12 information. Can you give me sort of a big picture
13 answer to it, or a commonly understood answer to the
14 question of does it depend on -- are there any
15 characteristics of the crude that you're working with
16 that affects how much value you add?

17 Also depending on the grit size, the grit
18 size, maybe that's a way to sort of get an idea. You
19 know, maybe depending on -- does it differ by the grit
20 size?

21 MR. WILLIAMS: Well, it's a good question,
22 and in general, we have always felt that the value
23 added component of grain, refined brown grain starting
24 from brown crude ore was roughly 100 percent.

25 If you took your brown crude ore transfer

1 and doubled it, you were in the ballpark of what it
2 took.

3 When you get -- it gets a little complicated
4 because the finer grits require the import of much
5 more energy time and manpower, sieving time, and all
6 the rest of it, to convert those larger pieces into
7 very, very fine pieces than it does if they are
8 coarser pieces.

9 Basically, if you think of a refined grain,
10 grit size number, you can almost visualize it in terms
11 of the number of particles per linear inch it would
12 take to occupy one inch. For example, 10 grit -- if
13 you lined it up, 10 particles side by side, you have
14 10 particles or 16 grit. Two-twenty, you would have
15 roughly 220 particles.

16 COMMISSIONER MILLER: Okay.

17 MR. WILLIAMS: So the input of energy and
18 all the rest of it to achieve the finer grit sizes is
19 greater than the cost of producing the coarse sizes.
20 But in general, you get very hard to cost that kind of
21 production process. So in general, I would say we
22 just simply double the crude ore cost and that's what
23 we regard as the value added.

24 COMMISSIONER MILLER: Right, right. Anybody
25 else want to comment? Mr. Durstberger?

1 MR. DURSTBERGER: I agree with Peter's
2 assessment. I would probably say that -- I would have
3 probably argued that about three-fifths of the
4 production costs were to be accounted for by crude ore
5 and two-fifths by the processing of it into refined
6 grain.

7 Now, let's not forget that when we talk
8 about Chinese crude that these are likewise in my
9 opinion not manufactured at -- not sold a true
10 production cost, and therefore that 50/50 ratio would
11 apply much more appropriately.

12 But if you were to produce it in a western
13 economy in the United States or in western Europe
14 where we have a lot of manufacturing facilities, I
15 would probably say it would be between 50 percent and
16 maybe 60 percent crude ore and the remainder the
17 refining.

18 COMMISSIONER MILLER: Okay. The red light
19 is on so I will stop for now. Thank you. I
20 appreciate your answers.

21 CHAIRMAN OKUN: Commissioner Koplan.

22 COMMISSIONER KOPLAN: Thank you, Madam
23 Chairman.

24 Let me just follow up if I could to close
25 the loop for myself on the issue of the stockpile, and

1 I know you have testified both on direct and in the
2 response to Commissioner Miller, and I hope I'm not
3 covering this exactly the same ground.

4 But in our preliminary determination we
5 noted that a condition of competition affecting the
6 supply of refined brown aluminum oxide was the sale at
7 low prices by the Defense Logistics Agency of its
8 stockpile of crude aluminum oxide, the raw material
9 used by domestic producers in '99 and 2000.

10 We noted that you stated that these
11 stockpiles were purchased mainly by the domestic
12 industry, but that these stockpile sales have now
13 ceased and you talked about this morning.

14 We also noted that there was no information
15 in the record as to whether any further sales from or
16 purchases for the stockpile are likely. That all
17 appeared in views at page 13.

18 In Footnote 11 on page 11 of the prehearing
19 brief, respondents state, and I quote so you don't
20 have to search for it, Mr. Schagrin, "This is not
21 correct. As recently as the second quarter of 2003,
22 bids for sales of fused aluminum oxide grain were
23 accepted, and there exists additional inventory for
24 future disposal."

25 Are respondents correct with regard to that,

1 and if so, how should we regard that when analyzing
2 conditions of competition now?

3 I'm just concentrating on that footnote.

4 MR. SCHAGRIN: This is Roger Schagrin.
5 Happy to respond, Commissioner Koplan.

6 Respondents are not correct as to their
7 comments on the Commission's preliminary
8 determination, because as you read from the
9 Commission's preliminary determination, the
10 Commission's preliminary determination conditions of
11 competition refer to sales of crude, not aluminum
12 oxide by DLA, and stated that those had ended.

13 What respondents' footnote says is the
14 Commission determination states that DLA sales have
15 ceased. That is not true, because the Commission's
16 determination said sales of DLA crude had ceased,
17 which was a correct statement by the Commission.

18 So respondents, having made one incorrect
19 assertion, then go on to make a correct assertion,
20 which is that the DLA continues to have an inventory
21 stockpile of refined brown aluminum oxide, the subject
22 product, which they continue to sell.

23 The producers here or the distributors can
24 tell you about the fact that while those products are
25 still in the stockpile and still offered for sale,

1 there are a number of reasons why in fact those DLA
2 sales have been minimal over the past two years,
3 primarily because the DLA wants higher prices for that
4 refined brown aluminum oxide than U.S. purchasers
5 could buy Chinese for.

6 So not only is the U.S. industry being
7 undersold by the Chinese, but so is the U.S.
8 government is being undersold by the Chinese. I know
9 that's not really a part of your injury analysis. We
10 don't take into account any injury to the U.S.
11 government.

12 However, that material remains in the
13 stockpile. By now it's down to a variety of grit
14 sizes that are probably the less popular sizes, but it
15 does remain there, and in fact, given the availability
16 of that inventory combined with the Chinese inventory,
17 in a way it's a condition of competition that adds to
18 the threat to the domestic industry, because the
19 government also has inventories that are available for
20 sale.

21 COMMISSIONER KOPLAN: Thank you.

22 Did the distributors want to add anything to
23 that, or has Mr. Schagrin covered it for you?

24 From the way you are silently nodding your
25 heads, he has covered that just for the record.

1 MR. PLONSKER: That is correct.

2 MR. BELL: That is correct.

3 COMMISSIONER KOPLAN: Okay. Thank you, if
4 you could both identify yourselves for the record so
5 the reporter gets it.

6 MR. PLONSKER: Harvey Plonsker.

7 MR. BELL: And Tom Bell.

8 COMMISSIONER KOPLAN: Thank you very much.
9 Thank you, Mr. Schagrin.

10 On page 56 of respondents' prehearing brief,
11 they state that price trends must be considered in the
12 context of falling raw material costs and declining
13 demand.

14 In the RBAO industry, they claim that demand
15 has declined as the most significant consumers in the
16 end-use refractory and abrasives markets have
17 experienced the effects of the down economy, and that
18 these industry conditions have a far more powerful
19 effect on average selling price than fluctuations in
20 price among independent importers that held, and I
21 can't use the numbers here because they are BPI, but
22 they refer to their share of the U.S. market in this
23 context.

24 Respondents then conclude by saying, "Thus,
25 any variation in the average selling price of subject

1 imports is likely to have too weak an effect on the
2 market to result in a significant depressing or
3 suppressing effect on domestic prices."

4 How do you respond to this in the context of
5 your argument on page 24 of your prehearing brief that
6 the high volume and low price of subject imports has
7 caused price depression and suppression as well as
8 lost sales volume?

9 MR. SCHAGRIN: It is quite easy,
10 Commissioner Koplan. And I invite Dr. Blecker to
11 comment after I do.

12 First, respondents have made the amazing
13 leap which the Commission knows from all the
14 experience that the changes in cost for the domestic
15 industry would have the biggest effect on changes in
16 price.

17 If that were the case, most American
18 industries would be quite profitable and we wouldn't
19 have cases here.

20 When these folks costs go up or down, that
21 does not mean that they can raise their prices or
22 lower their prices accordingly. That's not the
23 biggest impact on pricing in the market. The biggest
24 impact on pricing in the market is supply and demand
25 of the finished product.

1 Second, in terms of declining demand, you
2 know, it's really a mixed picture. There has been
3 declines in demand, of all things the refractory side
4 of the industry has been improving, partially as a
5 result of the steel 201, because we brought blast
6 furnaces back on, and when they were brought back on,
7 when they have to be relined, they are now being
8 relined instead of not being relined and just shut
9 down.

10 But certainly demand would have an effect on
11 price as well as supply. But the bottom line is that
12 purchasers' information that they are buying Chinese
13 because of price, lost sales and lost revenue
14 information confirm that the domestic industry lost
15 huge amounts of volume to Chinese product based on
16 price.

17 Your underselling data based on both AUV and
18 product prices shows both consistent underselling and
19 price depression for the domestic industry.

20 Any way you measure the Chinese imports,
21 even if you measure them their way, and obviously we
22 believe you need to measure them based on total
23 imports, you can see that Chinese imports are
24 extremely strong presence in this market, and all
25 these distributors, all the U.S. producers, everyone

1 in the industry, confirmed by virtually all your
2 purchaser responses, all say it's the Chinese pricing
3 and the volume of Chinese product which is causing
4 prices to fall in the U.S. market.

5 So I just think the respondents have a
6 problem trying to explain away an avalanche of data,
7 and it's just not possible.

8 COMMISSIONER KOPLAN: Thank you.

9 Dr. Blecker?

10 MR. BLECKER: I have to be careful because a
11 lot of this data is confidential, so I will have to
12 amplify these remarks in the post-hearing.

13 COMMISSIONER KOPLAN: Just about everything
14 is bracketed in their brief.

15 MR. BLECKER: But speaking in very general
16 terms, I think what matters of course is the bottom
17 line, the margin between price and cost. So even if
18 cost is falling per unit for the raw materials, if the
19 pricing more, that's a problem.

20 Furthermore, we have to look at the other
21 cost, which as the industry witnesses have testified
22 are very significant here, and what's happened is that
23 as they have lost volume to the subject imports, I
24 believe that their fixed cost per unit, like SG&A, for
25 example, per unit have risen. I hope such a broad

1 statement is permissible here. And so they are
2 getting squeezed on the cost side from the loss of
3 volume that's raising unit cost in other areas. So
4 they are being affected in that way as well.

5 COMMISSIONER KOPLAN: Thank you very much.
6 I see my red light is about to come on. I have
7 nothing further. I want to thank each of you for your
8 presentations and answers to our questions. Thank
9 you.

10 CHAIRMAN OKUN: Commissioner Lane.

11 COMMISSIONER LANE: I have no further
12 questions.

13 CHAIRMAN OKUN: Thank you.

14 Mr. Schagrin, let me turn to you because I
15 think somewhat a follow up to Commissioner Koplan's
16 question, and kind of where I ended my first round,
17 which is, I mean, to the extent when we look at this
18 record and the changes in the domestic industry over
19 the period, you know, we do see a growing domestic
20 supply capability during the period, and I wanted both
21 you and Mr. Blecker to have a chance to address that;
22 you from the legal side, what's the legal significance
23 in the context of this market; and then, Mr. Blecker,
24 after that if you can talk about the economics. And
25 you have to some extent, but I want to address it

1 straight on terms of the domestic supply during our
2 period of investigation.

3 MR. SCHAGRIN: Chairman Okun, the first
4 thing to keep in mind, which is the condition of
5 competition we spoke about, and it really goes to the
6 time period of this POI, respondents would have you
7 believe that things must be wonderful because C-E
8 reopened a plant in Newell, West Virginia. That is
9 wonderful for Newell, West Virginia.

10 But the fact is that's not, and that is the
11 addition of capacity here. But you have to remember
12 that was Allied Minerals' plant throughout the 1990s.
13 It shut down, we believe, in approximately 1998 or
14 1999.

15 What we really have here in terms of changes
16 in capacity, so over the POI we have an upward -- we
17 have an increase in capacity because a plant
18 previously shut down just before the POI was reopened.
19 So really over a slightly longer continuum of time
20 there hasn't been an increase in capacity.

21 We have talked to the staff. It's was in
22 the testimony of Mr. Williams, and I believe, though
23 it's tough to refer to anything in the 3M brief
24 because we didn't receive a public version of it, it
25 was referenced in the 3M brief, and that is that 3M

1 had had a production facility in the U.S, and that was
2 shut down during the POI. I don't believe that is in
3 your data.

4 But in general, the addition of capacity by
5 the U.S. industry has not been the cause of any impact
6 on the domestic industry in terms of injury. We had
7 the replacement of some portion of imports by C-E by
8 domestic production of C-E, and in fact that was more
9 beneficial to the domestic industry because they
10 stopped importing other products that had been in
11 direct competition with Treibacher and Washington
12 Mills.

13 I hope that answers your question.

14 Dr. Blecker.

15 MR. BLECKER: I think Roger has covered
16 that.

17 CHAIRMAN OKUN: Okay. Then let's turn to
18 the other argument raised by respondents which you
19 touched on in the beginning, Mr. Schagrin, but I'm
20 going to go back to it, which is the issue of looking
21 at our data and what role the domestics have played in
22 importing the subject product.

23 And I think from my perspective what I want
24 you to go back to is, or what I want you to address is
25 just how do we evaluate the time period. Is it more

1 relevant to look at the most recent time period
2 because of the changes that took place in the domestic
3 industry with regard to importation of domestic
4 imports? I mean, it's that question.

5 It's looking at Table 4-2 in the staff
6 report and, you know, hearing what you're saying
7 about, you know, what your clients are importing, but
8 we have -- there have been a few cases and maybe you
9 can also for post-hearing just go back and look at wax
10 transfer ribbons for me and do an evaluation of how we
11 handled these type of imports.

12 Let me let you respond there.

13 MR. SCHAGRIN: In our post-hearing brief
14 we're going to look at all the past cases. You just
15 had D-RAMS from Korea in which you excluded Hinx USA.
16 I don't think there is a lot of application in that
17 case here. And we will discuss the wax ribbons case
18 as well -- all the cases.

19 But in terms of looking at the import data,
20 respondents' argument about self-injury by the
21 domestic industry applies to really just one alleged
22 member of the domestic industry, someone that you
23 excluded from the domestic industry in the prehearing,
24 and we believe strongly that you will exclude them
25 again in the final based on the normal criteria,

1 because the nature and character of their operations
2 just appear overwhelmingly to be more like an
3 importer's than a domestic producer's, and we also
4 think that it has negative overall impact on the view
5 of the industry data.

6 We think, given the extremely high margins
7 in this case, and the fact that the case was filed in
8 November, that the Commission can exercise its
9 discretion to focus on 2000 through 2002. There is no
10 question that first half 2003 data was impacted in a
11 very significant way by the filing of this case.

12 And so we think the Commission should focus
13 mostly on 2000 through 2002.

14 The only other comment is that the import
15 data in 4-2 would made it seem that in 2002 the
16 domestic industry was getting a break, a major break
17 from imports. But when you look at Table 4-3, which
18 gives you the U.S. shipments of imports from China,
19 U.S. shipments of imports from China barely declined
20 at all between 2001 and 2002. Their market share
21 increased significantly, and they have increased over
22 the year 2000.

23 The reason for that is clearly that much of
24 the imports in 2001 shows that imports by the end of
25 the year, and they really led to a tremendous jump in

1 inventories of Chinese imports at the end of 2001, and
2 those were obviously shipped in 2002, and continuing
3 into 2003.

4 CHAIRMAN OKUN: Okay. Well, I will, of
5 course, be looking at the post-hearing when you can go
6 into detail on other figures which I think will be
7 helpful to see that as well.

8 But just to follow up, I guess, the period
9 that best represents the current state of the
10 industry, I mean, I guess I want to understand your
11 legal perspective on that, and I apologize not going
12 to the industry on a number of these questions. But
13 in the context of -- what I hear you saying is if you
14 look at '03, you have this post-petition behavior of
15 someone in the market. But, you know, I mean, if I
16 look at the whole period, you had changes by -- the
17 changes Mr. Durstberger has testified to, where you've
18 had a change from an importing company to a producer
19 and you want us to evaluate that, that is the
20 condition of this industry and that would be a good
21 thing. I'm trying to figure out, we throw out '03 in
22 your mind, or we pay less attention to '03 in your
23 mind because -- it's not because of someone just
24 importing or not importing. I mean, it is different
25 than in a lot of cases where I think we could just

1 say, oh, yes, that's post-petition behavior, we can
2 give less weight to it.

3 MR. SCHAGRIN: Chairman Okun, I don't want
4 to be misunderstood. There is certainly a major
5 change in post-petition behavior on the part of
6 imports. That's because of the extremely high margins
7 here, 135 percent. We allege margins in that range in
8 our petition. But the injury by the imports already
9 in the market in '02 that continue to be sold in the
10 first half of '03, the pricing pressure they causes,
11 the volume pressure they caused, continued to
12 demonstrate injury to the domestic industry in the
13 interim period. And that is because of extremely high
14 inventories present in this case.

15 So there's really a difference in our focus
16 in terms of the commission can take into account the
17 effect of the filing of the petition. We think it's
18 most appropriate here to take that into account based
19 on what is in the record, what's been stated on the
20 record by various parties, as to how the filing of the
21 petition affected imports. Filing the petition didn't
22 have the same effect on the quote-unquote sales of
23 imports because of these high inventories and on the
24 injury caused to the industry in the interim period.

25 CHAIRMAN OKUN: Is your analysis the same

1 for both price effects as volume effects, looking at
2 that period?

3 MR. SCHAGRIN: Yes, it is. And the
4 different in volume effects is because of the start up
5 of CE, but there's still volume effects. If you look
6 at -- and maybe because of certain of the changes in
7 the industry this is not a bad time, I know you have
8 to look at the industry as a whole and you look at the
9 industry as a whole first -- if you look at the two
10 largest producers, Washington Mills and Treibacher,
11 they consistently lost volume over the entire POI, the
12 consistently saw poor profitability and declines in
13 profitability on the part of Treibacher over the POI
14 and lost positions on the part of Washington Mills.
15 And even CE performed worse after start up. Start up
16 you would think would be the worst time. They started
17 performing worse in terms of profit margins and
18 profits in the interim period as compared to the
19 previous period.

20 So look at the whole industry together, the
21 injury is clear; look at the main players separately
22 and the injury is also extremely clear.

23 CHAIRMAN OKUN: I appreciate those comments.

24 Let me turn to Vice Chairman Hillman.

25 VICE CHAIRMAN HILLMAN: Thank you. And I

1 apologize again to our industry witnesses.

2 Mr. Schagrin, if I could start with you for
3 two questions that I think are going to have to be
4 addressed in the post-hearing. given the degree of
5 confidential data involved, but the first is in
6 reading your brief it is not entirely clear to me
7 exactly what you're arguing with respect to Great
8 Lakes and the issue I want to know is do you think
9 they are in fact a domestic industry that should
10 nonetheless be excluded for the traditional criteria
11 that the commission looks at? Or are you arguing that
12 they are not in fact a domestic industry?

13 Again, if I look at all of the factors the
14 commission traditionally looks at, I'm not sure the
15 preliminary opinion actually specifically addressed
16 this issue and it's not entirely clear to me that your
17 pre-hearing brief comes down four square one way or
18 another on the threshold question of are they a
19 domestic industry?

20 MR. SCHAGRIN: Commissioner Hillman, I'm
21 going to answer the first part of that question
22 confidentially in our post-hearing brief. I think in
23 order to really give you a complete answer to that
24 question we have to utilize confidential information
25 as to whether or not Great Lakes should be considered

1 a domestic industry.

2 As to the second part, if we were to say
3 based on its confidential information that Great Lakes
4 is a domestic industry, it is completely clear from
5 this record and all of the precedents of this
6 commission that Great Lakes should not be considered a
7 part of the domestic industry when the commission
8 analyzes this industry because of their interest as an
9 importer, which is really what the commission normally
10 looks at is what's the significance of this company's
11 interest as an importer, how does it affect their
12 consideration as a member of the domestic industry?

13 On that basis, it's clear that Great Lakes
14 should not be considered a member of the domestic
15 industry as the commission analyzes the injury data.

16 And as to the first part of your question,
17 we'll answer it fully. We'll also answer the second
18 part more fully in our post-hearing brief, but the
19 first part we'll address completely just in our
20 post-hearing brief.

21 VICE CHAIRMAN HILLMAN: All right. I
22 appreciate that.

23 And then the second one, I think, clearly
24 has got to be addressed in the post-hearing brief
25 which is when I look at the financials that we're

1 looking at, there are obvious and clear distinctions,
2 differences, between the various companies and I would
3 like you to help us understand why there are those
4 differences. If the Chinese imports are, as we've
5 heard, spread across the various product segments and
6 affecting all of the market segments into which this
7 product is sold, why, then, are the financials as
8 different as they are among the U.S. producers?

9 MR. SCHAGRIN: We will do that and that will
10 also tie in to part of our answer to the first
11 question you asked about whether someone should be
12 part of the domestic industry, but I really think when
13 you realize that Treibacher and Washington Mills are
14 the two biggest players in this industry, I don't
15 think their financial trends are actually very
16 different. I think that -- and we'll explain this
17 confidentially in our post-hearing brief -- I really
18 think respondents using some pretty simple analysis
19 have tried to say, boy, I mean, everybody in the
20 industry is just showing such different trends. I
21 think we'll demonstrate to you that in terms of trends
22 in volume and profits and losses that actually the
23 experience of the two largest producers in the
24 industry have been very similar over the POI and we'll
25 explain that in our post-hearing brief.

1 VICE CHAIRMAN HILLMAN: I appreciate that.
2 I will look forward to seeing that.

3 If I can go back to the distributors and
4 follow up a little bit on the questions that Chairman
5 Okun started with in terms of prices, I just want to
6 make sure I understand the arguments compared to the
7 arguments that we're going to hear from the
8 respondents in terms of what's really driving prices.

9 Just so I make sure I understand it, all
10 three of the distributors here, as I understood your
11 testimony, you're buying not on a long-term contract
12 but on a spot basis in the market? I just want to
13 make sure I'm understanding that right. Is that
14 correct? For all three of you?

15 I see all three heads nodding.

16 I guess, then, and what we're going to hear,
17 obviously, is that there were other things also going
18 on in the market. I mean, I know a number of you have
19 touched on --

20 I think, Mr. Plonsker, you were very
21 specific about it, the decline in demand, that a lot
22 of the users of this product are moving their
23 production offshore and so there's simply been this
24 sort of fairly substantial long-term decline in demand
25 for the product.

1 You combine that with information that we
2 have on costs that would suggest that there may have
3 been, either as a result of purchasing through EOA or
4 others that there may have been some cost reductions
5 from the production side.

6 Why should I not think that that those were
7 not also driving the prices down? I mean, you've all
8 said prices went down over this period, but why
9 wouldn't this decline in demand and/or decline in
10 prices not be also driving prices down? I mean, why
11 are you so clearly attributing price to the Chinese
12 imports?

13 MR. KANE: I think I can explain that in
14 terms of the abrasive market in general. We sell
15 aluminum oxide silicon carbide steel shot, stainless
16 steel shot, zinc abrasives, I can go on down the list,
17 silica, slag, starches, plastics, every sort of
18 abrasive material that you can use in an abrasive
19 blasting operation is something that we sell. And
20 I've been in this business since 1980. We've all
21 suffered through downturns and recessions and the way
22 all of these businesses have worked that we've done
23 our best to raise prices if possible when the economy
24 was booming, which has been tough because a lot of
25 these businesses have been around a long, long time.

1 But the traditional posture of the abrasive industry
2 in general has been to try to hold the line during
3 these tough times and just basically hang on and keep
4 prices where they are. And that's basically what's
5 happened in the industry.

