UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
SILICON METAL FROM	)	731-TA-471 and 472
BRAZIL AND CHINA	)	(Second Review)

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Tuesday,
September 19, 2006

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

The hearing commenced, pursuant to notice, at 9:32 a.m., before the Commissioners of the United States International Trade Commission, the Honorable DANIEL R. PEARSON, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

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SHARA L. ARANOFF, VICE CHAIRMAN
JENNIFER A. HILLMAN, COMMISSIONER
STEPHEN KOPLAN, COMMISSIONER
CHARLOTTE R. LANE, COMMISSIONER

APPEARANCES: (Cont'd.)

Staff:

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In Support of Continuation of Antidumping Orders:

On behalf of Globe Metallurgical, Inc.:

ARDEN C. SIMS, President and CEO, Globe
J. MARLIN PERKINS, Vice President, Sales, Globe
KENNETH R. BUTTON, Senior Vice President, Economic Consulting Services, LLC
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In Opposition to Continuation of Antidumping Duty Orders:

On behalf of Ligas de Aluminio S.A. (LIASA); Companhia Ferroligas Minas Gerais Minasligas; Camargo Correa Metais S.A. (CCM); Associacao Brasileira dos Produtores de Ferroligas e de Silicio Metalico (ABRAFE):

ADELMO J. MELGACO, Executive Director, ABRAFE
ROBERT J. MC HALE, Vice President, Metal Procurement, Alcoa, Inc.

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I N D E X

P R O C E E D I N G S

(9:32 a.m.)

CHAIRMAN PEARSON: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation Nos. 731-TA-471 and 472 (Second Review) involving Silicon Metal From Brazil and China.

The purpose of these second five-year review investigations is to determine whether revocation of the antidumping duty orders covering silicon metal from Brazil and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I note for the record that in Memorandum CO76-DD-001 dated February 27, 2006, Commissioner Okun recused herself from these second review investigations and is therefore not participating in today's proceedings.

Notices of investigation for this hearing, lists of witnesses and transcript order forms are available at the Secretary's desk. I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

As all written material will be entered into the record in full it need not be read to us at this time. Parties are reminded to give any prepared testimony to the Secretary. Please do not place testimony directly on the public distribution table.

All witnesses must be sworn in by the Secretary before presenting testimony. Finally, if you will be submitting documents that contain information you wish classified as business confidential your requests should comply with Commission Rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: No, Mr. Chairman.

CHAIRMAN PEARSON: Very well. Let us proceed with opening remarks.

MR. BISHOP: Opening remarks on behalf of those in support of continuation of the orders will be given by William D. Kramer, DLA Piper.

CHAIRMAN PEARSON: Welcome, Mr. Kramer. Please proceed.

MR. KRAMER: These are the second sunset reviews of the antidumping orders covering imports of a product well-known to the Commission, silicon metal. As the Commission knows from its prior investigations and the current reviews, silicon metal is a price-sensitive commodity product.

These reviews cover two countries, Brazil and China. Both of these countries have large, highly export oriented silicon metal industries, and both have a history of selling large volumes of silicon metal at low prices in the United States and other export markets.

For both countries, the Department of Commerce has found that the subject suppliers would dump silicon metal in the United States at very high margins of dumping -- over 90 percent for Brazil and over 139 percent for China -- if the orders were revoked.

China is widely acknowledged to be an extremely aggressive supplier of silicon metal with enormous capacity whose exports to the United States would have a devastating impact on the domestic industry if the Chinese order were revoked.

The Brazilian subject industry is not as large as the Chinese industry. However, the capacity of the Brazilian producers that remain subject to the order is large in comparison to the United States industry and other industries globally. That is so without considering the capacity of RIMA, which currently is not covered by the order, but is the subject of a request that the Department of Commerce reinstate the order based on resumed dumping.

Moreover, the subject Brazilian producers are even more export oriented than the Chinese producers and are formidable suppliers of low-priced silicon metal.

The Commission should cumulate the volume and effects of silicon metal imports from Brazil and China in these reviews as it did in the original investigations and the first sunset reviews. Under the statutory criteria it is clear that there would be more than a reasonable overlap of competition between the imports from both sources and domestic silicon metal.

In addition, there are no differences in the conditions of competition between the subject imports from Brazil and China that would warrant a decision not to cumulate. Indeed, the conditions of competition for both countries are virtually the same.

There is extensive evidence in the record of these reviews showing that Brazil and China would each export substantial quantities of silicon metal to the United States at low prices that would undercut domestic producer prices and cause material injury to the domestic industry if the orders were revoked.

Before the orders were imposed, suppliers from both countries exported large and rapidly increasing volumes of silicon metal to the United States at low and declining prices that inflicted very serious injury on the domestic industry. Brazil was the largest source of the preorder surge of dumped imports. Postorder developments also confirm that substantial renewed flows of injurious dumped imports would reenter the U.S. market if the orders were revoked.

With respect to Brazil, the postorder evidence includes, among other things, the large surge in U.S. imports from the two companies that are not currently subject to the order, RIMA and CBCC, after the order was revoked as to those companies, as well as the conduct of the Brazilian producers in the EU and Japanese markets and in other North American markets in which they compete.

In the case of both countries, revocation of the orders would result in large and increasing volumes of dumped imports, pervasive underselling, lost sales and price declines in the U.S. silicon metal market that would cause very serious injury to the domestic industry.

These negative effects of revocation would be particularly grave because of the vulnerability of the U.S. industry to injury by unfairly traded imports. The industry has a history of severe financial losses, furnace shutdowns, bankruptcies, consolidations and other serious setbacks.

The industry's vulnerability to injury by unfair imports can be seen both in the preorder impact of the dumped imports from Brazil and China and in the impact of the recent influx of dumped imports from Russia.

For all of these reasons, maintaining the Brazil and China orders in place is critical for the continued viability of the U.S. silicon metal industry.

MR. BISHOP: Opening remarks on behalf of those in opposition to the continuation of the orders will be given by Lyle B. Vander Schaaf, Bryan Cave.

CHAIRMAN PEARSON: Welcome, Mr. Vander Schaaf. Please proceed.

MR. VANDER SCHAAF: Thank you. Good morning. I am accompanied here today by my colleague, Joe Heckendorn from Bryan Cave. We are here on behalf of LIASA, Minasligas and CCM, the three producers in Brazil still subject to the order.

We support decumulating the imports from Brazil with the imports from China, and we support revocation of this antidumping duty order as to Brazil.

Our story and testimony in this investigation is very simple. We will highlight the significant changes in conditions of competition that have occurred in this market since the original investigation and the last sunset review and show that there is no likelihood that injury is likely to continue or recur.

Much has happened in the market and in this industry and in the foreign industry since the Commission last reviewed this antidumping duty order. Even more has changed since 1991. At the time the order was issued, seven Brazilian producers existed, or at least in the last sunset review there were seven producers in Brazil. Now there are only four remaining who are subject to the order.

The antidumping duty order against Brazil has already been revoked by the DOC as to three producers -- CBCC, which is owned by Dow, and RIMA and RIMA's related company, Electrosilex, who has a 10-year lease agreement with Electrosilex to use all of Electrosilex's capacity under this 10-yearagreement

-- so CBCC, RIMA and Electrosilex are no longer under the order.

Combined, these nonsubject producers in Brazil represent a significant portion of overall production capacity that is no longer subject to the antidumping duty order.

Currently the remaining subject producers have insufficient capacity with which to shift to the United States, and their capacity utilization rates are very high. They also have very low inventory levels.

There are no plans to increase capacity in the future, and there also are no trade relief measures in place against the foreign producers in any country other than the United States so there are no barriers to entry in other countries that would provide some impetus for a diversion of shipments from another country to the United States.

During the original investigation in the first sunset review, it was primarily producers no longer in existence or producers against whom the order has already been terminated who were mainly responsible for the capacity, production and exports to the U.S. that were the factual basis for the Commission's affirmative determinations in those investigations, particularly the determination in the first sunset review.

Therefore, the original determination and the first sunset review do not provide a basis to infer that revocation of the antidumping duty order is likely to lead to a recurrence of material injury to the domestic industry.

We also addressed the Petitioner's statements that the prices of the Brazilian subject imports will be sold at unfair prices and will result in adverse price effects for the domestic producers.

Like so many other foreign producers, the Brazilian producers did not participate in the DOC sunset review investigation. However, we believe that these producers' history before the DOC in annual administrative reviews is telling.

LIASA, one of the remaining subject producers, has been issued a zero dumping duty margin by the Department of Commerce in four consecutive administrative reviews. Its current antidumping duty rate is zero. CCM also has a current antidumping duty rate of zero. It was issued to it in its most recent administrative review at the Department of Commerce.

Minasligas has received a dumping margin of 0.74 percent, and that is its current rate. However, it too has received zero dumping duty margins in administrative reviews at the Commerce Department three times.

Therefore, the remaining subject producers have demonstrated the likelihood that their future shipments will be at fair prices and not likely to lead to significant price depression or price suppression.

The pricing data and unit value data gathered by the Commission in this investigation demonstrate current high prices, and they offer no evidence that there will be any underselling by the subject producers or that there will be significant price depression or price suppression.

Additionally, the data show that the U.S. demand for silicon metal has grown since 2000 and will continue to grow and that the U.S. silicon metal industry is healthy, robust and not vulnerable to import competition. These changes have created a vastly different landscape from the previous sunset review and original investigation.

Thank you.

MR. BISHOP: Would the first panel, those in support of continuation of the antidumping duty orders, please come forward and be seated?

Mr. Chairman, all witnesses have been sworn.

(Witnesses sworn.)

CHAIRMAN PEARSON: Welcome back, Mr. Kramer. Please proceed when you're ready.

MR. KRAMER: Thank you. I'm going to reserve virtually everything I have to say in rebuttal for the closing statement, but there were several statements made in the opening on behalf of the Brazilian producers that are factually inaccurate that I think it's important to respond to.

The statement was made first that there were three producers that remain subject to the order and then the statement that there were four remaining subject to the order. The statement was then made that the order has been revoked with respect to Electrosilex.

The order remains in place with respect to Electrosilex, and there's a very substantial deposit rate in place. The facts are that Electrosilex for a 10-year period has leased its production facilities to RIMA, but as a producer it remains subject to the order, and no revocation has occurred.

Of course, the order remains in place as to any company from Brazil that produces silicon metal. There are four such companies producing now. A fifth company, SIBRA, produced for a period of time and then converted to another product.

The other point I want to address is the statement that the producers that are no longer subject to the order accounted for the flow of product into the United States that inflicted injury preorder. I don't know if I stated that precisely correctly, but that was the substance of the statement.

I'd like to refer the Commission to page 17 of our brief, which lays out the facts with respect to whether the company is still subject to the orders, to what role they played in the surge of imports that injured the domestic industry.

Our first witness is Arden Sims.

MR. SIMS: Good morning. Mr. Chairman and Commissioners, my name is Arden Sims. I am president and CEO of Globe Metallurgical and have held that position for more than 22 years. I have a Bachelor of Science degree in Electrical Engineering. I've worked in the silicon metal industry since 1970.

Prior to joining Globe I worked for 11 years in management positions at Union Carbide Corporation. I spent most of my time at the Alloy, West Virginia, silicon metal plant, which was then owned by Union Carbide. In addition, for three years I was president of operations for another ferroalloy producer, and I have extensive knowledge of all aspects of the silicon metal industry.

I would like to tell you about our company. Globe is now the largest silicon metal producer in the United States. I am proud of the fact that Globe is an efficient producer of silicon metal that is fully capable of competing with other suppliers in a fair trade environment.

We have worked to reduce our production cost. For example, we have been able to reduce our usage of electrodes per unit of output by half. While we have succeeded in becoming an efficient silicon metal producer, we are currently confronting significant energy and other cost increases. For example, just at the beginning of this year Alabama Power Company raised the energy cost at our Selma plant by about 30 percent.

When I started with Globe, the company began committing significant additional resources to total quality management which focused on further improving the quality, efficiency and cost of Globe's operations.

As the result of dedicated efforts by management and workers, our company was recognized for its achievements. Globe won the Malcolm Baldrige National Quality Award in 1988 as the first small company to win that award. Later we also received the 1995 Supplier of the Year Award from Dow Corning Corporation.

We have maintained our emphasis on quality. This continues today, as illustrated by the ISO certificates of registration that are currently in effect at our Alloy and Beverly plants.

Globe's roots go back to 1871 when it was founded as the Globe Iron Company in Jackson, Ohio. Globe built the Beverly plant in 1955 and started silicon metal production there in the mid-1960s. In the early 1970s, the company expanded with the acquisition of the Selma, Alabama plant.

Since I became president and CEO of Globe in 1984, the company's silicon metal operations have undergone significant expansion. However, this expansion has not been a steady, lineal progression, but rather been a rough ride with serious setbacks.

From 1988 through 1990, Globe's silicon metal production capacity declined by 27 percent, and our production declined by more than 29 percent. Over the same period, our financial performance greatly deteriorated. Afterwards, U.S. silicon metal prices significantly improved, and so did Globe's financial condition.

As a result, in 1993 we acquired a one furnace silicon metal plant in Springfield, Oregon, from Dow Corning which had decided to stop producing silicon metal. The Springfield facility enabled us to better serve our customers in the western United States. After that acquisition we increased production at the Springfield plant by about one-third solely through efficiency improvements.

The following year, in December 1994, we purchased the Niagara Falls, New York, plant. We completely refurbished the existing silicon metal furnace and then converted a ferrosilicon furnace to silicon metal production in 1997. As a result, production effectively doubled at that site.

The period of expansion was followed by severe setbacks for Globe's silicon metal business. In the year 2000, December of 2000, we were forced to idle our Springfield plant.

Difficult market conditions and high power costs led to an arrangement under which the electric utility agreed to purchase back the power not used by the idle plant. In other words, market conditions made it more economical for Globe to idle the plant in order to sell electricity back to the power company than to produce silicon metal.

The same adverse market conditions caused us in 2000 to convert both silicon metal furnaces at our Beverly, Ohio, plant to the production of ferrosilicon for use as a foundry alloy feedstock. This major restructuring also forced Globe to eliminate about 90 jobs permanently and lay off 67 other people at least temporarily.

Around the same time, adverse market conditions and high power costs also affected our Selma, Alabama, plant. In order to obtain a more competitive power rate for the Selma plant, Globe agreed to a new contract with Alabama Power that mandated a shutdown of the Selma plant in July and August of 2001 and 2002. On each occasion following these shutdowns, depressed market conditions forced Globe to delay the restart of one of the two idle furnaces.

Furthermore, falling sales and very low silicon metal prices led to the decision to convert one of the two silicon metal furnaces at the Niagara Falls plant to ferrosilicon production in August 2001. When market conditions did not improve by year end, both the ferrosilicon furnace and the remaining silicon metal furnace at Niagara Falls had to be idled.

The silicon metal furnace at Niagara Falls was restarted in July 2002 when the Selma plant was idled under the agreement with Alabama Power Company. As a result, for July and August 2002 Globe's silicon metal operations were reduced to production in a single furnace.

By late October 2002, the two silicon metal furnaces at Selma were back in operation. However, at that time our total silicon metal workforce had been reduced to less than half of its level in 2000.

The financial strains Globe has encountered, including the difficult pricing and economic environment, forced Globe to file for Chapter 11 bankruptcy protection in April 2003 and to restructure its operations.

We restarted one of the two idle furnaces at Beverly in September 2003. At the same time, the remaining silicon metal furnace at Niagara Falls was shut down, with the result is that silicon metal production ceased at the plant, which still remains closed today.

As part of Globe's reorganization under Chapter 11 of the Bankruptcy Code, the Springfield plant was sold for the real estate value of its site. In May of 2004, Globe emerged from bankruptcy, but not before our workforce had been reduced by a quarter from its 2003 level and the value of the company's assets had been significantly written down.

The recovery of silicon metal prices allowed Globe to restart the second furnace at Beverly in 2004. Only then did Globe return to its normal configuration of producing silicon metal in four furnaces, two in Beverly and two in Selma.

In December of 2005 we acquired from Elkem the Alloy, West Virginia, production facility, which we continued to operate as a silicon metal plant. As a result of this acquisition, Globe is now the largest silicon metal producer and one of only two remaining U.S. producers.

Why did Globe suffer the setbacks that I have described? These serious setbacks occurred because of the injury Globe experienced due to large and rapidly increasing volumes of low-priced dumped imports.

As our Vice President of Sales, Marlin Perkins, will explain more fully, silicon metal is a commodity product sold primarily on the basis of price. Because of the nature of the product and the

U.S. silicon metal market, the domestic silicon metal industry is very vulnerable to injury by unfair traded imports.

Beginning in 1988, a large influx of dumped silicon metal imports from Brazil and China flooded the U.S. market. In each of the three years between 1988 and 1990, Brazil was by far the largest source of these imports. The dumped imports were sold at low and declining prices that undercut domestic producers' prices and caused U.S. market prices to collapse.

Between the third quarter of 1988 and December of 1989, the *Metals Week* price for silicon metal dropped more than 70 cents per pound of contained silicon to 52 cents per pound, a decline of more than 25 percent. This enormous price decline forced Globe and other silicon metal producers to lower their prices to compete with the prices of the unfairly traded imports or lose sales.

As a result, U.S. silicon metal producers suffered declining sales, revenues, lost sales and significant operating losses. At the time we at Globe were very concerned about the survival of the company.

The silicon metal antidumping orders forced the Brazilian and Chinese suppliers to sell at fair value or to withdraw from the market. With the orders in place, the volume of imports from the two countries declined dramatically. By the end of 1993, the annual volumes of imports from Brazil and China had fallen by more than 94 percent from the 1990 level.

The orders also allowed U.S. silicon metal prices to improve. These improvements as a result of the orders enabled Globe to increase its silicon metal production capacity, production, shipments and employment. From the depressed 1990 levels, Globe was able to increase its U.S. silicon metal annual production volume by more than 150 percent and its U.S. shipments volume by more than 160 percent by 1999.

After the orders were issued, the profitability of our silicon metal operations recovered and improve4d to the level that enabled Globe to invest in improved productivity, increased production capacity, maintenance of existing equipment, improved plant infrastructure and protection of the environment.

We were able to acquire the Springfield and Niagara Falls plants and more than double our silicon metal workforce between 1990 and 1999. The recovery of our operations and the U.S. industry as a whole could not have occurred without the relief the orders provided from the aggressive unfair pricing of the Brazilian and Chinese imports.

This recovery, however, was undermined by a new flow of unfairly traded imported silicon metal. Between 1999 and 2001, Russian imports surged into the U.S. market at very low and declining prices. These imports cause an enormous price decline. As was the case with the dumped Brazilian and Chinese imports.

Globe and the other U.S. producers were forced to reduce their prices to compete with the prices of the dumped Russian silicon metal imports or to lose sales. As a result, the U.S. producers again suffered greatly declining sales revenues, lost sales and net and operating losses.

Between 1999 and 2001, Globe's sales revenue plummeted by more than 46 percent, and its U.S. shipments declined by more than 53 percent. After preliminary relief was granted, the Russian imports disappeared from the U.S. market and have not returned. As a result, U.S. silicon metal prices increased, allowing Globe's financial condition to improve and the company to emerge from bankruptcy.

The experience with the Russian imports demonstrates what would happen if the Brazilian order were revoked and subject Brazilian imports were allowed to reenter the market without the discipline of the order. Devastating injury was inflicted by the Russian imports, even though the capacity of the Russian silicon metal industry is much smaller than that of the Brazilian producers that remain subject to the order.

Not only do the Brazilian producers have substantial existing production capacity. They also could bring more capacity on line by converting ferrosilicon furnaces to silicon metal production.

Globe is currently still recovering from the extensive injury the company suffered from dumped Russian imports. It has just been a little over two years since Globe emerged from bankruptcy after a costly and painful restructuring process. The Brazil and China orders, in combination with the Russian orders, have made that emergence possible.

I understand that the Brazilian producers are portraying the U.S. industry as healthy, robust and sheltered from import competition. It is true that Globe's financial condition has improved significantly in the past two years. However, that improvement reflects and is dependent upon the relief from unfair import competition that is now in place. Moreover, the recent improvement has by no means been sufficient to erase the devastation our company has experienced due to imported products.

Globe's recovery would not have been possible without the orders covering imports from Brazil and China, and we greatly appreciate the fact that import relief was provided and has been maintained.

In closing, I want to reemphasize how critically important the continuation of the antidumping orders on silicon metal from Brazil and China is to Globe. We would not have been able to emerge from bankruptcy, to acquire the former Elkem plant or indeed to survive as a domestic supplier of silicon metal in the absence of the orders. All of the work that Globe has done to improve its operations and to become the company it is today would be severely at risk if the orders were revoked.

We welcome fairly traded import competition. However, the experience with the dumped Brazilian and Chinese imports, as well as the injury inflicted by the dumped Russian imports, have demonstrated the devastating effects that revocation of the orders covering imports from Brazil and China would have on the U.S. industry.

Thank you.

MR. KRAMER: Our next witness is Marlin Perkins.

MR. PERKINS: Good morning, Mr. Chairman and Commissioners. My name is Marlin Perkins. I am Vice President of Sales for Globe Metallurgical.

For over 17 years I have supervised the selling and marketing of Globe's entire product line, including silicon metal. Thus, I am very familiar with the U.S. silicon metal market and the impact of unfairly traded imports on the domestic industry.

Today I am here to testify about the product silicon metal and the U.S. silicon metal market and why the antidumping duty orders covering imports from Brazil and China are so important to Globe.

First I would like to address the nature of the product. Silicon metal is a commodity product. There is no meaningful difference between domestic and imported silicon metal.

The Brazilian and Chinese producers and the other import competitors in the U.S. market make the same product as the U.S. industry using the same raw materials and the same production process, and sell it on the same basis and to the same types of customers. A ton of silicon metal is a ton of silicon metal regardless of source.

The U.S. market is a highly competitive market with two domestic producers and many import suppliers. The silicon metal sold by the Brazilian and Chinese producers, as well as other domestic and import suppliers, meets customer specifications in all segments of the market and is sold to customers in all of these market segments.

The bottom line for customers is that price is by far the most important consideration in purchasing decisions. Of course, a supplier must meet the customer's specifications for silicon metal with respect to maximum levels of impurities and sizing. Customers also ask about sales and technical service, but when it comes down to who wins the business it always comes back to price -- how much per pound.

Current market price information is readily available in industry publications like *Ryan's Notes* and *Metals Week*. Through these weekly publications and because customers tell suppliers about competing bids, price changes are rapidly disseminated throughout the market.

A large portion of total U.S. silicon metal consumption is concentrated in the hands of a few large chemical and aluminum industry purchasers. Because of their large size and small number, these major purchasers have a great deal of leverage in price negotiations. They are in a position to and do use competing domestic and import price offers to force our prices to the lowest level possible.

I understand the Brazilian producers are telling the Commissioners that since the first sunset reviews silicon metal has changed from being a commodity product to one sold on a tailor-made basis. It just isn't true that silicon metal is no longer a commodity product.

In fact, if there has been a change it's been in the direction of a convergence to producing what is fundamentally a single high-quality product. Globe and most producers globally aim to produce silicon metal that can be sold to customers in all market segments.

As the Commission knows, there are three principal market segments for silicon metal -- chemical, primary aluminum and secondary aluminum. In most respects chemical industry customers have the most rigorous specifications in terms of the maximum levels of impurities. However, when you produce a product that meets the specification of chemical industry customers you can sell this same product down to customers in the primary and secondary aluminum market segments.

Silicon metal is produced in the continuous furnace process that includes postfurnace refining. The silicon metal produced through that process can be and is sold to all types of customers. Sometime, we do a little more post furnace refining, or in one case, a postfurnace ladle addition, to meet the needs of a particular customer.

In addition, we cannot completely control the chemical composition of the material that comes out of our furnaces. If it happens, for example, that certain material has a higher than anticipated iron content we will sell this material to customers that have a less stringent iron specification.

Thus, to a certain extent we match our output to customers' needs whether they relate to the chemistry or the sizing of the product. However, these are minor differences in composition. We do not produce silicon metal that can only be sold to a particular customer. Nor do we produce material that is not interchangeable with competing material sold by other suppliers.

The Brazilian producers can and do sell to all market segments, and all U.S. and Brazilian suppliers are capable of meeting the requirements of all types of customers.

I also understand that the Brazilian producers claim that certification and prequalification requirements would present a barrier to entry for Brazilian and Chinese imports, if the orders were revoked.

In fact, this is an area where the market has changed in recent years. While in the past customers required suppliers to undergo a more rigorous prequalification process, now that process can be accomplished in a matter of days or weeks in most cases. In some circumstances such as chemical segment sales for electronic applications, it can take up to a few months, but these cases are the exception today.

The extent to which certification and prequalification have become less of an issue was demonstrated when GE Silicones held its internet auction in 2001 where suppliers were qualified in a matter of days and GE bought material from whoever offered the lowest price.

For most primary and secondary aluminum producers, qualification has been reduced to a truckload trial. The customers buy a truckload of material from a would-be supplier, and if the product is satisfactory they will take additional volumes from that supplier. If the product is not satisfactory, there may be some follow-up questions for the supplier.

In short, certification and prequalification requirements are not a barrier to imports from Brazil and China. They would offer us zero protection from a renewed flow of low-priced Brazilian and Chinese imports.

While a significant portion of silicon metal sales are made under long-term contracts covering a period of at least one year, such contracts do not protect us from market price declines. The price in long-term contracts is a negotiated term that reflects competition at the time the contract is written.

When market prices fall and the lower prices are published, the large silicon metal customers simply pressure us to reduce our contract prices. If we don't meet their demands, they will either reduce the volumes covered by the contract or not buy from us in the future.

This just happened to us at the end of last year with a major chemical industry customer that we sell to under an annual agreement. Market prices fell below the agreed upon contract price. They told us that business was slow and that they didn't need the volumes that they had committed to purchase. We were forced to cut our price. After we did the customer took the full volume specified in the contract.

For primary and secondary aluminum producers, contracts are normally based on anticipated volume requirements for a defined period of time, whether for a quarter, six months or a year. However, the amount actually purchased during the contract period frequently ends up different than the original contract volume.

We have very little power to compel the customer to take any minimum volume, and as a result when market prices fall customers can simply reduce the quantities they buy from us under the contract and buy lower priced material to replace the higher priced volume originally agreed upon.

I would now like to explain why I think that revoking the orders would be a catastrophe. I was there in 1989 and 1990 when the imports from Brazil and China came flooding into the U.S. market. They took market share by offering very low prices, undercutting those of Globe and other U.S. producers. The result was that U.S. market prices fell to very low levels, and the domestic industry was severely injured.

The Brazilian imports were the largest in volume during that period and increased dramatically. They were very aggressive with respect to pricing. I remember visiting customers during this period. When we would meet the Brazilian's price they would simply cut it again. Chinese imports increased rapidly and were very low-priced as well. Without the antidumping relief, Globe would not have survived.

Unfortunately, the same pattern repeated itself with low-priced imports from Russia beginning in 1999. In that year and in 2000, significant quantities of Russian imports were sold at low prices, undercutting the prices of domestic producers and other import suppliers. Globe and other suppliers had to lower their prices.

