

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
SILICON METAL FROM RUSSIA) Investigation Nos.:
) 731-TA-991 (Final)

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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Wednesday,
February 5, 2003

Room 101
U. S. International
Trade Commission
500 E St., SW
Washington, D.C.

The hearing commenced, pursuant to Notice, at 9:41 a.m., before the Commissioners of the United States International Trade Commission, JENNIFER A. HILLMAN, Vice Chairman, Presiding.

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P R O C E E D I N G S

(9:41 a.m.)

1
2
3 VICE CHAIRMAN HILLMAN: Good morning. On behalf
4 of the United States International Trade Commission, I
5 welcome you to this hearing on Investigation No. 731-TA-991
6 (Final) involving silicon metals from Russia.

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

13 The schedule setting forth the presentation of
14 this hearing and testimony of witnesses are available at the
15 secretary's desk.

16 I understand that the parties are aware of the
17 time allocation. Any questions regarding time allocations
18 should be directed to the secretary.

19 Since all written material will be entered in full
20 into the record, it need not be read to us at this time.

21 All witnesses must be sworn in by the secretary
22 before presenting testimony.

23 Copies of the Notice of Investigation, the
24 tentative calendar and transcript order forms are available
25 at the secretary's desk. Transcript order forms are also

1 located in the wall rack outside the secretary's office.

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

6 Madam Secretary, are there any other preliminary
7 matters?

8 MS. ABBOTT: Yes, Madam Chairman.

9 With your permission, we will add Clifford E.
10 Stevens, Jr. of Piper Rudnick to the calendar on page 2.

11 VICE CHAIRMAN HILLMAN: Without objection.

12 We may then proceed with the opening remarks.

13 MS. ABBOTT: Opening remarks on behalf of the
14 petitioners will be made by William D. Kramer, Piper
15 Rudnick.

16 VICE CHAIRMAN HILLMAN: You may proceed, Mr.
17 Kramer.

18 MR. KRAMER: Good morning.

19 I am Bill Kramer of Piper Rudnick, counsel for
20 petitioners.

21 In this case the respondents have acknowledged
22 that the domestic silicon metal industry is seriously
23 injured. In addition, they agree with petitioners about
24 almost all of the essential conditions of competition in the
25 U.S. silicon metal market. Thus, the central issue for the

1 Commission is whether the Russian imports have caused
2 material injury.

3 The record is clear that the dumped imports in
4 fact have caused severe injury. During the period of
5 investigation the Russian imports, which were sold at the
6 high margins of dumping, entered the U.S. market in
7 increasing volume and at very low and declining prices. In
8 2001 and part year 2002, the volume of Russian imports
9 surged, capturing a substantial and increasing share of the
10 market at a time when U.S. consumption and the volume in
11 market share of both the domestic producers and other import
12 suppliers declined.

13 During the POI, the prices of the Russian imports
14 have been the lowest of the major import suppliers. The
15 record shows that the low prices of the dumped imports pull
16 down the prices of both the domestic producers and other
17 imports.

18 In 2001, when the highest volume of low-priced
19 Russian material entered the market, the market experienced
20 the lowest prices of the period of investigation as reported
21 by Metals Week.

22 The low priced dumped imports pervasively
23 undersold U.S.-produced silicon metal. The Commission also
24 confirmed many instances of lost sales and lost revenues
25 suffered by domestic producers.

1 The decline in U.S. market prices caused by the
2 Russian imports has had devastating consequences for the
3 domestic industry. The industry was forced to make sales at
4 levels that generated huge losses. As the domestic
5 producers lost sales, they also were forced to shut down
6 furnaces and cut back production, which increased their per
7 unit costs and made the losses on each pound sold even
8 larger. Many of the industry's production workers lost
9 their jobs.

10 Given the severe negative impact of the Russian
11 imports it is not surprising that once the dumped imports
12 left the market after preliminary relief was imposed U.S.
13 market prices and the condition of the domestic industry has
14 begun to improve. Metals Week prices have increased
15 significantly. The domestic industry has brought back on
16 line production capacity that had been shuttered due to the
17 Russian imports. U.S. producers have increased their sales
18 volume and made sales at higher prices.

19 However, without final relief from the dumped
20 imports there is no prospect of a sustained price recovery
21 and an end to the severe damage the Russian imports have
22 inflicted on the domestic industry.

23 The threat of further material injury is also very
24 strong in this case. The Russian producers have focused on
25 the U.S. market where prices have tended to be higher than

1 in other major market such as the EU and Japan. The Russian
2 producers also have very significant unused capacity
3 available for maintaining or even increasing their exports
4 to the United States.

5 Absent final relief the Russian imports would
6 almost certainly resume entering the U.S. market in large
7 volumes and at aggressively low prices. The domestic
8 industry would again be disseminated and U.S. producers
9 could be driven out business permanently.

10 Thank you.

11 MR. BISHOP: Opening remarks on behalf of
12 respondents will be given by Michael H. Stein, Dewey
13 Ballantine, LLP.

14 The witness has been sworn.

15 (Witness sworn.)

16 VICE CHAIRMAN HILLMAN: Good morning, Mr. Stein,
17 you may proceed.

18 MR. STEIN: Good morning, Madam Vice Chairman,
19 members of the Commission.

20 For the record, I'm Michael Stein, counsel to GE
21 Silicones.

22 Petitioners' prehearing brief and their opening
23 statement were both remarkable because they ignore the very
24 most important condition of competition in the market: the
25 presence of fairly traded imports.

1 Reading their brief, you would not discover that
2 fairly traded imports rose so dramatically during the period
3 of investigation that they now account for 44 percent of the
4 United States market, and now exceed domestic production.
5 They increased their market share by underpricing the
6 domestic industry by substantial amounts.

7 Had the domestic industry proceeded against these
8 fair value imports, they might have a case. Instead,
9 because it's improbable that that silicon metal from these
10 countries is dumped, the case was brought only against
11 Russia, because if petitioners had waited they would not
12 have been able to take advantage of nonmarket economy
13 methodology. But this leaves them with the problem of
14 showing Russian imports alone cause material injury.

15 Domestic producers claim that Russian imports have
16 increased dramatically. The record shows precisely the
17 opposite. For the past 10 years, Russian imports have been
18 long-term cyclical decline. As show in the prehearing staff
19 report, imports from Russia in 1994 were double what they
20 were in 2001. Total Russian imports in any year of the POI
21 were less than the increase in fairly traded imports over
22 the POI.

23 Domestic producers claim that Russian imports
24 depressed U.S. prices. The record directly refutes that
25 claim. Russian average unit values are smack dab in the

1 middle of the import average unit values. It is an
2 impossibility for Russian imports to have been a price
3 leader when fair value imports increased their market share
4 so dramatically in a commodity product.

5 More proof the Russian imports have not caused or
6 threatened material injury is also on the record. If Russian
7 imports suppressed prices after they left the market, prices
8 should have rise. As you will hear, after Russia left the
9 market in September, GE was able to contract for all of its
10 2003 requirements at a lower price than it paid in 2002
11 because U.S. prices move in tandem with world prices, and do
12 not fluctuate solely based on events in the United States.

13 Moreover, fairly traded imports increased to fill
14 any gaps that were caused by Russia leaving the market, and
15 now exceed the total market share that the Russian imports
16 held earlier in the year.

17 The law is clear. If the only result of an order
18 is that fairly traded imports will replace the imports under
19 investigation, the courts require that the Commission make a
20 negative determination.

21 Here, the Commission need not speculate. Fairly
22 traded imports have replaced Russian imports. The record
23 before the commission compels a negative determination.

24 Thank you very much.

25 VICE CHAIRMAN HILLMAN: Thank you.

1 We will now proceed to the first panel. I
2 understand that all the witnesses have been sworn; is that
3 correct; Madam Secretary?

4 MS. SILLS: That is correct, Madam Chairman.

5 (Witnesses sworn.)

6 VICE CHAIRMAN HILLMAN: Mr. Kramer, you may
7 proceed.

8 MR. KRAMER: Our first witness is Mr. Perkins of
9 Globe.

10 VICE CHAIRMAN HILLMAN: Can you check that
11 microphone?

12 MR. PERKINS: Good morning, Madam Chairman and
13 Commissioners.

14 My name is Marlin Perkins. I am Vice President of
15 Sales at Globe Metallurgical, Incorporated, the second
16 largest silicon metal producer. For 13 years, I have
17 supervised the selling and marketing of Globe's entire
18 product line, including silicon metal, plus I am very
19 familiar with the U.S. silicon metal market and the impact
20 on unfairly traded imports on the domestic silicon metal
21 industry.

22 Today, I am here to testify about the catastrophic
23 negative effects of the dumped imports from Russia on the
24 domestic industry in general, and on Globe specifically. I
25 am also here to tell you about the positive effects on the

1 domestic industry, including Globe, of the preliminary
2 dumping finding against the unfairly traded Russian imports
3 and the continued improvement of the U.S. market that is
4 likely to result from the final relief against such imports.

5 As I testified before the Commission last week,
6 the U.S. silicon metal market is currently experiencing the
7 worst downturn period since the beginning of 1990s. Prices
8 fell from about 66 cents a pound in the beginning of 1999 to
9 a low of 47 cents a pound in May of 2001. There is no doubt
10 in my mind that the dumped imports from Russia have played a
11 leading role in driving down prices in the U.S. market.

12 In 1999 and 2000, substantial quantities of
13 Russian imports were sold at low prices. Then beginning in
14 2001, the trade press started reporting an increase in
15 Russian imports at even more aggressive prices. The volume
16 of Russian imports sharply escalated at a time when both
17 prices and demand were declining, and when the other
18 suppliers were cutting back production.

19 The Russian imports fought for market share
20 wherever they appeared. More and more often our customers
21 reported competing offer for Russian material at prices
22 substantially below the cut-throat level of 50 cents a
23 pound, and every time Russian silicon metal won a sell by
24 cutting price the domestic industry was hurt because prices
25 and transactions throughout the market were affected.

1 The severely discounted prices on increasing
2 volumes of Russian product pulled down the prices of silicon
3 metal from all other domestic and other import sources.

4 Why do the dumped Russian imports have such a
5 bigger impact? The short answer is that silicon metal is a
6 commodity product. There is no meaningful difference
7 between domestic and imported silicon metal. Competing
8 suppliers, including the Russian producers, make essentially
9 the same product using the same raw materials and the same
10 production process and sell it on the same basis to the same
11 customers.

12 Imported Russian silicon metal meets customer
13 specifications in all segments of the U.S. market and the
14 Russians aggressively targeted the entire market, including
15 the chemical industry customers.

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

24 The latest version of such price leveraging in the
25 reverse internet auctions conducted by GE Silicones and

1 other major customers in which aggressive bidding by the
2 Russian producers drove prices down.

3 The bottom line is that for silicon metal
4 consumers the most important consideration in making
5 purchasing decision by far is price. In the marketplace you
6 can talk to customers about sales and technical service,
7 about quality and quality control, and do a number of other
8 things attempting to differentiate your product from the
9 competition. But what the customer always come back is
10 price, how much per pound.

11 A substantial portion of silicon metal sales are
12 made under long-term contracts covering a period of at least
13 one year. However, these contracts do not protect domestic
14 producers from import competition.

15 For example, in the case of Globe, the price on
16 long-term contracts is a negotiated term that reflects
17 competition at the time the contract is written. Then when
18 prices fall the large silicon metal consumers simply
19 pressure us to reduce the contract prices or risk losing
20 future business.

21 The market situation before preliminary relief was
22 granted had left the domestic industry reeling. All U.S.
23 producers, including Globe, were directly impacted by the
24 low-priced Russian imports. I know this from firsthand
25 experience.

1 In November 2001, Globe quoted a price of 52 to 54
2 cents a pound to a major aluminum producer and long-time
3 customer of Globe. This customer which had purchased three
4 to four thousand tons of silicon metal from Globe the
5 previous year at a price of 56 cents a pound was very
6 enthusiastic about the level of customer contact, product
7 quality and technical support provided by Globe.

8 We anticipated that Globe's participation at this
9 customer would increase. Nevertheless, when the Russians
10 came in with about 48 cents a pound, it blew us right out of
11 the water. There was simply no possible way that Globe
12 could compete at that price level, and we lost all the
13 business to the Russians.

14 As the Commission can see from the detailed data
15 that we provided in our questionnaire, Globe is currently
16 struggling to survive the impact of the surge in Russian
17 imports. Since the beginning of 1999, Globe has not only
18 been forced to implement several furnace reconfigurations,
19 curtailments in plant closings, but has also put itself up
20 for sale due to the depressed market conditions.

21 As the market declined, the furnaces were idle,
22 Globe's financial position deteriorated rapidly. A small
23 net profit on silicon metal sales in 1999 turned into
24 increasingly large net losses in 2000 and 2001. Globe
25 failed to place new subordinated securities in late 2000 in

1 large part due to reduced silicon metal profitability.

2 The failure of this placement and subsequent
3 continuing losses on silicon metal caused Globe's senior
4 lenders to declare Globe's loans in default and accelerate
5 the loans' maturity. In order to satisfy the lenders'
6 requirements at the end of 2002, Globe was forced to put
7 itself up for sale.

8 With Globe's consent, certain accounts receivable
9 and inventory of Globe which were collateral for the senior
10 secured debt, were sold to Marco International, a U.S.-based
11 international trading company at a public auction in New
12 York on December 30, 2002. In addition, Globe and Marco
13 have entered into a nonexclusive total processing agreement
14 covering inventory purchased by Marco in the auction as well
15 as certain materials that Marco may acquire in the future.

16 Although these agreements with Marco allow Globe
17 to continue operating as a going concern, they do not
18 guarantee its survival, nor for reasons that cannot be
19 discussed publicly, do these agreements insulate Globe from
20 the impact of dumped imports on the U.S. market. Simply put,
21 if the domestic industry does not obtain final relief from
22 the dumped Russian imports, Globes very existence is
23 seriously threatened.

24 Fortunately, since preliminary relief was granted,
25 U.S. market prices have strengthened from 53 pounds. In

1 early September 2000 the average benchmark, Metal Week
2 silicon metal prices has risen to 61 cents a pounds by the
3 end of January 2003. Starting in the fourth quarter of 2002
4 and continuing into 2003, Globe is experiencing significant
5 improvements in pricing, quoting prices more than 10 percent
6 higher than before the preliminary determination. Globe is
7 seeing price improvements on both spot sales and contract
8 sales.

9 For example, during the fourth quarter 2002, Globe
10 negotiated new annual contracts with primary aluminum
11 producers that included prices between four and five cents a
12 pound higher than prices during the previous year.
13 Moreover, one primarily aluminum customer also increased
14 their volume order from Globe for the coming year.

15 These improvements have already allowed Globe to
16 restart the second silicon metal furnace at its Selma,
17 Alabama plant so that both furnaces at that plant are now
18 back in operation.

19 Nevertheless, prices remain depressed and the
20 condition of the domestic industry is very frail. In fact,
21 when final relief is not provided Globe may well have to
22 cease silicon metal production completely.

23 Absent final relief the unfairly low-priced
24 imports from Russia will continue to flood the U.S. market
25 at prices that will drive market pricing back down to

1 severely depressed level. The large amount of unused
2 production capacity in Russia, and the fact that its silicon
3 metal industry is heavily export oriented demonstrate that
4 increasing amounts of subject imports are likely to enter
5 the U.S. market.

6 However, if final relief is granted, further
7 improvement in the conditions of the domestic industry will
8 result. We expect prices to continue to climb and
9 anticipated renewed interest in our product from all
10 segments of the market.

11 As sales volume increase, Globe will be able to
12 restart additional idle furnaces and rehire laid-off
13 production workers. Our fervent hope is that the market
14 will eventually strengthen again to the point at which we
15 can implement previously abandoned capital improvement
16 projects and restart promising research and development
17 efforts. Only then will the investments Globe made and
18 other silicon metal producers have made to improve and
19 expand their production facilities, and reduce production
20 costs be fully realized.

21 That concludes my remarks. I would be happy to
22 respond to any questions you may have.

23 MR. KRAMER: Our next witness is Mr. Boardwine of
24 SIMCALA.

25 MR. BOARDWINE: Good morning. My name is

1 Boardwine. I am President and Chief Executive Officer of
2 SIMCALA, Incorporated, a U.S. silicon metal producer located
3 in Mt. Meigs, Alabama. I've worked in the silicon metal
4 industry for more than 30 years. During that time I have
5 been involved in all aspects of the business, from
6 engineering to production to marketing to senior management.
7 I have held my current position for the past seven years.

8 Before this dumping case my company had never
9 appeared before you in a trade proceeding. So I would like
10 to tell you about SIMCALA.

11 In 1995, a venture capital group, including
12 myself, formed SIMCALA to purchase the assets of CEMETCO, a
13 domestic silicon metal that was in bankruptcy. After the
14 acquisition, we invested nearly three years and
15 approximately \$20 million upgrading and modernizing the
16 former CEMETCO facility in order to produce high-quality
17 silicon metal.

18 SIMCALA became an efficient and reliable producer,
19 able to supply domestic customers at competitive prices. We
20 believe that in terms of smelting efficiency SIMCALA is one
21 of the most efficient producers in the world.

22 Despite our investment and our hard work to make
23 SIMCALA a world class producer, our continued viability is
24 in doubt because of the severe injury caused by the dumped
25 silicon from Russia.

1 The U.S. market price for silicon metal averaged
2 about 70 cents a pound during 1998 according to Metals Week.
3 By fourth quarter, 2001, the price had plummeted to about 50
4 cents a pound, well below our production cost, including
5 financing costs.

6 There is no question in my mind that the Russian
7 imports drove this price decline. In 1999, the Russian
8 imports began entering the market in increasing volumes and
9 at prices lower than the other major import suppliers, the
10 Russian imports increase from about 25,000 tons in 1999 to
11 about 34,000 tons in 2001. The Russian imports gained this
12 volume by selling at lower prices than the domestic industry
13 and the other major import suppliers.

14 In 1990 and 2000, the low prices of the Russian
15 silicon were the most important factor that damaged the
16 market. Other suppliers were forced to lower their prices
17 to compete with the low-priced Russian imports. In 2001,
18 the impact of the Russian imports was multiplied as the
19 Russians both sold at very low prices and ramped up in
20 volume at a time when demand was declining.

21 Imports from other countries decreased as the
22 Russians captured an increasing share of the market. Even
23 after we filed the dumping petition the Russian imports
24 continued to pour into the U.S. market at very low prices
25 until preliminary relief was granted.

1 Imports were not confined to the metallurgical
2 segment of the market. The Russians had improved the
3 quality of their product and for the first time targeted the
4 chemical segment of the market where prices and margins for
5 the domestic industry had been higher.

6 SIMCALA lost sales to the Russian imports both in
7 the chemical sector and in the aluminum sector because of
8 the very low pricing of the Russian imports.

9 The depressed prices and our loss of sales volume
10 had very serious repercussions for our company. As with
11 other domestic producers, we often enter into long-term
12 contracts with our major customers. These contracts are
13 renewable at the end of the term and often contain pricing
14 mechanisms based on prices in Ryan's Notes and other trade
15 publications. Those long-term contracts therefore do not
16 insulate us from the market price fluctuations.

17 Volume in set in a range and the sales price is
18 adjusted typically quarterly or annually on the basis of the
19 published market price trend.

20 Now, since the market price was driven down by the
21 Russian imports, we realized much lower prices under these
22 contracts. In October 2001, when we submitted a new multi-
23 year purchase agreement to one of our largest, most long-
24 standing and most reliable customers, the customer requested
25 a starting price that was below even our cash cost of

1 production. The customer informed us that the Ryan's Notes
2 price, which had been depressed by the surge of dumped
3 Russian material that year, justified their request.

4 Because we cannot agree to a multi-year contract
5 at a loss, we found it necessary to agree to enter into a
6 short-term contract for much lower volume at the below cost
7 price to maintain our valuable relationship with this
8 customer.

9 Under the weight of the depressed market prices
10 and lower sales volume, SIMCALA experienced significant
11 financial losses in 1999. The losses grew in 2000. In
12 2001, SIMCALA had additional losses, and also had to take a
13 \$62 million charge related to the impairment of long-lived
14 assets. The charge included a write-off of goodwill and a
15 write-down of property, plant and equipment. Revaluing the
16 assets of the company was necessary because of the
17 deteriorating market conditions fueled by the Russian
18 imports made our company's financial situation so
19 precarious.

20 The company was also not able to meet its debt
21 service requirements. On October 15, 2001, SIMCALA was not
22 able to make an interest payment due on \$75 million
23 bondholder notes. Because the company's only viable credit
24 facility had been suspended, it was necessary for us to
25 enter into negotiations with the holders of the notes in

1 order to restructure the debt.

2 The deteriorating market conditions driven by
3 Russian also had a significant effect on SIMCALA's credit
4 rating. In 1998, Moody assigned SIMCALA a B2 issuers credit
5 rating. In April the following year, the service downgraded
6 our credit rating to CAA1. In 2001, Moody's downgraded the
7 company's credit rating again. This time to junk. And in
8 March 2002, we received word from Moody that it would no
9 longer even track SIMCALA.

10 SIMCALA also was unable to go forward with a
11 projected capacity expansion. When market conditions were
12 favorable in 1998, the company had planned to construct a
13 fourth furnace during the period from 1999 to 2000. Once
14 operational, the furnace would have increased SIMCALA's
15 capacity by 33 percent, and added 30 full-time jobs.

16 Instead of expanding as we had planned, the
17 company contracted in 2001. We were forced to close one of
18 our three existing furnaces, reducing SIMCALA's capacity by
19 33 percent. We were also forced to reduce our workforce by
20 nearly half. In 2001, it became necessary to lay off 50
21 hourly employed and 10 salaried employees.

22 As I understand those opposed to dumping relief ar
23 claiming that nothing would have been different in the
24 absence of the unfairly traded Russian imports. I cannot
25 see how anyone could defend this position. It was the

1 influx of Russian imports at low and declining prices that
2 drove down prices, especially in 2001.

3 Suppliers from other countries were not willing to
4 sell at any price in order to gain share like the Russian
5 were. Even the South African supplier, which had used
6 aggressive pricing to establish itself as the largest source
7 of imports, lost share to the Russians in 2001 and 2002.

8 Other import suppliers, like the domestic
9 industry, were forced to reduce their prices to the
10 extremely low-priced Russian competition.

11 Market conditions have improved very significantly
12 since the filing of the petition, the preliminary relief and
13 the resulting withdrawal of the Russian from the U.S.
14 market. The Metals Week price increased from about 49 cents
15 a pound at the time the petition was filed to a about 53
16 cents a pound in July 2002. The week after the preliminary
17 duties were announced in September 2002, prices increased
18 another 2.5 cents a pound, and have continued to increase.

19 By the end of January 2003, prices had increased
20 to nearly 61 cents a pound. Notably these prices have
21 occurred even as other imports, primarily imports from
22 Brazil, have filled a portion of the former Russian market
23 share. We think this is due to the fact that the other
24 imports suppliers, most importantly the Brazilians, are
25 selling at higher prices than the Russians were.

1 However, it's not just the foreign suppliers that
2 have filled the void left by the Russians. Domestic
3 production and sales have expanded also. In October of
4 2002, SIMCALA hired additional employees and restarted its
5 idle third furnace, and returned to full capacity operation.
6 We have been able to sell additional output at profitable
7 prices.

8 In summary, led downward by dumped Russian silicon
9 U.S. market prices for silicon metal collapsed to
10 unprofitable levels. We lost significant business, even
11 from our oldest customers, and our company suffered
12 devastating financial losses.

13 Thankfully, since the petition we filed and
14 preliminary relief was granted, market conditions and the
15 position of our company have improved dramatically. But we
16 need final relief. If the Commission does not grant it, the
17 Russian will resume shipping large volumes at very low
18 prices and very likely destroy our company's viability and
19 possibly the entire domestic industry.

