

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of:  
MAGNESIUM FROM ISRAEL

) Investigation Nos.:  
) 701-TA-614 AND 731-TA-1431

Pages: 1 - 256  
Place: Washington, D.C.  
Date: Thursday, November 21, 2019



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1 THE UNITED STATES INTERNATIONAL TRADE COMMISSION

2 In the Matter of: ) Investigation Nos.:  
3 MAGNESIUM FROM ISRAEL ) 701-TA-614 and 731-TA-1431  
4 ) (Final)

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Thursday, November 21, 2019

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Main Hearing Room (Room 101)

11

U.S. International

12

Trade Commission

13

500 E Street, S.W.

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Washington, D.C.

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The meeting commenced, pursuant to notice, at

16

9:30 a.m., before the Commissioners of the United States

17

International Trade Commission, David S. Johanson,

18

presiding.

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1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners Present:

4 CHAIRMAN DAVID S. JOHANSON (presiding)

5 COMMISSIONER RHONDA K. SCHMIDTLEIN

6 COMMISSIONER JASON E. KEARNS

7 COMMISSIONER RANDOLPH J. STAYIN

8 COMMISSIONER AMY A. KARPEL

9 Staff:

10 WILLIAM R. BISHOP, SUPERVISORY HEARINGS AND INFORMATION

11 OFFICER

12 TYRELL T. BURCH, MANAGEMENT ANALYST

13

14 ANDRES ANDRADE, INVESTIGATOR

15 GREGORY LA ROCCA, INTERNATIONAL TRADE ANALYST

16 NATALIA KING, INTERNATIONAL ECONOMIST

17 EMILY KIM, ACCOUNTANT/AUDITOR

18 RAVI SOOPRAMANIEN, ATTORNEY/ADVISOR

19 NATHANAEL E. COMLY, SUPERVISORY INVESTIGATOR

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1 EMBASSY APPEARANCE:

2 Embassy of Israel

3 Washington, DC

4 The Honorable Yifat Alon Perel, Minister of Economic &  
5 Trade Affairs

6

7 OPENING REMARKS:

8 Petitioner (Stephen A. Jones, King & Spalding LLP)

9 Respondents (Jack A. Levy, Cassidy Levy Kent (USA) LLP)

10

11 In Support of the Imposition of Antidumping and  
12 Countervailing Duty Orders:

13

14 King & Spalding LLP

15 Washington, DC

16 on behalf of

17 US Magnesium LLC ("US Magnesium")

18 Cameron Tissington, Vice President of Sales,

19 US Magnesium

20 Susan Slade, Vice President of Marketing, US Magnesium

21 Christopher Amis, President, Local 8319,

22 United Steelworkers

23 Jennifer Lutz, Vice President, Economic Consulting

24 Services, LLC

25

-- continued --

1 In Support of the Imposition of Antidumping and  
2 Countervailing Duty Orders (continued):

3 Susannah Perkins, Staff Economist, Economic Consulting  
4 Services, LLC

5 James Gardella, President, Luxfer Magtech, Inc.

6 Bonnie B. Byers, Senior Trade Consultant,  
7 King & Spalding LLP

8 Stephen A. Jones, Stephen P. Vaughn, Neal J. Reynolds -  
9 Of Counsel

10

11 In Opposition to the Imposition of Antidumping and  
12 Countervailing Duty Orders:

13 Cassidy Levy Kent (USA) LLP

14 Washington, DC

15 on behalf of

16 Dead Sea Magnesium, Ltd. ("DSM")

17 Noam Goldstein, President, DSM

18 Eli Lerer, Vice President, DSM

19 David Wanless, Sales Manager, ICL Americas

20 Jack A. Levy, James R. Cannon, Jr., Mary Jane Alves -  
21 Of Counsel

22

23

24

25

-- continued --

1 INTERESTED PARTY IN OPPOSITION:

2 Eversheds Sutherland (US) LLP

3 Washington, DC

4 on behalf of

5 Westinghouse Electric Company LLC

6 Timothy Francis, Manager of Product Safety Engineering,

7 at Western Zirconium, a division of Westinghouse

8 Mark D. Herlach, Allison E. Speaker - Of Counsel

9

10 REBUTTAL/CLOSING REMARKS:

11 Petitioner (Stephen P. Vaughn and Neal J. Reynolds,

12 King & Spalding LLP)

13 Respondents (James R. Cannon, Jr.,

14 Cassidy Levy Kent (USA) LLP)

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## I N D E X

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## P R O C E E D I N G S

(9:33 a.m.)

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

CHAIRMAN JOHANSON: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on the Final Phase of Investigation Nos. 701-TA-614 and 731-TA-1431, Final, involving Magnesium from Israel.

The purpose of these final investigations is to determine whether an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of the imports of magnesium from Israel.

Schedules setting forth the presentation of this hearing, notice of investigation, and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table.

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding time allocations should be directed to the Secretary.

Speakers are reminded not to refer in their

1 remarks or answers to questions to business proprietary  
2 information. Please speak clearly into the microphones and  
3 state your name for the record for the benefit of the Court  
4 Reporter and for those sitting in the back of the room.

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

8 Mr. Secretary, are there any preliminary matters?

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

12 CHAIRMAN JOHANSON: Very well. Will you please  
13 announce our embassy witness.

14 MR. BISHOP: Our embassy witness is The Honorable  
15 Yifat Alon Perel, Minister of Economic & Trade Affairs with  
16 the Embassy of Israel.

17 STATEMENT OF MINISTER PEREL

18 MINISTER PEREL: Good morning, Chairman and  
19 members of the Commission, my name is Yifat Alon Perel. I  
20 serve as the Minister for Trade and Economic & Affairs in  
21 the Embassy of Israel to the United States.

22 The Government of Israel appreciates the  
23 opportunity to appear before the Commission today in the  
24 investigation of magnesium from Israel which is of great  
25 concern for the State of Israel.

1           Israel and the United States, as you may all  
2 know, enjoy a close relationship. And trade is an important  
3 part of that relationship. The State of Israel was the  
4 first country with which the United States negotiated and  
5 signed a Free Trade Agreement in 1985.

6           Furthermore, Israel and the United States are  
7 both parties to the WTO Agreements, including the agreements  
8 on countervailing and antidumping investigations.

9           The Government of Israel cares deeply about the  
10 outcomes of this investigation. Dead Sea Magnesium, which  
11 is the sole exporter of magnesium from Israel, is an Israeli  
12 company located in a disadvantaged area in the southern  
13 periphery of Israel characterized by a high level of  
14 unemployment and a low level of investments. It employs  
15 about 400 workers directly, and approximately 2,000  
16 employees indirectly. These are hard numbers in Israel.

17           Most of these employees do not have alternative  
18 employment opportunities. The company is actually the  
19 largest employer in the region, and is a major contributor  
20 to Israel's economic welfare. Therefore, the outcomes of  
21 this investigation may have a significant economic impact on  
22 Israel.

23           Both DSM and the Government of Israel fully  
24 cooperated with the Department of Commerce throughout its  
25 investigations, and supplied all requested information. But

1 as you know, Commerce's preliminary determination imposed  
2 extremely high antidumping and countervailing duties of over  
3 200 percent on all shipments of magnesium from Israel.

4           Such a high rate was extremely difficult to  
5 comprehend in Israel. Although the Commission is not  
6 responsible for the Department of Commerce's CV and AD  
7 margins and cannot change it, the severity of these rates  
8 underscores the importance of your decision for DSM's  
9 ability to continue accessing the U.S. markets and for the  
10 local economy in the southern part of Israel.

11           In the preliminary phase of the Commission's  
12 investigation, your former colleague, Commissioner  
13 Broadbent, ruled that there was not even a reasonable  
14 indication that magnesium from Israel was causing or  
15 threatening injury to the domestic industry.

16           At this final phase, the Government of Israel  
17 remains hopeful that you will find that Israel is not  
18 injuring or threatening the U.S. magnesium industry.

19           I do not have access to the entire factual  
20 record, but I trust you to carefully examine all evidence  
21 and render a fair decision. From our point of view, it  
22 seems that the combination of factors including the loss of  
23 a substantial customer, as well as low-priced imports from  
24 other countries, are the likely source of DSM's financial  
25 problems. Simply stated, Israel is not the problem.

1           As you know, consumers of magnesium in the U.S.  
2 market include aluminum producers, die-cast companies,  
3 pharmaceutical manufacturers, and zirconium producers. DSM  
4 is a responsible and stable supplier of those consumers, and  
5 an important player in the U.S. supply chain.

6           It seems that throughout the years U.S. Magnesium  
7 has been trying, with some success, to force other suppliers  
8 out of the U.S. market. The Commission has considered these  
9 issues before, specifically in an investigation in 2001  
10 which dealt with the same claim raised before the Commission  
11 today by the same American company.

12           It should be noted that in the 18 years since  
13 then, Israel has had no experience in responding to CVD  
14 investigations, as no such investigations have been  
15 initiated against it.

16           In the 2001 investigation, the Commission reached  
17 the following conclusion, and I quote: "The record does not  
18 indicate that subject imports from Israel have had  
19 significant effects on the price of domestic merchandise,  
20 and we do not find that this is likely to change, especially  
21 given the declining volume of subject imports and continuing  
22 substantial presence of lower priced nonsubject imports."  
23 End of quote.

24           The Government of Israel hopes that after the  
25 Commission's examination, the same results will be obtained

1 in this decision.

2 Israel is a strategic ally of the United States  
3 and a market economy. The Government of Israel would like  
4 to thank the Commission for the opportunity to present its  
5 views regarding this investigation and for your careful  
6 consideration of the facts in this case.

7 Thank you, very much.

8 CHAIRMAN JOHANSON: Thank you Minister Perel for  
9 appearing today. Go ahead.

10 MR. BISHOP: Mr. Chairman, opening remarks on  
11 behalf of Petitioner will be given by Stephen A. Jones of  
12 King and Spalding. Mr. Jones, you have five minutes.

13 OPENING STATEMENT OF STEPHEN A. JONES

14 MR. JONES: Good morning. This case is about  
15 imports of magnesium from Israel preliminarily found by the  
16 Department of Commerce to be dumped on the US market by the  
17 only Israeli producer, Dead Sea magnesium and subsidized by  
18 the Israeli government. The margin of dumping is 193  
19 percent, and the subsidy rate is 14 percent.

20 These imports are clearly a substantial cause  
21 of material injury to the domestic industry. The statute  
22 requires the Commission to consider the volume price effects  
23 and impact of imports on the domestic industry "within the  
24 context of the business cycle and the conditions of  
25 competition that are distinctive to the industry."

1           The keys to understanding this case are the  
2 conditions of competition that are unique to the magnesium  
3 industry. First, imports from Israel and domestic  
4 production are highly substitutable. In fact, the record  
5 shows that magnesium from Israel and magnesium produced in  
6 the United States are more substitutable than any other  
7 potential country pair.

8           For example, Dead Sea and US Magnesium are the  
9 only producers that offer large, pure magnesium T-bars,  
10 which many customers prefer. They also are the only two  
11 companies that offer ultra-high purity pure magnesium.  
12 Because of this, competition between Dead Sea and US  
13 Magnesium is based on price, sometimes as little as a penny  
14 a pound.

15           Second, Dead Sea and US Magnesium must run  
16 their plants continuously to prevent the deterioration of  
17 electrolytic cells. This means that US Magnesium cannot  
18 turn its plant on and off to regulate production volume  
19 based on changes in demand or market competition. It must  
20 produce what the plant can produce and sell that production  
21 every year.

22           Because Dead Sea is also an electrolytic  
23 magnesium producer, it is subject to the same constraints.  
24 Third, magnesium is sold in the US market to a relatively  
25 small group of purchasers based on contracts that are

1 negotiated during the fourth quarter of the year, the  
2 so-called mating season. Dead Sea competes against US  
3 Magnesium at every major US account.

4 Because US Magnesium must sell out its plant  
5 and because prices in export markets are relatively  
6 unattractive, it must meet or beat Dead Sea's competing US  
7 prices. The US purchasers are very sophisticated and use  
8 the leverage of Dead Sea's competing prices to force US  
9 Magnesium to lower its price. Because US Magnesium cannot  
10 afford to lose significant volume, it must lower its prices  
11 to make the sales necessary to keep its plant in operation.

12 These conditions of competition explain the  
13 data reflected in the prehearing report. There was no  
14 import surge because US Magnesium reduced its prices to  
15 maintain its volume and prevent an import surge. There was  
16 little underselling because US Magnesium's price reductions  
17 prevented Dead Sea from significant underselling. But US  
18 Magnesium's need to meet or beat Dead Sea's low price offers  
19 has seriously injured the company, causing operating losses  
20 throughout the Period of Investigation.

21 These losses have caused US Magnesium to defer  
22 necessary plant maintenance, resulting in lower production  
23 yields and higher costs. The injury caused by the subject  
24 imports has put US Magnesium's continued operations at risk.  
25 There can be no doubt that the problem is Dead Sea's

1 unfairly traded imports. After the petition was filed in  
2 October 2018, US Magnesium was able to increase its prices.  
3 Nothing in the market changed except suddenly there was  
4 discipline on Dead Sea's pricing.

5           Subject import prices went up and domestic  
6 prices went up. The opportunity to make sales at more  
7 reasonable prices enabled the domestic industry to earn a  
8 small operating profit during the first half of 2019. As it  
9 hears this case today, the Commission should consider the  
10 following questions: Why does Dead Sea continue to operate  
11 when it has never made a profit in its 25 year history? Why  
12 did import prices and U.S. market prices increase  
13 significantly after the filing of the petition? Is Dead  
14 Sea's production capacity what it reported to the  
15 Commission, or what its parent company ICO reported to the  
16 U.S. Securities and Exchange Commission.

17           US Magnesium looks forward to presenting its  
18 case to you today and answering your questions. The company  
19 knows that it produces quality products that serve the needs  
20 of purchasers in the market, and that it can thrive and grow  
21 under conditions of fair competition. But it cannot survive  
22 if it is forced to compete under grossly unfair conditions  
23 against imports that are dumped and subsidized. Thank you.

24           MR. BISHOP: Thank you Mr. Jones. Opening  
25 remarks on behalf of Respondents will be given by Jack A.

1 Levy of Cassidy Levy Kent USA. Mr. Levy, you have five  
2 minutes.

3 OPENING STATEMENT OF JACK LEVY

4 MR. LEVY: Good morning. This is Jack Levy  
5 from Cassidy Levy Kent, counsel for the Respondent Dead Sea  
6 Magnesium or DSM. It's good to be with you here again  
7 today. As you know, I am usually here representing the  
8 Petitioner, and as Petitioner's counsel we work hard to  
9 screen potential cases, weeding out the ones where the  
10 client may be desperate for relief, but the merits are  
11 simply lacking.

12 Why? Because we know full well that you  
13 Commissioners, you're going to look at the data with a very  
14 cold eye, and if the case before you is a stinker, you're  
15 going to rake us over the coals. We're counting on you to  
16 hold the Petitioners' feet to the fire in this case. If you  
17 refer here to Exhibit 1, you can see DSM's U.S. shipments  
18 during the Period of Investigation.

19 These data come straight from our  
20 questionnaire response. We hope you will ask the Petitioner  
21 why, if DSM's U.S. shipments are steadily declining in every  
22 year of the POI, and if DSM is also losing share in the  
23 merchant market, how could these volume trends possibly be  
24 adverse? Please ask them it's not really your position that  
25 the mere presence of DSM in the U.S. market is enough to

1 justify an affirmative determination; it also needs  
2 significant adverse price effects, right?

3 On that point, how can there be significant  
4 adverse price effects given the robust evidence of pervasive  
5 subject import overselling, overselling in 23 of 29  
6 quarters, nearly 80 percent of the time? Please ask them  
7 can you name a single case where the ITC went affirmative  
8 based on such a clear record of declining imports and  
9 pervasive overselling?

10 On impact, please ask them how can you claim  
11 that Israel is a cause of injury when there's no correlation  
12 between subject imports and the condition of the domestic  
13 industry? Remember, the U.S. industry got worse from 2016  
14 to 2018, while subject import volumes receded from the  
15 market and engaged in pervasive overselling. The utter lack  
16 of correlation strongly indicates a lack of causation,  
17 doesn't it? And Petitioner, how can you claim post-petition  
18 effects in interim 2019 and then cite the same data as  
19 evidence of threat?

20 Are imports getting more or less problematic  
21 in interim 2019? You can't have it both ways. Please make  
22 up your mind, Petitioner. On threat, how can you seriously  
23 claim that a company with this track record, decreasing U.S.  
24 shipments, pervasive overselling is an eminent threat?  
25 After all, DSM is already operating near its full capacity

1 and has been shipping more and more to third countries, and  
2 it has a proven track record of steering volume away from  
3 the United States.

4           What is clear from this record is that there  
5 are plenty of other apparent reasons for U.S. Magnesium's  
6 problems. So please ask them how much did the closure of  
7 ATI impact your financial performance? You don't blame  
8 Israel for that, do you? And what about non-subject  
9 imports, magnesium from Turkey, Russia, Taiwan and magnesium  
10 scrap? Won't you concede that they all harmed your  
11 business?

12           USM, what's with these reported quality  
13 problems? Maybe your injury is self-inflicted, you think?  
14 What's with these reports from 14 purchasers, 14, all of  
15 whom reporting that you are unable or unwilling to supply  
16 volume? Tell us USM, is this a production problem or a  
17 deliberate effort to hold volume off the market to  
18 perpetrate what Alcoa characterizes as a "nefarious,  
19 cynical business tactic." Or maybe it's both.

20           At the end of the day, we trust you, the  
21 Commission, will see this case for what is really is,  
22 desperate effort by a litigious company seeking to obtain  
23 relief that is completely undeserved. It is simply not  
24 enough that Israel was a mere presence in the U.S. market,  
25 and that U.S. magnesium stands to secure a business

1 advantage if Israel is excluded from the U.S. market.

2 That's not the law. The Petitioner needs to  
3 prove causation and they have provided insufficient evidence  
4 of causation. Respectfully on this record, Israel is  
5 neither a cause nor a threat of material injury. We look  
6 forward to speaking with you about these issues in the  
7 afternoon, but for now I'd just like to thank you for your  
8 attention to this very important case.

9 MR. BISHOP: Thank you, Mr. Levy. Would the  
10 panel in support of the imposition of the anti-dumping and  
11 countervailing duty Orders please come forward and be  
12 seated. Mr. Chairman, this panel has 60 minutes for their  
13 direct testimony.

14 MR. JONES: Good morning again. My name is  
15 Steve Jones from King & Spalding, representing the  
16 Petitioner, U.S. Magnesium. I will begin our presentation  
17 with Mr. Cam Tissington.

18 STATEMENT OF CAMERON TISSINGTON

19 MR. TISSINGTON: Good morning. My name is Cam  
20 Tissington and I'm the Vice President of Sales for U.S.  
21 Magnesium, LLC. I thank you very much for the opportunity  
22 to testify this morning and for the Commissioners' efforts  
23 to understand the challenges facing U.S. Magnesium.

24 As you know, we hosted your staff for a plant  
25 visit in September and we were grateful for both their

1 diligence and the obvious preparation that had gone into  
2 their trip. It is critical for the Commission to understand  
3 the manufacturing process to fully appreciate the harm that  
4 we are suffering and to know why we urgently need relief  
5 from dumped and subsidized imports from Israel.

6 I've spent most of my career in the magnesium  
7 business. Back in 1983, I started working in the magnesium  
8 operations of the Dow Chemical Company. I stayed there for  
9 15 years, eventually, becoming a global commercial manager  
10 for magnesium. In 1998, Dow left the magnesium business  
11 because it could no longer compete in a market distorted by  
12 unfairly traded imports.

13 I went to work for the Magnesium Corporation of  
14 America, the predecessor to U.S. Magnesium. Our facility is  
15 near the Great Salt Lake in Utah, one of the best locations  
16 on Earth for magnesium production. If market forces were  
17 all that mattered, we'd be in a very strong position, but in  
18 the world of magnesium markets are often distorted by unfair  
19 trade.

20 I've now been at U.S. Magnesium for 21 years and  
21 much of that time is being spent fighting dumped imports.  
22 China is currently under separate anti-dumping duty Orders  
23 concerning pure magnesium, alloy magnesium, and gradual  
24 magnesium. These Orders have been extremely effective.  
25 Last year, the United States imported only 221 metric tons

1 of magnesium from China. Unfortunately, we now face a  
2 severe problem with dumped and subsidized imports from  
3 Israel. According to the preliminary determination at the  
4 Department of Commerce, imports from Dead Sea Magnesium, the  
5 sole producer of magnesium in Israel, were dumped at a  
6 margin of more than 193 percent. They were also subsidized  
7 at a rate of 14 percent.

8           Let me explain why these imports are so harmful.  
9 U.S. Magnesium accounts for the great majority of magnesium  
10 produced in the United States. In fact, we are one of the  
11 few remaining companies in the Western world still making  
12 primary magnesium. When I first got into this business  
13 there were numerous primary magnesium producers in the  
14 United States, Canada, and Western Europe. Now, we are  
15 basically the only one left. My understanding is that Dead  
16 Sea sales of magnesium have never been profitable and that  
17 they remain in business solely because of the support from  
18 their parent company and subsidies from the Israeli  
19 Government.

20           We do not have that option. Over the course of  
21 the business cycle, U.S. Magnesium needs to make a healthy  
22 rate of return that will justify ongoing investments in our  
23 operations. If we cannot do that, we cannot survive. So,  
24 how do we obtain a healthy rate of return? First, we must  
25 sell all the magnesium that we produce. This is really

1 non-negotiable and is a direct result of our production  
2 process. We start with water from the Great Salt Lake. We  
3 use an evaporation process to create a brine that goes to  
4 our manufacturing site. The brine is treated to remove  
5 sulfates and boron and the remainder is dried, leaving us  
6 with a magnesium chloride powder.

7           That powder is melted, further purified, and fed  
8 into electrolytic cells, operating at approximately 700  
9 degrees Fahrenheit. I'm sorry; 700 degrees Celsius -- about  
10 1300 degrees Fahrenheit. Direct electrical current is sent  
11 through the cells to separate magnesium chloride into  
12 magnesium metal in molten form and chlorine gas. The  
13 chlorine is drawn off and sold or used to make byproducts.  
14 The pure magnesium rises to the surface of the electrolytic  
15 cell where we extract it, transfer it to the cast house, and  
16 cast it into ingots. Dead Sea uses a very similar process,  
17 although, they start with water from the Dead Sea.

18           Now, here's the important part and the key fact  
19 essential to understanding most of what is on the record in  
20 this case. Electrolytic cells, which run at very high  
21 temperatures, are critical to magnesium production and must  
22 run continuously because of their materials of construction.  
23 As a practical matter, we have no choice on the issue. If  
24 the cells are cooled down, they will immediately suffer very  
25 expensive damage. In fact, even if the cells run

1 continuously, they will degrade over time. As they  
2 degrade, we will use more and more electricity to process  
3 the same amount of magnesium chloride. Eventually, the  
4 cells break down completely and can no longer be used.

5           In short, as you think about this case, you  
6 should picture a factory in Utah with dozens of large  
7 electrolytic cells. Each cell is a very large, brick-line  
8 steel tank that is constantly making magnesium 24 hours a  
9 day. To stay in business, we cannot afford to stop that  
10 process. Furthermore, every cell should be refurbished  
11 every five years or so. Our recent returns have been  
12 insufficient to meet that schedule, so our factory is  
13 becoming less efficient and our capacity is effectively  
14 declining. And remember, the Dead Sea Magnesium Company  
15 faces very similar incentives; although, they have the  
16 advantage of being able to dump their magnesium at a loss.

17           So, that's the first part of what we must do to  
18 survive, sell all the magnesium we produce. We must sell it  
19 because we cannot afford to operate at low levels of  
20 capacity utilization. But obviously, we, unlike Dead Sea,  
21 cannot afford to take just any price. To generate the funds  
22 necessary to maintain our facility, we must obtain a true  
23 market price.

24           I'd like to describe our sales process now.  
25 Magnesium is an important product, but the market for

1 magnesium is much smaller than you would see for other  
2 metals, like steel or aluminum. Last year, the U.S.  
3 imported almost 11,000 metric tons of magnesium ingots from  
4 Israel and close to the same amount from the rest of the  
5 world. There are a limited number of customers for this  
6 product. Furthermore, we make no sales through  
7 distributors. And in the U.S., consumers insist on securing  
8 their metal needs prior to the beginning of the year, so  
9 magnesium is almost never sold on the spot market.

10 Here's what happens instead. Every year,  
11 beginning in the fall, we go through a sales process to  
12 contract all of our metal for the next calendar year. By  
13 that point, we usually know what our production will look  
14 like for the next year, which means we know how much we can  
15 sell and how much we must sell. The customers know what  
16 their demand looks like, so they know how much they need to  
17 buy. Together, we negotiate annual contracts to determine  
18 the price and volume of magnesium sales for the next year.

19 These negotiations are long and intense, usually  
20 lasting several weeks to several months. And I'm not the  
21 only person with decades of experience in magnesium. Each  
22 year we deal with a very sophisticated collection of buyers  
23 who combine great expertise with a determination to get the  
24 lowest price. And remember that they have a significant  
25 advantage. They know the prices being offered by Dead Sea

1 and other foreign producers and all we know is that Dead  
2 Sea's prices is unfairly low.

3 Dumped import from Dead Sea gives these highly  
4 sophisticated customers an enormous and unfair advantage in  
5 their negotiations with us. We know that Dead Sea has the  
6 capacity to produce about 35,000 metric ton of magnesium  
7 each year. We also know that Dead Sea must export all of  
8 that production because there's no demand for magnesium in  
9 Israel and we know that Dead Sea would like to export as  
10 much magnesium as possible to the United States and Brazil,  
11 two markets where China faces anti-dumping Order and  
12 therefore the two largest markets that China has not  
13 destroyed.

14 Our customers use these facts against us. I  
15 know that Dead Sea has sold as much as 26,000 metric ton in  
16 a year in this market. Each year, as we approach the fall  
17 contract season, we ask ourselves how low will Dead Sea  
18 force our prices down in an attempt to take more market  
19 share; thus, making us choose between cutting productions,  
20 which is not a viable option, and looking for more sales in  
21 lower-priced export markets.

22 Even these facts, you will not be surprised to  
23 know that our customers have been extremely effective in  
24 pressuring us to accept very low prices for magnesium. In  
25 fact, we suffered operating losses on our merchant metal

1 sales in 2016, 2017, and 2018. The main reason that we lost  
2 money was that we were certain that Dead Sea was willing to  
3 go even lower with their prices and we knew that we couldn't  
4 afford to let them undersell us. In other words, Dead Sea's  
5 mere offers of magnesium at dumped prices effectively made  
6 it impossible for us to obtain a fair market price for our  
7 own production.

8           These facts explain much of the record before  
9 you. Unlike a typical trade case, you don't see a dramatic  
10 surge of unfairly traded imports. That's because we had no  
11 choice but to cut our prices to protect volume; thereby,  
12 preventing that surge. Unlike many other trade cases, here  
13 you have many more instances of overselling by imports than  
14 underselling. Again, that's because when pressured we  
15 reduce our prices to prevent Dead Sea from underselling us.

16           There's no question that every year Dead Sea  
17 exhibits the same type of aggressive behavior that you see  
18 in other case. They offer very significant volumes of  
19 imports at dumped prices. The evidence of that behavior  
20 does not appear in a dramatic surge of imports or  
21 significant rates of underselling, but it has a dramatic  
22 adverse effect on our bottom line. And make no mistake,  
23 the effect has been devastating. Between 2016 and 2018, we  
24 suffered very severe losses. As a result we've been unable  
25 to refurbish our electrolytic cells on the usual five-year

1 cycle. That means that those cells are being degraded and  
2 our capacity is being reduced. It is no exaggeration to say  
3 that in the three years from 2016 to 2018 we were being  
4 slowly forced out of business by unfair trade, like so many  
5 other former magnesium producers in the United States and  
6 elsewhere.

7 In 2018, we decided to fight back. Last year,  
8 we started negotiating with customers for 2019 sales volume.  
9 We'd made offers to sell, but purchasers were still  
10 leveraging prices down. In late October, we filed these  
11 cases. We had to change the negotiating dynamic to make it  
12 harder for the customers to threaten us with dumped imports  
13 from Israel and it worked. Your staff report shows that the  
14 average unit value of imports from Israel fell by 7.1  
15 percent from 2016 to 2017 and fell another 3.7 percent from  
16 2017 to 2018.

17 But for the first half of 2018 to the first half  
18 of 2019, Israel's AUV rose by 8.5 percent. These cases were  
19 the only reason for that increase. There was no significant  
20 change in demand. There was no significant change in  
21 imports from other countries. Non-subject imports did not  
22 prevent us from increasing our prices. The only change was  
23 that Dead Sea and its customers were concerned about dumping  
24 duties. That gave us the chance to negotiate more  
25 reasonable process. In other words, we've proven that we

1 can raise prices and improve our profitability in a fair  
2 market. If relief remains in place, we should be able to  
3 refurbish our facilities and grow our sales. Over the long  
4 run, we have great confidence in the market for magnesium,  
5 but we must have a fair chance to survive and compete in the  
6 market.

7 As you can see from comments by the purchasers,  
8 they were not very happy with us for filing the petition. I  
9 would like to set the record straight with respect to some  
10 of those comments. U.S. Magnesium is a very reliable  
11 supplier. We negotiate and sign contracts during the fourth  
12 quarter of the year for the following year. We have always  
13 supplied those contracted volumes.

14 When purchasers need additional supply during  
15 the year, we try to work with them, but we are not always  
16 able to because we contract all of our volume in the fall of  
17 the preceding year. We do not make "take it or leave it"  
18 offers for us supply 100 percent of a company's need. And  
19 if purchasers elect to drag out the negotiating process,  
20 shopping for ever lower prices, we may not be able to supply  
21 100 percent of their needs by the time they elect to  
22 purchase.

23 I would like to make one final point. U.S.  
24 Magnesium did not bring these cases to drive imports out of  
25 the market. In fact, during the current contract season for

1 2020, we continued to compete against offers from Dead Sea,  
2 as well as others from Russia, Turkey, and other non-subject  
3 countries. The global market is oversupplied and there will  
4 always be strong competition in this market and companies  
5 who buy magnesium will always have significant leverage in  
6 their negotiations with us. We're perfectly willing to  
7 face fair competition. Our only request is that we be -- is  
8 that we not be forced to compete against dumped imports.

9 We believe that U.S. Magnesium can survive and  
10 even thrive in a fair market, but no company can make a  
11 healthy rate of return in this market if we are forced to  
12 compete against dumped and subsidized imports. I urge you  
13 to grant us the relief that we need. Thank you.

14 STATEMENT OF SUSAN SLADE

15 MS. SLADE: Good morning. My name is Susan Slade  
16 and I'm Vice President of Marketing for US Magnesium, LLC.  
17 I have more than thirty years of diversified experience in  
18 the magnesium industry. From 1989 to 1998 I was employed by  
19 the magnesium business unit of the Dow Chemical Company in  
20 both technical service and sales capacities, with my primary  
21 focus being the North American die-casting market.

22 After the closure of Dow Magnesium in 1998, I  
23 worked in sales and marketing for Canadian magnesium  
24 producer Noranda from 1999 through 2006. I worked for US  
25 Magnesium since then, since 2006, first as Director of

1 Marketing and then as Vice President of Marketing. I have a  
2 degree in metallurgical engineering from the University of  
3 Missouri-Rolla and as part of my responsibilities I analyze  
4 the economics and the technical aspects of the U.S. and the  
5 global magnesium industry.

6 As Cam just stated, US Magnesium is struggling to  
7 survive in this market. We find ourselves competing  
8 frequently and fiercely with unfairly-traded imports from  
9 Israel here in the United States. DSM must rely on exports  
10 to sell its production because there is no market for  
11 magnesium in Israel. As a result, DSM has made the United  
12 States a critical focus for its sales efforts.

13 The United States has become the primary outlet  
14 for DSM's magnesium production because China dominates the  
15 rest of the global market. For some time, China has been  
16 the dominant supplier of magnesium to the global market.  
17 According to the U.S. government, China counts for more than  
18 80% of primary magnesium production and more than two-thirds  
19 of global magnesium exports.

20 Unfortunately, China's extraordinary expansion of  
21 capacity has considerably outpaced their own demand for  
22 magnesium. Because of this China has flooded the world  
23 market with low-priced magnesium, which has placed  
24 considerable downward pressure on global magnesium prices.  
25 Due to this flood of Chinese exports, China has seriously

1 impacted industries in other countries. For example,  
2 Canada, Norway, France and India no longer have primary  
3 magnesium industries because of China. And the United  
4 States itself has lost several producers to unfair  
5 competition, including my former employer, the Dow Chemical  
6 Company, and Northwest Alloys, which was owned by Alcoa.

7 US Magnesium prefers to sell its magnesium in our  
8 home market. The plant was built to serve this market and  
9 every pound that we don't sell in the United States has to  
10 be exported at lower prices. This is why we made a  
11 concerted effort to regain volume in the United States in  
12 2018, even though we had to reduce our prices to meet  
13 competition to do so.

14 The only markets in which Chinese imports have  
15 not caused similar price declines are the United States and  
16 Brazil. Both of these markets are protected from aggressive  
17 Chinese price competition by anti-dumping orders. The  
18 orders have meant that prices in the United States and  
19 Brazil are higher than those in other countries, which makes  
20 the United States and Brazil very attractive markets for  
21 DSM. In fact, Brazil is DSM's second largest export market  
22 after the United States. This is why we find ourselves  
23 competing so fiercely with DSM in the United States every  
24 year.

25 DSM sells in other markets as well, which we do

1 track, and I have to admit, I was pretty surprised to see  
2 increasing volumes of alloy magnesium from Israel sold into  
3 Canada at AUVs below those from the Chinese. If DSM is  
4 willing to sell at such low prices in a neighboring market,  
5 we have to assume they're prepared to drop their prices in  
6 the United States significantly as well.

7           Next, I'd like to provide you with a little  
8 background about Dead Sea Magnesium. DSM's parent company,  
9 ICL, was established in 1968 as a government-owned and  
10 operated company. DSM itself was started in 1996 as a joint  
11 venture between ICL and Volkswagen AG, with ICL owning 65%  
12 and Volkswagen owning 35%. In 2009, Volkswagen transferred  
13 its shares from DSM to ICL.

14           In 1995, the Israeli government sold its  
15 controlling interest in ICL to Israel Corporation. However,  
16 the Israeli government continued its strong interest in this  
17 company, in part through its ownership of special shares in  
18 ICL, DSM, and DSM's sister company, Dead Sea Works. Through  
19 these special nontransferable shares, the Israeli government  
20 preserves the state's vital interest in both ICL and DSM's  
21 magnesium operations.

22           This special relationship between DSM and the  
23 government has manifested itself in many ways. First, the  
24 government was pivotal in providing a variety of subsidies  
25 to DSM over the years, which built up its capital assets.

1 More recently, the Israeli government has taken steps to  
2 preserve the operations of DSM by providing subsidies that  
3 will allow DSM to remain an ongoing concern. This is not  
4 surprising because DSM appears to never have turned a profit  
5 in its entire existence.

6 Moreover, DSM faces daunting environmental  
7 challenges at its manufacturing facility on the shore of the  
8 Dead Sea. To stay in operation, DSM must continuously  
9 syphon water from the Dead Sea to sustain the brine levels  
10 in the evaporation ponds from which it extracts magnesium.  
11 This has resulted in a significant lowering of the water  
12 levels of the Dead Sea, contributing to an environmental  
13 crisis and endangering the tourism industry of the region.

14 As the Department of Commerce has found, the  
15 government of Israel provides a variety of subsidies to DSM  
16 to help it deal with these issues, including subsidies that  
17 help finance the construction of dikes and enable DSM to  
18 build a new pumping station. The Israeli government is also  
19 providing funding for DSM to undertake a massive  
20 salt-harvesting project aimed at removing salt from DSM's  
21 evaporation ponds and stabilizing the water in these ponds.

22 In effect, we're competing against the company,  
23 DSM, and a government that apparently does not need to make  
24 a profit on its sales of magnesium, either in the United  
25 States or other export markets.

1           I'd also like to talk about the competition that  
2 we face in the market from DSM. As Cam just mentioned, we  
3 face aggressive price competition from DSM at every one of  
4 our key accounts in the market place. In fact, DSM is often  
5 our only real competition for those sales. During the  
6 annual contract process that Cam described in the fall, we  
7 are frequently asked by our customers to lower our prices to  
8 meet or beat the prices offered by DSM.

9           At that point, we're forced into a no-win  
10 situation. We either have to lower our prices or lose the  
11 business. In the past three years, we have both lowered our  
12 prices and lost volume in the face of competition from DSM.  
13 Frequently, the difference of even a penny per pound will  
14 determine whether or not we make the sale.

15           Moreover, as Cam just described, we need to  
16 operate our production process continuously, which means  
17 that we have to lower our prices sufficiently to ensure that  
18 we sell all of the product that we produce. However, we can  
19 only lower our prices for so long. Eventually, if the  
20 current situation stays the same, we will have to start  
21 shutting down electrolytic cells and curtailing production.  
22 If we can't avoid this situation, US Magnesium will end up  
23 having to shut down completely as so many other U.S.  
24 producers have had to do in the face of dumping.

25           Just a word on ATI's closure of its titanium

1 sponge facility. I understand that the respondents have  
2 made ATI's closure a big issue in their briefs. The ATI  
3 closure in 2016 did have an impact on our overall revenues  
4 and profitability. However, our business with ATI involved  
5 a unique magnesium chloride recycling process that operated  
6 separately from production of magnesium for our merchant  
7 magnesium business. The closure of ATI's facility is  
8 certainly not the cause of the price declines in our  
9 merchant market magnesium business and the accompanying  
10 declines in profitability that affected us in 2017 and 2018.

