UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
MAGNESIUM FROM CHINA	)	731-TA-1071 and 1072
AND RUSSIA	)	(Final)

REVISED AND CORRECTED COPY
OPEN SESSION

Pages: 1 through 344 (with excerpts)

Place: Washington, D.C.

Date: February 23, 2005

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
MAGNESIUM FROM CHINA	)	731-TA-1071 and 1072
AND RUSSIA	)	(Final)

Wednesday,
February 23, 2005

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

The hearing commenced, pursuant to notice, at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable STEPHEN KOPLAN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

CHAIRMAN STEPHEN KOPLAN
VICE CHAIRMAN DEANNA T. OKUN
COMMISSIONER MARCIA E. MILLER
COMMISSIONER JENNIFER A. HILLMAN
COMMISSIONER CHARLOTTE R. LANE
COMMISSIONER DANIEL R. PEARSON

APPEARANCES: (cont'd.)

Staff:

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION
SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT
CHRISTOPHER CASSISE, INVESTIGATOR
VINCENT DESAPIO, INDUSTRY ANALYST
JOHN BENEDETTO, ECONOMIST
CHARLES YOST, ACCOUNTANT/AUDITOR
PETER SULTAN, ATTORNEY
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

In Support of the Imposition of Antidumping Duties:

On behalf of US Magnesium, LLC; United Steelworkers of America, Local 8319; Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374:

MICHAEL LEGGE, President & CEO, US Magnesium, LLC
CAMERON F. TISSINGTON, Vice President, Sales and Marketing, U.S. Magnesium, LLC
CODY BROWN, President, United Steelworkers of America, Local 8319
KENNETH R. BUTTON, Economic Consultant, Economic Consulting Services, LLC
JENNIFER LUTZ, Economic Consultant, Economic Consulting Services, LLC

JOSEPH W. DORN, Esquire
STEPHEN J. NARKIN, Esquire
King & Spalding, LLP
Washington, D.C.

In Opposition to the Imposition of Antidumping Duties:

On behalf of Solikamsk Magnesium Works (SMW); Solimin Magnesium Corporation (Solimin):

EDWARD C. ROELS, Chief Financial Officer, Lunt Manufacturing Co., Inc.
DAVID G. NORRELL, Counsel for Lunt Manufacturing Co., Inc., Kirkland & Ellis
KRIS R. PFAEHLER, Vice President, Business Development & Marketing, Meridian Technologies, Inc.

APPEARANCES: (cont'd.)

On behalf of Solikamsk Magnesium Works (SMW); Solimin Magnesium Corporation (Solimin):

PAUL ARH, Director, Strategic Planning, Meridian Technologies, Inc.
KEVIN FERGUSON, Corporate Cost Reduction Manager, Gibbs Die Casting Corporation
MICHAEL SPARKS, Executive Vice President, Spartan Light Metal Products, Inc.
JOHN HUNKINS, Director, Material, Spartan Light Metal Products, Inc.
PATRICK B. FAZZONE, Counsel for Spartan Light Metal Products, Inc.; Meridian Technologies, Inc.; and Gibbs Die Casting, Tighe Patton Armstrong Teasdale, PLLC

FREDERICK P. WAITE, Esquire
KIMBERLY R. YOUNG, Esquire
Vorys, Sater, Seymour & Pease, LLP
Washington, D.C.

On behalf of Alcoa, Inc.; Northwest Alloys:

ROBERT MCHALE, Vice President, Metal Purchases East, Alcoa, Inc.
ELIZABETH FESSENDEN, President, Alcoa Flexible Packing, LLC (Previously in charge of Northwest Alloys)
PAULA STERN, President, The Stern Group, Inc.
ANDREW SZAMOSSZEGI, Economic Consultant, LECG, LLC

LEWIS E. LEIBOWITZ, Esquire
LYNN G. KAMARCK, Esquire
Hogan & Hartson, LLP
Washington, D.C.

APPEARANCES: (cont'd.)

On behalf of JSC AVISMA Titanium-Magnesium Works (AVISMA); VSMPO-Tirus, U.S., Inc. (VSMPO-Tirus):

JOHN G. REILLY, Economist, Nathan Associates, Inc.

JOHN M. GURLEY, Esquire
Coudert Brothers, LLP
Washington, D.C.

On behalf of Alcan Corporation; Novelis, Inc.:

ALAIN DERY, Manager, Alloy Procurement, Alcan, Inc.
SUNG HUH, Manager, Corporate Procurement Strategy, Novelis, Inc.

ROBERT A. SHAPIRO, Esquire
Barnes, Richardson & Colburn
Washington, D.C.

I N D E X

I N D E X

P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN KOPLAN: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation Nos. 731-TA-1071 and 1072 (Final), involving Magnesium From China and Russia.

The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury by reason of less than fair value imports of subject merchandise.

Before we begin, I would note that the Commission has granted a request from Respondents to hold a portion of this hearing in camera. We will begin with public presentations by Petitioners and Respondents. We will then have a 10 minute in camera session by Respondents, followed by a 10 minute in camera rebuttal presentation by Petitioners if so desired.

Only signatories to the APO will be permitted in the hearing room during the in camera sessions. Following the in camera presentations, we will resume with public rebuttal and closing remarks.

Schedules setting forth the presentation of

this hearing, notice of investigation and transcript order forms are available at the Secretary's desk. All prepared testimony should be given to the Secretary. Do not place testimony directly on the public distribution table.

As all written material will be entered in full into the record, it need not be read to us at this time. All witnesses must be sworn in by the Secretary before presenting testimony. I understand the parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

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

Madam Secretary, are there any preliminary matters?

MS. ABBOTT: No, Mr. Chairman.

CHAIRMAN KOPLAN: Very well. Let us proceed with the opening remarks.

MS. ABBOTT: Opening remarks on behalf of Petitioner will be by Joseph W. Dorn, King & Spalding.

MR. DORN: This case is about dumped imports from China and Russia that used progressively lower

prices to rapidly penetrate the U.S. magnesium market. The dumped imports drove down U.S. magnesium prices. The adverse volume and price effects devastated the industry's profit and its return on investment.

The magnitude of dumping is large, 91 to 141 percent for China and 19 to 22 percent for Russia. US Magnesium is doing everything reasonably possible to survive this unfair competition, but US Magnesium will fail if antidumping duties are not imposed.

This is the first magnesium investigation where the Commerce Department has defined the scope of the imported articles to include primary and secondary magnesium and to include pure and alloy magnesium in both cast and granular forms.

In response to antidumping petitions on imports of pure magnesium from China, the Chinese exporters started shipping alloy magnesium to compete in those market segments that traditionally used pure magnesium.

Producers of secondary magnesium also sell alloy magnesium to compete in the market segments that have traditionally used pure magnesium. Thus, unlike any prior case, the record of this final investigation demonstrates that pure and alloy magnesium are being used interchangeably by producers of aluminum, steel

desulfurization reagents, ferroalloys, gravity castings and other products.

This also is the first case where the Commerce Department has found that pure and alloy magnesium constitute a single foreign like product within the same class or kind of merchandise.

Commerce rejected Alcoa's beryllium argument. In fact, Alcoa admits that it uses either pure magnesium or AM50A alloy magnesium to make aluminum beverage can stock.

The import trends and the domestic industry trends are quite similar for pure and alloy magnesium, but to assess the full impact of imports of alloy magnesium from China the Commission must consider their adverse impact on the domestic industry's sales of pure magnesium.

The fact is that over half of the imports of alloy magnesium from China have been sold in direct competition with pure magnesium. That is where much of the lost sales, lost revenues and adverse price effects have occurred.

The Commission should assess industry import trends from the year 2000, not 2001. Both Petitioners and Alcoa agreed in the preliminary investigation that the domestic industry data are distorted for 2001

because of US Magnesium's temporary reduction of capacity during its modernization program.

The staff did collect pricing data for 2000 in this final investigation. The remaining domestic industry data for 2000 are available from the preliminary investigation, and the import data for 2000 are available from the Census Bureau.

Irrespective of whether you use 2000 or 2001 as the base year for trends analysis, the domestic industry is materially injured by reason of dumped imports.

First, the volume of dumped imports is clearly significant relative to U.S. consumption and U.S. production. Dumped imports increased 70 percent from 2000 to 2003 and another 29 percent in the first three quarters of 2004. Subject imports increased their share of imports from all countries from 25 percent in 2000 to 50 percent in 2003.

Second, the dumped imports have adversely affected domestic prices. The average unit value of dumped imports fell 22 percent from 2000 to 2003 and was 28 percent lower than the average unit value of imports from all other countries during those four years. The Commission has documented pervasive underselling by the dumped imports and has confirmed

substantial lost revenues due to dumped imports.

Third, the dumped imports have had a severe adverse impact on the domestic industry. The Department of Labor found that increasing imports contributed importantly to the closing of Northwest Alloys' magnesium plant in late 2001.

From 2000 to 2003, the industry suffered a decline in virtually all of its trade, pricing and financial indicators. The Commission has also confirmed substantial lost sales to dumped imports. The threat of additional injury is real and imminent. China alone has enough production capacity to supply the entire U.S. magnesium market several times over.

US Magnesium has invested heavily to become one of the world's most technologically advanced magnesium producers. It has the potential to expand capacity significantly. The dumped imports, however, have driven prices down so far that US Magnesium has suffered a negative return on its modernization project.

We need an affirmative determination. Thank you.

CHAIRMAN KOPLAN: Thank you, Mr. Dorn.

MS. ABBOTT: Opening remarks on behalf of the Respondents will be by Lewis E. Leibowitz, Hogan &

Hartson.

MR. LEIBOWITZ: Good morning, Mr. Chairman.

CHAIRMAN KOPLAN: Good morning.

MR. LEIBOWITZ: And to the Commission. I'm Lewis Leibowitz of Hogan & Hartson. This opening statement represents the views of those appearing before you today that are opposed to the imposition of antidumping duties on magnesium from China and Russia.

The opponents include foreign producers, an idle domestic producer, Northwest Alloys, shut down since 2001, and several of the largest magnesium consumers in the United States, in fact the world.

In our collective view, the opponents believe imposition of antidumping duties is unwarranted, and the Commission has ample evidence to reach that conclusion. We will explain why a negative determination is the proper one and the necessary one in this case.

First, in our view, there is no current injury. We will deal with certain aspects of this issue in the in camera session to follow the public session. While we believe and hope you will agree that there are two industries in this case, our conclusion applies whether there is one industry or two.

Second, there is no real and imminent threat of material injury to the domestic industry. Third, even if there were current injury or an immediate threat, it is clear that subject imports are not a cause of it.

The market for magnesium in the United States depends heavily on imports, in large part because the industry producing primary magnesium is incapable of sufficient production to meet domestic demand. This fact is relevant to the Commission's injury determination.

You will hear from Alcoa and Alcan, the two largest aluminum producers in the United States, from Meridian, the largest magnesium die caster in the world, and from other significant consumers of alloy magnesium for die casting. These witnesses will explain why multiple sourcing is critical to their companies and why imports are imperative, where, as here there is only one producer of primary magnesium, and that producer cannot meet domestic demand. These witnesses will also address the growth and the threat to growth in their markets which has a direct relationship to magnesium demand.

Finally, the magnesium consumers are best suited to explain what role price, quality,

availability and market uncertainties such as plant fires, environmental concerns and others play in their sourcing decisions.

There is only one domestic producer of pure magnesium, US Magnesium. Due to bankruptcy and plant modernization, US Mag was an unreliable supplier for much of the period of investigation. Currently, US Magnesium is unable to produce enough primary magnesium to meet demand from its U.S. customers.

Another domestic producer, Northwest Alloys, closed in 2001. As you'll hear, its closure was not due to subject imports.

Concerning secondary magnesium, there were once four domestic producers. Two of these companies, Garfield and Amacor, had devastating fires at their facilities. Garfield's fire in December 2003 resulted in a complete loss of production. Amacor's fire last month was more limited, but it appears that production will be down there for at least several months.

Halaco Engineering in California was fighting environmental claims and lawsuits for years. Under pressure from federal and state environmental authorities, Halaco filed for bankruptcy in July 2002 and closed its plant last year. It is not likely to reopen.

That leaves one secondary magnesium producer in the United States. With the domestic deficit in supply, prices and availability could well reach crisis levels that would jeopardize the position of domestic die casters.

Concerning market prices, the record is incomplete. Under the law, the Commission must consider the factors relating to injury, including the condition of the domestic industries as close as possible to vote date. In this case, this required looking at 2005 contract prices which were generally negotiated in late 2004 and are available from the Petitioner, but may not all be in the record yet.

We also note that prices for magnesium were rising before this petition was filed in February of last year. Thus, price increases were not due to the filing of this case.

In conclusion, this case comes down to a very fundamental point. There is no injury, but the sole domestic producer of primary magnesium is clamoring for antidumping duties. It does not need to be competitive in this market, let alone to survive.

U.S. purchasers face a serious deficit in domestic supply. If antidumping duties are imposed, magnesium consumers will suffer serious and long-term

damage, damage that will harm US Magnesium's own customer base.

The domestic consuming industries are united in this case. While they need U.S. magnesium, imports are also a crucial part of their equation.

We look forward to making our presentation later on today, Mr. Chairman. Thank you.

CHAIRMAN KOPLAN: Thank you. Thank you, Mr. Leibowitz.

Madam Secretary?

MS. ABBOTT: The panel in support of the imposition of antidumping duties, please come forward.

Mr. Chairman, all witnesses have been sworn.

(Witnesses sworn.)

CHAIRMAN KOPLAN: Thank you.

MR. LEGGE: Good morning. I am Mike Legge, president of US Magnesium.

MR. DORN: Are you ready, Mr. Chairman?

CHAIRMAN KOPLAN: I am, but I'm wondering if you could move that microphone a little bit closer. It doesn't seem to be picking up.

MR. LEGGE: Good morning. I am Mike Legge, president of US Magnesium. US Magnesium has its headquarters in Salt Lake City, Utah, and its production operations at Rowley, Utah, on the western

shore of the Great Salt Lake.

I joined a predecessor of US Magnesium in 1979 and was appointed president in 1993. US Magnesium's production facility was established in 1972. The raw materials for the plant is magnesium chloride derived from magnesium rich brines drawn from the Great Salt Lake.

We operate 78,000 acres of solar evaporation ponds to produce harvest brine, which is concentrated, dried, purified and charged to electrolytic cells, which produce primary pure molten magnesium.

CHAIRMAN KOPLAN: If I could interrupt you just for a second?

MR. LEGGE: Yes.

CHAIRMAN KOPLAN: I think that microphone next to Mr. Button is still on. No. I'm wrong. Okay. Do you want to try that one?

MR. LEGGE: Is this better?

CHAIRMAN KOPLAN: Yes. Thank you.

MR. LEGGE: The molten magnesium is transferred to the cast house to be cast as pure or alloy magnesium ingot, which US Magnesium sells into all market segments.

On behalf of US Magnesium and its 400 workers, I would like to thank the Commission for its

previous affirmative determinations in our trade remedy actions. Without these affirmative determinations, US Magnesium would no longer be in operation.

The fact that magnesium is a price sensitive commodity product, our business is extremely vulnerable to dumped imports. We have needed the Commission's help to stop the most egregious dumpers from destroying our business.

Our management team has done everything reasonably possible to make this company a global industry leader in technology, cost efficiency and environmental controls. Our owners have taken tremendous risk and invested much capital to save our plant and our jobs.

We believe that our customers will benefit from having a healthy domestic supplier of primary magnesium. It is important to U.S. consumers and to the national interest to maintain a primary magnesium industry in the United States.

Besides the security of access for customers, it affords availability of magnesium products for sophisticated military applications such as precision countermeasure flares used by aircraft taking off or landing in hostile environments.

We are the sole remaining U.S. producer of primary magnesium. Since 1998, over two-thirds of U.S. primary magnesium capacity has been shut down because of import competition. The dumped imports have increased their share of the U.S. market due to one and only one reason. Their lower prices.

We do not have the option of shutting off our cells when we lose substantial volume to lower priced imports. Doing so would destroy the cells, and it would be cost prohibitive to rebuild them. As a result, we must follow the market price down, even if doing so causes us to operate at a loss.

The dumped imports have exerted relentless downward pressure on our prices. With rising costs for energy and other inputs and declining magnesium market prices, we have been caught in a cost/price squeeze that resulted in severe losses.

Despite our financial difficulties, we have pursued a major modernization program to improve the company's production technology, to improve efficiencies, to reduce unit costs and to reduce chlorine emissions.

The centerpiece of the plan was the development and installation of a new type of electrolytic cell to convert magnesium chloride into

liquid pure magnesium. The new type of cell, which we call the M cell, was a product of five years of intensive research and development. The M cell has proved to be one of the most advanced electrolytic cell technologies in the magnesium world.

The original modernization plan called for construction of 60 M cells filling two of the existing four-cell buildings. This $60 million investment project would have increased our capacity from 43,000 metric tons per year to about 55,000 tons per year.

As US Magnesium approached implementation of this plan in 2001, however, financial difficulties due to deteriorating market conditions resulted in reduced cash flows and caused the initial scope of the project to be scaled back from 60 M cells in two buildings to only 30 M cells in one building.

We removed all of the oldest technology cells from service when the conversion to the new M cells began in April 2001. We installed 30 M cells at a capital cost of $40 million.

On August 3, 2001, the company filed for protection under Chapter 11 of the U.S. Bankruptcy Code, but we continued to work towards the completion of the 30 M cell installation. We exited bankruptcy through a sale of assets to US Magnesium in June 2002.

During the construction period from approximately March 2001 through September 2002, the plant's production volume was constrained as old cells were decommissioned and the new cells were constructed. The plant's output was temporarily reduced during this period.

Notwithstanding our reduced output during construction, the average unit value of dumped imports from China and Russia fell by 18 percent from 2000 to 2001 and fell by another seven percent from 2001 to 2002.

We had planned for a temporary revenue reduction due to decreased output. What we did not anticipate was that dumped imports from China and Russia would force our prices down at the same time that our output was constrained.

In 2002 and 2003, we applied M cell technology to the remaining older cells at a cost of $6 million. As shown on Hearing Slide 3, the M cells have increased electrical power efficiency at the cell and reduced our consumption of electrical energy per pound by one-third.

They have dramatically improved the strength of the chlorine at the cell discharge and the recovery of chlorine. They have increased the life of the cell

before refractory rebuilding from 500 days to 1,200 days and enabled us to reduce our labor hours per ton by almost 30 percent from 2000 to 2003.

As shown on Hearing Slide 4, the M cells have reduced chlorine emissions per ton by 91 percent. The captured chlorine is used to make wastewater treatment products that are used by municipalities all over the western United States.

These investments have been extremely successful from an operational standpoint. Among other things, the modernization has enabled the plant to meet the EPA's 2004 MACT standard, or maximum achievable control technology, for the U.S. magnesium industry.

Our success in making our production facility more efficient and environmentally friendly has been widely recognized by the U.S. Government, the State of Utah and others. As shown in Hearing Slides 5 and 6, the U.S. EPA awarded us the prestigious Climate Protection Award, and the Utah state legislature issued an official citation honoring our successful efforts.

In addition, as shown in Hearing Slides 7 and 8, we received the Best of State Award for primary metal production in Utah and Union Pacific Railroad's

Pinnacle Award.

The filing of this petition gave us reason to believe that magnesium prices would improve. Accordingly, we developed and engineered a project to expand capacity. We announced our expansion project in a press release on September 23, 2004, to increase capacity to 51,000 metric tons per year.

Then in October of 2004, after the Commerce Department's preliminary affirmative determinations of dumping, we decided to add more M cells and to increase capacity to 53,000 metric tons per year. This expansion plan, which will increase capacity by over 35 percent, is currently underway, and the new cells will start coming on line in July 2005 and will be completed in 2006.

Although our modernization project has proceeded well, our financial condition remains poor and vulnerable to reduction in prices. As you know from our questionnaire response, our operating losses have been substantial. Although spot magnesium prices did partially recover in 2004, that was due to the filing of the petition in February of last year.

Unfortunately, our realized prices for 2004 were largely dictated by contracts that we entered into in 2003. The market's reaction to the petition

was immediate and extremely telling. Within a couple of weeks, spot prices jumped dramatically. This happened because the market participants knew that this was a strong case and that high antidumping duties were likely to be imposed.

If antidumping duties are imposed and U.S. market prices are restored to fair market levels, we should ultimately earn a positive return on the M cell modernization project and the pending partial expansion project. In fact, if prices are at fair market levels we should be able to justify further expansion to as much as 73,000 metric tons per year, as we indicated in our September 23 press release.

If antidumping duties are not imposed, however, I fully expect market prices to plunge. This would destroy any return on our past and pending investment projects and make it impossible to consider any future expansion.

I understand that one of the factors the Commission must consider is the impact of dumped imports on an industry's ability to grow. Given our existing infrastructure, we are in an excellent position to expand capacity if market prices justify the capital investment.

We have existing capacity to harvest

magnesium chloride from lake brine to supply twice our current electrolytic cell capacity. A similar situation exists with our ample current ingot casting capabilities. All we need to do is to add more M cells to increase our electrolytic production capacity.

In conclusion, we ask for the Commission's help in removing the distortions to the U.S. market caused by the dumped imports so that we and the other members of the U.S. industry can not only survive, but also become an expanding part of the U.S. industrial base.

Thank you.

MR. TISSINGTON: Good morning. My name is Cam Tissington, and I Vice President of Sales and Marketing for US Magnesium, LLC. I have more than 20 years of diversified experience as a business executive in the marketing, development and sales of magnesium.

From 1982 to 1998, I was employed by the Dow Chemical Company in various capacities in the magnesium business, including magnesium marketing manager and finally global commercial manager.

Since 1999, I have worked for US Magnesium and its predecessor company as Vice President of Sales

and Marketing. I therefore understand the commercial realities, the economics and the technical aspects of the U.S. and global magnesium industry.

I will begin by discussing what the Commission calls the like product issue. I will focus on those product factors about which the Commission expressed some uncertainty in its preliminary determination. These factors are the uses of pure and alloy magnesium, the extent to which pure and alloy magnesium are used interchangeably and the relative prices of pure and alloy magnesium.

It is important to consider these questions in context. Magnesium encompasses a broad continuum of chemistries, raw material sources, forms, sizes and shapes. If you ignore this continuum and subdivide it you will get a result that does not reflect the realities of the marketplace.

In earlier cases, the Commission found that pure and alloy magnesium are used for different purposes and, therefore, do not compete in the marketplace. Even if this once was true, it certainly isn't true now.

Pure and alloy magnesium are both used in the production of aluminum alloys and the manufacture of reagents used in iron and steel desulfurization and

the production of ferroalloys in gravity casting and in the production of wrought magnesium alloy products.

Aluminum alloy in iron and steel desulfurization alone account for the clear majority of the U.S. magnesium market. In fact, according to the U.S. Geological Survey in 2003, aluminum alloy accounted for 47 percent of U.S. magnesium consumption, and desulfurization of iron and steel accounted for 13 percent of consumption. These two applications alone thus account for well over one-half of the magnesium market.

To understand why pure and alloy magnesium are used interchangeably in the bulk of the magnesium market you need to appreciate the manner in which alloy magnesium is used by purchasers in those end use segments. It is used based primarily upon the pounds of magnesium content irrespective of the alloying elements.

Aluminum producers and others have increasingly used alloy magnesium instead of pure because on a per pound basis alloy has become increasingly available at low prices. They buy alloy rather than pure whenever it makes economic sense, as it often has in recent years.

There's nothing about alloy magnesium that

makes it unsuitable for use in these market segments. About 94 percent of alloy magnesium sold in this country is made to ASTM Specification AM50A, AM60B and AZ91D.

AM50A generally consists of a nominal 95 percent magnesium, five percent aluminum and less than .6 percent manganese. The five percent aluminum is as valuable as the aluminum itself, and the nominal .6 percent manganese content is easily tolerated in the aluminum alloy. Thus, aluminum producers can freely add magnesium to their product either using pure magnesium or AM50A alloy.

The same is true of both AM60B alloy and AZ91D alloy, both of which consist primarily of magnesium and aluminum.

Alcoa, which is perhaps the largest aluminum producer in this country and a key customer of US Magnesium, stated recently at a hearing before the Department of Commerce that it is using AM50A magnesium alloy.

They have stated that this is a special product because it is what they refer to as beryllium-free. In fact, it is not beryllium-free and it is not special. The simple fact is that the ASTM specification for AM50A contains a requirement for

both a maximum and a minimum beryllium content. The minimum allowable content that must be added by specification is five times the level that Alcoa has defined as acceptable in its prehearing brief.

In its prehearing brief, Alcoa also says that only uncommon alloys can be used in the applications that would be used for pure magnesium. That's simply not the case. AM50A is a very common alloy and is one of the three dominant alloys used in the United States. The range of beryllium content of the other two major ASTM specification alloys, AM60B and AZ91D, is identical to that of AM50A.

Other evidence of the use of such ASTM specification alloy magnesium by aluminum producers can also be found in the trade press. For example, *American Metal Mart* made the following observation about this case when it was filed:

"US Magnesium's petition against Chinese alloy didn't surprise market participants, many of whom anticipated the move for the past year. It was widely acknowledged that some consumers, aluminum producers especially, were using AM50 as a substitute for pure magnesium which they could get from China."

Your prehearing report confirms these reports. It states that more than half of the alloy

imports from China in 2003 were sold to aluminum manufacturers.

Alcan and their recent spinoff, Novelis, are also very large aluminum producers and key customers of US Magnesium. In the preliminary investigation, the witness from Alcan stated explicitly that Alcan is using secondary magnesium. That's the same thing as saying that they are using alloy that contains beryllium. All secondary magnesium is alloy magnesium, and all secondary magnesium contains beryllium because the origin of the scrap is die cast alloy magnesium.

The experience of Alcan and Alcoa, therefore, shows that the presence of beryllium in alloy magnesium has not prevented aluminum producers from using that product.

Moreover, other aluminum producers are also using secondary alloy magnesium. Certain companies supporting our petition are secondary magnesium producers, and they have been selling alloy magnesium to these companies with no apparent objection to beryllium content of their product.

In the past, the Commission has also found that the prices of pure and alloy magnesium are not closely correlated. This is no longer true. The

prices of the two types of magnesium have converged. We are in a unique position to speak to this issue because we are the only remaining domestic producer of pure magnesium. The prices of pure and alloy are essentially identical. That's true for our products. It's true for most of the imports.

Let me switch gears a bit and talk about what happened in the market after this case was filed. Prices went up, but not nearly as much as you might imagine from reading the briefs of the Respondents.

While prices went up, the published data on spot market prices are just that. Most business takes place under one- or two-year contracts. You can see from our questionnaire response that the prices that we realized after the petition was filed were nowhere near as high as the reported spot market prices.

While negotiating calendar year 2004 contracts in the fall of 2003, we had little choice but to meet the low-priced subject imports head on. As Mr. Legge told you earlier, we had just made very extensive investments in new electrolytic cells. It was never an option to leave these cells idle and let them deteriorate beyond use.

After the case was filed, our contract prices which locked in the very low prices that were

prevalent prior to the filing of this case were far below the spot market prices that were reported subsequent to that time.

Moreover, if antidumping duties are not imposed there is no doubt that spot prices would fall as abruptly and sharply as they increased when the cases were filed and contract prices would follow.

Imports from China and Russia would depress prices to levels at or below those that we experienced in 2003. There would be massive underselling by these imports, just as there was before. We would experience lost sales and lost revenue on a massive scale, just as we did before.

Our plans to expand capacity would be severely impaired, just as they were previously. We would be deprived of an opportunity to earn a reasonable return on the extensive investments that we have made, just as we were before.

Your affirmative determination in this case is the one thing and the only thing that will prevent this from happening.

Thank you for the opportunity to appear before you today.

MR. NARKIN: I'm Steve Narkin with King & Spalding. On the issue of like product, there are

several additional important points that we would like to make to place in context what you just heard from Mr. Tissington.

First, as Mr. Tissington testified, magnesium is a product where each part of the equation -- product chemistry, product size and the raw materials used to make the product -- involves a continuum. The magnesium content of magnesium metal ranges from 50 percent up to nearly 100 percent with no break point along the way.

There is also a wide range in the size of the product. The raw materials used to make the product range from 100 percent primary to 100 percent scrap with an infinite range of blends in between. For each of these metrics there is, to use the Commission's vernacular, no clear dividing line.

That is the clear lens through which you should view this issue. This is an especially important point because Respondents are telling you that this case is different from other cases in which the Commission has found a single like product based on one-way substitutability. Here they say there is only what they call limited one-way substitutability.

Of course, we don't agree with that as well. As Mr. Tissington stated, the three ASTM alloy

products that account for 94 percent of alloy consumption can all be substituted for pure magnesium. That's unlimited, not limited one-way substitutability. That's a secondary point. To repeat, this product is a continuum.

As the evidence shows, when the magnesium content of the product falls below 99.8 percent and thus becomes alloy magnesium, that does not suddenly make the product unacceptable to aluminum producers and other end users that have traditionally used pure magnesium. Put another way, 99.8 percent is not a meaningful, let alone a clear dividing line.

Of course, it is true that die casters generally do not use pure magnesium, but it is also true that in the cases in which the Commission has found a single like product because the product is a continuum, products at one end of the continuum typically are not interchangeable with products at the other end of the continuum. This case is no different.