20 Thank you.

21 MR. KRAMER: Out third witness is Dr. Button of
22 Economic Consulting Services.

23 MR. BUTTON: Good morning. I am Kenneth Button,
24 Senior Vice President of Economic Consulting Services, LLC.
25 I am accompanied today by Jennifer Lutz, Senior Economist at

1 Economic Consulting Service who is seating at the end of the
2 table on my left.

3 We are appearing on behalf of the domestic
4 industry to assess the evidence as to whether the U.S.
5 silicon metal industry is injured or threatened with injury
6 by reason of imports from Russia. We have provided for the
7 Commission's convenience a set of exhibits based on public
8 information which we will reference in our testimony. I ask
9 that the exhibits be accepted for inclusion in the record.

10 Ms. Lutz will begin by commenting on the
11 conditions of competition and the injury being suffered by
12 the industry. I will then provide comments regarding
13 causation and threat.

14 Ms. Lutz.

15 MS. LUTZ: Good morning. I am Jennifer Lutz. I
16 will begin by noting the conditions of competition that are
17 distinctive to the silicon metal industry.

18 First, silicon metal is a commodity product.
19 While the product purchased by a customer may need to
20 conform to that customer's particular specification, the
21 differences in specifications among buyers and the consuming
22 chemical and metallurgical industries tend to be relatively
23 minor, and can be met by virtually all domestic and import
24 suppliers.

25 Second, it is important to appreciate that

1 virtually all silicon metal from essentially all supplies is
2 very pure, usually around 99 percent silicon with the
3 remainder being very minor amounts of impurities.

4 Although silicon metal has been described in terms
5 of different grades, for example, chemical grade or
6 metallurgical grade, there is in fact no accepted grade
7 classification system. Grades actually refer to ranges of
8 specifications that are typically sold to particular
9 customer segments specifying minimum levels of silicon and
10 maximum imports of impurities.

11 Domestic and imported silicon metal of the same
12 so-called grade are completely interchangeable regardless of
13 producer source. Producers make the highest purity silicon
14 metal that they can. No one intentionally produces a lower
15 purity products that can only meet customer specifications
16 in, for example, the second aluminum sector.

17 Therefore, silicon metal suitable for the chemical
18 sector, so-called higher grade material, is routinely sold
19 down to second aluminum producers.

20 Third, given its commodity product nature and the
21 interchangeable of Russian and domestic silicon metal,
22 competition among suppliers is fundamentally based on price
23 and relatively small differences in price can lead consumers
24 to switch some or all of their purchase volume to other
25 suppliers.

1 Information about prevailing prices is available
2 on a weekly basis in industry publications such as Prox
3 Metals Week, and Ryan's Notes. Furthermore, purchasers tend
4 to be more willing to reveal to competing suppliers the
5 prices at which silicon metal is being offered by other
6 suppliers. The combined effect of these market practices is
7 to ensure that price changes are quickly communicated
8 through the market.

9 In fact, a variety of price adjustment mechanisms
10 are used in long-term contracts which contribute to keeping
11 supplier prices aligned. For example, in some instance such
12 contracts require that contract transaction prices be based
13 on formulas tied to reference prices published in such
14 sources as Metals Week and Ryan's Notes.

15 The use of index pricing, meet or release clauses,
16 and other price adjustment mechanisms means that long-term
17 contracts provide little shelter from import price
18 competition and make the supplier vulnerable to the effects
19 of an overall declining market price level.

20 Moreover, as these two price indices are based in
21 significant measure directly on the import prices for
22 Russian silicon metal, the low prices of imports from Russia
23 have a direct negative effect on U.S. producer revenues even
24 with U.S. customers not receiving bids directly from Russian
25 material suppliers.

1 Moreover, even with long-term, supposedly fixed-
2 price contracts in the chemical and primary aluminum sectors
3 the attractiveness of low-priced imports can be irresistible
4 for customers, themselves subject to intense competitive
5 pressures. Some of these customers have simply given U.S.
6 producers ultimatums; either you must cut your price or we
7 are switching our volume to lower-priced suppliers.
8 Realistically, the U.S. suppliers have little choice but to
9 comply.

10 Recently, there has been a significant new
11 development in how silicon metal is purchased. As you know
12 from the prehearing briefs, GE Silicones has used an
13 internet reverse auction procedure under which: (1) all
14 suppliers are prequalified, thus removing quality
15 differences as a possible differentiating factor; (2) bid
16 prices are instantaneously communicated among all competing
17 suppliers; and (3) price becomes literally the only
18 determining factor in the customer's final purchase
19 decision.

20 In fact, at the staff conference in the
21 preliminary investigation, GE's representative pointed out
22 that a sale was won by \$1 per ton, or one-twentieth of a
23 cent per pound.

24 This is an important new condition of competition
25 in the market that makes it easier for low-priced imports

1 rapidly to take market share away from domestic producers
2 and to force down the domestic price level.

3 In fact, the economic pressure on U.S. producers
4 during such auctions is exemplified by the fact that in
5 facing another auction participant's reduced bid in the GE
6 reverse auction the U.S. producer had a mere two minutes to
7 respond with a counter-bid or lose the sale. The depressive
8 price pressure is tremendous.

9 Fourth, Russian silicon metal competes in all
10 customer segments of the U.S. market. In the first silicon
11 metal investigations in 1991, respondents from Argentina,
12 Brazil and China claimed that their products were unsuitable
13 for chemical customer use such that the U.S. producer sales
14 to chemical customers were sheltered from import
15 competition.

16 As the Commission concluded then and reaffirmed in
17 the sunset reviews, that claim is false. The clarity of the
18 situation is even more evident today. No segment of the
19 U.S. market is insulated from import competition.

20 Imports from Russia are sold to chemical customers
21 in large volume direct head-to-head competition with U.S.
22 product, just as these imports compete with U.S. product in
23 sales to primary and secondary aluminum customers.

24 Indeed, Russian producers have worked to improve
25 their product quality over time, and have intensified their

1 focus on the chemical segment of the U.S. market. As a
2 result the degree of competition between the domestic
3 producers and imports from Russia is more direct than ever.

4 All three domestic producers and eight of 10
5 importers reported that U.S. and Russian silicon metal are
6 interchangeable.

7 Interestingly, respondents are in agreement with
8 these conditions of competition while ignoring a crucial
9 condition recognized by the Commission in its 1991
10 investigation of imports from Argentina, Brazil and China.
11 The Commission found that the interplay of competitive
12 forces means that prices are somewhat less.

13 For example, although the absolute prices of
14 material sold to chemical customers are generally higher
15 than the prices of sales to secondary aluminum customers,
16 and they change somewhat rapidly because of the chemical
17 sector's use of longer term contract, the trends in chemical
18 and secondary aluminum segment prices are in fact highly
19 correlated over time.

20 One reason is that on the supply side the U.S.
21 producers and major import suppliers, such as the Russian
22 producers, simultaneously sell into all three segments.

23 On the demand side some major metallurgical
24 customers that operate both primary and secondary aluminum
25 production facilities simultaneously buy silicon metal for

1 their use in these two segments.

2 Furthermore, there are readily available published
3 pricing data in industry publications. Prices to customers
4 in all three segments, therefore, are subject to constant
5 adjustment, balancing them one against the other, subject to
6 the interplay of industry-wide supply and demand forces.

7 As demonstrated by the petition and the U.S.
8 producers' questionnaire data, essentially all of the
9 domestic industry's performance indica demonstrate that it
10 is suffering current material injury. These indica are
11 listed in Exhibit 1.

12 As respondents have conceded that the domestic
13 industry is injured, I will just cover a few highlights.

14 As prices fell the U.S. industry's gross and
15 operating profit margins were squeezed until they went
16 negative. With financial damage mounting, the industry had
17 little choice to pull capacity out production.

18 Not surprising, therefore, the domestic industry's
19 production capacity fell greatly during the 1999 through
20 2001 period, declining by 22.1 percent. Capacity declined
21 further in the part year period. The decline reflected the
22 closure of American Silicon Technologies in 1999, and the
23 subsequent decline in the capacity of other U.S. producers.

24 As shown in Exhibit 2, SIMCALA closed one of its
25 three silicon metal furnaces. Furthermore, Globe shut down

1 or converted four of its seven furnaces out of silicon metal
2 production, thus removing a very substantial volume of
3 production from the market, and leaving only Globe's
4 furnaces at Selma, Alabama and one furnace at Niagara Falls
5 still operating. ELCHEM also shut one furnace down.

6 Consequently, production fell substantially by
7 30.6 percent form 1999 to 2001, and by 24 percent in the
8 part year period.

9 Even with a drop in U.S. capacity the U.S.
10 domestic production drop was so great that the industry's
11 capacity utilization rate fell as well from 83.4 percent in
12 1994 to 74.3 percent in 2001, to only 60.3 percent in the
13 part year 2002 period.

14 With American Silicon Technologies ceasing
15 operations and the decline of other domestic producers'
16 production volume, industry employment fell significantly
17 during the POI, by 43.4 percent from 1999 to part year 2002.
18 In fact, the Department of Labor made a July 2002
19 determination that workers at Globe were eligible to apply
20 for worker adjustment assistance due to increased volumes of
21 imports of silicon metal.

22 As with production, U.S. shipments dropped. There
23 were certainly some contraction in U.S. demand during the
24 POI, particularly in 2001, but as U.S. industry shipment
25 volume fell at a faster rate than did total U.S. apparent

1 consumption, the U.S. industry's market share declined
2 substantially, from 65 percent in 1999 to only 43.5 percent
3 in part year 2002, a decline of 21.5 percentage points.

4 Reflecting the market deterioration domestic
5 producers' prices declined significantly during the POI.
6 Both the average unit value of shipments and the quarterly
7 transaction prices of the U.S. producers fell considerably.
8 The price declines were clearly evident in all three
9 consumer segments of the market.

10 The financial performance of the domestic industry
11 declined under the combined weight of reduced sales volume
12 and lower prices. The industry's operating income fell
13 sharply during the POI, as did its cash flow.

14 As Mr. Boardwine has described, SIMCALA is
15 suffering very large losses, has been forced to write down
16 the value of its assets, and was unable to service its debt.
17 Mr. Perkins has described Globe's financial deterioration.

18 In the face of such financial pressures the
19 industry has been forced to reduce capital expenditures and
20 to scale back planned and new investment products.

21 Dr. Button will now continue with comments
22 regarding causation and threat.

23 MR. BUTTON: Thank you.

24 The day before the Commission made clear that the
25 rise in volume of dumped imports of silicon metal from

1 Russia are a cause of the domestic industry's injury, the
2 volume of imports from Russia during the POI is clearly
3 significant and rising, as shown in Exhibit 3.

4 From about 25,000 tons in 1999, imports from
5 Russia increased by 36 percent to about 34,000 tons in 2001,
6 accounting for 28 percent of total imports and a rising and
7 substantial share of the U.S. market.

8 The increase in imports from Russia during 2001
9 was extraordinary. In the first three quarters of 2002, the
10 volume continued to rise. Imports from Russia in January -
11 September 2001 totaled about 33,000 short tons, an increase
12 of 58 percent over the part year of 2001 period.

13 And although the respondents have noted that the
14 import volumes from Russia were higher prior to the current
15 POI, they ignore the substantial decline in the import
16 average unit values.

17 While imports from Russia reached a volume of
18 about 34,000 tons in 1997, and 37,000 tons in 1998, just
19 prior to the current POI, let us emphasize the fact that the
20 AUV of these imports were relatively high, at 77 cents a
21 pound in 1997, and 64 cents per pound in 1998. In 2001, the
22 imports were slightly lower in volume but the import AUV had
23 dropped to 52 cents per pound, a decline of 18 cents per
24 pound from the 1997 levels.

25 Now, the purchasers responding to the Commission's

1 questions, all 11 stated that the U.S. silicon metal is
2 inferior to Russian material with respect to price. The
3 prices of imports from Russia have remained very low during
4 the POI, and have exerted a serious depressing and
5 suppressing effect on the U.S. industry prices.

6 Russian import AUVs have declined over the POI to
7 only 46 cents a pound in the January - September 2002
8 percent and were consistently below the average unit values
9 of nonsubject imports.

10 Furthermore, the record in this investigation
11 shows subject imports underselling U.S. silicon metal
12 consistently. The prehearing report notes underselling by
13 subject imports in 13 of 15 comparisons in the primary
14 aluminum segment, with an average underselling margin of
15 about five percent. In the secondary aluminum segment
16 subject imports undersold the domestic producers in 11 of 15
17 quarters, with an average underselling margin also of about
18 five percent.

19 Purchaser pricing data provide more evidence of
20 underselling. For sales to the primary aluminum segment the
21 prehearing reports data shows imports from Russia
22 underselling the U.S. product in eight of eight comparisons,
23 averaging about 11 percent underselling. Secondary aluminum
24 producers reported subject import selling in all 11
25 quarters, averaging about four percent underselling.

1 For sales to the chemical producers, purchase
2 price comparisons how subject imports underselling in nine
3 of 11 comparison, averaging a large seven percentage.

4 While subject imports were routinely sold at
5 prices below those of the domestic producers, they also
6 typically undersold nonsubject imports as shown in the
7 petitioners' prehearing brief at Exhibits 16 through 18.

8 The purchaser pricing data reenforced the import
9 AUV shown in the prehearing report at page I-16, which
10 compares quarterly import average unit values from Russia
11 and the other significant import source. Russian import
12 AUVs are consistently below the AUVs from the other import
13 sources including South Africa.

14 The expanding volume of low-priced Russian
15 material has been entering during a period of weak aggregate
16 U.S. demand, which has made the U.S. industry especially
17 vulnerable to the injurious impact of these imports.

18 While weakened U.S. demand during 2002 had a
19 negative price effect, the presence of increase in volumes
20 of the low-priced Russian material forced U.S. producers to
21 cut prices substantially more than they otherwise would have
22 as shown in our Exhibit 4, it appears that especially during
23 the Russian volume surge in 2001.

24 Imports from Russian have led the Metals Week
25 price downward. This finding is consistent with the

1 prehearing report data showing the import average unit
2 values of the Russian material to be almost always below the
3 AUVs of the nonsubject imports.

4 The domestic industry believes that the prices of
5 the nonsubject imports would themselves have been higher but
6 for the impact of imports from Russia. The belief is
7 strongly supported by the recent trends in Metal Week's
8 prices.

9 Recently, the Metals Week price has increased
10 significantly in response to the initial steps and applied
11 trade relief in response to imports from Russia. Please
12 note our Exhibit 5 which is annotated chart of Metal Week
13 prices. At the bottom of the chart we have quoted a
14 statement from the Russian respondents' prehearing brief
15 which seems to offer a test to determine whether the subject
16 imports are having a negative effect on domestic producers.

17 They state, "In short, a simple test for
18 determining whether subject imports have caused material
19 injury is to take the out of the market."

20 Well, this is just what has happened with the
21 anticipation of and the actual imposition of preliminary
22 import relief. Let's examine the chart.

23 You can see the decline in import prices during
24 the 1999-2001 portion of the POI as the volume of imports
25 from Russia increased. You can also see that with the

1 filing of the petition and the Commission's affirmative
2 preliminary determination in April 2002, import prices began
3 to recover. This recovery accelerated when the Department
4 of Commerce issued its affirmative preliminary dumping
5 determination September 2002, causing Russian material to
6 withdraw from the U.S. market and prices to continue to
7 increase through the January 31, 2003 level shown on the
8 chart.

9 As much of the U.S. industry's volume is sold
10 under contracts negotiated during the fourth quarter of the
11 year, the U.S. industry is looking forward to the improved
12 financial performance that higher prices negotiated during
13 the rising price period of the fourth quarter of 2002 will
14 bring for the industry during year 2003.

15 Now, prior to these initial import relief
16 measures, however, the imports from Russia caused the
17 domestic industry to suffer significant lost sales and
18 revenues. The prehearing report details many instances of
19 head-to-head competition between U.S. producers and
20 importers of Russian material which have resulted in lost
21 sales volume for the U.S. industry, and have consequently
22 caused the industry to lose production, employment, market
23 share, and financial return.

24 The staff confirmed a significant volume of sales
25 lost to the unfairly traded subject imports. Similarly, as

1 to lost revenues caused by the Russian competition, U.S.
2 producers have been forced to cut prices in order to
3 persuade customers not to switch their volume requirements
4 to the Russian material.

5 The U.S. price reductions have been substantial.
6 Moreover, U.S. industry revenues have declined even further,
7 would have still have declined even further with those
8 customers that did not receive direct bids from suppliers of
9 Russian material because of the common use of price
10 benchmarks, such as the metals we have priced, which have
11 been depressed by the low Russian import prices, especially
12 during 2001 and 2002.

13 As with the lost sales allegation, the staff have
14 confirmed the numerous cases of lost revenues due to
15 competition from the subject imports. The overall result
16 today is a U.S. industry in crisis, with some members
17 literally fighting for survival.

18 And the Russian producers have made clear that
19 unless restrained by import relief their competitive assault
20 is going to intensify. As shown in Exhibit 6, a Metals Week
21 report in March 20, 2002, quoted a source close to a Russian
22 producer as saying, "We are currently shipping as much
23 silicon to the U.S. as we can because of the threat of U.S.
24 trade tariffs."

25 Well, given that the volume of subject imports

1 rose by 58 percent during the first three quarters of 2002
2 compared to the comparable prior year period as you
3 previously saw in our Exhibit No. 3, it would appear that
4 they have followed through with this threat.

5 The Russian producers have the capability to
6 inflict more injury on the domestic industry. The Russian
7 producers increased both capacity and production during the
8 POI. However, the Russian plants still have significant
9 currently unutilized capacity and all three of the producers
10 have additional capacity plant.

11 Russian producer inventories have increased during
12 the POI, and importers of material from Russia have
13 significant inventories in the United States.

14 Moreover, as the Russian producers are heavily
15 export-oriented, they can switch exports rapidly from
16 current third country destinations toward the United States,
17 and there is also a number of other Russian ferro-alloy
18 producer which could switch furnaces from the production of
19 ferrosilicon toward the production of additional silicon
20 metal. The prehearing report assessed the available
21 information and concluded that the Russian producers have
22 the ability to respond "with moderate to large changes in
23 the quantity of shipments of Russian silicon metal to the
24 U.S. market." Staff report at II-3.

25 The fact that an expanded Russian volume of

1 silicon metal can rapidly penetrate the U.S. market and
2 further reduce U.S. prices has already been amply
3 demonstrated by the Russian materials rapid import and
4 market share expansion in 2001 and the resulting U.S. price
5 depression.

6 In conclusion, the evidence is clear that the
7 rising volume of low-priced imports from Russia has severely
8 injured the domestic industry and threatens to cause still
9 greater injury. Thank you.

10 MR. KRAMER: That concludes our presentation. We
11 would be happy to respond to Commission questions.

12 I would like to reserve our remaining time for
13 rebuttal and ask how much time we have?

14 VICE CHAIRMAN HILLMAN: Madam Secretary.

15 MS. ABBOTT: Forty-five minutes have elapsed so 15
16 minutes remaining.

17 MR. KRAMER: Thank you.

18 VICE CHAIRMAN HILLMAN: Okay. With that, I would
19 like to thank this panel. We very much appreciate the time
20 that you have taken to be with us this morning, and
21 appreciate your testimony as well as all the information
22 that you have provided to us.

23 We will begin this morning's questioning with
24 Commissioner Koplan.

25 COMMISSIONER KOPLAN: Thank you very much, Vice

1 Chairman Hillman.

2 In our preliminary determination the Commission
3 indicated that in any final phase of this investigation we
4 would examine the effect on price-based competition in the
5 market of three reverse internet auctions in the fall of
6 2001 that were conducted by GE Silicones for approximately
7 75 percent of its 2002 requirements.

8 We also indicated that we would seek similar
9 information regarding other purchasers whose identity is BPI
10 who have held internet auctions as well.

11 You have dealt with the issue of on-line auctions
12 at pages 31 to 34 of the BPI version of your prehearing
13 brief. Respondents have countered in Exhibit J of their
14 prehearing brief.

15 My question is whether you have reviewed their
16 exhibit, and if so, would have caused you to alter your
17 analysis. If your answer is it would not cause you to alter
18 your analysis, we can stop right there. If it would, I
19 think it would probably be best for you to provide that
20 additional analysis for purposes of the post-hearing because
21 we are referring to business proprietary information.

22 I am calling on you for that one, counsel.

23 MR. KRAMER: Commissioner, we do not believe that
24 that exhibit changes our analysis, and we will offer further
25 comments in our post-hearing brief.

1 COMMISSIONER KOPLAN: That's fine, if you would do
2 that, and I appreciate that. And as I say, if again when
3 you look at it the answer is still no, then you can simply
4 say that. Thank you.

5 The respondents argue that antidumping orders in
6 place for nonsubject countries are ineffective as the
7 countries subject to those orders have found themselves able
8 to sell in the United States at fairly traded prices.
9 That's respondents' brief at page 1. And I note that orders
10 currently are in place on China and Brazil.

11 It does appear, looking at the C-I table at C-III
12 of the staff report, and Mr. Button, I think you were
13 referring to the table in part with your Exhibit 3, I
14 believe it was. It does appear that nonsubject imports have
15 increased their market share over the POI, and particularly
16 in the interim period, in the interim 2002 period. I think
17 your references were to the subject imports on your chart.

18 I would like the industry witnesses to tell me how
19 they assess the impact of the nonsubject imports on your
20 industry, if I could hear from the industry people, Mr.
21 Perkins, Mr. Boardwine.

22 MR. PERKINS: Yes, sir. There have been increased
23 imports from the fairly traded countries, but at higher
24 prices. I think the evidence would show that the Russian
25 imports drag their prices down along with the domestic

1 industry prices. So while the imports were in higher
2 volume, they were also at higher prices until the Russian
3 material came in and essentially lowered everyone's prices.

4 COMMISSIONER KOPLAN: Mr. Boardwine.

5 MR. BOARDWINE: I agree with that also.

6 COMMISSIONER KOPLAN: Thank you.

7 Let me ask this of counsel. Do you wish at this
8 time to respond to respondents' argument that under general
9 metals if we find that nonsubject imports will replace all
10 or the majority of the Russian market share, then we have no
11 causal link between subject imports and injury, and we are
12 required to go negative?

13 MR. KRAMER: I would like to respond to that, and
14 we will say more about that in our post-hearing brief.

15 COMMISSIONER KOPLAN: Whatever you can tell me
16 now, I would like to hear, and I would imagine you would
17 like to get into that in your post-hearing as well.

18 MR. KRAMER: Sure. We don't think that general
19 metals bears any resemblance to this case, and general
20 metals in an extremely unusual, if not unique situation in
21 which there is a large volume of imported product in the
22 market from Russia, a portion of which the Department of
23 Commerce had determined was fairly traded and a portion of
24 which the Department of Commerce had found was sold at
25 margins over 100 percent.

1 The difference between the fairly traded material
2 and the material found to be sold at margins of over 100
3 percent was simply the chain of distribution. The material
4 that was sold by the same suppliers through certain traders,
5 that is, zero duty rate of margin calculated.

6 In most circumstances the Court of Appeals found
7 that, you know, the fairly traded and nonfairly treated
8 material were essentially interchangeable and both
9 prospectively, I think, they looked at the material during
10 the period in the same way.

11 And the important fact is that both the fairly
12 traded material and the material sold at high margins were
13 sold at the same low prices, so that's a fundamentally
14 different situation than the situation here where the dumped
15 imports are sold at low and declining prices and they are
16 undercutting both the nonsubject imports and the domestic
17 industry.

18 COMMISSIONER KOPLAN: Thank you.

19 Yes, Mr. Button, you had your hand up?

20 MR. BUTTON: Thank you, I have two points to make
21 with respect to the nonsubject imports. I note that Brazil
22 was one whose volume increased and expanded its share of the
23 U.S. market.