11 I also understand that DSM is saying in its  
12 briefs that imports from other countries like Russia and  
13 Turkey are the real cause of the price declines in the  
14 market. This has not been the case. We monitor imports  
15 into the United States closely. While we do see these  
16 countries involved in some contract negotiations, they have  
17 simply not had the same impact on our pricing in the market  
18 as DSM. Primarily, because they do not offer the same range  
19 of product or quality levels that we do. For example, US  
20 Magnesium and DSM are the only commercial suppliers of  
21 Direct Chill Cast Large T-bar ingot to the United States.  
22 This is a product that many consumers prefer.

23 Finally, our financial situation is made more  
24 challenging by the fact that demand has not been growing  
25 significantly in this market. Generally, in my experience,

1 demand for magnesium has remained flat or grown slightly  
2 over the past three and a half years with variations from  
3 year to year. We don't expect it to grow significantly in  
4 the near future. This means we can't hope that demand  
5 improvements will help our pricing and profitability levels  
6 improve by offsetting the continued aggressive pricing  
7 competition we see from imports of magnesium from Israel.

8 I'd like to finish by saying that US Magnesium is  
9 a great company that I'm proud to work for, and we have the  
10 ability to supply quality products to our customers. We  
11 think we have strong relationships with our customers and  
12 want to continue working with them to supply their needs.  
13 But we cannot continue to compete with the deep pockets of  
14 the Israeli government. We need your help to remedy dumping  
15 and subsidies and we ask you to make an affirmative  
16 determination in this investigation. Thank you.

17 STATEMENT OF CHRISTOPHER AMIS

18 MR. AIMS: Good morning. My name is Chris Aims  
19 and I am the President of the USW Local 8319. I've been the  
20 local president for eight years. The USW represents hourly  
21 workers at U.S. Magnesium facility in Utah. In addition to  
22 my duties as president of the Local, I also work as a  
23 utility operator at the facility, monitoring and controlling  
24 the water, steam, sanitation, natural gas, air, and  
25 electricity operations that are critical to all of our

1 processes.

2 I've worked for U.S. Magnesium for 27 years,  
3 starting their straight out of college. I have worked in  
4 nearly every facet of the production process, starting as a  
5 Smutter, removing the impurities from the electrolytic  
6 cells, and spending most of my time as a caster, stacker,  
7 and lead operator in the foundry. This experience gives me  
8 a unique perspective on the company and the industry. I  
9 welcome the opportunity, in cooperation with U.S. Magnesium  
10 to testify today.

11 I'm a second generation employee at U.S.  
12 Magnesium. My father started there in 1972 and I know what  
13 U.S. Magnesium means to my family and to our community. It  
14 is important for you to understand how critical this  
15 facility is to our rural part of the state. Jobs at U.S.  
16 Magnesium are well paying and come with good benefits. More  
17 importantly, they help support several of the smaller towns  
18 in the area, including Tukwila, where I grew up,  
19 Brownsville, and Magna by providing the economic activity  
20 that underpins our retails, fire, police, and schools.

21 Every job at U.S. Magnesium supports three or  
22 four other jobs in these communities, including the vendors  
23 and transportation workers that supply the facility. The  
24 benefits U.S. Magnesium brings to our local community are  
25 irreplaceable. The workforce at U.S. Magnesium is critical

1 to the success of the company. There are difficult jobs  
2 that require a significant amount of experience and  
3 training. The highly skilled welders, electricians,  
4 bricklayers, and instrumentation specialists have unique  
5 expertise that is not easily replaced.

6 Our workers are on 12-hour shifts, three days  
7 on/three days off. The facility has to run 24 hours a day  
8 every day of the year. This is because the electrolytic  
9 cells that produce the reaction to make magnesium metal must  
10 be kept in operation constantly. If a cell is taken down,  
11 the refractor and lining has to be rebuilt, which is both  
12 costly and time-consuming. As a result of this reality, it  
13 is not possible for us to produce less magnesium in the face  
14 of unfair competition.

15 The company is also constrained when it comes to  
16 laying off workers. As I said, there are highly-skilled  
17 jobs and if workers are laid off they cannot be replaced  
18 without an enormous investment. I also want to emphasize  
19 one aspect of the destructive impact that DSM's dumping and  
20 government subsidies have had on our operation. As a result  
21 of the unfair trade, which has wiped out U.S. Magnesium's  
22 capital spending, we've had to put off reconstruction of our  
23 electrolytic cells. Many of which were gone well beyond  
24 their expected life spans and are basically on life  
25 support.

1           As the cells age, they become less and less  
2 efficient and take more and more electricity to produce the  
3 same amount of magnesium. The deterioration of our  
4 production efficiency raises our costs and puts further  
5 pressure on the bottom line. I've seen first-hand what  
6 unfair trade can do to an industry. In 2016, ATI abruptly  
7 closed the titanium sponge facility adjacent to U.S.  
8 Magnesium. The U.S. titanium sponge industry have long been  
9 plagued by unfair trade. Instead of fighting for the  
10 workers at the facility, management at ATI just shut the  
11 facility down and began to import instead, 105 USW workers  
12 lost their jobs there.

13           Our employees are grateful that our management  
14 has not conceded defeat and instead has committed to  
15 fighting back against unfair trade. I urge your help to  
16 protect our jobs and vote affirmative in this investigation.  
17 Thank you very much and I look forward to answering your  
18 questions.

19           STATEMENT OF JAMES GARDELLA

20           MR. GARDELLA: Good morning. My name is Jim  
21 Gardella and I'm the President of Luxfer Magtech, Inc.  
22 Luxfer Magtech is a wholly-owned subsidiary of Luxfer  
23 Holdings, PLC, which is listed on the New York Stock  
24 Exchange under LXFR. We specialize in the research,  
25 development, manufacturing, packaging, and marketing of

1 magnesium product, flameless ration heaters, flameless  
2 self-heating meal and beverage kits, chemical detection and  
3 decontamination products, and sea water desalination kits.  
4 Our products are used for U.S. Military applications and for  
5 Emergency Preparedness and disaster relief for FEMA and the  
6 American Red Cross, as well as in diverse industries for  
7 commercial applications.

8           As a U.S. producer of magnesium pieces, chips,  
9 graduals, and powders made from pure magnesium through  
10 mechanical grinding and atomization, we have responded to  
11 both the U.S. producers and purchasers' questionnaires in  
12 these investigations. We support the petitions because we  
13 are very concerned about unfairly low pricing of imported  
14 magnesium. It is important that we have a stable, long-term  
15 supplier of primary, pure magnesium produced in the United  
16 States to support our U.S. Military applications.

17           Importantly, as we need a reliable source of  
18 pure magnesium for our products, the suppliers available to  
19 us are U.S. Magnesium and Dead Sea Magnesium. There is pure  
20 magnesium production in China, Brazil, Russia, and Turkey,  
21 but imports from China are subject to anti-dumping duties  
22 and Brazil, Russia, and Turkey do not produce grinding slabs  
23 that we use in our manufacturing process, which are  
24 manufactured only in the United States and Israel.

25           To reinforce, when we purchase pure magnesium,

1 we only have two supply options, U.S. Magnesium or Dead Sea  
2 Magnesium. It is important to note that a portion of our  
3 business is with the U.S. Military and they require pure  
4 magnesium that is manufactured in the United States or  
5 Canada. We call this US&C. There is no longer pure  
6 magnesium production in Canada because Canadian producers  
7 were forced out of business by imports from China many  
8 years ago.

9 U.S. Magnesium is the only U.S. producer of pure  
10 magnesium, so we must purchase from U.S. Magnesium for  
11 military applications. The magnesium used for the rest of  
12 our products; however, can be sourced from either the U.S.  
13 or Israel. That means that U.S. Magnesium and Dead Sea  
14 Magnesium compete head-to-head for that portion of our  
15 business. The head-to-head competition typically occurs  
16 during the fourth quarter of the year when magnesium buyers  
17 and sellers negotiates contracts for the following year.  
18 There are no magnesium distributors and there is effectively  
19 no spot market for magnesium. As a result, we must reach  
20 contracts with U.S. Magnesium and/or Dead Sea for the  
21 magnesium we will need for the following year.

22 There are two key factors that are critical for  
23 us purchasing magnesium for the portion of our business  
24 other than US&C. These factors are the availability of  
25 grinding slabs and price. In my opinion, the quality and

1 availability of pure magnesium grinding slabs from U.S.  
2 Magnesium and Dead Sea are identical, therefore, our choice  
3 between U.S. Magnesium and Dead Sea comes down to price,  
4 with the lowest price getting the business.

5           We have not hesitated to purchase magnesium from  
6 Israel when it was offered at a lower price than magnesium  
7 produced in the United States and we know that U.S.  
8 Magnesium has had to lower its price to meet competition  
9 from Israel in order to win our business. Although, lower  
10 magnesium prices are generally beneficially for our  
11 business it is even more important that we have a  
12 consistent, reliable U.S. source of supply.

13           U.S. Magnesium has been a reliable supplier to  
14 our company for many years. We have supported their  
15 petition and asked to appear at the hearing today to express  
16 our concern that if dumping continues it will force U.S.  
17 Magnesium out of business and eliminate our U.S. supply.  
18 This would obviously impact U.S. Magnesium, but would also  
19 be very harmful for U.S. producers, purchasers like Lexfer  
20 Magtech that rely on pure magnesium produced in the United  
21 States.

22           We need U.S. Magnesium to stay competitive in  
23 order for Lexfer Magtech to produce material for military  
24 applications, such as countermeasure flares for the U.S.  
25 Military and flameless ration heaters that are the heat

1 source for Meals Ready to Eat, MREs, used by our soldiers in  
2 the field.

3 Thank you for your attention and I look forward  
4 to answering your questions.

5 STATEMENT OF JENNIFER LUTZ

6 MS. LUTZ: Good morning. I am Jennifer Lutz,  
7 with Economic Consulting Services. As to the conditions of  
8 competition in the U.S. magnesium market, first, the  
9 Commission must understand that the magnesium market is very  
10 different from other metals markets, such as steel and  
11 aluminum.

12 In the 2015 investigation of imports of hot  
13 rolled steel, the Commission's report notes apparent  
14 consumption of around 54 million short tons, 10 U.S.  
15 producers, a significant spot market, and contract prices  
16 negotiated with reference to published spot prices.  
17 Similarly, the 2018 common aluminum ally sheet  
18 investigation found apparent consumption of 2.2 million  
19 short tons, 10 U.S. producers, an active spot market, and  
20 contract prices indexed to published spot prices.

21 In contrast, the U.S. market for magnesium has  
22 apparent consumption that is a small fraction of that  
23 reported for hot rolled steel and aluminum, a very limited  
24 spot market, a single primary producer, and no reliable  
25 means of indexing contract prices.

1           Second, demand for magnesium is a derived demand  
2 associated with the demand for downstream products,  
3 including aluminum alloys and cast magnesium products, such  
4 as auto parts. In these uses the demand for magnesium tends  
5 to be priced inelastic. A change in price does not  
6 materially change the demand for magnesium.

7           Third, the electrolytic cells used by producers,  
8 such as U.S. Magnesium and the Israeli producer, DSM, if  
9 shut down, require rebuilding at great cost. Thus, to be  
10 cost effective, producers must maintain continuous  
11 production at high level of capacity utilization.  
12 Therefore, in the face of price competition, a producer is  
13 generally compelled to cut price rather than reduce  
14 production volume. This holds true for both U.S. Magnesium  
15 and DSM.

16           Fourth, magnesium is a commodity. The magnesium  
17 imported from Israel is fully interchangeable with  
18 U.S.-produced magnesium. In all material aspects of product  
19 chemistry, form and quality, magnesium from Israel competes  
20 directly with domestically-produced product. DSM and U.S.  
21 Magnesium, as primary producers, compete even more directly  
22 competing for sales of ultra-high purity magnesium, pure  
23 magnesium, and alloy magnesium.

24           Fifth, reflecting the fact that magnesium is a  
25 commodity product, the market for magnesium products is

1 extremely price competitive. Because the chemical and  
2 physical characteristics of the domestic and imported  
3 product are comparable and governed by the same  
4 specifications customers focus on price in the selection of  
5 a supplier.

6 As shown in Slide 1, price was the factor most  
7 frequently cited by purchasers in making purchasing  
8 decisions. The other most frequently cited factors were  
9 quality and availability. Purchasers overwhelmingly ranked  
10 domestic product and subject imports as comparable with  
11 respect to these and many other factors, as shown in Slide  
12 2. The volume of subject import of magnesium -- of  
13 magnesium from Israel is significant, as shown in Slide 3.  
14 Subject imports were essentially flat from 2016 to 2017 and  
15 declined slightly in 2018, but remained significant. Israel  
16 is, by far, the largest single import supplier of magnesium  
17 to the U.S. market in each period of the POI and accounted  
18 for a significant portion of total imports during the  
19 period.

20 As you can also see in Slide 3, what was missing  
21 from the opening exhibit from DSM, the average unit value of  
22 total magnesium imports from Israel has declined  
23 significantly during the period, falling from a \$1.90 per  
24 pound in 2016 to \$1.77 per pound in 2017, to only \$1.70 per  
25 pound in 2018, a decline of 10 1/2 percent over the

1 three-year period. After the filing of the petition, the  
2 average unit value of subject imports increased to \$1.89 per  
3 pound in the first half of 2019.

4 While DSM's prices were declining in the U.S.  
5 market, U.S. Magnesium also tracked import AUVs into other  
6 export markets for DSM. Slide 4 shows data regarding  
7 imports of alloy magnesium from Israel into DSM's largest  
8 export markets. This slide shows that the U.S. AUVs are  
9 higher than those in other markets, demonstrating the  
10 attractiveness of this market to DSM. In 2018, for example,  
11 DSM shipped almost 9500 metric tons of alloy magnesium to  
12 the EU, Canada, and Brazil at prices well below prices to  
13 the U.S. market. These data also provide an indication to  
14 U.S. Magnesium of just how low DSM will go in price to move  
15 volume.

16 Slide 5 shows imports of alloy magnesium into  
17 Canada. Israel is the second largest supplier of alloy  
18 magnesium to the Canadian market and enters material at  
19 prices below those of Chinese suppliers.

20 The Commission is familiar with industries that  
21 have high fixed costs and thus need to spread those fixed  
22 costs over a large volume of production. This is true with  
23 respect to the domestic magnesium industry, but the need to  
24 maintain high levels of production is even more essential.  
25 Because a primary magnesium producer must operate

1 electrolytic cells continuously to avoid very costly shut  
2 downs, it cannot curtail production by simply cutting a  
3 production shift. Rather the producer faces extremely  
4 economic pressure to respond to low-priced import  
5 competition by cutting its own prices to keep sales volume.

6 This is particularly important with respect to  
7 high-volume customers which command lower prices by virtue  
8 of the volume purchased. In order to keep its electrolytic  
9 cells operating, U.S. Magnesium must retain these customers.

10 As the Commission has seen in many  
11 investigations, when competing with unfairly traded imports  
12 domestic producers are faced with the choice of lowering  
13 their prices to retain volume or losing sales. U.S.  
14 Magnesium did both of these during the POI. As discussed in  
15 our pre-hearing brief, it tried to maintain prices and lost  
16 volume at several key customers in 2017 and then lowered its  
17 prices to regain the volume in 2018. The record shows that  
18 a number of purchasers confirmed instances of lost sales and  
19 lost revenues. The lost sales account for a significant  
20 volume -- a significant portion of the subject imports  
21 reported by responding purchasers. The Commission has  
22 generally given significant weight to such confirmations as  
23 they are essentially an admission against interest by the  
24 purchasers.

25 In addition to the lost sales and lost revenues

1 confirmed by purchasers, there are other instances  
2 documented in our brief that demonstrate that the domestic  
3 industry experienced additional lost sales and lost  
4 revenues. The record with respect to the domestic industry  
5 shows clear injury during the 2016 to 2018 period prior to  
6 the filing of the petition. The trends are summarized in  
7 Slide 6. The industry suffered declining capacity,  
8 production, and capacity utilization. Employment and U.S.  
9 shipments declined from 2016 to 2017 and improvements in  
10 2018 left the industry below 2016 levels.

11 The industry suffered reductions in net sales,  
12 gross profits, and operating income. The ratio of  
13 cost-of-goods sold to net sales increased over the period of  
14 investigation, indicating that the domestic industry  
15 suffered a cost price squeeze.

16 While the industry, as a whole, shows clear  
17 signs of injury, the injury is even more apparent with  
18 respect to U.S. Magnesium, which is the largest U.S.  
19 producer, by far, and competes more directly with DSM with  
20 respect to all magnesium products. It is the sole U.S.  
21 primary electrolytic producer and is uniquely exposed to the  
22 harm caused by imports from Israel. It has suffered  
23 declines over the 2016 to 2018 period in virtually in dicta  
24 considered by the Commission. It recorded declines in  
25 production, shipments, and employment.

1                   With respect to its financial performance, U.S.  
2 Magnesium recorded significant declines in gross income and  
3 suffered a severe cost price squeeze. It experienced  
4 declines in operating profitability and capital expenditures  
5 were very low. U.S. Magnesium has used the relief against  
6 unfairly traded imports received in prior cases to upgrade  
7 and in some cases expand its production capacity. Prior to  
8 the period of investigation, it announced plans to increase  
9 capacity further and started to make significant capital  
10 expenditures in order to support this expansion. U.S.  
11 Magnesium has been unable to complete and enjoy the benefits  
12 of the capital projects that it started, but had to put on  
13 hold.

14                   In addition to the cancelled expansion projects,  
15 U.S. Magnesium has deferred maintenance on its existing  
16 capacity and has stretched the life of its electrolytic  
17 cells beyond their intended life, causing decreased  
18 productivity. Electrolytic cells are expensive to rebuild  
19 and without sustained higher prices, U.S. Magnesium will be  
20 unable to invest in its production operations.

21                   While the data collected by the Commission in  
22 this final investigation continue to show the severe injury  
23 experienced by the domestic industry, they also show  
24 significant improvements in the condition of the industry in  
25 2019, following the filing of the petition with notable

1 improvements in price and profitability. That concludes my  
2 testimony.

3 STATEMENT OF NEAL REYNOLDS

4 MR. REYNOLDS: Good morning. My name is Neal  
5 Reynolds and I am with King & Spalding. This morning I'll  
6 be addressing the issues of threat and the vulnerability of  
7 the industry. As our prior witnesses established, there's  
8 abundant evidence of present material injury from imports  
9 from Israel on the record now. So the Commission should  
10 make an affirmative injury finding here. If it reaches the  
11 issue of threat, though, the Commission should find that the  
12 threat posed by imports from Israel is real, imminent and  
13 alarming.

14 First of all, it's important to keep in mind that  
15 the U.S. is a critical market for Dead Sea. Dead Sea sells  
16 no magnesium in its home market. And Dead Sea has less  
17 incentive to sell magnesium in third-country markets like  
18 Asia and Europe, because China dominates those markets by  
19 selling large volumes of low-priced imports there.

20 The United States, though, is protected from  
21 Chinese imports because there are existing anti-dumping  
22 orders on all forms of magnesium from China. This means  
23 that the U.S. has higher prices than other export markets  
24 and is an attractive destination for Dead Sea's magnesium  
25 production. In fact, the U.S. is Dead Sea's largest market.

1 Obviously, Dead Sea will want to compete aggressively on  
2 price to maintain and improve its position in the U.S.

3           Secondly, Dead Sea has the capacity to increase  
4 its exports to the United States. Dead Sea claims to be  
5 operating at full capacity now. But its parent company,  
6 ICL, has publicly reported capacity levels for Dead Sea that  
7 are different than those included in your report. You  
8 should compare the reported capacity and production levels  
9 in your report with the 33,000 tons of capacity that ICL has  
10 reported Dead Sea has in its SEC filing.

11           If you do, you'll see the Dead Sea has capacity  
12 that can be used to increase its exports to the U.S. in the  
13 imminent future. Moreover, Dead Sea claims that its ability  
14 to increase its exports to the U.S. is constrained by the  
15 limits imposed on them by its parents', ICL's production of  
16 bromine. It's a nice theory, but the problem with theories  
17 is that the facts often get in the way of that theory.  
18 That's the case here, and all you need to do to look at  
19 that, to understand that issue, is look at Table VII-3 of  
20 the report to assess those claims.

21           I would like to turn your attention to the issue  
22 of whether these alleged production constraints actually do  
23 constrain Dead Sea's ability to ship increased amounts of  
24 magnesium to the U.S. market. Let me point you to Table  
25 VII-2 of your staff's report, the BPI version. And I'll be

1 talking about this in general terms so that I don't reveal  
2 any BPI information.

3           If you look at the data for Dead Sea's total  
4 shipments and export shipments in 2016, 2017 and 2018,  
5 you'll note that there is an obvious change in these totals  
6 during each of these years. I can't characterize that  
7 because it's BPI, but when you look at those changes, it's  
8 abundantly clear that ICL's alleged bromine production  
9 constraints do not impose a real limitation on Dead Sea's  
10 ability to ship increased amounts of magnesium to the U.S.  
11 and other export markets.

12           Thirdly, as we've shown with significant amounts  
13 of testimony and documentary evidence that we've placed on  
14 the record already, Dead Sea has consistently offered prices  
15 that are lower than US Magnesium's prices during the annual  
16 contract negotiation process. And this has caused declines  
17 in US Magnesium's prices throughout the entire process. As  
18 US Magnesium's input costs have increased, the company has  
19 been unable to increase its prices because aggressive price  
20 competition from Dead Sea, which means that the industry has  
21 experienced a serious and growing cost-price squeeze. There  
22 is no reason at all to think that this will change in the  
23 imminent future.

24           Fourth, as our witnesses have testified, the U.S.  
25 market is attractively priced when compared to other global

1 markets because of the existing orders on Chinese magnesium  
2 in the U.S. This difference in pricing between the markets  
3 gives Dead Sea a big incentive to increase its exports to  
4 the U.S. in the imminent future. The evidence with respect  
5 to lower prices received by Dead Sea in other markets  
6 demonstrates that there's a clear incentive for it to ship  
7 to higher-priced markets such as the United States, rather  
8 than to unprotected like, Canada where Israel undersells  
9 China.

10 Fifth, Commerce has found that there is  
11 significant subsidies being provided to Dead Sea by the  
12 Israeli government. Because Dead Sea has no home market,  
13 these subsidies are effectively export subsidies which will  
14 continue to encourage further exports by Dead Sea to the  
15 United States.

16 Finally, and perhaps most importantly here, the  
17 domestic industry is in a very vulnerable condition.  
18 Declining market prices for magnesium have caused US  
19 Magnesium's financial performance to plummet and forced it  
20 to postpone investments in its plants. In fact, although  
21 Dead Sea has asserted that the ATI closure has injured the  
22 domestic industry, the closure of that plant has actually  
23 made the industry more vulnerable to injury caused by  
24 imports from Israel.

25 And as the Commission heard from the US Magnesium

1 in other proceedings, US Magnesium has used the relief it's  
2 received from unfairly-traded imports in other  
3 investigations to make investments in its plants, which has  
4 made it more efficient and productive. Because of the  
5 aggressive price competition coming from the subject imports  
6 from Israel, however, US Magnesium has been unable to fully  
7 implement its plans to increase its capacity, and it's had  
8 difficulty maintaining the capital investments it has made.  
9 The deferral of maintenance on the cells that it has, has  
10 caused its productivity to decline and increased its unit  
11 cost of production.

12 In sum, continued and aggressive competition from  
13 unfairly-traded imports will only lead to additional and  
14 significant declines in the condition of US Magnesium and  
15 other members of the domestic industry. And I thank you for  
16 your attention, and I'll turn it over now to Steve Jones.

17 MR. JONES: Thank you, Neal. This is Steve  
18 Jones. That concludes our presentation, and we'd be happy  
19 to answer your questions now. Thank you.

20 CHAIRMAN JOHANSON: All right. We will now begin  
21 Commissioner questions with Commissioner Schmidtlein.

22 COMMISSIONER SCHMIDTLEIN: Okay, thank you very  
23 much. I'd like to thank all the witnesses for being here  
24 today. This is a bit of an unusual case where we, as you  
25 mentioned, Mr. Jones, in your opening, we don't have a surge

1 in imports and we don't have underselling, and so it looks  
2 like the crux of the case is this question of whether or not  
3 prices from Dead Sea are being used to leverage down prices  
4 of US Magnesium. If I summarized that incorrectly, you can  
5 correct me.

6 All right. So let me ask you, in looking at the  
7 evidence we have on the record of where the Dead Sea prices  
8 are being used? I know that in the prelim you put on the  
9 record some contemporaneous call reports, and then in your  
10 brief you cite to purchaser questionnaires and do an  
11 analysis of those. Is that the extent of the -- and in  
12 addition to the testimony today -- the contemporaneous  
13 documentation we have of purchasers using Dead Sea prices to  
14 lower US Magnesium's prices?

15 MR. JONES: Commissioner Schmidtlein, I'll start  
16 off. Someone else might have comments to add. I think the  
17 place to start is the substitutability of imports from  
18 Israel and U.S. production, highly substitutable, the record  
19 is very strong on this. Not just because it's magnesium is  
20 a commodity, but because Dead Sea and US Magnesium have  
21 similar product portfolios. They both produce Direct Chill  
22 Cast T-bars which the aluminum companies prefer. So highly  
23 substitutable product, first of all.

24 Secondly, you have information in the record, and  
25 the call reports and purchaser questionnaires contribute to

1 this, in showing that Dead Sea and US Magnesium compete  
2 head-to-head at every major U.S. account. There's no  
3 question about that. The competition is up and down the  
4 market. There may be some very small purchasers here and  
5 there who buy from one or the other and don't  
6 comparison-shop, but for the most part, there is  
7 head-to-head competition.

8 COMMISSIONER SCHMIDTLEIN: And I think I heard --  
9 at least one of the witnesses or maybe one of you say -- and  
10 you don't dispute that US Magnesium also is competing with  
11 these nonsubjects that are also in the market?

12 MR. JONES: That's correct, Commissioner  
13 Schmidtlein. There is no dispute that there are nonsubject  
14 imports in the market that compete, but US Magnesium and  
15 imports from Israel compete much more closely than US  
16 Magnesium and the nonsubject imports for reasons that we've  
17 provided, T-bars is one, the other is Dead Sea also has a  
18 direct sales office here in the United States, personnel  
19 that provide a level of service that the nonsubject imports  
20 do not provide.

21 Are nonsubject imports a problem? Well, not yet.  
22 Maybe they will be at some point, but they're definitely  
23 competing in the market. So we're not saying that  
24 nonsubject imports are no issue, but the competition between  
25 US Magnesium and Dead Sea Magnesium is much more intense

1 across the board.

2 COMMISSIONER SCHMIDTLEIN: Okay. And maybe one  
3 of the fact witnesses--Ms. Slade or Mr. Tissington--maybe  
4 you all wanna address this in terms of, when you're doing  
5 sales negotiations, and I listened to your testimony closely  
6 where--and especially Mr. Tissington--when you talked about,  
7 this is a months' long process that is intense, I believe is  
8 one of the words you used -- do you have purchasers  
9 specifically quoting prices from Dead Sea to you? Or is  
10 this something that you surmise? From the context of the  
11 conversation and then later you learn that the sale went to  
12 Dead Sea. Can you give us a little more flavor of exactly  
13 how it works? I mean we have looked at the call logs pretty  
14 closely as well, but I'd like to hear what you have to say.

15 MR. TISSINGTON: Let me start off by saying that  
16 after being in this industry for thirty-five years, I've  
17 developed lots of great relationships with the consumers in  
18 the United States. But I gotta be honest. They are calling  
19 me less and less and less every day. Could be because I  
20 appear in Washington too often. But the information is not  
21 as easy as it used to be to get, I'll be honest. However,  
22 quite often, consumers will simply say, "Dead Sea is lower  
23 than you."

24 Now, the customer base is not large, especially  
25 the customer base that buys in truckload quantities. And if

1 you look at the customer base in the United States, it's  
2 heavily weighted to heavy volume at very few consumers. And  
3 we know who those consumers are. Dead Sea knows who those  
4 are. We all know who buys from whom. And it's not that  
5 complicated with such a small industry. So we've gotten to  
6 the point where consumers will not usually tell just that  
7 Dead Sea Magnesium is selling at X price. What they do is,  
8 they tell us that, "Dead Sea is selling at a price lower  
9 than you."

10 Now, I can't react to that on Day 1 because I  
11 have to go and ask permission from Susan Slade, our VP of  
12 Marketing to move that market price, and she usually says,  
13 "Cam, you better go find two or three other places where  
14 you're hearing the same information." And so we use that  
15 kind of comparison to determine whether the information is  
16 factual or not factual.

17 And then Susan may or may not make that market  
18 move to meet that Dead Sea Magnesium price. But it's not  
19 cut-and-dry as if we were going out to buy a pickup in  
20 Tooele, where we can see the manufacturer suggested retail  
21 price, and we kinda know from our Fox Facts what that price  
22 should be. It's gotten to the point where it's not that  
23 easy because frankly consumers are pretty wary of  
24 anti-dumping countervailing cases.

25 COMMISSIONER SCHMIDTLEIN: Okay. Ms. Slade,

1 would you like to address this?

2 MS. SLADE: Yes, I'd just like to add, well, I  
3 guess, two comments to that. You know, there were a number  
4 of call reports about our negotiations for supply in 2019.  
5 Prior to the filing in 2018, there were significant call  
6 reports, which was significant period of time before the  
7 filing of the trade case, and consumers were much more open  
8 with us and we would absolutely get comments from consumers  
9 that would say, "You're three pennies above Dead Sea. If  
10 you can come down to that price, we can come to some  
11 agreement." "You need to be a penny lower," "You need to be  
12 five pennies lower," and specifically comments on the  
13 supplier of that.

14 As Cam says, now that we're in Washington, we  
15 certainly get lots of information from consumers. We did  
16 have situations continuing into negotiations for contracts  
17 in 2019, so this would've been in the fall of 2018, before  
18 the filing of the trade case, where we were getting  
19 information that we were making offers for sale and Dead Sea  
20 was making offers at prices lower than that, and we were  
21 unable to -- we were losing business to Dead Sea and/or we  
22 had made offers to large purchasers and we were just unable  
23 to conclude them over a period of a month. That's the kind  
24 of time frame where we said, "Ooh, this will be a very  
25 difficult contract season to go through again in the face of

1 ever-lowering prices coming from Dead Sea."

2 I guess I would comment on another -- this is a  
3 little bit more of a subjective situation in which there are  
4 a number--as Cam mentioned--there are a number of consumers  
5 that are significantly large and prospective to the overall  
6 market. And US Magnesium and Dead Sea Magnesium are the  
7 only two suppliers that have the kind of volume to be able  
8 to supply that large consumer, as well as the kind of  
9 product to be able to supply that large consumer, that  
10 product being the Direct Chill Cast Large T-bar ingot.

11 So it's the pressure at those large consumers  
12 that can only come from Dead Sea. Dead Sea's the only one  
13 that can threaten to take all of that account from us. And  
14 that's where significant pressure comes to us as we also  
15 can't afford to lose the volume at those large consumers in  
16 order to keep the production and capacity utilization at our  
17 plant going strong.

18 COMMISSIONER SCHMIDTLEIN: Okay. Let me just,  
19 because I'm running out of time here. So I don't know,  
20 maybe this would be best addressed in the post-hearing  
21 brief. When we look at the call reports, and I think we'll  
22 probably have some follow-up questions on your analysis of  
23 the purchaser questionnaires, since you've bracketed so much  
24 of that, it's hard to discuss it here. But when you look at  
25 the call reports, right? Because I'm looking for

1 contemporaneous documentation that Dead Sea prices were  
2 being used to leverage it down. In order to try to -- this  
3 is your theory of the case, right? This is why we don't see  
4 underselling, because the prices were already low --  
5 but several of the call reports we've looked at show that  
6 US Magnesium doesn't win the sale, right. Like put aside  
7 the question of whether or not it was -- Dead Sea was  
8 actually being quoted or whether that was something that was  
9 surmised later. It doesn't show US Magnesium keeping the  
10 sale at a lower price, right? So when I'm looking at those  
11 going okay, their theory is there's no underselling because  
12 they're already lowering the price.

13                   But many of those call reports show Dead Sea  
14 ultimately getting the price. So I guess one question would  
15 be how does that support your theory of the case, and then  
16 why doesn't that show up in the underselling data, right?  
17 So if we're trying to explain why there's no underselling.

18                   MR. VAUGHN: Commissioner Schmidlein, this is  
19 Stephen Vaughn, and we'll certainly address that in the  
20 post-hearing. But I do want to emphasize that, you know, a  
21 lot of the emphasis on the call reports was at the  
22 preliminary stage of these cases, and since the preliminary  
23 stage you now have a huge amount of evidence, namely the  
24 fact that there's been an entire year of contract  
25 negotiations that took place after these cases were filed.

1           What you see on the record is is that when the  
2 cases were filed, all of the sudden for the first time in  
3 three years there was a dramatic increase in pricing, an  
4 increase in domestic pricing. We would argue that this is a  
5 natural experiment. Nothing else changed. There was no  
6 significant change in demand, there was no significant  
7 change for the non-subject countries; nothing happened with  
8 ATI. That was three years ago. The only thing that changed  
9 was that these cases were put in place, and the ability of  
10 customers to use dumped and subsidized imports as leverage  
11 for the negotiations was weakened.

12           Nothing else happened, and all of the sudden  
13 the domestic industry, which has lost money for three years,  
14 turns an operating profit for the first half of 2019. So we  
15 will certainly address the information in the call reports,  
16 the information on the purchaser questionnaires, and I  
17 understand you're looking for direct evidence of the type  
18 that you're talking about.

19           But we think the facts on the record are  
20 compelling, and there is no alternative credible explanation  
21 as to why pricing suddenly got better.

22           COMMISSIONER SCHMIDTLEIN: Okay. I know my  
23 time is up, but like my follow-up questions to that would be  
24 yes, but all AUVs for even non-subjects went up in the  
25 interim after the duties were imposed, and volume from

1 Israel went up. So volume from Israel didn't go down. So  
2 there wasn't a lack of availability from Israel that was  
3 allowing, right. So it looks like -- it looks like there  
4 was a shock to the market, the entire market from duties and  
5 everybody took advantage of that to raise their prices.

6 MR. VAUGHN: But why would that be the case?  
7 The reason is is that the dumped and subsidized prices from  
8 Israel flow through the whole market. They are distorting  
9 all the market. They're distorting the prices that everyone  
10 is able to get. So when the large purchasers and the  
11 purchasers no longer have that leverage of saying hey, we  
12 have this big supplier out here that at least according to  
13 their own SEC filings has 12,000 tons of unused capacity,  
14 that is shipping thousands of tons into markets like Canada  
15 at much lower prices, we can draw on those guys. We can  
16 bring them in here.

17 When they no longer have that leverage, yes  
18 everyone -- now you start to have like a real market, and  
19 instead of everything being sold at a loss, now we start  
20 having a real back and forth and the situation improves.  
21 It's hard to imagine much more compelling evidence, that you  
22 change this one aspect and all of a sudden instead of  
23 everybody going out of business, people are now making  
24 money.

25 COMMISSIONER SCHMIDTLEIN: Okay, all right. I

1 apologize for going over. Thank you.

2 CHAIRMAN JOHANSON: Commissioner Kearns.

3 COMMISSIONER KEARNS: I'd also like to thank  
4 you all for being here. I appreciate your testimony. I  
5 guess I'll start right where Commissioner Schmidtlein left  
6 off. Mr. Vaughn, I guess you were talking about  
7 post-petition effect and how it looks like prices went up.  
8 I guess you're focused on AUVs, Israeli AUVs at that period  
9 or --

10 MR. VAUGHN: Actually, if you look at page  
11 V-13 of the staff report, I'm looking at the public version  
12 of the staff report and how it's talking about your pricing  
13 products, it says "Indexed price data compares how prices of  
14 Products 2 and 3 trended for U.S. producers and the subject  
15 importer. Most of the increase in domestic prices of  
16 Products 2 and 3 occurred in the last quarter of 2018  
17 through the first half of 2019. Prices of subject imports  
18 decreased until about the third quarter of 2018, at which  
19 point they increased throughout the rest of the year and  
20 into the first half of 2019."

21 So it is not just the AUVs. This is not a  
22 question of product mix. We have strong evidence on the  
23 record that once the cases were filed, pricing got better.

24 COMMISSIONER KEARNS: Okay thank you, and that  
25 leads me to what I was looking at there, which was also

1 pricing data. I'm looking at the proprietary version, page  
2 V-8 and V-9, which are the two products you just mentioned,  
3 Product 2 and Product 3. I'm looking at the margins there  
4 over the full POI, but then specifically in the first half  
5 of 2019.

6 With Product 2, I guess that's where my -- my  
7 first big question mark comes in there. I guess maybe I'll  
8 just stop there and ask for you, if you can respond at all  
9 to what I'm looking at there?

10 MR. VAUGHN: Well I'm going to -- so we're  
11 going to discuss this more in the post-hearing obviously.  
12 But yes, we're very eager to talk about this. I think is  
13 very consistent with what we're talking about. In other  
14 words, I think as you -- everybody's kind of in the fog of  
15 war in terms of the price negotiations, right, because  
16 you've got -- the customers are the only ones who really  
17 know what the offers are that are out there.

18 But once people know that there's less of a  
19 threat from dumped imports, then I think what you see is  
20 people are able to change the offers that are being made,  
21 and I think that turns up in the pricing that you're seeing  
22 there in Product 2. I think it affects everybody. I think  
23 it affects people on both sides of the investigation, and I  
24 think it affects how those relate to each other.

25 COMMISSIONER KEARNS: Okay. I look forward to

1 hearing more in the post-hearing. I think, I guess we can't  
2 really go much further than that.