Then, beginning in 2001, the trade press started reporting an increase in Russian imports at even more aggressive prices. Every time Russian silicon metal won a sale by cutting a price, prices throughout the market were affected. Prices declined almost 30 percent, reaching 47 cents a pound in May 2001.

If the orders covering imports from Brazil and China were revoked, the same thing would happen again. The Chinese producers and Brazilian producers under order would resume shipping large volumes of imports to the United States, and they would do so at prices undercutting Globe and other suppliers. Market prices would fall, and Globe's continued viability would be very much in doubt.

The Brazilian and Chinese imports are among the lowest priced and most aggressive in the world. They fight for market share wherever they appear, using low price as leverage. I witnessed this firsthand during the period leading up to the filing of the petition.

Then, after the Chinese and Brazilian imports in the U.S. were constrained by the antidumping orders, we continue to see the same aggressive pricing from these imports in Canada. Globe used to make significant sales of silicon metal in Canada.

A primary aluminum producer that previously had purchased silicon metal from U.S. suppliers moved part of its high silicon aluminum alloy production to Canada. When this company came out seeking bids for silicon supply, we offered them silicon metal at an attractive price.

We were told, however, that the company had decided to purchase from Brazil and Chinese suppliers whose prices had undercut our bids. Today Globe is no longer making significant sales into Canada. We were displaced by the Chinese and Brazilian silicon metal.

As I've explained, silicon metal is a commodity product. Sellers can only expand their share by undercutting their suppliers, which forces prices down across the market. A relatively small volume can have a big effect on the market price.

It can take as little as one or two low-priced sales to be reported in *Ryan's Notes*, and then the prices of those sales become the new price that customers expect to be quoted until the next lower priced sale is reported to *Ryan's Notes* or *Metals Week* and the published market price declines once again.

I understand that the Brazilian producers are arguing that they are somehow very different than the Chinese producers. It is true that the Chinese have enormous capacity, is very export oriented and is very aggressive in undercutting competing suppliers' prices. If the Chinese order were revoked that would have a devastating impact on the U.S. market and on Globe.

To say this does not mean that revoking the Brazilian order would not also have a very negative impact, but by the same means. The Brazilian producers are aggressive competitors with substantial capacity selling a commodity product at prices that must undercut their suppliers' prices to win sales.

Tons are tons, when offered at low prices undercutting the domestic industry and other suppliers. It does not matter whether the cheaper material comes from China or Brazil. The impact is the same. Sales are lost, and market prices go down.

And when significant volumes of low-priced material enter into the U.S. market as would happen in this case, prices spiral downward to a level that is not sustainable for the domestic industry. It's happened twice before and will happen again if the orders on Brazil and China are revoked.

Without question, the antidumping orders have been critical to the continued viability of the domestic industry. The imposition of the orders on Brazil and China in 1991 allowed prices to increase and conditions in the U.S. market to improve significantly.

After reaching a low of 52 cents per pound in December of 1989, the U.S. market prices increased to more than 86 cents a pound in 1997. As I mentioned, prices fell to a low of 47 cents by May of

2001 due to the Russian imports. Our sales prices and volumes improved dramatically after preliminary relief was issued in that case in September 2002 and after final relief was granted.

The improvement due to the Russian order would never have been possible if the orders on Brazil and China had not been maintained in the first sunset reviews completed in 2000. The orders covering Brazil and China are essential to the continued viability of the domestic industry.

Despite the improved market conditions made possible by the orders, Globe is still very vulnerable. We have gone through difficult years where plants were shuttered and furnaces idled. In the end, Globe was forced to seek protection from creditors under the bankruptcy laws.

Prices have risen, but our electricity and other input costs have risen also. Globe needs a healthy market to keep its recovery on track.

For the reasons I've explained, revoking the orders would have a devastating effect on the U.S. market and Globe. After what we have been through, that could literally put us out of business.

That concludes my remarks. Thank you.

MR. KRAMER: Kenneth Button is our next

witness.

MR. BUTTON: Good morning. I'm Kenneth Button, Senior Vice President of Economic Consulting Services, LLC, and I'm accompanied by Jennifer Lutz, Senior Economist at ECS.

We are appearing on behalf of Globe Metallurgical in these sunset reviews. I will address conditions of competition, the effectiveness of the order and vulnerability. Ms. Lutz will address the likely effects of revocation.

I will begin by noting the conditions of competition that are distinctive to the silicon metal industry. These conditions are consistent with the Commission's findings in the original investigations, as well as its more recent findings in the first sunset review and the 2003 investigation of imports of silicon metal from Russia.

Contrary to the Respondents' claim, these conditions have not substantially changed. First, demand for silicon metal is a derived demand arising from downstream production of aluminum and chemical industries. Historically the demand for silicon metal has not been affected by rises and falls in silicon metal prices largely because there are no substitutes for silicon metal.

Second, silicon metal is a commodity product. While the product purchased by a customer may need to conform to the customer's particular specifications, the differences in specifications among buyers in the consuming chemical and metallurgical industries tend to be relatively minor and can be met by virtually all domestic and import suppliers.

Third, silicon metal of a so-called higher grade may be and often is used for sale to customers using the so-called lower grades of material. Producers make the highest purity material that they can. No producer intentionally makes a product that will only meet, for example, secondary aluminum customer specifications.

Fourth, the U.S. silicon metal market is a single market in which subject imports compete in all segments. The subject imports have improved their quality since the original investigation and are able to compete in all segments of the silicon metal market.

As a result, the degree of competition between the domestic producers and subject imports is more direct than ever. Prices in different segments of the U.S. silicon metal market continue to be interrelated today just as they were during the original investigation period.

Fifth, this competition in the market is based principally on price, and relatively small differences in price can lead consumers to switch suppliers. Information about prevailing prices is publicly available through industry publications such as *Metals Week* and *Ryan's Notes*.

Some contracts establish transaction prices based on formulas tied to such reference prices. Pricing changes are quickly communicated through the market, and contracts with such pricing formulas make the supplier immediately vulnerable to the effects of an overall declining market price level.

Finally, price adjustments are common in long-term contracts. By one means or another, long-term customers get lower prices in periods of declining prices even when the contracts do not contain formal price adjustment mechanisms.

As a result, long-term contracts provide little shelter from import competition. Of course, in periods of rising prices customers are not as eager for their contract to reflect prevailing higher market prices.

The antidumping orders were originally put in place in mid 1991 and were very effective in permitting improvement in the condition of the domestic industry. The antidumping orders had an immediate volume effect, causing the volume of imports from Brazil and China to fall by 77 percent from their preorder peak of 56,000 tons in 1990 to only 12,000 tons in 1991, the year in which the order was imposed.

The subject import volume dropped even further during 1992, the first full year of relief, to only 4,500 tons, a fall of 92 percent from 1990. Subject imports remained well below the levels experienced during the original period of investigation through 2002 when two Brazilian producers, RIMA and CBCC, were able to obtain revocation of the order by achieving zero or de minimis margins in three consecutive administrative reviews.

Your orders also caused the prices of the subject imports to rise substantially. While the preorder 1990 average unit value of subject imports had fallen to only 47 cents per pound, it rose to an average of 55 cents in 1992, the first full year of relief.

The discipline of the orders has kept the unit value of the subject imports well above the dumped POI levels, with the exception of those imports from China which enter under the Customs provisions for temporary importation under bond, TIB.

The price benefit from the orders is further reflected in the rebound in the *Metals Week* spot price. From the September 1990 POI low of 52 cents, the *Metals Week* spot price recovered to 66 cents in the month of August 1991 after the imposition of the orders and the substantial exit of the subject imports from the U.S. market.

Following the first sunset reviews of these orders, the *Metals Week* price dropped sharply again, this time in response to dumped imports from Russia. After the Commission's affirmative determination in the Russian investigation, *Metals Week* prices recovered again.

In the first sunset reviews of these orders the domestic industry noted that the original orders on Brazil and China brought declining subject import volume and increasing subject import unit values, which allowed for a considerable improvement in the condition of the domestic industry.

Although the domestic industry experienced material injury because of dumped imports from Russia in the first half of the period of review of the current sunset reviews, the affirmative determination in the Russian investigation has allowed the domestic industry's condition to improve again.

The industry, however, remains vulnerable to injury from dumped imports from Brazil and China. A prehearing staff report shows the clear improvements in operating performance reported by the domestic industry in the first sunset reviews.

From the original POI to the POR of the first sunset reviews the domestic industry recorded improvements in production, production capacity, U.S. shipments, quantity and average unit values, employment, hours worked and productivity. These improvements are directly attributable to the decline in subject import volumes and the increase in subject import average unit values caused by these orders.

While much of the data covering the current period of review is confidential, the public report issued in the Commission's investigation on imports from Russia shows declines in all of these industry condition indicators from 1999 through the January to September 2002 period. The Commission findings in the investigation of imports from Russia are directly relevant to the current reviews as we will discuss in more detail shortly.

Following the original Chinese and Brazilian orders, the expanded sales volume in conjunction with improved pricing let the industry's financial performance improve materially. In 1990, the last full year of the original POI, the domestic industry was operating at a significant loss. By the close of 1992, the first full year of relief, the domestic industry as a whole had returned to profitability.

While the profitability data from the first sunset review POR are confidential, the data from the 2002 Russian investigation shows that the industry was profitable in 1999, but quickly sank into losses in the part year 2002 period. In recent years, the industry has again returned to profitability.

While the domestic industry did enjoy considerable improvement as a result of the orders, it remains vulnerable today. The Commission's investigation of dumped imports from Russia provides valuable information for the Commission in making its determination in this second sunset review proceeding.

The Russian investigation made clear that dumped imports caused injury to the domestic industry. In a commodity product like this, a new supply source can only gain market share by underselling the existing suppliers and thus driving down price.

In the Russian investigation, imports from Russia entered the U.S. market at low prices, quickly expanding market share from eight percent in 1999 to 12 percent in 2001 to 16 percent in January to September 2002, doing so by underselling U.S. producers and nonsubject imports, driving down market prices. These dumped imports caused deterioration in virtually all performance and profitability indicia.

With respect to the import sources of concern today in today's proceeding, please note that China is the world's largest producer of silicon metal with a capacity that has increased sharply since the original investigation and since the first sunset review period of review and has reached an estimated capacity level of nearly one million tons per year.

Brazil is the world's second largest producer of silicon metal with capacity reported by CRU to be over 250,000 tons per year. Even excluding RIMA and excluding CBCC, the remaining producers' aggregate capacity is equivalent to being the world's fourth largest supplier of silicon metal.

The large size of the industries in both subject countries is particularly of concern in light of the severe injury caused by imports from Russia, which had significantly lower capacity. The Chinese and Brazilian industries are both heavily export oriented.

After the imposition of the order on imports from Russia in March 2003, the *Metals Week* price data showed clear improvement. Prices reached a peak in 2004 and have moderated somewhat from this peak in 2005 and 2006.

This improvement in prices, however, does not insulate the domestic industry from injury caused by the dumped imports. Rather, these price improvements were possible only because of the restoration of fair trade in the U.S. market after the removal of dumped imports from Russia.

Furthermore, the industry is currently struggling to cope with rising costs for such key inputs as energy.

Ms. Lutz will now address the likely effects of revocation.

MS. LUTZ: Good morning. I am Jennifer Lutz, Senior Economist at ECS.

In the context described by Dr. Button, revocation of the orders is likely to have serious damaging effects on the domestic industry in the foreseeable future. The evidence shows that the volume of subject imports is likely to be highly significant in the absence of the orders.

The ability of the Brazilian and Chinese industries to increase exports to the United States very rapidly was aptly demonstrated during the original investigations when imports from Brazil increased from 13,000 short tons in 1988 to 32,000 short tons in 1990, and imports from China rose from 10,000 short tons to 26,000 short tons. Their combined market share more than doubled from 11 to 27 percent.

The subject countries are clearly capable of achieving such an expansion once again. Indeed, China is the world's largest producer and exporter of silicon metal. China's unused capacity is so large that it could fill more than half of U.S. consumption. This capacity would clearly be directed to the U.S. market.

Brazil is the world's second largest producer of silicon metal after China, and the companies that remain subject to the order have capacity equivalent to the world's fourth largest producer.

As discussed in our prehearing brief at pages 39 and 40, these subject companies have shipped to the U.S. market and have participated in administrative reviews in an effort to reduce their dumping deposit rates indicating their participation in the U.S. market.

CCM was one of two mandatory respondents in the Department of Commerce original investigation. Mandatory respondents are selected to reflect producers accounting for the largest volumes of subject merchandise from the exporting country.

Furthermore, while subject imports were concentrated in sales to metallurgical customers at the time of the original investigation, producers in both Brazil and China have improved the quality of their product and are now fully competitive and aggressively selling to chemical customers, as well as metallurgical customers, throughout the world.

As to prices, the likely effect of such an increase in subject imports would be injurious, just as it was when subject imports surged into the U.S. market prior to the orders.

By cutting their import unit values from 63 cents to only 47 cents, the subject imports were able to nearly double their sales in the U.S. market from 1988 to 1990. The Commission's original determination noted significant underselling by the subject imports and a declining price environment.

Since the orders were put in place, the subject producers have been constrained by the discipline of the orders in pricing, and the subsequent prices are therefore not indicative of likely levels if the order were revoked.

In the first sunset reviews of these orders the Commission found that significantly increased volumes of subject imports were likely to "undersell domestic silicon metal products to a significant degree and to have significant price suppressing and depressing effects within a reasonably foreseeable time if the orders are revoked."

The evidence on the record of these reviews indicates that such underselling would occur again, depressing and suppressing U.S. prices.

Further evidence of the likely low postrevocation prices comes from unit values of the TIB imports from China, which are not subject to the order. Their extremely low unit values are a good indicator of the likely level of subject producer prices if the orders are revoked.

As shown in Exhibit 17 to Globe's prehearing brief, the import AUV of these TIB imports from China has been far below the AUV of U.S. producers' U.S. shipments.

Moreover, as U.S. price levels have generally been higher than those in other major markets and consistently have been far above the prices in Japan, there is an economic incentive for subject country producers to direct available capacity at the U.S. market.

However, for the subject imports to seize U.S. market share from current U.S. or nonsubject suppliers, the subject imports would have to undersell the incumbents just as they did during the original investigations.

Given the high dumping margins of 139 percent for China and 91 to 93 percent for Brazil determined as being likely by the Commerce Department and the fact that the subject imports would have to compete also with nonsubject imports, the new flows of subject imports resulting from revocation are virtually certain to undersell the domestic producers. U.S. producers' prices would be depressed as a result.

Contrary to Brazilian Respondents' claims, the remaining subject Brazilian producers have not demonstrated the likelihood that their future shipments will be at fair prices. Their current deposit rates may be lower than the rates found by the Commerce Department in this sunset review. However, the negligible volume of imports from these suppliers suggests that they cannot ship meaningful volumes without dumping.

Respondents' arguments regarding pricing are simply not credible. First, with respect to prices in Europe where a large portion of Brazilian product is currently sent, Respondents rely on certain data giving the impression that prices in Europe tend to be higher than in the U.S.

However, CRU data, which provide quarterly prices on a delivered basis, show the U.S. prices consistently being above European prices over the last two and a half years, and *Ryan's Notes* shows U.S. prices currently to be higher than prices in Europe.

Furthermore, Brazilian export statistics show clearly that Brazil's exports to the U.S. market are higher priced than its exports to Europe. This gap has been quite significant during the period of review, reaching as high as 15 cents per pound. In the January through July 2006 period, the most recent data available, the gap between the U.S. and European average unit value is seven cents per pound.

While Respondents' claim about the current pricing in Europe is incorrect, the likelihood of renewed exports to the United States is indicated by

Brazilian producers' behavior in the European market.

MS. LUTZ: Quickly shifted export volume from Japan to the EU where prices are higher. We can anticipate a similar shift toward the United States if the order on Brazil is revoked particularly given the competition Brazil faces with China in its home market and other export markets as documented extensively in our prehearing brief.

Respondents repeatedly cite Globe's statement in its response to the notice of initiation that, "the U.S. for silicon metal is currently relatively healthy", when in fact the current condition of the U.S. industry is due largely to its efforts to maintain fair trade in the U.S. market. The domestic industry enjoyed operating profitability in 1988, but by 1990 it was experiencing operating losses.

Such material injury was found to be caused by dumped imports from China and Brazil. Increase in consumption does not mitigate the effects of dumped imports. In the original investigations U.S. consumption increased by more than 10 percent from 1989 to 1990. During this same period subject imports from Brazil and China increased their market share from 13 percent to 27 percent while U.S. producers' market share fell.

Clearly increasing demand is insufficient protection against dumped imports. Furthermore contrary to Brazilian Respondents' claims regarding three years of price stability prices have clearly declined from their mid-2004 peak as shown in *Metals Week* prices. This price decline has occurred just as certain input costs, particularly energy costs, have increased substantially.

In conclusion it is clear that revocation of the orders on the subject imports is very likely to lead to continuation or recurrence of material injury to the domestic industry. Thank you.

MR. KRAMER: That concludes our affirmative presentation.

CHAIRMAN PEARSON: Thank you for those presentations. We will begin this morning's questioning with Commissioner Lane.

COMMISSIONER LANE: Good morning, and welcome to the panel. Thank you for coming.

I would like to start with perhaps Mr. Sims and/or Mr. Perkins. As I understand it Globe right now has facilities at Beverly, Ohio, and Alloy, West Virginia, and you're operating those facilities. Do you intend to keep both those facilities running in the foreseeable future, and do they only produce silicon metal at those facilities?

MR. SIMS: Yes. We have facilities in Beverly, Ohio, two furnaces there that produce silicon metal and our plan is to continue to operate that facility. In Alloy, West Virginia, we have five furnaces and we plan to continue to operate those furnaces. In Alabama we have two furnaces and we're operating one of those.

Niagara Falls, New York, we have two furnaces and both of them are idle. Our plan is, and it's with the assumption that the dumping orders will continue, that we will continue to operate those furnaces. If the dumping orders do not continue then we have concerns about our ability to operate those furnaces.

COMMISSIONER LANE: Okay. Thank you.

Now, Mr. Perkins, did you want to add something?

MR. PERKINS: The plant at Beverly, Ohio, also has three smaller furnaces that produce some ferrosilicon products for the specialty ductile iron industry.

COMMISSIONER LANE: Okay. Thank you.

Dr. Button, I think you were talking about long-term contracts and I would like to know, and if you can't put it on the record in today's hearing it can be done post-hearing, what percentage of the output are subject to long-term contracts, and of those long-term contracts what percentage have been subject to a reduction in the stated price?

MR. BUTTON: Commissioner, you're correct. This is confidential data and we'd be happy to put it into a post-hearing submission.

COMMISSIONER LANE: Okay. Thank you.

Now, Mr. Perkins and Mr. Sims, again, could you tell me what percentage of your production goes to the aluminum industry and what percentage goes to other markets?

MR. KRAMER: We'd like to provide that on a confidential basis.

COMMISSIONER LANE: Okay. Thank you. Do you test and segregate each production run based on iron or other content so that you can supply a customer that has needs that are based on specific qualities or is all production generally mixed when it comes out of the furnace?

MR. SIMS: There's a base product that's produced with the standard raw materials that go into the furnace. All the furnaces essentially have the same raw materials going into them, and then a base product comes out, and we will do some tweaking with the analysis with purification with using oxygen to adjust some of the elements and then we will segregate it based on the outcome of those analyses and then ship it to the customers that fit those analyses.

Within the system at Globe we have two product lines for silicon metal. We have a low iron grade that's primarily for the primary aluminum industry and then the all other grade. Then within the all other grade there's some tweaking with aluminum and calcium, but basically there's two product lines.

COMMISSIONER LANE: Okay. Thank you. Maybe I'll stick with you. Aluminum prices saw a significant increase through 2005 into early 2006, but then aluminum prices dropped in mid-2006. Does the price for your product correlate to aluminum prices or do the prices move independently of one another?

MR. SIMS: The prices move independently, totally independently, and the prices move based on the import price.

COMMISSIONER LANE: Okay. Thank you. Page 213 of the prehearing staff report indicates that many U.S. purchasers of silicon metal seldom change their suppliers and that seven of 14 responding purchasers reported that they had not changed suppliers in the last five years.

Could you explain why silicon metal purchasers in the United States seem to do business with the same suppliers for long periods of time instead of shopping around for the best prices and quality, and how does this affect the substitutability of subject imports and domestically produced silicon metal?

MR. PERKINS: I guess if I understand your question correctly you're saying that these customers do not shop around. I would say that's incorrect. We are quoting various customers on a weekly or a monthly basis and there's always a threat that we will lose business based on pricing.

COMMISSIONER LANE: Dr. Button?

MR. BUTTON: Commissioner Lane, some customers buy from multiple sources, but they can switch among those sources the volumes that they choose to select. Additionally if there is stability in one respect, say with respect to Brazil, that would perhaps be due to the fact that for this extended period of time there has been an order on Brazil as well as on China which encourages some stability.

COMMISSIONER LANE: Okay. Thank you. In response to Commission questionnaires one importer reported that the United States market has become more focused on chemical uses as aluminum users have left for Canada or other countries since 2000 while another importer foresaw an increased use of silicon metal for solar energy cells.

What changes have you observed in the U.S. silicon metal industry since 2000 and what changes do you anticipate in the reasonably foreseeable future, and how have domestic producers adjusted to these changes and anticipated changes?

MR. SIMS: I don't have the numbers in front of me, but I don't know that --

COMMISSIONER LANE: I'm sorry. I can't hear you.

MR. SIMS: I don't know that we have seen a change like that. The chemical market and the aluminum market are roughly the same. There was a move we understand by one company to Canada and that customer brought that material back into the U.S. That's all I'm aware of as to moves to Canada. So we haven't noticed that change from U.S. to Canada.

COMMISSIONER LANE: Okay. Thank you. In their prehearing brief Brazilian Respondents contend that due to increased U.S. demand for silicon metal and domestic industry restructuring that domestic industry could not satisfy aggregate demand in the United States market in 2005.

How do you respond to this assertion and are there capacity expansions planned for the domestic industry in the reasonably foreseeable future?

MR. SIMS: That is correct. There's not enough domestic production to cover the market, but within Globe we have three facilities, three furnaces, that are idle that can be re-energized and brought back online and then of course the fairly traded imports from other countries would fill the need for the domestic industry.

COMMISSIONER LANE: Okay. Thank you.

Mr. Chairman, I'll wait until my next round. Thank you.

CHAIRMAN PEARSON: Thank you, Commissioner Lane. I get the next turn. Let me start by looking at apparent consumption of silicon metal.

Dr. Button, perhaps I should direct this to you because if you look at the staff report we see a market that has been relatively stable in terms of how we are measuring apparent consumption, a little bit of up and down, but it looks like the total consumption is hanging in there fairly well.

Does your experience corroborate those numbers? Are you comfortable with our measure of apparent consumption?

MR. BUTTON: Yes, Mr. Chairman. We are comfortable that the staff report has reasonably gathered the data on that point.

CHAIRMAN PEARSON: Okay. Thanks. The Respondents on page 29 of their prehearing brief argue that demand for silicon metal has been and will remain strong and is increasing worldwide. Is this an accurate reflection of the U.S. market? Would we consider demand to be fairly strong over the last couple of years?

MR. BUTTON: Well, I would certainly defer to Globe from their point of view, but with respect to the data that you point out on U.S. apparent consumption indeed it does seem to be relatively strong in the last few years.

CHAIRMAN PEARSON: For Mr. Sims or Mr. Perkins, you see that reflected in the marketplace? There are people there who want to buy some silicon metal that you've been able to sell the product relatively effectively over the last couple, three years?

MR. PERKINS: Yes, sir. I would agree with that, that it has been relatively robust.

CHAIRMAN PEARSON: Is there a certain cyclicality in the silicon metal market relating to the underlying uses? You indicated you've been 17 years in the business. Have you seen a cycle of ups and downs in demand?

MR. PERKINS: Well, I guess the one thing that is very, at least that is out there right now and a little bit troubling is the downturn in the automotive industry. There is a lot of concern from our customer base and hence from us that demand is going to be falling somewhat in the fourth quarter and then into next year, and so that is a concern. Yes.

CHAIRMAN PEARSON: That's primarily for aluminum use in the automotive industry?

MR. PERKINS: Yes, sir.

CHAIRMAN PEARSON: Are there some nonaluminum uses for silicon metal in the automobile industry?

MR. PERKINS: There are some silicone chemicals, seals and that type of thing, that go into head gaskets and that type of thing that are silicon chemical related, but the aluminum side is the one being most affected by the automotive downturn.

CHAIRMAN PEARSON: That's where we'd measure the tonnage?

MR. PERKINS: Yes, sir.

CHAIRMAN PEARSON: Okay. The Respondents also are indicating that as they look at the worldwide market they see that as strong and growing including in the countries that the subject Brazilian producers currently export to. Is that a fair characterization based on your sense of what's happening globally?

MR. SIMS: Yes. We agree with that, that the worldwide market for the product is growing and at the same time, though, that for instance in China the production capacity is growing significantly.

CHAIRMAN PEARSON: Thanks for that. So we have the good fortune of having a relatively strong global market and U.S. market at this time then. I would be correct to have that understanding?

MR. SIMS: Yes. That's correct.

CHAIRMAN PEARSON: Okay. Good. Respondents have argued that if the orders were to be revoked that the subject imports from Brazil would not likely increase substantially, that's imports into the United States, because the Brazilian producers have strong ties and commitments to alternate markets especially the European market where apparently we see demand increasing. What's your comment on that?

MR. KRAMER: I think that the record before the Commission contains extensive evidence that demonstrates that in fact those commitments would not result in maintained shipments to that market if the order were revoked. The same types of representations were made to the Commission at the first sunset review.

The representations were made on behalf of CBCC, RIMA and other Brazilian companies. Once the order was revoked with respect to those companies there was an enormous shift of supply into the United States market to the point that the volume greatly exceeded the preorder volume.

There are all kinds of other factors that we've identified in our brief that also compellingly show that the Brazilian product will be sold in the market where prices are most favorable and where the Brazilian industry is best protected from low priced Chinese import competition.

We've provided very detailed information to the Commission regarding the volume and price of competing product in Europe, Japan, the other principal global markets, as well as the historical record with respect to Mexico and Canada. The evidence shows that as you would expect that the Brazilian suppliers sell their product where they can realize the best price and where they're best protected from competition.

The conduct of these subject companies prior to the orders also shows how attractive the United States market is to them in the absence of the discipline of a dumping order. We're talking about an industry that was constructed for the purpose of exporting. The United States market, which is the closest in terms of geographic proximity, was an intended recipient of those export volumes.

That's exactly where the volume went until it was restrained by the discipline of an order and it's exactly where it came back to once that discipline was removed with respect to two companies.

CHAIRMAN PEARSON: So are you making an argument that the prices in Europe for silicon metal are sufficiently below those in the United States that it would be economically rational for Brazilian subject producers to abandon their European customers and divert instead the volume into the United States?