24 I would just note that the ITC data-web database
25 and it shows average unit values of imports for the January

1 - September 2002 period for Brazil and Russia. Brazil's
2 average unit value was 71 cents a pound. The average unit
3 value for Russia in that period was 50 cents per pound.

4 Indeed, the market share of the Brazilians in that
5 sense goes up. Why? We generally have described to you
6 that over the course of the POI they have withdrawn
7 capacity, and through 1999, 2000 and 2001 therefore --

8 COMMISSIONER KOPLAN: I missed that. Withdrawn
9 what?

10 MR. BUTTON: Capacity, they reduced the production
11 capacity such that their production volume went down.

12 COMMISSIONER KOPLAN: Thank you.

13 MR. BUTTON: Therefore that did in fact create a
14 void in the market, and customers did need the material, and
15 so long as prices, however, everybody remained below the
16 cost of production of the producers, they could not bring
17 the capacity back on line.

18 What has happened with preliminary relief is that
19 with the exit of the Russian -- and put on Exhibit No. 5,
20 please, Chris -- as you have seen the prices have risen for
21 everybody else such as the Brazilians, the producers now
22 have the economic incentive to bring capacity back on line
23 and they have done so. They have described to you that
24 furnaces are coming up. So that the gain in market share in
25 that respect it goes to the nonsubject imports, we believe a

1 significant portion of that is temporary, and hope it will
2 show fairly quickly show that they taken it back to the U.S.
3 side and now the production is back underway.

4 COMMISSIONER KOPLAN: Mr. Kramer?

5 MR. KRAMER: This is a central point and I would
6 like to offer two further comments.

7 Their argument is premised on factual assumptions
8 that we think are not true and will not -- we think we can
9 demonstrate that.

10 COMMISSIONER KOPLAN: Why does that not surprise
11 me?

12 (Laughter.)

13 MR. KRAMER: The first of those is that nonsubject
14 imports will replace the Russian imports and the domestic
15 industry will not -- you will gain volume. And the second
16 is that the nonsubject imports that, you know, do make sales
17 in the absence of the Russians will be sold at the same low
18 prices. And neither one of those conditions is true, as a
19 matter of fact.

20 COMMISSIONER KOPLAN: Thank you.

21 Let me just -- I think I can get this one in.
22 Respondents make numerous references to nonsubject imports
23 from South Africa as being fairly traded. Do you agree with
24 that, with their characterization, Mr. Perkins?

25 MR. PERKINS: Well, I think the South African

1 material has been present in this country before the
2 Russians, and since the Russian have disappeared once again
3 I think the evidence would show that when the Russian were
4 here they drug their price down as well. I think absent the
5 Russians they are more inclined to sell at prices that are
6 more in keeping with the domestic industry.

7 COMMISSIONER KOPLAN: More in keeping with the
8 domestic industry?

9 MR. PERKINS: Yes.

10 COMMISSIONER KOPLAN: Okay, thank you for those
11 questions. Thank you, Madam Chairman.

12 VICE CHAIRMAN HILLMAN: Thank you.

13 COMMISSIONER KOPLAN: I mean for those answers to
14 my questions. Let me correct myself.

15 VICE CHAIRMAN HILLMAN: Okay.

16 COMMISSIONER KOPLAN: Thank you again, Madam
17 Chairman.

18 VICE CHAIRMAN HILLMAN: Okay. If I could turn, I
19 guess, to one of the issues that both you, Mr. Perkins, and
20 you, Mr. Boardwine spoke about, which is the issue of
21 contracts and what they mean or don't mean in the market.

22 I guess if I can start with you, Mr. Boardwine.
23 You described that you had entered into, or SIMCALA had
24 entered into a number of long-term contracts. Just so I
25 clarify for the record, what is the duration? How do you

1 define a long-term contract?

2 MR. BOARDWINE: Yes, ma'am. When I refer or
3 SIMCALA refers to a long-term contract, we generally refer
4 to a contract that is at least a year.

5 VICE CHAIRMAN HILLMAN: At least a year.

6 MR. BOARDWINE: Yes, ma'am.

7 VICE CHAIRMAN HILLMAN: Do you have a number of
8 contracts that are in excess of one year?

9 MR. BOARDWINE: Yes, ma'am.

10 VICE CHAIRMAN HILLMAN: Okay. And Mr. Perkins,
11 you described also your contract situation. When you are
12 describing a long-term contract, what is the duration
13 typically?

14 MR. PERKINS: One year.

15 VICE CHAIRMAN HILLMAN: One year. Okay. Do you
16 have any that are in excess in one year?

17 MR. PERKINS: No, ma'am.

18 VICE CHAIRMAN HILLMAN: Okay. Both of you also
19 described to some extent the effect of price pressure,
20 downward price pressure on these contracts, and Mr. Perkins,
21 you described a general notion that your customers come back
22 to you to sort of put pressure on you to lower the prices
23 within the life span of the contract.

24 Do your contracts typically contain legal meet or
25 release clauses or price escalator or de-escalator

1 provisions within the contract itself?

2 MR. PERKINS: We have never agreed to a meet or
3 release clause. However, it's more a negotiation that, you
4 know, the customer is saying, you know, there are lower
5 prices and the threat is once this contract is over or is
6 renegotiated you lose volume.

7 VICE CHAIRMAN HILLMAN: Okay. Mr. Boardwine, how
8 about your contracts, do they have any kind of a price meet
9 or release or, you know, again, a de-escalator clause
10 contained within the contract itself?

11 MR. BOARDWINE: No, ma'am, we don't have meet or
12 release clauses in our contracts. Contracts basically are
13 adjusted according to the market trend.

14 VICE CHAIRMAN HILLMAN: They would be by per
15 volume? I mean, they would specify both a price and a
16 volume for a year period typically?

17 MR. BOARDWINE: A range of volume.

18 VICE CHAIRMAN HILLMAN: Okay.

19 MR. BOARDWINE: And then the price would be
20 adjusted during the period of the contract as market trend
21 changes usually based on an index. Ryan's Notes is typical.

22 VICE CHAIRMAN HILLMAN: And how often would the
23 prices change within the life of a given contract?

24 MR. BOARDWINE: It varies with the customer. It
25 can be quarterly, semi-annually or annually.

1 VICE CHAIRMAN HILLMAN: Okay. Mr Perkins, would
2 your contracts have a similar kind of adjusting feature
3 within the life of the contract?

4 MR. PERKINS: Typically, our annual contracts, the
5 prices are set for a year. We do have one starting in 2003
6 that is indexed, and changes on a monthly basis, but that's
7 the only one.

8 VICE CHAIRMAN HILLMAN: And help me get a sense of
9 how significant this is in terms of the percentage of your
10 contracts.

11 Mr. Perkins, you said you don't legally have this
12 requirement to change the prices, but as a practical matter
13 you're getting pressure to do so. Have you actually done so
14 and if so, in what portion of your sales that are subject to
15 contract would you say this has affected?

16 MR. KRAMER: Are you asking about during the term
17 of the contract?

18 VICE CHAIRMAN HILLMAN: Yes, during the life of a
19 contract. I'm just trying to get a sense of how often it
20 actually happens that you reduce prices as a result of
21 customer pressure or price pressure let's say.

22 MR. PERKINS: Maybe twice a year.

23 VICE CHAIRMAN HILLMAN: Maybe twice a year, and
24 that's on basically all of your contracts?

25 MR. PERKINS: There was just one in particular

1 that was -- it was a large contract and it was -- I think we
2 lowered the price twice over the length of the contract, the
3 year, but it was a pretty sizeable quantity.

4 VICE CHAIRMAN HILLMAN: Okay. The one contract
5 that you did, one sizeable contract that you did actually
6 lower prices as a result of --

7 MR. PERKINS: Yes, ma'am, but there are others
8 that we have not to that degree, but have moderated the
9 prices to some degree. Maybe once during the year if there
10 was a precipitous price fall.

11 VICE CHAIRMAN HILLMAN: Okay. And Mr. Boardwine?

12 MR. BOARDWINE: We have had several occurrences
13 where the customer will come back. Even though the market
14 trend is down and the price formula is working, they want a
15 price that's below that for some reason, and we have had
16 discussions have changed that price.

17 VICE CHAIRMAN HILLMAN: Okay. Again, I'm trying
18 to get a sense of how large the magnitude is of contracts
19 that have actually had their prices adjusted.

20 MR. KRAMER: Can I just clarify the fact that I
21 think what Mr. Boardwine is saying is that these contracts
22 had an automatic adjustment provision which was already
23 bringing the price down, and then the instances he is
24 talking about are instances where they were asked to make a
25 further reduction.

1 VICE CHAIRMAN HILLMAN: Okay, I understand. The
2 two companies are in a different situation in terms of Mr.
3 Perkins' contracts don't particularly have an automatic
4 adjusting, and Mr. Boardwine is describing contracts which
5 do. And would you say all of your contracts typically have
6 this adjusting factor in them, or just some of them?

7 MR. BOARDWINE: No, ma'am, not all of them. About
8 half of them.

9 VICE CHAIRMAN HILLMAN: About half of them. Okay.

10 MR. KRAMER: I'm sorry.

11 VICE CHAIRMAN HILLMAN: Mr. Kramer?

12 MR. KRAMER: I just want to make it clear that in
13 addition to the prescribed adjustments under the formula in
14 some instances they have been asked to make a further
15 reduction.

16 VICE CHAIRMAN HILLMAN: No, I understand that.

17 Like I said, I was just trying to get a sense of
18 the sort of volume of it, and I understood that from Mr.
19 Perkins.

20 Mr. Boardwine, you are describing about half of
21 your contracts have this automatic adjusting factor in them,
22 and then on top of that you were asked for further
23 reductions.

24 With respect to the contracts that did not have
25 the automatic adjusting in it, did you also have pressure to

1 and actually did change the prices of those contracts?

2 MR. BOARDWINE: Yes, ma'am.

3 VICE CHAIRMAN HILLMAN: Okay. Okay. Again if
4 there is anything further, Mr. Kramer, given that some of
5 this clearly would be BPI, but if there is anything further,
6 again to help me understand the magnitude of the volume of
7 sales that was actually subject to a price reduction even
8 though it may not have been called for under the terms of
9 the contract. I'm just trying to get a sense of the volume
10 and magnitude of the price pressure that was brought and the
11 response of the domestic industry.

12 MR. KRAMER: This is during the term of the
13 contract?

14 VICE CHAIRMAN HILLMAN: Correct. That would be
15 very helpful. I wondered if I could turn next -- you
16 touched a little bit, but I want to hear a little bit more
17 about the relationship between the primary aluminum market,
18 the secondary aluminum market and the chemical market.

19 Both of you described the Russians beginning to
20 enter the chemical market. I'm trying to understand really
21 the import of that. You've both described it as though this
22 were somehow, if you will, more pernicious, more difficult
23 for you to deal with, the fact that the Russians are in the
24 chemical sector which struck me as something a little bit
25 new from your experience. I wonder if you can help me

1 understand that.

2 Is the chemical market, do you regard it more as
3 your sort of bread and butter market and therefore it's more
4 troubling that the Russians entered that particular segment
5 of the market?

6 MR. PERKINS: Typically I think in the chemical
7 market the prices were higher. There were some premiums
8 there. I think the Russians when they came in and attacked
9 that market, obviously the price slid very, very rapidly.
10 There was at that point no protection for us on that larger
11 tonnage.

12 VICE CHAIRMAN HILLMAN: And this was new for the
13 Russians to be in the chemical market?

14 MR. PERKINS: Yes, ma'am. It was.

15 VICE CHAIRMAN HILLMAN: Why do you think that's
16 the case? Why have they not, as it's been described, the
17 Russians have been in the U.S. market for quite a number of
18 years.

19 MR. PERKINS: I think they improved their quality
20 to the point that they could compete in that market and
21 across the entire spectrum at that point and not just the
22 secondary industry. But the secondary, the primary as well
23 as the chemical industry.

24 VICE CHAIRMAN HILLMAN: Tell me again when that
25 was that the Russians came into the chemical sector?

1 MR. PERKINS: I think it started in '99, 2000.

2 VICE CHAIRMAN HILLMAN: And you would describe the
3 chemical sector as having had previously higher prices. Is
4 that typically the way it goes, that the chemical sector has
5 the highest prices and then the primary aluminum market and
6 then the secondary?

7 MR. PERKINS: That had been to that point, yes,
8 ma'am.

9 VICE CHAIRMAN HILLMAN: And do they follow each
10 other's prices? I mean do the folks that are bidding for
11 silicon going into the secondary aluminum, do they know or
12 care what the chemical prices are?

13 MR. PERKINS: I think as these prices are reported
14 in the magazines, you almost see it as one price now and
15 they're using that price to leverage the price down.

16 VICE CHAIRMAN HILLMAN: Okay. Had there always
17 been a differential, that the chemical product was whatever
18 it was, four cents higher than primary, and that's so much
19 higher than secondary? That had typically been the case?

20 MR. PERKINS: Yes, ma'am.

21 VICE CHAIRMAN HILLMAN: By a set amount
22 traditionally?

23 MR. PERKINS: I'm not sure there's a set amount,
24 no, ma'am.

25 VICE CHAIRMAN HILLMAN: Typically it would be so

1 many cents per pound higher? A difference between -- I'm
2 just trying to understand the effect of the Russians coming
3 into the chemical industry and whether that caused price
4 effects across segments in a way that you hadn't seen
5 before.

6 MR. KRAMER: The Commission I'm sure collected
7 data by segment during the original antidumping cases that
8 could be compared to --

9 VICE CHAIRMAN HILLMAN: I can see it. I'm trying
10 to hear from the industry what your sense is. But given
11 that the red light has come on, we can come back to this. I
12 will turn now to Commissioner Miller.

13 COMMISSIONER MILLER: Thank you Chairman Hillman,
14 but welcome back, Mr. Perkins.

15 Would you like to add anything more in response to
16 her question?

17 MR. PERKINS: I'm not sure I quite understand.
18 I'm not sure we ever as a company said that chemical prices
19 are four cents higher than or two cents higher than or six
20 cents, whatever the number was. We never had a premium that
21 we tagged to it like that, if that's the question.

22 COMMISSIONER MILLER: That's essentially -- We
23 have all the data and we have Dr. Button's interpretation of
24 it, but we really want to know from a company perspective
25 how you see these different markets interacting. So I think

1 that's what she's trying to get at.

2 MR. PERKINS: We were able to realize higher
3 prices in the chemical industry, but it's hard for me to
4 define exactly how much that was.

5 COMMISSIONER MILLER: Okay. Thank you. Welcome
6 to all of you. Mr. Perkins, you're back. Mr. Boardwine, I
7 believe it may be your first time here and so thank you to
8 you. Thank you for participating today.

9 I actually want to follow up a little bit because
10 I wanted to ask you a question about the sort of historic
11 participation of the Russian industry in this market, and
12 you heard Mr. Stein's initial statement, his comment about
13 the Russians have always been in the market. And perhaps
14 I've just heard the answer to that question.

15 But if you could, tell me a little bit about what
16 changed in terms of Russian participation that led you to
17 bring this case when they had been in the market for a good
18 while previous to this point?

19 MR. PERKINS: I think previous to this they had
20 been in the market at a time when demand was higher and
21 obviously their prices were a lot higher.

22 COMMISSIONER MILLER: So historically you saw
23 their prices being higher than they had been recently?

24 MR. PERKINS: That's correct. And over the 2000,
25 2001 time period then prices were obviously falling. They

1 were ramping up volume and selling it at increasingly lower
2 prices as time progressed.

3 COMMISSIONER MILLER: Mr. Boardwine, as you said,
4 you've been in this business for awhile. Do you want to add
5 anything about what you've seen of the Russians
6 participating in the silicon metal market over time?

7 MR. BOARDWINE: No, ma'am. Basically that has
8 what we've seen is the Russians have imported into the U.S.
9 for quite some time but at significantly higher prices. Now
10 they're increasing volume at a time when the demand is lower
11 and driving prices even lower. That's been the major
12 problem.

13 COMMISSIONER MILLER: Mr. Button, do you want to
14 add something?

15 MR. BUTTON: I think the point of view that
16 they've been trying to explain to you is that there has been
17 a price decline over the period of investigation, and
18 although they don't have access to confidential data, I
19 think what we can show is this gap that you discussed
20 between the different types has narrowed over time. We can
21 certainly include specific information on that over the POI
22 which provides some numbers to the impression that they've
23 been trying to express.

24 COMMISSIONER MILLER: I know you've already
25 responded to some questions about how imports from other

1 countries compete in the market but I guess I want to be a
2 little more specific.

3 You mentioned Brazil once or twice. What about
4 South Africa? When I look at the AUV data, the average unit
5 value data that we have and it's in our staff report and
6 it's broken out by separate tariff lines, and this is public
7 data in the brief submitted by Dewey Ballantine, I believe,
8 it does show me the South African average unit values have
9 been actually lower than the Russian in 2001 when prices
10 were dropping.

11 So I know Dr. Button you're going to give me your
12 answer but I want to hear the answer first from Mr.
13 Boardwine and Mr. Perkins just about how you see the South
14 African product competing in the market.

15 MR. PERKINS: I think the South African product
16 has always been lower than the domestic product. We've seen
17 that for a number of years.

18 I think during this period, though, I mean as the
19 Russian price went down the South African price followed it
20 very rapidly. They've always been lower priced than the
21 domestic market but I think as the Russian went down they
22 down very, very quickly with it.

23 COMMISSIONER MILLER: Have they been in the market
24 for a number of years as well? I don't have any history of
25 their data.

1 MR. KRAMER: They were steadily increasing in
2 volume and had become the largest and they were the lowest
3 priced source. Then the Russians came in at lower prices
4 and increased volume and by 2001 the south Africans lost
5 share to the lower priced Russian material. But they had
6 been the largest import supplier and they were selling at
7 relatively low prices.

8 COMMISSIONER MILLER: Okay.

9 MR. KRAMER: We think that the South African
10 material has consistently been somewhat higher priced than
11 the Russian and we'll explain this further in our post-
12 hearing brief, but there is one entry of Russian material
13 where we think the unit value is in error and that explains
14 why there appears to be, in that period you're referring to,
15 a lower South African price.

16 COMMISSIONER MILLER: All right. I'll look for
17 whatever you submit in the post-hearing brief regarding
18 that.

19 Let me go then if I could for a minute to ask you
20 some more questions about what's gone on in 2002. I've
21 heard your story about your view that prices have increased
22 and the industry is benefitting and you're attributing it to
23 the ongoing investigation.

24 It's not clear to me that I have data in front of
25 me that supports that point. Then I do have to talk to Dr.

1 Button for a minute because I hear your story but I don't
2 necessarily see it reflected even in our pricing data which
3 goes through the third quarter of 2002.

4 So why do I not see it?

5 MR. BUTTON: What precisely is the "it" that you
6 don't see?

7 COMMISSIONER MILLER: When I look at our pricing
8 data in Chapter 5, the tables specific to the pricing
9 information, the comparative pricing information. But I'm
10 just looking at the U.S. prices per pound and they go
11 through the third quarter of 2002 on a quarterly basis. I
12 don't see increases there.

13 MR. BUTTON: You don't see the improvement as yet.

14 COMMISSIONER MILLER: Right.

15 MR. BUTTON: A couple of points to be made on
16 that.

17 First, with respect to those that have contracts
18 we're looking for the new contract season which is
19 negotiated in the fourth quarter.

20 Secondly it does take a certain amount of time for
21 this to work through the system, for hopefully the departure
22 of the Russian material to be absent. However, during the
23 first three quarters of this year, when you're looking for
24 price improvement please recall that the Russian material
25 increased in volume by 58 percent, and note that if you

1 annualized the Russian material in that three quarters as a
2 standard way of comparing it to the prior year period, you
3 get 54,000 tons.

4 Let's compare that with the volume that the
5 Respondents have talked about as being kind of the more
6 natural, normal one in 1998 which was basically 38,000.

7 So the imports were still increasing in the first
8 three quarters of last year at a pace exceeding this
9 historical rate. And clearly would continue to have a big
10 effect.

11 We've also noted the presence of the inventories
12 in the U.S. market by importers. So you have all these
13 things going on which would have the effect of holding it
14 down. And only with the, I guess we have the certainty of
15 relief with the Commerce Department determination, well,
16 certainty, the beginning of relief with their determination,
17 the Russians pulled out. That's when the Metals Week chart
18 would become relevant because you then have the volume.

19 COMMISSIONER MILLER: I want to go back to that if
20 I could, and I understand the point on annualizing the data.
21 That's why I was looking at the quarterly numbers and the
22 quarterly prices, hearing what you said, because that's the
23 only place I felt like I ought to be able to see something,
24 and I wondered if the contract, if this is basically
25 reflecting prices that were contracted.

1 If I'm looking at a price that, for example Mr.
2 Perkins, you put in your questionnaire response for sales
3 for the July-September 2002, what period do those reflect in
4 terms of when you agreed to that price? Does that question
5 make any sense?

6 Third quarter 2002 you report a price for us.
7 When did you agree to that price?

8 MR. PERKINS: Those are typically maybe a month
9 before the quarter starts. So maybe June for the July
10 deliveries.

11 COMMISSIONER MILLER: Good. I have some questions
12 about that chart but the red light's on, so I'll have to do
13 them in the next round. Thank you.

14 Mr. Boardwine, do you mind -- He looks like he
15 wants to respond to my question. Mr. Boardwine?

16 MR. BOARDWINE: Yes, ma'am, if I may.

17 I can report that we had one contract in effect in
18 2002 that during the period after the relief was put in
19 place in September, that price movement that you see
20 reflected a higher price for us in the fourth quarter
21 because it's based on the average price of the previous
22 three months, and that movement from July to September
23 resulted in a higher price for us.

24 COMMISSIONER MILLER: Okay. I heard your story
25 and I just wanted to make sure we have the data on the

1 record that supports it since it's not clear that I see it
2 in the data before us. We may want to talk a little bit
3 further, whether we want anything in addition, in the post-
4 hearing submission to make sure we have the data in our
5 record that confirms what you're saying. Because I know
6 it's going to be contested by Mr. Stein, we already heard
7 that.

8 MR. PERKINS: I think the biggest improvement you
9 would see will be if you look at the January --

10 COMMISSIONER MILLER: 2003?

11 MR. PERKINS: Yes, ma'am.

12 COMMISSIONER MILLER: Thank you.

13 VICE CHAIRMAN HILLMAN: Commissioner Koplan?

14 COMMISSIONER KOPLAN: Thank you, Madame Chairman.

15 I want to thank the panel for its testimony.
16 Between your pre-hearing submission, your answers to our
17 questions thus far today, I'm only left with one thing I
18 want to raise. It's simply this.

19 I know there's been an investigation instituted by
20 the European Union to the Russian product, and I just
21 wondered whether you, and I realize that was last August,
22 and that it hasn't reached the preliminary stage yet so it's
23 still hanging out there, nothing's been determined. But I
24 just wondered if you happened to know what the allegations
25 are, the specific type of allegations that are contained in

1 the complaint that was filed. If not, I'll be asking that
2 question this afternoon but I just wondered if you had
3 looked at anything at all.

4 MR. KRAMER: At this point we don't have the
5 answer to that.

6 COMMISSIONER KOPLAN: Okay.

7 With that, I again appreciate your responses to
8 our questions and I'll turn it back to you, Madame Chairman.

9 VICE CHAIRMAN HILLMAN: Thank you.

10 I guess if I could follow up a little bit with
11 some of the line of questioning that Commissioner Miller was
12 on because I guess I had some of the same kind of questions,
13 that you've told a story that things got materially better
14 after the initial filing of this case, and yet again, our
15 data, and maybe it's that it's not recent enough, but our
16 data doesn't really show it. So let me start on the volume
17 side.

18 You've all described when the Russians pulled out
19 of the market. Again our data would in essence have shown a
20 continuing increase in the Russian imports. Even if I look
21 at the quarterly pricing data, it is not showing them having
22 pulled out yet. So I guess I'm trying to understand from
23 the industry witnesses, when did you perceive the Russians
24 coming out of the market? When?

