

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation No.:
SILICOMANGANESE FROM AUSTRALIA) 731-TA-1269 (FINAL)

REVISED AND CORRECTED

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THE UNITED STATES
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation No. :
SILICONMANGANESE FROM AUSTRALIA) 731-TA-1269 (FINAL)

Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Thursday, February 11, 2016

The meeting commenced pursuant to notice at
9:43 a.m., before the Commissioners of the United States
International Trade Commission, the Honorable Meredith M.
Broadbent, Chairman, presiding.

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Meredith M. Broadbent (presiding)

5 Vice Chairman Dean A. Pinkert

6 Commissioner Irving A. Williamson

7 Commissioner David S. Johanson

8 Commissioner F. Scott Kieff

9 Commissioner Rhonda K. Schmidtlein

10

11

12 Staff:

13 Bill Bishop, Supervisory Hearings and Information

14 Officer

15 Sharon Bellamy, Program Support Specialist

16 Sonia Parveen, Student Intern

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18 Michael Szustakowski, Investigator

19 Gerald Houck, International Trade Analyst

20 Tana Farrington, Economist

21 Justin Jee, Accountant/Auditor

22 Jane C. Dempsey, Attorney/Advisor

23 Elizabeth Haines, Supervisory Investigator

24

25

1 APPEARANCES:

2 Congressional Appearances:

3 The Honorable Joe Manchin III, United States Senator,
4 West Virginia

5 The Honorable Shelley Moore Capito, United States
6 Senator, West Virginia

7

8 Opening Remarks:

9 Domestic Producers (Myles S. Getlan, Cassidy Levy Kent (USA)
10 LLP)

11 Respondents (Shara L. Aranoff, Covington & Burling LLP)

12

13 In Support of the Imposition of Antidumping and Duty Orders:

14 Felman Production LLC

15 Eramet Marietta, Inc.

16 Robert Powell, Vice President and General Counsel,

17 Felman Production

18 Barry Nuss, Chief Financial Officer, Felman Production

19 Robert Ohlinger, Conveyor Belt Operator, Felman

20 Production; and President of Local 5171, USW

21 Peter Rochussen, Vice President, Eramet Comilog

22 Manganese, Inc.

23 Jack A. Levy, Myles S. Getlan and James R. Cannon, Jr.

24 - Of Counsel

25

1 In Opposition to the Imposition of Antidumping and Duty

2 Orders:

3 Covington & Burling LLP

4 Washington, DC

5 on behalf of

6 Tasmanian Electro Metallurgical Company Pty Ltd. ("TEMCO")

7 Samancor AG

8 Rodney Tidey, Finance Lead, Magnanese, TEMCO

9 W. Carl Kylander, Consultant for South32; and formerly

10 Vice President, BHP Billion Marketing Inc.

11 Dr. Seth Kaplan, Senior Economic Advisor, Capital

12 Trade, Inc.

13 Andrew Szamosszegi, Principal, Capital Trade, Inc.

14 Shara L. Aranoff, Alexander D. Chinoy - Of Counsel

15

16 Closing/Rebuttal:

17 Domestic Producers (Jack A. Levy, Cassidy Levy Kent (USA)

18 LLP)

19 Respondents (Shara L. Aranoff, Covington & Burling LLP)

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P R O C E E D I N G S

9:43 a.m.

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

CHAIRMAN BROADBENT: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on investigation 731-1269 involving silicomanganese from Australia. The purpose of the final phase of this investigation is to determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports from Australia that are sold at less than fair value. Documents concerning this hearing are available at the public distribution table. Please give all prepared testimony to the Secretary and do not place it on the Public Distribution table.

All witnesses must be sworn in by the secretary before presenting testimony. I understand that parties are aware of time allocations but if you have any questions about time please ask the Secretary. Speakers are reminded not to refer to business proprietary information in their remarks or in answers to questions. If you will be submitting documents that contain information you wish classified as business confidential your request should comply with Commission Rule 201.6. I would like to request that all witnesses and counsel state your name for the

1 record before delivering testimony and responding to
2 Commissioner questions. This helps the court reporter know
3 who is speaking at any given point. Mr. Secretary are there
4 any preliminary matters?

5 MR. BISHOP: No, Madam Chairman.

6 CHAIRMAN BROADBENT: Very well, will you please
7 announce our first Congressional witness?

8 MR. BISHOP: The Honorable Joe Manchin III,
9 United States Senator, West Virginia.

10 CHAIRMAN BROADBENT: Welcome Senator Manchin.
11 Very glad to have you here today.

12 STATEMENT OF THE HONORABLE JOE MANCHIN III

13 SENATOR MANCHIN: Very nice to be here. Thank
14 you all. Chairman Broadbent and Vice Chairman Pinkert and
15 Members of the Commission, good morning and thank you for
16 allowing me to testify here today. For the last five years
17 I have had the honor of representing the great state of West
18 Virginia in the United States Senate. I am testifying
19 before you today in support of Felman Production and Eramet
20 Marietta. More specifically, I am testifying on behalf of
21 their workers and the communities in which they live.

22 One of my top priorities as Senator is
23 encouraging economic growth and job creation in West
24 Virginia, a state that is particularly vulnerable in the
25 current economy I think as you all know. I am deeply

1 concerned when foreign producers violate U.S. Trade Laws and
2 harm our American workers. In 2006 as Governor of the State
3 of West Virginia, I had the opportunity to switch on the
4 first furnace at the middle of Mason County after Felman
5 took ownership.

6 Over the years, Felman has invested millions of
7 dollars in the facility to bring it from a state of
8 disrepair to a reliable and competitive production site.
9 Felman grew to become a major local employer in Mason
10 County, West Virginia, accounting for almost half of Mason
11 County's manufacturing jobs in 2012. At that time and just
12 before silicomanganese imports from Australia surged into
13 the United States, Felman's operation generated one hundred
14 and eighty seven million dollars for West Virginia's
15 economy, supported five hundred and twenty-four direct and
16 indirect jobs and created over thirty-one million dollars in
17 employee compensation.

18 However, an increasing and illegal Australian
19 import competition has had a crippling effect on Felman's
20 workers and the communities in which they work and live.
21 Allowing producers like Temco, which I understand is
22 Australia's only producer of silicomanganese, to dump freely
23 into the U.S. Market cannot be tolerated especially when the
24 effect is to injure Domestic Producers and workers in states
25 such as West Virginia and all the communities.

1 Before silicomanganese imports from Australia
2 began surging into the market, Felman employed approximately
3 two hundred and fifty plant workers at its facility, just in
4 little Mason County, but the incredible surge of Australian
5 Imports in 2013 so depressed the U.S. Market that it forced
6 Felman to idle its plant for close to one year. This had a
7 devastating impact on workers in the entire community in
8 Mason County, West Virginia. The jobs that were lost
9 provided good wages and benefits to hardworking men and
10 woman, exactly the kind of factory jobs this country should
11 be protecting from unfair trade practices by companies such
12 as Temco.

13 Felman was able to restart operations in 2014 but
14 has never fully recovered from this influx of imports from
15 Australia. Just as Felman restarted production, Australian
16 import volumes surged again and again depressed market
17 conditions. Faced with the same circumstances as in 2013,
18 Felman has had to curtail production and lay off workers who
19 had just been called back to the factory. In fact, Felman
20 had to lay off seventy people in the fourth quarter of last
21 year and now has a total of only seventy-four employees.
22 Without protection from the further dumped imports from
23 Australia the people of West Virginia and Felman will be
24 irreparably harmed.

25 The trade laws are intended to remedy exactly

1 this situation in which Felman and Eramet Marietta finds
2 itself when low-priced imports flood the market and cause
3 injury to U.S. producers and workers and an Antidumping
4 Order helps to establish a level playing field so that
5 companies like Felman can compete internationally. Our
6 American Industry should not have to shutter their factories
7 and send workers home and definitely because a foreign
8 company disobeys the trade laws of United States of America.

9 I appreciate the role this International Trade
10 Commission has played in enforcing the law and in showing
11 that West Virginia's companies and workers are treated
12 fairly when facing illegal trade practices. I am confident
13 that the Commission will carefully review the record that
14 has been compiled and arrive at the conclusion that an
15 antidumping order is necessary and proper in order to
16 protect small cities and communities all over America.

17 West Virginia has been hit so hard with the
18 extraction industry that we once had and the change of
19 events and rules and regulations and laws, this is almost
20 irreparable for us to find any other thing to come into this
21 market area. Half of the production, half of the
22 manufacturing in this one little county came from this one
23 plant so that tells you how critical every job is in West
24 Virginia. So I do think you all so much for your attention
25 and I want to take the opportunity to thank you again and

1 this Commission for being so considerate. I hope that you
2 look favorably upon this. Thank you.

3 CHAIRMAN BROADBENT: Senator Manchin, are there
4 any questions for this Senator? If not we will let you get
5 back to your job. Talk to you soon.

6 SENATOR MANCHIN: Thanks Chairman.

7 MR. BISHOP: Our next Congressional Witness is
8 the Honorable Shelley Moore Capito, United States Senator,
9 West Virginia.

10 CHAIRMAN BROADBENT: Welcome Senator Capito.

11 STATEMENT OF THE HONORABLE SHELLEY MOORE CAPITO

12 SENATOR CAPITO: Thank you. Thank you for having
13 me and it's good to be here with Senator Manchin. I think
14 that shows to you and to others how deeply we feel about
15 this and how concerned we are and how on the same page we
16 are in this issue. So good morning to Chairman Broadbent
17 and also to Vice Chairman Pinkert. I've been here before
18 and I'm always glad to come back and appear before you.

19 I'm testifying in strong support of the
20 imposition of an Antidumping Order on the imports of
21 silicomanganese from Australia. One of the two U.S.
22 Producers of silicomanganese as you've heard is Felman
23 Production. I believe we have a gentleman in the audience
24 who works at Felman. It's located in Mason County West
25 Virginia on the banks of the Ohio River. The other U.S.

1 Producer is Eramet in Marietta which is basically just
2 across the river. It employs many workers; they employ many
3 workers who live in the State of West Virginia.

4 As you may know, the plant in Mason County West
5 Virginia has been a major contributor to the economy for
6 decades and this portion of West Virginia in Mason County as
7 my statement will say has had some higher unemployment rates
8 than other areas of the state. My testimony today is really
9 about fundamental fairness in the rule of law and it should
10 be well understood in the broader context of my home state.
11 I mentioned our state unemployment is 6.3, one of the
12 highest in the Nation but in Mason County where Felman is
13 located is 6.9% and unfortunately these numbers belie the
14 full extent of the problem West Virginia has faced.

15 Last year, the Labor Department reported West
16 Virginia was the only state where less than half of the
17 adults worked. West Virginia's coal industry has lost of
18 ten thousand jobs since 2009 and the state is facing a three
19 hundred and fifty three million dollar budget shortfall just
20 for this year. We have also begun to cut back on our
21 education budgets. The economic challenges in West Virginia
22 underscore why the good-paying jobs at Felman are so
23 important to our state and to our region.

24 I had the honor of visiting the Felman plant to
25 help celebrate their sixtieth anniversary. They have a long

1 history, Felman doesn't but the plant does. I toured the
2 plant, met with its workers, spent time with their families.
3 Reflecting on the substantial investments that Felman has
4 made since 2006 to upgrade and modernize, folks were
5 gleaming with pride and hope...hope really that the future
6 was bright. Since that time, Felman has been under assault
7 from imports from Australia and I understand that the U.S.
8 Commerce Department has already found that Australia is
9 dumping.

10 The surge in Australian imports from 2012 to 2013
11 has caused Felman to both idle its plant at certain times
12 and begin to lay off more workers in 2014. Its production
13 levels remain a fraction of what they could be in the
14 absence of the dumping from Australia. As the Commission
15 observed in the preliminary determination, indicators of
16 Domestic Industry performance were almost uniformly negative
17 during the Period of Investigation. the industry is, if
18 anything even more vulnerable today. This year,
19 silicomanganese producers will need to commit millions of
20 dollars to upgrade their facilities to comply with the
21 enhanced environmental standards that take effect in mid
22 2017.

23 Without the ability to compete on a level playing
24 field, it is hard to see how these companies can justify
25 these significant capital investments. I'm a believer in

1 free trade and free trade agreements that open foreign
2 markets for U.S. Imports and foster greater efficiencies for
3 our U.S. customers and consumers, but I am also a believer
4 that companies need to play by the rules. When companies
5 start dumping our product into the United States and injure
6 our producers and workers in communities like Mason County,
7 we need to enforce our laws and ensure our level playing
8 field.

9 Felman and Eramet deserve the chance to compete
10 in a fair environment and that is exactly what the U.S. Law
11 provides. There are hundreds of workers in West Virginia
12 that will be directly or indirectly impacted by your
13 decision. The future welfare of the people depends on the
14 effective enforcement of our antidumping laws. The future
15 of the United States ferroalloy industry is at stake.

16 I think I mentioned in my statement that these
17 are the only two producers in the United States. I for one
18 believe that we need a ferroalloy industry in the United
19 States just as we need a robust steel industry in America.
20 Thank you for the chance to discuss the importance of this
21 case.

22 CHAIRMAN BROADBENT: Thank you, Senator. Are
23 there any questions for the Senator? If not, we will let
24 you go and thank you very much for being with us today.

25

1 MR. BISHOP: Madam Chairman, that concludes our
2 Congressional appearances today.

3 CHAIRMAN BROADBENT: Mr. Secretary, now let us
4 proceed with opening remarks.

5 MR. BISHOP: Opening remarks on behalf of
6 Domestic Producers will be given by Myles S. Getlan, Cassidy
7 Levy Kent.

8 CHAIRMAN BROADBENT: Welcome, Mr. Getlan. You
9 may begin when you're ready.

10 OPENING REMARKS OF MYLES S. GETLAN

11 MR. GETLAN: Thank you. Good morning, Chairman
12 Broadbent, Commissioners. My name is Myles Getlan of the
13 law firm Cassidy Levy Kent, appearing today on behalf of
14 U.S. silicomanganese producers Felman Production and Eramet
15 Marietta. We are here today to explain the pressing need
16 for an antidumping order on dumped silicomanganese imports
17 from Australia.

18 Felman and Eramet comprise the entirety of what
19 remains of the U.S. silicomanganese industry, a Domestic
20 Industry that by any objective measure is bleeding, bleeding
21 in a full range of commercial and financial indicators that
22 you consider; production, shipments, market share and
23 operating losses but even more striking and troubling,
24 bleeding jobs. The Senators just remarked on the industry's
25 dire employment situation with particular reference to

1 Felman but the U.S. industry as a whole has shed jobs at an
2 alarming rate during the Period of Investigation as
3 production related workers are a mere fraction of what they
4 were at the start of the period in 2012. Bobby Joe
5 Ohlinger, a plant worker at Felman Productions since 2006
6 made his very first trip on an airplane to be with you today
7 to tell you what these jobs mean to the people in Mason
8 County West Virginia and the devastating impact of job
9 losses on that community. Bobby Joe will tell you what it
10 was like when Felman was forced to idle its three furnaces
11 at the plant in 2013 and in doing so laid off all but a
12 handful of plant workers.

13 The record paints a clear picture that
14 silicomanganese imports from Australia are to blame for
15 bringing the U.S. Industry to its knees. On a POI basis,
16 the volume and price effects are apparent. Subject Import
17 volumes tripled during the Period of Investigation and
18 subject import market share increased dramatically at the
19 expense of U.S. Producers. With respect to price effects,
20 there is strong evidence of price depression, price
21 suppression and underselling as well as lost sales and
22 revenues.

23 As compelling as the POI trends are, year over
24 year comparisons are even more striking in showing that
25 Temco is to blame for the state of the Domestic Industry.

1 Our witnesses this morning will detail these year-over-year
2 trends but the story is straightforward. When Temco
3 temporarily shut down its plant in 2012 and had a limited
4 presence in the U.S. Market, it caused prices to increase
5 and the U.S. Industry earned profits during that time. In
6 2013, Subject Imports surged into the U.S. Market at low
7 prices capturing significant U.S. Market share at the
8 expense of the U.S. Industry.

9 This wave of Subject Imports and weak market
10 conditions led to steep losses and forced Felman to idle all
11 three of its furnaces. After a brief period in 2014 in
12 which Temco was slightly less aggressive in the market
13 allowing Felman to come back online, a second wave of
14 Subject Imports shipments hit the market in 2015. These
15 low-priced imports plunged the Domestic Industry deeper into
16 negative territory. In short, when Temco bought market
17 share through low prices, particularly in 2013 and most
18 recently in 2015, the industry suffered.

19 You will observe Temco running from this strong
20 record on volume and price effects and impact. Instead,
21 they will try to distract you with arguments that are not
22 supported by the record evidence. For example, Temco will
23 assert that it gained market share through higher prices, a
24 new take on commodity economics but in doing so Temco relies
25 on faulty data which we will detail later.

1 Temco will also try to explain how several
2 non-price factors account for the Domestic Industry's
3 injury. Its arguments on reliability on supply and product
4 quality are undermined by purchaser questionnaire responses,
5 which establish overwhelmingly that Felman and Eramet are
6 reliable suppliers. Temco also point to non-subject imports
7 but here again their arguments crater in the face of the
8 record evidence. Then Temco will try to distract you with a
9 whole bunch of malarkey concerning the Privat group and the
10 economics of multinational entities.

11 Putting aside the many misstatements and untruths
12 in their studies, the fact is that both Felman and Eramet
13 have been profitable before and they can be again. Their
14 corporate affiliations are not what prevent them from
15 returning to profitability but rather dump Subject Imports
16 from Australia. This industry is in a precarious position.
17 Our witnesses will describe how major investments are
18 required this year to comply with new environmental
19 standards. Without an affirmative decision in this case
20 Felman and Eramet will be hard-pressed to justify the
21 capital expenditures needed to continue running their
22 plants. We look forward to presenting our case to you
23 today. Thank you.

24 MR. BISHOP: Opening remarks on behalf of
25 Respondents will be given by Shara L. Aranoff, Covington and

1 Burling.

2 CHAIRMAN BROADBENT: Welcome back, good to see
3 you Ms. Aranoff. Please begin.

4 OPENING REMARKS OF SHARA L. ARANOFF

5 MS. ARANOFF: Good morning Madam Chairman,
6 Commissioners and Staff. I'm Shara Aranoff from Covington
7 Burling. I appear today on behalf of respondent Temco, the
8 sole Australian producer of silicomanganese and its related
9 importer Samancor AG. Temco and Samancor are part of the
10 South 32 group of companies and were until recently part of
11 the BHP Biliton Group.

12 This morning you are likely going to hear from
13 Petitioners that this is just another silicomanganese case,
14 that it's no different from the Commission's previous
15 investigations involving silicomanganese from China, India,
16 Ukraine, Kazakhstan and Venezuela. And if you take nothing
17 else away from today's hearing, I hope that you conclude
18 that that is simply not true. Temco plays and has played
19 historically a different role in the U.S. Market than the
20 foreign silicomanganese producers that the Commission has
21 considered in the past.

22 It has been a longstanding, responsible, reliable
23 and relatively high-priced supplier to U.S. steel mills for
24 many years. Petitioners' injury case depends first and
25 foremost on their decision to time the Petition so that the

1 Commission's POI would start in 2012. If you look at the
2 import volume data, you'll see that imports from Australia
3 increased from 2012 to 2013 before falling back some in 2014
4 but the increase was from a small base so of course the
5 percentage increase looks quite big, but these data are very
6 deceptive.

7 First, up until 2012, BHP Biliton operated two
8 silicomanganese plants, the Temco plant and a second plant
9 in South Africa. And BHP Biliton coordinated export sales
10 for both plants and sourced customer orders from whichever
11 plant made sense at the time but in 2012 BHP Biliton shut
12 down the silicomanganese furnaces at the South African plant
13 and from that point on BHP Biliton was able to serve U.S.
14 Customers only from the Temco plant.

15 Second, Temco's plant was shut down for four
16 months in 2012 followed by a slow ramp up when it reopened
17 so imports from Australia were abnormally low in 2012
18 compared to prior years and of course they went up when the
19 plant resumed normal operations. For both these reasons BHP
20 Biliton's exports to the U.S. were much higher in 2011 in
21 preceding years than they were in 2012. After that, imports
22 from Australia rose but they never again reached the level
23 of U.S. Market penetration of BHP Biliton's combined exports
24 in 2011 and before.

25 In other words, instead of taking market share

1 away from the Domestic Industry as Petitioners claim, BHP
2 Biliton actually reduced its U.S. Market footprint and gave
3 the Domestic Industry an opportunity to win new customers
4 and expand its market share. We realize that 2011 as
5 preceding years predate the POI but in this investigation as
6 it has done before the Commission can and should consider
7 BHP Biliton's import patterns prior to 2012 as conditions of
8 competition that put the volume of Subject Imports during
9 the POI in the proper context.

10 So what stopped the Domestic Industry from taking
11 advantage of the market space that opened up in 2012? Well,
12 it wasn't Subject Import volume as I've just explained. Nor
13 was it Subject Import pricing. This is evident from the
14 price comparison data which unfortunately are so
15 confidential I can't describe them. With respect to price
16 trends, U.S. silicomanganese prices spiked in early 2012
17 around the time of the closure of the BHP Biliton South
18 African plant when that was announced and then they returned
19 to normal. But Subject Imports did not cause price
20 depression or suppression. In fact, purchasers report that
21 it was Domestic Product and not Subject Imports that were
22 leading prices down.

23 In sum, there's no causal link between Subject
24 Imports and any failure by the Domestic Industry to thrive
25 during the POI. Nor does the record suggest that Temco

1 production exports or pricing would change to the detriment
2 of the Domestic Industry in the imminent future. That's
3 really all the Commission needs to know to reach a negative
4 determination, but I know you're probably asking yourselves,
5 if it wasn't Temco then why didn't the Domestic Industry
6 perform better during the POI and even though you don't need
7 to answer that question, the record does provide some clues.

8 Part of the story is demand, which has been going
9 down and the real key is that the Domestic Producers are not
10 the masters of their own fate. They're small parts of large
11 global enterprises that control their operations from
12 outside the United States and product silicomanganese in
13 multiple countries. When imports from BHP Biliton declined
14 in 2012 these parent companies decided to send in more
15 non-subject product, particularly from the Republic of
16 Georgia. This is a strategy of global profit maximization
17 that makes economic sense but it hobbles the Domestic
18 Industry leaving it unable to expand production, spread
19 costs over a larger volume or raise prices. In prior
20 silicomanganese cases the Subject Imports came from the
21 largest producing countries worldwide. They were plentiful,
22 low-priced and opportunistic in grabbing market share. This
23 case is different, aside from Temco and the remaining
24 producers in South Africa. It's hard to find a
25 silicomanganese producers of any significant size in the

1 world that's not either subject to antidumping orders in the
2 U.S. or controlled by Petitioners' parent companies. Temco
3 is a modest-sized long term responsible supplier so unlike
4 in past investigations we hope the Commission will reach a
5 negative determination. Thank you.

6 CHAIRMAN BROADBENT: Thank you.

7 MR. BISHOP: Would the panel in support of the
8 imposition of the Antidumping Duty Order please come forward
9 and be seated.

10 Madam Chairman, all witnesses on this panel have
11 been sworn in.

12 CHAIRMAN BROADBENT: Thank you, Mr. Secretary.

13 (Pause.)

14 I want to welcome the panel to the ITC, and you
15 may begin when you're ready.

16 STATEMENT OF ROBERT POWELL

17 MR. POWELL: Thank you very much.

18 MR. LEVY: Good morning, Madam Chairman, Vice
19 Chairman Pinkert, Members of the Commission. I am Jack Levy
20 for the Law Firm of Cassidy Levy Kent on behalf of Domestic
21 Producers, Felman Production, and Eramet Marietta.

22 We know that what you want this morning is to
23 hear from the industry witnesses, and so without further ado
24 I am going to turn it over to our industry witnesses. You
25 will be hearing first from Robert Powell, who is Vice

1 President and General Counsel of Felman Production, Felman
2 Trading, and their parent company Georgia American Alloys
3 headquartered in Miami.

4 Next you will be hearing from Barry Nuss, who is
5 Chief Financial Officer for the same group of Felman-related
6 companies.

7 Next we have for you Peter Rochussen, who is a
8 Vice President in the Eramet Group and has responsibility
9 for sales and marketing of silicomanganese.

10 And then finally we have as an industry witness
11 Bobby Joe Ohlinger, who is a plant worker at Felman
12 Production, a conveyor belt operator and also president of
13 the Local Union, United Steel Workers.

14 So without further ado, I will turn things over
15 to Robert Powell. And then at the end I will make some
16 closing remarks. Thank you, very much.

17 MR. POWELL: Good morning. My name is Robert
18 Powell. I am general counsel and vice president for Felman
19 Production, Felman Trading, and their parent company
20 Georgian American Alloys. We are based in Miami, and we
21 control all of our operations from Miami, both in Georgia
22 and in West Virginia.

23 I appreciate the opportunity to appear before you
24 this morning. As you know, Antidumping Orders currently
25 cover silicomanganese imports from five countries: China,

1 Ukraine, India, Kazakstan, and Venezuela.

2 Felman was not a U.S. producer during the
3 original investigations leading to those Orders, but we did
4 support the continuation of those Orders in the most recent
5 sunset reviews that the Commission conducted in 2011 and
6 2012.

7 This is actually the first antidumping action in
8 which Felman has been a petitioner, and so I thought it
9 might be helpful to comment on the background of our company
10 and Felman's entrance into the U.S. market.

11 The Ferro Alloys plant at Letart West Virginia
12 first opened more than 60 years ago under the name American
13 Alloys. It used to be one of over a dozen silicomanganese
14 plants in the United States, but today there are only two
15 American plants left standing: the Felman plant in West
16 Virginia, and the Eramet Plant in Ohio. All of the other
17 mills have been shuttered.

18 The plant in Letart, West Virginia, has always
19 been a key presence in the community, and an important
20 driver for the local economy.

21 In 2006, Felman rescued the plant out of
22 bankruptcy and began making substantial investments to
23 modernize the facility. Over the years, we have invested
24 tens of millions of dollars with the goal of ensuring that
25 the plant is cost competitive, safe, and environmentally

1 compliant.

2 While I was not with Felman back in 2006, Bobby
3 Joe was there and can tell you more about the many
4 improvements made to the plant in its operation since that
5 time. Let me just say that Felman made these investments
6 because we believe in the plant and its workers. And having
7 made such significant investments to modernize the facility,
8 our business objective is to run the plant as close to one
9 hundred percent capacity as possible, and to charge a price
10 for silicomanganese that allows us to earn a return on our
11 investments.

12 Felman's ability to earn a return on its
13 investments was severely challenged when the Great Recession
14 hit in 2008. And with it, plummeting demand. As the
15 economy began to improve, Felman continued making new
16 investments with the result that Felman was able to optimize
17 production operations in 2012.

18 Unfortunately, as Barry will detail later, this
19 was a short-lived period of profitability because low-priced
20 imports from Australia entered the U.S. market in late 2012
21 and derailed the opportunity for Felman to earn returns on
22 its substantial investments in the plant.

23 During the course of 2013, prices dropped and
24 cheap Australian imports displaced Felman's silicomanganese
25 sales. With our capacity utilization at unsustainable

1 levels, management made the difficult decision to idle the
2 plant and announce temporary layoffs. By the middle of
3 2014, we resumed production but operating levels have
4 remained low simply because our sales volumes and prices are
5 depressed. In fact, things have gotten even worse in 2015,
6 and there is no improvement in sight.

7 As you know, Felman Production and Felman Trading
8 are part of the Georgian American Alloys group of companies.
9 So when the Letart plant was idle, we were able to meet 100
10 percent of our contractual obligations and remain a reliable
11 supplier. We used Felman's accumulated inventories, plus
12 some standard-grade silicomanganese from our sister company
13 in Georgia to meet these obligations.

14 Now I have read TEMCO's brief and their
15 assertions about how we manage silicomanganese sales in the
16 U.S. market. We can elaborate more in our post-conference
17 brief, but the key point I want to emphasize is that our
18 goal is to maximize production and sales of standard grade
19 silicomanganese using our West Virginia production. In
20 contrast to West Virginia, Georgia focuses on sales of
21 high-grade silicomanganese.

22 TEMCO would have you believe that these two
23 products are the same, but they're not. It is not
24 particularly efficient for Georgia to produce standard-grade
25 silicomanganese, and under healthy market conditions you

1 should not see standard-grade silicomanganese from Georgia
2 in any significant volumes. In fact, since Felman's plant
3 resumed operations in mid-2014, standard-grade
4 silicomanganese has represented less than 10 percent of
5 total shipments from Georgia.

6 Again, we would not be investing tens of millions
7 of dollars in the Letart plant just to lose money. Our goal
8 is to make money and to earn a return on investment. And in
9 this industry, the only way that you do that is to maximize
10 production output.

11 Unfortunately, since Australia surged into the
12 market in late 2012, that is something that we have not
13 been able to do.

14 Before I turn things over to our CFO Barry Nuss,
15 let me just say that one of the most difficult jobs that I
16 have had to perform is to manage the layoff of our workers.
17 We had massive layoffs in 2013 when we were forced to idle
18 the plant, and because market conditions do not allow us to
19 return all of our--to run all our furnaces at once, we had
20 another round of layoffs this past year.

21 I would guess that as Commissioners you must get
22 used to hearing from petitioners telling you that they are
23 injured and that their continued existence is in jeopardy,
24 but that is exactly the situation that we're in.

25 We are at a crossroads. By the middle of next

1 year silicomanganese producers, which are Felman and Eramet,
2 will need to come into compliance with EPA's new NESHAP
3 environmental requirements which will cost millions of
4 dollars. If we do not come into compliance by the middle of
5 next year, we cannot run. Plain and simple.

6 So this year Felman is carefully studying the
7 business case for making these new NESHAP investments, and
8 we are trying to get to 'yes' and figure out a way to
9 recuperate the necessary capital expenditures.

10 Felman cannot justify so many millions of dollars
11 in new plant investment without protection from dumped
12 imports from Australia. The West Virginia plant was on a
13 path to success in 2012, until Australian imports crashed
14 the market and everything fell apart.

15 We need Antidumping relief in order for our U.S.
16 manufacturing operations to survive.

17 Thank you, very much.

18 STATEMENT OF BARRY NUSS

19 MR. NUSS: Good morning. My name is Barry Nuss.
20 I am Chief Financial Officer of Georgian American Alloys and
21 its subsidiaries Felman Production and Felman Trading.

22 I joined Felman in 2011. Prior to joining
23 Felman, I was employed in finance roles in the metals
24 industry for over 30 years.

25 I appreciate the opportunity to speak to you

1 today. As you heard from Robert, because of the disastrous
2 impact of low-priced imports from Australia on Felman's
3 operations, Felman filed a petition for relief in early
4 2015. And our situation today in many ways has only gotten
5 worse.

6 These dumped imports from Australia have
7 depressed market conditions to the point that Felman has had
8 to idle furnaces, lay off workers, and incur significant
9 losses.

10 In my testimony this morning I discuss several
11 factors that are relevant in how silicomanganese producers
12 compete for sales in the United States. I will also detail
13 how Felman has lost sales to imports from Australia and the
14 impact of those imports on Felman's operations.

15 As the Commission is familiar with
16 silicomanganese from past cases, I will make only a few
17 brief comments about the product itself.

18 Silicomanganese is a ferro alloy composed
19 principally of manganese, silica and iron.
20 Silicomanganese is used primarily in steel production,
21 particularly long products such as bar, rod, beams, and
22 rails, as a source of both silica and manganese.

23 Silicomanganese generally contains 65 to 68
24 percent manganese and about 17 percent silicon. This most
25 closely resembles Grade B of the relevant ASTM

1 specification, but most steel mills have their own
2 proprietary specifications that are slightly varied from the
3 Grade B.

4 All of Felman's production material meets those
5 specifications and our understanding is that the same can be
6 said for Eramet's U.S. production and, for that matter,
7 TEMCO's.

8 In this regard, imports from Australia and all
9 U.S. produced silicomanganese are substitutable. I also
10 note that high-grade silicomanganese is produced by our
11 affiliated company in Georgia. This high-grade
12 silicomanganese contains 72 percent manganese, in contrast
13 to the standard 65 to 68 percent manganese content.

14 In addition, there are other subtle differences
15 in the chemistry of the high-grade product. The high-grade
16 silicomanganese is sold at a higher price than the
17 standard-grade material.

18 Because each steel mill is configured to produce
19 steel using specific inputs, including silicomanganese with
20 certain chemical compositions, standard-grade and high-grade
21 silicomanganese are not readily interchangeable.

22 We have found that certain mills prefer the
23 high-grade product, and others prefer the standard grade.
24 And we do not see mills continually switching from one to
25 the other. Silicomanganese production is a highly capital

1 intensive and energy intensive process. Silicomanganese
2 production is a continuous process of smelting manganese and
3 silicon containing feedstocks in furnaces that operate at
4 high temperatures.

5 These furnaces are expensive capital assets and
6 require effective management of fixed electricity costs. To
7 achieve production efficiencies, we must operate at near
8 capacity. Failure to achieve high-capacity utilization
9 makes silicomanganese production uneconomic and results in
10 the need to idle one or more furnaces, which is what
11 happened during the Period of Investigation.

12 Silicomanganese is a commodity product. So long
13 as the product meets the steelmaker's specification, the
14 only distinguishing feature is the price. And as I noted
15 previously, silicomanganese produced by Felman, Eramet, and
16 TEMCO is essentially the same and completely substitutable
17 with one another.

18 Purchasers are not concerned with the supplier or
19 the country of origin. While Felman has long-standing
20 customers, these customers routinely solicit bids from
21 multiple suppliers, sometimes up to a dozen suppliers, and
22 make their purchasing decisions almost completely on the
23 basis of price.

24 In the U.S. market, import competition is a fact
25 of life. Indeed, imports are necessary to satisfy U.S.

1 demand. The U.S. market also attracts imports as prices
2 tend to be higher than in other parts of the world.

3 Unfortunately, there is a history of dumped
4 imports in the United States, with antidumping orders
5 currently covering imports from five countries. Beyond the
6 countries under the Order, for which silicomanganese can and
7 still does enter the U.S. market, there continue to be many
8 foreign sources of silicomanganese.

9 Indeed, Felman's related plant in Georgia has
10 been a consistent supplier to the U.S. market over the
11 years, and today almost all of the product supplied from
12 Georgia is the high-grade product I described earlier.

13 As Robert described earlier, Felman invested tens
14 of millions of dollars in the plant so that it could be in a
15 position to compete with all sources of supply. Before the
16 Recession in 2008, Felman had strong financial performance.
17 Again, after the Recession in 2012, Felman's finances were
18 sound and Felman employed a workforce of more than 250
19 employees.

20 Our plant accounted for more than a third of
21 manufacturing jobs in Mason County, West Virginia. Not
22 coincidentally, this was a time when TEMCO had shut down its
23 operations. But since that time, the U.S. manganese--
24 silicomanganese market and Felman's performance has been in
25 steep decline, and the most significant cause of that

1 decline has been low-priced imports from Australia that
2 surged into the market after TEMCO came back online in late
3 2012.

4 Today our workforce has been reduced to 74
5 employees. Australia has been a consistent supplier to the
6 U.S. market for over 20 years. However, 2013 marked a
7 radical change in its behavior in the U.S. market.