MR. KRAMER: I'm really pointing to the price difference as well as other factors including the very important consideration of how well sheltered our market is from Chinese competition.

The Brazilian suppliers have been driven out of markets in which the Chinese suppliers are unrestrained and the situation is that in the EU to which this volume has shifted there is relief in place with respect to China and Russia, but in each case there's a significant difference in the duty rate that's in place and the Chinese companies have been able to continue to ship to Europe, although at a lesser volume than would have occurred absent the relief.

So I think the record shows that the shift would occur because of the economic incentives, but I also think it's the case that this is not an industry in which customers and suppliers are bound to each other over an extended period of time and we haven't seen --

CHAIRMAN PEARSON: Right. Although, as Commissioner Lane mentioned we do have indications in the staff report that there may be more fixity in producer/customer relations in this industry than in some others we look at, so that's why I'm trying to reconcile what we see in the staff report with the responses of this panel to Commissioner Lane's question.

MR. KRAMER: Well, of course the record also shows that the Brazilian suppliers once confronted with low priced Chinese competition which first pulled their prices down and then caused them to shift to the EU from the other markets where they had a major presence and to which they said they had long-term commitments.

CHAIRMAN PEARSON: Well, my time has expired, so let me turn now to Vice Chairman Aranoff.

VICE CHAIRMAN ARANOFF: Thank you, Mr. Chairman. I join my colleagues in welcoming this morning's panel. Thank you for spending this time with us. As you know there are several Brazilian producers who have not responded to the Commission's foreign producer questionnaires in these reviews including one fairly important one.

Data for this producer as well as other missing data have been proffered by the Brazilian Trade Association representing this industry, and so I wanted to ask, Mr. Kramer or Dr. Button, do you have any objection to the data provided by the Trade Association or the Commission relying on them?

MR. SCHAEFERMEIER: The data provided by the Trade Association -- this is Martin Schaefermeier -- is not complete as to that significant producer that you're mentioning.

You can at least calculate by, you know, you have certain baseline information for the entire Brazilian industry such as total import volumes based on the customs records and you can calculate by subtracting from the producers for which you have information, the relative import volumes, you can calculate those or you can actually, the record indicates the actual imports by that producer.

So certain information that may not have been provided on the record can be calculated or at least estimated to a good degree I think by deduction, by subtracting information from the companies for which you have information. As I recall the information provided by ABRAFE it does not quite jive with those figures.

When you look at what is on the record subtract the data from the companies that have submitted information and compare that to some of the information from ABRAFE and others. It may not necessarily be ABRAFE's fault, it may be just a lack of communication, you know, ABRAFE and this particular producer.

VICE CHAIRMAN ARANOFF: Okay. I'm not sure what to make of that answer. That answer was you can develop estimates from the data that we already have on the record to reflect the missing companies, that if you do that it doesn't entirely match what the Trade Association has provided, but we're not talking about orders of magnitude of difference, it just doesn't quite line up.

MR. KRAMER: That's correct.

VICE CHAIRMAN ARANOFF: Okay. Thank you. I appreciate that. If there's anything that you want to add that's more specific confidentially that would be very helpful because as you know we tend to look in these reviews for whatever is the information that's available to us and I'd like to be able to assess how reliable the Trade Association information really is.

I'll ask this question and I don't know what you can say on the public record, but Mr. Sims, what can you tell us about the pending acquisition of your company?

MR. SIMS: The company is pending acquisition by a London exchange company, IML. Basically what it amounts to is a change in parent ownership. It has no impact on the operation or the management of Globe, or the activities of Globe, or the production of Globe. A lot of the owners of shares of Globe now will have ownership in that company also. So it's just a change of parents.

VICE CHAIRMAN ARANOFF: The company is currently privately held and would continue to be privately held?

MR. SIMS: No. It would be a public company at that time.

VICE CHAIRMAN ARANOFF: It would be a public company after the acquisition?

MR. SIMS: Yes. That's correct.

VICE CHAIRMAN ARANOFF: Okay. Can you tell us what it is about the company or its current position in the market that has made that change seem like a desirable outcome and whether you think that the acquisition and the company going public is going to change the conditions of competition in the U.S. market?

MR. SIMS: I'm not aware of any change in the ownership of the company that will have an impact on the competition.

MR. KRAMER: It's a change in the shareholders of the company. It will become a wholly owned subsidiary of that other entity. There's no effect on the operations, or financing, or business strategy. It would be the same management.

VICE CHAIRMAN ARANOFF: Okay. I mean, one of the things I'm trying to get at is the Respondents' argument that coming out of bankruptcy in an improved financial condition has made the company strong and attractive and that's why it's being acquired.

I don't know if you have a response to that because it seems to me your response of well, we're just shifting ownership from one investment company to another doesn't really address -- it's either a good investment or it's not and if it's a good investment is it for the reasons that the Respondents have indicated?

MR. SIMS: I think the acquisition is based on the assumption that the orders in place will continue and that Globe, although its financial performance is improved since the bankruptcy a little over two years ago that we will continue to heal and be a viable company, but it's under the expectation that the orders will remain in place.

VICE CHAIRMAN ARANOFF: Okay. Thank you.

MR. KRAMER: We'll provide some further comment on that in our post-hearing brief.

VICE CHAIRMAN ARANOFF: You're certainly welcome to. Yes, Mr. Kramer. Thank you.

MR. KRAMER: Okay.

VICE CHAIRMAN ARANOFF: Let me turn to the issue of cumulation. It seems to me that this is very central to the Brazilian producers' arguments in these reviews.

Although in your brief and in your presentation this morning you indicate that there aren't really any of the kinds of discretionary factors that the Commission sometimes relies on to decline to cumulate in reviews the Brazilian producers have come up with a list of at least six or seven factors that they point to which they suggest would indicate differences in conditions of competition that Brazilian and Chinese imports might face in the U.S. market if the orders were revoked.

I wanted to go through those one by one with you and ask you to respond to them. The first would be an indication that the trends in average unit values for imports from Brazil and China have assertedly been different.

MR. KRAMER: That's an extremely misdirected and misleading argument because that's based on a comparison of the unit values of shipments of Brazilian products subject to the order -- I think in fact it's limited to the subject producers' unit values -- in circumstances in which they're shipping very, very small volumes at high prices for the purpose of trying to obtain reduced deposit rates to Chinese material that's being imported under the TIB program and is not subject to the order.

So, I mean, that's not a difference in conditions of competition that when product is subject to an order it's a higher priced than when it's not subject to an order.

VICE CHAIRMAN ARANOFF: Okay.

MR. KRAMER: You can look at the conduct of the two sources of supply when they're not subject to the order. You can also look at what the Department of Commerce has found would happen were the orders --

VICE CHAIRMAN ARANOFF: I take your answer, although I think the point that they were making was not necessarily that one set of prices was higher or lower than the other or average unit values, but that the trends in those values didn't tend to move in the same direction over the period of review.

MR. KRAMER: I'm not sure what that would refer to. I've got to look at their argument and will respond in the brief, but I don't know of any such differing trend that should cause them not --

VICE CHAIRMAN ARANOFF: Okay. They do have a chart in their brief, so I'll invite you to look at that and respond in post-hearing. Thanks.

MR. KRAMER: Okay.

VICE CHAIRMAN ARANOFF: I'll have to come to the other factors in my next round since the light has turned yellow. Thank you.

CHAIRMAN PEARSON: Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you. I, too, would join my colleagues in welcoming all of you I believe back to the Commission for today's hearing on silicon products which we've obviously seen in many occasions. Let me start a little bit with an understanding. Again, I am trying to understand the differences in the conditions of competition between the Chinese and the Brazilians.

Let me start first with trying to understand your sense of the Brazilian capacity to ship more to the United States.

Mr. Sims, you commented in your opening statement that the Brazilians have a number of ferrosilicon facilities that could be converted to producing silicon to ship to the U.S. market. Just so I understand it, first, how easy is it to do such a conversion from ferrosilicon to silicon, and secondly, what would be the economic incentives that would encourage the Brazilians to do that?

MR. SIMS: First on the economic incentives it's based on where they're going to make the most money or where's the best margins, in ferrosilicon or silicon metal.

COMMISSIONER HILLMAN: What are the best margins? Are they for ferrosilicon or silicon?

MR. SIMS: In the U.S. --

CHAIRMAN PEARSON: Mr. Sims, please pull the microphone a little bit closer if you could?

MR. SIMS: Okay. I'm sorry.

CHAIRMAN PEARSON: Thanks.

MR. SIMS: In the U.S. the best margins are silicon metal. Now, on the conversion process it depends on the particular equipment. We have four furnaces that we're able to convert to silicon metal, to ferrosilicon or back in just very short timeframe within less than a week. More recently there was some even extremely large ferrosilicon furnaces that have been converted, one in Norway.

I understand there's an argument that large furnaces are not able to be converted to silicon metal, but that has been done in Norway. The conversion process depends on the equipment you start with. If it's going from ferrosilicon to silicon metal it would require a dig out or removal of the material in the furnace, not a relining, but a removal of the material in the furnace.

Then the electrode configurations would be changed from what's called a self-baking electrode or Soederberg electrode to prebaked electrodes. So that's a matter of pulling all of the old electrodes out of the column and putting the new ones in. If the furnaces are properly designed that's all there is to it.

If the columns are not set up for prebaked electrodes because they do weigh more then there might be some modifications needed to the slipping arrangement and to some of the structural steel to hold the facilities.

On the start up and the conversions the reason relining is not required is that the silicon metal furnace produces its own crucible out of silicon carbide, so it will produce a crucible and then operate within that crucible and any iron contamination that was in the crucible will stay outside of that and not get into the metal.

So it's been our experience that in just a few days after changing over from ferrosilicon to silicon metal we're totally in grade on silicon metal.

COMMISSIONER HILLMAN: Has it historically been the case that the margins on the production of silicon are greater than those on ferrosilicon?

MR. SIMS: It really depends on the pricing in each market and they're pretty much independent. The ferrosilicon market is independent of the silicon metal market pricing.

COMMISSIONER HILLMAN: Okay. I mean, then the second issue in terms of the Brazilian capacity to ship into the U.S. market would go to the extent to which there is any excess capacity in Brazil.

The Respondents have put some numbers on the record which are confidential, but I would wonder whether you can say anything publicly or could comment in the post-hearing brief on whether you believe there is significant excess capacity, unused capacity, in Brazil among the producers that are still subject to the order to significantly increase their shipments to the U.S. market?

MR. KRAMER: We'll address it in the post-hearing.

COMMISSIONER HILLMAN: Okay. I appreciate it. I then wondered if I could go to the issue of what's happened in terms of the long-term contracts.

As I heard it, and again, I would like you to comment on it, as I understood the way you're describing it the vast majority of the product is sold subject to a long-term contract, but that within those contracts are price adjusting mechanisms in a significant portion of the contracts such that when the prices go down the customers in essence come back to you and say okay, we'll continue to purchase the volume, but we want you to invoke this price de-escalator if you will.

Help me understand the issue of the volume. I mean, to what extent do the contracts lock in a certain volume? I sort of heard Dr. Button in essence suggesting that you may have a contract, but that the volume may also be adjusted based on the price. So first let me understand when you say you have a contract what is it exactly committing you to do and what is it committing the purchaser to do?

MR. PERKINS: Most of our contracts do not spell out a specific volume. A lot of aluminum -- well, on both sides, aluminum and silicon chemical, the contract will say well, they'll give you an anticipated volume and it will be based on their absolute needs as time progresses, so there is no firm volume that is attached to that contract.

So the experience that we've had if you start out with a higher price at the beginning of the year when it is negotiated then as time progresses if that market price or that import price goes down the customer has approached us and said well, you know, things are not as good as we had anticipated at the beginning of the year, we'll need less volume, and we have typically over the years understood that to mean you've got to improve your pricing, you've got to lower your pricing.

We've got other options out there and we're going to exercise those options. Typically when we go back and renegotiate that price down we start getting the volumes that we had anticipated at the beginning year. Unfortunately the volume is at a much lower price.

COMMISSIONER HILLMAN: Okay. If they were not to purchase whatever the general volume minimums or anticipated requirements it would not be viewed as in some way a breach of a contract with them?

MR. PERKINS: No, ma'am. We have tried in the past to put a take or pay clause into a contract and we've never been able to negotiate that successfully.

COMMISSIONER HILLMAN: Okay. Now, you mentioned that on the flip side the customers are not very eager when the prices go up to agree to any kind of a price increase. Does that ever happen? Has it happened?

MR. PERKINS: I can't remember an instance where that happened.

COMMISSIONER HILLMAN: Where you have gone back and said the prices have gone way up, our contract allows for an adjustment, we're going to have to seek an increase in price even during the duration of a given contract?

MR. PERKINS: Well, most of our contracts do not have a mechanism that the price can move, so we set a price and when the price moves up they anticipate that you're going to fulfill the volume at the price that you negotiated.

COMMISSIONER HILLMAN: Wait. I'm sorry. Maybe then I just didn't understand. Most of your contracts do not have price adjusting mechanisms within the terms of the contract. It's more the customer comes back to you?

MR. PERKINS: That's correct.

COMMISSIONER HILLMAN: There isn't a set formula that says we're going to look at the *Ryan's* or the *Metal Bulletin* price?

MR. PERKINS: Well, some of them do. Some do. Yes, ma'am.

COMMISSIONER HILLMAN: Okay. Okay. I know there's a lot of questionnaire data in the record. My problem is some of this is confidential. To the extent that we do not already have explicit data on the portion of your contracts that has these explicit price escalator, de-escalators, that are triggered to an index I just want to make sure I understand what portion of your sales would be subject to a contract that has these specific kind of price adjustors within the terms of that contract.

MR. PERKINS: Yes, ma'am.

COMMISSIONER HILLMAN: Okay. That would be very helpful. Given that the yellow light is on I will come back in the next round. Thank you.

CHAIRMAN PEARSON: Thank you, Commissioner.

Turning now to Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you, Mr. Chairman.

Thank you to the witnesses for your testimony and answers to our questions so far.

I'm going to start with some questions for you, Mr. Kramer. First, you make an observation on page 44 of your brief, "an examination of the conduct of the Brazilian producers in exporting to the main global markets and to North America over time shows that the Brazilian producers are driven out of markets where they face unrestricted Chinese competition and shift their exports to markets where the Chinese producers are constrained and they are not".

It appears to me that you're implying that Brazilian imports would compete primarily with subject Chinese imports rather than U.S. domestic production if these orders are revoked. Other than simply telling me I'm mistaken how do you respond?

MR. KRAMER: What we intend to be saying by that statement is that what we have is two suppliers that primarily supply export markets who make sales based on price and then confront one another in seeking to capture market share in these markets and with the result that the relative pricing, you know, they compete with one another. The Brazilian price is pulled down toward or to the Chinese level, but in doing that they are competing with other import sources and with domestic suppliers in those markets, so they are each engaged in price competition with one another to gain market share and in doing that they're offering prices lower than other suppliers.

COMMISSIONER KOPLAN: Do you think for purposes of the post-hearing you might just expand on that a bit more?

MR. KRAMER: I'd be happy to.

COMMISSIONER KOPLAN: Thank you. Appreciate it. Let me stay with you if I could. You state on page 32 of your brief that in 2005 the production capacity of the Brazilian producers that remain subject to order collectively have the fourth largest silicon metal production capacity in the world and I heard that again this morning in the testimony.

When making that statement what I'm curious about is are you including Minasligas and Camargo in the production capacity percentage data that you bracketed in that statement in your brief? I ask this because Minasligas currently faces an AD margin of only 0.74 percent and Camargo has a zero margin. If you are including their production capacity when you make that statement what would that capacity percentage be without those two in it?

MR. KRAMER: We are of course including those suppliers because that is capacity available to be shipped to the United States if the order were revoked, and we would be happy to provide that other number, although I think that the number that should be of interest to the Commission is the number that includes those companies because those companies have those rates that you've cited based on administrative reviews when they were subject to the order where --

COMMISSIONER KOPLAN: Let me just if I can shorten it for you if I could, I appreciate what you're saying, but what I'm wondering is how the percentage data figure that you've got bracketed gets modified when you subtract those two from it. Then I'd have it both ways. Do you see what I'm saying?

MR. KRAMER: Be very happy to give you that.

COMMISSIONER KOPLAN: Okay. That's what I'm looking for.

MR. KRAMER: Sure.

COMMISSIONER KOPLAN: Thank you. Let me continue to stay with you.

MR. KRAMER: Okay.

COMMISSIONER KOPLAN: When you argue at page 31 of your brief that we should not accept Brazilian producers' arguments that they be decumulated you state that, "The Brazilian producers point to the fact that the subject Brazilian producers have not exported to the U.S. in recent years. In fact the Brazilian producers' behavior is the same as, not different than the Chinese producers. Subject producers from both countries have not been exporting to the U.S."

"They have instead focused their exports on markets where they are not subject to the discipline of anti-dumping orders." The Brazilian producers' behavior does not appear to me to be the same as the Chinese because they are gradually eliminating margins on a substantial percentage of their production capacity.

This appears to me to be a difference in the conditions of competition between the two subject countries. How do you respond to that?

MR. KRAMER: Well, I think the first response to that is notwithstanding the reductions that were achieved in reviews in which small quantities were shipped at high prices for a number of years none of those companies has been able to ship any product to the United States over an extended period, perhaps the whole period, they have not been able to ship in commercial quantities to the United States with the discipline of the order in place.

So, I mean, yes, you can ship 100 tons to the United States, sell it at 10 cents above the market price and reduce the deposit rate, but see, to me fundamentally there's no difference if you're unable to participate in the United States market as a commercial supplier.

COMMISSIONER KOPLAN: Thank you.

Dr. Button?

MR. BUTTON: Commissioner Koplan, just to add, perhaps expand a certain point on that. There is in one sense a distinction here that yes, the Brazilian producers are engaged in administrative reviews.

COMMISSIONER KOPLAN: Yes. That's what I'm driving at.

MR. BUTTON: They indicate that they have no interest in the U.S. market. One inquires why should they be engaged in the administrative reviews seeking to sell basically symbolic levels of volume to the United States to get lower margins if they have no intention to re-enter the U.S. market? That I think is the point.

It suggests to me more that there's a difference and it's a difference in terms of coming to the U.S. I would urge the Commission to note the small size of the volumes that are being used to try to get the lower margins, that they are not at commercially meaningful amounts.

COMMISSIONER KOPLAN: Thank you for adding that.

Yes, sir?

MR. SCHAEFERMEIER: If I could add, the Department of Commerce has found I believe with LIASA that these were not commercial volumes in at least two if not three administrative reviews and we can explain that further in the post-hearing brief if you would like us to, but there has been a specific finding that at least one of the subject producers has not been able to ship in commercial volumes by the Commerce Department.

COMMISSIONER KOPLAN: I'd appreciate it if you'd do that, Mr. Schaefermeier.

MR. BUTTON: I'll just make an interjection that the relevance of that particular point is that whereas it takes three years of zero or de minimis margins to seek to get revocation the failure to ship in commercial quantities in any one of those years disqualifies that year from counting towards the three year period.

COMMISSIONER KOPLAN: Thank you, Dr. Button. I think I'll stick with you for this next one. Brazilian Respondents note in their brief at page 27 that Globe alleged in its responses to notice of institution at 18 that, "there are plans for the Brazilian producers to expand their capacity". The Brazilians respond by alleging that your arguments are based on outdated information and point to their questionnaire responses.

The information they provide is in brackets, but you've got access to the BPI data and I wonder what you can tell me now and if you could expand on that, though, in the post-hearing submission?

MR. BUTTON: Prefaced with an overabundance of caution I'd rather put all of the response in the --

COMMISSIONER KOPLAN: That's fine.

MR. BUTTON: -- confidential statement.

COMMISSIONER KOPLAN: Sure.

Mr. Schaefermeier?

MR. SCHAEFERMEIER: The one point I would like to make is we submitted this information in response to the Commission's notice of institution and at the time we simply looked at the website of CCM which had at least at the day before the statement that we quoted in our response's admission of institution.

When we then were preparing our prehearing brief we noted that information was removed from the website.

COMMISSIONER KOPLAN: Thank you.

Thank you for your responses. I see my yellow light is on, so I'll save the rest of my questions for the next round.

Thank you, Mr. Chairman.

CHAIRMAN PEARSON: Thank you, Commissioner.
Commissioner Lane?

COMMISSIONER LANE: Thank you. Dr. Button, I would like to briefly address the impairment charge argument that is made on page 24 of Globe's prehearing brief. Globe states that taking an impairment charge can result in statistical measures that create the false impression that an industry's financial condition is better than it really is.

I understand what you are saying regarding subsequent depreciation expense and return on investment, but contrary to your argument that this accounting creates a false impression I thought that the accountants intend an asset impairment charge to get the books back on track to eliminate the false impression that is created by over valued assets.

Are you suggesting that we disregard these generally accepted accounting entries?

MR. BUTTON: Commissioner Lane, not at all. The phrase false impression is if one looks at the numbers without understanding the changes that underlie them. You see a sudden change. For example if the return on investment goes up from one level to another does it suddenly mean that the profitability circumstances of that company, the financial health of that company has suddenly improved by for example increased sales in a more buoyant market?

No. That would be a false impression. One needs then to look at the statistics to realize that what underlies this is something more subtle and perhaps not necessarily a good thing. When a company is forced to take an impairment charge in that unhappy circumstance it's saying that the assets that it has will not achieve a return that would be otherwise expected and you have to write them down.

That's not typically a good thing to do. Having done that you thus have a change in the depreciation expense that you will have in further future years. Your cost of goods sold will in fact decline so that you have, yes, in terms of market and accounting terms a more accurate picture of this, but one has to ask what has happened?

Has the profitability circumstance of the company overall necessarily become more buoyant? Not necessarily. That's what I meant by the term false.

COMMISSIONER LANE: Okay. Thank you. Would you describe the competitive advantages and disadvantages in terms of raw material costs and energy/electricity costs of the silicon producers in the United States, Brazil, China and nonsubject producers? How have these cost factors changed since the previous review?

Dr. Button, do you want to try that?

MR. BUTTON: That's a long list I suspect and perhaps we can do most of that in the post-hearing brief unless Globe has specific comments to make. We'd be happy to respond more comprehensively in the brief.

COMMISSIONER LANE: Okay. Thank you. China appears to be able to substantially increase shipments of silicon metal to the United States were the anti-dumping duty order removed. Please estimate the potential increase in shipments to the United States and the likely impact of these shipments on the domestic silicon industry.

MR. BUTTON: Commissioner, we believe the ability to expand exports to the United States from China is very large. The key factor there is one, the very large capacity that they have. I may estimate it in the range of one million tons. The very large unutilized capacity that exists there at this time, which is equal to about half of U.S. apparent consumption, and if the order were revoked the U.S. market prices are substantially higher and would therefore be very attractive to the Chinese producers.

We believe that they have the ability and the economic incentives and motives to bring that product to the United States if that happens. Entering as a low priced supplier the Chinese would have to cut prices take customers from other producers. We've heard descriptions both in context of long-term contracts and otherwise that customers themselves find the incentive of getting lower supply prices very attractive.

That would then force the domestic producers and other third-country suppliers to cut prices in response. This would be very much the circumstance that happened in the original period of investigation between 1988 and 1990 when Brazilian for example and Chinese producers competed amongst themselves parlaying prices down as they sought to win and/or hold customers. We fear that would happen again.

COMMISSIONER LANE: Okay. Thank you. How much has the demand for silicon metal increased in response to demand in the solar energy industry, and what constrains growth in the use of silicon in this industry?

MR. SIMS: The supply of silicon metal to the solar cell industry is quite small. Worldwide it is only about 10,000 tons to 15,000 tons of silicon metal into the solar cell industry out of a market that's over a million tons. That market is expected to grow, but it's really starting from a real low base.

COMMISSIONER LANE: Will the demand occur in the United States or outside the United States?

MR. SIMS: Probably both. Currently, the use of solar cells for the manufacture of electricity is very dependent upon the prices of cells and right now they're subsidized in order to try to get the costs down to the grid rate for electricity. So the expectation is it will grow both in the U.S., Europe and Japan and other parts of the world.

COMMISSIONER LANE: Okay. Why did Elkem stop producing silicon metal in the United States in December 2005?

MR. SIMS: That's when they sold their facility to Globe and I could only make assumptions on why they decided to sell to Globe. I would assume one of the reasons and probably the predominant reason that it was not a profitable enough business for them at that time or long-term. Also, there was a restructuring.

The corporation was taken over by another company in Norway called Orkla and they might have had different ideas on the direction of the company and silicon metal not being a performer financially such that they decided to exit.

COMMISSIONER LANE: Okay. If you know explain why American Alloys and AST shut down their facilities.

MR. SIMS: AST, I believe they shut down their facility as a result of the imports from Brazil and China. American Alloys, as I recall their problems developed with the imports from the silicon metal side on the imports from Russia. It might have been earlier than that, but I'm not sure about that.

COMMISSIONER LANE: Okay. Thank you. The price of silicon metal in Europe is similar to that in the United States yet they have no duty on Brazilian product. Why would Brazilian product reduce the U.S. price and not that in Europe?

MR. SIMS: I'm sorry. Could you repeat the question?

COMMISSIONER LANE: Okay. The price of silicon metal in Europe is similar to that in the United States yet they have no duty on Brazilian product. Why would Brazilian product reduce the U.S. price and not that in Europe?

MR. BUTTON: There's a specific reason. The

Brazilians coming to the United States would be trying to take customers from incumbents. This is a commodity product. The only way you are going to take Globe's position away from it with a customer is to provide that customer an incentive to switch and that incentive would be to provide a lower price.

That's the path that has been taken in the past in the original investigation. That's the path that the Russian materials took in that investigation period which you saw and I expect that's how they would have to do it in the United States as well.

MR. KRAMER: The Brazilian suppliers have been selling at lower prices in the EU which is what has permitted them to capture market share from other suppliers in that market. They would have to engage in the same conduct in the United States market to gain share.

COMMISSIONER LANE: Okay. Thank you.

CHAIRMAN PEARSON: Thank you, Commissioner Lane.

Dr. Button, in your response to Commissioner Lane's question, you indicated that the Brazilians, in order to gain market share in the United States, would have to do some aggressive pricing.

Going back to where I ended up my first

round questions, in a discussion with Mr. Kramer about the economics, the economic rationale of the subject Brazilian producers shifting some of their export volume that's currently going to Europe into the United States.

How would they find it feasible to do that if, indeed, they would have to price aggressively into the United States? Wouldn't they make more money if they just kept selling into Europe?

MR. BUTTON: Two points on that. First of all, I'm going to shift back to a topic that's relevant. It has to do with customer loyalty and long-term contracts.

As we found in the United States market, it seems that customer loyalty in that respect is somewhat ephemeral. I'm going to suggest, but I have not been able to document, that maybe that's a worldwide phenomenon for many customers, that they seek the lowest-priced product.

Currently, in Europe, those prices are lower than in the United States, as Ms. Lutz mentioned in her testimony. Three indicators were provided, indicating that U.S. prices are higher than those in Europe. Therefore, there is a margin there to be sought, and the economic incentive would be to come the United States with those volumes.

MR. KRAMER: May I add a point to that?