Second, there is another point that should not get lost in this discussion. While there is clear evidence of substantial interchangeability here, the truth is that contrary to what Respondents assume you can have a single like product even if there is no

interchangeability.

That is what the Commission has said on other occasions, and that is the only conclusion consistent with the legislative history of this statute and the Commission's repeated statements over many years which make clear that none of the various like product factors is dispositive.

Third, we cannot emphasize enough the potential practical implications of finding two like products, given the nature of this product and the history of prior magnesium cases.

We do not believe that such a finding would affect the outcome of this case because the data that the Commission has before it for the two types of magnesium are very similar, but if the Commission were to find that pure and alloy magnesium were separate like products or to make an affirmative determination for pure, but a negative determination for alloy, you can know with 100 percent certainty that alloy magnesium from Russia will pour into this country to be used in traditional pure magnesium applications, just like alloy magnesium from China has and would under such circumstances.

After all, why are companies like Alcoa and Alcan pressing the argument that pure and alloy

magnesium are separate like products? They are plainly doing this because short of an across-the-board negative determination that is the outcome that they want. They want to be able to use pure and alloy magnesium interchangeably at the same time that they are telling you that they are not interchangeable.

The Commission has over the years seen many consumers come before it and ask that separate like products be carved out because their concern is they may not be able to get a specialized product that is not readily available from domestic producers. This kind of argument is very different. It is the kind of argument that should set off alarm bells.

Fourth, there is a very important legal dimension to this issue that we ask the Commission to keep in mind. The legislative history to the Trade Agreements Act of 1979 says that the definition of like product should not be interpreted in such a fashion as to prevent consideration of an industry affected by the imports under consideration.

Please think about what that means in the context of this case. If you find that pure and alloy magnesium are separate like products, you are effectively precluding yourselves from considering the harm that imports of alloy magnesium from China have

caused the domestic pure magnesium industry in its sales to aluminum producers.

We think that this evidence is considerable. You can see it in the evidence relating to lost sales and revenues and in the fact that more than half of imports of alloy magnesium from China in 2003 went to aluminum manufacturers.

You can also see it in the press reports that we have quoted in our briefs, but even if you are not as sure of this as we are if you find that pure and alloy magnesium are a separate like product you cannot even consider this evidence. It becomes irrelevant. We respectfully submit that this would be contrary to the very clear guidance that Congress has given the Commission on this subject.

Fifth and finally, the Commerce Department has seen Respondents' arguments for what they are. This is reflected in its final determination that pure and alloy magnesium are a single like product in a single class or kind of merchandise.

Although Respondents say that you should not pay any attention to the Department's determinations because its class or kind findings are different from the Commission's like product findings, in the context of this case that argument is just a smokescreen. The

Department has been focusing on the very same issue that you are; that is, to what extent are pure and alloy magnesium interchangeable.

Before the Department, just as here, Respondents and Alcoa argued that the presence of beryllium is an impediment to the use of alloy magnesium in aluminum beverage cans. Here is what the Department said about this issue in its final determination:

"We do not think that it is necessary to resolve this dispute between Petitioners and Alcoa over whether the alloys Alcoa uses contain intentionally added beryllium or whether Alcoa could theoretically use such alloys through coating beverage can walls or diluting these alloys with pure magnesium.

"There is ample evidence on the record, including statements by Alcan, Alcoa and Halaco, a U.S. producer of secondary magnesium, to conclude that alloy magnesium with and without beryllium can be used as a substitute for pure magnesium in certain applications of the aluminum industry and the iron and steel desulfurization industry."

It really is just as simple as that. On the basis of the very clear evidence that is available to

you in this final investigation, which is much more clear cut than what was before you in the preliminary investigation, we respectfully submit that this issue should not be a close call.

Finally, we would like to discuss the issue of cumulation very briefly. The parties, including Alcoa, basically agree that magnesium is a commodity product that does not differ significantly depending upon the country of origin. In that sense there is no question that the products at issue meet the fungibility requirements for cumulation.

But, the Russian Respondents argue that this is not true when you consider the fact that there are different product mixes coming in from the two subject countries in the sense that all of the imports from China are alloy magnesium, whereas a high percentage of the imports from Russia are pure magnesium.

That argument is wrong. Cumulation requires only a reasonable overlap of competition. There is a massive overlap of competition here. In the heart of the magnesium market, aluminum alloying and desulfurization, there is tense competition among imports of pure magnesium from Russia, alloy magnesium from China and pure and alloy magnesium made by domestic producers.

All of these magnesium products from China, Russia and the United States, whether they be pure or alloy, are highly fungible in those large segments of the market. Moreover, even if the Commission were to somehow put that aside, which we submit is impossible, there would still be a reasonable overlap of competition. That is because the percentage of imports from Russia that is alloy magnesium is still significant and by itself constitutes a reasonable overlap of competition.

As we will explain in our post-hearing brief, for that reason the case that the Russian producers rely upon in an effort to prove otherwise, that is S-Rams From Korea and Taiwan, is easily distinguishable from this one.

Thank you.

MR. BROWN: Good morning. My name is Cody Brown. I work as a senior vacuum wagon operator at US Magnesium's plant. I have worked at the plant since 1986.

I have been president of Local 8319 of the United Steelworkers of America since 1997. Local 8319 represents approximately 300 workers and their families. The Steelworkers have represented workers at US Magnesium since 1974. The majority of these

workers have over 15 years of experience, and many of them have been there from the beginning.

We at Steelworkers are very concerned that our plant will be forced to close if this Commission does not reach affirmative determinations in these cases. Opponents of our position have stated that US Magnesium is not the victim of dumped imports, but is the victim of its own mismanagement. I strongly disagree.

Our owners did not abandon us when things got tough. They have put money into the plant to improve our technology and working conditions. Together we are doing everything possible to save our plant and our jobs.

Both the union members and the management team have sacrificed jobs and have had little or no increases in wages or benefits. We have nearly doubled our workload and responsibilities to effectively reduce emissions and lower operating costs.

Our workforce is one of the most dedicated and hardworking groups in the industry. That is evident by the fact that we have survived the surge of unfairly traded imports while two-thirds of the magnesium industry has been destroyed.

We are grateful that the Commission has supported our past petitions. As the record indicates, we do not bring frivolous petitions, and we do not squander the opportunities that past petitions have given us. We are not afraid of free trade as long as it is fair trade.

On behalf of the US Magnesium workers and the other American workers who have lost their jobs, I am asking you today to level the playing field and grant our petition to impose antidumping duties against the unfairly traded magnesium imports.

Thank you.

MR. BUTTON: Good morning. I am Kenneth Button, Senior Vice President of Economic Consulting Services, LLC, testifying on behalf of the domestic industry. I'm accompanied by Jennifer Lutz, Senior Economist at ECS.

As to the conditions of competition in the U.S. magnesium market, first, demand for magnesium is a derived demand associated with the demand for downstream products. In these uses, the demand for magnesium tends to be price inelastic. A change in price does not materially change the demand for magnesium.

Second, the electrolytic cells used by

producers such as US Magnesium and the Russian producers, if shut down, require rebuilding at great cost. Thus, to be cost effective producers must maintain continuous production at a high level of capacity utilization. Therefore, in the face of price competition a producer is generally compelled to cut price rather than to reduce production volume.

Third, as stated by Alcoa at the staff conference, magnesium is a commodity. Magnesium imported from China and Russia is a close substitute for U.S. produced magnesium in all material aspects of product chemistry, form and quality. Magnesium from China and Russia compete directly with domestically produced magnesium.

Fourth, reflecting the fact that magnesium is a commodity product, the market for magnesium products is extremely price competitive. Because the chemistry and physical characteristics of the domestic product and imported product are comparable and governed by the same industry accepted ASTM specifications, customers focus on price in the selection of a supplier.

Fifth, US Magnesium and the producers in China and Russia can easily switch production between pure magnesium and alloy magnesium to suit the

producer's commercial interests. For example, when dumping duties were imposed on pure magnesium from China, the Chinese producers switched their exports from pure magnesium to alloy magnesium for the U.S. market.

Finally, a major recent change in the conditions of competition concerns U.S. consumers, especially, but not exclusively, U.S. aluminum producers, which have traditionally used pure magnesium to make their products. Major U.S. aluminum producers have begun to buy low-priced imported magnesium alloys comprised principally of magnesium and a small amount of aluminum as a low-cost means for introducing magnesium to their aluminum alloy production.

There is no doubt that the volume of subject imports from China and Russia is significant and is rising rapidly. As you can see in Hearing Slide 9, in the year 2000 the cumulated volume of alloy magnesium from China and pure and alloy magnesium from Russia totaled about 20,400 metric tons. It grew by 70 percent to almost 35,000 metric tons in 2003. In the January-September 2004 period, the subject import volume increased further, by 29 percent over the 2003 part year period.

In this expansion, the Chinese and Russian share of total U.S. imports rose from 25 percent in 2000 to 50 percent in 2003. As shown in the confidential data, the subject imports increased their share of apparent U.S. consumption in each period of the POI.

The imports from China and Russia achieved this rapid increase in volume in market share by selling at progressively lower prices which caused domestic prices to fall. This is clearly shown in Slide 10.

The Russian alloy magnesium AUV dropped from $1.60 in year 2000 to 86 cents in 2003, a fall of nearly one-half. The Russian pure magnesium AUV fell from $1.09 in 2000 to 87 cents in 2003, a drop of one-fifth. The Chinese alloy magnesium AUV, already very low at 92 cents in 2000, declined to still lower, 84 cents, in 2003.

What is also telling in this exhibit is that the falling Russian import AUVs converged on the extremely low Chinese alloy magnesium price. The fact of the convergence of the Russian pure and alloy magnesium AUVs with the Chinese alloy magnesium AUV reflects the market reality that Russian pure and alloy magnesium are each sold in direct competition

with the Chinese alloy magnesium to aluminum producers.

The fact that the subject imports had been a cause of the lower domestic prices is also reflected in the fact that they had consistently undersold non-subject imports by a wide margin. As shown in Hearing Slide 11, Russian pure import AUVs were far below the AUVs of the non-subject pure magnesium imports.

Similarly, in Hearing Slide 12 we see that both Russian and Chinese AUVs for alloy magnesium were well below the non-subject import AUV for alloy magnesium.

As expected, the Commission also found that the subject imports undersold the domestic producers. That's summarized in Hearing Slide 13. Russian pure magnesium undersold the domestic pure magnesium in 15 of 19 comparisons. Moreover, Chinese alloy magnesium undersold domestic pure magnesium in 11 of 15 comparisons on sales to aluminum producers.

Russian alloy magnesium similarly undersold domestic pure magnesium in two of four comparisons in sales to aluminum producers. As you can see, there is also substantial subject import alloy underselling of the domestic alloy magnesium in sales to die casters.

Because a primary magnesium producer must

operate electrolytic cells continuously to avoid very costly shutdowns, the producer faces extremely strong economic pressure to respond to low-priced import competition by cutting its own prices to keep sales volume.

In examining certain underselling data for 2003, the Commission should keep this factor in mind and read with great care US Magnesium's prehearing brief narrative regarding certain very specific contract situations. It should also recognize the importance of the timing of the contract sales.

The effect of the dumped imports has been to push US Magnesium's price below its cost. As you are aware, the company's predecessor, MagCorp, was forced into bankruptcy in August 2001. As the successor company, US Magnesium was working to complete the transition out of bankruptcy during 2002 and 2003 at a time when the volume of imports from China and Russia surged and their import prices fell to historical lows.

During US Magnesium's M cell construction and start-up period in 2001 and 2002 as described by Mr. Legge, US Magnesium did face some temporary reductions in its production volume. However, even with the constrained production volume US Magnesium

suffered major lost sales and lost revenues as described in the prehearing report.

Please note that in the magnesium industry, losing a sale does not necessarily mean a reduction in total production volume. It does mean that having lost the sale to a key customer US Magnesium must seek another buyer for that volume, normally at a lower price. The U.S. producer may even be forced to look overseas to the export market to insure that the volume is fully placed.

In your analysis of the aluminum segment of the market you will also see the prevalence of head-to-head competition between US Magnesium and Russian magnesium, pure magnesium on the one hand, and the Chinese selling alloy magnesium on the other hand.

As Mr. Tissington has testified, the reason that the aluminum producers began using alloy magnesium is that access to pure magnesium was blocked by the U.S. antidumping order on Chinese pure magnesium.

In response, U.S. aluminum producers began importing low-priced Chinese and now Russian alloy magnesium products which were fundamentally just magnesium and aluminum such as the product known as AM50A alloy which Alcoa uses. Therefore, the imports

of the Chinese alloy magnesium have been depressing the domestic industry's pure magnesium sales to aluminum producers.

Now, although I've been focusing on the situation of the current producers in the U.S. industry, the Commission should not lose sight of the fact that Northwest Alloys was a producer during 2000 and 2001 when it closed in the face of the same difficult market conditions and import competition that led MagCorp into bankruptcy.

While Alcoa may assert otherwise today, Northwest Alloys blamed low-priced imports for the plant's closing when it sought trade adjustment assistance for its employees. Therefore, from the perspective of the U.S. industry as a whole, the Commission should determine that the declines in production capacity, production, employment and shipment volume for the domestic industry has been substantial during the POI.

The Commission should appreciate also that U.S. producers of secondary magnesium have suffered lower prices on the secondary alloy products that they sell to the aluminum, desulfurization and die cast customers.

US Magnesium was able to regain volume

during the POI, but could only do so by enduring very severe depression of its prices. Later today you may hear a claim by Respondents that the subject imports were merely drawn in by the reduction in US Magnesium's production volume associated with either the 2001 bankruptcy or the 2002 installation of the new M cells.

Well, if so then why during the last quarter of 2002 and in 2003 when US Magnesium resumed normal operation did subject imports offer such low prices? Why did they have to undersell not only US Magnesium, but also the non-subject imports as well, and why did they combine these low prices with an accelerating expansion in the volume of imports and U.S. market share that continued through part year 2004?

You may also hear an inaccurate claim by Respondents that the domestic industry does not need help because prices in 2004 increased to strong 52 levels. Be wary of that claim.

First, the filing of the petition in this case on February 27, 2004, had an immediate and dramatic impact on prices as shown in Hearing Slide 14. Immediately after filing the petition the widely followed imports magnesium price published by *Platt's Metals Week* literally took off and rose from about

$1.09 per pound to over $1.40. When the Commission made its preliminary injury determination the *Metals Week* price took off again.

The Commerce Department's determination of significant dumping margins sustained the spot price at about $1.50. It is quite clearly that the improvement in spot prices during 2004 has been directly related to this ongoing investigation and to the prospect that antidumping duties would curtail the availability of dumped subject imports. Equally clear, however, is the probability that if the Commission were to reach a negative determination prices would fall back to their old levels.

The second caution regarding the claimed impact of higher spot prices is the fact that almost all of US Magnesium's sales are on a contract basis. Therefore, US Magnesium has certainly not yet achieved the full benefit of the post-petition increase in market prices.

For example, US Magnesium's shipments delivered under contracts to customers during 2004 were actually sold at prices negotiated at significantly lower levels prevailing during 2003 prior to the petition filing. Please keep this in mind as you assess Respondents' claims about US

Magnesium's financial performance during 2004 and its prospects for the future.

Another post-petition development was that both Chinese and Russian Respondents continued to expand exports to the United States, apparently to beat the Commerce Department's preliminary determination.

As shown in the quarterly data in Hearing Slide 15, the progressive increase in Chinese and Russian exports continued to even higher levels. However, once the Commerce Department released its preliminary dumping margins at the beginning of October 2004, the subject import volume fell sharply.

My colleague, Jennifer Lutz, will now address the issue of threat.

MS. LUTZ: Hello. My name is Jennifer Lutz, Senior Economist at ECS.

The U.S. industry is threatened with further injury from subject imports. Both Chinese and Russian producers have unused capacity and new capacity coming on line. According to the Chinese Government Nonferrous Metals Information Division, capacity in China is 700,000 tons or almost twice estimated world magnesium consumption.

While the prehearing report cautions that

some of this is capacity to produce pure magnesium, be aware that all primary alloy magnesium starts out as pure magnesium, which is easily converted to alloy magnesium.

Given that none of the estimated 150 to 200 Chinese producers provided questionnaires in this final investigation, the public information showing massive unutilized Chinese capacity must be taken at face value. Since 90 percent of China's magnesium 55 production is exported, much of China's excess capacity is aimed at the U.S. market.

At the preliminary conference, Respondents offered numerous assurances that China was not a threat to the U.S. industry because of rising raw material prices, particularly for ferrosilicon and coal, which limited production.

For example, as shown in Hearing Slide 16, Mr. Gammons noted, "It will be three to five years before we can have energy problems solved and the raw materials solved and get back into the marketplace as an extreme aggressor again."

Respondent Alcan noted in its post-conference brief that there were "numerous reports of Chinese suppliers canceling orders and reneging long-term contracts."

Despite these alleged impediments, imports of alloy magnesium from China increased 34 percent in the January through September 2004 period compared to the 2003 part year period, and the Department of Commerce found critical circumstances with respect to imports from China.

Press reports also note that China has diverted some of its exports to Europe because of the preliminary antidumping duties in the U.S. Clearly, in the absence of relief, these imports would be directed back at the U.S. market.

The Russian producers, AVISMA and Solikamsk, are also export oriented and over the POI have diverted sales from third country markets to the United States. More third country and home market sales could be diverted to the U.S. market if an antidumping order is not put in place.

Furthermore, both AVISMA and Solikamsk produce pure and alloy magnesium. If an order is put in place against either pure or alloy magnesium, but not both, these producers could easily switch production to the other product and flood the U.S. market.

Furthermore, the Department of Commerce identified a third unnamed Russian producer which has

started shipping to the U.S. market. There have also been press reports about a pilot project currently underway to produce magnesium from asbestos tailings in Russia. This project would add over 50,000 tons of capacity.

At the preliminary conference, Russian Respondents asserted that they simply could not increase exports to the U.S. market. As shown in Hearing Slide 17, the economist for AVISMA noted that Russian producers are "essentially sold out and operating flat out, and they cannot significantly increase their exports to the U.S. market." However, subject imports from Russia in the part year 2004 period increased by 26 percent.

You have heard a great deal about US Magnesium's plans for expansion and how those plans would be jeopardized without relief from the dumped imports. The secondary producers need this relief as well. Garfield Alloys has been shuttered for over a year. It has publicly stated its intent to rebuild, but has not started yet. It is less likely to rebuild in the absence of relief.

Amacor, another secondary producer, before suffering a fire in its raw materials storage area, had started discussing plant expansion with local

government officials. According to public reports, these discussions took place shortly before the fire, indicating that Amacor was responding to the higher fair value market prices by moving forward with plans to increase supply to the market.

Amacor has stated publicly that it plans to restart within three to six months. Clearly the absence of dumped imports in the U.S. market would make an expansion more appealing to Amacor.

Thank you.

MR. DORN: That concludes our direct presentation.

CHAIRMAN KOPLAN: Thank you very much, Mr. Dorn, and thank you to all the witnesses who have testified this morning.

We will begin the questioning with Commissioner Lane.

COMMISSIONER LANE: Good morning and thank you for your testimony. I look forward to hearing more about this product from the Petitioners and the Respondents.

Let me go first to Mr. Legge. I'm interested in your contracts that you have for your product and if I'm getting into business proprietary Mr. Dorn will hit you and we'll have to put it in the

post-hearing brief or something. But I'm struck by the testimony about the pricing and the effect that the subject imports have had upon your product.

Then I want to talk about how that relates to your product that's under contract and how much of your product is under contract, and do those contracts have reopeners, or when would you be able to do anything about what you charge for your product because of the contracts?

MR. LEGGE: Commissioner Lane, although I'm quite familiar with the contracts I would say that Cam Tissington who's Vice President of Sales and Marketing is even more familiar with the structure of our contracts. If I could, I'd like to defer that to him.

COMMISSIONER LANE: That's the sign of a good executive.

Mr. Tissington?

MR. TISSINGTON: Avoiding confidential information which we'd be happy to submit in the post-hearing brief, I can tell you that most of our contracts are one to two years. Most of our business is under contract and is usually signed in the fourth quarter of the preceding year.

Openers and those types of things are not common in the magnesium industry, at least not in the

domestic magnesium industry. Basically the contracts are usually fixed price, fixed term.

COMMISSIONER LANE: So you would have to wait until those contracts come up for renegotiation before any change in the price could be realized by US Magnesium?

MR. TISSINGTON: Absolutely. And really what happens is the contracts expire after their term, so it's, contracts are not normally written where there's a mandatory renegotiation and extension of the contract. They simply expire after their term and then you go back in fourth quarter of the next year or two years later and renegotiate or negotiate a new contract, per se.

COMMISSIONER LANE: Would it be fair to say that the prices that is put in those contracts is somehow or other related to whatever the spot market is at the time?

MR. TISSINGTON: No, not at all.

It's a negotiated price that's based on prevailing market prices at that time, so it's a negotiation with the consumer and of course they're negotiating with every other supplier of magnesium molecule that's out there.

COMMISSIONER LANE: Thank you.

How would you characterize the percentage of your contracts that were already in place by the time the petition was filed?

MR. TISSINGTON: Contracts by desire of both the producer and the consumer are negotiated before the beginning of the next calendar year. We certainly need to know where our metal is being placed. You've heard that we need to make sure that we place every pound, and the consumers need to make sure they have a reliable supply starting on January 1st. So those contracts for almost all of those contracts are done by the end of the year.

COMMISSIONER LANE: Are most of your contracts due at the same time or expire at the same time?

MR. TISSINGTON: Certainly. I guess that's a characteristic of the magnesium industry, but they all seem to expire at the end of the calendar year.

COMMISSIONER LANE: Mr. Legge, I'm interested in your energy prices that you have to pay and I'm certainly aware of the increased cost of natural gas. What has US Magnesium done or what is it able to do to keep those prices as low as possible?

MR. LEGGE: There are two components to our energy consumption and that is natural gas and

electrical energy. We just completed an electrical energy contract negotiation with the local utility, PacifiCorp. That's a five year contract. We believe it's a very fair and equitable contract for the company and for PacifiCorp.

With regard to natural gas I believe that no one in this industry is untouched by that, but at this point in time in this current year, 50 percent of our gas consumption is what you might use the term hedged with the local utility and we could provide more details of that in a post-hearing brief.

COMMISSIONER LANE: Okay. Thank you.

Now I want to go to some like product issues. It has been argued that the use of alloy magnesium in aluminum production is a relatively new phenomenon that has blurred the lines between pure and alloy magnesium and has led to direct and increased competition between these types of magnesium To what extent was alloy magnesium used in aluminum production over the period examined?

MR. NARKIN: This is Steve Narkin, Commissioner Lane.

Obviously a lot of the data relating to this issue are confidential so we're not in a position to really give you any kind of quantification here. But

I think what you see is a rising and significant percentage of alloy magnesium being used for traditional pure applications.

Does that answer your question?

COMMISSIONER LANE: Yes.

Mr. Dorn?

MR. DORN: In terms of historical context, the first time the Commission looked at this issue back I think in 1992, you found that pure and alloy were one like product. The binational panel said no, do it again, and you were forced to determine that they weren't a like product.

Back in that era you were only looking at primary magnesium. There may have been some alloy, secondary magnesium that was being sold to aluminum producers back in 1991, '92, but you didn't capture any of that data so you have no information of record about any competition between secondary alloy and primary pure magnesium in sales to the aluminum industry.

In addition, back then you didn't have any imports of alloy magnesium on the record that were being sold to aluminum producers.

Here those two facts have dramatically changed. You have evidence in this record which

includes sales of secondary alloy magnesium to aluminum producers and also, of course, over half of the imports of alloy magnesium from China are being sold to aluminum producers.

So in our view it's a dramatically different record in this investigation than in the prior investigations involving like product issues.

COMMISSIONER LANE: Okay. That reminds me of another issue that I wanted to talk about and that's beryllium. Is this really an issue on whether or not alloy magnesium can be used in aluminum cans or is this just sort of a side issue?

MR. DORN: We'd call it a side issue. We've looked at the Food and Drug Administration regulations and we see nothing that addresses the issue of beryllium content in aluminum beverage cans or in any other container used for food products.

COMMISSIONER LANE: Let me ask you this real quick. Is the use of beryllium in a can, is that going to be a health issue?

MR. DORN: Apparently the FDA has not addressed that point.

COMMISSIONER LANE: Thank you.

CHAIRMAN KOPLAN: That was very quick.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

Welcome to the panel. I don't know a lot about magnesium. This is the first case I've had a chance to deal with it so I'm enjoying learning a few things.

I start with a very basic question for you, Mr. Legge. The magnesium alloy wheels that look so nice when they're clean, are they primarily magnesium with a little bit of something else thrown in or are they primarily something else with a little bit of magnesium?

MR. LEGGE: I'm not aware of which magnesium wheels you're looking at, but a lot of the ones that I've seen that people call magnesium wheels are primarily aluminum wheels, but I'm just not familiar with the ones you've seen.

COMMISSIONER PEARSON: I look at the ones on automobiles mostly.

So that's not an area where you have particular expertise. You wouldn't suggest some methodology for keeping them clean? What would be the best thing in my view would be self-cleaning magnesium alloy wheels. If your industry could contribute to that it would be a great service to mankind.

Mr. Tissington?

MR. TISSINGTON: Mr. Commissioner, if I could kind of address that, there are some real magnesium wheels out there like the Callaway Corvette wheels but the majority of the mag wheels are really a styling issue which means it's an aluminum alloy that has a little bit of magnesium in them. So you clean them like a normal aluminum wheel.

COMMISSIONER PEARSON: That's the problem, you have to clean them a lot has been my experience.

Let me switch to another topic about which I know even less. My fellow Commissioners, some of them have had an opportunity to address magnesium before. They've made like product decisions and found most recently two separate like products. Were they wrong? I'm not talking about the preliminary in this case which you addressed to some degree, but look back at the previous cases. Did my fellow Commissioners get it wrong with their like product decision?

MR. DORN: The Commission got it right the first time the Commission looked at this issue in a case that involved imports of both pure and alloy magnesium. Even though in that case the Department of Commerce determined that pure and alloy were two separate classes or kind of merchandise, the

Commission still found it was one domestic like product.

The issue really hasn't come up again in this context since then because in the more recent cases you haven't had a situation where both pure and alloy were within the articles subject to investigation. The last time you looked at this issue it was only with respect to pure magnesium, you didn't have any alloy within the scope of the investigation. In fact in the last investigation the Israelis argued that you ought to expand the domestic like product to include alloy even though the petition was armed against pure because they wanted to have a larger U.S. market to dilute the import penetration ratios.

When you disagreed with the Israelis, the Commission disagreed and found that pure was a separate like product, you stated precisely that given the fact that the scope of this investigation only includes pure magnesium, then you went on to address it. But to us that's a key distinguishing factor.

In this case it involves both pure and alloy, and as I've said before, it also includes secondary alloy. The only way a secondary alloy producer in the United States can serve aluminum producers is to sell alloy magnesium. It can't make

pure magnesium. So that's new information in this record that didn't exist in prior records.

Then of course you have the situation of over half of the Chinese alloy being sold to aluminum producers, and that's entirely new in the record of this investigation.

So we think that the only precedent is right on point, the original case you looked at, you did the right thing. You found one like product.

COMMISSIONER PEARSON: Okay. And part of your argument is that the industry has, the usage of magnesium has changed enough that it's less justifiable now to have two separate like products than it may have been in the past, even though in your view it was not the right thing to do in the past?

MR. DORN: That's correct. And as Mr. Narkin was saying, the legislative history says you shouldn't define a domestic like product in order to avoid really considering the adverse impact of the imports.

Here if you don't find one like product, what do you do with the imports of alloy magnesium from China that are taking sales away from US Magnesium when it sells to the aluminum producers? When it's selling pure.

You've got direct competition between Chinese alloy and domestic pure magnesium. We don't see how you address that competition unless you find one like product.

COMMISSIONER PEARSON: Let me defer the rest of the like product questions to my colleagues. I'll shift to something else.

The U.S. industry is not able to produce enough magnesium to serve domestic demand, so at the current time the United States is a net importing country. In that case, why is this petition focused on Chinese and Russian imports? There certainly are a lot of non-subject imports.

Mr. Legge, do you have comments on that?

MR. LEGGE: Our view is that the demand in the United States can clearly be met by U.S. domestic production and non-subject imports. Clearly without the consideration of unfairly dumped imports from China and Russia.

MR. NARKIN: Commissioner Pearson, this is Steve Narkin. If I can just add briefly to that.

I'm struck by the statements in the brief and again this morning to the effect that because the U.S. industry doesn't have the capacity to produce everything that's consumed here, that somehow imports

get a free pass. It may be true that you need imports, but it is not true that you need dumped imports, and it is not true that you need imports underselling the domestic like product.

MR. DORN: And Commissioner, if I could just direct your attention to Hearing Slide 11, that shows the fact that the imports from Russia of pure magnesium are at a much lower price than the imports of pure magnesium from non-subject countries. And if you'll turn to Slide 12 you see the same story with respect to alloy magnesium. Again, it's Russia and China that are the downward price leaders, and that's the focus of the case. We're only aimed at unfairly priced imports. US Magnesium has no problem with fairly traded imports. We're going after the bottom feeders, the downward price leaders, and there's plenty of evidence in that in the purchaser's questionnaires, that in fact these are the downward price leaders -- Russia and China.