8 From 2012 to 2013, Australian import prices
9 dropped almost 30 percent, a staggering amount. And the
10 data for this period demonstrate that Australia was the
11 low-price leader, with all the imports plunging market
12 prices down.

13 As I noted, price is the key factor in purchasing
14 decisions. And these low prices are the reason why TEMCO
15 was able to dramatically increase its market share in 2013.
16 For the volume that Felman retained, the depressed market
17 conditions put downward pressure on prices that Felman
18 realized and leading to a substantial lost revenues.

19 The initial surge in imports from Australia in
20 2013 led to lost sales and reduced production and crippled
21 Felman's ability to cover its fixed costs. In short,
22 continued operations were no longer economically viable.

23 Thus, in late June 2013 Felman had no choice but
24 to idle all three of its furnaces. Felman initially hoped
25 that this idle would only last for three months, but market

1 conditions did not permit them to restart operations until
2 July 2014.

3 This had a devastating impact on the company, its
4 workers, and the surrounding community. Felman was proud
5 not to have laid off a single employee during the Great
6 Recession, but idling the three furnaces required Felman to
7 lay off about 75 percent of its workers.

8 We were pleased to resume operations in July
9 2014, after securing a more flexible electricity rate
10 structure for the plant, and with U.S. market prices
11 improving modestly in the first half of 2014.

12 Though we were optimistic that conditions would
13 continue to improve in late 2014, Felman still was not able
14 to operate close to the 2012 levels, and only rehired a
15 portion of the workers that it had laid off in 2013.

16 Unfortunately, the improved conditions that led
17 to our resumption of plant operations were short-lived. In
18 2015, we witnessed the second wave of imports from Australia
19 that rivaled the 2013 phenomenon. The second wave had many
20 negative effects.

21 Australian imports depressed U.S. market prices.
22 These imports prevented Felman from recapturing the share it
23 lost in 2013. Felman incurred further unsustainable
24 operating losses. And yet again these low-priced imports
25 led to further layoffs.

1 Quite simply, this recent surge in subject
2 imports has clobbered Felman, threatening our very
3 existence. This situation has placed Felman at a
4 crossroads. Felman has taken steps in the last few years to
5 compete in a difficult market. Felman secured a new power
6 contract that provided much greater flexibility in Felman's
7 electricity costs.

8 Felman also made modest investments toward
9 upgrading the plant with an eye toward compliance with new
10 environmental standards. However, Felman is now faced with
11 investing millions more to comply with the new environmental
12 regulations that become effective in 2017.

13 It will be hard to justify these investments if
14 dumped imports that surge into the market and unfairly
15 capture market share are left unchecked. We simply cannot
16 compete in such an environment.

17 I thank the Commission for its time and would be
18 happy to respond to questions at the completion of our
19 presentation. Thank you.

20 STATEMENT OF PETER ROCHUSSEN

21 MR. ROCHUSSEN: Good morning. My name is Peter
22 Rochussen. I'm Vice President of Eramet Comilog Manganese,
23 Inc., and have responsibility for the sales and marketing of
24 silicomanganese produced by Eramet Marietta in Ohio.

25 I have more than 20 years of experience in the

1 alloys and specialty metals industry in North America. I am
2 here this morning representing Eramet Marietta and our 200
3 employees.

4 Eramet Marietta produces silicomanganese and
5 ferromanganese at our plant in Marietta, Ohio. Our plant is
6 one of the largest industrial employers in Washington
7 County, which is part of the Appalachian Region. The plant
8 dates back to the 1950s and was purchased the Eramet group
9 in 1999.

10 Since that time, Eramet has made substantial
11 investments to upgrade and modernize the plant. We have
12 continued to invest in our plant and people, and when market
13 conditions are favorable Eramet silicomanganese business is
14 a profitable one.

15 Let me begin by stating that while Eramet was not
16 a petitioner, we fully support this case and urge the
17 Commission to make an affirmative finding.

18 Like Felman, Eramet Marietta has been
19 significantly injured by low-priced imports from Australia.
20 We too have seen production, sales, and prices decline
21 during the Period of Investigation, and have incurred
22 substantial operating losses, particularly when the
23 low-priced imports from Australia surged into the U.S.
24 market in 2013 and most recently during 2015.

25 I can provide more detail on the impact of the

1 Subject imports on Eramet, but first I would like to take a
2 few minutes to follow up on Barry's discussion of how this
3 market works, and in particular elaborate on the pricing
4 dynamics in the U.S. silicomanganese market.

5 MR. ROCHUSSEN: When selling silicomanganese in
6 the United States, there are two basic transaction types.
7 Contract Sales and Spot Sales. Most of Eramet's sales are
8 made under contracts. Our customers almost always purchase
9 silicomanganese using a bidding process in which they issue
10 request for bids on a quarterly, semi-annual and annual
11 basis.

12 Purchasers typically receive multiple bids,
13 sometimes as many as a dozen. Prices for these contract
14 sales are based on a formula with a discount off of
15 published price indices, such as Ryan's Notes, Platts Metals
16 Week and American Metal Market. The suppliers offering the
17 largest discount off the reference price are in the
18 strongest position to win new contracts and to grow volumes
19 under their existing supply agreements.

20 The extent of the discount offered is influenced
21 by a number of factors, which are taken into account during
22 negotiations, especially price. Going into negotiations, we
23 need to be prepared with a full range of comparative price
24 intelligence. This includes published price references,
25 import statistics, including import values and, of course,

1 communications between the company and our customers.

2 While spot sales are individual sales
3 transactions and are typically based on a fixed price.
4 Their price is influenced by the same sources I've just
5 mentioned, import values, current reference prices and
6 communications with our customers.

7 Information on these spot sales is commonly
8 reported to the publications and used to set the index
9 price. Given the structure, pricing for imports from
10 Australia feed into published price indices, both directly
11 and indirectly. That is, any TEMCO product sold in the spot
12 market may directly be reported to the publications and
13 influence the published reference price.

14 In addition, other suppliers will price their
15 product by reference to the same indicators I've mentioned
16 before, including the import values. Suppliers and
17 purchasers are well aware of relative price changes and
18 react immediately. The sharp declines in import prices for
19 silicomanganese from Australia have certainly influenced the
20 market price for silicomanganese during the period of
21 investigation.

22 Putting this all into perspective, very small
23 differences in price, whether in the form of a discount or a
24 reference price or a fixed price for a spot sale, can
25 determine who gets the sale. This is true even if a

1 purchaser has an established relationship with a supplier.
2 We simply must have the lowest price to win or keep our
3 business. In a commodity business such as ours, with demand
4 being inelastic, one suppliers' loss is always another
5 suppliers' gain.

6 It is in this environment that Eramet lost
7 sales volumes and had to reduce prices during the period
8 of investigation. And clearly low-priced silicomanganese
9 from Australia was a major contributing factor. U.S.
10 silicomanganese market conditions were relatively strong in
11 2012 and Eramet's silicomanganese business was profitable.

12 However, once TEMCO came back online in late
13 2012, it proceeded to ship significant volumes of
14 silicomanganese at low prices into the United States. Just
15 like that, TEMCO became the second largest source of supply
16 for the U.S. market in 2013. There is no doubt in my mind
17 that TEMCO bought their way into the U.S. market with low
18 prices at our expense.

19 TEMCO clearly had the lowest price in the market
20 at that time and supplanted volumes from other sources.
21 Eramet needed that volume, but we didn't get it. During
22 this period of time, our capacity utilization plummeted and
23 so did our financial performance.

24 In 2014, prices and market conditions stabilized
25 somewhat, but this was short-lived, as Australian products

1 surged into the market again in 2015, and again led prices
2 lower. These lower prices have led to further operating
3 losses for Eramet.

4 Like Feldman in 2016 is a big year for Eramet,
5 as we will need to commit significant capital expenditures
6 in order to meet new environmental standards that go into
7 effect in 2017. While we know Eramet can be successful in a
8 fair market, it would be more difficult to justify these
9 environmental investments if we are forced to compete with
10 dumped imports from Australia.

11 For all of these reasons, we support Felman's
12 petition and join them in asking the Commission to help
13 create a level playing field and issue an affirmative
14 decision. Thank you for your time and I look forward to
15 answering your questions.

16 STATEMENT OF ROBERT OHLINGER

17 MR. OHLINGER: Good morning. Thank you for
18 having me here. My name is Robert Ohlinger. I work -- I'm
19 a worker at Felman Production in New Haven. I'm also Union
20 President of our Local 5171. I'll try not to keep it too
21 long. It's a little bit out of my element. This is my
22 first trip to Washington, my first time on an airplane and
23 it's all been, it's all been new to me. So thank you for
24 having me.

25 I just wanted to tell you a little bit about --

1 I'm forty- I'll be forty-six years old in March. I live, I
2 live three miles from the Felman plant in a little town
3 called New Haven. I've got a wife and a son named Garrett -
4 - he'll be twenty-one years old -- a stepdaughter -- she's
5 twenty. My son's attending college and hoping maybe he can
6 get my stepdaughter to go. I think my son's going to make a
7 career out of college, and my daughter's going to try to
8 make a career out of not going, so we'll see what happens
9 there.

10 But I just wanted to tell you a little bit about
11 the plant. When I was growing up, everybody in the town of
12 New Haven and Hartford and in the county there, even across
13 the river in Ohio, Miesgs County and Geauga, you know,
14 everyone worked at the plant and when I grew up, that's all
15 you -- when you went to the barbershop on Saturday or
16 hardware store, that's all we'd talked about. You know,
17 listen to the old-timers talk about it, and it was very
18 interesting -- not really as important as -- just
19 interesting hearing the stories, you know, the history of
20 it.

21 My great uncle -- he passed away several months
22 ago -- he was two months from his birthday of being a
23 hundred -- but he worked at the plant. He helped actually
24 build the plant in 1956 when it was first built. We've got
25 pictures of him pouring concrete when the facility was going

1 up.

2 So I grew up right beside of him and listened to
3 the stories, never dreaming I'd want to work there -- when I
4 was a young kid driving by we would look in, you would see
5 the flame and the fire splashing and the smoke, and I would
6 say, you know, there's no way in the world I would ever work
7 there, come to find out, you know, thirty-five years later,
8 it's one of the best jobs I've ever had, and I got in an
9 airplane and flew to Washington -- when I said I would never
10 fly again -- to help get the place go a little bit.

11 But since I started there in 2006, Felman's has
12 made a lot of changes. They've added overhead cranes and,
13 you know, business was really going good. We had up to two
14 hundred and fifty employees and, you know, it seemed like it
15 was really, you know, it was one of the greatest things to
16 come along.

17 They never, you know, when you went for an
18 interview, you didn't have to worry about your college
19 education or whether you was fifty-five years old or sixty
20 years old or eighteen, right out of high school. You know,
21 they gave everybody that had a strong back, the opportunity
22 to come in and prove theirselves and work and that's what we
23 did.

24 Since 2006 -- I think I've took a one-weeks'
25 vacation -- I enjoy being at work, don't wanna go nowhere.

1 A lot of days I don't wanna get out of bed, but never a day
2 I say, you know, I don't wanna go there. I think that's how
3 the majority of the people there feel. We're all one big
4 family.

5 We got a -- there's a guy there by the name of
6 Harvey Bush -- I work with him, one of the four in our
7 department. He's been there since 1968 and still going
8 strong. We've got a lady there, her name is Cindy. She's
9 kind of our mom. She's the one that cooks us breakfast in
10 the morning, and we can always go out there to her
11 department for lunch and, you know, it's just a, it's a
12 really great place to be.

13 So as time was going on, you know, and they was
14 kept hiring and during the recession in 2008, we was all
15 fearing for our jobs and our neighboring county there,
16 Jackson County, West Virginia, Constellium aluminum plant,
17 they had shut down and, you know, lost eight hundred jobs,
18 and we kept thinking, you know, we're next, we're next.

19 But things kept going along and they was still
20 hiring, and it was really great. And then 2013, we had our
21 first big cutback, and it was devastating. There's no jobs
22 around there. I can't go a hundred miles any way and get a
23 job making what I make now, or the insurance benefits and
24 stuff. So it was really devastating, so it was up and down,
25 and in 2014, they had called some back.

1 this afternoon.

2 You heard from our industry witnesses at some
3 length about the injury that has been suffered in the U.S.
4 industry and by its workers. This is not a close case when
5 it comes to the issue of injury. There is blood all over
6 the floor and the bleeding continues, and it is tragic.

7 We also think that the evidence in the
8 prehearing report. The staff has certainly done a diligent
9 work in its investigation. We thank them for that.

10 Provides as well, palpable evidence of volume effects, price
11 effects, the adverse impact again is clear. You've also
12 heard this morning that the human element, which is so very
13 real.

14 What I thought I would do in closing is just get
15 back to first principles a bit. What we've heard is that
16 silicomanganese is a commodity product. It's sold on the
17 basis of price.

18 So we're talking about commodity economics. In
19 that environment, common sense should tell you that when
20 supply is taken out of the market, prices should be going
21 up. And when additional volumes are forced into a market,
22 prices should be pushed down.

23 That should be intuitive to all of us. We've
24 seen so many commodity cases before and to be sure every
25 case is sui generis, but your past learnings and other cases

1 about conditions of competition surely can inform your sense
2 of market economics.

3 In this industry, silicomanganese is mostly
4 sold under contract, we heard that. And we heard from
5 Mr. Rochussen that contract sales prices are set at a
6 discount off of the published price index. The price
7 indices could include Ryan's Notes or Platts Metal Week or
8 AMM, but in principle, there is this index price, most
9 commonly Ryan's Notes, and contract prices are set at a
10 discount off of it.

11 One can observe market price trends in the
12 marketplace by reference to these published indices
13 themselves, which of course are a reflection of what's
14 happening in the spot market. And also what we heard from
15 Mr. Rochussen, demand is inelastic in this market and that
16 one suppliers' gain is necessarily another suppliers' loss.

17 So with those basic principles in mind, what I'd
18 like to do is take you through a bit of the chronology of
19 what happened during the period of investigation and in so
20 doing, try to answer at least preliminarily what we think
21 are likely the three questions in your mind.

22 If I were a Commissioner, I would be looking at
23 this record and saying, wow, it sure looks like there's
24 injury. I see volume effects, I see what Domestic Producers
25 are saying about price effects, but you know, what's going

1 on with demand here? And how do I address the question of
2 declining demand? What's going on with nonsubject imports?
3 There sure looks like there are a lot of nonsubject imports
4 in this market.

5 And what about the pricing issues? A lot of
6 it's proprietary, but TEMCO sure is talking a lot about
7 underselling or the lack of it. And so those are, I think,
8 legitimate questions that we hope to help you sort out this
9 morning. And I'd like to take a preliminary stab at helping
10 you understand those issues.

11 So I think, again, the period of investigation -
12 - it's not contrived, it's -- 2012 is our base year. And so
13 I'd like to start the story by talking about the world in
14 which the POI began, which was 2012 and Andrew asked you to
15 project our Public Exhibit A. And I don't think anyone is
16 denying the fact that during 2012, one of the three South
17 African producers, the BHP Company, shuttered its facility
18 at the beginning of 2012. That supply was taken off the
19 market. And during several months of 2012, TEMCO in
20 Australia idled its facility.

21 And so what happened in 2012? Again, I talked
22 about common sense and how when supply comes off the market,
23 there should be upward lift in market prices. You don't
24 have to believe me.

25 TEMCO testified on this very point -- not one,

1 but two witnesses under oath -- and their sworn testimony in
2 the preliminary phase at the staff conference, Mr. Anderson
3 testified that the closure of the Australian and the South
4 African facilities had a greater impact on 2012 prices in
5 the United States than elsewhere, but perhaps most
6 pointedly, speaking of first South Africa and then
7 Australia, Mr. Kylander said, 'We closed TEMCO down
8 temporarily. So you had basically one of the largest
9 suppliers in the domestic, that is to say, U.S. market,
10 shutting all their operations down, and it caused a price
11 spike.' No kidding.

12 Prices went up in 2012 because the TEMCO volume
13 receded from the market. There's no question about that.
14 It's basic commodity economics. And I would respectfully
15 submit to you that the reverse is also true. That in 2013,
16 when you see volumes from Australia surging into the U.S.
17 market as they did, that just as the withdrawal of volumes
18 in 2012 raised prices, so did a surge in volumes in 2013
19 depress U.S. market prices. That there is a cause and
20 effect analysis. You don't have to believe us, believe
21 TEMCO.

22 Let's look a little bit at what's going on in
23 terms of price trends in the marketplace and I would call
24 your attention to Domestic Producers Exhibit B. And so what
25 we're mapping out here are the Ryan's Notes low prices

1 throughout the period of investigation. These are the
2 quarterly average price points that we're plotting. And you
3 can see what's going on in terms of relative trends and
4 price levels during the period.

5 And I would simply call out -- just by way of
6 clarification -- this information is extracted through our
7 firm's subscription. This is not a POF data from the
8 prehearing report. Although we submit that the trends are
9 again fundamentally the same.

10 What we see here in the Ryan's Notes again is
11 what I described. And what TEMCO described, which was that
12 2012 was a period of relatively healthy prices and relative
13 health of the U.S. domestic producers in terms of their
14 financial performance.

15 TEMCO comes back online in the third quarter of
16 2012 and they begin to buy their way into the U.S. market.
17 And what happens to U.S. prices during this period? From
18 the point of the TEMCO idle to the point of TEMCO buying its
19 way into the U.S. market in 2013?

20 What you see here is that prices are crashing.
21 This is a period when Australia is taking volumes, taking
22 share and U.S. producer share is crashing. This is a point
23 where by the middle of 2013, and you can see the low price
24 point, Felman is brought to its knees and has to idle all
25 three of its furnaces.

1 And you look at this charge and you look at
2 where we are in the middle of 2013, it should come as no
3 surprise. This is probably a good moment in time to say,
4 well, what about demand? And what about nonsubject imports?
5 How do I understand those questions?

6 Well, we are grateful that the prehearing report
7 makes public the data for apparent domestic consumption.
8 And if you look at your Table C-1, what we can all see is
9 that from 2012 to 2013, ADC for silicomanganese in the U.S.
10 market is growing. So a decline in demand in no way
11 explains this crash in U.S. market prices from 2012 to 2013.

12 It is quite simply, again, commodity economics.
13 It's volume, supply being forced into the U.S. market by
14 TEMCO through low price leadership. Demand doesn't explain
15 what's going on in this first wave of TEMCO's assault from
16 2012 into 2013.

17 And then there's the question about nonsubject
18 imports. What's going on with nonsubject imports? There's
19 a lot of nonsubject import volume here. Well, again, if you
20 focus on this first wave of TEMCO's assault from 2012 to
21 2013, nonsubject import share is declining over this period.
22 That is to say Australian share is surging, but nonsubject
23 import share is receding and the domestics are getting
24 clobbered.

25 So clearly it's not the nonsubject imports

1 taking away from U.S. producers in this period. And the
2 prehearing report correctly states that in 2013, Australia
3 becomes the Number 2 supplier of silicomanganese imports.
4 Well, that's technically true, but the other thing we heard
5 from Mr. Nuss, and it's a critical point, Georgia by volume,
6 Number 1 supplier no doubt, but overall more than ninety
7 percent of that volume is high-grade silicomanganese, which
8 is a very different product with limited interchangeability.

9 So if you focus on the heart of the market,
10 standard-grade silicomanganese, which is all that TEMCO
11 makes, all that the U.S. producers make, that's where
12 they're competing head-to-head. If you were to essentially
13 create a C-Table for just standard-grade silicomanganese,
14 what you would see is that Australia becomes the Number 1
15 source of import supply in 2013.

16 Again, Georgia is an important presence, but
17 it's a presence with high-grade silicomanganese and at least
18 a majority of the volume of steel mills can't use it in lieu
19 of standard-grade silicomanganese because of other
20 chemistries, most prominently higher phosphorous content
21 which exceeds their limitations, either through production
22 processes. They can't tolerate the phos, or the particular
23 products they're making, which can't tolerate those phos
24 levels.

25 You know, we have in the record an expert report

1 from Capital Trade that TEMCO commissioned, which purports
2 to pontificate about the interchangeability of high-grade
3 and standard-grade silicomanganese. And wants you to
4 believe that all you have to do is adjust for contained
5 manganese and voila, it's the same stuff. It's spongeable.
6 Just adjust for contained manganese in the price and
7 everything else is the same.

8 That would be like telling you that low and
9 medium carbon ferromanganese is the same. Just adjuster for
10 contained manganese. Or manganese metal flake and
11 silicomanganese is the same. Just adjust for contained
12 manganese. There's other chemistries going on here. And
13 U.S. steel mills that have specifications for standard-grade
14 silicomanganese specify a minimum phos level of 0.2%.

15 High-grade silicomanganese from Georgia has
16 much, much higher levels. And the details and the
17 chemistries are proprietary, but on our posthearing
18 submission we'll give you much, much more robust information
19 about the chemistries and which mills can't use it. Either
20 because of their production process or because of the
21 specific products they're making.

22 So there's very limited overlapping competition
23 between what's going on in the high-grade segment of the
24 silicomanganese market and the standard-grade segment of the
25 silicomanganese market. But I just make this point to

1 emphasize that in 2013, if you focus your analysis on
2 standard-grade silicomanganese, which is the only grade
3 that's produced in Australia, the only grade that's produced
4 in the United States, Australia comes out of nowhere to
5 become the Number 1 source of supply in 2013.

6 They do so and it's nonsubject import volumes
7 are receding, or least their share is receding, and the U.S.
8 industry is getting clobbered in an environment where demand
9 is increasing. Prices are crashing, the cause and effect
10 analysis here is clear. You don't have a Bratsk problem if
11 you look at it carefully. Because you can clearly isolate
12 the cause and effect relationship between subject imports
13 and the condition of the U.S. industry.

14 Now, when you look at what's going on from the
15 point when Felman idles going into 2014, prices are going up
16 a little bit and to be sure nonsubject imports become a more
17 prominent feature in the U.S. marketplace. This is a period
18 when TEMCO, having secured contracts and a foothold in the
19 U.S. market pulls back a little bit, in terms of pricing, in
20 terms of their foothold in the U.S. market. And prices
21 start to recover and the condition of the U.S. industry
22 stabilizes measurably compared to the abysmal 2013
23 performance.

24 So in a period where nonsubject imports are
25 growing in 2014, the condition of the U.S. industry is

1 stabilizing. You don't have this correlation. Then you get
2 back to 2015, TEMCO's not happy to stop where they are.
3 They launch a second wave assault to buy their way into the
4 U.S. market.

5 The U.S. producers have no choice but to buy
6 share where they can and to get up to an operating level
7 just to have a fighting chance. But the point is that TEMCO
8 is buying share as well, and they are depressing U.S.
9 producer prices.

10 MR. LEVY: And so, you know, it's pretty clear
11 what's going on in this period. The volume effects in this
12 case are palpable, and the price effects should also be
13 common sense when you just think about commodity economics.
14 And by the way, common sense aside and putting aside the
15 sworn testimony of TEMCO in the prelim, we also have clear
16 evidence about what's going on on the pricing record.

17 I think perhaps the first place to start would
18 be Exhibit 3, Exhibit C, which is a public summary of
19 questionnaire response data. I would simply for purposes of
20 this discussion call your attention to the line that is
21 priced "U.S. versus Australia," and sometimes I get confused
22 reading this. But it uses the superior, comparable and
23 inferior lingo.

24 But more often than not, U.S. origin
25 silicomanganese is if not comparable inferior, meaning

1 higher priced. So what you have from your questionnaire
2 respondents is saying more often than not prices are
3 comparable, which is exactly what you would expect in a
4 commodity market.

5 But to the extent there are differences, the
6 differences are that more often than not the U.S. price is
7 higher than the Australian price. It makes perfect sense in
8 an environment where you're getting clobbered and you're
9 losing share to subject imports, and it's borne out here in
10 Table 2-9.

11 We would also respectfully submit that it's
12 borne out in other data collected by the staff, and here,
13 I'm going to make reference to some of the confidential
14 exhibits on pink paper. First, I would ask you to kindly
15 turn your attention to Confidential Exhibit A.

16 This is one of those cases where, and the
17 Commission found this in the preliminary phase, where
18 because we're dealing with a pure commodity product, you can
19 look at import averaging and values. That's probative,
20 that's meaningful, because you don't have this product mix
21 problem when you're talking about countries, with the one
22 exception being Georgia.

23 And so if you look at the reported import unit
24 values collected by the Commission staff and then through
25 the questionnaires, and then compare that to U.S. producer

1 commercial shipments, you can see the relationship between
2 U.S. producer prices.

3 What's going on with Australian prices there?
4 Are they higher or lower, and does that relationship make
5 sense to you? And then what's going on with non-subject
6 import prices? Are they higher or lower relative to
7 Australia. Does that relationship make sense to you.

8 We respectfully submit that this analysis of AUV
9 data is quite probative and telling. We've not reproduced
10 it here on pink paper, but we also think that Pricing
11 Product 1, which looks at contract sales to traders, has it
12 exactly right. What you should expect to see is a record of
13 mixed underselling, and that's what we have in this record.
14 But underselling nonetheless in critical periods, where
15 there are share changes.

16 In periods where there are share gains, you
17 should see more underselling by non-subject imports, and
18 where the U.S. industry is recovering somewhat, it may be
19 more mixed, and you see that in Product 1.

20 The big issue in this case is Product 2. But I
21 should also say that if you were to just limit your analysis
22 to what you see in Table 2-9, to the AUV data, to Product 1,
23 where the volume coverage is actually better than you have
24 pricing products in many cases, you've got plenty of clear
25 and affirmative evidence that matches the entire narrative

1 we've given you. You have plenty to hang your hat on.

2 The one issue is Product 2, and respectfully
3 those data are not fixable and they don't deserve weight. I
4 would like to take you through an illustration of what we
5 mean and what the problem is. So here, I would first like
6 to turn your attention to Confidential Exhibit -- it's
7 labeled as C.

8 Apparently I have two C's and no B's, but I am
9 looking here at a particular -- it's the second confidential
10 exhibit in sequence, okay? This is an excerpt for a
11 particular importer who's contributing to Pricing Product 2,
12 okay.

13 First, I'd like to draw your attention to the
14 excerpt, which is the language that they provide in response
15 to Section 3-8C of their importer questionnaire response.
16 First they're talking about how spot sales are priced. But
17 then in the second part, they're talking about how long term
18 contract prices are set and I'd like you to look at that
19 part. What do they say about how long term contract prices
20 are set, okay?

21 Now look at the chart below. This is the
22 imported empirical data that they report in their
23 questionnaire. How are their prices, and again it says
24 "subject imports" but it's just their data here, how are
25 those prices relative to the index cited? Is the

1 relationship consistent or is the relationship diametrically
2 opposed? Can you reconcile their narrative description with
3 their reported data?

4 I look at these two and I say to myself
5 something cannot be right here. Something cannot be trust.
6 I can't rely on this. Then we take step back and look at
7 it more at a macro level across, you know, a wider range of
8 contributing respondents, because this is -- we're not
9 cherry-picking one company here. There's a whole bunch of
10 them that have this issue.

11 But if you look at the purchasers of product
12 under contract, what are they saying about the relationship
13 between the price they pay relative to published indices? I
14 would simply ask you to look at some of these bullets, maybe
15 the first one or two or three for a moment and just read
16 that, and ask yourself okay, so what are they saying?

17 Are contract prices, how do those contract
18 prices relate to the published index? What's the
19 relationship between their contract price and the published
20 index? Are these guys all saying the same thing? Are they
21 consistent?

22 With that in mind, having digested the narrative
23 response, lastly turn your attention to Confidential Exhibit
24 D. This is an aggregation of the reported data of the
25 problematic questionnaire respondents reporting in Product

1 2, and we respectfully submit that this picture looks a lot
2 like the last picture we showed you, and I'd ask you to
3 reflect on whether these data can in any way be reconciled
4 with the narrative responses from their customers, as to how
5 contract prices are set and how the product is priced.

6 Common sense should tell you that when you look
7 at the numbers in Pricing Product 2, these data cannot be
8 right. They cannot be right. They're -- you know, Felman
9 gives you data, you know. They're susceptible to audit by
10 Mr. G, you know. These guys, they just give you numbers and
11 there's no accountability.

12 But they have indicted themselves with their own
13 narrative description of their data. So those data are
14 unfixable, but thankfully there's plenty of other data that
15 you can hang your hat on. You have the narrative
16 explanations in Table 2-9, you have the AUVs which are
17 probative because this is a commodity case and the staff did
18 a diligent job of collecting that information from the
19 questionnaires.

20 Finally, you do have pricing products that work,
21 most prominently Product 1, where the coverage is better
22 than in most cases, and to be sure it's mixed. But it's
23 more than probative and corroborates a price effect, an
24 adverse price effect, including underselling.

25 So I think that might be where I stop for now,

1 except to remind you that, you know, the final theme we've
2 heard here is that this industry is at a crossroads. We'll
3 talk more about it I'm sure in Q and A. But there are
4 substantial new investments, many millions of dollars that
5 are required to be invested over the next year to comply
6 with new EPA requirements, the so-called NESHA regulations.

7 Either this industry finds a way to justify
8 those new investments, has a line of sight to getting a
9 return on those investments or they don't make them. If
10 they don't make those investments, they're not able to run
11 as a matter of law come July of 2017.

12 So now more than ever these producers need a
13 level playing field. They need relief from dumped imports.
14 They were injured during the Period of Investigation, they
15 are terribly vulnerable today and the threat of future
16 injury is even greater. So with that, we will turn things
17 over for questions and thank you so much for your time and
18 attention.

19 CHAIRMAN BROADBENT: Thank you. I want to thank
20 the panel for joining us today and taking time out of your
21 business day to be here. I'm trying to get my -- get a
22 better grip on the time line. I think as I understand it,
23 July 2013, three of Felman's furnaces that were producing
24 silicomanganese were idled, and one was restarted in July of
25 2014, and then a second was restarted in August of 2014

1 based on, I guess, a better electricity contract or
2 something.

3 Then you had this burnout or burn through in
4 November of 2015. Is that about right Mr. Powell or Mr.
5 Nuss?

6 MR. NUSS: Yes, those facts are correct.

7 CHAIRMAN BROADBENT: Okay great. Exhibit 5 of
8 the Respondent's prehearing brief is an announcement from
9 Felman Production May 2013 about it temporarily shutting
10 down of one of the three furnaces. Respondents argue that
11 the shutdown was characterized by Felman as a strategic cost
12 reduction measure, and was not an event that was caused by
13 Australian imports. Was the shutdown caused by Australian
14 imports?

15 MR. NUSS: I'm Barry Nuss for Felman Production.
16 The shutdown was caused by market conditions foremost. If
17 market conditions had not deteriorated, there would be less
18 concern about the cost aspect. So certainly costs are
19 something that we continually work on to reduce, become
20 competitive, to stay in operation as the markets go up and
21 down.

22 But at that point in time, the market conditions
23 were so bad that we had no choice but to shut down the
24 furnaces.

25 CHAIRMAN BROADBENT: So when did you focus on

1 the fact that subject imports were a problem?

2 MR. NUSS: Again, it's Barry Nuss. We did not
3 focus on that immediately as we shut down the furnaces.
4 When we restarted the furnaces, it came to our attention --
5 I mean there's lags in the availability of import
6 information and through analysis we were able to see that
7 the Australian were a major factor or the main factor in
8 what was happening, and the decision was made then in early
9 2015 to file the petition.

10 MR. LEVY: Commissioner Broadbent, just as a
11 point of clarification, the information cited in TEMCO's
12 prehearing brief omits the totality of the press release
13 issue by Felman at the time of plant idle in mid-2013.

14 In the press release, which we'll be more than
15 happy to supply in our post-hearing submission, Felman
16 explicitly calls out depressed market conditions as a
17 leading reason for the plant idle. It isn't until Felman
18 has the benefit of hindsight that it can discern with
19 particularity that the leading cause is Australian subject
20 imports causing those depressed market conditions.

21 CHAIRMAN BROADBENT: But as a practical matter,
22 why did it take you until February 2015 to identify really
23 that it was Australia?

24 MR. LEVY: So we'd be more than happy to give
25 the chronology of the decision-making. But suffice it to

1 say that it wasn't until the plant was back with resumed
2 operations in the middle of 2014 that they thought there was
3 hope. If you look at this chart here, prices --

4 They idle in the middle of the 2014. Prices
5 start to recover somewhat. There's hope that they'll be
6 able to restart. They do so in the middle of 2014, and
7 Felman had never been a petitioner before. They're not in
8 the habit of filing these petitions.

9 But things start to unravel yet again, and you
10 can see that at the same time that TEMCO is buying even
11 further U.S. market penetration, prices are declining yet
12 again. So there's a point in time in 2014, after the plant
13 resumes operation, where the focus is on the trade remedy
14 option, which is not viewed as a first resort.

15 It wasn't until a certain point in 2014 that
16 there was focused attention. So again, we'll give a more
17 detailed chronology. But the one thing I do want to say is
18 there's a suggestion by Ms. Aranoff, and it's made clear in
19 the prehearing brief, that this Period of Investigation is
20 gerry rigged, that 2012 is somehow an abnormal base year.

21 2012 was a period of relative health. Health is
22 not abnormality. Health is health, and whether Felman had
23 filed this petition on Labor Day of 2014, when they were
24 starting to study this in earnest, or whether Felman filed
25 it when they did in February of 2015, the Period of

1 Investigation would have been exactly the same.

2 So this delay of some months in trying to
3 understand with particularity the merits of their case and
4 decide strategically whether they were going to move
5 forward, in no way impacted the Period of Investigation.

6 The other point I will make, and Ms. Aranoff
7 should know this very well from her time as a Commissioner,
8 Respondents have an opportunity in commenting on the
9 questionnaires if they want a different Period of
10 Investigation. There was no such request made by Australia
11 in commenting on the final phase questionnaires, saying hey,
12 maybe you want to have an extended Period of Investigation.

13 The Commission's done that in certain cases
14 where the facts warrant it. There was no suggestion that
15 that was appropriate here. So, you know, frankly I think
16 that that argument, it just rings hollow with us.

17 CHAIRMAN BROADBENT: Okay. Mr. Nunes, excuse
18 me, Mr. Nuss, I think the prehearing brief from Felman said
19 that Felman idled its West Virginia silicomanganese plant
20 and laid off a large percentage of workers due to low-priced
21 subject imports.

22 As I understand it, most of Felman's sales are
23 made through long-term contracts and didn't Felman have a
24 lot of long-term contracts that would support that
25 employment in that steel mill, which is pretty large?

1 MR. NUSS: As a result of the poor market
2 conditions and the imported subject product taking market
3 share, Felman built inventories over the course, over the
4 period of time prior to the shutdown. So we had substantial
5 inventories on the ground that we could fulfill obligations.

6 As I said earlier, we thought that the period of
7 the shutdown was going to be short-lived. It turned out
8 that market conditions didn't allow us to restart, and
9 eventually those inventories were sold out and they were
10 supplemented by inventories that we brought in from Georgia
11 and that we purchased elsewhere.

12 CHAIRMAN BROADBENT: So were you able to
13 maintain your contractual obligations to --

14 MR. NUSS: We did meet all of our contractual
15 obligations.

16 CHAIRMAN BROADBENT: Okay. Since the beginning
17 of the POI, Felman has shut down its furnaces and TEMCO has
18 done the same thing with the Australian facility and its
19 related South African facility I think was closed
20 permanently. Then you had the burnout in 2015 and that
21 factory is offline right now.