CHAIRMAN PEARSON: Yes.

MR. KRAMER: The Commission can look to what happened with respect to CBCC and RIMA, and the answer to that is that they sold at relatively higher prices but lower than their U.S. competitors and, by that means, captured a tremendous amount of volume. I believe, in that case, they sold at prices higher than Europe but lower than the U.S. competing prices and took a tremendous amount of volume.

CHAIRMAN PEARSON: Dr. Button, if there is sufficient information on the record, or that could be put on the record, that would allow you to do a comparison for us of the earnings that the Brazilian subject producers might get from shifting their existing sales from Europe to the United States, that could be helpful.

I'm just trying to understand the economic rationale for the shift, and it may well be there. It's not entirely apparent to me from what I've seen on the record so far.

MR. BUTTON: I would be happy to do that.

CHAIRMAN PEARSON: I'm not needing, for purposes of this evaluation, some estimation for how prices in Europe might rise if they started to lose a big share of Brazilian product, but, obviously, in terms of actually what happened in a dynamic marketplace. It's not clear to me how many tons could be pulled out of Europe before the price there would respond in a way that would keep more tons from getting away, if you see what I'm saying.

MR. BUTTON: I would be happy to address that. Thank you.

CHAIRMAN PEARSON: Okay. If you can incorporate it, that's fine. You needn't run some fancy model to demonstrate that point. I think we accept that it would be an effect that would be there in the marketplace, and we should be mindful of it, I guess.

MR. BUTTON: Very good, Mr. Chairman.

CHAIRMAN PEARSON: The Respondents maintain that the subject Brazilian producers' capacity is now small enough that there could be no discernable adverse impact on the domestic industry if the order would be revoked. Could you please address the no-discernable-adverse-impact issue, give some thoughts on that?

MR. KRAMER: This is an industry that is equivalent in size --

CHAIRMAN PEARSON: Please pull the microphone a little bit closer, if you could, Mr. Kramer. Thanks.

MR. KRAMER: This is an industry that's equivalent in size to a very substantial portion of the United States industry. We provided that specific number in our brief. It's an industry with a history of aggressive pricing and underselling in the United States market when it was unrestrained.

These very same producers that we're talking about, subject to the order; the Commission looks at their volume trends and their pricing. You look at the history of injury to the United States industry when there is an influx of unfairly traded material. You look at the history of the Russian case, where you're talking about a much smaller industry.

I think that it's quite evident that we're talking about very significant harm that would be inflicted. It doesn't approach the threshold.

CHAIRMAN PEARSON: Well, perhaps, but then, on this record, we do see that the two highest years of U.S. imports of nonsubject Brazilian silicon metal have been the two years of recent profitability for the U.S. industry. So somehow the U.S. market absorbed this materially larger volume of nonsubject

Brazilian product with no adverse effect; in fact, if anything, a beneficial effect. I don't know what Dr. Button would think about an injurious relationship there.

MR. KRAMER: Well, two points with respect to that. The first is that those companies remained, subject to reinstatement of the order. Then if you look at their pricing currently and compare it to pre-order pricing, it demonstrates that you're not looking at the conduct you would see were the order not in place and the possibility of reinstatement did not exist.

Those suppliers are selling at lower prices than domestic competitors and taking enormous market share, but they are selling at higher prices than they would were they not potentially subject to reinstatement. That restraint is mitigating the effect of --

CHAIRMAN PEARSON: I'll be interested to see that documented in Dr. Button's follow-up analysis that we discussed.

MR. BUTTON: Very good, Mr. Chairman.

CHAIRMAN PEARSON: Could you say a little bit more about what accounts for the variations in the specifications of silicon metal that's coming out of the furnace? I get the sense that you have a pretty good idea of what the specs will be coming out, but not complete certainty. Is that correct?

MR. SIMS: That's correct. What comes out of the furnace contains some higher elements like calcium and aluminum that all of the customers use in all of the industries, chemical and aluminum, primary and secondary. So there is a removal process of those elements outside the furnace, and that's pretty standard technology that everyone around the world uses. It's just using oxygen to remove those elements.

CHAIRMAN PEARSON: Okay. You accept that there will be some stuff coming out of the furnace, something in the silicon that you probably want to get rid of, and then, in essence, it amounts to a secondary refining process where -- that might not be the right term, but --

MR. SIMS: That's correct.

MR. KRAMER: May I interject one point that I think is important for clarification? I think it's important to understand that we're talking about extremely small amounts of impurities and --

CHAIRMAN PEARSON: Right, but amounts that are extremely important to certain customers, obviously.

MR. KRAMER: -- extremely small variation in these trace elements.

MR. SIMS: Well, on the calcium variation, there's a few customers that require a .03 max calcium. That's a percent, .03, a percent. Others, it might be .07 percent. Aluminum levels, .01 percent or .15 percent. So it's small changes, small adjustments.

CHAIRMAN PEARSON: When you run the furnace, you generally have some knowledge, I assume, of which customer the product will be going to.

MR. SIMS: We operate the furnaces all the same, regardless of the customer.

CHAIRMAN PEARSON: Okay. So do you have identical inputs into the furnace all of the time?

MR. SIMS: Yes.

CHAIRMAN PEARSON: You try to avoid any variation in the quality of the inputs.

MR. SIMS: Yes, except for one product. We adjust the charcoal level for the iron, lower iron products. Other than that, it's the same raw materials going into all furnaces.

CHAIRMAN PEARSON: Okay. There would be more adjustments generally made after the product has come out of the furnace through the --

MR. SIMS: Yes, some minor adjustments.

CHAIRMAN PEARSON: Okay. Have I bothered you, Mr. Kramer? Do you have a comment?

MR. KRAMER: I just think it's important to understand that you have this continuous process with the same inputs, and then there is a refining step, which is post-furnace, which is an oxygenation process, and, again, all of the production goes through that, and then, in some instances, there might be some minor variation at that finishing step. You might oxygenate a little bit longer. There is, as far as I know, just one instance in which there is a ladle addition at that point.

These are extremely small differences, and then the product that's produced is not something that can be, and is, only sold to one customer. It can be sold to other customers because you're fundamentally dealing with something that's the same product, all of which is at a very high level of purity.

CHAIRMAN PEARSON: Right. Okay. Thank you. Madam Vice Chairman?

VICE CHAIRMAN ARANOFF: Thank you, Mr. Chairman. I am going to come back and take up where I left off, with cumulation questions, but before I do that, there's one or two others I wanted to get in.

First of all, I note that there is an industry trade publication that recently reported that Globe had declared force majeure at its Selma, Alabama, plant and that production problems appear to persist and that generation problems have developed at the Beverly, Ohio, plant, where a furnace has been shut down.

So I wanted to ask Mr. Sims, have these problems been resolved, and if not, how long do you think it will be before these plants are running at their full capacities, and have you had any trouble fulfilling contracts in the meantime?

MR. SIMS: The force majeure was at the Alloy, West Virginia plant, and it had to do with a power supply to the facility. That has been corrected, and it was a short timeframe, this past summer, a matter of weeks. It was not related to the furnace equipment or anything; it was the power supply to the plant.

The Selma facility; we did experience a significant power rate increase there, and we did not declare force majeure. We have shut down one furnace, and we're continuing to operate one furnace there of the two.

I'm not aware of anything concerning the Beverly plant. It's operating two furnaces, and has been, on silicon metal and three on small volume foundry alloys.

VICE CHAIRMAN ARANOFF: Okay. Thanks for clarifying that. I think we've got the facts lined up with the wrong plants here, but I appreciate that clarification.

Can you tell us what the status is of Commerce's changed circumstances review of RIMA, and if you requested that review, can you tell us what prompted that action?

MR. KRAMER: The status is that we are in the period in which the Department of Commerce is considering whether to initiate a changed circumstances review. We expect a decision with respect to that in the reasonably near future.

What prompted that action was a systematic examination of whether circumstances had changed with respect to RIMA's shipments to the United States and whether or not there was a resumption of dumping.

We submitted an extensive request to the Department of Commerce that outlines changes with respect to RIMA's cost of production, RIMA's selling prices to the United States during 2006, the exchange rate and the effect on RIMA's dollar-denominated costs due to those changes.

We also submitted information regarding RIMA's channels of distribution and whether or not RIMA had been forthright with the Department in the reviews leading to revocation with respect to whether or not it had an affiliated reseller in the United States.

We submitted margin calculations showing, on a price-to-price and on a cost basis, that RIMA has resumed dumping, and we've shown that on a current basis and on the basis of its sales to the United States through the first six months of this year. Accordingly, we expect the Department to initiate a changed circumstances review, and based on all of the information available to us, we expect that to result in reinstatement of the order.

VICE CHAIRMAN ARANOFF: Okay. I appreciate that information.

Let me go back to cumulation while I still have time. I was asking you to go through a number of the points that the Brazilian producers had raised as potentially differences in conditions of competition between Brazilian and Chinese imports into the U.S. market in the event of revocation. So we had looked at the first one, which was AUV Trends.

MR. KRAMER: May I go back to that for one moment?

VICE CHAIRMAN ARANOFF: Sure.

MR. KRAMER: I had understood their comment to go to the overall price levels of the two sources of supply, and, in fact, it does do that, and then also makes the argument, based on trends, that you've referred to. The argument about the overall comparison is invalid for the reasons I've described. I would be very happy to determine what they are saying about the trends, and I can give you an answer to that in our post-hearing brief.

VICE CHAIRMAN ARANOFF: Okay. I appreciate that.

The second item that they raise is that there are differences in the total capacity between Brazil and China. I think you've addressed your views on that one. It also referred to capacity utilization.

MR. KRAMER: May I add a point to that?

VICE CHAIRMAN ARANOFF: Sure.

MR. KRAMER: Our understanding of Commission precedent is that the Commission is looking for fundamental changes that would, in fact, cause a difference in how these imports would impact the United States market so that if you have an industry, for example, where a substantial portion of the total capacity has been shut down. There has been a change in the products produced at the plants. It's no longer a product that meets requirements of U.S. customers. There has been a huge surge in domestic consumption.

Somehow there is a fundamental change so that that capacity that existed no longer can be expected to come to the United States. This is a case in which, yes, there has been a change, in that you have two companies currently revoked, but there have been counterbalancing changes in terms of capacity expansion, and what we're saying is the remaining industry is still very large and formidable, so it's not a situation where someone no longer has capacity that would have the same consequences.

VICE CHAIRMAN ARANOFF: Okay. I pretty much understood that to be your response, but I appreciate your spelling it out.

But on the second half of that was with reference to differences in capacity utilization rates on the record between the Brazilian and Chinese industries. Do you have a comment on that?

MR. KRAMER: There is clearly a difference in that respect. In my mind, this all comes back to differences in degree. It's very clear that the Chinese industry poses an enormous threat, for many reasons, including excess capacity, and we're not saying that in each and every respect the Brazilian industry is the same as the Chinese industry; we're saying that if you look at all of these factors, in a whole series of respects, they are more alike than different.

VICE CHAIRMAN ARANOFF: Okay. All right. The next point that's raised is differences in the currently applicable antidumping duty deposit rates.

MR. KRAMER: I think that that should be completely disregarded by the Commission because the Commission is trying to evaluate the implications of revocation, and that's why the Department of Commerce provides its assessment of the likely margin of dumping. I just think that the margins achieved by shipping de minimis quantities and charging above market prices are not germane to what the Commission has to evaluate.

What difference would it make if the Chinese had done the same thing, had shipped at $1.50 a pound and got a zero rate and then not shipped because they couldn't ship commercial quantities?

VICE CHAIRMAN ARANOFF: Thank you, I appreciate that, and I still haven't gone through all of the factors, but I will persevere. Thank you, Mr. Chairman.

CHAIRMAN PEARSON: Commissioner Hillman?

COMMISSIONER HILLMAN: Let me follow up, I guess, a little bit on this and try to make sure I understand on this issue of the differences because, again, as I sit here and look at it, you have a Brazilian market in which you have a limited number of players that are still subject to the order, and then you have the Chinese market in which you have a very large number of players, at least from what I understand, none of whom would be considered, in and of themselves, to be really significant players.

So you have one market with lots of little guys and the Brazilian market with the biggest guys no longer subject and four other producers there, some of whom are still large, again, large players, and yet you're telling me that these should be cumulated because the conditions of competition and the behavior of the two are enough sort of similar that we should be cumulating potential imports from, again, the subject Brazilian producers and this large group of small Chinese producers, collectively, who have a very large capacity. Again, just help me understand why you think they will compete in the U.S. market in the same way.

MR. KRAMER: This does not directly answer your question. There have been some changes in the Chinese industry, so it's becoming more like the western industry in terms of there are some larger producers. But, fundamentally, we're not saying that one is the picture of the other. What we're saying is that the conduct of the imports would be essentially the same, and we're pointing the Commission to evidence that shows that to be the case.

So part of this is the question of whether the fact that you've got an industry that's enormous and that, for various reasons, perhaps a multitude of producers, poses an enormous threat. We're trying to say that that doesn't mean that an industry that is different in some respects and is not as large does not pose a similar threat.

We're talking about two industries, both of which are large in relation to the United States industry, both of which have a history pre-order and a history in other markets of engaging in very, very similar conduct with the same consequences, both of which are selling a commodity product where they can only capture market share by undercutting other suppliers and have done that to capture market share.

So we're saying, without regard to the fact that there are some differences that, on a stand-alone basis, Brazil would have the same kind of damaging effect.

COMMISSIONER HILLMAN: Okay. Dr. Button?

MR. BUTTON: If I may expand a little bit on that, and this may touch on some of the points that Commissioner Aranoff was raising as well.

Respondents describe a few of these items that they say are differences in conditions of competition. They are really not conditions of competition; they are the things that they could find, and many of them, particularly having to do with the average unit values, are somewhat trivial, and I'll comment on that in a moment.

In fact, since the original period of investigation, the Chinese and Brazilian producers have become more similar in their relevant commercial behavior in the United States market. In the original period of investigation, one of the claims was that the Chinese producers' product was only capable of competing in the metallurgical sector and not the chemical sector.

Well, one of the things that has happened over time is, indeed, that the Chinese and the Brazilian producers, all of them produce for all parts of the U.S. market and are capable of supplying essentially every one of the U.S. customers in every geographical location as well, and they compete head to head commercially around the globe.

Additionally, the things that remain the same is the fact that they respond to pricing, just like the customers do, and they are both quintessentially export oriented. The Brazilians face Chinese competition in the Brazilian domestic market, which is another good reason for them to remain export oriented.

The supposed differentiation in price, which is contained in their brief, and Vice Chairman Aranoff has focused us upon that, is basically dealing with, in some cases, trivial volumes, indeed. TIB import numbers and non-TIB imports merged together. In that chart -- I won't mention the details -- there is a flex in 2003 data, and I invite the Commission to look at the subject Brazilian quantity change between 2002 and 2003. We're really dealing with different animals. There is no economic meaning, I believe, in that particular chart.

What counts, I would hope, is your interpretation of the manner of commercial competition in the U.S. market that both the Chinese and the Brazilians would engage in against the domestic industry and against third-country imports. The key point is that they will seek customers by reducing price. They have the technical capability of doing it, and they have the volumes to do it. Indeed, they should be cumulated.

COMMISSIONER HILLMAN: I guess, just so I understand, on the Chinese and the TIB imports, I would only ask you to comment in your post-hearing brief on how you would tell the Commission to regard the TIB imports. Obviously, we've addressed this issue in terms of how we consider them to be subject imports, how we should view them in terms of how they compete or not, and what we should look at.

I know we have addressed this issue. I would point you to Cut-to-length Steel Plate, in which three commissioners, including myself, did not include TIB imports in imports for consumption in terms of looking at volume numbers. My question to you is, should we take the same approach in this case? How would that affect our analysis for China, where such a large portion of the imports are TIB imports?

MR. BUTTON: We would be happy to respond further, but, indeed, the TIB imports enter without the discipline of the order. They are relatively small overall in quantity, and the key message is, what would the subject imports look like, price-wise, if they, too, did not have the discipline of the order? That's the main message that we would suggest.

COMMISSIONER HILLMAN: All right. I would ask you to, again, just address the general issue of whether they should be considered subject imports, and whether they should be looked at in any way differently than straight-up subject imports. Thank you.

Let me go to the issue of, again, product quality, if you will, or the level of impurities. I just want to make sure I understand it. As I heard you, you, in essence, are producing two -- I don't want to call them grades, but two products: one, the low iron; and one, the all other.

I'm just trying to understand what portion of your sales are, in essence, of a higher grade, higher purity level of product sold to someone who doesn't actually specify that. In other words, how much high grade are you selling to a low-grade application?

MR. SIMS: We would have to get the precise numbers for you, but it's quite small. It's probably less than 10 percent, but I'm not sure.

COMMISSIONER HILLMAN: Okay. If there is anything further you want to put, in terms of numbers, on the record --

MR. KRAMER: I'm not sure that that question was understood. Are you talking about, for example, whether product that could be consumed for chemical-grade production is sold to a secondary aluminum company?

COMMISSIONER HILLMAN: Correct. I'm trying to understand -- as I heard the testimony there's two basic products here, the low iron and the all other, and the specifications are, again -- each customer has their own specifications. But what I heard maybe the testimony from you, Mr. Perkins, is that a lot of the product is, in essence, higher spec. than what the individual customer has asked for, and I'm trying to understand how often that, in fact, occurs.

MR. KRAMER: Just to clarify one point, Globe fundamentally produces a single product which is sold to all types of customers. What we're talking about, the low iron, is a specialty grade that is a very, very small percentage of their production. It's just the one exception to all product being sold to all types of customers.

COMMISSIONER HILLMAN: Okay. So you're saying virtually all of the product that Globe produces meets the highest of the specs, and, therefore, virtually all of your sales to customers that have a lower spec. requirement is nonetheless of the higher-grade product.

MR. PERKINS: Yes, ma'am. I think that's a good characterization.

COMMISSIONER HILLMAN: Okay. All right. I understand. Then is a producer ever disqualified because it has not sold any merchandise to a purchaser recently? In other words, how often are you qualified as a qualified supplier?

MR. PERKINS: In the aluminum sector, there is not a whole lot of disqualification and requalification, I think. If you met the standard in the past, you probably will meet the standard in the future.

COMMISSIONER HILLMAN: In the chemicals sector?

MR. PERKINS: It's a little bit different, but as we've pointed out, the qualification process has been slimmed down so much that even if you are disqualified, you can get requalified, I think, rather rapidly.

COMMISSIONER HILLMAN: Okay. I appreciate those answers. Thank you.

CHAIRMAN PEARSON: Commissioner Koplan?

COMMISSIONER KOPLAN: Thank you, Mr. Chairman.

Mr. Kramer, I keep coming back to you. I've got a question. I'm looking at the dates where you submitted to Commerce for this changed circumstance review with regard to RIMA, July and then the submission August 18, and, in my opinion, there isn't even a slim possibility that Commerce will decide that before November 15. Do you disagree?

MR. KRAMER: I think that if a changed circumstances review is conducted that is contested and runs its full course, it's very unlikely that there would be a decision before --

COMMISSIONER KOPLAN: And you do expect it to be contested.

MR. KRAMER: That's not entirely clear to me.

COMMISSIONER KOPLAN: Okay. But if it is contested --

MR. KRAMER: There has been one submission to this point opposing the request. I think there is uncertainty regarding whether it will be contested.

COMMISSIONER KOPLAN: So if I'm predicting that there is a likelihood it's not going to get done by the 15th of November, you don't dispute that at this point. You don't have a basis to dispute that.

MR. KRAMER: No.

COMMISSIONER KOPLAN: Okay. Thank you. You understand why I'm asking that question --

MR. KRAMER: I do.

COMMISSIONER KOPLAN: -- because I have to go on the record that's in front of me.

MR. KRAMER: I do. What I would say, though, is that we hope that the Commission will take into account all of the facts of record, including whatever information is available at the time of the vote, with respect to the reinstatement request.

COMMISSIONER KOPLAN: I appreciate that, but I can't decide that for Commerce.

MR. KRAMER: Right.

COMMISSIONER KOPLAN: That's another forum, and that issue is in that forum; it hasn't been resolved. Do you see where I'm coming from?

MR. KRAMER: I understand.

COMMISSIONER KOPLAN: Okay. Thank you.

Dr. Button, let me come back to you just briefly. When we discussed, in my first round, what the significance of these administrative reviews are that Brazil has been going through, you said that that simply is evidence of their interest in participating in this market. They want to come back. That's why they are going through these administrative reviews. Correct?

MR. BUTTON: Yes, sir.

COMMISSIONER KOPLAN: Okay. So would I be incorrect that the converse would apply to China, who haven't participated as to any administrative views? Does that mean that they are not interested in coming back here? How can you have that both ways?

MR. BUTTON: I think you can have this one both ways.

COMMISSIONER KOPLAN: Well, I would be interested in your explaining that to me.

MR. BUTTON: Okay. I believe, with respect to China, looking at the past commercial behavior of the large number of producers there, that if there was no order, the large volume of unutilized capacity in China would immediately be seeking an outlet, and if the order in the United States were lifted with respect to China, I think, as a commercial reality, there is no doubt, and I believe the Brazilians appearing before you would have no doubt, that that volume would come to the United States.

As to Brazil, on the other hand, you have those who say that they will not ship to the United States, but they have gone through the bothersome annual process of administrative reviews a number of times with the goal of seeking revocation. For me, it does make sense that they do that because I believe they would seek to come to the United States.

COMMISSIONER KOPLAN: That is a very creative response on the spur of the moment to my question.

Did you want to add to that, Mr. Kramer?

MR. KRAMER: I would like to make several points. The first point is that there are currently pending before the Department of Commerce two new shipper reviews.

COMMISSIONER KOPLAN: I'm aware of that.

MR. KRAMER: [**********************
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the new shipper --

COMMISSIONER KOPLAN: And will that be decided before the 15th of November?

MR. KRAMER: I don't think it will be.

COMMISSIONER KOPLAN: You don't think it will be. Okay.

MR. KRAMER: There have been past attempts to -- there have been at least three or four occasions in the past in which requests for administrative reviews or new shipper reviews were submitted to Commerce, and, in each case, those failed the early stages. I think there was only one final determination, and I think, to some degree, first of all, the differences. It's even more difficult for the Chinese to attain an artificial, reduced margin than it is for the Brazilians.

The final point is that we've had pretty much continuous effort to circumvent the Chinese order through multiple, repeated efforts to bring product in without going through the administrative review process. So the desire to reenter the market has taken a different form in the case of Chinese product. It's most commonly been in the form of entry of product falsely identified as originating in another country.

COMMISSIONER KOPLAN: Do you want to document that for post-hearing?

MR. KRAMER: Sure.

COMMISSIONER KOPLAN: Thanks.

Did you have your hand up, Dr. Button?

MR. BUTTON: No, sir. Mr. Kramer raised points that I was going to add. Thank you.

COMMISSIONER KOPLAN: Okay. Thank you. Thank you, both.

Now, let me come back to Mr. Sims or Mr. Perkins. On page 28 of the Brazilian Respondents' brief, they state, and I quote: "Brazilian subject producers cannot and have no reason to abandon the European market and shift focus to the U.S. market. Silicon metal prices have been higher than, or at least equivalent to, the U.S. market prices in Europe for some time. Silicon metal market analysts forecast that this price structure will remain steady for at least another five years."

How do you respond, particularly when the Chinese are subject to orders in the EU, and the Brazilians are not?

MR. SIMS: It's our view and our information is that the pricing in Europe is currently lower than the pricing in the U.S. That was more recently reflected in Ryan's Notes that was published this week.

Also, our experience in Europe has been when we've had material available, we have explored entering the U.K.

COMMISSIONER KOPLAN: You said Ryan's Notes this week?

MR. SIMS: Yes.

COMMISSIONER KOPLAN: What about prior to this week? Ms. Lutz?

MS. LUTZ: The Ryan's Notes data show two prices for the week that the issue covers -- I think one that covers four weeks and one that covers six weeks -- so it does go back over a certain period of time.

COMMISSIONER KOPLAN: Do we have that? Do we have that in the record?

MS. LUTZ: I don't believe it's on the record currently. We can put it on the record.

COMMISSIONER KOPLAN: Could you do that?

MS. LUTZ: Yes.

COMMISSIONER KOPLAN: Okay. Anything else on this point?

MR. SIMS: We have attempted to sell product into the EU market, and we've not been successful there because the pricing has been lower than it would be attractive for us to move product there.

COMMISSIONER KOPLAN: But do you discount the significance of the fact that the Chinese are subject to orders in the EU, and the Brazilians are not? I mean, that's what I'm asking you. That keeps it open for the Brazilians, does it not?

MR. SIMS: Yes, but also the pricing is lower. We see the pricing lower in the U.K. -- in the EU.

COMMISSIONER KOPLAN: I look forward to getting whatever you're going to submit on that post-hearing. Let me move on. You understand the reason I'm asking the question, Dr. Button and Ms. Lutz. Thank you, both.

Let me stay with Mr. Sims and Mr. Perkins. Respondents state the following on page 31 of their brief. They say that "in the past five years, freight costs have been rising exponentially and today represent a significant barrier for Brazilians to enter the U.S. Freight costs to ship from Brazil to the U.S. can be twice as high as those to ship from Brazil to Europe or Japan." Do you disagree with that?

MR. KRAMER: We don't think that's true.

COMMISSIONER KOPLAN: You don't think that's true?

MR. KRAMER: No. We've got some indication already that the representation that prices have increased greatly is not true, and we'll try and provide more information to the Commission.

MS. LUTZ: Let me just summarize. We looked at the U.S. import statistics for silicon metal from Brazil and separated out the freight and insurance from the CIF price, and, in fact, the price per pound reached a high level in 2001 and has decreased since then. Transportation, insurance, and freight costs have declined since 2001 on a per-pound basis.

COMMISSIONER KOPLAN: Thank you for that.

If the chairman will indulge me, I have one question left.

CHAIRMAN PEARSON: The chair will indulge.

COMMISSIONER KOPLAN: Thank you.

CHAIRMAN PEARSON: I owe you a few.

COMMISSIONER KOPLAN: I don't keep count.

Mr. Kramer or Dr. Button, on page 6 of the Brazilian Respondents' brief, they state, and I quote: "Simcala is completely insulated from import competition due to its ownership by Dow Corning, which purchases --" and then there is a bracketed characterization in there "-- of Simcala's production."

I know that you don't represent Simcala, but can you help me with this? Can you or your clients provide any information on whether, to your knowledge, Simcala receives insulation from price changes in the market because of their relationship with Dow? In other words, do Simcala's sales to Dow reflect merchant market pricing? Do you want to do that now or post-hearing?

MR. BUTTON: I believe we would like to respond in the post-hearing brief, and there is a response to that. Thank you, sir.

COMMISSIONER KOPLAN: Okay. Thank you very much. I look forward to that. Thank you, Mr. Chairman.

CHAIRMAN PEARSON: Commissioner Lane?

COMMISSIONER LANE: Thank you.