25 MR. PERKINS: After the preliminary determination

1 period of the Commerce Department.

2 VICE CHAIRMAN HILLMAN: So April? I'm sorry, the
3 summer --

4 MR. PERKINS: September.

5 VICE CHAIRMAN HILLMAN: So beginning in September
6 of 2002 was when you first -- Again, Mr. Kramer, I'm really
7 wanting it from the industry's perspective of what was going
8 on in the market.

9 MR. PERKINS: It would be the September date. And
10 I guess the improvement that we saw at that point was
11 basically on spot pricing. People that weren't on
12 contracts, that they were just buying -- It was obviously
13 smaller quantities, but when they would come into the market
14 then the price had moved up considerably.

15 VICE CHAIRMAN HILLMAN: How did you know this was
16 attributable to the Russians coming out of the market? What
17 was the market dynamic going on there?

18 MR. PERKINS: The Russians just weren't quoting
19 prices.

20 VICE CHAIRMAN HILLMAN: Okay, so basically after
21 September you're saying the Russians were no longer quoting
22 prices.

23 MR. PERKINS: Yes, ma'am. The indications that we
24 got from the marketplace that the Russians had material in
25 inventory that they were, obviously it was committed at that

1 point so they could not quote on additional business going
2 forward.

3 VICE CHAIRMAN HILLMAN: And since then, again
4 since our data doesn't show it, prices have gone up by how
5 much? Spot prices would typically be what now?

6 MR. PERKINS: Fifty-nine, 60 cents.

7 VICE CHAIRMAN HILLMAN: Okay. So if they had been
8 down in that 50 cent range they would have come up. Okay.
9 That's helpful.

10 I guess part of me wanted to also understand, one
11 of the other things we're going to hear and what I wanted to
12 hear you all talk a little bit about is the effect of demand
13 on what's happened over the course of this period and then
14 what your sense is, what do you think demand is going
15 forward. In other words you've obviously described in your
16 testimony that during some of our period of investigation
17 demand was fairly weak. Help me understand that. How weak
18 and what were the effects, and then what are your demand
19 projections for 2003?

20 MR. PERKINS: At this point we haven't seen a big
21 uptick in demand. We are certainly hopeful that's going to
22 take place at some point. I think what we're hearing in the
23 marketplace, that the first quarter looks relatively flat;
24 second quarter maybe a slight improvement; more hopeful in
25 the third and fourth quarters.

1 VICE CHAIRMAN HILLMAN: What are the typical
2 drivers of demand?

3 MR. PERKINS: Automotive I think is a big one.
4 Certainly on the metallurgical side.

5 VICE CHAIRMAN HILLMAN: Mr. Boardwine, would you
6 agree with those demand projections?

7 MR. BOARDWINE: Yes, ma'am. Inside our company
8 our customers are telling us the same thing, that basically
9 the aluminum industry is being driven automotive, which has
10 been fairly good. The chemical industry's been down. So
11 overall demand has been very flat and has been flat for the
12 last two to three years, and there's really no projection
13 for an improvement in 2003.

14 VICE CHAIRMAN HILLMAN: And how would you describe
15 this, again over the period of investigation we saw
16 obviously a weakening in demand. Tell me what you think the
17 weakening of that demand has been on the industry.

18 Obviously you've pulled out a lot of capacity, but I'm
19 trying to understand the relationship between the weakening
20 demand as opposed to imports in terms of what's pushed what.

21 MR. BOARDWINE: Our company feels that the overall
22 total demand in the U.S. has dropped by about five to ten
23 percent across three years and remained flat. That's our
24 internal best guesstimate.

25 VICE CHAIRMAN HILLMAN: Again what I'm trying to

1 understand is would you say some of these plant closures or
2 consolidations or conversions to ferro-silicon production
3 have been driven by those demand changes?

4 MR. PERKINS: Certainly in our case I think it's
5 in our questionnaire that we converted furnaces from silicon
6 metal to ferro-silicon. We did that, the prime reason for
7 that was to take silicon metal capacity off-line. It was
8 just a losing proposition at that point due to pricing
9 levels. We used that ferro-silicon for our foundry side of
10 our business.

11 If you look at Globe, Globe is most profitable
12 when every furnace that can produce silicon metal is
13 producing silicon metal.

14 VICE CHAIRMAN HILLMAN: Would you see if these
15 orders are in place or if prices go up, are you likely to
16 convert those furnaces back to silicon production?

17 MR. PERKINS: That is certainly a very real
18 possibility, yes, ma'am. That would be a goal, yes, ma'am.

19 VICE CHAIRMAN HILLMAN: Because it's more
20 profitable to produce silicon than to produce ferro-silicon
21 if prices are good.

22 MR. PERKINS: Absolutely.

23 VICE CHAIRMAN HILLMAN: And the demand would be
24 enough. That's what I'm trying to understand is this issue
25 of the decline in demand. Whether the decline in demand

1 has, how that has weighed into any decision to convert a
2 facility or to get out of silicon.

3 MR. PERKINS: The demand in the United States is
4 certainly larger than the supply in the United States, so
5 whatever we can pick up we would certainly do so, yes,
6 ma'am.

7 VICE CHAIRMAN HILLMAN: On the other hand there
8 are some allegations that there were U.S. producers that
9 could not get adequate quantities of silicon from the United
10 States and hence purchased subject imports.

11 How would you respond to that?

12 MR. PERKINS: They never called me.

13 (Laughter_

14 VICE CHAIRMAN HILLMAN: Again, I think this is
15 public information. GE Silicones is one of the ones that
16 argued that it purchased subject merchandise because of
17 problems with domestic supply.

18 MR. BOARDWINE: Ma'am, certainly in our case when
19 we closed our furnace in August of 2001 it was because we
20 lost business to low price Russian silicon. We had the
21 customer relationship, we just couldn't match the price.

22 VICE CHAIRMAN HILLMAN: Can either of you speak to
23 GE Silicones in particular? They're saying that it
24 purchased subject merchandise, Russian merchandise, because
25 of problems with domestic supply.

1 MR. PERKINS: I would agree with Mr. Boardwine, it
2 was strictly a pricing -- If the pricing was at a level that
3 we could make money on it, we would have certainly sold it
4 to them.

5 VICE CHAIRMAN HILLMAN: Okay. so your sense is it
6 was not the fact that you could not supply or could not
7 supply enough, it's that you wouldn't supply it at that low
8 of a price.

9 MR. PERKINS: No, ma'am. We had furnaces shut down
10 and people laid off. We would have gladly started the
11 furnace up, rehired the people if we could have if nothing
12 else just broke even on it.

13 VICE CHAIRMAN HILLMAN: Let me go to another issue
14 that Respondents have raised which is this issue of sort of
15 the timing in terms of the relationship between the Russian
16 imports and what was going on in terms of prices.

17 They are contending that the largest decline in
18 the silicon prices took place in the year 2000 which is the
19 time at which the Russian imports were at their lowest
20 volume level throughout the POI.

21 I don't know, Dr. Button, whether you want to
22 respond to that or, again, obviously they understand as well
23 as you do that the Russians have been in the market all
24 along, but they're saying their volumes were actually the
25 lowest in 2000 at a time in which there was the greatest

1 downward price structure.

2 MR. BUTTON: We think that might be slightly
3 simplistic. If we go back to one of the other, Chris, if
4 you go back to Exhibit 2 or -- the one before that please.
5 That one. What we see is a history of the Russian AUV as
6 basically leading the Metals Week price and being aggressive
7 in its pricing as it enters the market. You can see that
8 the bottom, in terms of the most aggressive they got was
9 relatively early in the period in first quarter 2000, 2001.

10 The issue is yes, their volume was still
11 substantial but lower than before, but they were moving in
12 in terms of the depressiveness of the pricing. That is how
13 they managed to get sales.

14 By bringing down the prices of the non-subject
15 imports, this is what we believe they did in the key ones,
16 that had an effect of hurting the overall price level. Once
17 the overall price level went below the cost of the U.S.
18 producers, they had to withdraw capacity. That's kind of
19 the causal link which is very important.

20 So we think they were damaging then. It became
21 accelerated in 2001 as the volume went up quite sharply as
22 we discussed, and then to comment further on the volume
23 matter that you raised with respect to 2002, let me just
24 clarify some information that might help inform your views.

25 During 2002 the Russian volume actually peaked in

1 the month of May. It had roughly double its typical monthly
2 volume. It remained very high in June, July, August, and in
3 the month of September it dropped to a fraction. Then there
4 were zero imports of Russian silicon metal in October or
5 November following the Commerce Department's determination.

6 So the view is that the petition and your
7 preliminary determination here didn't cut off the Russian
8 volume. It created expectations that eventually that would
9 take place. That's what we see in the Metals Week pricing.
10 The Russians, nonetheless, continued as our quotation said,
11 to push in as much volume as they could before the duties
12 were put in place. As that ladder effect certainly
13 continued to have a negative price effect on the actual
14 transactions that you see in the questionnaire data.

15 What we're seeing in the Metals Week numbers is
16 really going to be the expectation these men hope to have in
17 their future contracts.

18 VICE CHAIRMAN HILLMAN: I appreciate those
19 answers.

20 Thank you very much. I will now turn to
21 Commissioner Miller.

22 COMMISSIONER MILLER: Thank you, Madame Chairman.

23 Let me come back to my questions about the Metals
24 Week price since we have this exhibit. I just want to make
25 sure I understand Exhibits 4 and 5 and what they mean to the

1 industry folks too.

2 The Metals Week price is published spot price,
3 correct? What's it for?

4 MR. KRAMER: It's for sales of imported silicon
5 metal to customers from dealers on a spot basis.

6 COMMISSIONER MILLER: It's just an import price,
7 it's not a domestic price. That's the number you have up
8 there.

9 MR. KRAMER: It's used as, it's reflective of
10 market prices, but it's based on import selling prices.

11 COMMISSIONER MILLER: Is there a Metals Week price
12 for the domestic price?

13 MR. KRAMER: No. The import pricing drives the
14 market price up.

15 COMMISSIONER MILLER: But it's some kind of
16 composite imported price.

17 MR. BUTTON: It's our understanding that it's a
18 composite price done through research by a Metals Week staff
19 on a weekly basis, and it is their, shall we say, estimate
20 or test of the prevailing market price from dealers and
21 importers and purchasers. As these gentlemen would
22 indicate, it does not include their prices, though it
23 certainly -- They view it and customers view it as the trend
24 and thus it takes the nature of an index with which they
25 must live.

1 COMMISSIONER MILLER: All right.

2 I'm also trying to understand, back a little bit
3 to the question that Chairman Hillman asked you earlier
4 about primary, chemical, secondary.

5 This index then is reflective of what's going on
6 with all three? How do you interpret it in terms of the
7 three different market segments? What's it mean?

8 MR. PERKINS: I think it's a composite number, and
9 someone in the primary industry will see it and they will
10 use it as a lever. Someone in the secondary will use it as
11 a lever. And the chemical. So I don't think it's
12 indicative of any one over the other, it's just --

13 COMMISSIONER MILLER: It's not like these things
14 move differently. They move very much together.

15 MR. PERKINS: No, ma'am. They're moving pretty
16 much in tandem.

17 COMMISSIONER MILLER: Okay.

18 MS. LUTZ: Just to add to that, I believe that the
19 specs in the Metals Week guide suggest that it's closer to a
20 secondary aluminum spec. But we can provide the spec in a
21 post-hearing submission.

22 COMMISSIONER MILLER: All right. I just want to
23 make sure I understand it.

24 You used the import AUV for the low silicon
25 content tariff line in your Exhibit 4.

1 MS. LUTZ: Again, the Metals Week spec, I believe
2 it states that it's 98.5 percent silicon content. So that's
3 why we used the lower --

4 COMMISSIONER MILLER: Okay. So that would be the
5 most comparable. Okay.

6 I just wanted to make sure I understood it.

7 The only other point is, one of the reasons I'm
8 asking this is because I'm remembering Mr. Perkins in your
9 initial testimony you talked about achieving a four to five
10 cent a pound price increase in your contract negotiations
11 with a primary aluminum producer. But the Russian product
12 isn't primarily in the primary. It's not concentrated in
13 the primary aluminum, it's more in secondary and chemical to
14 a certain extent as well.

15 But you're telling me these all kind of move
16 together, so that explains why you're talking about the
17 impact in the primary aluminum market. That's what I'm
18 trying to understand. You're talking about the impact in
19 the primary aluminum market, even though that's not the
20 segment where the Russian product is most concentrated.

21 MR. PERKINS: Yes, ma'am. I think the Russians
22 have had less success in penetrating some segments of the
23 primary industry.

24 If you look at the primary industry the thing that
25 they're looking for most is a low iron content. Not to say

1 that all the primary aluminum producers want a very low
2 iron, because in some cases just the regular run of the mill
3 secondary iron levels will work in the primary grades.

4 The primary grades that require a very low iron
5 are casting alloys that they're making aluminum wheels,
6 something that you want a bright, flashing, high luster type
7 finish. You want a very low iron content on. So the
8 automotive casting alloys that are going into an engine
9 block or a head or something like that, obviously they don't
10 care what it looks like. It's going to be buried under the
11 hood. But for the wheels, they want something with a very
12 low iron content.

13 Even though the Russians really can't participate
14 in that particular segment, the prices still moved in
15 tandem. Whether they moved in sympathy with the secondary
16 grades or the chemical grade or whatever that Metals Week
17 price indicated.

18 COMMISSIONER MILLER: Okay.

19 The Respondents probably would be happy if I lose
20 my voice before I get a chance to question them, so I won't
21 go much longer. But let me ask one last question.

22 Are critical circumstances still an issue in this
23 investigation given the Commerce Department's finding? Do
24 you have a position?

25 MR. KRAMER: No, they're not an issue.

1 COMMISSIONER MILLER: All right. With that I
2 appreciate all your answers to my questions. It's been very
3 helpful. Thank you.

4 VICE CHAIRMAN HILLMAN: Commissioner Koplan?

5 COMMISSIONER KOPLAN: Thank you, Madame Chairman.
6 I do now have a couple of follow-ups.

7 The Respondents, this is a follow-up to the line
8 of questioning that's just been going on I think.
9 Respondents argue that the domestic industry has refused to
10 be a reliable supplier to the secondary aluminum market, the
11 less profitable of the markets. And they go into a fair
12 amount of detail at pages 54 to 57 of their brief, a lot of
13 which is BPI.

14 I'd like to hear from the industry witnesses on
15 this, from you Mr. Boardwine, and I think you had indicated
16 Mr. Perkins, that you were shut down at one point and I
17 didn't know whether that affects what your response would be
18 to this question, but I'd like to just hear from the
19 industry witnesses on this allegation.

20 MR. PERKINS: We were never ---

21 COMMISSIONER KOPLAN: Specific to the secondary
22 market now. Secondary --

23 MR. PERKINS: We were never completely shut down.
24 We shut furnaces down in Selma, but at the same time we had
25 furnaces operating in Niagara Falls so we were not down

1 completely, no, sir.

2 COMMISSIONER KOPLAN: What I'm trying to
3 understand is have you all had the opportunity to supply
4 this segment of the market but failed to do so? Either of
5 you.

6 MR. PERKINS: No, sir. Right now a very large
7 portion of my sales is to the secondary industry.

8 COMMISSIONER KOPLAN: I mean during the period of
9 investigation that we're looking at.

10 MR. PERKINS: I never refused to supply them, no
11 sir.

12 COMMISSIONER KOPLAN: Were you unable to supply
13 them?

14 MR. PERKINS: No, sir.

15 COMMISSIONER KOPLAN: What about you, Mr.
16 Boardwine?

17 MR. BOARDWINE: Typically a substantial part of
18 our volume is committed to the chemical industry and to the
19 secondary aluminum industry.

20 COMMISSIONER KOPLAN: And to the secondary.

21 MR. BOARDWINE: And to secondary aluminum.

22 When we did shut one furnace which reduced our
23 production by one-third, we closed that furnace in August of
24 2001. A major portion of that volume went to a customer that
25 had requested we meet a Russian, basically a low price from

1 the index. We chose not to do that because we'd have had to
2 take it as a loss. So we took less volume to maintain the
3 relationship, as I've testified, we took that at a loss but
4 we couldn't afford to take the whole volume.

5 So we could have supplied the industry but we
6 couldn't supply it at the price requested and the customer
7 did have available material he claimed at the price that --

8 COMMISSIONER KOPLAN: So you kept your foot in the
9 door.

10 MR. BOARDWINE: We kept our foot in the door in a
11 relationship that we'll have to rebuild as we go forward.

12 COMMISSIONER KOPLAN: And that was in 2001?

13 MR. BOARDWINE: That was in 2001, and then we
14 restarted that furnace in October of 2002 after the
15 temporary relief was put in place, and we are now
16 reestablishing relationships and a lot of it is with the
17 secondary industry.

18 COMMISSIONER KOPLAN: Thank you. That's very
19 helpful. I appreciate that.

20 Did you want to add something else, Mr. Perkins?

21 MR. PERKINS: Chairman Koplan, when we're selling
22 product obviously we're trying to get the highest price we
23 can get for it, and if that is in the primary industry
24 obviously that's where we would sell it. But we're not, in
25 the secondary industry you're dealing with some pricing

1 levels that typically the lower grades would fit. We're not
2 going to get into a situation very much like Mr. Boardwine
3 outlined that we're going to be selling below our cost.

4 If we have tonnage available and we can make some
5 money on it we'd certainly sell it to them.

6 COMMISSIONER KOPLAN: Thank you, Mr. Perkins.

7 Just one last thing. Given the commodity nature
8 of this product there have been suggestions that there's a
9 world price for silicon metal. What I'm trying to
10 understand is what's driving price here? Is it world price
11 that's the leader as far as what's happening in the domestic
12 market? How does world price affect all of this?

13 MR. BUTTON: Commissioner, did you want the
14 domestic industry to respond to that, or would you like an
15 economist take on it?

16 COMMISSIONER KOPLAN: Well, if you don't do a
17 thorough job I'll come back to them but you look like you're
18 ready.

19 MR. BUTTON: That's fine. Obviously both
20 domestically and internationally there are supply and demand
21 factors at work in here. Globally it's supply and demand
22 which will cause the prices to go up and down.

23 The issues here in this market are prices lower
24 than they otherwise would have been. Certainly in a time of
25 low demand, the weak demand side is going to compress prices

1 somewhat. But are they as low as they would otherwise be
2 but for import pressure? We're seeing a substantial supply
3 side pressure which is in the form of a major increase of
4 volume of the Russian material at a very low price. Such
5 that the international pressures that are out there perhaps
6 that are leading the Russians to come here may be in fact
7 perhaps that the demand globally for silicon metal is low
8 such that they have greater incentive to come to the United
9 States. Thus that increases the import supply here and
10 causes greater price depression for this industry.

11 There are import relief measures in place with
12 respect to silicon metal which provides some benefits and
13 provides some insulations from international excess supply
14 pressures. But there's nothing in place that can prevent
15 the Russian volumes, as we've said, that an annualized rate
16 would be last year at 54,000 tons which would be a
17 historically huge volume. There's nothing in place that
18 would prevent that from being sold at a low price, from
19 having a depressive effect.

20 COMMISSIONER KOPLAN: Mr. Perkins and Mr.
21 Boardwine, is there anything you'd like to add to that?

22 MR. BOARDWINE: No, sir.

23 MR. PERKINS: No, sir.

24 COMMISSIONER KOPLAN: I guess they fee you did a
25 complete job.

1 Thank you very much for your response. I have
2 nothing further.

3 Thank you, Madame Chairman.

4 VICE CHAIRMAN HILLMAN: Thank you.

5 I have just a couple of follow-ups on some of the
6 issues that we've touched on.

7 First, because it does involve BPI I would ask in
8 a post-hearing brief on this whole issue of whether or not
9 GE Silicones had access to adequate material or did or did
10 not purchase from the domestic industry, I wondered, Mr.
11 Kramer, in your post-hearing brief if you could respond
12 particularly to the allegations made on pages 48 to 53 of
13 the Dewey Ballantine brief. Again, it gets to this issue of
14 GE Silicones and its purchases of U.S. material.

15 MR. KRAMER: We'd be happy to do that.

16 VICE CHAIRMAN HILLMAN: I heard the general answer
17 that was perfectly fine in the open session, but I would
18 like an answer that addresses some of the issues that were
19 raised in a BPI fashion.

20 Secondly going back to the issue that I first
21 raised in my first round of questions which is this issue of
22 to what degree contracts are actually broken or prices are
23 really changed. Again, I'm struggling, given the very high
24 percentage of product that is sold by the domestic industry
25 on contract, I'm trying to make sure I really do have a good

1 sense of this notion of how binding the contracts are.

2 I'm going to read just a couple of sentences out
3 of our staff report because I'm not sure that they really
4 are telling me the same story that I heard in the testimony
5 that you gave in terms of your contracts and what has
6 happened, and I just would ask for you to respond to it.
7 And again, in a post-hearing if there is any particular
8 details about particular contracts that you think tell me
9 the right story, I would welcome that.

10 But we asked in our staff, we asked purchasers the
11 issue of the relationship between contract prices and spot
12 prices, but also this issue of the degree to which contracts
13 are binding. And specifically the staff report reads, "When
14 asked if prices vary within the duration of a contract in
15 response to changes in spot prices, 12 of 15 responding
16 purchasers stated no. When asked if any suppliers had
17 actually changed prices during the period in which a
18 contract with a meet or release clause was in place, five of
19 five responding purchasers said no."

20 I'm just hearing from, again from our staff report
21 and from our purchaser responses a general impression that
22 once they've made a contract with you they stick to it.

23 Now again, it relates to a different issue in this
24 meet or release. But again I would just ask as a follow-up
25 if there's anything further you want to put on the record in

1 terms of again, this notion of -- And again, I wouldn't harp
2 on it if contracts were not such a big way in which the
3 product is sold in the U.S. market.

4 MR. KRAMER: We'd be happy to respond to that.

5 VICE CHAIRMAN HILLMAN: Okay.

6 With that, I think I have no further questions.

7 Commissioner Miller?

8 COMMISSIONER MILLER: (No audible response)

9 VICE CHAIRMAN HILLMAN: Okay. Seeing that there
10 are no further questions from here I will turn to staff.
11 Does staff have any questions?

12 MR. McCLURE: Jim McClure, Office of
13 Investigations. Staff has no questions.

14 VICE CHAIRMAN HILLMAN: Okay. Mr. Stein, do
15 Respondents have any questions of this panel?

16 MR. STEIN: (No audible response)

17 VICE CHAIRMAN HILLMAN: Okay.

18 It may be a little bit early, but given that we
19 have a full panel for the afternoon session I think we will
20 take a lunch break. I will ask everyone to return at 12:45.
21 I would remind you that this room is not secure over the
22 lunch hour so if you have any BPI information you need to
23 take it with you.

24 We will resume at 12:45.

25 (Whereupon, at 11:39 a.m. the hearing was

1 recessed, to reconvene at 12:45 p.m. this same day,
2 Wednesday, February 5, 2003.)
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1 explain why there's no threat of injury. Then we can go
2 home.

3 I'll begin.

4 Perhaps the very most important point the
5 Commission should recognize when it's doing this
6 investigation, and one that the Petitioners really did not
7 come to grips with, and in fact I would urge the Commission
8 to read carefully Mr. Button's answer to Commissioner
9 Koplan's question on do the world supply and demand
10 conditions matter, he danced. He didn't really answer that
11 question. And the reason is that anybody who knows anything
12 about silicon metal knows that this is a commodity that is
13 produced all over the world, it is sold all over the world.
14 It is traded. The price in one country may be somewhat
15 higher or somewhat lower than prices in another country, but
16 those differentials remain.