22 How do U.S. mills that need the silicomanganese
23 product ensure that they have a stable supply, in light of,
24 you know, capacity going offline with regular frequency and
25 then domestic industry sort of having problems supplying the

1 entire market? How does the consumer manage this?

2 MR. NUSS: The U.S. market -- this is Barry Nuss
3 -- the U.S. market is an import market. There are plenty of
4 sources of supply.

5 Most groups of steel companies have multiple
6 suppliers and they deal, you know, with suppliers who have a
7 history and a track record of being reliable, and in our
8 case have the added benefit of being able to produce at
9 another plant overseas if that is needed. So I think they
10 split their sources of supply is how they protect
11 themselves.

12 CHAIRMAN BROADBENT: So you do need to sort of
13 balance where your sources are with imports and so forth?
14 As a steel producer, you need imports really in this market?

15 MR. NUSS: Yes.

16 CHAIRMAN BROADBENT: Okay. Vice Chairman
17 Pinkert.

18 VICE CHAIRMAN PINKERT: Thank you Madam
19 Chairman, and I join the Chairman in thanking all of you for
20 being here today. I believe you heard the opening argument
21 for the Respondents, and I want to ask you point blank. If
22 we look at the bigger picture here, going back to say 2011,
23 did BHP Billion actually reduce its footprint here in recent
24 years relative to 2011?

25 MR. LEVY: To be perfectly honest, we have not

1 studied that completely, because we view it as irrelevant
2 under the statute. There were three producers in South
3 Africa and then BHP shuttered their facility and then there
4 were two.

5 What we're hearing from TEMCO in effect is that
6 they want credit for the shuttered production in South
7 Africa, that that somehow gives their Australian operation a
8 free pass to dump into the U.S. market and injure U.S.
9 production and workers. We respectfully submit the statute
10 doesn't work that way.

11 It may very well be the case that BHP as a
12 global operation reduced its footprint. But that does not
13 make the growing presence of TEMCO volumes at dumped prices
14 any less injurious or any less susceptible to remedy under
15 U.S. law.

16 VICE CHAIRMAN PINKERT: Thank you. I take it
17 that you might be able to look into this in post hearing and
18 supply additional information relative or relevant to this
19 argument?

20 MR. LEVY: Certainly.

21 VICE CHAIRMAN PINKERT: Thank you. Now under
22 the category there's no such thing as a dumb question, I
23 want to ask you to help me to understand the economics of
24 Felman favoring its U.S. production over the interests of
25 production at facilities in Georgia. If they don't in fact

1 favor the U.S. production, I'd like to understand that. But
2 if the company does, then what's the economics of that?

3 MR. NUSS: This is Barry Nuss. Let me step
4 back. I can't speak here as an expert on multinational
5 enterprises and how they set their strategy. But I am an
6 expert on how Georgian American Alloys establishes the
7 priorities for its various plants.

8 MR. NUSS: We have a plant in Georgia that
9 produces build silicomanganese and a plant in the United
10 States. The economics are such that it is most efficient in
11 Georgia to produce the high grade product that I spoke
12 about. That comes from the fact that when it produces that
13 high grade product, it gets to use ore from a mine that it
14 owns and is nearby.

15 If it produces standard grade material, just
16 like Felman in West Virginia it has to import raw material,
17 basically the manganese ore. So it's most efficient for
18 that plant to produce the high grade material.

19 Georgian-American Alloy's strategy has always
20 been we will produce standard grade silicomanganese in West
21 Virginia to the maximum extent of that plant, and we will
22 supplement that if and when needed by producing incremental
23 tonnages in Georgia.

24 In Georgia, we are an efficient producer because
25 we not only have the mine and the ferroalloy smelting plant,

1 but we also have hydroelectric power. But that
2 hydroelectric power doesn't meet all the needs if we're
3 running at capacity. We would have to purchase electricity,
4 and it eliminates the advantage, the economic advantage
5 compared to West Virginia if we have to buy electricity to
6 produce incremental tonnages in Georgia.

7 In good markets, it can be done. In poor
8 markets, it doesn't make sense. So for Georgian-American
9 Alloys, the ideal configuration of our production is produce
10 high grade in Georgia as efficient as possible, and produce
11 the standard grade, which is supplied to the U.S. industry,
12 particularly an industry that's closer geographically to
13 West Virginia, because transportation is another factor in
14 this business. So that's our strategy and that's what it
15 has been.

16 VICE CHAIRMAN PINKERT: So do I understand
17 correctly that the Georgia facility could produce the
18 standard grade in greater quantities if it were economically
19 viable to do that?

20 MR. NUSS: Yes, that's correct. Technically
21 they can produce the standard. But it is a less efficient
22 production than the high grade material.

23 VICE CHAIRMAN PINKERT: Thank you. Now there's
24 factual disagreement between the parties with respect to a
25 certain contract, all of the details of which are treated by

1 the parties as proprietary. Could you address the conflicts
2 in the arguments in evidence or if you can't do it here,
3 could you address that in the post-hearing?

4 MR. LEVY: Sorry, Jack Levy for domestic
5 producers. Obviously, the lion's share of this information
6 is proprietary. It limits our ability to speak to it in a
7 public session. We will do our best to address it in
8 greater depth in a post-hearing submission.

9 What I will say is that the public version of
10 the prehearing report reads at page V-26 that other
11 identified reasons for shifting from U.S. producers to
12 subject imports were Felman's refusal to supply blank.
13 That's a matter of public record. You've heard from
14 Felman's witnesses that they have honored their contractual
15 commitments, that they're reliable suppliers.

16 But what I would like to do maybe briefly is
17 turn things over to Mr. Rochussen of Eramet Marietta, and
18 ask him to speak to the reliability of supply of Eramet
19 Marietta, and whether they had an opportunity to sell
20 greater volumes of silicomanganese in the U.S. market, with
21 particular reference to 2013 when we had this onslaught of
22 imports from Australia.

23 MR. ROCHUSSEN: Thank you. Peter Rochussen for
24 Eramet. Eramet has been a producer of silicomanganese since
25 the 1950's. We've produced basically every year since then.

1 We have been a stable producer and a reliable supplier to
2 the U.S. market over that long period of time.

3 I don't think -- I've been with Eramet for 15
4 years. I can't speak to the period prior to that, but I'm
5 pretty sure if we have looked back in the record, there
6 hasn't been a year that they've missed production in the
7 plant in Ohio. During the period of time, 2013, we had the
8 capacity to produce additional silicomanganese units.

9 Pricing conditions didn't make it economically
10 viable for us to do that. We couldn't see the opportunity
11 to actually make a business out of competing against the
12 import levels coming in from Australia at the low prices
13 that were becoming evident. Consumers in the marketplace.
14 We had contracts with a reasonable number of consumers out
15 there on contract business, at price levels which had been
16 set at the beginning of the year.

17 Those consumers knew what our pricing strategy
18 was for that year. So they really knew that we weren't in a
19 position to be able to compete against the pricing
20 conditions that had been offered at the time coming out of
21 Australia. So essentially in effect we were denied the
22 opportunity to compete effectively in that market at that
23 point in time.

24 We certainly had the capacity at that time to
25 grow the business, but the opportunity simply wasn't there

1 because of pricing conditions.

2 VICE CHAIRMAN PINKERT: Do you think you might
3 have some documentation that's contemporaneous with that
4 time period that you could supply in the post-hearing, on
5 your inability to compete in that --

6 MR. ROCHUSSEN: Yeah, absolutely.

7 VICE CHAIRMAN PINKERT: Perhaps as well, Mr.
8 Levy, if you could provide some documentation on that issue,
9 I think that would be helpful.

10 MR. LEVY: We'd be happy to do so. Thank you.

11 VICE CHAIRMAN PINKERT: Thank you very much.

12 CHAIRMAN BROADBENT: Commissioner Williamson.

13 COMMISSIONER WILLIAMSON: Thank you. I want to
14 express my appreciation to the witnesses for coming today.
15 I very much appreciate you being here. Just continuing on
16 that last series of questions of Commissioner Pinkert, how
17 important is it to domestic purchasers to have alternate
18 supply, and does country of origin matter in that
19 consideration?

20 MR. ROCHUSSEN: Peter Rochussen for Eramet. The
21 domestic -- the consumers in North America, it is an import
22 market. There's a reliance on imported material. The
23 combined capacity of both Felman and Eramet cannot meet 100
24 percent of the demand.

25 So there is a certain reliance on the market, on

1 the consumers to have material coming in from other regions.
2 That is a fact. I mean that cannot be denied.

3 Country of origin doesn't necessarily play a
4 role at all from what we can see. It comes down to price at
5 the end of the day. It's essentially a commodity product.
6 Similar specifications, comparable specifications, whether
7 it's coming from Australia or whether it's coming from
8 Feldman or whether it's coming from us.

9 At the end of the day, the only distinguishing
10 feature really is the price that is offered to the end
11 consumer.

12 COMMISSIONER WILLIAMSON: Okay, thank you. The
13 reason I raised that question is because that in addressing
14 the question Commissioner Pinkert asked you, Mr. Levy wanted
15 to do it post-hearing. I wanted him to address that aspect
16 of it too.

17 MR. LEVY: Certainly. I'd be happy to.

18 COMMISSIONER WILLIAMSON: Thank you. Mr.
19 Ohlinger, I very much appreciated what you had to say about
20 working at the plant, the experience and all. I was just
21 wondering about what has been done. What keeps workers at
22 the plant competitive to say workers in Australia? I mean
23 have their been upgrades in skill level or things like that?

24 MR. OHLINGER: Since 2006, Felman's made a lot
25 of upgrades to the plant. They have put in a lot of new

1 equipment, overhead trains. They have changed the way the
2 furnaces run to make them more efficient. Just I don't even
3 know that I could tell everything. They had put in -- our
4 product, the silicomanganese, makes a byproduct called slag.

5 So they had built a slag processing plant right
6 beside of us or there on the plant property, and they sell
7 it to Armstrong, which is in Jackson County, the same as
8 Eramet does. They make insulation out of it. So you know,
9 the importance of Felman's runnings is also important to the
10 ones in Jackson County at the Armstrong plant. There's
11 really good paying jobs.

12 But basically at the plant, Felman's has put a
13 lot of money into it, a lot of changes since I walked in the
14 door in 2006, and the men and women that work there has put
15 everything into it that they could to, you know, keep the
16 place going. Right now we're running one furnace with 54
17 employees, you know, working in the plant and guys have
18 doubled up on the work, doubled up on changing schedules and
19 stuff, just trying to be able to compete to keep our foot in
20 the door.

21 If we can keep our foot in the door and metal
22 prices start going on up, you know, they'll start calling
23 people back to work. But you know, if they shut the door,
24 that may be the end of it. We may be looking at years for
25 the plant to restart, and right now in the area, in the

1 families, we just ^^^^ we can't afford that. So you know,
2 we're doing whatever it takes to keep the plant going.

3 In 2013, the union sat down with the company and
4 we had made some changes to our contract, to help Felman's
5 be able to compete and run more efficient, and actually it
6 had hurt some jobs. You know, we combined some jobs and cut
7 some jobs. But this had to be done in order to, you know,
8 be able -- for them to be able to compete and keep as many
9 working as what we possibly could.

10 So on both sides throughout the last several
11 years, there's been a lot of changes, a lot of working
12 together to, you know, try to keep the facility going.

13 COMMISSIONER WILLIAMSON: Thank you. Has there
14 been, as you introduce new equipment, things like that, has
15 there been a sort of an upgrade in skills of the workers or
16 training and things like that?

17 MR. OHLINGER: Yes. Yes, there has. Some of
18 the new jobs that they brought in such as the water
19 processing facility or slag processing I was telling you
20 about, it is -- it's more of a skilled job. They had to
21 bring people in to do the training, and it even turned out
22 being one of the higher-paying job levels there, you know.

23 Our job levels start out from 17 dollars and
24 something an hour to -- and go up to 21, 22 dollars an hour.
25 So just as the slag processing plant, that ended up being,

1 you know, a 20 -- I think it's a 20 dollar an hour, 80 cent
2 job.

3 So yes, some of the things that they've done and
4 added has actually made more money, you know. They put in a
5 ^^^^ trying to run an induction furnace right now that will
6 melt our fines. So they just -- they had added it and done
7 a lot of work with it throughout the several months.

8 So when we come up with a job bid and pay scale,
9 it had actually become the highest paying job in the plant,
10 which was I think it's 21.80 or something like that. So you
11 know, the changes they have made has benefitted us
12 dramatically.

13 COMMISSIONER WILLIAMSON: Thank you for those
14 answers. Mr. Powell, what factors does Felman's parent,
15 GAA, consider when deciding whether they will use domestic
16 production to supply the U.S. market? Is it primarily this
17 question of standard versus high grade?

18 MR. POWELL: Yes, yes. Again, the strategy is
19 to produce as much standard silicomanganese as possible in
20 West Virginia and the high grade silicomanganese in Georgia.
21 So we have customers that take standard grade and other
22 mills of customers that take the high grade.

23 COMMISSIONER WILLIAMSON: Okay. What are the
24 trends regarding, if this is not proprietary, demand in the
25 U.S. for the high grade versus demand for standard grade,

1 and what is this -- I'd just ask what those trends are and
2 what implications do they have for say competition in this
3 market for this standard, which is where the subject imports
4 are coming from?

5 MR. LEVY: The proprietary information collected
6 by the staff I think includes the raw materials with which
7 to answer that. Again it's APO, but we'd be happy to put
8 together sort of a package that shows what's going on.

9 I think as was discussed earlier, you have
10 standard grade serving a number of mills and high grade
11 serving other mills. For those that could readily switch,
12 they've already made the switch and that was the case
13 throughout the POI. For those that remain, switching is
14 either very challenging from an engineering and a production
15 cost point of view, or simply not feasible from a technical
16 point of view because of the end products that they're
17 making, and again most notable this tolerance for phos that
18 high grade manganese, excuse me, high grade silicomanganese
19 has.

20 So things were relatively stable during the
21 Period of Investigation with some fluctuation, and if you
22 look at where we are today, Georgia is producing -- less
23 than ten percent of what you see from Georgia is standard
24 grade silicomanganese. It was a little bit more during the
25 period when Felman was idle, because there was a need to

1 supplement the accumulation of U.S. origin inventories, so
2 that Felman could continue to meet its contractual
3 obligations.

4 But again, that isn't what Georgia's in the
5 business of doing. They're in the business of, from an
6 efficiency point of view, focusing on the high grade.

7 COMMISSIONER WILLIAMSON: Okay. I'm
8 particularly interested. Do these trends say anything about
9 the competition of subject imports? If there's any
10 implication, that's important.

11 MR. LEVY: Yeah absolutely, and I think we'll be
12 happy to speak to it more in the post-hearing. But again,
13 the head-to-head competition in the U.S. market is focused
14 on the standard grade silicomanganese segment. That's all
15 the Australians make. That's all the U.S. producers make,
16 and Georgia is focused 90 plus percent on another product
17 that has limited overlap in competition and limited
18 interchangeability.

19 So the fact is looking at Georgia along with
20 other non-subjects inflates the perceived importance of
21 non-subject imports in the market.

22 COMMISSIONER WILLIAMSON: Okay. Thank you for
23 those answers.

24 CHAIRMAN BROADBENT: Commissioner Johanson.

25 COMMISSIONER JOHANSON: Thank you Commissioner

1 Broadbent, and I would like to thank all of you for
2 appearing here today. As I was talking about this
3 investigation yesterday with my staff, Mark Reece, who's
4 seated to my side, we discussed the many factors at issue in
5 this investigation.

6 I told him well, this investigation to me is in
7 some ways like a mystery. He said no David, it's a mystery
8 in brackets, because there's so much which is proprietary.

9 So there are a lot of issues at factor here
10 which we really are unable to speak on today. So I'd
11 appreciate if you would liberally provide information in the
12 post-hearing to help illuminate some of these matters.

13 I'm using this as a segue to my first question,
14 which of course is largely BPI. If you look at pages 24 to
15 25 of the Respondent's prehearing brief, there's a
16 paragraph. There's one paragraph which discusses a certain
17 issue at factor which is raised by the Respondents. Could
18 you all please respond to this in your post-hearing brief,
19 and that's all I can say on this one issue? Thank you.

20 And now I would like to go back to follow the
21 two questions which were just asked by Commissioner
22 Williamson, and I'm going to ask you -- I'm going to begin
23 by asking you when did high grade silicomanganese from
24 Georgia first enter the U.S. market?

25 MR. LEVY: We'll have to check. It may go back

1 to years before these gentlemen's service at the company.

2 COMMISSIONER JOHANSON: Okay, thank you. Has
3 Felman Trading ever sold standard grade and high grade
4 silicomanganese to the same steel producer?

5 MR. NUSS: Not at the same time. The steel mill
6 will generally select one grade or the other, the standard
7 grade or the high grade because they'll adjust their process
8 to use one or the other, or they'll set their process to use
9 one or the other.

10 COMMISSIONER JOHANSON: How hard is it -- I'm
11 sorry, Mr. Levy. Did you want to respond?

12 MR. LEVY: Yeah. Just as a point of
13 clarification, you know. The steel mill is obviously --
14 excuse me. The steel industry is not without its
15 complexity. Steel companies are not a monolith. They have
16 many mills. Each mill in many respects has its unique
17 production process, its unique product mix.

18 So I think what Barry was indicating was that
19 for a particular mill, they are either consuming high grade
20 or consuming standard grade and they're not readily
21 switching. I believe it is the case, and correct me if I'm
22 mistaken Barry, that there may be particular companies where
23 certain mills are taking and have been taking high grade
24 silicomanganese from Georgia.

25 And at the same time, that same company has

1 other mills that have indicated to you that they lack the
2 technical ability to purchase high grade silicomanganese in
3 their production process. So you know, it's a story. It's
4 a mill-by-mill story. Is that a fair statement?

5 MR. NUSS: Yes. This is Barry Nuss. Yes,
6 that's correct.

7 COMMISSIONER JOHANSON: All right, thanks. Do
8 you have any knowledge of mills that once consumed standard
9 grade silicomanganese which have switched to high grade
10 silicomanganese, and if so, could you provide us with
11 information on that, or at least name those companies or
12 those plants?

13 MR. NUSS: Yes. Nearly all of the mills that
14 consume high grade silicomanganese at one time consumed
15 standard grade, because that was the product that was
16 available. It was only after it was introduced that they
17 looked at it. They looked at the economics of it; they
18 looked at the technical limitations of using it, how it
19 affected their processes, their practices and decided which
20 product made the most sense for their specific mills.

21 COMMISSIONER JOHANSON: If it's a superior
22 product, I don't know if you would call it that way, but if
23 it is why have more plants not moved to using high grade
24 silicomanganese?

25 MR. NUSS: The high grade -- this is Barry Nuss

1 -- the high grade silicomanganese has chemical elements,
2 particularly phos levels that are in excess of the standard
3 grade specification, and that provides a technical challenge
4 to many plants depending on the products that they're making
5 and depending on their practices, their melting practices
6 and so on and other materials that they're using.

7 So not every plant can use high grade. Every
8 plant can use standard grade. So there are plants that can
9 use either and make their choice as to which is better for
10 them. There are plants that can only use standard, and
11 there are plants that can use both, you know, and make their
12 -- make their determination.

13 But they don't switch back and forth because
14 that's not -- it's a sloppy practice for them to go back and
15 forth, to change their mix, their recipes and so on.

16 MR. NUSS: So they tend to determine what's best
17 for that mill based on its processes and its products and
18 then stick with that practice.

19 MR. LEVY: And sorry to interject, but perhaps
20 Peter Rochussen can speak to this a little more from his
21 marketing experience.

22 Peter, are there particular products -- steel
23 products that simply can't tolerate the high FOS, or is it
24 just a production process issue?

25 MR. ROCHUSSEN: Peter Rochussen for Eramet. As

1 we heard earlier on the silicomanganese are predominantly
2 used in the long product segment of the steel industry, long
3 product being, you know, rebar, structural beam, some
4 tubular product for energy sector and so on. Each of those
5 particular grades of steel, as I'm sure you're heard from
6 many of the steel industry types that have come before you,
7 have very different specifications on residual elements of
8 which phosphorous is one of the elements which is looked
9 upon closely.

10 So product which goes into, for example, rebar,
11 which goes into, you know, structural buildings or into
12 concrete roads and so on out there can tolerate a high phos
13 level compared to a product as a steel product which perhaps
14 goes into a structural beam or into an energy tubular
15 product which cannot tolerate a higher phos levels.

16 It really differentiate which molds -- which
17 molds are able to take and tolerate a higher phos material
18 in the silicomanganese compared to the molds that can't --
19 that have to take a standard grade material.

20 From our own experience, we don't -- we don't --
21 Eramet does not actively compete against any of the higher
22 grade material in the marketplace. We see it as a
23 completely different segment of the market and we don't
24 participate in that sector of the market at all.
25 Essentially we focus on the standard-grade material at the

1 molds that are able to use a standard-grade material. So
2 while we do get requests for bid from the molds that are
3 using the higher-grade material, we don't actively bid
4 against that at all.

5 COMMISSIONER JOHANSON: At times that the plant
6 has been idled did any of the steel producers that Felman
7 was selling to switch to using high-grade silicomanganese?
8 Or did they import during that time, high-grade
9 silicomanganese perhaps to offset --

10 MR. NUSS: I'm not aware of any. This is Barry
11 Nuss. I'm not aware of any customer who switched to high
12 grade over the concern that availability of standard grade
13 was an issue.

14 COMMISSIONER JOHANSON: Right. That's what I'm
15 getting at.

16 MR. NUSS: As a result of Felman production's
17 idling furnaces. Now, there are still mills that continue
18 to evaluate the high-grade product as to whether it makes
19 sense for their product mix in their process.

20 COMMISSIONER JOHANSON: Could you all comment on
21 the comparability of prices between standard and high-grade
22 silicomanganese?

23 MR. NUSS: This is Barry Nuss. The high-grade
24 material contains a higher content of manganese, 72 percent
25 versus 65 to 68 percent. The price is determined, it's a

1 separate product with a separate supply and demand dynamic
2 to it. So there is a negotiation. There is an element of
3 that pricing that scales up on a manganese basis, but there
4 are also other considerations in the price because they may
5 have -- there may be more costs involved in dealing with the
6 higher phos by the customer. They may be a high volume and
7 that may become part of the consideration, a high-value
8 consumer. So it's not just simple math. Go from 65 to 72,
9 scale it up and that's the price. But on a manganese -- on
10 a material basis it tends to have a higher price because it
11 has more manganese in a ton of material.

12 COMMISSIONER JOHANSON: All right. I have one
13 more question but I'm going to hold off because my time has
14 expired. Thanks.

15 CHAIR BROADBENT: Commissioner Schmidtlein. oh,
16 Commissioner Kieff.

17 COMMISSIONER KIEFF: Thanks.

18 CHAIR BROADBENT: Sorry, my -- Commissioner
19 Kieff.

20 COMMISSIONER KIEFF: So I join my colleagues in
21 thanking you all for coming and prepping and following up
22 and echo Commissioner Johanson's light-hearted, but of
23 course important remark that the follow up will be
24 especially important given the brackets. So we all look
25 forward to that. And I, as a former techie, I'm so, so

1 tempted to really ask a lot of questions about the
2 metallurgy and the inorganic chemistry, but I'll stop
3 putting everyone to sleep and instead let me just say it is
4 also really so helpful to have the benefit of the human
5 story. And so, Mr. Ohlinger, thank you for coming and
6 providing it. It's an important part of our analysis.

7 Let me, if I could, ask -- tack in a totally
8 different direction and ask what might be a very legal or
9 business set of questions.

10 The long-term contracts in this industry, can you
11 talk a little bit about how they're basically structured
12 which is to say, are they pegged as so-called output
13 contracts, I'll buy whatever you make, or requirements out
14 contracts, you'll provide whatever I need? Are they
15 specific as to quantity or price? Do they have benchmarks?
16 We agree in this contract that we will transact over a
17 quantity that is X percent of some benchmark and Y percent
18 of some benchmark price? Can you just talk a little bit
19 about the structures of these contracts, these long-term
20 relational contracts?

21 MR. ROCHUSSEN: Peter Rochussen for Eramet. I
22 think a lot of the detail on that is going to be proprietary
23 which will all come back to you in the post-hearing. But I
24 think in general I could make a comment in that. Long-term
25 contracts typically are entered into for two reasons. I

1 mean, one is for the consumer to have at least a portion of
2 their expected usage over a period of time, have that
3 security of supply from a known source coming in. And the
4 same thing applies to the supplier. I mean, to have a
5 certain portion of production basically with a known home to
6 go to over a period of time.

7 Typically the contract tends to be more in terms
8 of the price mechanism as established and runs through the
9 course of the contract which, you know, may be a year, it
10 may be two years or longer. The volume -- on the volume
11 side there tends to be more flexibility built into it. As
12 we all know the steel industry -- I mean, it's an up and
13 down -- it's a rollercoaster ride at the best of times, so
14 you aren't able -- they aren't able to predict the
15 consumption levels with any degree of accuracy, so there has
16 to be a fair amount of flexibility built in on the volume
17 side of the equation.

18 So we talk about -- we don't like to refer to the
19 requirements contracts, but essentially that is really what
20 that does come down to. You know, we'll end up -- the
21 contract might specify it will supply 50 percent of the
22 actual consumption during a period of time with certain
23 limitations on the bottom end and the top end to give the
24 plant -- the steel consumer -- the steel producer some
25 flexibility in how they actually source the material during

1 that period.

2 COMMISSIONER JOHANSON: Does anyone else -- well,
3 thank you very much. Does anyone else want to add to that?

4 MR. NUSS: This is Barry Nuss for Felman. I
5 agree with what Peter has said. It's generally the same.
6 The contracts tend to be an agreement on a percentage of the
7 demand that's required and sometimes there's limitations to
8 that. There may be a maximum -- up to a maximum quantity.
9 And then pricing, of course, is referenced on a monthly
10 basis.

11 COMMISSIONER JOHANSON: Can you remind me what
12 are the options for quantity that has been produced but is
13 not yet ready to be used by a mill -- by a steel mill? Put
14 differently, how stable is the stuff? And how expensive is
15 it to have it sit around?

16 MR. ROCHUSSEN: Essentially it's a product which
17 does not have a shelf life. I mean, essentially it -- you
18 know, you can produce it today, it can sit in storage for,
19 you know, 30, 40 years.

20 COMMISSIONER JOHANSON: Okay.

21 MR. ROCHUSSEN: And, I mean, it's going to be as
22 good then as it is today as long as it's been protected from
23 the elements and so on like that. I mean, that shouldn't be
24 an issue at all. I can only speak for ourselves in terms of
25 Eramet. I mean, we ship most of our product to the end

1 consumer directly from our plant. So the inventory
2 fluctuation is dealt with in terms of plan storage. So
3 relatively little cost factor on terms of storage on site.

4 To the extent that we have to move material to an
5 external facility for packaging, for example, then obviously
6 there's a cost involved in doing that.

7 COMMISSIONER KIEFF: Okay. And then this may be
8 a very legal question. So it may be really best for Mr.
9 Levy, but really anyone who wants to dive in. I take it
10 that a significant point of contact between you and your
11 counterpart is on the -- the question of causation. She
12 might agree with a lot of your facts about challenges. You
13 used a colorful metaphor of blood on the floor. She might
14 use a less colorful metaphor or a different rate, you might
15 say, while it's not as messy or whatever. But even if she
16 agreed with you that it's a tough situation, I take it that
17 the view would be, yeah, but it's not caused by reason of.

18 If it turns out that she's got a lot of traction
19 there, do you have traction back on a threat type argument?
20 And if so, is that an important part of your argument?

21 MR. LEVY: seems to us that, you know, there's
22 hardly a case where respondent doesn't stand before you and
23 say, it ain't us. It's not subject imports, it's nonsubject
24 imports. It's not price, it's nonprice factors. You may
25 see injury, but it's self-inflicted injury. You know, at a

1 high level these are the arguments you're going to hear from
2 respondents in every case. And in every case any counsel
3 representing domestic producer or if we'll argue, no, no,
4 no, that's just not right.

5 So not surprisingly, I'm here telling you, no,
6 no, no, that's just not right.

7 But we have identified in our prehearing brief
8 and we'll elaborate in further detail in our present-hearing
9 that as injured as the domestic industry is, and as much as
10 that was caused by subject imports, they are more vulnerable
11 today than they have ever been and the implications in terms
12 of threat of future injury to the domestic industry is also
13 clear. And so we would very much say that if you have any
14 pause as to the cause and effect analysis during the
15 retrospective period of investigation, there is also strong
16 evidence to suggest threat of future injury.

17 And I will say, Commissioner Kieff, I think this
18 may predate your arrival at the Commission, but in the wake
19 of the great recession we had case after case after case
20 where demand was declining from beginning to end of period.
21 And in over across a number of cases I was mystified to come
22 away with an affirmative vote, but one grounded in threat
23 rather than present injury. And it was clear with the
24 benefit of hindsight that Commissioners sometimes struggled
25 with isolating -- the causation issue and dealing with

1 demand.

2 Now, we've discussed how in the context of 2012
3 to 2013 where demand is increasing, you can see that demand
4 is not what's explaining the circumstances. But if you, for
5 similar reasons, have any pause at any technical issue
6 whether it's a bracketed mystery or otherwise, without a
7 doubt there is threat of injury in this case to support an
8 affirmative determination and we will be sure to elaborate
9 that on that fully in our post-hearing submission. So thank
10 you for the question.

11 COMMISSIONER KIEFF: That's great and I'll just
12 briefly then ask, you know, both sides, to the extent
13 possible in the post-hearing to highlight the nature of the
14 disagreements you're having with each other and whether the
15 nature of those disagreements is the same in these different
16 -- let's call it phases of our analysis. So it could be,
17 you know, factual, it could be inferences about the
18 significance of the facts. It could be legal significance.
19 And the more you can highlight that, and the more you can
20 explain, hey, I disagree with my sister at the bar on a
21 factual question here, but over here, we have a different
22 disagreement and, you know, being explicit about the nature
23 of those disagreements can often help us piece out each
24 side, where the rubber hits the road for both sides. So my
25 time is up. I just wanted to ask both of you to do that to

1 the extent you can.

2 MR. LEVY: Thank you very much. We will. I
3 mean, there's no question that with respect to one issue
4 there is a debate that is specific to film and that is
5 specific to a time period in the POI, and we would say,
6 number one, we obviously disagree with them on the merits
7 and it will be for you to interpret it. But it doesn't
8 answer the question, what about Eramet? It doesn't answer
9 the question, what about the future?

10 COMMISSIONER KIEFF: Right.

11 MR. LEVY: And so we'll do that in all
12 appropriate circumstances. And thank you.

13 CHAIR BROADBENT: Commissioner --

14 COMMISSIONER KIEFF: Thank you.

15 CHAIR BROADBENT: Commission Schmidtlein.

16 COMMISSIONER SCHMIDTLEIN: Thank you. I'd like
17 to also thank everyone for appearing here today.

18 Mr. Ohlinger, I wanted to especially thank you
19 for coming, given that this was your first time on an
20 airplane, I heard you say. I can relate to that because my
21 father refuses to fly. He's been on an airplane twice in
22 the last 55 years and once was -- the last time was for my
23 confirmation hearing here, and I wasn't sure he was going to
24 survive the flight home. So I hope that's not been your
25 experience in your first time on an airplane to Washington.

1 MR. OHLINGER: No, it was -- it was quite an
2 experience. It wasn't as bad as what I thought it would be.

3 COMMISSIONER SCHMIDTLEIN: Okay.

4 Mr. OHLINGER: I never in this world had any
5 intention of every flying. And I can't say once I get back
6 home that I'll do it again. But it wasn't too bad. It was
7 interesting coming into Washington and looking out. And I
8 had a window seat and I could see that things was really
9 different from here than back home. I could see all the
10 crane -- tower cranes, and, you know, process going on. You
11 have buildings going up and it was quite something to see.

12 COMMISSIONER SCHMIDTLEIN: Yeah. Well, I
13 appreciate you coming. I grew up in a small town of about
14 3,000 people in rural Missouri, so my parents still live
15 there. Maybe that has something to do with why they don't
16 like to fly.

17 [LAUGHTER]

18 MR. OHLINGER: That might be it. Thank you.

19 COMMISSIONER SCHMIDTLEIN: All right. So, I
20 wanted to understand more specifically the concern with the
21 pricing data. So I don't know, Mr. Levy, maybe this is a
22 question for you. And if I understand you all, the concern
23 is with product two, but you don't have a concern with
24 product one.

25 MR. LEVY: That is correct. And, again, the

1 concern is not with the product, per se.

2 COMMISSIONER SCHMIDTLEIN: Right.

3 MR. LEVY: So if you take a step back, product
4 one is contract sales to traders, distributors.

5 COMMISSIONER SCHMIDTLEIN: Right.

6 MR. LEVY: Product two is contract sales to end
7 users to steel mills.

8 There is substantially -- in product one you have
9 a unique universe of questionnaire respondents that
10 obviously includes the likes of Felman and Eramet but also
11 others on the foreign side. And we see integrity in their
12 questionnaire responses. To the extent some of those
13 respondents overlap in product two, and there are, I think,
14 one or two that overlap, one of them being Felman Trading,
15 ironically, because they're also -- what you'll find is that
16 we don't dispute the integrity of their data in product two.
17 But for the lion's share of the questionnaire respondents in
18 product two, their numbers make no sense in relation to the
19 narrative descriptions from them and from their purchasers
20 as to the relationship -- as to how they describe their
21 contract prices in relation to an index on the one hand, and
22 how their actual reported numbers line up against those
23 indices.

24 And so, you know, if you want to say, well, you
25 know, here's what's going on with nonsubject import pricing,

1 and you want to point to product two, those aerospace flawed
2 data. And the flaw emanates from the individual
3 questionnaire respondents and what they reported. And you
4 cannot reconcile the numbers they reported, line up their
5 numbers against the indices, see how those prices relate,
6 and then look at their narrative response of how their
7 prices are supposed to relate to those indices under the
8 contracts. Then look at the purchasers and what do they say
9 about the relationship between the prices that they're
10 paying and the indices.

11 And we respectfully submit, I know it's a little
12 obtuse to talk about this in a public session --

13 COMMISSIONER SCHMIDTLEIN: Uh-huh.

14 MR. LEVY: -- that you cannot reconcile their
15 narrative responses about how their prices are set and how
16 they -- the level at which they operate on the one hand, and
17 the reported numbers. They're just -- they essentially
18 have, you know, indicted their own numbers through their own
19 narrative responses and unlike U.S. producers, they're not
20 susceptible to audit, and so, you know, in that environment,
21 what do you do?

22 What we can't do is come to you and say,
23 Commissioners, you know, just ignore the pricing data on the
24 record wholesale because you need to analyze price effects
25 under the statute. So what do you do in an environment

1 where product two is distorted, it's flawed, it's unfixable?

2 COMMISSIONER SCHMIDTLEIN: Well, let me ask you a
3 question. And, again, obviously we can't go into the
4 specifics, so if I understand you, what you're relying on is
5 the purchaser -- the answers in the purchasers'
6 questionnaire and you've put them out here in confidential
7 exhibit C, page 2.