Dr. Button, I think these questions are for you. I believe I heard some responses that silicon metal is purchased primarily on price considerations. However, as far as demand elasticity is concerned, I believe I heard that demand will not respond significantly to price changes. Do you agree that this product's demand is relatively inelastic, and do you agree with staff's estimate of a demand elasticity of less than .5?

MR. BUTTON: Commissioner Lane, we do believe that the demand is inelastic. We agree with the staff estimates. Indeed, there are no substitutes for the product.

COMMISSIONER LANE: Okay. Thank you. Sticking with elasticities, staff has estimated substitution between U.S. and subject product to be in the range of 3-to-5. Do you agree with that range?

MR. BUTTON: We would believe it would be the higher end of the range. This is, quintessentially, a commodity product, and each of the producers can produce the same product for each of the customers.

COMMISSIONER LANE: Okay. Finally, you already indicated a difference in capacity between Brazil and China. Staff has estimated supply elasticity for Brazil of 3-to-5, but for China that estimate is 8-to-12. Do you agree with those ranges?

MR. BUTTON: Yes. We generally agree with the ranges. I would note again, with Brazil, the ability for them to move volume from one market to another rapidly was demonstrated by their ability in the past to move product from Japan to the EU and from

Mexico and Canada, similarly, to the EU.

COMMISSIONER LANE: Okay. Thank you.

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

CHAIRMAN PEARSON: Thank you, Commissioner Lane.

At the risk of muddling things up for the vice chairman, I would like to discuss a couple of issues that deal with differences that may exist between Brazilian and Chinese producers that could be relevant to cumulation, although, I confess, I have not thought this through in a systematic way. So trusting that she can pick up the pieces, here I go.

The Respondents have indicated that Chinese silicon metal capacity is a lot larger than Brazilian and that there are more than 113 silicon producers in China and only four subject producers in Brazil. Now, I think the four subject producers would indicate a consolidation since the last five-year review. The 113 in China may well exhibit an expansion.

Should we see differences in those two economies, with one maybe consolidating and having greater pricing discipline therefore, and the Chinese economy for silicon metal expanding and getting more players and perhaps being less disciplined?

MR. BUTTON: I would comment first that the one thing that unites them both is they are fundamentally export markets, export producers, so they are competing on the world market. Indeed, the Chinese perhaps set a particularly aggressive tone, but in the world market, the Brazilians need to compete against them. The Brazilians in the export market coming to the United States; they have to bow to the economics of their customers, and the customers are price sensitive, and they, therefore, would have to cut price to get market share.

CHAIRMAN PEARSON: Are you comfortable with the basic characterization of the number of producers in China perhaps being 113 or more, with only four subject producers remaining in Brazil?

MR. BUTTON: I'm not sure of the relevance of the numbers in that respect. Four for Brazil, yes. The large number for China, yes. That would not surprise me.

MR. KRAMER: I think those would be very compelling differences if there were no information in the record regarding the actual conduct of the producers in the two industries, but --

CHAIRMAN PEARSON: Well, I'm getting to that because my next question deals with how we should evaluate the willingness and ability of major Brazilian producers to obtain zero margins from Commerce, compared to what seems to be a lack of willingness or inability on the part of Chinese producers to do the same.

MR. BUTTON: With respect to the remaining subject Brazilian producers, they have not been able to do it. They have not been able to ship the commercial quantities required by Commerce consistently at nondumped levels. It is not difficult for any individual producer to make a sale, a small, symbolic sale, and get a low margin. It's the ability to do that in a manner which the Department of Commerce would view as commercially meaningful and indicative of nondumped, commercial behavior.

CHAIRMAN PEARSON: Respondents, accepting that not all Brazilian producers have yet gotten a zero margin. Still, within this period of review, we have had significant shifting of Brazilian producers from the camp that had margins to the camp that has zero margins, which seems to me not an immaterial change in conditions of competition, and we haven't seen, to the best of my knowledge, a similar trend among the Chinese producers.

MR. BUTTON: Well, we anticipate, as Mr.

Kramer has indicated with RIMA, that we're not sure we believe that RIMA, indeed, is selling at nondumped prices and a nondumped behavior, and it is now, as Mr. Kramer indicated, before the Commerce Department. Hopefully, they will investigate that.

It's simply the act of seeking to enter the market, which is how you should interpret what the Brazilians are doing. The Chinese, on the other hand, also have repeatedly acted to seek to enter the market. One, they have got the TIBs, which have continued. That hasn't stopped, and they have sought to circumvent, and the results have been criminal and civil actions. They are both involved in the market.

CHAIRMAN PEARSON: Mr. Kramer?

MR. KRAMER: I'm trying to understand the question in the context of what the Commission is trying to evaluate in examining conditions of competition. I'm having difficulty with the idea that the fact that a company can ship 100 metric tons at a particular price and a particular period and get a zero rate calculated based on that sale and then be unable to ship to the United States after having obtained a zero rate. It seems to me, that is not a material difference in terms of understanding the conditions that would confront that company if the order were revoked.

CHAIRMAN PEARSON: Right. My reading of what's happened during the period of review is that we went from a situation in which there were zero shipments to the United States by nonsubject Brazilian producers to a point where, although now it's confidential, let me describe it as some tens of thousands of tons of shipments of silicon metal from nonsubject Brazilian producers to the United States.

That seems to me to indicate some change in conditions of competition. Am I misunderstanding what the term "conditions of competition" means in this context? Mr. Schaefermeier?

MR. SCHAEFERMEIER: That's a change in conditions of competition with respect to nonsubject material.

CHAIRMAN PEARSON: Right. But they went from being subject to becoming nonsubject. So is that not a change in competition that we have to consider, or do we have to ignore that?

MR. KRAMER: Well, you're trying to evaluate conduct in the absence of the order.

CHAIRMAN PEARSON: You're the one who raised conduct, I think, earlier, so go ahead.

MR. KRAMER: I'm basing my comments on what

I understand to be the Commission practice with respect to this. So you have a situation in which certain producers have achieved margins, zero margins or de minimis margins, and then have been unable to ship to the United States. The question is, what significance should the Commission attribute to that in comparing that source with Chinese producers who have not obtained such zero margins but also remain similarly constrained and unable to ship?

I think that there is a difference in that the Brazilians were able to go through that Department of Commerce process and achieve that outcome, but there is no difference in terms of the implications for whether or not they would engage in similar conduct were the order revoked.

CHAIRMAN PEARSON: Mr. Schaefermeier?

MR. SCHAEFERMEIER: If I could just add to the point I was trying to make, if I understand it correctly, the Commission is trying to make a prospective evaluation of what would happen if the order were revoked, and the order can only be revoked with respect to those Brazilian producers that are currently subject to the order. Those are the four or five companies that we've talked about this morning.

Now, I'm trying to figure out logically, if you make that evaluation in that prospective manner, you know that, as to those companies, they are not able to ship with the discipline of the order. How does that fact change if you then look at the behavior of the nonsubject companies?

CHAIRMAN PEARSON: Well, if the statute prohibits me from looking at changes that have occurred over the period of review in terms of shipment patterns among subject and nonsubject producers, please elaborate on that for me in the post-hearing; otherwise, I'll just kind of -- Dr. Button, you wanted to say something?

MR. BUTTON: Just as a rhetorical question for the Brazilians: once a Brazilian subject producer has achieved its first zero margin, why does it continue to ship de minimis levels of volume? Once it got the zero margin, why doesn't it become a full, commercial player? Why does it drag on for extended years not selling commercially significant quantities?

We believe the answer is that they aren't able to do so because of the discipline of the orders.

CHAIRMAN PEARSON: And not that they might have better opportunities to sell quantity in Europe.

MR. BUTTON: Correct, because they wouldn't bother to seek the administrative reviews and the removal of the order if they were so happy selling in Europe.

CHAIRMAN PEARSON: Okay. Thank you.

Madam Vice Chairman, over to you now. Please sort out the cumulation questions.

VICE CHAIRMAN ARANOFF: Well, I'm not sure the chairman has muddied the waters. He may have made my list a little shorter and gotten us all to lunch that much sooner, but there are two more items on this cumulation and conditions-of-competition discussion that I want to make sure to touch on.

These have been mentioned by my colleagues in the context of other questions, but I don't think in the direct context of whether they constitute differences in the conditions of competition that producers in these two countries would face in the event of revocation.

One of them is the fact that Chinese product is subject to trade remedies in other major markets, including the European Union and, I believe, Australia. Does that create a difference in the conditions of competition under which the two might compete in the U.S. market that would, if not be a basis for not cumulating, be sort of on that side of the scale?

MR. KRAMER: I think it's a consideration, but I don't think it should be given significant weight in view of all the evidence we've put in regarding what would happen with respect to the flow of Brazilian product. In the EU market, there is a Chinese order, which, to some degree, is restraining the flow of Chinese product, although there has been some increase in volume.

So to some degree, that's a constraint the Brazilians do not face, but we think that the facts speak for themselves with respect to the overall dynamics of in what market the Brazilian product will be sold. We think there are other compelling incentives that would lead to sales in the U.S. market.

VICE CHAIRMAN ARANOFF: Okay. I should point out, in that regard, because I've been trying to think it through, it's kind of an anomaly in the way you're arguing because your argument is that Brazilian product will move towards markets where they don't have to compete with Chinese product.

So if you follow that to its natural conclusion, it would be that if the order were to be revoked with respect to Brazil but not China, Brazilian product would enter the U.S. market in significant quantities, but if the order were to be revoked with respect to both Brazil and China, Brazilian product would not enter the U.S. market in significant quantities because they would be pushed out by China.

MR. KRAMER: I think if the order were revoked with respect to both countries, I think it is the case that there would be a very strong incentive for the Brazilians to focus on the EU, where they have a degree of protection from the Chinese competition.

VICE CHAIRMAN ARANOFF: Okay. It seems a little anomalous to me.

In any event, one more factor that I wanted to make sure that I went through with you: One of the arguments that is raised by the Brazilian producers with respect to cumulation is the fact that certain Chinese producers or importers of Chinese product may have been attempting -- in one case, they have actually admitted to having evaded the order. Again, does that count on the side of the scale that might provide a basis for not cumulating?

MR. KRAMER: Well, in my mind, this is another iteration of the fundamental argument that's being made, which is that the Chinese are so enormous, so aggressive, so injurious, that, by comparison, Brazil is very different, and the Commission should treat them differently. I think that, yes, it's true that there have been very aggressive attempts to illicitly bring Chinese product into the United States.

That's the avenue they have chosen to try to regain access to the market, but to say that does not mean -- I think the Commission needs to examine bottom line, are these two sources more alike than different in the critical respects that will determine what will happen if the orders are revoked?

VICE CHAIRMAN ARANOFF: Okay. I appreciate all of those answers and thank you for your patience for following this question through three rounds of questioning, and, Mr. Chairman, I don't have any further questions.

CHAIRMAN PEARSON: Commissioner Hillman?

COMMISSIONER HILLMAN: I have no further questions. I want to thank the panel very much for your answers.

CHAIRMAN PEARSON: Commissioner Lane? Commissioner Koplan. Excuse me. Commissioner Lane? Done. Okay.

Seeing no further questions from the dais, are there any questions from staff?

MR. DEYMAN: George Deyman, Office of Investigations. There are no questions from the staff.

CHAIRMAN PEARSON: Lunch break. Okay. That's the next thing on the list. Let's see. If there is no objection from my fellow commissioners, I think we should take a full hour today and come back at 25 minutes before two. Excuse me. Before we take our lunch break, does Respondents' counsel have any questions for the morning's panel?

MR. VANDER SCHAAF: We have no questions, Mr. Chairman.

CHAIRMAN PEARSON: Thank you. Sorry about that oversight. Thank you, Mr. Secretary.

Now we get on to the important business of lunch. I propose that we take a full hour, at least until 25-to-2, which is almost a full hour.

Mr. Secretary, if you would please advise Commissioner Okun at an appropriate time that she missed a hearing in which I allowed a full hour for lunch, that would be just great.

We are in recess until two-thirty-five.

(Whereupon, at 12:38 p.m., a luncheon recess was taken.)

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A F T E R N O O N   S E S S I O N

(1:38 p.m.)

CHAIRMAN PEARSON: Ready or not, we'll try it again. This hearing is reconvened.

Madam Secretary, are there any preliminary matters?

MS. ABBOTT: No, Mr. Chairman. The second panel, in opposition to the continuation of antidumping duty orders, has been seated, and all witnesses have been sworn.

CHAIRMAN PEARSON: Okay. Excellent. Mr. Vander Schaaf, you may proceed.

MR. VANDER SCHAAF: Thank you. Again, I'm Lyle Vander Schaaf from Brian Cave, accompanied today by my associate, Joe Heckendorn, also from Brian Cave. Today, Adelmo Melgaco has come to join us from Brazil. He is the executive director of ABRAFE, which is the association in Brazil which, in Portuguese, would tell you that they are the association for the producers of ferro-alloy and silicon metal producers in Brazil. We also have Robert McHale joining us from Alcoa, and so without further ado, I'll just have Mr. Melgaco proceed with his prepared statement. Thank you.

MR. MELGACO: Good afternoon. My name is Adelmo Melgaco, and I am the executive director of

ABRAFE, the Brazilian Association of Ferro-alloy and Silicon Metal Producers. Thank you for taking the time today to hear our testimony. It's an honor to be here.

I have been working at ABRAFE for the last 21 years. Twenty-one years is a long time, I admit, but it is reasonable and appreciated when someone works for such a long time at the same organization. What is not reasonable and, indeed, astonishing is to have an antidumping duty order kept in place for more than 15 years.

This is the second time I appear before this Commission to discuss the antidumping order on silicon metal from Brazil. To be very honest, I look forward to come to Washington, D.C., next time only on vacation.

ABRAFE is the trade association in Brazil for the ferrosilicon and silicon metal producers. We assist the producers with governmental or institutional issues in working with the Brazilian government much the same way that trade associations operate here in the United States.

Whenever a problem involves all or a large group of producers in Brazil, ABRAFE usually takes care of the problem. From our past dealings on these types of issues on behalf of the Brazilian producers, we have obtained a significant amount of business proprietary data about their production, capacity, inventories, and shipments.

In response to a request from the Commission's staff, ABRAFE submitted to the Commission the other day a questionnaire response providing data for RIMA and Italmagnesio because the Commission did not have that on these producers. The data we provided is the type of data we have on file at ABRAFE.

I am here today to speak about the Brazilian silicon metal industry on behalf of our members of ABRAFE who are still subject to the antidumping duty order. At the end of this presentation, my conclusion will be that the Brazilian industry's current condition is dramatically different from the condition at the time of the original investigation.

During the original investigation and prior sunset review, there were eight companies that produced silicon metal in Brazil: RIMA, CBCC, Eletroila, Companhia Industrial Fluminense, SIBRA, LIASA, MINASLIGAS, and CCM. I will talk about each of them separately.

RIMA is no longer subject to the order

because the Department of Commerce revoked the order with respect to RIMA's imports, effective in July 2001.

CBCC is a wholly owned Brazilian subsidiary of Dow Corning since 2000, and the order against Brazil was also revoked by the Department of Commerce for imports from CBCC, effective in July 2002. In the hearing for the prior sunset review, there was a representative from Dow Corning, Mr. James May, who was sitting next to me and testified supporting the revocation of this antidumping order. Today, we miss him but understand Dow Corning's interests have already been met.

Another Brazilian producer, Eletroila, has been redenominated Eletrosilex. Eletrosilex ceased producing silicon metal in 2000, and, in September of that year, this company leased its entire silicon metal plant to RIMA. Eletrosilex and RIMA entered into a 10-year lease agreement in September 2000, and RIMA has been utilizing Eletrosilex's entire capacity for its own production and exports since then.

So far, I have spoken about three companies whose silicon metal exports had formerly been subject to the antidumping duty order but are no longer subject producers, according to United States law.

The fourth company mentioned in the beginning was Companhia Industrial Fluminense. This was an unsophisticated silicon metal producer with very limited capacity at the time of the original investigation. Companhia Industrial Fluminense ceased producing silicon metal in the beginning of the nineties.

The fifth Brazilian company that is no longer a silicon metal producer is SIBRA. SIBRA ceased producing silicon metal in 2000. SIBRA is a subsidiary of the Companhia Vale do Rio Doce, usually referred to as CVRD, and was redenominated Rio Doce Manganes (RDM) in October 2003. RDM is still under CVRD Group and produces manganese ore and manganese ferro-alloys.

The three remaining companies -- LIASA, MINASLIGAS, and CCM -- continue to be silicon metal producers in Brazil whose imports continue to be subject to the order and are today represented by their attorneys from Brian Cave, LLP. The Brazilian industry would have shrunk from eight to three subject producers if it wasn't for a new producer. Italmagnesio is a new producer of silicon metal in Brazil that never exported silicon metal to the United States. This company started producing silicon metal approximately three years ago but has limited capacity vis-a-vis other Brazilian producers.

In summary, we are here talking today about only four producers of silicon metal in Brazil whose imports remain subject to the antidumping duty order. I would like to put forward a few reasons why this Commission should revoke the antidumping duty order for these four producers that I hope you will consider.

The Brazilian producers still subject to the order have been operating at very high levels of capacity utilization and have no plans to expand their capacity in the foreseeable future. The availability and cost of energy in Brazil constrains Brazilian producers' ability to expand production.

In 2001, Brazilian capacity was significantly affected by an energy rationing program imposed by the Brazilian government. This has seriously impacted the operations of all silicon metal producers, and there are forecasts in Brazil that energy demand may surpass energy supply again in 2008 or 2009, which would oblige the Brazilian government to reestablish the energy-rationing program within the next two or three years.

Also, as explained in the Brazilian

producers' prehearing brief, it is very unlikely that any Brazilian producer of ferrosilicon would shift to producing silicon metal. Currently, among the subject producers, only MINASLIGAS and Italmagnesio produce both ferrosilicon and silicon metal, and they produce these two products on separate furnaces due to the technical constraints prohibiting the use of the same furnace for the two products. The limitations on product shifting exist for both economical and technical reasons, and I would be happy to discuss this in more detail in the question-and-answer session.

Another aspect I would like to comment on is the fact that silicon metal demand is following a rising trend in Brazil. This is because of the growing demand for, and production of, aluminum and other products in Brazil. Home market shipments have increased more than 130 percent from 2001 to 2005, and imports into Brazil have increased in the period as well. The Brazilian market is now absorbing more silicon metal. In the future, Brazilian subject producers' sales to their home market are expected to increase at a high rate.

Contrary to what Globe has implied in this proceeding, the United States market for silicon metal is no longer the world's largest. Silicon metal consumption in the European Union is much higher than in the United States, and specialized publications forecast it will increase in the years ahead.

Also contrary to what Plaintiff Globe has implied, the United States prices do not provide an incentive to shift sales from Europe to the United States market. Silicon metal prices in Europe have been equivalent and sometimes higher than in the U.S., which makes Europe, not the United States, the most attractive market for Brazilian silicon metal. Moreover, Brazilian subject producers are qualified and certified by European purchasers, whereas this is not the case in the United States.

After the incidents of September 11, with new regulations and restrictions imposed for exporting into the United States, freight costs to ship from Brazil to the U.S. became much higher than freight costs to ship from Brazil to Europe or Japan, for instance.

These are the reasons why the Brazilian subject producers, even being subject to insignificant dumping margins in the United States, have their sales and marketing efforts dedicated to European markets.

When considering the ability of Brazilian subject producers to increase shipments to the United States if the order was to be revoked, I respectfully request the Commission to take into consideration what happened after revocation of the antidumping duty order on ferrosilicon from Brazil.

Petitioner suggests the Commission should take into account the increase of nonsubject sales from Brazil after revocation of the order for RIMA and CBCC.

I believe this does not give a basis for a fair analysis because the most significant portion of these sales are made from a Brazilian subsidiary to its parent company in the United States.

In conclusion, I would thank you once again for your attention and would be glad to provide any further clarification you might want during the question-and-answer session. Thank you.

MR. VANDER SCHAAF: Thank you. Our next witness is Robert McHale from Alcoa.

MR. McHALE: Good afternoon, Mr. Chairman and Members of the Commission. I am Bob McHale. I am director of the Global Alloying Materials Commodity Council for Alcoa. I have been with Alcoa for 24 years, the past 18 involved with alloying materials, including silicon. I am located in Cirsona, Pennsylvania.

Alcoa supports the revocation of the antidumping duty order against silicon metal from Brazil. Alcoa is the world's leading producer of primary aluminum, fabricated aluminum, and alumina. Silicon metal is an essential input in the production of aluminum. Although it represents a small percentage of the final cost of aluminum, we cannot produce certain alloys without it. We are the largest purchaser of silicon metal, primary grade, in the United States.

In the last five years, the use of aluminum for a number of applications has increased significantly. This increase has been particularly important in the automotive sector. Alcoa expects the demand for aluminum will continue to grow on a long-term basis, both in the United States and worldwide, at approximately 3 to 4 percent per year.

As demand for aluminum increases, so will the requirement for silicon metal. In particular, we are seeing increased demand in the purchasing by the U.S. automotive sector as it gradually incorporates more and more aluminum into its wheel assemblies and other parts, something European auto makers have been doing for several years.

Consequently, silicon metal prices throughout the world remain strong. Indeed, the prices for silicon metal in Europe are currently as high or higher than the prices in the United States.

Alcoa has always relied heavily on the domestic industry for its supply of silicon metal. Recent consolidation in the U.S. domestic industry has created a situation where one domestic supplier has an overwhelming share of our business. Alcoa cannot afford to be tied to a single supplier for such an essential input.

To ensure security of supply, we began purchasing from the Brazilian producer, RIMA, a few years ago, after the antidumping order was revoked with respect to RIMA. Importantly, notwithstanding the revocation of the order with respect to RIMA and our decision to purchase from RIMA, we have continued to purchase substantial quantities from our domestic sources. In fact, our purchases from Globe have increased as has our production in connection with our expanded Rockdale, Texas, facility.

If the order is revoked, we would continue to purchase substantial quantities from domestic sources, and we do not believe that we would necessarily increase our purchases of foreign-sourced silicon metal. We would continue to make our purchasing decision based on a number of factors, but, most importantly, security of supply.

Indeed, if the order is revoked with respect to Brazil, it is very unlikely that Alcoa will purchase any of the subject Brazilian producers. This is because none of the subject Brazilian producers is currently qualified to sell Alcoa. RIMA is the only Brazilian producer that has been qualified by Alcoa in the United States.

Before Alcoa will ever consider even a bid from a potential supplier, the supplier must be qualified. The qualification process is no simple task. To be qualified, first, the producer must demonstrate to Alcoa that it can supply sufficient quantities. This is usually accomplished in preliminary meetings between the supplier sales force and Alcoa personnel. Then a sample of material is sent to the Alcoa Technical Center in Alcoa Center, Pennsylvania, where it undergoes extensive chemical analysis and melt-loss screening. The sample is then screened for unacceptable trace elements, such as cadmium and beryllium.

Next, we require a full shipment of the supplier's material to be delivered to our plant to produce test aluminum.

Finally, in a large number of cases, we will do an on-site, plant audit of the producer's facility. This process costs us about $30,000 to conduct. Importantly, until a producer is qualified, price is not a factor; that is to say, price is unimportant if the supplier cannot, or has not, become certified.

Alcoa supports the revocation in this case because it simply cannot be in a position where it is forced to rely on a single source for this essential input. I believe other purchasers have similar concerns.

Moreover, Alcoa currently uses at least seven different specifications of silicon. This diverse product mix makes it even more important to have multiple sources available to ensure that we always will have sufficient quantities of each specification.

For these reasons, Alcoa supports revocation of the order with respect to Brazil. Thank you.

MR. VANDER SCHAAF: Mr. Heckendorn will be addressing the issue of cumulation.

MR. HECKENDORN: Good afternoon, Mr. Chairman, and members of the Commission. My name's Joe Heckenorn. I'm here on behalf of the Brazilian respondents.

With respect to cumulation, we address these issues in detail in our pre-hearing briefs. I'm not going to go through those arguments completely here, but I would like to touch on a few key points.

First of all, we still take the position that if the Commission considers all of the arguments that Respondents' panel make today and the volume arguments that we made in our pre-hearing brief, you'll find there is no discernible adverse impact and that cumulation is actually not permitted under the statute.

However, even if the Commission does find that there is a discernible adverse impact, and even if the Commission finds that there will likely be overlap of competition between Brazilian imports and Chinese imports, the record evidence here indicates that conditions of competition are vastly different between Chinese product and the Brazilian product.

Earlier today the Commission touched on some of these, and I'm just going to go through them briefly and maybe respond a little bit to what counsel had to say this morning.

First of all, I think one of the most important differences is the differences we see in the trends in the AUVs. While there may be some explanation for why the prices are, why the AUVs are different in value, the trends can't be explained away. If you look at the trends, in every instance except one Brazilian imports go down when Chinese imports go up, and Chinese imports go down when Brazilian imports go up, so they're actually going in opposite directions. There is no relationship there. Brazilian prices aren't following Chinese prices and Chinese prices aren't following Brazilian prices.

With respect to the TIB issue, I think that's just another, and we pointed this out in our brief, that's just another condition of competition that's different. Chinese producers are importing TIB and the Brazilian producers are not. This is just one additional difference in conditions of competition.

Now in prior cases the Commission has relied on these kinds of differences in AUVs and I think the comments earlier today that are these really conditions of competition? They most certainly are, and all you have to do is look at three of your last sunset review decisions and you'll see these are the precise types of things that were being addressed in those opinions.

The second difference we mentioned in our brief is differences in capacity. This one's not disputed so I won't spend much time on it, but I do think it's an important one because it's such a big difference. Not just in the volume, not just amount capacity, but the characteristics of the capacity. You've got a diffuse, hundreds of producers. I was told today hundred is probably a conservative estimate. It's probably more like two or three hundred.

And you have a total production capacity which is far greater than the Brazilian capacity has ever been. The capacity utilizations are very different as well. You have remarkably low capacity utilization being reported in China and remarkably high capacity utilization being reported in Brazil.

Again, if you look at any of your most recent sunset decisions, these are the kinds of things that are being considered.

Another interesting difference that didn't get put in the brief but I think is something the Commission should consider is the difference in the overall production levels and the changes in those production levels during the period of review.

Throughout the period of investigation, Brazilian production remained relatively the same and if you take out the non-subject, the new non-subject producers, it actually goes down a little bit.

In contrast, the Chinese production explodes and doubles from 2000 to 2005.

Similarly, total exports. Basically total exports from Brazil stays about the same, maybe even goes down about 15 percent. During the same period, Chinese exports increased by over 85 percent.

These are two countries that are operating in very different worlds right now.

There was also discussion about the differences in trade barriers faced by the Brazilian and Chinese producers. I think this has always been considered a condition of competition that the Commission will look at, and here you've got Chinese producers that have multiple dumping orders in place against them around the world and you've got the Brazilian producers, this is it. This is one order that's been in place for 15 years in which nearly every subject producer is either out of the order or on its way out because it has several zeroes in a row.

Finally, the Chinese and Brazilian imports are focused on different markets. You can see this by looking at Petitioners' Exhibits 14, 15, and 16 where they show Canada, Mexico and Japan. If you look at those tables, you look at the volume trends, you see that the Chinese are going up and the Brazilians are leaving the market, basically in each instance. They're not competing, they're not chasing those prices and trying to steal sales from the Chinese, they're just leaving and going to Europe because that's their preferred market.