6 Certainly there's cases where there's remote
7 examples of a price being shot somewhere on a spot buy
8 or something, but in general, as an abrasive industry,
9 we've tried to hold the line because the industry does
10 not have the profit margins of a Merck or some
11 pharmaceutical company.

12 Now, these are mature industries, but during
13 this time, as in previous times, aluminum oxide has
14 held up in other recessions, the price of aluminum
15 oxide has held fairly well during other recessions.
16 This is the first time we've seen people selling
17 material in the market at our cost.

18 VICE CHAIRMAN HILLMAN: And would you
19 describe what has happened in the prices for the brown
20 aluminum oxide behaving differently from these other
21 abrasives?

22 MR. KANE: Yes, I would. In my experience,
23 that's correct.

24 VICE CHAIRMAN HILLMAN: Okay. Do others
25 that are distributors want to comment on that?

1 MR. PLONSKER: Well, I'd like to give you a
2 little bit of a perspective. You asked how do we know
3 what's driving the prices down and let me give you a
4 perspective from a distributor's point of view.

5 Let's suppose that there is a customer ABC
6 that is now receiving visits from various sales people
7 and somebody new wants to come in and offer a product.
8 They're obviously going to attempt to do that,
9 assuming that quality and delivery are equal, and I
10 think that's fair assumption, they're going to lower
11 the price. So some of the large users would now
12 receive lower prices.

13 Well, how is a distributor going to
14 basically offer that unless they had a cost for their
15 raw materials, their product, that was not less than
16 what they were currently paying?

17 And so the result is that people like
18 Washington Mills and Treibacher pretty much know what
19 the industry prices are so if some distributor is now
20 going to come in and offer a large user a
21 substantially lower price in order to achieve the
22 business, it's got to be coming from someplace other
23 than these people, the domestic producers, and that's
24 what happened.

25 People found that they could get prices that

1 were significantly lower from Chinese product and
2 that's what drove the product certainly into our
3 marketplace and it's really true if you look at
4 grinding wheel manufacturers or refracting people,
5 they found there was a way to get lower prices and
6 that was to in effect bring in imported grain.

7 Because if I went to Don McLeod and I said,
8 Don, I've got a problem, I need to have lower prices,
9 and he knew that I was either going to source from a
10 domestic manufacture or nobody, he knew what the
11 competition was offering, he would say, well, I'm
12 sorry, I can't lower my prices down there, we have to
13 maintain our margin. I would understand that. But
14 that totally changed when Chinese material became
15 readily available.

16 VICE CHAIRMAN HILLMAN: Now, Mr. McLeod, if
17 I then look at your long-term contract purchasers and
18 I've now heard on the spot side but from the
19 refractory and the coat, I guess it was, that you
20 described you typically purchase on an annual contract
21 basis, help me sort of look at the effect of imports
22 as opposed to reductions in demand or changes in cost
23 in terms of how they affect your annual contract.

24 MR. MCLEOD: Well, from the standpoint of
25 how it affects our cost, our cost to produce is

1 heavily controlled by volume. If we lose volume going
2 through our plants, it has an effect on our cost.
3 Sitting down with a large grinding wheel company, a
4 large sandpaper company, which is in the fall of the
5 year, we're talking to them right now about next
6 year's usage and agreement, we put all this into play
7 in terms of how are we going to quote that customer.

8 We understand who the competition is, we
9 understand what the effect is on our plants is if we
10 lose that volume, and then we make a decision, our
11 management team will make a decision, on whether or
12 not we want to meet a certain situation on price.

13 VICE CHAIRMAN HILLMAN: I see the red light
14 has come on. I may come back.

15 You look like you wanted to add something,
16 Mr. Durstberger, I'll come back on that.

17 Thank you.

18 CHAIRMAN OKUN: Commissioner Miller?

19 COMMISSIONER MILLER: Thank you, Madam
20 Chairman.

21 I'd like to just finish up a little bit on
22 the line of questioning that I was pursuing before,
23 making sure I understand some of these issues related
24 to the crude product.

25 I wanted, sort of, Mr. Williams for you,

1 when you were back there shoveling that crude ore out,
2 is there good crude and not so good crude, good crude
3 and bad crude, depending on the size? I mean, is
4 there any differentiation between the crude ore that
5 you use?

6 MR. WILLIAMS: We only make good crude ore,
7 of course, at Washington Mills. There's really no
8 difference.

9 COMMISSIONER MILLER: You mean in Canada.

10 MR. WILLIAMS: Correct. But there is --
11 Washington Mills Canada.

12 COMMISSIONER MILLER: Well, now, I'm going
13 to ask you, is your crude ore that you produce in
14 Canada better than the crude ore that comes from
15 China?

16 MR. WILLIAMS: I'd like to tell you that it
17 is, but the honest truth is it isn't. It's the same.
18 We can't tell --

19 COMMISSIONER MILLER: Well, if you wanted to
20 tell your customers -- I mean, does it make any
21 difference? What would make it good or bad, bigger,
22 smaller? You're telling me it really makes no
23 difference, I know --

24 MR. WILLIAMS: I hate to say this in front
25 of some of our distributor customers, but they know it

1 anyway, there is no difference between the Chinese
2 crude ore and ours. We use it interchangeably. And
3 we mix it in together.

4 COMMISSIONER MILLER: Okay. And does it
5 come in different sizes, even though it makes no
6 difference, does it come in different sizes?

7 MR. WILLIAMS: I suppose you could order it
8 in different sizes, but the standard crude ore that
9 the Chinese produce for the export markets that they
10 sell is exactly what we're selling.

11 COMMISSIONER MILLER: Okay. And when you
12 described it earlier, you talked about it being a grit
13 size, I think you said, of one inch or less.

14 MR. WILLIAMS: Yes.

15 COMMISSIONER MILLER: Okay. And that's what
16 we're going to see between the three-eighths inch and
17 the one-inch is what you all are calling crude. Your
18 discussion earlier about the sort of consistency of
19 the product -- I found Mr. Plonsker's description of
20 it, it's sort of like it's all different and what you
21 produce in the refined is a more uniform product. I
22 was just trying to understand whether it made any
23 difference if you started with something closer to the
24 one inch or something closer to the half inch?

25 MR. WILLIAMS: It would require slightly

1 more crushing if you started with a coarser crushed
2 crude than a finer crushed crude, but in essence it's
3 indistinguishable to the crushers.

4 COMMISSIONER MILLER: And is there anyone
5 that takes the one inch and turns it into a half inch
6 before then selling it to somebody else?

7 MR. WILLIAMS: Not that I know of.

8 COMMISSIONER MILLER: Either here or
9 elsewhere.

10 MR. WILLIAMS: Correct.

11 COMMISSIONER MILLER: And that would
12 essentially be a crushing kind of operation, it
13 wouldn't be an electric arc furnace operation?

14 MR. WILLIAMS: Yes. You're right. Do you
15 mean are there other crushers of crude ore in the
16 United States?

17 COMMISSIONER MILLER: Well, I'm asking sort
18 of generally.

19 MR. SCHAGRIN: Making the smaller sizes for
20 crude people to use.

21 MR. WILLIAMS: No. No.

22 MR. SCHAGRIN: What Mr. Williams was trying
23 to make clear in response to your question,
24 Commissioner Miller, is that there are not only to our
25 knowledge no crushers in the United States who would

1 crush crude into smaller size crude for refiners to
2 use, we're not even aware of it in other parts of the
3 world, but maybe Mr. Durstberger could add his
4 knowledge.

5 MR. DURSTBERGER: Yes. That's correct. The
6 only reason to crush crude would be to turn it into
7 refined grain. There is no reason to touch it twice.
8 The cost of it would be prohibitive.

9 COMMISSIONER MILLER: Okay.

10 MR. SCHAGRIN: I would add, Commissioner
11 Miller, only from the standpoint of poor Mr. Williams
12 having shoveled this, the only thing I can think of
13 having shoveled gravel is the one thing that makes the
14 difference is whether it's wet or not. I've just got
15 to imagine it's a lot heavier and not as good to have
16 your crude be wet versus dry. Other than that, I'm
17 sure there's no difference.

18 COMMISSIONER MILLER: Okay. All right.

19 And to make sure I understand our pricing
20 products as well, we have four different pricing
21 products, different grit sizes. From what I've been
22 hearing, my understanding and impression and is that
23 one to three millimeters is probably going exclusive
24 to the refractory?

25 MR. SCHAGRIN: Correct.

1 COMMISSIONER MILLER: The other three
2 products, the 80 to 60 and the 220, are they going to
3 just the bonding and coating or just industrial?

4 MR. SCHAGRIN: They go to both. All three
5 of those products would go to both bonded and coated
6 users as well as to distributors.

7 COMMISSIONER MILLER: Okay. But not likely
8 to a refractory?

9 MR. SCHAGRIN: But not to refractories.

10 COMMISSIONER MILLER: Okay. And then within
11 those products, is there any differentiation -- having
12 not looked at the raw data, but just our compilation
13 of the data, I mean, if you're talking about that
14 product that we have, for example, as the grit size
15 80, are there different -- if it's going to industrial
16 and the bonded and coated folks, is it a different
17 product going to them with different kinds of prices?
18 Are we seeing an average or are we seeing a pretty
19 uniform price there?

20 MR. SCHAGRIN: I understand it's the same,
21 it doesn't matter who it's going to, it's the same.

22 COMMISSIONER MILLER: It's a very uniform
23 product if it's grit 80?

24 MR. SCHAGRIN: Uniform product.

25 COMMISSIONER MILLER: Would any of the

1 producers or Mr. McLeod, perhaps, I mean, if you're
2 selling the grit 80 product to one guy versus the
3 other guy, is it all the same or are there some little
4 fine differences there?

5 MR. MCLEOD: Depending on the market that
6 you're selling to, whether it's bonded, coated or
7 industrial, there is a difference. There's a Table 2
8 specification and a Table 3. A Table 2 is a tighter
9 grading spec that normally is sold to the bonded
10 abrasive producers. The Table 3 is more industrial
11 driven, a little bit wider specification. There might
12 be some changes in the iron content because of the
13 application. But in all cases, it's application
14 driven and the size requirements, the chemistry
15 requirement, will be dictated by the application.

16 COMMISSIONER MILLER: So if you're within
17 the table, the same table you're again narrowing the
18 product range that you'd be looking at or the price
19 range for that product?

20 MR. MCLEOD: Correct. Yes. Yes.

21 COMMISSIONER MILLER: Okay. All right.

22 MR. SCHAGRIN: And, Commissioner Miller, our
23 pricing products do have the table --

24 COMMISSIONER MILLER: You included the
25 table. That's exactly why I asked.

1 MR. SCHAGRIN: -- because it's either Table
2 2 or Table 3.

3 COMMISSIONER MILLER: Right. Exactly.

4 MR. SCHAGRIN: One small comment, and this
5 applies across a lot of the data in the staff report,
6 and that is, for example, on page 5-4, the numbers are
7 confidential, but I would note that when you look at
8 this data and what it accounts for, here and in a lot
9 of the other parts of the staff report except for
10 Exhibit C-2, it included everybody in the domestic
11 industry. And, of course, that would have an effect
12 on your data, so I would suggest to the commission,
13 particularly given your preliminary determination to
14 exclude Great Lakes from the domestic industry, that
15 maybe you ask the staff to put together data
16 throughout the report that gives you data or
17 comparisons here inclusive or exclusive for the
18 industry, either inclusive or exclusive of them,
19 because it does make a difference in all these
20 percentages.

21 COMMISSIONER MILLER: Right. Well I
22 recognize alot of the data changes depending on the
23 decision that's made, the threshold decision of how to
24 handle Great Lakes.

25 All right. I only have one more question

1 and I just wanted to get a little bit of a
2 clarification and, Mr. Durstberger, I think this is
3 probably best addressed to you.

4 I know there was an E.U. order on aluminum
5 oxide. It covered both what we're calling crude and
6 refined, didn't it?

7 MR. DURSTBERGER: Yes, it did.

8 COMMISSIONER MILLER: Can you just tell me a
9 little bit about that order? I understand it has
10 expired.

11 MR. DURSTBERGER: It expired in May of this
12 year, 2003.

13 COMMISSIONER MILLER: Okay. And just --
14 could you tell us a little bit about the history of
15 what happened while that order was in place?

16 MR. DURSTBERGER: Well, what had happened in
17 Europe is Europe -- Peter was addressing crude
18 production, but in more general terms, aluminum oxide
19 production in Europe had shrunk from, I think,
20 approximately 15 producers down to three or four,
21 mostly due to pressure by Chinese imports likewise.

22 Ten years ago, the first antidumping duty
23 tariff was imposed in Europe to protect the European
24 industry. It is our belief that weak enforcement in
25 Europe has not had the desired effect, therefore,

1 during the last ten years, there was another
2 significant amount of production facilities that have
3 closed.

4 I think I have commented on it during the
5 last hearing that there was a lot of imports from
6 countries where it is very well known there is no
7 aluminum oxide production, South Africa, Vietnam,
8 places where Chinese grain was probably transported,
9 transshipped, repackaged and sent into Europe. And
10 the quantities were significant, I think 50 to 60,000
11 tons a year. So partially to that there was
12 resignation on the part of the remaining European
13 producers to keep this antidumping in force and the
14 European commission has let it expire.

15 COMMISSIONER MILLER: Okay. I know my red
16 light is on, can I just have one follow-up on that?

17 CHAIRMAN OKUN: Yes.

18 COMMISSIONER MILLER: The European
19 producers, I know earlier in response to one of my
20 questions there was a comment that they do produce
21 crude. Do the same producers in Europe produce the
22 crude and the refined? Is it a more integrated
23 industry?

24 MR. DURSTBERGER: Yes, it is, generally
25 speaking. It is sometimes broken down in different

1 plants. For example, one of Treibacher's plants in
2 Austria that specializes in crushing and grading is
3 supplied by a crude ore fusion plant in Slovenia where
4 electricity rates are more favorable. But, generally
5 speaking, they are more integrated, yes.

6 COMMISSIONER MILLER: Okay. All right.

7 Thank you. I appreciate all your answers
8 very much.

9 CHAIRMAN OKUN: Commissioner Koplan?

10 COMMISSIONER KOPLAN: Thank you, Madam
11 Chairman.

12 I do have just a couple of quick matters.

13 First, if I could just follow up on what
14 Commissioner Miller was talking to you about, the E.U.
15 antidumping matter, I know you did cover that in the
16 staff conference in response to a question from Mr.
17 McClure, but respondents weren't present when you
18 testified on this issue and I would just point out
19 that on page 23 of their pre-hearing brief, and this
20 is not BPI, they discuss this in their opening
21 paragraph on that page and put a somewhat different
22 spin on it.

23 And I would just ask for purposes of the
24 post-hearing if you would take a look at that again,
25 Mr. Schagrin, and see if there is anything else you

1 want to add to the response that Mr. Durstberger gave
2 both today and at the staff conference.

3 MR. SCHAGRIN: There is a lot we would like
4 to add, Commissioner Koplan. I would invite Mr.
5 Durstberger if he would like to add some things now
6 about allegations about --

7 COMMISSIONER KOPLAN: It's brief. I can put
8 the allegation on the record if you want to respond to
9 it now.

10 MR. SCHAGRIN: Okay.

11 COMMISSIONER KOPLAN: Let me just tell you
12 what the allegation is. They say Imerys, Treibacher
13 and C.E. Minerals, Plabrico web of affiliations is
14 headquartered in France. The E.U. imposed a dumping
15 order on BAO in 1997. In October 2002, however,
16 Treibacher, the major BAO producer in Europe,
17 consented to the termination of the dumping order.
18 Why would Treibacher allow the E.U. order to
19 terminate? One answer is that the Imerys group makes
20 production and sales decisions based on global
21 considerations, part of the effect of terminating the
22 E.U. order is that Plabrico once again would import
23 Chinese BAO and Plabrico has since begun shipping
24 finished refractories to the U.S. market.

25 That's the allegation.

1 MR. DURSTBERGER: First of all, it's
2 partially incorrect because the first antidumping
3 tariff in Europe was imposed, to the best of my
4 knowledge, in 1992, not 1997. Secondly, since
5 learning of this allegation yesterday, I have checked
6 with Plabrico Europe, who is a fully owned subsidiary
7 of the Imerys Group. They have informed me that they
8 just two major production plants, one is in Germany
9 and one is in the Netherlands. The one in Germany has
10 supplied exactly half a ton of material to the U.S. in
11 2002 and zero in 2003. The factory in the Netherlands
12 has supplied 20 tons in 2002 and 30 tons in 2003. As
13 a side remark, the product shipped from Holland did
14 not contained brown fused aluminum.

15 The history of Plabrico Europe is that it
16 does not sell into the United States or Canada. Why?
17 When the Plabrico Group was split up in three
18 different parts, Plabrico U.S.A., Plabrico Japan and
19 Plabrico Europe, Plabrico U.S.A. was completely
20 independent of the Imerys Group, they maintained their
21 trademarks here in the United States and has continued
22 to sell as Plabrico U.S.A. here in the U.S., so we do
23 not own any trademarks to sell our products in the
24 U.S.

25 In a mature market, like the one outlined by

1 the opponent, it would be commercial suicide to enter
2 a market with a no name product in a refractory
3 industry where your technology, your references, your
4 brand names ultimately mean success. So we not only
5 have not sold here, we also do not intend to sell in
6 the United States as Plabrico Europe.

7 COMMISSIONER KOPLAN: Thank you very much
8 for that.

9 I have just one other matter, and I
10 apologize for this, I'm going to come back to that
11 footnote 11 that I mentioned earlier that dealt with
12 the DLA sales having ceased. And in looking at the
13 exhibit that accompanies the brief, Exhibit 9 that's
14 cited in that footnote, I now see that the exhibit
15 does not comport with the allegation in the footnote.

16 In the footnote, there is a reference to
17 sales of fused aluminum oxide grain. In our
18 preliminary determination, what we were talking about,
19 as I excerpted from the prelim was crude aluminum
20 oxide, okay? When you go to that exhibit, and this is
21 a public exhibit, the source of the exhibit is the
22 U.S. Geological Survey, headed "Abrasives Manufactured
23 Annual and Quarterly Reports," the header on the
24 exhibit is "NDS Disposals of Crude and Refined
25 Aluminum Oxide." And when you look at that, what you

1 see is that crude aluminum oxide inventories
2 disappeared in 2000 and there were no inventories in
3 2001, 2002 of crude aluminum oxide or in the first six
4 months of January to June of 2003. So the finding
5 that we made with regard to that in our prelim,
6 according to this exhibit, would still be accurate
7 today. And I'm sorry that I missed that when I went
8 through it.

9 MR. SCHAGRIN: That's okay, Commissioner
10 Koplan, because I hope that I told you that the
11 commission's preliminary determination was completely
12 correct.

13 COMMISSIONER KOPLAN: Well, I thought you
14 would have said that anyway, Mr. Schagrin.

15 MR. SCHAGRIN: No, no, no. Oh, no. You
16 know me better than that. If you made a mistake, I'd
17 be the first one to point it out. When I make a
18 mistake, I think I'm the first one to point it out.
19 But I think as Mr. Williams testified and I think we
20 put this in our pre-hearing brief, if not we'll put it
21 in our post-hearing brief, while DLA sold all their
22 inventory by the end of 2000, the terms, which is one
23 of the reasons the prices were lower, were pretty
24 favorable compared to other purchasers, the purchasers
25 had 18 months to pick it up and pay for it. So what

1 Washington Mills purchased in 1999 and 2000, they were
2 allowed to pick up in 2001 and they used a lot in 2001
3 and 2002.

4 And I think you'll also notice, Commissioner
5 Koplán, look at how little on the refined, look at how
6 little the changes are between 2000 and the first half
7 of 2003 and between 2001 and 2002, the reduction -- I
8 mean, the disposals are in the hundred ton range.
9 What impact is that having in a market of 100,000
10 tons? It's obviously the Chinese, not the DLA sales,
11 that are causing the problems here.

12 Thank you.

13 COMMISSIONER KOPLAN: Thank you.

14 And with that, I have nothing further.

15 Thank you, Madam Chairman.

16 CHAIRMAN OKUN: Thank you.

17 Commissioner Lane?

18 COMMISSIONER LANE: No questions.

19 CHAIRMAN OKUN: Now, Mr. Schagrin, I have to
20 go back. I thought I had understood the earlier
21 answer on DLA and what was in this chart and about the
22 refined versus the crude, but when you were talking
23 about how we would consider that in terms of -- I
24 don't know if you were talking about threat context or
25 not, saying that the presence of this DLA stockpile on

1 the refined side was also something we should be
2 looking at, did I hear you incorrectly the last time?

3 MR. SCHAGRIN: No, you heard me correctly
4 and you analyzed this correctly in your preliminary
5 determination. As you can see, the DLA sold in 1998,
6 1999 and 2000 an average of 50,000 tons a year of
7 crude. That's about the average over that three-year
8 period. The DLA notwithstanding a law that says that
9 the DLA is supposed to get market prices, the fact is
10 that DLA sold that crude at prices less than the
11 availability of crude from Canada, less than the
12 availability of Chinese crude. It was significantly
13 low priced product.

14 It's the contention of the domestic industry
15 that without the ability to get what was almost a
16 one-time windfall from the federal government really
17 over a four, four and a half year period, getting low
18 cost input product, that the injury to the domestic
19 industry would have looked that much worse earlier on
20 because of the Chinese imports, which were already
21 high back in 1999 and 2000, were already underselling
22 the U.S. industry and that the industry would have
23 already seen significant closures of plants and even
24 producers going out of business.

25 Now that the DLA crude is over, we are just

1 at the mercy of the Chinese.

2 The respondents argue, oh, the answer here
3 is just buy Chinese crude. Treibacher only buys
4 Chinese crude. They've gone from profits to losses.
5 There is not a spread between the pricing of Chinese
6 crude and Chinese grain that would allow the U.S.
7 industry to stay in business. The answer for the
8 domestic industry is if they just buy Chinese crude
9 and don't get dumping relief they're going to be put
10 out of business by dumped China grain sales.

11 CHAIRMAN OKUN: Okay. I understood that
12 argument with regard to whether there was a spread.
13 With regard to the DLA refined product, were you
14 arguing anything about that now?

15 MR. SCHAGRIN: No, our only arguments were
16 that there are some inventories out there, it may be
17 something in threat when you look at the fact that
18 there's also Chinese inventories, there are also
19 government inventories that are out there that may
20 have an effect on the marketplace. They really
21 haven't had an effect over the last few years because
22 if you look at the DLA disposal prices, they're in the
23 \$450 range for 2000 through 2002, their sales are
24 minuscule, distributors have told me and I think
25 they've testified to it today or else they can put

1 that testimony on the record that distributors
2 wouldn't buy DLA refined nor would members of the
3 domestic industry in any quantity other than to fill
4 in here, I think Washington Mills itself bought 30 or
5 40 tons in the last year or so, maybe 100 tons, but
6 that the prices that DLA wants are higher than Chinese
7 prices and that's why DLA is unable to sell its
8 refined out of its stockpile.

9 COMMISSIONER KOPLAN: Okay. I had only gone
10 back to that both just hearing the response but also
11 when Mr. Williams was responding to Commissioner
12 Miller about kind of this historical -- how he looked
13 at the DLA.

14 My impression of your testimony, Mr.
15 Williams, was you were fearful of the DLA purchasing
16 the refined product as well because it would impact
17 U.S. producers' markets, I guess, when they put it in
18 the market because they would be able to sell at a
19 lower price.