8 MR. LEVY: Uh-huh.

9 COMMISSIONER SCHMIDTLEIN: Examples of them. So
10 not all of those statements in that exhibit refer to the low
11 average? Right? And in fact one of the largest -- or
12 larger, let's say larger purchasers that's included in there
13 doesn't indicate -- the statement doesn't indicate which of
14 the averages that their contracts are discounted off of? So
15 I guess my question is, I mean, this is all like -- it
16 certainly -- you know, you raise a red flag, but how can you
17 really say, because we don't -- you know, I guess there's
18 two questions. Does it make a difference if the discount is
19 off a different average, not the low monthly, but maybe the
20 middle monthly -- you know, middle average, or high? Is
21 there that much difference between those numbers?

22 MR. LEVY: Well, that's a wonderful question.

23 COMMISSIONER SCHMIDTLEIN: Okay.

24 MR. LEVY: The short answer is it doesn't change
25 the conclusion. And so I think what would be very

1 enlightening for the post-conference submission is we can
2 map out the same prices in terms of these troubling
3 questionnaire respondents and show a multitude of indices.
4 And what you find is that the relationship is still the
5 same. So we've not cherry picked one index and said, ah-ha,
6 but in fact what you see is that across a range of indices
7 things are in effect upside-down.

8 COMMISSIONER SCHMIDTLEIN: I mean, it's unusually
9 in a case where we have this high of coverage for the
10 pricing products, we have extremely high coverage in this
11 case. So aside from this sort of -- these narrative
12 statements, I mean, do you have any -- and this is maybe
13 asking for a bit of speculation, but do you have any other
14 idea of like why -- why would -- and I know you said there
15 was a little bit of overlap, I guess you've looked at the
16 questionnaire. There was only eight importers that
17 responded to -- that went into that is pricing product. So,
18 what's going on? Pricing product one, everybody reports
19 their data accurately. Pricing product two, what are they
20 adding in that shouldn't -- you know, they all looked at the
21 wrong -- you know, submitted the wrong numbers?

22 MR. LEVY: Yeah. So, I mean, you're right. What
23 we've discussed now, albeit obliquely, is a huge red flag.
24 But there is other specific information that calls into
25 question the integrity of the data. And it's really company

1 by company, right? So some of the responding companies,
2 everything they've submitted looks reasonable, others not so
3 much. And in our post-hearing we can identify for each of
4 them, we can call out those additional discrepancies. But
5 there are things in their numbers that cannot be right,
6 whether it's arbitrarily reporting your data in some
7 quarters to the exclusion of others, or peanut butter
8 spreading your price over a period of quarters because it's
9 simple, albeit sloppy. But there is a lot of chronic issues
10 beyond that.

11 I don't have an answer as to why the data are
12 flawed in product two in relation to these companies, but
13 there's no question that they cannot be right. But just,
14 again, to come back to basics, the biggest red flag in our
15 mind is again the commodity price economics. You have a
16 large volume of supply being pushed into the market. Prices
17 should be coming down, not up as a respondents suggest. The
18 data show prices going down. And if you look at table 2-9,
19 I think it's the exhibit C of our -- and look at price, what
20 the purchasers are saying is that by and large U.S. and
21 Australian prices are comparable, but more often than not by
22 a ratio of five to two, the U.S. price is inferior, i.e.,
23 higher. So at a narrative level, purchasers are telling us
24 that the Australians are lower priced to the extent they're
25 not priced the same. And when we look at product one we see

1 what we would expect to see which is mixed underselling, but
2 underselling where you need it in terms of showing a cause
3 and effect relationship. And then this is, as I mentioned
4 earlier, a case where average unit values are probative
5 because we're dealing with a commodity product. And if you
6 refer to confidential exhibit A, you see there a summary of
7 the AUV data collected by staff.

8 COMMISSIONER SCHMIDTLEIN: Well, let me interrupt
9 you briefly with regard to that. So I know that you're
10 encouraging us to look at the AUV's of subject imports. My
11 question is, why wouldn't we look -- if we were going to
12 look at AUV data, why wouldn't we look at U.S. shipments of
13 subject imports?

14 COMMISSIONER SCHMIDTLEIN: Wouldn't that be the
15 more appropriate level of trade than AUVs of imports? In
16 other words, you know, instead of the data coming across the
17 border, it's the data of importers who are then selling it
18 to the mills or distributors?

19 MR. LEVY: So the answer is, it depends. Because
20 you're going to have particular companies that are
21 themselves the importers of record and account for
22 significant volume of consumption in the marketplace.

23 And so we can address that more in our
24 post-hearing submission, but the level of trade issue is not
25 nearly as pronounced an issue in this case as you may have

1 legitimately in others. So we would be happy to speak to
2 that in more detail.

3 But again, we're not saying that this is the only
4 source of information, Product One. The volume of coverage
5 in Product One has been much maligned by the Respondents,
6 but if you look at the volume of coverage for Product One in
7 relation to the market, it's actually a higher level of
8 coverage than you have in many cases in which you rely on
9 pricing products and find clear indications of price
10 effects.

11 So what we don't want to leave you with is the
12 impression that somehow Product One, as corroborated by
13 Table 2-9, as corroborated by the AUV data, is somehow
14 anemic or insufficient. We are simply saying that Product
15 Two cannot be right.

16 COMMISSIONER SCHMIDTLEIN: Okay, thank you.

17 CHAIRMAN BROADBENT: The--you are making this big
18 distinction between high-grade silicomanganese from Georgia
19 and the standard grade from Australia and the U.S. Is there
20 two like products here? I mean, do we need to look at them
21 that closely? What other sources of high-grade
22 silicomanganese are out there besides Georgia? And are
23 there plans for any domestic production or expansion into
24 the high grades?

25 MR. LEVY: Peter, maybe you could speak to that in

1 terms of non-Georgian supply?

2 MR. ROCHUSSEN: Yes, Peter Rochussen for Eramet.
3 To my knowledge there's no comparable product out there
4 during the Period of Investigation that matches the
5 Georgian, what's called the Georgian High Grade material in
6 manganese content, and so on.

7 CHAIRMAN BROADBENT: So that's fairly exceptional
8 on the market? If you've got a lot of different sources,
9 Georgia's is different. Very different?

10 MR. ROCHUSSEN: Yeah, I mean typically what we've
11 seen coming in from nonsubject and subject is the standard
12 grade material. The Georgian material that comes in, to my
13 knowledge, is unique in terms of the specifications.

14 MR. LEVY: Speaking from a legal point of view, we
15 are not arguing that it is a separate like product. What we
16 are pointing--and to be sure there's some overlap in
17 competition. Mr. Nuss has testified that historically
18 individual mills have switched from standard grade to high
19 grade. Those that could switch readily have done so In
20 historical periods.

21 And so there's some overlap and not the clear
22 dividing line that you generally look for in delineating
23 separate like products. But as a condition of competition,
24 we point out that the overlap in competition is limited.
25 The interchangeability is limited. And the pricing--the

1 products are not fungible such that the pricing can be
2 adjusted simply by looking at containing manganese and say,
3 ah ha! Now I've discerned something about Georgian prices
4 relative to say Australian prices. That isn't the way the
5 market works.

6 The Commission may very well be curious to know
7 what a C Table would look like, excluding the high-grade
8 Georgian silicomanganese, not because it's a separate like
9 product, because it allows you to focus your analysis
10 singularly on the segment of the market where there is the
11 most head-to-head competition.

12 Mr. Rochussen basically said Eramet doesn't play
13 in that segment of the market. It is a unique market
14 segment. And I think what you'll find, if you were to
15 create such a C Table, is that the trends are fundamentally
16 the same but the prominence of such nonsubject imports is
17 much more muted and the impact, or I should say the profile
18 of Australian imports is that much more prominent.

19 CHAIRMAN BROADBENT: Okay. Let's see. In the
20 Respondents' brief, I wonder if you all would take a look at
21 that, and then in your post-hearing there's a graph that has
22 trends. It's Figure 3 on page 12 of the Respondents'
23 economic submission. And I just wanted your sense of what this
24 reflects about U.S. steel producers' willingness to use
25 high-grade silicomanganese in lieu of the standard grade.

1 Because it looks like there's a big uptake in the high-grade
2 consumption. But I would like your comments on that,
3 please.

4 This I'll ask to all parties--I'll ask the
5 Respondents as well--but can you provide whether there's any
6 evidence of sales prices offered in which a supplier offered
7 two price options, one for high grade and one for standard
8 grade?

9 Mr. Powell, have there been any regulations or
10 laws passed regarding environmental protections that have
11 affected production at your plants in the U.S.?

12 MR. POWELL: Robert Powell for Felman. Yes.
13 There's the recent NESHAP that was passed that was the EPA
14 regulation that now requires--well, it will go into effect
15 on June 30th, 2017. So it's not yet in and we don't have to
16 comply with that until that time period. But that basically
17 requires a 95 percent capture and control of all fugitive
18 emissions. And mainly what we're talking about is
19 manganese. And that will require significant capital
20 expenditures to retrofit Felman's facility and install new
21 control devices.

22 So it's a very--it'll cost millions of dollars to
23 comply, and so just in terms of talking about I guess future
24 harm, you know, the continuation of Australian material
25 being dumped into the market presents a very real future

1 harm in terms of us making the decision to spend millions of
2 dollars to comply with this NESHAP.

3 CHAIRMAN BROADBENT: Okay--

4 MR. ROCHUSSEN: Sorry. Peter Rochussen for
5 Eramet. That's essentially the same for Eramet, as well. I
6 mean we are at the same stage as Felman looking to, how to
7 justify future investments to comply with these new NESHAP
8 regulations. And certainly the conditions of competition
9 play a very definite role in that.

10 So to make a decision to invest millions of
11 dollars, there has to be a certain payback period involved
12 for it to make economic and be justifiable. So certainly
13 the future threat is a big part of what we have to look at.

14 CHAIRMAN BROADBENT: Okay. On page 5-12 of the
15 prehearing staff report, it states that five responding
16 purchasers stated that Felman was a price leader, which is
17 more than for any other firm. One firm stated that Felman
18 entered the U.S. market with aggressive pricing to garner
19 market share, while another firm stated that Felman used its
20 offshore Georgian supply to lead prices down.

21 In other words, unlike other cases where we
22 sometimes get the sense that domestic industry leads prices
23 up but not down, there is evidence that the opposite is the
24 case here. How would you respond to those responses?

25 MR. LEVY: So I think we will respond in relation

1 to the APO data at a post-hearing submission. But we will
2 also preview for you. What we'll put on the record are
3 articles from Ryan's notes, not the index but the location;
4 article after article after article during the POI where
5 they single out Felman as the party trying to raise prices
6 in the U.S. market. And it really is stunning.

7 And I think it's very hard to reconcile that kind
8 of account, but we'll try to speak to it more directly in a
9 post-hearing submission.

10 CHAIRMAN BROADBENT: Is there a witness that could
11 talk to me about sort of the role of the raw material prices
12 in this industry, the decline--how much of the decline in
13 the silicomanganese price is the result of a decline in raw
14 material prices?

15 MR. LEVY: Peter, do you want to take a stab at
16 that?

17 MR. ROCHUSSEN: Peter Rochussen for Eramet.
18 Ordinarily one would expect that raw material price trends
19 would be reflected at some level in the finished product
20 price in the marketplace.

21 What we have seen is that there's been a relative
22 disconnect during the Period of Investigation when you're
23 looking at manganese ore being the largest raw material
24 going into silicomanganese and the market price.

25 One would expect that, you know, and certainly at

1 the level, at the consumer level, you know, when they follow
2 what the publications say about manganese ore pricing, or
3 other raw materials that are used in the production of
4 silicomanganese, it creates an expectation in their mind of
5 a future price trend of the silicomanganese.

6 But what we have seen, though, is that disconnect
7 has been quite I think blatant in the case of
8 silicomanganese where the trend hasn't necessarily followed
9 and correlated in a direct, in a direct way.

10 CHAIRMAN BROADBENT: Okay.

11 Mr. Ohlinger, in the back row, I want to thank
12 you for coming. It's really helpful to have your testimony.
13 Can you describe the process of shutting down a furnace?
14 How long does it take to restart it? And can the furnace
15 immediately when you restart it, start producing
16 commercially viable product? Or will it take a few--some
17 amount of time to get the product right after a restart?

18 MR. OHLINGER: Once, when the furnace goes down it
19 really depends on how long the furnace has been down. The
20 plant that'd done maintenance say to the one that's burnt
21 through, you know, we done maintenance to keep it up to
22 where it'll be ready to get on line, you know, a lot
23 quicker. After the furnace is turned on, it takes about a
24 week for of it heating up to where when we can actually
25 start the tapping and gettin' the material out of it.

1 I guess it's just different things can come up,
2 but likely it doesn't--most generally it doesn't take that
3 long.

4 CHAIRMAN BROADBENT: Okay. Thank you. My time
5 has expired.

6 Vice Chairman Pinkert?

7 VICE CHAIRMAN PINKERT: Just a couple of follow-up
8 questions.

9 First of all, what impact does the underselling
10 information in this case have with respect to a proper BRATS
11 analysis?

12 MR. LEVY: Well, it's hard to answer that in full
13 detail in a public session. So I think that we will address
14 it in our post-hearing. I'll leave it at that. But thank
15 you, and we always appreciate the BRATS questions from the
16 Commissioners, and particularly from you, Commissioner
17 Pinkert. Thank you.

18 VICE CHAIRMAN PINKERT: Let's see. Would it be
19 appropriate for the Commission to make an adjustment to the
20 prices for Product Two from Georgia, as argued by
21 Respondents, to reflect the high magnesium--I'm sorry,
22 manganese content of Georgian silicomanganese?

23 MR. NUSS: It's not--this is Barry Nuss from
24 Felman. You can't compare the products. It's not an
25 apple-to-apple comparison, simply mathematically adjusting

1 for the manganese content.

2 As I indicated, there are other chemical
3 compositions in the high-grade product, and they provide
4 challenges to steel mills. Some can deal with those
5 challenges. Some, with additional costs or additional
6 processing, and they would want a discount for that.

7 There's also the recovery of the higher manganese
8 becomes a question for each steel mill to evaluate based on
9 its practices. And that experience can vary. So, yes, it's
10 appropriate to make an adjustment for the high-grade
11 silicomanganese, but it's not a simple mathematical
12 calculation as the Respondents suggest.

13 VICE CHAIRMAN PINKERT: Would you be able to tell
14 us what a better adjustment calculation would be?

15 MR. NUSS: We would be able to provide proprietary
16 information, specific examples, in the post-hearing
17 submissions.

18 VICE CHAIRMAN PINKERT: Thank you.

19 My last question has to do with the relationship
20 between spot prices and the indices. And I understand your
21 testimony that the index prices for silicomanganese are
22 affected by declining spot prices for imports from
23 Australia, but is there any way to actually line that up and
24 show that impact? Rather than simply arguing it from the
25 point of view of how you understand the indices are

1 compiled, is there a way to show that impact directly?

2 MR. LEVY: To the best of our knowledge, there's
3 no direct evidence that, you know, this particular spot
4 price reported in the index was a spot sale from Australia
5 and, ah ha, that's them.

6 There's some evidence in the record to show that
7 there's that direct nexus, but what you've heard in the
8 testimony is that in a commodity market there are all sorts
9 of price signals that folks are continuously reacting to.

10 This is an industry where the vast majority of
11 the sales are made under contract. Mr. Rochussen testified
12 that contract prices are a discount off an index. The depth
13 of the discount that has to be offered takes into
14 consideration all the market signals, including known
15 information about subject import pricing, which is obtained
16 in conversations from purchasers. It's observed through
17 import statistics that are published on the AUVs are
18 probative.

19 The same is true when you have nonsubject imports
20 say in Australian--excuse me, of a South African producer,
21 selling at spot. They know what the Australian price is,
22 and they have to meet that competition in setting the spots.

23 So there are all sorts of not only direct but
24 indirect mechanisms through which Australian pricing
25 influences the U.S. market. And I think the Respondents

1 essentially have this thesis that insofar as they do not
2 directly feed into the Ryan's Notes Index or other indices,
3 that their volume has no associated or attendant price
4 effect in the U.S. market, that they have no price effect in
5 the U.S. market at all.

6 And I would respectfully submit that that isn't
7 the way a commodity market works. But much like other
8 commodities this Commission has examined, it is not
9 something where you can necessarily connect those dots with
10 great ease.

11 VICE CHAIRMAN PINKERT: Thank you, very much. And
12 I thank the panel.

13 CHAIRMAN BROADBENT: Commissioner Williamson?

14 COMMISSIONER WILLIAMSON: Thank you. I am going
15 to ask the Respondents this question this afternoon, but I
16 wanted to see if you all had any insight on this.

17 How does it come about that, you know, mills were
18 shut down in South Africa and Australia at the same time?
19 Was one planned and the other unforeseen? Or how did we get
20 into this situation?

21 MR. LEVY: As we understand it, there were three
22 mills in South Africa, one of which was owned by the BHP
23 Group. And we were perhaps in the situation globally where
24 you had too much supply chasing not enough demand, a fact
25 pattern the Commission knows well.

1 So what would appear to have happened is that BHP
2 as a multi-national enterprise made a business decision to
3 consolidate operations in Australia. And after a period of
4 idle, decided to double down with Australian production of
5 silicomanganese and focus that volume on the U.S. market.

6 There are still two mills operating out of South
7 Africa and participating in the U.S. market. And obviously
8 TEMCO in Australia is the focus of this petition and the
9 problem. Domestic producers have made--I mean have been
10 perfectly candid about the fact that there's a role for
11 imports in this market. And we were very careful and
12 thoughtful in narrowly tailoring this Petition to target the
13 source of supply that we believe to be injurious during the
14 period of investigation.

15 We did not go after every source of supply such
16 as South Africa and say, well, through the magic of
17 cumulation we'll get them, too. We really wanted to focus
18 on what was causing the problem, and we identified that as
19 Australia. And as you can see, when you're talking about
20 standard-grade silicomanganese they came out of nowhere to
21 be the number one source of import supply in the U.S. market
22 in 2013. And there's no question that they're the culprits
23 for bringing Felman to its knees, causing a plan to idle,
24 causing massive losses for Eramet, and the industry to a
25 state it has not recovered from.

1 COMMISSIONER WILLIAMSON: Yeah, I was wondering
2 about the South African question, but did you say BHP also--
3 having closed down South Africa, what led to the closing--to
4 shutting down temporarily the Australian operation when it
5 did?

6 MR. LEVY: You can ask them that question.

7 COMMISSIONER WILLIAMSON: I will, but I was
8 curious about--

9 MR. LEVY: It's possible they had accumulated
10 inventory--

11 COMMISSIONER WILLIAMSON: If you don't know,
12 that's okay, but I just thought I would--thought maybe you
13 had a version of it. Okay, thank you.

14 We usually ask a question about post-petition
15 effects. Were there any post-petition effects in this case?
16 And if so, why not?

17 MR. LEVY: We've asked ourselves that question.
18 Given the fact that this is a commodity market, and given
19 the fact that TEMCO has control over the importation of its
20 merchandise into the U.S. market, any post-petition effect
21 we believe should have been experienced upon the imposition
22 of cash deposit requirements.

23 Cash deposit requirements came into effect during
24 the last week of September of 2015, which coincides with the
25 last week of the POI. So this is not an industry, we don't

1 think, where the mere filing of a petition shocks the market
2 and causes prices or volumes to shift. If anything, it's
3 something we would have hoped to have seen in the fourth
4 quarter after the POI.

5 And we can speak to what the future portends in
6 our post-hearing brief in relation to our threat of injury
7 argument.

8 COMMISSIONER WILLIAMSON: Okay. Thank you.

9 Let's see. Just quickly, since it was purchased
10 by GAA, has Felman Production ever been profitable? And if
11 so, when? If you want to do it post-hearing, you can,
12 unless you have an answer now.

13 MR. NUSS: Yes, we can--this is Barry Nuss--we can
14 provide more information post-hearing. But as I indicated
15 earlier, just prior to the 2008 Great Recession, Felman
16 plant was profitable. And again during a period in 2012 the
17 Felman plant was profitable. So it has been profitable in
18 normal market conditions.

19 COMMISSIONER WILLIAMSON: Okay. Thank you.

20 Mr. Getlan made reference to the Privet group and
21 their control, and so I want to know, do they control GSA
22 Felman Productions, or Felman Trading? And if not, does the
23 Privet group have a relationship to these entities? And who
24 is the Privat Group?

25 MR. POWELL: This is Robert Powell for Felman. My

1 understanding of the Privat Group is that it's other
2 companies that are owned by the same shareholders of Privat
3 Bank. But there is no "Privat Group" entity that exists as
4 far as I know.

5 But I was very surprised to read in TEMCO's brief
6 and their expert report so many factual inaccuracies. I
7 mean, just in the "Economic Incentives of Privat in GA," the
8 expert report, just in one paragraph I found at least four
9 false statements. So I can quickly go through some of those
10 if you'd like--

11 COMMISSIONER WILLIAMSON: Okay.

12 MR. POWELL: Because it deals with the Privat
13 ownership of GA.

14 COMMISSIONER WILLIAMSON: Okay, so long as it
15 bears on this case.

16 MR. POWELL: Well, so one of the statements was
17 "In March 2011 Optima Group LLC, a French subsidiary of
18 Privat Group, purchased CC Metals and Alloys." And that is
19 just completely false.

20 First of all, Optima Group is a Delaware company.
21 And it's not a subsidiary of the Privat Group. There are
22 U.S. shareholders, two U.S. shareholders of Optima Group.
23 And there are two Ukranian shareholders.

24 COMMISSIONER WILLIAMSON: Could I interrupt real
25 quickly? What page are you on?

1 MR. POWELL: Oh, I'm sorry. This is page 16. So
2 later in that same paragraph on page 17, beginning at page
3 17--

4 COMMISSIONER WILLIAMSON: Okay, I don't want to--I
5 guess the real question is, what does all that have to do
6 with this case? I'm not sure.

7 MR. POWELL: Well, I think essentially the
8 argument is, you know, that we're some kind of puppet of the
9 Ukranian shareholders, or Privat Group.

10 COMMISSIONER WILLIAMSON: Okay.

11 MR. POWELL: And that is just completely false.
12 So Georgian American Alloys was created in 2012. It
13 acquired the other facilities in the U.S., CC Metals and
14 Alloys, which produces ferro silicon. Felman Production
15 which produces silicomanganese. And Georgian manganese and
16 Vartseque, which are the plants, the mine plant that
17 produces silicomanganese high grade, and the power plant.

18 So Georgian American Alloys is a Delaware company
19 based in Miami, Florida, and we have a board, and
20 management, and ownership that's separate than the Ukranian
21 facilities that are owned by maybe some of the Privat Group
22 shareholders in Ukraine. So we're separate entities. Any
23 transactions that we have between GAA and the Ukranian
24 entities are done at arms' length. If there are
25 disagreements over prices or terms, then we don't enter into

1 agreements with them. So everything that we do from Miami,
2 we control the Georgian operations and decisions as well as
3 the decisions in West Virginia.

4 MR. LEVY: Jack Levy for Domestic Producers.
5 Just want to add one point. I, too, was shocked in reading
6 the expert report of TEMCO in relation to the Privat group.
7 I hadn't read, I sort of heard a smear against Ukrainian
8 individuals this pointed since Vladimir Putin invaded the
9 Crimea, but the thrust of it is, that GAA does have
10 upstream shareholders who are Ukrainian.

11 And these upstream shareholders have interests
12 in Ukrainian production, including Ukrainian
13 silicomanganese. But the track record of the Georgian
14 American Alloys Group in the United States, and certainly
15 the track record of Felman Production, is one of competition
16 with these entities in the silicomanganese market and I
17 think the Commission will remember that, in the most recent
18 Sunset review, Felman appeared in support of the
19 continuation of anti-dumping orders against Ukraine, much to
20 the chagrin of the Ukrainians.

21 And as recently as last year, Felman retained
22 our law firm to oppose the Ukrainian producers in a
23 requested administrative review before the commerce
24 department. In that proceeding last year, the Ukrainian
25 producers made a sale into the United States and wanted a

1 lower dumping rate, and we argued quite forcefully for
2 rescission of that review, attacking the merits of their
3 request, much to the chagrin of Ukrainian shareholders and
4 producers.

5 COMMISSIONER WILLIAMSON: Thanks, I get the
6 point. I was just --

7 MR. LEVY: Thank you.

8 COMMISSIONER WILLIAMSON: Okay. Thanks. I have
9 a couple of more questions. How quickly do changes in the
10 demand for steel carry through to the demand for
11 silicomanganese?

12 MR. LEVY: Peter, do you want to take a stab?

13 MR. ROCHUSSEN: Peter Rochussen for Eramet. I
14 heard that correctly, you're trying to correlate the demand
15 for steel versus demand for silicomanganese?

16 COMMISSIONER WILLIAMSON: Yes. Is there a lag -
17 -

18 MR. ROCHUSSEN: Well, first of all, the demand
19 for silicomanganese is almost directly linked to the
20 domestic production of long product in the United States.
21 So there's a disconnect between the demand for steel and the
22 production of domestic steel.

23 They also suffer from a large amount of imports
24 and so on like that, so while we see that the consumption of
25 steel might be following a relatively stable trend, a lot of

1 that steel is coming from imported material, to the
2 detriment of U.S. producers of steel. That's going to
3 impact in turn the silicomanganese demand.

4 COMMISSIONER WILLIAMSON: Okay. I got it. So
5 you're really following how much steel is produced in the
6 U.S.?

7 MR. ROCHUSSEN: That's correct, yes.

8 COMMISSIONER WILLIAMSON: Thank you for those
9 answers.

10 CHAIRMAN BROADBENT: Commissioner Johanson.

11 COMMISSIONER JOHANSON: Thank you, Chairman
12 Broadbent. I would like to turn back to a line of questions
13 that was just raised by Commissioner Williamson. It seems
14 that a key argument of the respondents can be found at Page
15 12 of their brief. They state in their prehearing brief at
16 Page 12 that the Commission and the International Trade have
17 previously acknowledged that a multi-national entity which
18 controls both foreign and domestic producers could
19 conceivably increase profits in the U.S. market, even if
20 doing so caused harm to domestic industry.

21 Do you all agree -- I assume you don't, but
22 could you address this point made by the respondents?

23 MR. LEVY: Essentially the thesis is that the
24 interest of Georgian American Alloys is to spend tens of
25 millions of dollars in modernizing a plant, earning profits

1 in years when conditions are good, but now somehow
2 cannibalize the plant and lose money -- perhaps Rob or Barry
3 can reiterate on the stated objectives and business goals of
4 GAA.

5 MR. NUSS: This is Barry Nuss for Felman. It's
6 clearly not in the interest of GAA to invest tens of
7 millions of dollars to bring a plant up to a competitive
8 position, only to cannibalize its success by moving
9 production overseas.

10 We have followed a strategy of producing
11 products in the most efficient place and the most efficient
12 place to produce high-grade silicomanganese is in Georgia
13 and the most efficient place to produce the standard-grade
14 is in the U.S. at Felman Production.

15 Our strategy has always been and continues to be
16 to produce as much as possible at the Felman Plant and
17 supplement it at the Georgian plant. And as I described
18 earlier, that supplementing is actually those incremental
19 tonnages have additional costs. They're not as cost
20 effective because it exceeds our ability to generate
21 electricity, an important cost component in Georgia.

22 So, theoretically maybe if, you know, if it
23 makes general sense, but specifically given the economic
24 realities of Georgian American Alloy in our plant and the
25 inputs, it doesn't work for us. It doesn't work to assume

1 that that theory is applied.

2 COMMISSIONER JOHANSON: Can high-quality
3 silicomanganese be produced in the United States?

4 MR. NUSS: Technically, it can, but you would
5 have to bring that raw material to West Virginia, and it's
6 not cost-effective to do that.

7 COMMISSIONER JOHANSON: So it's more of an issue
8 of raw material and not as much as energy?

9 MR. NUSS: That's correct.

10 COMMISSIONER JOHANSON: Okay. Okay, thanks.
11 And once again, this whole investigation's kinda hard
12 because there's so much, so many brackets. But I think that
13 Nor -- I read something about Norwegian production. I know
14 they're not a subject country, but --

15 MR. NUSS: Yeah, so --

16 COMMISSIONER JOHANSON: -- and the difference is
17 in producing in Norway versus Georgia and the United States,
18 and I guess the point I'm getting at is -- why a certain
19 product produced in certain locations. My question's very
20 disjointed so --

21 MR. LEVY: So Commissioner Johanson, I think
22 you're making reference to the fact that Eramet has an
23 affiliate in Norway that is focused on the production of a
24 product referred to as low-carbon silicomanganese.
25 Low-carbon silicomanganese is outside the scope of this

1 investigation because we mirrored the scope of a prior
2 investigation. Our understanding is a different product
3 competing in a different segment, but I'll let Mr. Rochussen
4 speak to that point.

5 MR. ROCHUSSEN: Peter Rochussen, Eramet. And
6 that's correct. I mean our Norwegian affiliate is focused
7 on the production of low-carbon silicomanganese and Eramet
8 Marietta does bring that product in, and market that product
9 and sell that product to U.S. consumers.

10 U.S. consumers are very different and distinct
11 from the consumers of standard grand silicomanganese. It
12 goes into different steel products. It's sold on a totally
13 different technical basis and it has follows a completely
14 different pricing dynamic. So there are two very, very
15 distinct products.

16 COMMISSIONER JOHANSON: All right, thanks. And
17 getting back to my original line of questions, respondents
18 have argued that Felman's part of a large corporate family
19 and that its parent, GAA, is controlled by the owners of the
20 Privat group. Respondents refer to these relationships at
21 Pages 12 to 13 of their prehearing brief, and that includes
22 a very long Footnote 45.

23 Again, how do you respond to their
24 representation as regarding the corporate interest at stake
25 here?

1 MR. POWELL: This is Robert Powell for Felman.
2 Again, I think they're just inaccurate and seem to be based
3 on either misreported information in the media or their own
4 conspiracies. I mean, as I explained our corporate
5 structure, you know, we're a Delaware company, Georgian
6 American Alloys is a Delaware company based in Miami with
7 subsidiaries including Felman Production and Georgian
8 Manganese, which we, you know, have been very open about.

9 We have sales relationships with some entities
10 that are owned, that have, where there's common shareholders
11 in Ukraine, but those are all done on an arms-length basis,
12 and even in that relationship are also mentioned on our
13 website, so it's not like we're trying to hide anything.

14 I think the assertion that's being made is that
15 we're controlled by Ukraine. But that's clearly not the
16 case and you know, as Jack mentioned, we oppose -- we want
17 to keep Ukraine in on the Sunset review to keep duties
18 against Ukraine, and then recently, we opposed them again.
19 So we act in our own self-interest in the interest of Felman
20 Production and Georgian Manganese.

21 COMMISSIONER JOHANSON: All right. Thanks for
22 your response. In considering data on the record at Pages
23 D12 of the staff report that indicates that nonsubject
24 imports were priced lower than subject imports in the
25 majority of comparisons. Does support a finding that they

1 were driving prices down?

2 MR. LEVY: We'll address this more in our
3 posthearing submission, but I think it suffers from the same
4 infirmity as pricing product too. And so, if you believe
5 pricing product too, then we have bigger problems to contend
6 with, and we'll address that in more detail in our
7 posthearing submission.

8 COMMISSIONER JOHANSON: All right, thank you.
9 And getting back to respondent's brief, it seems like a crux
10 of their case can be found at Page 22 of their brief in the
11 first full paragraph. And this is largely proprietary, so I
12 was wondering if you could try to address their point here
13 in the posthearing brief?

14 MR. LEVY: Certainly.

15 COMMISSIONER JOHANSON: This is yet another of
16 those mysteries which is in brackets, that if you all could
17 address that, I'd appreciate it. And also, getting back to
18 the point made by Commissioner Pinkert earlier on, regarding
19 something raised by the respondents at Page 21 of their
20 brief under the Number 2.

21 That's where all this starts. This issue is
22 proprietary and Commissioner Pinkert spoke to this earlier
23 and requested you all to submit more information. I want to
24 reiterate that would be very helpful. And it would be
25 helpful if you all could include in your primary documents,

1 if possible, as opposed simply affidavits. To give us more
2 light as to what happened with that situation.

3 All right, that concludes my questions.

4 CHAIRMAN BROADBENT: Commissioner Kieff.

5 COMMISSIONER JOHANSON: I appreciate your
6 answers.

7 COMMISSIONER KIEFF: Thanks. Can you tell us
8 what's happening with the worldwide price today? Is it
9 stable, declining, increasing?

10 MR. LEVY: Peter, would you like to address
11 that?

12 MR. ROCHUSSEN: You talking about specifically
13 during the current period right now? Or you talking about
14 during the period of investigation?

15 COMMISSIONER KIEFF: Like today, last week, last
16 month. I mean I know that all markets are volatile and I'm
17 not trying to ask you to be a ticker tape, but just
18 generally --

19 MR. ROCHUSSEN: Certainly, if we have a look at
20 the most recent trends over the last few months, there has
21 been a decline generally in all commodity prices -- not the
22 last few months, over the last year or so. I'm mean, we're
23 looking at iron ore, manganese products or chrome, whatever
24 the case may be, there's a general decline driven by the
25 economic situation, in China essentially.

1 Manganese hasn't been immune to that. So
2 manganese ore prices have declined significantly, whether
3 it's silicomanganese or ferromanganese prices, they have
4 declined in foreign markets as well. It certainly has been
5 evident over the last six months, for example, six to nine
6 months. That's effectively what we have to deal with in
7 dealing with a commodity.

8 COMMISSIONER KIEFF: Okay, so and again, we
9 don't have to spend too much time on this now, but certainly
10 in the posthearing if you can help us see evidence of what
11 worldwide price is doing. And then what you think it will
12 do, and then what those things tell us, if anything, about
13 the legal issues. So just I'm sure you can do that in the
14 posthearing, and that's fine. I just thought I would
15 bracket that.

16 MR. LEVY: Thank you.

17 COMMISSIONER KIEFF: Great. That concludes my
18 questioning for this panel. Thank you very much.

19 CHAIRMAN BROADBENT: Commissioner Schmidtlein.

20 COMMISSIONER SCHMIDTLEIN: Thank you. I wanted
21 to go back to a conversation that was earlier in the hearing
22 with regard to Felman and the decision to shut down. And if
23 I understood that earlier, and I think that Mr. Nuss
24 testified that, at the time Felman shut down, they
25 understood that market conditions were declining, but you

1 didn't know until later in retrospect, that it was Australia
2 that was causing that problem. Did I understand you
3 correctly?

4 MR. NUSS: That's correct. At the time that we
5 shut down, we knew that market conditions would not sustain
6 the operations. Right, that was the present case.

7 COMMISSIONER SCHMIDTLEIN: Right. And so I
8 guess what I'd like to understand more and I'm not sure if
9 you can talk about it in the hearing is, how did you come to
10 understand later that it was Australia? Can you give us a
11 sense of that? And what data you analyzed in reaching that
12 conclusion?

13 MR. NUSS: Yes, we can address that in a
14 posthearing submission.

15 COMMISSIONER SCHMIDTLEIN: Okay.

16 MR. NUSS: The information included import
17 information, statistics, as well as market intelligence.

18 COMMISSIONER SCHMIDTLEIN: Okay. Well, and can
19 you, and again if you can't tell us now, but was it that
20 that type of information wasn't available to you at the time
21 you made the decision?