Finally, I think there's sort of a qualitative condition of competition here. The Brazilians are playing by the rules. They're going to the DOC, they're participating in the administrative interviews, they're here today. The Chinese are trying to sneak things in the back door. They're misrepresenting countries of origin, they're getting sanctions imposed against them in other countries. That's a condition of competition that the Commission should consider as well.

We hope the Commissino will exercise its discretion to decumulate, if not for any other reason but just to be fair.

MR. VANDER SCHAAF: Thank you. I'll make a couple of concluding remarks.

In particular, we obviously have made a big deal out of the issue that this order has been in place for 15 years and we know the Commission's practice is always to look at the conditions of competition that were in place in an original investigation, but I think that it behooves the Commission to take a look at the differences between the current situation in the U.S. market and in the Brazilian industry and in the U.S. industry and what it was like when the order was put in place originally. And even when you reviewed this order five years ago in the first sunset review.

During the original investigation there were eight producers. Dow at that time was a producer. American Alloys, Elkem, SKW, Globe, of course, Silicon Metal Tech, Simetko, and Reynolds.

I note there was a comment today about why did American Alloys close and they said it was because of imports from China and Brazil, but I think they closed after the order was imposed, so I don't think there's much validity to that.

Since the period of the original investigation there have been a number of consolidations, mergers, sell-offs and so forth that have really changed the dynamic of the domestic industry. There really is only one U.S. producer that sells in the open market. That's Globe. That is sort of recognized as a true market participant. Now that they have acquired Elkem they've consolidated that production base.

Simcala, as we've indicated, is owned by Dow Corning, one of the companies in the U.S. that has always been recognized in your investigations as a significant purchaser of silicon metal, so we believe that, of course, provides an insulation factor for Simcala with respect to imports from other countries.

Dow Corning of course also owns CBCC, one of the non-subject producers in Brazil. So we really think it would be difficult to construct an argument that Simcala is going to somehow be injured by imports from Brazil because Dow is going to, instead of buying from their related producer in Brazil CBCC or from their wholly-owned affiliate in the U.S., Simcala, they're going to buy from other producers in Brazil and that's going to drive down prices, I think that's quite a stretch.

Globe emerged from Chapter 11 bankruptcy protection in 2004 in a very much improved position. So much so that they were able to acquire Elkem in December of 2005.

So, although the number of U.S. producers has become smaller, apparent consumption has still grown and is still very high. Because Brazilian producers have ceased producing silicon metal and because others are no longer subject to the order, the conditions facing the domestic industry from the subject producers in Brazil are starkly different than the case in the original investigation.

Looking at some of the statutory factors with respect to volume, for example, in addition to the issues that Mr. Melgaco identified for the lack of a likelihood of increased shipments from Brazil, there is other substantial evidence demonstrating that there is not likely to be a significant volume of imports from Brazil if the order is revoked, and we point particularly to the statutory factors that the Commission is required to consider.

You're required to consider a likely increase in production capacity or existing unused production capacity.

The evidence does not show any likely increase in production capacity or any increase in existing unused capacity and the record shows very very little unused capacity at all among the subject producers.

The statute requires that the Commission consider existing inventories of the subject merchandise or likely increases in inventories, and of course the evidence on these factors show no likelihood of an increase in volume.

You're supposed to consider existence of barriers to importation into other countries other than the United States, and as testified by the others, there are no orders in any other country besides the U.S. against Brazil.

You're also required to consider the potential for product shifting. This is one area in the statute where the statute does not use the term likely, it uses the term potential. But even here, the producers in Brazil who are subject to the order who produce other products besides silicon metal, ferrosilicon, do not use the same furnaces to produce silicon metal. In order to do that they would have to convert those furnaces, as Mr. Melgaco said, and as we've documented in our pre-hearing brief.

So even before there can be any potential, the furnaces have to be converted.

There are other considerations that provide a limitation to the likelihood of significant volumes from Brazil. We've documented in our pre-hearing brief the existence of long-term contracts by the Brazilian producers in their other foreign markets including, and most particularly, the European Union.

They also have longstanding relationships with their customers in these markets and demand for silicon metal has been and will remain strong in those markets.

Demand worldwide is also strong and growing. Over the past 15 years worldwide silicon metal consumption has grown at an annual rate of 3.5 percent for aluminum grade silicon metal, and eight percent for chemical grade silicon metal.

Evidence shows that this growing trend will continue in the foreseeable future. This is due to what are likely to be increased consumption of silicons in the construction sector, electronic industry, solar panels and other areas, and in the production of aluminum alloys as Mr. McHale testified for automotive applications and other products.

Non-Western silicon metal demand is also rising. A widely respected proprietary report that we provided quotes to and was attached to a questionnaire response among one of the Brazilian producers states that worldwide demand will increase from 1.5 million tons per year in 2005 to approximately 1.95 million tons per year in 2010. For that reason, one can expect an overall worldwide growth rate of about 5.39 percent per year in the next five years.

These are independent reports printed by industry experts so we think they should be given a lot of weight.

Another limitation which Mr. McHale alluded to was the requirement for certification and pre-qualification. We identified in the brief, and I'd like to restate, that of the 11 purchasers that reported qualifying their suppliers, none of them identified the Brazilian subject producers as qualified suppliers.

Therefore, the subject producers will not be able to export into the United States for some time if the order against Brazil is revoked. Certification and pre-qualification requirements can take as long as 18 months.

With respect to price, we think Figure 5-2 is very telling. There was a lot of testimony this morning by the Petitioners that prices in Europe are not higher, but your report at Table 5-2 says to the contrary and so do a number of the reports that we have attached to our brief and cited to in our pre-hearing brief.

Unlike perhaps investigations in the past involving silicon metal, currently European prices are strong and equal if not higher to U.S. prices.

Nevertheless, prices in the U.S. market are high and they've been rising over the period, and the prices are higher now than they were during the period of the original investigation.

Therefore, in addition to there being no substantial evidence for a likely increase in volume to significant levels, we also believe there is no substantial evidence showing a likely adverse price effect, either significant likely price depression or significant likely price suppression.

We also take issue with the Petitioners with respect to their comments about silicon metal being a commodity product. We always have this debate about the C word in ITC antidumping investigations.

From an economic standpoint, from your textbook economics courses, silicon metal wouldn't meet the qualifications of a commodity product in textbook economics, but we understand the nature of the Commission's investigations and the emphasis on products where price is an important factor.

But in this regard we note that in the staff report, the questionnaire responses, and some of the other evidence that's been presented in this record do not provide a textbook example of a commodity product. There are too many examples of purchasers indicating that price is not the most important factor. There are too many varieties of the product. There are three segments that everybody seems to recognize in secondary and primary aluminum and also chemical grade, and then within that you have large purchasers like Alcoa who have their own particular formula.

This is not the dynamic of a commodity product. If it's a commodity product it's a hybrid commodity product for which price is not as important as other commodity products.

The standard classification system that is used has really given way to specific formulas by particular customers.

Other issues with respect to price, all publications dedicated to ferroalloys that we've seen have been reporting that U.S. prices are high and firm and that there exists an upward pressure on U.S. silicon prices. Silicon metal prices in the U.S. have been high and stable for at least three years, and forecasts are that U.S. prices will remain high and steady from 2006 to 2010, so we really don't agree obviously with the Petitioners' comments about the likelihood of price effects in this market if the order is revoked.

We also return to the issue of Simcala being owned by Dow Corning and the fact that there is insulation to some extent from price-based competition. But other purchasers also indicated that there are preferences for the domestic product. Some have an outright requirement that a certain percentage of purchases be of the domestic product.

With respect to the recent DOC administrative reviews, much was said about the administrative reviews that the Brazilian producers have participated in. They seem to really want to underscore and downplay those proceedings. Some of those administrative review requests were not requested by the foreign producers, they were requested by the domestic Petitioners.

This is one of the most litigious industries that we will come across in the dumping realm. If there are imports into the United States there is a request for an administrative review.

Even when a producer is terminated from an order this industry petitions to get them back in under the order. It is an extremely litigious industry. You can ask anybody who reports on this industry about it. It is very unique.

But with respect to those administrative reviews, the Department of Commerce will not institute an administrative review unless you have bonafide sales. One of the factors that Commerce takes into account is the quantity of those sales. They also take into account whether or not the sale was at arm's length.

The Department of Commerce will not institute if there isn't a bonafide sale.

So there's nothing underhanded or improper about those administrative review requests. In fact I don't think it's ever improper or underhanded or shows some kind of improper intent to ever petition your government for anything. If there is a law and a legal provision for doing something, by doing it you should not be somehow inferred to be doing something wrong or having an improper motive. I really really take issue with the Petitioners' implications from the morning panel.

In any event, in those proceedings LIASA, CCM, and Minasligas have received the zero dumping margins that we've identified, and there's more to those antidumping proceedings than just comparing the foreign market price to the home market price. The Commerce Department can also look at cost of production and whether or not a producer is selling below their cost of production.

So these proceedings do have meaning and they do have effect, and they do provide an implication that the foreign producers in Brazil who are still subject to the order can and have shipped without dumping.

As Mr. Heckendorn said, the exhibits provided in the Petitioners' pre-hearing brief where they compare unit values and quantities in other markets like Europe and Canada and Mexico and the price trends they provide show that the Brazilians are not in there to dump and not under-compete and under-price the domestic market and other importers. And it's very telling, their examples with respect to China and Brazil in the top two lines of every one of those charts.

What is Brazil doing? They're not competing with China on price. Their quantities are going down, the Chinese quantities are going up, the Chinese prices are going down, and the Brazilian prices are either staying stable or they're pulling out of the market altogether.

Even the evidence they provide on the record doesn't support their argument.

With respect to impact, I've already touched on this slightly. We believe that because of the consolidation, the lending out of bankruptcy in a good condition by Globe, we think the industry is definitely not in a vulnerable state.

The Petitioner even admitted that the domestic industry is doing well. In its response to the notice of institution, Globe stated, "The U.S. market for silicon metal is currently relatively healthy." This should be viewed as an indication that after these long 15 years, the time is finally ripe for this agency to revoke the antidumping order with respect to Brazil.

After it emerged from Chapter 11 bankruptcy protection, when silicon metal prices were hovering at seven year highs of more than 80 cents per pound, Globe's CEO was asked in a press report whether it would boost production. Its CEO stated that production expansions would depend on market conditions. He acknowledged at that time that "The market is strong at this time, and we feel it will remain this way for a significant period of time, but we need to see a little more data and information to confirm this."

Well, what they did is acquire Elkem the next year. So I think their viewpoint that the market is strong and that they needed to see whether it would stay that way has been confirmed, otherwise they would not have acquired Elkem.

The fact that Dow Corning chose to purchase Simcala in 2003 also is testament, we believe, to the overall positive health of the industry.

None of the data, gross profits, operating income, none of those data show any indication of an industry that is vulnerable.

In addition, with an antidumping duty imposed on Russia recently, the industry is even less vulnerable than the data would suggest.

Another factor that eliminates any chance of vulnerability is the demand forecast. As we've indicated here today and as we provided in our pre-hearing briefs, the forecasts are that demand will continue to grow, not only in the U.S. but in other countries as well.

In sum, the record evidence demonstrates that apparent U.S. consumption is expected to increase in the reasonably foreseeable future, negating any likelihood that revocation of the order on Brazil will lead to a recurrence of material injury to the domestic industry.

Thank you, and we will be happy to entertain your questions.

CHAIRMAN PEARSON: Thank you for those presentations.

Let me welcome all of you, especially Mr. Melgaco, for your long journey to the United States. I hope that your schedule allows you to stay for a few days of vacation. September is a good time to be here on holiday because the larger crowds from the summer time tend to dissipate, so you've got the city to yourself to some degree. So welcome.

I get to start this afternoon.

Let me begin with a little more discussion of the global demand outlook for silicon metal. I think I heard from you, Mr. McHale, that you were talking about a three to four percent demand growth projection. Was that just for the United States or was that globally?

MR. McHALE: That was global numbers, three to four percent.

CHAIRMAN PEARSON: How would you see the U.S. market shaking out relative to the global market?

MR. McHALE: Pretty much the same. I think the question mark would be the automotive, which was brought up earlier, but the true automotive demand, the number of cars, is growing. What is changing is the position that the big three have. So it's simply a game of checkers where the production is moving to the imported product, whether that's made in the States or that's made outside of the United States, but they still need four wheels and a spare tire.

CHAIRMAN PEARSON: Are there any differences currently between the amount of aluminum used in one of the big three products versus the other firms that either sell vehicles to the United States or manufacture them here?

MR. McHALE: Generally the same. When you start talking SUVs and some engine blocks and transmissions, they're just bigger in size so there's more weight in a larger vehicle.

CHAIRMAN PEARSON: So the potential would be for a decrease in aluminum and silicon metal consumption if the big three down-size either their total number of vehicles or the size of their vehicles?

MR. McHALE: Correct.

MR. VANDER SCHAAF: One thing that Mr. McHale mentioned to me yesterday about the European auto producers is that they've been very good about using more aluminum in other vehicles, though, to decrease the weight of the vehicle and improve fuel efficiency. I don't know the extent to which that would be a counter-balance.

MR. McHALE: There's been more aluminum and magnesium applications in the Audis and the BMWs and some of the German cars than there have been in the United States.

CHAIRMAN PEARSON: And that would be one of the factors that's contributed to a relatively higher rate of growth in consumption in Europe?

MR. McHALE: Correct.

CHAIRMAN PEARSON: Mr. Vander Schaaf, I think you made reference to a projection between 2005 and 2010, the global demand would likely increase by something in excess of five percent?

MR. VANDER SCHAAF: Yes, that's what the reports show that we've attached to our brief. Those are proprietary reports so I can't identify what they are, but we did provide them as attachments to a questionnaire response where those were requested, and also attachments to the brief.

CHAIRMAN PEARSON: The slight difference in numbers between those that you cited and Mr. McHale cited, those would be due to just different people making the estimates? Would you argue the direction is the same? It's just quibbling over the exact amount?

MR. VANDER SCHAAF: Yes. Even among the reports we submitted, they all have a little bit slightly different view on how much the market will grow, but they all generally are in the same range and they're all anticipating and forecasting continued growth.

CHAIRMAN PEARSON: Mr. Melgaco, you had mentioned in your statement that demand in Brazil has grown quite rapidly in recent years, increasing by more than 100 percent, I believe?

MR. MELGACO: One hundred thirty percent for five years.

CHAIRMAN PEARSON: That's very robust growth. Is that growth projected to continue?

MR. MELGACO: Pardon?

CHAIRMAN PEARSON: Do you expect that rate of growth to continue in Brazil?

MR. MELGACO: Well, the demand was very low and now is developing products that contain silicon metal. Now that's why this increase rapidly, big one.

It continue to increase, but probably less, a rate lower than this one, but still strong.

CHAIRMAN PEARSON: And has the increase in consumption in Brazil been related to an increase in the production of aluminum or for other reasons?

MR. MELGACO: Aluminum contributed, but there are other reasons for our automotive industry. The importers from parts now are being produced there and so forth.

CHAIRMAN PEARSON: So there's a general agreement between the Petitioners and the Respondents that we do expect demand to continue to grow worldwide and maybe some slight differences in terms of the specific outlook, but we're on the same page on that.

MR. VANDER SCHAAF: I believe so, yes.

CHAIRMAN PEARSON: Mr. Melgaco, you had mentioned that the costs for shipping silicon metal to the United States were high relative to shipping I think to Japan or the European Union. Could you discuss that in a little more detail? Is that related exclusively to the security efforts that have gone into effect since the terrorist attacks five years ago?

MR. MELGACO: One of the things that contributes for this was the lack of ships to the States due to the, after September 11th, the restrictions they put on transport. So this increased strongly the price of transport from Brazil to the United States.

CHAIRMAN PEARSON: Is it related also in

part to the availability of empty containers to be shipped to the United States? The whole question of whether there are containers available for back-haul to the United States?

MR. MELGACO: This lack of containers, I think it's a world problem, all over the world. Brazil has too.

But as far as I know, it's due to the restrictions to transport for the Customs authorities that increase the price. That's it. That's as far as I know.

MR. VANDER SCHAAF: I think being involved in a number of different commodities that I've seen, the huge demand for shipping from China to the U.S. has really put a crimp on availability of vessels. I think in every sector.

It's pretty easy to find a vessel to go from the U.S. to China and they're shipping them empty or bringing scrap metal or finding whatever they can to put in those vessels to save costs, but I've seen a number of examples where this historically enormous demand for products coming out of China to the West Coast has really put a crimp in worldwide availability for vessels.

I don't know if it's and East Coast/West

Coast thing, but I'm seeing a lot of these examples where shipping times are longer, and so forth because all the vessels are occupied coming out of Shanghai and other ports in China.

CHAIRMAN PEARSON: Can you clarify, please, is silicon metal shipped in containers or is it shipped in dry bulk vessels?

MR. MELGACO: Mostly in containers.

CHAIRMAN PEARSON: So there is, perhaps separate from the issue of availability of vessels is the question of availability of containers, or particularly empty containers that want to get from one place to another.

MR. MELGACO: Correct.

CHAIRMAN PEARSON: Mr. McHale, do you have anything to add?

MR. McHALE: The material generally is sold in what are called super sacks, which is one metric ton bags. Those bags would be shipped typically in a container.

CHAIRMAN PEARSON: Okay. Then obviously lifted out by some type of crane and then put directly on a truck. Okay.

Mr. Melgaco, since I've been asking you questions, perhaps I could ask about the business commitments that Brazilian producers have with customers in the European Union or with other countries, and I should ask now specifically about the Brazilian producers that are subject still to the U.S. antidumping duty.

Do you know from your conversations with those business executives, are they quite likely to stay with those customers? Or would they be more likely to shift to the United States if the order was revoked?

MR. MELGACO: They are certified by, the Brazilian producers are certified by European consumers. The price in our files in Europe is a little bit better than the United States. I don't know, I don't think why they would send to the United States if the market is open, the relationship between consumer and producer is very good, we had a long time relationship between them. I don't know why it would change.

CHAIRMAN PEARSON: Okay. Thank you very much. The light is changing.

Vice Chairman Aranoff, over to you.

VICE CHAIRMAN ARANOFF: Thank you, Mr. Chairman, and I too would like to welcome the afternoon panel and thank those of you who have traveled to be with us this afternoon in particular.

I'd like to go back to the issue of qualification or certification. You argue in your brief that the need to become qualified or certified presents a barrier to entry, but what I read in your brief and what I heard Mr. McHale testify to today was a certification process that would seem to take a period of time well within the one to two years that we might perhaps look at in terms of what is the reasonably foreseeable future. So it seems perfectly logical to me that there might not be any subject Brazilian producers who are qualified as U.S. customers now. Why bother, as you know, when the order has been in place for as long as it has, but that they could easily go through that process expeditiously if the order were to be revoked, so it wouldn't really present much of a barrier to entry.

Do you have a response to that?

MR. VANDER SCHAAF: Well, it's true that the Commission, it's pretty clear from the Commission's precedent that your forecast for foreseeable future is probably broader than the time it takes for someone to be certified or qualified unless they fail and have to go through it again, but it raises a couple of issues.

First, it suggests this isn't a commodity product, first of all, because you don't even consider availability and how that weighs into price, or reliability of supply and how that weights into price, or quality and how that weighs into price until you meet the minimum thresholds for qualification and certification. Then you start talking about price. That's not what we see in commodity products.

So we pointed out for purposes of identifying this product, it just doesn't meet the paradigm of a commodity product like the Commission sees in most investigations.

But secondly, it does provide an indication of if there is going to be a ny kind of surge in miports that the Petitioners are predicting, when would it occur?

Well, it certainly isn't going to occur this year or next year. Alcoa, for example, is in the process now of securing bids for their purchases in 2008. They will lock into their long-term contracts in what, October, Mr. McHale?

MR. McHALE: We will probably award it sometime mid to late October.

MR. VANDER SCHAAF: So the foreign producers who are subject to the order in Brazil can't get certified for these sales in 2007. The earliest they could ever be in the market is 2008, assuming that they come in well ahead of time, get qualified and certified, and then are eligible to bid on his round of bids in 2007 for the 2008 market year. So that's one indication.

The second is these bidding process and qualification requirements then provide you with a pool of potential suppliers. I'm not aware of any situation where a major purchaser, at least a major purchaser, dedicates all of their purchases to any one supplier. So it's part and parcel of their purchasing decisions to require these certification and pre-qualification requirements. That allows you to then bid. Then they distribute their purchases among qualified purchasers.

So I don't see purchasers buying from a single supplier.

The other thing that the qualification and certification requirement seems to be related to and is sort of another indication of is the fact that these purchasers have reported in their questionnaire responses and as it's been reported in the staff report, tend to stay with their suppliers. They don't change suppliers very frequently.

I think that is another thing that may be related to the fact that this isn't necessarily a commodity product. Purchasers become familiar with their suppliers, suppliers become familiar with the formula that the purchaser demands, and why rock the boat or change suppliers when they meet your requirements and they produce a product that meets your recipe demands.

But I don't think anybody has a certification or a qualification requirement that takes longer then three years, or something like that, which the Commission may look at as the reasonably foreseeable future.

VICE CHAIRMAN ARANOFF: Okay, let me follow up on a few things you said there.

Mr. McHale, Mr. Vander Schaaf just mentioned that you are in the process of awarding contracts for 2007. Can you tell us, does your company award all its volume in long term contracts? And how long are those contracts?

MR. McHALE: Generally our agreements in the United States and Canada run for one calendar year.

VICE CHAIRMAN ARANOFF: So you have them up to bid in the fall and award them for the following calendar year.

MR. McHALE: Correct.

VICE CHAIRMAN ARANOFF: And you usually award a long term contract for that year to several suppliers in order to maintain diversity of supply?

MR. McHALE: In the past we have used several suppliers. Unfortunately this year there's less than several with the acquisition of Elkem.

VICE CHAIRMAN ARANOFF: Okay.

I know one of the discussions we had this morning was that some purchasers specified they require or want, I'm not sure what the right word is, a certain percentage of domestic supply. Is it important to you to have domestic supply? And why?

MR. McHALE: We have largely depended on domestic supply because of service issues. Some of the importers in the last few years have invested in warehouse space and stored material and their promised performance and reliability have improved greatly.

VICE CHAIRMAN ARANOFF: You indicated in your testimony that you've been importing product from RIMA in Brazil. Compared to your domestic suppliers now and historically, do they provide the same level of service and the same quality of product? Or are you only relying on them to sort of fill in where you absolutely have to?

MR. McHALE: No, RIMA has stepped up to one of our higher purity consuming plants. The very low iron chemistry that we require down at Rockdale, Texas. They have warehouse material for us in Texas for quick deliveries. They've done a nice job. As Globe has.

VICE CHAIRMAN ARANOFF: When you're setting up your contracts for a particular year, well, a couple of questions. First, do you do separate contracts for each of the different grades or recipes that you're looking for?

MR. McHALE: Generally we'd write one contract and then have specific line items for specific plants and their specific chemistries. So typically an order would have eight, nine, twelve locations on it with probably five, six or seven different chemistries.

VICE CHAIRMAN ARANOFF: And each of the suppliers to which you award some of your business would be expected to be supplying all of those chemistries or most of those chemistries?

MR. McHALE: Generally there are suppliers that do a better job on the high purity alloys than other suppliers. They have more availability of the lower iron material.

VICE CHAIRMAN ARANOFF: Okay.

What can you tell us about the way the contracts are structured? And if you need to answer this in confidence later that's okay, but I'm interested basically in whether the price and the quantity are fixed terms in the annual contract.

MR. McHALE: They're generally requirement agreements, so what we would do is take the requirement of a specific plant and assign it to a specific producer and they would live and die with their requirements for silicon. So it's not an exact quantity.

As far as the pricing is concerned, it's a fixed price. There are no further negotiations either up or down. Alcoa honors their agreements and we expect our suppliers to do the same. So even if the price in the market for silicon would go down, we would continue to buy at the price that we contracted for.

VICE CHAIRMAN ARANOFF: So when the domestic producers were testifying this morning that they've bene pressured by their customers to lower prices when market prices have gone down, they're pointing to someone other than Alcoa.

MR. McHALE: They are.

VICE CHAIRMAN ARANOFF: Okay.

Just so I understand you, when you say you give requirement contracts for each of your facilities, does that mean that one supplier is getting a requirements contract for a particular facility, or two suppliers could be splitting a requirements contract for a particular facility? How does that work?

MR. McHALE: It would be an extremely rare case where we would split it between two suppliers. We do have one location where we've done that. The rest have been single sourced with a particular supplier.

VICE CHAIRMAN ARANOFF: Because you stressed in your testimony that your concern is supply security. Are you assuring that in the sense that if the one supplier that you've matched up with a particular facility for some reason just can't come through for you, you can move supply that was under a requirements contract from another facility?

MR. McHALE: We have a number of approved suppliers, and if we have contracts for them we can move metal from one plant to another as far as just backup, safety supply.

VICE CHAIRMAN ARANOFF: Do you ever make spot purchases?

MR. McHALE: I would say it would be very very rare. On occasion if a particular supplier were to let us down and we had to buy some spot metal to cover in, it's a rare occasion.

VICE CHAIRMAN ARANOFF: Thank you very much. I see my light's turned yellow.

Thank you, Mr. Chairman.

CHAIRMAN PEARSON: Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you, and I too would join my colleagues in welcoming you and thanking you for taking the time to be with us this afternoon.

Mr. McHale, if I can stay with you. First, we appreciate very much the willingness of purchasers to come in. You give us a different perspective than we get if we only hear from producers, so I want to take advantage of the fact that you've been kind enough to be with us and follow up a little bit.

We heard a lot of discussion this morning on this issue of whether the product is in essence tailor made or whether it's really, as it was described this morning, in essence Globe making a single product with a little bit of specialty low iron product. But fundamentally, making all of their product at the level that would satisfy the chemical grade purchasers, but then in essence selling it, if you will, down market to you and others that might not have the same level of specifications that the chemical folks do.

Is that your experience? Is it your understanding that in essence the producers are making more or less large batches of one set of products?

MR. McHALE: No, that is not my understanding. I buy very different chemistry. Even the seven specifications that I have, the irons will vary from a 20 max iron, .20, up to a .50. It doesn't sound significant, but it is significant.

An example would be that, talking about a commodity type of thing, you need a sameness. An example is the Russians could never make our high purity silicon. They could never make it. They didn't make it, they don't make it today, they don't bring it into the United States, we don't even buy it in Europe. They never got down to those low irons. Those low irons are very difficult, and not every producer can get there.

COMMISSIONER HILLMAN: You mentioned that you are purchasing from Globe. Is it your understanding that when Globe is producing product for you, is it your understanding that they understand that this particular batch or set of product is coming to you and must meet a particular set of specifications?

MR. McHALE: They know what our specifications are and they ship to those specifications. How they get there from a manufacturing process, I really don' know what their operations, how they specifically do it.