COMMISSIONER PEARSON: So even though it would be fair to describe the magnesium market globally as a commodity market in which the product is relatively fungible, your view is that an order on Chinese and Russian product would keep them out of the United States and allow some more fairly priced

product to enter.

MR. DORN: That's correct. What's happened during the period of investigation is that China and Russia have increased their share of imports from all countries from 25 percent in 2000 to 50 percent in 2003. They've clearly been using lower prices to gain market share. And with the antidumping duties in place against China and Russia those downward market forces are going to be eliminated, and non-subject imports, to the extent they're needed in the U.S. market will come in at higher prices and will not cause the adverse price effects that imports from Russia and China have caused.

COMMISSIONER PEARSON: So since US Magnesium is able to sell everything it produces then you are seeing this case primarily as a price case rather than as a volume case?

MR. DORN: Well, no. I see it as a volume case as well, because in October of 2001 Northwest Alloys was forced to close its plane. It was a major producer of primary magnesium. It submitted an application for trade adjustment assistance with the U.S. Department of Labor in which it pointed at the low prices of imports from China and Russia as a cause for the separation of its workers, and the U.S.

Department of Labor agreed and found that increasing imports contributed importantly to the layoff of those workers.

MR. BUTTON: Commissioner Pearson, if I might add, Ken Button.

With respect to US Magnesium, you're correct that they are expanding production. Indeed in response to the market they're trying to expand capacity which is of course one of the concerns described by the Respondents. Hopefully you would imagine they would welcome the expansion of the capacity.

In this respect, price, you are correct, is key. They need a price which provides a positive return on the investment. You've seen the trends in the prices over time. They are unduly low. You've seen the impact of the filing of this case which has been quite positive with respect to price. They hope that this would then permit this expansion to continue.

With the red light on, my closing comment would be that foreign capacity in Europe and many areas has been closed. The European producers have described this as being because of the price pressure that they have faced, especially from China. There is

great concern that that same fate would affect US Magnesium.

Thank you.

COMMISSIONER PEARSON: Thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Let me follow up to what Commissioner Pearson was just asking if I could. At the staff conference, and this is for you, Mr. Legge. At the staff conference Alcoa Vice President, Robert McHale, described Alcoa as your, and I quote, "largest customer." He stated that you are a, in his words, "a good supplier in terms of product quality and on time delivery" but complained that you, and I am quoting, appear to be seriously undercapitalized stating as follow, "Let me be specific. As a purchaser of magnesium Alcoa needs reliable supply at competitive prices. US Magnesium is a major supplier to Alcoa but it does not in my considered opinion have sufficient capacity to supply substantially more to Alcoa than it already does."

We've heard some of that this morning in the opening statement as well of Mr. Leibowitz.

During the period under examination did your company fail to secure any sales contracts with Alcoa because you lacked the capacity to meet its stated

needs? I note that in your pre-hearing brief at page 78 you mention that your production capacity was reduced in 2001 and 2002 due to your cell modernization program and that during the third and fourth quarters of 2001 you were uncertain of your production output for 2002 and were careful not to over-commit for 2002.

Did the fact that you did not over-commit mean that you turned away the opportunity to sell more product?

MR. LEGGE: First, I would say that in response to Mr. McHale's concern about undercapitalization, that's exactly what we're doing right now is capitalizing and expanding.

The second thing I would do, again I believe that Cam Tissington the VP of Sales and Marketing has a lot better information on what we did on contracts with Alcoa during that period.

CHAIRMAN KOPLAN: Mr. Tissington?

MR. TISSINGTON: Yes. With respect to Alcoa, Alcoa is a purchaser that really tells you how much you're going to be allowed to essentially supply or bid on, and there was a period when we did jointly agree that we would push some shipments back from one point in a year to later in the year, but we've never

failed to deliver on any of our contracts with Alcoa.

CHAIRMAN KOPLAN: Did you have to pass on any contracts, though, because of what you were doing in terms of modernization?

MR. TISSINGTON: No. We're always asking for more volume from Alcoa.

There's obviously the issue of price, but we certainly quote every time we get a chance to quote volume to Alcoa, but we don't always win the business.

CHAIRMAN KOPLAN: Thank you, I appreciate that.

Did US Magnesium sell any alloy magnesium to customers during the period under examination who had expressed a preference for pure magnesium?

MR. TISSINGTON: Yes, we did.

CHAIRMAN KOPLAN: Is that something you can answer now or in terms of detail, or is that something you would prefer to do for purposes of the post-hearing?

MR. TISSINGTON: I would be happy to answer post-hearing, in the post-hearing brief.

CHAIRMAN KOPLAN: I'd appreciate it if you would do that. Thank you.

I note that at page eight of your pre-hearing brief you state that, quote, "In practice

virtually all alloy magnesium contains at least 90 percent magnesium."

If so, why did you not simply use 90 percent magnesium as your break point rather than 50 percent?

Mr. Legge or Mr. Tissington?

MR. DORN: I think from a practical matter, Mr. Chairman, the HTS data are collected using that break point so that's what we used. We were just following the HTS description to make sure we captured the import data correctly.

CHAIRMAN KOPLAN: Thank you for that, Mr. Dorn. I appreciate it.

This is a follow up to a question that Commissioner Lane asked. Mr. Legge, Alcoa alleges in its pre-hearing brief at pages seven and eight that once capacity is dedicated to alloy magnesium it is difficult in most cases to switch back to pure magnesium due to the difficulty in purging equipment from alloying elements which while acceptable in alloy material represent contamination in pure magnesium. They mention that because of health concerns they do not use any alloy to which beryllium was intentionally introduced. However, they claim that most alloy products include beryllium.

Is it true as Alcoa argues that therefore

the production of alloy magnesium involves different equipment and labor than the production of pure magnesium?

MR. LEGGE: We have three horizontal casting lines that we have alternatively cast pure and alloy on at any point in time, and it just simply requires a cleaning and flushing when switching from alloy to pure. It doesn't require anything going from pure to alloy other than maybe a mold change, and we do it quite regularly. If you follow the procedure you meet the specification on the alloy.

CHAIRMAN KOPLAN: So you do that with the same workers as well?

MR. LEGGE: That's correct.

CHAIRMAN KOPLAN: Thank you very much.

I note that Alcoa alleges at page four that it has been able to obtain beryllium-free alloy from Chinese sources but has been unable to purchase it domestically. They allege that you do not produce it. They also allege that they have been unable to use secondary magnesium because secondary producers have not been able to control beryllium sufficiently for Alcoa to make use of it in Alcoa's operations.

Your testimony this morning appears to contradict that. Can you document this or do you want

to elaborate further?

MR. TISSINGTON: I think I can elaborate further in this arena.

We do make alloys that do not contain beryllium. We make ASTM alloys that do not contain beryllium. Alcoa has never provided a request for proposal that we should supply those alloy products to them, but we would certainly be happy to.

CHAIRMAN KOPLAN: Well I guess you just put that on the record right now for them. Thank you.

MR. NARKIN: Chairman Koplan if I could just add briefly to that question, as I think we all know what Alcoa is saying is that they need beryllium-free alloy at the same time they're saying that the beryllium-free alloy that they're getting is AM50 alloy. Mr. Tissington can correct me if I'm wrong but I don't think I am, US Magnesium sells a lot of AM50A alloy.

CHAIRMAN KOPLAN: I note that Mr. Tissington is nodding in the affirmative that he agrees with you.

MR. DORN: And Mr. Chairman, just one final point, Exhibit 18 to our pre-hearing brief is the affidavit of John David Gable from Halico. He testifies about selling secondary alloy magnesium containing beryllium to various producers of aluminum

products.

CHAIRMAN KOPLAN: Thank you, Mr. Dorn.

This is for Mr. Dorn and Dr. Button.

Assume for the sake of argument that the Commission again finds that pure and alloy magnesium are separate like products. For purposes of the post-hearing, please provide what in your considered judgment would be the basis for the Commission reaching an affirmative determination regarding two such separate like products.

Of course if you'd like to give me a preview of your argument now, you can feel free to do so.

MR. DORN: A very brief preview is if you look at the data in your pre-hearing report in terms of domestic industry trends and in terms of import trends there really isn't that much difference in terms of the key factors in terms of volume of imports, the average unit values of the imports, the trends in terms of the trade data, pricing data, and profitability data of the so-called pure industry and so-called alloy industry. So we don't think this is really outcome determinative.

Why are we fighting it so hard? We do seriously believe this is a better way to look at it based upon the evidence on this record in terms of the

competition between Chinese alloy and domestic pure. We think that's the more rational way to look at it based upon the unique set of facts in this record. But it's certainly not outcome determinative and we'd be happy to address that in our post-hearing brief.

CHAIRMAN KOPLAN: Thank you.

MR. BUTTON: If I might just give you the brief survey of what the points would be. One is separately for pure and alloy magnesium, there are increases significant -- The volumes of imports from the subject countries are significant and they are increasing. We see the prices of pure and alloy separately considered are declining. You have found lost sales and revenues with respect to both.

The underselling data that you have are available with respect to both separately in each of the subject countries.

CHAIRMAN KOPLAN: Thank you.

Just one very brief thing for Mr. Legge.

Mr. Legge, have you provided Commission staff with your finalized 2004 audited financial statements?

MR. LEGGE: Have we?

MR. DORN: I'm not sure they're available. We'll certainly provide them as soon as they are

available, but we'll check on that. We provided a draft but I don't think that was audited, correct?

CHAIRMAN KOPLAN: If you would do so I would appreciate it, if it is available.

MR. DORN: We certainly will.

MR. LEGGE: We'll do that.

CHAIRMAN KOPLAN: Thank you.

Commissioner Miller?

COMMISSIONER MILLER: Thank you, Mr. Chairman, and thank you to all the members of the panel, to those of you -- certainly all the front row and some of those behind who have been here before, welcome back. We appreciate Mr. Legge and Mr. Tissington. Mr. Brown, I think you may have been here as well, Mr. Brown, or no?

MR. BROWN: Yes.

COMMISSIONER MILLER: Yes, I thought so. Welcome back. Thank you, we appreciate your willingness to testify before us again.

There have been a lot of questions on certain aspects of the like product. Following up on the Chairman's last questions I just want to go back on the issue of alloy or pure one more time with the question this way.

Have there been any, as I hear most of your

discussion you seem to be mostly aimed at the effects of the narrowing of the price difference between pure and alloy as a cause for the aluminum producers perhaps using more of the alloy. Because it's mostly the Chinese alloy that you are pointing to as being used by the aluminum producers in the U.S.. Is that correct?

MR. BUTTON: Yes. As you would recall, the concern arose when the antidumping duty was imposed on Chinese pure magnesium, and in response then the aluminum producers began importing Chinese alloy because it was priced at a level which was sufficiently attractive.

COMMISSIONER MILLER: I understand that's essentially the core of your story. What I also wanted to ask is whether there have been any changes, and I'll ask this question of the aluminum producers later, but to your knowledge have there been any changes in the manufacturing processes of your customers that would allow them to use an alloy product in a way that perhaps the couldn't have or would not have in the past?

MR. TISSINGTON: There is one aluminum producer that we're aware of in the United States that has invested some dollars in trying to determine how

they could use those alloy products throughout their aluminum products. I'd be happy to provide more information on that in a post-hearing brief.

COMMISSIONER MILLER: Okay. If you could. Again, part of the reason I ask this, Mr. Dorn earlier you addressed I think for Commissioner Lane some of the changes since that first decision when the NAFTA panel told the Commission, no, you've gotten it wrong on like product. So I want to make sure I understand any changes that have occurred on both the demand and the supply side that are relevant to the like product determination.

So to the extent that there may be any on the manufacturing side in terms of the customers of the product, I think it's helpful to understand what those are.

With that, I'm going to leave the like product issues, although I have some others on another aspect of it that I'll come back to later. But to ask if you would talk a little bit about the demand condition in the markets for both pure and alloy magnesium.

The aluminum market, the iron and steel desulfurization, castings. We haven't talked too much about demand conditions, so Mr. Tissington, Mr. Legge,

whichever one of you. I know you fell into a lot of different markets so it's a big, broad question. But I'm just trying to get a sense of what's going on.

MR. TISSINGTON: From a macro view we see the global magnesium market increasing probably four to five percent in the next few years, so there is some growth in the global market.

Here in the United States we see it relatively flat for the next year and then actually a decline in 2006-2007. That's primarily because of the forecast decrease in the die cast alloy segment.

We're a very tiny industry and our die cast segment is very dependent on some very large application platforms, automobiles. There are a couple of those out in the future that we are going to be losing, and that will dramatically impact the amount of die cast consumption here in the United States. It doesn't take but maybe one platform to convert to a different material for there to be a decrease in demand.

This was planned out about a year ago. It's a conversion that we're going to lose to aluminum just because of the comfort with aluminum in this particular platform, and that will actually impact the demand for die casting here in the United States.

COMMISSIONER MILLER: If you lose it to aluminum do you not gain it in aluminum? I mean -- You supply both parts of that market.

MR. TISSINGTON: I'd rather supply a 90 percent or 95 percent magnesium alloy, rather than an aluminum alloy that's got maybe one percent magnesium in it, so it is a big loss for us.

But it was strictly a technical change from a standpoint of designer comfort with aluminum versus magnesium. It was not a price issue and certainly not a decision that was made after the filing of this case. But it will impact U.S. demand and we do forecast a decline in demand not for 2005, but 2006-2007.

COMMISSIONER MILLER: Okay.To what extent do the prices of magnesium across the different kinds of markets influence each other? I'm just trying to understand if the aluminum market is strong but the die casting market is weak, tell me how the prices between the different markets, or the strength of the different markets affects your pricing in those different markets.

MR. TISSINGTON: Magnesium prices are driven by supply/demand. Absolutely that is the overriding factor. Because the global market is so over-supplied

we have an over-supply situation in the U.S. as well. So the fact that aluminum may be up for one period and die casting may be down doesn't really override the fact that the market is in such over-supply.

So you don't really see a carry-over impact because one segment might be strong or weak versus another segment, because it is truly a supply/demand driven global industry.

COMMISSIONER MILLER: Okay.

Dr. Button?

MR. BUTTON: If I might just augment that. One fact that you have seen in price is what we described as the convergence. In the recent period you now have a product, alloy magnesium, being sold in a segment that it was not previously used. It has the effect of inter-weaving the price effects.

COMMISSIONER MILLER: Okay.

Anything specific to be said, you kind of touched on both castings and aluminum. Anything specific to be said about the iron and steel desulfurization market?

MR. TISSINGTON: Basically the same things hold true for those segments as well. Aluminum in the United States is 47 percent of the consumption and steel and iron desulfurization is another 13 percent.

Then when you add in die casting you've pretty well captured the majority of the magnesium market.

But the same holds true for those other segments as well. There may be slight differences in price, but as Dr. Button said those prices have basically converged.

COMMISSIONER MILLER: Okay.

You had some discussion earlier, and you made some points in your initial testimony about contract prices. Dr. Button, I took note of your advice to read certain parts of the pre-hearing brief and I'll go back and make sure I know exactly what you're pointing to.

The Respondents have requested that the Commission request data on recently negotiated contracts for 2005. Do you want to comment on your view of that request? Given what I've heard you say, it's telling me that the pricing, for example our pricing data for 2004 in our pricing tables is probably pricing reflected as part of the 2003 contracts, correct?

MR. BUTTON: The product delivered in 2004 was at prices which were negotiated during the end of 2003. Prices delivered in 2005 will have been negotiated following the petition filing in 2004,

which is why Exhibit 14 is one thing we keep in mind.

COMMISSIONER MILLER: Okay. Understood. And I can understand your argument that it's affected by the petition's filing. I just want to know that I have complete information on the record.

MR. BUTTON: The economic relevance of them would be that the 2005 contracts would reflect prices which would unfortunately be viewed as vulnerable, tenuous, and potentially would go down in the next contract cycle if the order were to not to be put in place.

COMMISSIONER MILLER: In the next contract cycle, but Mr. Tissington made the comment about prices are basically firm for a set period of time.

MR. BUTTON: That's right.

COMMISSIONER MILLER: So these for 2005, the prices have been set by virtue of those 2004 contracts.

MR. TISSINGTON: That's correct.

MR. DORN: If I could just --

COMMISSIONER MILLER: Mr. Dorn? I'm sorry, but I know my time is expired but I'll still let you respond to my just request of what your view is of the Respondent's --

MR. DORN: I appreciate that. From a legal

perspective and precedent perspective, a similar request was made in aluminum plate from South Africa. The Respondents there asked that you supplement the record with post-POI information and you said no. You said you know, you have a period of investigation, you have a start date and you have a finish date, and particularly in this situation what they've suggested is you get information from US Magnesium. What about the other participants in the market? What about the purchasers' questionnaires? What about the importers' questionnaires? You'd just be getting a tidbit of information from US Magnesium and not from other participants in the market.

In addition, I don't see what the relevance would be in terms of the timing of that information because given the preliminary determination of dumping by the Department of Commerce and the withdrawal of imports from the market as we showed on this other slide, that's obviously going to affect the contract prices in the fourth quarter of 2004. So it's not really showing you the impact of the dumped imports on prices in the United States. So from both a legal and an economic perspective, we don't think it makes sense to go beyond the POI to collect that data.

COMMISSIONER MILLER: Okay. I appreciate

it. I wanted you to have that opportunity.

Thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you. I would also join my colleagues in welcoming all of you back to the Commission and we very much appreciate your testimony and all of the information in the pre-hearing briefs.

If I could sort of follow up on the question that Commissioner Miller was asking and make sure that I understand it.

Mr. Tissington, in response to Commissioner Lane, she was asking you in essence do the spot prices affect the contract prices and your response was no. They do not. That the contract, as I heard it. And yet I'm hearing in response, Mr. Dorn sort of suggesting well we need to understand that the contracts that were negotiated in 2004 would to some degree reflect this big spike up in prices.

So I'm trying to make sure I understand it. You said in response to Commissioner Lane that the prices were not related to the spot prices, but were related to market conditions. So I'm trying to make sure I understand the difference between market

conditions that affect contract prices versus spot prices.

Why are spot prices not part of market conditions?

MR. DORN: Just a definitional point, I think there's a difference between actual market prices for actual transactions on the one hand and published index spot prices on the other. So there might be some confusion there.

COMMISSIONER HILLMAN: I'm just trying to make sure I understand exactly the response that you gave to Commissioner Lane and if you could help me understand when and how, if at all, do spot prices affect contract prices?

MR. TISSINGTON: The spot price doesn't affect the contract negotiation.

COMMISSIONER HILLMAN: And you're saying that as a legal matter or when you're engaged in the negotiations it doesn't affect it. I'm trying to understand this issue of there are these spot prices out there and you're saying it has no implications for the contracts.

MR. TISSINGTON: Spot prices are exactly that. They're just spot prices that are reported by Platt's as a spot price in the market at that time.

When we negotiate a contract in the fall of the year it's based on the competitive situation at that account and it's also based on the trends that have occurred in pricing and what we foresee for that contract year. It's not that spot price that happened to be published in Platt's.

COMMISSIONER HILLMAN: When you say you're looking at the trends in what's happening in prices, what are you looking at to figure out that trend? Your own prices for your contracts solely?

MR. TISSINGTON: It's a negotiation with the customer, and usually the customer has a lot of competitive information. It's an over-supplied marketplace. They've probably got four or five other competitive offers on that same product and it's simply a negotiation with that customer.

There's no reference back to the spot price that happened to be published yesterday or this morning.

COMMISSIONER HILLMAN: So neither you nor your customers bring spot prices into any kind of contract negotiation.

MR. TISSINGTON: From a practical standpoint, no.

COMMISSIONER HILLMAN: There's been a

considerable amount of discussion about this issue of the relationship between alloy prices and pure prices. As I understand it, historically there had been a gap with alloy prices coming in typically less than pure prices. Help me understand, Mr. Tissington, this issue of what historically happened in terms of the relationship between alloy prices and pure prices. Normally pure was some percentage above, some amount above alloy prices? And did they track one another historically?

MR. TISSINGTON: There hasn't really been a tracking of one above or below the other. Both pure and alloy prices have moved cyclically over whatever period of time that you want to take a look at. Sometimes pure is priced less than alloy, but it has also gone in cases where it's been the other direction.

More recently, however, since probably 2000 the prices have come together and converged to be a single price.

COMMISSIONER HILLMAN: From a cost standpoint is it more or less expensive to produce pure versus alloy? Cost of production.

MR. TISSINGTON: They're almost identical to us.

COMMISSIONER HILLMAN: No difference in terms of which one you're producing. Okay.

Mr. Legge, in response to one of the earlier questions on this issue of switching back and forth, you mentioned that the only thing you have to do is flushing and cleaning and that you do it regularly.

Just so I understand, how regularly is regularly? Is this something you do on a daily, hourly basis? or is it something done less frequently than that? And how long does this cleaning and flushing take place to move from producing pure to alloy?

MR. LEGGE: When we're running an alloy we will of course try to run a campaign of AM50, AM60, AZ91. There are a lot of reasons to do that, because there are economies of scale the longer you run it. So we will run a casting machine on alloy for several days at a time. But when we make the decision to switch that machine back to pure it is about a 12 hour shift that, is all it is. It takes one what we call a shift to switch that machine back to pure.

COMMISSIONER HILLMAN: So the cleaning and flushing process would take 12 hours of cleaning and flushing.

MR. LEGGE: Approximately.

COMMISSIONER HILLMAN: And during that time you're not actually running product?

MR. LEGGE: Well we have multiple casting lines, so you're only switching one.

COMMISSIONER HILLMAN: But on the one that you're switching, you're not running product for that 12 hour period.

MR. LEGGE: No. And going from pure to alloy it's a very short switch.

COMMISSIONER HILLMAN: I understand that.

Again, how often typically do you do this switching over?

MR. LEGGE: I think Cam is almost in constant contact with the cast house. Maybe he could give you a feel for how quickly we'll switch on alloys.

MR. TISSINGTON: If we're being efficient we try to do it probably every week or every two weeks, but there have been cases where we've done it a lot sooner than that.

We never lose a pound of production though, because our cast house is over-designed from a capacity standpoint, we can do a switch over on one casting machine and not lose any production in the plant.

COMMISSIONER HILLMAN: Okay.

Mr. Narkin, if I can switch back to sort of the legal issue that you were commenting on, and I just want to make sure I understand it. I understand from your perspective the implications for the Commission of making one decision with respect to pure versus a different decision with respect to alloy. I understand the commercial and other implications.

I want to make sure I understand from a legal perspective, if we were to decide that there were two like products and in essence go affirmative on both, are there then the same, I'm trying to make sure I understand whether you think there are legal sort of negatives to going that route? I mean are there things we should be aware of that you think are problematic from a legal perspective from doing that?

I understand the hypothetical that you posited was that we went affirmative on one of the products and negative on the other and I understand what you're saying about the issues there. But if they were both affirmative does it raise for you the same kind of legal red flags in terms of making this distinction between pure and alloy as separate like products?

MR. NARKIN: It still raises concerns,

Commissioner, and the reason would be to try to envision what might happen in the aftermath of a decision like that.

As I was saying earlier, if you do separate the like products you can't take into account the damage that's being inflicted on the pure magnesium industry by the alloy magnesium imports from China.

What that would mean would be if and when your decision is subject to review by the courts, the case for an affirmative determination with respect to pure would be less strong than it would be if you had treated it as a single like product and been able to take into account those effects of alloy magnesium imports on pure domestic product.

COMMISSIONER HILLMAN: Okay, I appreciate that answer.

MR. DORN: Personally Commissioner, I would smile on vote day, but I would probably leave the room scratching my head wondering how they came out that way on like product.

COMMISSIONER HILLMAN: I understand. Like I said, I was just trying to make sure I understood some of the implications that Mr. Narkin was raising, and he obviously posited a different hypothetical. So I appreciate the answer on that one.

The last thing in terms of how to measure the degree of this shift. I mean you've talked a lot about how you're now seeing this increasing use of alloy for what had traditionally been pure usages, if you will. I'm trying to get a sense of how we understand how significant that is. I've heard your issues on the percentage of the Chines product being sold to aluminum alloyers, but I'm not sure that is giving me the best way to think about how significant a shift this is.

It's obviously only in one segment, the aluminum alloying. I don't know whether we have any information on the other, on the desulfurization side or any of the others, whether a similar shift is occurring, and how we best get some quantification of the degree to which we're seeing a real switch into the usage of alloy product by what had traditionally been pure users.

Mr. Button?

MR. BUTTON: Within the staff report data you can see trends. In the period of time you can look at the data for U.S. aluminum producers and see the increase in their use of it. You see then the parallel increase in imports of the product. The past is prologue and you can see the trend. There is no

reason for the trend to change unless the economic fundamentals underneath it were to change.

COMMISSIONER HILLMAN: And we should assume that 100 percent of the purchases by aluminum alloyers of alloy product is in fact a shift. That's what I'm trying to understand.

MR. BUTTON: Yes.

COMMISSIONER HILLMAN: The base should be zero? They didn't use to buy any? That's what I'm trying to get a sense of.

MR. BUTTON: I'd let Mr. Tissington comment, but --

COMMISSIONER HILLMAN: Since the red light's come on I may come back to it, Mr. Button. Thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Lane?

COMMISSIONER LANE: I want to go back to one of the questions I asked earlier and I think this will be for Mr. Legge. Do rising energy costs affect pure and alloy magnesium producers differently?

MR. LEGGE: It has a similar impact on us. It's an input to the production of both and it's very similar.

COMMISSIONER LANE: You testified that US Magnesium is in the process of expanding its capacity.

What is the status of that?

MR. LEGGE: The status of that is the building in which we're expanding has been modified to accept the additional cells, and the components for the additional cells are being installed in the building at this moment.

COMMISSIONER LANE: How soon then will you have increased production?

MR. LEGGE: We're projecting to start some of the newer cells in July of 2005 and complete them, that installation, very near the end of our fiscal year, somewhere around October.

COMMISSIONER LANE: And the increased production as a result of that increased capacity, that would not currently be under a contract, but you would be out selling it on the spot market?

MR. LEGGE: We have anticipated when it's going to come and I think that Mr. Tissington can tell you what he's going to do with it or he anticipates to do with it.

COMMISSIONER LANE: Mr. Tissington?

MR. TISSINGTON: We're currently participating in the spot market and we are talking to customers about the additional capacity that will be coming on line this year.

COMMISSIONER LANE: Thank you.

In the preliminary phase of these investigations it was argued that one of the biggest changes in the magnesium industry is the development of new technology that allows aluminum cans to be produced from secondary alloy magnesium. How has this change affected the domestic magnesium industry and to what extent is secondary alloy magnesium used to produce aluminum cans today?

MR. TISSINGTON: I am aware that there is an aluminum company working on being able to accept alloys in a wider variety of products than they might have in the past. We'll address, I can discuss it in post-hearing brief as much as we know about it, but I'm not aware of specifically what you've described there.

COMMISSIONER LANE: Thank you.

MR. DORN: Commissioner, I'd also point out that in that Exhibit 18 which I referred to earlier to our pre-hearing brief, a producer of secondary alloy magnesium testified that Halico has sold its beryllium containing secondary alloy magnesium to a variety of aluminum producers and he names them and says these purchasers have not voiced any concerns regarding the small amount of beryllium contained in the secondary

magnesium alloy product sold by Halico.

I think there was some discussion about some new technology, but I'm not sure that technology's been put on the record so I'm not sure we can really react to it very meaningfully.

MR. NARKIN: Commissioner Lane, if I could just add to that very briefly. There is information in the confidential record that relates to this point and I suspect you probably know that. It's information that obviously Mr. Tissington would not have and we would like to address that issue further in the post-hearing brief.

COMMISSIONER LANE: Okay, thank you.

On page 13 of Alcan's pre-hearing brief, they argue that the domestic industry is healthy even though they have been forced to overcome a crisis in customer confidence of its own creation and contend that purchasers were simply wary of a producer that was being threatened with crippling environmental-produced proceedings, bankruptcy, poor management decisions, and reduction in castings, and were therefore forced to seek alternative suppliers of magnesium.

How do you respond to this? I guess what they were saying is that you're creating your own

problems.

MR. LEGGE: Well, we would disagree very strongly on that and we could probably specifically address all of those issues in the post-hearing brief on it. But I would just say that I don't find much of it with merit.

MR. BUTTON: Commissioner Lane, just to not let an obvious point that might be useful go by. It's hard to say that you're not injured when you're in a financially very difficult situation, struggling to find a positive return on a large investment that you're making, and seeing price erosion and having lost sales and lost revenues. Those all would fit into I believe a definition of being injured.

COMMISSIONER LANE: Thank you.

Alcoa and Northwest Alloys in their pre-hearing brief page 28 state that the price comparisons between pure and alloy magnesium are somewhat misleading because of the different levels of magnesium content, and that adjusting alloy magnesium prices to reflect this would affect any margin of underselling.

How would you respond to that contention?

MR. TISSINGTON: It's an interesting argument but I think it doesn't allow for the fact

that the alloying elements in those magnesium alloys are also valuable to the aluminum producer.