22 MR. LEVY: Commissioner Schmidtlein, if I could
23 jump in. We spent a fair amount of time dialoguing --

24 COMMISSIONER SCHMIDTLEIN: I'd actually like to
25 know as a factual matter, so I assume you weren't involved

1 at that point? In 2013, I guess it was, when you made those
2 decisions? So why was it that the information that you
3 looked at later wasn't available to you at that point in
4 time? To inform your understanding of what was going on?

5 MR. NUSS: We were just not focused on who was
6 the cause. We were more fighting the days' battles of what
7 is the market and what can we do to continue to operate.
8 After we shut down, we turned attention to what, what is the
9 cause and what can we do as a remedy. And that eventually
10 brought us to discovering the information and filing the
11 case.

12 COMMISSIONER SCHMIDTLEIN: Okay. All right.
13 Thank you. You mentioned the import prices and so forth,
14 and this has been touched on a little it already today. But
15 can someone, and I don't know, Mr. Nuss, if you're the best
16 person to explain this, can you talk a little bit more about
17 how subject import prices influence, One, you claim they
18 influence the indices, and Two, that they influence the
19 negotiations.

20 And so I'd like to understand a little bit more
21 about how the import prices of Australian product is able to
22 do that. Where do people get their information? And is
23 that happening on a real-time basis during these contract
24 negotiations? Is a real practical matter, is what I'm
25 asking.

1 MR. ROCHUSSEN: Peter Rochussen for Eramet.
2 During negotiations, it might not be clearly evident at that
3 point in time as to you are effectively competing against at
4 the price level. That kind of information only really comes
5 up after the fact with the benefit of hindsight.

6 You get a certain amount of feedback from your
7 customer prior to or during the negotiations. After the
8 negotiations that varies a lot from customer to customer.
9 So to a larger extent, you're drawing inferences from what
10 you hearing from a variety of different sources, whether
11 it's from what you read in the trade information in the
12 publications, what you pick up from import statistics, what
13 you pick up from various other data mining topics, DataMine
14 for example, where they're reporting on what's arriving at
15 the various ports on a fairly real-time basis.

16 So all of that, you're trying to put into your
17 mind and figure out, like, what's going on at the market at
18 this particular point in time and how do I need to react to
19 that, to be able to book this particular piece of business.

20 COMMISSIONER SCHMIDTLEIN: So have you had in
21 your negotiations with purchasers, instances where they've
22 specifically cited Australian product as a basis for wanting
23 a lower price from you?

24 MR. ROCHUSSEN: Specifically for us?

25 COMMISSIONER SCHMIDTLEIN: Yes.

1 MR. ROCHUSSEN: No.

2 COMMISSIONER SCHMIDTLEIN: Has Felman?

3 MR. NUSS: I don't believe that we get those
4 sort of specifics in the negotiation. It comes to light
5 subsequent when you find out what material is being
6 delivered, maybe from warehouse or truckers or you come to
7 understand who won the business and why you lost, or who you
8 lost to?

9 COMMISSIONER SCHMIDTLEIN: Well, how do you
10 understand why you lost? Is it assumed that it's the price?
11 Or is it --

12 MR. NUSS: It is the price. That is the key
13 buying factor is the price. If quality and reliability are
14 equal, it comes down to price.

15 COMMISSIONER SCHMIDTLEIN: Right.

16 MR. NUSS: Yes.

17 COMMISSIONER SCHMIDTLEIN: Okay. And I know
18 this was -- and I apologize if this was already answered,
19 but the question about how it influences the indices? How
20 does the import prices influence what's reported by the
21 indexes?

22 MR. ROCHUSSEN: Peter Rochussen for Eramet.
23 Typically, the index should be driven by spot transactions
24 that are out in the marketplace, and then contract pricing
25 is driven off that published reference by virtue of a

1 discount that is negotiated with the consumer.

2 To the extent that the folk that aren't involved
3 in contract negotiations want to develop a piece of business
4 in the U.S., they effectively have to compete against the
5 contract pricing, the net contract pricing off the
6 discounts. So through all the market intellects that gets
7 gathered by the various levels of competition out there,
8 whether it's Felman or Eramet or the TEMCO folk or any other
9 person that's trading in that commodity, they would have a
10 sense of where the next price under contracts are and for
11 them to achieve any level of business out there, that would
12 be wanting to compete towards those lower end of the price
13 range. And that's what's going to drive the publication
14 price.

15 COMMISSIONER SCHMIDTLEIN: So, I guess -- isn't
16 it the petitioner's position that is the AUVs of the imports
17 that's influencing all of this? And not the fact -- you
18 know, I'm not talking about -- because I thought that was
19 your argument. That it's the AUV value of imports that
20 influencing -- not, you know, obviously Australia is
21 selling, having negotiations, selling product into the
22 United States, whatever that product is sold at, however
23 that information makes it back, but I thought the argument
24 was the AUV value is influencing it. Do I have that wrong?

25 MR. ROCHUSSEN: No, you don't have it wrong. I

1 mean that's certainly an important factor that we all look
2 at, in looking to see where the price trends are in the
3 marketplace and what might be driving it.

4 COMMISSIONER SCHMIDTLEIN: So what database do
5 you -- well, how do you do that? Do you use our database?

6 MR. ROCHUSSEN: What's available on the public
7 databases that are available through, I guess, DataWeb.
8 Those are the averaging port values that are reported.
9 Quite often, I mean, what you -- you aren't working with
10 perfect vision. A lot of the time, you know, you're looking
11 at AUVs that are coming in from a period two to three months
12 ago, and you find --

13 COMMISSIONER SCHMIDTLEIN: Well, I was gonna
14 say, isn't there a time lap?

15 MR. ROCHUSSEN: There's a serious time lap.
16 We're working with imperfect information in the marketplace
17 and you're trying to corroborate that with other periods,
18 other sources, whether it's through discussions with
19 customers, whether it's what's been picked up in foreign
20 regions as to what's been exported from those areas to the
21 U.S. What the various competitors market doing in different
22 markets outside of the U.S. And you trying to bring that
23 all together to see and try to predict what might be
24 happening at that point in time when you're negotiating.

25 COMMISSIONER SCHMIDTLEIN: So AUV values are

1 just one factor among many that's influencing the price?

2 MR. ROCHUSSEN: It's certainly a very important
3 factor that has to be taken into account, because there's a
4 general assumption that the AUVs are based on what the value
5 of the material is at the time of import. Driven by what
6 they expect to be selling it at.

7 COMMISSIONER SCHMIDTLEIN: But not the U.S.
8 shipment AUVs -- the import AUVs?

9 MR. ROCHUSSEN: Import AUVs.

10 COMMISSIONER SCHMIDTLEIN: All right, I don't
11 have any other questions at this time, thanks. Did you want
12 to add something, Mr. Levy? Okay, thank you.

13 CHAIRMAN BROADBENT: Commissioner Williamson?

14 COMMISSIONER WILLIAMSON: Just one last quick
15 question. For Felman's lost sales and revenue allegations,
16 do you agree with the respondents' argument that the
17 Commission should not consider lost sales or revenue that
18 occur when Felman's West Virginia plant was closed and
19 Felman Trading was supplying U.S. customers with
20 silicomanganese from Georgia?

21 MR. LEVY: Thank you. We disagree with that
22 thesis. The thesis in a nutshell is that Felman lost sales
23 opportunities, Felman idled its facility, therefore, any
24 lost sales opportunities could not have been supplied at a
25 Felman's U.S. production. It's a bit backward as logic

1 would have it. It's also the case that Felman had
2 accumulated many months of U.S. origin inventory, which it
3 would have been more than happy to unload at a fair price.
4 And it is also the case that, had it not been for unfair
5 import competition, Felman would not have idled, the
6 capacity was there and it could have and would have been
7 tapped to product out of the United States. We've heard
8 clear testimony from Mr. Powell and Mr. Nuss that their
9 preferred business strategy, it is more efficient to produce
10 standard-grade silicomanganese out of West Virginia. The
11 only reason they supplemented from Georgia was to insure
12 that they were meeting their contractual commitments,
13 because obviously reliability of supply is table steaks in
14 this industry.

15 COMMISSIONER WILLIAMSON: Okay. Thank you for
16 the answer. I want to thank the panel for all of their
17 answers.

18 CHAIRMAN BROADBENT: We're all done. All right.
19 Thank you. I want to thank the witnesses for coming today.
20 Does staff have any questions for this panel?

21 MR. SZUSTAKOWSKI: Mike Szustakowski, Office of
22 Investigations. Staff has no questions.

23 CHAIRMAN BROADBENT: Okay. Thank you. In that
24 case, it's time for a lunch break. Excuse me? Respondents,
25 did you have any questions?

1 MR. LEVY: Madam Chairman, just a quick
2 question. Do we have any residual time from our panel
3 presentation to be used in rebuttal?

4 MR. BISHOP: You had one minute remaining.

5 MR. LEVY: Excellent.

6 CHAIRMAN BROADBENT: Make it a good one. All
7 right, is it time for a lunch break now? I think. We will
8 resume at two o'clock. Remember the hearings room is not
9 secure, so please don't leave confidential business
10 information out, and thanks again for coming this morning.

11 (Whereupon, at 1:02 p.m., a lunch recess was held
12 to reconvene at 2:01 p.m.)

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1 AFTERNOON SESSION

2 (2:01 p.m.)

3 MS. BELLAMY: Will the room please come to order.

4 CHAIRMAN BROADBENT: Madam Secretary, are there
5 any preliminary matters for the afternoon session?

6 MS. BELLAMY: No, Madam Chairman.

7 CHAIRMAN BROADBENT: Thank you.

8 I want to welcome the afternoon panel to the ITC.
9 I would like to again remind all witnesses to speak clearly
10 into the microphones and state your name for the record for
11 the benefit of our Court Reporter.

12 You may begin when you're ready.

13 MS. ARANOFF: Thank you, Madam Chairman, and good
14 afternoon. On behalf of the Respondent Panel, this is Shara
15 Aranoff from Covington & Burling, and we appreciate the
16 opportunity to appear before you today.

17 Before we begin our prepared testimony, there is
18 one bit of this morning's presentation that I do want to
19 take the opportunity to rebut.

20 The Commission focused a great deal this morning
21 on a point of factual disagreement between the parties,
22 which is whether the 65 percent and 72 percent
23 silicomanganese are interchangeable.

24 Mr. Nuss had a lot to say about that this
25 morning, about why you can't make an apples-to-apples

1 comparison by adjusting only for the manganese content. At
2 the staff conference he was asked a direct question on this
3 and he gave a direct response on it, and I want to read you
4 the exact exchange from the transcript of the conference
5 from the preliminary phase:

6 "Question from Mr. Szustakowski: The high
7 manganese product, the 72 percent manganese product that
8 comes from the related Felman Enterprise in Georgia, is
9 there a price premium for that?

10 "Response from Mr. Nuss"--again, this is Barry
11 Nuss, "The vast majority of product that comes from the
12 Georgian company is this higher grade 72 percent product.
13 Georgia is a secondary source for standard silicomanganese,
14 the 65 percent product, to the U.S. market. Felman does not
15 charge any different price for the 72 percent product from
16 the standard 65 percent product on a manganese-contained
17 basis. Right. So it's the same, the same pricing, but it
18 is scaled for the fact that it contains more manganese."

19 "Question from Mr. Szustakowski: I don't
20 understand what that means. What does it mean, 'scaled for
21 the'--

22 "MR. NUSS: That means that on the weight of the
23 material it's a higher price, but on a manganese-contained
24 basis the amount of manganese within the product, which is
25 what the steel producer is buying, is looking for, it's the

1 same price."

2 So I'll stop there.

3 As we move on to our prepared remarks and you
4 hear about the Georgian product, please keep in mind what
5 Mr. Nuss admitted at the preliminary phase of the
6 investigation. And Dr. Kaplan will have more to say about
7 that in his presentation.

8 Moving along, I would note as a number of the
9 Commissioners did this morning, that preparing for this
10 presentation has been more than normally challenging because
11 with only two domestic producers and one Australian producer
12 so much of the record is confidential, and we hope that
13 you'll bear with us if we need to defer some of our
14 responses to the post-hearing brief, particularly with
15 respect to the pricing data which we have been advised that
16 we cannot even characterize in general terms on the public
17 record.

18 We will have three witnesses this afternoon. The
19 first will be Rod Tidey who has traveled here from the TEMCO
20 plant in Tasmania.

21 Next will be Carl Kylander who until recently was
22 responsible for marketing Australian silicomanganese in the
23 U.S. market.

24 And then we will have an economic presentation
25 from Dr. Seth Kaplan.

1 So now I will ask Mr. Tidey to go ahead and
2 begin.

3 STATEMENT OF RODNEY TIDEY

4 MR. TIDEY: Good afternoon, Commissioners. My
5 name is Rod Tidey. I'm the TEMCO finance lead.

6 TEMCO produces silicomanganese and ferromanganese
7 at a single facility at Bell Bay in Tasmania, and is the only
8 producer of silicomanganese in Australia. TEMCO is
9 currently owned by South32, and Anglo American, in a 60-40
10 joint venture with South32 operating the TEMCO facility.

11 Until 2015, the major shareholder and operator of
12 TEMCO was BHP Billiton. In May of 2015, BHP Billiton
13 underwent a demerger, dividing into two companies, BHP
14 Billiton and South32. TEMCO became part of South32.

15 Just talking about myself, I've been at TEMCO
16 since 1989. I've been finance lead at TEMCO since May 2015,
17 the time of the demerger. Previously I've served as general
18 manager, and prior to that as finance manager, TEMCO.

19 As general manager, I was responsible for the
20 running of the plant. And as finance manager I was
21 responsible for the accounting, costing, risk management,
22 IT, and procurement functions.

23 In my testimony today I will say a few words
24 about our operations prior to 2012, and then explain why
25 2012 was an unusual year for TEMCO and also for BHP Billiton's

1 silicomanganese operations more generally.

2 I will then talk about TEMCO's current operations
3 in Australia and close with a few remarks about TEMCO's
4 future plans.

5 So for many years, prior to 2012, BHP Billiton
6 was a significant and steady supplier of silicomanganese
7 into the U.S. market. For most of its history, BHP Billiton
8 has supplied the U.S. market from refining facilities in
9 both Australia and South Africa.

10 The facilities in Australia were those of TEMCO,
11 while the facilities in South Africa were those of Samancor
12 manganese, which for here on in I will call Samancor
13 Manganese.

14 Samancor Manganese is owned by the same South32
15 Anglo American Joint Venture as TEMCO, and like TEMCO was
16 owned before the demerger by the BHP Billiton Anglo Joint
17 Venture.

18 In 2012 and previous years, BHP Billiton
19 distributed silicomanganese from both these facilities to
20 the U.S. BHP Billiton coordinated the shipments from the
21 two sites, and maintained relatively steady overall import
22 volumes into the U.S. and relatively steady market share.

23 For example, in 2011, the calendar year
24 immediately prior to the start of the Period of
25 Investigation, BHP Billiton exported a total of

1 approximately 140,000 short tons of silicomanganese to the
2 United States from Australia and South Africa. We estimate
3 that this represented approximately 32 percent of the U.S.
4 market.

5 In each subsequent year during the Period of
6 Investigation, BHP Billiton's combined imports from
7 Australia and South Africa declined. By 2014, these imports
8 and market share figures for South Africa and Australia
9 combined were half what they had been in 2011.

10 Due to two major events, 2012 was a misleading
11 base year for measuring the impact of BHP Billiton's
12 silicomanganese sales to the United States. These events
13 are, first and foremost, the permanent closure of the
14 silicomanganese facility in South Africa. And second, the
15 temporary closure of the TEMCO facility in Australia.

16 In February 2012, Samancor Manganese in South
17 Africa stopped producing silicomanganese and subsequently
18 the Samancor Manganese facility used to produce
19 silicomanganese in South Africa, which was called South
20 Plant, was demolished.

21 Samancor Manganese does not produce
22 silicomanganese in its remaining facilities in South Africa.
23 Instead, those facilities have been designed and built to be
24 able to produce ferromanganese and medium carbon manganese
25 alloys. And for this purpose, Samancor Manganese uses large

1 furnaces which are not well suited to the silicomanganese
2 production.

3 In addition to the closure in South Africa, a
4 second event seriously impacted BHP Billiton's participation
5 in the U.S. market in 2012. That was the temporary closure
6 of the TEMCO operations from February through to June 2012.
7 This 4-month closure was due in part to an erosion of
8 TEMCO's international competitiveness due to a steady
9 increase in its import costs, including electricity.

10 TEMCO used the temporary shutdown to engage with
11 stakeholders to reduce operating costs, including entering
12 into a revised electricity contract.

13 Through this effort we were once again able to
14 produce silicomanganese with a competitive cost structure,
15 and production of silicomanganese restarted in June 2012.
16 But the facility didn't ramp up to full capacity until
17 August of 2012.

18 Because of these closures, BHP Billiton's exports
19 of silicomanganese to the United States plummeted in 2012.
20 In particular, exports from Australia in 2012 were less than
21 60 percent of the level they had been in 2011. And
22 Australia's share of the U.S. market declined by a similar
23 amount.

24 These closures contributed to a short-term spike
25 in silicomanganese prices. This was primarily a market

1 reaction to the shuttering of BHP Billiton's silicomanganese
2 production in South Africa and, as industry reports noted,
3 2012's plant closures affected silicomanganese prices
4 worldwide, but particularly in the United States.

5 The United States had previously imposed
6 antidumping duties against a number of large silicomanganese
7 suppliers, and domestic producers have always made up a
8 small share of the U.S. market.

9 Due to these two factors, U.S. customers were
10 more dependent on South African and Australian imports than
11 customers in other countries. Closure of the Australian and
12 South African facilities therefore had a greater impact on
13 2012 prices in the U.S. than elsewhere.

14 In the sunset review conducted in 2012 regarding
15 silicomanganese from Brazil, China, and Ukraine, it's my
16 understanding that Felman itself told the Commission that
17 the South African closure caused prices to briefly increase
18 to 72 cents per pound before returning to a normal level.

19 These unusual events took place right at the
20 beginning of the Commission's Period of Investigation. That
21 means the Commission's import volume numbers for Australia
22 begin the POI at an artificially low level, and prices to
23 begin the POI at an artificially high level.

24 Seen in isolation, the trends between January
25 2012 and December 2014 do not tell an accurate story about

1 what is going on in the U.S. silicomanganese market.

2 Let me now turn to TEMCO's operations in 2013 and
3 2014. So following the closure of the facility in South
4 Africa, with the exception of a period where we were obliged
5 to acquire product from third parties in order to meet our
6 contractual commitments, BHP Billiton, which is now South32,
7 has continued to serve U.S. silicomanganese customers
8 exclusively from Australia.

9 As a result, exports from Australia increased
10 from 2012 to 2013, and declined from 2013 to 2014, but with
11 an overall increase from 2012 to 2014.

12 However, the combined exports to the United
13 States of BHP Billiton have never recovered to reach the
14 total volume of the combined exports for Australia and South
15 Africa prior to the period of investigation, nor are they
16 anticipated to do so in the foreseeable future.

17 The increase in Australian exports between 2012
18 and 2014 should be properly characterized as a partial
19 offset of the loss of BHP Billiton's volume from South
20 Africa. In this sense BHP Billiton did not take sales
21 volume away from the domestic industry, it merely sought to
22 maintain a portion of its existing U.S. sales by filling
23 orders for its U.S. customers for silicomanganese from
24 Australia, rather than South Africa.

25 In fact, because imports from TEMCO never reached

1 the level of the pre-2012 imports from TEMCO and Samancor
2 Manganese combined, domestic producers had an opportunity to
3 increase their sales and market share at BHP Billiton's
4 expense.

5 At this point I would just like to take a moment
6 to discuss our current operations in Australia. There are
7 four furnaces at the TEMCO facility. Our furnace
8 configuration in Australia is two furnaces producing ferro
9 manganese and two furnaces producing silicomanganese. For
10 technical reasons described in our confidential
11 questionnaire response, this is the optimal configuration
12 for our facility.

13 Petitioners claim that TEMCO could potentially
14 convert additional furnaces to produce silicomanganese and
15 that therefore our potential production capacity represents
16 a significant percentage of U.S. apparent consumption.

17 And whilst it is technically possible to increase
18 the number of furnaces producing silicomanganese, the
19 scenario laid out by the Petitioners is pure speculation. A
20 shift away from our two-and-two configuration would be far
21 less efficient to TEMCO's overall operations, and as
22 discussed in greater detail in our confidential
23 questionnaire response, such conversion would come with
24 significant costs and with ongoing high unit cost of
25 silicomanganese production.

1 With the two furnaces that currently produce
2 ferro manganese, the facility has a choice between creating
3 one ton of silicomanganese or creating around 1.63 tons of
4 ferro manganese. In short, there are volume losses as well
5 as costs that would result from this shift. Thus we have no
6 plans to convert additional TEMCO furnaces to
7 silicomanganese in the foreseeable future.

8 Just finally a brief note about inventory levels.
9 TEMCO's September 2014 inventory levels were artificially
10 low for two reasons. Firstly, shipments in September 2014
11 were unusually high; and second, a crusher had been out of
12 operation so that TEMCO's stock of uncrushed material, which
13 is treated as work-in-progress, were unusually high.

14 There was some recovery of inventories in the
15 remainder of 2014. Inventory levels at the end of 2015 were
16 somewhat higher than normal, as TEMCO had been experiencing
17 trouble-free production, together with somewhat depressed
18 demand. The fact that TEMCO has held this production as
19 inventory, as opposed to flooding the market with it, again
20 shows that TEMCO is a responsible global player.

21 TEMCO's future plans. So what are our plans for
22 the future? First, TEMCO has got no plans to expand
23 capacity. What TEMCO always seeks to improve is operating
24 efficiencies. It has no plans to make the kind of major
25 investments such as adding furnaces or other capital

1 equipment which would be required to significantly increase
2 its existing production capacity.

3 To put this in context, the last significant
4 change in production capacity at TEMCO was the commissioning
5 of the fourth furnace way back in 1977.

6 Second, and with respect to TEMCO's ability to
7 imminently increase its exports to the U.S., for most of the
8 POI TEMCO was running flat out with no excess capacity
9 through to the end of 2015. Late in December 2015, TEMCO
10 experienced a transformer fire that shut down one of its
11 silicomanganese furnaces.

12

13 Whilst global steel demand and, by extension,
14 global demand for silicomanganese, is currently low, TEMCO
15 has made a decision not to bring the furnace back on line
16 until demand conditions improve.

17 This isn't the behavior of a company focused on
18 producing and selling as much silicomanganese as it can,
19 whatever the price.

20 Two additional facts may be relevant to the
21 Commission:

22 First, neither TEMCO nor any of its affiliates in
23 the South32 family of companies hold any silicomanganese
24 inventories in the U.S. While inventories at the plant rose
25 in 2015, after months of trouble-free operation, they will

1 decline in 2016 due to the extended closure of one furnace.

2 Second, as discussed in greater detail in our
3 confidential questionnaire response, market trends tend for
4 TEMCO to project that its exports to the U.S. will decrease
5 slightly in 2015 and '16. Indeed, TEMCO's estimates in this
6 questionnaire, which were based on forecasts prepared in the
7 ordinary course of business a few months ago, is likely too
8 high given the current demand conditions.

9 So just to summarize, BHP Billiton and its
10 successor South32 have been long term, reliable suppliers of
11 silicomanganese to the U.S. market. Although export volumes
12 from Australia rose in 2013 following the temporary
13 disruption in 2012, they have only partially replaced our
14 South African exports and in this sense have not taken
15 volume or market share away from the domestic industry.

16 In fact, our overall volumes have gone down.
17 There are no plans to expand the TEMCO facility. In short
18 the world we know, a world in which we have historically
19 competed fairly and will continue to compete fairly, is a
20 very different picture from that painted by the Petitioner.

21 Thank you. And if you've got any questions, I
22 would be very happy to take them.

23 STATEMENT OF W. CARL KYLANDER

24 MR. KYLANDER: Good afternoon. My name is W. Karl
25 Kylander.

1 Until May 2015, I was Vice President at BHP
2 Billiton Marketing, Incorporated, which I will call BMI.
3 BMI is a subsidiary of BHP Billiton Limited. During most of
4 the period of investigation, BMI was responsible for
5 marketing and distribution of BHP Billiton's manganese
6 products in the U.S.

7 After the May 2015 demerger that resulted in the
8 transfer of BHP Billiton's manganese business to South32.
9 BMI no longer has a role in the manganese business.

10 At present I serve as a consultant to South32
11 which operates TEMCO, the sole producer of Australian
12 silicomanganese. South32 also has controlling interest in
13 Samacor AG, or SAMAG, the importer which currently sells
14 silicomanganese from TEMCO to the United States.

15 During most of the POI I had direct
16 responsibility for marketing manganese ores and alloys into
17 the United States. I worked at BMI from 2001 to 2015, and
18 before 2001 I worked for predecessor companies to BHP
19 Billiton, and other companies in the mining and steel
20 industries.

21 My experience in the manganese business goes back
22 more than 20 years.

23 I will start today with a few comments on the
24 history of BHP Billiton's involvement in the U.S.
25 silicomanganese market, and why it is important when the

1 Commission considers the volume of subject imports.

2 I will then turn to pricing, pointing out several
3 factors that affect silicomanganese pricing in the U.S.
4 market, and others that do not.

5 BHP Billiton and its predecessor companies have
6 been selling silicomanganese in the U.S. market since at
7 least 1995. As explained by Mr. Tidey, until 2012 this
8 silicomanganese was sourced from the TEMCO plant in
9 Australia, as well as BHP Billiton's silicomanganese
10 facility in South Africa.

11 While both facilities were operational, the
12 contracts and contract terms for sales outside the home
13 markets of those facilities were centrally coordinated
14 through BHP Billiton by SAMAG which arranged export sales
15 for both plants.

16 BHP Billiton used an organizational structure
17 where it sourced products for customers from different
18 locations based on various considerations such as logistics.

19 You have heard from Mr. Tidey already that in
20 2012 BHP Billiton stopped producing silicomanganese at the
21 plant in South Africa, and the TEMCO plant experienced a
22 four-month shutdown. The overall level of BHP Billiton's
23 exports to the U.S. declined significantly from the level in
24 2011 and previous years.

25 During that time, we used available inventories

1 sourced from BHP Billiton's facilities in both Australia and
2 South Africa to meet our commitments under existing
3 contracts with U.S. customers.

4 In addition, we sourced some third-party material
5 to satisfy those contracts. We did not enter into any new
6 contracts with U.S. customers until the TEMCO plant came
7 back on later in 2012. At that point, we did begin making
8 new sales into the U.S. of TEMCO material, but we never
9 achieved the volume of U.S. sales that BMI had in 2011 or
10 previously.

11 Let me now turn to several points about
12 silicomanganese sales. I will speak to the types of
13 silicomanganese in the market. I will then turn to the way
14 price information is transmitted in the market. Lastly, I
15 will also discuss nonprice considerations.

16 Steel mills use silicomanganese primarily for its
17 manganese content and, to a lesser extent, silicon. In this
18 investigation, there are two types of silicomanganese under
19 consideration by the Commission.

20 The first is what the staff report calls standard
21 grade silicomanganese which has a manganese content of
22 between 65 and 68 percent.

23 The second type is what the staff report calls
24 "high grade" which has a manganese content of 72 percent.
25 There is actually a third type of silicomanganese that

1 exists called "low carbon silicomanganese," but all parties
2 agree that it is outside the scope of this investigation.

3 TEMCO produces 65 percent silicomanganese, as do
4 Felman and Eramet. The principle source of the 72 percent
5 product is Felman's affiliate in the Republic of Georgia
6 which produces both 65 and 72 percent silicomanganese during
7 the POI.

8 Felman argues that 72 percent silicomanganese is
9 essentially a different product, and that the Commission
10 should pay no attention to the volumes and prices at which
11 it is sold by Felman Trading in the U.S. market.

12 In my experience, however, most of our customers
13 in the United States are able to purchase and use either 65
14 or 72 percent silicomanganese. During my time at BMI, the
15 market has seen significant growth of imports of 72 percent
16 silicomanganese from Georgia. 72 percent silicomanganese
17 has all been sold to steel mills which previously used 65
18 percent silicomanganese.

19 I see these two products as competing directly
20 with each other in the U.S. market. It is true, as Felman
21 suggests, that 72 percent silicomanganese typically sells at
22 a higher price per pound than 65 percent, but the price
23 difference between 65 percent and 72 percent silicomanganese
24 is a function of the manganese content.

25 Silicomanganese is priced by pound. When

1 purchasing 72 percent silicomanganese, the purchaser is
2 getting more manganese per pound. But if you adjust for
3 manganese, with the manganese levels, so you're comparing
4 prices for the same amount of contained manganese, there is
5 no premium for the 72 percent product.

6 Because 65 percent and 72 percent silicomanganese
7 sell at equivalent prices on a manganese content basis and
8 can be used by most steel mills interchangeably, they
9 compete in the same market based on price and reliability.

10 For that reason, the Commission should pay very
11 close attention to the volume and pricing of nonsubject 72
12 percent silicomanganese from Georgia.

13 MR. KYLANDER: Next, I would like to discuss the
14 role and function of price indices in the U.S. Felman
15 argues that our prices are reflected in indices like Platts
16 and Ryans notes that are used throughout the industry to set
17 contract prices. According to Felman, they are injured
18 because they set their contract prices based on these
19 indices and we have caused the prices in these indices to be
20 lowered. This argument is fundamentally flawed.

21 First, let me explain how Platts and Ryans notes
22 prices are set. Ryans notes prices are set twice a week
23 based on a survey of consumers, traders and producers
24 regarding the previous day's sales to end users on the spot
25 market. Platts is set in a similar manner. In the

1 preliminary phase, Felman argue that prices for Australian
2 silicomanganese were being reported in these indices and
3 driving contract prices down. For this reason, the
4 Commission's questionnaires in the final phase collected
5 detailed information about what prices are reported to the
6 indices. As described in more detail in the confidential
7 response to our questionnaire, the vast majority of BHP
8 Biliton's and South32's U.S. business is through long-term
9 contracts with formula prices linked to the indices, not
10 one-off spot sales.

11 In addition, our contracts are mostly with
12 distributors not end users and these contracts with
13 distributors are likewise not a part of the Platts or Ryans
14 notes pricing. For this reason, it is now clear that BHP
15 Biliton sales of Subject Imports to U.S. customers do not
16 have any direct affect whatsoever on Ryans notes or Platts
17 prices. In its prehearing brief, Felman has raised a new
18 argument, that index prices are driven by non-subject
19 sellers who feel pressured to cut prices based on the
20 average unit values on Australian Imports. This new theory
21 does not match my experience nor do I think it makes much
22 sense.

23 First, purchasers and sellers in this market do
24 not examine AUJs when negotiating prices. Discussions of
25 pricing focus almost exclusively on the numbers reported on

1 indices like Ryans notes and Platts. Second, the market's
2 focus on price indices rather than AUVs make sense. AUVs
3 reported at the time of import constitute a best-guess for
4 future sales price. Similarly a potential buyer or seller
5 consulting AUVs for marketing information may be looking at
6 values that were created and reported many months prior.

7 By contrast, numbers reported in Ryans notes and
8 plats represent a current snapshot of the actual sales
9 values in the market. AUV is simply of very little
10 informational value to parties attempting to negotiate a
11 purchase and as a result AUVs do not play a significant role
12 in pricing or purchasing decisions made by players in the
13 market. Felman's theory that Australian AUVs drove down the
14 price of non-Subject sales reported to a major indices like
15 Ryans and Platts during the POI is creative but without a
16 basis in reality.

17 I'd like to turn to the role of non-price
18 considerations. In my experience, price is an important
19 factor in purchasing decisions made by customers but not the
20 only factor. Our ultimate customers are steel mills that
21 rely on a significant and consistent supply of
22 silicomanganese to keep their steel production operational.
23 Given the just-in-time inventory requirements of steel
24 producers, steel plants highly value suppliers that they can
25 rely on. That's why most purchasers largely rely on one

1 year or even longer term contracts for their silicomanganese
2 from suppliers whom they trust.

3 There is an old saying in purchasing circles "if
4 you pay too much for a product, you're in trouble with your
5 boss. If you run out, you're fired." Steady supply is of
6 particular importance given the context of the
7 silicomanganese market and the United States. Many of the
8 largest global producers of silicomanganese are already
9 subject to Antidumping Orders and do not participate in the
10 market. As a result, as we saw in 2012, a single company's
11 decisions can create widespread concerns over reliability of
12 supply.

13 Let me now turn to trends that we observed during
14 the period of investigation. As the Commission has likely
15 already taken note, U.S. prices for silicomanganese at the
16 beginning of the period of investigation were relatively
17 higher than they are now. There was a short-lived spike in
18 prices in early 2012 and the price of silicomanganese has
19 fluctuated since then, ultimately declining to its current
20 levels.

21 As my colleague described and as the ITC Staff
22 noted in the prehearing report, this price spike was
23 primarily a market reaction to the shuttering of BHP Biliton
24 silicomanganese production in South Africa which was the
25 largest source of silicomanganese sold by the company into

1 the United States. It was also affected by the temporary
2 closure of the Temco plant in Australia that followed
3 shortly afterwards. I might even call it a market
4 overreaction. After the initial price spike in early 2012,
5 prices trended back towards normal from May 2012 through the
6 rest of the year. Temco restarted production in June 2012
7 in the midst of this price decline and began shipping this
8 new production sometime afterwards.

9 At this time I would like to address a quotation
10 that was attributed to me in this morning's presentations
11 which I think grossly misrepresents what I said at the Staff
12 Conference last year. I would like to ask you to pay
13 attention to page 129 of the preliminary Staff Conference
14 transcript and I quote: "Kylander: The price spike in 2012
15 was driven by our plant closure in South Africa needs to be
16 built in. We were a massive importer of South African
17 silicomanganese in the period prior to that. When you close
18 that plant down it became public knowledge and the fact that
19 we weren't going to bring that plant back up, it caused a
20 price spike. In addition to that, we closed Temco down so
21 we had basically one of the largest suppliers in the
22 domestic market shutting all their operations down and it
23 caused a price spike." Only a portion of this was
24 represented this morning. It was grossly misrepresentative
25 of what I actually said at the Staff Conference.

1 Because the primary use for silicomanganese is in
2 steel production, prices in the market generally track the
3 demand for long product steel very closely. That is what
4 happened during the POI except for the price spike in early
5 2012. Demand for silicomanganese declined overall between
6 2012 and 2014 and has experienced an even sharper decline in
7 2015. As a result, there is simply less demand for our
8 product currently and the price we receive has taken a hit.

9 I'd like to conclude by summarizing the role of
10 our silicomanganese in the U.S. Market, Petitioners would
11 have you believe that BHP Biliton were Johnnie come lately
12 who's buying their way into the U.S. Market but nothing
13 could be further from the truth. Australian silicomanganese
14 sales can only be construed as damaging to the U.S. Domestic
15 Industry if we focus on the silicomanganese that's been
16 brought in from Australia but pretend not to see the decline
17 in BHP Biliton's imports from South Africa.