20 That was the impression I got for why you
21 were saying we didn't necessarily think this was such
22 a good thing and that's why I was curious as to if
23 there was anything further you wanted to say on that.

24 MR. WILLIAMS: It is a fact that the DLA has
25 sold some of the refined grain at lower prices than we

1 would like to see in the marketplace, but this is
2 inescapable because the material that the DLA is
3 offering is packed in 800 to 1000 pound drums. This
4 is not a standard pack at all. The drums themselves
5 are old, 1950s drums. They are galvanized drums. The
6 disposal of those drums is very difficult due to the
7 toxic qualities of the galvanized coating, so there's
8 a lot of downside to the DLA grain sales by virtue of
9 the material itself. But the DLA prices are the
10 largest downside because their prices are way above
11 what the Chinese selling prices for refined brown
12 grain are presently. We can buy Chinese grain much
13 cheaper than we can buy DLA.

14 CHAIRMAN OKUN: Okay. I understand that now
15 in that context.

16 I believe two of my post-hearing questions
17 Vice Chairman Hillman covered regarding the financials
18 and also addressing the related party issue directly
19 and I've heard you, Mr. Schagrin, say that you would
20 do that as well as in the context of what that means
21 for our data, with whatever decision is reached with
22 regard to Great Lakes.

23 The other post-hearing question I would have
24 is that in terms of critical circumstances, I have
25 normally looked at the import volumes during intervals

1 of three to six months preceding and following the
2 petition and the inventories over the same timeframes
3 where we have that information available and if you
4 can make sure that you address that to the best of
5 your ability to the extent you are arguing a different
6 period, to justify that as well.

7 MR. SCHAGRIN: Chairman Okun?

8 CHAIRMAN OKUN: Yes?

9 MR. SCHAGRIN: We'll address that. I'm not
10 really sure that according to the way the data has
11 been gathered -- and we're fairly hesitant -- it's
12 maybe the one thing we agree upon with respondents,
13 we're a little hesitant to rely on data from all the
14 Customs statistics, but I think we can take a shot at
15 looking at both three month and six month. I'm not
16 sure you have the data completely set out that way in
17 terms of the staff report, in terms of both three
18 months and six months prior to and after the filing of
19 the petition, but we'll do our best to address that in
20 the post-hearing brief.

21 CHAIRMAN OKUN: Right. And if it's a data
22 limitation, just to describe in the detail necessary
23 so that it's clear what those limitations are.

24 MR. SCHAGRIN: We will do so.

25 CHAIRMAN OKUN: I think with that I have no

1 further questions.

2 Let me turn to Vice Chairman Hillman.

3 VICE CHAIRMAN HILLMAN: Thank you.

4 I wanted, I guess, to come back to the
5 question that I had asked earlier and give Mr.
6 Durstberger a chance to respond. I'm trying to
7 understand, for those purchasers that are purchasing
8 on an annual contract basis, which presumably would be
9 your purchasers, Mr. Durstberger, this issue of the
10 relative relationship between Chinese product in the
11 market as opposed to cost reductions or demand
12 reductions and their implications for prices.

13 MR. DURSTBERGER: Yes, I did want to make a
14 comment to that. Firstly, although Mr. Plonsker
15 mentioned that demand has seemingly decreased due to
16 production moving offshore, et cetera, I think that
17 I'm in a position to see the differences in what I
18 would consider structural demand change and a change
19 in demand for our refined brown aluminum oxide due to
20 competition from China, due to the fact that we also
21 sell products that do not directly compete with
22 Chinese products to the same industry, mostly the
23 abrasive industry. And whereas I do concur that there
24 is a slight decrease in demand, and when I say slight,
25 I mean in the range of 2 to probably 5 percent,

1 depending on people's point of view, and this change
2 in demand might be made up by technological change
3 where less grinding, less abrasives are necessary
4 every year. This, however, is an organic decrease
5 that we producers have had for a hundred years.

6 The way we react to it is that when less
7 abrasives is used, it generally tends to turn into a
8 trend where finer sizes are required, meaning that
9 probably on a tonnage basis the consumption, the
10 demand, decreases; on the dollar basis, not
11 necessarily so because those products sell for higher
12 prices, as I think Mr. Williams and Mr. Plonsker
13 pointed out.

14 So on an overall basis, being a global
15 producer with 13 facilities around the world, I agree
16 that demand is probably flat to slightly decreasing,
17 not necessarily dollarwise but tonnage based.

18 These organic changes are nothing compared
19 to the onslaught that currently is happening here in
20 the United States where your selling prices are
21 undercut by 50 percent. That's not a 3 to 5 percent
22 in structural demand or some production moving
23 offshore or a tendency to different production
24 technologies that affect demand slightly negatively.
25 That's a situation where from one day to the other you

1 will not lose 3 percent of your sales to certain a
2 abrasives customer, you will lose 100 percent because
3 they start to buy offshore due to pricing reasons.

4 So although there is granted demand decrease
5 on a worldwide basis in the U.S. due to technical
6 changes and production shifts to low-cost countries,
7 the scale is absolutely not comparable. You're
8 comparing a 2 to 5 percent maybe to a much, much more
9 severe impact of these lower prices.

10 VICE CHAIRMAN HILLMAN: Okay. Then just a
11 last little follow-up on this cost issue. I mean,
12 obviously, we've got the data on these DLA sales, and,
13 Mr. Schagrin, you just pointed out that the prices on
14 them were lower than anybody's crude in the market.

15 Mr. McLeod, to you or to Mr. Durstberger, I
16 mean, are your -- again, your contract purchasers, the
17 ones that are out there for these big volumes on an
18 annual contract basis, are they following at all your
19 costs? Would your purchasers be aware that you've
20 gotten this big windfall from the government and, gee,
21 why shouldn't they get some of it? I mean, is there
22 pressure for lower prices in order to pass along, if
23 you will, this windfall that you've gotten in the form
24 of lower prices to that set of customers?

25 MR. MCLEOD: There is constant pressure

1 offering a lower price to the end user. We don't go
2 through a day without a negotiation of some sort with
3 our customers based around the cost issue. And it's
4 always about the economy, it's about my business, it's
5 about my customers and what I'm up against as a
6 competitor, so it goes hand in hand.

7 In terms of the windfall, I believe it is a
8 public record that if someone wants to know if we
9 bought DLA crude, it's out there. I don't think I've
10 had anyone come back to me and say you just had this
11 wonderful windfall so therefore I want you to pass it
12 along to us. I can't say that I've been asked that
13 question.

14 VICE CHAIRMAN HILLMAN: Okay. Like I said,
15 I mean, obviously, we're going to hear a lot about
16 whether and how to factor in these cost reductions in
17 terms of looking at why did prices go down.

18 Mr. Durstberger, did any of your customers
19 come and say, well, gee, since you're getting such a
20 great deal on crude, we want a better deal on our
21 finished product?

22 MR. DURSTBERGER: No. At the point where
23 the DLA crude became an issue, the refractory industry
24 was firmly in Chinese hands and the abrasives industry
25 did at this point not concern themselves to my opinion

1 with our cost position on DLA crude.

2 VICE CHAIRMAN HILLMAN: And then my last
3 question, Mr. Schagrin, in your opening comments, you
4 pointed to the table that looks at what purchasers
5 look at when they're buying this product and you've
6 obviously pointed out that the one cited most often
7 was lower price. But I was struck a little bit by the
8 other factors that purchasers tend to place a lot of
9 emphasis on, two in particular, of availability and
10 reliability of supply.

11 Now, we see purchasers say that those are
12 very important factors, usually in cases where there's
13 been a shortage in the market or difficulties with
14 accessing supply. I haven't heard any of that this
15 morning, so I'm just curious, from either the
16 distributor's perspective or the producer's
17 perspective, why is that? Why are purchasers saying
18 that next to price, key things for them are
19 reliability of supply and availability? Have there
20 been supply problems out there that purchasers are
21 reacting to in ranking those as very important factors
22 in their purchasing decisions?

23 MR. WILLIAMS: In my experience, no. A
24 purchaser will always tell us that they want a
25 reliable supplier because abrasive grain is a

1 repetitive commodity that is used consistently. And
2 so it is a normal and predictable response and desire
3 on the part of the purchaser to have a reliable and
4 secure source of supply.

5 But at the end of the day, despite that
6 ringing statement, most of our customers want us also
7 to meet the lowest price and the lowest price,
8 unfortunately today, is Chinese. Fifteen years ago,
9 they weren't so reliable. Today, by virtue of the
10 fact that they have large inventories in this country,
11 they are very reliable suppliers.

12 VICE CHAIRMAN HILLMAN: How about any of the
13 distributors? Would you comment? I mean, again, does
14 it strike you as odd that purchasers would say that
15 next to price the other absolutely key factors, more
16 important than lots of other things, would be
17 availability and reliability of supply?

18 MR. PLONSKER: I can't think of a better way
19 for a purchasing agent of a large company to get fired
20 than to not have product available and shut the plant
21 done. If he pays a few more cents a pound, it's not
22 going to be quite so crucial, but if he shuts the
23 plant down because he's made a bad choice on who he's
24 buying his product from in terms of reliability, he's
25 in big trouble.

1 But given that, the basic assumption of most
2 people is that if they're dealing with a reliable
3 supplier, such as ourselves as distributors or one of
4 the domestic manufacturers, availability is
5 essentially a given. I mean, they have established
6 their records over the years as being a reliable,
7 trustworthy supplier, so it's the basic given.

8 So if that's a given, what's the really
9 differentiating factor? And it's price.

10 VICE CHAIRMAN HILLMAN: Okay. But I'm not
11 hearing from anybody that there has been in fact
12 supply problems out there in the market.

13 MR. PLONSKER: Correct.

14 MR. KANE: No, there have not been supply
15 problems at all.

16 MR. SCHAGRIN: Not to any of our knowledge
17 over the POI.

18 MR. BLECKER: If I might just add to that,
19 although the purchasers state that those factors are
20 extremely important to them, they also in the vast
21 majority do not see that as a difference between the
22 U.S. and Chinese supply. Take a look at Table 2-3,
23 U.S. and China are regarded as comparable by the vast
24 majority on both availability and reliability of
25 supply.

1 VICE CHAIRMAN HILLMAN: I appreciate that.

2 And with that, I have no further questions,
3 but I thank you all very much for your answers.

4 CHAIRMAN OKUN: Seeing no further questions
5 from my colleagues, let me turn to staff to see if
6 staff has questions for this panel.

7 MR. MCCLURE: Jim McClure, Office of
8 Investigations. The staff has no questions.

9 CHAIRMAN OKUN: Let me ask counsel for
10 respondents, do respondents have questions of this
11 panel?

12 MR. O'BRIEN: Thank you, Madam Chairman. We
13 have no questions.

14 CHAIRMAN OKUN: Thank you.

15 Before we take a lunch break, two things.
16 One is, Mr. Schagrín, if you can make sure that the
17 samples that may be up here still are available for
18 respondents to review, although I would note that the
19 big bag of the crude stuff is going to break, so
20 someone needs to get something on it so that it's not
21 in Madam Secretary's courtroom floor for after the
22 hearing, which I know she'll appreciate.

23 And then, second, to remind all parties that
24 the room is not secure during the lunch break,
25 therefore, take any information that's business

1 confidential with you as you go.

2 And the final thing, which is I want to
3 thank all the witnesses once again for their
4 testimony, for their willingness to answer our many
5 questions today. We very much appreciate your
6 participation and the additional information you will
7 provide in post-hearing.

8 With that, we will take a lunch break until
9 1:30. The hearing is adjourned.

10 (Whereupon, at 12:28 p.m., the proceedings n
11 the above-captioned matter were adjourned until 1:30
12 p.m.)

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1 President with Cometals, Inc.

2 Immediately behind Mr. Gates is Mr. Liu
3 Jianwei, the Deputy Director of Legal Services of the
4 China Chamber of Commerce of Metals, Minerals and
5 Chemicals.

6 Next to Mr. Liu is Mr. Douglas Doza, Senior
7 Vice President, Manufacturing and Research, for Allied
8 Mineral.

9 On Mr. Doza's immediate left is MR. John
10 Redshaw, Sales and Marketing Director for Dauber, Inc.

11 Before the company witnesses begin, I'd just
12 like to make a couple of points. One of the exhibits
13 that was not discussed today was Exhibit 3 in our
14 brief, which shows a very dramatic decline in
15 shipments of crude product from Canada.

16 Now, you can pull from the tariff schedules
17 and we'll certainly supply it a corresponding chart
18 showing crude products from China during the same
19 period and you will see that the source of crude brown
20 fused alumina has increased sharply from China,
21 decreased sharply from Canada.

22 Now, the position of the domestic industry,
23 as we understand it so far, is that that didn't
24 matter, that you can have a Canadian crude plant which
25 has reduced its exports dramatically and that has no

1 effect on the financials at all. That just simply
2 does not hold water.

3 Now, as of yesterday, we received yet
4 another set of financials from the domestic industry
5 and while we are a little bit regretful that it's so
6 late, we are happy that the staff is continuing to try
7 to get to the bottom of this issue. There is quite a
8 lot going on with the domestic industry in terms of
9 related companies and the move of product from Canada
10 to China.

11 One of the interesting things that came out
12 this morning was the discussion of the domestic like
13 product and, as I understand it, petitioners' position
14 was that their hands were tied, that Customs couldn't
15 enforce a scope definition that they would like, so
16 they came up with one and they did the best they
17 could.

18 Well, the one they happened to pick had an
19 absolutely dramatic effect on the data that's in front
20 of the commission and a small change one way or the
21 other would dramatically change the data and I think
22 all parties agree that it would affect virtually every
23 aspect of this case if the definition were changed
24 even slightly.

25 Now, on that point, it is interesting, of

1 course, as Exhibit 7-C in our brief we included a
2 product line offering by Washington Mills in which
3 they promote their refined products for domestic
4 consumption. But they chose not to include that
5 particular definition of refined product, even though
6 they market and sell it. Instead, they took a
7 truncated version which happened to have a dramatic
8 effect on all the data in front of the commission.

9 Now, the scope definition, of course, is a
10 Commerce Department matter, we're not challenging
11 that, but, by the same token, the commission has broad
12 discretion and authority over the domestic like
13 product definition and I am certainly pleased that the
14 commission is giving it serious consideration because
15 I do believe it should be changed.

16 Two final points. One is I was happy to
17 hear all the questions about quality today. We have a
18 lot to say about quality. I think fairly stated, when
19 quality matters, quality really matters, so if you're
20 looking at this industry as to what happened on
21 particular customers, and we are certainly prepared to
22 answer those questions, when quality counts, you
23 either have the quality or you do not do business with
24 that company period. And for reasons we'll explain.

25 Finally, this morning, I stopped keeping

1 count of the times I heard references to the Chinese
2 suppliers. As I mentioned in my opening statement,
3 that is a very, very broad statement and, given the
4 profile of this particular domestic industry, it is
5 extremely unhelpful to refer merely to Chinese
6 suppliers. As is noted and as admitted, all of the
7 U.S. producers import both the crude product and the
8 refined product from China. Without more specificity,
9 a mere reference to Chinese suppliers is of very
10 marginal use.

11 With that, I'd like to turn to the first
12 company witness, Tom Gibson of Allied Mineral.

13 MR. GIBSON: Good afternoon, Madam Chairman,
14 commissioners. My name is Thomas E. Gibson. I'm Vice
15 President of Corporate Development for Allied Mineral
16 Products of Columbus, Ohio. My responsibilities
17 include business planning, start up of new ventures
18 and raw material sourcing. I also have direct
19 responsibility for Allied's affiliated companies in
20 China and South Africa, which are manufacturing and
21 marketing organizations for Allied's products which
22 are monolithic refractories.

23 Our major markets are foundries and steel
24 mills. Allied exports 25 percent of what we make in
25 Columbus, Ohio worldwide into over 50 countries. We

1 have won two presidential awards for excellence in
2 export. We are an employee-owned company. We have
3 over 300 employees worldwide with 235 in the United
4 States and 200 in Ohio. Those owner-employees are
5 very concerned about preserving U.S. manufacturing
6 employment.

7 One reason is that both BFA and refractories
8 are global businesses. For example, next month,
9 Allied will begin production of its refractory
10 products at a new plant in Brownsville, Texas. Allied
11 has a dominant share of the induction furnace
12 refractory market in Mexico. To protect that
13 position, we considered opening a plant in Mexico.
14 However, we determined that a better strategy would be
15 to build and operate a plant in Brownsville where we
16 have just invested over \$2 million.

17 The reasons for that decision were (1)
18 favorable transportation costs into the major markets
19 in Mexico, (2) excellent port facilities, and (3) we
20 could combine shipments of major raw materials,
21 including BFA, bauxite, silicon carbide, and magnesium
22 oxide, from Tenchen, China into Brownsville, produce
23 our refractory products and then ship those into
24 Mexico under NAFTA.

25 Combining raw materials for shipment

1 produces economies in transportation and
2 administration. This points out the global planning
3 that must go into this industry.

4 Through the 1990s, Allied processed BFA
5 through a joint venture company, North American
6 Processing Company, or NAPCO, so we can also bring the
7 perspective of a former U.S. producer to this case.

8 In the late 1980s, I managed the startup of
9 NAPCO in Newell, West Virginia, which was a 50/50
10 joint venture between Frankenshulte, a minerals
11 trading company, and Allied. NAPCO's mission was to
12 crush, screen, package and market refractory minerals,
13 including brown fused alumina, which is RBAO, by the
14 way. I hope I can use the term brown fused alumina,
15 which I'm more familiar with, but it's the same
16 product.

17 Logistics is a major factor in almost all
18 industrial minerals operations. For that reason, we
19 located NAPCO on the Ohio River between Parkersburg,
20 West Virginia and Pittsburgh, Pennsylvania. This
21 decision was based on a detailed study of the location
22 of the U.S. refractories market, NAPCO's target
23 market, and the total cost of importing crude raw
24 materials from China and elsewhere, including bauxite
25 and magnesium, and delivering the processed product to

1 major refractory producers.

2 NAPCO processed aluminum-based products,
3 including BFA and bauxite, and magnesium-based
4 products, which were dead burned MGO.

5 In 1995, I began traveling to China on a
6 quarterly basis to do the ground work for the startup
7 of a refractory plant in China to serve the China
8 market and other Asian markets and to develop raw
9 material suppliers for that operation as well as for
10 our operations in the U.S., Italy and South Africa.

11 From 1989 through 1998, Allied purchased the
12 majority of its BFA requirements from NAPCO, which
13 sourced crude BFA from China and crushed and sized it
14 for Allied and other refractory industry customers.
15 Realizing that we were having significant quality
16 problems with the BFA from NAPCO, which Mr. Doza will
17 describe in a few minutes, and that we were paying two
18 and sometimes three middlemen in the process, it was
19 my belief that the best and most efficient way to
20 purchase BFA for all of Allied's global companies was
21 from an integrated producer, either in China or
22 elsewhere. I've seen nothing in the subsequent years
23 that would change that opinion.

24 We've always said in China you don't find
25 suppliers, you develop them. That was certainly true

1 in the 1990s and it's still very much true today.
2 There is a wide variation in the quality and service
3 capabilities of Chinese crude and refined BFA
4 producers.

5 Our efforts from 1995 through 1998 and
6 continuing until today were to develop suppliers of
7 BFA and other refractory minerals for Allied's global
8 companies. The motivating factors were and are to
9 improve quality, no contamination, consistent
10 properties and traceability to a producer, and to
11 eliminate the middlemen.

12 The major cost to producing BFA is refining
13 bauxite in fusion furnaces. Modern integrated plants
14 in China then cool and crush the ingot, separate
15 impurities and process the crushed ingot through a
16 series of additional crushers and screens to make
17 refractory split grain sizes, which are then packaged
18 directly into super sacks or big backs or small bags.

19 This integrated process is inherently more
20 efficient than interrupting the process at some point
21 and shipping the intermediate product to a distant
22 processing plant.

23 After assuring ourselves that we had two
24 high quality sources for BFA in China, in November
25 1999, we sold the NAPCO plant to C.E. Minerals. To

1 the best of my knowledge, that operation has been a
2 success for C.E., who now processes Chinese bauxite,
3 South American bauxite, and Chinese BFA at the plant.

4 One major reason for that plant's success is
5 its location. I believe that C.E. has at least a 5
6 percent of selling price transportation cost advantage
7 at Newell versus Niagara Falls and Tanawanda, New York
8 and a much larger transportation cost advantage versus
9 North Grafton, Massachusetts to the major refractory
10 consumers who are in Ohio and Illinois.

11 In March of 2000, Great Lakes Industries
12 began processing what we and they regard as crude BFA
13 at Wurtland, Kentucky. I visited the Great Lakes
14 plant and, based on my experience, I believe it to be
15 one of the most advanced processing facilities in the
16 world for making refined brown fused alumina.

17 In spite of what Mr. Durstberger says, we
18 have purchased BFA from both C.E. and Great Lakes in
19 recent years. I note this for two reasons. First,
20 our purchases from domestic suppliers other than NAPCO
21 have not declined since we shut down NAPCO in 1999 and
22 began sourcing mostly from China. We source roughly
23 the same volume domestically today as we did before
24 the move. The only change is that we replaced our
25 captive production with Chinese product.

1 Second, we have purchased more in recent
2 years from one domestic supplier than any other. For
3 confidentiality reasons, I will refer to that supplier
4 as supplier X.

5 We purchased more in recent years from
6 supplier X primarily because supplier X was the only
7 domestic supplier that provided traceability to an
8 Allied approved source in China.

9 Until this year, we believe all of the crude
10 that supplier X brought into the U.S. came from one of
11 two Allied approved sources.

12 We are currently ordering BFA from supplier
13 X with the instructions that they source the product
14 from a specified crude supplier.

15 Another domestic supplier, supplier Y, has
16 just agreed after years of refusing to do so to
17 identify their source of crude. We believe often they
18 didn't really know where their crude came from, that
19 they were buying from an intermediary. We hope to
20 approve that source and are now beginning to work with
21 supplier Y.

22 In both cases, we have to pay more for the
23 refined BFA made from crude from an approved supplier.
24 This has everything to do with traceability and
25 quality and nothing to do with price.

1 Next, I would like to comment on how the
2 global reach of some of the U.S. producers affects
3 this case. Enclosed in my declaration is an
4 advertisement appearing in a U.S. publication called
5 "Refractory Applications and Use." This publication
6 has a distribution of 3400 copies in the U.S. and only
7 110 copies internationally. The ad was for monolithic
8 refractories in competition to Allied and it was
9 sponsored by Plabrico International of the
10 Netherlands, a subsidiary of Imerys. Imerys, as you
11 know, is also the parent of Treibacher and C.E.
12 Minerals.

13 In addition, in 2002, Treibacher allowed the
14 E.U. Chinese BFA antidumping order to expire by
15 announcing it would not oppose such expiration. This
16 was a duty that Treibacher had petitioned for earlier,
17 I believed it 1997, perhaps it was 1992, but it was
18 prior to the company's acquisition by Imerys in 2000.

19 Now, Treibacher is petitioning for a duty on
20 Chinese refined BFA into the United States, a type of
21 duty that its sister company in the Netherlands no
22 longer has to pay due to Treibacher's decision to let
23 that duty expire. And now that sister company is
24 advertising in the monolithic refractories.

25 Now, you can understand, I think, why our

1 management is a bit concerned about this and I was
2 glad to hear Mr. Durstberger say it shouldn't be such
3 a major concern, but he admitted that they're bringing
4 product in and I really don't feel any more
5 comfortable today than I did prior to hearing his
6 testimony.