For instance, AM50 alloy is five percent aluminum. That five percent aluminum is certainly as valuable as the aluminum that Alcoa is making themselves, so you can't say that it doesn't have value. Ninety-five percent magnesium obviously has magnesium value, and there are some aluminum alloys that also use manganese which is one of the other alloying ingredients in AM50 alloy. So it also has value to the aluminum producer.

COMMISSIONER LANE: Okay, thank you.

Mr. Chairman, that's all the questions I have right now.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

I have a safety question. Apparently magnesium enjoys burning and that is a relevant condition of competition during this period of investigation. This is pure magnesium I believe. Do some types of alloy magnesium also burn when they run into water or once you start to alloy magnesium is that no longer an issue?

MR. TISSINGTON: Magnesium is no different than any other metal from that standpoint. If you get it up to a high enough temperature it will in fact burn. Both pure and alloy magnesium will in fact burn.

The only time I think that that's a real concern is during the processing of molten magnesium, you have to treat it differently than maybe some other metals to make sure that you can handle it without burning, but from a standpoint of an element, no, it doesn't spontaneously combust because it comes in contact with water or anything like that. You have to get it up to its actual melting point.

COMMISSIONER PEARSON: So as a user of magnesium, pure magnesium or magnesium alloy that user is not making a decision to take one product or the other based on their concerns about safety during storage or transportation of the material?

MR. TISSINGTON: If we talk specifically about the die caster, typically a die caster will make the part that he's being requested to provide to the component manufacturer or to the automotive OE and if the part calls for magnesium then they will certainly provide a quotation based on magnesium. If it calls for aluminum they'll certainly do that as well.

There are some casters, including some here today, that also cast both materials. So they're very familiar with both aluminum and magnesium. But it's usually the part designer that makes the material choice and not necessarily the company that's manufacturing a part.

COMMISSIONER PEARSON: But if you were an aluminum alloyer who was needing some magnesium and you had a choice of buying pure or magnesium with a bit of alloy in it, in terms of safety and handling the product it's a neutral decision between the two.

MR. TISSINGTON: Correct. It's a neutral decision.

COMMISSIONER PEARSON: Thank you.

Mr. Legge, the Petitioners, Alcoa in its pre-hearing brief is saying that even if US Magnesium's large potential environmental liabilities no longer seem imminent, the potential disruption from those liabilities and from the firm's prior bankruptcy constrain the willingness of some purchasers to buy from US Magnesium. Could you comment on that?

MR. LEGGE: Well, Alcoa said it so I assume that that must reflect what they believe. We believe with regard to the environmental liabilities that they are defined and they're not large and we've been out

of bankruptcy two years now. I think they would concede that we've been a pretty reliable, steady supplier to them.

COMMISSIONER PEARSON: I got that impression too at the end of the period of investigation. I think it was probably earlier in the POI that there were concerns about reliability of supply.

MR. DORN: If I might add to that, Commissioner, I mean the fact is that Alcoa is a very large customer of US Magnesium and was during the POI, and as Mr. Tissington says, US Magnesium hasn't refused to quote Alcoa at any point. Our main issue with respect to the adverse impact of imports is with respect to the lower prices that we've received from Alcoa for our product as a result of the downward pressure of the imports. But they haven't refused to buy from us because of any alleged environmental concerns or bankruptcy concerns.

COMMISSIONER PEARSON: Mr. Button, did you have a comment?

MR. BUTTON: No, sir. No further comment.

COMMISSIONER PEARSON: Okay.

Mr. Tissington, --

COMMISSIONER PEARSON: Mr. Tissington, do you find that most of the customers that you serve

also buy from other suppliers, or do you have a portfolio of customers who exclusively buy from U. S. Magnesium?

MR. TISSINGTON: We do have some customers that are sole-sourced with U. S. Magnesium. It is also fairly common for a consumer to want more than one supplier.

COMMISSIONER PEARSON: Is it fair to guess that your sole-source customers would be relatively smaller firms where the volume that they demand isn't so large that it becomes a difficulty supplying it?

MR. TISSINGTON: Over the POI, we have had customers of significant volume that have been sole-sourced with us.

COMMISSIONER PEARSON: Okay. And, obviously, you would like some more of those.

MR. TISSINGTON: Absolutely.

COMMISSIONER PEARSON: Perhaps, again for you, Mr. Tissington, could you comment on the allegation that U. S. Magnesium, after emerging from bankruptcy and with expanded plant capacity, that the firm was a leader in pushing prices lower as you sought to maintain and rebuild market share? Were you a price leader on the down side is what I'm wondering?

MR. TISSINGTON: Well, obviously, I am going

to answer no. I think one of the proofs of that is when we were unable to sell all of our metal on the domestic market, we had to go overseas to sell a significant portion of material. That is not usually the way a supplier would behave if they were able to lead prices down and capture all the volume in the domestic market that they wanted.

COMMISSIONER PEARSON: Mr. Chairman, I have no further questions at this point, thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner. I have a few.

First, Mr. Legge, and I wish I knew the answer to this but I don't, on any given electrolytic cell, do you produce both pure and alloy magnesium?

MR. LEGGE: The point at which we differentiate between the magnesium going to a pure or an alloy product is in the cast house department. So, at that juncture, when the metal is coming off the cells, we don't target a product. Once it enters the cast house, we can then decide which way that metal will go, whether it goes to an alloy product or a pure product.

MR. DORN: Mr. Chairman, as I understand it, depending on how you divide it up, there might be 10 to 12 steps to produce magnesium and all those steps

are common to pure and alloy. It is only the very, very last step where you have got this molten pure magnesium. You either cast it that way, or you add a little bit of alloying elements to make it into alloy.

It is only at that very last step that you would distinguish between pure and alloy. Otherwise, the process is exactly the same.

MR. BUTTON: Commissioner, just to make it real clear. What comes out of the electrolytic cell is liquid pure magnesium. All primary alloy magnesium from U. S. Magnesium starts that way, as does all pure magnesium. It gets to the cast house as liquid molten pure magnesium; and it is either cast as pure that way or a little aluminum and zinc is added and it is cast as alloy.

CHAIRMAN KOPLAN: Thank you. You have provided the percentages of your sales that were under contract for more than one year, which you term long term; and the percentage for a year or less, which you have termed short term, and the percentage that was spot. All of those percentages are actually business proprietary.

My question is: Are a contract's short term versus long term, or spot, different for die casters and aluminum alloyers?

MR. TISSINGTON: I am not sure that I understand the question, sir.

CHAIRMAN KOPLAN: If you are selling to a die caster is that typically a short-term or a long-term contract; and if you are selling to an aluminum alloyer, the same question? Does long-term or short-term follow the nature of your particular customer?

MR. TISSINGTON: No.

CHAIRMAN KOPLAN: It does not, okay.

You said, I think, Mr. Tissington, that spot prices don't have an effect on your existing long-term or short-term contracts, right?

MR. TISSINGTON: Yes, there are a lot of things that go on from negotiation of those contracts in the fall of the year. And certainly the producer, and also the customer, were not unaware of those spot prices that are published in Platt's. So I can't say that we haven't looked at them and we are both aware what they are.

But there are a lot of other factors that go into that negotiation that take precedence, such as the amount of competitive material that is at any particular account.

CHAIRMAN KOPLAN: Let me ask you this: You talked about how the market reacted at each stage of

this proceeding when Commerce acted and we acted in a prelim. But with the filing of suit, wouldn't spot prices react quicker to things that happen at each stage of this proceeding than in an existing contract of the short-term or long-term? Don't you see the effect almost immediately with your spot prices?

MR. TISSINGTON: Certainly.

CHAIRMAN KOPLAN: Wouldn't that have an impact on the next, either year or more contract, or short-term contract? Wouldn't that start a trend?

MR. TISSINGTON: Well, the contracts, as we've said, negotiated in the fourth quarter of a year, so what really happens --

CHAIRMAN KOPLAN: I understand that but I'm saying: Let's say that Congress has gone affirmative in their preliminary determination. You have a reaction from the spot market. The following month, you are about to negotiate a new contract with somebody.

Wouldn't what the spot market's reaction had been have an effect on that future contract?

MR. TISSINGTON: The trend certainly would. It would be in the minds of both the producer and the customer, but not the actual number on that particular day.

CHAIRMAN KOPLAN: Okay. When I asked earlier why you used the 50-percent break point, Mr. Dorn, and why you didn't simply use 90-percent magnesium, and I asked that question because of your footnote where you said: In practice, virtually all alloy magnesium contains at least 90-percent magnesium.

You tagged that to the convenience of the HTS numbers. But when we look at like product and the six factors, the HTS numbers are not one of those factors. We are not bound by HTS numbers. In your brief, at page 9, I am seeing you saying at the conclusion of this paragraph I am looking at: The clear dividing lines, previously and reluctantly found by the Commission in previous cases, simply do not exist here.

I guess I am asking you again: If the clear dividing lines don't exist here, why couldn't you have simply used 90 percent as a break point, if we are not bound by HTS numbers and, historically, we are not bound by that.

MR. DORN: Well, I guess given our history of circumvention, I mean we got an anti-dumping order against pure ingot from China; and then they switched and started bringing in granular pure magnesium. We

had to bring a case against pure granular magnesium and then they started bringing in alloy magnesium and selling it into pure applications.

If we got an order that was restricted to 90-percent magnesium products, then I am sure we would see one that came in that had 89-percent magnesium. So there is a certain caution there. As a practical matter, I don't think it makes any difference because I don't think your record contains material, either on the import side or the domestic side, that is in that 50- to 90-percent range that we know of, but it can certainly happen if high duties went into effect against the dividing line at 90 percent.

CHAIRMAN KOPLAN: No, I hear what you are saying and I am not splitting hairs between 89 and 90. What I am saying is that: as a real-life matter, dropping all the way down to 50, I mean you could drop to 45 for that matter.

But that doesn't track what's going on, if your footnote is accurate, where you say virtually all alloy magnesium contains at least 90. You could have --

MR. TISSINGTON: Commercially.

CHAIRMAN KOPLAN: -- commercially moved that up substantially and you would have been covering what

we are looking at in this case, right, without circumvention.

MR. DORN: I think that is correct.

CHAIRMAN KOPLAN: Okay, thanks.

Mr. Tissington, you had stated earlier in answer to a question that I asked that you have sold alloy magnesium to customers who initially requested pure magnesium. Did you charge less for the alloy or more?

MR. TISSINGTON: I charged the same as what I would have charged for pure magnesium in that particular sale.

CHAIRMAN KOPLAN: You did? Okay. I think that is everything I have right now.

I want to thank you very much for your answers and I will turn to Commissioner Miller.

COMMISSIONER MILLER: Thank you, Mr. Chairman.

I want to ask a few questions about the possible changes in the U. S. industry that I found to be producing granular magnesium, and the 2001 investigation recognizing that Commissioner Hillman and I, when we decided that there were two like products, it is not worth your recommending to us, Mr.Dorn. But, in any event, I did that in the 2001

investigation and I want to understand again what is different?

I think what might be most useful for me in doing that is if I just ask you about a few of the companies that we found to be grinders in the last investigation; and what you, as industry participants, know regarding those companies? ESM, is ESM still producing granular magnesium? I think they are also --

MR. TISSINGTON: To the best of my knowledge, they are.

COMMISSIONER MILLER: Okay. Reade?

MR. TISSINGTON: Yes.

COMMISSIONER MILLER: And Rossborrough --

MR. TISSINGTON: Magnesium Technologies, yes.

COMMISSIONER MILLER: Rossborrough is --

MR. TISSINGTON: Is Magnesium Technologies.

COMMISSIONER MILLER: Rossborrough was acquired by Magnesium, or its name changed. I am not sure. But, as far as you know, the operations of those three companies are the same today as they were in 2001, what they do as producers?

MR. TISSINGTON: I couldn't comment on that. I really am not sure what their product line looks like any more, but I know that they still are in

operation to grind magnesium.

COMMISSIONER MILLER: Okay. Well, I have to figure out what to do with that.

Let me just clarify one other thing to make sure that I am clear on this. The scope of this case, with respect to the granular magnesium still is in this case?

MR. DORN: That's correct.

COMMISSIONER MILLER: Reagents?

MR. DORN: Are excluded.

COMMISSIONER MILLER: Are excluded as they were in the 2001 investigation, correct?

MR. DORN: That's correct.

COMMISSIONER MILLER: So, in terms of whether reagents are in or out, it is the same line of demarkation as in the previous investigation?

MR. DORN: That was our intention, yes.

COMMISSIONER MILLER: Okay. I don't believe I have any further questions at this point.

I appreciate all of your answers, thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you.

Dr. Button, if we can go back to where we left off last time again. I am just trying to make

sure that I understand how best to look at the data in terms of figuring out how significant a change this is. As I understand your testimony, you all are describing this as a change, that there had been producers that had basically used pure magnesium only, that have now started using alloy product for what you describe as pure applications.

I am just trying to make sure that I understand the best way to read our data in terms of helping me understand how significant this shift is. So where we left off, I am trying to understand whether, in your view, all of the aluminum, all of the purchases by aluminum alloyers of alloy product is, in fact, a shift. I mean had all of that been only pure in the past and is all of that now a shift?

MR. BUTTON: We will be happy to address this with detailed data from the confidential record in our brief. However, I would say, that to the extent that you can view the purchaser questionnaires and see that at the beginning of the POI, who are buying alloy, they aren't using any, and then they start using it, I would view that as a 100-percent shift.

To the extent that there exist some customers that had in the past, at some point, used

secondary magnesium alloy produced by one of the domestic producers for such purpose, we understand that that is a very small number. But what you are facing here, with respect to those who had perhaps done that in the past who are now buying it from import sources, is a change in magnitude which makes a change in quality of kind. It is a major shift in the order of magnitude in the economics.

So I believe the data record will show that you are moving in a direction from essentially zero consumption, or a very small consumption of alloy in an aluminum production process, to a substantially expanded trend; the vector of this using both imported alloy and alloy provided by U.S. secondary producers.

COMMISSIONER MILLER: Okay.

MR. DORN: If I could just --

COMMISSIONER MILLER: Go ahead, Mr. Dorn.

MR. DORN: Could I just express one other point with regards to the significance of precedents in your prior records versus this record?

Since the prior cases only involved primary magnesium, an aluminum producer, for example, if they had been answering the purchaser's questionnaire, they would have only reported their purchases of primary magnesium. So when you were looking at this issue

before, to the extent that there had been somebody who was buying some secondary aluminum, that would not have been in the record.

What is new about this case is that you have that in the record. We can quantify it at this time; we could not quantify it previously.

COMMISSIONER MILLER: Okay. Mr. Dorn, your point is exactly -- I am just trying to make sure I understand sort of what the basis I am starting at, so that I can figure out the significance of this shift. Because, obviously, you all are describing this very significant.

I am sure that Mr. Leibowitz is going to tell us that no, no. These should be two separate-like products and that this issue kind of a minor issue at best, a small change. I am just trying to make sure that I understand and I would, Dr. Button, if you can, again, I understand that a lot of this is confidential data. But try to help me understand how you think it is the fairest way to look at what is, in fact, a shift that has occurred in terms of this blurring of the line between pure and alloy.

So alloy product that is being sold to what had in the past been a pure user. Again, how I best quantify that I think would be helpful information.

MR. BUTTON: We will help you to do so.

COMMISSIONER HILLMAN: Okay, thank you very much.

Actually, Mr. Dorn, your comment also raised another issue that I want just to get your comment on; and that is this issue of secondary magnesium. Because, obviously, one of the things is that Alcan is asserting that what is really going on in the market is the degree of magnesium recycling, creating a sort of threat for demand for primary magnesium.

I wondered if you could comment on what impact, if any, the trend in recycling of magnesium has had on: your production, your demand, the relationship between primary and secondary prices, or anything else on this issue of the increased recycling of magnesium?

MR. DORN: I think you have confidential evidence in the record from producers of secondary alloy. They talk about the same downward pressures caused by imports from Russia and China that U. S. Magnesium has complained about. They are complaining about the same price factors that we are.

COMMISSIONER HILLMAN: Okay. Again, then going back to this issue of these changes that have occurred over time. It is my understanding, and that

is partly from the Staff Report; and I understand, Mr. Tissington, your answer was a little bit different than what I anticipated, which was that: historically, alloy product had sold at lower prices than the pure product.

Again, assuming reflecting the fact that the alloys are cheaper to add than the pure magnesium is, but you are telling me that really is not what has happened historically?

MR. TISSINGTON: Well, I think you need to define the time period you look at. If you go back 20 years, you will see its cycleable directions. Sometimes alloys are higher priced, sometimes they are lower priced.

COMMISSIONER HILLMAN: Okay. What I guess I am trying to understand is: In the past, when alloy has been significantly lower in price than pure, I am assuming it did not cause the shift of the aluminum producers going to purchase alloy product in those times in the past when there was again much lower alloy product available. Is that right?

MR. TISSINGTON: Could I ask you to repeat the question. I am not sure if I understand --

COMMISSIONER HILLMAN: Your arguing that now in this investigation that there has been this big

shift of the aluminum alloyers purchasing alloy product when they used to purchase only pure and that they are doing it for price reasons, as I understand what the testimony is.

I am trying to understand, again, if 10 years ago, 15 years ago, alloy was also much lower in price than the pure product, did they switch then and, if not, why not?

MR. TISSINGTON: Well, I don't think an aluminum producer has a desire to buy an alloy product versus a pure product. I think the reason they choose to buy an alloy product is because the pure from China was no longer available; whereas, China could bring in the alloy products: ASTM, AM50A. The aluminum producers bought that material rather than the pure.

COMMISSIONER HILLMAN: And they bought it on price reasons?

MR. TISSINGTON: They have no inherent need for an alloy product to alloy with their aluminum. They are really looking for --

COMMISSIONER HILLMAN: Okay. So why aren't they buying more pure from you? That is what I am trying to understand.

MR. TISSINGTON: The alloy product from China is much cheaper.

COMMISSIONER HILLMAN: Okay, for price reasons.

All right, now, Dr. Button --

MR. BUTTON: Just to provide clarification on one point. Fundamentally, there is not a distinction between a pure versus an alloy price. The availability of magnesium units at a low price, and the fact is that the Chinese price for pure was very low, and the Chinese began to serve the U. S. aluminum producers. That was cut off.

What came in as the substitute was magnesium units from China in the form of alloy magnesium, which were lower than everybody else's pure and alloy. That gave them, the aluminum producers, the economic incentive to buy their product.

COMMISSIONER HILLMAN: Okay. The last question on this number of EPA issues that have gotten raised here.

Mr. Legge, in your testimony, you touched on it a little bit. But I just want to make sure how the EPA's emission standards for primary magnesium that I understand were issued in October 2003, effective October 2004, what impact they had on you?

MR. LEGGE: Well, when those were to be promulgated, we saw the standards coming down, so

everything that we did was focused on meeting the standards as they were promulgated.

Originally, that process started back in the mid-1990s. At that point in time, there were other magnesium producers that the regulators were surveying to determine what is called maximum-achievable control technology because it is a survey that the industry used it to see where the best standard is, the best practice.

At the point in time it was promulgated, there was only one left US Magnesium and we have achieved that, we meet those standards.

COMMISSIONER HILLMAN: Just so that I understand how they work. You need it because your M cells are more efficient, or is it a combination of sort of, I don't want to call it dirty, but your old cells have X amount and your M cells are Y, and the average is meeting some standard. Is that how it works?

MR. LEGGE: Actually, it combines and involves the whole plan.

COMMISSIONER HILLMAN: Okay.

MR. LEGGE: It considers emissions that are even up in the feed-preparation area.

COMMISSIONER HILLMAN: Okay. I appreciate

those answers. I have no further questions. Thank you very much.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Lane?

COMMISSIONER LANE: For clarification purposes necessitated by Chairman Koplan's questions. Chairman Koplan talked about long-term contracts and short-term contracts.

Mr. Tissington, would you explain to me so that we are clear as to what the differences are between a long-term contract and a short-term contract?

MR. TISSINGTON: I think the definition is in the questionnaire. I think the short-term contract was defined as a year, or less than a year; and long-term was defined as greater than a year. So that is the way we answered the questionnaire.

COMMISSIONER LANE: Okay, thank you.

Secondly, in response, Mr.Dorn, to Chairman Koplan's question about the HTS, you said: because of our history of circumvention. Who is the "our" in that statement?

MR. DORN: U. S. Magnesium has suffered the consequences of circumvention of the prior orders by the Chinese and that is what I was referring to.

COMMISSIONER LANE: Okay. You didn't mean that you were circumventing?

MR. DORN: No, ma'am.

COMMISSIONER LANE: I just wanted to clarify the record on that.

MR. DORN: I appreciate that.

COMMISSIONER LANE: Thank you. That is all the questions I have.

CHAIRMAN KOPLAN: Thank you for helping me out, Commissioner.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman. I just want to express my appreciation to the panel. This has been very interesting. I have no further questions.

CHAIRMAN KOPLAN: Thank you. I do have two very brief things.

First, Mr. Tissington, I am struggling a little bit with this, so I am going to ask you if you could document that transaction we talked about. I am not clear, frankly, why you provided alloy rather than pure to that customer if price was the same for either; and the manufacturer of pure versus alloy, as I understand it, is only in what is described the final, or twelfth step.

So I am just curious as to the circumstances of that one and if you could provide that post-hearing, I would appreciate it; and I would also ask you if that is the only time, just that one transaction, during the period that we are looking at, or are there others?

MR. TISSINGTON: I will be happy to respond in a post-hearing brief.

CHAIRMAN KOPLAN: Okay. If there were others during period, if you could provide that as well with documentation.

And then this is just for me as a clean-up. In your direct testimony, Mr. Legge, you mentioned that you had planned the $60 million investment project that would have increased your capacity from 43,000 metric tons a year to about 55,000, but then you weren't able to do it the way you planned because of difficulties. So you cut back and did 30 M cells in one building first, at a capital cost of $40 million. That is in your direct.

My question is simply: When you did the 30, how did that increase your capacity from the 43,000 metric tons that you talked about? What level did that bring you up to?

MR. LEGGE: When we stepped back and did just the

30 M cells in one building?

CHAIRMAN KOPLAN: Yes.

MR. LEGGE: Then that forced us to run a building of what we called sealed cells, or S cells, that were going to be decommissioned with the higher dollar cost expansion. So we had to back into those cells and run them; and then that set our production level, I believe it is at -- I think in the documents, we have indicated 39,000 metric electrolytic capacity.

CHAIRMAN KOPLAN: So you actually dropped. Your capacity went down from 43 to 39?

MR. LEGGE: Yes, because we took cells out of Buildings 2 and 3, decommissioned those, and never ran those again.

Also, I said in the direct testimony, we had to go back and spend $6 more million.

CHAIRMAN KOPLAN: Yes, you did.

MR. LEGGE: Because those cells were not satisfactory.

CHAIRMAN KOPLAN: Okay. You did mention that, I believe, in your direct.

MR. LEGGE: Yes.

MR. DORN: Mr. Chairman, there may be some confusion in talking about capacity in terms of whether we are talking about electrolytic ingot

capacity, or whether total capacity, which would include the ability to use scrap to make alloy magnesium from scrap.

Some of these numbers are confidential, but I think we have tried to be clear in the capacity numbers as to whether we are just talking about name-plate electrolytic capacity, or whether we are talking about practical capacity that includes the ability to recycle some scrap in making alloy magnesium.

CHAIRMAN KOPLAN: Okay. If you could spell that out in a little bit more detail for me in the post-hearing. I understand what you are saying but it would be helpful.

MR. DORN: We will do that, thank you.

CHAIRMAN KOPLAN: Thank you. I have no further questions. I appreciate all your answers to our questions.

Let me see if there are any other questions from the dais. It appears that there are none.

I will turn to Mr. Deyman and ask Mr. Deyman if the Staff had questions of this panel before I release them?

MR. DEYMAN: The Staff has no questions.

CHAIRMAN KOPLAN: Thank you, Mr. Deyman.

Mr. Leibowitz, before we release the panel,

do you have any questions?

MR. LEIBOWITZ: No questions on behalf of Alcoa, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you.

MR. LEIBOWITZ: No questions from respondents.

CHAIRMAN KOPLAN: No questions from respondents.

Well with that, that concludes our morning session. We will take a one-hour break for lunch. I would advise you that that gets us back at ten past one. I would advise you to take any materials that have business-proprietary information in them with because the room is not secure.

With that, I will see you all back here at ten after one. Madam Secretary, have the witnesses been sworn?

MS. ABBOTT: Yes, Mr. Chairman, and the panel is seated.

CHAIRMAN KOPLAN: Thank you.

Mr. Leibowitz, you may proceed.

MR. LEIBOWITZ: Thank you, Mr. Chairman.

We will defer to Mr. Fazzone and the die cast witnesses.

MR. FAZZONE: Thank you very much,

Mr. Chairman. Patrick Fazzone from the law firm of Tighe Patton Armstrong Teasdale. I represent a panel of members of the U.S. die casting industry. With me today is David Norell from the firm of Kirkland & Ellis, who represents one of the die casters represented here, Lunt Manufacturing.

We are going to proceed now with testimony from Mr. Arh, Director of Strategic Planning at Meridian Technologies, Inc.

CHAIRMAN KOPLAN: Good afternoon.

MR. ARH: Good afternoon. My name is Paul Arh and I'm the Director of Strategic Planning for Meridian Technologies, Inc. I have been with the company for over eight years and before that I worked at Alcan Aluminum for 15 years.

With me today is Kris Pfaehler, who is Meridian's Vice President of Business Development & Marketing.

Meridian is the largest supplier of magnesium die castings to the global automotive industry. We have plants in the United States, Canada, Europe and Asia and our centralized purchasing department in Canada sources magnesium for all of our operations worldwide.

Our U.S. manufacturing facility is Magnesium

Products of America, which is located in Eaton Rapids, Michigan. This plant directly employees over 380 people, making it one of the largest employers in the area. If we include all of the jobs that this facility supports, we would count them in the thousands. All together, Magnesium Products of America pumps more than $75 million into the economics of Michigan and adjoining states.

We are greatly perplexed by the actions taken by U.S. Magnesium. The magnesium die casting industry is just now starting to development momentum but this antidumping case could derail the efforts of U.S. die casters to benefit from this promising development. If American die casters cannot obtain sufficient quantities of alloy magnesium, then our industry will suffer and the auto industry's drive to improve fuel economy performance will be affected. In fact, we understand that U.S. Magnesium primarily produces magnesium in its non-alloy or pure form for use in the steel and aluminum industries. Our customers specify the alloy grades that we must use for their die cast products and we simply cannot substitute pure magnesium for alloy magnesium in our applications.

Let's just look at a couple of facts.

In 2004, the market for alloy magnesium used by the die casting industry in the United States was approximately 64,000 metric tons. According to U.S. Magnesium's website, their current production capability for both pure and alloy magnesium is 43,000 metric tons. Obviously, they do not have the capability to meet the die casting industry's requirements, much less the overall demand for the United States.

I would like to provide some purchasing history for our Eaton Rapids facility. In 2002, we did not buy any product from U.S. Magnesium. Since then, however, we have increased our purchases from them to over 5,500,000 pounds in 2004. That's almost 2,500 metric tons and it represents more than 20 percent of our annual requirement. The balance of our purchases are obtained from other U.S. and Canadian sources.

Due to the size of our purchases, it is not possible for Meridian to rely on only one supplier, nor would it make good business sense. The recent fire at Amacor is a good example of how easily a company can be affected by unforeseen events. Given the demands of our customers in the automotive industry, we must have multiple sources in order to

ensure an uninterrupted supply of magnesium for our operations.

The actions taken by U.S. Magnesium are self-defeating and have created tight supplies in the United States. Other sources, whether domestic or foreign, cannot meet the shortfall created by reduced Chinese and Russian supply. At the same time that U.S. Magnesium has complained about imports, the prices for alloy magnesium have been increasing in the U.S. Because magnesium is in competition with aluminum and to a lesser extent steel, these disruptions in magnesium supply and increasing costs will eliminate the business case for the use of magnesium castings by our automotive customers in the United States. Since these customers are price sensitive, they will simply stop buying our product.

In order to counter this eventuality, Meridian will have little choice but to shift production to Canada, thereby reducing or eliminating purchases from U.S. Magnesium for our Michigan facility. In effect, the result will be to force Meridian to place greater reliance on metal from China and Russia, the very countries U.S. Magnesium says is hurting the industry in the United States.

In addition, we believe that many more

magnesium die casters currently operating in the United States will move overseas or will lose sales to imported die castings, resulting in lost jobs and revenue in the United States.

Before this antidumping case, our industry was growing and had a promising future. Automotive companies have been exploring more and more applications for magnesium parts which offer real advantages in weight reduction and in fuel economy. However, the actions taken by U.S. Magnesium will have a negative effect on the American die casting industry.

For these reasons, I strongly urge the commission to terminate this case.

Thank you.

MR. ROELS: Good afternoon. My name is Ed Roels. I'm the Chief Financial Officer of Lunt Manufacturing Company, Inc. I'm also in charge of metal purchasing for our company, a responsibility that I've had for 13 years.

Lunt is one of the largest magnesium die casters in the United States and one of the largest in the world. We serve the automotive, power tool and bicycle and electronic industries. Currently, we employ approximately 500 people at two plants in

Illinois. Lunt casts only magnesium.