3 MR. REYNOLDS: Commissioner Kearns, this is  
4 Neil Reynolds.

5 COMMISSIONER KEARNS: Yes.

6 MR. REYNOLDS: If I might add, it really isn't  
7 unexpected that you would see prices for all sources of the  
8 product increasing after the imposition of dumping duties.  
9 It's not just domestic prices that will increase in that  
10 situation; the other prices are -- the non-subject prices  
11 are allowed to go up because prices are generally increasing  
12 in the market, because the orders in the case have had a  
13 disciplining effect on the market.

14 So it shouldn't be a surprise to the  
15 Commission that you are seeing prices for non-subjects,  
16 subjects and domestic products increasing during that  
17 period.

18 COMMISSIONER KEARNS: Right. But I guess what  
19 I'm asking about isn't so much that pricing for each, you  
20 know, from each supplier is going up, but the relative  
21 pricing between DSM and US Magnesium?

22 MR. VAUGHN: I think I see what you're getting  
23 at. In other words, you want to know why those -- let us  
24 address that in the post-hearing. But I think that actually  
25 makes a lot of sense when you sort of think through how the

1 contract process works. But it's not easy to do that here.  
2 But we will explain that.

3 COMMISSIONER KEARNS: Okay, thank you. Yeah.  
4 Hopefully I won't be overlapping too much with some of the  
5 questions Commissioner Schmidtlein asked, but I wanted to  
6 start -- I mean in Footnote 117 of our preliminary  
7 determination, I suggested that our assessing of pricing  
8 would be facilitated by an opportunity to question relevant  
9 US Magnesium personnel, those that were responsible for  
10 writing the call reports. Are those personnel present  
11 today?

12 MR. TISSINGTON: I am. Cam Tissington, yes.

13 COMMISSIONER KEARNS: Okay. I think we had --  
14 if I recall correctly, there was another name on the call  
15 reports that --

16 MR. TISSINGTON: We have, we actually have  
17 three people involved in magnesium sales, myself, Rachel  
18 Rowley and Tom Correlich. So any of the three of us might  
19 write call reports or might jointly write the reports.

20 COMMISSIONER KEARNS: Okay, okay. But all  
21 three of you are familiar enough with each individual  
22 negotiation to answer any questions?

23 MR. TISSINGTON: There's only the three of us  
24 that deal with actual transactional sales, and we work in  
25 the same tiny office. So absolutely we talk about

1 everything thoroughly.

2 COMMISSIONER KEARNS: Okay. I guess what I  
3 want to get to here is we've been doing some sort of I guess  
4 I call it purchaser-specific analysis, to try to get a  
5 better feel for, you know, what's going on in this market,  
6 both with respect to the lost sales and with respect to kind  
7 of the effects on negotiations. I want to ask about each of  
8 those things now.

9 With respect to lost sales, page 29 of your  
10 brief I think is very interesting. It concerns lost sales  
11 with respect to three purchasers that you pointed to. Here  
12 or post-hearing can you respond to pages 28 and 29 of DSM's  
13 brief, which argues that certain lost revenue allegations,  
14 and I think lost sale allegations, are contradicted by other  
15 evidence in the record. I don't think you can say anything  
16 now about that, but it would be helpful here as well.

17 MR. JONES: Steve Jones, Commissioner Kearns.  
18 We'll handle that post-hearing. You're right, we really  
19 can't get into that in the public hearing. But we'll be  
20 sure to address that for you in the brief.

21 COMMISSIONER KEARNS: Okay, thank you. And  
22 related to that, again on page 29 of your brief, you sort of  
23 calculate the magnitude of how important those three  
24 purchasers are, and you know, the percentage of total  
25 purchasers' sales volumes that they account for. I guess my

1 question is, you know, what do we do about the non-response,  
2 the non-response purchasers?

3 I mean should we just sort of extrapolate and  
4 assume those who didn't answer the purchaser questionnaires  
5 lost, you know, that a similar volume of sales was lost to  
6 DSM from them or what more can we get about the purchasers  
7 who didn't respond to the questionnaire, or how should we  
8 analyze that? Does that make sense?

9 MR. REYNOLDS: Commissioner Kearns, I think  
10 that generally, you know, what we would want to do in the  
11 brief is point you to points in the staff report that you  
12 and your staff have clearly found situations where there are  
13 lost sales and revenues. With respect to the other  
14 purchasers who haven't responded, I think that you can  
15 conclude that there were similar situations that have  
16 occurred for those purchasers in the market.

17 That's consistent with US Magnesium's  
18 experience in the market, that they have been forced at a  
19 number of key accounts to either reduce their sales prices  
20 or lose the sales. I think the fact that there were several  
21 purchasers who haven't provided you with information, a  
22 number of them, is an indication that they perhaps, I think  
23 as a reasonable inference, that they chose not to respond  
24 because they don't want really to tell you that they're  
25 agreeing with the lost sales and revenue allegations.

1                   COMMISSIONER KEARNS: Okay, and I guess for  
2 some of those then, you all have been lost sales to those  
3 other purchasers who didn't respond?

4                   MR. REYNOLDS: I'll have to check that.

5                   COMMISSIONER KEARNS: Okay, please do. Thank  
6 you. So then switching to, you know, from lost sales moving  
7 to the effect on negotiations, we looked at some of your  
8 largest customers and at some of the customers that you  
9 described extensively in your brief beginning at page 31,  
10 their questionnaire responses seem to suggest that it was  
11 non-subject imports and not DSM that may have forced prices  
12 down, if you look at the purchaser-specific AUVs for  
13 purchasers from US Magnesium, DSM and non-subject imports.  
14 Can you respond to that now or post-hearing?

15                   MR. VAUGHN: We will certainly respond to that  
16 in the post-hearing. We will obviously -- we will make two  
17 obvious points right now. We'll say more in the  
18 post-hearing. One, I think it's clear that the purchasers  
19 have a very strong interest in trying to keep dumped and  
20 subsidized sorts of imports in the market, and that should  
21 be taken into account as part of your analysis.

22                   Second of all, the volume of imports from Dead  
23 Sea is much greater than the volume of imports from any of  
24 the other countries that Respondents have pointed to, and  
25 therefore we think that's another major factor that you

1 should take into account, because when you're in these  
2 negotiations, right, one of the big issues is how credible  
3 is the threat of the other imports coming in? Given the  
4 size of DSM's presence, given DSM's very large activity in  
5 Canada, the threat from DSM is obviously profound.

6 But we will go into more detail on these  
7 points with reference to specific purchasers in the  
8 post-hearing.

9 COMMISSIONER KEARNS: Okay thank you, and that  
10 gets to I think what I may have heard Ms. Slade say earlier,  
11 and just to see if I understood it correctly. Is it the  
12 case that these non-subject suppliers can't provide the  
13 quantities that those purchasers need, and so they can't  
14 really be a credible threat in terms of pricing versus DSM?

15 MS. SLADE: Sure. Susan Slade. Again, yes  
16 it's true that the smaller importers can't necessarily  
17 supply the volume that the larger accounts need, but they  
18 certainly can supply volume to some of the smaller accounts.  
19 Obviously, we compete against the smaller importers at those  
20 accounts. Also, the difference being that they don't have  
21 quite the breadth of product portfolio that both U.S.  
22 Magnesium and DSM have that is essentially identical.

23 So we may compete against those smaller  
24 importer, non-subject importers at some accounts, but not  
25 necessarily across at the largest accounts. They don't

1 threaten to take all of that business, and across all of the  
2 accounts. Whereas with Dead Sea Magnesium, where both our  
3 product breadth and quality and availability is essentially  
4 identical, we compete at every single account for every  
5 single transaction.

6 COMMISSIONER KEARNS: Okay. Thank you very  
7 much.

8 CHAIRMAN JOHANSON: Commissioner Stayin.

9 COMMISSIONER STAYIN: Do you consider that  
10 there are any supply constraints in the market?

11 MS. SLADE: Yes, Susan Slade. Thank you. We  
12 don't consider any supply constraints in the market. If you  
13 look at the global magnesium market, there is significant  
14 over-capacity in the global magnesium market, and in the  
15 United States market specifically despite anti-dumping  
16 orders on China, there is significant competition coming  
17 into the United States, significant imports and competition  
18 coming into the United States. So we don't see any  
19 constraints in either our home market or the rest of the  
20 world.

21 COMMISSIONER STAYIN: The record in the supply  
22 constraint area, we found that 14 of 34 responding  
23 purchasers reported supply constraints of magnesium.  
24 Purchasers reported that US Magnesium declined or refused to  
25 sell magnesium to them, that US Magnesium behaves in a

1 dominant fashion with selling their products, and they're  
2 often unable to supply additional volume over a quoted  
3 quantity, and in some cases that US Magnesium was  
4 disqualified because they could not meet the specifications.  
5 Can you give us some kind of backup to any of this and what  
6 response you have to them?

7 MR. TISSINGTON: Cam Tissington. Well, you  
8 know, I'm four foot 17. I don't think really dominant in  
9 any supply situation. But we do have a finite amount of  
10 capacity that we have online at any particular price point.  
11 At the prices that we've been selling at for this last three  
12 years, we certainly do have production constraints.

13 In other words, we can't afford to spend  
14 capital upgrading our facility to make more product at  
15 today's price levels. So when we go into the contract  
16 season at the fall of the year, that is the amount of metal  
17 that we have to contract. We know what we're going to  
18 produce in the next calendar year. We go through contract  
19 negotiations.

20 Because contracts are so hotly contested and  
21 negotiated, there have certainly been times when somebody,  
22 either ourselves or other side, overplays their hands and  
23 you find out that at the end of that season you may not have  
24 the amount of metal left in your portfolio that they want to  
25 buy, or they may not have the amount left in their purchase

1 portfolio that we want to sell. So those things certainly  
2 happen.

3           Also because there's really no spot market in  
4 the United States during the calendar year, we don't save  
5 metal for the spot market. If a consumer under buys, and  
6 then they come out into the marketplace into the spot  
7 marketplace during the next calendar year, it is possible  
8 that we might not have the volume available to meet their  
9 needs, and we may have to decline to pull out all of that  
10 volume or in a portion of that. It doesn't mean they can't  
11 buy the metal. There are plenty of folks that will supply  
12 that spot market, but quite often it won't be us.

13           In recent history, I don't know of any account  
14 that we are not qualified at or that we have failed to meet  
15 their qualifications.

16           COMMISSIONER STAYIN: Do you produce all types  
17 of magnesium products?

18           MR. TISSINGTON: We do. We have the broadest  
19 product line possible. Our product line is almost identical  
20 to Dead Sea Magnesium's. We produce UHP magnesium,  
21 ultra-high purity. We produce magnesium that does qualify  
22 for the metal reduction industries, which are usually one of  
23 the higher demanding market segments.

24           MS. LUTZ: Commissioner Stayin, this is  
25 Jennifer Lutz. I just wanted to add as you heard in Cam's

1 testimony, the sales are done on an annual contract basis.  
2 US Magnesium has fulfilled its contracts. Talking about  
3 shortages means the purchasers did not contract the proper  
4 amounts. That's a different matter. With respect to some  
5 of the allegations of US Magnesium not being able to meet  
6 specifications, we can't discuss them publicly. But I think  
7 that they are wildly exaggerated and we will address that in  
8 the post-hearing.

9 COMMISSIONER STAYIN: There were comments from  
10 some purchasers that US Magnesium used all or nothing  
11 offers. Has your firm used all or nothing offers requesting  
12 or demanding exclusivity arrangements?

13 MR. TISSINGTON: No, we have absolutely not  
14 demanded that consumers buy all of their product from us.  
15 Quite frankly, that would be ludicrous.

16 COMMISSIONER STAYIN: Have you ever failed to  
17 meet a purchaser's minimum quality specification?

18 MR. TISSINGTON: Cam Tissington. As I stated  
19 previously, we don't know of any accounts where we're not  
20 qualified to supply, including all the accounts of the metal  
21 reduction industry and also the powder industry, both of  
22 which can have very high quality standards. We're also  
23 qualified by all of the folks making parts for the auto  
24 industry, and those individual OEs that make or that  
25 purchase magnesium automotive parts. So I'm not aware of

1 any individual location where we're not qualified with our  
2 product lines.

3 MR. REYNOLDS: Commissioner Stayin, this is  
4 Neal Reynolds. I just want to point out that in Table II-9  
5 of the staff report, there's a very consistent response from  
6 purchasers saying that Israeli and domestic products are  
7 both very comparable in quality.

8 COMMISSIONER STAYIN: That brings me to the  
9 whole question of what factors are the primary driving  
10 forces in the market. The question is is price the driving  
11 factor in getting a sale?

12 MS. SLADE: Yes, Susan Slade, and thank you  
13 for the question. When we're dealing with competing against  
14 a qualified supplier at a consumer, price is absolutely the  
15 only factor in determining the conclusion of the  
16 negotiation. We consider that when people talk about other  
17 non-price factors like customer service or your sales person  
18 is really nice or we hope that you can get the product to us  
19 in short order, we have all of that equivalent capability  
20 with Dead Sea Magnesium, and all of those non-price factors  
21 are really just small talk kind of like the weather to keep  
22 the negotiation going, and the final conclusion of the  
23 negotiation is decided on price.

24 COMMISSIONER STAYIN: In response to our  
25 questionnaires, purchasers rated 16 different factors and 35

1 firms responded that availability was the number one issue,  
2 product consistency, reliability of supply, delivery time,  
3 quality meets industry standards and then price.

4 So we had 35 firms, 34 and the majority of  
5 firms referring to other factors than price. Delivery terms  
6 and supplier diversity was not necessarily of concern. How  
7 do you respond to those?

8 MS. SLADE: I would respond to that by --  
9 again, Susan Slade, thank you -- and by saying that all of  
10 those non-price factors, when we're competing with Dead Sea  
11 Magnesium were equivalent, and so the only decision can come  
12 down to price.

13 MR. VAUGHN: Commissioner Stayin?

14 COMMISSIONER STAYIN: Yes.

15 MR. VAUGHN: Yeah, this is Stephen Vaughn. I  
16 would also note that on page II-15 of the staff report, it  
17 says the majority of purchasers, 20 out of 35, reported that  
18 they usually purchase the lowest priced product.

19 COMMISSIONER STAYIN: Yeah. Well, it looks  
20 like I'm almost out of time, so I'll hold my next question  
21 for the next round.

22 CHAIRMAN JOHANSON: Commissioner Karpel.

23 COMMISSIONER KARPEL: I wanted to ask about  
24 your ability to respond to changes in demand, which hinges  
25 in production. So setting aside, you know, relative changes

1 in market share, but how do you generally deal with changes  
2 in demand if it's true what you all, is it's not really able  
3 to change production?

4 MR. TISSINGTON: This is Cam Tissington.  
5 There's a number of different bottlenecks in an electrolytic  
6 magnesium plant. The one that is most obvious is the  
7 electrolyzers and how many electrolyzers you're running. An  
8 electrolyzer takes two to three weeks to rebuild. So as  
9 long as you've got spots or slots or, as I think maybe the  
10 questionnaire referred to it as steel shells available in  
11 your facility, you could increase capacity in a relatively  
12 short period of time.

13 These are very large electrolyzers, they make  
14 a lot of tons per year each. So in a two to three week  
15 period, we can rebuild an electrolyzer if there's that spot  
16 available. However, you couldn't possibly consider doing  
17 that if you're not making a reinvestment return on the sales  
18 of your magnesium. So if I'm selling magnesium at a loss,  
19 I'm certainly not going to spend the Cap X to rebuild an  
20 electrolyzer for the privilege to sell more magnesium out in  
21 the marketplace at a loss.

22 The second bottleneck in an electrolyte plant  
23 that we sometimes talk about is how much magnesium chloride  
24 powder can you make to feed those electrolyzers. That's  
25 usually -- it's a number that only the folks that run those

1 electrolytic plants know. But it does certainly limit the  
2 amount of feed you have for electrolyzers, and thus the  
3 amount of electrolyzers you can put on at any time.

4 I can say that US Magnesium has a lot of  
5 ability under both of those ceilings to increase the  
6 capacity of the plant. But we just can't possibly do it at  
7 the current rate of return.

8 COMMISSIONER KARPEL: And so on the flip side,  
9 if demand were to go down, setting aside any issue with  
10 subject imports or non-subject imports, but just a change in  
11 demand in the downstream industries that use your product,  
12 how do you respond to that?

13 MR. TISSINGTON: Cam Tissington. In the  
14 United States, because volume is contracted on a yearly  
15 basis, and that as at the choice of consumers, not at the  
16 choice of producers, it's consumers that want to know what  
17 their budget is going to be for next year. We pretty well  
18 know in the fall of the year after our contracts are  
19 concluded what our production will be for the next year, and  
20 during that contract season we are driven to make sure that  
21 we sell all of the magnesium under contract that we are  
22 configured to produce in the plant for the next 12 months.

23 So if demand should change, if a customer  
24 should disappear, if the demand of that particular customer  
25 should go down dramatically, we have an issue. We have

1 magnesium that cannot be sold on the spot market because in  
2 a falling demand market, there is certainly no spot market  
3 and that is a problem for us.

4 MS. SLADE: At that point, we do actually have  
5 other options, and our option if we can't sell the material  
6 into the United States, our option is to export that  
7 material and we will and we have done that. But I think  
8 you'll notice in the information in the questionnaire that  
9 we've provided, our export volumes have been reduced  
10 consistently throughout the Period of Investigation, as  
11 we've made sure to supply that metal to the United States.

12 (Pause.)

13 COMMISSIONER KARPEL: All right, and I guess I  
14 want to understand, and maybe you can address this a bit  
15 more in I think some of the information here on consumption  
16 in the record as confidential. But there have been some  
17 changes in apparent U.S. consumption over the POI, and I  
18 guess I want to understand how that has impacted this issue  
19 you say in terms "well, we can't really lower production,"  
20 so we have to sell -- we want to sell all we have.

21 If there's changes in apparent consumption,  
22 that could impact you separate and apart from any impact of  
23 subject imports. So given those numbers aren't public,  
24 maybe we just save that for the post-hearing.

25 MR. VAUGHN: Commissioner Karpel, we'd be

1 happy to put that, discuss that in the post-hearing brief.

2 COMMISSIONER KARPEL: Thank you, and then I  
3 want to better understand your argument, that you have to  
4 sell everything you produced in a single year. Is it not  
5 possible to inventory some of the materials? I know there  
6 is some record information about inventory, so I'm a little  
7 confused on that point.

8 MR. TISSINGTON: Cam Tissington. Certainly  
9 that product could be inventoried, but it would be a crazy  
10 business model to do that unless you saw an opportunity then  
11 in the following calendar year to sell that product in the  
12 market in addition to what you planned on producing in that  
13 market. That's a gamble that's very difficult to take and  
14 so as Ms. Slade said, our logical option is usually to go  
15 offshore with that material and try to sell it in other  
16 markets.

17 But it is physically possible to keep it?  
18 Absolutely. The other decision you could make is to shut  
19 down electrolyzers prior to their natural expiration.  
20 That's a very, very expensive decision to make.  
21 Electrolyzers run, our particular electrolyzer runs about  
22 five years. So you certainly when you spend the Cap X to  
23 build that electrolyzer, you need to have a five-year vision  
24 that you're going to run that electrolyzer. When you shut  
25 them down in midyear, you do incur a significant financial

1 penalty for doing that.

2                   COMMISSIONER KARPEL: Thank you. It just  
3 seems like a challenging industry if you're not able to  
4 respond to changes in demand very well. I mean most  
5 industries can sort of tailor their production to what the  
6 market needs and that can also affect price. But it sounds  
7 like you're saying that you can't actually do that.

8                   MR. TISSINGTON: This is Cam Tissington. You  
9 can do that, but it's a great financial penalty, and it is  
10 strictly the nature of how you make magnesium. It's not  
11 easy to make the way folks that run electrolytic plants make  
12 it. These are electrolyzers that run at around 1,500  
13 degrees Fahrenheit. They're all hot materials of  
14 construction. The cells are full of molten salt. The  
15 molten salt unfortunately has a real desire to penetrate  
16 into the mortar and the brick and these electrolyzers, and  
17 that's why if you send them through a thermal cycle, if you  
18 heat and cool these cells, you lose your refractory, your  
19 mortar and your brick in these cells.

20                   So it's just the nature of making magnesium  
21 the electrolytic process way. But it is the best way to  
22 make magnesium. It's not that different than other  
23 electrolytic metals. We all deal with difficult materials  
24 of construction and high temperature plants that can't be  
25 cooled down. Now when I say "can't," you can certainly do

1 it, but it's at a financial penalty if you destroy these  
2 electrolyzers, because they really are meant and must run  
3 for a five year cycle to justify the Cap X that you put in  
4 them.

5 MR. VAUGHN: Commissioner Karpel, I would just  
6 point out that obviously there are other ways to make  
7 magnesium and it's referenced in the staff report. But in  
8 the past when the Commission has looked at this industry,  
9 they found that this method is actually the more cost  
10 effective method. So that explains sort of why U.S. Mag  
11 uses this method, why DSM uses the method. But it does come  
12 with these complications, as you suggested.

13 MR. REYNOLDS: And Commissioner Karpel, I'd  
14 like to add done thing. The whole approach and thought  
15 behind the contracting process, the annual contracting  
16 process is based on both purchasers and producers' ideas  
17 about what expected and projected demand for the following  
18 calendar year is going to be. Both sides, especially the  
19 purchasers, are trying to project what they're going to need  
20 for that year. So the contract volumes reflect that at  
21 least at the time they contract.

22 COMMISSIONER KARPEL: So related to that, I'm  
23 wondering -- I just want to re-check this to make sure I'm  
24 not saying misstatements.

25 (Pause.)

1                   COMMISSIONER KARPEL: --right way, so I won't  
2 talk specifically. But I guess I'm trying to understand  
3 what your unused capacity is. So is this cells that you  
4 have that aren't turned on and running? Are these yeah.  
5 I'll stop there.

6                   MR. TISSINGTON: This is Cam Tissington. A  
7 magnesium electrolytic plant is a chemical plant where we  
8 prepared the feedstock for the metallurgical plant, and it's  
9 a metallurgical plant that then takes the feedstock and  
10 processes it into molten metal and ultimately a casting that  
11 we can sell to the marketplace.

12                   When we talk about unused capacity, it really  
13 depends upon where your bottleneck is. In the case of US  
14 Magnesium today, at the rates we're currently running at, we  
15 have plenty of product from the chemical side of the  
16 business, which is the dried magnesium chloride feed. We  
17 could I won't say easily, because it's a very expensive  
18 process. But we could basically take unused slots in the  
19 electrolytic plant and add more electrolyzers.

20                   That this large steel box that's lined with  
21 refractory, where we actually decompose magnesium chloride  
22 into magnesium and chlorine. We have spots available in  
23 electrolytics to put more of those cells in, which would  
24 immediately increase the capacity of that plant. But those  
25 cells were taken offline at the end of their lives, and were

1 not rebuilt because the market price didn't justify  
2 rebuilding them.

3           So up to a certain level, we can keep adding  
4 electrolyzers. After we get all the electrolyzers in that  
5 will consume all of the chemical feed from the chemical  
6 plant, then the next bottleneck is what we call  
7 spray-drying, which is taking mag chloride and drying it to  
8 a feed for those electrolyzers.

9           But we have a provision for that as well. We  
10 spent a tremendous amount of money on an expansion of that  
11 facility that we never did bring online because of market  
12 conditions, so we do have an answer to the spray dryer  
13 limitation as well. So on paper that plant is designed to  
14 90,000 metric tons.

15           MS. SLADE: It's Susan Slade. If you don't  
16 mind me adding just a couple of comments. As Cam mentioned,  
17 I think it's important to understand those electrolyzers can  
18 be put in place quickly, I mean in a matter of three weeks  
19 with the current crew that we have. We certainly could  
20 bring on more crew to bring cells on more quickly.

21           The important part of this is the decision to  
22 build or rebuild an electrolyzer is a long-term decision.  
23 You can't make that decision just to supply a spot  
24 requirement one month and one year. That big cell is going  
25 to produce large amounts of metal for the next five years.

1 So you've got to have prices. You have to have some price  
2 certainty for the future in order to justify that  
3 investment.

4 Our feeling is that in -- with us being able  
5 to raise prices in 2019 and our attempt to raise prices in  
6 2020, we feel like since the trade case was filed and the  
7 veil of potential dumped and subsidized imports from Israel  
8 has been uncovered and the market is aware that there need  
9 to be prices in the marketplace that reflect fair trade, we  
10 have a lot of confidence that in the absence of dumped and  
11 subsidized imports from Israel that we can make that  
12 investment to rebuild electrolyzers for the next five  
13 years, and for that matter in anticipation of that we put  
14 together a schedule to do that rebuilding over the next 12  
15 months.

16 CHAIRMAN JOHANSON: All right. I would like  
17 to thank you all for appearing here today. Has the domestic  
18 industry lost market share to non-subject imports, and if so  
19 has market share loss been concentrated in a particular  
20 segment of the U.S. magnesium market?

21 MR. JONES: Chairman Johanson, Steve Jones.  
22 The information on that in the staff report is bracketed.  
23 It's hard to characterize. I believe, I'm wondering if one  
24 of my colleagues has an inclination to try to do that.

25 MR. VAUGHN: I think Commissioner, we would

1 rather just address that in the post-hearing, given how it  
2 really is, it really is all bracketed, and we'd like to talk  
3 about that in the post-hearing. But I do want to clarify  
4 for purposes of, you know, the Commission's understanding,  
5 what our view is.

6 We did not say that non-subject imports are  
7 not a factor in the market, and in fact I think we made very  
8 clear we think they are a factor in the market. What we  
9 would push back very hard on is, is that somehow non-subject  
10 imports, you know, break the causal link between the harm  
11 that Israel is causing and the harm that we are suffering.

12 In other words, they are a factor that we have  
13 to overcome, just like any industry has other multiple  
14 challenges and factors that they have to overcome. But we  
15 think here, the evidence is very strong that the Israeli  
16 imports by themselves are a cause of material injury.

17 CHAIRMAN JOHANSON: Thanks Mr. Vaughn, and  
18 following up on that question, how do you respond to DSM's  
19 contention at page 22 of its prehearing brief that  
20 non-subject imports, sources were low price leaders during  
21 the Period of Investigation?

22 MR. VAUGHN: So I would make a couple of  
23 points in response to that argument. First, I think that  
24 the argument completely sort of misconstrues what's  
25 happening. They're analyzing these cases if we're sort of,

1 you know, in hot-rolled steel or something and you've got  
2 people kind of running around, going out to distributors  
3 with low-priced offers, and that's what tends to drive the  
4 market.

5 Here, there are no distributors or virtually  
6 no distributors. There are no spot sales. That's just not  
7 how this market works. What you have is a limited number of  
8 customers who come together at a limited period of time once  
9 a year to negotiate contracts. Do non-subject imports play  
10 a role in those contracts? Yes. Do they play a big a role  
11 as dumped and subsidized imports from Israel? We don't  
12 think so for several reasons.

13 One, the Israeli product is a higher quality  
14 product and can serve a larger share of the market. Two,  
15 Israel has a much bigger presence in the market and has been  
16 in the market for a much longer time. Three, the potential  
17 for Israel to increase its sales to this market is quite  
18 significant and profound. Four, you know, everyone knows  
19 that DSM is very active not only here but in other markets,  
20 and they can easily shift sales from those markets to this  
21 market, given that this is a more attractive market.

22 And so given those facts, when customers are  
23 using leverage over us to drive down our prices, you know,  
24 the dumped and subsidized imports from DSM are one of the  
25 best pieces of leverage that they have. This can really be

1 seen by what happened between interim '18 and interim '19,  
2 where all of a sudden the cases are filed, leverage hasn't  
3 gone completely away because we don't yet know how the cases  
4 are going to come out.

5 But even just the potential of a trade, of  
6 trade litigation changed the market dramatically and  
7 enormously. In other words, those customers didn't just  
8 immediately switch over and say we're dropping all the  
9 Israeli goods and now we're only going to buy from the  
10 non-subject imports. They said we are prepared -- now that  
11 you've filed this case, we are prepared to pay higher prices  
12 than we were willing to pay before. That shows that the  
13 imports from Israel are a unique and detailed source of  
14 harm.

15 MS. LUTZ: Chairman Johanson, just to probably  
16 take what I think the main takeaway from what Mr. Vaughn  
17 just said was that if the non-subject imports were the cause  
18 of price depression in the U.S. market, the filing of the  
19 case should have had no effect on the U.S. market. The  
20 non-subject imports would have been free to continue to  
21 participate as they had been, driving down prices if they  
22 were cause of it and they didn't.

23 CHAIRMAN JOHANSON: Thanks, Ms. Lutz and Mr.  
24 Vaughn. Could you all please respond to arguments by Alcoa  
25 and Arcanic in their prehearing brief submissions, pages two

1 to four of Alcoa's and pages three to four of Arcanic's  
2 submission, that subject imports have no volume effects?

3 MR. TISSINGTON: This is Cam Tissington. I'm  
4 not sure, Commissioner, exactly what you're referring to,  
5 but Dead Sea Magnesium certainly does export magnesium into  
6 the United States. They're a significant portion of the  
7 supply in the United States. The two consumers that you  
8 just mentioned are some of the largest consumers in the  
9 United States.

10 I'm not sure how either Alcoa or Arcanic could  
11 say that Dead Sea Magnesium did not have an impact on the  
12 U.S. marketplace. I'm a bit incredulous to that, but on the  
13 other hand I'm a seller. I'm in the business to sell metal,  
14 and I'm pretty sure that one or two of them are sitting in  
15 the back of the room glaring at the back of my neck right  
16 now. So if I need to get into more detail, I would really  
17 prefer to do it in a writing after the hearing.

18 CHAIRMAN JOHANSON: Okay, yes. Mr. Vaughn.

19 MR. VAUGHN: Commissioner, I do have their --  
20 I have their brief here, and let me make a few points in  
21 response. First of all, I think they misunderstand the law.  
22 They seem to argue that unless -- that the imports cannot be  
23 significant unless you see kind of a huge surge in imports.  
24 That's not true. The statute just asks whether they're  
25 significant either in absolute terms or relative to

1 production or consumption.

2 Here, the imports from Israel combined with  
3 the possible threat of imports from offshore are clearly  
4 sufficient to have a major leverage point in the market.  
5 Next, they try to change the subject and say well, you guys  
6 said in your 232 submission that you were worried about  
7 imports from Russia and other countries.

8 Again, that's wholly consistent with what I  
9 just told you. Actually, if you look at that 232  
10 submission, we also referenced imports from Israel. So we  
11 do have these concerns about subject imports. We're not  
12 saying they don't have a factor in the market. But to do  
13 say that, you know, three or four thousand tons of imports  
14 from Russia counterbalances 11,000 tons of imports from  
15 Israel and breaks that causal link we think is just  
16 completely incorrect.

17 CHAIRMAN JOHANSON: Thanks, Mr. Vaughn. You  
18 indicate at page 35 of your prehearing brief that you're  
19 unaware of any purchasers whose specifications you cannot  
20 meet.

21 However, ATI submitted evidence on its  
22 prehearing brief that you failed to qualify to supply  
23 magnesium for the production of zirconium sponge on a number  
24 of occasions. This can be seen at page three of ATI's  
25 prehearing brief. Could you please explain this

1 discrepancy?

2 MR. TISSINGTON: This is Cam Tissington. Back  
3 when we were really close friends with ATI, they spent a  
4 fair amount of time in our plant actually, running trials of  
5 different types of materials to come up with formulations  
6 that would be actually better for their zirconium  
7 production. We actually have a load of materials sitting in  
8 our warehouse with their name on it that is being approved  
9 by them and that's ready to ship to them.

10 Unfortunately, we've had a falling out of our  
11 relationship with ATI, and they're no longer interested in  
12 buying that particular load or any other magnesium from us  
13 to the best of my knowledge. But we are qualified to the  
14 best of my knowledge with ATI. I've never received anything  
15 from them that said we were not qualified. Alternative to  
16 that, we have a load ready for them that they've approved.

17 MS. LUTZ: Chairman Johanson, I was looking  
18 closely at their submission when we received it, and I think  
19 that while the data are confidential, I would not place much  
20 weight on their analysis and we will explain why in our  
21 post-hearing brief.

22 CHAIRMAN JOHANSON: So you say you contend  
23 that you did not fail to qualify magnesium for the  
24 production of zirconium sponge?

25 MR. TISSINGTON: Cam Tissington. I contend

1 that we did not fail. In the case of metal reduction,  
2 especially for zirconium, there's some elements that they're  
3 more particular about in magnesium than other consumers  
4 might be. Magnesium, especially pure magnesium, is not 100  
5 percent sure. As you probably all know from dealing with  
6 other metals, there's always level of contaminants that are  
7 available in those pure metals.

8           The zirconium industry has particular  
9 contaminants that they are concerned with. One would be  
10 aluminum. So they have specifications written around very,  
11 very low levels of aluminum contamination. We meet those  
12 levels, and we have certainly met those requirements at ATI  
13 and worked very closely with them inside our facilities.  
14 They've audited our facilities, they've been there where  
15 we've made casting runs for them.

16           Now this -- our falling out of our  
17 relationship with ATI was 2016. So this is quite a while  
18 since we've had meaningful conversations on what their  
19 requirements are for the zirconium industry. But prior to  
20 that, there was a terrific working relationship between the  
21 two companies on those products for the zirconium industry.

22           CHAIRMAN JOHANSON: So different companies  
23 will have different standards and you have to formulate your  
24 product to meet those, these individual companies?

25           MR. TISSINGTON: Typically -- this is Cam

1 Tissington -- typically customers buy to an ASTM  
2 specification, and it may be as easy as 99.8 magnesium. So  
3 it's Specification 9980A, magnesium. There are a few  
4 industries, though, that do have special requirements,  
5 especially when you get into the ultra-high purity  
6 magnesium.

7           Now there are specifications for UHP that are  
8 consistent for everybody, 99.95, different grades within  
9 ASTM. However, then there's also folks, specific customers  
10 like ATI. Another one would be Westinghouse, who have very  
11 specific requirements and they write their own  
12 specifications that are different than ASTM specifications.  
13 Trying to control very specific impurities in the metal. We  
14 meet those requirements.

15           CHAIRMAN JOHANSON: Okay, thank you Mr.  
16 Tissington. My time has expired. Commissioner Schmidtlein?

17           COMMISSIONER SCHMIDTLEIN: Thank you very  
18 much. I just have a few follow-up questions. One question  
19 I had in looking at the pricing information, especially for  
20 Product 2, which is the biggest volume product. We see a  
21 price jump in the U.S. in the fourth quarter of 2018, which  
22 I understand you all attribute to the filing of petitions.

23           My question is though since most of this is  
24 contracted for on an annual basis, and I didn't think the  
25 contract prices could be renegotiated. Maybe that's

1 incorrect. Can you explain why we see a price jump, you  
2 know, right then in the fourth quarter, given the fact that  
3 most of your sales are pursuant to annual contracts?

4 MR. TISSINGTON: This is Cam Tissington. You  
5 are correct. I did say most sales, in fact sometimes all  
6 sales are contracted in the fall of the year for the next  
7 year. If consumers underbuy or someone asked me earlier  
8 what happens if demand changes and they get caught off  
9 guard, they will come back into the spot market and look for  
10 more metal.

11 In the case you're referring to is a consumer,  
12 a large consumer came back into the market looking for  
13 additional metal, because they had not contracted enough for  
14 that calendar year. We entered into short term contracts,  
15 less than one year with them, to be able to supply that  
16 material. It was one of those rare cases where we actually  
17 had material available in inventory and were able to supply  
18 their needs.

19 That was sold at a significantly higher prices  
20 than their current contract price. Now it's not that we  
21 didn't supply the current contract, we did. Every pound of  
22 that current contract supplied. Much to their dismay, the  
23 short-term contract they entered into was at a higher price.  
24 But we were able to supply the volume. We conducted the  
25 business and then shipped that product, and that's why you

1 see that inflection point.

2 COMMISSIONER SCHMIDTLEIN: Okay. All right,  
3 thank you for that answer. A second question, and I alluded  
4 to this at the end of my first round of questions, is why  
5 did the volume from Israel go up in the interim period, if  
6 this is -- if Israeli product is being sold primarily on the  
7 basis of price and not because purchasers want a diversity  
8 of supply, why did we see the volume go up in the interim  
9 period?

10 MS. SLADE: Yes, this is Susan Slade, and I  
11 assume you're referring to the interim period of being first  
12 half '19 versus first half of '18, and we believe the volume  
13 went up for them in the first half of '19 because before we  
14 filed the trade case in October and we were entering into  
15 contract negotiations for supply in 2019, Dead Sea continued  
16 to offer lower prices at consumers where we were offering  
17 prices as well, and they continued to take some volume in  
18 that time frame.

19 MR. JONES: Commissioner Schmidtlein, Steve  
20 Jones. This is conjecture, but it would be as well that  
21 given in 2019 there was a pending anti-dumping  
22 investigation, there was some desire to get some magnesium  
23 into the country before the cash deposit requirement went  
24 into effect during the summer of '19.

25 MR. REYNOLDS: Neal Reynolds, Commissioner

1 Schmidtlein. I'd add that if you look at, and I'm going to  
2 be delicate here I think, but there's -- if you look at the  
3 numbers for interim 2019 and compare them to full year 2018,  
4 there's a similarity there. So the increase is not  
5 unexpected also taking into account what we've also said  
6 otherwise about that here at this point.

7 COMMISSIONER SCHMIDTLEIN: Okay. Maybe you  
8 can -- I'm not quite sure I follow you. If I can look at  
9 the volume for interim 2019 --

10 MR. REYNOLDS: If you look at the volume for  
11 interim 2019.

12 COMMISSIONER SCHMIDTLEIN: Uh-huh, from  
13 Israel.

14 MR. REYNOLDS: Yep, and you compare it to the  
15 market share, I'm sorry, the market share.

16 COMMISSIONER SCHMIDTLEIN: Market share.

17 MR. REYNOLDS: I'm sorry market share, and you  
18 look at the market share for 2018, you can see the  
19 relationship. So what you're looking at and what you're  
20 seeing increases and decreases in those years, reflects  
21 changes in demand, or the difference --

22 COMMISSIONER SCHMIDTLEIN: The changes in  
23 demand?

24 MR. REYNOLDS: No. They correspond to the  
25 fact that demand is changing. So even though import numbers

1 were increasing, they're maintaining their market share in  
2 that period.