7 Treibacher also produces BFA in a fusion
8 plant in China. C.E. Minerals, another Imerys
9 company, has refractory mixing plants in
10 Andersonville, Georgia and Zhanjiang, China, where it
11 toll manufactures refractories for U.S. and European
12 companies.

13 Imerys has every right to structure its
14 global operations as it sees fit, but please
15 appreciate that the Imerys companies are first
16 producing crude and refined BFA in China, they're
17 importing crude and refined BFA into the U.S., they're
18 advertising European monolithic refractories in a U.S.
19 publication, they're producing refractory product in
20 China and the U.S. on a tolling basis. Competitive
21 pressures are applied by the Imerys companies at every
22 step of the process.

23 To me, it seems basically unfair for the
24 Imerys companies to try to carve out one process step
25 for protection when doing so would help other Imerys

1 companies compete in other steps of the value chain.

2 Next, I would like to briefly address the
3 problems with the definition of the covered product.

4 Let me cite some examples. First, the plaintiffs
5 offer and Allied consumes BFA that the petition
6 defines as crude but in reality it's refined.
7 Washington Mills offers a product defined as
8 three-quarters by three-eighths. That means that a
9 minimum of 80 to 90 percent of the grains will be
10 bigger than three-eighths inch or smaller than
11 three-quarters inch in size.

12 A Treibacher brochure states that its
13 refined BFA is supplied in sizes from microns to a few
14 centimeters. BFA of a few centimeters is definitely
15 larger than three-eighths inch. Allied has an
16 internal spec for a product that is one and a quarter
17 inch by one inch. All three products are refined.
18 They underwent crushing, sizing, screening to meet
19 ours and the petitioners' strict grain size
20 distribution specifications. By the arbitrary
21 definitions as proposed in this petition, these
22 refined products would be classified as crude.

23 In addition, Allied uses a BFA product
24 defined as one-half inch by one-quarter inch. Our
25 specification specifies 40 percent to 55 percent on a

1 three-eighths inch screen. Under the definition of
2 this petition, this refined BFA would sometimes be
3 classified as refined and sometimes as crude,
4 depending on the exact measurements on the
5 three-eighths inch screen.

6 I have two samples of this product here, one
7 of which would not be subject to the antidumping order
8 if it came down and one of which would, but you cannot
9 look at these products and tell a difference and we
10 see no difference in the products. We would use these
11 products interchangeably in our formulation.

12 I suppose this begs the question how would
13 Allied define crude versus refined BFA? Our
14 definition -- and these are definitions that we
15 strongly believe would receive the endorsement of the
16 majority of abrasives, industrial minerals and
17 refractory companies, are that refined BFA is a
18 product that is ready for use by the industrial
19 customer. Crude BFA is a product that requires
20 further processing before the industrial customer can
21 use it.

22 The petitioners' definition is arbitrary and
23 does not take into consideration the reality of the
24 BFA refractory products or the variety of sizes of
25 crude that have been shipped into the commercial

1 market.

2 Just if I could break my testimony, I've
3 seen crude and I agree that one-inch by down is a very
4 common definition of crude, but I've also seen crude
5 that was 30 millimeter or about one and a quarter inch
6 by down, 20 millimeter, which is about three-quarters
7 of an inch by down, and even 10 millimeter or 9
8 millimeter by down, which is three-eighths of an inch
9 by down. So that goes very much to the issue of how
10 you definite crude.

11 Finally, regarding the industry outlook, the
12 U.S. refractories industry underwent a major
13 consolidation and downsizing in the late 1990s and
14 early 2000s. Shipments from U.S. refractory producers
15 dropped from \$2.5 billion in 1997 to \$1.9 billion in
16 2001, a 24 percent drop. The industry is finally
17 experiencing some strengthening in 2003. The
18 short-term outlook has continued to rebound with the
19 current economic recovery. In particular, monolithic
20 refractories, where the majority of BFA is consumed,
21 will grow in the years ahead at the expense of
22 refractory bricks.

23 Thank you, Madam Chairman and commissioners.

24 CHAIRMAN OKUN: Thank you.

25 MR. O'BRIEN: We will now hear from Mr.

1 Doza, also of Allied Mineral.

2 MR. DOZA: Good afternoon. My name is
3 Douglas K. Doza. I am Senior Vice President,
4 Manufacturing and Research, Allied Mineral Products.

5 Prior to making my statement, I would like
6 to make a few changes to page 2 of my declaration.
7 In Section 8, line 3, Exhibit C should read Exhibit D.

8 In Section 9, line 2, Exhibit D should read
9 Exhibit E and line 5, Exhibit E should read Exhibit F.

10 In Section 10, the second and third
11 questions should read as follows: "In Allied's
12 experience, purchasing from a U.S. processor makes
13 this significant quality problem worse because the
14 material is not normally traceable to its source in
15 China. For example, enclosed as the final" that ends
16 page 2, the balance of that sentence is correct,
17 starting page 3.

18 I will now make my statement.

19 I have been involved in Allied's quality
20 assurance efforts for refractory products since 1988.
21 Product consistency and the absence of contamination
22 and product traceability are major concerns in
23 refractories due to the demanding applications in
24 which they are used. For example, Allied manufactures
25 monolithic refractories using brown fused alumina

1 primarily for the metal melting market.

2 Brown fused alumina makes up most of these
3 refractory products due to its ability to withstand
4 the harsh chemical and thermal environments present in
5 these applications. These applications include blast
6 furnace troughing systems as well as induction
7 furnaces. For example, in these applications,
8 refractories must withstand temperatures of up to 3200
9 degree Fahrenheit while being in direct contact with
10 molten iron and/or steel.

11 Enclosed as Exhibit A in my declaration are
12 two photographs of common applications of Allied's
13 products. The first is a coreless induction furnace,
14 pouring molten metal into a ladle. As noted in the
15 photograph, temperatures can reach 3200 degrees
16 Fahrenheit. There is nominally five inches of
17 refractory between the molten metal and the water
18 cooling system in these furnaces. If molten metal
19 contacts the water cooling system, then a catastrophic
20 event will occur.

21 The second photograph is of a blast furnace
22 trough. Blast furnace troughing systems have a highly
23 corrosive environment operating at temperatures up to
24 2800 degrees Fahrenheit. Failure of the refractory
25 material in these applications can be catastrophic.

1 Earlier today, we heard that quality was not
2 that important.

3 Well the refractory system is as strong as
4 its weakest part. Refractories are expected to have a
5 minimum useful life and eventually require
6 replacement. Replacing a refractory system is costly
7 and time consuming, during which the furnace normally
8 does not run. For this reason, Allied markets its
9 products based on expectations of maximum throughput
10 before replacement. Therefore, quality is crucial to
11 the application of our products.

12 Inconsistent quality can greatly reduce the
13 life of a refractory lining. Inconsistent quality
14 linings can be the result of inconsistent quality raw
15 materials, including RBAO with inconsistent chemical
16 or physical properties. These deficiencies can result
17 in faster wear in harsh thermal and corrosive
18 conditions.

19 In addition, contamination can substantially
20 reduce the useful life of a refractory. The defects
21 caused by contamination can create holes or weak spots
22 in a refractory lining, exposing areas and leaving
23 them more vulnerable to heat or chemical degradation.
24 For this reason, Allied strives for uniformity in
25 content and composition of its refractories.

1 Inconsistent and out of specification
2 quality is therefore not acceptable to Allied.
3 Inconsistent quality in RBAO from China is often
4 caused by sourcing from different producers, some of
5 who do not have the production controls, sampling
6 techniques or testing procedures necessary to produce
7 consistent crude BAO. My declaration sets forth
8 further details on this point.

9 In addition, contamination in RBAO used by
10 Allied is simply not acceptable. However,
11 contamination can enter RBAO from many sources.
12 Enclosed as Exhibit C in my declaration are a series
13 of photographs taken recently at various points in the
14 supply chain regarding shipments of crude and RBAO
15 from China.

16 Industry practice for shipment of crude BAO
17 involves transportation of BAO in super sacks from the
18 producers, which Tom Gibson mentioned earlier, to the
19 port in China. These super sacks are then cut open to
20 facilitate bulk handling. Sometimes they are cut open
21 in warehouses, sometimes they are cut open at the
22 port, sometimes they are cut open on the vessel, where
23 it is then transported to its final destination.

24 Once it arrives, a clam shell or similar
25 bulk handling system is used to remove the BAO. Many

1 opportunities in this process present itself for
2 contamination.

3 These photographs illustrate that unless
4 product is shipped in sealed packages such as those
5 used by Allied contamination can enter from wood
6 sources, paper, rust, fiber, and other various
7 sources.

8 Attachments D, E and F to my declaration
9 reference examples of contaminated RBAO received from
10 the petitioners. These are wholly unacceptable for
11 Allied's applications. As shown in Exhibit D, a
12 recent inspection of a shipment found the following:
13 metal scales from the hold of a ship, ferro silicon,
14 wood splinters, rope, fiber, plastic, a piece of a
15 metal nut and a string. I have this sample with me
16 today. None of these contaminants is acceptable for
17 Allied's application and this particular shipment had
18 all of them.

19 I will point out two contaminants which are
20 particularly alarming: one, a large metal nut
21 measuring one inch in length by one and a half inches
22 in width. This nut, if it was to find its way into a
23 refractory lining such as the coreless furnace example
24 I discussed earlier, having a nominal wall thickness
25 of five inches, it would create an isolated defect

1 measuring nearly one-third of the refractory
2 cross-section. This would substantially compromise
3 the integrity of the refractory.

4 Second is bulk bag tie. It measured over
5 ten inches in length. If this was to fall into a
6 refractory lining horizontally, it would span the
7 entire width of the refractory wall, allowing molten
8 metal to be potentially released from the furnace. As
9 stated previously, the consequences of contamination
10 could be catastrophic.

11 Based on these facts, Allied rejected this
12 particular shipment. This supplier has acknowledged
13 the inevitability of contamination in the current
14 transportation system of crude BAO from China. Allied
15 has had similar experiences with other domestic
16 suppliers. Please refer to my declaration for
17 additional details.

18 As noted previously, quality and consistency
19 vary significantly amongst the China crude BAO
20 producers. In Allied's experience, purchasing from a
21 U.S. processor makes this significant quality problem
22 worse because generally the material is not traceable.
23 Quality issues were a major factor in Allied's
24 decision to sell its Newell, West Virginia BAO
25 crushing facility in 1999. Since that time, Allied

1 has sourced directly from pre-qualified Chinese
2 facilities that crush the aluminum oxide ingots.

3 Besides having complete traceability, Allied
4 personnel can walk the factory floors. Allied ships
5 from these factories in sealed containers, super
6 sacks, which eliminate the very substantial risk of
7 contamination often associated with bulk unsealed
8 shipments. This has allowed Allied to achieve a much
9 higher quality level than that provided by the Newell
10 facility or from the RBAO produced by domestic
11 suppliers.

12 Thank you very much. I would be happy to
13 answer questions.

14 CHAIRMAN OKUN: Thank you.

15 MR. O'BRIEN: Our next witness is Ms.
16 Kelleen Loewen.

17 MS. LOEWEN: Good afternoon, Madam Chairman,
18 and commissioners. My name is Kelleen Loewen and I am
19 the Global Market Manager for Saint-Gobain Grains and
20 Powders located in Worcester, Massachusetts. I
21 appreciate the opportunity to make the following
22 points this afternoon and would be pleased to respond
23 to any questions you might have.

24 My company, Saint-Gobain, has been
25 headquartered in Worcester, Massachusetts since 1885.

1 It was formerly known as Norton Company. It is part
2 of the Saint-Gobain family of companies headquartered
3 in Paris, where it was founded in 1665. Saint-Gobain
4 has produced, supplied and consumed industrial grains
5 and powders for many years.

6 My responsibility at Saint-Gobain is to
7 manage the global sales and marketing of materials we
8 manufacture and that are sold to the abrasives and
9 general industrial markets. One of the products that
10 I am involved in is the selling of refined brown
11 alumina oxide, or BFA as it is commonly referred to,
12 from our Saint-Gobain facility located in Xien Jo,
13 China.

14 It is important to understand the different
15 market segments and uses that BFA exists for since the
16 product itself and the suppliers and purchasers differ
17 by market segment.

18 The markets for BFA fall distinctly into the
19 refractory segment, abrasives segment, and other
20 industrial uses.

21 The refractory segment is by far the largest
22 by volume and by product size. In general, the
23 customers for refractory grade BFA do not buy abrasive
24 grades, nor are these customers sought after by
25 abrasive grade suppliers. For example, during the

1 three years at Saint-Gobain that I have managed this
2 product line, I cannot recall a single sale made by my
3 company of refractory grade product and I do not
4 consider those companies part of my potential customer
5 base.

6 The markets also vary by sales channel, such
7 as end use or distributor. My customer base consists
8 of related Saint-Gobain companies and unrelated
9 customers in the end use and distributor markets.

10 Regarding related companies, Saint-Gobain
11 has affiliates in the United States, several of which
12 use abrasive grade BFA. These are not entirely
13 captive customers, as they source their products from
14 us based on our competitiveness. In fact, if my price
15 is not low enough on BFA, my sister division actually
16 buys from one of the petitioners who offers a lower
17 price.

18 Regarding unrelated customers, most of my
19 sales are to manufacturers of bonded, coated and
20 general industrial applications. Bonded products are
21 typically grinding wheels and coated products are
22 typically sandpaper. The bonded and coated markets
23 are traditionally tied to activity in industrial
24 markets such automotive, aircraft, metal foundry,
25 woodworking and rail production. With the slow

1 economy, these markets have contracted in recent
2 years.

3 My bonded and coated customers are generally
4 long-term and pretty loyal. This makes sense given
5 the nature of the products on which the BFA is used.
6 A grinding wheel sold by my customers might sell for
7 several dollars up to several thousand dollars. The
8 BFA portion of that product can typically be around 20
9 to 40 percent for bonded applications and 10 to 20
10 percent for coated applications. The BFA is also the
11 part that contacts the surface to be ground.

12 Since the raw material is such an important
13 component of the final product, the quality and
14 consistency of the grain is critical. In addition to
15 quality and service, there are other factors such as
16 consistent delivery, customer service, and brand
17 reputation that are important. As a result, my
18 customers normally do not switch suppliers based
19 solely on price.

20 This is also the case regarding my sales to
21 the general industrial market segment. The largest
22 users in that market segment include companies who
23 blast automotive, aircraft, military and industrial
24 equipment. We also sell material for the polishing of
25 T.V. tubes for television. These industries have been

1 under serious stress in the United States in recent
2 years. With the economic downturn in each of these
3 businesses, the sales of brown alumina oxide also goes
4 down.

5 The problems in the airline and automotive
6 industry are well known and earlier this year one of
7 the largest U.S. T.V. tube producers, Thompson, moved
8 some of its operations out of the United States.
9 However, for those customers that remain, product
10 quality is of paramount important.

11 The BFA that I supply to those customers is
12 not only ISO certified, but it's also certified to the
13 specifications of the particular customer, such as
14 Pratt & Whitney, GE Aircraft Engine, or to a specific
15 spec like Thompson's. The certification process for
16 the aircraft industry can take up to one year.

17 These customers do not just buy on price.
18 Since many of the finished products that utilize
19 abrasives are expensive end products, it would be
20 ridiculous for one of these companies to risk finished
21 product rejects due to quality problems. Scratching a
22 valuable product because of sourcing BFA of inferior
23 or inconsistent quality is just not done.

24 Another large portion of the industrial
25 market segment is for granite countertops and

1 headstone blasting and polishing. While the headstone
2 market is fairly recession proof, it is not immune
3 from competition from other substitutes. I know that
4 because one of the plants that is part of the
5 Saint-Gobain companies produces one of those
6 substitutes which is alumina zirconia in Canada near
7 Niagara Falls.

8 Many of the customers in the granite
9 industry are switching over from BFA to using our
10 alumina zirconia product because, though it is more
11 expensive, it is also much more efficient. I know
12 because I am responsible for managing the sales of
13 those products and I know full well that the sales of
14 that product are displacing BFA for polishing and
15 blasting.

16 At Saint-Gobain, we see the market for BFA
17 as declining due to economic reasons and due to
18 alternative materials. We also don't typically see
19 customers switching suppliers strictly based upon
20 price.

21 My final point is that our company,
22 Saint-Gobain, has also been in this business long
23 enough to see that many U.S. grinding wheel and
24 sandpaper companies have had a hard time remaining
25 competitive in manufacturing these products in the

1 U.S. If the cost of raw materials increases, more of
2 these companies will move this production closer to
3 where the raw material comes from, in other words,
4 other low cost countries. This will mean further loss
5 of jobs in the U.S.

6 This completes my testimony and I would be
7 pleased to answer any questions.

8 CHAIRMAN OKUN: Thank you.

9 MR. O'BRIEN: We'll now hear from Mr. Dennis
10 Gates of Cometals.

11 MR. GATES: Good afternoon. My name is
12 Dennis Gates. I am a Vice President with Cometals,
13 which is a division of Commercial Metals Company,
14 headquartered in Dallas, Texas. I have been with
15 Cometals since 1991. My responsibilities include the
16 sourcing and sale of industrial mineral products,
17 including the brown fused alumina that's the subject
18 of this case.

19 I would like to provide a couple of examples
20 from my own experience with Cometals to illustrate the
21 dominant presence of the U.S. producers in the U.S.
22 market for brown fused alumina. Let me begin by
23 noting that in the mid 1990s, I was importing a
24 relatively small amount of brown fused alumina for use
25 in the refractory market. My two largest companies

1 were Magneco Matrell, a market share leader in BFA
2 refractories, and Vesuvius, the second or third
3 largest U.S. refractory producer.

4 Regarding Magneco, I had about 30 percent of
5 their business. Transtech, another importer of
6 Chinese product, had the remaining 70 percent. In the
7 mid 1990s, Transtech took 100 percent of Magneco's
8 business and was subsequently bought by C.E. Minerals.
9 Transtech took 100 percent of the business because
10 they offered local warehousing with additional quality
11 control and, after C.E. took over, they also offered
12 to blend different sizes or splits to meet Magneco's
13 specifications before delivery. C.E. Minerals was
14 also supplying Magneco with silicon carbide.

15 Cometals could not compete with these value
16 added factors and lost the business. When Magneco
17 informed me their decision to move 100 percent of the
18 business to Transtech, price was not mentioned as a
19 factor.

20 Another customer was BMI, which through
21 acquisition and restructuring has become Vesuvius, the
22 second or third largest U.S. refractory producer.
23 Vesuvius had a plant located in southern Ohio near the
24 river. During the late 1990s, BMI decided to close
25 its crushing line for BFA and committed to buy 100

1 percent of its BFA from Great Lakes, who built a new
2 BFA processing line in northern Kentucky across the
3 river from BMI's plant. Great Lakes brought in
4 product from China and sized it at their Workman,
5 Kentucky facility.

6 There is no reason to think I have a chance
7 to get that business back. Vesuvius never indicated
8 price as a reason for awarding 100 percent of this
9 business to Great Lakes and I cannot compete with the
10 value added by this facility.

11 There's one more competitive situation that
12 speaks to the problems that are being expressed today.
13 That's the U.S. Filter situation. U.S. Filter is the
14 largest U.S. distributor, having bought up several
15 independent distributors in the mid to late 1990s. I
16 understand that at one time, Washington Mills had the
17 majority of the business with U.S. Filter. Then, in
18 the late 1990s, Exolon succeeded in getting a
19 significant portion of the U.S. Filter business, I
20 believe approximately 50 percent.

21 When Washington Mills purchased Exolon in
22 2001, I have no doubt that Washington Mills expected
23 to resume its majority position as supplier to U.S.
24 Filter, but by that time Great Lakes had succeeded in
25 infiltrating U.S. Filter and took the lion's share of

1 their business.

2 So I agree, Washington Mills lost the U.S.
3 Filter business. It lost it partially to Exolon and
4 then nearly completely to Great Lakes, two of the U.S.
5 producers involved in this case. Independent
6 suppliers like Cometals had nothing to do with this
7 major loss to Washington Mills.

8 So you might ask what is Cometals doing with
9 respect to this product?

10 We had some sales of brown fused alumina to
11 customers where we already did business in other
12 products. One point the commission should understand
13 is that this product is almost always sold in
14 combination with other mineral products like silicon
15 carbide, bauxite, or magnacite. I did not have a
16 single customer that bought only brown fused alumina
17 from Cometals. These products are loaded and shipped
18 together and the price available for any one product
19 depends on the cost and price of the other products in
20 the mix. For that reason, switching suppliers does
21 not happen easily or frequently.

22 My final comment goes to the scope
23 definition in this case. When the commission
24 considers who is and who is not a U.S. producer, it
25 should be aware that the scope definition in this case

1 raises a great deal of potential for manipulation.
2 For example, if a U.S. producer is supplying the
3 refractory market and wants to increase volume to the
4 abrasives market, that producer could bring in product
5 that is crude under the scope definition but requires
6 a simple screening to sort out a major portion of the
7 abrasive size product. That supplier could be a major
8 player in the abrasives market segment without
9 crushing a single abrasive grain or having any entry
10 falling within the scope of this case.

11 To those familiar with this industry, the
12 scope definition is utterly artificial. The important
13 distinction is whether the product is sized to sell
14 for an end use customer or not. A particular size or
15 the portion of a bag that is above or below a certain
16 size is meaningless from a commercial standpoint.

17 Thank you and I'd be happy to answer any
18 questions.

19 CHAIRMAN OKUN: Thank you.

20 MR. O'BRIEN: We'll now hear from Mr. John
21 Redshaw of the Dauber Company.

22 MR. REDSHAW: Good afternoon, Chairman Okun
23 and Commissioners. My name is John Redshaw and I'm
24 responsible for sales and marketing and business
25 development at Dauber Company, Inc.

1 Prior to my joining Dauber in September
2 2001, I was Vice President of Sales and Marketing for
3 Exolon ESK headquartered in Tanawanda, New York. I
4 was with Exolon for 23 years prior to my leaving to
5 join Dauber. Until acquired in August 2001 by
6 Washington Mills, Exolon was a significant U.S.
7 producer of refined brown fused alumina oxide for the
8 abrasives market.

9 For as long as I can recall, Exolon and
10 Washington Mills were frequent competitors for sales
11 of refined brown alumina oxide in the United States.
12 During the mid 1990s, the U.S. Defense Logistics
13 Agency, DLA, liquidated stockpiles of alumina oxide at
14 unprecedented low prices. For the first few years of
15 the DLA sales of alumina oxide, Exolon, and I believe
16 Washington Mills, were precluded from bidding. At
17 that time, I believe Treibacher was the only
18 significant company bidding for the DLA material.
19 And, if I remember correctly, Exolon and Washington
20 Mills were under investigation for antitrust
21 violations and not permitted to submit bids.

22 During the late 1990s, Exolon and Washington
23 Mills were able to bid for DLA material. At that
24 time, Exolon obtained large amounts of the DLA crude
25 and refined brown alumina oxide at very low prices. I

1 was involved in the corporate decision by Exolon in
2 the late 1990s to use the DLA prices to lower costs
3 and at the same time increase market share in the U.S.
4 abrasives market. As you heard earlier, AO went into
5 the DLA cheap and it came out even cheaper.

6 In large part based on the low-cost DLA
7 material, Exolon approached many Washington Mills and
8 Treibacher customers for refined brown alumina oxide
9 and tried to obtain business by offering lower prices.
10 At the same time, Exolon increased its imports of
11 China crude brown alumina oxide and I believe
12 Treibacher and Washington Mills did the same.