I am testifying here today because we are concerned that eliminating Russia and China as potential suppliers of magnesium alloy will jeopardize our company, our jobs in the United States and the entire magnesium die casting industry in the United States.

I would like to make five points to explain those concerns. I will then be available for questions you might have.

First, U.S. Magnesium historically has not been able to supply all the magnesium alloy that Lunt needs in order to meet the requirements of our customers. Our largest customer, in fact, the industry's largest customer, General Motors, did not qualify U.S. Magnesium for use until just recently. Their inability to receive qualification was a limitation in selecting them for supply. We therefore were compelled to purchase from others or, at the very least, limit the quantities we purchased from U.S. Magnesium.

Further, for specific alloys needed in the growth sector of the market, creep-resistant alloys, U.S. Magnesium has chosen not to supply. In fact, U.S. Magnesium asked that we seek another supplier in

lieu of them.

Second, the experience we have had with other U.S. and Canadian suppliers of the magnesium alloy has taught us to become dependent on any one producer, such as U.S. Magnesium, as virtually our only source of raw material is dangerous. Consider the following supply issues we've had to cope with:

1998: Contract termination. Dow declares force majeure in the middle of a contract and we had to seek an alternative supplier.

2001: Contract suspension. Northwest Alloy stops selling die cast and asks to terminate our contract early.

2001-2002: Supplier bankruptcy, U.S. Magnesium or MagCorp at the time.

2002-2003: Supplier reorganization, asset sale and write-off. Xstrata writes off their $20 million investment, sells their assets to newly-formed Amacor at a substantial loss.

2003: Supplier fire. Garfield Alloys burns down December 2003.

2005: January 2005, Amacor arson fire destroys warehouse. Expected shutdown three to six months.

1980s: AMAX, which is the former company

before MagCorp, before U.S. Magnesium, suffers a flood, supply was in jeopardy.

Also jumping backwards datewise, in 2001-2003, Noranda opens a plant and then shuts down within 24 months.

I'm going to jump to a side point here. This ties into the Petitioners' data. One key point that is, I think, lost here is Noranda's effect on the marketplace. If you look at the Petitioners' data in their graph, U.S. dealers import price, the price begins to fall when Noranda comes to the marketplace. The price also begins to firm in the first quarter of 2003, when Noranda leaves. So I think that's something that maybe is being missed from the testimony here today.

Moving on to my testimony, today, if supplies from U.S. Magnesium were disrupted for even a short period, North Hydro in Canada and Dead Sea Magnesium in Israel, the only other sources of magnesium other than from China and Russia, would not be able to meet our needs.

It is for the above reasons a wide diversity of supply is so very important. I would be remiss in my obligations if I purchased from only one supplier.

Third, our obligations to our customers

require us to maintain alternative sources of magnesium alloy. The process of developing a product with a customer creates a long-term obligation for the die caster. The customer has to have confidence that the die caster will be able to obtain sufficient magnesium alloy as a raw material over the anticipated life of the product. Convincing customers and then ensuring that we are in a position to fulfill those obligations means that we must have more than one supplier of magnesium alloy.

We have purchased substantial amounts of magnesium alloy in the past from U.S. Magnesium and expect to continue to do so, but we also need to be able to rely on alternative suppliers. Russia and China have filled that role in the past and there are not enough alternative suppliers for Lunt and the die casting industry without Russia and China. China alone supplies two-thirds of the world's magnesium requirements.

Fourth, U.S. Magnesium provides virtually no technical support or product alloy development. Our customers require more technical support than U.S. Magnesium has chosen to supply. As I mentioned earlier, U.S. Magnesium has chosen not to supply creep-resistent alloys, nor participate in their

development. U.S. Magnesium was the only major producer not to participate in the U.S. car program funded by the U.S. Government to develop creep-resistant alloys for more fuel efficient automobiles.

Fifth, the price that U.S. Magnesium is currently demanding, above $1.50 a pound for magnesium alloy, is at a level that will damage the die cast industry in the United States and undoubtedly cause a loss of jobs and business to other countries. Magnesium is our largest cost. Its cost component ranges from 23 percent to 50 percent of our selling price. The price increases to above $1.50, which is about a 36 percent increase in cost, will force our customers to reconsider the use of magnesium products.

In addition to hurting our position with customers, U.S. Magnesium prices will place domestic die casters at a severe economic disadvantage versus foreign die casters, some of whom are only 400 miles away from our facilities in Illinois. Die casters in Canada and Mexico, as well as other countries, will be able to obtain their magnesium alloy at competitive world market prices. As a result, die casters in those countries will begin taking away our business. The fact that the dies used by the die casters are

owned by the customers will make us especially vulnerable to such foreign competition.

In order to survive and compete effectively, the U.S. die casting companies will be forced to move their operations and jobs overseas. The ultimate effect will be to severely injure our industry in the United States and cause the loss of more U.S. jobs. Unfortunately, this is already starting to occur.

In October 2004, Lunt signed a joint venture contract to supply our customers with parts that used to be made in the United States but now are going to be made elsewhere and imported here. Our initial plans call for three machines to be transferred from our facilities in Illinois to another country where metal is not affected by this trade inquiry. We would prefer, however, to keep those machines and jobs here in the United States. I can only say that we are not alone. In planning the movements of the machines abroad, I asked a logistics contractor whether he had moved die cast machines before. He answered, "You," Lunt, "are not the only ones doing this. Currently, I have 50 die cast machines in Houston for shipment to India and China." He told me in all his years he has never seen anything like this.

So this trade case is a clear and present

danger to the viability of the magnesium die casters in the United States and to its employees. I respectfully ask the commission to consider these facts in making its decision.

MR. FERGUSON: Good afternoon. My name is Kevin Ferguson. I am the Administrative Director for Gibbs Die Casting. I am responsible for purchasing metal raw materials, including magnesium, for Gibbs' operations in North America. I have over ten years experience purchasing magnesium and analyzing the world magnesium market. Founded in 1966, Gibbs has grown into one of the largest suppliers of aluminum and magnesium die castings in the U.S. We have two U.S. manufacturing locations, one located in Texas and the other is at our headquarters in Kentucky.

Gibbs has worked on expanding its Texas plant to provide aluminum and magnesium castings to customers in Mexico. Gibbs North America employs over 1600 employees in the U.S. in its two manufacturing facilities. We specialize in manufacturing custom die castings such as compressor components, transmission component applications, and magnesium steering wheels.

Gibbs is the largest custom die cast supplier of magnesium steering wheels in the world. Our quality ratings include QS900, Ford Q1, GM Mark of

Excellence, Chrysler Pentastar and Eaton Quality 1 Registration. Magnesium alloy offers an excellent combination of lightweight, ease of manufacturing and good engineering properties necessary for crash management programs.

Gibbs does not purchase any pure magnesium because it cannot be used for die casting purposes. Gibbs purchases magnesium alloy from a variety of different sources. This diversification is important to ensure that delivery is not interrupted by unforeseen circumstances with a single supplier. The most important factors in our magnesium purchases are availability, price and the quality.

As with all of our incoming raw materials and supplies, my preference is for a domestic supply and provide good price, good quality and on-time delivery. In fact, we buy much of our MOR and raw material supply from suppliers within a 100-mile radius of our plant in Kentucky. However, with the constant pressure for reduced costs, our cost reduction activities from our customer base, we must ask that suppliers be competitive in all ways so that we can remain in business. U.S. Magnesium is the only available domestic supplier producer of magnesium. We have purchased magnesium alloy in limited quantities

from them due to commercial issues, including delivery, price and availability.

Most recently, after filing this case, U.S. Magnesium raised their prices from $1.07 to $1.53 and ultimately refused to supply us with any additional metal regardless of price. Even before this most recent refusal to supply, we have been unable to rely on U.S. Magnesium as our sole or even majority magnesium alloy provider. In our experience, U.S. Magnesium has had problems with supply and delivery. A number of these problems stem from their bankruptcy. As a result of the bankruptcy, U.S. Magnesium had to process all incoming checks and subsequent payments through a third-party administrator. Due to an error by the administrator regarding a receipt of payment, U.S. Magnesium withheld remaining scheduled shipments to Gibbs until payment was received. Rescheduling replacement loads for customer orders was extremely difficult and almost shut down our largest customer.

I buy millions of pounds of magnesium and aluminum per year and no other suppliers have caused similar problems.

As a result, I cannot rely on U.S. Magnesium as a dependable supplier because of the actual and potential effect of its practices on our customers.

Our primary customers are tier 1 to the automotive manufacturers. The automotive manufacturers ask for annual cost reductions, despite the increase in magnesium prices and other operating cost factors. Our customers are expected to absorb increases while at the same time providing cost reductions. Instead, our customers demand decreases from us in prices and this year, once again, our sales team had the nearly impossible task of convincing our customers that there was nothing we could do to reduce the cost of magnesium content of their product.

If increased duties prevent me from buying competitive priced magnesium alloy, our customers will replace our product with lower cost product. Our customers are already looking into buying finished product from die casters outside of the United States that can import and use lower priced foreign source material.

If we lose significant customers to overseas manufacturers, we will go out of business. In effect, only the U.S. die caster will lose business while the Chinese and Russian magnesium targeted by this investigation will still enter this market in the very same quantities in the form of finished products. The only difference will be the elimination of the need of

hundreds of honest, hardworking and skilled U.S. die cast workers.

Another direct result of increased import duties on magnesium alloy is that the U.S. die casters' only option may be to move its operation overseas, where it can buy and process foreign magnesium at lower prices. This will inevitably also result in the loss of jobs. Again, the end result will be the import of finished products which are sold to customers at lower prices. None of this will help U.S. Magnesium.

For these reasons, we respectfully urge this commission not to find for the Petitioner in this case.

Thank you for the opportunity to appear here today. I will be pleased to respond to your questions.

MR. HUNKINS: Good afternoon. My name is John Hunkins. I am the Director of Materials at Spartan Light Metal Products. I have six years experience in purchasing magnesium alloys for our company and I am responsible for all magnesium alloy purchases for our company.

With me today is Michael Sparks, Executive Vice President of Sales and Marketing, who after 32

years in die casting, is well versed in market trends in our industry.

Spartan Light Metal Products is a family-owned manufacturing company specializing in medium-size, high pressure die cast aluminum and magnesium products for the automotive, OEM and other industries. We have manufacturing operations in two midwest locations, one in Illinois and one in Missouri. Our company employs over 800 associates in our combined locations and makes a major contribution to the local economy in both places.

Spartan has been in business since 1961 and is known for its engineering solutions and technical competencies. In 1978, Spartan introduced the first successful commercial die casting of magnesium in North America. We were the recipient of the Ford Motor Company 2003 Silver World Excellence Award and have been recognized by Honda, Toyota and General Motors for our quality and delivery excellence.

We are proud to have been able to grow high value manufacturing jobs in the United States and compete in global markets.

Spartan Light Metal Products does not purchase any pure magnesium ingot. The die casting process requires an alloy made from a chemical blend

to enhance the flow and strength of the material.

Spartan purchases magnesium alloy from a variety of suppliers. We do this to maintain a healthy and diverse supply base with an assortment of suppliers with R&D capability and those commodity suppliers. Given the requirements of our automotive customers, we simply must have multiple sources of supply to avoid supply disruptions. This purchase policy allows us to maintain excellent engineering development capability and competitive metal prices.

U.S. Magnesium Corporation is one of our suppliers and we have engaged in business with them for many years. Although they are neither an R&D supplier nor a lower price commodity supplier, they are the sole U.S. producer. As such, we have sourced magnesium alloy from them every year until this year. We have not relied on them for significant portions of our business, partially due to their continuing financial problems that could interrupt our production plans and customer deliveries.

Our suppliers, along with our own remelt facility must be and are all qualified and approved by the big three automotives. The testing and process control required for this accreditation has been a significant barrier to Chinese magnesium

alloy producers which have been attempting to gain recognition for several years. Corrosion from contaminants has been the primary concern which impacts durability and strength performance.

The magnesium die casting industry has grown and applications have increased, though not at the rate that had been predicted. In the U.S., the soft economy that characterized the end of the 1990s and continued into 2003 resulted in a relaxing of CAFE laws by the U.S. Government to assist auto makers. In addition, periods of low petroleum prices have resulted in heavier than expected vehicles which until recently kept the car consumer market demand more focused on comfort and size than on mileage.

In our view, the petition for antidumping duties on imports from Russia and China is an inappropriate response to a recent condition in the U.S. market. Frankly, the Russian producers have been providing metal for years along with the other western producers. Compared to other producers, they are small. Russian producers do not pull scrap metal, nor do they offer any domestic platform for research and development, which is extremely important and valuable to magnesium die casters. We have purchased a limited amount of their material.

The Chinese are somewhat of an unknown. Quality issues and negative perceptions of delivery liability along with no accreditation of U.S. automotives for Chinese magnesium alloys have kept them a very small player in the die cast alloys. To date, Spartan has never had a contract with a Chinese magnesium producer because we have not been able to certify their quality for supplying the products we manufacture.

The history of magnesium pricing has shown itself to be much more a function of supply management than of dumping into the market. With the recent shakeouts, pricing has begun to strengthen. Prices will continue to strengthen without the commission's intervention and the ensuing byproduct of an artificial shortage that would result from the elimination of the Russian and Chinese supply.

The impact on Spartan if antidumping duties are imposed would be very detrimental to our business model. The result would be very likely to be loss of our U.S. production and therefore jobs at our plants. Specifically, we will be unable to pass magnesium price increases on to our customers. This may force us to seek alternative locations to die cast our magnesium products outside our borders.

Secondly, if magnesium costs increase, our customers may be forced to find alternate materials such as composites, steel or aluminum to reduce costs.

Third, the use of alternate materials would involve reengineering. The new materials selection would remain for the life of the product cycle, often five to ten years. This would have a major impact on magnesium alloy demand.

Fourth, the OEM may elect to purchase the finished product from non-U.S. producers, since the cost increase in raw material may exceed the landed cost of importing.

Fifth, future OEM product designers would most certainly think twice before using magnesium, impacting our business indefinitely.

Finally, with reduction in magnesium usage, our North American vehicles will weigh more, consume more gas, and perform less efficiently.

For these reasons, we at Spartan urge the commission to reach a negative injury determination in this proceeding.

Thank you for the opportunity to appear before the commission today.

MR. LEIBOWITZ: Mr. Chairman, this is Lewis Leibowitz, counsel for Alcoa Northwest Alloys.

We will move from the die cast portion of the presentation now to aluminum producers and we'll just proceed right along, if we may.

CHAIRMAN KOPLAN: I'm not sure if I'm having the same problem with that mic. Could you try the one that's to your right?

MR. LEIBOWITZ: Certainly. Is this better?

CHAIRMAN KOPLAN: Yes.

MR. LEIBOWITZ: Oh, my goodness. That's an understatement.

I won't repeat my name, I hope the court reporter got it.

Alcoa is the world's largest consumer of magnesium, which is a critical alloying element in making certain widely used types of aluminum products, including but certainly not limited to the ubiquitous aluminum beverage can.

Petitioners have missed several essential points in this case and have misstated others. We are going to try to address some of that through our testimony and through your questions and our answers.

Appearing with me today are Robert McHale to my left from Alcoa Materials Management, one of the principal purchasers of magnesium for the company; Elizabeth Fessenden to my right, currently President

of Alcoa Flexible Packaging, but formerly responsible for Northwest Alloys.

I am also joined here today by Michael Scott, International Counsel for Alcoa; Dr. Paul Stern, Chief Executive of the Stern Group; and my colleague, Lynn Kamarck, and our economic consultant, Andrew Szamosszegi from LECG.

Bob McHale is going to provide Alcoa's perspective about this case and its infirmities as seen from a global consumer of magnesium; Ms. Fessenden will discuss the decision to close Northwest Alloys; and, time permitting in our piece of this presentation, I will talk about three legal and policy issues in this case, but if time doesn't permit, we will be glad to deal with those in the questions and answers.

First, I would like to turn it over to Bob McHale.

MR. MCHALE: Good afternoon. I am Robert McHale, Vice President of Alcoa Materials Management, in charge of purchasing metal for use as raw materials for Alcoa in North America. In this posture, I have 17 years of experience in purchasing magnesium and analyzing the market for magnesium around the world. Alcoa is the world's largest purchaser of magnesium.

I would like to explain why the commission should not find that any injury to the domestic magnesium producers is due to imports.

There is a need for imports. First, domestic production of magnesium is substantially less than domestic demand. As a result, U.S. Magnesium is unable to supply all the magnesium necessary to meet domestic demand. Therefore, Alcoa must purchase magnesium from other countries. Alcoa needs reliable suppliers of magnesium at globally competitive prices.

U.S. Magnesium is a major supplier to Alcoa, but U.S. Magnesium does not, in my considered opinion, have sufficient capacity to supply significantly more to Alcoa than it already does.

The difference between Alcoa's needs and U.S. Magnesium's capabilities can only be made up by imports, of which subject imports are an important part. Additionally, Alcoa needs more than one source of supply. This need was brought home to us a couple of years ago when U.S. Magnesium's capacity was cut due to their bankruptcy and the replacement of electrolytic cells. In addition, magnesium production is prone to disastrous fires, for example, the recent fire at Amacor. For these reasons, it is simply too risky for Alcoa to rely solely on one source of

magnesium, thus, imports must be a part of the supply picture.

Pricing. Prices are driven by demand. Current prices and future contract prices with which I am very familiar indicate that demand is likely to remain very healthy. While we are obviously interested in obtaining competitive prices, there are other factors. As noted above, we are unwilling to make all our purchases from one supplier. As a result, we have placed contracts with higher priced suppliers to secure multiple supply sources.

Another factor is transportation logistics. For example, U.S. Magnesium cannot effectively supply Alcoa's Warrick, Indiana facility. As a result, we have had to turn to import suppliers to supply Warrick needs, even though imports are priced higher than products sourced from U.S. Magnesium.

Pure and alloy magnesium are separate like products. Alcoa uses pure magnesium. We view pure and alloy magnesium as separate products because we can use pure and we cannot use alloy. Alloy magnesium is generally unacceptable for Alcoa's purposes unless it is free of intentionally added beryllium or any beryllium concentrations of 1 part per million or more. We have very good reason for not accepting any

magnesium that is not beryllium-free. The processing of magnesium products containing beryllium could cause Alcoa's workers unacceptable health risks. Aluminum alloys that are not beryllium-free are not used by Alcoa in food and drug related applications where much of our production is used. We stand by these requirements and believe they are necessary for the responsible production of aluminum products. To us, therefore, there can be no compromise to these standards.

While Alcoa has purchased beryllium-free aluminum AM50A from China, we have not purchased it from any domestic source. It is doubtful whether Alcoa will be purchasing alloy magnesium from China in the future. The specifications for AM50A alloy magnesium recently have been changed by the ASTM. It now specifies a minimum beryllium content of .008 percent. As a result, AM50A alloy magnesium is no longer beryllium-free.

In conclusion, the current antidumping investigation on magnesium from Russia and China are profoundly disturbing to Alcoa. Antidumping duties, especially on Russian product, will harm our U.S. operations by making our U.S. plants less globally competitive.

This case comes on the heels of significant tightening in the market, rising prices and increased capacity utilization. Moreover, this action threatens a major source of our supply which would damage Alcoa substantially. Because we cannot accept a sole source of supply, the imposition of antidumping duties would lead us to explore ways to keep our global competitive position intact, either to shift the production outside the U.S. or take other steps to maintain reasonable access to world competitive magnesium supplies.

Thank you for the opportunity to appear before you today. I will be pleased to respond to your questions.

MS. FESSENDEN: Good afternoon. My name is Elizabeth Fessenden. My current position is President of Alcoa Flexible Packaging. We produce printed and laminated structures used in food and drug packaging applications. I have been in this position for about three years, but previously I was President of Alcoa Primary Metals Allied Businesses and in that position one of the businesses reporting to me was Northwest Alloys.

Northwest Alloys and Alcoa opposed the antidumping investigation on magnesium in 2001 and we

also oppose the current antidumping petition. At Alcoa, we know U.S. Magnesium well and we do not think that imports of the subject merchandise are causing material injury to U.S. Magnesium.

As a former producer of magnesium in the United States, we feel that we are particularly well qualified to make such an assessment.

I want to emphasize that the decision to cease production at Northwest Alloys in 2001 was based on Northwest Alloys' high costs. It had nothing to do with dumped imports.

Northwest Alloys also participated in the commission's proceeding involving pure magnesium from China and Israel in 2001 and in that proceeding Northwest Alloys submitted extensive information documenting the reasons for closing our plant which was in Addy, Washington.

Northwest Alloys demonstrated that its facility was not cost competitive due to high energy costs, a costly production process and non-competitive raw materials. The production process is what made it a high-cost facility. Magnesium ingot was produced using a silicothermic process in which magnesium-bearing dolomite mined right there from an open pit was the principal feed material. The process

involved higher cost raw materials than most magnesium production plants in the world. It's a batch process rather than a continuous process, it required extensive reductants, ferrosilicant and aluminum, and the final processing required added costs to remelt the magnesium.

Late in 2000, Alcoa prepared an internal estimate of relative costs of magnesium production plants around the world and in this study we estimated each plant's cost of labor, energy, capital equipment, raw materials, overhead and other factors of production. The analysis indicated that Northwest Alloys was among the highest cost producers of magnesium in the world and that we could not feasibly be competitive through any internal investment in the facility. Alcoa made its decision to cease the production in large part based on this analysis.

A press release was issued at the time of the closure. We indicated that the closure was due to high product costs and unfavorable market conditions. I've just discussed what the high costs were. The unfavorable market conditions at issue included low magnesium prices at the time and recognition that Northwest Alloys could not be profitable based on the presence of lower cost facilities elsewhere in the

world. However, unfavorable market conditions did not equate to unfairly traded imports. Indeed, in our questionnaire in both 2001 and the current investigation we made it clear that unfairly traded imports were not the cause of any negative effects on the return of investment or growth for Northwest Alloys.

Thanks for your time.

MR. LEIBOWITZ: Mr. Chairman, I invite your legal questions during the question and answer period. I would like to transfer the microphone, such as it is, to our colleagues from Alcan.

MR. SHAPIRO: Good afternoon. My name is Robert Shapiro. I'm with Barnes, Richardson & Colburn. We represent Alcan Corporation and the recently formed spinoff Novelis Corporation.

With me today to my left is Alain Dery from Alcan. He is in charge of all procurement of all alloying components for Alcan. To my right is Sung Huh with Novelis Corporation. He has a similar role with that company. Prior to the recent divestiture, these two individuals worked together in acquiring all of the magnesium that was required by Alcan.

I'll now turn it over to Alain.

MR. DERY: Good afternoon. Robert already

introduced me, as well as my colleague, Sung Huh. Together, Alcan Corporation and Novelis are among the largest aluminum producers in the United States. In 2005, we will buy nearly 11,000 metric tons of magnesium to supply our U.S. plants.

U.S. Magnesium is the only domestic source of pure magnesium. U.S. Magnesium has recovered from its previous bankruptcy and appears to be resolving its outstanding environmental disputes. At the same time, prices for magnesium are on the rise. Under these conditions, it is difficult to understand how the U.S. industry can be injured. Alcan is concerned that U.S. Magnesium is using this remedy action as a means of further monopolizing the U.S. industry and to drive up prices to unreasonable levels. We urge the commission to make a negative determination in this investigation.

Magnesium is essential in the production of many aluminum alloys. Pure magnesium is the preferred source of this aluminum because of the ease at which it can be used to calibrate the alloy in the absence of other elements that may be incompatible with the alloy being produced or harmful to the workers producing such alloy or the environment.

We generally purchase magnesium under annual

contracts. In the past, MagCorp, the predecessor of U.S. Magnesium, was a major supplier of Alcan's magnesium needs. Our confidence in MagCorp, however, was shaken by the bankruptcy and threat of crippling environmental litigation. As a result, we were forced to curtail our purchases from U.S. Magnesium.

Due to the long-term nature of the purchasing decision, the effect of the MagCorp bankruptcy extended well beyond 2001, the year emphasized in the petition, into the early part of 2003. Indeed, from our perspective, the bankruptcy has a greater impact on our dealings with U.S. Magnesium in 2002 than any other factor. Even once U.S. Magnesium has apparently weathered the bankruptcy, there was a significant delay in their returning to reliability as they expressed difficulties in meeting our needs.

U.S. Magnesium's problems appear to be finally behind them. In late 2003, Alcan was able to negotiate a long-term contract with U.S. Magnesium and to rely on them for a large portion of its 2004 purchases. For 2005, Alcan negotiated its largest contract in five years with U.S. Magnesium. An unhappy occurrence for Alcan that must be quite fortunate for U.S. Magnesium is that they have

returned to reliability, prices have increased significantly.

In 2002, Alcan was able to purchase magnesium at an average price below $1.00 a pound. In 2003, as we were negotiating our contracts for 2004, prices had increased between $1.05 and $1.30 a pound. Prices for 2005 are at an average of approximately $1.35 a pound and we expect those prices to hold.

Regardless of the reliability of U.S. Magnesium, Alcan corporate policy is to maintain a diversified supplier base and to avoid becoming overly reliant or dependent on any single supplier. Alcan has experienced supply interrupt in the past and we do not intend to suffer that again.

Additionally, aluminum is a major sustainable resource. Alcan prides itself on continual development of technology for the use of recycled material in the production of its own aluminum products. Alcan has invested significantly in the development of secondary magnesium as a source of material for its aluminum production activities.

Alcan is so committed to developing this new domestic source of magnesium that it has been willing to pay a premium. The development of secondary magnesium as a source material has had a dramatic

impact on Alcan's decision regarding sourcing of magnesium. In 2002, this technology was essentially non-existent. By 2003, Alcan was sourcing a significant proportion of its magnesium from a domestic producer of secondary magnesium. Alcan forecasts that the proportion of its magnesium needs that will be fulfilled by recycled materials will continue to grow over the next few years as more sources are qualified.

Secondary magnesium and other forms of alloy magnesium are not a substitute for pure magnesium. Significant additional investment is required to qualify the sources and to control the amount of harmful elements that may be contained in the alloy. Furthermore, the aluminum alloy must be carefully monitored to assure that the quantity of magnesium present meets the standard for the product being produced.

Alcan has implemented new air, surface and bulk sampling tests for beryllium as well as other elements to ensure viability of these alternative sources. Such concerns are reduced when pure magnesium is used. Pure magnesium allows for easier calibration and management in the alloying process as the proportion of magnesium being added to the molten

metal is easily known. Additionally, unwanted or harmful elements are by definition absent.

Beryllium is a toxic substance that is undesirable in many aluminum alloy end uses and harmful to the workers producing these products. It is of particular concern when secondary magnesium is used. Beryllium is present in most secondary magnesium as it is an essential element of the alloy magnesium used by die casters. Alcan cannot use the primary alloy used by die casters because the beryllium content is too high.

Alcan is only able to use secondary magnesium because of its tight controls on the source material and its investments in controlling, reducing and eliminating beryllium that may be contained in the secondary product.

I understand that Alcan is an exception with the aluminum industry in its use of secondary magnesium as a source material. Even with Alcan's significant investigation, secondary magnesium represents but a small percentage of the total magnesium used by the aluminum alloying industry and hardly supplants our reliance on pure magnesium.

Alcan faces competition from not only other domestic aluminum companies, but also foreign

companies that obtain magnesium free from additional antidumping duties. We also compete vigorously with other materials such as plastics and steel.

Although our magnesium supply base has dwindled due to an increasing number of trade restrictions, Alcan has no intention of becoming overly reliant on a single company with questionable financial and continued risk of environmental litigation.

In sum, an affirmative determination is not justified in this case. Magnesium prices are rising and U.S. Magnesium appears to have made significant financial and environmental gain in the past few years. Its previous financials and environmental troubles appear to behind it, once again making U.S. Magnesium an important and reliable source for Alcan.

I thank the commission for allowing me to discuss these issues today. My colleague Sung Huh and I are available to answer any question the commission may have on these matters.

MR. GURLEY: Good afternoon. My name is John Gurley of Coudert Brothers, counsel for AVISMA. I am here today with John Reilly of Nathan Associates. Mr. Reilly will testify today that the U.S. industry is not being injured by reason of imports from Russia.

I will also be here to answer any questions you might have with respect to AVISMA.

John?

MR. REILLY: Good afternoon. For the record, I am John Reilly of Nathan Associates, appearing on behalf of AVISMA and VSMPO-Tirus.

In my testimony today, I would like to comment separately on pure magnesium and alloy magnesium, starting with pure magnesium, and focusing on U.S. producers' exports.

Census data from the USITC dataweb indicate that U.S. domestic imports of pure magnesium in 2002 amounted to fully 11,300 metric tons, at an average export value of only 87 cents a pound.

Reported 2003 exports amounted to 8800 metric tons, at an even lower value of 81 cents a pound.

Clearly, U.S. Magnesium's domestic marketing difficulties about which you have heard quite a bit this afternoon forced the company to buy its way into the export market at very low prices.

In sharp contrast, total reported imports of pure magnesium during 2002 amounted to 31,600 metric tons, at an average landed value of $1.04 per pound. Thus, the average reported export value for 2002 was

17 cents a pound or about 16 percent lower than the average value of all imports.