18 During the POI, BHP Biliton's total market share
19 and total sales of silicomanganese in the U.S. actually
20 declined. They did not increase. BHP Biliton had been a
21 long-term, reliable partner providing silicomanganese to the
22 U.S. Steel Industry well before Felman existed as a company
23 in 2006. If given the opportunity, South 32 tends to be
24 every bit as reliable a partner as BHP Biliton was now that
25 it has assumed responsibility for Australia's

1 silicomanganese production. Thank you for your time and I
2 will be happy to answer questions.

3 STATEMENT OF DR. SETH KAPLAN

4 DR. KAPLAN: Good afternoon. Seth Kaplan from
5 Capital Trade. I have been retained by respondents to
6 examine the role of Australian imports in the U.S. Market.
7 My presentation is divided into four parts: an overview,
8 conditions of competition, injury and threat. Let me begin
9 the overview which is the first section. The first slide of
10 the overview shows the main points and that Australian
11 import volumes and pricing are not injurious.

12 Australia is the 3rd largest source of imports to
13 the United States. The first two have not been filed
14 against. I can't recall a case like that and if I could it
15 would probably be China. So it's a very unusual case, just
16 on its face. Australia is a long-term responsible supplier
17 to the U.S. Market and when you look at Australian pricing I
18 think you will find it not injurious.

19 The next slide shows the volume of imports over
20 the POI. The largest importer was Georgia, South Africa was
21 second and Australia was third. You can see where the U.S.
22 Producers and all other sources fit in. Unusual pattern for
23 the Commission. The next slide shows Australian imports
24 since 2002 relative to all other imports. This is a slide
25 your probably haven't seen before in these cases either.

1 Typically you see the vast majority of imports being covered
2 instead of only a small sliver of imports being covered.

3 Let's turn to the next slide and you can see a
4 representation of what BHP Biliton participation was in the
5 market. What you see pre-POI is Australia in green and
6 South Africa in purple. Once the mill in South Africa was
7 closed and the Australian mill closed and reopen you could
8 see the relative participation of BHP in the U.S. Market and
9 it has gone down considerably. In fact, that is space
10 during the POI for other producers to fill. U.S. Producers
11 and non-subject producers. But this share diminished and
12 this took a fair amount of explanation if you could
13 understand with the clients of the U.S. Trade Law.

14 They go "we're leaving, we closed the plant.
15 We're much smaller. What's the problem?" and I said "well,
16 as an economic matter you're creating space and you're
17 leaving the market. I'll leave the law to the lawyers but
18 as an economic matter you should understand this. The next
19 slide looks at pricing in the market and this particular
20 slide concentrates on product two. Why product two? Well
21 in all previous investigations there was only one product
22 and it was product two. It should have been called product
23 one here but...

24 So this was the product from all the previous
25 cases. This was the product asked for by Petitioners in the

1 Petition to be collected. This was the product they asked
2 to collect differently from the prelim to the final and
3 these are the results they get. This is what they got and
4 they don't like it. This is from the pricing products but
5 how are the pricing products collected? They ask for
6 revenue and quantity in each quarter. They don't ask for a
7 price. So for these to be wrong, there has to be a
8 systematic mistake in reporting either revenue or quantity
9 or both for every quarter by a large number of importers.

10 Further, this price AUV is consistent with
11 another table that they had to fill out regarding their
12 trade data that Commissioner Schmidlein referred to. Their
13 trade data asks for the revenue and quantity of imports, so
14 that's how you get import unit values and the revenue or
15 quantity of importer shipments. If you take the importer's
16 shipment numbers and the AUV from that and cross-check it to
17 the pricing data you will find that they are consistent. So
18 you have to have this other enormous conspiracy, a mass
19 breakout of stupidity, hallucinations going on at multiple
20 firms or I don't know.

21 So take a look at this data and say "is this
22 consistent with injury by Australia? And I'd also note,
23 what's going on with South Africa? Can't talk about it but
24 where is their argument about that? The next page
25 aggregates all the pricing products. So this looks across

1 the total volume of pricing products in the Staff Report,
2 aggregates them and weights them and what you see is a
3 pattern that is very similar as if you just looked at
4 product two.

5 Now let me turn to the conditions of competition.
6 Silicomanganese is a commodity product. We both agree on
7 that. Reliability of supply is essential for steel
8 producers, everyone agrees on that. The Domestic Industry
9 cannot and will not reliably supply the U.S. Market. We
10 disagree on that and I will spend some time. But let me go
11 to the first one first. Look at the commodity nature. It's
12 used by long product steel producers. They're before you
13 all the time. These are companies like SDI, Gerdal, Nucor,
14 CMC, Arselow and Middle; guys with EAF furnaces producing
15 long products.

16 It competes on products and reliability of
17 supply. It's a commodity so it competes on price but it
18 would shut down billions of dollars of assets were it not
19 available. So a reliable supply is important if you're
20 making steel. It lacks good economic substitutes. There is
21 technical substitutes for silicomanganese but as an economic
22 matter, about the same amount of pounds per ton of steel has
23 been constant for a relatively long period of time. So
24 there's really no good economic substitutes.

25 And finally, sixty-five and seventy-two are

1 interchangeably, so let me go to the last one because we all
2 agree on the first three. Are sixty-five and seventy-two
3 interchangeable? Well, a large majority of U.S. Purchasers
4 stated that Georgian silicomanganese is always frequently
5 interchangeable with silicomanganese from U.S. Producers,
6 Australia and South Africa. I ask you to look at whether
7 steel producers switched between sixty-five and seventy-two
8 and among suppliers during the POI. We provide information
9 on that, but that's an indication of whether substitution
10 could occur.

11 We know that Georgian imports have increased
12 significantly and we have been told this morning that most
13 of that or a lot of that is seventy-two. Clearly everyone
14 who was using seventy-two used sixty-five before. They've
15 interchanged them at their mills. Both sixty-five and
16 seventy-two are priced off of sixty-five. There was
17 enormous disassembling and back-peddling this morning but Ms.
18 Aranoff read the quote from the preliminary where they said
19 they priced seventy two off sixty five content and we do
20 these comparisons in our brief. I would ask the Commission
21 to ask the Staff to produce pricing tables where they adjust
22 the seventy-two to sixty-five to allow you to do the
23 comparisons yourself.

24 Finally, I would ask you to look at whether
25 seventy-two increased or decreased or remained the same over

1 the POI. If it had moved around some that tells you that
2 switching costs are not significant because people can
3 adjust. Now both sixty-five and seventy-two are both priced
4 off sixty-five content. We have read about that this
5 morning. The staff report says that. They tell you how to
6 make the adjustment.

7 The next slide shows the use of seventy-two
8 percent silicomanganese over the POI. Once again, when
9 products are not substitutable you won't expect to see much
10 change. When they are, you might expect to see change.
11 What do you see? What do you believe? Them or your lying
12 eyes?

13 The next slide looks at reliability of supply as
14 an essential product for U.S. steel producers. We know it
15 is necessary for making steel as a strengthener and a
16 deoxidizer. Sixteen of seventeen purchasers describe
17 reliability of supply as very important. Three factors
18 reach sixteen out of seventeen: reliability of supply,
19 price and minimum quality requirements. So those are the
20 three most important things to the people that respond to
21 your questionnaires.

22 You would expect to see many long-term and annual
23 contracts if reliability with supply was important and
24 you've heard testimony from both sides and the staff report
25 refers to that as well. Take a look at the numbers. If

1 reliability of supply is important, you will see long-term
2 contracts.

3 Finally the lack of substitutes for
4 silicomanganese is demonstrated by the constant ratio of
5 silicomanganese consumed to long product steel produced.
6 The next slide shows that. The reason that it's
7 confidential is it's sourced from Guru Reports that require
8 their parties not to release the information publicly but
9 these are very reliable sources, these are the Guru kind of
10 associations that keep track that you're used to in other
11 investigations. So once again, not good substitutes.

12 Now, let me turn to the Domestic Industry and why
13 they cannot or will not reliably supply to the market.
14 First, the Domestic Industry does not have sufficient
15 capacity to supply the market. That was testified to this
16 morning. The Commission is aware of that. Second, the
17 Domestic Industry has not produced at its reported capacity.
18 We know that as a fact as well. There's disagreement about
19 why.

20 Finally, Georgian American Alloys interests lie
21 with the foreign operations and I will note that it is not
22 American Georgia Alloys but Georgian American Alloys and I
23 think you'll come to see why that is momentarily. So let's
24 look at the first point about the inability for the Domestic
25 Industry to supply the market. I'll go from right to left

1 in terms of the perise but the red line is the amount of
2 apparent consumption in the market. The blue line is the
3 U.S. Capacity that's reported. You see the capacity is less
4 than consumption. Imports are needed. The purple bar is
5 the amount of actual U.S. Production and you could see it's
6 less than the blue bar meaning that there's excess capacity.

7 The next slide looks at Eramet's capacity and I'd
8 just like you to note the direction of change, if any, it's
9 moving. The next slide shows Felman's capacity and how
10 often it operated. They have three furnaces so this is
11 public information. They operated all three furnaces in
12 2012 until 2013 at which point they idled the plant. Since
13 that time, they've tried to bring on two, but it's been
14 pretty rough. They had two on for a while, they lowered it
15 back to one, they brought back on two. Now they just had a
16 burn through that's going to keep it idle for months on end.

17 So if you are a steel producer in the United
18 States looking for reliable supplies, these last two graphs
19 should give you concern. If you are going to have to shut
20 down a steel plant because you can't get this stuff, you are
21 going to be concerned if you saw the last two graphs.
22 Further, they've had significant equipment problems. I just
23 spoke of the burn through and I've spoke of the amount of
24 time the furnaces were idle. They never opened one of the
25 furnaces of the remaining two that they opened. One was

1 offline half the time and is now being repaired yet again.

2 Imports did not cause the closure. As was
3 testified to this morning, at the time of the closure they
4 had not identified imports or Australian imports as a
5 reason. It was market conditions. Market conditions?
6 That's like saying the election was determined by political
7 conditions and your opinion is going to be determined by
8 legal conditions. That's the most empty suit expression you
9 could possibly use. Of course market conditions had stuff
10 to do with it. It's like the test in economics and they say
11 "yes, it was supply and demand Dr. Kaplan." I'll go "Good
12 answer, need a little more specific nature."

13 It took them over a year to figure out, they said
14 what happened to their plant. They are in business. They
15 make one product. They're in the market every day. They're
16 getting Guru publications at their door and they don't know
17 what happened to them. They tell you today they couldn't
18 figure out what happened for a year and a half. In any
19 case, the Public Service Commission said the plant however
20 has not been profitable since at least 2010, well before the
21 imports, well before the POI and was shut down in July of
22 2013 and would not reopen unless Felman was granted a
23 special rate for electricity.

24 By the way, during the closure in Australia the
25 electrical rate went down. People want lower costs. Does

1 it mean imports are involved? No contemporaneous records
2 about imports, no contemporaneous records about Australia.
3 During the same period they renegotiated the labor contract.
4 It was rejected the first time because it took too much
5 away. Then they finally approved it.

6 I will note that the spike of Georgian imports
7 occurred at the same time the layoff of workers in West
8 Virginia were put off for a year. Why is that? It is
9 because GAA's interests lie with its foreign operations.
10 Felman Production is part of Georgian American Alloys which
11 has interlocking ownership ties with Privet Bank in the
12 Ukraine. GAA and Privet's interests lie with the Georgian
13 facility. GAA is a Delaware corporation that is
14 headquartered in Miami, but who are the shareholders? I
15 understand that the Australian importer is a Delaware
16 Company as well, but who are the shareholders? They are up
17 in Australia. Who are the shareholders of GAA? They're in
18 the Ukraine.

19 MR. KAPLAN: GA's interests lie with its foreign
20 operations because of the interlocking ownership and because
21 of their interests. The next slide shows the interlocking
22 ownership and relationships. The key to this is just that
23 the three blue companies in the middle are part of GAA and
24 that beneficial shareholders of GAA are often the Ukraine,
25 that's the only point I want to make.

1 The next slide shows the facilities of the
2 related parties to the owner. Whether or not they are
3 dealing at arms-length there is interlocking ownership
4 relationships and there is confidential information on the
5 record, confidential emails that I will point out that
6 suggest that maybe those five companies are interrelated a
7 little more, but it is irrelevant. Really at the end of the
8 day because the Ukraine has an order against it and the
9 Romanian plant is shut down. Let's go to the next slide.

10 GA's interests lie with its foreign operations,
11 let's take a look. Let's take a look at Georgian imports
12 first of all. While they were shutting down their domestic
13 facilities this is what was happening from imports from
14 Georgia. If you will note in purple South Africa was the
15 largest supplier in the United States for a very long time.

16 The green which is Australia is kind of an
17 afterthought here. During the period of investigation
18 Georgia finally overtook South Africa as the largest supplier
19 while Australia remains small. We will note that every
20 plant in the United States that could use the 72 used to use
21 65 and 65 is what is made domestically. 65 was shuttered,
22 72 is going up. Next slide please.

23 This takes a look quickly at the land and duty
24 value of Georgian imports and it makes a comparison to
25 certain costs. If your land and duty value looks like that

1 and your costs look like that, where do you want to be
2 shipping from? I think it speaks for itself.

3 The next slide compares the two facilities.
4 Where would your interests be if you owned the two plants?
5 Well let's take a look. On the Georgian side you have 12
6 furnaces, on the U.S. side you have 3. On the Georgian side
7 you have 7 mines and in the U.S. you have none. On the
8 Georgian side you have a hydro-electric power plant, I think
9 it should be 800 megawatts, it's been pointed out that we
10 can power the earth with 800,000 so I think that's a typo.

11 No dedicated hydro plant for Felman. How many
12 workers in Georgia? 6,000 mostly at the mines, take a look
13 at confidential record, how many in the U.S.? Hourly wages
14 in Georgia -- under \$4.00 an hour people discussed hourly
15 wages and benefits this morning, they are significantly
16 higher.

17 Finally I ask you to look at the investments at
18 the bottom and the valuation at the bottom. The -- I think
19 the ones on the right are flipped but the valuation of in
20 2005 of the Georgian facility was 186 million dollars. I
21 believe in 2006 of the U.S. facility it was 20 million
22 dollars so that's you know 10 times higher.

23 What about investments? 76 million dollars of
24 investments in Georgia, take a look at the confidential page
25 to see how much were made in the United States. Which

1 facility is more important? Which plant has a bigger
2 investment? Which one has bigger capacity? Take a look at
3 the costs, where do their interests lie? What happened over
4 the POI? Georgian imports increased, domestic plants were
5 shuttered.

6 The next slide gives you kind of a graphical
7 indicia of some of these factors and basically the point of
8 it is that the red line Georgia is really big and the blue
9 line Felman is really small. And that's what you just have
10 to get out of that.

11 The next slide is quite complicated, slide 33,
12 but what I would like you to get out of that however is the
13 average unit values, the red is Georgia and the blue is
14 Felman U.S. Take a look at their pricing.

15 Finally let me turn to injury -- first let me
16 summarize quickly. We agree it is a commodity product. We
17 agree price and reliability are important. We know that the
18 U.S. industry has reliability problems. We know that the
19 Georgian facility has increased imports greatly. We know
20 that the import volumes from BHP have actually fallen and
21 imports from Australia have been relatively small.

22 So let's turn to injury again and let's go
23 through volume and price. The next slide once again shows
24 Australia's small share in the U.S. market. The next slide
25 shows how BHP presence in the U.S. market has declined

1 creating space for the domestic industry and non-subject
2 imports to fill that void. There was a void created by the
3 behavior of BHP in total.

4 So the decline in South African shipments from
5 BHP when they shuttered their facility permanently was not
6 made up by the increase in exports from Australia, there was
7 less total stuff. There's a void in the market. Steel
8 purchasers now have to find other sources from the combined
9 South African and Australian BHP production. They could go
10 to the U.S., they could go to Georgia, they could go to
11 South Africa, where did they go?

12 Taking a look at the next slide you could see
13 that over the POI it wasn't Australia, they are the third
14 largest guy in terms of imports and you could see where they
15 are compared to U.S. producers. Once again in the next
16 slide we turn again -- if you are forcing yourself into the
17 market are you the high price provider or the low price
18 provider?

19 The next slide shows this looking and breaking
20 out 65 and 72 Georgian. You could do that by adjusting the
21 72 to 65 based on a methodology that was agreed upon by or
22 asked if it was correct by the staff to the various parties
23 who agreed and this is the numbers you get for the Georgian
24 shipments into the U.S. market, where are they? Where are
25 they compared to other U.S. produces, South Africa and

1 Australia.

2 The next slide once again aggregates everybody
3 and you see the same pattern once again and you will notice
4 the gaps between the lines.

5 The next slide was anticipated by Commissioner
6 Schmidtlein when she asked, "Aren't we -- if we are going to
7 use average unit values shouldn't we use them at the same
8 level of trade? Shouldn't we use average unit values from
9 U.S. producer shipments and average unit values from
10 importers commercial shipments?" And I think the answer is
11 plainly yes. If you do that this is what you see.

12 The higher line is the higher price. Is the red
13 U.S. producer's line higher or the green Australian import
14 line higher? And if they are is this consistent with what
15 you have seen in all the pricing products? It tells a
16 pretty seamless story from all the data, from different
17 people, from different tables, from different types of
18 analysis.

19 Finally purchasers confirm that Felman is a price
20 leader, all of that information is confidential but read who
21 the people saying this are. Read the company in brackets,
22 would these guys know? Are these guys fringe players in the
23 U.S. market or are these central players in the U.S. market
24 and what do they say?

25 I would also ask you to compare the names in this

1 slide to the names of the largest purchasers on the
2 questionnaires in the back of the questionnaire they say who
3 are your 10 largest purchasers in 2014, one of the
4 percentages -- take a look at those for Felman production
5 and Felman trading and then take a look at the people that
6 responded to this question and I think you will find
7 something quite interesting.

8 Finally on threat I think we have discussed that
9 already. I think we have been a reliable supplier so that
10 there is no expected increase in import volume. You have
11 already seen what the prices are there are no U.S.
12 inventories they have been tested to. The potential for
13 product shifting has been already addressed. There are no
14 subsidy allegations and there's no evidence to believe that
15 they would increase imports, in fact they have shuttered
16 capacity so as not to disrupt the market.

17 I have two minutes and I do want to like talk
18 about a question often times Commissioner Kieff says, "Where
19 are the factual issues joined?" That's where the legal
20 issue is joined and where the factual issue is joined. The
21 factual issues joined here are enjoined in two places.

22 They are critical, fundamental and basic to this
23 case. One is is what is going on with the pricing. They
24 have suddenly been -- had the feeling that the product they
25 asked for to be collected that the product that was asked

1 for in every other investigation, that the only product that
2 was collected in every other investigation, that the product
3 that was collected in the prelim the product now that
4 matches the collected product in the prelim be ignored.
5 It's wrong, it has got to be. Investigate that. You have
6 questionnaires, people by oath testified, all of those
7 people got product 1 right but got product 2 wrong. They
8 are all independent of each other, they are not filling out
9 prices, they are filling out revenues and quantities for
10 each quarter and they all messed them up simultaneously in 1
11 product while not the other product and it's only a subset
12 of the people that report it, that is desperation.

13 You need evidence of that. That is the direct
14 evidence. The other information they might feel it is
15 inconsistent but this is the data you have that was
16 certified to by the importers and purchasers and that data
17 is reported in the staff report.

18 The second issue is the interchangeability of 72
19 and 65 and I think that is plain. For the first time we
20 have heard in any investigation now this 72 stuff is
21 different, now it is a separate product that you hear is
22 increasing and increasing and increasing over years, no one
23 knew about this in other investigations and now suddenly it
24 is different.

25 Take a look who purchasing. Take a look at what

1 they have purchased before. Take a look if they are
2 changing the ratios of what they purchased. If those things
3 are happening it will tell you it is interchangeable, if
4 those are not it will tell you it is not. I think those two
5 issues are the issues that you should look at very carefully
6 in terms of credibility and fundamental issues in this
7 investigation. My time just beeped out, thank you.

8 MS. ARANOFF: Thank you very much that concludes
9 our presentation.

10 CHAIRMAN BROADBENT: Thank you, I want to thank
11 the witnesses for coming today and let's begin our questions
12 with Vice Chairman Pinkert.

13 VICE CHAIRMAN PINKERT: Thank you Madam Chairman.
14 I thank all of you for being here today to help us to
15 understand these issues. Dr. Kaplan I think in your closing
16 well not your closing but your summation if you will, you
17 indicated that it is possible that the pricing data for
18 product 2 doesn't jive with some of the information relied
19 upon by the Petitioners.

20 And so I am trying to understand they talked
21 about the way that that data, the way that those prices are
22 set for this product and how this data that we have for
23 product 2 is not consistent with their understanding of
24 that. Can you comment on that? I know you said that this
25 is the pricing data we have and there is reason to believe

1 that it is compiled accurately but can you talk about that
2 alleged inconsistency?

3 MR. KAPLAN: Since as Mr. Levy said each
4 inconsistency is its own story. We have to look producer by
5 producer to figure out how they made their mistake all in
6 the same direction I might add. I would like to do this in
7 the post-hearing brief. But I would like to add again you
8 know that the reporting is of their revenues and quantities
9 during the period. It is not like they are reporting
10 prices. We are driving those prices from that.

11 So that means they have to be making a mistake on
12 how much money they made that quarter and how much they sold
13 that quarter consistently and repeatedly across one product
14 and not the other product and across some firms and not
15 other firms, so that's your underlying data. I think that
16 that is the baseline that's been certified. The other thing
17 poses a question and if that question is not answered you
18 have certified under oath data from a whole bunch of people
19 so you can't go well that's certified but that's kind of
20 curious I'm not going to look at it, that is the data and it
21 is consistent with the first prelim investigation and it is
22 consistent with Commissioner Schmidtlein's trade table of
23 average unit values for commercial shipments of imports.

24 So the data set is consistent and I will discuss
25 the mystery in brackets.

1 VICE CHAIRMAN PINKERT: Thank you. Let's turn to
2 another mystery, in your slides there's a heading on page 24
3 on the proprietary slides saying GAA's interest lie with its
4 foreign operations. My question is why shouldn't we believe
5 that the interests of the global operation are to maximize
6 profit globally, not to maximize profit in one area or
7 another area but to look at the whole and to maximize
8 profit?

 MR. KAPLAN: I think that's
9 exactly right. I think you are maximizing profits as a
10 whole not individually in each location. And if you are
11 maximizing as a whole one of the things that you are going
12 to look at are the size of the two locations, the cost
13 structure of the two locations and in this case I think what
14 you see is that given the investments, the employment, the
15 size, the fact they have a hydro plant there, the fact that
16 it is going to be weighted toward Georgia when you maximize.

 You could also see from the confidential land to
18 duty value cost comparison of where you would expect the
19 costs to be so you would like to maximize profits across
20 looking at the two locations but now when you have declining
21 demand situation what are you going to do, you know, which
22 one do you shut down? Which one do you supply from? And I
23 think the evidence is plain. You supply from Georgia,
24 Georgia went way up. What happened in the U.S. is
25 confidential but we know from the statistics that Georgia

1 went way up.

2 So I think that answers it, it is like you are
3 backing into it. We know Georgia went way up, we know what
4 happened with the U.S., we know they are a multi-national
5 profit maximizing corporation, why did they go to Georgia?
6 I think if you look at the two facilities, a little bit
7 about their cost structures it will tell you that. It is
8 consistent with the facts of this case.

9 VICE CHAIRMAN PINKERT: Thank you. Now turning
10 to the business people on this panel would you agree with
11 the notion that in this commodity-like market that price
12 changes are rapidly communicated in the market? We can get
13 into what that might mean for the data in a second but is
14 that the way the market actually works?

15 MR. KLANDER: Yes I think that the price changes
16 of the market are communicated relatively quickly by means
17 of the indices is the main way that is done so yes.

18 VICE CHAIRMAN PINKERT: Thank you so does that
19 mean that we shouldn't expect under any circumstances to
20 find persistent underselling in a market where it is
21 commodity-like and price changes are rapidly communicated
22 throughout the market?

23 MR. KAPLAN: Well it would depend on the
24 conditions of the contracts, what the discounts are, how the
25 adjustments occurred but as we have heard testimony of

1 already those adjustments aren't occurring because of prices
2 from Australia because they aren't in the indices. You will
3 note that there are differences among the countries and
4 among the you know, or not, and the gaps are there or not
5 and that the domestic producers charge the same prices or
6 not.

7 So I would ask you to look at all of that. It's
8 not -- this is no gold, where there is a single price in the
9 world at any given moment. And if you think of other
10 commodity type products you have looked at you will also
11 notice that there are differences in pricing from the
12 sellers to different customers as well.

13 VICE CHAIRMAN PINKERT: Thank you. If you look
14 at table Roman 3-3 in the pre-hearing report and you look at
15 the overall level of production capacity during the period
16 of investigation, at least to my eyes it looks like there is
17 consistency over the period and given the financial
18 performance of the industry I wonder if you can comment on
19 whether that is something that you would expect to see?

20 MR. KAPLAN: I mean that would go into decisions
21 that permanently change capacity and suggests and that's a
22 forward looking exercise so I would have to have information
23 about what they expect about the future in terms of what
24 they are doing with their assets today and from a GAA
25 perspective I want to have some kind of comparative analysis

1 between the two as they are maximizing products for the firm
2 as a whole.

3 VICE CHAIRMAN PINKERT: Thank you. Now I want to
4 get to a more legalistic kind of question and I don't want
5 to mischaracterize what the morning panel said but what I
6 wrote down while they were talking was that Petitioners say
7 we don't have a BRATS problem here because we can identify
8 the cause of the problems experienced by the domestic
9 industry. Is that the right way to look at the BRATS
10 analysis?

11 MS. ARANOFF: I actually think that this is a
12 pretty clear case under the BRATS analysis. You have got a
13 commodity product, you have got non-subject imports that
14 have a significant presence in the U.S. market that I think
15 is indisputable and then you have to ask yourself if the
16 Australian product were not present in the market would
17 Australian imports be replaced by non-subject imports? You
18 can see where the trends are going for non-subject imports,
19 particularly from Georgia but that is not the only source
20 and the other question is but would there be a price benefit
21 for the domestic industry if non-subject imports were to
22 replace subject imports.

23 You have in front of you the pricing information,
24 I can't discuss it, you will have to answer that question
25 for yourself but I think the only way you get to not having

1 a BRATS problem here is if you agree with Petitioners that
2 you have to throw out the most important price comparison
3 data, the data from product 2.

4 VICE CHAIRMAN PINKERT: Mr. Kaplan quickly?

5 MR. KAPLAN: In fact it's both and that's why
6 those two key issues were so important. They are sitting
7 there and like, Oh my God, so what do we do? Well we have
8 to get rid of Georgia -- oh that's a different product -- oh
9 and the pricing stuff is bad -- oh the pricing stuff is all
10 wrong. So the two fundamental things for BRATS is there
11 replacements out there? These are the third biggest and you
12 can see that they are small relative to the other two, that
13 they are desperately trying to get rid of one of the
14 countries for replacement purposes and then they are denying
15 the prices that are right on the record because it fits
16 right in with the BRATS argument.

17 So where these issues are joined factually shows
18 that they understand what kind of problem that they have and
19 they are saying that the record is wrong, that the record is
20 incomplete, the record is incorrect. Something is going on
21 because as a BRATSS issue they are kind of toast if those
22 two things are in fact correct.

23 VICE CHAIRMAN PINKERT: Thank you.

24 CHAIRMAN BROADBENT: Commissioner Williamson?

25 COMMISSIONER WILLIAMSON: Thank you. I want to

1 thank the panel for coming today and particularly a couple
2 of members for traveling so far. First off would be a
3 little provocative, Mr. Kylander you talk about being a very
4 reliable supplier and I am wondering why then close South
5 Africa plant and then shut down you know the plant in
6 Australia about the same time when it had a big jump in
7 prices? Was that being a reliable supplier?

8 MR. KYLANDER: This is Carl Kylander. Yeah well
9 what we did is we serviced our customers from the inventory
10 and we purchased third party product to make sure that we
11 didn't have to walk away from any of our contracts. Yes we
12 have been a reliable supplier for over 20 years including
13 that one small period of time where we had both plants shut
14 down which was a very tough time to be a reliable supplier.
15 So we went out and we bought third party product and from
16 memory we may have even lost money on the third party
17 product but we honored our contractual commitments with our
18 customers.

19 COMMISSIONER WILLIAMSON: But the prices did go
20 up?

21 MR. KYLANDER: The prices went up immediately
22 after we announced the closure of the South African plant,
23 the permanent closure of the South African plant.

24 COMMISSIONER WILLIAMSON: Oh so even before had
25 you announced what you were going to do in Australia at that

1 time?

2 MR. KYLANDER: No we had not.

3 COMMISSIONER WILLIAMSON: Okay, I guess the other
4 question is why go ahead with the Australia closure given
5 this situation? What was so compelling about that?

6 MR. TIDEY: Rod Tidey, Financial Lead for TEMCO.
7 So we got to the TEMCO closure was driven because we had
8 rising costs and at that time a forecast for declining
9 prices in the immediate future so you know from our point
10 of view, operating the plant in those circumstances was not
11 appropriate so we took the opportunity to stop production,
12 reset our costs, including renegotiating our electricity
13 contract as was mentioned so that when we took I guess a
14 three month or four month production suspension to get everything
15 ready and start re-operating in a competitive position, that was
16 the intention that is what we did.

17 COMMISSIONER WILLIAMSON: Okay.

18 MS. ARANOFF: I just want to add to that if you
19 look in TEMCO's foreign producer questionnaire there is some
20 confidential detail that gives you the history of their
21 electricity contract and what had been going on up to that
22 time.

23 COMMISSIONER WILLIAMSON: Okay, thank you. What
24 about can you tell me a little bit more about why TEMCO's
25 shut down in South Africa and were the exports to the U.S.

1 getting the duty free treatment under AGOA, it's a subject
2 that has been very dear to my heart for a long time -- the
3 African growth and opportunity duty free imports from South
4 Africa?

5 MR. KYLANDER: Carl Kylander the questions is why
6 the shutdown of the South African plant and was it subject
7 to AGOA?

8 COMMISSIONER WILLIAMSON: Yeah essentially
9 because they had duty free benefits these are GSPR goal
10 would there have been -- there are some advantages there?

11 MR. KYLANDER: Yeah it was duty free. The main
12 reasons for the shutdown of South Africa were increasing
13 power rates in South Africa, and increasing power rates and
14 projection that those power rates were going to continue to
15 increase and in fact they have.

16 COMMISSIONER WILLIAMSON: Okay.

17 MR. KYLANDER: All South African silicomanganese
18 is duty free and as well as Australia.

19 COMMISSIONER WILLIAMSON: Oh Australia was free
20 because of the -- and I guess the South African power
21 problems have continued haven't they, it's not relevant for
22 here but I was just --

23 MR. KYLANDER: Yes.

24 COMMISSIONER WILLIAMSON: Okay. Thank you. This
25 morning we heard that the high-grade silicomanganese from

1 Georgia has a higher phosphorous content that limits its use
2 in certain mills for certain steel products and I was
3 wondering do you agree with that because no one talked about
4 that in your presentation?

5 MR. TIDEY: Phosphorus is one of those things
6 that every steel maker moans about, a bit like footballer
7 when they put the studs in their boots.

8 COMMISSIONER WILLIAMSON: Can you speak a little
9 bit more in the microphone.

10 MR. TIDEY: Sorry, phosphorus levels are one
11 thing that every steel maker moans about, they love zero
12 phosphorus, they all would and the reality is that the
13 manganese ores all contain some level of phosphorus and when
14 you convert those ores to alloy the phosphorus always
15 reports the alloy and then always by default will go end up
16 with the steelmaker.

17 I guess in my experience it is one of those
18 things that we have had numerous visits from steelmakers to
19 our site and it's a bit like studs on the boots of a
20 football, they keep slipping over, it's something they always
21 moan about. The reality is the amount of phosphorus even in
22 relatively high phosphorus ore sources is only a very, very
23 small fraction of the phosphorus that ends up in the steel
24 product and that's actually because in rudimentary terms you
25 are only putting 10 kilograms of silicomanganese into making

1 a ton of steel.

2 So even though the phosphorus level may be a
3 little bit high in the silicomanganese it gets so diluted in
4 the process. In reality, you know there are certainly other
5 ways that every steelmaker could remediate the issue around
6 phosphorus.

7 COMMISSIONER WILLIAMSON: Okay.

8 MR. KYLANDER: I would like to add one comment as
9 well. I don't think we will argue that there is zero
10 steelmakers for whom this is a concern but I think there are
11 a relatively small number of steelmakers from that estimate
12 and just to re-emphasize every single one of the people
13 using the 72 now used to use a 65. Also, I think the small
14 number of people who have a phosphorus issue would directly
15 correlate to the TEMCO product.

16 TEMCO's product is high in carbon as well. It
17 doesn't meet the ASTM grade specifications that most
18 steelmakers expect but it is also a small number and we are
19 not asking it to be considered a totally different product
20 simply because there are a few steelmakers that can't use it
21 which is exactly what the Petitioners are saying.

22 COMMISSIONER WILLIAMSON: Okay Mr. Kaplan?

23 MR. KAPLAN: Yes I would take a look at the steel
24 companies that are using the 72 and I would look at what
25 kinds of products they make and I think that evidence is

1 consistent with the fact that this is generally not a
2 problem. You could look at the Georgian import increase and
3 the share of Georgian sales market that will tell you that
4 it is not a problem.

5 And to the extent that --

6 COMMISSIONER WILLIAMSON: Say that again.

7 MR. KAPLAN: If you see the increase from Georgia
8 and if and there is confidential data saying how much of
9 that is 72 that would tell you that there are significant
10 amounts of people that can use 72 without a problem and you
11 have been told that almost everyone could use 72 without a
12 problem and you have been told that everybody using 72 used
13 to use 65 and that's my point about Georgia and America you
14 know, the GAA issue is everyone who used 72 could have used
15 65 and yet Georgia was going up very steeply and they are
16 shuttering U.S. operations.

17 And the answer is why and I think the answer is
18 they are maximizing profits of a multi-national enterprise.
19 Where do you want to supply?

20 COMMISSIONER WILLIAMSON: You are getting off --
21 does that mean how, if somebody was using 68 and starts
22 using 72 what does it take to go back to it, to go back to
23 the 68, is this something you could just do tomorrow?

24 MR. KYLANDER: I think the switch back from 72 to
25 65 is relatively easy. Most computer programs that

1 steelmakers use are relatively sophisticated. They have a
2 bin system, they have a recipe, they set the recipe and they
3 switch. No, they don't want to do it, you know switch back
4 and forth every day but making a switch, let's say you have
5 a barge load of product A coming in, switching to product B
6 you would be done probably in a day.

7 COMMISSONER WILLIAMSON: Okay and I guess going
8 from 68 to 72 would you say is equally as --

9 MR. KYLANDER: I think the process of switching
10 is the same. You know there may be some customers who don't
11 want to make that switch, which we admitted, I think there
12 are very few but the process of switching would be the same.

13 COMMISSIONER WILLIAMSON: Okay thank you. Where
14 are your customers that you supply with silicomanganese
15 prior to the closure of your South Africa facility -- were
16 they aware of the source of the silicomanganese that you
17 supplied and did it matter to them?