13 Exolon was successful in obtaining
14 significant business from Washington Mills during the
15 late 1990s and into 2000. One major account, Tirolet,
16 was, I believe, one of Washington Mills' largest
17 customers and switched their refined brown alumina
18 oxide business entirely to Exolon. Exolon had similar
19 success with U.S. Filter, another of Washington Mills'
20 largest customers, to which we offered low prices
21 during this period.

22 Overall, the price of the abrasive grade
23 refined brown alumina oxide dropped by double digit
24 percentages during 1998 and 1999 from the 1997 prices.
25 I believe that in some accounts the price decline for

1 refined brown alumina oxide dropped by as much as 25
2 percent.

3 During 2000 and much of 2001, the price
4 competition continued between Exolon and Washington
5 Mills. Again, this was not caused by Chinese refined
6 brown alumina oxide.

7 At the same time, Exolon was importing
8 Chinese crude brown alumina oxide and using DLA
9 material, we assumed that Washington Mills and
10 Treibacher were doing likewise. We believe that these
11 companies were also processing some crude brown
12 alumina oxide like Exolon so that for any specific
13 sale it was difficult to determine what was North
14 American, what was imported and what was DLA material.

15 In August 2001, Washington Mills acquired
16 Exolon's operations. By that point, the competitive
17 conditions of falling prices in the refined brown
18 alumina oxide market had been established for nearly
19 four years.

20 On that note, I would add despite claims to
21 the contrary, Exolon was a health company at the time
22 we were acquired by Washington Mills. In no way was
23 Exolon driven to financial ruin by trying to match
24 Chinese pricing. In fact, as I recall, although
25 Exolon lost money in 2000, shareholder equity was the

1 fourth highest in the company history and the vast
2 majority of Exolon's debt was due to industrial
3 revenue bonds dedicated to plant expansion.

4 In addition, Exolon's Canadian subsidiary,
5 which was a brown fused alumina oxide fusion plant,
6 was carrying substantial cash and corporate inventory
7 was extremely healthy. Working capital in 2000 was
8 the fifth highest in history, while current
9 liabilities were the lowest in history. Due to the
10 cyclical nature of the synthetic abrasive business,
11 Exolon's business was suffering during a poor economic
12 climate. However, as with the recession of the early
13 and mid 1980s and, again, during the early 1990s,
14 Exolon would have rebounded from this dilemma.

15 During 1985 and 1986, Exolon lost
16 substantial sums of money and shareholder equity was
17 one-third of shareholder equity in 2000. The
18 debt-to-equity ratio of the mid 1980s was abysmal
19 compared to 2000, yet the Exolon organization near
20 real financial ruin in 1985 and 1986, rebounded after
21 two poor economic cycles to proudly record the highest
22 profit years in history during 1995, 1996 and 1997.

23 One can glean from this information that the
24 implication of Chinese refined brown alumina oxide
25 ruining the health of Exolon is simply not true. I

1 would like to emphasize that at no time during my
2 nearly seven-year tenure as Vice President of Sales
3 and Marketing at Exolon do I recall competing directly
4 against Chinese refined brown alumina oxide in the
5 abrasives business. Our primary targets for market
6 share growth remained Washington Mills and Treibacher.

7 As you know, both of these companies along
8 with Exolon had reduced prices at large refined brown
9 alumina oxide consumers by reducing cost of goods
10 sold, using Defense Logistics Agency material for many
11 years.

12 This particular economic cycle for the
13 synthetic abrasives business has bottomed out and
14 conditions have been slowly improving for the last 12
15 months. Antidumping duties on refined brown alumina
16 oxide will only slow this recovery.

17 Thank you very much.

18 CHAIRMAN OKUN: Thank you.

19 MR. O'BRIEN: Our next speaker is Mr. Liu.

20 MR. JIANWEI: Good afternoon. My name is
21 Liu Jianwei and I am the head of Legal Services
22 Department of China Chamber of Commerce of Metals,
23 Minerals and Chemicals, Importers & Exporters. The
24 CCCMC is a non-government organization under the
25 current market economy system in China. It acts as a

1 trade coordinator, providing services to its members
2 and services as a bridge between the government and
3 its members.

4 CCCMC has over 2600 members. Of this
5 number, approximately 200 are producers of brown fused
6 alumina. Of this number, 150 are also exporters.
7 Although there are one or two state-owned companies,
8 all of the producers and exporters set their prices
9 according to the market competition.

10 Although there has been an increase in the
11 production of BFA, it is because demand within China
12 and other markets has increased. This increased
13 production is not a threat to the United States
14 production.

15 The primary reason that the production has
16 increased is due to the significant growth of the
17 Chinese steel industry. In year 2001, between 130 and
18 150 million metric tons of steel were produced. In
19 year 2002, this number grew to 178 million metric
20 tons. And in year 2003, production is expected to be
21 more than 200 million metric tons.

22 In response to this increase production of
23 steel, production of refractory grade of BFA and other
24 furnace materials has increased.

25 Much of this steel is cold rolled steel for

1 use in China's booming domestic household appliance
2 markets such as refrigerators and washing machines.
3 The largest Chinese steel mill, Ball Steel, recently
4 negotiated a joint venture agreement with a Japanese
5 company that is expected to double the output of Ball
6 Steel, which is currently 60 percent of the Chinese
7 production.

8 This will require even more production of
9 refined BFA. In addition, the year 2008 Olympic games
10 will be held in Beijing. This even has resulted in
11 many new construction contracts, not only for Olympic
12 venues, but for other infrastructure steel
13 construction requirements such as buildings and
14 hotels.

15 The production of abrasive grade BFA has
16 also increased because of increased domestic
17 consumption. China produces medium and low grade
18 floor and granite for building construction. These
19 products have kept up with the demand for new building
20 in China. Abrasive grade BFA is required in this
21 production. Increased production of the building
22 materials has led to an increased domestic demand for
23 abrasive grade BFA. In addition, exports to third
24 countries of these building materials have also
25 increased.

1 Finally, the use of abrasive grade BFA for
2 finishing glass products has also increased.

3 China exports of crude and refined BFA to
4 other countries excluding the United States has
5 increased from 180,000 metric tons in year 2002 to
6 270,000 metric tons for the first seven months of this
7 year. It should be noted that Chinese export figures
8 combine crude and refined BFA as to the export
9 statistics of most countries other than the U.S.

10 With regard to the pricing of BFA from
11 China, this has been driven in large part by the --
12 NATO, during winter because they are such a large
13 volume producer and exporter.

14 I thank you very much for giving me the
15 opportunity to appear before the commission today.

16 CHAIRMAN OKUN: Thank you.

17 MR. O'BRIEN: Our final speaker will be our
18 economic consultant, Mr. Daniel Klett.

19 Before Mr. Klett speaks, I just want to make
20 sure one thing is clear on the record because several
21 of the witnesses referred to either BFA or brown fused
22 alumina. That is the commercial name that is familiar
23 to many of our witnesses for the product that's at
24 issue, brown aluminum oxide, so I just want the
25 transcript to be clear on that point.

1 MR. KLETT: Good afternoon, Chairman Okun
2 and members of the commission. My name is Daniel
3 Klett. I'm an economist with Capital Trade, Inc.

4 There are five points I want to make this
5 afternoon:

6 First, there is no U.S. capacity to produce
7 fused aluminum oxide ingots and the price of the fused
8 aluminum oxide sales in the U.S. is significantly
9 affected by the cost of the raw material input,
10 crushed fused aluminum oxide imports, which represents
11 a large share of the total U.S. production costs.

12 The commission has actual data to
13 corroborate this. For APO reasons, I cannot go into
14 detail, but Exhibit 18 of our pre-hearing brief shows
15 that the pricing in the U.S. market is affected by the
16 cost of crushed aluminum oxide imports, whether in
17 scope or out of scope product.

18 Second, the commission noted in its
19 preliminary phase investigation opinion the
20 significant variance in financial conditions among the
21 U.S. producers. This continues to be an important
22 factor in this investigation and the commission cannot
23 properly evaluate industry condition or causation
24 without a full understanding of why the disparity
25 exists.

1 Even in the aggregate, however, any
2 deterioration in volume-related production and
3 shipment indicia from 2000 to 2002 was affected
4 largely by significant demand downturn for downstream
5 refractory and abrasive products that consume RBAO.
6 U.S. producers' financial condition remained
7 relatively stable between 2000 and 2002, even with
8 certain technical accounting methodology changes by
9 Treibacher that resulted in an increase in costs in
10 2002.

11 The deterioration in financial conditions in
12 2003 cannot have been the result of subject imports
13 which declined in volume and market share. Neither
14 was there an increase in subject import inventories in
15 the first half of 2003 that might indicate a
16 correlation between subject import and the
17 deterioration in the industry financial condition in
18 interim 2003. In fact, importers' inventories
19 remained at relatively constant levels over the POI
20 and in the first half of 2003.

21 Regarding volume, subject import market
22 share did increase over the POI, but petitioners'
23 brief ignores the fact that the increases were at the
24 expense of non-subject imports. The focus by
25 petitioner on increases in subject import purchases

1 from the purchasers' questionnaire should be given
2 late. The shipment data from the importers'
3 questionnaires is a more comprehensive and accurate
4 measure of the subject import volume and trends.

5 The commission staff did confirm certain
6 lost sale allegations, but these volume losses in
7 isolation do not establish material adverse volume
8 effects. In a competitive market, suppliers are
9 always losing and winning sales to individual
10 customers and it's the aggregate market shares that
11 should be evaluated with respect to volume effects and
12 given more weight.

13 Regarding price, nominal prices for the four
14 RBO products did decrease and there was apparent
15 underselling. However, these facts alone do not
16 establish the existence of U.S. producers' RBO prices
17 being depressed or suppressed by reason of subject
18 imports.

19 Regarding the representativeness of the
20 pricing product specifications, these price trends
21 differ from the average unit value trends for the
22 remaining products. It's not a question of coverage,
23 it's a question of trend.

24 The final point I want to make relates to
25 threat. The inventory overhang cited in petitioners'

1 brief as a threat factor is just not there. Foreign
2 producers and importers must keep some inventory on
3 hand for operational and customer requirement reasons.
4 Petitioner assumes that any inventory will be
5 completely liquidated and sent to the United States,
6 which is a commercially unrealistic assumption.

7 Instead, what is relevant is whether ending
8 inventory levels in June 2003 are above historical
9 levels. Data in your staff report show that they are
10 not, either for importers or Chinese producers. Also,
11 a portion of importers' inventory is for internal
12 consumption, not re-sale into the U.S. market.

13 Thank you.

14 CHAIRMAN OKUN: Thank you.

15 MR. O'BRIEN: Madam Chairman, that completes
16 our witness statements. We do have the samples that
17 were referred to by Mr. Gibson of the product that
18 overlaps the current scope definition and the
19 contamination that was in the shipment which Allied
20 received from a domestic company. It's in a sealed
21 bag, if the commission would like to take a look at
22 it.

23 CHAIRMAN OKUN: If you would give those to
24 the secretary to bring up to the commission to
25 examine.

1 Before we begin our questioning this
2 afternoon, I want to take this opportunity to thank
3 all the witnesses for being here. We very much
4 appreciate your participation, particularly those in
5 business who take time away from your day-to-day
6 operations to be here and also, Mr. Liu, to thank you
7 for traveling from overseas to be a participant in
8 today's proceedings. We very much appreciate your
9 participation.

10 I will remind witnesses as well just if you
11 please state your name when you answer questions to
12 help both us and the reporter.

13 We will begin our questions this afternoon
14 with Commissioner Lane.

15 COMMISSIONER LANE: Thank you.

16 I just have one question and it's a
17 follow-up to Commissioner Koplan's question to
18 petitioners regarding the expiration of the E.U.
19 dumping order.

20 Please address Treibacher's explanation as
21 stated on pages 74 and 75 of the pre-hearing staff
22 report that the order was simply ineffective because
23 of weak enforcement and Treibacher did not wish to
24 support an order that hurt honest customers.

25 MR. GIBSON: From everything I've heard,

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1 that's entirely accurate, there was a lot of cheating
2 going on into the E.U. by third parties. There were
3 some legitimate ways that they were getting around the
4 duty by blending other minerals and sending in a
5 blended product which came in under a different code.
6 Sometimes they would skip the blending process and
7 layer the material, which was strictly illegal, and
8 some of them got caught.

9 As I think was said earlier this morning,
10 there was brown fused alumina going into the E.U.
11 countries from countries that had no brown fused
12 alumina capacity such as Poland, Turkey. The South
13 African situation was a bit different in that there
14 was a processing facility there that claimed that they
15 had permission to process crude and to export it to
16 Europe with permission of the Europe Union, but there
17 was a lot of circumvention and it was not very
18 strictly enforced. That's correct.

19 MR. O'BRIEN: If I might add, Commissioner,
20 the effectiveness or lack thereof of a dumping order
21 is not unique to this product nor unique to the E.U.
22 There are other avenues available to complainants
23 besides simply terminating the dumping order. Indeed,
24 it's a very unusual reaction, to let the order be
25 revoked and terminated simply because it is being

1 circumvented or manipulated.

2 I would also point out there is a cause and
3 effect here. The order was revoked. Plibrico started
4 advertising in a publication that is overwhelmingly
5 for the U.S. market and in a very, very minor way for
6 the world market, and now shipments start to appear.

7 Now, I believe that there's an irresistible
8 conclusion that that was part of the Imerys thinking
9 in allowing the E.U. dumping order to be revoked.

10 COMMISSIONER LANE: Okay. Thank you.

11 CHAIRMAN OKUN: Thank you. Well, let's see.
12 I'm going to have a few questions on like product, but
13 let me --

14 I think, Mr. O'Brien, let me start with you
15 on one thing that has just struck me kind of
16 throughout both reading your briefs and then just the
17 testimony today and I was reminded of it when Mr.
18 Gates was talking about the loss of business to U.S.
19 Filter that was gained by Great Lakes and it just
20 brought to my mind the question I have for you, which
21 is if the commission reached a determination regarding
22 Great Lakes where it decided it was not a domestic
23 producer and I think secondly, but slightly different,
24 if it were a domestic producer but excluded, do you
25 still have your arguments on causation?

1 Because my sense was reading it that you
2 almost in all cases argued it with market share or
3 anything, this whole expanded definition of domestic
4 industry.

5 MR. O'BRIEN: Well, the answer is yes, we
6 still have our arguments and the premise of your
7 question is that Great Lakes is not a U.S. producer or
8 is excluded from part of the domestic industry, so
9 both of those premises naturally we disagree with.
10 But accepting that premise, I believe you need to
11 consider it a very substantial condition of
12 competition and you need to look at all of the
13 producers because Great Lakes has certainly -- has
14 facts unique to Great Lakes but there are many, many
15 facts in common.

16 I think you also heard Mr. Gates speak about
17 the Magneco situation and C.E. Minerals. Magneco is
18 the biggest refractory supplier in the United States.
19 That business has been and continues to be a C.E.
20 Minerals account. C.E. Minerals, of course, has
21 undergone a transformation during the period of
22 investigation.

23 So accepting the premise of your question, I
24 think you still then say that there is a very
25 significant condition of competition going on here

1 where there is at least a very blurred line between
2 what's being imported, what's being produced
3 domestically and who is losing sales to what.

4 I believe Mr. Redshaw said that Exolon,
5 Washington Mills and Great Lakes at various times --
6 or Treibacher - were all bringing in Chinese product,
7 taking DLA product and making product in the U.S. It
8 is one of the conditions of competition, regardless of
9 how you come out on the domestic industry issue.

10 CHAIRMAN OKUN: Okay. Well, for purposes of
11 post-hearing when you're making these arguments, if
12 you can be sure and point out where for sake of
13 argument if we make a decision different than where
14 you would have us come down with respect to Great
15 Lakes what your argument would be and what data that
16 would be based on and then to address the issue which
17 I posed to petitioners this morning which is when you
18 look at our entire record and where a company shows up
19 or doesn't, what is the change with a company in or
20 out, because I think that is relevant to our analysis.

21 Then let me go back to like product for a
22 moment and I will go to the industry witnesses, but,
23 Mr. O'Brien, let me just start with you. In your
24 statement at the beginning of your panel here, you
25 talked a little bit about the problems as you see it

1 with the petitioners' scope. I didn't hear you
2 address directly the points that Mr. Schagrín had made
3 this morning when responding to some of my colleagues'
4 questions about the continuum -- let's talk about the
5 continuum for a minute, I think those products that
6 you've described as kind of crossing along this
7 continuum and Mr. Schagrín's response being that it's
8 very tiny, he gave some figures which he said he would
9 substantiate in his brief.

10 I wonder if you would respond first on that
11 point.

12 MR. O'BRIEN: Well, certainly. You have --
13 just on that point, you have a market brochure, you
14 have a marketing brochure by Washington Mills that
15 defines refined product as larger pieces than the
16 current scope definition. You have advertisements by
17 Treibacher which refers to refined pieces in sizes
18 larger than the current scope diffusion. You have the
19 commission's precedent of looking at a domestic like
20 product along a continuum of processing operations
21 unless there's a way to draw a bright line.

22 There isn't any way to draw a bright line
23 where the petitioners have drawn it. Those additional
24 products, those additional sizes, are legitimately
25 refined product. They admittedly, I believe, are

1 refined product. Their operations should be in the
2 domestic industry.

3 Now, the key question is what does that do
4 to the scope of the case, which at all times was a
5 contrived scope to begin with? Once you change that
6 scope even a little bit, then the data in front of the
7 commission changes dramatically in terms of what's
8 imported versus what is U.S. produced.

9 CHAIRMAN OKUN: Okay. Just on that point,
10 that's where I'm trying to understand where the
11 distinctions are.

12 To the extent Mr. Schagrin was arguing not
13 dramatic changes, but teeny changes, are we talking
14 about two different things here? In other words, he
15 was saying the amount that would be in this, I think
16 it would be the continuum, I thought that was the
17 argument he was addressing, was very small, that was
18 the .01 or .03 percent, I can't remember the figures
19 right now. Is that something different than what
20 you're describing and what you're describing as
21 dramatic?

22 MR. O'BRIEN: Yes. They are two different
23 concepts.

24 CHAIRMAN OKUN: Okay. So help me out there
25 on that.

1 MR. O'BRIEN: Excuse me?

2 CHAIRMAN OKUN: So help me out.

3 MR. O'BRIEN: So what he's saying is that
4 Washington Mills only produces a little bit of larger
5 sized product, so it's a non-issue whether we include
6 it or whether we don't. No, it's not.

7 The reason is because in the preliminary
8 determination, the commission defined the domestic
9 like product exactly contemporaneously with the scope
10 of the case.

11 Now, you've got a vast amount of volume
12 coming in, it's very important data, that depends on
13 who you consider to be a domestic producer and what
14 you consider them to be producing. And even changing
15 the domestic like product a little bit brings in that
16 additional data.

17 CHAIRMAN OKUN: Brings in the whole -- the
18 crude? The entire crude?

19 MR. O'BRIEN: No. No. We're speaking about
20 the one particular company that we have in mind where
21 there's a dispute or an argument over whether or not
22 they should be a U.S. producer or not.

23 CHAIRMAN OKUN: Okay. Well, obviously,
24 we'll see the data the petitioners present and maybe
25 I'll go back before I ask another question and just

1 make sure that I understand. But just in terms of --
2 Let me ask the second part.

3 MR. O'BRIEN: Perhaps I just maybe try and
4 clarify it. In our view, all of the producers bring
5 in a lot of crude product. They process it and they
6 make a lot of refined product. All of them. And what
7 has happened is this artificial definition has been
8 imposed at three-eighths of an inch, to try and say,
9 well, no, all of the producers are not bringing in
10 crude; some of them are, but some of them aren't. And
11 that's the dispute.

12 Our position again is they're all bringing
13 in crude product because whether three-eighths of an
14 inch or smaller or not, if it's not sized, if it's a
15 lump like the crude that was passed around before,
16 then it's not usable by an end customer. So it's not
17 refined product. It's a commercially meaningless
18 distinction.

19 So our position is all the producers are
20 bringing in crude in big volumes and all of them are
21 making refined in big volumes.

22 CHAIRMAN OKUN: Okay. But our domestic like
23 product could not include what's not produced in the
24 United States, so we have to make a distinction, which
25 is different than I think -- I thought what I heard

1 Mr. Gibson talking about was getting back to this kind
2 of -- the most commercially meaningful in his view
3 being an end use distinction, which I completely
4 understand from a businessperson's perspective, but
5 not one that Commerce --

6 I mean, as Mr. Schagrin, explained, it's not
7 something that we see happening where we can make an
8 end use, it's driven by the end use, that we can say
9 that's how we're going to get to our like product.

10 So I'm struggling with that. Even if we
11 have this issue of the size and these two samples --
12 now, maybe you can help me out on them. I mean, on
13 the one it says crude and the one that says refined,
14 which to my completely untrained eye look a lot alike,
15 I will admit that.

16 Does this crude one -- is anything shaken
17 out of it? In other words, has this been run through
18 any grade, anything has happened to this one versus
19 this one?

20 If you could use your microphone, please.

21 MR. GIBSON: Those were prepared just to
22 show you that there's no difference. We weighed those
23 carefully and we made sure that they showed that there
24 could be material that's exactly alike in our view,
25 but that could come in as crude or refined.

1 In practice, you could receive either one
2 commercially and they would be made exactly the same
3 way, just in one case, maybe a few more grains got
4 crushed, in other case, a few less grains got crushed.
5 That's the only difference.

6 CHAIRMAN OKUN: Okay. So in the container
7 that these come in, this one would look the same there
8 as it does here. In other words, nothing is done to
9 it at all.

10 MR. GIBSON: We would pull the sample and do
11 a screen analysis, see how much we got on
12 three-eighths of an inch. If it happened to 45
13 percent, then we've got a refined product. If it
14 happened to be 51 percent, we've got a crude product.

15 CHAIRMAN OKUN: The percent. Yes. Okay.

16 MR. GIBSON: Yes.

17 CHAIRMAN OKUN: Well, I see my red light has
18 come on. I will turn to Vice Chairman Hillman. I may
19 come back to this, depending on what other answers I
20 hear.

21 COMMISSIONER HILLMAN: Thank you. I, too,
22 would join the chairman in thanking you very much for
23 all of your testimony and for all the information that
24 you have provided us.

25 I guess I do want to stay with this because

1 I want to make sure I'm understanding it because I
2 guess I share some of the chairman's concerns about
3 how much difference it would make. Again, we're not
4 talking about changing the scope, so what comes in
5 under the scope of any potential order would not be
6 changed by what we decide on the like product. So I'm
7 trying to understand what you think the import is of
8 this notion of expanding the definition of the like
9 product.

10 Again, at least I think I heard, you seem to
11 be saying, Mr. O'Brien, that there is this distinction
12 between Mr. Schagrin's arguments about what the
13 domestic industry does and yours and yet I have to say
14 I heard them saying this morning -- they agree, nobody
15 in the United States produces the crude product, okay?
16 So there is no domestic production of the crude
17 product and therefore it's not clear to me what you
18 get by trying to put the crude product into a
19 definition of the domestic like product, since there
20 is no domestic production of crude product. And that
21 everybody in the domestic industry imports the crude
22 product and refines to produce the refined product, so
23 I'm still struggling with what difference does it
24 make, if we were to some degree change this notion of
25 the like product.