17 Conditions in the U.S. market aren't as important
18 as what's happening in the entire world, and I think that
19 when you are looking at this the Commission in a number of
20 cases has recognized that where factors of worldwide supply
21 and demand factors, when the world price is going down that
22 is not to be necessarily attributed to subject imports.

23 Fair value imports have been vastly more important
24 than Russian imports in their effect on the domestic
25 industry and in fact fair value imports are the elephant in

1 the room that the Petitioners want the Commission to ignore.
2 this is the elephant in the room.

3 If you take a look at the relative volumes of fair
4 value imports and Russian imports over the period of
5 investigation, what you will find is that it is in this
6 commodity product which even the Petitioners agree, the only
7 reason you buy silicon metal from one vendor rather than
8 another vendor is price. Just look at those volumes and
9 figure out who it is that is moving the price.

10 The trend in U.S. silicon metal from Russia has
11 been down, and while fairly traded imports were going up.
12 The relative volume gains of fair value imports are not
13 surprising because despite the Petitioner's best effort to
14 ignore fair value imports, these imports have been
15 increasing steadily throughout the last decade while Russian
16 imports have not. You can see the dotted lines where the
17 actual imports and the solid line was the other.

18 Russian imports did not suppress prices. Rather
19 both Russian and fair value imports reflected world price
20 conditions as the next chart, which you will see more than
21 once, because it is the absolute crucial point.

22 Russian imports are smack dab in the middle of the
23 AUVs if you look at the two HTS categories. The staff
24 report puts them both together, and of course the low
25 silicon metal AUVs are lower so the staff report may make it

1 look like Russia is a little lower than it is.

2 But the fact is that all imports are sold at more
3 or less the same price. That import price is lower than the
4 domestic price, but what the domestic industry would have
5 you ignore is the fact that the fair value import price is
6 the same as the Russian import price, and the fair value
7 volume dwarfs Russian import volume.

8 I'd like Sandy Merber to talk a little bit about
9 why General Electric is here.

10 MR. MERBER: Good morning. My name is Sandy
11 Merber and I'm GE's counsel for international trade
12 regulation and sourcing. In that capacity I perform a
13 corporate staff function and work with all of the GE
14 businesses worldwide.

15 As my colleague Marcia Haynes will testify
16 shortly, if Russian suppliers were not in the market GE
17 could replace Russian silicon metal with fairly traded
18 imports at comparable or lower prices.

19 Why then has GE taken a leading role in opposing
20 the petition?

21 There are two reasons unrelated to pricing why GE
22 has a strong interest in maintaining a Russian supply source
23 of silicon metal. First, following the September 11th
24 attacks, GE adopted a company-wide security in crisis
25 management policy that requires each GE business to protect

1 its supply chain against disruption in the event of another
2 incident. The policy requires each business to identify its
3 mission-critical commodities and take measures to ensure
4 that a disruption in the manufacture or transportation of
5 those commodities will not cause GE to shut down our
6 manufacturing operations.

7 In the case of GE Silicones, silicon metal is such
8 a mission-critical commodity. It is important to the
9 business to keep Russia as a supplier to provide geographic
10 diversity in the supply chain as required by prudence and by
11 the corporate policy.

12 Second, while maintaining access to the Russian
13 market for silicon metal of course is important to the
14 Silicones business, that is not the only interest that GE
15 has in this matter. Deepening GE's commercial affiliation
16 with Russia by expanding and solidifying sourcing
17 relationships also has company-wide significance that goes
18 beyond a narrower interest in a specific commodity.

19 It has long been our experience that in order
20 fully to realize opportunities in export markets it is
21 important to participate broadly in the economies of those
22 markets including sourcing of goods and services.

23 GE currently participates in the Russian market in
24 a wide range of businesses ranging from leasing aircraft to
25 Russian airlines to supplying gas pipeline transmission

1 equipment and services, supplying medical equipment to
2 Russian hospitals. But Russia is a far greater potential
3 market for many GE businesses and the opportunities for the
4 most part are ahead of us.

5 Russia's enormous fleet of locomotives is aging
6 and in need of large-scale replacement and refurbishment.
7 Helping Russian utilities improve efficiencies and power
8 generation and transmission is a huge opportunity for our
9 power systems and industrial systems businesses. The
10 increasing pace of oil and gas exploration create
11 significant opportunities to supply compressors for
12 extraction of these resources and transmission through
13 existing and new pipelines, and the list of export
14 opportunities goes on and on.

15 In order most fully to participate in the Russian
16 economy as an exporter it is important that GE be able to
17 broaden the scope of its participation in the Russian market
18 in other roles including as a purchaser of goods and
19 services from Russian firms.

20 Participating in a market as a customer gives GE
21 an opportunity better to understand the market. More
22 importantly, where GE is able to form long-term stable
23 supply relationships with firms in a market, GE has an
24 opportunity to demonstrate the advantages of having GE in
25 the market more broadly as a seller as well as a buyer.

1 As an example, when a vendor becomes integrated
2 into GE's supply chain, GE maximizes the benefit of the
3 relationship both to GE and to the vendor by assimilating it
4 into GE's culture and business methods through such programs
5 as providing six sigma training to the supplier.

6 Six sigma is the quality program that GE has
7 adopted company-wide to improve its customer service,
8 product design and efficiency, and which has transformed the
9 way we do business.

10 Providing six sigma training of course benefits GE
11 by allowing it to participate in the benefits that flow from
12 increased efficiency and customer responsiveness on the part
13 of the supplier, but it also benefits the supplier in its
14 relationships with other customers including its local
15 customers. As the benefits of doing business with GE become
16 more widely known, the value of GE and its "at the customer
17 for the customer" six sigma program becomes an important
18 incentive to buy from GE. Similarly, opportunities to
19 demonstrate the value of other initiatives such as GE's
20 corporate leadership development program become significant
21 to potential customers.

22 An analogy between GE's commercial engagement in
23 the country and the relationships that allow the U.S.
24 government to conduct effective commercial advocacy programs
25 may be instructive. The United States government, primarily

1 through the Departments of Commerce and State but also
2 through many other departments and agencies, conduct an
3 active and effective program of commercial advocacy on
4 behalf of U.S. companies business interests abroad. Much of
5 that work is targeted at leveling the playing field for U.S.
6 businesses in markets that are not fully transparent. The
7 ability of the U.S. government to help its constituent
8 companies in a foreign market depends on the engagement of
9 the United States with the foreign government on a broad
10 range of issues -- political, as well as commercial.

11 The process works similarly for a company such as
12 GE and for many of the same reasons. Broad commercial
13 engagement in all aspects of an economy creates an
14 environment in which GE can employ its full enterprise-wide
15 programs to support exports of goods and services to that
16 economy.

17 Marcia Haynes will now explain why GE's purchases
18 of Russian imports have not injured the domestic industry
19 and why an affirmative determination will not aid the
20 domestic industry nor have a substantial impact on GE
21 Silicones' business.

22 GE is taking a leading role in opposing this
23 petition because we believe that an affirmative
24 determination would not aid domestic producers of silicon
25 metal, but would needlessly set back our efforts to

1 participate broadly in the Russian economy which are an
2 important company priority.

3 MS. HAYNES: Chairman Hillman, members of the
4 Commission, good afternoon. I'm Marcia Haynes, General
5 Manager of Global Sourcing for GE Silicones, a business unit
6 of GE, General Electric Company. I'm responsible for the
7 global purchasing of silicon metal that is the principal
8 input for the silicone product my company produces in the
9 USA, Japan and Europe.

10 My job is to purchase material from qualified
11 suppliers at the lowest possible price.

12 The chemical grade silicon metal we purchase as a
13 commodity produce. Once a company is qualified to supply
14 us, price is the principal determinant. Although we do
15 attempt to purchase from a variety of sources, company
16 policy prevents us from obtaining our supplies from a single
17 source.

18 Since September 11th, as Sandy mentioned, this has
19 become even more important. Company policy now dictates
20 that we maintain multiple, diverse suppliers, and
21 contingency plans for the supply of all mission-critical
22 materials. Silicon metal is a mission-critical material.

23 If we have to pay more for silicon now than our
24 competitors do, we will lose business, particularly in the
25 United States. As it is, our Asian and European affiliates

1 and competitors are able to purchase silicon metal for
2 somewhat lower prices than we can, putting tremendous
3 pressure on me to purchase this material at the lowest
4 possible price.

5 The premium among the countries Japan, USA and
6 Europe which remain constant throughout the period of
7 investigation. In short, we are not in a position to pay
8 more for silicon metals. We either purchase at a
9 competitive price or decrease production on our U.S.
10 facilities in favor of facilities abroad.

11 There are many suppliers both in the United States
12 and abroad that are qualified to sell silicon metal to us.
13 When the Department of Commerce made an affirmative
14 preliminary determination and Russia left the market, we
15 simply redirected our purchases to other qualified foreign
16 suppliers from Canada, Brazil and South Africa, all of whom
17 trade fairly in our market. We were able to meet all of our
18 needs for 2003 at prices that were lower than the prices we
19 paid for 2002 requirements.

20 If Russian prices were in fact the lowest prices
21 quoted in 2002 we would have been unable to replace Russian
22 imports at even lower prices.

23 I can tell you that the notion that Russian
24 imports have displaced domestic production or had a material
25 impact on prices in the United States is just flat wrong.

1 Silicon metal is a commodity that is manufactured
2 and traded around the world. It is not possible for prices
3 to vary significantly by country.

4 There's no such thing as a price leader in a
5 commodity business. Sellers want to get as much as they can
6 for their product, but there comes a time when the price is
7 so low that they will no longer sell. It is plain that not
8 just Russia, did during the last three years.

9 This is an important point. We buy every ounce of
10 domestic material that is offered to us at a competitive
11 price and would be delighted to buy more. Unfortunately one
12 domestic producer is unable to meet our product
13 qualifications and therefore cannot sell us. Another
14 domestic producer has refused to bid for our business at
15 competitive prices. And the one producer that will sell to
16 us offers the same tonnage each year and has never expressed
17 an interest in increasing its sales to us. We can only
18 assume that it limits itself to us in order not to be too
19 dependent on one customer.

20 In short, we have no prospect of increasing our
21 purchase of domestically produced silicon metal whether
22 Russian material is available or not.

23 Russian material when it is available to us
24 competed with other imported materials because that was all
25 that was available. We increased our purchases of imported

1 material again because that was all that was available at
2 competitive prices.

3 When I testified at the preliminary conference I
4 described in detail the options GE Silicones held in the
5 fall of 2001 for our 2002 requirements. I will not repeat
6 the detailed description of those options except to note
7 that Russian producers participated only in some auctions
8 and the ending price is nearly identical in the auctions
9 where they participated and those where they did not.

10 It is important to note that in those auctions
11 where Russians participated and won, there were other
12 imports lower than the domestic bid. This demonstrates that
13 Russian imports did not suppress or depress prices, but
14 rather competed with fairly traded imports and domestic
15 production for our business.

16 We did not repeat the auction experiment in 2002
17 for 2003 requirements because we wanted to maintain the
18 element of surprise in our negotiations. We believe that
19 changing our purchasing strategy is to our advantage.

20 We conducted traditional negotiations for our
21 business in 2003 and unlike the industry standard, we
22 started this process in June. Typically the industry starts
23 it at the end of the year.

24 We provided that information to the Commission in
25 our questionnaire response. It is highly confidential. But

1 I repeat what I said earlier, we had no difficulty replacing
2 Russian imports with other imports that are priced below
3 what we paid for Russian material.

4 I can state categorically that at least for us the
5 notion that Russia cost the domestic industry sales is
6 ludicrous. Petitioners may argue that our ability to
7 obtain material at a lower price after Russia left the
8 market is not representative and that prices in the United
9 States are increasing because Russia has left the market.

10 Spot prices may be firming, but if so this is
11 because prices are firming worldwide, not because of events
12 peculiar to the United States.

13 Now the Petitioners told you about prices
14 increasing after Russia left the market. Let me give you a
15 slightly different perspective on some of the dynamics that
16 changed in the fourth quarter.

17 Short term electricity supply issues in Norway
18 took material out of the marketplace. One domestic producer
19 had operating difficulties in the fourth quarter. On top of
20 that the historical shutdown of Chinese plants in the fourth
21 quarter because of their hydroelectric power cycle also
22 drove inventories down.

23 The examples I've given demonstrate an important
24 condition of competition in the silicon metal market.
25 Prices are determined by world supply and demand conditions.

1 Prices throughout the world move in tandem. I
2 purchased silicon metals for consumption not only in the
3 United States but in Europe and Japan, and the relationship
4 between the prices I pay in these markets is extraordinarily
5 stable.

6 The absence of Russia from this market has not
7 changed and will not change this relationship. Given
8 current market conditions an antidumping duty order would
9 have the following effects. It would permanently deprive GE
10 Silicones of a valued supplier. It would shift business to
11 other foreign suppliers and would not help the U.S. industry
12 at all.

13 We can buy our requirements from Canada, Brazil or
14 South Africa at virtually the same prices as from Russia.
15 There is no sense in which our position is unique. This is
16 a global business with suppliers and competitors around the
17 world.

18 With regard to the purchases of silicon metal
19 there is nothing special about GE Silicones. Our
20 competitors can purchase the same material at comparable
21 prices. Global competitiveness is a must for survival.

22 These are not good times for any of us. The
23 dollar has been unusually strong, hurting both our potential
24 domestic suppliers and us. Demand for our product is down.
25 One of our major competitors recently expanded off-shore,

1 further reducing the demand for U.S. produced silicon metal.

2 Russian imports took sales that otherwise would
3 have been made by fair value imports that simply did not
4 contribute to any harm being suffered by the domestic
5 producers.

6 I buy silicon metals for a living and I know for a
7 fact that a final antidumping duty order on Russian silicon
8 metal will not improve the lot of the domestic industry. If
9 the remedy will not help, then the injury was caused by
10 something else.

11 Thank you.

12 MR. NOELLERT: Vice Chairman Hillman, Commissioner
13 Miller, Commissioner Koplan, I'm William Noellert, an
14 economist with Dewey Ballantine. I will review for the
15 Commission why the volume and price trends in this industry
16 do not support an affirmative determination against silicon
17 metal imports from Russia.

18 Cumulative, Russian imports have averaged 23
19 percent of total U.S. silicon imports during the period of
20 investigation. The volume of fair value imports has far
21 exceeded the volume of Russian imports throughout this
22 period. Fair value imports have been in the range of three
23 to four times the volume of Russian imports each year.

24 Indeed, if Russian imports had remained at their
25 1999 level in 2002, total silicon metal imports would still

1 have increased by almost 40,000 tons. Thus the increase in
2 the volume of fair value imports over the period exceeds the
3 absolute level of Russian imports in any year during the
4 POI.

5 Thus it is not surprising that fair value imports
6 gained almost twice the market share as did Russian imports
7 over the period.

8 Fair value imports not only greatly exceeded
9 Russian imports during the period of investigation and
10 gained significantly more market share, but fair value
11 imports surged even more in the third and fourth quarters of
12 2002 when Russian imports were excluded from the market due
13 to very high preliminary duties.

14 Fair value imports have already replaced Russian
15 imports in the U.S. market. By November 2002 fair value
16 imports have already replaced Russian imports in the U.S.
17 market. By November 2002 fair value imports reached almost
18 16,000 tons, which we believe is the highest monthly total
19 ever.

20 To illustrate the magnitude of fair value imports
21 in the September to November time period since Russian
22 imports have left the market, we have annualized these three
23 months for the import volume and compared that level to the
24 previous nine years of total U.S. imports.

25 The current annual rate of imports since Russia

1 was excluded from the market exceeds any of these previous
2 nine years.

3 Now this next chart is similar to the previous one
4 except we've excluded Russian imports. These are just data
5 for fair value imports.

6 What it shows is that since 1993 the current
7 annual rate, that is the rate from September to November of
8 2002, exceeds any of those years by a large amount. Indeed
9 the largest next year was 2000 and the current annual rate
10 exceeds that by 40 percent.

11 Removing Russia from the market has not provided
12 any volume benefit to the domestic industry.

13 This next chart is one that Mike Stein went
14 through in his introduction. It emphasizes the point that
15 the long term trend of imports from Russia have been down,
16 while from fair value sources the trend has increased
17 significantly.

18 Based on this longer term perspective it is clear
19 that the volume of Russian imports have not increased at
20 all.

21 An analysis of the price information on the record
22 indicates that all imports, both fair value and Russian,
23 undersell the domestic product. This is shown in the chart
24 here comparing fair value import AUVs with the domestic
25 average selling prices over the period. The average unit

1 value of fairly traded imports has ranged from \$114 a ton to
2 \$161 a ton below the domestic average during the POI.

3 Removing Russian imports from the market will not
4 improve the relative price competitiveness of the domestic
5 industry with respect to import competition.

6 This data is confirmed by looking at the specific
7 product pricing data that purchasers provided the
8 Commission. It also shows that all imports, Russian and
9 fair value, undersell the domestic product.

10 In the secondary aluminum market, data for Russia
11 and South Africa are available. The average margin of
12 underselling for Russian imports was 4.2 percent, while the
13 average margin of underselling for South African imports was
14 5.6 percent.

15 In the chemical market segment we see the same
16 story. Data are available for Brazil, Canada, Russia and
17 South Africa. All countries generally undersell the
18 domestic product by similar average margins, from four to
19 seven percent. Thus it is clear that if Russian imports
20 were excluded from the market, fair value imports would take
21 the place of Russian imports at similar prices.

22 Mike Stein also showed you this chart earlier.
23 What we did here is we took the AUVs from each country and
24 ranked them every year over the POI and allocated the
25 volumes above and below the Russian AUV. What it shows you

1 is that for the high content silicon metal, that is the HTS
2 Category 6910, 32 percent of import volume had lower AUVs
3 than the Russian import volume and 54 percent of imports had
4 higher AUVs. For low content silicon metal, that is HTS
5 6950, 25 percent of the import volume had lower AUVs than
6 the Russian imports, while 35 percent had higher average
7 unit values.

8 All of the price and value data on the record
9 indicate that excluding Russian imports from the market will
10 not resolve the domestic industry's problems with lower
11 priced import competition.

12 The analysis of the volume and price data indicate
13 that the decline in the condition of the domestic industry
14 is not by reason of Russian imports. There is no
15 correlation between changes in domestic industry shipments
16 and changes in the volume of Russian imports. Domestic
17 shipments have been declining each year in the period of
18 investigation, regardless of whether Russian imports
19 increased or decreased. Domestic imports have been in a
20 downward cyclical trend due to declining demand and a loss
21 of international competitiveness because of the strong
22 dollar.

23 By the January to September 2002 period, fair
24 value imports had increased so much and domestic shipments
25 had fallen so far that fair value imports exceeded domestic

1 shipments and captured over 44 percent of the market.

2 Just as Russian imports can't be blamed for any
3 effects of fair value imports, Russian imports can't be
4 blamed for the injury caused by the sharp decline in demand
5 over the period of investigation.

6 Demand declined in all end use segments of the
7 silicon metal market. Primary aluminum production fell by
8 almost one-third from mid-2000 to early 2002, principally
9 from the shutdown of primary aluminum smelters in the
10 Pacific Northwest due to sharp increases in energy prices.

11 With respect to this market segment, primary
12 aluminum, we have argued in our brief that domestic
13 producers are generally sheltered from Russian competition,
14 yet this segment was not insulated from price declines over
15 the period of investigation and it's obvious that a major
16 factor in the price declines to primary aluminum producers
17 was the excess supply situation created by the significant
18 drop in demand in this sector.

19 Demand also declined in secondary aluminum.
20 Production is down 25 percent over the period of
21 investigation.

22 Demand in the chemical segment also fell due to
23 the decline in automobile production and the general
24 economic slowdown.

25 Silicon metal is a raw material that is widely

1 traded internationally. It is a textbook example of a
2 commodity. Both Petitioners and parties opposed to import
3 restrictions agree on this point. Because silicon metal is
4 widely traded internationally, prices in various world
5 markets track each other as this chart indicates.

6 Petitioners want the Commission to believe that
7 Russian imports are the reason that U.S. silicon metal
8 prices have declined. But silicon metal prices from all
9 sources have declined during this time period. Even if
10 Russian imports has not increased over the period of
11 investigation, U.S. prices would have declined as fair value
12 imports transmitted declining world prices to the U.S.
13 market.

14 Trends in world supply and demand for silicon
15 metal determine the world price of this commodity. U.S.
16 import prices are determined by these world prices and the
17 exchange value of the dollar. Imports are the transmission
18 vehicle that connect these world prices to the U.S. market.

19 Petitioners cannot drive a price wedge between
20 these world prices and domestic prices by trying to impose
21 duties on only 23 percent of U.S. imports. It is not
22 possible to keep U.S. prices substantially different from
23 world prices with an abundance of fair value imports.

24 U.S. import prices have been declining steadily
25 since 1996, over the same period that world prices shown in

1 the previous chart were declining.

2 The average unit value of silicon metal imports
3 has declined 30 percent.

4 Since 1996 the Feds real broad dollar index has
5 increased over 20 percent. The strengthening dollar was a
6 significant factor, pushing down world silicon metal prices
7 expressed in U.S. dollars and it made the United States an
8 attractive market for silicon metal exporters.

9 The recent weakening of the dollar, especially
10 against the Euro, will tend to increase world silicon metal
11 prices expressed in dollars.

12 This next chart illustrates the effect of the
13 strengthening dollar and silicon metal prices. This chart
14 is an index of European silicon metal spot prices. The red
15 line expresses this index in Deutschmarks per metric ton and
16 the blue line shows the same index expressed as dollars per
17 metric ton.

18 From 1996 until 2001 the Deutschmark index has
19 declined by 12 percent but the dollar index declined by just
20 over 39 percent. Thus the strengthening dollar over this
21 period exacerbated the world's silicon metal price declines
22 expressed in U.S. dollars making it an especially difficult
23 time for U.S. producers.

24 I want to return to this chart that shows the
25 market share gains for fair value imports and Russian

1 imports over the period.

2 Petitioners have argued that silicon metal is a
3 commodity product and that "competition among silicon metal
4 suppliers is fundamentally based on price."

5 We agree with this characterization of the market.
6 What this means, however, is that these market share trends
7 you see in this case would not be possible if Russian
8 imports were underselling both domestic producers and fair
9 value imports.

10 The fact that fair value imports gained almost
11 twice the market share of Russian imports is compelling
12 proof that Russian imports did not enjoy a price advantage
13 relative to fair value imports and that both Russian imports
14 and fair value imports did enjoy a price advantage relative
15 to domestic production.

16 Pat Magrath will now explain why there is no
17 threat of injury from Russian imports.

18 MR. MAGRATH: Good afternoon. I'm Pat Magrath,
19 Georgetown Economics Services representing SUAL Holdings and
20 ZAO Kremny. With me is Brad Hudgens, also of GES.

21 There is no real and eminent threat of injury to
22 the domestic by virtue of imports from Russia alone. Yes,
23 the U.S. producers, who are high cost producers of a material
24 that is the most abundant element on earth, save oxygen, may
25 face continued threat from the 29 or so different import

1 suppliers to their market, that are arrayed around the
2 world.

3 But it is impossible to maintain that one import
4 supplier of this same 29, who have exported to the U.S.
5 market since 1999, a great majority of whom undersell U.S.
6 producers on a regular basis, to be singled out as a real
7 and eminent threat. Proof that imports from Russia alone
8 can not rise to the threat level is readily seen in the
9 current environment. Russian imports are no longer present
10 in the U.S. market. There have been zero imports in the
11 last two months.

12 Testimony from GE, a major user of chemical grade
13 silicon, as well as other facts on the record from
14 metallurgical grade consumers, show that consumers have had
15 no troubles securing alternate suppliers during the crucial
16 4th quarter of 2002, when most contracts are negotiated and
17 at the same level, or even lower pricing.