18 MR. KYLANDER: I would say it is a mixed bag,
19 some were aware and to some it mattered. I would say most
20 were concerned with who their supplier was as much as where
21 the product came from.

22 I mean in other words we built this as a supplier
23 and they were supplying both South African and Australian
24 and they were less concerned with whether it was South
25 African or Australia in most cases and more concerned with

1 who is the supplier, are they reliable, are they going to
2 take care of us?

3 COMMISSIONER WILLIAMSON: Okay and what would
4 determine whether or not you supplied customers from South
5 African or Australia?

6 MR. KYLANDER: Almost purely logistical costs.
7 It is cheaper to get product to the east coast of the United
8 States from South Africa and cheaper to get to the west
9 coast from Australia.

10 COMMISSIONER WILLIAMSON: Okay thank you for
11 those answers.

12 CHAIRMAN BROADBENT: Commissioner Johanson?

13 COMMISSIONER JOHANSON: Thank you Commissioner
14 Broadbent and I would also like to thank all of you for
15 appearing here today and especially Mr. Tidey coming all the
16 way from Australia. Thanks for educating us further on this
17 issue. Mr. Kaplan on page 13 of the packet that you handed
18 out today you note that a large majority of U.S. purchasers
19 stated that Georgian silicomanganese is always or frequently
20 interchangeable with silicomanganese from U.S. producers in
21 Australia and South Africa.

22 Is there -- do you know if there is any
23 information such as in trade publications that would
24 indicate that and also Mr. Kylander you have mentioned that
25 there is basically recipes for how you can change from going

1 to 65 to 72, do you have any information you all could get
2 to us in the post-hearing? If you could look for that that
3 might be helpful.

4 MR. KAPLAN: Yes we will look for the information
5 but you know there is this final end product you want to
6 meet and if the ingredients are a little different you
7 adjust for them and kind of in the mix for the label
8 chemistry and that's what we were talking about. No one has
9 to pull out a slide ruler anymore you kind of know what the
10 essay is of the stuff, you hit a button and it tells you
11 what the formula is and then you have these bins that put in
12 the right amounts and the switching time is really waiting
13 for one bin to end and then moving over the next bin so in
14 discussing this with the experts they said it is -- you
15 don't have to stop things, it's not a continuous process,
16 you can't mix something together in the bin.

17 Well when one bin is done then you switch to the
18 other one, you get the computer and change the formula and
19 then you get the next heat being at the correct
20 specification. Did I go to school correctly gentlemen?

21 MR. KYLANDER: I would like to add that in most
22 cases these recipes, these programs that the steelmakers use
23 are highly classified.

24 COMMISSONER JOHANSON: Right but if you all could
25 give me more information on this I know we have what is in

1 the questionnaire responses, that's helpful but if there is
2 anything else out there you call could provide that would be
3 helpful because this is obviously an issue that you all feel
4 strongly about and the Petitioners seem to feel strongly the
5 other way so if there is some third party out there what you
6 could give a bit more light to this issue that would be
7 appreciated.

8 And continuing along that same issue, is a market
9 of 65% silicomanganese declining overall as steel plants in
10 the United States are switching to 72% silicomanganese?

11 MR. KYLANDER: Carl Kylander, in my opinion it is
12 the same market. I mean it is silicomanganese. There's
13 isn't as Petitioners suggest there isn't segregation between
14 the two, it is siliconmanganese it is all the same market in
15 my opinion.

16 COMMISSIONER JOHANSON: Okay thanks. As you can
17 tell some of us are still trying to grapple with this issue,
18 okay thanks. You all say pages 18 to 21 of your pre-hearing
19 brief that the increase in subject imports from Australia
20 from 2012 to 2013 merely reflected the fact that BHP had
21 closed its South African facility in February 2012 and that
22 Australian product took the place of the South African
23 product.

24 Unless both BHP silicomanganese from South Africa
25 and Australia were priced similarly however does it matter

1 that Australian product replaced South African product in
2 determining whether the domestic industry is materially
3 injured by subject imports from Australia?

4 MR. KYLANDER: Carl Kylander speaking -- I think
5 there are two parts to that, are they priced the same -- I'm
6 not sure I --

7 COMMISSIONER JOHANSON: And also there's a legal
8 issue.

9 MR. KYLANDER: Yes.

10 COMMISSIONER JOHANSON: And this is something
11 that was raised this morning I believe by Commissioner
12 Pinkert. I know we have the situation in South Africa but
13 looking at the legal matter this is an investigation
14 involving imports from Australia.

15 MR. KYLANDER: So I'll answer the first part.

16 COMMISSIONER JOHANSON: Right.

17 MR. KYLANDER: There's no different in the way
18 the Australian and the South African product were priced.

19 COMMISSIONER JOHANSON: Is that because it was a
20 pure commodity product and that is what you would expect?

21 MR. KYLANDER: Yes sir.

22 COMMISSIONER JOHANSON: Okay thanks.

23 MS. ARANOFF: Let me answer -- this is Shara
24 Aranoff let me answer the legal part of the question.
25 Petitioners told you that they hadn't even thought about

1 what had happened with the South African imports from BHP
2 because it was legally irrelevant because this is an
3 investigation about imports from Australia.

4 I want to point out why we disagree with that. I
5 think we agree with the Petitioners insofar that we all
6 agree that as a factual matter between 2012 and 2013 subject
7 imports from Australia increased. But that does not mean
8 that what was going on with respect to BHP Billion in South
9 African imports is legally irrelevant to the Commission's
10 determination.

11 You can find that despite the increase that the
12 volume of imports is not significant because of the context
13 in which that increase in Australian imports took place.
14 That is that the one company which controlled both and which
15 as Mr. Kylander told you sold them based just on logistics
16 the same price to customers in the U.S. who mostly didn't
17 care where they came from.

18 You know that company took away a large portion
19 of the supply that was coming to the United States which was
20 from South Africa. It decreased its overall footprint and
21 it replaced some of what was coming in from South Africa
22 with Australian product for a net decrease for the company.

23 Now does that mean that imports from Australia
24 subject imports did not increase between 2012 and 2013 of
25 course not, they did increase and you know everyone agrees

1 to that but we would suggest that it is a reason why the
2 Commission should find that that increase was not
3 significant.

4 There are other reasons why you could find that
5 the volume is not significant and that would be because it
6 also had no adverse price effects, that's a more complicated
7 point that I won't go into now and you could also find that
8 the volume of subject imports are not significant because
9 looking at the market as a whole the volume and the price
10 impacts of non-subject imports as well as what is going on
11 with demand are much -- have a much greater effect during
12 the POI's such that any effect of the subject import volume
13 was de minimis.

14 So there are three ways which we think you can
15 find that the volume of subject imports is not significant
16 despite the increase.

17 MR. KYLANDER: Sorry Carl Kylander, I think you
18 will also ask whether the subject imports increasing took
19 market share away from domestic producers, if I understood
20 you correctly and the answer is clearly no, it was our own
21 market share. Our market share went down so the increase in
22 Australian imports only partially offset the decrease from
23 South Africa so it couldn't possibly take market share away
24 from the domestic producers because it was our market share.

25 MS. ARANOFF: If you look at the volume data from

1 '13 to '14 which is something that Petitioners talked about,
2 it is a very small change in Australian import volume
3 between '13 and '14, it's in a downward direction so the
4 same point.

5 MR. KAPLAN: If you examine slide 37 again and I
6 think that -- it tries to illustrate the point that Mr.
7 Kylander said in that there was an average import volume of
8 combined BHP Australian and South African imports from 2006
9 to 2011 and it fell during the POI so that's kind of his
10 point is that space was created for other suppliers because
11 their combined shipments fell. Their increase of Australian
12 did not offset the decline from South Africa all at the same
13 price.

14 So suddenly if you are a steel consumer you are
15 looking and going I have got to get some more product from
16 somewhere and that should have benefitted everybody else and
17 how those benefits played out is something we discussed but
18 clearly from a company standpoint they created space in the
19 market and gave up share and that share that they lost and
20 combined from the pre POI to the POI period is something
21 that benefitted non-subject and domestic producers because
22 of our exit from the market.

23 COMMISSIONER JOHANSON: Alright, yes Mr.
24 Szamosszegi?

25 MR. SZAMOSSZEGI: Thanks just one quick thing to

1 add. It is also important the closure in South Africa is
2 also important for the analysis of trends in non-subject
3 imports right because the Petitioners make a big deal of
4 what happened to non-subject imports in 2013 well a lot of
5 that is explained by the closure of one of the larger mills
6 in South Africa.

7 COMMISSIONER JOHANSON: Alright thanks for your
8 responses my time is about to expire so I will come back in
9 the second round, thanks.

10 CHAIRMAN BROADBENT: Commissioner Kieff?

11 COMMISSIONER KIEFF: Thank you very much I join
12 my colleagues in thanking you all for traveling, preparing,
13 coming today to present and following up. Let me take
14 advantage of my coming after several of my colleagues and
15 our afternoon panel being later in the day and dive into
16 hopefully some touch points.

17 So first let me just ask is the overall margin
18 relevant to our analysis in the injury determination? If I
19 remember correctly the margin in this case was not on the
20 larger side of margins that we have seen right, it is a
21 fairly small margin?

22 MS. ARANOFF: Commerce hasn't put out the final
23 margin yet. The preliminary margin was 11 point something
24 percent, the final comes out next week. As you know
25 Commissioner Kieff the statute tells the Commission to

1 consider the margin.

2 COMMISSIONER KIEFF: I guess what I am asking
3 also is in a kind of a theory of inevitably inaccurate
4 decision-making right I always make or almost always make
5 hopefully occasionally make accurate decisions but I almost
6 always make decisions that are to some extent limited right,
7 I don't have perfect knowledge, I don't have -- I mean there
8 is lots running in my head right, so I have limited brain
9 power and limited information and I have to cobble all of
10 that together.

11 But that means that I should have less confidence
12 in my decision-making when I have reasons to have less
13 confidence in the magnitudes of the factors I am seeing and
14 if I am seeing a low factor is that a reason for lower
15 confidence here?

16 MS. ARANOFF: Lower confidence in particular this
17 case?

18 COMMISSIONER KIEFF: Yes, sorry if I were to get
19 to an affirmative.

20 MS. ARANOFF: You know the statute says the
21 Commission needs to consider the margin of dumping it
22 doesn't say anything about how. My understanding is there
23 are currently two lawsuits against the Commission in which
24 that particular issue is being debated so I would hesitate
25 to get in the middle of that dispute.

1 COMMISSIONER KIEFF: Yeah I mean obviously we all
2 have to get in the middle of it.

3 MS. ARANOFF: I am sure we would like it if you
4 would decide that a lower margin is a factor more in favor
5 of Respondents than a higher margin.

6 COMMISSIONER KIEFF: And again I don't mean to
7 put anyone on the spot right, including your opponents, just
8 invite all of you if you have thinking you want to provide
9 later on a way to address constructively the various sides
10 of that debate but still help ourselves in thinking about
11 this case one way or the other in this case.

12 MS. ARANOFF: We'd be happy to do that, but we
13 would also maintain that, you know, it's more important to
14 look at the pricing data that the Commission collected which
15 we think are so strongly favorable to the respondents'
16 position that you wouldn't even need the help --

17 COMMISSIONER KIEFF: Gotcha.

18 MS. ARANOFF: -- to think about the dumping
19 margin.

20 COMMISSIONER KIEFF: Very briefly, Dr. Kaplan?

21 DR. KAPLAN: There's a very long intellectual
22 history starting in the late 80s about the use of a margin
23 and so each Commissioner can decide how to use it. But I
24 would say that, as a qualitative point, that smaller is
25 worse for petitioners and better for respondents, and vice

1 versa. So I think your instincts on that are correct.

2 COMMISSIONER KIEFF: So another tricky issue
3 that seems to have arisen in this case, and sometimes arises
4 in cases like this, is that because of the special way in
5 which we conduct our procedure here, we don't have what I,
6 as a former trial lawyer, think of as cross-examination,
7 where I, as a former appellate lawyer, think of it as kind
8 of dynamic engagement between counsel or among the panelists
9 or between the panelists and counsel.

10 So it doesn't resemble typical bench appellate
11 argument or a typical trial. But you pointed out a couple
12 of touchpoints where, you know, your opponents seem to have
13 taken a different position today than you read at the
14 beginning of your testimony, that they had taken earlier.

15 And I suspect if we had more of a dynamic
16 opportunity for exchange, they would have a way to engage
17 that to explain why it -- why the court reporter was correct
18 in reporting what happened, but the significance we're
19 supposed to draw from it is different than your suggesting.

20 And so I just want to invite really both sides,
21 because we have the benefit on both sides of some very
22 experienced ITC lawyers to offer to us how, in this case or
23 in other cases, we might use procedures to improve the
24 communication around that point, so that you each feel that
25 you have the opportunity to present your real ideas and your

1 real facts in a clear way and that we, as decision makers,
2 have the opportunity to really get access to what you are
3 providing.

4 And you know, it seems to me that as a
5 procedural justice matter, that ought to be in both of your
6 interests and you're both very experienced, so you, both
7 sides, will both have insights and if you can provide that,
8 I would really benefit from that. Because I'm struggling as
9 to how to think about that in this case, but then generally
10 how to think about it.

11 Moving past that invitation for posthearing
12 submissions, let me just ask you -- at the moment, is this
13 difference a difference that may end up not mattering --
14 could you both be right and you still win, I guess is what
15 I'm asking. In other words, could he have a different --
16 some context, some other take-away that would not make them,
17 let's call it, changing positions, but you might nonetheless
18 say, that's fine. I still win, anyway.

19 MS. ARANOFF: Shara Aranoff. Thank you for that
20 question. The answer is, does it matter to the outcome
21 whether there is, in fact, a meaningful difference between
22 what Mr. Nuss said about 65 versus 72 in the prelim, and
23 what he said today.

24 And the answer is, that's a credibility
25 determination that the Commission will need to make, but in

1 the meantime, there is considerable additional evidence on
2 the record to support the point that we are making, that
3 these two products are interchangeable. You only have to
4 look at the volume trends in the market to look at the fact
5 that everyone who is using 72 was using 65.

6 I believe the difference that Mr. Nuss pointed
7 out today went to phosphorous, Mr. Tidey and Mr. Kylander
8 had some responses that only affects a very small part of
9 the market.

10 COMMISSIONER KIEFF: So long as we then have
11 enough in the record to reach a reasoned reliance upon that
12 record evidence, we could reach our own determination,
13 whether there's the, let's call it impeachment opportunity
14 or not.

15 In other words, whether it's truly impeachable
16 or truly not impeachable, it might just be, let's call it,
17 disagreed with, and that could be done in a way that doesn't
18 find it to be not entitled to some kind of truth value,
19 merely like lots of data, only of some evidentiary value,
20 compared to a weight of other evidence. Is that a fair way
21 to think about it?

22 MS. ARANOFF: It is. I mean we think that the
23 Commission should make a decision about whether or not 72%
24 and 65% silicomanganese are interchangeable, based on the
25 weight of the evidence in the record which includes a

1 variety point.

2 COMMISSIONER KIEFF: Gotcha. And then similarly
3 on the inferences that Dr. Kaplan was drawing about, let's
4 call it the rational self-interest of the multi-national,
5 they, as representatives of the domestic business entity,
6 have provided testimony under oath, we could credit that
7 testimony as True with a capital T, but still decide your
8 way on the core issues that the Commission has to decide
9 about how pricing is operating, is that correct?

10 DR. KAPLAN: Absolutely. And I would -- my
11 discussion of -- and I stated it during my testimony -- of
12 the multi-national relationship, was more to offer an
13 explanation of possible facts, a possible explanation which
14 I think is correct, of the facts which speak for themselves,
15 which would lead to a negative determination.

16 Just looking at the pricing issues, the
17 alternative products, the BRATS issues, the size of the
18 imports, but I did want to give a coherent explanation for
19 the whole record. So that is not a foundation of our
20 argument. It's an explanation of what happened in the
21 market.

22 COMMISSIONER KIEFF: Thank you, and I see that
23 my time is up. Thank you.

24 CHAIRMAN BROADBENT: Commissioner Schmidtlein.

25 COMMISSIONER SCHMIDTLEIN: Thank you. All

1 right, this first point may be sort of a technical point,
2 but -- and Ms. Aranoff, maybe this is for you -- this point
3 about volume and the argument that it's not significant
4 because the imports from Australia were just replacing what
5 was eliminated by the closure in South Africa.

6 Is that an argument that really goes to
7 causation? In other words, not a question of whether we
8 would find volume significant, but whether or not there's a
9 causation element to it later in impact?

10 And I thought that, you know, these arguments
11 have been made recently in the paper cases, like
12 supercalendered, uncoated paper -- you know, similar
13 argument about this and the opinion on uncoated paper's not
14 out yet, but supercalendered is, so I don't know if you're
15 familiar with that and what the Commission did there.

16 MS. ARANOFF: I hadn't read that.

17 COMMISSIONER SCHMIDTLEIN: Okay. But in terms
18 of the question of -- is it your position we should be
19 considering that in determining whether we find the volume
20 to be significant under that part of the statute?

21 MS. ARANOFF: I think that there are multiple
22 pathways that the Commission could take in how you want to
23 treat that information. There have been decisions in the
24 past and we could come up with some in our posthearing
25 brief, where the Commission has said, okay, we find that in

1 absolute terms the volumes of imports increased, but we
2 don't find that volume to be significant, because it didn't
3 have price effects or because, you know, it didn't have an
4 adverse impact on the domestic industry.

5 There are also cases where the Commission has
6 done, as you've suggested, and said, well, we do find the
7 volume of imports to be significant, but we find that there
8 haven't been adverse price effects or we find that there are
9 elements of causation missing, and so, you know --

10 COMMISSIONER SCHMIDTLEIN: Okay, well maybe in
11 the posthearing you can look at those cases. I'd invite the
12 petitioners to do the same and in particular, the paper
13 cases that we've had before us. The uncoated should be
14 coming out soon. I don't know the date, but --

15 All right, I wanted to follow up on this
16 question about the difference between high- and
17 standard-grade. Maybe Mr. Kylander, it was in your
18 testimony where I think you might have addressed this.
19 Maybe both of you. But either one -- if you could tell me.

20 So I understand that your all's position is
21 there's not a premium because it's based on the content of
22 the magnesium and therefore when you price it per unit, if
23 you will, there's no premium. And so my question is, if
24 someone's going to purchase higher grade, instead of
25 standard, then would you be able to purchase less of that to

1 do the same job that you would otherwise purchase standard
2 for, but in a higher quantity?

3 MR. KYLANDER: Yeah, Carl Kylander. Yes, that's
4 exactly right.

5 COMMISSIONER SCHMIDTLEIN: That's right? Okay.

6 MR. KYLANDER: So you're making that computer
7 program with your recipe in it. IF you have the 72%
8 product, you adjust the recipe to add a little bit less of
9 that --

10 COMMISSIONER SCHMIDTLEIN: You don't need as
11 much? Okay. So it is, okay. So I just wanted to make sure
12 that was correct. That I understood that correctly.

13 And you all noted that there's been an increase
14 in the use of this higher grade magnesium product over the
15 POI and so have you all had customers -- and I apologize if
16 this has already come out in the testimony -- have you had
17 customers switch from standard- to higher, and then switch
18 back? I mean, how often does that happen? Who are these
19 people that are now purchasing this higher grade, as opposed
20 to the standard grade?

21 MR. KYLANDER: Yeah, so Carl Kylander again.
22 Yes, I personally experienced customers that we lost because
23 they switched to Felman and a percentage of that would've
24 been presumably high-grade and some of it standard, or 72
25 and 65. So yes, I have personally witnessed that. It is

1 very broad-based, across the steel industry.

2 You look at the numbers, the high-water mark for
3 imports of Georgian product are over a hundred and forty
4 thousand tons in a four hundred thousand ton market. That's
5 like 35% market share, overwhelming 72% grade. So it's just
6 not a couple of specialty mills here that found a way to use
7 this product. It is used extensively across the steel
8 industry.

9 COMMISSIONER SCHMIDTLEIN: All right, thank
10 you. All right, I want to switch gears a little bit, to
11 Dr. Kaplan. And the question about what's causing prices to
12 move in this case. And I'm trying to, I guess, square the
13 testimony that was cited from the staff report and I think
14 everybody agrees with, that when the volume from Australia
15 and then South Africa left the market in 2012, this caused a
16 spike in the prices, right?

17 And this is a commodity-like product, it's price
18 sensitive, so can you explain to me why it isn't that when
19 volume starts coming back into the market, that's not having
20 an effect on the price?

21 DR. KAPLAN: Sure. I think one of the big
22 things that happened with the South African closure and I
23 think the important thing to note is the price spike was
24 caused by the South African closure, not Australia, which
25 wasn't announced yet, is that was unexpected. And people

1 were concerned about a supply disruption.

2 And you could look at any kind of series of
3 products. Let me give you the sugar case. Unrelated, but
4 there was a hurricane and there was a big price spike
5 because people who think they could get into New Orleans to
6 drop off the sugar and then it got fixed and then the price
7 came back down. Something unexpected happened.

8 So, that's what happened in South Africa and
9 then everyone's scrambling until they, because of the
10 reliability issue until the supplies sort out and then
11 things get back to normal.

12 I'll give you a counterexample. Is that
13 Felman's closing down, but they build up a big inventory,
14 and they assure everybody that they have supplies, and that
15 they have -- at Georgian facility and that they're a trader.
16 So you don't see spikes because it's like, everyone goes,
17 oh, what's going on, and they go, okay, I can kinda see that
18 this thing is covered.

19 So if this was some kind of permanent effect,
20 you would have seen that price transmitted over a long
21 period of time because it was transitory, even though it was
22 a permanent closure, it was transitory in the sense, was
23 people didn't expect it to come and then organize themselves
24 in a way that they realize it wasn't a problem.

25 COMMISSIONER SCHMIDTLEIN: Right. I guess what

1 I'm trying to understand or reconcile is, the idea that we
2 all agree that the volume affected the price in 2012 or the
3 perceived volume -- I guess you could say -- and that it
4 caused the price spike. And if I understood your all's
5 case, your argument is, prices are being driven by demand in
6 this market, and not affected by any volume of product
7 coming from Australia. Right?

8 DR. KAPLAN: I would say that it's not being
9 affected by the volume from Australia because there are
10 sources of supply to supply the U.S. market from multiple
11 sources. So people don't see any big supply disruption
12 because the biggest producer's Georgia, and the second
13 biggest producer that's not covered is South Africa and then
14 if you look at all the other people that mentioned, remember
15 when we said we got ten bids for every contract, there's all
16 these other nonsubject guys. So I don't see a quantity
17 effect because that stuff is going to be picked up by
18 others. And so I don't see how it would affect prices.

19 COMMISSIONER SCHMIDTLEIN: Okay. So what is
20 affecting prices then? Just the perception of demand?

21 DR. KAPLAN: Well, I think demand is falling and
22 I think there's changes in the prices of the inputs too,
23 right? Because commodity prices are falling? I think the
24 inputs to make silicomanganese have fallen. Could speak
25 with these gentlemen and that's going to affect the supply

1 side, and then there's, on the long product side, demand is
2 falling and that's going to affect prices as well.

3 COMMISSIONER SCHMIDTLEIN: So can you -- and
4 maybe you can't talk about it here, but can you talk about
5 then what's causing the price fluctuation over the POI
6 because when you look at, you know, the aggregated pricing
7 products in your slide, Slide 9, you see an increase in
8 prices over a certain period. And so if demand is falling
9 according to all, because of the demand for steel products
10 is falling, I guess? Right.

11 DR. KAPLAN: Right, I will personally --

12 COMMISSIONER SCHMIDTLEIN: Price of commodities
13 is falling, why is this going -- what's causing that change?
14 Is it volume of something? You know --

15 DR. KAPLAN: I will look at the supply and
16 demand factors on a quarterly basis to see how they're
17 moving around, but you know, that's what's going to drive
18 the prices and I think, you know, you should remember as
19 well that this is a product that's traded worldwide.

20 So these are our issues in markets worldwide for
21 both inputs and for demand that are having some effects on
22 the U.S. market as well. So I'll spend time trying to parse
23 that, but you're really kind of, like, could think of it as
24 like a regression analysis.

25 There's, like, there's prices being affected,

1 there's demand in different places of the world. And those
2 things change, quarter by quarter, month by month, and will
3 affect prices. So I will try to parse that out for you.

4 COMMISSIONER SCHMIDTLEIN: Okay. All right.
5 Thank you. My time is up.

6 CHAIRMAN BROADBENT: Ms. Aranoff, I know you
7 mentioned this in the opening statement, but can you just go
8 over again for me why we should be considering the
9 pre-period of investigation market share trends?

10 MS. ARANOFF: Sure, I'd be happy to do that. I
11 think Petitioner made the point at some point this morning
12 that, you know, they can pick whatever period they want to,
13 you know, to have the period of investigation. They can
14 file the petition whenever they want, and of course, that's
15 absolutely true.

16 The point that we were trying to make was
17 fortuitously the beginning of 2012 is very abnormal period
18 for explaining what's been going on in this market.
19 Ppetitioner also made the point that had respondents wanted
20 to, we could have asked the Commission to have a different
21 longer period of investigation to capture data for an
22 earlier period, and so I did want to touch a little bit on
23 why we didn't do that. We certainly thought about it.

24 The Commission very rarely does that. It's a
25 burden on the parties, you know, not least of which our own

1 client to go back in the records and produce, you know, data
2 for that period, so we did think about it.

3 But we came down to the fact that the Commission
4 has, in a number of cases, and we cite them in our brief,
5 said that doesn't need to expand the period of investigation
6 in situations like this, that it can consider as a condition
7 of competition, what was going on in the market immediately
8 before the beginning of the period of investigation, if that
9 is helpful. And indeed we would argue necessary to really
10 understand, you know, the point at which the Commission's
11 data begins and the story that it's telling. So that's, you
12 know, that's where we came out here.

13 CHAIRMAN BROADBENT: Okay. Mr. Kaplan?

14 DR. KAPLAN: Commissioner? I just want to
15 emphasize that the story of about the replacement is
16 information for the Commission to consider for context.
17 That is not a requirement for a foundation of our case.

18 It's not -- you don't have to look at the
19 replacement of Australia, of South African -- the incomplete
20 operation of Australia from South Africa to find negative.
21 We are the third biggest importer, we have a story on
22 pricing, we have a story of the U.S. industry being able to
23 produce and instead becoming the largest single importer.

24 So this is context. But, it's important context
25 for a couple of reasons. First, the clients were mystified

1 as to why we're here because of that, because they left the
2 market and they wanted us to express that to you, because it
3 is important context. You know, the before and after.

4 And the second reason is, it does explain that
5 we created space in the market under the period of
6 investigation as our total imports to the United States
7 declined, but it's not a necessary condition at all to form
8 the basis of what we believe is the quantity price and
9 effects analysis that would lead to a negative
10 determination.

11 CHAIRMAN BROADBENT: Okay, thank you. This
12 might be for Mr. Tidey or Mr. Kylander. What is TEMCO's
13 project for 2016 of silicomanganese exports to the United
14 States, compared to 2013 and 2014?

15 MR. TIDEY: Rod Tidey, TEMCO. We are
16 projecting, I think, I pretty much estimated this earlier.
17 We were taking a reduction, you know, of silicomanganese
18 exports to the States in 2015. That's our forecast at this
19 point. And given the closure of one of our furnaces in
20 December, we'd expect that that would have an additional
21 impact and reduce our imports slightly further in 2015, late
22 '15, sorry, '16 and '17.

23 CHAIRMAN BROADBENT: Okay, thank you. Mr.
24 Kaplan, how do you explain that both the domestic industry
25 and nonsubject imports lost market share from 2012 to 2013?

1 DR. KAPLAN: I think what you're saying is the
2 replacement and the shutdown in South Africa. So, you know,
3 that's kind of an artifact of the way the company decided to
4 supply the U.S. with less total silicomanganese, but more
5 from Australia.

6 CHAIRMAN BROADBENT: Ms. Aranoff, when is it
7 appropriate for us to look at AUVs? Can you talk a little
8 bit generally about when they are important in an
9 investigation and when you know how to be careful?

10 MS. ARANOFF: In general, the Commission has
11 always said that it prefers not to look at AUVs because the
12 Commission's collected pricing data are at a much greater
13 level of specificity in terms of apples-to-apples
14 comparison.

15 Sometimes the Commission, when the Commission
16 doesn't have good price comparisons, it has turned to AUVs
17 and said we have nothing else, maybe we can look at these.
18 And even then, the Commission often hesitates to do that.

19 In this case, the Commission has collected
20 pricing data on four products. We think that it covers a
21 very large amount of the total volume in the U.S. market.
22 The product definitions are quite precise. The largest
23 product was the one that Petitioners specifically asked the
24 Commission to collect, and it compares to the product--the
25 pricing information the Commission has collected in all its

1 past silicomanganese cases.

2 So, you know, we're aware of the criticisms that
3 are out there, but, you know, we think that the Commission
4 really doesn't need to go past the pricing data, the
5 quarterly pricing data that it collected in this phase to
6 look at average unit values.

7 The second point to make about that would be that
8 the average unit value comparison that Petitioners have
9 suggested is not even the one that the Commission would
10 normally use, which as Dr. Kaplan and Commissioner
11 Schmidtlein have discussed, would be a comparison at the
12 same level of trade, U.S. producers shipments versus U.S.
13 imported shipments to their customers.

14 The comparison that Petitioners have asked you to
15 look at is at two different levels of trade, looking at the
16 import values. So, you know, even if you were going to
17 consider average unit values in this case, you would
18 consider the version of that comparison that Dr. Kaplan had
19 on his chart and not the version that Petitioners have
20 suggested, which would be completely unprecedented.

21 CHAIRMAN BROADBENT: Yeah. Thank you for that
22 definition. It was clear.

23 After TEMCO's and Samacor's South Africa facility
24 was shut down and shuttered, where did U.S. customers that
25 had historically sourced from these facilities get their

1 silicomanganese? Was it uniformly one place?

2 MR. KYLANDER: To the extent that we know, we only
3 know that they got a portion of what we used to supply in
4 total from Australia. You saw the imports go up from
5 Australia. Where the rest of it came from, we only know it
6 wasn't us. I can't speculate as to exactly which of the
7 other providers of that product benefitted from our exiting
8 the market. We only know, not us.

9 CHAIRMAN BROADBENT: Okay. And how did TEMCO get
10 the U.S. customers when it restarted its plant?

11 MR. KYLANDER: I'm sorry?

12 CHAIRMAN BROADBENT: Where did TEMCO get U.S.
13 customers when it restarted its plant? How did it get--

14 MR. KYLANDER: We already had them. I mean, we
15 operated a centralized marketing organization globally, and
16 we simply decided whether product came from South Africa or
17 Australia mostly based on logistics. So the customers that
18 fed into the--we already had them. Those are existing
19 customers.

20 CHAIRMAN BROADBENT: So they were coming--it was
21 coming in in exactly the same price?

22 MR. KYLANDER: We used the same formula to price
23 South African product as Australian product.

24 CHAIRMAN BROADBENT: Okay.

25 Alright, I think I have--I will yield now to Vice

1 Chairman Pinkert.

2 VICE CHAIRMAN PINKERT: Thank you, Madam Chairman.

3 I just have a couple of follow-up questions.

4 First of all, I want to read to you a portion of
5 Commissioner Pearson's dissent in a 2012 sunset review and
6 ask you if you agree with him. Quote:

7 "Decision makers in the closely related entities"
8 parenthetical coming from me, that include Felman, end of
9 parenthetical, "would be unlikely to act in such a way that
10 imports from any of its foreign operations reach a
11 significant level likely to cause injury to its operations
12 in the U.S. market."

13 MR. KAPLAN: There are--there is a half of a
14 library full of theory of multinational enterprises. And
15 what it will tell you is that subject to legal and
16 logistical and certain historical or cultural constraints,
17 they're going to maximize profits for the enterprise.

18 And the notion that you go buy three facilities
19 in three places and maximize profits independently kind of
20 defeats the purpose of becoming a multinational enterprise.
21 The idea is to, is to save logistical costs, production
22 costs, transaction costs, translational costs, in a way that
23 maximizes the firm.

24 And you see acquisition sometimes and what do
25 they do? The first things they do is they shut down a bunch

1 of places because there's redundancies.

2 So you operate as a multinational enterprise to
3 maximize the value of the enterprise as a whole. It is a
4 rare exception and an odd circumstance where you would--and
5 you would need a reason for why you would not do that. So I
6 think that Commissioner Pearson got the economics of it
7 wrong, and I think I got a real lot of support from that in
8 the economics profession and finance profession, that you
9 operate in a way to maximize the long-term discounted cash
10 flow of the enterprise.

11 MS. ARANOFF: And, you know, with all due respect
12 to all of our friend former Commissioner Pearson, I think it
13 goes back to what I said in my opening statement, that you
14 don't even have to reach these issues about multinational
15 enterprises to reach a negative determination in this case.

16 Because if you just look at the volume and price,
17 and you say to yourself there's just a lack of evidence of
18 causation here, it doesn't tie together, that's enough right
19 there. You don't need to have reason to explain, well, if
20 that's not what caused whatever ails the domestic industry,
21 the Commission is not required to know, well, what did?

22 But if you want to know what did, we think that
23 this is what the record shows.

24 VICE CHAIRMAN PINKERT: Thank you. And my last
25 question may touch on some very sensitive matters, and it

1 may not lend itself to a full answer in a public hearing,
2 but given that your slide says GAA's interests lie with its
3 foreign operations, I'm wondering what you're saying
4 implicitly, if anything, about why this Petition was filed
5 in this investigation?

6 MR. KAPLAN: Well, I'm not going to speculate. In
7 my experiences working with petitioning firms, they
8 typically do not file against countries where they have
9 related parties.

10 I think the Commission has recognized that in
11 certain cases, when considering causal effects. There was
12 one case a long time ago where a domestic producer who was
13 shutting down its facility and moving to another country
14 filed against a third country, so that it would only have
15 access to the United States and was no longer a domestic
16 producer.

17 The Commission saw through that one. But there
18 are a variety of reasons when there are joint ventures, or
19 you have facilities in another country, that you don't file
20 against that country. And I would leave it to you to
21 imagine what the room would be like as people discussed
22 that. You know, do you file against yourself? Do you, you
23 know, given common ownership, are there reasons for that?
24 If there's two producers there, how do you deal with it?

25 But that's also, once again, part of being a

1 multinational enterprise, is that you're managing your
2 worldwide profitability under all these various constraints.

3 VICE CHAIRMAN PINKERT: And I recognize that
4 you're not asking for the exclusion of somebody from the
5 domestic industry, but nevertheless where your interests lie
6 is part of that analysis. And I'm just trying to understand
7 if you're saying anything about what's really going on here.

8 And if you can't answer that in the public
9 session and you want to answer it in the post-hearing,
10 that's fine.

11 MR. KAPLAN: Yeah, I'm not going to say anything
12 here at all.

13 MS. ARANOFF: The answer is, you know, we don't
14 know any more than you know about why Petitioners filed this
15 Petition against Australia.