During 2003, the total import volume was 28,000 metric tons, at an average landed value of 98 cents a pound. In this case, the average U.S. export value was 17 cents a pound or 17.1 cents below the average value of all U.S. magnesium imports. And I should note that you can add about 10 percent to the import numbers that I just quoted to convert it into an imported selling price.

The import/export data show clearly that U.S. Magnesium was willing to sell pure magnesium at prices well below the average of all imports during both 2002 and 2003. The data also show that the volume of exports at those prices were quite significant.

Simply stated, U.S. purchasers of pure magnesium preferred to buy the imported product, even at a higher average price than U.S. Magnesium was demonstrably willing to sell for.

Losing access to pure magnesium even for a short period would be disastrous for the aluminum producers that are the major consumers of the product. Accordingly, the buyers of pure magnesium opted to maintain diverse sources of supply as a means of

ensuring against disastrous supply disruption.

During 2004, the situation changed. A strengthening market caused the average landed value of all pure magnesium imports to rise to $1.09 per pound, that's a selling price of a little over $1.20 per pound, and total volume of pure magnesium imports increased significantly during this period, thus price went up and volume went up.

Also in 2004, the volume of U.S. domestic exports declined sharply and the average export value rose significantly, as expanding domestic demand made U.S. Magnesium far less dependent on exports than in 2002 and 2003.

Since most pure magnesium moves under long-term contracts, there's a lag between a change in demand conditions and the full effect of such a change on price. With this in mind, it's clear that the strong 2004 market has caused current year contract prices to increase sharply. USGS reports that most aluminum mills have negotiated 2005 contract prices in the range of $1.45 to $1.55 per pound. That's roughly $3200 to $3400 per metric ton.

At these prices, there is no doubt that pure magnesium production is a highly profitable business and it would be absurd to claim that the domestic

industry is currently injured.

As regards alloy magnesium, non-subject imports have accounted for a dominant share of total imports throughout the 2001 to 2004 period. Non-subject imports, principally from Canada, accounted for 70 percent of total alloy import volume in 2001 and 67 percent in 2004. The average landed value of the non-subject imports remained above $1.27 per pound throughout the entire 2001 to 2004 period. This again demonstrates that many customers were willing to pay high prices for imported alloy magnesium throughout the period of investigation rather than buy from a domestic producer.

In December of 2001, Extractor, now called Amacor, began production of secondary alloy magnesium at a plant in Anderson, Indiana, having a reported total capacity of 25,000 metric tons per year. The entrance of this large new domestic competitor could only have put pressure on alloy magnesium prices in 2002 and 2003.

Now, during 2004, demand turned up. The total volume of alloy magnesium imports rose by more than a quarter, while the average unit value of total imports rose by nearly 16 percent, to $1.11 a pound. Such performance reflects a significant strengthening

of the U.S. alloy magnesium market. USGS reports that alloy magnesium contract prices for 2005 have risen to the $1.45 to $1.55 level, again, about $3200 to $3400 per ton.

In short, alloy magnesium production, like pure magnesium production has become highly profitable and the domestic industry is not presently injured. The fly in the economic ointment is the current high price of magnesium, in particular, the current price of alloy magnesium will choke off domestic die casting growth, cause production to move to foreign countries, or cause customers to substitute aluminum for magnesium as the life cycles of current magnesium parts continue to come to an end.

I think the moral of this story is be careful what you ask for, you might get it.

Thank you.

MR. WAITE: Mr. Chairman, my name is Fred Waite from the firm of Vorys, Sater, Seymour and Pease. With me today is Kimberly Young. Together we represent Solikamsk Magnesium Works, the other Russian producer. My function today is to tell you that our panel has completed its testimony and is available for questions.

CHAIRMAN KOPLAN: That's it?

MR. WAITE: Yes, sir.

CHAIRMAN KOPLAN: All right. Thank you very much for your presentations and we will begin the questioning with Commissioner Pearson.

Before we do that, given the number of witnesses on this panel, I would ask that each time you respond to a question if you would again identify yourselves for the record so that the reporter could get that and doesn't have a problem. Thank you.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

We certainly have a different point of view expressed this afternoon. I'm awfully glad I came back for this afternoon's session.

I'd like to get perspectives from a number of you from different segments of the industry on the demand conditions that you faced during the period of investigation.

What were you seeing for demand for your products? And perhaps let's start with the die casters and go in the same order that you presented your testimony.

MR. ARH: This is Paul Arh. Demand from the years 2001 through 2004 was growing. As has been

mentioned already, the product life cycle for our products can run anywhere between four and five years for products on the interior of the vehicle to up to ten to fifteen years for engine components or power train components, as we call them. And so as those product life cycles have changed with the competitive price of magnesium and certainly the automotive customers have grown their demand for our product and so we continue to see that increasing. But what was mentioned this morning was that products are not price sensitive. That is incorrect. In our industry, they are extremely price sensitive. At $1.50, our customers will stop buying and using magnesium.

COMMISSIONER PEARSON: Let me just follow up because the next question really is threat, looking ahead. Are you starting to address that now? I mean, what do you see as the demand for your product in the next year or two?

MR. ARH: Again, lead time for our product, the design and use of the product is over a couple of years, so what we are securing today is for use two or three years down the road. The impact we will see will be a couple of years further for the 2008-2009 timeframe and we expect that at that point the customers will not be coming to us for magnesium

product.

COMMISSIONER PEARSON: Okay. Others from the die casting industry?

MR. ROELS: This is Ed Roels from Lunt Manufacturing. I would say that our company has been growing, just as Meridian has. We have been very successful from 2001, 2002, 2003 and 2004. We have been growing tremendously. We're probably 100 percent larger than we were back in 2000. So the growth is there, but there's no question that the price does matter. And I think to follow up what Paul said, because the automotive, the OEMs, invest so much in a car and its up-front engineering, it's very, very expensive, to design a car, our demand will continue going for two or three years out, but as the models get redeveloped and the attrition occurs, because the price can get so high, they won't be in the next designs, which then, you know, as he said, that's three years out at least. So it's a much further horizon when you talk about the decrease.

Next year, when you look at things and if prices go up, our customers may be forced to buy that, but it doesn't mean they're going to be forced to put it in the next design. Does that make sense?

COMMISSIONER PEARSON: Yes.

MR. SPARKS: My name is Michael Sparks from Spartan Light Metal Products. I disagreed this morning and take exception to the declining use of magnesium in years out. I am personally involved with several OEMs on programs that go out into 2007, 8, 9, even into 2010, where weight or mass reduction is of critical importance. At this moment, they are contemplating whether to use aluminum or lightweight steels or composites for a lot of these applications. So up until the petition was filed, the decisions were leaning towards magnesium as a very reliable metal and I'm not so sure if that's true today.

Our growth has been sustained at maybe about a 13 percent growth rate for the last probably 10 years and a lot of that has been in magnesium, so I would disagree with the declining mag use up until -- cost is an impact, it's not inelastic and they do look at alternatives, they look at cost versus performance.

Thank you.

MR. FERGUSON: This is Kevin Ferguson with Gibbs Die Casting. I think the discussions about future work has already been discussed, but I'll talk a little bit about existing work that may actually go on for another six or eight years, components that

we're making right now.

Our customers are actually looking to source those offshore beyond control of any kind of incoming duties applied and try to take advantage of lower cost materials. We make a steering wheel primarily and just by buying your magnesium maybe in Canada or in Mexico or anywhere else in the world, you're going to save 12 to 15 percent right of the top off the price of that unit. So these are global shoppers, large tier 1 manufacturers that are global shoppers and know the price of magnesium and all raw materials worldwide, so they will look beyond what we're seeing here today.

COMMISSIONER PEARSON: And just to clarify, then, your view is that a difference in the price of magnesium of 12 to 15 percent may be enough to shift the production from your facility to a facility offshore.

MR. FERGUSON: Yes. They've actually moved work from our plant for as little as 2 or 3 percent. The automotive manufacturers, and I know this probably is not a topic of our discussion today, but they're really in trouble and so 2 or 3 percent means a lot to them when they're competing with offshore automobiles coming in here, whether it's from South Korea or

anywhere else in the world. So they must be extremely competitive in the way they buy all components because 5 percent in a steering wheel and 7 percent in a dashboard and 20 percent in some other panels, it means they may make money on a car or lose money on a car.

COMMISSIONER PEARSON: Okay. Other comments from the die casting representatives?

(No response.)

COMMISSIONER PEARSON: Okay. Thanks.

How about the aluminum industry?

MR. MCHALE: The demand for our products in 2001 and 2002 is off. I'm sorry, Bob McHale from Alcoa. Demand for our products in 2001 and 2002 is off and evidence of that is the shuttering of some of our capacity. We closed a couple of smelters and idled some other facilities. However, in 2003, 2004 and clearly 2005 business has turned up considerably. Demand for our products is strong and the demand for the alloying materials that we buy is up significantly because we've reduced the amount of scrap that we buy. I'm talking specifically scrap aluminum.

When we buy scrap aluminum, in that scrap aluminum is magnesium and some of the other alloying materials. We're reduced the scrap we've purchased

because a lot of the scrap in the U.S. has gone to China. So we're replacing that scrap with primary aluminum, which requires additional magnesium units.

COMMISSIONER PEARSON: And then could you clarify the reasons for the downslide in demand in the early part of the period of investigation?

MR. MCHALE: I think it was just a downturn in the economy.

COMMISSIONER PEARSON: So linked to overall economic activity?

MR. MCHALE: Overall economic activity was off. Building and construction, aircraft, 9/11.

COMMISSIONER PEARSON: And if you were to project ahead a year or two, then --

MR. MCHALE: 2005 looks like a very strong year, as does 2006 at this point in time.

COMMISSIONER PEARSON: Okay. Alcan?

MR. DERY: Alain Dery from Alcan. The demand for our product during the investigation period was I'll say relatively stable or flat, marginal growth or decrease. However, the comment of Mr. McHale of Alcoa on the quality of magnesium, well, the same does apply to us with the reduction of the availability of scrap in the market, so we have to use pure metal, then we need to bring more alloys to

compensate.

COMMISSIONER PEARSON: Any other comments from aluminum producers?

(No response.)

COMMISSIONER PEARSON: How about importers? Any comments on demand conditions that you see in this country or worldwide?

(No response.)

COMMISSIONER PEARSON: Hearing none, we'll shift.

What would be the effect on the marketplace if antidumping duties went into place for magnesium from Russia and China? Would there be trade from those countries, despite the duties, or would the duties be relatively prohibitive? What adjustments would take place in the market?

MR. ROELS: Ed Roels from Lunt Manufacturing. They would be prohibitive. We would be left with a limited marketplace to buy from, which is our largest concern, and then the prices, of course, have already firmed and our concern, then, is the demand from our customers because of that.

COMMISSIONER PEARSON: Okay. So they would be prohibitive both with respect to China and Russia?

MR. ROELS: Yes. Yes.

COMMISSIONER PEARSON: Is there anyone who thinks trade might occur, despite the duties?

Mr. Leibowitz?

MR. LEIBOWITZ: I'm not in the aluminum industry per se, but I think there is always the possibility, depending on conditions, that some trade would occur. Of course, if it did, that would result in monies flowing to the Petitioner if duties were in place.

It's hard for me to predict, I'm not an economist or a prognosticator. The margins that have been found by the Commerce Department are clearly prohibitive for China. They are much lower for Russian producers, but, as we all know, those are only deposit rates, those aren't the final assessed rates which would have to await a review.

I think it's fair to say that it would be very difficult to sustain significant imports even from Russia in the face of substantial dumping margins, if they were finally assessed. In order to make that determination, you have to look at the alternatives and I think that's the key point: what are the alternatives available to die casters and aluminum producers and with that I think Mr. McHale may want to comment on that.

COMMISSIONER PEARSON: I am interested in that, but my red light has come on.

MR. LEIBOWITZ: May we resume later?

COMMISSIONER PEARSON: If my colleagues don't pick up on that, I will come back to it later.

Thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner Pearson.

I'll let you finish the answer to that question if you can do it rather briefly.

MR. MCHALE: I had spoken about the global price of magnesium. The differential between the pricing of pure magnesium in the United States and elsewhere in the world is substantial and I believe that's going to cause the production of magnesium-bearing alloys to leave the United States to take advantage of the global magnesium price. Clearly, that's going to happen, or magnesium-laden aluminum alloys will be produce by some of our competitors in foreign countries and imported into the United States. There's that big of a differential between the price in the U.S. right now and the price in Canada, Europe and Australia.

CHAIRMAN KOPLAN: Thank you, Mr. McHale.

Turning to another subject, this is for

counsel, you limited our scope, Mr. Leibowitz, to asking legal questions. Was that right? As opposed to illegal questions?

MR. LEIBOWITZ: No, that's not correct. That's not correct, Mr. Chairman.

CHAIRMAN KOPLAN: Okay. Let me start with this, if I could. On page 4 of Petitioners' post-hearing brief, it states that, and I quote, "The final staff report should include 2000 trade and financial data which are readily available from the domestic producers' preliminary questionnaire responses and 2000 import data which are readily available from the U.S. Census Bureau."

Does any counsel take issue with the commission using a four-year period, that is, 2000 through 2003, plus a nine-month interim period in 2004? I note that previously both Mr. Leibowitz and Mr. Reilly found that acceptable, so I just wanted to give the other counsel an opportunity to say whether that's acceptable to them as well and, if not, why not.

MR. LEIBOWITZ: Mr. Chairman, this is Lewis Leibowitz. I want to first of all commend you for keeping your illegal questions to a minimum.

CHAIRMAN KOPLAN: I'm not through yet.

MR. LEIBOWITZ: I know, but in advance.

My acquiescence to the 2000 data certainly stands. I don't see that that's a problem. I did point out earlier, though, that the current situation is critical to the commission's determination and I don't accept the notion of limiting the POI to the first three quarters of 2004 for all purposes.

CHAIRMAN KOPLAN: No, you've made that clear.

MR. WAITE: Mr. Chairman, Fred Waite.

CHAIRMAN KOPLAN: Yes, Mr. Waite?

MR. WAITE: We would have no objection to your examining the 2000 data, but we would ask the Commission to be mindful that in 2000 and 2001 the United States Commerce Department was conducting a previous antidumping investigation of magnesium from Russia and in that investigation it found that Russian material was not unfairly traded. In fact, the Commerce Department dismissed the investigations with a finding of no less than fair value sales by the Russian producers, so we would ask the Commission if it looks at 2000 and 2001 data to be mindful that by law Russian material cannot be injurious during that period because it was not being dumped.

CHAIRMAN KOPLAN: Anybody else?

Mr. Shapiro?

MR. SHAPIRO: This is Robert Shapiro, Barnes Richardson & Colburn. We, again, also have no objection to 2000 data, but we would stress that the significant change in the market that occurred with the bankruptcy of MagCorp and the shift in reliability of that company at that point is a rift within that data that's only now becoming recovered.

CHAIRMAN KOPLAN: Thank you. I thank each of you.

Mr. Gurley?

MR. GURLEY: Yes. This is John Gurley for AVISMA. Yes. We acquiesce for the 2000 data, but note again consistent with the letter that we filed that the commission seek information with respect to 2005, because of the way the contracts are let. We believe that 2005 information will be very interesting for the commission.

CHAIRMAN KOPLAN: Thank you. I thank each of you for that.

By way of background, I do not believe that any of your pre-hearing briefs deal with Petitioners' allegations of lost sales and lost revenues. The commission requested domestic producers to report any such instances due to subject imports from China and

Russia since January 2000 in the preliminary phase and since January 2001 in the final phase.

The information received is set forth beginning of page 14 of chapter 5 of the confidential staff report. The specific details are confidential, however, I can say that in my opinion a significant number of the allegations, although I can't state the number that I added up, a significant number of the allegations were confirmed.

How do you explain away the existence of verified lost sales and lost revenue?

MR. LEIBOWITZ: This is Lewis Leibowitz. I think it would be best to deal with those issues in the post-hearing submission in full so that we can actually refer to the numbers.

CHAIRMAN KOPLAN: Okay. That's fine. I didn't see anything, as I say, in the pre-hearing briefs on that particular issue, but I welcome it in the post-hearing.

MR. LEIBOWITZ: Yes, Mr. Chairman. We'll do that.

CHAIRMAN KOPLAN: Thank you.

Let me stay with you, if I could. In our preliminary views, we found that there is a reasonable overlap of competition between the subject imports of

alloy magnesium from China and Russia and between the subject imports and the domestic like product, therefore, we cumulated subject imports of alloy magnesium from China and Russia.

We noted that cumulation is not an issue with respect to pure magnesium imports because the scope of the investigation regarding imports from China does not include pure magnesium, it's limited to alloy magnesium.

You argue at pages 55 and 56 of our pre-hearing brief that there is no reasonable overlap of competition, but the 1995 magnesium determination you cite in footnote 135 to me at least appears to support what we did in the current investigations.

I do not understand the legal basis for your argument. You do understand that the scope regarding imports from China does not include pure magnesium and that it's only alloy that we cumulated?

MR. LEIBOWITZ: Mr. Chairman, we certainly understand that, the limitation of the cumulation. The argument that we were making in the brief which we will further address in post-hearing is related to the correctness of cumulating alloy from China and pure and alloy from Russia.

CHAIRMAN KOPLAN: But we didn't include pure

when we cumulated in the prelim, it was alloy to alloy that we were cumulating, right?

MR. LEIBOWITZ: Correct. Yes.

CHAIRMAN KOPLAN: Okay.

MR. LEIBOWITZ: I'm sorry if I misspoke about the pure from Russia. It's alloy to alloy. Yes.

CHAIRMAN KOPLAN: That's why I was confused with your argument. So if you could elaborate on that post-hearing, I would appreciate it.

MR. LEIBOWITZ: Certainly. We'd be happy to.

CHAIRMAN KOPLAN: Thank you.

Mr. Dery, at page 26 of Alcan's pre-hearing brief, it states that, and I quote, "Energy prices are a significant cost component to magnesium producers. The U.S. domestic magnesium industry was affected in 2001 by significant increases in energy costs, as well as the general economic downturn of that year. Energy costs drove up production costs substantially, according to Lee R. Brown, Vice President of Contracts at U.S. Magnesium. Energy costs constitute 40 percent of the company's total production costs and the company suffered over the last few years an increase in natural gas costs of over 200 percent and an

increase in electricity costs of some 35 percent."

Conversely, though, Petitioners' pre-hearing brief states that, "If U.S. Magnesium had been able to increase its prices to cover the higher energy costs instead of having to reduce prices to compete with dumped imports, U.S. Magnesium's financial performance and financial condition during the period of investigation would have been much better."

How do you respond to that?

MR. DERY: Well, I guess those are facts.

CHAIRMAN KOPLAN: That's why I'm asking.

MR. SHAPIRO: I would interject -- I'm sorry, this is Robert Shapiro, Barnes, Richardson & Colburn.

CHAIRMAN KOPLAN: We've got the industry witness here now, I'd be interested in hearing from the industry witness.

MR. DERY: Well, the fact that the costs for U.S. Magnesium increased, well, it's the reality of life and it's not our control, basically. The reality is they have to stay competitive regardless of that. It's their own management, they are managing their costs and not we. My responsibility is to buy magnesium and we want to have reliable product, reliable delivery and quality at a competitive price

and that's how we judge things.

CHAIRMAN KOPLAN: Thank you for that response.

Did you want to add to that?

MR. SHAPIRO: If I may add just one thing. The statement that the reduction in price to compete with the U.S. imports we disagree with. The problem that U.S. Mag was facing was to attract its customers back after their customers lost confidence in them after their bankruptcy and environmental problems. That was a driving force, they had to get that back. So I would question whether the causation of driving the price down by the imports.

CHAIRMAN KOPLAN: Thank you. I appreciate that.

I'll turn to Vice Chairman Okun.

VICE CHAIRMAN OKUN: Thank you, Mr. Chairman.

Thank you to all the witnesses for appearing here today. There's a large number of you here and I appreciate hearing your perspective on your business and how it works. A lot of issues seem to be dispute and it's hard to decide where to start.

Let me start on a couple of pricing questions, just to see if I understand. One just

general question is whether you think it would be useful for us to be also looking at some of the published pricing data such as Metals Week for assessing price trends in the market. And I know that Commissioner Lane had a conversation with Petitioners about how prices are set and I've heard about the contracts and when they're set and I guess I would like to hear a little bit more from the companies, both the die casters and the aluminum, on does that relate at all if we were looking at these published prices?

You're talking about worldwide prices. I'm just trying to understand a little bit more about how we would get a sense of pricing in this market, how it relates to your contracts and how it relates to global pricing, if you're able to give us that perspective.

Mr. McHale, maybe I'll start with you because I'm thinking of you saying that, but also if you could comment on just the published pricing.

MR. MCHALE: The two published prices for magnesium would be the Metals Week price and also the Metal Bulletin price. Metal Bulletin is more global price, delivered Rotterdam. It would be a better indication of what the price for, let's say, Chinese magnesium. The metals we price is based on a spot

purchase. There are very, very limited spot purchases of magnesium. I think Cam Tissington even related to that.

Most of the magnesium sold in the United States is done on an annual contractual basis, so when Karen MacBeth from Metals Weeks is putting together that spot magnesium price, it's a very small survey. It is only an indication. My bet is that there are weeks that go by with absolutely no spot magnesium transactions.

VICE CHAIRMAN OKUN: Okay. Is there any disagreement among industry on that? I guess what you're saying --

Mr. Arh?

MR. ARH: If I may, Paul Arh. I agree with what Mr. McHale is saying about spot purchases, however, I do take exception to what U.S. Mag said about spot purchasing prices not having an impact in the negotiations for contracts.

If the spot price is trending up, the general prices are also trending up and if that happens at the time of contract, we're going to be paying a higher price for our next contract.

Yes, part of it is negotiation, but I highly doubt U.S. Mag will take a look at the opportunity for

higher prices and say, gee, you've been such a good customer we're going to give you a break, while prices are going up, your price is going to go down.

VICE CHAIRMAN OKUN: Okay. I appreciate that.

Mr. Leibowitz, you had your microphone on?

MR. LEIBOWITZ: Yes, Commissioner Okun. I would only point out that that is the reason why we think the best evidence of what the market price is currently and was at the end of the period of investigation are the contract prices. We urge you to consider Mr. Gurley's letter.

VICE CHAIRMAN OKUN: End of '04 negotiated for '05.

MR. LEIBOWITZ: Correct.

VICE CHAIRMAN OKUN: Okay. Well, then, let me ask this question, which is one of the other questions that has been raised is whether the prices were indeed rising before the petition was filed or whether we have a post-petition effect here. And the Petitioners had put the Metals Week prices in their chart 14 which would show your spot prices and when the spot prices went way up would be after the petition is filed.

Tell me your response and what you're

looking at when you're arguing that in fact the prices were going up before the petition was filed. Are we talking here again about the contracts that were negotiated at the end of '04, before the petition was filed? I want to just make sure I'm clear on the argument.

MR. LEIBOWITZ: First of all, I would refer you to Petitioners' slide 12, which shows the prices of imports increasing prior to the filing of the petition, which I think is more pertinent to the post-petition effect question, but, yes, I think that contracts negotiated in the fourth quarter of 2003 would give you some indication of the perceived price levels at that time, as well as a pretty good indication of what they were throughout 2004, since they tend to be annual or longer contracts.

VICE CHAIRMAN OKUN: Okay. Does any other counsel have any comments?

Yes?

MR. HUNKINS: Just a comment --

VICE CHAIRMAN OKUN: Just identify yourself again, please.

MR. HUNKINS: I'm sorry, John Hunkins with Spartan Light Metal Products. Back in 2003, we had a couple major events. If you go back to the end of

2002, we were looking forward and seeing Noranda coming on line with full capacity, we were looking at AMC coming on line with -- they were two years out, but projected to take 45,000 metric tons of Ford business for ten years solid. And understanding the magnesium producers' side of the equation and that they have to run at 100 percent to be cost effective, what you had was a glut of supply coming on compared to the actual consumption level that we saw coming.

Now, a lot of the forecasts of the late 1990s and early 2000 was that Mag was going to grow huge and some of those decisions were probably made reasonably logically. However, they looked back in the past to find out what they thought they'd get for their metal and that looked like $1.50, $1.60, and when all this supply came on, the only thing they had to deal with to keep their plants running was price. And it really became -- United States Mag and everyone else was involved in the same equation to get their plant running at 100 percent, which is their most cost-effective point, the only tool they had in their toolbox was price unless they had an established relationship with a die caster for R&D. And basically I think that's what happened to the pricing.

If you look at the end of 2003, after we

found out that Noranda wasn't coming and we also found out that AMC was turning into a dream, prices firmed. They went up twice in the month of December, I believe, and the contracts for 2004 reflect that. So the oversupply condition is really what I think we're all looking at here and it's not just an oversupply, they're inelastic. Mag producers cannot operate at 30 percent or 40 percent and adjust to the market. They have to run at 100 percent or basically shut down. At that kind of prices, you're only going to get the best surviving.

VICE CHAIRMAN OKUN: And that I think there's agreement on. What's impacting those prices is where the disagreement is.

Well, let me then just ask a few more questions, then, on pricing and maybe I'll start with the die casters just because I think in your testimony you clearly talked about the need for globally competitive products and the fear of moving offshore, of your customers moving offshore.

When you're negotiating the contracts, and I'll ask the aluminum producers as well, what are you going in with in terms of the pricing? In other words, I get loud and clear the need for multiple sources, this is an industry where things are blowing

up and you want reliable supply and you want diversification. I hear that. But I'm having a little harder time understanding the relationship to how you would strike the deals in these contracts and how we should look at that vis-a-vis the subject imports and the data we have regarding pricing and what was happening with pricing. So I guess the basic question is if I can look at this data and say what it looks like to me is you go into these contracts and you've got lower priced material out there from Russia or China and you can use it, then you use that as a wedge with your U.S. producer to say, you know, I need this price. I'm stating that, but I'd like to hear from you on how does it work? How do you see it?

MR. ROELS: Edward Roels with Lunt Manufacturing. Just to talk about what I call the contract season, typically, you start talking about the next year's price in late summer, August, September, and there's a lot of discussion going on with the western producers; some discussion going on with what I'll call the Russian producers. And then on the Chinese side, for our industry, again, qualification of material is a very, very big deal. And so when the price -- there is no -- at least in my company, there is no big like -- to put it blunt,

there is no big Chinese price that with a contract, I'm going to hang over the head of the western producers. In a sense, they're competing against themselves.

And, yet, of course, we're participants in the marketplace. We know -- we have a feel for where prices are going to be. We even will, you know, make suggestions where we think they should be. To touch on Paul's point, that spot price, it does matter what way it's going. Is it going up; is it going down. It's not something that's definitely going to be the price you get in the contract; but, certainly, you're going to know the price trend. Is it tightening or is it, you know, is it a long market.

And so that contract season is very important. So, you're going to talk to these producers for two or three months. And for us, typically, you know, some will switch chairs; some will have no production -- we will give them no orders; and others will, you know, fill in where others, you know, sold to us in a prior year. But, once you meet that quality hurdle and the qualification issue, it comes down to what -- then it comes down to price. Price is a real issue.

VICE CHAIRMAN OKUN: Okay. I want to hear

from others on that. My read light has come on, so I'll either have an opportunity to come back and hear from the other industry representative. But for counsel, if I could ask you to, for post-hearing, to tie in what your witnesses are saying on this issue and, also, looking, again, at the lost sales and lost revenue that the Chairman mentioned, in terms of what was said there, in helping me understand what's going on in the market. With that, thank you, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you. Commissioner Miller?

COMMISSIONER MILLER: Thank you, Mr. Chairman, and let me join in welcoming all of the witnesses, those who have been here before and those who are new to a Commission investigation. We appreciate you being willing to be here and share with us your knowledge of your industry.

I think in this round what I'd like to focus on is learning a little bit more about the die caster side of the industry. Previous magnesium investigations, we've often heard the story on the aluminum side, because the investigations focused on pure. And it seems that adding alloy to the case here is what has brought the die casters before us. So, I'm going to do one of my sort of tell me a little bit

of the history kind of questions, because I just want to make sure I have some context. And really that is to ask some of the die casters -- I, too, have heard your comments about needing a diversification of sources. I just want a little bit better understanding historically how China has been a supplier of magnesium alloys to the die casting industry, if it has historically. I'm trying to put our little three-year window in a bigger context, if I can, so it just helps me understand better what's going on.

So, who would like to begin? Mr. Roels, you just finished. Mr. Hunkins, why don't I go back to you for a minute, because you actually made a comment about you've never had a contract with China; but, Russia, you saw as a small supplier.

MR. HUNKINS: That's correct. Yes, we do not --

COMMISSIONER MILLER: I sort of took note of that. I thought is China totally new to the magnesium -- to supply alloy magnesium or is it just your company hasn't?

MR. HUNKINS: Well, our customers, the automotives, have certain requirements and you have to have an accredited supplier for magnesium. And to

date, none of the Chinese magnesium alloy producers have made the hurdle. There is nobody approved. And since I -- I mean, I do business besides automotives, but there's no real allure to me to move China until they get the approvals. It's a very -- for die casting, that holds a very important piece of our cost structure, no doubt. At the introduction of metal, which for some reason is tainted, would be a significant problem for us, both in recall kind of costs and cleanup costs. So, we really don't -- we don't really mess with the Chinese producers at all, not to date.