3 COMMISSIONER SCHMIDTLEIN: Oh, I see. Okay.

4 MR. REYNOLDS: Because of the demand changes.

5 MR. VAUGHN: Commissioner Schmidtlein, this is  
6 Stephen Vaughn. I think one other factor which we'll  
7 probably address as part of our answer to Commissioner  
8 Kearns' question about -- Commissioner Kearns had a question  
9 earlier about what happened with relative prices in the  
10 market in the first half of 2019. We're going to address  
11 that question, and that may provide some clarity on this  
12 point as well.

13 COMMISSIONER SCHMIDTLEIN: Okay. Sort of a  
14 related question in talking about market share, do you agree  
15 with the Respondents that we should be looking at the import  
16 questionnaire data in terms of shipments for DSM, given that  
17 it's one importer and one producer?

18 MR. VAUGHN: I mean we think that you should  
19 -- we don't think it makes that much of a difference to the  
20 case, to be honest. But we do think that in general, you  
21 know, you're better off looking at the census numbers  
22 because that's going to -- the timing is going to fit more  
23 accurately, I think, with when things are actually coming  
24 into the market, and that's sort of how the Commission has  
25 done things throughout the case so far. But to be honest,

1 we think you end up in the same place, either whichever  
2 source you use.

3 COMMISSIONER SCHMIDTLEIN: Okay. Do you agree  
4 that we should be looking at the merchant market for  
5 purposes of analyzing volume and market share?

6 MR. VAUGHN: So I think that's a very  
7 interesting argument that they make there, because if you'll  
8 remember, they had this other argument, which was that  
9 somehow there was this huge volume shortage resulting from  
10 ATI, and we always made the point that the shutdown of ATI  
11 didn't affect our merchant market sales. So maybe they've  
12 abandoned that argument there on the volume side.

13 Again, I would make a couple of points. One,  
14 as you hear most of our testimony here is focused on the  
15 merchant market, and our case is really focused on the story  
16 of the merchant market. However, it is also the case that  
17 when you look at the industry, especially for purposes of  
18 threat and for looking at sort of the vulnerability that the  
19 industry faces, you do tend to look at the industry as a  
20 whole.

21 So therefore we would argue that the way the  
22 staff has done it, which is the way the Commission normally  
23 does it, is probably the best way in terms of looking at all  
24 of the different factors that the Commission is supposed to  
25 look at. But again, we feel that whichever of those ways

1 you analyze the data is going to support a finding that  
2 imports from Israel had a very harmful effect on the  
3 domestic industry.

4                   COMMISSIONER SCHMIDTLEIN: So I'm not sure I  
5 understand. So are you -- you don't disagree then that we  
6 should look at the merchant market for purposes of volume  
7 and market share?

8                   MR. VAUGHN: Well, I would say that the best  
9 way to look at it for purposes of volume and market share  
10 and those things is probably the way that you've  
11 traditionally done it, because I think, you know, you don't  
12 just look at volume and price effect and all these things in  
13 a vacuum, and you really need to sort of see what is  
14 happening to the entire industry.

15                   So for example, if you have a situation where  
16 you have captive consumption, the Commission usually takes  
17 that captive consumption into account when it analyzes the  
18 industry as a whole. I think that would be the best way to  
19 do it.

20                   But I do want to point out that most of our  
21 emphasis here involves the merchant market, and we certainly  
22 agree with them that most of the competition takes place in  
23 the merchant market, and we're glad that they seem to be  
24 agreeing with us that changes that might have happened with  
25 respect to some captive consumption doesn't necessarily

1 change what availability we would have had in terms of  
2 providing magnesium to the merchant market.

3 COMMISSIONER SCHMIDTLEIN: Okay, all right.  
4 The last sort of odds and end question I had at this point  
5 was, and maybe somebody else has already covered this, in  
6 the purchaser questionnaire survey that we do in Section II  
7 of the staff report, it shows that the vast majority of  
8 purchasers listed U.S. and Israeli prices as comparable, and  
9 I wonder if you had any response to that, given that the  
10 theory of your case is that there is aggressive price  
11 behavior from Israel. So if that were happening, wouldn't  
12 you expect purchasers to not list them as comparable,  
13 right, either whether you're looking at it from the point of  
14 the offer being made?

15 So Israeli price, according to you all,  
16 Israeli price would be superior, or the offer being  
17 finalized, which according to you all the U.S. price would  
18 be superior from the purchaser's perspective. So why do we  
19 see purchasers saying they're comparable?

20 MR. VAUGHN: Well Commissioner Schmidtlein, I  
21 think the testimony so far here has been that the purchasers  
22 are trying to drive the two prices together, and that in  
23 fact our witnesses testified that they were told that they  
24 needed to be within a penny or a couple of pennies of what's  
25 going on with the price from DSM.

1                   So I think it would be reasonable for a  
2 purchaser who just sort of gets this questionnaire and  
3 doesn't necessarily understand all the theories of the case,  
4 but it simply asking themselves when I look at the prices  
5 that I'm seeing, am I getting roughly similar prices from  
6 the two sources, to say yeah, because that's what happens  
7 over the course of the contract negotiations.

8                   MR. JONES: Commissioner Schmidtlein, Steve  
9 Jones. I think it makes all the sense in the world when you  
10 consider how substitutable they are --

11                   COMMISSIONER SCHMIDTLEIN: But this is a  
12 commodity --

13                   MR. JONES: --and I think Ms. Slade's  
14 testimony is that products, the product range is the same,  
15 the capabilities are the same, availability, reliability,  
16 time of delivery, all these things are the same. The prices  
17 are --

18                   COMMISSIONER SCHMIDTLEIN: But a few pennies  
19 makes a big difference, right, according to you all?

20                   MR. JONES: Absolutely, absolutely.

21                   COMMISSIONER SCHMIDTLEIN: So wouldn't that be  
22 a difference in the minds of the purchasers? No?

23                   MR. REYNOLDS: Commissioner Schmidtlein, Neal  
24 Reynolds. I just want to add a point. A big part of their  
25 argument here is that they are the alternative higher priced

1 product, okay? So keep in mind that when those purchasers  
2 are telling you that the prices are comparable, that  
3 fundamentally conflicts with their argument, that they are  
4 routinely higher priced. At a minimum they're comparable.

5           Secondly, I want to point out -- I really want  
6 to just emphasize what Mr. Jones said, which is this is a  
7 commodity product and in commodity products, you expect  
8 prices to be pretty close because commodity product pricing  
9 is close, and they compete with each other. It's the  
10 competition during that pricing contract process, sorry, the  
11 competition during the contract process that really sets  
12 what the level is. That's where we've provided you with the  
13 data showing you what's really going on in this market in  
14 terms of price competition.

15           You really need to assess that. Even in a  
16 commodity product market, you're going to have people  
17 starting out higher, competing against each other and going  
18 down, just because of price competition. In this case,  
19 that's the aggressive price competition from Dead Sea.

20           COMMISSIONER SCHMIDTLEIN: Okay, all right.  
21 My time is up, thank you.

22           CHAIRMAN JOHANSON: Commissioner Kearns?

23           COMMISSIONER KEARNS: Thank you. Just a  
24 couple of remaining questions on pricing, and you need to do  
25 this post-hearing. But can you respond to the arguments on

1 pages 26 and 27 of DSM's brief regarding a lack of  
2 competition between DSM and US Magnesium that several  
3 purchasers discussed there?

4 MR. VAUGHN: Yes. We will address that in the  
5 post-hearing.

6 COMMISSIONER KEARNS: Okay, thank you. And  
7 then this is just sort of a background question. So you  
8 have annual contracts without, you know, adjustments to  
9 price generally. Given that, is it accurate to look at the  
10 AUVs and purchaser questionnaire responses as a measure of  
11 pricing? I mean I'm looking in particular at a purchaser  
12 that you discuss in Exhibit 3 of your brief, and it looks  
13 like at least with respect to that purchaser, there's a bit  
14 of a difference between contract prices and the AUVs there.

15 So can we kind of rely on purchaser  
16 questionnaire AUVs as a measure of pricing in the market or  
17 not necessarily? Maybe this goes a little bit to what you  
18 said earlier, Mr. Tissington. I think at least there are  
19 cases where maybe a purchaser doesn't get all of the  
20 quantity it needs in a given year, and so it might end up  
21 having a short term sale. But I would think -- that would  
22 still be reflected in our purchasing questionnaire. So I  
23 don't know if you have any thoughts on that, and in  
24 post-hearing is fine too.

25 MR. VAUGHN: Well, we will address this --

1 this is Stephen Vaughn -- we'll address it to some extent in  
2 the post-hearing. But I do want to -- I do want to comment  
3 here. I mean I think, for example, you do see a big  
4 increase and I'll just use the Israel import numbers from  
5 the census, since those are the numbers that we have that  
6 are public. Also it's public that the pricing products for  
7 2 and 3 went up after the cases were filed.

8           So here, I think, you have evidence that the  
9 AUVs did increase. I think you're going to find that that  
10 is also reflected in changes to contract prices. So you  
11 might have a situation where an individual customer might  
12 have some reason, we have to think about that for purposes  
13 of post-hearing, why it might be different for one purchaser  
14 as compared to everybody else. But I think the testimony is  
15 going to be very consistent, that you had improved contract  
16 pricing from say first half '18 to first half '19, and that  
17 is supported by the AUVs. That's supported by the pricing  
18 products. I mean that is very, very consistent across the  
19 board.

20           COMMISSIONER KEARNS: Okay, thank you. Ms.  
21 Slade, I thank you suggested that non-subject imports can't  
22 supply sufficient quantities of magnesium to serve as a real  
23 threat in price negotiations. But some of the largest  
24 purchasers and purchasers that you all have focused on in  
25 arguing that DSM is driving down prices, have purchased very

1 small quantities of DSM material at AUVs that are above U.S.  
2 Magnesium's AUVs, but significant quantities, significant  
3 quantities of non-subject imports at AUVs well below both  
4 DSM and US Magnesium.

5 Can you address this issue further  
6 post-hearing? I mean as I understand it, you have suggested  
7 that purchasers aren't quoting exact DSM prices, and our  
8 pricing data and AUV data suggests DSM is not what is  
9 driving down prices. So I think a lot hinges on the data  
10 from individual purchasers, and those data, at least for  
11 some large purchasers, seem to point to non-subject imports  
12 as driving down prices.

13 So again, that might best be post-hearing, I  
14 guess, because we're talking about specific companies here.

15 MR. VAUGHN: We'll address that in the brief  
16 Commissioner Kearns.

17 COMMISSIONER KEARNS: Okay.

18 MR. VAUGHN: Thank you.

19 COMMISSIONER KEARNS: I wanted to talk about  
20 ATI's closure. I think this question was asked before, but  
21 I apologize if it was. Did you shut down or remove any  
22 electrolytic cells as a result of the closure of ATI  
23 Raleigh, and didn't loss of that business reduce the  
24 throughput for yourselves?

25 MR. TISSINGTON: This is Cam Tissington. It's

1 hard to answer your question without making this answer too  
2 long, but I'm going to try really hard. Our agreement with  
3 ATI was basically a recycle agreement on magnesium chloride.  
4 The waste product of a titanium plant is magnesium chloride,  
5 and all you really need to do to recycle that magnesium  
6 chloride back into magnesium, which they can use as a  
7 reductant in their process, is electrolyzers.

8           You don't have to go through a magnesium  
9 electrolytic plant; you just need some electrolyzers. So  
10 what we did with our arrangement with ATI is we installed  
11 some dedicated electrolyzers that were used to take their  
12 mag chloride, decompose the mag chloride into chlorine,  
13 which we kept, and magnesium which we would send back to  
14 ATI.

15           They would then mix that titanium  
16 tetrachloride, which they purchased on the outside, and  
17 again they would make titanium and the byproduct would be  
18 mag chloride and that cycle would go around. At any  
19 individual moment in time there might be a truckload of  
20 molten magnesium at ATI. So I can't in a public forum say  
21 what ATI was running at, but I think they told the press  
22 they were at around 10,000 tons per year of titanium sponge.

23           To make 10,000 tons of titanium sponge a year,  
24 you need 10,000 tons of magnesium, but you don't get it all  
25 at once. That plant operates continually, so we would

1 decompose their mag chloride, send it back to them at  
2 magnesium. They'd have about a truckload in their plant.  
3 That's important because if you look at the final day of ATI  
4 running that plant, when they shut down they consumed the  
5 last truckload of molten magnesium.

6           The ratios are a little funny but you make  
7 four times as much mag chloride as magnesium you consume.  
8 So they made about four truckloads of mag chloride and sent  
9 over to us. We put in those dedicated electrolyzers. When  
10 we had consumed that mag chloride, those electrolyzers were  
11 done.

12           Unfortunately, we were bottlenecked on the  
13 spray dryers. So we couldn't produce enough mag chloride to  
14 feed our cells to feed those electrolyzers. Now that didn't  
15 change any of our merchant metal business, which is going  
16 from the Great Salt Lake to consumers that want our metal.  
17 It only changed the fact that we had nothing to put in those  
18 electrolyzers that were dedicated to ATI. Somewhere between  
19 six and ten electrolyzers had to be shut down, because ATI  
20 didn't send over that magnesium chloride feed.

21           So they were shut down, stripped down to their  
22 steel shells. So those are electrolyzers that if we had  
23 feed, we could certainly run them. But that ATI system  
24 really provided us with that mag chloride feed. It in no  
25 way impacted our merchant metal business because there was a

1 truckload of molten magnesium in their plant at any one  
2 time. That was it, and when the feed quit being sent over,  
3 there was no way to make that magnesium.

4 So it was really a distinct business for us.  
5 It was a recycled mag chloride business, not even a recycled  
6 mag business, and certainly not a merchant metal mag  
7 business.

8 COMMISSIONER KEARNS: Okay, thank you. That's  
9 helpful, and while we're on those kinds of issues, let me  
10 ask you about your production costs. Given that you obtain  
11 your raw materials from lake brine, what causes your raw  
12 material cost to change?

13 MR. TISSINGTON: This is Cam Tissington. One  
14 of our or the main raw material in our facilities is energy,  
15 and we generate --

16 MS. LUTZ: It's not reported as a raw  
17 material, sorry.

18 MR. TISSINGTON: Oh. See Jennifer, you should  
19 have taken that.

20 MS. LUTZ: I know. I've spent a lot of time  
21 talking to their accountant. So with the main raw material  
22 being the brine you're correct. Their raw material costs  
23 are much lower than say a recycler. The raw material costs,  
24 I believe and I can check into this further and provide more  
25 information in the post-hearing brief, is scrap and alloying

1 elements to make alloy magnesium, and possibly processed  
2 chemicals. I'm not sure if that's recorded in raw materials  
3 or other factory costs -- protective cover gases and process  
4 materials chemicals, but I'll provide more information in  
5 the post-hearing brief.

6 COMMISSIONER KEARNS: Okay, thank you. I wanted  
7 to ask about exports. What explains the decline in export  
8 shipments by the domestic industry over the POI?

9 MS. SLADE: Thank you for the question. Our  
10 export quantities are strictly determined by balancing our  
11 production and the amount of material that we sell to the  
12 United States. The United States is our home market. It's  
13 our preferred market and we want to make sure that we cover  
14 commitments in the United States. So, if we wanted to make  
15 sure that we have metal for the United States and if our  
16 production is decreased with our electrolyzers becoming more  
17 inefficient as they age, our actual production has fallen  
18 over the past couple of years. And so, instead of reducing  
19 the amount of material that we want to sell to the United  
20 States, we reduce our export material.

21 COMMISSIONER KEARNS: Okay, thank you. I guess  
22 my time is about up. I'll leave it there. Thank you.

23 CHAIRMAN JOHANSON: Commissioner Stayin?

24 COMMISSIONER STAYIN: Looking at the Table VII  
25 on V-15, it indicates the prices for the product imported

1 from Israel were below those for U.S.-produced product and  
2 69 of 29 instances and margins of underselling ranged from  
3 -- I can't give you that number -- that range. In the  
4 remaining 23 instances, the margins of underselling ranged  
5 below. I'm sorry. I'm dealing with the brackets here. I'm  
6 sorry about that. Basically, the question is where you have  
7 all this overselling primarily than underselling how does  
8 the theory on price play out where you got declining volumes  
9 and market share from the imports -- the subject imports  
10 over the full years of the POI and overselling in a majority  
11 of the pricing comparisons?

12 MR. VAUGHN: So, just to summarize the answer to  
13 your question, I would make the following points. The first  
14 point is that because of the way the factory is set up they  
15 produce a certain amount of magnesium every year and they  
16 need to sell that magnesium, so they go out into the market  
17 and they try to move the magnesium. And the record is very  
18 clear that throughout every year from 2016 to 2018, the  
19 domestic industry was operating at a loss. So, if you are  
20 prepared to go into the market and sell at a loss, you can  
21 prevent a surge in imports. You can prevent underselling  
22 by those imports. The only downside to it, obviously, you  
23 have the loss.

24 And so, what happened with this industry was is  
25 that 2016, 2017, 2018 -- three calendar years for which you

1 have data, they were out there in the market trying to do  
2 everything they could to avoid losing market share to these  
3 imports from Israel. Now, we know that Israel, if you look  
4 at their SEC filing, the SM could make more magnesium. We  
5 know that they're selling a lot of magnesium into other  
6 markets at prices even lower than they are to the United  
7 States. So, U.S. Magnesium had very realistic concerns  
8 that if they did not maintain these low prices they would  
9 lose sales and that would ultimately have a catastrophic  
10 effect on their operations.

11 Now, I think the key piece of evidence here is  
12 that once the cases are brought now consumers no longer have  
13 the enormous leverage of these dumped and subsidized  
14 imports. They still are able to bring in imports from  
15 Israel. They're still able to bring in imports from  
16 third-market countries, but U.S. Mag and the other U.S.  
17 producers can now be more confident that they're not going  
18 to be dumped and subsidized at the same enormous rates that  
19 they have been for recent years. And at that point, you  
20 start to see that the context of all of these contract  
21 negotiations changed.

22 You know now we're more on a level playing  
23 field. The unfair advantage that customers have had as a  
24 result of Israel's behavior is now gone. Now, we have more  
25 real market negotiations back and forth and what you see is

1 an immediate improvement in the domestic industry's pricing  
2 and in the domestic industry's profits. So, that, I think,  
3 is the explanation for those facts that you were referring  
4 to.

5 COMMISSIONER STAYIN: Thank you. With a market  
6 where the demand is declining how do you deal with that when  
7 you have a situation where you have to keep the equipment  
8 running constantly and you got a market where the demand is  
9 declining? How do you deal with that in terms of competing?

10 MR. TISSINGTON: You've described a very real  
11 and difficult scenario. In our opinion, the market has been  
12 relatively flat over the period of review and it's a very  
13 difficult decision that you have to make. If you look at  
14 that period of review, you'll see that our overall  
15 production numbers have come down a bit, which is partial  
16 response to that. The other response is we have to make  
17 sure that we don't continue to lose volume and market share  
18 in the domestic market. So, we are compelled to meet the  
19 prices that are out in the marketplace to make sure that we  
20 don't have further loss of our production.

21 It is the quandary that we have. We could shut  
22 down capacity to respond to that, but that will simply  
23 increase our production unit cost as well. So, we're in a  
24 no-win situation. Those electrolyzers run five years. If  
25 we shut them down and take useful life off of them, it's

1 going to be very difficult to justify, based on market  
2 prices, rebuilding those electrolyers, so we have to fight  
3 for volume.

4 COMMISSIONER STAYIN: What is the cost of having  
5 to rebuild or replace electrolytes?

6 MS. BYERS: The staff report notes that the cost  
7 of replacing and rebuilding an electrolyzer would be 650,000  
8 to \$700,000.

9 COMMISSIONER STAYIN: So, that presents you with  
10 a very difficult scenario in order to have to keep the  
11 equipment rolling constantly.

12 MS. LUTZ: I just wanted to add that's the cost  
13 per electrolyzer, but there are how many electrolyers in --  
14 there are 60 of them in the plant and room for more if there  
15 were demand for the magnesium. So, you take that amount and  
16 multiply it by 60.

17 COMMISSIONER STAYIN: Yeah. With the pricing of  
18 imports being the lower pricing in the market, have you had  
19 to have issues with them in terms of having lost sales  
20 because they went to the out-of-scope -- not the subject,  
21 but the other imports?

22 MS. SLADE: Yes, we do face competition from  
23 non-subject imports, some of the smaller importers like  
24 Russia, Turkey, Taiwan. And yes, we do lose sales to them,  
25 as evidenced by the volumes that they bring in. The

1 difference between them and the imports from Dead Sea are  
2 (1) the magnitude in volume. The scale of the volume of  
3 those smaller imports pales in comparison to the volume that  
4 Dead Sea Magnesium is bringing in.

5           Also, we keep saying thing, but it really is  
6 true that those importers -- for example, Taiwan is a small  
7 importer of -- I'll call it off-spec, secondary alloy. It's  
8 material that doesn't meet ATM specifications to substitute  
9 for primary alloy in the casting industry and so we compete  
10 against that to a limited extent. We don't compete against  
11 it at every customer, at every account, and every segment.  
12 And that's significantly different with our situation  
13 against imports from Israel where we offer the same product  
14 portfolio and we compete against them at every account and  
15 every application. And so, any low prices they tend to  
16 offer tend to go across markets and so they don't just offer  
17 us -- they don't just impact us at one account, but every  
18 account. So, the impact of the lower pricing offered by  
19 Israel is a far greater impact than any loss of sales that  
20 we have to some of these smaller importers.

21           MR. VAUGHN: I'd like to make one other point  
22 over these pricing. So, if you look at your Table C-III and  
23 you look at sort of what happened with the pricing actually  
24 during the period of investigation, you see that from '16 to  
25 '18 the average unit value of magnesium from Russia went up

1 by 3.9 percent. For Taiwan, it went up by 12.4 percent.  
2 For Turkey, it stayed flat. It was down to about 0.5  
3 percent.

4 But for Israel, it fell 10 1/2 percent. That's  
5 what they did with their prices over the period of  
6 investigation. And then, if you look at what happened in  
7 the interim periods, the prices from Turkey went up 29  
8 percent. The prices from Taiwan went up 13 percent. The  
9 prices from Russia went up 11.6 percent. The prices from  
10 Israel only went up 8 1/2 percent. They have been very,  
11 very aggressive on price relative to everybody in the  
12 market, including the non-subject imports and that could be  
13 seen in the data.

14 COMMISSIONER STAYIN: I am out of time. Thank  
15 you.

16 CHAIRMAN JOHANSON: Commissioner Karpel.

17 COMMISSIONER KARPEL: Thank you. I wanted to  
18 follow up. On a response that you gave to Commissioner  
19 Stayin in response to some of his questions on supply  
20 constraints, you mentioned a situation where sometimes as  
21 you're doing your contracting in the fourth quarter you may  
22 not have the volume available that any given purchaser wants  
23 to buy; particularly, if they are entering the contract  
24 negotiations maybe later than some of the purchasers you  
25 deal with. In that scenario, do purchasers choose to buy

1 from you the volume that you are able to offer them or will  
2 they say if you can't supply everything I need I'm going to  
3 take my business elsewhere?

4 MR. TISSINGTON: I think it's really a mixture.  
5 There's some that will certainly split their business  
6 between multiple suppliers. There's others that just don't  
7 want to handle it that way and it really is up to those  
8 individual consumers. This is not a large market. There  
9 are not a lot of consumers that buy truckload quantities.  
10 You know it's a very specific number of folks. And you  
11 don't wake up one morning and decide that you're going to  
12 use magnesium. You've got a facility that has probably  
13 used it historically. You know that you need to go contract  
14 volume. We develop relationships over the course of years  
15 and decades and 35 years where we try to enter contract  
16 negotiations with those folks that want to buy everything  
17 from a supplier at a convenient time during contract season.  
18 As a seller, the last thing I want to have happen is for a  
19 consumer that has been typically buying everything from us  
20 to not have the opportunity to buy everything from us, so we  
21 do try to schedule it. There is the fog of war going on,  
22 but it is somewhat civilized in that we do try to  
23 accommodate each other and make sure that everybody get what  
24 percentage they want, but it doesn't always work out that  
25 way.

1                   COMMISSIONER KARPEL: Thank you. My next  
2 question is in your pre-hearing brief you noted that DSM and  
3 USM are the only suppliers that can offer large T-bars of  
4 magnesium and it's also an indication that third-country  
5 sources are not substitutable. Do you have any information  
6 on the share of the U.S. market that T-bars represent?

7                   MS. SLADE: We certainly calculate it. Off the  
8 top of my head, I don't know, but we can certainly calculate  
9 that and provide that in the post-hearing brief.

10                  MR. JONES: I don't have an answer on this, but  
11 I believe that the shipment manifest data might give some  
12 indication of what the product type that's coming in from  
13 Israel, so we can look at that and give you a pretty good  
14 indication, I think, of what the percentage of imports that  
15 are T-bars is.

16                  MS. SLADE: I might also add that if a consumer  
17 wants to buy pure magnesium, large directional cast T-bar  
18 ingots are a shape that they may prefer, but they can also  
19 buy ingot pure magnesium as a substitute. I mean the  
20 product chemistry is the same. It's just in a different  
21 shape and they tend to prefer it for safety and convenience  
22 reasons, but just because somebody doesn't have any more  
23 T-bar doesn't mean that they don't necessarily have more  
24 pure magnesium that can be supplied to that application.

25                  COMMISSIONER KARPEL: Thank you. Respondents

1 have argued in their pre-hearing submissions that a number  
2 of U.S. purchasers have found creative ways to use alloys or  
3 secondary magnesium and even in some instances out-of-scope  
4 scrap in applications that require pure magnesium. Has the  
5 substitutability between primary and secondary aluminum  
6 increased over the last few years? And if so, has this  
7 impacted your business?

8 MS. SLADE: I'd be happy to comment. There is a  
9 limited substitutability of secondary alloy for pure  
10 magnesium and our impression is that the substitute -- the  
11 extent of substitutability has not increased because if you  
12 look at the imports of secondary alloy through the period of  
13 investigation they've actually come down from 2016 to '17  
14 and '18.

15 COMMISSIONER KARPEL: Thank you. And could you  
16 talk a little bit more about your understanding of specialty  
17 magnesium products and what portion of the market they  
18 represent? Respondents have noted that they're unable to  
19 purchase some of these specialty products from domestic  
20 sources.

21 MR. JONES: Commissioner Karpel, just a question  
22 of clarification. Are you referring to a proprietary alloy  
23 or something like that, something that's patented?

24 COMMISSIONER KARPEL: I'm not referring to that  
25 specifically. I mean ATI and other companies have mentioned

1 specialty products and I wondered if you had a -- maybe you  
2 have a reaction to what specialty products are and aren't.  
3 I'm happy to hear that too.

4 MR. TISSINGTON: I don't ever hear that term  
5 "specialty," but when you said the word "ATI," then I think  
6 we're referring to ATI zirconium production and they use  
7 magnesium as a reductant to convert their feedstock into  
8 zirconium metal and there are two producers that I know of,  
9 of zirconium metal in the United States. Both use magnesium  
10 as a reductant. They may use the word "specialty" because  
11 it's a UHP grade of material, so it's an ultra-high purest  
12 grade of magnesium, but they do have special requirements on  
13 some of the impurities that they want especially low and  
14 those might be things like aluminum titanium phosphorous,  
15 but they want very low levels.

16 We are absolutely capable, and to the best of my  
17 knowledge, qualified at both ATI and Westinghouse to supply  
18 those materials. We've got material in our warehouses that  
19 meet the requirements of both. The ATI material was  
20 produced pre-2016. And as I think I mentioned earlier, we  
21 kind of had a falling out of our relationship with ATI when  
22 they shut down their facility in Utah. So, I understand why  
23 I still have that load of material sitting in my warehouse,  
24 but we do also have material sitting in the warehouse for  
25 Westinghouse and we have supplied them in the past and we've

1 had conversations going forward about supplying them in the  
2 fourth quarter of this year. I hope that's what "specialty"  
3 was; otherwise, I've just ticked off two of my favorite  
4 customers.

5 COMMISSIONER KARPEL: Thank you. No, I think  
6 that does it. And I think this question is for maybe the  
7 post-hearing, but it's been raised here before. But in at  
8 least my first read of it, there appears to be a disconnect  
9 between your arguments in this case and some of the comments  
10 you made in your 232 comments. I know I've heard you say  
11 there isn't a disconnect, but perhaps in post-hearing you  
12 could elaborate that a bit more for us.

13 MR. JONES: We'd be happy to do that. And we'll  
14 go into some detail on that in our post-hearing, but just a  
15 quick comment. The Section 232 and Title VII are completely  
16 different statutes and we all have to go back in time a  
17 little bit to the Spring of '17 when it was being  
18 contemplated by the Trump Administration to use 232 for the  
19 first time in a long time.

20 And the Administration ended up putting duties  
21 on steel and aluminum, which was defined incredibly broadly,  
22 so we talked about all different type of magnesium. We  
23 talked about all different sources of magnesium, including  
24 Israel, because we really didn't know what the standard was  
25 going to be and we wanted to make sure that we were covered.

1 So, that's kind of it in a nutshell. It's different because  
2 we were seeking a different type of relief.

3 COMMISSIONER KARPEL: No, I can appreciate that.  
4 I'm most interested in what you'd said as sort of a factual  
5 matter about the price of non-subjects. Do you want to  
6 respond?

7 MR. JONES: We'll address that post-hearing.

8 COMMISSIONER KARPEL: And then my last question;  
9 and you're welcome to address this in post-hearing too. I  
10 wondered if you could respond to DSM's arguments at page 42  
11 and 43 of their pre-hearing brief that other factors; in  
12 particular, (1) a July 15, 2019 bankruptcy settlement with  
13 state and local officials in New York about environmental  
14 contamination at a former USM site had an impact on the  
15 domestic industry. And (2) that costs associated with the  
16 construction of a new lithium plant in Utah have also had  
17 an impact on the financial operations of U.S. producers. I  
18 think they're citing these as alternative reasons that we  
19 may have seen some declines in the domestic industry's  
20 financials over the period of investigation.

21 MS. SLADE: I'll try to start addressing the  
22 question. I'm not familiar -- I'm sorry -- with the  
23 bankruptcy situation. U.S. Magnesium has never gone  
24 bankrupt, so I'm not sure what that's referring to. But in  
25 terms of the other costs, I know that we detailed in our

1 questionnaire throughout all of the years of period of  
2 investigation were we had costs associated with different  
3 processes where we're trying to maximize the value of our  
4 byproducts. So, whether it was in the construction of  
5 hydrochloric acid plant to try to maximize the value of our  
6 chlorine molecule or whether it was looking if we could make  
7 potassium fertilizer salts out of the salts in our  
8 evaporation ponds or whether it was looking at the  
9 production of lithium carbonate salts out of the excess salt  
10 that contains lithium. So, we will absolutely continue to  
11 pursue projects to maximum the value of our byproducts that  
12 come when we make magnesium.

13 COMMISSIONER KARPEL: My time is up, but just to  
14 clarify I was reading my comment quickly. They refer to a  
15 former U.S. Magnesium production site rather than the actual  
16 company itself. Thank you.

17 MR. JONES: We'll address that post-hearing.

18 CHAIRMAN JOHANSON: Okay, I'm going to dig just  
19 a little bit deeper on Section 232. I don't know if  
20 Commissioner Karpel asked the question, but this one is  
21 maybe a bit more specific. I'd like to speak on the  
22 comments that U.S. Magnesium submitted to the Department of  
23 Commerce in connection with the Section 232 investigation on  
24 aluminum.

25 The excerpt shown on page 39 of the Israeli

1 brief appears to discount the role of imports from Israel,  
2 stating that while they previously were over 80 percent of  
3 total imports that those had fallen to only 46 percent of  
4 imports. This passage then goes on to term Russia and  
5 Turkey as the low-price sources and asserts that imports  
6 from Russia had displaced U.S. Magnesium at numerous  
7 customers. The statement was submitted in June of 2017.  
8 Have conditions changed since then? I believe that you said  
9 today that non-subject imports were not a significant  
10 problem yet.

11 MS. SLADE: Again, if I could just maybe comment  
12 from a broad perspective, I believe that the information  
13 that was put together for the 232 filing, again, it was a  
14 much broader scope of filing that included products that  
15 aren't included in this investigation. Products like  
16 reagents and anodes and even scrap that is excluded from  
17 this investigation. But the fact of the matter is it was a  
18 different timeframe. I believe the data that was utilized  
19 in that timeframe was 2013 to 2016 was the information that  
20 we were looking at. We certainly -- many of the importers  
21 are still the same into the United States, but it is a  
22 different timeframe and this period of investigation is  
23 obviously 2016 to first half of 2019.

24 And yes, there are some changes. You know the  
25 fact of the matter is Turkey started bringing material in,

1 in 2017, I believe, to become qualified and they shut that  
2 plant down in 2018. So, that situation has certainly  
3 changed. And with respect to Russia, you know we're  
4 certainly always very -- have a keen eye towards watching  
5 and trying to understand if there's any change in importer  
6 strategies and Russia is certainly one of those. But if  
7 you look at Russia on a macro perspective over the last --  
8 although their imports may vary from year-to-year, on a  
9 macro basis over the last six years you know they've average  
10 probably 2700 tons of imports per year over that timeframe.  
11 And so, you know I tend to agree with ICL's -- DMC's parent,  
12 ICL, that states that Russia provides most of its magnesium  
13 to the titanium and to the aluminum industries that are  
14 domestic in Russia and so they have not -- they have shown  
15 over a period of time, even though they may have had a blip  
16 over a quarter or short period of time, they've shown over a  
17 long period of time now that they're bringing in, like I  
18 said, on average, 2700 tons of material into the United  
19 States.

20 Absolutely, non-subject country imports that we  
21 will always continue to monitor and have the potential to  
22 impact our business. But on the other hand, when we look at  
23 this period of investigation from 2016 to 2018, we really  
24 believe that the large volumes coming from Dead Sea  
25 Magnesium relative to those other smaller importers is

1 what's having the impact on our lower pricing.

2 CHAIRMAN JOHANSON: Yes, Mr. Vaughn.

3 MR. VAUGHN: Yes, Commissioner, I'd just like to  
4 make three points. First of all, on page 3 of the  
5 submission in -- the 232 submission they said directly "U.S.  
6 Magnesium is adversely affected by imports of pure alloy and  
7 granular magnesium from Israel, Russia, and Turkey, among  
8 other countries." So, they're very clear right at the  
9 beginning that Israel is having an adverse affect on their  
10 operations.

11 On page 19, they make clear that Israel still  
12 accounts for 46 percent of imports of pure magnesium. That  
13 Israel has consistently been the largest import support  
14 supplier of alloy magnesium. That in 2016 Israel accounted  
15 for 31 1/2 percent of total imports of alloy magnesium. And  
16 so, I think it's very clear from reading this that while  
17 they were trying to capture the whole world, because that's  
18 what you try to do in a Section 232 investigation, they were  
19 clearly talking about Israel as well and Israel as  
20 contributing to the problem.

21 I would also point out that one of the things  
22 that did change actually between 2017 and by the time these  
23 cases were filed is that the average unit value of imports  
24 from Israel actually fell fairly dramatically. If you look  
25 at Table C-III of the staff report, in 2016 the AUV of

1 imports from Israel was almost \$4200 a ton. By 2018, that  
2 AUV was down to 3757 per ton, which is decline of 10 1/2  
3 percent. By contrast, you did not see comparable pricing  
4 declines from Russia, Taiwan, and Turkey.

5 So, I guess I would sort of make two points.  
6 One, they clearly identify Israel as a problem, even back  
7 then. Two, Israel became even more competitive on price  
8 between 2016 and 2018, whereas, the non-subject imports the  
9 price was basically more stable.

10 MS. BYERS: Mr. Commissioner, it's Bonnie Byers.  
11 I would also just add that the Turkish producer, Assan, shut  
12 its doors in the first half of 2018, so they were less of a  
13 concern at that point.

14 CHAIRMAN JOHANSON: Okay, thanks to you all for  
15 your answers there. On Page 6 of your brief, you argue that  
16 the Commission should include producers that grind magnesium  
17 ingot into granular form. Could you please, for the  
18 post-hearing, analyze grinders to the factors that the  
19 Commission typically examines when considering if a firm is  
20 engaged in sufficient production-related activities to be  
21 considered a member of the domestic industry?

22 MR. JONES: We'd be happy to do that, Mr.  
23 Chairman.

24 CHAIRMAN JOHANSON: Okay, thanks, Mr. Jones. And  
25 I don't think this has been covered yet, and I apologize if

1 it has, but could you please respond to the allegation of  
2 Alcoa and Arconic that you all timed the filing of the  
3 petitioners in these investigations to interfere with and  
4 disrupt the 2019 and 2020 contracting seasons in order  
5 to--what they describe as strong-arming customers into  
6 unfavorable long-term supply contracts? And this is on Page  
7 6 of their briefs.

8 MR. VAUGHN: I'll let the client/witnesses  
9 comment if they want to on the facts of it, but I just wanna  
10 point out that legally, that seems like pretty compelling  
11 evidence of our case, right? In other words, if the filing  
12 of the case alone is sufficient to give us more market  
13 power, then that would seem to indicate that the dumped and  
14 subsidized imports from Israel are having an impact on the  
15 market.

16 So we've been trying to explain throughout this  
17 morning that one of the strongest pieces of evidence you  
18 have, and a piece of evidence for which they never  
19 address--and for which I don't think they have an answer--is  
20 that mysteriously, after years and years of lowering prices,  
21 all of a sudden, they raise prices in the first half of 2019  
22 and we're able to raise prices as well. And so, of course,  
23 the case has had an impact on the contract negotiations.  
24 That's the whole point.