16 VICE CHAIRMAN PINKERT: Thank you.

17 CHAIRMAN BROADBENT: Commissioner Williamson.

18 COMMISSIONER WILLIAMSON: Just to follow on that
19 line of questioning, Mr. Kaplan you talked about
20 multinational enterprises and maximizing profits, but I
21 don't think you ever addressed the question of--and I
22 realize there were changes in corporate ownership and all
23 that during that period--why Felman invested in the West
24 Virginia plant in the first place, if it had all these
25 interna--other interests?

1 MR. KAPLAN: Well, I mean you make forecasts of
2 what you think the world is going to look like. And then
3 you operate how the world actually ends up looking.

4 So, you know, people make investments under
5 certain anticipated prices, certain anticipated quantities,
6 based on what they thought the overall economy was going to
7 do and the world economy was going to do.

8 And then when things turn out differently, you
9 adjust to maximize your profits. And what you're seeing in
10 the commodities world in general, right, people are trying
11 to figure out which facilities to close, for how long.
12 There are real, real issues in a lot of these commodity
13 products, and metals and mineral products going on across
14 the world.

15 But the original investment was made because you
16 thought the demand was there to effectively manage these
17 things. And when outside demand falls, you're making
18 decisions to maximize the value of the firm.

19 COMMISSIONER WILLIAMSON: But is that--they
20 presented a theory on why they thought it still made sense,
21 in the sense that you have the 68--you know, domestic end is
22 making standard grade, and they're going to bring in the
23 high from overseas. I mean, that's the current theory. Is
24 that not an unrealistic theory?

25 MR. KAPLAN: I think it's unrealistic because I think that we

1 heard for the first time today that there are these big
2 differences between 72 and 65. And that's kind of a new
3 story. And, you know, certain people want this, and the
4 products don't interchange. And I think they need a story
5 like that to explain why Georgia is going up, and those
6 furnaces aren't operating.

7 But I think once you see that--and we'll provide
8 more evidence that these things are interchangeable at the
9 mill level, that the story comes down to what's the best way
10 to maximize profits, given what's going on to world demand
11 and demand in the United States.

12 I hope that was helpful.

13 COMMISSIONER WILLIAMSON: Except, I guess if you
14 look at the trend as to percentage of people using the high
15 manganese content, the higher content, that doesn't
16 necessarily say it is unrealistic.

17 MR. KAPLAN: Well, it's--

18 COMMISSIONER WILLIAMSON: I mean I know there's
19 movement back and forth, but there are certain trends.

20 MR. KAPLAN: I will say it is consistent with two
21 stories, not knowing the facts. One is there's some special
22 demand for 72 that's increased over time for some reason.

23 The other part is, these products are the same
24 and could be used, adjusted for, you know, the content
25 price, and that they'd prefer to send in the 72 because it

1 maximizes firm profits if the products were very
2 interchangeable.

3 I think that's where the issue has been joined.
4 So I don't think it's a--I think they came up with a story
5 that could, you know, be true. I don't think it is. And I
6 think we've demonstrated it with some of the evidence, and
7 we will provide further evidence to that effect.

8 COMMISSIONER WILLIAMSON: Okay. Thank you.

9 MS. ARANOFF: If I could add, the one thing that
10 Dr. Kaplan can't say publicly, and that is part of the
11 answer to your question, has to do with pricing. And we
12 will put that piece into our post-hearing brief.

13 COMMISSIONER WILLIAMSON: Okay. Thank you.

14 Mr. Kylander, and you may have to do this
15 post-hearing, has your firm ever sold silicomanganese in the
16 U.S. at prices above those quoted by Ryan's Note? And if
17 so, can you describe the circumstances and how often this
18 happens, and the profit?

19 MR. KYLANDER: We would consider that to be
20 confidential information--

21 COMMISSIONER WILLIAMSON: Understood. And you
22 could maybe also include the approximate percentage of sales
23 when you do address it post-hearing.

24 Thank you. On page 71 of Respondents Prehearing
25 Brief, you state that the U.S. is not a major target growth

1 market for TEMCO. Has this always been the case? Or is
2 this a new strategy on the part of TEMCO or its parent
3 company?

4 MR. KYLANDER: I would say that TEMCO is the only
5 facility we have left, so we had supplied the quantity of
6 product in the United States that makes the most sense for
7 the facilities. So bringing--you know, there's no reason
8 that the company, for the company to change that strategy.

9 COMMISSIONER WILLIAMSON: But--and this you may
10 want to address post-hearing--is not the major target for
11 the growth of the company? What was the basis for that
12 statement? And is this really a new strategy?

13 MR. KYLANDER: I think we need to answer that
14 post-session brief.

15 COMMISSIONER WILLIAMSON: Yes. And so my
16 follow-on question was, if this is a new strategy when was
17 the decision made to do that.

18 Okay, other than costs attributable to the loss
19 in production, are there any actual costs associated with
20 converting the furnace used to produce ferromanganese to
21 silicomanganese?

22 MR. TIDEY: Rod Tidey, TEMCO. I guess for us, I
23 mean firstly just a couple of things that have resonated
24 from the testimony of Mr. Ohlinger. You know, the way he
25 described his facility is not unlike some of the issues that

1 we face.

2 We are in a first-world economy. We're having
3 high wages, and we're also, you might not know, but Tasmania
4 is dominated by a green parliament. So environmental issues
5 are very, very close to the heart of our governing bodies,
6 and we incur substantial costs around environmental matters.

7 Turning to your point around conversion, you know
8 I guess conversion's got two issues. Firstly, there's a
9 cost of actually doing the conversion. There's a period
10 there where as you change products there are some costs that
11 you incur at that point.

12 The other thing that's particularly relevant for
13 TEMCO, we operate a duplex process which I think we've
14 described in our previous responses. And the issue that
15 comes out of that is that our whole operating regime changes
16 if we convert one of our ferromanganese furnaces to make
17 additional silicomanganese.

18 And at the end of the day, those additional costs
19 from doing that will suboptimize the whole plant. So we are
20 never like to be motivated unless there is a massive price
21 difference between silicomanganese and ferromanganese, the
22 likes of which we haven't seen for many years. We are not
23 at all motivated to switch from one of our ferromanganese
24 furnaces to create additional silicomanganese capacity. It
25 would increase the plant's overall cost and reduce its

1 overall profitability.

2 COMMISSIONER WILLIAMSON: I mean are these plants
3 sort of designed to operate the way it is?

4 MR. TIDEY: It's not so much the design as the
5 components. But in essence the raw material mix that we've
6 got for silicomanganese production includes some components
7 of ferromanganese slag. So if we're not making ferromanganese
8 slag, then we have to buy additional manganese units. It's
9 quite a complicated I guess scenario. But I guess what I
10 can say is that the time has shown--in the time that I've
11 been there--time has shown that the optimum configuration
12 for the furnaces is running two furnaces with ferromanganese
13 using the subsequent feed and having a very stable
14 silicomanganese production.

15 COMMISSIONER WILLIAMSON: So I guess my next
16 question was going to be: What would it take to switch from
17 ferromanganese--oh, you mentioned quite a dramatic shift in
18 the relative prices.

19 MR. TIDEY: Absolutely. Yes.

20 COMMISSIONER WILLIAMSON: Okay, thank you for
21 those answers. Great. Thank you.

22 CHAIRMAN BROADBENT: Commissioner Johanson?

23 COMMISSIONER JOHANSON: Thank you, Commissioner
24 Broadbent.

25 The next question is almost the same question as

1 was asked by the two Commissioners who spoke just before me,
2 Commissioner Pinkert and Commissioner Williamson, but I had
3 to ask it as well because it's just a major issue. So my
4 apologies if I'm repeating it, but I kind of feel obligated
5 to do this.

6 Felman argues at pages 67 and 68 of its brief
7 that it would be absurd to think that Felman would have
8 invested millions of dollars in its U.S. operations in
9 recent years only to catabolize its U.S. sales with imported
10 manganese from Georgia.

11 How do you all respond to this point? And to the
12 testimony from the first panel that the strategy has been to
13 produce as much as possible at the West Virginia plant?

14 Ms. Aranoff:

15 MS. ARANOFF: Dr. Kaplan will have I think a
16 detailed response. He's the one that responded before, but
17 Felman did testify to the Commission today that it is more
18 efficient to produce the 65 percent in the U.S. plant and
19 the 72 percent in the Georgian plant.

20 They then--it is true on the facts that in the
21 middle of 2013 they closed down the U.S. plant and they said
22 they didn't let down any of their customers, so they used
23 some--what they had left over of their inventories, and then
24 they began producing 65 percent at the Georgian plant.

25 So they had customers with contracts for which

1 the prices had already been negotiated, but instead of
2 producing that product in the U.S. plant, which they told
3 you was the most efficient place to produce that product,
4 they decided to produce it in the Georgian plant, which they
5 told you was a less efficient place to produce it, and pay
6 the ocean freight cost to get it to the U.S.

7 Can I explain that to you? No. But those are
8 the facts in front of the Commission, and I will allow Dr.
9 Kaplan to go from there.

10 MR. KAPLAN: Please refer to slide 31. And I'd
11 like you to take a look at the last two lines, which are
12 investments and valuation.

13 So the question you asked is: Why would they
14 invest here and then decide that they aren't going to
15 operate it fully? And I would say, take a look at the
16 comparative investments and valuation there. And if you
17 have the problem of having decreased demand, and figuring
18 out where you're going to produce, you know I think it's
19 public.

20 I mean, \$76 million of investments in the POI
21 over there, and \$186 million valuation 10 years ago, where
22 the valuation in the United States was \$20 million, and you
23 can see the investment number.

24 So you could kind of flip the question and ask:
25 Why would they produce it here and not in Georgia, given the

1 investments in Georgia? And I think, you know, that would
2 be a question that would be more of a head scratcher because
3 the valuation was ten times higher.

4 So, you know, in the best of all worlds demand
5 would be going through the roof and we wouldn't be here.
6 But it hasn't, and we are, and we're the third biggest
7 importer who has cut back shipments to the United States,
8 and we don't think we're causing a problem based on the
9 record.

10 COMMISSIONER JOHANSON: Yeah, this is not a
11 straightforward case. I mean there's a lot of issues we
12 have to look at. But sticking on the point you just made
13 about investments here in the United States by Felman, I
14 mean this is an old plant. They put a lot of work into
15 this. We heard Mr. Ohlinger speak this morning, I think it
16 was his great uncle that worked there. I mean this plant
17 has been around for awhile.

18 So it's hard to imagine that they would spend the
19 money by purchasing this old plant and bring it up to be
20 able to be productive, and then have the strategy to bring
21 in this product from let's say from Georgia to bring into
22 the market and to displace conceivably what they're
23 producing here.

24 MR. KAPLAN: I--you know, when everything was
25 originally purchased and invested, you know, that might not

1 have been the idea. So the question is, when you're
2 stressed what do you do? And their choice appears to be,
3 from the record evidence, increase imports from Georgia and
4 not produce as much in the United States.

5 I mean, that's factual. So I'm trying to give
6 you an explanation of why they did that, but that's just the
7 fact. That is what they did. Georgia imports are way up.
8 Furnaces are way down.

9 So the question to ask them is: Why didn't they
10 produce all this stuff up here and not import stuff from
11 Georgia, because they control both. And their answer has
12 been: Well, that's a different product.

13 I don't think it is a different product, if you
14 look at the customers and everything that will show. And so
15 what's the next explanation if it's not a different product,
16 which I don't think holds? It's that it's a multinational.
17 It's relatively better for them to do it from there.

18 And one of the things you could look at is the
19 investment they made over there and over there. And they
20 say, well, if we've got to cut bait where's it going to be?
21 And it's like, well, it's this older plant in the United
22 States we made a small investment in, or this giant older
23 plant in Georgia we made an enormous investment in.

24 And, you know, that's kind of the way I see it
25 without, you know, discovering internal documents. But it

1 is certainly consistent with the way multinational
2 enterprises operate, and it is consistent with the facts
3 that are undeniable. They are undeniable facts. They shut
4 down stuff in the United States. They increased stuff from
5 Georgia.

6 And then they're saying it's us that caused the
7 problem, even though you've seen the pricing data, and
8 you've seen the quantities from BHP. We don't think that's
9 right.

10 MR. SZAMOSSZEGI: Just to add on to that, Andrew
11 Szamoszegi -- one thing that we consider is that the
12 Georgian facilities aside from being quite large have other
13 alternative markets that are quite close to that that they
14 choose to send their product to the United States and in
15 fact according to the contrite data, that's their largest --
16 the U.S. is their largest market by far tells you something
17 about what they think their returns are to sales here from
18 Georgia relative to what they would get from Felman.

19 COMMISSIONER JOHANSON: Alright thanks and my
20 apologies but I am going to continue along this theme. It's
21 pretty prominent in your brief. You have argued that Felman
22 has a veto power over Felman's trading imports from overseas
23 affiliates and its parent company serves U.S. market
24 principally through imports to its foreign production
25 facilities and that is your brief at page 63.

1 What concrete evidence might you have to rely
2 upon this for the proposition that -- for the proposition
3 that GAA is maximizing overall profits to the detriment of
4 Felman production?

5 MS. ARANOFF: I think there's neither -- there's
6 a slight misquote there. Could you just give me the page
7 again?

8 COMMISSIONER JOHANSON: Respondent brief at page
9 63. I'm sorry you have -- that Felman production has no
10 veto, my apologies. I skipped a key word I think. Actually
11 what happened I circled it with the big black felt tip pen
12 which crossed out veto on here so Miss -- yes, my colleague
13 here Commissioner Schmidtlein verifies that mistake.

14 MS. ARANOFF: So this is based on you know the
15 argument from the new court case which is cited on that page
16 of the brief that you are pointing to. And that's the
17 situation involving Mettal Steel that had made the argument
18 to the Commission that the U.S. operation which was a very
19 large investment relative to the global footprint of the
20 company and that the U.S. company had veto power over the
21 quantity or volume of any imports that were coming in and
22 the Commission therefore declared itself satisfied that
23 imports which were low priced weren't in high enough volumes
24 to harm the company's investment and U.S. production would
25 not be made.

1 Both because of the relative sizes of the
2 investment and because of the veto power which was held by
3 the U.S. production operation and the point that we are
4 making on this page of the brief is that neither of those
5 things is true in this case. In this case you have a
6 situation where the investment in the U.S. is very small
7 relative to the size of the investment outside of the U.S.
8 and where the U.S. production facility, Felman Production
9 does not have veto power over imports coming in from
10 Georgia.

11 It is in fact hard to imagine on the facts that
12 are in front of the Commission that if Felman Production had
13 that power they wouldn't have exercised it at some point
14 during the period of investigation.

15 COMMISSIONER JOHANSON: Thank you Miss Aranoff,
16 my apologies for the confusing question. I'm a little
17 embarrassed by it but thanks for your response.

18 COMMISSIONER KIEFF: Thank you. Mr. Kylander and
19 Mr. Tidey can you talk a little bit about what you
20 understand the current world price to be doing, trending and
21 what do you anticipate for the short-term future or
22 medium-term future?

23 MR. TIDEY: I'm Rod Tidey, I'll have a go at
24 answering. I guess recently, consistent with the testimony
25 this morning we see that silicomanganese prices have trended

1 down for around 9 maybe more months and there is a bit of
2 speculation around where they are going in the future.

3 Month on month in recent times the prices
4 continue to decline so we changed to that.

5 COMMISSIONER KIEFF: And that's worldwide not
6 Australia?

7 MR. TIDEY: That's worldwide, I can't really
8 comment about the U.S. I have got no knowledge on the U.S.
9 market but that is what we are seeing in worldwide prices.

10 COMMISSIONER KIEFF: And Mr. Kylander you are
11 seeing roughly the same thing right?

12 MR. KYLANDER: Yes I won't comment on what the
13 future state might be but certainly we have seen a recent
14 downward trend.

15 COMMISSIONER KIEFF: And then just to ask your
16 team as I asked the morning team to please provide evidence
17 of your views in the post-hearing so that we have something
18 in the record to supplement the various statements.

19 MR. KYLANDER: Sorry, Carl Kylander again, I
20 would like just to add one thing to me the most accurate in
21 the last few weeks we have actually seen a really small
22 upward trend in the price of silicomanganese just recently.

23 COMMISSIONER KIEFF: Thank you very much that
24 concludes my questions for the panel.

25 CHAIRMAN BROADBENT: Commissioner Schmidtlein?

1 COMMISSIONER SCHMIDTLEIN: Alright I have a few
2 follow-up questions. At page 36 and 37 of the Petitioner's
3 brief they contend that even mixed underselling can have a
4 significant impact on the market when you are dealing with a
5 commodity like product which we are here. You all in
6 contrast contend that it is not significant can you respond
7 to their argument?

8 MS. ARANOFF: Well Petitioner's first argument is
9 of course that you should throw out the price data because
10 it is not favorable to them, or at least for the large
11 product. Their second argument is oh well even if it is not
12 favorable you should just say oh this is mixed underselling
13 it doesn't really tell us anything in particular.

14 I guess it depends on how you define the term
15 mixed. When I look at the pricing data I would not define
16 what it is showing as mixed because it is confidential I
17 really feel uncomfortable going into more detail than that
18 but it goes again to product 2 and how much of the volume of
19 the imports is accounted for there and what it quite
20 obviously shows about what is going on.

21 I simply wouldn't describe that as mixed.

22 COMMISSIONER SCHMIDTLEIN: Okay, this is maybe a
23 good segway to another question I had which is about how
24 prices are set in the market and Mr. Kylander you testified
25 about the indices and that in your view the indices prices

1 do not reflect or in any way influenced by AUV values
2 correct, that is what I understood you this morning.

3 MR. KYLANDER: I think what I actually said was
4 the price negotiating are not impacted by AUV values.

5 COMMISSIONER SCHMIDTLEIN: Okay and that is based
6 on your experience in having conducted price negotiations?

7 MR. KYLANDER: Over many, many years. Not once
8 have I had the purchaser bring it up in a negotiation, not
9 once.

10 COMMISSIONER SCHMIDTLEIN: And you have never
11 gone to check?

12 MR. KYLANDER: It's not a forward indicator, it
13 is a backwards indicator, so no.

14 COMMISSIONER SCHMIDTLEIN: And so what about the
15 indices when Ryan's notes or the other two put out their
16 prices I guess on a twice weekly basis you said, do you know
17 are they looking at -- do they look at that for any sort of
18 you know, in any way in putting out what they think the
19 price is at that moment?

20 MR. KYLANDER: According to published information
21 where they explain how they achieve their prices, no.

22 COMMISSIONER SCHMIDTLEIN: Okay is that on the
23 record? Do we have those types of --

24 MR. KYLANDER: Yeah I think they publish how they
25 come about their prices.

1 COMMISSIONER SCHMIDTLEIN: Okay well if they are
2 not could you put some of those on the record? I mean I
3 think that would be helpful. Do contract sales have a part
4 in the indices?

5 MR. KYLANDER: No contract price it is almost
6 always tied to the index so it can't --

7 COMMISSIONER SCHMIDTLEIN: But in their survey of
8 purchasers or importers they are not asking them to report
9 prices that were achieved in contract sales?

10 MR. KYLANDER: Not if it is tied to the index
11 itself, it would be a self-fulfilling process it would just
12 pile up --

13 COMMISSIONER SCHMIDTLEIN: Right, right.

14 MR. KYLANDER: So they don't include --

15 COMMISSIONER SCHMIDTLEIN: So it is just spot
16 sales?

17 MR. KYLANDER: It is just spot sales.

18 COMMISSIONER SCHMIDTLEIN: Okay. Alright thank
19 you for that. My last question has to do with an argument
20 that we see here often at the Commission which is the
21 correlation between the volume of subject imports and the
22 performance of the domestic industry. And so can you
23 respond to that point which is if you look at the big
24 picture, you know if you look at the C table and you look at
25 volumes it appears to be a correlation between where there

1 is an increase in volume and a decline in performance, a
2 decrease in volume and if you can't respond to that now in
3 the post-hearing brief that would be fine too.

4 MS. ARANOFF: I think we can start answering it
5 now.

6 COMMISSIONER SCHMIDTLEIN: Okay.

7 MS. ARANOFF: And finish in the post-hearing
8 brief. Now this is a textbook case of where correlation
9 does not mean causation. And there are two main reasons for
10 that. If you just look at say subject imports went up
11 between 2012 and 2013 and then you say hmm the domestic
12 industry is not performing too well during the period of
13 investigation that is correlation.

14 The problem is that you have to get to that
15 causal link between the volume of subject imports and what
16 was going on in the domestic industry and to do that you
17 would have to either be able to show that subject imports
18 took market share away from the domestic industry or that
19 there was an adverse price effect and we don't think that
20 the current record shows either of those things. The
21 domestic subject imports from Australia there's that gap in
22 the market in 2012 creates ground when subject imports from
23 Australia come back they are selling to the same customers
24 that they had in 2011 and there is still ground because they
25 never reached the level that South African plus Australian

1 have been before so mathematically it doesn't stand to
2 reason that they could have taken market share away from the
3 domestic industry.

4 Similarly on the price side and that's where we
5 get into the confidential information there is simply no
6 evidence that is the prices of Australian imports that are
7 driving what is going on with pricing in the U.S. market
8 that may have resulted in some harm to the domestic industry
9 during the period.

10 COMMISSIONER SCHMIDTLEIN: Dr. Kaplan?

11 MR. KAPLAN: We have discussed at least 5 or 6
12 things going on simultaneously over the period and you know
13 scientists, economists, biologists, anybody when there are 5
14 of 6 things going on they try to sort through them and
15 figure out the effects of each. They use pretty
16 sophisticated statistical techniques yet controlled
17 experiments you do that and you know I just -- I have just
18 stopped after 23 years of the Commission like you know a
19 lawyer walks in and opens a page and rumbles around to see
20 two numbers going in opposite directions and builds a case
21 around it.

22 We know there are 6 or 7 things going on and when
23 we know that all of them are having effects. There are
24 demand effects going on, there's stuff going on with the
25 price of inputs, there's stuff going on with related parties

1 in an economic sense not in a legal sense.

2 And to look at two things and then say well
3 here's our whole story as a kind of a causal statement from
4 a correlation is just kind of the worst kind of casual
5 empiricism that you know that we see. I mean you know I
6 don't know what we do about it -- I think you know we try to
7 look underneath it and I think that is what we try to do a
8 lot of but taking it by itself and not looking very, very,
9 very carefully underneath it, or if you are going to do it
10 in a mathematical or a statistical way, doing it correctly
11 by taking account of all of the factors that it's not going
12 to tell you a real lot, just in and of itself, so that is
13 all I can say to someone with my professor's hat on, you
14 know from the egg-headed place I come.

15 COMMISSIONER SCHMIDTLEIN: Alright thank you very
16 much, I don't have any other questions, thank you very much.

17 CHAIRMAN BROADBENT: Okay we talked about the
18 increase between 2012 and 2013 but what explains the trends
19 in that interim period to the second wave of subject imports
20 that was discussed this morning?

21 MR. KAPLAN: You know some of this is
22 confidential but I will take a shot. The first thing that
23 you should know is that if you look at full year data for
24 2015 that is now in that 2015 is lower than 2014 so for the
25 first 9 months 2015 is higher than 2014 but for the year it

1 has actually fallen because the market is in a pinnacle
2 place.

3 The second thing is that and I don't think I'm
4 saying let me think for a second, there are contracts in the
5 market and there are commitments and sometimes what happens
6 in the future is based upon information in the past. That
7 doesn't mean it is going to continue. It depends on lengths
8 of agreements and things like that and I hope I am not being
9 so cryptic as to say some people are nodding, some are not
10 but I hope that gets to it. So things have fallen in 2015
11 and some of the shipments reflect decisions made in the past
12 about contracts.

13 And you could even look at it in another way that
14 some of the contracts people have a choice and so if you are
15 a customer that happens to be doing better or worse than
16 another customer they might be asking for more. Under
17 contract you have to provide, it is no decision you are
18 making so there are all kinds of reasons that could explain
19 various changes.

20 I will say in the grand scheme of things that we
21 have evidence that it has to do with some people's internal
22 evaluation of what reliability of supply means and where you
23 get stuff from and that's as far as I can go without --

24 MS. ARANOFF: I would just add one more thing to
25 that. I think the panel this morning you heard testimony

1 about the way that most contracts are structured as a
2 percent of requirements or a range of volumes that the
3 purchaser can take. So then those contracts are reached for
4 a year or sometimes more than a year and then the price is
5 negotiated to be pinned to an index.

6 After that point what happens is in the hands of
7 the purchaser because the price formula is set, the range is
8 set and the purchaser decides how much they want to take in
9 the range.

10 CHAIRMAN BROADBENT: Let's see I wanted to in the
11 post-hearing I wanted to ask that you respond to the
12 Petitioner's arguments on product 2 on the merits. Please
13 respond to their statement that we would have expected to
14 see import prices for product 2 on the lower side of the
15 Ryan's notes index but that we don't actually see that, for
16 the post-hearing.

17 I think that's all I have got at this point, I am
18 going to yield to Commissioner Williamson. Did you finish,
19 okay, Commissioner Williamson? Okay anybody else?
20 Commissioner Johanson?

21 COMMISSIONER JOHANSON: Yes I have just one more
22 question. The domestic industry contends at page 81 of its
23 pre-hearing brief that the only market that is seeing more
24 favorable market conditions than the United States is China
25 and that TEMCO has stated that it does not ship to the

1 Chinese market and wouldn't have the ability to ship there
2 in the near future. How do you respond to this argument of
3 the domestic industry?

4 MR. ARANOFF: I think the consensus is that
5 TEMCO's internal assessment of alternative markets is
6 confidential and we will answer that if it is okay in the
7 post-hearing.

8 COMMISSIONER JOHANSON: That's fine, that
9 concludes my questions, thank you all again for appearing
10 here today.

11 CHAIRMAN BROADBENT: If Commissioners have no
12 further questions does the staff have any questions for this
13 panel?

14 MR. SZUSTAKOWSKI: Michael Szustakowski, Office
15 of Investigations, staff has no questions.

16 CHAIRMAN BROADBENT: Okay do the Petitioners have
17 any questions for this panel?

18 MR. LEVY: No questions Madam Chairman.

19 CHAIRMAN BROADBENT: Okay in that case I would
20 like to thank the panel for your testimony and I will
21 dismiss you now. With that we come to closing statements
22 and those in support of the Petition have one minute from
23 direct and five for closing for a total of six minutes and
24 those in opposition have zero minutes from direct and five
25 for closing for a total of five minutes.

1 As is our custom we will combine those, you do
2 not have to take all of your time. We will start with those
3 in support of the Petition. You can begin when you are
4 ready.

5 CLOSING REMARKS OF JACK A. LEVY

6 MR. LEVY: Thank you Madam Chairman. I don't
7 have a lot of time here but let me start off by answering a
8 question that was asked of the Respondent's panel this
9 afternoon which is why did Felman file a Petition? The
10 answer quite simply was to protect tens of millions of
11 dollars in investments in a plant that it made since the
12 acquisition in 2006.

13 To protect workers like Bobby Joe Olinger and his
14 hundreds of co-workers and the families in the Mason County,
15 West Virginia community and because they were injured. They
16 were materially injured and we respectfully submit that
17 Australia is to blame.

18 We heard from Respondents that the volume effects
19 in this case are not significant and we would tell you that
20 the volume effects in this case are extreme and significant,
21 both absolutely and relative to U.S. production and
22 consumption. Their key thesis is that when South Africa
23 closed its facility at the beginning of 2012 there was a
24 void and the BHP group had a god given right to reclaim what
25 they called our market share and darn it they were going to

1 reclaim that market share with Australian manufacturing in
2 2013 no matter what it was going to take.

3 And what it took was dumping, dumping at rates
4 estimated in the 12% range by Commerce which we respectfully
5 submit is not small in a market economy in a commodity
6 market. And that had the effect of displacing U.S.
7 producers in a most pronounced way, particularly in 2013, a
8 year when non-subject import volumes were shrinking as a
9 percent of U.S. consumption and in a period where U.S.
10 demand was growing.

11 You know if you talk about our market share I
12 would respectfully ask you to look at the U.S. industry's
13 market share in the C table in calendar year 2012 and look
14 at what happens to the U.S. industry's market share over the
15 course of the period of investigation and I would submit to
16 you that that is the our market share that matters under the
17 statute.

18 Now Respondent's also go to great lengths to talk
19 about non-subject imports and BRATS issues and we can see
20 that of course you must avoid the trap of erroneously
21 attributing to subject imports any injury caused by
22 non-subject imports, that is your job.

23 But we think that at bottom you got it right in
24 the prelim. In the prelim you determined we observed that
25 the record does not indicate a correlation between the

1 presence of non-subject imports in the market and the
2 domestic industry's condition when non-subject imports fell
3 in 2013 the domestic industry's output and financial
4 performance deteriorated.

5 And when non-subject import volume increased in
6 2014 the domestic industry's performance improved. We think
7 you have it exactly right and that analysis was based on the
8 view in the prelim that all non-subject imports were
9 fungible with U.S. production, with Australian production.
10 What we now have on the record are some very serious issues
11 concerning the limited interchangeability of high grade from
12 Georgia as compared with standard grade.

13 Now we have obviously heard a difference of view
14 as to the extent of that interchangeability but regardless
15 of the answer to that question and we will provide robust
16 details in our post-hearing submission the conclusion is the
17 same, which is that non-subject imports in no way break the
18 causal link and the volume effects on this record are clear.

19 Briefly with regard to price Mr. Kaplan and
20 others on the panel concede that in part the closure of the
21 South African plant to be sure but also the idle of the
22 TEMCO plant in 2013 contributed to a price spike in the U.S.
23 market but then they denied that there was any similar price
24 effect when Australian volume rushed into the U.S. market in
25 2013. That kind of a surge we submit has to have a price

1 effect. That is the way commodity economics work.

2 And they would embrace pricing product data that
3 show in certain products pervasive of overselling but in a
4 commodity market if you saw overselling of 50%, 25%, 10%
5 pick a number, does that make sense? Or look at your past
6 determinations where you found that persistent systematic
7 underselling is not what you would expect to find in this
8 market, in a commodity market, it should be mixed and the
9 margins of difference should be modest.

10 So the other point on price I think I was asked
11 it might have been Commissioner Williamson, I apologize I
12 don't remember who asked the question about post-petition
13 effects and we said that any post-petition effects in this
14 kind of an industry would come after the imposition of cash
15 deposits. Commerce's prelim was at the very end of
16 September for last week of the POI.

17 What we heard from Dr. Kaplan this afternoon was
18 that yes Australian volume surged during the interim period
19 for the first three-quarters of 2015 but that volume has
20 retreated in the fourth quarter such that 2015 is not the
21 high water mark anymore for Australian presence in the U.S.
22 market.

23 That sounds a lot like post-petition effects when
24 suddenly cash deposits kick in all of a sudden Australia
25 retreats from the market. This speaks to a cause and effect

1 relationship between the volume of Australian material in
2 the market and price. I realize I am running out of time
3 but I will just close on the issue of non-price factors.

4 There is a lot of innuendo about who is a
5 reliable supplier and who is not and to the extent the
6 finger is being pointed at Felman, Felman's position and it
7 is unqualified is that they are a reliable supplier, they
8 met all orders during the period of investigation and oh by
9 the way you heard from Eramet. Nobody has accused them of
10 unreliability. They had ample capacity, they were ready,
11 willing and able to supply at a non-dumped price and the
12 reason that they lost sales volumes and the reason Australia
13 was able to surge into the market and displace them was
14 because of price.

15 So we think this evidence is clear. We realize
16 there are some issues you need to sort through in the
17 post-hearing and we will work diligently to help bring those
18 issues into a clearer light so thank you very much for your
19 time and attention today.

20 CHAIRMAN BROADBENT: Thank you Mr. Levy.

21 CLOSING REMARKS OF SHARA L. ARANOFF

22 MS. ARANOFF: On behalf of Respondents, TEMCO and
23 Samancor AG thank you to the Commission and to the staff for
24 your time and attention today and throughout the course of
25 the investigation. We have just a few closing observations.

1 Petitioner has tried very hard to make this look
2 like a textbook material injury case but really the only way
3 they can do that is by censoring the textbook. Petitioner
4 would like it if the Commission ignored the reasons why 2012
5 is a misleading base year. Petitioner would like it if the
6 Commission did not examine the role of non-subject imports
7 in the U.S. market.

8 Petitioner would like it if the Commission
9 defined what a reliable domestic producer is based on how
10 much that domestic producer can import rather than produce
11 domestically in order to reliably supply its customers and
12 they would definitely prefer it if you do not look at the
13 global operations of much larger silicomanganese producers
14 that are related both to Felman and Eramet so please look at
15 the whole record and keep in mind of course that the U.S.
16 steel industry cannot operate without silicomanganese
17 imports.

18 In order to find that the volume of subject
19 imports is significant the Commission would have to ignore
20 BHP Billiton's long-term steady presence in the U.S. market,
21 the decline in combined imports from Australia and South
22 Africa during the POI. It's not really correct to say that
23 BHP Billiton was bound and determined to regain its market
24 share come hell or high water.

25 They were selling less total product to the same

1 customers at non-injurious prices. Similarly with respect
2 to post Petition and the 2015 supposed second wave surge,
3 remember that 2015 contracts were agreed to at the end of
4 2014 after that how much volume actually came into the U.S.
5 was the decision of the purchaser and it wasn't the
6 purchaser that was paying the duties those were paid by
7 Samancor so it doesn't add up, the story about post-Petition
8 effects.

9 In order to find adverse price effects the
10 Commission would have to disregard the price comparison data
11 which unfortunately we have not been able to discuss today
12 in even the most general terms. You would also have to
13 ignore the role of demand and of much larger volumes of
14 non-subject imports in placing downward pressure on prices
15 or find that price increases should have occurred despite
16 declining demand.

17 Petitioner's argument now is that you should find
18 that in fact there is not underselling there is just mixed
19 evidence. Well if there is mixed evidence by what theory
20 are subject imports which are in smaller volumes than
21 non-subject imports the thing that's placing downward
22 pressure on prices and causing price depression, it doesn't
23 really add up.

24 Only by setting aside much of the record could
25 the Commission conclude that subject imports have been more

1 than a de minimus cause of any injury that the domestic
2 industry may have suffered during the period of
3 investigation.

4 In turning to threat please ask yourselves this,
5 why would a company that is bent on maximizing production
6 and expanding U.S. market share close its South African
7 plant and then also shut down its Australian plant in whole
8 or in part, not once but twice during the period of
9 investigation?

10 While Petitioners have offered a lot of
11 speculation about what TEMCO might do in the future, none of
12 it is consistent with TEMCO's actions during the POI or with
13 the economics of TEMCO's plan. For all of these reasons we
14 believe the record supports a negative determination.

15 So thank you very much for your attention and
16 good evening.

17 CHAIRMAN BROADBENT: Thank you Miss Aranoff.
18 Again I want to express the Commission's appreciation to
19 everyone that participated in today's hearing. Your closing
20 statements, post-hearing briefs, statements responsive to
21 questions and requests of the Commission and corrections to
22 the transcript must be filed by February 19, 2016. Closing
23 of the record and final release of data to the parties will
24 be March 4, 2016. Final comments are due on March 8, 2016
25 and with that this hearing is adjourned.

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(Whereupon, the hearing was concluded at 4:57

p.m)

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Silicomanganese from Australia

INVESTIGATION NOS.: 731-TA-1269

HEARING DATE: 2-11-16

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

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: 2-11-16

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