1 MR. O'BRIEN: It affects the data that the
2 Commission has received regarding the imports of
3 refined product.

4 Our view is that that is wrong. The Commission
5 has received it but that is not import of refined
6 product in the case of at least one significant
7 company. It is imports of crude product. It happens
8 to meet the scope definition, we can see that, but
9 it's imports of crude product. It is not refined
10 product. That's a big difference.

11 All of that product is further processed.
12 It's crushed, sized to end user specifications and
13 delivered to end user specifications. Those are big
14 numbers. They affect things. They matter.

15 MR. KLETT: Commissioner Hillman? This is
16 Dan Klett.

17 I think that if you evaluate like product in
18 the domestic industry based on the standard that it's
19 produced so that the end user can use it, which is I
20 think commercially what at least our people tell us is
21 how they look at refined versus crude, then I think it
22 has implications for the weight and how you evaluate a
23 particular U.S. producer in terms of their inclusion
24 or exclusion from the domestic industry and I think in
25 that respect it's significant, aside from the numbers

1 themselves.

2 MS. MURRAY: If I could, Commissioner, this
3 is Lisa Murray speaking.

4 We are not asking that further product be
5 added to the like product. WE're not asking to have
6 crude added to the like product. We're asking to have
7 product removed that should not be part of the like
8 product because it is in fact crude which is not
9 produced in the United States.

10 VICE CHAIRMAN HILLMAN: Okay.

11 Again, I just want to follow up on Chairman
12 Okun's questions on this issue because obviously this
13 crude looks a little bit if not very different from
14 the larger bag of crude that the Petitioner showed to
15 us. I just want to make sure I understand it.

16 Your view is this is how it comes. In
17 essence, exactly as you get it when you bring it in
18 from wherever you bring it in from. This is how it
19 looks. You didn't do anything to it to make it look
20 closer to refined. This is literally how it comes in
21 bulk form, ready to be processed with no processing of
22 any kind?

23 MR. GIBSON: That material would be added to
24 our formula just as it is. It would not be further
25 processed, no.

1 VICE CHAIRMAN HILLMAN: Then help me
2 understand why it is that this would look so different
3 from the larger bag that the Petitioners presented.

4 MR. GIBSON: That's not crude. That's
5 refined. But under their definition it's crude, but
6 it's really refined. It's ready for use.

7 VICE CHAIRMAN HILLMAN: Mr. Gibson, if I
8 brought in a large, again not pre-fac, not anything,
9 what have you done to the product to get it to this
10 stage?

11 MR. GIBSON: We didn't do anything. One of
12 the Petitioners took that product and made this
13 product out of it.

14 VICE CHAIRMAN HILLMAN: What does one do to
15 transform that product into this product?

16 MR. GIBSON: First they would screen out the
17 material that is bigger than that so they don't have
18 to crush any more than they have to. They put that
19 over a series of screens so that the plus, I think
20 that's one and a half by a quarter, so the plus one-
21 half gets screened off and goes back, maybe to a
22 crusher. The minus one-quarter goes into making other
23 products. What's left is a half by a quarter, which
24 is what they ship to us.

25 VICE CHAIRMAN HILLMAN: Okay. Other than

1 for purposes of this investigation would anyone
2 actually do that? What is the commercial significance
3 of doing what you've just described?

4 MR. GIBSON: That's the whole business of
5 the processor, of the Petitioners.

6 VICE CHAIRMAN HILLMAN: I understand, but
7 you would presumably take it on down to a final
8 refined product?

9 MR. GIBSON: No, that is a refined product.
10 That goes into a blend that gets put into the walls of
11 -- Actually this particular product goes into a blast
12 furnace trough.

13 VICE CHAIRMAN HILLMAN: Either one of these
14 bags would be considered finished end use product?

15 MR. GIBSON: One ingredient in our product
16 which is a refractory product which also in this case
17 contains a high temperature cement, gets poured like
18 concrete into a blast furnace trough. That's an
19 ingredient that gives that material heat resistance
20 and corrosion resistance.

21 VICE CHAIRMAN HILLMAN: But you're saying
22 these two, either one, would be sold as a finished,
23 completed, end use product. No further crushing,
24 refining, scaling, nothing else done. This is an end
25 use, finished product ready for the commercial market.

1 MR. GIBSON: It's ready for our use. Yes,
2 ma'am.

3 VICE CHAIRMAN HILLMAN: And when you say
4 ready for your use, help me understand the size of the
5 overall market that uses a product of this kind of
6 size and again, I was hearing a lot this morning that
7 the important thing here was the consistency of the
8 particle size.

9 MR. GIBSON: Yes.

10 VICE CHAIRMAN HILLMAN: Again, to the
11 untrained eye there's a fairly significant difference
12 in particle sizes among these particles. They're not
13 close to being the same size. There are big chunks
14 and little chunks in both of these packages.

15 MR. GIBSON: But what you will find is --

16 VICE CHAIRMAN HILLMAN: What portion would
17 you say of the total market for this, again whether
18 we're saying RBAO or BFA, however you describe it,
19 what portion of the total market would consume
20 products that again are of this kind of large and
21 mixed product size?

22 MR. GIBSON: I don't know the total market
23 but for Allied it's between three and five percent of
24 our consumption of RBAO.

25 VICE CHAIRMAN HILLMAN: Okay.

1 If I can maybe come back to make sure I
2 understand it because you all have used this term BFA.
3 I want to make sure I do understand. Is it exactly
4 the same as what we would have been describing as
5 refined brown aluminum oxide, or does the term BFA
6 differ in any way from refined brown aluminum oxide.

7 MR. GIBSON: BFA would be the same as BAO,
8 brown aluminum oxide. It can be refined or it can be
9 crude. You can have crude BFA and refined BFA. You
10 just substitute BFA for BAO, you have it.

11 VICE CHAIRMAN HILLMAN: So throughout all of
12 your testimony you would have perhaps been mixing, I
13 mean each of your witness' testimony, you would have
14 been mixing what in the scope or the Commission's
15 language would have been both refined and crude into
16 that term BFA, correct?

17 MR. GIBSON: Yes, but when the distributors
18 are speaking they are talking about product for the
19 end user. That's refined product. Saint-Gobain sells
20 refined product. So when Saint-Gobain refers to BFA
21 it's refined product. It's for use by the end user.
22 That is the distinction.

23 VICE CHAIRMAN HILLMAN: I understand that
24 you all would like a use definition. It's not clear -
25 - We have a scope and a customs system that isn't

1 going to do that so I'm trying to figure out how to
2 take your testimony and match it with both the data
3 that we're looking at and the way in which the
4 Commission by the way it works is going to have to
5 look at these products.

6 But what you're saying is when you use the
7 term BFA it is in your view a product like this that
8 has been refined in the sense of screened to some
9 degree and available for end use? Or it is all crude?
10 Would all crude product be included in your definition
11 of BFA?

12 MR. GIBSON: I think --

13 MS. LOEWEN: Kelleen Loewen with Saint-
14 Gobain.

15 I think up until about six to nine months
16 ago everyone referred to brown aluminum oxide as BFA.
17 No one talked about RBAO. The word refined was never
18 used. It was always finished or crude. That's why
19 people are kind of getting confused because up until
20 this case there was crude and refined.

21 What we're talking about in each of our
22 testimonies today, if we say BAO normally we'll put
23 the R in front of it to say refined, to be in a
24 finished state. But these are new terms to us also
25 because this 3/8ths of an inch definition is new to

1 all of us because prior to this there was no refined.

2 VICE CHAIRMAN HILLMAN: But when you say
3 BFA, in your view that encompasses only finished
4 product? Or does it also encompass crude product?

5 MS. LOEWEN: It can encompass crude also.
6 So we would say BFA crude if it was going to be crude,
7 and we would say RBAO if it was to be the refined
8 version of it.

9 VICE CHAIRMAN HILLMAN: All right. I
10 appreciate that.

11 The red light is on. Thank you, Madame
12 Chairman.

13 CHAIRMAN OKUN: Commissioner Miller?

14 COMMISSIONER MILLER: Thank you, Madame
15 Chairman, and let me too join in thanking all of you
16 for being here.

17 I think I will ask another question or two
18 about these samples at some risk of continuing down a
19 road that I guess I question, Mr. O'Brien. Even based
20 on what Mr. Gibson just said, you just said that this
21 kind of product would represent three to five percent
22 of Allied's consumption of the finished, refined
23 product.

24 Can you give me a sense, a bigger picture,
25 of how much you would think it would -- First of all,

1 I assume only refractories are going to be using
2 something this large. So Ms. Loewen, you probably
3 don't deal with this kind of product very much.

4 MS. LOEWEN: No, that's too course for me
5 because we're making grinding wheels and sandpaper.
6 That would be considered crude for me.

7 COMMISSIONER MILLER: Exactly.

8 Mr. Gibson, can you give me an idea in the
9 overall scheme of the refractory industry what percent
10 might be accounted for by those who would use that
11 large of a sample?

12 MR. GIBSON: Just based upon the end use of
13 that type of product, the only thing I can say, the
14 overall market has to be lower than Allied's
15 percentages. Because --

16 COMMISSIONER MILLER: Because that's a big
17 product, that's something you're pretty big in.

18 MR. GIBSON: Right, although we're --

19 COMMISSIONER MILLER: What is this for again
20 and why is it that the refractory that uses this kind
21 of product does so as opposed to something that uses
22 the one to three millimeter which we're not arguing
23 about?

24 MR. GIBSON: Mr. Doza is better equipped to
25 answer that.

1 COMMISSIONER MILLER: Mr. Doza?

2 MR. DOZA: Doug Doza.

3 With reference to product design because
4 that's really what this is about, Allied manufactures
5 monolithic refractories. We use these types of sizes.
6 Some of our products contain as large as one and one-
7 quarter inch BFA, and when we talk about BFA as a
8 refractory person, BFA is what is produced as an
9 ingot. It is what goes through preliminary crushing
10 to knock it down to one inch and down, and then it is
11 what is later refined. That entire scope is BFA.

12 So when the question is asked how much of
13 this is used in the end application, this is used
14 primarily in highly abrasive applications. The large
15 grains, much like in sandpaper where you're trying to
16 make a nice finish and rub something off, in the large
17 grain it withstands the mechanical impact of molten
18 metal stream, mechanical impact of chipping hammers,
19 things along these lines, in molten metal contact
20 applications.

21 So we would use that in niche products which
22 is a large part of our business to deal with the
23 mechanical abrasion of that particular application.

24 When we talk about the product design
25 itself, a formulation could contain as much as 20

1 percent of that particular size.

2 COMMISSIONER MILLER: Okay.

3 MR. DOZA: To impart the properties we need
4 in our customers' furnaces.

5 COMMISSIONER MILLER: Okay. And at that
6 size level is uniformity less of an issue in the
7 product than it may be in the sandpaper application
8 that Ms. Loewen is selling into? Earlier today the
9 discussion was very much about the refined or finished
10 product uniformity, consistency of particle size being
11 important, whereas in the crude it isn't. It's
12 everything from the dust to whatever size ingot.

13 In the large, when you're using something in
14 an application that uses this, is uniformity just less
15 of an issue?

16 MR. DOZA: No, the uniformity really isn't
17 less of an issue. That is actually one of our
18 specified sizes. That was produced for us in
19 accordance to our specifications by one of the
20 gentlemen whose companies talked this morning.

21 With that being said, the specification is
22 for less than a half inch and greater than a quarter
23 inch, and that's about six millimeters in difference.
24 So we consider that fairly tight in our applications.

25 We would then blend that with something in a

1 similar tight grain size distribution. We would
2 possibly use six or eight different crisp cuts of
3 brown fused alumina to blend together to get a
4 homogenous distribution which is what our product
5 requires in its end application.

6 COMMISSIONER MILLER: Okay, that's helpful.
7 Thank you. I appreciate that.

8 Mr. Doza, I'm going to stay with you a
9 moment longer. Your testimony emphasized in your
10 affidavit, I believe, at Exhibit 8 of the brief, of
11 your pre-hearing brief, emphasized the quality issue
12 so much and I heard that so much from Mr. Gibson's
13 testimony. Yet maybe in some ways I want to ask what
14 is it about Allied?

15 Even you from the public version of our
16 report can see that purchasers basically responded
17 that U.S. and Chinese product are quite comparable in
18 terms of quality and in fact, this may be, when I look
19 at the one indicator there that talks about how they
20 compare U.S. and Chinese product in terms of quality
21 exceeding industry standards, there's actually only
22 one purchaser who said that the Chinese product
23 exceeded industry standards.

24 I guess it's you, given what I heard this
25 morning, and I don't know that. I don't know that

1 from anything I've seen because I haven't read all the
2 questionnaires from the purchasers. I'm looking at
3 the staff tables at the moment.

4 In other words, your testimony frankly is
5 quite inconsistent with what we got from most
6 purchasers. Now is there something about Allied in
7 particular that would mean that you would give us a
8 response that I otherwise see as being quite
9 inconsistent with purchasers generally?

10 MR. DOZA: The focus on quality from Allied,
11 I would not say we are atypical in the marketplace
12 from a quality push perspective, but the niche
13 applications and overall the demanding nature of a
14 refractory application means consistency, traceability
15 and lack of contamination is crucial.

16 Our process in the refractory industry
17 process is such that if contamination gets into it it
18 may not be caught before it gets into a furnace
19 lining. Unlike some of the abrasive applications
20 where further handling and visual inspection.

21 For example that bolt that I talked about
22 earlier, that would never make it to a piece of
23 sandpaper but it could make it into a refractory wall
24 because of the scale of the installation.

25 So when I try to answer is Allied different,

1 I don't think Allied is different in that our
2 application in the refractory industry is such that we
3 have to focus very heavily on quality because of the
4 potential catastrophic implications of quality
5 problems.

6 COMMISSIONER MILLER: I think our record
7 does support that quality is important. It's on the
8 issue of whether the U.S. and the Chinese product
9 differ in terms of their quality that I think you have
10 an apparently different view than most of our
11 purchasers.

12 Mr. O'Brien, you can tell me I'm wrong in
13 reading what I have before us at this point, but
14 that's --

15 MR. O'BRIEN: I would say this, Commissioner
16 Miller. The responses that came in focused on a
17 bundle of factors that go into the decision to obtain
18 product from a particular supplier. Price undeniably
19 is one factor. Quality I believe undeniably is one
20 factor. Availability.

21 Ms. Loewen referred to customer loyalty,
22 meeting specific customer specifications.

23 Our point being that when you look at the
24 causation for people moving around the industry it is
25 not by reason of less than fair value pricing that

1 sourcing decisions are made. It's a bundle of factors
2 that go into that decision.

3 What Mr. Doza is pointing out is that in
4 Allied's case quality may be to an extent more
5 important than other factors, but I believe it is a
6 consistent story with the bundle of factors that's
7 before the Commission.

8 MS. MURRAY: Also Commissioner, it's Lisa
9 Murray speaking.

10 COMMISSIONER MILLER: All right.

11 MS. MURRAY: There was testimony this
12 morning that the product itself was fairly
13 homogeneous, and I think that perhaps that might have
14 been what purchasers were thinking of to the extent
15 they said there were not quality differences. In that
16 if you took a couple of those lumps and you took one
17 from one manufacturer and one from the other, yes,
18 they would seem to be the same. However, if the
19 question is how many pieces of string and nuts and
20 bolts and other contaminants appear, I believe that's
21 what Mr. Doza is referring to when he refers to
22 quality. Not contamination in the nugget itself, but
23 the contamination in the packing and in what's
24 actually received.

25 COMMISSIONER MILLER: Okay. I hear what

1 you're saying, but I still look at a table that says,
2 for example on the factor of whether quality exceeds
3 industry standards, that the U.S. is superior in the
4 view of six purchasers; the U.S. and China are
5 comparable in the view of nine purchasers; and there
6 is one purchaser who thinks China is superior. That's
7 the indicator that strikes me as being quite
8 inconsistent with the testimony I'm hearing from
9 Allied.

10 I know you all want to answer and I know the
11 red light is on so my time has run out. But I want to
12 be fair and give you a chance to respond.

13 CHAIRMAN OKUN: Why don't we come back, to
14 the extent that you want to address -- I see two of
15 you reaching for it. We'll come back and make sure
16 you have a chance to respond, Mr. Gibson.

17 I'll turn to Commissioner Koplan.

18 COMMISSIONER KOPLAN: Thank you, Madame
19 Chairman.

20 Let me start with the question that
21 Commissioner Lane asked on the first round with regard
22 to the EU dumping order.

23 Mr. O'Brien, I know you weren't present at
24 the staff conference but did you obtain a transcript
25 of that conference?

1 MR. O'BRIEN: Yes, sir.

2 COMMISSIONER KOPLAN: Did you review Mr.
3 Durstberger's discussion of that in some detail at
4 pages 32 to 34 of the staff conference?

5 MR. O'BRIEN: I did read the staff report
6 excerpt. I can't honestly say I recall what else was
7 said.

8 COMMISSIONER KOPLAN: You didn't read the
9 transcript of the conference itself?

10 MR. O'BRIEN: Not lately, no.

11 COMMISSIONER KOPLAN: He covers this issue
12 in some detail. He covered it at that time. I noted
13 this morning that you all weren't present for that
14 conference, but he went through it again this
15 afternoon. Then Commissioner Lane inquired as a
16 follow-up of you all, and I thought Mr. Gibson gave a
17 very candid response basically saying that the
18 problems outlined by Mr. Durstberger were real
19 problems. The thing was not being enforced, it was
20 going nowhere from their standpoint. And to expend
21 time and money on something that had no effect, your
22 client agreed on that point.

23 Then you jump back in and your response is
24 that there are other avenues available and you're
25 sticking to your original position.

1 When I look at what you have in your brief
2 on this issue, all you say is that why would
3 Treibacher allow the EU to terminate as though they
4 never gave a reason. One answer is that the Imerys
5 Group makes production and sales decisions based on
6 global considerations.

7 There is no acknowledgement that there's any
8 evidence in the record explaining it. I'm just saying
9 that I'm a bit troubled by that. You've never really
10 dealt with the response.

11 I would ask you, wouldn't you at least
12 acknowledge that his response is one answer to that
13 question?

14 MR. O'BRIEN: Certainly.

15 COMMISSIONER KOPLAN: Okay, thank you. Then
16 that lays that to rest for me.

17 Now, Ms. Loewen, I might not have heard you
18 correctly, but did you say that prior to this case
19 refined was a term that was not used in the industry
20 from your standpoint?

21 MS. LOEWEN: I would say at Saint-Gobain and
22 for most of our customers, refined was not a word that
23 was used. It was either crude or finished.

24 COMMISSIONER KOPLAN: Crude or finished?

25 MS. LOEWEN: Crude or finished.

1 COMMISSIONER KOPLAN: Okay, let me just come
2 back again, if I could, and I don't know that you've
3 seen this as a document, but I got into a discussion
4 this morning about a footnote in your brief on page
5 11. That was Footnote 11. It was not referred to as
6 refined or crude in that footnote. You used the other
7 term.

8 In fact as I said, our preliminary
9 determination was referring to crude in the
10 determination as a condition of competition and I
11 basically quoted from the opinion.

12 But then when I look at your own exhibit
13 which is a public document and the sourced is the U.S.
14 Geological Survey, "Abrasive Manufactured Annual and
15 Quarterly Report" and the NDS disposals of the
16 products we're talking about, the heading on your
17 exhibit is NDS disposals of crude and refined aluminum
18 oxide and you've got two categories in here, and this
19 is something you put into evidence.

20 The first category is crude aluminum oxide
21 which is what we were talking about in our
22 preliminary. And that shows no inventories, no
23 disposals after the year 2000.

24 The second category is refined aluminum
25 oxide. That's your exhibit. There you are showing

1 some degree of inventories.

2 So it's not the Petitioners that injected
3 that in, this is your own exhibit. I'm a little
4 confused by that.

5 MR. KLETT: Commissioner Koplan, this is Dan
6 Klett. I prepared that exhibit.

7 We in the brief have used the term refined
8 and crude because that was the terminology used in the
9 staff report to distinguish between the two types.

10 COMMISSIONER KOPLAN: But in this exhibit,
11 the Geological Survey, weren't they using those terms
12 or did you put those headings on?

13 MR. KLETT: Actually the USGS uses the term
14 abrasive grain and I think their terminology when they
15 say grain, that is the refined. If you go back to the
16 USGS reports, their terminology is aluminum oxide
17 abrasive grain and crude fused aluminum oxide. So
18 that's the terminology used in the USGS.

19 COMMISSIONER KOPLAN: So you created the
20 terminology in the exhibit?

21 MR. KLETT: I didn't create the term
22 refined. I used the term refined because that was the
23 nomenclature that was being used.

24 I think what our industry witnesses are
25 saying is that just expressing their experience in the

1 marketplace in terms of what terminology they use.

2 MR. O'BRIEN: Commissioner Koplan?

3 COMMISSIONER KOPLAN: Yes, Mr. O'Brien.

4 MR. O'BRIEN: At the outset I will say that
5 we do regret the wording in Footnote 11 but we do have
6 some additional comments on that that you may find
7 interesting, if we could.

8 COMMISSIONER KOPLAN: I would find it
9 interesting, yeah. Do you want to make them now?

10 MR. O'BRIEN: Yes, please.

11 MS. MURRAY: Commissioner Koplan, this is
12 Lisa Murray speaking.

13 As the one who drafted the apparently
14 unfortunate footnote, both the footnote and the
15 exhibit are correct. The exhibit focuses on the
16 inventories of refined, however it is also true that
17 there are sales of crude out of the DLA that have been
18 sold but have not yet been shipped so they're not
19 available in inventory because they've been sold. But
20 the most recently quarterly report from the DLA
21 reports specific quantities of crude that have not yet
22 been shipped and we can provide that document with our
23 post-hearing submission.

24 COMMISSIONER KOPLAN: I'd appreciate that.
25 You can understand the confusion caused when you cite

1 to the Commission's preliminary determination but
2 don't indicate that the condition of competition we
3 were talking about centered on crude because that
4 doesn't appear on that page of your brief.

5 MS. MURRAY: I apologize for the unfortunate
6 wording.

7 COMMISSIONER KOPLAN: No problem. I
8 appreciate your clarifying that.

9 You suggest on page 35 of your brief when
10 examining import data that the Commission could
11 subtract subject imports that independent importers
12 consume internally since these imports do not enter
13 the general U.S. market for RBAO. Is there a legal
14 basis that you can cite to me for discounting imports
15 that are internally consumed by the importer?

16 MS. MURRAY: The Commission of course hears
17 this argument in several cases and we are not arguing
18 so much that you need to do this as a formal matter as
19 that we suggest that you consider as one of many
20 factors that you consider what exactly is happening
21 with these imports including that.

22 COMMISSIONER KOPLAN: I appreciate that.

23 Let me ask you this. You've used the term
24 contrived scope in your brief and in your direct
25 presentation. As you know, it's Commerce that makes

1 the determination as to what the scope is in a case of
2 this nature.

3 Did you pursue that avenue at Commerce
4 vigorously? And what was the result?

5 MR. O'BRIEN: We did not challenge the
6 scope. We did make a proposed definition to change
7 the scope back at the beginning or when the companies
8 were just getting into the case. That was not
9 accepted and we did not pursue it for the rest of the
10 cases.

11 COMMISSIONER KOPLAN: You do know that the
12 Commission is bound to accept the definition of scope
13 that's handed to us by Commerce.