18 The ease with which consumers have switched
19 illustrate our key points. First, that silicon is an
20 abundant globally produced commodity. Other import
21 suppliers, other low cost foreign capacity, as effortlessly
22 replaced Russia temporarily vacating this market.

23 Second, the temporary withdrawal of Russian supply
24 has not succeeded in transferring any market power to U.S.
25 producers, or for that matter, to any particular foreign

1 supplier who continue to have to meet world prices and
2 contract negotiations with buyers.

3 In rebuttal, petitioners will point to recent
4 press articles citing increase prices in the spot market as
5 they did also this morning. But even if these spot
6 increases have more than a mayflies half life, they will be
7 of little benefit to U.S. producers who have reported that
8 95 percent of their sales are on a contract basis.

9 As trade publications cited in our briefs state,
10 recent U.S. spot price increases are in tandem with similar
11 spot price increases in other major markets. These
12 increases across markets are not a coincidence, but expected
13 given the worldwide availability of this basic commodity.
14 They continue the remarkable congruence of the price chart
15 that Mr. Noellert showed you just now. And it's there
16 again.

17 Other threat factors upon scrutiny fell to support
18 an affirmative on threat as well. Imported inventories,
19 although they have increased, are already committed to
20 purchasers under contract 2002 and poise no threat of
21 negatively effecting market prices going forward. The
22 Commission is referred to testimony in the preliminary
23 investigation by Grantage Metals, the importer of silicon
24 from SUAL and ZAO Kremny and its need to maintain sufficient
25 inventory to service its existing contracts.

1 Petitioners note that Russian respondents report
2 on use capacity to produce silicon metal and that this could
3 be put to use and exported. In our brief, at exhibit G, we
4 have powered with data showing significant excess capacity
5 worldwide. As in world supply in general, as Mr. Noeller
6 has referred to, this potential tonnage, towards that of
7 Russia, as this charts shows, that excess tonnage shown here
8 by the way is only for that of the western world. It does
9 not include the worlds largest producer, China, and the
10 other CIS and East European producers.

11 In short and sadly for this industry, taking
12 Russia and only Russia out of the current U.S. market
13 environment will not make any difference to U.S. producers.
14 Only severe restrictions on all imports or preferably a boom
15 in the chemical and aluminum market sending demand into a
16 strong up cycle will increase prices to the point that will
17 return the higher cost domestic producers to profitability.

18 That concludes my presentation. Thank you.

19 VICE CHAIRMAN HILLMAN: Mr. Stein does that
20 concludes your entire panels presentation?

21 MR. STEIN: Yes it does actually.

22 VICE CHAIRMAN HILLMAN: Okay, I thank you very
23 much then. And I would like to thank these witnesses. It's
24 been extremely helpful to hear your testimony. We
25 appreciate all the information in the prehearing briefs as

1 well as what's been presented today.

2 If I could start, if I could turn to you Ms.
3 Haynes a little bit for some further explanations in terms
4 of the 2003 contracts that you mentioned. You say that you
5 started your negotiations in June. Just so I understand it,
6 for the record, when did you finish the negotiations?

7 MS. HAYNES: We finished in the 4th quarter.

8 VICE CHAIRMAN HILLMAN: In the 4th quarter?

9 MS. HAYNES: Yes, I just want explain the
10 significance of June. In June we had the conference
11 meeting. Semi-annual, bi-annual, conference in Norway. All
12 the suppliers were together at that time to give us an
13 opportunity to make sure that we started our negotiations
14 early. We did the same thing two years ago.

15 VICE CHAIRMAN HILLMAN: Okay, but you concluded
16 the negotiations during the 4th quarter of 2003.

17 MS. HAYNES: Yes.

18 VICE CHAIRMAN HILLMAN: And then tell me a little
19 about, you mentioned that you were able to achieve prices in
20 those 2003 contracts, that were below your 2002 prices.

21 MS. HAYNES: Absolutely.

22 VICE CHAIRMAN HILLMAN: Okay. And your contracts
23 are typically one year contracts?

24 MS HAYNES: Yes they are.

25 VICE CHAIRMAN HILLMAN: Do they have meet or

1 release clauses in them or other price adjusters in them?

2 MS. HAYNES: We do fix pricing and they do have
3 meet or release clauses in them, yes.

4 VICE CHAIRMAN HILLMAN: So they have a fixed
5 price, but how is it effected by a meet or release clause?

6 MS. HAYNES: If we get the opportunity to qualify
7 a new supplier, we're constantly qualifying new suppliers,
8 and market conditions change and they are able to come to us
9 with a lower price, we'll act on it. That's why we have the
10 meet or release clause.

11 VICE CHAIRMAN HILLMAN: And would you say of the
12 contracts that you've entered, how often have you adjusted
13 the price downward during the dependency of the one year
14 contract?

15 MS. HAYNES: In my time, in this job, we've never
16 adjusted our prices down.

17 VICE CHAIRMAN HILLMAN: So even though you have a
18 meet or release clause, you typically are leaving the prices
19 at what you negotiated them for for the entire year.

20 MS. HAYNES: Absolutely.

21 VICE CHAIRMAN HILLMAN: Okay.

22 MS. HAYNES: We just have that for flexibility.

23 VICE CHAIRMAN HILLMAN: Okay. And how would you
24 describe what's going on in spot prices for silicon in the
25 4th quarter of 2002.

1 MS HAYNES: I'm going to be quite honest with you,
2 Chairman Hillman. I really do not look at spot pricing. We
3 buy on a contract basis and most of the chemical buyers, buy
4 that way. Spot pricing is usually an aluminum game, or
5 secondary aluminum game, not us. I really don't pay a lot
6 of attention to spot pricing.

7 VICE CHAIRMAN HILLMAN: So you would say that spot
8 prices basically don't effect your contract prices.

9 MS. HAYNES: Not at all.

10 VICE CHAIRMAN HILLMAN: So when you are
11 negotiating these contracts, even during the period of that
12 negotiation, are you looking at all at what's going on in
13 the spot price market?

14 MS. HAYNES: When we look at what we should pay,
15 we're looking at cost of manufacture. We do a ton of
16 analysis on all profitability and what we need to be
17 profitable. That's were we start. And then we collect data
18 from across the globe. We look at the electricity cost and
19 then we talk about what we should pay and that's how we set
20 our targets.

21 VICE CHAIRMAN HILLMAN: Okay, so not necessarily
22 in relationship to -- are you following, for example this
23 metal markets index?

24 MS. HAYNES: No, I don't.

25 MR. STEIN: Can I break in for one second?

1 VICE CHAIRMAN HILLMAN: Sure.

2 MR. STEIN: I can verify that by the fact that we
3 had to subscribe to Ryan's notes because GE's silicon
4 didn't. So, this is corroboration. Sorry to take up the
5 time.

6 VICE CHAIRMAN HILLMAN: You mentioned, I'm trying
7 to understand, on the demand side, you mentioned declines in
8 demand and I think you sort of quickly commented on them.
9 But, I wondered if you can expand a little bit on the
10 factors that have led to the decline in demand for silicon
11 metal among the chemical producers. What would you forecast
12 going forward?

13 MS. HAYNES: When we look at the last couple of
14 years, certainly, our industry has been pretty flat. So,
15 what you have is a combination of our industry being flat,
16 plus manufacturing shift in Europe and to Asia. When you
17 look at the U.S. market, I mean, those are the two biggest
18 factors. And if we look at where we're going to be in the
19 future, if the economy goes, so do we.

20 VICE CHAIRMAN HILLMAN: Okay. So, you would say,
21 over the past couple of years, flat demand and then going
22 forward, it depends on the state of the economy.

23 MS. HAYNES: Absolutely.

24 VICE CHAIRMAN HILLMAN: But more geared to the
25 state of the U.S. economy than --

1 MS. HAYNES: Well, if we talk about the U.S.
2 market, certainly, the state of the U.S. economy.

3 VICE CHAIRMAN HILLMAN: Okay. I guess, Mr.
4 Merber, if I can turn to you a little bit, just to
5 understand this argument about the importance of access to
6 the Russian market. Two questions: one, just to make sure
7 I understand it, in terms of your needing to do business
8 with Russia, because you are also -- Russia is buying from
9 you and you are also selling to them. I mean, there's
10 purchasers and sellers selling on both sides. None of this
11 will involve any kind of counter trade. This is an issue of
12 money -- I mean, of access to currency.

13 MR. MERBER: No, no. It's not a currency issue;
14 it's a question of experience showing that where you're an
15 active participant in a market, that helps you to sell
16 products into that market. To understanding, I think -- the
17 example I used was something that we think is a very viable
18 part of doing business with GE, which is our training of our
19 customers and suppliers in some of our management
20 techniques. And to demonstrate that, you need inroads, and
21 being a purchaser in the market helps you establish those
22 connections with your suppliers that then spreads and helps
23 pull your export sales, as well.

24 VICE CHAIRMAN HILLMAN: Okay. I appreciate that.
25 I just wanted to make sure that it wasn't an issue about

1 literally the Russians not having funds, in essence.

2 MR. MERBER: No, no.

3 VICE CHAIRMAN HILLMAN: Okay. No, I just wanted
4 to understand it.

5 I guess, then, I need to go a little bit into -- I
6 don't know that I wanted to go into Gerald Metals, but a
7 little bit into this whole argument. Because, I have to
8 say, this is striking me as perhaps setting up this kind of
9 different test, in terms of how we should view Russia; how
10 we should view any case, in which there is a supplier, who
11 we could argue, Mr. Stein.

12 But, let's just say for purposes of argument that
13 I determined that the Russians, on the basis of this record,
14 that their volume is significant. Just say I decide this
15 many tons, 15 percent market share, you know, whatever the
16 number it is on its own, okay, that volume, let's just say
17 we argue this is significant. You're now suggesting to me,
18 at least I think, that there is somehow a different test,
19 because of the fact that the other product in the market is
20 non-subject product. In other words, I think you're reading
21 into Gerald Metals this notion that we have to look on a
22 sort of going forward basis of, in the absence of Russia
23 product, what would it do for the domestic industry. And
24 unless the domestic industry can prove today that they would
25 be aided by an order on Russia, that we are legally

1 precluded from putting an order in effect. I mean, that's
2 sort of how I'm reading your sense of Gerald Metals.

3 MR. STEIN: I don't think that I would extend
4 Gerald Metals to that point.

5 VICE CHAIRMAN HILLMAN: Well, I'm glad to hear
6 that.

7 MR. STEIN: I think that you're --

8 VICE CHAIRMAN HILLMAN: But, why don't you go
9 ahead, because I do think you are setting up a different
10 test, at least, and I'm reading, in a fact situation, which
11 we have a significant supplier on its own. We, also, have
12 significant non-subject imports. And, yet, as I hear you
13 saying it, you're, in essence, suggesting that we cannot
14 make an affirmative determination, because of the presence
15 of the non-subject imports.

16 MR. STEIN: I think you would have to say that --
17 you would have to find that we are wrong, as a matter of
18 fact, that non-subject imports would replace subject
19 imports. And if you did that, then I think it would be fair
20 to say that Gerald Metals would not be applicable.

21 But what Gerald Metals and Taiwan Semiconductor
22 stand for is something that I think the Commission actually
23 has taken into account in a number of cases, like menthol
24 from China and others, that the presence of fairly-traded
25 imports is and can be an extremely important condition of

1 competition; and that if the only effect of an order is to
2 transfer the imports from one foreign supplier to another
3 foreign supplier, then you cannot say that those imports
4 have caused injury. I think that all it's doing is --

5 VICE CHAIRMAN HILLMAN: That latter statement,
6 it's that second sentence that you just said, that if all
7 that's going to happen is volume is going to be transferred
8 from Russia to someone else, in other words, that we are
9 somehow then precluded from issuing an order, if you think
10 that's the case.

11 MR. STEIN: I think that it's both volume and
12 price. If the domestic industry is basically standing in
13 the shoes it was standing in before the order issued,
14 because the only thing that happened is the import supply
15 source changed, then it should be a negative determination.
16 And I think that's what Gerald Metals and Taiwan
17 Semiconductor stands for.

18 And if you look at Taiwan Semiconductor, it was
19 basically this case. The fair value imports were more or
20 less at the same level as fair value imports here. The
21 Taiwanese imports were more or less at the same value as the
22 Russian imports here. It was semiconductors, which like
23 silicon metal, is a commodity where world supply and demand
24 determines prices. And Commissioner Miller recognized this
25 at the outset and the court ultimately said she was right,

1 because the unfairly-traded imports really were not having
2 an effect. And I think what the court is saying to the
3 Commission is, where there are fairly-traded imports in the
4 market, you should look very closely at whether the order
5 is, in fact, going to have a practical effect. This is a
6 case where the order isn't.

7 VICE CHAIRMAN HILLMAN: All right.

8 MR. STEIN: I mean, I --

9 VICE CHAIRMAN HILLMAN: There's a significant
10 number of points that are available in what you've just
11 said, Mr. Stein.

12 MR. STEIN: Probably.

13 VICE CHAIRMAN HILLMAN: Given that the red light
14 has come on --

15 MR. STEIN: I'm sorry. And I'm sure we'll have
16 more time. I mean --

17 VICE CHAIRMAN HILLMAN: Given that the red light
18 is on, I will turn to Commissioner Miller. Thank you.

19 COMMISSIONER MILLER: Very tempting, but a careful
20 road I'll go down here for a minute, just a bit longer --

21 MR. STEIN: Okay.

22 COMMISSIONER MILLER: -- with apologies to Ms.
23 Haynes and Mr. Merber, if we divert here into the law. It's
24 been a while since I've read Taiwan Semiconductor. I've
25 read Gerald Metals and my decision on remand there more

1 recently.

2 What I'm having the biggest problem with in what
3 you're saying is that you seem to be saying that in an
4 original investigation, not a sunset, where I have to look
5 to the affect of an action, but in an original
6 investigation, that I'm supposed to look at the effect of
7 the antidumping order. And I guess, is that what you mean?
8 Can you point me to something in the law that tells me to
9 look at the future affect of an order, in deciding whether
10 or not to go affirmative or negative?

11 MR. WILNER: Mike, can I try it for a second?

12 COMMISSIONER MILLER: Mr. Wilner, please.

13 MR. STEIN: We, also, have the lawyer, who
14 litigated that. It's stupid for me to be --

15 (Laughter.)

16 MR. WILNER: Well, let me start first, and let me
17 first apologize. I've learned in this that I should sit
18 next to Mr. Stein and not behind him, because he is so
19 large.

20 COMMISSIONER MILLER: It's just a remarkable
21 assortment. We've begun the afternoon, to say this is truly
22 fascinating.

23 MR. WILNER: Let me start out by --

24 COMMISSIONER MILLER: Sure, go ahead, Mr. Wilner.

25 MR. WILNER: I think, in a sense, we've gotten a

1 bit off on the wrong foot. The test is, under the statute -
2 - and I don't think this needs to be a legalistic type
3 discussion -- the test under the statute is whether the
4 injury to the domestic industry is by reason of the subject
5 imports.

6 I think, in a case where you have -- regardless of
7 the volume of the subject imports, but when you have a
8 worldwide traded commodity product and there are several
9 other import sources available, the question you need to
10 look at, is the injury by reason of the subject import or
11 are other imports also causing it. For instance -- and then
12 I'll come back -- and Ms. Haynes's testimony, when she said,
13 in the GE auctions, yes, Russian won some of those bids;
14 but, in each case that Russia won, there were non-subject
15 imports priced in between that bid and the domestic. So, if
16 they hadn't have won, somebody else would have.

17 Now, I think in looking at the issue, the logical
18 issue is the injury by reason of the subject imports. One
19 piece of evidence that helps you determine that is if
20 subject imports weren't in the market, would the domestic
21 industry be better off. It's not that you look at that.
22 That's a piece of evidence that goes to the issue, is the
23 injury by reason of the subject imports. It's not a
24 different test. It's one of the methods you look as
25 evidence, to test that basic statutory issue.

1 And I think it's really a logical issue here. The
2 fact is, we almost had the case of oil here and we were
3 getting ready to be prepared to say, okay, let's say that
4 you have duties on imports from Saudi Arabia. Well, the
5 fact is, this is a globally-traded commodity. Even if you
6 kept Saudi imports out of this market, they'd go somewhere
7 else, and there are lots of other imports that are coming
8 in. And while there might be a very short term price, very
9 short term, they're going to equalize and it's not going to
10 matter. In this situation, where you have an abundance of
11 fairly-traded import sources of a globally-traded commodity,
12 it's not going to affect anything. And that's what I think
13 it's all about.

14 COMMISSIONER MILLER: All right. That
15 interpretation, I'm comfortable with. The part of the test
16 where you try to say, okay, what happens if you take the
17 subject imports out and the sort of effect oftentimes to
18 look at what's happened since the case was filed to do that,
19 I have problems with that test, because I think whenever you
20 have a case, you have an effect on the market and it's not
21 necessarily predictive of what would happen after the order.

22 MR. WILNER: It's just a case of evidence.

23 COMMISSIONER MILLER: Okay. Mr. Stein, that
24 interpretation I'm comfortable with.

25 MR. STEIN: Good.

1 COMMISSIONER MILLER: We'll forgive you. Mr.
2 Wilner is used to arguing this side.

3 MR. STEIN: Well, as you know, this is -- you
4 know, I'm playing out of position as it were and certainly
5 have no interest in establishing a test that Petitioners
6 can't meet. And that was never my intention.

7 COMMISSIONER MILLER: Good.

8 MR. STEIN: But, it is important to -- and as a
9 petitioner, we have often asked the Commission to look at
10 what happened in the market after the imports left, because
11 it is a way of testing what --

12 COMMISSIONER MILLER: Yes. And that, I'm saying,
13 I don't always agree with that, because I think you'll
14 always have an effect by virtue of taking those subject
15 imports out, in the course of an investigation -- or almost
16 always.

17 MR. STEIN: Right.

18 COMMISSIONER MILLER: Always is a strong
19 statement.

20 MR. STEIN: And I agree with that. But, where you
21 don't, doesn't that tell you something?

22 COMMISSIONER MILLER: Well --

23 MR. STEIN: And I think that's what --

24 COMMISSIONER MILLER: -- you have to look at the
25 facts.

1 MR. STEIN: And I really think that's what Gerald
2 Metals and Taiwan Semiconductor are saying. Gerald Metals
3 is easy. You switch from one trading company to another.

4 COMMISSIONER MILLER: That's the thing, it was 100
5 percent perfect substitutes, basically.

6 MR. STEIN: Taiwan Semiconductor basically says,
7 we didn't mean to confine Gerald Metals to that particular
8 factual situation. There, the Commission has an obligation
9 to explain why it is that they think that fair value imports
10 won't just simply replace the subject imports.

11 COMMISSIONER MILLER: Okay. I'll go back --

12 MR. STEIN: And you might want to go back and read
13 it. But, I do think that what the court is saying is that
14 this is -- that you should be, where the record would permit
15 you to make the inference, and the inference is that all
16 that will happen is fairly-traded imports will replace
17 unfairly-traded imports.

18 COMMISSIONER MILLER: Well, let me go to that
19 point, because, you know, I mean the industry the
20 petitioning companies chose to file their case against
21 imports from the country that they believed were causing
22 their injury, you know. That's what they chose. They could
23 have chosen to include more. I mean, Brazil is obviously
24 under order already, but there are other suppliers. They
25 could have done it more broadly. They chose to file against

1 the country that they perceived as causing their injury.
2 And, frankly, I don't want to really fault them on that. I
3 think they know that better than I do, okay.

4 MR. STEIN: Can I -- yes, please; I'm sorry.

5 COMMISSIONER MILLER: Well, you can respond to
6 that or I can --

7 MR. STEIN: I intend to.

8 COMMISSIONER MILLER: -- ask Ms. Haynes to talk
9 about that more from her industry perspective. But, I'm not
10 going to fault them for filing a case against the country
11 that they perceived to be posing the price problems for
12 them, because from what I've heard this morning and what
13 I've read of their brief, that's essentially their point.

14 MR. STEIN: Well, can I respond to that?

15 COMMISSIONER MILLER: Yes.

16 MR. STEIN: I would argue to you, and, again, as a
17 petitioner's lawyer, that if you could get margins against
18 the fairly-traded imports, that that is one possible reason
19 why the Petitioners did what they did. And, of course, that
20 is their asserted reason and I don't want to say that
21 they're lying or anything.

22 On the other hand, certainly, they are competent
23 counsel. And Canada, South Africa, there are a lot of
24 countries that you would look at and say -- you would file
25 against. And what we have here is a situation where, during

1 the Commerce period of investigation, the dollar was pretty
2 much at an all time high. And I do not believe that they
3 could possibly have gotten margins against any of these
4 countries. And if you look at the countries that at least
5 GE was importing from, they were all countries where the
6 dollar was extremely strong against the local currency.

7 COMMISSIONER MILLER: It hasn't prevented other
8 industries from getting margins against those countries,
9 though. Mr. Wilner is anxious to say something.

10 MR. STEIN: Yes. The next point I wanted to get
11 to is this is the last helicopter out of Saigon, because
12 Russia was about to get market economy status. And I can
13 promise you that there is no way on God's green earth,
14 because, believe me --

15 MR. WILNER: I wanted to say, I think what Mr.
16 Stein is saying is two things. The Petitioners choice to
17 bring a case against a country is not necessarily only
18 because they believed that is the one hurting them. There's
19 a whole mix of factors. And if they believe that, of
20 course, it's got to be tested by the actual data in the
21 record. But, it's a combination of issues: where can you
22 get margins; and, I think, with a strong dollar, it was very
23 difficult in the rest of the world.

24 And I will tell you the only reason margins were
25 found against Russia is because of the use, and this is the

1 last case a non-market economy methodology will be used
2 against Russia. If it hadn't been used, there would be no
3 margins in this case, and they fought very hard on that.

4 COMMISSIONER MILLER: You learn new things all the
5 time. I'll be back with you, Ms. Haynes, the next time
6 around. Thank you, very much.

7 VICE CHAIRMAN HILLMAN: Commissioner Koplan.

8 COMMISSIONER KOPLAN: So now you're leaving it up
9 to me; is that it? Let me try it this way, at page two of
10 your brief, you state, and I quote, "that Russian imports
11 have not had a volume effect, as they simply have displaced
12 other imports."

13 Normally, when that's the case, I find subject
14 imports increasing, as non-subject imports decline on a
15 rather parallel course. That trend is not present here. In
16 fact, during the period of investigation, both subject
17 imports and non-subject imports increased, both as to market
18 share and volume. I'm referring to Table C-1. How do you
19 explain the discrepancy that I see between your argument and
20 the actual numbers that I'm looking at in Table C?

21 MR. NOELLERT: I think what we are referring to
22 there is that given the obvious price disparities between
23 all import sources and the domestic product, that if sales
24 had not been made to Russia, they would not go to the
25 domestic industry, because their prices were too high. They

1 would have gone to other fair value imports. So, in that
2 sense, what we're saying is given the preponderance of
3 evidence on the record, that all imports were selling well
4 below the domestic product, that the competition was really
5 among the imports, and whether it was Russian or other
6 sources, they would get those sales, not the domestic
7 product, because their prices were just way too high.

8 COMMISSIONER KOPLAN: Let me come back, if I could
9 then, to our preliminary determination, and this is a direct
10 quote: "We found volume of subject imports from Russia to
11 be significant notwithstanding Respondent's argument that
12 the level of Russian imports during the 2000-2001 period
13 still remained below historically high levels. The three-
14 year period examined, the subject imports increased
15 significantly and, as noted, the proportion destined for the
16 chemical sector increased significantly, where the majority
17 of U.S. product competes grew substantially." That's in the
18 chemical segment.

19 Now, I note that these trends continued during the
20 nine month interim period in 2002. But, your pre-hearing
21 brief proceeds as though we never made that finding. What
22 am I missing that you're bringing up today that's new from
23 the finding that we made in our preliminary determination on
24 that point?

25 MR. WILNER: Commissioner Koplan, may I try to

1 answer that for a second?