COMMISSIONER MILLER: All right. Well, for others who have, I mean, obviously, China's -- our information shows China shipping a fairly large quantity of the alloy magnesium. Are others using it in different -- I heard a lot of automotive castings and I know Mr. Roels, you -- I'm saying that correctly -- you mentioned actually that U.S. Mag wasn't qualified with GM. So, I know there is stuff going on here. Where is it --

MR. ROELS: Yes, it's a confusing picture. If I could just --

COMMISSIONER MILLER: Please.

MR. ROELS: -- follow up a little on that.

Certainly, General Motors has not qualified U.S. Magnesium. They just recently did qualify a Chinese producer though, however, and that's, I believe, being shipped into Canada. So, it is a competitive issue. It is something that's out there.

In Europe, they use Chinese metal. They use a lot of it. So, there is a competitive threat. But, here, in the United States, it is not as big. We have purchased some. But if you look at our percentage of purchases, it's not as significant as this trade case may imply. That's probably the best way to look at it. I can't --

COMMISSIONER MILLER: Okay.

MR. ROELS: -- I can't speak for the other die casters.

COMMISSIONER MILLER: But, you're here, so --

MR. ROELS: Yes.

COMMISSIONER MILLER: -- obviously, it matters to you.

MR. ROELS: Oh, yes, it's a competitive issue. And it's very, very important, because that world price is out there and that's the threat to us, is the western price here in the United States already is too high compared to the world price.

COMMISSIONER MILLER: Okay. So what you're saying is that you're really here because you want to know that U.S. prices are comparable to global prices, more than because you've been using a lot of Chinese alloy magnesium in your own operations?

MR. ROELS: Yes. Yes, that would be fair to say.

COMMISSIONER MILLER: Okay.

MR. ARH: Could I add to that?

COMMISSIONER MILLER: Yes, please.

MR. ARH: Paul Arh from Meridian Technologies. We do produce magnesium castings on a global basis and we do buy from China, although not in the United States. There is one or two -- there are one or two companies, Chinese companies, that are accredited with the OEMs and we use them in China. We do not use them in the United States. We prefer to buy our magnesium close to where we produce our product. So in the United States, we buy exclusively from U.S. and Canadian sources.

The thing that might be missing here is that this is a global marketplace. And so, the impact of duties on Chinese material coming in that would be used, for instance, in the aluminum industry, if that material no longer comes in, that shortens the supply,

which puts pressure on us. So while we don't use Chinese material, it impacts the total supply. You can only cast that pound of magnesium once. It either goes into the aluminum industry, the desulfurization, the steel industry, or the die casting industry. It can't be used in all three at the same time. And so --

COMMISSIONER MILLER: Okay.

MR. ARH: -- we don't purchase Chinese, but this case does have a direct impact on us.

COMMISSIONER MILLER: Okay. All right. Very interesting. Anybody else want to add any other comments?

MR. FERGUSON: Yes.

COMMISSIONER MILLER: Mr. Ferguson, correct?

MR. FERGUSON: Kevin Ferguson with Gibbs Die Casting. We may be somewhat unique in that we do buy some Chinese in the United States. What's important to note, however, is our customers actually, as global shoppers, as I've mentioned, will come back and say, why are you asking us to pay $1.35 or $1.50 or whatever per pound for magnesium when I can make this same product in Europe, let's say, and the raw material cost will be $1.05; or Canada, it will be $1.08; or Asia, it might be one dollar.

What we do is -- or what I do, in the first year that I went to our customers with our sales people to talk about this, I thought I was going to be fired, because I said, you know, I have to buy a diversified supply of material, which means I may buy some low-cost material that I have qualified in-house. By the way, we go through an extensive testing program. So, while there may be 150 potential suppliers out there, I can tell you there are only a few that we might try to use. With that said, I would layer my buy with some low-cost good material and then, of course, it would have to include domestic or North American supply, which my price might be a little higher than they want, they accepted it.

And then problems shake up along the way. My supply is pretty balanced. They don't have problems. So, it just so happened that I had good fortune that year, that I may have been one of the few die casters that didn't have any interruptions because of my buy. It doesn't always work that way; but, in this particular case, it did. So, I have to look at a diversified buy just to keep these suppliers from looking elsewhere. And the pressure this year has become extensive. They are looking offshore to buy these materials.

COMMISSIONER MILLER: Okay. Excellent. Well, that's very helpful in helping me understand. I think it probably means I'm going to turn back to the aluminum manufacturers, if I still have time for a couple of questions.

First, Mr. McHale, can I ask you to just clarify your statements in your initial testimony about the ASTM change on the AM50A? You say the ASTM standard has changed. Can you tell me when and --

MR. MCHALE: It appears the standard changed around late in 2003. Previously, the standard did not specifically call out any beryllium content, whether a minimum or a maximum. It fell in the category of 'all others.' And then it changed, the ASTM changed and now it specifically calls out beryllium and specifically calls out a minimum and a maximum beryllium content. So, there was a change in the ASTM, the analysis that they require on AM50 and some of the other alloys. We have copies of that for you.

COMMISSIONER MILLER: All right. I think it would -- if you haven't submitted those already, it would be helpful if you could, just so --

MR. MCHALE: Yes.

COMMISSIONER MILLER: -- we understand. To your knowledge, is there any reason for the change?

MR. MCHALE: I'm not sure why that was. That would obviously -- maybe the die casters would have an answer to that.

COMMISSIONER MILLER: Any die caster have any comment on anything they might know. Mr. Ferguson, again?

MR. FERGUSON: Beryllium has been present and it's a requirement for die casting process. It basically helps prevent some burning of the alloy when you're casting. So, it's just an additive element that will ultimately have to be replaced with something else -- they don't have anything yet -- whether it's manganese or something else that will prevent the alloy from burning so quickly.

COMMISSIONER MILLER: Okay. So, you needed it and you wanted --

MR. FERGUSON: I need it.

COMMISSIONER MILLER: -- to know that the ASTM standard assured that it was there. Mr. McHale and Mr. Dery don't want it. Okay. Well, I'll come back to that if nobody else does. Thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner. Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you. And I, too, will join my colleagues in thanking you all for

being here. We very much appreciate all the presence of such a broad array of users of magnesium. It's very helpful in helping us understand these issues in this case.

Let me see if I could just follow on a little bit on some of the questions that Commissioner Miller was raising. Just, first, on this issue on the accreditation, just to I understand it. Mr. Ferguson, you said you do your own in-house accrediting. But, presumably, that does not hold water with the OEMs. In other words, you can't go to the GMs or the Fords of the world and say, well, gee, I've qualified this company; therefore, accept it. They would have to do their own accreditation?

MR. FERGUSON: Well, we do. In fact, I think General Motors may lead the way on this. They have some qualification processes. Ford doesn't seem to be quite so -- quite as touchy about it. Of course with the spinoff of Vistion and Delphi from General Motors and Ford, it begins to make it a little more ambiguous. So, of course, with aluminum, and I know we're not talking about aluminum, but on the aluminum side, we do all qualification, all testing, and the customer leaves it up to us. We're required to buy good metal. That's our -- if we don't, it's our

fault.

On magnesium, in the beginning, the big three, let's say, they qualified all mag and told you, you had to use, in some cases, Norsk Hydro material. It would plainly state that on the blueprint and on the qualification requirements. That has begin to back up.

We make steering wheels primarily and these are very critical crash-test components. If you're in a wreck and your air bag doesn't deploy, that steering wheel must perform as designed. So, we do a lot of testing, both chemical testing, chemical analysis, some older standards called brightometer. We send it off for fast neutron activated analysis in Texas A&M, the only testing machine in the world for that. But most importantly, we do pragmatic testing. We test these steering wheels in the most extensive test that the big three have developed. And if those steering wheels perform well, then we know at the end of all this testing, it's good.

COMMISSIONER HILLMAN: Okay. But do the big three accept that?

MR. FERGUSON: They do from us.

COMMISSIONER HILLMAN: Okay. So, they are not any longer specifying for you where you have to

get your magnesium from?

MR. FERGUSON: General Motors still will. It just depends on how -- we don't sell directly to General Motors. We sell to --

COMMISSIONER HILLMAN: Okay.

MR. FERGUSON: -- tier one. So, it depends on how well they make their argument with General Motors.

COMMISSIONER HILLMAN: And as of when was that the case?

MR. FERGUSON: In our case, it's gradually declined over the past two years, year-and-a-half.

COMMISSIONER HILLMAN: Okay. Mr. Arh?

MR. ARH: If I may summarize. Paul Arh. General Motors and Daimler Chrysler still certify their suppliers, the magnesium suppliers.

COMMISSIONER HILLMAN: Okay.

MR. ARH: Ford expects the die caster to certify the supplier. So, there is a little bit of a difference between the OEMs.

COMMISSIONER HILLMAN: Okay. Again, part of what I'm trying to understand is just how long it takes and what portion of Chinese production would count as accredited under either of these two scenarios. Do you have a sense of that?

MR. ARH: There's no pat answer. It takes quite a while. It can take up to a year --

COMMISSIONER HILLMAN: Okay.

MR. ARH: -- to certify a supplier.

COMMISSIONER HILLMAN: Okay. And, in your view, are there any Chinese suppliers under, again, either of these two ways of doing it: the Ford, the die caster certify. Again, I'm trying to get a sense of what portion of Chinese production would presumably be qualified.

MR. ARH: I can't answer specifically. I do know that there are -- and I can't remember the names off the top of my head, but there are two Chinese suppliers that have certification with some of the OEMs.

COMMISSIONER HILLMAN: Okay. No, I appreciate that. If I can then come back, Mr. McHale, Mr. Dery, to some of the aluminum issues. We heard a lot of discussion this morning about this issue of what Petitioners are describing as a significant shift by aluminum producers from using entirely pure or almost entirely pure in the past, to the usage of significant amounts of alloy product. I mean, you both touched a little bit on it, but I'd like to hear a little bit more specifically anything that you can

tell me about whether you perceive that there has been a change by the aluminum producers in your ability -- I mean, is there a technological change or just your, you know, it's become cost effective to use more alloy magnesium than you used to use? Mr. Dery?

MR. DERY: Alain Dery. So, if I may, basically, history force us to diversify our source. The availability of pure magnesium was quite limited in the United States and we had to look for alternatives. And usually alloy -- magnesium alloy is another way to get magnesium units. And among that, then we could have a recycled product, it's a magnesium alloy, that was quite in line with our philosophy of recycling. And then we initiated in 2002, basically with Extralta, at the time -- it became Amacor -- to find a way -- and we analyzed in the beginning, it was possible for us to use their product in our process. It was not necessarily cost driven. It was a diversification that was driving this thing in the first place.

COMMISSIONER HILLMAN: Okay. So, you're saying, you first started using it in 2002?

MR. DERY: The recycled products, secondary -- recycled magnesium, we started to use it in 2002, small amount. We qualified the product. In 2003, we

used significant quantities.

COMMISSIONER HILLMAN: Okay; all right. So, it is as a result of a change in your own technology; in other words, your ability to use it. You changed something about your process that permitted it?

MR. DERY: We developed the capacity to use this kind of product, that we were not familiar with before.

COMMISSIONER HILLMAN: Okay. Mr. McHale?

MR. MCHALE: As I had said earlier, there was an increase in demand for magnesium. At the same time back in 2001 and 2002, with the closing of Northwest Alloys, the closing of Noranda, the closing of Pechiney, there wasn't supply. The Chinese AM50 filled that gap, as far as the demand is concerned. It was part of the diversification by ourselves and others, as far as another source of supply. We were very limited to sources of supply and the Chinese material fit the demand issue.

COMMISSIONER HILLMAN: Okay. So, again, I'm just trying to make sure I understand it. Was it a change in your technology that allowed you to use alloy? I mean, why -- I mean, presumably, at least as I heard the discussion this morning, you know, there are have been other times in the past when alloy

prices would have been below prices for pure. Presumably, you didn't shift to using alloy in those other times, but you've done it now. That's what I'm trying to understand, is why has the shift to using some alloy occurred recently?

MR. MCHALE: I think that was covered. It was available and it was a magnesium metal unit and we utilized it.

COMMISSIONER HILLMAN: Okay. Now, you, also, addressed very clearly this issue of the beryllium in your testimony. But just to sort of close the circle with what we heard this morning, I mean, have you ever asked U.S. Mag for a beryllium-free product?

MR. MCHALE: We do. We buy primary magnesium from them and that's a beryllium-free product.

COMMISSIONER HILLMAN: Okay. But how about the AM50A?

MR. MCHALE: We have not inquired with them on the AM50. If the differential between the primary product and the alloy product was wide enough that it made sense for us, we would talk to them about an AM50 product.

COMMISSIONER HILLMAN: Okay.

MR. MCHALE: Currently, I don't think that differential is there.

COMMISSIONER HILLMAN: Okay. Because it is more costly, I presume, for you to use the AM50A than it is for you to use a pure product?

MR. MCHALE: The AM50 has aluminum in it and aluminum is valued at the price of aluminum, not the price of magnesium. So, in essence, when I'm buying the AM50 product, I'm paying a magnesium price for the aluminum, which doesn't make much sense. So, the differential, it has to be at a discount to pure magnesium for me to use it.

COMMISSIONER HILLMAN: Okay. Mr. Dery, same thing. You would prefer to use entirely the pure product? It's more costly to use the AM50A, but you'll use it when you have to?

MR. DERY: Yes. Essentially, using pure magnesium is our preference. But as I said before, having one domestic supplier, it's something we cannot live with. So, we need diversification and that's why we did get another domestic supplier. But, it's -- I do not produce primary magnesium. So, we have to do our homework in a lot of ways to use an alternative product.

COMMISSIONER HILLMAN: Okay. Ms. Fessenden,

you testified about the reasons for the closure of Northwest Alloys, which I heard very clearly. One of the issues raised this morning was this issue of trade adjustment assistance. And, obviously, there's both corporate or community trade adjustment assistance and individual trade adjustment assistance for your workers. Did Northwest Alloys receive trade adjustment assistance corporately or did the individual workers from Northwest Alloys apply for and receive trade adjustment assistance?

MS. FESSENDEN: The individuals.

COMMISSIONER HILLMAN: Okay; all right. There was no petition for trade adjustment assistance more broadly?

MS. FESSENDEN: Correct; right. Right.

COMMISSIONER HILLMAN: Okay.

MS. FESSENDEN: Right. No, we do not.

COMMISSIONER HILLMAN: Okay.

MS. FESSENDEN: It was after the fact, after the close. And I explained the decisions for the close. After the close, we then looked for all sorts of ways to help the displaced employees and that was one of them.

COMMISSIONER HILLMAN: Okay.

MS. FESSENDEN: It went directly to them.

COMMISSIONER HILLMAN: Okay. So, you supported their petitions for trade adjustment assistance?

MS. FESSENDEN: Yes.

COMMISSIONER HILLMAN: Okay. Thank you, very much. Mr. Chairman?

CHAIRMAN KOPLAN: Thank you, Commissioner. Commissioner Lane?

COMMISSIONER LANE: Thank you. Mr. Ferguson, I would like to ask you a few questions. In your testimony, you said that one of the problems you had with U.S. Magnesium was that it did not provide you with the technical support that you need. And I assume then that your other suppliers provide you with that support. What type of support do you need and what kind of support do you get from your other suppliers?

MR. ROELS: This is Ed Roels from Lunt Manufacturing. I'm the one who brought up that point.

COMMISSIONER LANE: Okay. Well, I was having a hard time seeing the name tags back there. Sorry.

MR. ROELS: Yes. Mostly the assistance is metallurgical help. We need help in development of new alloys. Creep-resistant alloys are very, very

important to the marketplace right now. We also, need assistance when our customers, the OEM, metallurgist at, let's say, Daimler Chrysler, want to talk to another very strong competent metallurgist, we are going to pull in -- we're going to pull into the discussion one of our main suppliers. So, yes, there are other suppliers that do it. Norsk Hydro has done it. Dead Sea has done it with regard to creep-resistant alloys. Some of the Russian suppliers have participated in that, as well. U.S. Magnesium has not.

COMMISSIONER LANE: So, how do you get this other support from your other suppliers? Telephone? E-mail?

MR. ROELS: Oh, yes, both. You know, there's always a client contact with our vendor and they have their own technicians on staff, specifically for this purpose. So, we'll call our salesman and then we'll arrange a meeting.

COMMISSIONER LANE: And if your supplier is in Russia, would the technical support be from Russia?

MR. ROELS: Generally, no. It would be someone -- Norsk Hydro was local or Dead Sea is here frequently. The Russians pretty much participate on the U.S. CAR program and the creep-resistant alloys.

COMMISSIONER LANE: Okay, thank you. Hopefully, I got this one right. Mr. Hunkins, you talked about that you wanted more than one supplier and that you needed to look for other suppliers because of the financial problems that U.S. Magnesium had.

MR. HUNKINS: My point was that we look for various suppliers. We look for research and development type suppliers and we look for commodity suppliers and we use that mix, both to help us in developing new programs and new low-creep magnesium alloys, along with the commodity suppliers, who help in the pricing, because they don't bring any R&D to the table, so they bring price. And basically, that's the point there.

U.S. Magnesium does not offer, say, research and development and they're really not a commodity player. However, they are a U.S. producer, so we've always kept them in our stable.

COMMISSIONER LANE: Okay. And when you referred to their financial problems, exactly what were you talking about?

MR. HUNKINS: When they went into bankruptcy, if we had had a lion share of our requirements booked with them, outside of the contract

period that we do with our magnesium suppliers at the end of each year, we could have been subjected to some higher prices that we really don't want to be subjected to. That's one of the purposes of the contract we do each year.

COMMISSIONER LANE: Okay. And I believe you, also, said that if the cost of magnesium go up and the price from the Chinese suppliers increase, then you would be forced to go to steel or aluminum to reduce your cost. Is that --

MR. HUNKINS: I think the point there is that if the price of magnesium goes up, our customers will look at alternate materials. They would include aluminum. They could include steel. They could go to composite. And, basically, that would be determined by just how high the magnesium price gets.

COMMISSIONER LANE: And you could use steel instead of magnesium for your purposes?

MR. HUNKINS: Certain applications, yes, you can. However, you don't get the nice weight savings you get with magnesium.

COMMISSIONER LANE: Okay. Mr. McHale, you talked about you needed several different supply sources. Have you always needed several supply sources?

MR. MCHALE: Well, we are the largest purchaser of magnesium in the world and we really need to diversify our supply base probably more than others, because of the magnitude of the volume.

COMMISSIONER LANE: So, have you always gotten various suppliers for your product?

MR. MCHALE: We have. But back when Northwest Alloys was a supplier and operating and owned by Alcoa, they were a major, major supplier, internal supplier to Alcoa.

COMMISSIONER LANE: Okay.

MR. MCHALE: But even then, we had alternate suppliers and other suppliers.

COMMISSIONER LANE: Did you get a lot of your product by somebody other than Northwest?

MR. MCHALE: I wouldn't say a lot. There were some -- we dealt with most of the major magnesium producers, certainly in other parts of the world we did. The Northwest Alloys product wasn't exported to our plants in Australia or Europe. They were supplied locally.

COMMISSIONER LANE: So, would you characterize your need for -- or your driving need for diversification subsequent to Northwest going out of business?

MR. MCHALE: Absolutely.

COMMISSIONER LANE: I'm not sure who to ask these questions. But, I've heard lots of testimony about the increase energy costs and how that has had an affect upon this industry. Would you say that these high energy costs have been -- have affected the industry worldwide? I mean, are the energy costs in Russia and China increasing similar to what we see here in the United States?

MR. ARH: If I may, Paul Arh.

COMMISSIONER LANE: Yes.

MR. ARH: Early 2004, I was actually stationed in China for four months and I saw the price of magnesium rise dramatically in China. As you probably are aware or have read, the availability of electricity in China is constrained because of their growth. Prices have gone up. It has caused a significant cost increase in China. And the price of magnesium rose dramatically from 2003 through 2004. So, yes, it is a significant input into the production of magnesium and anytime the price of electricity goes up, obviously, the cost and resulting price of the product goes up.

COMMISSIONER LANE: Okay, thank you. I'd like now to talk about is there a difference in

perception between customers of -- between pure and alloy magnesium? Do you find that certain customers or users view pure and alloy differently?

MR. ARH: If I may, again, Paul Arh. The die casting industry cannot use pure. It must use AM50, AM60, or AZ91. These are the alloy specs that are given to us by our customers. Pure does not have the metallurgical properties that the three alloys that I've mentioned have.

MR. MCHALE: As I said previously, now with the minimum beryllium content, we will use pure. We cannot use the alloy because of the beryllium. Same would hold for the secondary product, because that also contains beryllium.

COMMISSIONER LANE: Okay, thank you. That's all I have, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you, Commissioner. Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman. Going back to where I left off a while ago, we were talking about the effects in the marketplace if the antidumping orders go into effect. I just want to understand the transition that we would anticipate taking place if that occurred. I imagine at least some firms have contracts with Russia or Chinese

suppliers. And so one question is, would those contracts stay in effect if the duties are in place and would the duty, then, have to be absorbed by one party or another?

MR. LEIBOWITZ: This is Lewis Leibowitz. There's a certain legal aspect to that question and maybe I'll start. And, of course, like all legal questions, the answer is it depends. The contract may provide, for example, for some kind of force majeure, where an unexpected development occurs and that excuses continued performance or it may not. Or an antidumping order may not be considered force majeure. It's going to depend on the contract. But, in economic terms, it seems to me that if the purchaser is a global purchaser, like Alcoa, there's always the option of moving the supply around the world to where it's needed and where it can be economically used. And that may be one way to transition, you know, in light of an annual or two-year contract, for example, to get through that period until you can negotiate something that takes account of the economic reality here.

COMMISSIONER PEARSON: Okay. And I appreciate that that could happen in the case of Alcoa. How about some of the smaller users? Perhaps

none of this somewhat smaller users have contracts with Russians or Chinese. Mr. Arh?

MR. ARH: If I may, Paul Arh. Again, we do not buy Chinese metal in the United States, but I can speak about what happened in China. We had contracts with some suppliers in China for use in China. When the price of material rose, the Chinese suppliers refused to honor the contract at the price that we had signed. And basically, they said, here is the new price; if you don't like it, you get no metal.

COMMISSIONER PEARSON: Okay. Mr. Ferguson?

MR. FERGUSON: Kevin Ferguson with Gibbs. We don't have any contracts in place at this time for Chinese and Russian magnesium. What I would anticipate happening is our -- I think there's a lot of ears listening to see what will come of this investigation and I think we'll see some of our work go offshore.

COMMISSIONER PEARSON: Okay.

MR. SPARKS: This is Mike Sparks from Spartan. We have no Russian or Chinese contracts either. Our contracts for 2005 were negotiated post-petition, so we're in a pretty bad position actually. Our customers are not very forgiving to let us adjust a lot of these prices. So, I would suspect that

you'll find us seeking alternative approaches for manufacturing of products or we'll see the importing of completed products with magnesium that help us avoid -- help avoid the duty.

COMMISSIONER PEARSON: Okay. At least for an intermediate period, I assume there would need to be some magnesium entering the United States from somewhere to make up for what wasn't coming in from China and Russia. As you look at the world, those of you who have that sense, where could it come from? Because, I'm understanding that the plants have to run full out and everybody contracts their stuff. I mean, is there a bunch of magnesium sitting around? Mr. Arh?

MR. ARH: If I may, again, Paul Arh. Magnesium moves globally. So, if the Chinese don't come into the United States, they'll go to Europe; they'll go to Canada. That displaces some of the volume that is made in that country and that volume will come into the United States through the non-sanctioned producers.

COMMISSIONER PEARSON: Okay. So, I would be correct to understand that the global market is sufficiently fungible and trade flows are sufficiently malleable, so that things would adjust and we would

stumble forward.

MR. ARH: You will -- there will be material, but it will be at such a price that our customers will not pay it, which means we will not be producing magnesium products, which means the supply in the United States will be sufficient, but they'll be no customers.

COMMISSIONER PEARSON: All right, thank you. Mr. Leibowitz?

MR. LEIBOWITZ: Mr. Pearson, I just wanted to point out that some of that magnesium could come in in the form of steering wheels or automobile wheels and so forth, rather than in its primary state, and that is, of course, bad for the United States' economy.

COMMISSIONER PEARSON: Okay. Well, thank you for addressing this issue and clarifying it further. Another question, one or more people have mentioned some firms about which we have relatively little information on the record. I heard mention of Noranda, AMC, and Pechine. And I'm wondering whether we -- if indeed there is something we should know about those firms entering, exiting the market, expanding, contracting, whatever they were doing. I'd like to hear more of it, probably some of it in the

post-hearing. But, please, Mr. --

MR. HUNKINS: I'm John Hunkins with Spartan Light Metal Products. Noranda was commissioned. It was up in Canada. That was to generate 55,000 metric tons of magnesium. We had AMC, which, I believe, was over 100,000 metric tons. That was Australian Magnesium Corporation. And together, those actually, I believe, exceeded the U.S. consumption, just those two companies. So, they were significant.

Pechiney I'm not that familiar with Pechiney, but they were not a major player, I don't believe. Maybe one of the other guys could help. Okay, Pechiney was a producer in Europe, which shut down. I can't remember what year. But, certainly, there were effects there that happened in the European market, to my knowledge, not so much here in the United States.

MR. ROELS: But coming back to the other producers, Noranda certainly had -- as I mentioned earlier, they had an effect on trade. In that graph we saw from the Petitioners, if you look at the time Noranda came onto the market as a new producer and watch the prices fall. And I can tell you even from the quotes, the prices were falling. And then they left the market because their process was not working.

They were, in fact, losing a lot of money and they had to shut it down. Then the prices began to firm after Noranda alone, left the marketplace.

COMMISSIONER PEARSON: Okay. It sounds to me like -- I'll get to you in a second -- it sounds to me like there's a story there about things going on in the marketplace that might have had an effect on price that could be explaining some of what we're seeing in the record. And, yet, I haven't yet seen that story spelled out in a way that I've been able to understand. Mr. Dery?

MR. DERY: Well, my only comment on the Pechine plant is now it's being owned by Alcan, as we purchased Pechine. This plant stopped its operation in France in 2001, about the same time that Alcoa stopped their operation. As a matter of fact, those two plants were very similar. And the reason why they stopped is their operation costs were too high. And all their technology was no longer competitive.

COMMISSIONER PEARSON: Okay. Well, for the post-hearing, to the extent that there's an argument there to develop, please feel free to do so. You know, issues like direct imports into the United States, if that was relevant, or if these firms weren't directly exporting to the United States, was

their entry or exit from the industry having an effect on the world market that then filtered through to the United States market. You guys know all of this stuff.

I think my last question, Mr. Leibowitz or others, who are members of the Bar, I am not -- so, you'll have some idea of the depth of my understanding or lack thereof of the Title VII statutes, but in several of the presentations, there were compelling discussions of the economic damage and hardship that would come onto U.S. firms using magnesium if the orders go into effect, okay. And I have empathy for all those people caught in that situation. But the real question is, to what extent do the statutes allow us to consider those hardship effects, as we make our determination in this case? Because, my general understanding is that we need to look at the affects of the dumped imports on the U.S. producers of magnesium.

MR. LEIBOWITZ: Commissioner Pearson, I'd be glad to respond to that question. The statute requires the Commission to consider various factors that are listed in the statute and permits consideration of any other economic factor that is relevant to the question of injury. The question of

injury is whether there is injury by reason of subject imports. Our point is very simple. This market in this industry needs imports. Imports are indispensable, not only to Alcoa or Alcan or the die casters, but to U.S. Magnesium, as well. If imports do not come into this market, the demand will fall off and that will redound to the injury of U.S. Mag, as well as these users.

Imports that are beneficial to the domestic industry cannot hurt it. And, therefore, that is a relevant factor for the consideration of whether subject imports are causing or threatening material injury. It's clear, it's direct, and it is undeniably relevant. If you fail to consider it, I think you're not doing the job the statute really gives to you, especially in this instance, where you have a single significant domestic producer in a market that is clearly in supply deficit, where imports are absolutely necessary, including subject imports.

COMMISSIONER PEARSON: Okay. My red light has come on. But, if you wish to elaborate on that in the post-hearing, that would be appreciated, particularly if there are any precedence where the Commission may in the past have applied that approach.

MR. LEIBOWITZ: We will give you some and we

would enthusiastically entertain that question. Thank you.

COMMISSIONER PEARSON: Thank you.

CHAIRMAN KOPLAN: Well, maybe I can just pick up on that a little bit with you. I wanted to start this with Mr. Roberts, but Mr. Roberts isn't here. So, I'm going to raise this with Mr. Gurley and with you, Mr. Leibowitz. Let me walk through this a little bit. On page 17 of Mr. Waite's pre-hearing brief, he argues that 'even if restrictions are placed on imports of pure and alloy magnesium from Russia and on magnesium from China, there are other sources of imported magnesium, which is significant and readily available.'

What I'm trying to understand here and then I just heard your discussion of all of this, there are non-subject imports present in this market that I can't detail because it's BPI in tables C-1 and C-2 that are fairly traded. If Mr. McHale, when he testified, is correct in that the U.S. market needs access to imports, why can't we simply turn to fairly-traded non-subject imports?