COMMISSIONER HILLMAN: But in your view, they are sending you products with different specs.

MR. McHALE: Absolutely.

COMMISSIONER HILLMAN: It's not monolithically one product that is high enough to meet all your specs.

MR. McHALE: No. If that were so, I wouldn't pay the premium that I pay on the high purity silicon grade.

COMMISSIONER HILLMAN: I appreciate that.

MR. VANDER SCHAAF: And the Brazilian producers don't produce one product in a batch. They've informed me that you really can't. There are certain impurities that can't be refined out later in the process. Iron, phosphorous, titanium, and several others that you have to take account of when you produce the product, so you have to know who you're producing it for, what it's being produced for before you take the step of producing.

I have to admit, I was very confused by the statements this morning, especially the statement that there's essentially one product. I just don't see that, even in the market, but certainly I don't see that among the Brazilian producers at all.

COMMISSIONER HILLMAN: In fairness I think it was described as mostly one product along with the low iron. Clearly I heard them saying there is in essence two products out there from their perspective and that the vast majority is simply produced to the highest specs, the chemical grade specs, and then is in essence sold down market, is how I understood it. But you're telling me you don't perceive the market that way.

Tell me a little bit about your decision to purchase from RIMA and whether or not the fat that Elkem was purchased by Globe affected that. In other words, if you're trying to make sure you have product available from more than one supplier.

What did the purchase of Elkem by Globe do to your need to source from other places? Who did you turn to?

MR. McHALE: Specifically the RIMA purchase was done before the Globe Elkem acquisition. We had an increased requirement for high purity silicon in Rockdale, Texas. From a transportation standpoint it seemed to fit coming out of Brazil into the port of Houston. We bid them and they came in with some reasonable pricing and they became a supplier to that specific location, sharing the business with Globe.

COMMISSIONER HILLMAN: How did the fact that they had been, had the antidumping order revoked against RIMA affected your decision to go to RIMA?

MR. McHALE: They were suddenly available in the United States and represented the United States so they ended up being qualified, they were qualified for Alcoa Brazil, and then we qualified them in the United States and they were on our bid list.

COMMISSIONER HILLMAN: Again, obviously Petitioners are going to argue well exactly what happened with RIMA is going to happen with the other non-subject producers. In other words, if you look at it, as soon as the orders are revoked the shipments from both CBCC and RIMA go up very substantially, which then begs the question of okay, why shouldn't we assume the same thing will happen with respect to the other four Brazilian producers?

MR. McHALE: The increase in our requirement in Rockdale, Texas was new business to Alcoa United

States and it was shared with Globe and RIMA. So Globe picked up in that growth also.

MR. VANDER SCHAAF: There were no sales taken away from any domestic producers with respect to that RIMA contract.

With respect to CBCC, they're owned by Dow Corning which also owns Simcala. I find it hard to believe that Dow Corning would ever permit anything to happen to their Simcala operations. They're the owner. They're Dow Corning. I have a hard time believing that CBCC's exports to the U.S. are taking sales away from a domestic producer. If they're taking sales away from a domestic producer one would assume they're taking sales away from Simcala and that that's a conscientious corporate policy choice. That doesn't bear on material injury to Simcala. Otherwise, if it does, why do it?

I particularly take issue with them saying these imports from CBCC, which have been, I guess I can't get into the volumes. Mr. Melgaco knows and has said briefly in his testimony the breakdown of that, but especially with CBCC we just don't see how that is an example of a problem with Brazil.

The other Brazilian producers don't have the affiliation with some big purchaser in the U.S. that

CBCC has.

COMMISSIONER HILLMAN: Just so I understand it, again I understand that the numbers themselves are confidential, but as I hear you saying if you do the math, in essence the increase in non-subject Brazilian imports that we've seen in your view is driven by CBCC which in your view in essence doesn't count because of the connection with Dow and by this particular relationship between Mr. McHale and RIMA for new volume, and that is the majority of, or the vast majority as you're describing it of the increase in non-subject Brazilian product.

MR. McHALE: Yes. I don't think CBCC would have shipped to the U.S. were it not for Dow Corning. Their parent.

COMMISSIONER HILLMAN: All right.

If we look at the other thing the Petitioner is going to is when the EU lifted its antidumping order on Brazil in 1998, shipments from Brazil to the EU rose very substantially. Again, why would we not assume a similar pattern coming into the U.S. market if the antidumping orders are revoked here?

MR. McHALE: First, the prices and demand structure in Europe really necessitated a supply from a supplier and a country like Brazil. It wasn't as if it was pushed product. It was demanded product at fairly reasonable prices. Even if you look at the pricing trends in your publicly available information in the report, the prices in Europe are increasing. So the Brazilians have not had any significant adverse impact on prices in Brazil or in Europe, sorry, and indeed the Europeans have filed antidumping investigations against other countries where imports like from China have had that kind of an impact.

So although volume has gone up to Europe, demand has gone up, and the need for the Brazilian product has gone up. And it's pursuant to long term contracts with relationships with suppliers. It's not like they're sending spot sales out there at dumped prices.

So that evidence actually supports the Respondents' case to a large extent.

COMMISSIONER HILLMAN: Mr. McHale, would you have a comment on this view of how frequently purchasers switch suppliers of silicon metal? Obviously you, I won't say switched, but you picked up RIMA as a supplier. But again, how often have you switched suppliers for any significant portion of your purchases of silicon?

MR. McHALE: I think RIMA was probably the first new supplier we've brought in in five to seven years, so we really don't switch that much from supplier to supplier.

COMMISSIONER HILLMAN: Would you say that's typical in the industry?

MR. McHALE: I would say it's probably typical to the industry.

COMMISSIONER HILLMAN: On the aluminum side.

MR. McHALE: On the aluminum side.

COMMISSIONER HILLMAN: Would you have any view on the chemical side?

MR. McHALE: I really don't know on the chemical side.

COMMISSIONER HILLMAN: Mr. Vander Schaaf, can you tell me what the status of the antidumping investigation in Brazil regarding silicon metal from China is? Or Mr. Melgaco.

MR. MELGACO: Pardon?

MR. VANDER SCHAAF: I believe it was a safeguard --

COMMISSIONER HILLMAN: I believe there is a case, some sort of a trade remedy case, in Brazil against Chinese imports of silicon metal. Do you know the status of that?

MR. MELGACO: We asked for, we gave to the government a petition and the government said no, it's not, it has no sense this. So we wait. If the imports increase more, we can study the problem. Now it's over.

COMMISSIONER HILLMAN: The investigation has been terminated.

MR. MELGACO: Yes. They did begin the investigation.

COMMISSIONER HILLMAN: But they rendered a negative determination?

MR. MELGACO: We asked of petition from Brazilian government to install investigation against China, and we had, they answered now is not the, the figures we have here doesn't justify this now. Let's see the behavior of their imports to Brazil and after then we will study.

MR. VANDER SCHAAF: I believe the operative word is the government did not institute the investigation.

MR. MELGACO: No, the government didn't institute the investigation.

MR. VANDER SCHAAF: It was a China safeguards proceeding, I believe. Brazil has the same provision under its law that most countries in the world have when China joined the WTO which allowed them to do special safeguards against China only. It was actually a China safeguard investigation, correct? Petition?

MR. MELGACO: Correct.

COMMISSIONER HILLMAN: If there is any readily available, again, easy summary of what exactly happened on this case, when the request was made, when the Brazilian government issued whatever it would have issued in terms of not institution this that could be put on the record, I'd appreciate that.

I apologize, Mr. Chairman, for going over my time.

MR. VANDER SCHAAF: Okay.

CHAIRMAN PEARSON: We got useful clarifications on the red light, so that was time well spent.

Commissioner Koplan?

COMMISSIONER KOPLAN: Thank you very much, Mr. Chairman.

Mr. Melgaco, I also want to thank you very much for coming all this way to appear before us. It's very much appreciated.

I've been sitting here listening to the questions and answers and my questions are slipping away but I want to come back to the issue of freight costs, if I could, which has been discussed in your brief and by you this afternoon, Mr. Melgaco.

When you said in your direct testimony that after the incidents of September 11, and I'm looking at your testimony, "With new regulations and restrictions imposed for exporting into the United States, freight costs to ship from Brazil to the U.S. became much higher than freight costs to ship from Brazil to Europe or Japan, for example."

The only place I can find something that quantifies for me what those differences are is Mr. Vander Schaaf, in your Exhibit 2 which is confidential. And it's dated August 1, 2006. It does quantify differences in freight costs.

What I can't tell from that exhibit is over what period of time this document is referring to. I know the date of the document. Also because as I said, the date of the document is August 1st of this year, also because this you're alleging started after September 11 of '01, I am wondering whether you could provide this kind of documentation for each of the years in the second period of review so that I can understand what the trend was with these freight costs during our five year period of review.

Can you provide similar documentation? Is what I'm looking at typical of what's occurred? Or did it escalate to what I'm looking at.

MR. VANDER SCHAAF: I think it has escalated. What what is is the Brazilian producer decided to compare ferrosilicon costs and actually got a quote to say if I were going to ship today, so those costs were as of the day they requested it. To get a quote for shipping from Brazil to the U.S. and Europe, ferrosilicon, a comparable product, to say these are what the differences are that we face.

COMMISSIONER KOPLAN: In other words the cost of shipping silicon would be no different than the cost for shipping ferrosilicon in this document?

MR. VANDER SCHAAF: I'm not aware that there would be. I'll confirm that, but they're very comparable products and I'm guessing that, and his assumption in providing that to me was that they would be the same essentially.

COMMISSIONER KOPLAN: -- refer to the fact that it's ferrosilicon because it's all confidential.

MR. VANDER SCHAAF: I appreciate that. We probably could have done creative bracketing on that. But --

COMMISSIONER KOPLAN: Can you give it to me for the period of view so that I can see the costs for each year?

MR. VANDER SCHAAF: It wouldn't be in the nature of a quote request, but maybe they can get some kind of historical data from their shippers that they use and we can find other sources for shipping costs that we can provide. But I don't think I can go to them, to one of the shippers and say look, give me a quote of what it would have cost three years ago, or two years ago, or a year ago. They'll give me that kind of a thing today which will then compare to what it was on the date of that document. But I think we'll have to go to different sources to get the historical costs.

COMMISSIONER KOPLAN: Mr. Melgaco, is there anything you can add to that, or Mr. McHale, in terms of our ability to get that kind of information?

MR. MELGACO: No.

MR. VANDER SCHAAF: Not that I know of, no. I'm guessing Alcoa would have better luck than me, but I don' know if he's going to be willing to help me out on this one.

COMMISSIONER KOPLAN: I understand you're saying they went way up, but I'm trying to understand how much over the period.

Thank you.

Let me come back to a question that was asked this morning and that's the feasibility of switching an electric arc furnace from the production of ferrosilicon to silicon in light of current prices for both products and costs associated with such a conversion, how long would that take, how much would it cost, is it feasible to do so?

Mr. Melgaco, could you help me with that?

MR. MELGACO: Sorry about my English. Could you ask me again?

COMMISSIONER KOPLAN: I'll do it again. You've been doing fine. I'll repeat it again for you and go a little slower.

MR. MELGACO: Thank you.

COMMISSIONER KOPLAN: What I'm trying to understand is how difficult is it to switch from ferrosilicon to silicon in production, or vice versa, in light of current prices for both of those products and the costs associated with that conversion?

This morning I think we got an estimate of such a conversion from the domestics of 30,000 American dollars, if I remember correctly. With a particular conversion that took place. But I'd like to hear from you on that.

How long would it take?

MR. MELGACO: I don't have the numbers in terms of the cost, but I know I have prepared about this subject the difficulties of facilities to convert from one, from ferrosilicon to silicon metal. I have a small statement. If I could read it, I think it would explain it.

COMMISSIONER KOPLAN: Absolutely. That would be very helpful.

MR. MELGACO: Thank you.

Switching a furnace from the production of ferrosilicon to silicon metal is a complicated and sometimes unachievable task. Procedures related to switching furnaces can be very expensive and not cost effective.

As is stated by the Commission staff, the conversion of ferrosilicon to silicon metal is technically possible for smaller ferrosilicon furnace, but may be technically impossible if the ferrosilicon furnace is large.

Minasligas and Italmagnesio are the only Brazilian subject silicon metal producers that produce both silicon metal and ferrosilicon. It's very difficult to product shift from ferrosilicon to silicon metal. These are several technical constraints that make such a conversion virtually unfeasible under certain circumstances.

If I may, I would like to comment on some of them.

The electrodes normally used in the production of ferrosilicon is a self-baked soderbergh type. This electrode is different from the type of electrode used in production of silicon metal. This electrode is formed from a carbon base and needs to be encased in the steel plate form.

As electrode is consumed during the process, the -- case melts down, contaminating the furnace with iron. For that reason, if one uses this type of electrode to produce silicon metal, the product will inevitably have a higher than acceptable iron content which cannot be diminished by using conventional refined metals. Higher iron contents are generally not accepted by silicon metal customers.

Conversely, the electrodes used in the production of silicon metal is normally the pre-baked carbon type which does not require a steel casing. As a consequence the obtained final product always has lower iron impurities as required by silicon metal customers.

This technical constraint greatly limits the ability of ferrosilicon metal producers to shift production.

To replace a soderbergh electrode with pre-baked electrodes it's necessary to reinforce the structure, it's necessary to reinforce the structure of the furnace building as well as replace the overhead traveling crane of the top floor. This because the pre-baked electrodes are supplied in sections of solid carbon about nine feet long which are to be screwed to the top of the electrode column, so requiring a higher vertical span above the column and importing significantly higher loads both to the building structure and to the crane that is used to serve the electrode handling.

Depending on the company's plants, this would require them to raise the roof structure by several feet and would involve high costs that could make it unreasonably expensive. Moreover, if soderbergh electrode is replaced with the pre-baked one, then the electrode slipping device has to be replaced as well because of the greater weight that the slipping device will have to be subjected to.

The replacement of the electrode slipping device is another constraint that would have to be faced.

As is stated by the Commission staff, it's generally easier for firms to switch from silicon metal production to ferrosilicon production than the revere. Ferrosilicon contains more impurities than silicon metal and it tends to contaminate the furnace lining with impurities intolerable in silicon metal production.

One should not confuse the technical constraints and requirements of switching an elastic furnace, in a furnace, to the production of ferrosilicon to silicon metal with the constraints to do the opposite.

There are further technical constraints and difficulties for switching an elastic furnace from the production of ferrosilicon to silicon metal.

The book entitled "Production of High Silicon Alloy" is a worldwide acknowledged publication dedicated to silicon metal and represents an excellent source to understand them. I have copies of it here with me and I can provide it to you if you like.

Thank you.

COMMISSIONER KOPLAN: Thank you very much.

Thank you, Mr. Chairman.

Mr. Vander Schaaf, if there's no objection on your part, if that statement could be included as part of the record so that we're sure that the transcript is complete on that.

MR. VANDER SCHAAF: Sure.

COMMISSIONER KOPLAN: All I would take you up on is your offer of that additional submission, Mr. Melgaco.

Thank you very much.

MR. VANDER SCHAAF: So just to summarize, for Menisligas it would be the cost of raising their roof essentially to convert.

COMMISSIONER KOPLAN: I got that. Thank you.

Thank you, Mr. Chairman.

CHAIRMAN PEARSON: Thank you, Commissioner.

Turning now to Commissioner Lane.

COMMISSIONER LANE: Good afternoon.

The statute requires us to evaluate all relevant economic factors within the context of the business cycle. I would like to know how you would define the business cycle with regard to this industry.

Mr. Vander Schaaf?

MR. VANDER SCHAAF: I would probably defer to Mr. McHale. I'm not aware of any cycle, to be honest with you. I think you have peaks and valleys in this industry like any industry, or this market, and we're currently at a high level, and the forecasts are that demand is expected to continue at a high rate. But I don't see a recurring cycle in this market.

What I see is a petitioning industry very willing to fire off a petition as soon as imports from any country go above a certain level, or as soon as the producer feels the need to bring someone back in to an order that's already been terminated from an order.

But I don't want to give any justification to the historical propensity for this industry to file antidumping cases and somehow suggest that it's because of business cycles. I think there are just normal downturns in business demand. But I would defer to Mr. McHale.

MR. McHALE: I don't think there's a definitive cycle you can look at. It has its own cycle. It's amazing to me that it is unrelated to other metals, because a lot of metals really are running from a price standpoint. Aluminum ran and backed off a little bit, but silicon has been late in the charge. It's moving up now. We're having higher prices of silicon metal, but it may be their year, 2006 and 2007. But it's hard to say there's a definitive cycle that would run two or three years type of thing. It's very erratic.

COMMISSIONER LANE: Thank you.

Now I have a follow-up question on one of Commissioner Hillman's questions regarding product specs and the various specs that Alcoa has.

Mr. McHale, I believe you indicated that you had several specs you required related to iron content but you were not aware how producers met those specs. Is it your experience that some of your lower quality specs might be met with product that is of a higher quality or with lower iron content than your specs allow?

MR. McHALE: I believe there are times that they could apply a lower iron material against a higher iron spec. It depends on what they have in inventory and what's coming across the line.

In general the way I believe it is they will bring their raw materials together and make a product and if it meets my spec it goes to me; if it meets the secondary spec it goes to them. And randomly, they manage to make enough product to meet all the requirements. That's the way I believe it works.

I don't believe they specifically make my product, but I require a specific product. How they get there and how they get the irons to the levels I need, as long as it's there I don't care how they get there. And as long as they continue to supply, that's what I'm looking for.

COMMISSIONER LANE: So if they say the product meets your specs then you just accept it?

MR. McHALE: We randomly test some material. The material is required to come in with test reports, with accurate chemistries against what we're requiring. Our metallurgist will check the chemistry as reported versus what the order says, and then on a quarterly, maybe once every half year, we'll randomly sample some material and test it at our Alcoa technical center.

COMMISSIONER LANE: Thank you.

Mr. Melgaco, on this question of meeting buyers' chemistry specs, do you produce products specifically tailored to meet buyers' specs? Or do you generally produce the highest quality product possible and then ship that product even if it exceeds a buyer's specs?

MR. MELGACO: We produce tailor-made products for specific companies. That's the normal among the companies. If I understood your question.

COMMISSIONER LANE: My question was, do you produce to the specs, or do you produce the highest quality that you can, even if it exceeds the buyer's specs?

MR. MELGACO: No, you produce to the consumer's specifications.

MR. VANDER SCHAAF: I was thrown for a loop by their comment this morning, quite frankly. I sent an e-mail and called my colleague who is in Brazil, Felipe Berer, one of our associates who can't come back to the country until October because of U.S. immigration laws.

He went ahead and sent out a communication to the clients, because I was like where is this coming from? This is his e-mail. I'm reading from my Blackberry.

"Brazilians do not produce silicon metal the way Globe allegedly does. They do produce according to each customer's specs. In particular there are some impurities/elements that can't be refined later in the process such as iron, phosphorous, titanium, and several others. Moreover, after silicon metal solidifies, the producer cannot change the specs without further processing. This seems to be one of those myths Globe has created in this proceeding."

COMMISSIONER LANE: I guess you don't want me to put your Blackberry into evidence.

(Laughter).

MR. VANDER SCHAAF: I was hoping that reading it would suffice, but I can forward the e-mail, I guess.

COMMISSIONER LANE: Thank you.

Mr. Vander Schaaf, let me stay with you.

In your pre-hearing brief you quoted numbers comparing the cost of shipping a container of silicon from Brazil to Europe and from Brazil to the United States. What are those numbers on a per ton basis? And you may have to provide that post-hearing, if it's confidential.

MR. VANDER SCHAAF: Yes, and I don't know the answer so we'll take a look at that and also provide the information Commissioner Koplan has requested and get you that answer.

COMMISSIONER LANE: Would you please describe the competitive advantages and disadvantages in terms of raw material costs and energy electricity costs of the silicon producers in the United States, Brazil, China and other non-subject producers? And how have those factors changed since the previous review?

MR. VANDER SCHAAF: I believe the request is comparison of costs between Brazil and the U.S.?

COMMISSIONER LANE: Yes.

MR. VANDER SCHAAF: I'm pretty sure they're going to say we don't know the U.S. producers' costs, and we have read a number of things that we can probably use on the APO record, we the attorneys, to at least draw some comparisons. But in this regard it has happened in the past that the Brazilians have this energy rationing that they go through because the furnaces use the electricity for heating the furnaces, and Brazil is a big hydroelectric country and they oftentimes find themselves in situations where they don't have enough electricity to produce so they ration electricity.

I believe in the past there were a couple of periods when demand was so high that silicon producers had to cease producing for the time being because of the rationing process.

Perhaps you can provide some details about that.

I know it's not giving you the cost issue, but it does give you a manufacturing perspective that creates a constraint at least, and, of course, whenever you incur these types of examples you're, I'm sure, incurring extraordinary costs.

MR. MELGACO: I have not access to United

States costs of energy, but in Brazil I can state that five years ago, three years ago, energy cost was established by the government so it's public. I can provide to you if you want. But after some series, three years ago, we made an agreement with hydroelectric companies, some companies, and a contract for ten years. I can send to you some details. I don't have them with me. If you are interested on them.

MR. VANDER SCHAAF: To also add, it's all about electricity for costs. That was made very clear to me by the producers. Electricity cost is by far and away the dominant cost item.

COMMISSIONER LANE: Okay. Thank you.

Mr. Chairman, since my light has come on, I'll just pass till the next round. Thank you.

CHAIRMAN PEARSON: Okay. Thank you.

Mr. Heckendorn, you have I think argued that we shouldn't find no discernible adverse impact, but if we don't do that, then you suggest we look at other reasons for decumulating Brazil. Could you cite any investigations that we've done in the past with somewhat similar fact patterns in which the Commission has found no discernible adverse impact? I mean, does this one line up well with times when we've made that finding before?

MR. HECKENDORN: None come to mind right off the bat. I know the ones I was looking at were more along the lines of the one I mentioned in my testimony were more along the lines of conditions of competition. Even where the Commission found there was a discernible adverse impact and there was reasonable overlap of competition, still found that it was proper not -- exercised its discretion not to cumulate. I think that matches up very well.

My point on no discernible adverse impact was that when you factor all the volume arguments that we have in our brief and the things that Mr. Vander Schaaf talked about today, I think it's a legitimate argument to make that this really isn't going to impact the domestic industry because so much of the production is nonsubject or dedicated to other markets or the other production constraints like the energy problems that they have in Brazil and like the long-term commitments that they have to Europe.

CHAIRMAN PEARSON: Okay. Well, if you think of more things for the posthearing, let us know.

MR. HECKENDORN: I will do that. Thank you.

CHAIRMAN PEARSON: Okay. Mr. Vander Schaaf, this morning I had discussed with Petitioners the question of whether they could provide an analysis of why it would be economically rational for subject Brazilian producers to shift sales from Europe to the United States. So let me reverse and ask you, can you or your clients provide some analysis of why it is not economically rational to shift those shipments from Europe to the United States?

MR. VANDER SCHAAF: Well, we've hit on this a lot in our brief, but I really don't believe you can just flick a switch and shift into the U.S. market. First of all, there are constraints to getting here, including the requirement to be certified and qualified and so forth. They are at a high capacity utilization level. They don't have plans to increase capacity, so they in fact would have to shift sales from one customer to another.

I think that they've been in Europe a long time. They've established long-term relationships with their customers. They are in long-term contracts. They're not going to quickly abandon these. The European market has imposed antidumping duties on China, so they've got a very favorable market there. And quite frankly, I can't think of any economic reason why they would shift from that dedicated market where demand is increasing and prices are high and forecast to remain high, I can't see an economic reason why they would shift from the E.U. to the U.S.

CHAIRMAN PEARSON: Okay. Thank you.

Mr. McHale, perhaps you could take a stab at this. The Petitioners have maintained that there really are no differences in product mix between product offered by China and by Brazil. Now with Alcoa's interests in global sourcing, what's your observation on that? Do you have a familiarity with the product available, both from China and from Brazil?

MR. MCHALE: We purchase Chinese material for our Australian locations. We also buy a little bit for Europe, specifically Hungary, which is not part of the -- the Brazilian plants buy from the Brazilian producers.

CHAIRMAN PEARSON: Okay. And are you able to obtain from the Chinese any type of product that you could obtain from the Brazilians?

MR. MCHALE: The Chinese over the past two years have reached levels of purity that Alcoa require. Previous to that, they were a higher iron product. But with continuous improvement, they have lowered their iron levels to meet Alcoa's tough specifications.

CHAIRMAN PEARSON: Okay. So at least for the products that Alcoa buys, it's possible to obtain the product form either Brazil or China?

MR. MCHALE: Correct.

CHAIRMAN PEARSON: Okay. Any other comments on product mix, Mr. Vander Schaaf or Mr. Heckendorn?

MR. VANDER SCHAAF: No, I don't -- go ahead, Joe, if you have something. I don't believe there are any other comments.

CHAIRMAN PEARSON: Okay.

MR. VANDER SCHAAF: I could add we have seen the same reports that were reported in the staff report that say the Chinese product has come of age and has improved. We're just not familiar with the product. They don't appear to be selling in the U.S. market, and our Brazilian clients aren't familiar much with what's being sold in the U.S. or could be sold in the U.S. from China.

CHAIRMAN PEARSON: Okay. The Petitioners also maintain that imports and the domestic like product compete in all segments of the market and that prices in all segments of the U.S. market are interrelated. What's your response to that?

MR. VANDER SCHAAF: I think when they say that prices are interrelated they tie it back to the statement they made in their pre-hearing brief, which they also argued, I think, in their last sunset and I think in the original investigation; that when a price in one segment goes down, it has a deleterious effect on the price of a product in another segment.

You know, I don't know how much detail I can get into this, but we don't see the same thing happening today, where chemical grade products used to be the highest priced products in the past investigations, you see chemical prices now somewhat coming down and lower than the primary aluminum grade prices, particularly in Europe.

So I don't know that we would put a lot of weight on that. We don't see the evidence to be supporting that position, in terms of their inter-related prices. I don't know, there was another aspect here, a question that I think I might have missed in terms of --

CHAIRMAN PEARSON: I just was asking about the inter-relationship between, you know, the various pricing and the various market segments, basically.

MR. VANDER SCHAAF: Okay, yes, so I just don't see the evidence supporting that position, and I don't know where they're coming from with that.

Because it's something they've said before. But in this case, you just don't see that happening with the chemical grade and the primary aluminum grades moving in different directions, at levels that are different than what they have been historically in terms of, chemical grade is always higher. So I guess we disagree with them.

CHAIRMAN PEARSON: Okay, and Mr. McHale, have you noticed over time whether there is a fairly close price relationship among different grades of silicon metal that Alcoa might buy; or have some grades, perhaps the harder to produce ones, tended to have their prices move in some different way than might happen to the easier to produce grades?

MR. MCHALE: The range of grades that we purchase, the spread between the grades from the highest purity to the lowest purity, those ranges have tightened up a little bit. I think the industry, whether it's Globe or the Brazilians -- everybody is making a little bit of a higher quality product now than maybe they did years in the past.

So the premium that we would pay on the high period isn't as much as it has historically been, but there is still a premium for those tougher chemistries.