25 And the notion that they're -- I truly don't

1 understand, as far as I could tell, the only -- what they  
2 were supposed to do, I guess, is simply continue to sell  
3 this product at a loss. That appears to be the suggestion  
4 from the other side. That US Mag operate as a sort of  
5 charitable organization and provide magnesium to the world,  
6 or at least to the United States at a loss.

7 Well, they don't have to do that. As a matter of  
8 U.S. law, they have the opportunity to come in here and seek  
9 trade relief. And the fact that the trade relief has  
10 started to make a difference, and has given them a chance to  
11 the point where they're now telling you they think they have  
12 a chance to rebuild these cells and maybe even, you know,  
13 refurbish new cells. That is about as compelling in  
14 evidence of why they should get relief of anything you're  
15 gonna see in the record.

16 MS. LUTZ: Chairman Johanson, I would just also  
17 add, the thing that I find particularly funny about that  
18 statement is that apparently US Magnesium is so powerful  
19 that they manage to get the federal government shut down so  
20 that this final investigation would be delayed long enough  
21 to affect the 2020 contract season. That's power.

22 MR. TISSINGTON: This is Cam Tissington. I'd  
23 like to explain why the timing is the way it is. In 2018,  
24 when the contract negotiation season began, I tried to  
25 negotiate agreements with the large consumers. And again,

1 I'm not gonna mention which ones because they're probably in  
2 the back of the room.

3 But we failed to reach an agreement and they  
4 continued to leverage the price down, specifically based on  
5 Dead Sea prices. We knew we were not gonna get an agreement  
6 concluded. We tried and knew we weren't gonna get an  
7 agreement concluded. We knew prices were gonna continue to  
8 go down. That's when we looked at filing the case. So,  
9 does it coincide with the contract season of 2018? Well, it  
10 certainly does, because that was the impetus for actually  
11 filing the case.

12 CHAIRMAN JOHANSON: Okay, thanks for your  
13 responses. My time has expired. Commissioner Schmidtlein?

14 COMMISSIONER SCHMIDTLEIN: Okay, thank you. I  
15 just had a couple of questions sort of following along that  
16 line. In your experience during this contract season, I  
17 apologize if this has just been asked, I wasn't sure whether  
18 it was '18 or '19. Do you have purchasers quoting DSM  
19 prices as lower than what you are offering? Are they still  
20 attempting to drive down prices with low prices from DSM?

21 MR. TISSINGTON: Yes, we have had an instance of  
22 a very large consumer using Dead Sea as the supplier and  
23 willing to supply at lower prices than US Magnesium. Again,  
24 I have not been given a specific number and it isn't that we  
25 didn't ask for it, but they didn't give us a specific

1 number. But they are still using --

2 Now, as I said earlier in my testimony, we have  
3 to be somewhat cynical about what we hear. And it's getting  
4 more and more that way. We need to check multiple sources,  
5 we need to try to figure out if the information we're  
6 getting is completely accurate, if we're interpreting that  
7 information properly. But we were specifically told that  
8 the DSM was willing to quote lower prices.

9 COMMISSIONER SCHMIDTLEIN: Well, I guess you  
10 could test it by whether or not you agree to lower your  
11 price or lose the sale. I don't know if you wanna answer  
12 that here, but --

13 MR. TISSINGTON: That's an awful big ask for a  
14 sales manager that needs to sell his magnesium in the  
15 marketplace. But certainly, that is one of the options.

16 COMMISSIONER SCHMIDTLEIN: But that's not what  
17 you'll have been doing?

18 MR. TISSINGTON: I don't think I really wanna get  
19 into the details of the negotiating strategy with our  
20 largest customers in the back of this room --

21 COMMISSIONER SCHMIDTLEIN: Okay. Why don't we --

22 MR. TISSINGTON: -- but it is certainly something  
23 we --

24 COMMISSIONER SCHMIDTLEIN: You can answer that in  
25 post-hearing.

1 MR. TISSINGTON: Absolutely.

2 COMMISSIONER SCHMIDTLEIN: Okay, that'd be great.  
3 My other question, again, following on this line of  
4 questions about the 232 comments. In the respondents'  
5 brief, they point out -- I think the quote was focused on  
6 imports from Israel and so forth -- but I'm looking at a  
7 slightly different quote on Page 4 of the respondents' brief  
8 where they quote written comments of US Magnesium and the  
9 232, investigation from June 23rd, 2017, where US Magnesium  
10 talks about ATI's closure and states that it "had the  
11 effect of raising per unit production costs."

12 And when I listened to Ms. Slade's testimony  
13 where she talked about the business with ATI involved a  
14 unique magnesium chloride recycling process that operated  
15 separately from production of magnesium for a merchant  
16 market business. So my question is, does the COGS  
17 ratio--that's reflected in the staff report--take into  
18 account the per unit production cost that's referenced in  
19 your comments on the 232s? And maybe a question in preface  
20 to that should be, can you explain what this is referring  
21 to, the effect of raising per unit production cost?

22 MS. LUTZ: I think that one comment I would make  
23 is that, that refers to the entire US Magnesium business.  
24 It's a high fixed-cost business. There are costs that that  
25 was offsetting. And frankly, we think that the ATI business

1 masks a lot of the harm from the subject imports over time.  
2 And it became glaringly obvious when the ATI plant shut  
3 down.

4 COMMISSIONER SCHMIDTLEIN: So the closure of the  
5 ATI plant did affect the overall business then? Well, I  
6 guess I was under the impression y'all were trying to  
7 separate that and say, you know, that had nothing to do with  
8 imports. That closure had nothing to do with imports and  
9 its impact on us is separate from any impact from Israel.  
10 But it did impact the company's profitability. It impacted  
11 the overall COGS ratio --

12 MR. VAUGHN: Commissioner Schmidtlein, can I just  
13 comment on that? They made two arguments. I mean they  
14 really made one argument on the ATI which we really have  
15 pushed back strongly on. And that is this argument which  
16 they float from time to time as though, okay, well, once ATI  
17 shut down, you were left with this big pile of magnesium and  
18 then you had to sort of shove that magnesium out into the  
19 market.

20 That argument is just groundless and that's what  
21 you've been hearing us push back on in terms of the recycle  
22 --

23 COMMISSIONER SCHMIDTLEIN: Correct. This is  
24 slightly different, correct.

25 MR. VAUGHN: This argument, we would argue, and I

1 totally agree with what Ms. Lutz said, this really -- we did  
2 say and we have said that it affected the industry's  
3 profitability and that we think you should look at as a  
4 factor that makes the industry vulnerable in terms of your  
5 analysis of the impact of Dead Sea on the industry.  
6 Certainly we don't think that breaks the causal link between  
7 what happened to us and what Dead Sea did.

8           In other words, even if we were still selling to  
9 ATI, we would still be injured because of what they're doing  
10 to our merchant market contracts. But certainly it  
11 indicates that it is a negative factor just like, you know,  
12 in a lot of cases where the Commission says, you know, the  
13 respondents come in and say, "Well, you shouldn't find that  
14 we had any problem because they were faced with falling  
15 demand." And the Commission has said many, many times, you  
16 know, even if you have other things that are hurting you,  
17 the imports can still hurt you. And that, to us, is kinda  
18 the way you ought to be looking at this ATI situation.

19           MS. LUTZ: Commissioner Schmidtlein, this is  
20 Jennifer Lutz again. I would also add that, regardless of  
21 the effect from that, the closure of the ATI facility did  
22 not affect changes in the financial condition of US  
23 Magnesium from 2017 to 2018, which is a continuation of the  
24 trend of US Magnesium's increasing COGS to --

25           COMMISSIONER SCHMIDTLEIN: Well, on a much

1 different scale though. I mean, so that's -- I guess this  
2 is my question. In your argument that they suffered a  
3 cost-price squeeze, it starts out Page 42 of your brief, you  
4 haven't excluded from the COGS ratio the impact of the  
5 closure of ATI on that ratio and the increase, right?

6 MS. LUTZ: We have not.

7 COMMISSIONER SCHMIDTLEIN: Right, okay.

8 MS. LUTZ: But the ratio does increase from 2017  
9 to 2018 as well when the ATI closure would not have been a  
10 factor.

11 COMMISSIONER SCHMIDTLEIN: Okay. I think that's  
12 all of my questions. Thank you.

13 CHAIRMAN JOHANSON: Commissioner Kearns?

14 COMMISSIONER KEARNS: Thank you. I just have a  
15 few. I hope to get through them quickly. I wanted to ask  
16 you, I guess first, about secondary magnesium. To what  
17 extent is secondary magnesium substitutable for primary? In  
18 their submissions, Alcoa and Arconic argue that purchasers  
19 have found ways to increasingly use secondary magnesium  
20 instead of primary. Has that been your experience? Do you  
21 know of anything more about that?

22 MS. SLADE: Yes, this is Susan Slade, and I'll  
23 try to address it, although it might be a little  
24 complicated, I'll try to keep it simple between the  
25 substitutability for primary magnesium and secondary

1 magnesium, so if you are starting with primary magnesium,  
2 primary magnesium is completely substitutable for secondary  
3 magnesium, for use in secondary, you can use primary  
4 magnesium.

5           Conversely, secondary magnesium is sometimes  
6 substitutable for primary magnesium, and the exception to  
7 that is when there are some industries that can't tolerate  
8 any of the elements that may be in secondary alloy. And  
9 those industries include the metal reduction industry,  
10 military flares, chemical industry, graphic arts, and much  
11 of the aluminum industry that can't tolerate some of the  
12 elements that are in secondary alloy like zinc, beryllium,  
13 rare earth. So there is some limited substitutability for  
14 secondary for primary magnesium.

15           I'd also like to point out that all secondary  
16 magnesium is not the same. So some secondary magnesium is  
17 made from high-grade scrap that is recycled into ASTM  
18 specification material for casting. That secondary  
19 magnesium is substitutable for primary magnesium in the  
20 casting industry. On the other hand, some secondary  
21 magnesium is made from low-grade scrap that has higher  
22 impurities. That secondary magnesium is not substitutable  
23 for primary magnesium to the casting industry and it tends  
24 to be used as a hardener in the aluminum industry in the  
25 portion of the aluminum industry that can tolerate the

1 chemical elements that may be included in secondary alloy.  
2 And we would call that secondary magnesium alloy made from  
3 low-grade, we would call that off-spec secondary.

4 COMMISSIONER KEARNS: Okay. How much, though,  
5 over the POI, has that changed? I mean is it a pretty  
6 constant impact? Or is there more ability to use secondary  
7 now than there used to be?

8 MS. SLADE: My impression, both from imports, as  
9 well as consumers that buy either primary or secondary  
10 magnesium, is that it has not changed significantly.  
11 Because if you look at the imports of secondary magnesium,  
12 imports of secondary magnesium decreased between 2016 and  
13 '17 and '17 and '18. So it's actually lower than it was at  
14 the beginning of the period of investigation.

15 If you look at the imports of scrap, gross scrap  
16 that can be used to make secondary magnesium, those imports  
17 from 2016 to 2018 are basically flat. So neither of those  
18 suggest to me that either imported secondary magnesium or  
19 domestic secondary magnesium made from imported scrap has  
20 increased between 2016 and 2018.

21 COMMISSIONER KEARNS: Okay. Thank you.

22 I wanted to ask about threat. DSM asserts that  
23 adding cells also requires additional particular investment.  
24 Post-hearing, can you comment and indicate whether US  
25 Magnesium would similarly have to make such investments to

1 add cells?

2 MR. VAUGHN: Yes, Commissioner Kearns, we will do  
3 that.

4 COMMISSIONER KEARNS: Thank you. And then I  
5 think my last question, I wanna talk a little bit more about  
6 post-petition effect. Mr. Vaughn, can you clarify what  
7 impact the petition has had on purchaser behavior? Normally  
8 we might expect a decline in subject imports, but we don't  
9 see that here. I think you've recognized that, but  
10 suggested that purchasers decided that they could still  
11 purchase DSM material, they just needed to purchase it at  
12 higher prices than after the petition was filed. Is that  
13 your contention?

14 MR. VAUGHN: Yes, in fact, I think if you look at  
15 it throughout the period, we believe that the vast majority  
16 of the effect of the unfairly-traded imports has been on the  
17 price side. And that has to do, I think, with just the  
18 nature of this industry and the way it works. The volume,  
19 you don't see as much correction on the volume side, you see  
20 a lot of the correction on the price side. So whereas in a  
21 typical case, you might see kind of a mixed change, right,  
22 some on the price side, some on the volume side. Here you  
23 tend to see a lot more on the price side. So I think  
24 that's consistent with the way the industry has been working  
25 throughout.

1                   COMMISSIONER SCHMIDTLEIN: Okay. But if I'm a  
2 purchaser, why would I pay a higher price just because I  
3 think that an order might be put in place? I mean, if  
4 anything, I think I might pay a lower price because I'd say,  
5 you know--and not that purchasers probably know the dumping  
6 laws this well--but, you know, the dumping margins, and  
7 regardless of what my particular price is gonna be, I'm  
8 gonna be paying that dumping margin, so I think I'd either  
9 be, like, well, look, I'm gonna pay the dumping margin no  
10 matter what, why don't I just get, if I'm gonna continue to  
11 import from DSM -- well, first of all, I think I maybe  
12 wouldn't wanna continue to import from DSM, but if I did,  
13 then I would keep prices the same or maybe even reduce them  
14 and say, "Look, I'm gonna have to pay duties on this, so  
15 let's discount that from the price." Why wouldn't I think  
16 that way?

17                   MR. VAUGH: Well, I think that there were a  
18 couple of things. First of all, you have to remember that,  
19 you know, the contracts were taking place, and a lot of  
20 these contracts were resolved in the last half of 2018,  
21 right? So, that was very early on in the proceeding, and at  
22 that point, there still wasn't a certainty in terms of what  
23 the margins were ultimately gonna look like, or what things  
24 were gonna look like.

25                   Second of all, you know, there was still a

1 question about what's exactly gonna happen with the case?

2 So I wouldn't purport to indicate that you've necessarily

3 seen the full effect here of what would happen once the

4 orders actually were to go into place. I think the fact

5 that you sort of saw any impact shows that the mere filing

6 of the case started to affect everybody's behavior.

7 Certainly there's nothing that anybody else can point to

8 that affected other people's behavior.

9 And I think that what we would expect to see,

10 going forward, is if the orders are imposed and the relief

11 goes into effect, then, yeah, the market forces will

12 continue to operate. Some things will happen along the

13 lines of what you discussed. Some people might look at some

14 of these other alternative sources. But at least our client

15 will finally have an opportunity to negotiate on a level

16 playing field and get a true market-based rate of return.

17 COMMISSIONER KEARNS: Okay. And in terms of

18 potential other causes, I don't know exactly when Turkey

19 shut down, but I believe it was towards the end of 2018.

20 What impact did that shutdown have on the U.S. market? I

21 mean we see that, you know, imports from Turkey, you know,

22 go to zero essentially in 2019.

23 And so, do you have any thoughts on what impact

24 that had when Turkey shutdown on the market? And also at

25 the same time, or kind of conversely, we see Taiwan, their

1 imports went up quite dramatically, I think, in the first  
2 half of 2019. So any thoughts on -- could those -- you  
3 know, how do we think about those factors as well? And  
4 post-hearing could be fine.

5 MR. VAUGHN: We will address that in the  
6 post-hearing.

7 COMMISSIONER KEARNS: Okay. Thank you. I have  
8 no further questions.

9 CHAIRMAN JOHANSON: Commissioner Stayin?

10 COMMISSIONER STAYIN: Yes, I'm not sure whether  
11 this had been covered, and it may have, but I just wanted to  
12 go back to it. On Table IV-6 dealing with market share,  
13 look at the U.S. market share, it declined by less than the  
14 market share of Israel. So Israel's market share over the  
15 POI declined more than U.S. producers' market share. Can  
16 you comment upon that, please?

17 MS. LUTZ: This is Jennifer Lutz.

18 COMMISSIONER STAYIN: I might just add one more  
19 thing. The nonsubject sources increased their market share  
20 in that period. Go ahead, thank you.

21 MS. LUTZ: I'm just gonna make a very brief  
22 statement about what you heard in the testimony from 2016 to  
23 2017, the domestic industry lost market share. The Israeli  
24 subject imports gained market share. Prices fell. In 2018,  
25 US Magnesium made the decision that they needed to get those

1 sales back. They needed to sell in the U.S. market. They  
2 needed to not be exporting into markets where the prices are  
3 much lower, and lower their prices significantly and regain  
4 some of that market share from DSM.

5 MS. SLADE: If I could just add to that. I mean  
6 we referenced very specific examples, I'm not sure which  
7 brief it was in, I believe it was maybe the prehearing  
8 brief, but we provided very specific examples that consumers  
9 where, from 2016 to 2017, we tried to maintain the same  
10 price that we had in 2016 and we lost specific volume to  
11 Dead Sea at those accounts.

12 From 2017 to 2018, it was our intention to regain  
13 that market share and Dead Sea continued to offer those  
14 lower prices. We chose to go down and meet those prices in  
15 order to bring that volume back to US Magnesium because,  
16 honestly, that was volume that US Magnesium had supplied for  
17 a number of years prior to that.

18 COMMISSIONER STAYIN: All right, thank you. I  
19 have no further questions.

20 CHAIRMAN JOHANSON: Commissioner Karpel.

21 COMMISSIONER KARPEL: I have no further  
22 questions.

23 CHAIRMAN JOHANSON: I'm gonna get back to a  
24 contract question. My last question involved contracts as  
25 well. You argue at Page 38 of your prehearing brief that

1 the percentage of subject imports that undersold the  
2 domestic like product increased on a volume basis throughout  
3 the period of investigation. Do you accept, or how do you  
4 respond to the justification provided by DSM at Note 79 of  
5 its prehearing brief that this underselling was due to 2019  
6 prices being locked into contracts?

7 MR. VAUGHN: Commissioner Johanson, I think a  
8 full accounting of this is gonna require us to talk about it  
9 in the post-hearing, given sort of all the sensitivities  
10 that are in the data, but I think as a general matter that  
11 we're gonna emphasize that, as the -- there are a number of  
12 things that start happening to trends as the market moves  
13 toward a more true market set of pricing, and I think that's  
14 part of what we're looking at here. But I would really be  
15 more comfortable if we could talk about this in the  
16 post-hearing.

17 CHAIRMAN JOHANSON: Okay, Mr. Vaughn, I certainly  
18 understand. I look forward to seeing that. Do any other  
19 Commissioners have questions for this panel? No  
20 Commissioners do. Do staff have any questions for this  
21 panel?

22 MR. COMLY: Nate Comly, Office of Investigations.  
23 Staff has no questions.

24 CHAIRMAN JOHANSON: Do respondents have any  
25 questions for this panel?

1                   MR. LEVY: Respondents have no questions for this  
2 panel.

3                   CHAIRMAN JOHANSON: Okay, then let's go ahead and  
4 take a recess for lunch. Let's return here at 2:00 and  
5 we'll see you back here then. And, also, please be sure to  
6 bring any CBI material with you as the room is not secure.  
7 Thank you.

8                   (Whereupon a lunch recess was taken, to reconvene  
9 this same day at 2:00 p.m.)

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AFTERNOON SESSION

CHAIRMAN JOHANSON: Mr. Secretary, are there any preliminary matters?

MR. BURCH: There are no preliminary matters. Those in opposition to the imposition of anti-dumping countervailing duty orders have been sworn in and are seated. I would like to note they have sixty minutes for their testimony.

CHAIRMAN JOHANSON: You all may begin.

MS. ALVES: Good afternoon. My name is Mary Jane Alves, and together with Jack Levy and Jim Cannon, we are here from Cassidy Levy Kent. We represent the respondent, Dead Sea Magnesium. We'd like to begin the panel this afternoon with a presentation by Noam Goldstein, who is the President of Dead Sea Magnesium.

STATEMENT OF NOAM GOLDSTEIN

MR. GOLDSTEIN: Noam Goldstein. Good afternoon to you. Good afternoon. My name is Noam Goldstein. I'm the President of Dead Sea Magnesium, or DSM. DSM is part of Israel's Chemicals group, also known as ICL. ICL is a global fertilizer, specialty facility minerals and chemical company. We are operating bromine, potash magnesium and phosphate mineral value chains. I work in ICL group for more than thirty-three years and had value senior management position. I'm also the president of ICL Potash

1 and also the president of Dead Sea Works. I've traveled  
2 here from Israel to participate in this hearing and ensure  
3 that you receive our full cooperation.

4 As you know, DSM is the sole producer of  
5 magnesium in Israel and is the sole importer of Israeli  
6 magnesium into the United States. Back in 2001, US  
7 Magnesium tried to impose dumping duties on Israel, but  
8 thankfully the ITC rejected it. Ever since the time, we  
9 have been very careful about how we participate in the U.S.  
10 market. We are careful to control our shipment volumes and  
11 we work very hard to command the highest prices in the  
12 United States market.

13 With this introduction, I am going to hand things  
14 over to our Vice President, Mr. Eli Lerer, and our U.S.  
15 Sales Manager, Mr. Dave Wanless, to present our testimony.  
16 These are the two individual who are closest to the facts  
17 that you are receiving in this case. But please know that  
18 our team here is to answer all of your questions. We hope  
19 that after you'll consider all of these facts in the case,  
20 you will rule in our favor, just as you did in 2001. As we  
21 say in Hebrew, "Ha'emet Toshi a Otano," or in English, "The  
22 truth will set you free." And that basically summarizes our  
23 philosophy here in this case. Thank you.

24 STATEMENT OF ELI LERER

25 MR. LERER: Good afternoon. My name is Eli

1 Lerer. I am Vice President of Dead Sea Magnesium. I have  
2 degrees in materials engineering and business management  
3 from Ben-Gurion University and have been with the company in  
4 various engineering and management roles for the past  
5 twenty-five years. Like Noam, I traveled here from Israel  
6 to respond to this trade action. This afternoon I want to  
7 explain who we are and how we participate in the U.S.  
8 market. After that, Dave Wanless is here to talk about  
9 conditions of competition in United States.

10 Let me begin with a few words of introduction.

11 ICL has been in business for more than fifty years and is a  
12 publicly traded company on both the Tel-Aviv and New York  
13 Stock Exchanges. As an executive of ICL, I can assure you  
14 that we are 100% committed to providing you with thorough  
15 and accurate information to assist you in your  
16 investigations.

17 In the ICL group, maintaining our integrity is  
18 always the top priority. As you know, DSM is the only  
19 Israeli producer of magnesium and Israel accounts for almost  
20 half of total magnesium imports into the United States. As  
21 Noam indicated, US Magnesium first tried to import duties on  
22 Israeli magnesium back in 2001. I remember that case.  
23 After a long and costly defense, the Commission found that  
24 we were not a cause of material injury to the U.S. industry.  
25 And just three years ago, when the administration was

1 considering potential trade measures under Section 232, US  
2 Magnesium again argued for tariffs on magnesium imports,  
3 including magnesium imports from Israel. Thankfully, US  
4 Magnesium again failed in their efforts.

5 I give these two examples of trade action by US  
6 Magnesium, not to emphasize that the company has a track  
7 record of losing. Instead, I give them out to highlight  
8 that we are well-aware that US Magnesium will not hesitate  
9 to file petition against us. For precisely this reason,  
10 we've always been extremely careful about how we behave in  
11 the U.S. market. When I testified at the staff conference,  
12 I said, if there is one word I would use to describe our  
13 corporate philosophy, it would be discipline.

14 What do I mean by discipline? I mean that Dead  
15 Sea Magnesium is not in the business of trying to grow U.S.  
16 sales by offering low prices. Just the opposite. We try  
17 very hard to participate in the U.S. market at the highest  
18 possible prices, higher than other import sources and higher  
19 than all U.S. producers, not just US Magnesium. If you  
20 refer to Exhibit 1, you can see our U.S. shipment volumes  
21 during the period of investigation.

22 This trend is not an accident. It reflects a  
23 business plan to keep our volumes under control. Let me  
24 give you just one example. Last year, one of the companies  
25 that testified on the morning panel -- Luxfer -, asked us to

1 double our sales volume if we lowered the price. We refused  
2 this opportunity to provide the higher volume at lower  
3 price, and instead, only agreed to supply half of the total  
4 amount they requested. As you can see, it is no accident  
5 that our U.S. sales have been going down a little bit every  
6 year. That has been our business strategy to avoid exposing  
7 ourselves to a trade case.

8           And to be clear, why we don't always know who we  
9 compete against, we try our best to offer prices that are  
10 the highest in the market. We are definitely not trying to  
11 injure US Magnesium. As always, we have been behaving in  
12 the U.S. market in a disciplined manner that should have  
13 prevented US Magnesium from winning a trade case against us  
14 in the first place. Frankly, I can't understand why Israel  
15 has been targeted when we are the highest price. And  
16 meanwhile, other import sources including Turkey, Taiwan and  
17 Russia are the lowest price.

18           Clearly, the petitioner did not appreciate our  
19 efforts to be disciplined. And now we have had to defend  
20 ourselves in a long and costly process. If the Commerce  
21 Department permanent rates are allowed to become permanent  
22 duties, it is hard to imagine how we can continue to supply  
23 the U.S. market. On a personal note, this has been a very  
24 stressful year in my life. But I have been patiently  
25 waiting a year for your vote. I strongly believe that

1 whatever problems US Magnesium may be having, Israel is not  
2 the cause.

3 Specifically, I want to highlight two key points.  
4 First, sales from Israel declined in every year of the  
5 period of the investigation. And why? We don't know the  
6 exact levels of total demand in the U.S. market. We believe  
7 that DSM's market share is actually lower than it was back  
8 in 2016.

9 Second, we were not the low priced leader.  
10 Imports from other sources were the main reason for downward  
11 price pressure in the market. And as I mentioned before, we  
12 believe that our prices were generally higher than U.S.  
13 producer prices. Finally, I also want to emphasize that we  
14 are not a future threat to the US Magnesium industry for  
15 several reasons.

16 First, as I mentioned already, our past track  
17 record in the U.S. market demonstrates that we are  
18 disciplined. We are not in the business of undercutting  
19 U.S. producer prices in order to grow sales volumes.

20 Second, if we are able to get back into the U.S.  
21 market, our 2020 sales will be no higher than 2018 levels.  
22 If you look at our questionnaire, you can see that we have  
23 been exporting magnesium in increasing amounts to markets  
24 outside the United States. And lately, there is one other  
25 thing I want you to understand that is unique to our company

1 and our business strategy.

2           If you read our questionnaire response, you will  
3 see that our production capacity is significantly lower than  
4 the nameplate capacity reported in ICL's annual reports.  
5 Today, we are operating near 100% of our actual capacity.  
6 The reason why our capacity is lower than the nameplate  
7 capacity is because many years ago, we made a business  
8 decision to idle several electrolytic cells.

9           Because the cells were allowed to stay idle, they  
10 can no longer be put back into production without  
11 significant new capital investment. We are talking tens of  
12 millions of dollars we would need to rebuild the dead cells,  
13 install additional chlorinators and purchase a fluoride bed  
14 dryer. Looking to the future, it is not realistic to focus  
15 that we would authorize millions of dollars in new capital  
16 expense to restore that lost capacity.

17           Let me explain you why. In Israel, when Dead Sea  
18 Magnesium produces a ton of magnesium, it also produces  
19 approximately 2.2 tons of chlorine. Chlorine and magnesium  
20 are coproducts in a joint production process. If you refer  
21 to Exhibit 2, you can see that DSM's chlorine tons get  
22 consumed almost entirely by the ICL group, mostly at our  
23 bromine plant. As a particular matter, our current  
24 magnesium production capacity has been aligned with ICL's  
25 maximum requirements for chlorine feed stock.



1 DSM sales in Canada and Brazil and visibility on our sales  
2 in our other markets including Europe. I have a degree in  
3 economics and business administration and have twenty-five  
4 years' experience in the metals industry.

5 Over the years, I have held senior roles  
6 involving the production and sales of magnesium. I used to  
7 manage the MgReTech business, a U.S. producer that recycles  
8 scrap magnesium and sells magnesium alloys in the United  
9 States. And I also have experience working in the aluminum  
10 industry when I was a purchaser of magnesium when I worked  
11 at Aleris where we evaluated purchase opportunities from all  
12 the major sources.

13 So I think it's fair to say that I understand the  
14 U.S. magnesium market from both the sales side and from the  
15 buy side. I hope my testimony this afternoon will help you  
16 to better understand the market and the conditions in which  
17 we compete. If some of this information overlaps with what  
18 you heard from the panel this morning, I apologize. But I  
19 wanted to provide our perspective.

20 Let me start by describing the different product  
21 segments. The first segment is pure magnesium. In the  
22 United States, the sole supplier is US Magnesium. And the  
23 major import sources include Israel, Russia and Turkey.  
24 Turkish production shut down briefly in 2018, but it is now  
25 back under new ownership, and we again see lots of Turkish

1 volumes being offered for sale in the U.S. market, and at  
2 very low prices. Depending on the customer, pure magnesium  
3 can be used as a reducing agent for making rock products,  
4 and as a hardener in aluminum alloy.

5           The next segment is magnesium alloy. The major  
6 alloys in the category are AZ91D, AM60, and AM50. But we  
7 also have some proprietary alloys that are exclusive to DSM.  
8 In the United States, there are multiple suppliers of alloy  
9 magnesium. You have US Magnesium that uses a primary  
10 production process, and others that recycle magnesium to  
11 make their alloy in a secondary production process. Those  
12 include Amacor, MgReTech, Spartan and MagPro. The major  
13 import sources for magnesium alloy are Israel and Taiwan.

14           The end uses for magnesium alloy including  
15 die-casting, for making rock products and as a hardener in  
16 aluminum alloy. Another major segment is magnesium scrap.  
17 In the United States, magnesium scrap typically enters the  
18 market as a byproduct of magnesium die-casting. On the  
19 import side, magnesium scrap similarly comes from magnesium  
20 die-casters in countries such as Canada, Mexico and the UK.  
21 Israel does not ship scrap to the United States.

22           So to summarize, in the pure segment, US  
23 Magnesium is the sole U.S. producer competing with imports,  
24 including imports from Israel, Russia and Turkey. In the  
25 alloy segment, multiple U.S. producers are competing against

1 each other and with imports, including imports from Israel  
2 and Taiwan, and for certain applications in the alloy  
3 segment such as aluminum producers in search of a cheap  
4 magnesium unit, there is competition from imported scrap, as  
5 well as recycled magnesium that U.S. producers make by  
6 remelting scrap.

7           If you turn to Exhibit 3, you can see a visual  
8 representation of the different sources of supply for  
9 magnesium. The blocks give you a rough approximation of the  
10 size of each of these sources.

11           Let me next to talk to you about demand trends in  
12 the U.S. As I just mentioned, there are several different  
13 market segments and distinct demand drivers in each segment,  
14 and unfortunately, there is no public source of data with  
15 which to measure aggregate demand for magnesium. In the  
16 United States, the period from 2016 to 2017, my sense is  
17 that the total demand in the merchant market drifted a  
18 little lower.

19           But most notably, in 2017, US Magnesium lost its  
20 most important captive customer, ATI, which was co-located  
21 next to their plant. According to USGS, ATI consumed one  
22 ton of molten magnesium for every one ton of every titanium  
23 sponge it produced. So when the plant closed, it meant that  
24 US Magnesium must have lost 8- to 9,000 tons of annual  
25 demand for its products beginning in 2017. In 2018, demand

1 increased by a healthy amount.

2           There were probably three reasons why. First,  
3 overall GDP in the American economy was growing in 2018.  
4 Second, America's primary aluminum industry seemed to be  
5 getting stronger in 2018, supported by the President's  
6 Section 232 remedy. And third, U.S. companies invested in  
7 increased capacity to produce die-cast magnesium parts for  
8 America's auto industry.

9           Consistent with this trend, two U.S. producers,  
10 MgReTech and Spartan announced plans to expand their  
11 magnesium production capacity. These investments make sense  
12 because light-weighting in the U.S. auto industry,  
13 particularly for electric vehicles, is driving growth and  
14 demand for magnesium. Magnesium is often the best  
15 light-weight metal for these emerging applications.

16           Next I want to describe how DSM competes and how  
17 we arrive at our prices. While there are both spot sales  
18 and contract sales in this industry, I can tell you that the  
19 vast majority of our volume is sold pursuant to annual  
20 contract agreements that get negotiated in the fourth  
21 quarter for the following contract year. Right now, we're  
22 in the middle of the mating season for 2020 contracts, and  
23 it is probably no coincidence that the petition was  
24 carefully timed to impact the contract cycles for both 2019  
25 and 2020.

1           The way things work is that customers send us our  
2 FQs, including their expected volume requirements for a  
3 particular product. We are invited to bid for volumes on  
4 the basis of price. If a magnesium producer is an  
5 unreliable supplier or if material is not yet qualified at  
6 that customer, then they will not be a competitive bidder.  
7 But not surprisingly, because magnesium is a commodity  
8 product, competition then occurs largely on the basis of  
9 price.

10           However, in my experience, price is not the only  
11 factor. Our customers value diversity of suppliers and  
12 often pay us a premium to have us as a backup secondary  
13 source. Nonsubject imports are a little different. Because  
14 they come in and out of the market sporadically, they use  
15 traders and they compete directly with the U.S. producers on  
16 the basis of price.

17           Eli Lerer just told you that we have a limited  
18 volume of magnesium available for production and sale in the  
19 U.S. market. I can promise you that my objective is to get  
20 a fair market price and not to undercut U.S. producers or to  
21 grow market share through reduced prices. And while it's  
22 not so easy to read the tea leaves in negotiating with our  
23 customers, I believe our prices are generally the highest in  
24 the market. I can tell you that the main reason market  
25 prices drifted lower from 2016 to 2018 was due to lower

1 import prices from sources like Russia, Turkey and Taiwan.

2 Now I just told you that demand was increasing in  
3 2018, and as you can see from the public import data, that  
4 our 2018 prices are lower than in 2017. Let me explain why.  
5 It's because there is a time lag. Our 2018 prices were set  
6 in the fourth quarter of 2017 at a time when we could not  
7 know the U.S. demand would increase in 2018. In fact, my  
8 customers were predicting the opposite.

9 And what else was happening at the end of 2017?  
10 Several things are noteworthy. Let me call your attention  
11 to Exhibit 4. As you can see here, prices for magnesium  
12 alloy from Taiwan were 25% lower than Israel's import  
13 prices. Turning to Exhibit 5, Russian import volumes  
14 increased by more than 190% over the prior year. And their  
15 import prices for pure magnesium were 25% lower than  
16 Israel's import prices. And if we move to Exhibit 6, you  
17 can see 2017 imports of pure magnesium from Turkey increased  
18 by more than 81% over the prior year, and their import  
19 prices were similar to Russian, 27% lower than Israel's  
20 import prices.

21 So we were negotiating 2018 contracts in an  
22 environment of soft demand and surging nonsubject imports at  
23 prices that were significantly lower than the Israeli price.  
24 During this period, we did everything possible not to  
25 undercut the U.S. producer prices and in the end, our 2018

1 volumes were down and we lost market share.

2 Not surprisingly, a year later, in the week of  
3 stronger U.S. demand in 2018, market prices for 2019  
4 contracts rebounded. For this reason, we began signaling  
5 price increases to our customers even before the petition  
6 was filed. After the petition was filed, we formalized our  
7 planned price increases and we did our best to remain the  
8 highest priced in the market in 2019. But here again,  
9 because nonsubject import prices were low in 2018, it had  
10 some impact on the prices we felt we could charge going into  
11 2019 contract negotiations.

12 If you refer to Exhibit 7, you can get a picture  
13 of what we were seeing during the mating season for 2019  
14 contracts. As 2019 unfolded, we got the sense that US  
15 Magnesium was imposing supply restrictions, which created a  
16 supply scare and probably helped them to ratchet up prices.  
17 There was nothing we could do to adjust at that point. Our  
18 calendar year contract prices were already locked in, and  
19 after the 200% preliminary duties went into effect, we had  
20 no choice but to pull back from the market by the fourth  
21 quarter.

22 All throughout the year, I've been getting calls  
23 from our customers who are anxious about disruptions to  
24 their supply chain. I'm hearing reports that US Magnesium  
25 does not have adequate volume to supply their needs.

1 Customers are repeatedly being put on allocation and US  
2 Magnesium is unable to supply their requests for spot  
3 volumes. It's an alarming situation.

4 I find it particularly surprising that US  
5 Magnesium would file this petition, claiming that we are  
6 taking volume from them when they were unable to fill new  
7 orders for their existing customers. And we have other  
8 customers who have confirmed for me that we are their only  
9 qualified source of supply. Westinghouse, who joins us  
10 today on this panel, is one such example.

11 So obviously our sales for these customers are  
12 not injuring anyone. As Eli told you in his testimony, the  
13 DSM sales strategy in the United States has always been  
14 about discipline. Discipline on volume and discipline on  
15 price. We conducted ourselves responsibly in the U.S.  
16 market, precisely so that we would not be targeted for  
17 another trade case.

18 Frankly, I fail to understand why US Magnesium is  
19 singled out Israel as the cause for their problems. Our  
20 import volumes are steadily decreasing, even as demand  
21 rebounded in 2018. So I think it is fair to say that DSM is  
22 also losing U.S. market share, at least in the merchant  
23 market, which is where we compete.

24 And the record is clear that our prices are  
25 generally higher than U.S. producers and significantly

1 higher than other low-priced import sources, including  
2 magnesium from Turkey and Russia, as well as alloy magnesium  
3 from Taiwan. I think I will stop there and thank you for  
4 your attention.

5 STATEMENT OF JACK LEVY

6 MR. LEVY: Thank you, Dave. Jack Levy from  
7 Cassidy Levy Kent. I think I'd like to take a few minutes  
8 and give you sort of an executive summary of some of the  
9 highlights from our brief. And then with that, turn things  
10 over to Westinghouse for some comments from their  
11 perspective in the market.