MR. LEIBOWITZ: Mr. Chairman, would you like Mr. McHale to answer that or would you like me to answer that?

CHAIRMAN KOPLAN: Well, I'll start with you.

MR. LEIBOWITZ: Okay. Fairly-traded imports, in this case, mean imports that are not subject to investigation. The Petitioner simply chose not to file --

CHAIRMAN KOPLAN: Right.

MR. LEIBOWITZ: -- against those countries. The issue in this case is whether there is injury by reason of the imports that the Petitioners chose to involve in this case. The Commission's job is to look at those imports and determine whether they are causing or threatening material injury. We believe that they are needed in this market and we believe that the imports that are currently coming in are needed in this market. The fact that they have been a subject of an affirmative determination by the Commerce Department only has significance in the sense that it brings them before this Commission to decide whether they're causing or threatening injury.

CHAIRMAN KOPLAN: Could I jump in for a second?

MR. LEIBOWITZ: Yes.

CHAIRMAN KOPLAN: You heard me ask Petitioner this morning, the industry witness, Mr. Legge, whether they ever had to turn away sales

because they were unable to meet your clients' requests for product and that did not occur, as I understand it. Can you document for me shortages where you could not obtain product from Petitioner and, therefore, had to turn to subject product? I mean, is there documentation for that?

MR. LEIBOWITZ: I would defer to Mr. McHale for the precise answer to that. That may be confidential; I don't know. But, there is documentation for that, yes.

CHAIRMAN KOPLAN: If it is confidential, though, you could have provided that information up until now in your pre-hearing confidential submissions. Mr. McHale, is there such documentation? Has U.S. Magnesium, during the period under examination, failed to meet your specific requests?

MR. MCHALE: They did defer, I believe it was in 2003, the first half or first quarter of 2003, they could not meet our requirements and we had to go outside and purchase substitute units.

CHAIRMAN KOPLAN: Could you document that for me?

MR. MCHALE: We can document that.

CHAIRMAN KOPLAN: And when you went outside, did you have to go to subject project or where you

were able to go to what we call non-subject project?

MR. MCHALE: I think we went to a mix of both.

CHAIRMAN KOPLAN: A mix of both. If you could provide the details on that for the post-hearing submission.

MR. MCHALE: Okay.

CHAIRMAN KOPLAN: And I appreciate your identifying that. And I would, also, since they are here, ask Petitioners to similarly respond in kind with documentation. That would be very helpful.

MR. LEIBOWITZ: And Mr. Chairman, I would, also, add that Mr. McHale referred to the Warrick, Indiana facility. That's another example where U.S. Magnesium can't practically supply that particular plant because of logistics.

CHAIRMAN KOPLAN: Okay.

MR. LEIBOWITZ: So, that's another example.

CHAIRMAN KOPLAN: I mean, you understand where I'm going with this?

MR. LEIBOWITZ: Yes, I understand where you're going with that. And I believe that in our view, it simply cannot be arbitrarily assigned that the Petitioners will decide which countries can trade here and which ones cannot and have a viable

competitive market in the global sense. And that's where we're struggling with that formulation. We can't just say, let's deal with the imports that they chose not to file against, add those to the domestic production, and see where we are. We won't be in a very good place.

CHAIRMAN KOPLAN: I appreciate your argument. You appreciate the need for my asking this question, though.

MR. LEIBOWITZ: Certainly.

CHAIRMAN KOPLAN: And I'll look forward to the response. Thank you.

On pages -- this is for Alcoa, again. On pages five and six of your pre-hearing brief, you state that the staff report is incorrect in its statement that 'there is an overlap in that both pure magnesium and alloy magnesium produced in the United States are used by aluminum producers.' I'm trying to understand why you assert this statement as incorrect, given the fact that Table 3-5 of the confidential staff report at page 311 shows that -- and I can't put the percentage out here in the public session -- but it's on line six that I'm looking at. And it shows, in my opinion, that a significant amount of the magnesium shipped to aluminum alloyers in 2003 from

U.S. producers was alloy magnesium.

What I'm asking you, Mr. Leibowitz, is if you are challenging the number that appears in that table and, if so, I'd like you to include a discussion of that briefly in your in-camera session and also for purposes of the post-hearing.

MR. LEIBOWITZ: Certainly, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you. Mr. Tissington's testimony this morning regarding the AM50A alloy magnesium, and it's at pages three to five of his prepared statement, which I assume you have, as well, and Mr. McHale's testimony this afternoon are what I might call diametrically opposed to each other. Any documentation that can be provided with respect to the beryllium aspect of this product by either Petitioners and/or Respondents would be very much appreciated by me, in terms of the post-hearing.

MR. LEIBOWITZ: I would be happy to do that, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you. Any additional -- you know, I've got two sides at war with each other over this issue and I'm trying to get a grip on it.

MR. LEIBOWITZ: The only reason I'm hesitating is that I do not necessarily see them diametrically opposite. I think they emphasize

different points. I think they are reconcilable, at least for the most part. To the extent they're not, of course, Alcoa is correct.

CHAIRMAN KOPLAN: Well, unless Mr. Dorn stipulates to that, I'm still looking forward to hearing from both sides.

MR. LEIBOWITZ: Absolutely.

CHAIRMAN KOPLAN: Thank you, very much.

MR. LEIBOWITZ: We'll take no chances.

CHAIRMAN KOPLAN: Thanks. With that, I'll turn to Vice Chairman Okun.

VICE CHAIRMAN OKUN: Thank you, Mr. Chairman. And, again, I've enjoyed listening to the answers to the many questions. I still have a few more. Let me just go back on this AM50 one time, just to make sure I understood the testimony, Mr. McHale, you gave regarding when there was a change in the standard, the ASTM standard, that now specifies a specific beryllium content, if I understand that correctly. Did you, if you can tell me in the open session, did you purchase any more Chinese AM50 after that change was made?

MR. MCHALE: I do not believe we purchased any Chinese AM50 after that change was made.

VICE CHAIRMAN OKUN: Okay. And if someone

wanted to produce beryllium free, I mean if that's a -- I may get some sort of an argument over whether that's an accurate term -- alloy, would it then just come in as a non-ASTM specified or --

MR. MCHALE: If it came in as beryllium free, it wouldn't meet the ASTM spec. Then, it would fall under primary.

MR. LEIBOWITZ: If I may add, in previous cases where pure magnesium was the subject merchandise, pure magnesium has been defined as magnesium that is either more than 99 point something percent magnesium or if it's more than 50 percent magnesium, if it does not meet the specifications for an ASTM alloy. In this instance, AM50 that did not have the minimum beryllium content would not meet the specification for an ASTM alloy and, therefore, would be considered pure.

VICE CHAIRMAN OKUN: Okay, okay.

MR. LEIBOWITZ: And so there would be no overlap with alloy.

VICE CHAIRMAN OKUN: Okay; all right. Well, if you could just, for purposes of the post-hearing, document whether or not you did purchase any more AM50. But, then, the other question I had --

MR. LEIBOWITZ: Sure.

VICE CHAIRMAN OKUN: -- during that discussion, Mr. McHale, was when you were talking about why you would choose to purchase an AM50 when both you and Mr. Dery have said you would prefer the pure. And it relates to this non-subject question, which is, I mean, if I look at the data in the record, it looks like there is pure available from other sources. What makes you go to -- what made it attractive to go to a Chinese AM50 beryllium free versus just buying other pure that could be in the market, not U.S., but a non-subject?

MR. MCHALE: Once again, it's a diversity of supply issue. When you look at --

VICE CHAIRMAN OKUN: But on that point, isn't it diverse -- I mean, maybe I don't know exactly where you're purchasing on everything, but is it diverse you have to be out of western pure?

MR. MCHALE: When you look at the number of producers, western producers of magnesium, there really are a limited number of producers. And when you look at China being the largest single producer of magnesium in the world, not to tap into that source wouldn't be the right thing to do from a business standpoint.

VICE CHAIRMAN OKUN: Okay. So, you're

saying if you're looking at other suppliers, the Canadians, your western suppliers, you believe you have to be diversified beyond U.S. Mag and a Canada supplier --

MR. MCHALE: Correct.

VICE CHAIRMAN OKUN: -- in your view? Okay. I had to make sure I understood where the incentive was to go somewhere else. Yes, someone else --

MR. DERY: If I may add one comment?

VICE CHAIRMAN OKUN: Yes.

MR. DERY: As was mentioned before, the magnesium is a global -- we look at that globally. And when you look at the global production of the magnesium, two-thirds or 70 percent of the mag is being produced in China and we cannot just ignore that. But, it's part of a global thing. And then we base our strategy on what is available and where the demand is and when we adjust it. And that's clearly important. We cannot ignore Chinese alloys when it's available.

VICE CHAIRMAN OKUN: Okay. And just, Mr. McHale, just one other thing that I meant to ask you before, which is when you were talking about what the specifications are for Alcoa on this AM50, the beryllium free, as you put it, it's not because the

FDA -- in other words, Mr. Dorn, I heard say there's no FDA requirement the cans can have it. It's an Alcoa specific requirement or there's -- are there any other reasons why you can't use it?

MR. MCHALE: I believe there are CONEG requirements that address elements like beryllium and cadmium. But, however, this is an Alcoa requirement. Alcoa is on the cutting edge of this requirement. We think the industry is going to come right along with us fairly quickly.

VICE CHAIRMAN OKUN: Okay. So, it's specific on that. Okay. That's helpful for me to understand the distinction there.

Okay. There was -- Mr. Gurley, you had your microphone on in responding to Chairman Koplan's question that Mr. Leibowitz had spoke to. Did you have anything further on that?

MR. GURLEY: Well, when he asked, I guess, both parties to put on evidence that there was -- that U.S. Mag had been turning away business --

VICE CHAIRMAN OKUN: Right.

MR. GURLEY: -- I was hoping that the tone of that question would include the present, so that if they are currently now, based upon their contracts that went into 2004 for 2005, if that's resulting in

them being forced to turn away business.

VICE CHAIRMAN OKUN: That's a decision the Commission, I assume, has not reached regarding the collection of additional data. So, I'll just leave it there.

CHAIRMAN KOPLAN: That's correct.

VICE CHAIRMAN OKUN: All right. Then, let me, also, just on a follow-up on the legal question that Commissioner Pearson posed regarding whether the statute allows us to take into effect the impact on consumers, just to make sure that Petitioners understand that they are also being asked to respond to that particular question, as well, and looking at the legislative history with the statute. And I see Mr. Dorn is shaking his head, Mr. Narkin. So, we'll see something on that. I appreciate that.

I have a question with regard to on the pricing data, a little bit on, you know, who is buying the different products on there. But, I think it might be better addressed in the closed session where we can actually look at the data. So, I think I'll hold that one and I have no further questions at this time, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you. Commissioner Miller?

COMMISSIONER MILLER: Thank you, Mr. Chairman. Just one last area that I think I can only do at this point, because I wanted to talk to Mr. Dery a little bit more about -- I have your testimony regarding the secondary magnesium industry, particular industry, and I was looking at it again, just in terms of that being an industry, which you talk about how Alcan has been very involved in investing in the development of it. And I guess given particularly the problems that we've seen, we have in our record about some of the facilities -- you've mentioned fire issues and such -- I wondered if you could comment a little bit about what you see as the future of the secondary magnesium industry. And then I'm going to ask Mr. McHale to comment, as well, because I didn't hear the same discussion or you didn't talk about the secondary magnesium industry, as much, Mr. McHale, so I just wanted to see what Alcoa's view of that industry is. Mr. Dery?

MR. DERY: Yes. Well, I cannot agree more with your comment that there is risk for this kind of business, which you have a prime example that just happened recently. But regardless of that, we believe in sustainability. We believe that recycling a product is good overall for -- as an application. We

love to do that with aluminum. That's one of the greatest value of aluminum, its recyclability. And being able to do that with magnesium is certainly something we consider important. It will help us to diversify sources and it helps us to contribute to what we describe as sustainability. But this comes with constraint, as I explained. We have to recycle basically reject from die caster. And there is zinc and beryllium that we have to manage properly to be able to introduce that in our alloy. And we do -- we are very concerned by that and we are closely monitoring those things. And doing those things allow us to be able to use it. For future requirement, we are certainly seeing that as part of our solution for us.

COMMISSIONER MILLER: Does any other country have a secondary aluminum -- or a secondary magnesium industry?

MR. DERY: Absolutely.

COMMISSIONER MILLER: Okay.

MR. DERY: Absolutely. There's many --

COMMISSIONER MILLER: Where?

MR. DERY: There's many in Europe. We refer to the Pechine plant before.

COMMISSIONER MILLER: Right.

MR. DERY: This plant is -- right now, it's a recycling plant. U.S. Magnesium is a recycler. They are doing some recycling. And, basically, they are everywhere.

COMMISSIONER MILLER: To your knowledge, is it -- are they doing it in China and Russia, as well? Or --

MR. DERY: They are doing some recycling in China. Norse Hydro has a recycling plant in China. You do have a recycling plant in Germany. Of course, recycling has to be done -- wherever you have die caster, chances are that you will find a recycler in a nearby area.

COMMISSIONER MILLER: Because it's the die caster --

MR. DERY: Yes, yes.

COMMISSIONER MILLER: Okay. Mr. McHale, any comments on that?

MR. MCHALE: Yes. Alcoa is very supportive of recycling and the secondary magnesium industry is part of that recycling complex. However, the secondary industry recycles die cast magnesium and that die cast magnesium contains beryllium.

COMMISSIONER MILLER: Right.

MR. MCHALE: It is our idea that that metal

should be recycled and go back to the die casters, which hopefully would open up opportunities for us to buy more primary magnesium, as that recycled product goes back into their system.

COMMISSIONER MILLER: Okay. So, that's a little different approach from Alcan, which is --

MR. MCHALE: Different.

COMMISSIONER MILLER: -- hoping to bring it back into the aluminum industry. You're seeing it as more another --

MR. MCHALE: If the beryllium could be controlled, it would be something -- we, obviously, would look at those metal units.

COMMISSIONER MILLER: Okay. Well, I have to admit, just to digress for a minute, last night I was at a science show and they were doing fireworks with magnesium at one point. I'm like, ah, tomorrow. I have no further questions. I appreciate all the testimony of the witnesses. Thank you.

CHAIRMAN KOPLAN: We could have used some of those at this hearing. Commissioner Hillman?

COMMISSIONER HILLMAN: Just one quick follow-up, Mr. Ferguson. I just want to make sure I got this right. You had testified earlier, in your direct testimony, about this issue of a problem with

getting supply from U.S. Magcorp during the time of their bankruptcy and this issue of the third-party payer system. Did you have subsequent supply problems from U.S. Magnesium after -- I mean, again, after the bankruptcy was over with, were there then later on supply problems?

MR. FERGUSON: No. We were able to correct after that, about a one-month period.

COMMISSIONER HILLMAN: Which would have been when?

MR. FERGUSON: It was in 2004.

COMMISSIONER HILLMAN: Okay.

MR. FERGUSON: I'd have to look and see.

COMMISSIONER HILLMAN: All right, all right. Okay.

MR. FERGUSON: Yes, I think it was 2004.

COMMISSIONER HILLMAN: I think with that, I have no further questions. But, thank you all, very much, for your answers.

CHAIRMAN KOPLAN: Thank you, very much. I'll turn to Commissioner Lane.

COMMISSIONER LANE: Mr. McHale, I have a few questions for you and it's basically talking about the diversity of supply and your getting your product from China. Do you source your product from more than one

place in China -- I mean, more than one supplier?

MR. MCHALE: We have a number of qualified Chinese magnesium producers that Alcoa sources globally from. Certainly, our European supply and our Australian supply and our Canadian supply come from those approved manufacturers in China.

COMMISSIONER LANE: And not your U.S. supply that you need --

MR. MCHALE: We're currently not buying any Chinese AM50.

COMMISSIONER LANE: When you buy your product from China, do you do that through a contract or do you do it just on a transaction-by-transaction basis?

MR. MCHALE: Generally, our contracts are anywhere from six months to one year. We would deal directly with the Chinese producers. There are times we would use a broker or trader in the middle of the relationship.

COMMISSIONER LANE: And have you had any problems with, if the price changes, the Chinese saying we're not going to honor the contract?

MR. MCHALE: We have been faced with those issues, also.

COMMISSIONER LANE: And what happens then?

MR. MCHALE: That's kind of confidential information.

COMMISSIONER LANE: Do you get your product? I mean --

MR. LEIBOWITZ: Commissioner, we're just treading a little close to business proprietary information here that might come up in the answers. That's the only reason for hesitation. We'd be happy to discuss it fully in post-hearing and give you all the details we have.

COMMISSIONER LANE: Well, what I'm wondering is, and I don't -- I wouldn't imagine that this would be business confidential, but when you make these business decisions and you're concerned about the ability of U.S. Magnesium to deliver the product that you need, do you weigh that against dealing with Russian or Chinese legal systems and what happens if somebody fails to deliver on their contract? Are those issues that are concern to you?

MR. MCHALE: All of them are. Certainly, all of them come into discussion as far as when we decide on sourcing of supply and who we're going to partner ourselves with. We look at the financials. We look at their environmental. We look at a lot of issues. And some of those issues have risk, some of

those don't. We evaluate those risks and make business decisions accordingly.

COMMISSIONER LANE: Okay. Now, my last area of questions relate to beryllium. Why does Alcoa not want beryllium in its product?

MR. LEIBOWITZ: Ms. Fessenden will respond to that.

MS. FESSENDEN: Using beryllium in the process creates an industrial hygiene problem for the workers exposed to the beryllium and that's why we don't have it -- don't want it in our plants, don't want it where they can breathe it in.

COMMISSIONER LANE: Okay, thank you. That's all the questions I have.

CHAIRMAN KOPLAN: Thank you, Commissioner. Commissioner Pearson?

MR. DERY: Excuse me.

CHAIRMAN KOPLAN: Oh, I'm sorry.

MR. DERY: One comment. What's just been said, we have the exact same concern. The Alcan system, we just chose to manage that problem instead of saying, well, we don't want to see it in our plant. That is a very respectable position. But, you could do either or. And beryllium is an issue. It has to be managed. And a different solution may appear.

CHAIRMAN KOPLAN: Thank you, Commissioner Lane. Commissioner Pearson?

(No questions from Commissioner Pearson.)

CHAIRMAN KOPLAN: I just have one thing. Mr. McHale, you said you are currently not buying Chinese AM50 -- AM50A, I guess. So where are you sourcing that from, if you're not buying from the Chinese?

MR. MCHALE: Where are we sourcing our magnesium from?

CHAIRMAN KOPLAN: What have you used to replace the Chinese product that you had been purchasing before?

MR. MCHALE: Pure, pure magnesium.

CHAIRMAN KOPLAN: Pure, okay. I have nothing further. Let me see if there are -- Commissioner Hillman?

COMMISSIONER HILLMAN: Just one further question, Mr. McHale, just in response to Commissioner Lane -- I just want to make sure I understand -- whether you do have beryllium in any of the products that you do or is it only for the food and beverage applications, where you are using this beryllium-free magnesium?

MR. MCHALE: No. In any of the products

that Alcoa manufactures.

COMMISSIONER HILLMAN: Okay.

MR. MCHALE: As Liz says, it's a workforce issue.

COMMISSIONER HILLMAN: Okay. I just --

MR. MCHALE: Exposing the workforce to beryllium.

COMMISSIONER HILLMAN: I just wasn't sure whether her workforce was only the food and beverage workforce or whether it was all Alcoa.

MR. MCHALE: No.

COMMISSIONER HILLMAN: All right. So, as I understand your testimony, all --

MR. MCHALE: All.

COMMISSIONER HILLMAN: -- Alcoa products are produced beryllium free.

MR. MCHALE: The magnesium is melted in an Alcoa plant in an open furnace, which would expose our employees to beryllium; whereas the die casters melt in a closed gas environment. So, their workers aren't exposed to it. It's a different type of melting.

COMMISSIONER HILLMAN: Like I said, I just wasn't sure whether she was speaking of all Alcoa workers or just for the food and beverage. Thank you, very much. I have no further questions, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you, Commissioner. Let's see if there are any other questions from the dais. Seeing that there are none, Mr. Deyman, have we covered everything?

MR. DEYMAN: I believe so. The staff has no questions.

CHAIRMAN KOPLAN: Thank you. Mr. Dorn, before we release this panel, do you have any questions of this panel?

MR. DORN: No questions, Mr. Chairman.

CHAIRMAN KOPLAN: Okay. Thank you. With that, that concludes this portion of the presentations. Before I turn the panel loose, let me just say that I think that both sides today have done an extremely good job helping us with their presentations and it's much appreciated. With that, we will take a five-minute break and move into the in-camera session. Before we do that, could I get a time check on what both sides have remaining, Madam Secretary?

MS. ABBOTT: The Petitioners have 10 minutes remaining; Respondents, seven-and-a-half.

(Whereupon, at 3:44 p.m., a brief recess was taken.)

//

//

//

//

P U B L I C S E S S I O N

CHAIRMAN KOPLAN: Madam Secretary, for the record, is everyone -- if I could inquire of both sides whether their public witnesses are back in the room?

MR. DORN: Petitioners are back in the room, Mr. Chairman.

MR. LEIBOWITZ: Respondents are back in the room, Mr. Chairman.

CHAIRMAN KOPLAN: Okay. Thank you. Well, for the record, again, Mr. Dorn, you've got a minute and a half left if you care to use that for rebuttal and five minutes for closing.

MR. DORN: And I'd like to combine the two times, Mr. Chairman.

CHAIRMAN KOPLAN: Go from one right into the other?

MR. DORN: Yes, sir.

CHAIRMAN KOPLAN: Go ahead.

MR. DORN: Okay.

CHAIRMAN KOPLAN: Go ahead.

MR. DORN: All right. First, let's talk about the die casters' testimony. I think what you heard here was a chorus. Everyone agreed from the die casters that dumped imports affect domestic magnesium

prices. We agree. There's no disagreement. There's a legal disagreement. Mr. Leibowitz would have you say that, well, if the antidumping duties hurt consumers and the dumped imports help consumers, then you should reach a negative determination, but the law is just the contrary.

We have agreement on all sides here that dumped imports from China and Russia are having adverse price effects in the U.S. market.

With respect to Alcoa's testimony, an aluminum producer, we heard testimony was that we need a globally competitive price. Again, the emphasis on price.

With respect to the ASTM specification for beryllium, we have the 2000 specification for AM50A and it does require a minimum amount of beryllium. Mr. McHale is just wrong in his testimony to the contrary this afternoon and we'll supply these specifications with our post-hearing brief.

With respect to the closing of Northwest Alloys' plant, the witness today said that it didn't have anything to do with the imports, but the record is quite to the contrary. The original press release issued on June 22, 2001 said the closing was due to high production costs and unfavorable market

conditions. On June 23, 2001, a manager of the plant said the process the plant uses is inefficient and cannot compete with producers in China, Russia and Israel.

He went on to say that while a dramatic increase in the price of electricity has resulted in the shutdown of aluminum smelters in the region, that wasn't the cause of this closure. The increase in power costs wasn't good for the business, but the main reason for the plant's shutdown was market conditions.

Then, a human resource manger for Northwest Alloys, that is, corporate management of Northwest Alloys, signed a TAA application in 2001, June 25, 2001, in which he said magnesium is a commodity product primarily marketed on the basis of price. Imported magnesium in several forms and used for the same purposes as that produced by Northwest Alloys is being sold for less than $1.00 per pound.

He said magnesium produced in China and Russia is being imported at very low prices, below the cost of Northwest Alloys. The parent company, Alcoa, which has historically taken nearly all of Northwest Alloys' output, has sourced magnesium with these producers. And, in fact, the Department of Labor found that increasing imports contributed importantly

to the layoff of all the workers at Northwest Alloys' plant.

Then we had testimony before this commission in October of 2001 by Pat Graham, an employee at Northwest Alloys, who indicated that the employees at that plant had been certified for trade act assistance five times since 1991 and most recently again the prior month, the month prior to his testimony. He said that the flood of unfairly traded magnesium imports into the U.S. market is the primary reason that Northwest Alloys has shut down. Our managers at Northwest Alloys told us that Alcoa could not justify continuing to operate the plant given the low market prices caused by cheap imports.

So contrast what you heard today with what Alcoa and Northwest Alloys told the Department of Labor back in 2001.

Clearly, Alcoa wants cheap imports of magnesium. That's why they've changed their view on this subject.

Mr. Dery from Alcan said that antidumping duties will drive up prices. They're very concerned about antidumping duties driving up prices. But what's the flip side of that? The flip side of that is the dumped imports from China and Russia have

driven prices down. That's the statutory factor that the commission needs to focus on.

Mr. Dery also made it very clear that there was a substantial shift in the use of secondary alloy magnesium beginning in 2003 by the aluminum industry. That's the shift that Commissioner Hillman was asking about.

Mr. Dery said it's just another way to get magnesium units. You can get magnesium units from pure magnesium, you can get magnesium units from alloy magnesium. And therefore they are interchangeable to an aluminum producer.

Going back to the question of exports at low prices in 2002 and 2003, we would ask you to focus on the extensive evidence of lost sales that's in the record. As the chairman indicated, we have much more evidence of confirmed lost sales and lost revenues in this case than you have in the typical case and that was occurring during 2002 and 2003.

U.S. Magnesium didn't voluntarily decide to just export product at unfavorable prices. It was forced to do so because it was losing market share to dumped imports from China and Russia.

Now, the customers' witnesses say that prices for magnesium will cause a shift to alternative

die cast products. What about increasing prices for those alternatives, aluminum, steel and plastics?

Thank you Mr. Chairman.

CHAIRMAN KOPLAN: Thank you, Mr. Dorn.

Mr. Leibowitz?

MR. LEIBOWITZ: Thank you, Mr. Chairman, members of the commission. We appreciate your attention all day today. I will be hopefully quite brief.

The question of like product has been discussed quite a bit. I want to put it in perspective. I believe precedent matters. In previous investigations and reviews, this commission has found pure and alloy magnesium to be separate like products. We think they are separate.

Petitioners have made two points, essentially, for overruling this precedent: first, that there's an overlapping use of alloy magnesium for aluminum alloy and, secondly, that there could be an opportunity for escape -- I won't use the C word -- from antidumping duties. Neither point is accurate, neither should influence the commission.

The overlapping use described, even if Petitioners had correctly described it, is insignificant. It's not usable by the purchasers of

other alloy magnesium because of the absence of beryllium. It's not usable by Alcoa certainly because of the presence of beryllium.

The escape argument fails certainly because it would not work. We can detail that later.

The fact is that all of the normal circumstances you expect in a case like this for the last portion of the period of investigation are up: imports, prices, et cetera. All up. You don't expect that. There's something else going on here.

The Petitioners either don't care or don't know that their customer base will be decimated by antidumping duties in this case. Whether that is relevant for the commission's consideration is one point and I appreciate the questions from the commissioners about that, but why Petitioners don't appreciate it is frankly beyond me. I don't get that.

Consumers are at least as vulnerable as U.S. Magnesium under current market circumstances. Non-subject imports, this is important, can become subject imports at the whim of one company in this market. They will not step up and take the place of subject imports because if they do they, too, will become subject.

As imports disappear, so will domestic

producers. We believe that is a relevant consideration in determining whether those subject imports are a cause of injury to the domestic industry if there is such injury.

If the petition caused price increases, then why have Chinese magnesium prices gone up? Why have the prices of all other metal products in this market and in global markets gone up? That's what's happening here, not the filing of this petition. The petition is not relevant.

It is remarkable to me that the Petitioners admit that they have made a bet on winning an antidumping case, making a substantial investment. That investment was necessitated by major environmental liability that has been averted at least for the future by the installation of new equipment and more efficient equipment. I applaud them, but it's not a sign of injury that they made an investment. Companies that expand and make new investment are not injured. It points exactly in the opposite direction to Petitioners' claim.

With respect to the closing of Northwest Alloys, Ms. Fessenden I think accurately described the situation, not only today, but her colleagues in 2001 before this commission accurately described it. I

only point out that a trade adjustment assistance determination by the Labor Department is not binding, nor is it particularly instructive to this commission in its injury investigation.

That concludes my remarks. Again, I appreciate the commission's attention and we look forward to submitting our post-hearing brief.

CHAIRMAN KOPLAN: Thank you for that.

Maybe I misunderstood. Did I see you raise your hand, Mr. Dorn?

MR. DORN: I wasn't intending to get your attention, Mr. Chairman. I apologize.

CHAIRMAN KOPLAN: Okay. Thank you.

Post-hearing briefs, statements responsive to questions and requests of the commission and corrections to the transcript must be filed by March 2, 2005; closing of the record and final release of data to parties by March 16, 2005; and final comments by March 18, 2005.

I want to thank all those who participated in today's proceedings. It has been extremely helpful. I also want to thank staff.

With that, this hearing is concluded.

(Whereupon, at 5:55 p.m., the proceedings in the above-captioned matter were concluded.)

CERTIFICATION OF TRANSCRIPTION

TITLE: Magnesium from China and Russia

INVESTIGATION NO.: 731-TA-1071 & 1072

HEARING DATE: February 23, 2005

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 2/23/05

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Renee C. M. Katz
Signature of Court Reporter