14 MR. O'BRIEN: I do, Commissioner Koplan. We
15 are not challenging that.

16 COMMISSIONER KOPLAN: Okay. Thank you.

17 I see my yellow light's come on. I'll save
18 the rest for the next round.

19 Thank you very much.

20 CHAIRMAN OKUN: Commissioner Lane?

21 COMMISSIONER LANE: No questions.

22 CHAIRMAN OKUN: Mr. Liu, let me ask you a
23 couple of questions with respect to the Chinese
24 industry, and again, I appreciate you being here to
25 tell us a little bit more about China's production

1 capacity, et cetera, from the perspective of your
2 association. I was interested in what you were saying
3 about the Chinese market, the growth in the Chinese
4 home market and where your other exports were going.

5 I just wanted to go back to make sure I
6 understood one point of what you were saying so I'm
7 looking now at our staff report which is a public
8 document, Table 7-1, which has Chinese production
9 capacity, production shipments and inventories. In
10 terms of home markets, I can track with you the home
11 market shipments which I think are consistent with the
12 testimony I heard you say which is they have been
13 increasing and projected to increase going out in the
14 '04 which I think I heard you say is related to a
15 number of things going on in China. Is that accurate?

16 MR. LIU: As I mentioned in the beginning of
17 my presentation, I myself come from the Legal Service
18 Department and I have my colleagues with me and for
19 the market situation and some presence on the
20 productory itself I would like to ask my colleague.
21 Is that okay?

22 CHAIRMAN OKUN: Let me just check with the
23 Secretary in terms of whether everyone has been sworn
24 in. I saw someone walk in late and I just want to
25 make sure he's been sworn in before --

1 MS. ABBOTT: The two additional witnesses
2 that walked in have been sworn.

3 CHAIRMAN OKUN: Thank you. Then, Mr. Liu,
4 you can ask your colleagues to respond.

5 MR. LIU: Thank you very much.

6 (Pause)

7 MR. LIU: So far my colleague understood
8 that the material we have presented to the lawyer is
9 in line with what I said just now.

10 CHAIRMAN OKUN: So the information in the
11 table in the staff report -- You're saying the
12 information that is in the staff report is consistent
13 with what your testimony is?

14 MR. LIU: Yes.

15 CHAIRMAN OKUN: With respect to exports to
16 both the United States and to all other markets, one
17 thing that struck me about the table is looking at the
18 exports to all other markets where the projections are
19 quite large, increases over where they were through
20 2002. I wondered if you could just, and you may have
21 mentioned that, just tell me what's going on in the
22 other markets that would be, that China's anticipating
23 making those increases in exports.

24 MR. LIU: Okay, let me ask.

25 (Pause)

1 MR. LIU: Excuse me.

2 CHAIRMAN OKUN: Mr. Liu, I have a couple of
3 questions. Let me just go back, I'll come back to
4 you, and also let me just say that whatever my
5 question is, Mr. O'Brien, you can go back to the
6 transcript and give some additional information. I
7 understand that sometimes the way we're posing it and
8 language barriers can be a problem. So you can still
9 add to whatever you say today.

10 But let me come back to you and let me do a
11 couple of things then I'll come back to this question.
12 Okay?

13 MR. LIU: Sure.

14 CHAIRMAN OKUN: Mr. Gibson, why don't I in
15 the interim let you respond to Commissioner Miller's
16 question about quality that I think you had wanted to
17 chime in on there.

18 MR. GIBSON: I always like to think that
19 Allied's on the leading edge of all trends and
20 therefore we are a little bit different than our
21 competitors.

22 But I think a lot of it goes back to the
23 experiences that we've had. We were one of the first
24 people to use a domestic processor of Chinese crude
25 when we had NAPCO as an affiliated company and we ran

1 into all sorts of quality issues there with
2 contamination, both from shipping and within the
3 product itself; a variation in chemistries; variation
4 in physical properties. It was a constant battle.
5 Mr. Doza can tell you that, he lived it.

6 So we went directly to Chinese producers,
7 were able to control, to develop them and then to
8 control the transportation, et cetera. We experienced
9 much better quality.

10 In the mean time we do a little business
11 with the domestic producers still, the same amount we
12 did back then, and we still have quality problems.

13 I'm sure that was our response. It's what
14 we've lived. It's what we've experienced.

15 CHAIRMAN OKUN: Maybe on that note I could
16 just turn to another area in those responses which
17 Vice Chairman Hillman had asked the earlier panel
18 about which is, I was struck not by the quality which
19 I think again, other than your response, they seemed
20 quite comparable. But on the fact that so many
21 focused on reliability and availability and I was
22 curious, I guess the panel this morning said there
23 hadn't been any disruptions to the market that would
24 make us think that purchasers would be putting a great
25 emphasis on reliability, supply and availability. I

1 thought in particular in the case of this where it
2 looks like there are substantial inventories, big
3 inventories both for the domestics and for the
4 importing companies. With that kind of inventories I
5 would be surprised if availability is an issue. So I
6 was curious if that part of the information we had
7 collected as well, why that might be something
8 purchasers were focused on.

9 MR. GIBSON: As one of the respondents said
10 this morning, if you run out of material, you're out
11 of business. WE can't make a product to ship unless
12 we have the raw material so it's an extremely
13 important factor. I think anybody would have to rate
14 it as a very important factor.

15 I'm not aware of any significant issues
16 relative to availability. We have a long supply chain
17 so we have to monitor our consumption and our
18 inventories pretty diligently, but I don't think there
19 have been any major problems up until this year. And
20 now we're having problems getting refined Chinese
21 material for our European and South African plants
22 because it's in short supply. There are delays and
23 prices have gone up. But that's part of the market
24 getting more active, and also some problems with
25 Chinese BFA production.

1 CHAIRMAN OKUN: Mr. Gates?

2 MR. GATES: I'd like to make a comment on
3 the reliability issue.

4 I think a lot of buyers aren't as involved
5 in the supply chain as Allied Minerals may be, so
6 you'll see a lot of responses I would guess, and I
7 don't know this for a fact, but I would guess from a
8 lot of purchasers in the abrasive industries, and also
9 some of the purchasers who aren't as involved in the
10 refractory end of purchasing about reliability because
11 when they buy from an overseas source if you're not on
12 top of that long supply chain you can run into
13 production problems because a shipment is late or a
14 delivery is late.

15 So I think it is a very big issue. I think
16 you find a lot of purchasers who have had major issues
17 with supply chain issues over the years.

18 CHAIRMAN OKUN: I appreciate those further
19 comments on that.

20 I saw Mr. Liu look up. Are you ready to
21 respond now, Mr. Liu?

22 MR. LIU: Okay. My colleague, Ms. Liu said
23 the export quantity fluctuates constantly and now she
24 could not explain why the exports to the other
25 countries going up. That's the best answer. I'm

1 sorry.

2 CHAIRMAN OKUN: I appreciate that.

3 Again, I will just submit a couple of
4 additional written questions with regard to some of
5 the information here to see if you can provide some
6 further information, but I appreciate your responses
7 here today.

8 I've lost track of where I am, if I have any
9 questions left. So let me turn to Vice Chairman
10 Hillman. I may come back.

11 VICE CHAIRMAN HILLMAN: Thank you.

12 I wondered if I can come forward to you, Mr.
13 Gates, and you, Ms. Loewen, to comment on a couple of
14 issues.

15 You heard Mr. Gibson and Mr. Doza talk about
16 this issue of traceability, they want to know where
17 the crude product came from. On the other hand we
18 heard testimony this morning that they were being
19 honest about it, there was really no difference
20 between the Canadian product and the Chinese crude
21 product.

22 From your perspective in the smaller grain
23 products, the bonded and coating and other industries.
24 Do you care where the crude is from? Do you know? Is
25 this issue of tracing back to the source of where the

1 crude product came from important for either of you?

2 MS. LOEWEN: For Saint-Gobain we actually
3 have a plant in Xien Xo, China which is actually a
4 Saint-Gobain joint venture. So that is our plant and
5 that company in Xien Xo is actually ISO certified.

6 So for us --

7 VICE CHAIRMAN HILLMAN: It is a producer of
8 crude?

9 MS. LOEWEN: We make our own crude and we
10 make our own finished sizes. So we have complete
11 traceability. And yes, it is very important to our
12 customers who make grinding wheels and sandpaper that
13 that product is of a good quality.

14 As the folks said this morning, it is equal
15 quality to the Canadian source. If you look at
16 Chinese brown fused alumina versus Canadian, the
17 qualities are very similar.

18 VICE CHAIRMAN HILLMAN: Okay.

19 Mr. Gates?

20 MR. GATES: I would say qualities are very
21 similar, but that you'll find very few end use
22 customers in the United States who would say they want
23 to buy Chinese grain or want to buy any grain. That
24 relates not only to the processing but also to the
25 crude material. Almost every end user, be it in the

1 abrasive industry or the refractory industry, would
2 want to know that they're getting material from the
3 same supply that will give them not only consistent
4 sizing but also a consistent chemistry.

5 It's not to say that this plant or that
6 plant produces a better quality than any other plant,
7 but it's important in almost all cases that it's a
8 consistent product. I think Mr. Doza can probably
9 speak to that better than I can. But in some cases
10 the chemistries are affected by the crude, not
11 necessarily by the refining, and when you're making an
12 end use product every time you make a wheel it's got
13 to act the same way when you send it to Ford, or every
14 time you make a refractoring and send it to U.S. Steel
15 it's got to act the same way. Not necessarily better
16 or worse, but the same. Otherwise you're going to
17 have quality issues.

18 VICE CHAIRMAN HILLMAN: Okay, and that
19 issue --

20 MR. GATES: So I think yes, it is important.
21 Traceability is important.

22 VICE CHAIRMAN HILLMAN: The consistency is
23 more -- I'm trying to understand where the consistency
24 comes from. Is it more from the production of the
25 crude or is it more from the way in which it is

1 crushed and --

2 MR. GATES: Both. And more -- I think that
3 would be answered differently by 100 producers. I
4 don't know how many more would say crushing is more
5 important, and I don't know how many more would say --
6 100 end users. How many would say crushing is more
7 important and how many would say sieving is more
8 important. It probably depends on the end use.

9 VICE CHAIRMAN HILLMAN: Okay.

10 I want to understand a little bit more,
11 again from your perspective in your part of this
12 industry, the issue of pricing and how it works.

13 Obviously Ms. Loewen you talked very
14 specifically that you tend to sell on a long term
15 contracts and that's typical of sales direct to end
16 users in this product segment. I think that's very
17 consistent with what we heard this morning.

18 From your perspective, what is driving
19 prices in the U.S. market these days?

20 MS. LOEWEN: I think you have to look at the
21 price issue. It really depends on the market.

22 You have people who have long term contracts
23 and price is a concern, but when you look at the
24 businesses like the aircraft and the automotive
25 market, you're using brown aluminum oxide to blast

1 blades and veins that go into aircraft parts. So
2 that's pretty high tech stuff and price is not
3 necessarily of a concern.

4 Pricing is always, everybody seems to say
5 that price is one component and that's true. Price is
6 one component. There are a lot of folks who are now
7 entering into this market. It's becoming a bit of a
8 saturated market within the domestics.

9 You have ourselves, Treibacher, Washington
10 Mills, everybody's vying for the same business and the
11 business is declining. It's competitive out there.
12 It has become a commodity as was mentioned this
13 morning.

14 Certain parts of this commodity market are
15 more high tech like the aircraft and land-based
16 turbine markets. But it's competitive. There's a lot
17 of folks out there who are all distributing this
18 product.

19 Could you say that it's the Chinese entering
20 the market? I don't think so. I bring in product
21 from China. I think you could probably ask a lot of
22 the folks that are sitting behind me am I one of the
23 lowest costs out there? Absolutely not. I lose a lot
24 of business every year, and I am a Chinese
25 manufacturer. We are not pricing our stuff at the

1 lowest end.

2 VICE CHAIRMAN HILLMAN: Mr. Gates, the same
3 question. From your perspective.

4 MR. GATES: From my perspective, my actual
5 refined aluminum oxide business over the years that
6 I've been involved in that business, it's declined.
7 So as not to I guess muddy the water with who's a
8 producer and who is not a producer, I'll say that I've
9 lost most of that business that I've lost in this
10 particular product area to companies in the United
11 States who bring in material and refine it or crush it
12 or sieve it for people who used to be customers.

13 So I'd say the price leaders are those
14 companies that are bringing in material currently.
15 The companies that sell to the biggest consumers in
16 America, the biggest end use clients, buy from people
17 who bring it in and refine it here.

18 Whether or not they're, in the scope of this
19 case or not is not my decision, I don't know, but
20 those people are the people who are driving the
21 pricing and taking the business away from companies
22 like mine.

23 VICE CHAIRMAN HILLMAN: The other issue that
24 we talked a little bit about this morning in terms of
25 whether it's having any impact at all on prices is

1 cost to the domestic producer. Again there was clear
2 testimony that there were these relatively
3 significantly sized sales out of the DLA inventory of
4 crude product at very very low prices.

5 Just as folks out there in the business were
6 you aware of that when these sales were occurring at
7 these low prices? Was that well known in the
8 industry?

9 MR. O'BRIEN: Perhaps Mr. Redshaw might be
10 able to comment just briefly because most of the big
11 volume of DLA was in the late '90s when it hit the
12 market.

13 VICE CHAIRMAN HILLMAN: Go ahead.

14 MR. REDSHAW: There is no doubt that
15 customers, competitors knew that he who had DLA
16 material at the time would be the cost of goods king,
17 and cost of goods, and in fact probably this isn't the
18 case but in the transcript, but when you had a
19 distributor in here talking earlier about paying 42 to
20 48 cents a pound, whatever it was, for a product, and
21 folks in the room were buying DLA material for six or
22 seven cents a pound, this thing has been cost driven.

23 From the middle '70s until 1990 the advent
24 of the DLA material for all practical purposes, all
25 the producers could just about straight line their

1 cost. Everyone was basically in the same cost basket.
2 That changed dramatically with the DLA material and
3 then it changed once again when those same folks were
4 importing Chinese crude.

5 Let's face it, when you look at the DLA
6 material, you look at the Chinese crude at anywhere
7 from five to ten cents a pound, and you hear market
8 prices thrown around at 42 to 48, it's cost driven.

9 VICE CHAIRMAN HILLMAN: I'm trying to
10 understand it also more from a purchaser perspective.
11 As a purchaser of product were you aware that some
12 folks may have had lower costs? Again, over the
13 course of this period, and try to take advantage of
14 getting some of that loser cost?

15 MS. LOEWEN: For us at Saint-Gobain, we used
16 to have our own manufacturing facility up in Chippewa,
17 Canada and we exited that in the late '80s. So really
18 from the late '80s until 1999 we were pretty much out
19 of the brown market. We didn't get back into the
20 brown market until 1999 when we started this joint
21 venture with this company in China.

22 So the time we exited in the '80s to the
23 recent time is when all this DLA material was actually
24 being disposed of.

25 So I can't really answer that because Saint-

1 Gobain wasn't really in the brown market during that
2 time period.

3 VICE CHAIRMAN HILLMAN: How about you, Mr.
4 Gates?

5 MR. GATES: I would say that we were in the
6 brown market at that time. We were aware of all the
7 DLA sales. We couldn't take advantage of them. We
8 would have loved to because we didn't have facilities
9 enabling us to take advantage of crude materials.

10 VICE CHAIRMAN HILLMAN: Were you purchasing
11 from anyone that was getting the DLA materia?

12 MR. GATES: No.

13 VICE CHAIRMAN HILLMAN: Okay.

14 I see that the yellow light has come on.
15 Thank you Madame Chairman.

16 CHAIRMAN OKUN: Commissioner Miller?

17 COMMISSIONER MILLER: Thank you, Madame
18 Chairman.

19 I appreciate the Chairman went back and gave
20 Mr. Gibson an opportunity to respond on my last round
21 of questioning.

22 I thought there was somebody else reaching
23 for a mike or whatever, but I know most of my question
24 was really aimed at Allied. I just wanted to make sure
25 that anyone who wanted to speak in response -- Mr.

1 Redshaw? I thought it might have been you.

2 MR. REDSHAW: That was me at the time.

3 When you think about, we've been acronymed
4 to death in this business. I can remember when it was
5 simply AO, and there was aluminum oxide refractor and
6 aluminum oxide for abrasives, aluminum oxide for
7 blasting, then the advent of the Chinese was BFA, not
8 this RBAO. Acronymed to death.

9 But at the same time I would comment that at
10 a producer like Exolon who had been around, as you
11 heard earlier, since the teens. The refractory
12 product, I had a veteran sales manager of 30 years,
13 always referred to refractory product as you heard
14 earlier today, crude referred to as gravel. He always
15 referred to refractory product as rocks. It tended to
16 be the case not in a sales perspective, but certainly
17 from an operations perspective, we love refractory
18 grade because it only costs us a couple of cents a
19 pound. WE just run it, run a crush, we can sell it,
20 they don't care about the quality.

21 But with that attitude exactly, which caused
22 problems at consumers such as Allied who they looked
23 at their product as it should be a value-added
24 product. Where in fact producers would tend to treat
25 ANSI-graded products which were used for blasting and

1 for abrasive grains as value-added product. And
2 Allied was always perceived, and again, they are
3 probably the most successful refractory company in
4 what has been just an abysmal business, they've been
5 the most successful, and one of those reasons is their
6 quality. They've been quality oriented and they
7 didn't put up with rocks or material outside the
8 specification or tie racks, cigarette butts, et
9 cetera.

10 So in their defense, in my opinion, they
11 were one of those refractory companies that took the
12 quality to a whole new level.

13 COMMISSIONER MILLER: I appreciate that.
14 I'm sure Mr. Gibson does as well.

15 I'll only join you in telling you that I
16 fight acronyms all the time here at the Commission as
17 well.

18 I did have one other question for you,
19 however, and that was primarily because your story
20 about Exolon and its condition at the time of the
21 merger was so different from that we heard this
22 morning, as you said yourself.

23 I just want to invite both you, your
24 counsel, and also Mr. Schagrin on Petitioner's side,
25 since this story is so different and it is within the

1 period of our investigation and also something we said
2 we would look at a little bit more. If either one of
3 you want to provide anything, Exolon you pointed out
4 was a public company before the merger?

5 MR. REDSHAW: Yes, it was a publicly held
6 company.

7 COMMISSIONER MILLER: I'd just invite either
8 of you to provide us whatever -- not huge volumes, but
9 whatever select information is on the public record
10 that might help us understand that story a little bit
11 better.

12 I did have one last question. It comes back
13 to the question of the like product because at this
14 point, Mr. O'Brien, I still sort of leave here not
15 completely sure what alternative definition you would
16 give us on like product. I heard Mr. Gibson's view of
17 like product in the industrial sense of refined is
18 ready for industrial use, crude needs further
19 processing. But I think we have to recognize that --
20 I'm going to invite Mr. Seidel to respond to this
21 because his name was mentioned earlier this morning as
22 being an expert in this matter. So I'll invite him if
23 he would like to comment on whether -- I think the
24 illusion at that point was the administrability or
25 non-administrability of such a definition. Whatever,

1 you can comment on that.

2 But then the real question for you is, and I
3 know this has come up, maybe you've told us
4 specifically what you think the definition should be
5 but I'm not sure that's clear to me yet.

6 So in whatever order, Mr. O'Brien and Mr.
7 Seidel.

8 MR. O'BRIEN: Let me see if I can get it out
9 on the transcript clear.

10 Our position is that the domestic like
11 product is that product which is crushed or screened
12 for use by an end user. The domestic industry would
13 be those companies that crush or screen product for
14 sale to end use customers.

15 COMMISSIONER MILLER: Okay. We can't change
16 the scope so the scope is still the 3/8th of an inch
17 or less.

18 MR. O'BRIEN: Correct.

19 COMMISSIONER MILLER: But the like product,
20 in other words, is where you would have us define it
21 by use not the scope.

22 MR. O'BRIEN: Correct.

23 COMMISSIONER MILLER: So Customs doesn't
24 have a problem. Right, Mr. Seidel?

25 MR. SEIDEL: I think the big problem that

1 you have here is because of the way the scope was
2 defined. You do have a problem in the administrative
3 enforcement of any antidumping order.

4 The Tariff Act defines it as artificial
5 corundum, and then it divides it into two sections.
6 One is crude and the other one says in "grains ground,
7 pulverized or refined." It has nothing about size.

8 What the scope has done here is it's created
9 an artificial definition of certain sizes, some of
10 which will be for Customs purposes in grains,
11 pulverized or whatever, outside the scope. Others
12 will be in grains inside the scope. And for the
13 Customs Service to administer that is going to be
14 virtually impossible. It does not inspect the
15 shipments.

16 I was with Customs for 32 years and I
17 retired as Assistant Commissioner so I know they don't
18 inspect that many shipments.

19 When they do inspect it, they'll have to
20 size it because of the percentage requirements that
21 are in there.

22 The end use definition would require a
23 certification that this is being imported as is for
24 the end use.

25 Well, the same thing with the scope. It's

1 going to require a written statement from the importer
2 because Customs can't inspect the shipment that says
3 this is within the scope or this is without the scope.

4 I just think you have the same
5 administration problems regardless of which definition
6 you have, but from a standpoint of enforceability, the
7 end user one makes more sense. People know whether
8 they're importing it for use in the product in the
9 form that it's imported, or whether it's going to be
10 further refined, screened, or whatever. There are
11 obviously items within the scope here that are for use
12 in refractories and items outside the scope that are
13 for use in refractories that will come in without
14 paying the dumping duties if one is assessed. Because
15 as you look at the samples, and I think that was the
16 confusion before with crude or refined. They were
17 really talking about in scope or out of scope.

18 COMMISSIONER MILLER: I see your point. I
19 appreciate it. I appreciate all the answers to my
20 questions. Thank you very much.

21 CHAIRMAN OKUN: Commissioner Koplan?

22 COMMISSIONER KOPLAN: Thank you, Madame
23 Chairman.

24 I just have one request for the post-
25 hearing, if I may.

1 In our preliminary determination we
2 indicated that in any final phase we were going to
3 examine whether Great Lakes engages in sufficient
4 production-related activity in the U.S. to qualify as
5 a domestic producer. As we all know, the purpose of
6 the preliminary, we found that appropriate
7 circumstances existed to exclude Great Lakes from the
8 definition of the domestic industry.

9 For purposes of the post-hearing it would be
10 helpful for me if you all would as best you can review
11 the traditional factors that were used in making such
12 a determination. I'm referring to the source and
13 extent of the firm's capital investment, the technical
14 expertise involved in U.S. production activities, the
15 value added to the product in the United States,
16 employment levels, the quantity and type of parts
17 sourced in the United States, and any other costs and
18 activities in the United States directly leading to
19 production of the like product.

20 If you would provide as best you can an
21 analysis of those factors to help in my determination
22 as to whether Great Lakes should be included as part
23 of the domestic industry or excluded as a related
24 party.

25 MR. O'BRIEN: WE will, certainly.

1 COMMISSIONER KOPLAN: Thank you very much,
2 Mr. O'Brien.

3 With that, I have no further questions.

4 CHAIRMAN OKUN: Just one last question, Mr.
5 O'Brien, I go back to you. It is along the lines of
6 some of the questions we were talking about earlier,
7 but just to make it clear.

8 On the argument that you have made today and
9 in your briefs regarding how we should look at the
10 imports by U.S. producers, however the domestic
11 industry is defined at the end of the day.