12 If we could first turn to Exhibit 8, what you  
13 see up here is a chart that we've shown you a few times  
14 already today. This is DSM's U.S. shipments in each period  
15 of the Period of Investigation. There's sort of a technical  
16 issue here and Commissioner Schmidtlein flagged it earlier  
17 in the morning panel, which is what dataset should you be  
18 using for looking at subject imports.

19 Our position is that consistent with past  
20 practice when you have complete and accurate coverage of  
21 subject imports through questionnaire responses you should  
22 be looking here at DSM's reported U.S. shipments. Why?  
23 Because if you look at census data, which is what's in the C  
24 Tables and what U.S. Magnesium has been arguing from all day  
25 today, those data can be a little bit misleading and a

1 little bit distorted. Why? Well, one reason would be  
2 inventories. Inventories fluctuate and there's not a  
3 one-for-one correlation in time between imports on the one  
4 hand and U.S. shipments to customers, sales transactions on  
5 the other.

6 Also, there's a no trivial volume of re-exports  
7 -- that is to say sales to Canada by DSM out of their U.S.  
8 inventories. And we think it's distortive for you to simply  
9 conflate merchandise that's been brought into the U.S.  
10 market, but not sold through to the U.S. customers. So, the  
11 reminder of our discussion is focused on our U.S. shipment  
12 data because we think it is what's most probative. And for  
13 that matter, we also focus our discussion of shipments,  
14 volumes, market share trends, domestic consumption on the  
15 merchant market.

16 Of course, you should look at the market as a  
17 whole, but we think that given the nature of competition in  
18 this industry, it's also important to focus on the merchant  
19 market as a condition of competition. I think even U.S.  
20 Magnesium would concede that DSM did not compete for sales  
21 to ATI for the time that ATI was a customer in 2016 so focus  
22 on the merchant market makes sense.

23 And so, on that point, if you turn to your pink  
24 paper in Confidential Exhibit 1 -- I'll give you a minute to  
25 page to it -- but I want to call your attention to that

1 chart just to see what's happening in this period. There  
2 was some discussion this morning about what happened in  
3 2017. Well, look at subject percent share from '16 to '17.  
4 Is it going up or going down? And look at the domestic  
5 percent share from '16 to '17. Is it going up or is it  
6 going down? And finally, look at non-subject import share.  
7 Is it going or is it going down? And then ask yourself, to  
8 the extent the domestic industry has a beef in this period,  
9 is Israel really to blame, or is non-subject imports?

10           And if you look next to calendar year 2018,  
11 what's going on here with subject import share in the  
12 merchant market. Is it going up or going down? And by  
13 contrast, what's happening with the domestics? And then,  
14 finally, I would simply point to the interim periods where I  
15 think you've heard testimony that basically the perception  
16 from DSM is that their share is more or less moving  
17 sideways in the interim period and that's something to keep  
18 in mind as we talk later about the so-called post-petition  
19 effects.

20           If we could turn away from volume in a minute,  
21 but before we do, just to make the point that it may be  
22 right that in the abstract the absolute volume of subject  
23 imports is significant; but we respectfully submit that this  
24 trend is not adverse. And I suppose there's philosophical  
25 question which is whether -- if you have a volume, a

1 meaningful volume of imports, but it doesn't culminate in  
2 any adverse effects for the domestic industry is that  
3 volume still significant as a matter of law. I leave that  
4 to you Commissioners to decide, but I would simply take the  
5 position today that whatever the absolute volume it's an  
6 absolute volume that's decreasing and it's losing share in  
7 the merchant market and it is not an adverse volume trend.

8           So, shifting next to Exhibit 9, our view is they  
9 don't have a case unless they can show you significant  
10 adverse price effects. And there was a lot of discussion of  
11 this in the preliminary phase and our perception was that  
12 they relied very heavily on many allegations of lost sales  
13 and lost revenue. Allegations that couldn't be fully  
14 resolved in the preliminary phase, so it would seem, but not  
15 we have a robust, factual record and so what does the  
16 factual record show now on price? Well, with regard to the  
17 question of underselling, we actually have pervasive  
18 overselling by subject imports in roughly 80 percent of the  
19 time. And when there's overselling, it's actually by a  
20 significant margin, according to your data. It's not the  
21 penny that we heard from in this morning's panel.

22           And I would simply turn your attention to  
23 Confidential Exhibit 2 in the pink paper. I think we all  
24 recognize that Pricing Product 2 is the pricing product with  
25 the most volume, so it's actually pretty probative. And let

1 us recall that USM brought this petition at the end of 2018  
2 and using colorful language testified at the staff  
3 conference that they were in a death spiral and that Israel  
4 was to blame.

5           Look at the relative prices between Israel, on  
6 the one hand, and then U.S. producers and then non-subject  
7 imports for the period from 2016 to 2018. Israel is blue.  
8 The domestics are green. Russia is red and Turkey is  
9 yellow. To me, a picture is worth a thousand words. And in  
10 my mind, this picture does not indicate significant adverse  
11 price effects by reason of Israel. And where you have a  
12 record of pervasive overselling by subject imports it's very  
13 hard to evidence price suppression.

14           Most notably, in this market where there are a  
15 lot of other players -- this is not just a situation where  
16 it's us and them and we're co-equal. There are plenty of  
17 non-subject imports that are unquestionably the low price  
18 leader. And the U.S. producers, who are desperate to  
19 maximize their production and sales they have to meet  
20 competition with those low priced non-subject imports if  
21 they're going to survive. And so, in that environment how  
22 can higher-priced subject imports be a ceiling on domestic  
23 producer prices when you have non-subject import prices that  
24 are lower and they're like an anchor around the neck of U.S.  
25 producers? On that record, you just can't have price

1 suppression by reason of subject imports.

2           And then, again, on this issue of lost sales and  
3 lost revenue, we now have robust information from purchasers  
4 -- roughly 35 who've responded -- and the evidence is weak.  
5 You know U.S. Magnesium said in their brief that they were  
6 responding to intelligence where the price signals were  
7 "represented to be Israel." And I think that that's a  
8 pretty telling turn of phrase because we heard a lot today  
9 at the hearing.

10           When Mr. Tissington testified, he said  
11 purchasers are telling me less and less every day. He says  
12 the intelligence I get is "not cut and dry." It's "not that  
13 easy to discern who he's competing against or what price  
14 levels are." Mr. Vaughn had even more colorful language.  
15 He said when USM's negotiating he described it as "A fog of  
16 war." And he added "Customers are the only ones who really  
17 know" what's going on. I would get the sense from all this  
18 testimony that there's a fair measure of deception that goes  
19 on when suppliers are negotiating price with purchasers,  
20 and for good reason, because purchasers are trying to  
21 extract the lowest possible price. And it stands to reason  
22 that much of the time when U.S. Magnesium may think they're  
23 competing against a lower Israeli price they're just plain  
24 wrong.

25           And what we see in this final phase record is

1 lots of faulty intelligence. We know see confirmed examples  
2 where DSM was not even at the account in the first place.  
3 Where U.S. Magnesium was confusing Israel with non-subject  
4 imports, whether from Turkey or Russia or Taiwan or for that  
5 matter with competing U.S. producers, situations where  
6 contrary to U.S. Mag's sense of the market, DSM was actually  
7 higher priced, and why? Because we also have numerous  
8 situations where the customer went onto explain that they  
9 preferred Dead Sea Magnesium for non-price reasons, be it  
10 the need to have a second supplier or an object quality  
11 issues. There are numerous reasons on this record in terms  
12 of non-price factors why purchasers preferred to buy at  
13 least some of their volume from Israel.

14           So, let's turn to Exhibit 10 and talk a little  
15 bit about causation because at the end of the day causation  
16 is a big problem for the Petitioner. From 2016 to 2017 --  
17 you remember at the end of 2018 U.S. Mag tells you they're  
18 in a death spiral. What's happening during that period?  
19 Well, not to beat a drum, but again, DSM's U.S. shipments  
20 are steadily decreasing. They're losing share in the  
21 merchant market and it's pervasive overselling. So,  
22 whatever their problems in that period we were not a cause  
23 of material injury.

24           Then they say, ah-ha, but we've got you because  
25 there are post-petition effects, the U.S. industry is doing

1 better for price reasons in the first half of 2019. But I  
2 don't need to lecture you, the Commissioners, on how the  
3 statute works. The post-petition effects language in  
4 1677.7(I) what that talks about is a situation where if  
5 there's a change in the volume price or impact of subject  
6 imports after the filing of the petition and it's related to  
7 the investigation the Commission can reduce the weight  
8 accorded to the data in making its determination.

9           What does that mean? It means that if the U.S.  
10 industry does better post-petition because suddenly there's  
11 discipline on subject imports you don't hold that against  
12 the Petitioner in reaching your determination. What it does  
13 say is in a world where there's no evidence of causation of  
14 material injury from '16 to '18 and then lo, and behold, the  
15 U.S. industry does better post-petition and there's a  
16 correlation there that petition filed, prices go up that  
17 that proves your case. That's just not the way the  
18 statute's written. And so, what you see, in fact, that  
19 there's no correlation post-petition. There's no you know  
20 marginally improved discipline on the part of subject  
21 imports post-petition.

22           Candidly, subject imports are a little less  
23 disciplined because of, again, sort of the fog of war in  
24 negotiations. This is what happens. And let's be clear,  
25 there are plenty of other good reasons why prices went up in

1 2019 that had nothing to do with the petition. Mr. Wanless  
2 talked to you about the lag, right? You're negotiating in  
3 the fourth quarter of '18 and those negotiations began  
4 before the petition was filed and you're trying to assess  
5 where the market is. Well, in 2018 what happened? Demand  
6 surged. Why? The aluminum industry is booming in a  
7 post-232 world. Dye casting in the automotive space for  
8 automotive parts and light-weighting is taking off. U.S.  
9 producers are investing in this segment, so everything is  
10 looking strong in 2018.

11           And, oh, by the way, one of the more pernicious,  
12 non-subject import sources, Turkey, suddenly recedes from  
13 the scene. So, there are a lot of factors going on in the  
14 fourth quarter of 2018 that serve to portend an increase in  
15 U.S. industry prices, in market prices for 2019. And by the  
16 way, DSM was signaling price increases to its customers at  
17 the beginning of the meeting season before it even heard  
18 about a petition.

19           So, let's turn to Exhibit 11. Since the  
20 evidence of causation in this case in relation to subject  
21 imports is so flimsy, it's instructive to reflect on what  
22 can help explain what's going on with the U.S. industry.  
23 And first, this issue of ATI I don't want to distort it.  
24 Our simple point is that if you're going to look at the  
25 financial condition of the U.S. industry as a whole, then,

1 by definition, that has to include the ATI tolling  
2 relationship in 2016. It's just the right answer, given the  
3 statute and your practice. And so, if it's baked in the  
4 cake, then you need to understand that the closure of ATI in  
5 2016 and taking that out of the equation in 2017 is going to  
6 be a factor that explains a change.

7 We're not saying that that explains everything  
8 and it's not explanatory of what's happening in the merchant  
9 market, but if you're including internal consumption in your  
10 PNL, if you will, your income statement for the total  
11 industry then you need to account for ATI because Israel had  
12 nothing to do with the closure of ATI and the loss of  
13 revenue associated with that magnesium production activities  
14 at U.S. Magnesium. And importantly, U.S. Mag doesn't  
15 dispute us on this point. It is another factor.

16 Turning to Exhibit 12, this 232 petition got  
17 some air play this morning and I think it's worth repeating  
18 some of these quotes because in mid-2017 recall that U.S.  
19 Magnesium is trying to get 232 duties imposed on magnesium.  
20 And so, they're describing what's going on in the market in  
21 this moment of candor, not when they're asking you for a  
22 dumping Order. No, they're just describing market  
23 conditions to the Administration. And they talk first about  
24 the pure magnesium segment and they say, correctly, that  
25 Israel was the largest import supplier in recent years.

1 Israel accounted for 80 percent of imports, but by '17 was  
2 only 46 percent.

3           So, they're acknowledging that Israel was  
4 receding from the market at that time. And then they go on  
5 to talk about non-subject imports. They talk about  
6 low-price sources, such as Russia and Turkey accounting for  
7 an increase in volume and Russia displacing U.S. Magnesium  
8 at numerous customers. So, I think it's perfectly clear  
9 that non-subject imports in this pure magnesium segment was  
10 an important competitive threat and, in fact, an injurious  
11 cause for U.S. Magnesium. And by contrast, they're  
12 diminishing the role of Israel in that narrative. Well,  
13 what's happened since then? The Israeli volumes have  
14 continued to go down, down, down. The only thing that's  
15 changed is now they have a case before you.

16           Let's turn to Exhibit 13, same song, second  
17 verse. Now, we have U.S. Mag in 232 comments talking about  
18 the alloy segment. And they say with regard to Israel it  
19 was consistently the largest import supplier accounting for  
20 50 percent, but by 2016 only 31 1/2 percent. Israel's  
21 receding again. They note it. But then they go on to note  
22 that the AUV of secondary alloy magnesium imports fell  
23 significantly and the dynamics have placed considerable  
24 pressure on U.S. Magnesium prices and thus U.S. Mag's  
25 viability. And they call out the main import source as

1 Taiwan. So, here again, you have this confession that  
2 non-subject imports are a very big problem for U.S.  
3 Magnesium's viability right smack in the middle of the POI.

4           And then let's turn to Exhibit 14. Magnesium  
5 scrap is not within the product scope language, but U.S. Mag  
6 acknowledges that imports of scrap have an important  
7 competitive effect because they say it can be used in many  
8 of the same applications, right? You've got lots of end  
9 users who just want cheap magnesium units and scrap can do  
10 the job. And basically, they said that that was driving  
11 down primary magnesium prices. That was a cause of price  
12 depression. Well, we have this little chart for you in the  
13 middle. The gray bar being scrap prices relative to primary  
14 and secondary magnesium and what you could see there is that  
15 nothing has changed. Scrap is still dirt cheap. So, what  
16 they said in mid-2017 is still true today. It is driving  
17 down -- it is a cause of downward price pressure for them  
18 during the POI.

19           And let's turn to Exhibit 15. You know this is  
20 a record where there's more than a little bit. In fact,  
21 there's lots of information provided from purchasers about  
22 essentially self-inflicted injury on the part of U.S.  
23 producers. It's very rare that you have a record like this.  
24 You have producers, some of them complaining about quality  
25 issues, saying that U.S. Mag can't meet their spec and

1 you're going to hear from one of them on our panel in a few  
2 moments, Westinghouse. And then you've got 14 purchasers --  
3 14 -- reporting supply constraints.

4           It's not unusual to have a case where you've got  
5 one or two purchasers reporting supply constraints and you  
6 look at it with a little skepticism and wonder whether this  
7 purchaser has an axe to grind and maybe you take it with a  
8 grain of salt. But when 14 purchasers come out of the  
9 woodwork and they're all telling you the same thing, U.S.  
10 Mag declined or refused to sell. U.S. Mag was unable to  
11 supply additional volume, that their own commercial  
12 missteps are the cause, the capacity limitations, allocation  
13 -- putting customers on allocation. You know if a  
14 Petitioner comes to me and says I want to file a case, but,  
15 oh, by the way, I've got my customers on allocation. I'd  
16 tell them to take a walk. I mean that is toxic for a  
17 Petitioner in a case before you.

18           You know we heard testimony from Ms. Slade we  
19 don't see any supply constraints in the market. We heard  
20 testimony from Mr. Tissington there's no account where we're  
21 not qualified at. I think that what you've got in this case  
22 -- they also said with regard to these all-or-nothing  
23 marketing behavior where you know reportedly they go to a  
24 customer and they say you're going to buy everything from us  
25 or nothing at all. You know that kind of Mafioso

1 negotiating tactic. Mr. Tissington said they've never done  
2 it, but you've got multiple purchasers saying that they've  
3 done it and they've done it plenty; particularly, in the  
4 wake of losing their ATI business.

5           So, what you've got on this record with regard  
6 to quality, with regard to supply constraints, with regard  
7 to you know bullying marketing tactics that may alienate  
8 customers what you've got in all of this is a tremendous he  
9 said/she said problem. You, the Commission, in this case  
10 more than most you have to weigh evidence and make an  
11 assessment about the credibility because I don't know how  
12 you reconcile these two competing accounts of what's really  
13 happening in the U.S. market. And you know it's been our  
14 experience that when you've got many purchasers all saying  
15 the same thing that's pretty compelling. So, you know for  
16 all of these reasons, we think that the evidence of  
17 causation of injury by reason of subject imports just  
18 nonexistent on this record during the POI.

19           And if we turn to Exhibit 16, I'll just say a  
20 few words about threat. You've heard it from Mr. Lerer and  
21 I'm sure you'll want to hear more about it in Q&A, but DSM  
22 is already producing near full capacity. They would have to  
23 have major capital expenditure to expand their output beyond  
24 current levels. And more importantly, they're constrained  
25 by the amount of chlorine co-product that they can generate

1 at the facility, so they're near full capacity.

2 But perhaps more importantly and more obviously  
3 for you, let the data do the talking. They have a track  
4 record of decreasing U.S. sales volumes year after year  
5 after year. You heard from Petitioner all these reasons  
6 about how it's a jungle out there because of Chinese volume,  
7 and no one in their right mind would want to sell outside  
8 the U.S. market.

9 Well, then why is their volume going down in  
10 the United States every successive year? It's because of  
11 what Mr. Lerer told you, it's because they're disciplined.  
12 They're afraid of being targeted in dumping cases and they  
13 behave in a way to avoid it wherever possible. And then if  
14 you also look at their track record outside of the United  
15 States, they're actually increasing their sales to third  
16 country markets.

17 So you know, whatever US Mag's theory of  
18 non-U.S. markets may be, it doesn't square with the behavior  
19 of this company in recent years. So again, if you look at  
20 Slide 17, U.S. sales volumes are going down, and then  
21 importantly, you have this on the record, this is simply  
22 showing you in proportional terms sales outside of the  
23 United States at the bottom in orange as a percent of total  
24 sales or exports of DSM, to sales in the United States.

25 What you could see here over time is that from

1 '16 to '17 to '18, what are they doing? They're selling  
2 more and more outside the United States. So you know, US  
3 Mag may have all sorts of theories about how it's a jungle  
4 out there and no one in their right mind would want to sell  
5 outside the United States, but their track record is  
6 otherwise, and they must have good business reasons for  
7 behaving this way.

8           You heard some of those reasons our prehearing  
9 brief, that Brazil is a protected market, that these guys  
10 have found niche premium customers in segments around the  
11 world, that there's a need to support their affiliates who  
12 are selling a suite of chemical products in various markets,  
13 and they're not going to leave them in a lurch.

14           So for whatever their business reasons are,  
15 they walk the talk. You don't have to believe what they're  
16 telling you about the future. All you have to do is read  
17 the data about how they've been behaving year after year  
18 after year. You know, in the cases where I see where you're  
19 going affirmative on threat, there's a trajectory and all  
20 you have to do is extend the vector and say this is where  
21 things are going, and if they keep going in this direction,  
22 the U.S. industry's in trouble.

23           If Dead Sea Magnesium continues on this  
24 trajectory, they're going to supply less and less and less  
25 to the U.S. market over time, be the high price leader

1 wherever possible, and shipping more and more in relative  
2 terms to non-U.S. markets. It's not speculation. It's in  
3 the data. So for all of these reasons, not only is there no  
4 evidence of causation of injury during the POI, there's no  
5 basis for finding threat of injury either.

6           So with that and I think we have about eight  
7 minutes left, I'm going to turn things over to Westinghouse,  
8 because you've seen testimony today and it's actually in US  
9 Mag's prehearing brief, that not a single purchaser in the  
10 United States whose specifications they cannot -- that  
11 they're qualified everywhere, and I think you may hear  
12 something different from Westinghouse. Thank you.

13                           STATEMENT OF TIMOTHY FRANCIS

14           MR. FRANCIS: Good afternoon. My name's Tim  
15 Francis.

16           MR. BURCH: Could you please pull your  
17 microphone closer?

18           MR. FRANCIS: I'm the -- a little closer,  
19 okay. Sorry. My name's Tim Francis. I'm the process  
20 safety engineering manager of the Westinghouse Western  
21 Zirconium plant in Ogden, Utah, and since 1980 I have been  
22 responsible for the qualifying of magnesium from various  
23 magnesium producers. I can assure you right now that US Mag  
24 is not a qualified supplier of nuclear grade magnesium for  
25 Western Zirconium, and I can explain that here in a few

1 minutes.

2                   At Westinghouse's Western Zirconium plant, we  
3 produce zirconium alloyed metal products for critical  
4 applications. The zirconium alloys are used in nuclear  
5 reactors, chemical processing equipment and biomedical  
6 devices and applications. All of these applications require  
7 precise alloy, element and impurity control and homogeneity  
8 to meet challenging and the critical application  
9 requirements. Zirconium alloys have a unique property that  
10 make them a preferred and sometimes the only option for the  
11 demanding applications, and most importantly zirconium  
12 alloys are used to house the nuclear fuel and provide the  
13 skeletal structure for the fuel assemblies that are the  
14 power source for nuclear reactors.

15                   Zirconium alloys are also biocompatible and  
16 serve demanding applications such as a hip and knee joint  
17 replacements. Western Zirconium is one of the two U.S.  
18 producers of zirconium products, and in particular we supply  
19 the zirconium that Westinghouse uses to manufacture nuclear  
20 fuel assemblies for the commercial nuclear reactors.

21                   Westinghouse is the leading producer of  
22 nuclear fuel in the United States, and our Columbia, South  
23 Carolina plant supplies over 60 percent of all of the  
24 nuclear fuel for the 96 U.S. nuclear reactors that generate  
25 20 percent of the nation's electricity. Just that portion

1 of our production that is used within Westinghouse is  
2 therefore essential, producing about 12 percent of all  
3 United States electricity.

4 In addition, Western Zirconium provides  
5 nuclear grade zirconium alloys to the U.S. and international  
6 companies besides Westinghouse. Those include GE, EDF,  
7 Korean Nuclear Fuel, Sandvik Metal in Sweden. The melted  
8 zirconium alloy ingots are composed, a composite blend of  
9 chemistries, of the nuclear grain sponge that you've heard  
10 something about, recycled from the manufacturing processes  
11 and certain alloys that are added to each ingot. Each  
12 customer, however, has its own low impurity limit and a  
13 very, very narrow allowable variation, which makes each  
14 ingot an extremely challenging product as the specifications  
15 and the impurities must be carefully controlled and blended  
16 to meet the individual customer requirements.

17 There are over 30 elements each with minimum  
18 and maximum tightly controlled ranges that are required to  
19 be analyzed and controlled for final ingot acceptance.  
20 Therefore, the quality of zirconium sponge and the level and  
21 the consistencies of impurities are critical to ensure that  
22 the final melted ingot that we produce is homogeneous and  
23 meets the customer's chemistry specifications.

24 Zirconium sponge chemistry is directly  
25 impacted by the increase in magnesium used to produce that

1 zirconium sponge, and in order to manufacture zirconium for  
2 nuclear applications we need magnesium that is low in  
3 impurities and consistent in quality, with very, very little  
4 variation from one ingot to another.

5           The impure elements of concern in primary  
6 magnesium are directly absorbed in the reaction, and they  
7 directly transfer to the nuclear sponge. The main  
8 impurities that are carefully controlled for incoming  
9 magnesium include, but are not limited to, aluminum, iron  
10 and phosphorous. We're also look at the other 30 elements.  
11 The subject merchandise that I would like to focus on is  
12 nuclear grade magnesium. Westinghouse Western Zirconium  
13 currently consumes roughly about one to one and a half  
14 million pounds of nuclear grade magnesium for the  
15 manufacture of zirconium alloys for the nuclear field  
16 components and the biomedical implants.

17           Throughout the years, Western Zirconium has  
18 purchased magnesium from several magnesium producers  
19 including Dow Chemical, Magnesium Corporation of America,  
20 Dominico, Dead Sea Works. Today, there's only one U.S.  
21 producers and that is, of course, US Magnesium. Beginning  
22 in 1979 through 1987, WZ purchased all of its nuclear grade  
23 magnesium from Dow Chemical. I had spent five years with  
24 Dow Chemical and understood the magnesium business, and we  
25 selected them.

1                   So we used Dow Chemical magnesium for several  
2 years. However, they provided notification that they were  
3 going to exit the magnesium business, and WZ began  
4 purchasing magnesium from US Mag. We were blending it with  
5 Dow nuclear grade magnesium through 1992. In 1993-95, our  
6 backs were against the wall and WZ was dependent on US Mag  
7 exclusively.

8                   Despite US Mag selectively providing low  
9 impurity magnesium, their production material on many  
10 occasions failed to meet the aluminum and the phosphorous  
11 specifications, and they varied widely in quality. As a  
12 result, Westinghouse was forced to implement a very, very  
13 costly and hazardous purification step to use this magnesium  
14 at all. When customers began demanding even lower  
15 phosphorous levels, it became no longer possible to use the  
16 US Magnesium material.

17                   It truly had been my desire since 1979 that we  
18 would like to qualify US Mag's provider, and it's been so  
19 for the past several decades. Like all businesses, we don't  
20 really want to be dependent on only one source, and we would  
21 prefer a domestic supplier. US Mag is not only a domestic  
22 supplier but they're about 60 miles across the lake from us,  
23 so the transportation costs would be much less. It makes  
24 good sense.

25                   But unfortunately US Mag has consistently

1 proven that they're unable to supply magnesium that meets  
2 the strict requirements for nuclear and the biomedical  
3 applications. There have been around five rounds of  
4 engagements with US Mag initiated between 2002 and 2018 in  
5 which they provided samples. In every case but one, the  
6 samples failed to meet our specifications.

7           Let me just address that particular case. In  
8 2017, US Mag offered to provide about 45,000 pounds, a lot  
9 we call it, of nuclear grade magnesium. The samples met  
10 WZ's specifications for all of the elements of interest, and  
11 WZ agreed to purchase this material and it was delivered in  
12 February of 2018, which began kind of qualification part of  
13 the process. Following the one lot test batch, WZ  
14 approached US Mag for a quote for a second lot of nuclear  
15 grade magnesium to continue the qualification process.

16           U.S. Mag responded that if WZ could not raise our  
17 aluminum specifications to 50 parts per million, and our  
18 specification is 30, they had no material available. We are  
19 of the opinion that the single acceptable 2018 delivery was  
20 a result of deliberate investment of time and expenses to  
21 produce only one lot of material that met our  
22 specifications.

23           We are of the belief, that given the timeline,  
24 that our acceptance of this material in good faith was used  
25 a few months later to produce their anti-dumping case

1 against Dead Sea Works. None of the material offered since  
2 2018.

3 CHAIRMAN JOHANSON: Mr. Francis, I'm sorry, your  
4 time has expired. If you could wrap up please.

5 MR. FRANCIS: Okay, I can do that.

6 CHAIRMAN JOHANSON: Thank you.

7 MR. FRANCIS: Okay, right here -- Westinghouse  
8 does not purchase magnesium from Israel based on price.  
9 Dead Sea is our supplier because there's no domestic  
10 alternative for the purity and consistency. A tariff on  
11 nuclear grade magnesium from Israel will translate to higher  
12 nuclear and biomedical, with zirconium costs for  
13 Westinghouse and other nuclear businesses.

14 It will harm the U.S. competitiveness of  
15 zirconium and will also provide the opening for China and  
16 Russia, which will certainly take advantage of the zirconium  
17 market and make U.S. dependent on them for yet another  
18 critical material. Thank you.

19 CHAIRMAN JOHANSON: Alright, thanks to all of you  
20 for appearing here today. We will now begin Commissioner  
21 questions with Commissioner Kearns.

22 COMMISSIONER KEARNS: I also thank you for  
23 appearing today and making the trip from Israel. Mr. Levy,  
24 if I heard you right, you pointed out that the statute  
25 indicates with respect to post-petition effects, that we can

1 accord less weight if it suggests less injury attributable  
2 to subject imports.

3 But if I heard you correctly, you argued the  
4 statute does not permit us to consider kind of the flip side  
5 of that. In other words, kind of a controlled experiment  
6 of, you know, is there some connection between subject  
7 imports and injury to the U.S. industry, and if some  
8 discipline such as even a petition is put in place, that  
9 that could be a way of determining whether or not there's  
10 some connection there. Is that your position?

11 MR. LEVY: Well, let me try to be clear. I think  
12 it's an important issue. I think the first point is  
13 absolutely right. If you look at the statute, and what the  
14 statute says. In a nutshell it says that if there's  
15 evidence that a petition has imposed discipline on subject  
16 imports, and the U.S. industry, some of its performance  
17 indicators show improvement post-petition.

18 But that in no way should be used to detract from  
19 an affirmative determination on behalf of the U.S. industry.  
20 That's as far as the statute goes. Now in practice, the  
21 Commission will often look at improvement post-petition and  
22 say, "Aha, there is a disciplining effect on subject  
23 imports. The condition of the domestic industry is  
24 improving." And that, they will say, further corroborates  
25 the cause and effect nexus that we observed pre-petition.

1           And I think that that is a perfectly reasonable  
2 thing for the Commission to do in the ordinary case. But  
3 what do we have going on here pre-petition? I respectfully  
4 submit that there's no evidence of a causal nexus between  
5 subject imports on the one hand, and the injured condition  
6 of a domestic industry.

7           And so, what you have in terms of a, if you will,  
8 a post-petition effect, is you have changes in the market  
9 that in no way correlate to a new found disciplining on  
10 subject imports. And so, you can't just correlate and say  
11 we're doing better for you know, arbitrary reasons that are  
12 detached from subject imports and say that proves our case  
13 for the POI. It just doesn't work like that.

14           COMMISSIONER KEARNS: Okay, thank you. That  
15 makes sense. Let me just ask this, somewhat follow-up  
16 question. Is the increase in prices at the end of 2018 and  
17 an interim 2019 due to these investigations? If not, what  
18 was the cause?

19           MR. LEVY: I'd like Mr. Wanless to talk about  
20 what was happening in late '18, and pricing for 2019, and  
21 what factors contributed to changes in price.

22           MR. WANLESS: Dave Wanless. As far as the what  
23 was going on at the end of 2018, that we had already started  
24 to see an increase in the demand in the overall market, and  
25 we believe that, as I had mentioned in my testimony, that

1 was being driven both by just general economic activity  
2 within America being strong and growing.

3 And as well, that the U.S. government had brought  
4 in the 232 remedies, which were supporting the primary  
5 aluminum business and therefore driving demand up in that  
6 business. So, we believe that those two factors and that  
7 demand was causing signals to that prices would also fall,  
8 would increase as a result.

9 COMMISSIONER KEARNS: Okay, that's very helpful.  
10 Thank you.

11 MR. LEVY: Commissioner Kearns, just one point to  
12 add. I think you heard it in the testimony also. Also, in  
13 late 2018, in this environment where DSM is assessing the  
14 market and beginning to signal prices for 2018, Turkey, who  
15 had been sort of a pernicious source of non-subject imports,  
16 they exited the market, right, that they closed.

17 Now, they're back under new management, so Turkey  
18 continues to be back in the market and traders have volume  
19 for sale right now. But at that moment in time, you had a  
20 non-subject import source that had been injurious, but at  
21 least for a period of time stepped back.

22 COMMISSIONER KEARNS: Okay, thank you. Also, on  
23 pricing, in its brief, at pages 31 through 34, U.S.  
24 Magnesium discusses examples in which it claims it lose  
25 sales to DSM in 2016 and 2017, then regained that business

1 by cutting prices in 2018. I'm assuming this will have to  
2 be post-hearing, but can you discuss whether you competed  
3 for business at these purchasers?

4 MR. LEVY: Yes. It's all APO, we'd be happy to  
5 address it post-hearing, thank you.

6 COMMISSIONER KEARNS: Okay, thank you. And most  
7 of this may also need to be post-hearing, but you may be  
8 able to say a few things here. Three purchasers -- there's  
9 three purchasers referred to on page 29 of Petitioner's  
10 brief that confirmed lost sales due to lower priced subject  
11 imports.

12 I know you all in your pre-hearing brief  
13 questioned whether or not those were really lost sales. And  
14 I would appreciate anything more you can tell us  
15 post-hearing about that, if you have it. But otherwise, is  
16 this volume of lost sales due to prices significant?

17 I think the way the Petitioners describe it, it  
18 seems like arguably it is, and especially if you were to  
19 extrapolate to address the non-responsive purchasers, it  
20 would be significant. So, is there anything you can tell us  
21 now or post-hearing on that?

22 MR. LEVY: Sure, we'd be happy to address that  
23 post-hearing, thank you.

24 COMMISSIONER KEARNS: Okay, thanks.

25 MR. CANNON: Commissioner Kearns, Jim Cannon. I

1 would like to say something about the non-responsive folks.

2 COMMISSIONER KEARNS: Yes?

3 MR. CANNON: So, you have a long practice at the  
4 Commission, and actually if you look at that table, it's  
5 either Table 5-9, or 5-10, you total up at the bottom the  
6 actual people who did respond, right? The yes's and the  
7 no's, yes, elicit responses.

8 You don't take any position, haven't to try to  
9 interpret people who don't respond. But you can compare the  
10 two tables and there's a few cases where people responded  
11 about lost sales and then made no response with regard to  
12 lost revenues. So, perhaps you could fill in a few blanks.

13 But just in general, I think that's a  
14 professional and principled approach. And to actually try  
15 to infer from a lack of evidence anything, I really don't  
16 think you can go there under the standard of review.

17 COMMISSIONER KEARNS: So, even if every one of  
18 our purchasers came in and said absolutely lost sales due to  
19 price, no question about it. There's plenty of evidence of  
20 that. And it was let's say, a third of total purchasers, I  
21 should conclude that no more than one-third of all  
22 purchasers found the lost sales were due to price?

23 MR. CANNON: I'm not sure I understand your  
24 hypothetical, but when I was a Petitioner, I would love that  
25 fact pattern.

1           COMMISSIONER KEARNS:  But you're telling me you  
2  wouldn't.  You're telling me that I only have data on  
3  one-third of the purchasers, so I can't assume anything on  
4  the other two-thirds, even though the one-third seems to  
5  make a very strong case that there is underselling across  
6  the board.

7           MR. CANNON:  I think the way you've always  
8  handled that is to look at the yes's and the no's and kind  
9  of the proportions and the volumes and to assess that.  And  
10 the people who don't take the position, I don't think the  
11 Commission makes an inference about that volume and assigns  
12 any factor or weight on way or the other.  And I believe  
13 that's how the Commission has actually always analyzed this.

14           And I really don't think there's any other way to  
15 do it that's fair to both sides of the equation.

16           COMMISSIONER KEARNS:  Okay.

17           MS. ALVES:  Commissioner Kearns, Mary Jane Alves,  
18 from Cassidy Levy Kent.  I just want to add one additional  
19 point which is there is a distinction between a preliminary  
20 determination and a final determination.  And I see your  
21 point.  If you have not heard in the purchaser surveys in  
22 the preliminary phase of the question of the investigation,  
23 you don't know where purchasers stand on something like  
24 that.

25           And there may be a lot of information that you've

1 received that suggests you might come to a different result.  
2 Under the standard that you're applying in a preliminary  
3 determination where you have American Lam, sure, you might  
4 choose to then go to a final, so that you could give them  
5 the opportunity to provide more information.

6 But having gotten to a final, you typically look  
7 at what you have received from the purchasers, and then it  
8 is a tally. You look at their narrative. You look at the  
9 tallies, and you evaluate what you have. But you certainly  
10 don't extrapolate from the non-responses, what else might be  
11 out there in the universe.

12 COMMISSIONER KEARNS: Okay, well I would love  
13 hearing more from both sides on that post-hearing. I mean  
14 it seems to me that we often do have to make some  
15 inferences. For example, on pricing data, sometimes we  
16 might only have like 4 percent coverage in our pricing data.

17 And we might see entire underselling. We don't  
18 ever say but that's just 4 percent. We take it into  
19 account. But I'm not just going to say well, that's just 4  
20 percent, so I can throw that in the trash, and I have no  
21 idea if there's underselling in this market because I only  
22 have 4 percent here.

23 So, I'd love to know. It seems to me like we  
24 have to make inferences based on incomplete data across the  
25 board, not just with respect to lost sales, but with respect

1 to pricing, with respect to all kinds of things.

2 Our foreign producer's questionnaires -- we don't  
3 have total information there either. Like, but we don't  
4 just sort of assume that you know, we're only going to look  
5 at what we have, and everything else we just have to kind of  
6 assume. Because I think, essentially, you seem to be  
7 suggesting to me that we are assuming it in one direction.  
8 That it doesn't show any lost sales. It doesn't show any  
9 underpricing. It doesn't show, you know, that there is  
10 other capacity in a foreign country. But I'm not sure if  
11 that's how we're supposed to look at it. So, I would just  
12 appreciate more thoughts on that post-hearing, I guess.  
13 Okay, thank you.

14 MR. CANNON: This is Jim Cannon. We will and  
15 actually exactly the way we were discussing this, what  
16 you're saying.

17 COMMISSIONER KEARNS: Okay.

18 MR. CANNON: In other words, if it's only 4  
19 percent coverage, you would still extrapolate more broadly.  
20 Here it's whatever it is, 3 out of 14, or something.  
21 Anyways --

22 COMMISSIONER KEARNS: Right.

23 MR. CANNON: There's a number at the bottom of  
24 the table.

25 COMMISSIONER KEARNS: Okay, okay. Let's see.

1 Oh, I'm sorry, I've gone over my time, I'll end it there,  
2 thank you.

3 CHAIRMAN JOHANSON: Commissioner Stayin?

4 COMMISSIONER STAYIN: Thank you. In the staff  
5 report, it reported that 4 of 13 respondent importers and 14  
6 of 34 responding purchasers reported supply constraints of  
7 magnesium. You heard earlier today about a purchaser  
8 reporter that magnesium -- U.S. magnesium, declined to where  
9 they refused to sell magnesium, et cetera. Have you  
10 experienced supply constraints in your sales here in the  
11 United States?