2 COMMISSIONER KOPLAN: Certainly; sure.

3 MR. WILNER: I think we're bringing up nothing
4 new. Honestly, we're trying to look at a broader way to
5 look at it, honestly. There's no doubt, if you look just to
6 the technical three-year period of investigation, starting
7 with 1999, imports from Russia are up.

8 COMMISSIONER KOPLAN: Let me just stop you for one
9 second, if I could, and I apologize for this. I'm looking
10 at the three-year period and the interim period.

11 MR. WILNER: Yes.

12 COMMISSIONER KOPLAN: You're telling me that
13 beyond that, within the last two months, after that window
14 is closed, the Russians exited. But, I'm looking at the
15 period of investigation, including the interim period. They
16 were here.

17 MR. WILNER: Yes.

18 COMMISSIONER KOPLAN: And the trend is upward.

19 MR. WILNER: Yes.

20 COMMISSIONER KOPLAN: And they don't appear to be
21 displacing non-subjects. It looks like the Russians, who
22 are significant, and the non-subjects, who are significant,
23 combined are displacing domestic.

24 MR. WILNER: I agree.

25 COMMISSIONER KOPLAN: Okay.

1 MR. WILNER: Okay, I agree. And I think there's
2 another issue at work here. There is no doubt that Russian
3 imports from Russia were significant during the period of
4 investigation and during that limited period of
5 investigation, they increased.

6 COMMISSIONER KOPLAN: And were underselling the
7 domestics.

8 MR. WILNER: And were underselling the domestics.

9 COMMISSIONER KOPLAN: Okay.

10 MR. WILNER: I agree.

11 COMMISSIONER KOPLAN: Having a significant effect.

12 MR. WILNER: No.

13 COMMISSIONER KOPLAN: Not having a significant
14 effect?

15 MR. WILNER: No, not having a significant --
16 that's where we --

17 COMMISSIONER KOPLAN: All right, I thought I could
18 bring you the rest of the way.

19 MR. WILNER: No, no. And that's where we
20 disagree.

21 COMMISSIONER KOPLAN: Okay.

22 MR. WILNER: And I think that's where -- let me
23 just make a few points and then I'll turn it over.

24 COMMISSIONER KOPLAN: Sure.

25 MR. WILNER: First of all, I think it is important

1 when you look at the three-year period of investigation,
2 that you should put it in the context of the other charts
3 we've shown. If you go back to 1993, Russian imports are
4 not up; they're down. And let me just say, I think this is
5 significant. It's an important factor at work. The
6 Petitioner said, oh, well, sure, they were higher in volume
7 before, but, my goodness, they were at higher prices before
8 and now, they're selling at lower prices.

9 Well, that's the first trigger, the first red
10 flag. Why would Russian imports be selling at lower prices,
11 in order to sell lower volumes than they did before? You
12 normally don't sell lower prices to decrease your volumes.
13 Clearly, the first indication is, and you can look at the
14 worldwide price chart, earlier, when Russian volumes were
15 up, their prices were higher and so were world prices. All
16 that's happened is Russia has followed world prices.

17 World prices and import prices were below domestic
18 prices. The dollar was strong, domestic share of the market
19 dropped to imports. Now, here is why there is no effect to
20 Russia. This the key issue of this case, I think. You've
21 got to say, then, okay, was the injury by reason of this
22 share of the Russian share, because they've only filed a
23 case against Russia. They've ignored the rest of the
24 imports. And the impact is not by reason of Russia, because
25 in each of the cases, where Russia not the seller, one of

1 the other imports would be.

2 Ms. Haynes' auction is a great example of that.
3 As she pointed out, when we bought from Russia, there was
4 another import source available between the prices. So, was
5 the injury by reason of the Russia imports? The domestics
6 would have lost the share anyway. The last two months
7 merely is evidence to show, yes, that's so; look what's
8 happened when they're out of the market. The other imports
9 go up and the domestics don't.

10 So, it's that causal link that I disagree with.

11 COMMISSIONER KOPLAN: But, I'm sitting here and
12 I'm saying to myself, how many times have I seen a case come
13 in against a certain number of countries, sometimes rooked,
14 because standing alone, those countries might be negligible.
15 And we go to conclusion on that case and then, lo and
16 behold, in comes another one on the same product and the
17 rest of the countries are tossed in, okay. And I guess I
18 don't read Gerald Metals as though it's on all fours with
19 the situation we have here. We've talked about that a bit
20 this morning.

21 So, I hear what you're saying, but I'm not there.

22 MR. STEIN: Well, Commissioner Koplan, let me --

23 MR. WILNER: I can't ask a question. But, if it
24 is true in fact, that in these sales made to the Russians,
25 that if the sales have not been made to the Russians, they

1 would have been made to another source, and if it is, in
2 fact, true, that if Russia is out of the market, that the
3 domestics won't benefit in terms of price or volume, then if
4 those facts are true, isn't the logical conclusion true,
5 that the injury is not by reason of Russian imports?

6 And let me just say, this isn't like every other
7 case. We're talking about a case of a worldwide commodity
8 product abundantly available in the market. And in those
9 cases, you can't just take one out of the others.

10 COMMISSIONER KOPLAN: Let me say this: I'm
11 listening to what you're saying, but I'm also taking into
12 account the testimony I've heard from Mr. Merber and Ms.
13 Haynes. And Mr. Merber has said that one of the reasons
14 that they're purchasing from the Russians, to also get a
15 foothold in the Russian market with regard to other segments
16 that they want to do business in. And I'm asking myself,
17 oh, if they want to do that, then isn't that an incentive to
18 bring in Russian product, perhaps it's coming in at dumped
19 prices, in order for them to expand other segments of their
20 business to get that foothold in overseas.

21 Then, I heard Ms. Haynes's testimony, when she
22 characterized silicon metal as a mission critical material
23 for GE. And I'm asking myself, well, now, if that's so,
24 given the uncertainty of their being able to get products
25 from overseas in the event of a worldwide crisis, why

1 wouldn't she be seeking -- why wouldn't Silicones be seeking
2 to qualify and purchase more domestic product?

3 And when I put it all together, I'm guess I'm just
4 not on the same page.

5 MS. HAYNES: Can I --

6 COMMISSIONER KOPLAN: I see my yellow light is on;
7 but, sure, Ms. Haynes, you're welcome to --

8 MS. HAYNES: Can I answer that question on the
9 mission critical, because this is really --

10 COMMISSIONER KOPLAN: Sure.

11 MS. HAYNES: -- this is absolutely really
12 critical. You can have as much disruption in the U.S.
13 market. You can have a plant that explodes somewhere. You
14 can have tracks that bring back material to us go down. And
15 so, it's really important that we get material every single
16 place that we can, to every shipping lane, you know, from
17 every state, if we can. It's really critical.

18 MR. STEIN: Commissioner Koplan, before the red
19 light goes on, I'd like to -- I think there's something
20 that's very important in what you said, that I'd like to try
21 to correct, as to why Mr. --

22 COMMISSIONER KOPLAN: Something I said wrong?

23 MR. STEIN: No, no, no, something that we didn't
24 make clear.

25 COMMISSIONER KOPLAN: Okay.

1 MR. STEIN: GE Silicones bought from Russia,
2 because it liked the price and volume. Mr. Merber was
3 trying to explain why GE is here, why GE decided to defend
4 this case, which is different. It wasn't as though GE went
5 out and said, oh, we've got to find something from Russia to
6 buy, let's buy silicon, and brought it in. The question
7 before the house was, here is this case; we're going to lose
8 our access to Russian silicon metal; do we want to do
9 something about it. No, for commercial reasons; but, yes,
10 for corporate reasons.

11 COMMISSIONER KOPLAN: Are you telling me that if
12 GE didn't have its interest in having Russia as a customer,
13 that they'll still be here today?

14 MR. STEIN: What I'm saying is that GE is not here
15 because they think they're going to buy cheaper from Russia.
16 They're here because they want to keep Russia as a supplier;
17 that, in fact, GE was more than able to replace Russian
18 metal with fairly-trade metal.

19 COMMISSIONER KOPLAN: Thank you, and I appreciate
20 your indulging me, Madam Chairman.

21 VICE CHAIRMAN HILLMAN: I think I'm going to let
22 this sit for a just a second and go to just a couple of
23 factual or other questions. Ms. Haynes, if I could, can you
24 tell me what you think the affect was on the market for
25 silicon, when the orders came into place on Chinese and

1 Brazilian imports?

2 MS. HAYNES: I really -- I'm not an expert on the
3 orders that came in on Brazilian. They came in way before I
4 was even thinking about silicon metals. And they didn't
5 have an impact on our ability to get material from Brazil,
6 for example, who are importing from -- we are importing from
7 a supplier in Brazil.

8 VICE CHAIRMAN HILLMAN: Okay. Do you have a sense
9 of whether they had any impact on prices in the market?

10 MS. HAYNES: China is huge and so if China was in
11 the market, I suppose we would see the lower pricing we
12 talked about, the margin between, and the different
13 countries being different, but stable. And I think that,
14 potentially, you would see prices that are like our
15 affiliates in Japan and in Europe eventually.

16 VICE CHAIRMAN HILLMAN: Okay. Now, I know the EU
17 has proceedings involving a potential order on imports from
18 Russia into the European Union. Can you tell me what effect
19 you think that would have on the market, if the EU were to
20 place an order on Russian imports?

21 MS. HAYNES: I really have no input on that; I
22 really have no input on that.

23 VICE CHAIRMAN HILLMAN: If I can, I guess, then go
24 back to, I think it was you, Mr. Wilner, who said that the
25 question becomes, is the domestic industry better off

1 without imports from X country. I mean, that, at the end of
2 the day, in this kind of a case, is what it comes down to.
3 And, yet, I'm sitting here posing that question to myself.
4 And we've heard the domestic industry this morning testify
5 that, in their view, the answer to that question is, yes,
6 once the Russians came out of the market in September,
7 prices have improved and improved enough that their
8 contracts going forward for 2003, their contracts are
9 reflecting these price increases. Now, obviously, Ms.
10 Haynes is not telling us that her contracts are reflecting a
11 price increase; but, they're telling us that theirs are.

12 So, if at the end of the day, that's the test, in
13 your view, whether we can agree or not agree on whether
14 Gerald Metals suggests this is even an appropriate test, but
15 even if we do, I just want to make sure I understand it,
16 that you would say that the answer to that question, is the
17 domestic industry better off without Russian imports in the
18 market, you're suggesting that the answer is, no?

19 MR. WILNER: I am saying, absolutely, and I'm sure
20 Mr. Stein will agree with me. We always seem to come
21 together on the truth. But, yes, I am saying the answer is,
22 no. I think the test is, was the injury they're suffering
23 by reason of the subject imports; and then there's a threat
24 issue, would they -- do the subjects pose imminent threat.

25 And let me say, there's an inclination that we

1 would all have to say, if somebody brings a case against
2 somebody, they must think they'd be better off, so why else
3 would they bring it? But, I think that's got to be tested
4 by the data. Everybody tends to scapegoat certain problems.
5 I really don't think they were able to bring cases against
6 the fairly-trade imports here, which are abundant in the
7 market. So, we need to look, would they be better off.

8 I see nothing on the -- the only evidence that
9 we've seen seems to prove, with Russia out of the market, in
10 fact, it proves they are not better off. The Russian sales
11 were replaced by sales of other imports. They put on today,
12 for the first time, a chart, which, frankly, none of them
13 could explain what it really is. I mean, that was amazing
14 to me. What is this chart you put on from Metals Week?
15 Some said it was imports. Others said it was distributors'
16 prices in the market. The only evidence we've seen is that
17 there has been certainly no effect making the domestic
18 industry better off because of Russia in the market.

19 And let me just say something. As Ms. Haynes said
20 also, and I'm sure Michael will expand, there is some
21 indication of prices firming around the world in silicon
22 metal. That's not a result of anything of Russia being
23 outside the U.S. market. It's a result of certain factors
24 in the worldwide market, a problem in Norway, somewhere
25 else, where worldwide spot prices might be firming up. But,

1 (a), we've seen no evidence of it.

2 It's a basic condition. If you have a worldwide
3 condition that takes worldwide supply off the market, then
4 worldwide prices will rise. If you take Russia out of the
5 U.S. market, you're not going to have any effect on prices
6 here. Other imports fill that gap. Maybe this is an
7 appropriate 201 case, but it's not an appropriate case
8 against Russia alone. I'm sorry, Mike.

9 MR. STEIN: Can I make two points?

10 VICE CHAIRMAN HILLMAN: Sure.

11 MR. STEIN: The first is we, a number of months
12 ago, requested that you issue a supplemental questionnaire
13 to get precisely this information. We put it on the record
14 for General Electric, which is the only people that I can do
15 this for, and asked you to collect this information, and we
16 still hope you will because everything we know and annual
17 contracts suggests that, in fact, prices have not improved
18 substantially.

19 At the preliminary investigation, Mr. Appleby from
20 Greenwich Metals, who was a principal importer of Russian
21 material, testified. I called him to see whether he would
22 come to the final, and he said, Thanks, but no thanks. I'm
23 buying fair-value imports now. He had no difficulty at all
24 replacing Russian imports and no longer had an interest in
25 the case. And, in fact, you don't see any buyers of

1 aluminum here because every time I tried to find somebody,
2 they said, We don't care.

3 MR. MAGRATH: Sorry, Mike. Go ahead.

4 MR. STEIN: So I think that we will, obviously, in
5 the post-hearing brief, we'll take a look at price trends
6 around the world and see if they are matching what the spot
7 prices are, but, again, as Ms. Haynes said, 90-plus percent
8 of this market is contract, and we don't think that buyers
9 have any trouble at all in replacing Russian imports.

10 I would like to make one other point, which is the
11 value of the dollar is very, very important in this
12 industry. As Mr. Noellert noted when he noted what happened
13 to the price of silicon metal in Deutschmarks and the price
14 of silicon metal in dollars. I note that for the first time
15 in a number of years the Euro is trading higher than the
16 dollar at the moment. There is no doubt that dollar-
17 denominated prices of silicon metal are likely to rise as a
18 result of the fall of the dollar, and I would not want the
19 Commission to attribute to the preliminary Commerce order
20 effects that were caused by other causes.

21 I would finally say that what happened after the
22 prelim. went on is basically a laboratory experiment that
23 either will prove or disprove the other information on the
24 record. Commissioner Miller earlier said, Well, gee, when
25 prices go up, yeah, sure the order is going to have some

1 effect. I'm used to that. So prices go up. Maybe it's not
2 everything, but when prices don't go up, that is the dog
3 that didn't bark in the night. That really tells you
4 something. I hope you go out and get that information.

5 VICE CHAIRMAN HILLMAN: But we do have at least
6 clear testimony from witnesses this morning that prices did
7 go up in the fourth quarter of 2000.

8 MR. STEIN: Right. And that is record evidence --

9 VICE CHAIRMAN HILLMAN: I'm going to go back to
10 Mr. Magrath.

11 MR. MAGRATH: Thank you. I'll be brief. I think
12 that the Petitioners this morning were careful to say that
13 their offers were going up in hopes that they would get
14 those higher offers, and their evidence of actual price
15 increases on their contracts were rather stingy. We have
16 submitted in the prehearing brief, and we will submit in the
17 post-hearing brief, along with GE, evidence from major
18 purchasers that stipulates that their prices have not gone
19 up, and they have had no problem getting material from
20 alternate suppliers.

21 And, finally, Commissioner Hillman, you were quite
22 right to question Petitioners about their evidence, which
23 was spot prices, versus their actual sales, which is 95
24 percent contract and which the purchasers say there is a
25 very loose connection, if any, between spot prices and

1 contract prices. Thank you.

2 VICE CHAIRMAN HILLMAN: Okay. And I see the red
3 light has come on already. Commissioner Miller, I will turn
4 to you.

5 COMMISSIONER MILLER: I was just reading your own
6 submission of Ryan's Notes, parsing the words very
7 carefully, understanding Ms. Haynes doesn't use it. The
8 headline on the section I'm reading is "Silicon Metal Prices
9 Up across the Board," and the first paragraph is talking
10 about U.S. offers being 63 cents, you know. This is all
11 public. Right? Ryan's Notes is public. It specifically
12 references GE Silicones. It says you're being unrealistic,
13 Ms. Haynes. You're a good negotiator, obviously.

14 MR. NOELLERT: Commissioner Miller.

15 COMMISSIONER MILLER: Yes, Mr. Noellert?

16 MR. NOELLERT: The current issue of Ryan's Notes,
17 February 3rd, which we didn't have in our prehearing brief,
18 but we'll put in our post-hearing brief, talks about an
19 auction that Globe just had on the Internet for 600 tons of
20 silicon metal, and they put it up with a minimum price of 57
21 cents a pound, and the bids they received ranged from 48
22 cents a pound to 56 cents a pound. So I think we have to
23 distinguish between what are offer prices and what are
24 transaction prices because it's not clear to me that there
25 is a lot of business being transacted at these offer prices

1 that are floating around.

2 COMMISSIONER MILLER: And reading this carefully,
3 I recognize that, you know, it specifically says no new
4 business was confirmed at higher levels, and I wouldn't be
5 surprised to have someone tell me, well, everybody is
6 waiting. I've heard that before. So --

7 MS. HAYNES: Commissioner Miller, I just have one,
8 as you mentioned GE Silicones --

9 COMMISSIONER MILLER: Sure.

10 MS. HAYNES: -- in Ryan's Notes, what you need to
11 understand is that GE Silicones doesn't talk to Ryan's
12 Notes.

13 COMMISSIONER MILLER: No.

14 MS. HAYNES: So any information in there would not
15 be factual.

16 COMMISSIONER MILLER: I recognize what this is,
17 you know. I know it's market intelligence that everybody
18 but you reads, but, you know, it is what it is, you know,
19 and we always like to see outside sources.

20 Let me come back to you, Ms. Haynes -- there are
21 other things I want to do as well, to ask you -- how long
22 did you say you've been purchasing silicon metal?

23 MS. HAYNES: Three years.

24 COMMISSIONER MILLER: Two years?

25 MS. HAYNES: Three years.

1 COMMISSIONER MILLER: Three years. Okay. I was
2 curious, and I'll ask you the question anyway. Perhaps
3 you're familiar from history. You heard, perhaps, my
4 question to Petitioners earlier about what change in Russian
5 behavior did they see. You all have made the point on the
6 history, and they claim that in the past Russian prices have
7 not been as low as they became in the 2000 -- in the period
8 that we're looking at.

9 MS. HAYNES: Right. If I look at the period since
10 I've been in the job, Russian prices have just moved with
11 world prices, so we didn't see any significant drop in their
12 prices. There were no anomalies. It wasn't like one
13 shipment was lower. It's just constant, if we had an annual
14 price, that's the price you saw throughout the year.

15 COMMISSIONER MILLER: Can you compare South Africa
16 as a supplier? Same thing.

17 MS. HAYNES: Same way.

18 COMMISSIONER MILLER: They are all basically --
19 again, it's back to your point of, you know, world market,
20 world price.

21 MS. HAYNES: Absolutely, absolutely.

22 COMMISSIONER MILLER: And, you know, a couple of
23 you have made comments about, well, this is different; this
24 is a world commodity. It's not different. We have so many
25 cases here that are world -- that particular scenario I've

1 heard many times before. You put it into your own materials
2 a couple of times. It was in your brief, and I think Mr.
3 Noellert referenced it in, you know, one of his exhibits.
4 Imports are the vehicle by which world prices come into the
5 U.S. market. Whatever the world price, imports are how they
6 get here. So I just don't think that's that different from
7 many other cases we see, is really my --

8 MR. STEIN: Commissioner, could I suggest what the
9 main difference is? It's rare that a petitioner would leave
10 out in a world commodity price case so many fair-value
11 imports. That is, I think, that is what makes this case
12 unusual. They say, boy, Russian imports moved so
13 dramatically. They were a fifth of imports at the beginning
14 of the period of investigation. They were a fourth of
15 imports at the end of the period of investigation. That is
16 not --

17 COMMISSIONER MILLER: Is that significant?

18 MR. STEIN: I would say it's not terribly
19 significant, given the fact that there were a lot more a
20 little while earlier. They bump around because they compete
21 against other imports. And I will tell you what the main
22 difference is during the period of investigation. The main
23 difference is GE qualified Russia.

24 COMMISSIONER MILLER: Okay. Well, that actually
25 is going to take me back to Ms. Haynes in a minute, but, Mr.

1 Wilner, you were jumping up there, so let me give you a
2 chance to --

3 MR. WILNER: I wish I didn't jump up so much. I
4 wish I didn't do that.

5 COMMISSIONER MILLER: You're a little too far to
6 kick.

7 MR. WILNER: You know, the thing is, now that I'm
8 older, I really should not act that way, but I just can't --
9 but, anyway, I think the point you made is really the
10 essential point, and, Commissioner Koplan, I think it goes
11 to your point, too. Imports are the vehicle by which world
12 prices move into the U.S. market. The point here is, in
13 this case, with the world commodity and with the abundance
14 of fairly traded imports, those world prices are going to
15 move into the U.S. market without Russian imports there, and
16 it's not only that there is an abundance of fairly traded
17 imports to move the world price into the U.S. market, but
18 they are imminently expandable, as all the documentation
19 showed. You drop down Russian imports; fair-value imports
20 increase.

21 So the world price comes here. The only way to
22 protect the domestic industry from this worldwide price of
23 this commodity is really broad import relief that covers
24 those other sources available in the market, or, as Bill
25 said, a tremendous increase in demand. But that's the key

1 that differentiates this case from most, I think. That's
2 why I was jumping up and down.

3 COMMISSIONER MILLER: Maybe you can write in the
4 petition for them. I don't know, Mr. Wilner. But, Ms.
5 Haynes, can we come back to the certification issue?

6 MS. HAYNES: The qualification?

7 COMMISSIONER MILLER: The qualification issue.

8 MS. HAYNES: Okay.

9 COMMISSIONER MILLER: Tell me more about how that
10 works, when Russia became qualified, and why they became
11 qualified.

12 MS. HAYNES: First of all, whenever you have
13 multiple sources, you have competition, and for a long time
14 we were extremely dependent on the U.S. market and started a
15 program before I came into this job to get multiple folks
16 qualified, be it Brazil and South Africa, some European
17 suppliers. So today, globally, we have about eight
18 suppliers qualified, and we continue to qualify more
19 suppliers every year. And Russia was one of those folks
20 that got qualified. They had material available to them.

21 We do a very extensive kind of due diligence on
22 suppliers. We look at their facilities. We try to
23 understand their costs. We understand if they are in it for
24 the long term, and Russia is one of those folks that showed
25 they are in it for the long term. As late as last year, I

1 think I was there, and when I look at plants, I can tell you
2 that when I compare, Russia probably has the second best
3 plant anywhere in the world. The best, in my estimation, is
4 in Canada. Anywhere in the world. You know, they approach
5 it as serious business. They are a viable source.

6 COMMISSIONER MILLER: How long does that
7 qualification process take?

8 MS. HAYNES: The qualification process used to
9 take a lot longer before six sigma. It probably took two
10 years, two and a half years sometimes. Today, with our use
11 of the quality tools of Six Sigma tools, it takes us about a
12 year to do a qualification.

13 COMMISSIONER MILLER: I'm going to ask you to
14 explain what you just said. What did you call it?

15 MS. HAYNES: Six sigma quality tools. Sandy
16 talked about it. It's just a methodology, a statistical
17 process that we use to look at data, to evaluate data. We
18 look at the supplier capability long before we even put the
19 material into our reactors because if material fails in our
20 reactors, which happened in the past, then it is a huge,
21 huge investment in repair costs for us. So now we're able
22 to look at that ahead of qualification of a material, and
23 that has shortened the cycle significantly.

24 COMMISSIONER MILLER: Okay. The yellow light is
25 on. I have a couple of things to clean up with, but I'll

1 stop at this point. Thank you.