CHAIRMAN PEARSON: Okay, and at a time when prices for silicon metal overall are increasing, you would expect to see the lower grade prices rise and then a premium of some sort be maintained for the higher grades.

MR. MCHALE: I think the spread is where it is; it's going to probably stay in the range that it is now, and they'll all move in sinc, in lock step.

CHAIRMAN PEARSON: Okay, so there would then be a significant inter-relationship among the prices of the various grades. Okay, I just wanted to clarify that.

My last question, I think, is for Mr. Melgaco. Do you know whether any of the Brazilian companies have implemented accounting systems that would allow them to determine whether individual sales to U.S. firms would be considered to be dumped?

MR. VANDER SCHAAF: I can tell you, as an anti-dumping attorney who represents parties before the DOC, we oftentimes can, you know, provide very specific advice about what prices would have to be, and based upon the Commerce Department's numerous anti-dumping determinations in this case, if the clients would hire us for that, we could certainly advise them, almost with a pretty exact basis, whether a sale that they are making would be at a dumped price or not.

There is a lot of accuracy that you can provide, especially in this kind of context where the Commerce Department has provided so many determinations over the years. You have a pretty good expectation of what they're going to be doing in the next proceeding, if you ship at a particular price.

There are variables like the exchange rate and things like that that you take into account. Quite frankly, oftentimes -- no disrespect to the DOC -- but oftentimes it is something like the exchange rate that is the biggest mover in the dumping calculation. If they wanted to, they could implement something like that.

CHAIRMAN PEARSON: To the best of your knowledge, they are not currently using such systems?

MR. VANDER SCHAAF: I don't believe they are. But they're not shipping now, so I don't know if they are or not. They certainly haven't retained us for that.

MR. MELGACO: Let me clarify. Because in ABRAFE, the associates are competitors. We decide in some moment, 15 years ago, that price and commercial problems would not be discussed in ABRAFE. That's why

I couldn't answer your question; thank you.

CHAIRMAN PEARSON: Okay, well, if you have any follow-up information for the record, by all means, let us know. I understand the sensitivity that firms might have in discussing this issue.

On the other hand, it could be of some interest. Because we see on the record that some firms have managed to get zero margins certified, year after year, even while they are shipping product to the United States. So somehow they're either getting lucky or they know what they're doing with the pricing.

MR. VANDER SCHAAF: There were some instances where the producers didn't receiving zero dumping margins. I'm not sure that I went into it in the testimony.

But there were a couple producers that received -- yes, Minasligas had a 1.67 percent dumping margin from the 1995 to 1996 review period, a 1.23 percent margin from the 1990 to the 2000 review period, and then the 0.74 percent dumping duty from the 2000 to 2001 review period. So it's not as if they've gotten zeros every time. They've also gotten low dumping margins.

CHAIRMAN PEARSON: Okay, well, thank you; my light has changed a minute or two ago, and I turn now to Vice Chairman Aranoff.

VICE CHAIRMAN ARANOFF: Thank you, I'm hoping that I can invite you to provide on the record, in your post-hearing submissions, some additional detail on the subject of the degree to which Brazilian producers have dedicated their exports to other customers. There's been a lot of discussion about the European market and the fact that no one would abandon their customers there, and that there are long-term contracts.

Would you be able to provide for the companies that you represent, Mr. Vander Schaaf, some kind of documentation of with whom they have long-term contracts and what volumes and time periods those contracts cover? Of course, if there's any information about price, that would be very helpful, too.

MR. VANDER SCHAAF: Okay, we'll get that for you.

VICE CHAIRMAN ARANOFF: Thank you; I wanted to offer you the opportunity to respond to one factual statement that was made in this morning's testimony on the subject of whether Brazilian producers are likely to expand their capacity.

I believe I heard the domestic producers indicate this morning that they had relied on information from CCM's website at the time of the institution of these reviews, indicating that there might be an increase in capacity contemplated, and that information was subsequently removed from the website. Does anyone have any information about that, or would you like to respond?

MR. MELGACO: Well, they made up their mind and then decided not to increase another furnace, to put another furnace. So they put out on the website this information, because they reformulated their investments.

CCM is a big company. So we are involved in Brazil, only for knowledge. They have a very big problem of environmental installation -- some big houses to eliminate air pollution. The investment is very big. So the people are putting the money, preparing to install that equipment. They are very, very expensive.

For instance, for my sector, only 10 systems are more than $200 million. That's one of the reasons, probably, that the CCM will not invest in new furnaces any more.

VICE CHAIRMAN ARANOFF: Okay, if I

understand your answer correctly, it was essentially that the costs, and particularly the environmental compliance costs of the investment, proved too high and the company reconsidered the decision to expand, which is a fine answer and I appreciate that.

If there's anything that you want to add, post-hearing, that can, you know, objectively document what happened here, just in order to eliminate any insinuation that somebody was hiding something on the website, that would be appreciated.

MR. MELGACO: Okay.

MR. VANDER SCHAAF: We'll provide that.

VICE CHAIRMAN ARANOFF: Thank you; Mr. Heckendorn, I have to ask you this question, since you have been making all the cumulation arguments, and we have gone at some length through the potential reasons for not accumulation, based on either no discernable adverse impact or discretionary factors.

In the event that the Commission were to cumulate Brazil and China, can you still make an argument for a negative determination on a cumulative basis, because you don't do it in your brief?

MR. HECKENDORN: I can make an argument. There's no question about that. I think it's going to be a real tough case. I mean, I think that's why we argued the brief the way we did, and I think that's what makes this almost an equitable issue. It's unfair to lump them together with a dead loser, in some ways.

MR. VANDER SCHAAF: It dawns on us that China is not going to get rid of 95 percent of their capacity, right? I mean, over the next 20, 30, 50, 60 years? So every five years, Brazil is going to be coming back saying, don't put us in with China; don't put us in with China; don't put us in with China.

It's going to be the same. Unless something major happens in China, you're not going to get rid of the Brazilian order, ever. Because if you cumulate us with China every time, it's going to be the same old thing.

So just let us know if you decide not to cumulate it, you're never going to do it, because we won't keep coming back. Because it's going to be the same thing, every time. They're just going to keep getting bigger and bigger, and they're going to be different than Brazil every time.

VICE CHAIRMAN ARANOFF: Okay, fair enough answer -- let's see, on qualification. I wanted to keep following-up on that. I guess just to make sure that our record is complete on that, I believe you testified that none of the currently subject Brazilian producers is qualified -- I don't know. Did you say, was that only with respect to Alcoa or any U.S. purchasers?

MR. VANDER SCHAAF: Yes, it's in the public staff report that of the purchasers who identified that they have qualification certification requirements, none of them identified the subject Brazilian producers of any of the purchasers in the United States. I'm not aware of any of our clients or the additional company, Intalmagnesio, being qualified by any purchasers in the United States who have qualification and certification requirements. I believe the only company that's qualified is RIMA with Alcoa. That's all I've seen.

VICE CHAIRMAN ARANOFF: Okay, just to make sure that our record is complete on that point, if you could ask each of the companies that you represent just to indicate to us whether they are qualified at any U.S. accounts; and for those of them that were in existence at the time of the original investigation, whether they were qualified with U.S. customers at that time or any time since. That would also be helpful to know, even if they are not currently qualified.

MR. VANDER SCHAAF: Okay, we'll do so.

VICE CHAIRMAN ARANOFF: Thank you; one question on data -- you argued in your brief that the Commission is not properly allocating the import data between subject and non-subject Brazilian product in the years in which the retroactive revocation of the orders of RIMA and CBCC were effective.

So I wanted to follow-up on that and ask you, do we currently have sufficient part-year, producer-specific data on the record to make such an allocation? If we were to make such an allocation, what would that change and why would it matter, ultimately, to our assessment of the effects of revocation?

MR. VANDER SCHAAF: I don't know. I guess, first of all, I don't think you have the data for the split year, because the order was revoked. The period of review also is right in the middle of the year. It goes from July 1 to June 30. So when the Commerce Department revoked, they revoked back to the beginning of the review investigation. So you have a revocation in the middle of the year, and you have a period of review that began the middle of the year, the year before.

I don't know that it matters whether they're viewed as subject or non-subject, so much as there should really be a recognition that those producers, RIMA first, where they were revoked in 2001, their period of review actually began in the middle of the year, the year before, and ended in the middle of the year, the following year, and the dumping margin was determined to be zero for that time period.

So a good argument could be made that at least with respect to half of that year, those products should be non-subject. But staff had to make a choice; do we put them in as subject or non-subject? It's right in the middle of the year, so they put them in as subject for that year. They could just as easily put them in as non-subject and, in fact, the dumping margin was zero for the shipments from January to June of the year of the renovation. So it would make sense to do so.

But I don't know if it's either here or there, because we're talk primarily about CBC and RIMA, who are no longer subject to the order, and it shows their shipment activity, which obviously they are no longer subject producers. So it's just a matter of really the details in the data.

VICE CHAIRMAN ARANOFF: Well, I agree with you. I mean, I looked at that and I'm sympathetic to the point that you're making; except that when I look at it further, I say, well, okay, but does it matter to the bottom line of what I need to determine in this case?

If you can think of anything in the post-hearing that would tell me that it does matter, you know, I'll go back to staff and ask them if they can figure out how to get it done. Because I agree with you at this point that their assessment at this point was that they had to choose how to do it, because they couldn't break it out.

MR. VANDER SCHAAF: Okay.

VICE CHAIRMAN ARANOFF: Okay, my light is yellow, so thank you very much.

CHAIRMAN PEARSON: Commissioner Hillman?

COMMISSIONER HILLMAN: I have just a couple of quick follow-ups. We heard a lot of discussion about the relative incentives for the Brazilians to come into the U.S. market, some of them predicated by the data that the Petitioners put on the record in terms of comparing the AUVs for Brazilian shipments going to Canada and Mexico. We've heard a lot about Europe, but they also did comparisons with Canada and Mexico.

I guess I just wanted your take on the issue of why the AUVs for shipments from Brazil to Canada and Mexico are lower than the AUVs for shipments to the United States.

MR. VANDER SCHAAF: I don't know, Joe, you probably have looked at those better than I have. But I'd probably have to ask the clients. I don't know if it's an exchange rate thing. I would imagine it's not an exchange rate thing.

But the one thing I will note, their shipments to Canada have really declined significantly. I don't have it in front of me, but in the most recent period, they are extremely low.

I'm guessing that this has to do with China driving prices down, because China prices are much lower than the Brazilian prices, when you compare those, and China's quantities are going up; whereas, the Brazilians' quantities are going down. With respect to Canada in particular, they reach a very insignificant level.

MR. HECKENDORN: To the point where there is, I think, one shipment, one container in the last --

MR. VANDER SCHAAF: I think it was 485 tons in 2005, for example.

MR. HECKENDORN: And that's the trend with respect to all three of those markets, that they're leaving the market.

VICE CHAIRMAN HILLMAN: Okay, well, if there is anything that you wanted to add in the post-hearing, feel free. Then my last question is the same one that I put to the Petitioners this morning, which is with respect to the imports from China, since such a significant number of them go into the TIB imports. Should TIB imports be considered subject imports, for purposes of our analysis?

Again, I would point you to the cut-to-length plate opinions in 1999 and final in 2000; again, in which there was some difference of view among the Commissioners as to how to treat the TIB imports. Then further, how does this affect our analysis for China?

MR. VANDER SCHAAF: I think there's probably going to have to be some legal research to provide a very good answer. So I'm going to hold off responding now and do some of that research to provide you our position. I do have a position now, but I'd rather take a look at what some of the research shows, because I think that's a legal issue that deserves some research.

VICE CHAIRMAN HILLMAN: Okay, if you could respond in the post-hearing, that would be much appreciated. With that, I have no further questions, Mr. Chairman. But thank you very much to all of the witnesses and the panel for your presentations this afternoon, thanks.

CHAIRMAN PEARSON: Commissioner Koplan, do you have any questions for Mr. Vander Schaaf?

COMMISSIONER KOPLAN: Thank you, Mr. Chairman; I don't actually have any questions, but I have a housekeeping request, Mr. Vander Schaaf.

That is. the submission that you were going to add for the record, the working paper that Mr. Melgaco had, and I think you had an attachment that was going to accompany that -- yes, what you have in your hand -- if you could make sure that those are provided to Mr. Kramer.

MR. VANDER SCHAAF: Will do.

COMMISSIONER KOPLAN: Thank you, and with that, I have nothing further. Thank you very much for your answers to our questions.

CHAIRMAN PEARSON: Commissioner Lane?

COMMISSIONER LANE: I just have a follow-up matter. I neglected to ask Mr. Melgaco to actually put in the electricity costs from Brazil that he offered to put into the record; and yes, I would like to have those, thank you.

MR. MELGACO: Okay, we will provide it.

COMMISSIONER LANE: Thank you, and Mr. Chairman, that's all I have.

CHAIRMAN PEARSON: I realized that I have one more question. During the POR, some Brazilian firms shifted from being subject producers to non-subject producers, and we talked about that a fair amount. Does that constitute a changed condition of competition? I had that discussion this morning with Petitioners. So I invite you to think about that, also.

If it does constitute a changed condition of competition, how should we take it into account in our analysis; or perhaps a related question, can you cite any previous investigations that might provide some guidance for us on that?

MR. HECKENDORN: I think off the top of my head, I mean, without doing research, I think you treat them like any other non-subject imports. I think that they're not part of the order.

CHAIRMAN PEARSON: Right, but the question is, is the shift from being a subject producer to a non-subject producer, in and of itself, is that a change in the conditions of competition? That's what

I'm trying to understand.

MR. HECKENDORN: Okay.

CHAIRMAN PEARSON: And if that is a change in the conditions of competition, then what do we do with it? How does it influence our analysis?

MR. HECKENDORN: I think we'll have to give that some thought and put that in a post-hearing submission.

CHAIRMAN PEARSON: That's fine. I'll look forward to the efforts of your thinking. Are there any other questions from the dias; Madam Vice Chairman, Commissioner Hillman?

(No response.)

CHAIRMAN PEARSON: Okay, well, let me see whether I can do a better job with the wrap-up than I did at noon time. Let's see, are there any questions from the staff; Mr. Deyman?

MR. DEYMAN: Yes, I'm George Deyman, Office of Investigations. I have one question for Mr. McHale. As I recall, Mr. McHale, I think you mentioned that when the order was revoked on RIMA, at that time, that RIMA had already been qualified by Alcoa, Brazil. Did you say that?

MR. MCHALE: RIMA was a supplier to Alcoa, Brazil --

MR. DEYMAN: Okay, Brazil.

MR. MCHALE: -- but still needed to be qualified in the United States.

MR. DEYMAN: Right.

MR. MCHALE: That doesn't count.

MR. DEYMAN: So the fact that it was qualified in Brazil, did that make it easier or quicker to qualify it in the United States?

MR. MCHALE: That expedited the process, by the fact that they were qualified in Brazil, and we had a track record as far as their promised performance, service levels, paperwork.

MR. DEYMAN: So my question is, the current subject producers in Brazil, Minasligas, LIASA, et cetera, are they qualified with Alcoa in Brazil?

MR. MCHALE: I believe some of them are qualified in Brazil; and if those were to come into the states, they could qualify in more of an expeditious manner than somebody who had never been a supplier to Alcoa at all.

MR. DEYMAN: Well, if you could tell us, in the post-hearing brief, which one are qualified in Brazil, that might help.

MR. MCHALE: Okay.

MR. DEYMAN: The staff has no further

question; thank you.

CHAIRMAN PEARSON: Does counsel for the domestic industry have any questions for the current panel?

MR. KRAMER: We have no questions.

CHAIRMAN PEARSON: Okay, I'm advised that the time remaining for those in support of continuation is seven minutes from the direct presentation and five minutes for closing, so a total of twelve; and for those in opposition to continuation of the order, nineteen minutes from the direct presentation, and five minutes for closing.

So starting with the domestic industry, how do you wish to proceed? Do you want to use some of the time for rebuttal, or would you like to go directly to closing?

MR. KRAMER: I would like to use a few minutes for rebuttal.

CHAIRMAN PEARSON: Okay, and do you want to do rebuttal separately from closing, or would you want to do it as one combined effort?

MR. KRAMER: I'd be happy to do it on a combined basis.

CHAIRMAN PEARSON: Okay, fine, well, thank you very much panel. You may be excused, and we will move to closing.

MR. VANDER SCHAAF: Thank you.

CHAIRMAN PEARSON: Welcome back, Mr. Kramer; please go ahead when you're ready.

MR. KRAMER: Thank you, the first point I would like to make is that Mr. Melgaco appeared before the Commission during the hearing in the first sunset review. In his testimony before the Commission, he said and I'm quoting from his testimony, "In the European Union, the anti-dumping order against silicon metal from Brazil was revoked in February 1998. Again, a huge increase of imports from Brazil was predicted by the European producers; and again, it did not happen." That's on the 14th of November, 2000.

The volume of imports into the EU from Brazil in 1997 was 34,000 short tons. In 1998, the year in which the order was revoked in February, the volume was 48,000 short tons. In 1999, the volume was 66,000, and in 2000, it was 76,000. It fell back slightly, and then for the years from 2003 to 2005, it's in the range of 93,000 and up to 103,000.

So the Commission was told that there had been no increase in volume. In fact, there was a very dramatic increase, which continued over the period.

Second, I'd like to address some statements made with respect to the producers subject to the order and the margins calculated. In the opening statement, it was said that the order had been revoked with respect to Eletrosilex. During the course of the testimony, the statement was made that Eletrosilex is no longer a subject producer.

Just so the Commission knows the facts, Eletrosilex participated in eight administrative reviews, in each of which it got high margins; the last of which was the 1998/1999 review. It was assigned a 93.2 percent rate, after which it leased its production facilities to RIMA, which is operating them under a 10 year lease and has been shipping to the United States under RIMA's rate.

So it still is an existing entity. It owns the facilities. It's still subject to a high rate of duty. It's simply that its facilities have been leased to another producer.

The statement was made during the testimony that the subject companies are "on their way out of the order;" that they have several zeros in a row, implying that they are progressing toward and imminently will be revoked.

The fact is that in order to qualify for revocation, a company must have three consecutive periods of zero or de minimis dumping margins. None of these producers has such a situation, because none of them have shipped to the United States for a period of two to three years.

So their circumstance is that they would have to ship to the United States in commercial quantities; do that for three consecutive years; request and participate in a review; and get zero and/or a de minimis rate in each one of those reviews; and then persuade Commerce to revoke the order in order to no longer be subject to the order.

The statement also was made that these producers can and have shipped without dumping. I just want to reiterate that these companies are not shipping, cannot ship without dumping. It is reflected in the fact they are not shipping and they, in many instances, did not ship commercial quantities during the periods when they achieved the reduced rates.

The next point I'd like to address concerns the statements regarding commitments to the European market. If you look at the Brazilian producers' brief, I don't think anywhere in the brief is there a reference to long-term contracts. The references are in terms of commitments.

There was a statement during the testimony that they had documented the existence of long-term contracts with European customers. In fact, I'm not aware of any such documentation in the record.

When the ABRAFE witness was asked about such commitments, he first pointed to the fact they were certified in Europe, and we've heard discussion of, you know, how significant that is.

Second, he said his information or his records indicated that prices were better in Europe. With respect to that, I want to point out that the Brazilian export data show consistently over time that the average unit value of shipments by the Brazilian producers to Europe is lower than the average unit value of their shipments to the United States. So I'm not sure what records he's referring to.

Then he talked about good relations with customers. Commissioner Aranoff has now asked for information regarding long-term contracts. The only further suggestion I have with respect to that is that it's very, very important to know exactly what the terms of the contract are.

You know, it's reflected in the testimony of the domestic industry witnesses. It's very common, at least in the United States, to have a long term contact with an expected quantity and a price term but, in fact, not have that be a binding agreement over those period of years,

So I hope the Commission will get documentation of the actual terms of these contracts, or at least major contracts.

With respect to the question of freight costs in the United States, you know, the representation is that they've tremendously increased, and that they are much higher than freight costs to Europe and Japan.

We've pointed out that the import data show that there, in fact, has been a decline in freight costs to the United States from Brazil; and we do not believe that there is this kind of differential that's described. We're going to try to get more information for the Commission with respect to whether or not that's true.

One final rebuttal point, there were a number of characterizations of what the Brazilian producers' conduct has been in other markets and, you know, what the nature of their pricing was, as compared to the Chinese suppliers.

You know, we've submitted very detailed information about this in our brief and exhibits to the brief. The fact is, they are very low price suppliers. They are among the lowest priced.

You know, they get pulled down toward the Chinese price. They're not typically the lowest price. But it's not a situation in which there's some difference that suggests that they are fundamentally different. They are selling at aggressive prices, and they are among the lowest priced suppliers in all these markets where their price conduct is not disciplined by an order.

I'd like to turn to my closing statement. The evidence before the Commission in these sunset reviews shows that if the anti-dumping orders were revoked, the domestic industry would again be severely harmed by dumped imports from Brazil and China. Large volumes of Brazilian and Chinese silicon metal would re-enter the U.S. market at low prices, forcing U.S. producers to cut their prices or lose sales. The result would be collapsing market prices, reduced sales, and severe financial injury to the domestic industry.

The experience of the U.S. industry, prior to imposition of the Brazil and China orders and during the period the Commission examined in the Russian investigation, clearly demonstrates the devastating impact that a renewed flow of dumped imports would have on U.S. producers. Such injury also would occur if only the Brazilian order were revoked.

The Brazilian companies that remain subject to the order have large silicon metal capacity, as well as substantial ferrosilicon capacity, that could be converted to silicon metal production. The Brazilian industry is highly export-oriented. It was built to export, and the U.S. market is the most attractive export market available to it.

Chinese import competition, which now is present even in the Brazilian home market, has forced the Brazilian producers to concentrate their exports in a market in which they are best protected from Chinese competition. If the Brazilian order were revoked, the U.S. market would become that best protected export destination.

The Brazilian producers claim that silicon metal is no longer a commodity product. In fact, silicon metal remains a commodity product, sold primarily on the basis of price.

There are differences in customer specifications and other customer requirements, but competing suppliers can meet these different specifications and requirements. There's not one word that's been said that there is any customer that has any requirement or any specification that the Brazilian suppliers can't meet. To say simply that there are differences doesn't mean that you are not competing head to head, selling an interchangeable product.

The reduced dumping margins currently in effect for several subject Brazilian producers reflect the discipline of the order. The same is true of the complete absence of shipments by the subject Brazilian companies to the United States in recent years.

The fact that the subject Brazilian producers, like the Chinese suppliers, would shift volume to the U.S. market and sell at aggressive prices if the order is revoked, is shown by their pre-order conduct and their behavior in other markets. The fact that one of the most important U.S. customers supports revocation confirms the conclusion that the Brazilian suppliers would reenter the U.S. market.

Brazilian companies point to the fact that there are only two remaining U.S. producers as a positive change, reflecting industry strength. In fact, the decline in the size of the U.S. industry and the number of domestic producers is the result of devastating injury caused by dumped imports, that would be repeated if the orders were revoked.

To the extent that the domestic industry's financial condition has improved, this recovery is directly attributable to the relief from unfair import competition provided by the dumping orders now in place. Continuation of the orders is critical to the survival of the U.S. industry, and we believe it's warranted by the facts presented to the Commission.

CHAIRMAN PEARSON: Thank you, Mr. Kramer.

Mr. Vander Schaaf?

MR. VANDER SCHAAF: Thank you, I know we have some rebuttal time, but I suspect I'll be out of here in five minutes.

CHAIRMAN PEARSON: You're just trying to earn brownie points.

(Laughter.)

MR. VANDER SCHAAF: Believe it or not, I'm sure I am more tired than you guys are.

You know, we harken back to the difference of this investigation from the past investigations. There are conditions of competition that are significantly different from the original investigation and the last sunset review. We think that that provides a situation where the Commission cannot look back at an original investigation or its prior sunset review, like it typically does, to say this is what the conditions would be if we didn't have an order.

This is a completely different universe now, especially the domestic industry. It doesn't look anything like it did during the original investigation when you had eight producers in the market. The Brazilian producers and the industry in Brazil are markedly different.

So we think that this case offers an opportunity for a fresh look, and that's what we believe the Commission should do in this investigation; look at what situations really are in the Brazilian market and in the world market and in the U.S. market. You'll see a domestic industry that's doing relatively well. It's been consolidating over the years and now has a very, very powerful producer with a very large capacity, and you have producers in Brazil who are no longer subject.

I don't think there's any ambiguity on this. We understand the situation with Electrosilex. If Electrosilex were to run its own facility and have its facility back, it would be subject to the order. But the fact of the matter is, RIMA has a 10 year lease agreement with Electrosilex to use 100 percent of its capacity in this entire facility; and when RIMA uses that facility to produce the product and ship to the United States, it is non-subject material. I didn't mean to imply something contrary to that and, of course, CBCC is no longer subject to the order.

The capacity utilization rates in Brazil are very high. Their inventory levels are negligible, and there are no trade relief measures against Brazil in other countries.

We know that Petitioners always want to harken back to the original investigations. Because obviously, if we're sitting here, that means an order was imposed and the Commission found injury. So why wouldn't they want to look back to the original investigations? But we think that the changes that have occurred provide a unique situation that should be taken into account.

With respect to the administrative reviews that we've heard a lot about, I think we'll take a close look at that and provide some detail in the post-hearing brief.

But I wouldn't be surprised to see that in every administrative review, based on the desire among this industry to file trade relief requests, that every year that a review was conducted, Alcoa and Globe also requested the review, irrespective of whether the foreign producers were requesting a review. We'll take a closer look at that and provide some details.

This case, in our view, hinges on decumulation. It all turns on the China issue. We think that we've provided a significant amount of evidence to show the conditions of competition are different when considering China, as compared to when considering Brazil, and we believe that this is the type of case that the Commission should rely on to exercise its discretion to decumulate.

That's why Congress made a distinction in the statute from a original investigation to a sunset review, where it gave the Commission the discretion to decide whether or not to decumulate.

We think that the Congress meant to give the Commission this discretion to get rid of orders that no longer serve the useful purpose of preventing a likelihood of reoccurrence of injury; and we think the Commission should exercise its discretion to decumulate in this investigation, and then decide to revoke the order as to Brazil. Thank you very much.

CHAIRMAN PEARSON: Thank you, Mr. Vander

Schaaf.

Post-hearing briefs, statements responsive to questions and requests to the Commission, and corrections to the transcript must be filed by October 6, 2006; closing of the record and final release of data to parties, on October 31; final comments, on November 2nd.

Madam Secretary, is it safe now for me to adjourn this hearing?

MS. ABBOTT: Yes, Mr. Chairman.

CHAIRMAN PEARSON: Thank you; without further ado, this hearing is adjourned.

(Whereupon, at 4:03 p.m., the hearing in the above-entitled matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Silicon Metal from Brazil and China

INVESTIGATION NO.: 731-TA-471, 731-TA-472 (Second Review)

HEARING DATE: September 19, 2006

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: September 19, 2006

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
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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).

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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: Christina Chesley
Signature of Court Reporter