12 MR. WANLESS: David Wanless. Once the  
13 preliminary duties were put into effect, we stopped  
14 importing the material during 2019, that was in July.  
15 Normally speaking, our supply chain is populated with  
16 approximately two month's-worth of inventory, and therefore  
17 you can assume that two months after that time, that we no  
18 longer had material to deliver to our customers.

19 COMMISSIONER STAYIN: Alright. Has DSM had any  
20 problems in failing to meet customer's specifications during  
21 the POI?

22 MR. WANLESS: During the POI we had one incident  
23 with a customer claim. And we have subsequently initiated a  
24 requalification. However, as far as details concerning that  
25 customer, and that process, we would like to provide in a

1 post-hearing submission.

2 COMMISSIONER STAYIN: In your view, what factors  
3 led to the export unit values exceeding your export values  
4 overselling U.S. shipments during the POI?

5 MR. LEVY: Commissioner Stayin, just to clarify,  
6 are you asking what accounts for why DSM's prices are higher  
7 than U.S. producer prices?

8 COMMISSIONER STAYIN: Yes. Yes.

9 MR. LEVY: Okay, thank you.

10 COMMISSIONER STAYLIN: Over sale, oversell, not  
11 over supply, sorry.

12 MR. WANLESS: David Wanless. I would say that  
13 the single most important factor with respect to our ability  
14 to achieve a premium over the market prices is due to our  
15 reliability. So, we consider ourselves to be a reliable  
16 supplier of high-quality product, and we believe that based  
17 on the feedback we get from our customers, that that is what  
18 they value most.

19 COMMISSIONER STAYIN: Okay. How comparable are  
20 DSM's magnesium products? How comparable are they to the  
21 U.S. Magnesium's products? Are they substitutable,  
22 interchangeable?

23 MR. WANLESS: Depending on what the customer and  
24 what the application is, that they are substitutable in  
25 certain circumstances. However, as we've just heard from

1 Westinghouse, there are situations where the U.S. Magnesium  
2 cannot meet the specification of the customer. So,  
3 therefore, I would consider our product to be superior in  
4 those instances.

5 I had also mentioned in my testimony, that in the  
6 alloy part of the market, that Dead Sea magnesium actually  
7 produces proprietary grades of magnesium, which are intended  
8 to provide additional mechanical properties, and therefore a  
9 wider array of applications for the automotive companies.

10 And in that case, I would consider that we offer  
11 a superior product that is not reproduced by U.S. Magnesium.

12 COMMISSIONER STAYIN: On page 19, 219, Table 9,  
13 there are a list of comparisons of U.S. and Israeli  
14 products, and they show them relatively comparable and the  
15 question on price had apparently been that price was not  
16 reported by U.S. but Israel, the price was more stable.

17 To what degree have you had stability and price  
18 in terms of your sales with customers in the United States?  
19 How do you go about negotiating these contracts? Are these  
20 contracts on a yearly basis? And during the POI, how did  
21 that process work and let me know how that worked for you.

22 MR. WANLESS: Alright, so as mentioned in my  
23 testimony that the negotiation process is one where most of  
24 the consumers in the market issue are accused during the  
25 fourth quarter of the year, prior to the contract year, and

1 those have specifications as to their quantity requirements  
2 in the products they are looking for.

3 At that time when we received those RFQ's, there  
4 are various sources of information available to the market  
5 that can give us intelligence as to where we believe that  
6 the prices will fall for that contract period.

7 And I'm referencing things such as census data on  
8 imports, which gives us some idea of what the levels are  
9 that have been coming in in prior periods. Of course, that  
10 is a lagging indicator, but it is a data point that we use.

11 Also, additional with respect to what's available  
12 as far as price references -- public price references, or  
13 official price references, there really aren't any that  
14 exist in the market that are based on formal terminal  
15 markets. However, there are certain references most people  
16 refer to which is called the Platz, which is a publication.  
17 And they have a survey of market participants with respect  
18 to what they're paying.

19 But again, that's for spot pricing, not for  
20 contract pricing. So, that is yet again another data point.  
21 And I mention the main data points that we take into  
22 consideration when assessing where the market's at.  
23 However, I would say by far the most significant  
24 contributor, as far as market Intel, is simply our  
25 discussions with market participants, including our

1 customers during that period of time.

2 COMMISSIONER STAYIN: Are there alternatives to  
3 the use of magnesium? Are U.S. purchasers of aluminum  
4 likely to switch to alternatives such as alloys, if the cost  
5 of magnesium increases, or if DSM exits the market?

6 MR. WANLESS: I think that -- depending on what  
7 the application is. So, for example, we've talked about the  
8 aluminum industry, where they use magnesium as an alloying  
9 element. You need to have a magnesium unit in order to  
10 accomplish that task.

11 How that magnesium unit arrives at your plant can  
12 come in various forms -- everything from scrap, through the  
13 secondary products. Ingots made from scrap to primary  
14 magnesium. So, there are alternatives available out there  
15 in the market.

16 But with respect to some of the chemical  
17 processes that we've talked about that due to the purity  
18 requirements, those processes require no impurities, so that  
19 that mag unit needs to arrive without impurities, that  
20 really significantly reduces the options that the consumer  
21 has with respect to where they can acquire their magnesium.

22 COMMISSIONER STAYIN: Okay. Do you commercially  
23 sell the chlorine gas that is a co-product of magnesium  
24 production? And how do your revenues compare for your sales  
25 of magnesium and the chlorine co-product?

1           MR. LERER: Magnesium, as I mentioned in my  
2 testimony, actually the co-product chlorine, is producing  
3 from our electrolytic cells for each ton of magnesium that  
4 we are producing. We are producing 4.2 tons of chlorine.  
5 Most of the chlorine is going by pipe to our bromine plant,  
6 which is about 1.5 kilometers north of our plant, order to  
7 produce bromine.

8           In parallel, the bromine plant has its internal  
9 units to produce chlorine. So, actually they have two  
10 sources of chlorine, and the magnesium actually is  
11 budgeting. It's budget for magnesium depends on the request  
12 for chlorine from the bromine plant.

13           COMMISSIONER STAYIN: Should the Commission focus  
14 in its analysis on the competition in the U.S. merchant  
15 market or the overall market?

16           MR. LEVY: Commissioner Stayin, I think we are in  
17 agreement with U.S. Magnesium that head to head competition  
18 for sales occurs in the merchant market. So, we think that  
19 it makes sense given those conditions of competition for you  
20 to look at trends in volume and share in the merchant  
21 market, that's what you have in attachment A, I believe, of  
22 our pre-hearing brief.

23           COMMISSIONER STAYIN: My time has run. I'll be  
24 back to you soon.

25           CHAIRMAN JOHANSON: Commissioner Karpel?

1           COMMISSIONER KARPEL: Thank you. I wondered if  
2 you could respond to Petitioner's argument. They took the  
3 graphic that you all had showing the volume of subject  
4 imports in the U.S. market over the POI. And then they drew  
5 a line on there to show average -- to show import volumes,  
6 yeah, that one, to show average unit volumes, average unit  
7 values of subject imports.

8           I wonder if you could respond to their arguments.  
9 Their argument essentially is, even though the volume of  
10 subject imports is going down, AUV's are going down, and  
11 that's what we're seeing as the injury, I suppose.

12           MR. LEVY: Sorry, Jack Levy. DSM. We'll  
13 obviously have to give you a complete response post-hearing,  
14 but I think a couple things are worth calling out. First of  
15 all, what's happening in DSM pricing in any given contract  
16 year is a function of market conditions as they're  
17 understood in the fourth quarter of the preceding year.

18           So, that explains why for example, as you heard  
19 from Mr. Wanless, prices went down in 2018. Not because  
20 2018 wasn't a good year in terms of demand, but because in a  
21 snapshot in time, in the fourth quarter of 2017, it was not.  
22 Non-subject imports had been a big problem. Nobody had a  
23 crystal ball and knew about Section 232 for aluminum.

24           Nobody knew that the die casting industry would  
25 be growing the way it did. So, there's that one

1 explanation. The other thing that's worth calling out is  
2 that -- and this kind of also goes back to the wisdom of  
3 using census data in lieu of actual DSM questionnaire data,  
4 is that those are internal transfer prices that you see in  
5 the census data.

6 Those are not prices that reflect transactions  
7 between unrelated parties. Those are custom's values that  
8 are declared by DSM to U.S. Customs and Border Protection  
9 when they're bringing merchandise from Israel, into their  
10 U.S. inventories.

11 And so, here again, we think it's much more  
12 probative to look at our actual sales prices in the U.S.  
13 market. And I'd be more than happy post-hearing, to provide  
14 a discussion based on that, rather than trying to  
15 extrapolate from custom's values. Thank you.

16 COMMISSIONER KARPEL: So, just so I understand  
17 your argument. So, you don't think we should give much  
18 weight at all to the AUV's because of -- if you could just  
19 explain again. I mean, you don't trust the census data, or?

20 MR. LEVY: I'm simply making the point that  
21 AUV's, they exist. I'm simply making the point of where  
22 they come from, their internal transfer prices reported by  
23 DSM. They're not transaction values with purchasers.

24 What you have on this record, however, is a  
25 robust record of evidence where you've got pricing products

1 which are actual sales transactions, which controls for  
2 product mix. And you also have robust AUV's from purchasers  
3 who have answered the questionnaire.

4 So, you have 35 purchasers who are telling you  
5 for any given year, what their AUV's are for purchases from  
6 U.S. suppliers from Israel, from non-subject and you know,  
7 as a general rule, purchasers are buying, you know, it  
8 controls for product mix, because any given purchaser,  
9 they're buying one thing.

10 So, as a general rule, AUV's in that context are  
11 quite meaningful. So, just to kind of illustrate what I'm  
12 talking about, there are a few tables that we use that  
13 essentially summarize that purchaser information.

14 One example is at page 5 of our pre-hearing  
15 brief, Table 2, where essentially you see the aggregation of  
16 the average unit values and this is based on the delivered  
17 prices to purchasers during the POI. And you could see, you  
18 know, where is Israel? Where are domestic producers? Where  
19 are non-subject imports? And so, we think there's a lot of  
20 record evidence on price in this record. The census we  
21 think, is probably the least robust. I'm not saying the  
22 census data are not directionally informative. I'm simply  
23 saying you've got better evidence on this record.

24 COMMISSIONER KARPEL: Yeah, I wanted to go to an  
25 argument that, well maybe not. One of the things I've asked

1 Petitioners about this morning is about the large T-bars of  
2 magnesium. And I had asked them whether DSM and U.S.  
3 Magnesium, are really the only suppliers of that.

4 And I asked them also, as well, if they had any  
5 information about the market share of T-bars and what they  
6 represent. I wondered if you could try to respond to those  
7 questions too. I also note that they responded that there  
8 may be substitutes for T-bars as well. I wondered if you  
9 had reactions to that.

10 MR. WANLESS: Okay, to confirm your first  
11 question, yes, we are the only two producers of the product  
12 that I believe that they were referring to, which there is  
13 T-bar, and there are other T-bar like products, but they're  
14 talking about a cast product that's sawn to shape, and it's  
15 very specific and precise in size.

16 And in the U.S. market we are the only two  
17 producers of those products. But as far as  
18 substitutability, I would say that the -- again, the  
19 consumer is looking for a magnesium unit. What form that  
20 arrives in may create some efficiencies inside of their own  
21 process. However, at the end of the day they're looking for  
22 a magnesium unit, and therefore T-bars and ingots are  
23 fungible in that respect, so. Was there another part that I  
24 missed? Did I miss?

25 COMMISSIONER KARPEL: Any sense of the size of

1 the market that this product, or those two products, ingots  
2 and T-bars, are they?

3 MR. WANLESS: Can we do that in a post-hearing  
4 submission, thank you.

5 COMMISSIONER KARPEL: And I also asked this this  
6 morning, but I'm interested in your perspective as well.  
7 You talk about the ability to use alloyed or secondary  
8 magnesium, or in some cases, out of scope scrap, in  
9 applications that require pure magnesium. And has there  
10 been changes in that over the period of investigation?

11 MR. WANLESS: Yeah, so the ability to use the  
12 lower grades we'll call them the secondary product, again,  
13 those products contain a higher level of impurities. So, it  
14 all depends on the consumer's ability to absorb those  
15 impurities into their process.

16 If you're in a chemical reaction, there's very  
17 little ability to absorb impurities. Whereas, if you're  
18 alloying aluminum, some of those impurities in fact, are  
19 impurities that they desire. I'm talking about copper,  
20 iron, nickel, things like that.

21 So, in as much as most of the aluminum industry  
22 already is recycling, they know the technology of recycling.  
23 So, the matter of whether they're recycling aluminum, or  
24 they're recycling magnesium scrap, that they can handle  
25 both.

1           I would say at this point, the information that  
2   is being given to me is that the industry is trying to  
3   expand its capability to consume scrap magnesium, or  
4   secondary magnesium made from scrap in order to provide some  
5   security as far as a supply chain going forward.

6           COMMISSIONER KARPEL: Has that fact impacted your  
7   ability to sell in the U.S. market, or are you selling as  
8   much as you'd like in the U.S. market?

9           MR. WANLESS: Well, I would say that it hasn't  
10  impacted us at this point in time. Beyond -- let me  
11  clarify. It hasn't yet impacted us beyond the condition  
12  that already existed pre-petition. We were already selling  
13  to consumers that were -- had the ability to absorb  
14  magnesium scrap and/or secondary magnesium products.

15           So, it hasn't changed for us at this point. Some  
16  of what I just referred to is an effort that is ongoing  
17  today and is something that I think will develop in the next  
18  short while, as far as the industry's ability to absorb  
19  secondary products and scrap. So, I think the effect is to  
20  come in the future -- in the near future.

21           COMMISSIONER KARPEL: Are you talking about your  
22  company's -- effect on your company or are you talking about  
23  the market more generally, so yours would be impacted?

24           MR. WANLESS: My last comment was about the  
25  market more in general as far as.

1           COMMISSIONER KARPEL: Okay. You started  
2 discussing with Commissioner Stayin about prices and  
3 visibility of prices in the market. And you talked about  
4 some data points you looked at when you're thinking about  
5 what prices you were looking for your product.

6           And then you said but the most important, you  
7 know, data point, is this discussion with customers. I  
8 wonder if you could say a little bit more about how those  
9 discussions go. Are they giving you feedback about what  
10 others are offering for the price? And are you considering  
11 whether you can meet that price? Are you facing, you know,  
12 purchasers who are saying lower your price because I have  
13 someone else, I can buy it from if you don't, or what are  
14 you experiencing?

15           MR. WANLESS: The way we had explained this in  
16 the staff meeting was that we are given signals by our  
17 customers. So, I think that there was some mention this  
18 morning that it is very little specific information.  
19 Customers tend not to say that you're precisely this far  
20 away from the market, or this far away from a purchase  
21 order.

22           But they will give you directional information  
23 about whether you're above or below, and perhaps some  
24 indication of margins or regions. But yes, we do get that  
25 type of information from some of our customers.

1                   COMMISSIONER KARPEL:  But I do want to have a  
2 follow-up.  Do you have a sense that there's some gains for  
3 -- I don't want to cast aspersions to purchasers who may be  
4 in the room, but do you think they have -- there could be  
5 some misinformation being conveyed between purchasers and  
6 suppliers that might make the guess about where to set your  
7 price a difficult one?

8                   MR. WANLESS:  Yes.  People, although my boss  
9 keeps trying to convince me of this fact and I tell him this  
10 can't be true, but apparently people do lie from time to  
11 time, so.

12                   CHAIRMAN JOHANSON:  Okay, thanks to all of you  
13 for being here today.  I was wondering, something was raised  
14 in the U.S. Magnesium's -- their brief, and I just want to  
15 run it by you.  Could you please respond to U.S. Magnesium's  
16 argument found at page 14 of their pre-hearing brief, that  
17 DSM has never operated at a profit?

18                   MR. GOLDSTEIN:  I'm Noam Goldstein, I will take  
19 this.  DSM have stated, you can see it in the minutes, is  
20 part of the huge site.  We're having this site more than 10  
21 different plants, one of them is the magnesium.  And there's  
22 a lot of error you see between one and the other.  When we  
23 are looking at DSM, we are looking at its contribution, the  
24 contribution of it to the revenue and profit of the site.

25                   If you would concentrate on the magnesium over

1 there, magnesium production. You can see that what we are  
2 doing, we are taking Carmelite, which is produced by Potash,  
3 producing magnesium, producing chlorine and what you see is  
4 in the way to Potash, which is additional contributions to  
5 the magnesium.

6 We are analyzing this information. Would you  
7 like us to make profit in everything which we are doing?  
8 So, what we are doing is if we would take out the magnesium,  
9 our profit will be higher or lower. Because the exercise  
10 that you are doing and everywhere that you are doing it, the  
11 answer is positive, we should continue to operate the  
12 magnesium because the overall contribution of magnesium, I  
13 see it as positive.

14 MR. LEVY: Mr. Johanson, sorry.

15 CHAIRMAN JOHANSON: Alright, you go ahead.

16 MR. LEVY: Well just to, you know, add a little  
17 more color. What you see up here is a very complex  
18 symbiotic relationship, you know, between all of these  
19 different chemical processes, all in basically the same  
20 site.

21 And there's no question that this combined  
22 industrial operation is uber profitable. If you draw a  
23 circle around one or several of the operations, one of which  
24 being Dead Sea Magnesium, you may not show a tax profit.  
25 But of course, from an accounting point of view, it's all

1 consolidated at a higher level for purposes of Israeli  
2 taxes.

3 And so, the fact that Dead Sea Magnesium may show  
4 a tax loss, is more an artifice of how the corporations are  
5 structured, which has a lot more to do with the fact that  
6 once upon a time there was a joint venture with Volkswagen.  
7 And there isn't anymore, but it's really just an artifice of  
8 corporate structure.

9 CHAIRMAN JOHANSON: Mr. Levy, you said that the  
10 overall company is uber profitable?

11 MR. LEVY: If you were to draw a circle around  
12 all of the operations you see there, you would see a very  
13 successful business enterprise. If you were to draw a  
14 circle around just essentially the DSM component of it, in  
15 terms of its corporate organization, not so much, and it is  
16 an artifice of the fact that the transfer price that DSM is  
17 charging for the chlorine co-product sold to the bromine  
18 business is low.

19 If you were to have a higher transfer price for  
20 the chlorine co-product, then viola, all of a sudden you  
21 have lots of tax profits parked in the DSM entity. It all  
22 comes out in the wash under Israel accounting when you  
23 consolidate these different entities.

24 The question is simply which entity should have  
25 more profit, and which entity should have less profit? And

1 frankly, the corporate structure is again, an artifice of  
2 the fact that long before the POI there was a joint venture  
3 with Volkswagen, and so certain operations needed to be  
4 distinct and separate corporations.

5 And we'd be more than happy to give a little more  
6 color post-hearing, but hopefully that gives you some  
7 understanding of what's going on in Stome, Israel.

8 CHAIRMAN JOHANSON: Yes, it does, thank you. So,  
9 we have this chart up this morning when you were speaking  
10 with showing the import volume going down? Yeah, and I  
11 guess you got it right there. Maybe I'm being a little slow  
12 today, but can you just describe exactly why it is going  
13 down?

14 MR. LEVY: So, again Jack Levy for DSM.

15 CHAIRMAN JOHANSON: During the POI?

16 MR. LEVY: Do you mean why the numbers are lower?

17 CHAIRMAN JOHANSON: Yeah, yeah. I know Mr.  
18 Lerer, I believe you stated that you wanted -- you did not  
19 want to run afoul of the U.S. trade laws again. Were there  
20 other factors at work?

21 MR. LEVY: Honestly, Commissioner Johanson, I  
22 have never seen a company that is more afraid of getting  
23 tagged with a dumping suit, than Dead Sea Magnesium. They  
24 have been calibrating their behavior in the United States  
25 ever since the 2001 case, which they won.

1           Understanding that it was just a matter of time  
2 until sooner or later, U.S. Magnesium would file a petition.  
3 And so, what they understand, is that you look at trends.  
4 And so, they're trying to sell a little bit less, in every  
5 successive year, so that when and if there's a dumping case,  
6 they can show that they are not responsible for, you know,  
7 adverse volume effects, or adverse price effects in the U.S.  
8 market.

9           So, what happens every year, is that this  
10 gentlemen to my left, David Wanless, he's charged with  
11 selling incrementally less magnesium every year. And in  
12 that environment where he can only sell so much, according  
13 to the budget, he's looking to get the highest possible  
14 price. He's not looking to grow volume, because he knows  
15 full well, that more volume portends a dumping petition  
16 from U.S. Magnesium.

17           I mean it is extraordinary, but these gentlemen,  
18 they run their business like a, you know, like a dog with a  
19 tail between its legs. They are in constant fear of  
20 dumping. And for good reason. And it explains their  
21 behavior. It's atypical, but it absolutely is real.

22           And I don't know if Mr. Lerer, you want to  
23 elaborate, but that is really the answer.

24           MR. LERER: Exactly. I said, you know,  
25 discipline -- it's very tempting to take all of our

1 productions and say oh, it's a good market, let's sell  
2 everything, but no. Not at all. Every year, every year, we  
3 are checking again and again, not to increase, even to  
4 reduce the sales to U.S. in order not to open for a  
5 petition.

6 CHAIRMAN JOHANSON: Okay, thanks Mr. Lerer for  
7 touching on that issue again. I wanted to get to a question  
8 or subject, that I raised with the Petitioners this morning.  
9 ATI submitted evidence in your pre-hearing brief that U.S.  
10 Magnesium failed to qualify to supply magnesium for the  
11 production of zirconium sponge on a number of occasions.

12 You all discussed this at page 3 of your  
13 pre-hearing brief, and also attachments 2 to 3. U.S.  
14 Magnesium contested this, and so that was not the case.  
15 Could you all touch upon that?

16 MR. LEVY: I'm sorry, Commissioner Johanson,  
17 you're asking us to comment on --

18 CHAIRMAN JOHANSON: You contended that on a  
19 number of occasions U.S. Magnesium could not qualify to  
20 supply magnesium for the production of zirconium sponge.  
21 And they contested that this morning. They said that was  
22 not the case. Do you know anything about that, or?

23 MR. LEVY: So, I think there's some information  
24 on the APO record that we can address post-hearing. We also  
25 have a pre-hearing letter or brief, from ATI. Some of that

1 information is proprietary, but I think it's clear from the  
2 public version of their brief, that they take the position  
3 that there were quality and qualification issues for U.S.  
4 Magnesium at the ATI account.

5 And so, what it sounds like from where I'm  
6 sitting, is that ATI's experience is not all that different  
7 from Westinghouse experience, which is that U.S. Magnesium  
8 has trouble providing inspect product in reliable commercial  
9 quantities.

10 CHAIRMAN JOHANSON: Okay, thanks Mr. Levy. And  
11 the yellow light is on, so I'll stop there. I'll come back  
12 to you all later. Commissioner Schmidtlein?

13 COMMISSIONER SCHMIDTLEIN: Okay. Thank you. I'd  
14 like to thank you for being here as well and traveling so  
15 far. So, I want to go back to the question of the  
16 post-petition effects just so I understand your position.  
17 Mr. Levy, is it your position that the Commission should  
18 give less weight to the period post-petition because there  
19 have been effects from the Petition?

20 MR. LEVY: So, Commissioner Schmidtlein. Again,  
21 I think we're all familiar with dealing with post-petition  
22 effects, and kind of your garden variety case, you'd have  
23 evidence of causation during the pre-petition period, and  
24 then post-petition, you may very well have an improvement in  
25 the condition of the domestic industry which correlates with

1 some disciplining effect by reason of subject -- a  
2 disciplining effect on subject imports.

3           And what the statute instructs is, you know,  
4 don't hold that against the domestic industry that they're  
5 doing better post-petition. And it's also traditional, I  
6 think, for you to observe that and say, "Aha! These  
7 post-petition improvements for the domestic industry, in so  
8 far as they correlate with more discipline on the part of  
9 subject imports, provides further corroboration or  
10 confirmation, of any causation and injury that is observed  
11 during the POI.

12           And our position quite simply is, that from 2016  
13 to 2018, which is the period that led up to the filing of  
14 this petition, there's no evidence of causation of injury by  
15 reason of subject imports. And what you have post-petition  
16 is clearly an improvement in market conditions due to a  
17 number of factors, including strong demand in 2018, Turkey  
18 receding from the market.

19           You know, you've heard these other explanations,  
20 and so in that environment yes, the U.S. industry apparently  
21 has been successful at raising prices and good for them.  
22 But our point simply is that there's no observable  
23 incremental discipline that we're seeing from subject  
24 imports post-petition that can be correlated with that.

25           In fact, if you look at some metrics, and I'm

1 thinking of underselling, you actually have a little more  
2 mix to underselling as opposed to pervasive overselling from  
3 subject imports. And in terms of what's happening in terms  
4 of subject import share, there is -- I would say, a  
5 significant amount of subject import share loss in the  
6 merchant market from '16 to '18, and I would say that the  
7 trend is not nearly as pronounced across the interim  
8 periods, particularly if you look at our attachment A, or if  
9 you look at the pink paper and you look at confidential  
10 Exhibit 1.

11 COMMISSIONER SCHMIDTLEIN: So, do you disagree  
12 though, that the petition did result in prices going up? I  
13 understand that you argue that there were other factors also  
14 causing prices to go, but do you disagree that the petition  
15 had an effect of increasing prices?

16 MR. LEVY: That's a good question. I think  
17 you've heard testimony today that DSM was negotiating  
18 essentially the so-called mating season began before the  
19 petition was filed. And so, DSM was signaling prices for  
20 2019 before it knew about a petition.

21 And it was signaling those price increases for  
22 reasons that had nothing to do with the petition, quite  
23 obviously --2018 demand, competition from Turkey, et cetera,  
24 et cetera. Once it became known that there was a petition,  
25 it was pretty clear that DSM had to make the decision about

1 where pricing was.

2 DSM continued to try to read the tea leaves and  
3 do what it has always done, which was to come in as the  
4 highest price. Clearly, post-petition, and interim 2019,  
5 DSM was less effective at doing that than it had been in  
6 prior years.

7 Why? We think that U.S. Magnesium had  
8 deliberately held back some volume, and then used that as an  
9 opportunity to manufacture some more underselling. You  
10 know, good for them for getting prices up in interim 2019,  
11 but I don't see the cause and effect relationship between  
12 subject import pricing on the one hand, and then the filing  
13 of the petition. It's just not clear from this record.

14 COMMISSIONER SCHMIDTLEIN: Okay. But I just want  
15 to make sure I understand your answer. So, you do agree  
16 that there was an impact from the petition on prices, even  
17 if there was other impacts from increased demand, and Turkey  
18 receding from the market, you're reading the tea leaves, you  
19 do agree that there was some impact that prices went up in  
20 some part because of the petition?

21 MR. LEVY: I think the answer is yes.

22 COMMISSIONER SCHMIDTLEIN: Yes, okay. That's all  
23 I was trying to get at. In the negotiations during the  
24 contract season, can you all talk a little bit about how  
25 those go. In your testimony, and I can't remember which

1 witness it was who explained. Maybe it was Mr. Wanless, in  
2 terms of the various sources of intelligence on the market.

3 And I believe at the end of your testimony, or  
4 maybe it was in response to a question, you said the most  
5 significant source is conversations with our customers. And  
6 still, in those conversations with customers, do you have  
7 customers quoting non-subject prices to you, or just biting  
8 other sources including U.S. or non-subject sources, you  
9 know, in an effort to leverage down your prices? Is that  
10 how you experienced negotiations?

11 MR. WANLESS: That does happen on occasion.  
12 David Wanless. That does happen on occasion, but I believe  
13 what I had said earlier was that in conversation with market  
14 participants, so it's not exclusively with our customers.

15 So, there's other participants in the market,  
16 whether they're involved in the logistical side of the  
17 market, or just have a feel for what's going on in the  
18 market. But that truly is in the magnesium market. I have  
19 mentioned in my testimony, and very quickly, that I come  
20 from the aluminum industry, which is highly structured and  
21 has a terminal market with which people can view prices that  
22 are very formal and based on actual transactions.

23 Nothing like that exists in the world of  
24 magnesium. And the only price index that is in fact, issued  
25 on a daily basis in the United States, is a survey. It's

1 not based on transactions, so we very much have to get that  
2 feedback through discussions with the market participants  
3 and triangulating amongst the market participants as far as  
4 that information.

5 But you've asked the question -- do they give us  
6 precise information to push us directionally.

7 COMMISSIONER SCHMIDTLEIN: And by precise, I  
8 don't mean they need to be quoting you specific numbers, but  
9 just do they cite other sources and tell you I can get it  
10 cheaper from these other sources? Is that what happens?

11 MR. WANLESS: Very, very rarely will I have a  
12 conversation where they're talking precisely about another  
13 source. There are inferences, suggestions, implications,  
14 which we can surmise who it's likely that that would be, or  
15 a group of sources that that would be, but very rarely do we  
16 have customers give us precise or specific information with  
17 respect to naming a source.

18 COMMISSIONER SCHMIDTLEIN: Okay. Now, I believe  
19 in the direct presentation. Again, I don't know if it was  
20 you, Mr. Wanless, or the other witness. But I did write  
21 down that one of you testified that Russia, Turkey and  
22 Taiwan were causing prices to decline. Was that your  
23 testimony I am recalling?

24 MR. WANLESS: I had mentioned that, yes.

25 COMMISSIONER SCHMIDTLEIN: Okay. So, what is the

1 basis for your statement in that regard? How do you come to  
2 that conclusion given that the -- it's been difficult to get  
3 your hands around prices in this market given that there's  
4 no transparent index or formal structure that you can look  
5 at.

6 MR. WANLESS: Yeah, so, you're saying how do I  
7 arrive at the determination that it's those particular  
8 sources that are the low cost drivers, low priced drivers?

9 COMMISSIONER SCHMIDTLEIN: Yes.

10 MR. WANLESS: Whereas, I've just stated that  
11 people tend to not give us precise information. My  
12 experience in the market allows me at points, because it's  
13 not a particularly large market, to make determinations with  
14 respect to who those products are.

15 Over time, information tends to be validated or  
16 verified as opposed -- regarding which customers buy from  
17 which sources. You can also look at some of the import  
18 information to see where material is arriving to, so.

19 COMMISSIONER SCHMIDTLEIN: How do you -- given  
20 that the source, those sources in particular, are so much  
21 smaller than U.S. shipments as well as DSM shipments. How  
22 is it that these smaller sources are having such a large  
23 impact on the market?

24 MR. WANLESS: Well, I've asked that question many  
25 times to the market participants. But what -- I feel that

1 they bring in a sufficient amount and as you move through  
2 the negotiating season, you move from customer to customer.  
3 It's very rare that you'll have more than a very small group  
4 of customers making a determination at a certain time. And  
5 again, it happens over the fourth quarter.

6           So, they tend to push that volume as they go down  
7 and as customers will hold that up as this is the measure  
8 that you need to meet, or it's a portion of the measure that  
9 you need to meet, and so that's where they tend to have an  
10 unsupportable level of impact or influence on the market,  
11 but they do, so.

12           And there are customers that support the -- some  
13 of those sources year after year, so.

14           COMMISSIONER SCHMIDTLEIN: Okay, alright, thank  
15 you, my time is about to expire, so we'll come back in the  
16 next round.

17           CHAIRMAN JOHANSON: Commissioner Kearns?

18           COMMISSIONER KEARNS: Just as a quick follow-up  
19 to that. Given how little transparency there is in this  
20 market, I would think if I were a purchaser or anyone else  
21 in the market, I would look at those imported UV's pretty  
22 closely whenever they come out to get a sense of, you know,  
23 Turkish versus Russian, versus Israeli prices, and what  
24 might be going on in the market.

25           Is that how it would work? Is that how in your

1 experience? That's about the only transparent pricing  
2 information you have and it's not great, right, because its  
3 import and in some cases it's a related party and  
4 everything. I understand all that. It's at the wrong level  
5 of trade and everything else, but at least you've got some  
6 suggestion of whether Turkey is coming in cheap, or Israel  
7 is coming in cheap, right?

8 MR. WANLESS: Yes, David Wanless, yes. I mean  
9 that, as I mentioned earlier, that is one of the few  
10 verifiable sources of information. But at the same time,  
11 that's a trailing indicator, and if you're looking at that  
12 information, usually I believe it arrives at least a quarter  
13 behind, and those could be negotiated from deals that were  
14 negotiated 12 months in advance of that.

15 So, to say that they're reflective of what's  
16 going on in the current market would be -- it would be  
17 difficult to arrive at that conclusion.

18 COMMISSIONER KEARNS: Okay, thank you. U.S.  
19 Magnesium argues based on your parent company's SEC filings,  
20 that your capacity is larger than the data presented in the  
21 pre-hearing report. How do you respond?

22 MR. LERER: Eli Lerer, Dead Sea Magnesium.  
23 Indeed, our nameplate is 33,000 tons of magnesium. However,  
24 we are significantly or much lower than this number. Why is  
25 it? Well, to start with I would say that huge investment

1 that we need to invest in order to purchase a new  
2 chlorinator to rebuild a new chlorinators and cells.

3 Moreover, we need additional dryer to purchase  
4 and to build. Only the permits to receive such -- for such  
5 an instruction of such a device, takes between two to three  
6 years due to the regulation and authorities.

7 However, this is only one input. The second  
8 input is that you must have an outlet for your chlorine  
9 production. Otherwise, you can invest, and you can plan,  
10 you can do whatever you want. But if you don't have an  
11 outlet for your chlorine, you are not able to produce more  
12 magnesium than your current quantity.

13 As I mentioned, and you can see on the slide, as  
14 I mentioned and we can see on the slide, actually the  
15 bromine which needs the chlorine to produce bromine, by the  
16 way. One ton of chlorine produces about two tons of  
17 bromine. In order to do that, they have two sources. One  
18 -- internal sources in the bromine plant, and the second is  
19 chlorine that is coming from the electrical procedure at  
20 Dead Sea Magnesium.

21 Well, if we would like to increase our capacity,  
22 we need to find an outlet for additional chlorine. In  
23 Israel, there is no other producers or customers for  
24 chlorine. And as you know, we are in an isolated country,  
25 and therefore, we don't have any ability to deliver to our

1 neighbors, chlorine for their needs.

2           Moreover, shipping chlorine by sea is very rare.  
3 First of all, it's highly dangerous. Second, the  
4 permissions, the regulation's permission on the port. They  
5 are so tough that nobody will accept it and I would add also  
6 a technical issue. Chlorine is a gas chlorine. This is the  
7 output of our process.

8           However, in order to deliver chlorine, you need  
9 to liquefy it to make it a liquid. In order to make it a  
10 liquid, you need to put it in a tank and from this tank you  
11 will deliver the liquid to the destinations, in our case, to  
12 the bromine plant.

13           The permits let us to be up to 400 tons of  
14 chlorine, that's all.

15           COMMISSIONER KEARNS: If I could just jump in,  
16 but then why did ICL report 33,000 tons of magnesium  
17 capacity in its SEC filings?

18           MR. LERER: Original plan of the plant was 33,000  
19 tons. However, we are not there, and I think we never have  
20 been there. We, on the plan, on the original plan, there  
21 were a lot of other plans to use chlorine. For example,  
22 they established a plant called Aluminum Chlorine, that  
23 needs to use this chlorine for producing aluminum chlorine.  
24 But this plant, actually after two years was shot down.

25           Additional, 203 potential products have been

1 checked and they have been shot down. Therefore, there is  
2 only one use for this chlorine, and this is our bromine  
3 plant, that's all.

4 COMMISSIONER KEARNS: And is that -- so, does.

5 MR. GOLDSTEIN: Can I add to this?

6 COMMISSIONER KEARNS: Yeah, please.

7 MR. GOLDSTEIN: Noam Goldstein. If you're  
8 looking at the chlorine plant, there's a capacity over  
9 there. We're not doing every time optimization. We just  
10 increased this capacity, later we're going to finish this  
11 deal about 10,000 ton of chlorine, and we are in the process  
12 of increasing it by additional 10,000 ton.

13 Meaning, why we are doing this? Because we found  
14 that chlorine from this plant are cheaper because it's  
15 consumed -- it's produced also because there's a need for  
16 this in Israel, and because of the optimization, this is  
17 what we are doing. We are increasing actually, the current  
18 production for the dependent plant over there.

19 The meaning is that we are reducing the  
20 production in the magnesium, because you have to balance it.  
21 And in fact, the 33,000 ton is really theoretical number.  
22 We are far below, and we are going in Israel, but this is  
23 not relative number.

24 COMMISSIONER KEARNS: And so, I'm sorry if I  
25 missed this in your answer, so is all of your chlorine

1 purchased by ICL?

2 MR. GOLDSTEIN: Almost 95 percent or more, there  
3 is a small -- not a small, but the company that is consuming  
4 very small amount of chlorine, they're not so far away from  
5 us, they are increasing their capacity so it's from 2022 we  
6 will not sell them anymore, but again, it's a very, very  
7 small company.

8 COMMISSIONER KEARNS: Okay, thank you. And you  
9 agree with U.S. Magnesium that electrolytic cells can be  
10 rebuilt in as little as three weeks?

11 MR. LERER: I will be -- Eli Lerer, of Dead Sea  
12 Magnesium. I will be more than happy to get the recipe how  
13 they are doing it in three weeks. That's the magnesium, it  
14 takes about two and a half months from the day you are  
15 shutting down a cell, until you are operating it again after  
16 rebuilding.

17 COMMISSIONER KEARNS: Okay, thank you. Well,  
18 let's see, one quick -- well, one quick question. Western  
19 Zirconium and others have claimed that U.S. Magnesium can't  
20 supply specialty very high grade product. That surprises me  
21 when I look at product one, which is high purity magnesium,  
22 and the relative sales quantities of U.S. and Israeli  
23 product there.

24 I understand that nuclear grade and this high  
25 grade are probably very different products, but still I

1 would have kind of expected you know, kind of a continuum on  
2 that. Can you tell me more about why we don't see more  
3 sales of DSM product in product one, given that they're able  
4 to produce other high purity products?