12 When asked about that this morning, to Mr.
13 Schagrin, and I referenced at that point Table 4-2 in
14 the staff report, his general characterization I think
15 was A, that we have to get the domestic industry
16 right, but that however we looked at it, that table is
17 not an accurate representative of most everybody out
18 there.

19 So that however we came down this was not
20 very representative and didn't in fact color how we
21 look at the rest of the data. I wanted to have a
22 chance to hear your response to that point.

23 You can also do it in your post-hearing
24 brief.

25 MR. KLETT: This is Dan Klett. I'd just

1 like to make one point.

2 CHAIRMAN OKUN: Yes.

3 MR. KLETT: That is regardless of how you
4 look at the volume data, whether you break it out
5 based on some of the ways we have it in our brief or
6 whether you look at the volume data based on the
7 breakout of production, subject imports and non-
8 subject imports as reflected in your staff report, and
9 even as reflected in Mr. Schagrin's brief with some
10 modifications. I think the data show that while there
11 have been increases in subject import volume and
12 market share, that you look at the public data with
13 respect to non-subject imports, those declined
14 significantly and to a certain extent you have
15 increases in subject import market share at the
16 expense of non-subject imports, regardless of how you
17 cut or slice the data.

18 CHAIRMAN OKUN: I appreciate those comments.

19 Mr. O'Brien, did you have anything to add on
20 that?

21 MR. O'BRIEN: I think we will further
22 address it in the post-hearing submission. There are
23 additional comments but I think they're very
24 consistent with the point that Mr. Klett was making.

25 CHAIRMAN OKUN: I appreciate those further

1 comments and the other issues that I wanted to raise I
2 believe have been covered by my colleagues.

3 Vice Chairman Hillman?

4 VICE CHAIRMAN HILLMAN: I hope just one
5 quick follow-up, because something Mr. Redshaw that
6 you said in response to everybody would rather produce
7 refractory product because it doesn't take as much
8 work in essence, because you're not getting it down to
9 as fine a grade prompted I guess two questions.

10 We heard some testimony this morning, and I
11 guess I wanted your take on it of, if you will, the
12 value added between taking the crude product and
13 producing the refractory product as opposed to
14 producing the more finely ground product. Do you have
15 a relative sense of that, how much value added there
16 is in terms of going from crude to refractory product
17 and how much more value is added as you go up the, or
18 down in grain size?

19 MR. REDSHAW: I would throw out just a rule
20 of thumb. Not addressing the cost of the crude.
21 Mainly because crude in Europe might cost 21 cents, 22
22 cents a pound to produce, and crude in North America
23 might have cost 13 cents.

24 However a rule of thumb, and anyone at the
25 table here might want to correct me, but refractory

1 material may be two, two and a half, maximum three
2 cents a pound to produce, where abrasive grain was
3 typically looked at as eight, nine, ten cents a pound.
4 So there was significant difference.

5 VICE CHAIRMAN HILLMAN: Okay, I think that's
6 very helpful.

7 Just help me on the volume side of it. Or
8 maybe it's the weight. If you take a ton or however
9 much you're taking of the crude product and producing
10 it into refractory product or whatever, do you lose a
11 fair amount in the process?

12 MR. REDSHAW: There's always a couple of
13 percent loss. Of course the difficulty in producing
14 abrasive or ANSI graded material is that you're going
15 to produce 20 different sizes. Some of them are in
16 huge demand and you can virtually charge what you
17 want. Others you have too much of.

18 In terms of a weighted average, I couldn't
19 tell you a producer who has the data in front of them,
20 I'm not privy to that data having left Exolon. But
21 certainly they could show you what the weighted
22 average of each specific grit was typically for a ton
23 of material run through the system.

24 VICE CHAIRMAN HILLMAN: But you're saying
25 there is some loss that occurs?

1 MR. REDSHAW: Yeah, whether it's refractory,
2 whether it's abrasive grain or a blasting grain, paper
3 and cloth. There's always a certain amount of loss.
4 Even if you bring in refined brown fused aluminum
5 oxide from China, there's loss. And simply repackage
6 it, there's loss there as well.

7 VICE CHAIRMAN HILLMAN: All right. That's
8 very helpful. I appreciate that.

9 I think with that I have no further
10 questions. But I would join my colleagues in thanking
11 you very much for your appearances here and for all
12 your testimony.

13 Thank you.

14 CHAIRMAN OKUN: If there are no further
15 questions from my colleagues, let me see if staff has
16 questions for this panel.

17 MR. McCLURE: Jim McClure, Office of
18 Investigations.

19 Staff has no questions.

20 CHAIRMAN OKUN: Thank you.

21 Let me ask counsel for Petitioners if they
22 have questions for this panel.

23 MR. SCHAGRIN: Roger Schagrin on behalf of
24 Petitioners. We have no questions.

25 CHAIRMAN OKUN: Okay.

1 Again, I want to thank all the witnesses for
2 their testimony today, for their answers to our man
3 questions, and for the information you'll be
4 submitting in post-hearing briefs.

5 The time remaining, the Petitioners have a
6 total of 14 minutes which includes five minutes for
7 closing. Respondents have a total of nine minutes
8 which includes five minutes for closing. So when we
9 have a chance for this panel to go back to their
10 seats, we will have Mr. Schagrin come up.

11 (Pause)

12 CHAIRMAN OKUN: Mr. Schagrin, it looks like
13 you're ready to proceed.

14 MR. SCHAGRIN: Thank you, Chairman Okun,
15 Members of the Commission. Roger Schagrin, of
16 Schagrin Associates on behalf of Petitioners.

17 Let me start with scope and like product.
18 Rarely have I seen, we usually spend a lot of time on
19 like product here at the Commission but rarely have I
20 seen so much time spent for so little use,
21 particularly by Respondents.

22 One thing I did appreciate, Commissioner
23 Koplan, was your question to Mr. O'Brien about how
24 vigorously he contested scope at the Department of
25 Commerce since he's raised it so ultra-vigorously here

1 at the Commission.

2 Well just a few weeks ago I had the pleasure
3 of sitting across from Mr. O'Brien for two hours at
4 the Department of Commerce hearing. I'll recheck the
5 transcript, which I did read after the hearing, and I
6 do not remember him raising scope in one word. The
7 word scope may have been said at the hearing, but I
8 don't remember him raising an issue about scope at the
9 Department of Commerce which you correctly identified,
10 Commissioner Koplan, is the place to raise it.

11 Now let's talk about like product over here
12 at the Commission which we should talk about.

13 The fact is that Respondents' emphasis on
14 the need to expand the like product here is such a red
15 herring. It's okay if they raised it in their briefs
16 because they maybe didn't know how important these
17 larger sizes in the brochures were, but it sounded to
18 me from the Allied witness that they really did.
19 Allied said well we buy five percent of our products
20 in these larger sizes. But you know, none of the
21 other refractory producers do. And we know none of
22 the abrasive folks do because they're all buying
23 smaller grains. So it's maybe one percent of the
24 entire U.S. market. Maybe one-third of one percent of
25 the domestic producers' production and shipment.

1 Is that a big like product issue for the
2 Commission? I don't think so.

3 But what we were trying to get to in scope,
4 they said maybe you should have increased the scope to
5 one inch but still call it refined. Well all the
6 crude comes in at one inch or finer. All we would
7 have been doing is biting off a tremendous amount of
8 problems in terms of Customs enforcement.

9 By the way, all of the crude, I talked to
10 the Petitioners during the break. All of the crude
11 imported by Petitioners is outside of the scope. A
12 hundred percent of it. The Petitioners do not import
13 any crude that would be considered in the scope. It
14 all meets the definition of being outside of the
15 scope. We think that would be, it's the nature of the
16 product.

17 If you were trying the references made of
18 well, you could just import this product and layer in
19 the grit sizes and then sieve them later. No, read
20 the scope. The scope says ground, pulverized or
21 refined artificial corundum also known as brown
22 aluminum oxide or brown fused alumina in grit sizes of
23 3/8th inches or less. Then it gets into the
24 exclusion.

25 If you import a product that's in grit

1 sizes, no matter how hard you try to hide it from the
2 Customs Service, if you try to mix it in with crude,
3 if you try to do other things that were done in
4 Europe. My job, as specifically given to me by
5 Treibacher before they joined this case, it is true
6 what Treibacher said about the European case. Mr.
7 Durstberger's European parents said we're not going to
8 spend money in the United States unless that lawyer
9 you're thinking about hiring there can tell you that
10 this can be enforced in the United States. We're not
11 going to waste our money, get another order against
12 the Chinese, and see all these games played. I said I
13 think we can do it. I work with Customs. I think we
14 can get this done, and that's the way we drafted it.

15 Now in our pre-filing discussions with the
16 Department of Commerce we did exactly what Mr. Seidel
17 suggested. We said look, the only people who can
18 import crude into the United States are people who can
19 crush it. Why don't you just do an end use
20 certificate? It's so easy.

21 Commerce and Customs said no way. I want
22 you to know that Mr. Seidel has a lot of respect for
23 me. I don't think Customs is going to have difficulty
24 enforcing these orders because he said well, it's
25 going to be impossible for Customs to enforce this.

1 Look at how much is going to enter as refined that's
2 outside of the scope. Yes, it's probably about one
3 percent of imports. That was Allied's testimony.
4 That shouldn't be a problem. Now cheating will be a
5 problem. It's always a problem. Every case we have.
6 I don't even want to get into that.

7 But I will make one promise. That is once
8 we get a dumping order in effect, I pledge I'll work
9 with Mr. Seidel. We can do a changed circumstances
10 review if he can get the Customs Service to agree with
11 Commerce that we can go to end use certificates.
12 That's my pledge. I'll live up to it. Stu, call me
13 after the order goes into effect.

14 Okay, let's look at the other arguments.
15 Let's really get into some of the others.

16 Allied raises the quality argument. The
17 Commission is already aware from the record that
18 they're probably the only one, I think there may have
19 been one other, quality is not really an issue for the
20 domestic industry. These domestic producers have been
21 known throughout their histories for providing good
22 quality.

23 I'll tell you what Allied's story really
24 proves to you. That is we were asked the question
25 before, can't you really compete if you just buy

1 Chinese crude? Won't that make you competitive with
2 the Chinese grain? Allied is the best example.
3 Allied tells you, we closed our Newell facility just
4 because we couldn't assure our quality of supply of
5 crude. Boy, we could assure our quality of supply to
6 grain. Now if that makes more sense to you than it
7 does to me I will be really surprised.

8 Treibacher, Washington Mills, they don't buy
9 crude from brokers. They said we don't want to keep
10 going through middlemen for the crude. Well you don't
11 have to go through middlemen for either the crude or
12 the grain. Treibacher and Washington Mills, where are
13 they buying crude from? Europe, Canada, China. They
14 always go directly to the producer. People are too
15 big. Allied was too big to have to go through any
16 middlemen.

17 But why did they get out of the business?
18 Just for the same reason that my clients will be
19 forced out of the business if you make a negative
20 determination. That is they found that they could buy
21 Chinese grains, dumped Chinese grain, cheaper than
22 they could buy Chinese crude and crush it themselves
23 in Newell, West Virginia. That's why they shut down
24 the plant. They couldn't make money at the plant.
25 That's the real reason.

1 You can't possibly believe that they shut
2 the plant down because they could assure quality of
3 supply of grain but they couldn't assure quality of
4 supply of crude. That's just really a red herring.
5 It doesn't make any sense.

6 They say look, our imports couldn't be
7 affecting the domestic industry. We buy the same for
8 the domestic industry has been buying for years.
9 Yeah, well Washington Mills and Treibacher tell me,
10 and we'll put this in the post-hearing brief, that
11 they sell Allied on average less than 100 tons a year.
12 So they really haven't shifted recently that much from
13 domestic production to imports, but they buy trifling
14 amounts.

15 The same with some of the arguments about
16 Immires and refractories that were made by
17 Respondents. They really take one and one and they
18 come up with nine.

19 We know why Treibacher got rid of the AD
20 order. The fact that they have a general ad in a
21 magazine doesn't negate the fact that Plibriko is not
22 selling from Europe into the United States, not
23 selling product containing the refractories in any
24 measurable amounts in a market. I think they referred
25 to the refractories market as approximately \$2 billion

1 a year? What's 20 tons in a \$2 billion a year market?
2 I would think the Allied Vice President would know who
3 he's competing with on a day to day basis. My
4 Petitioners know they're competing with Chinese
5 imports every single day.

6 Now, let's talk about the Exolon gentleman's
7 testimony. His testimony was basically, and we'll get
8 into the data on why Exolon was going bankrupt, that's
9 not really an issue, but his data basically said, and
10 I think he was careful in his choice of words. He
11 said when I was at Exolon I didn't face competition
12 from Chinese imports in abrasives. He didn't say in
13 refractories.

14 The testimony of Mr. Silver, the President
15 of Exolon, and contrary to the testimony of the
16 gentleman from Cometals, that Vesuvius had been
17 Exolon's largest customer. Vesuvius kept coming back
18 to Exolon to say the Chinese are lowering their
19 prices. Eventually, Exolon lost the entire Vesuvius
20 business which was just devastating for them to
21 imports that were brought in by Great Lakes Minerals.
22 That was their testimony. They confirmed the lost
23 sale, that Vesuvius changed over to imported product.

24 The same was true, Cometals complained.
25 Hey, Magniko was a customer of mine for some of my

1 imports and they were buying domestic. But then we
2 lost all that business to C-E. Well that was C-E, the
3 importer originally. That was a problem. Everybody
4 in refractories was losing out to imports.

5 And the testimony of Mr. Redback [sic] was
6 consistent with the domestic industry's testimony.
7 And that is up until late '90s the big push by imports
8 from China was in refractories. Then 2000 onwards
9 they went after abrasives and they went after
10 distributors.

11 In fact he said that when he was at Exolon
12 they started trying to get business based on price and
13 they used lower prices to get people to change their
14 business. All the other people in the Respondents'
15 panel said our customers don't change on the basis of
16 price. Their own panelist said well at Exolon we got
17 people to change on the basis of price, and I think he
18 was right about that.

19 But then it just didn't follow. He said
20 Washington Mills bought Exolon but they couldn't stop
21 the pricing problems and we don't know why.

22 First look at the record. In 2000 was
23 Exolon lowering their prices just to take volume from
24 other folks in the domestic industry? And if so, were
25 they the lowest price folks?

1 Well, their prices were higher than Chinese
2 prices. After 2001 when Washington Mills bought them,
3 did pricing in this industry increase? You've got all
4 your pricing products. No, pricing didn't increase.

5 Well Exolon's not out there lowering prices
6 to try to grab market share any more. Why aren't
7 prices increasing? It's because the Chinese are
8 underselling everybody in the market. They were
9 causing continued price depression. In fact to show
10 how easy it was to enter the U.S. market with new
11 Chinese imports, you need look no further than Mr.
12 Redback [sic] himself. He leaves Exolon after being a
13 long term sales employee. He goes to a company that
14 was not engaged in the business of importing brown
15 aluminum oxide. He begins importing cheap, dumped
16 brown aluminum oxide and he goes back and sells it to
17 all the former customers that he called on when he was
18 at Exolon.

19 How was he able to sell to all those
20 customers? On the basis of wonderful quality? No.
21 Quality's equivalent. He sold those customers on the
22 basis of offering them a lower price because he knows
23 customers in fact in this industry do change suppliers
24 based on price. They said, 23 out of 25 said price
25 was very important to them. They obviously changed on

1 the basis of price.

2 Let's face it, the imposition of dumping
3 duties will hurt Mr. Redback's [sic] job. I have
4 nothing against him. The law is the law. If you
5 import dumped products, if you injure the domestic
6 industry, somebody's going to have to pay the dumping
7 duties. That's the way it goes.

8 Let's look at Saint-Gobain. They said look,
9 we don't really compete with anybody. We've got our
10 own Chinese supplier.

11 Well first, they do have their own Chinese
12 supplier. Their Chinese supplier could have gone to
13 Commerce and showed they weren't dumping. They
14 didn't.

15 Saint-Gobain only sells abrasives. The
16 testimony in response to questions was, well you know
17 this really is a tough market because there's more and
18 more people in the market like C-E Minerals. C-E
19 Minerals doesn't sell to the abrasives market. C-E
20 sells only to the refractories market.

21 Who are the more and more people the witness
22 from Saint-Gobain could have been referring to in her
23 knowledge base? You've got all the information about
24 the domestic industry. Who are the more and more?
25 There are more and more importers. Just like all the

1 distributors testified to. Distributors kept telling
2 this Commission that for the past couple of years
3 there have been importers coming through the woodwork.

4 We think you've covered most of the imports
5 here. To be honest there's a few you haven't covered,
6 but there's just lots of importers of Chinese product.
7 It's a dumped product. It undersells the domestic
8 industry. This is an industry that's easy to
9 penetrate and to make sales if you've got the right
10 price, and if you hold a lot of inventories.

11 In conclusion, are imports significant by
12 volume and market share and are there increased
13 significant? Yes.

14 Did the imports rob sales from the domestic
15 industry and do you have a lot of verified lost sales?
16 Yes.

17 This industry was injured throughout the
18 POI. Capacity utilization was low. Production,
19 shipments, employment, all fell from 2000 to 2002,
20 profits weakened significantly over the POI. You have
21 consistent underselling in both product pricing and
22 UAV basis. The record overwhelmingly shows price
23 depression. It demands an affirmative determination
24 and it demands an affirmative critical circumstance of
25 determination is appropriate here because in the face

1 of these high dumping duties, importers tried to beat
2 the system and that caused additional injury to the
3 domestic industry.

4 We'll say more about threat in our post-
5 hearing brief.

6 Thank you very much. I beat the red light.

7 CHAIRMAN OKUN: Thank you.

8 Mr. O'Brien?

9 MR. O'BRIEN: Thank you, Madame Chairman.

10 I certainly do appreciate Mr. Schagrins'
11 pledge to work with other companies to change the
12 scope of the case assuming that Customs will go along
13 with it. I believe its relevance here to the
14 Commission is this is a peculiar scope.

15 I'm not asking the Commission to change it.
16 All I'm saying is I'm asking the Commission to
17 appreciate that it's a peculiar scope. And when you
18 turn to the domestic like product, please keep that in
19 mind.

20 Our position on the definition of the
21 domestic like product is that any product, regardless
22 of size, if it comes in and is crushed in size it is
23 part of the domestic like product and those companies
24 that crush and size product in the United States are
25 U.S. producers. That's our position, plain and

1 simple. The effects on the Commission's analysis are
2 extremely high.

3 I don't believe there's a serious
4 disagreement about the commercial realities in
5 accordance with the definition that I just said.

6 Mr. Harvey Plonsker earlier this morning
7 when asked on this issue said consistency of sizing is
8 more important than the size itself. Absolutely. WE
9 agree completely. Full stop.

10 With regard to the other points, I believe
11 the description of what happened with Magniko and
12 Vesuvius really is quite revealing on the conditions
13 of competition.

14 If you take Magniko, Vesuvius and Allied
15 you've got the three top companies in the refractory
16 market and the refractory market by volume is the
17 biggest market segment. It's really considerably
18 larger than abrasives or industrial.

19 So if you take those two, Magniko and
20 Vesuvius, where were those sales lost? How were those
21 lost sales?

22 One went to C-E Minerals who had the
23 business when they were an importer and has the
24 business now that they're a U.S. producer. The other
25 one went to Great Lakes who, regardless of the status

1 of them, they are certainly a company with a heavy
2 U.S. investment, and we obviously would argue that
3 they should be counted as a U.S. producer.

4 Those are two of the three largest
5 companies. You then take Allied's story and it is
6 simply, you cannot fairly conclude from the testimony
7 today that Allied sold its NAPCO facility in West
8 Virginia and moved to China on the basis of price.
9 There were too many other factors involved.

10 At the end of the day the Commission has to
11 find injury by reason of the LTFV imports. Not by
12 reason of all the other intervening factors, some of
13 which we've gone over today, the others of which are
14 spelled out in our brief. The DLA sales. The massive
15 imports of crude product by the U.S. producers
16 themselves. The substantial imports of refined
17 product by the U.S. producers themselves. The quality
18 issues. All the other issues interpose themselves
19 between the injury complained of and the LTFV sales,
20 and we submit you simply cannot find that those sales
21 were a source of material injury.

22 We would argue, and I think the Commission
23 is quite sensitive to this fact, that the domestic
24 industry itself is not in bad shape given its strong
25 ties to the steel industry and the foundry industry,

1 the automobile industry, the rail industry, all the
2 heavy industries which are clearly in a depressed or
3 slowed-down state. Hopefully it will be cyclical.
4 2003 looks better than 2002, and hopefully 2004 will
5 look better than 2003.

6 But if the normal business cycle applies in
7 this case, as it has in the decades before in this
8 industry, then brown fused alumina will come back in
9 tighter demand and higher prices as the industry
10 recovers.

11 In any case it's current condition is not
12 due to the LTFV sales.

13 The other issue that I believe the
14 Commission is sensitive to is the details anomalous.
15 There is a very substantial variation among the
16 domestic producers. Those answers, with all due
17 respect to all of the data submissions that have been
18 put in to date, still leave more questions than
19 answers.

20 You've got a situation where you have
21 dramatically changing sources of crude. There is no
22 question that the volume coming in from Canada has
23 almost entirely disappeared. The volume of crude
24 coming in from China has risen dramatically, and yet
25 you have, I believe on the record, there is no

1 sensible link to how that has affected U.S.
2 operations. But it's a big affect and it has to be
3 attributable to something.

4 I will say if the domestic industry did not
5 think it would be doing good down the road, then why
6 have crude shipments from China continued to increase
7 from year upon year upon year? That includes right
8 into 2003. The increases of crude product are
9 increasing. That's the HPS data, and even with
10 corrections made by Respondents and Complainants, the
11 volume of crude product coming in from China is
12 getting higher every year.

13 That crude product, I believe it's a matter
14 of record, that nobody is just reselling crude.
15 Everybody that's taking it in is crushing it, and it
16 has to be an indicia of where the industry thinks
17 itself is going.

18 Finally, with respect to threat, I
19 appreciate your listening to Mr. Liu speak about the
20 extremely robust Chinese market. Mr. Liu pointed out
21 that even one producer, Bau Steel, is expanding its
22 steel production dramatically. That steel production
23 translates directly into increased refractories and
24 foundries which translates directly into increased
25 consumption in China.

1 The exports to third country markets are
2 also increasing and it is certainly a reasonable and
3 we believe correct view of the data to show that the
4 increased capacity in China will be completely
5 absorbed by the increased demand within the Chinese
6 market itself.

7 So in summary, we would conclude that the
8 industry is not in a state of distress or a state of
9 injury, and we would certainly conclude that any such
10 injury that the Commission finds is not by reason of
11 LTFV exports from China and there is no threat of
12 material injury in the future.

13 Thank you very much.

14 CHAIRMAN OKUN: Thank you.

15 Post-hearing briefings, statements
16 responsive to questions, and requests to the
17 Commission and corrections to the transcript must be
18 filed by September 30, 2003.

19 Closing of the record and final release of
20 data to parties is October 15, 2003.

21 Final comments are due October 17, 2003.

22 With no further business to come before the
23 Commission, this hearing is adjourned.

24 (Whereupon, the hearing was concluded at
25 4:10 p.m.)

CERTIFICATION OF TRANSCRIPTION

TITLE: Refined Brown Aluminum Oxide from
China

INVESTIGATION NO.: 731-TA-1022 (Final)

HEARING DATE: September 23, 2003

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: September 23, 2003

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's
Representative

1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Mason Edwards
Signature of Court Reporter