5 MR. LEVY: Yeah, Commissioner Kearns, thank you  
6 for that question. I think we'd like to give you a complete  
7 response post-hearing. It's obviously a very small segment  
8 of the market, involving a very small number of customers.  
9 So, it's sensitive.

10 But with regard to nuclear grade, it's apparent  
11 to me that what purchasers care about most is not the amount  
12 of magnesium per se, but the amount of impurities. So, you  
13 know, it's what happens with, you know, so many parts per  
14 million, and it is the case that different purchasers have  
15 different specifications.

16 So, we'd be more than happy to provide very  
17 detailed response in this regard because I think it's also  
18 the case that Petitioner has some questions surrounding our  
19 reporting. And so, we've undertaken to provide an  
20 explanation on that already, and we'll undertake to provide  
21 even more post-hearing, so thank you.

22 COMMISSIONER KEARNS: Okay, thank you, and I'll  
23 turn it over.

24 CHAIRMAN JOHANSON: Commissioner Stayin?

25 COMMISSIONER STAYIN: Thank you. The Petitioners

1 have claimed that they have some financial difficulties  
2 right now. That they're enduring a cost price squeeze, due  
3 to pricing pressure from subject imports. How do you  
4 respond to that?

5 MR. LEVY: Commissioner Stayin, Jack Levy for  
6 DSM. You know, as you know, we're often representing a  
7 Petitioner, and one of the building blocks for alleging a  
8 cost price squeeze by reason of subject imports, is your  
9 cogs to sales ratio. And so, as your cogs to sale ratio is  
10 increasing, essentially it means your gross margins are  
11 being squeezed and you want to say, "Aha! Subject imports  
12 are to blame."

13 And I don't think we would take issue with the  
14 cogs to sales ratios that U.S. Magnesium is reporting in  
15 their data. But that should not be conflated with price  
16 suppression, which is the relevant standard under the  
17 statute. And our position, quite simply is, what you have  
18 here in this market on this record, is a situation where by  
19 and large, you have Israeli prices, then you have the U.S.  
20 producer prices, and then you have non-subject imports.

21 And so, if you look at the pink paper to  
22 confidential Exhibit 2, you get kind of a pretty good visual  
23 image of how those prices relate to one another. And the  
24 statute tells you, when you're looking at this question of  
25 price suppression, it says, "In evaluating the effect of

1 imports of such subject merchandise on prices, the  
2 Commission shall consider whether the effective imports of  
3 such merchandise prevents price increases which otherwise  
4 would have occurred to a significant degree."

5           So, essentially U.S. Magnesium wants to tell you  
6 that Israel is facing a ceiling on the price that they can  
7 charge, and therefore we're responsible for their cost price  
8 squeeze. And our position is we're not a ceiling on the  
9 price that we can charge. Not just because we're engaged in  
10 pervasive overselling, although that's a nice start.

11           But also, because there's a significant volume of  
12 non-subject imports, which are the low priced leaders. And  
13 there's no question that U.S. Magnesium has told you, they  
14 want to place as much volume as possible, and so they're  
15 going to have to meet competition from these low priced  
16 imports.

17           So, you have pervasive underselling from  
18 non-subject imports, and I think the term of phrasing early  
19 in the day, it's like an anchor around their neck. That's  
20 what's pulling their prices down. How can we be a ceiling  
21 if they're getting pulled down?

22           And the key language in the statute is, which  
23 otherwise would have occurred. With or without Israeli  
24 prices up here. They're getting pulled down. And so, our  
25 view is cogs to sale ratio is part of it, but that does not

1 establish price suppression on this record. Thank you for  
2 that question.

3 COMMISSIONER STAYIN: Yeah, thank you. Please  
4 respond to USM's argument on page 40 to 42 in its  
5 pre-hearing brief, that the industry's improved pricing  
6 levels following the filing of the petition demonstrates the  
7 subject imports were a significant cause of the price  
8 declines that had occurred earlier in the period of  
9 investigation.

10 You have responded to that question, I believe,  
11 already, but you may want to make sure it's in your  
12 post-hearing brief.

13 MR. LEVY: Thank you, we'll be sure to do so,  
14 thank you Commissioner.

15 COMMISSIONER STAYIN: Magnesium, U.S. Magnesium  
16 also proffers on page 31 and 34 of its pre-hearing brief  
17 specific examples of situations where purportedly lost sales  
18 to DSM in 2016 to 2017, which it then regained in 2018 by  
19 lowering sales prices. In your post-hearing brief, would  
20 you please address that as well?

21 MR. LEVY: Certainly, thank you.

22 COMMISSIONER STAYIN: This is a question that  
23 might be primarily for you Mr. Levy, but the others might  
24 want to weigh in as well. In evaluating the financial and  
25 operating performance by the domestic industry, how should

1 the Commission distinguish the negative effects of declining  
2 U.S. demand from injury from domestic industry caused by  
3 subject imports?

4 MR. LEVY: Well again, I think we'd like to  
5 answer this post-hearing. But our view is that when you  
6 look at the financial condition of the domestic industry as  
7 a whole, you have to include the tolling operations for ATI  
8 in 2016. It is production of magnesium.

9 And for that matter, you should be including the  
10 activities of the grinders. These are all forms of U.S.  
11 production. If you do that, that's essentially the income  
12 statement for the U.S. industry that you're starting with.  
13 It's clear that there's a demand shock, because you lose ATI  
14 as a captive consumer of magnesium in 2017.

15 And so, our point is just to be sort of  
16 intellectually honest, that demand shock, and that loss of  
17 revenue that's associated with that production activity that  
18 existed in 2016, and no longer exists in 2017, has nothing  
19 to do with subject imports.

20 We're not saying that that's the only explanation  
21 for what's going on in the market. And certainly, when  
22 you're looking at head to head competition, issues of volume  
23 and price and apparent domestic consumption -- excuse me,  
24 volume and share trends in apparent domestic consumption,  
25 that if you focus in on the merchant market, you can

1 actually get a much more probative picture of what's  
2 happening in terms of head to head competition.

3 So again, on the one hand, we think you should be  
4 looking at the P and L of the U.S. industry as a whole,  
5 including their tolling. But then when looking at  
6 essentially volumes and share and demand trends, we think  
7 you should be focusing primarily on the merchant market,  
8 because that's where competition takes place.

9 So, I hope that explanation is helpful.

10 COMMISSIONER STAYIN: Yes. The Petitioners claim  
11 that prices for magnesium are relatively higher in the  
12 United States than other markets due to the anti-dumping  
13 duty orders on magnesium from China. Are you able to sell  
14 your magnesium products for higher prices in the U.S. market  
15 than in other export markets?

16 MR. WANLESS: David Wanless. I would say that  
17 the U.S. -- prices in the U.S. market are considered to be  
18 in general, the highest prices in the world. And just to  
19 give a bit of context, normally speaking, with the world  
20 being dominated by Chinese production, that the world is  
21 often viewed, as far as the world of magnesium, as the  
22 United States, Brazil, both protected markets, and the rest  
23 of the world.

24 The rest of the world that has to, or does buy,  
25 Chinese ingot. So, in that you can infer that, or excuse

1 me, in general, the prices in the U.S. are higher, are the  
2 highest. However, it's not to say that there are other  
3 situations globally that we actually participate in.

4 And we participate in for similar reasons. We've  
5 talked about the purchasing decision priorities of the U.S.  
6 consumers. The global consumers are not that much  
7 different, and they value things such as security of supply  
8 and reliability very highly.

9 And we do have situations in other markets in the  
10 world that, in fact, we receive a premium for, which  
11 translates into very high prices, non-Chinese level prices  
12 in other global markets.

13 COMMISSIONER STAYIN: You also answered my next  
14 question about how important is diversity of supply?  
15 Security of supply, to purchasers?

16 MR. WANLESS: Yes, so Dan Wanless. If you look  
17 at some of the markets that we've spoken about, and  
18 especially we've talked about the zirconium business and we  
19 of course, have Westinghouse with us here today, is that due  
20 to their specification, the security of supply is critical.

21 They simply can't go down the street and find  
22 another source for their material. In that respect, it's an  
23 extremely high priority. So, I would say as you move  
24 through the spectrum of markets, and market segments and the  
25 demand in those market segments, then you will start to get

1 a variance as to the priorities that the purchasers have.

2 And as far as reliability of supply, for most  
3 it's a very high priority, but where they feel that they  
4 have perhaps the lowest spec, the most options, it becomes  
5 less of a priority to them.

6 COMMISSIONER STAYIN: Okay, thank you. I think  
7 that ends my time.

8 CHAIRMAN JOHANSON: Commissioner Karpel?

9 COMMISSIONER KARPEL: I don't have any more  
10 questions at this time.

11 CHAIRMAN JOHANSON: Mr. Wanless, you were just  
12 speaking about China a minute ago. Could you respond to US  
13 Magnesium's contention at page 51 of its prehearing brief  
14 that DSM is unable to sell magnesium to Europe due in  
15 significant part to Chinese exports?

16 MR. WANLESS: Yeah. I'm sorry, could you  
17 repeat the question? I'm not sure I was clear on that.

18 CHAIRMAN JOHANSON: Yeah. Could you please  
19 respond to US Magnesium's contention at page 51 of its  
20 prehearing brief that DSM is unable to sell magnesium to  
21 Europe due in significant part to Chinese exports?

22 MR. WANLESS: Okay. Thank you for that  
23 clarification. David Wanless. We do in fact sell magnesium  
24 in Europe.

25 CHAIRMAN JOHANSON: Eli Lerer, Dead Sea

1 Magnesium. Actually, our shipments to non-U.S., as you can  
2 see on the slides, are increasing each year and even before  
3 the petition was filed, this is one. Second, we are selling  
4 to niche products, I would say to zirconium industry in  
5 Europe to -- industry in Europe and racing industry I would  
6 say also in Europe.

7

8                   So we have some niche product that we are  
9 selling our products there for a long time, and there can  
10 you see that it's increasing. Every year it's increasing.

11                   MR. LEVY: Commissioner Johanson, I think USM  
12 lives in a world where everything is about price, and I  
13 think if you read our prehearing brief, you'll see that  
14 there are strategic reasons why DSM has increasingly sold  
15 magnesium outside the U.S. market, even where it is not  
16 necessarily the highest price. Those reasons include  
17 supporting global customers and supporting its affiliates,  
18 who need to offer a suite of chemical products for their  
19 customers.

20                   But also on this issue of whether sales  
21 outside the United States are just a total basket case, and  
22 particularly as it dovetails with this question of threat,  
23 if you'll indulge me I would just encourage you to turn to  
24 Table C-1 of the prehearing report for a minute. So C table  
25 seems to be getting bigger and bigger these days. They used

1 to be one page; now they're three.

2 (Off mic comment.)

3

4 MR. LEVY: Oh, we don't get them that big. So  
5 depending upon what version you have, you're somewhere in  
6 the middle of the C table. There are lines that have the  
7 average unit value of U.S. producer shipments, and then  
8 right below it has export shipments and the average unit  
9 value of export shipments for U.S. producers. I'd ask you  
10 to focus on interim 2019, since that's the most recent  
11 period and it's probably the most relevant in the concept of  
12 threat.

13 Just compare the prices on average that the  
14 U.S. industry is getting in interim 2019 in the United  
15 States and the average unit values it's getting on exports  
16 outside the United States. I would just simply point that  
17 out as again, a point of reference as you evaluate their  
18 price-based arguments concerning incentives to sell around  
19 the world. Thank you.

20 CHAIRMAN JOHANSON: In talking about the rest  
21 of the world, to what extent do the scopes of the Brazilian  
22 anti-dumping duty orders overlap with the scopes of these  
23 investigations? Do you all know that?

24 (Off mic comments.)

25 MR. LEVY: I think we'll get you an answer

1 post-hearing.

2 CHAIRMAN JOHANSON: Okay, that's great. Thank  
3 you. Both Alcoa and Arconic on page six of their respective  
4 briefs claim that if they were not willing to rely on US  
5 Magnesium for all of its magnesium needs, then US would not  
6 sell any material to them. That's a quote. When asked this  
7 morning about this, US Magnesium denied that this is their  
8 policy. Does US Magnesium have anything to add on this  
9 topic, and I might say that you address this indirectly on  
10 pages nine to ten of your pre-hearing brief?

11

12 MR. LEVY: Yes. I think this is a good  
13 question for Mr. Wanless. So David, I would say is when did  
14 you start hearing about these all or nothing business  
15 tactics, and how common is it in your experience?

16 MR. WANLESS: Yeah. I would say that I  
17 started hearing about these type of tactics shortly after my  
18 arrival to Dead Sea Magnesium, which is in fact in the early  
19 stages of the POI. I would not consider that they are  
20 frequent, but there are a limited number of customers, which  
21 I can tell you that this continues to be a regular part of  
22 our discussions and our conversations when we meet each  
23 other.

24 So that is to say that they were put in that  
25 position, and they have not forgotten that they were put in

1 that position, and in fact have indicated to me that they  
2 would endeavor to do everything in their power not to be in  
3 that position in the past. But they have confirmed  
4 specifically to me that they were presented with that  
5 ultimatum.

6 CHAIRMAN JOHANSON: Do you have any emails or  
7 any written information to that effect?

8 MR. WANLESS: I don't.

9  
10 CHAIRMAN JOHANSON: Okay, all right. How  
11 transparent are prices and price offers in this market? In  
12 his comments this morning Mr. Tissington and also on page  
13 six of his written statement, said that purchasers have a  
14 significant advantage in the negotiations because purchasers  
15 know the price offers of both US Magnesium and Dead Sea.  
16 Does Dead Sea view the negotiation process similarly?

17 MR. WANLESS: Inasmuch as we would agree that  
18 the consumers receive quotes from both of us in some cases,  
19 so they would have visibility on those prices. But there's  
20 no further visibility to those type of offers anywhere else  
21 in the market, other than we submit our offers directly to  
22 our customers and don't discuss them with any other parties.

23 CHAIRMAN JOHANSON: So do purchasers indeed  
24 have a significant advantage by virtue of their superior  
25 knowledge of prices?

1                   MR. WANLESS: I would say that if you're  
2     restricting your conversation or your negotiation to the  
3     customer to that of solely being a vote price, I guess you  
4     could construe that they would have advantage. But we don't  
5     consider that our negotiations with our customers are  
6     limited to only discussing parties as an element of the  
7     purchase decision.

8                   So in that respect, I believe that we try to  
9     keep our negotiations balanced by bringing in other factors,  
10    such as our reliability, the quality of our products and  
11    other conditions of sale.

12  
13                   CHAIRMAN JOHANSON: Okay, thanks for your  
14    responses there, and I think I have just one more question.  
15    How do you respond to US Magnesium's statements that  
16    electrolytic cells can be rebuilt in as little as three  
17    weeks, and that DSM could thus quickly repair its cells and  
18    increase production destined for the U.S. market?

19                   MR. LEVY: You know that's magnesium. I'm  
20    repeating about the same question. In any case, a cell, to  
21    rebuild a cell that's magnesium takes at least two and a  
22    half months.

23                   CHAIRMAN JOHANSON: Okay. So it would indeed  
24    take longer than the three weeks?

25                   MR. LEVY: Yes.

1                   CHAIRMAN JOHANSON: Okay. All right. That  
2 concludes my questions. Commissioner Schmidtlein.

3                   COMMISSIONER SCHMIDTLEIN: Okay, thank you. I  
4 just have a couple of questions. One relates to current  
5 participation in the market. I think this was touched on  
6 already, but I wasn't really clear on where you all stand.  
7 Are you currently engaged in contract negotiations for 2020?

8                   MR. WANLESS: We have not negotiated or issued  
9 an offer to any customer for 2020.

10                  COMMISSIONER SCHMIDTLEIN: And do you have any  
11 negotiations, and maybe you want to answer this in the  
12 post-hearing. Are there any negotiations on hold pending  
13 the outcome of this investigation?

14                  MR. WANLESS: I can answer that question. No,  
15 there are no negotiations on hold. We have not initiated  
16 any negotiations with customers in the United States for  
17 2020.

18  
19                  COMMISSIONER SCHMIDTLEIN: Okay, all right.  
20 Then my last question, just sort of switch gears, it's  
21 probably for Mr. Levy, is we do have some confirmed lost  
22 sales. You've talked about them briefly I think already in  
23 the hearing today. If we find that those are credible, how  
24 do we consider those in the context of your argument that we  
25 should go negative?

1                   MR. LEVY:  If you were to find in any case  
2  specific instances of lost sales that are credible by reason  
3  of subject import pricing, I think it's incumbent upon the  
4  Commission to assess, based on the totality of the record,  
5  whether again under the statute, that adverse price effect  
6  is significant, and whether that alone rises to the level of  
7  material injury during the period.

8                   I cannot tell you what significant means or  
9  what material means in the abstract, but we'd be more than  
10 happy to address with specificity those lost sales  
11 allegations that get profile in the post-hearing, in the  
12 prehearing report.  There's more to be added even from  
13 what's in our prehearing brief.  So I think that -- I think  
14 that is probably where a lot of your energy needs to be  
15 focused in kind of this post-hearing environment.

16                   COMMISSIONER SCHMIDTLEIN:  Okay, all right.  
17 I'd invite you to do that in the post-hearing brief.

18                   MR. LEVY:  Thank you.

19

20                   COMMISSIONER SCHMIDTLEIN:  All right.  I have  
21 no further questions.  Thank you.

22                   CHAIRMAN JOHANSON:  Commissioner Kearns.

23                   COMMISSIONER KEARNS:  Yeah.  I just have a  
24 couple of cleanups.  In the last round of questioning I was  
25 asking you about your chlorine and bromine production and

1 sales. Can you post-hearing provide projections for your  
2 bromine production going forward?

3 MR. LEVY: We have the question. We will give  
4 in post-hearing. We can say that we are the biggest bromine  
5 production producer in the world. There is no big deviation  
6 from one year to another. It's not -- we're limited by  
7 capacity but also by the markets. So you will not find big  
8 deviation on that.

9 COMMISSIONER KEARNS: Okay, thank you. Can  
10 you tell us post-hearing who the one unrelated Israeli  
11 customer is for your chlorine, how much they purchase and  
12 information about sales to them over the past few years and  
13 projections for future sales?

14 MR. LEVY: Certainly.

15

16 COMMISSIONER KEARNS: Great, thank you. Then  
17 the last question I had, I think maybe it's you Mr. Wanless,  
18 you were talking about the effect China's had on global  
19 markets and how there's sort of Brazil there's U.S. that are  
20 more protected and then there's the rest of the world. So I  
21 gather that you agree with US Magnesium that China's  
22 production has a major impact on world markets. Is China's  
23 role in the world magnesium markets similar to its role in  
24 steel and aluminum, in other words that it is the chief  
25 cause for excess global capacity and production?

1                   MR. WANLESS: Yeah, David Wanless. I would  
2 say yes to that, and as way of an example is that if you  
3 look at what is to be reported as the production capacity in  
4 China, and then you look at China's exports each year, you  
5 see that they're still exporting north of 50 percent of  
6 their production, reported production capacity. So there's  
7 still significant capacity that's available in China, beyond  
8 which that there seems to be a never-ending series of  
9 reports of additional capacity being built into that market.

10                   So it's based on their forecasts and I was  
11 working on this the other day. I think it could still be a  
12 decade or more before they are able to absorb the capacity  
13 that they have in the market today. So yes, that has a  
14 tremendous impact on the rest of the world.

15                   COMMISSIONER KEARNS: Right. So growing  
16 excess capacity but also excess production for the global  
17 market I guess you're saying, yes now?

18                   MR. WANLESS: That's excess capacity for the  
19 rest of the world market, yes.

20                   COMMISSIONER KEARNS: Yeah.

21

22                   MR. WANLESS: Yeah.

23                   COMMISSIONER KEARNS: Okay, and has DSM  
24 supported any efforts to address that problem in global  
25 markets as we've seen with steel and aluminum?

1 MR. WANLESS: I'm not familiar with those  
2 efforts, so I'm not sure I could answer that question or  
3 respond to that I'm afraid.

4 COMMISSIONER KEARNS: Okay. I was just  
5 curious. Okay, thank you. I mean not just you. I don't  
6 know if there's anyone else who can speak to that issue,  
7 about efforts that DSM has supported or that the Israeli  
8 government has supported to address excess capacity of  
9 Chinese magnesium in the world markets?

10 MR. LEVY: We cannot. We are so small, they  
11 are so big, we are not in a position even to try it.

12 COMMISSIONER KEARNS: Okay, all right. Thank  
13 you very much. I have no further questions.

14 CHAIRMAN JOHANSON: Commissioner Stayin?  
15 Commissioner Karpel? Okay, I've got one. Okay. In  
16 footnotes on page 43, you made mention of EPA's Superfund  
17 issues that US Magnesium faces and you also attach a 2019  
18 bankruptcy settlement and suggest that the Commission may  
19 wish to examine the impact of these issues.

20

21 Could you explain here in broad terms what you  
22 think the impact of these issues have been on US Magnesium,  
23 and do you think that these -- do you think the effect of  
24 these environmental issues shows up in the C table?

25 MS. ALVES: Chairman Johanson, we don't know

1 what the effect has been. We do not have the results of the  
2 Commission's audit of USM's facilities. That's certainly  
3 something that we would imagine that the auditor would be  
4 looking at. But certainly to the extent that there are high  
5 levels of COGS to net sales ratios for the domestic industry  
6 as a whole, there may be an influence caused by this  
7 activity in USM's financials, which would then impact the  
8 domestic industry's financials.

9           Again, the article was referring to former USM  
10 facilities that were at a nearby location, and so there may  
11 be additional amounts that are due based on the bankruptcy  
12 settlement.

13           CHAIRMAN JOHANSON: Okay. Thanks, Ms. Alves.  
14 Anyone else want to touch on that?

15           MR. LEVY: So Commissioner Johanson just to be  
16 clear, this I think footnote was simply intended as a point  
17 of reference for the ITC auditor. Having not seen the  
18 results yet of any audit, we simply wanted to call out what  
19 might be some extraordinary charges or costs that might  
20 warrant closer examination in the context of an audit.

21

22           At the end of the day, I don't think we take  
23 issue with US Magnesium's assertion that they had financial  
24 woes during the Period of Investigation. I think this case  
25 is all about causation, not about their injury.

1                   CHAIRMAN JOHANSON: All right, thanks Mr.  
2 Levy, Ms. Alves. Commissioner Schmidtlein.

3                   COMMISSIONER SCHMIDTLEIN: Okay, yeah. I just  
4 had one additional question for the post-hearing, and this  
5 relates to the discussion on pages 31 to 36 of US  
6 Magnesium's brief, where they talk about some situations  
7 where they allegedly lost sales to subject imports, but then  
8 regained the volume in 2018 it's very bracketed, it's  
9 heavily bracketed, so I would invite you to respond to that  
10 analysis in your post-hearing brief.

11                  MR. LEVY: Thank you.

12                  COMMISSIONER SCHMIDTLEIN: Thank you.

13                  CHAIRMAN JOHANSON: Any other Commissioners  
14 have questions?

15                  (No response.)

16                  CHAIRMAN JOHANSON: No Commissioners do. Do  
17 staff have questions for this panel?

18                  MR. COMLY: Nate Comly, Office of  
19 Investigations. Staff has no questions.

20                  CHAIRMAN JOHANSON: Do Petitioners have any  
21 questions for this panel?

22                  MR. JONES: No questions, Mr. Chairman.

23

24                  CHAIRMAN JOHANSON: All right, thank you.

25 Then we can -- let's now -- this panel is dismissed, but

1 before you all leave the table let me give you -- before you  
2 prepare for your closing statements, let me give you the  
3 time remaining.

4           Petitioners have seven minutes of direct and  
5 five minutes of closing for a total of 12 minutes.

6 Respondents have zero minutes for direct and three minutes  
7 for closing for a total of three minutes. So you all are  
8 dismissed, and we can prepare for rebuttal and closing of  
9 Petitioners.

10           MR. LEVY: Commissioner, just as a point of  
11 clarification, we have three minutes, not five?

12           CHAIRMAN JOHANSON: Correct. You all went  
13 over during the closing.

14           MR. LEVY: I see.

15           CHAIRMAN JOHANSON: I'm sorry?

16           (Off mic comments.)

17           CHAIRMAN JOHANSON: Yeah, you can. Yeah, I'm  
18 sorry. For a total of 12 minutes. I apologize.

19           MR. BURCH: Closing and rebuttal remarks on  
20 behalf of the Petitioner will be given by Stephen E. Vaughn  
21 of King & Spalding. Mr. Vaughn, you have 12 minutes.

22           CLOSING STATEMENT OF STEPHEN E. VAUGHN

23           MR. VAUGHN: Thank you very much. I want to  
24 thank the Commission and I want to thank its staff for all  
25 of your time today. I think this has been a very productive

1 hearing and I think we've made a great deal of progress in  
2 terms of clarifying the issues that are before the  
3 Commission.

4 I want to start by responding to some of the  
5 comments that were made regarding U.S. Magnesium and its  
6 business practices. We heard a number of allegations from  
7 counsel in the afternoon about quality issues and other  
8 potential concerns with U.S. Magnesium. I want to emphasize  
9 that the staff did a great job collecting data on this and  
10 many, many purchasers have given their answers on  
11 availability, delivery terms, delivery time, quality meets  
12 industry standards, quality exceeds industry standards,  
13 reliability to supply overwhelming the record tells you that  
14 U.S. Magnesium and Dead Sea Magnesium are comparable on  
15 these points.

16 So, it is simply a canard to say that there's  
17 some sort of major quality issue here that is driving  
18 developments in the marketplace. The purchasers have told  
19 you that these producers are very, very competitive on all  
20 of those issues. But I think in trying to shine the  
21 spotlight on U.S. Magnesium, counsel has raised questions  
22 about his own client. The record clear is very, very clear  
23 that this -- we don't normally talk a lot about the dumping  
24 margins and the subsidy margins, but they are relevant here  
25 because they are significant.

1                   We believe that DSM has received massive  
2                   subsidies from the government over there. We believe that  
3                   they are dumping at enormous margins, far beyond anything  
4                   that market conditions would possibly justify. We heard  
5                   lectures from counsel this afternoon about things being done  
6                   for good business reasons. It's not clear, to be honest,  
7                   that DSM operates as a regular business at all. The  
8                   response on the questions about their profitability made it  
9                   very clear that there are clearly many reasons why they  
10                  exist and why they make magnesium, but they don't seem to be  
11                  all that interested in making profits.

12                  There was some suggestion about tax reasons.  
13                  We'll have to look at that for purposes of the post-hearing,  
14                  but I would point out that if you are dumping your product  
15                  at a margin of close to 200 percent below your cost, it's  
16                  going to be pretty difficult to make a profit. As you look  
17                  at this case that is the key fact in this whole thing. DSM  
18                  doesn't have to worry about maximizing its profits. U.S.  
19                  Magnesium does. DSM can make whatever it makes and sell it  
20                  in the world for whatever prices it can get because they  
21                  are backed by subsidies and they are backed by apparently  
22                  the rest of that company. That is not an option that is  
23                  available for U.S. Magnesium.

24                  It seems clear, in retrospect, that they had a  
25                  theory that as long as they held a certain share of the

1 market and as long as they could avoid any kind of an  
2 appearance of a surge then they could dump. They could take  
3 subsidies. They engage in very severe levels of unfair  
4 trade. And when the time comes, they would be insulated  
5 from any potential risks.

6 Now, they said that this goes all the way back  
7 to 2001. In reality, the data shows that in 2008, for  
8 example, they shipped over 26,000 tons to the United States.  
9 In 2010, they shipped over 18,000 tons to the United States.  
10 In 2012, they shipped over 17,000 tons to the United States.  
11 So, they've been in and out of this market, sometimes more  
12 aggressively, sometimes less aggressively, but I want to  
13 come back to this -- to the -- the problem that they had all  
14 along is the law doesn't work the way they think it does.

15 They contend that import volumes could not be  
16 significant because there was no dramatic surge, but that is  
17 not the statutory test. Under the statute, the question is  
18 whether imports, whether in absolute terms or relative to  
19 production or consumption, were significant. You don't get  
20 to claim a certain share of the market through dumping and  
21 subsidies and then hold onto that share and that --  
22 automatically, you can keep it forever just because the  
23 other side can't point to a surge. That's not the law. We  
24 don't have to prove a surge. That's not a philosophical  
25 question, as was suggested earlier. That's a legal

1 question. And the law is clear. It's up to you to decide  
2 whether that volume is significant.

3 Here there could be no doubt that during each  
4 year of the period of investigation there were more enough  
5 dumped and subsidized imports available to have an extremely  
6 negative impact on domestic producers. The witnesses for  
7 U.S. Magnesium testified that each year they are under  
8 enormous pressure to negotiate contracts covering all their  
9 production. That testimony has not been challenged. When  
10 customers tell U.S. Magnesium it must compete against dumped  
11 imports from Israel, U.S. Magnesium must take that claim  
12 seriously.

13 Let's see the other slide here. Now, if you  
14 look at this slide that's 1500 tons of imports to the EU in  
15 2018, 5163 tons to Canada, 2751 to Brazil. That's over 9400  
16 tons that they shipped. And if you look at those prices,  
17 those AUVS, everyone one of those prices are below the  
18 prices that they were getting in the United States. It is  
19 not going to high-end niche customers. These are low-priced  
20 imports. And if you're sitting in the chair where U.S. Mag  
21 is sitting, you have to take seriously the possibility that  
22 that tonnage could be shifted to the United States and  
23 that's why U.S. Magnesium reacted the way it did.

24 They put on the record in their annual report to  
25 the Securities and Exchange Commission that they can make

1 33,000 tons of magnesium in a year and that last year they  
2 made 21,000 tons. So, they told the Securities and Exchange  
3 Commission they had 12,000 tons of excess capacity. Now, I  
4 understand they have complicated answers that they gave you  
5 today, but if you're sitting in that chair of U.S. Mag, you  
6 have to think about this 9,000 tons that can be shipped,  
7 plus any other tons that are going into low-priced markets,  
8 plus you have to think about that unused capacity. And so,  
9 when you have customers, and I think Mr. Wanless was very  
10 clear on this, the customers use the leverage that they  
11 have. And when you hear that they're out there, you have to  
12 take that seriously. That is enough evidence to show that  
13 the volume of subject imports is significant.

14           Next, DSM contends that the Commission could  
15 reject any finding of price effect due to a lack of  
16 underselling, but that is not how the statute works. As  
17 counsel said in the afternoon, the key question is whether  
18 dumped and subsidized imports were having a significant  
19 adverse effect on domestic pricing. Of course, they were.  
20 There is actually now, thanks to the testimony of Mr.  
21 Wanless, you have strong agreement on both sides on how the  
22 market works.

23           Each year there are very intense negotiations  
24 between producers and consumers over sales for the next  
25 year. In those negotiations domestic producers face an

1 enormous and unfair disadvantage by the presence of dumped  
2 and subsidized imports. Mr. Wanless agreed that customers  
3 do what they can to get lower prices. Domestic producers  
4 can never know precisely how low DSM is willing to go, but  
5 they know that DSM loses money every year. They know that  
6 its operations are subsidized. They know that its sales  
7 into Canada are lower than China's sales into Canada. And  
8 under these circumstances, they have no choice but to offer  
9 their own product at extremely low prices to avoid being  
10 forced out of the market. These facts represent compelling  
11 evidence of price effects.

12                   Now, let's talk about impact. DSM's  
13 presentation consisted largely of efforts to blame the  
14 domestic industry's problems on something other than unfair  
15 trade, but again, that's not how the statute works. As long  
16 as the imports are not merely incidental or tangential or  
17 trivial, then even if other sources are causing problems for  
18 the domestic industry that satisfies the causation standard.

19                   Furthermore, all of these efforts to change to  
20 the topic fail when one considers that in the first half of  
21 this year, as counsel acknowledged, prices rose after the  
22 petitions were filed. We heard a lot of talk about other  
23 imports anchoring the market, holding down prices. Why  
24 didn't that anchor hold in the first half of 2019? Counsel  
25 provides two potential explanations, one is Turkey. I would

1     urge you to look at the volumes of Turkey and I think you  
2     will agree with us that that is not sufficient to explain  
3     the significant increase in price that we saw.

4             The second theory has to do with demand. That  
5     people were being overly optimistic about demand. But let's  
6     just think about that for a little bit. This isn't a  
7     situation where you have a distributor who goes out into the  
8     market and buys the magnesium and then is speculating on  
9     what his customers are going to buy. Here the customer is  
10    the end user. They know what the demand is. They're not  
11    guessing at it. They know exactly what they intend to do  
12    the next year. And of course, I'm sure -- so the notion  
13    that all of a sudden some of the most sophisticated  
14    companies in the world didn't know how much magnesium that  
15    they intended to use, that they misread their own demand  
16    curve. That just isn't credible.

17            Let's look at the other possibilities. Did  
18    imports from third countries suddenly leave the market? No.  
19    Were U.S. customers deprived of alternative sources of  
20    supply? No. Did ATI restart its operations in Utah? No.  
21    None of the potential factors raised by DSM changed. The  
22    one change, the only change was that DSM and its U.S.  
23    customers had to deal with the possibility of trade relief.  
24    That one change was enough to make the industry profitable.

25            Counsel has attempted to invoke the statute with

1 respect to post-petition effects. The issue here isn't that  
2 narrow provision which comes into effect under a certain set  
3 of circumstances. The issue here is very simple and  
4 straightforward. You have the statutory authority to look  
5 at the evidence and see whether the causation standard has  
6 been met. Here you have the evidence of what it looks like,  
7 what the contract market looks like when they're dumping and  
8 subsidies and there's no hope of relief and what the market  
9 looks like when there is hope of relief. That evidence  
10 compels the conclusion that they were a problem.

11 Let me just make a few, final quick points. DSM  
12 claims that customers buy their magnesium for non-price  
13 reasons, but they also claim that trade relief will drive  
14 them from the market. That doesn't really make a lot of  
15 sense. If they really wanted the DSM for non-price reasons,  
16 they shouldn't mind paying a fair price. So, I just want to  
17 conclude by saying that I think the record supports us on  
18 all three of the statutory factors and that we are entitled  
19 to relief and we urge you to reach an affirmative  
20 determination. Thank you.

21 MR. BURCH: Thank you, Mr. Vaughn. Rebuttal and  
22 closing remarks on behalf of the Respondents will be given  
23 by James R. Cannon, of Cassidy Levy Kent. Mr. Cannon, you  
24 have three minutes.

25 CLOSING STATEMENT OF JAMES R. CANNON, JR.

1           MR. CANNON: Thank you. Three minutes, and we re  
2   outta here. As you know, it s not legally sufficient to  
3   find that there s dumping and we are present in the market.  
4   Your, your job is to find whether there s material injury,  
5   which means, is there causation? Also, I would point out,  
6   the subsidies are not enormous. They are single digit, 7%  
7   at the preliminary. It s the dumping allegations.

8           Secondly, more importantly, Mr. Vaughn s theory  
9   is that this is a zero sum game. There s only two players.  
10  If US Mag goes up, Dead Sea has to go down and vice versa.  
11  He is wrong. There are third-country imports. The  
12  third-country imports were increasing during this period.  
13  Their prices are the lowest prices in the market. US Mag  
14  specifically identified these imports in the 232 case as the  
15  cause of their problems.

16           Next, a lot of the discussion about price is only  
17  about the price. The Commission can t look at price without  
18  looking at supply and demand in the market. US Mag is the  
19  large supplier to the U.S. market, very large. This is not  
20  tomatoes, where the domestic industry and the Mexicans are  
21  about the same size, it s nothing like that.

22           The U.S. presence is dominant. They have to  
23  compete with the third-country imports because they compete  
24  everywhere in the market. The Israelis are not just  
25  disciplined. They are far smaller, their production, their

1 output is smaller than all of US Mag s output. So they pick  
2 and choose, they find niches in the market. They do their  
3 best to sell at the high quality accounts, to the  
4 high-priced customers and before the petition was filed,  
5 they started selling to third countries, reducing shipments  
6 to the United States, cutting their market share. This is  
7 not a pattern that is binary.

8 Our mere presence here robs US Mag of sales. And  
9 I say that with actually a great deal of sympathy for the  
10 U.S. industry. You guys know what we do in my firm, I  
11 absolutely have sympathy for their position. But it s not  
12 caused by Israel. Now, if we are fine with termination, you  
13 have volume and market share effects. You need to fix the  
14 shipments data and not look at the census data. The  
15 third-country data that we just saw, those are census data.  
16 ICL has subsidiaries everywhere in the world. Those are  
17 transfer prices.

18 Next, that s gonna be found in Table IV-5 in the  
19 final questionnaire. Then you re gonna look at Table V-7 to  
20 see whether there s underselling or overselling. You re  
21 gonna look at Table V-6 for price depression. What you re  
22 gonna see is that there is not underselling and prices are  
23 going up. On the record in this case, considering all the  
24 factors, you should make a negative determination. Thank  
25 you.

1                   CHAIRMAN JOHANSON: Thank you all for your  
2    comments. I will now make the closing statement.  
3    Post-hearing briefs, statement responsive to questions and  
4    requests of the Commission and corrections to the transcript  
5    must be filed by December 2nd. Closing of the record and  
6    final release of data to parties occurs on December 12th and  
7    final comments are due on December 16th. With that, this  
8    hearing is adjourned.

9                   (Whereupon the meeting was adjourned at 4:54 p.m.)

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## CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Magnesium from Israel

INVESTIGATION NOS.: 701-TA-614 and 731-TA-1431

HEARING DATE: 11-21-19

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: 11-21-19

SIGNED: Mark A. Jagan  
Signature of the Contractor or the  
Authorized Contractor's Representative

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker identification and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

SIGNED: Christopher Weiskircher  
Proofreader

I hereby certify that I reported the above-referenced proceedings of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceedings.

SIGNED: Gaynell Catherine  
Court Reporter