2 VICE CHAIRMAN HILLMAN: Commissioner Koplan?

3 COMMISSIONER KOPLAN: Thank you, Madam Chairman.

4 Mr. Stein, let me come back to our preliminary determination
5 on a different subject, and I'm quoting again. This is
6 footnote 47 on page 8 of our prelim. "Respondents testified
7 at the conference that Russian producers are excluded from a
8 significant segment of the U.S. primary aluminum market
9 because no Russian producer is qualified to manufacture low-
10 iron metal that's less than 0.35 percent iron due to the
11 composition of quartzite deposits in Russia. However, the
12 record indicates that except for those applications that
13 require low-iron grades of silicon, the various grades of
14 silicon metal produced in Russia are of sufficient variety
15 and purity that the Russian material is competitive in
16 virtually all U.S. markets and applications.

17 And you mentioned this argument again in your
18 prehearing brief. What I'm wondering is whether you have
19 significant specific examples of applications that required
20 low-iron grades of silicon during the period of
21 investigation. In other words, can you document or quantify
22 any such examples?

23 MR. STEIN: I'd leave it to the Russian sellers --
24 are better than I at this.

25 MR. WILNER: Let me just say, we will check to see

1 if we can do that in the post-conference brief. May I just
2 make a point, though, and I don't think it's business
3 proprietary? If you examine, there are virtually no sales
4 of Russian aluminum in the primary aluminum market,
5 virtually none. So the proof is in the data. It's just not
6 in that market. My company, Brastk Aluminum, is not
7 qualified at all for any primary aluminum supplier.

8 MR. WAITE: Commissioner Koplan, Fred Waite from
9 Holland & Knight on behalf of the other Russian producers.

10 COMMISSIONER KOPLAN: Welcome.

11 MR. WAITE: Thank you. It's been interesting.
12 Our clients have sold through trading companies to some of
13 the primary aluminum producers but very limited quantities,
14 and at the staff conference in this investigation the
15 trading company that at that time had an exclusive
16 arrangement with our clients for marketing silicon metal in
17 the United States to the primary and secondary aluminum
18 industries testified that one of the major primary aluminum
19 producers -- I'm not sure whether he named the company, so I
20 won't now, but we will in our post-hearing submission -- put
21 a tender out for a very substantial quantity, millions of
22 pounds, of silicon metal, of which more than 75 percent had
23 to qualify as low-iron content, which meant that our clients
24 were unable to participate in that part of the business.
25 There was a 25 percent segment, however, that was marginal

1 for our client; and, therefore, he was able to participate
2 in that segment of the business, although he did not receive
3 all of that business from the primary aluminum producer in
4 question.

5 COMMISSIONER KOPLAN: Thank you very much. I
6 appreciate your response. At this time, I don't have
7 anything further. Thank you, Madam Chairman.

8 VICE CHAIRMAN HILLMAN: Thank you. Ms. Haynes, if
9 I could just finish on this issue of qualification, because
10 I'm not sure I did understand in response to Commissioner
11 Miller. When did GE Silicones qualify Russia?

12 MS. HAYNES: In 1999.

13 VICE CHAIRMAN HILLMAN: In 1999, which means,
14 then, your first purchases from Russia would have been after
15 that qualification, --

16 MS. HAYNES: Yes.

17 VICE CHAIRMAN HILLMAN: -- presumably, so in 2000?

18 MS. HAYNES: I think we do buy material while
19 we're qualifying, so some purchases would have been made in
20 1999.

21 VICE CHAIRMAN HILLMAN: Okay. And you say you
22 have some eight other sources.

23 MS. HAYNES: Absolutely.

24 VICE CHAIRMAN HILLMAN: Okay. All right. That's
25 helpful. Typically, now for all of them there would be this

1 approximate one-year qualification period.

2 MS. HAYNES: Yes.

3 VICE CHAIRMAN HILLMAN: Okay. All right. That's
4 helpful. Thank you. I guess, a couple of questions going
5 to a couple of things that have been said. You've talked
6 about looking at the level of Russian imports, and your data
7 showed it going back a fair number of years. I heard Mr.
8 Wilner state that he thought we should take that into
9 account as a condition of competition, but I just wanted to
10 make sure you were not suggesting that we should be looking
11 outside the POI.

12 MR. STEIN: That is correct. We are not expecting
13 to change the period of investigation, but we do think you
14 should look at it as exactly that and look at it in its
15 historical context.

16 VICE CHAIRMAN HILLMAN: Okay. All right. Fair
17 enough. I guess, another question. You've, in essence,
18 indicated that anything that may or may not have been lost
19 in the domestic industry would simply have been taken over
20 by other nonsubject suppliers. I guess, Ms. Haynes, if I
21 could go to you on this issue of how the auctions work
22 because, you know, on the one hand, I understand the point
23 you're making in terms of what the prices would have come
24 out in the absence of the Russians, but if I just think
25 about how an auction works, obviously the mere admission of

1 a bid below a price, in essence, drives down the price that
2 it's going to take to win the bid. So I'm having trouble
3 understanding how if the Russians were participating at all
4 and bidding under whatever was the prevailing bid at that
5 moment -- the price is, whatever, a dollar, and then they
6 come in at 98, and then somebody else has to come in below
7 that -- I'm having trouble understanding the argument that
8 they simply did not have any effect on the auction itself or
9 on the results. If they participated at all, presumably
10 they would have driven the price down, to some extent, even
11 if they were not the winning bidder.

12 MS. HAYNES: I would think that anybody
13 participating would have had that same effect, really.

14 VICE CHAIRMAN HILLMAN: Okay. I can accept that.
15 That's a lot easier to accept than the notion that anybody
16 participating has some effect, rather than trying to suggest
17 that the Russians had no effect if they were not the winning
18 bidders.

19 MR. STEIN: They weren't in some of the auctions.

20 MS. HAYNES: They weren't in some of the auctions.
21 That's true.

22 MR. STEIN: And, therefore, if they had an effect,
23 you would expect the auctions in which they participated to
24 wind up with a lower price than the auctions where they
25 didn't, and that's what you don't see. That's why we think

1 it's a laboratory experiment, the result of which helps us.

2 VICE CHAIRMAN HILLMAN: Mr. Stein, I'm sorry. I'm
3 told there is a problem for just a minute, technical
4 difficulties with the recording, and since we want a
5 complete transcript, let's hang on just one moment. We'll
6 just take a momentary recess.

7 (Whereupon, at 2:29 p.m., a brief recess was
8 taken.)

9 VICE CHAIRMAN HILLMAN: We are ready. My
10 apologies to everyone in the room for the delay. I will
11 say, in my almost four and a half years here, this is
12 unprecedented, so I'm sorry. I'm told that they think they
13 did catch all of the transcript. We're hoping we don't have
14 an infamous, 18-minute break or any other minute break in
15 our tape. So with that, I apologize for the delay, and, Mr.
16 Stein, you were going to add something in response to a
17 question about this issue of what the Russian participation
18 in these auctions --

19 MR. STEIN: -- auctions means.

20 MS. HAYNES: I just want to make a really
21 important point on the auctions. We set the start price.
22 The suppliers don't. And so when we look at what it should
23 cost us to manufacture our product, we decided that we at
24 least have to get this price to continue to be competitive.

25 The other important point is the Russians

1 participated, and in those auctions where they participated
2 the results were similar to those auctions that they didn't,
3 and one of the Petitioners here opted not even to look at
4 the start price, not even to act on the start price, so they
5 weren't impacted by the Russians; they were impacted by our
6 start price. I just want to make sure that we understand
7 that.

8 VICE CHAIRMAN HILLMAN: All right. I would ask,
9 Mr. Stein -- I don't want to go into it in the sense of
10 whether it contains BPI information, but obviously in the
11 Petitioners' brief, on pages 31 to 33, they commented on
12 this issue of the three auctions and what overlaps or lack
13 thereof there may have been. I wondered if, in your post-
14 hearing brief, if you could just comment on their response
15 to this issue of the auction and the impact of the Russians'
16 participation.

17 MR. STEIN: Of course.

18 VICE CHAIRMAN HILLMAN: Okay. I appreciate that.
19 And with that, I have no further questions. I will turn to
20 Commissioner Miller.

21 COMMISSIONER MILLER: I just have a couple of
22 mostly requests for post-hearing. One -- Mr. Noellert, I
23 apologize for creating work, but this table, the graph, that
24 you supplied, in the summary, and it's at page 21 --

25 MR. NOELLERT: We'll supply all of the backup

1 tables on how we got that.

2 COMMISSIONER MILLER: Well, basically, what I
3 would like to see, this merges all of the period of
4 investigation together in each. Can you do it, or have you
5 done it on an annual basis?

6 MR. NOELLERT: Yes, yes.

7 COMMISSIONER MILLER: Okay. That's what I would
8 like to see.

9 MR. NOELLERT: Okay. Fine.

10 COMMISSIONER MILLER: Thank you. And then in your
11 exhibits to your brief, Exhibits D, G, and M contain
12 confidential exhibits, and even the name is bracketed, so I
13 won't say what it is, you gave us just partial, a page or
14 two out of each of these different exhibits, and if we're
15 going to see a page or two, I think it's only fair to give
16 us the full document that's contained there. Okay? So if
17 you could submit for your post-hearing submissions, and I'm
18 going to keep my fingers crossed that I haven't just asked
19 for a truckload of information -- if I have, so be it, and
20 with that, I have no further questions. I appreciate all of
21 your answers today. It's been a very interesting
22 discussion. Thank you.

23 VICE CHAIRMAN HILLMAN: Commissioner Koplan?

24 COMMISSIONER KOPLAN: Thank you, Madam Chairman.
25 Just as a follow-up to Commissioner Hillman's request, this

1 morning I asked the Petitioners to look at your Exhibit J
2 and compare that with what they had on pages 31 to 34. If
3 you could weave in your Exhibit J to your response when you
4 comment on that segment of their brief, I would appreciate
5 that as well.

6 MR. STEIN: Yes, of course.

7 COMMISSIONER KOPLAN: Thank you. I have nothing
8 further. Thank you very much.

9 VICE CHAIRMAN HILLMAN: Okay. Seeing that there
10 are no further questions from here, do staff have questions
11 of this panel?

12 MR. McCLURE: Jim McClure, Office of
13 Investigations. The staff has no questions.

14 VICE CHAIRMAN HILLMAN: Mr. Kramer, do Petitioners
15 have questions of this panel?

16 MR. KRAMER: We have no questions.

17 VICE CHAIRMAN HILLMAN: Okay. Seeing that that is
18 the case, we can then dismiss this panel with your thanks.
19 We appreciate very much your testimony. Just so that you
20 know the time allocations, at this point Petitioners have 15
21 minutes for rebuttal and five minutes for closing, for a
22 total of 20 minutes. Respondents have 19 minutes for
23 rebuttal and five minutes for closing, for a total of 24
24 minutes.

25 So, again, I thank this panel, and we will now

1 move to rebuttal and closing.

2 (Pause.)

3 VICE CHAIRMAN HILLMAN: Mr. Kramer, you may
4 proceed.

5 MR. KRAMER: We'll begin with a few rebuttal
6 points that Dr. Button will make.

7 MR. BUTTON: Thank you. I'm Ken Button from
8 Economic Consulting Services. A few points. First, the low
9 prices we've been discussing forced the U.S. producers to
10 cut and to close capacity. It is a fact that the U.S.
11 entries thus could not fill a portion of the market share
12 that it previously had. Nonsubject imports increased during
13 that period when the U.S. production capacity was curtailed.

14 We've been discussing a lot about why the
15 nonsubject imports increased, but as to their prices, can an
16 antidumping order be effective in this type of commodity
17 market? Well, yes. An antidumping order can be effective,
18 as shown by the Brazilians, having relatively high prices,
19 far higher than the Russians.

20 You will note that Brazil had the largest
21 nonsubject market share during the January-September 2002
22 period, but despite the commodity nature of this product,
23 the partial void left by U.S. producers closing capacity in
24 the market shares, the Brazilians were able, in the January-
25 September 2002 period, to sell, based on the staff report's

1 data, at 65 cents per pound compared to the Russians in that
2 same period selling at 46 cents a pound, a 19 cents
3 difference. In other words, the Brazilians were 40 percent
4 higher than the Russians. This is hardly something that was
5 caused by foreign exchange issues. This is a more
6 complicated market than the Respondents have suggested.

7 After the Department of Commerce prelim.,
8 important things happened. First, the U.S. industry
9 reopened capacity. They started furnaces. They started
10 producing. Secondly, they increased their actual contract-
11 confirmed sales volumes at higher prices than in the past.
12 Thus, this increased volume didn't go to the nonsubject
13 imports. This particular volume went to the domestic
14 industry.

15 With respect to threat, but for the preliminary
16 relief, if one annualizes the rate of increase of the
17 Russian material in the January-September 2002 period, the
18 annualized volume goes to 54,000 tons, which is greater than
19 the volume at any time from 1995 to the present, according
20 to the Respondents' Exhibit Number 15. The volume was very
21 much increasing. That concludes my remarks.

22 MR. KRAMER: I'm going to try and reduce this all
23 to very simple terms. We've had a lot of discussion about
24 the legal standard that should be applied, and it seems to
25 me the two parts to what the Commission has to address are

1 this question that's been raised about the legal standard,
2 and then there is the question about what the record
3 evidence shows.

4 With respect to the legal standard, which we will
5 address more fully in our post-hearing brief, our position
6 is that the statute prescribes the determination that the
7 Commission is required to make, whether the subject imports
8 are cause of material injury to the domestic industry or
9 threaten such injury, and it specifies the factors the
10 Commission is to consider in making that determination. Our
11 position is that there is no legal basis for the Commission
12 to issue a negative determination based on speculation that
13 when there is injury by reason of the imports that relief
14 would not benefit the domestic industry, and we don't think
15 that Gerald Metals stands for that proposition.

16 But I don't think that's really all that pivotal
17 in this case because, in essence, the Respondents' case
18 comes down to two points. They are saying, first, that the
19 subject imports did not play a causal role in injuring the
20 domestic industry, and, second, they are saying, therefore,
21 relief from the Russian imports will not have any effect,
22 will not benefit the domestic industry, and, further, they
23 are saying because relief won't have any effect, that
24 demonstrates point one, that the imports did not play a
25 causal role.

1 As I'm going to spell out more fully in my closing
2 statement, I think the Commission will find that the
3 evidence simply can't be squared with the assertion that the
4 Russian imports did not cause injury, nor will the evidence
5 support a conclusion that relief will not benefit the
6 domestic industry. The fact is they did cause injury, and
7 relief is currently benefitting and will further benefit the
8 domestic industry.

9 As part of the basis for the claim that that's not
10 true, the statement was made that where you have an
11 abundance of globally traded sources of product that relief
12 is not going to affect anything. Well, in this case, we
13 have prior antidumping actions brought with respect to
14 silicon metal in circumstances in which there were a
15 multitude of global sources, and what happened was a
16 dramatic benefit for the domestic industry in terms of
17 pricing, volume, the condition of the industry.
18 Furthermore, that benefit has not gone away. These regular
19 differences among markets that GE is referring to, there is
20 a consistent pattern in which the United States price is
21 higher, and that reflects the continued effectiveness of
22 antidumping relief with respect to the PRC and Brazil.

23 The record is clear that over the period of the
24 Commission's investigation, the dumped Russian imports
25 entered the U.S. market at very low and declining prices and

1 in large and increasing volumes. The Russian imports
2 pervasively undersold the domestic producers and the other
3 major import suppliers. In doing so, they drove down U.S.
4 market prices to very low levels that caused the domestic
5 producers to incur huge losses, shut down furnaces, and lay
6 off workers.

7 Contrary to the arguments you've heard today, the
8 Russian imports are not just one of equivalently priced and
9 otherwise indistinguishable sources of supply to the U.S.
10 market. The Russian imports entered at the lowest prices of
11 the major import suppliers. You can literally see the
12 Metals Week price and the average unit values for the other
13 major import suppliers being led downward by the Russian
14 imports over the period of investigation.

15 The difference between the Russian imports and the
16 other imports is particularly stark in 2001. In that year,
17 the dumped imports increased dramatically in volume, even
18 though demand was declining, while the other major import
19 suppliers lost volume and market share. Dumped imports
20 drove prices down in all of the principal market segments:
21 chemical, primary aluminum, and secondary aluminum. The
22 idea that the primary aluminum sector, in which the Russian
23 producers participate to a lesser degree, operates in some
24 kind of vacuum in which the domestic industry is sheltered
25 is pure fiction. As the Respondents acknowledged, the

1 prices of silicon metals sold to primary aluminum customers
2 steadily declined over the POI. That occurred because the
3 prices in the various market sectors are interrelated, as
4 the Commission has recognized.

5 In their prehearing brief, the Respondents state
6 that "a simple test for determining whether subject imports
7 have caused material injury is to take them out of the
8 market." The Russian imports have been taken out of the
9 market with the imposition of preliminary relief at the very
10 end of the Commission's period of investigation. The result
11 has been significant increases in U.S. market prices, the
12 return of idle domestic industry furnaces to operation, and
13 thus, higher revenues, production, sales, and employment for
14 the domestic industry.

15 The Respondents' attempt to argue that nothing
16 will or could improve because nonsubject imports have
17 increased after the exit of the Russian material from the
18 market will simply replace the Russian imports at the same
19 prices, leaving the domestic industry in no better position.
20 First, this argument is entirely speculative and focuses on
21 a period after the granting of preliminary relief at the end
22 of September 2002, outside the period of investigation.
23 More importantly, directly at odds with their speculation,
24 the facts now available already show significant improvement
25 in the form of higher prices and increased production and

1 sales for the domestic industry.

2 While the Respondents theorize that all of the
3 Russian volume will be replaced with equally low-priced
4 imports from other countries, in fact, the domestic industry
5 has brought furnaces back on line, increased sales, and
6 taken a portion of the former Russian market share. In
7 addition, the imports that have increased, which are
8 primarily from Brazil, are entering the U.S. at higher unit
9 values than the Russian imports that did so much damage
10 during the POI.

11 Another flaw in the Respondents' speculation that
12 nothing will improve when, in fact, improvement is
13 constructing is that they attempt to extrapolate too much
14 based on the alleged post-POI purchasing activity of one
15 customer, GE Silicones. As we will explain more fully in
16 our post-hearing brief, the claims made with respect to this
17 company's alleged post-POI purchases are unsupported and, we
18 believe, inaccurate. They have this information; we do not
19 have the information about their purchases. But the first
20 point is that the data in their brief do not support the
21 claim that they are making in the brief and at the hearing
22 regarding having met all of the requirements with lower
23 priced material. The data in the brief do not support that.

24 Press reports indicate that they are having
25 difficulty meeting all of their requirements at the prices

1 they are willing to pay, and industry intelligence indicates
2 they haven't met all of their requirements. I don't know
3 what the truth is with respect to that, but I do know that
4 they have testified today that they had completed all of
5 their negotiations at the end of the fourth quarter, 2002,
6 and their own submission in their prehearing brief directly
7 contradicts that. If they had completed them, they should
8 have provided the Commission with complete information about
9 the sources and the pricing of all of this supposed
10 replacement supply.

11 For all of the reasons we have laid out today and
12 in our prehearing brief, this is a classic case of material
13 injury by reason of dumped imports. The domestic industry
14 is on its way to recovery with the benefit of preliminary
15 relief from the Russian imports, which is itself strong
16 evidence of causation. However, the U.S. industry remains
17 in a highly vulnerable condition, given the severe injury
18 caused by the dumped imports.

19 For this reason and the others explained today and
20 in our brief, the Russian imports present a very real and
21 imminent threat of further material injury. The industry
22 needs final relief. Absent such relief, the Russian imports
23 would again enter the U.S. market at very low prices and
24 enlarge volumes. The domestic industry would again be
25 severely injured. Some or all of the domestic producers

1 might not survive. Thank you.

2 VICE CHAIRMAN HILLMAN: Thank you. Rebuttal from
3 Respondents. You may proceed, Mr. Wilner.

4 MR. WILNER: Chairman Hillman, Commissioners, let
5 me just try to make a few points. First, let me just very
6 quickly address a prior dumping case. I don't know all of
7 the facts they have talked about, but I think it's important
8 to say that the prior dumping case against China, Brazil,
9 and formerly Argentina, China is the number one producer in
10 the world, by far the largest, and Brazil is either number
11 two or number three, depending on production in the United
12 States. Russia is not even in the top five, so it's a
13 different circumstance.

14 I think that the Petitioners' case really is
15 premised on a few myths. Number one, and they started out
16 this way, they said that Russian imports have increased
17 dramatically. As a matter of fact, one of the witnesses
18 said, beginning in 1999, there was an increase in Russian
19 imports. In fact, that's not so. During this period of
20 investigation, Russian imports are down. We don't deny that
21 they are a significant portion of the market, but they are,
22 in fact, down from previously. So it's odd to think that
23 this is an increasing surging. You could only see a surge
24 if you look within the period of investigation, and even
25 there, there is not a surge.

1 If you look at the beginning of the first interim
2 period of 2002, which was really the whole year 2002, as the
3 Petitioners said, Russia's imports were committed for
4 all of the sales. Those were their total imports for the
5 year. That's not a surge. They are clearly down from prior
6 years.

7 Second, they said, and they said it time and time
8 again, Russian imports are priced lower. Theoretically, if
9 Russian imports were, in fact, the low-priced product in the
10 market driving down the others, they might have a case, if
11 they were the driving force for imports in the market.
12 Indeed, Mr. Kramer, when you asked him to talk about Gerald
13 Metals, he said the reason Gerald Metals does not control
14 this case is because Russian imports were the low-priced
15 product in the market. That's a myth. They are not. As
16 Mike said, they are really priced smack dab in the middle of
17 the imports coming into the market. If they weren't there,
18 there would be other lower imports prices in the market
19 without them, so that's gone.

20 The third myth, they say prices have gone up when
21 and because Russian imports have left the market. Now, I'll
22 give you that the data on this is confusing. Here at the
23 hearing, the Petitioners put in a chart, which is confusing
24 what it represents, how it was compiled, or what it is. The
25 evidence on the record does not show a price increase,

1 although Ms. Haynes has said, and there is some indication
2 in some of the commentators, that prices have firmed up
3 worldwide. I do want to say, when you look at the
4 Petitioners' Exhibit 5, which is what they premise the price
5 increase on, even if it were true, and we don't believe it
6 is true -- as people said, it's just a spot market -- it may
7 be just the import prices coming into the market, but even
8 that chart contradicts their argument because it shows a
9 price increase occurring in the beginning of 2002 -- it
10 shows it later, too, but it shows at the beginning of 2002
11 when they say the largest volume of Russian imports was
12 coming into the market during the POI. So there would be no
13 correlation between the price increase and the decrease of
14 Russian imports. Quite the opposite: You would see the
15 price increase going concurrent with the increase in Russian
16 imports.

17 I think the important point is that really if
18 prices are firming, or if they are falling, the chart that
19 was in our presentation of worldwide prices showed that
20 worldwide prices move up or down together. There are small
21 differences, but they stay in tandem throughout the world.
22 That's why when Russian imports were much larger back in
23 1997, '98, '94, prices were higher, as they were in the
24 world, Russian volumes fell, and prices fell along with
25 worldwide prices.

1 Now, let me address -- I want to make a point to
2 Commissioner Koplan again and see if I can explain my theory
3 once more again. And I don't have the charts up there, but
4 there was a chart showing fairly traded imports, a bar
5 chart, and showing Russian imports. And I guess our
6 argument is that if you took out the Russian imports
7 altogether, you would just see the bar chart for fairly
8 traded imports going up, and, in fact, Ms. Haynes' example
9 is proof of that. What happened is her Russian imports
10 dropped to nothing, and the fairly traded imports just went
11 up. I guess that's what we're saying. That's the effect.
12 We say in that context it's evidence -- it's not the test,
13 it's not the standard, but it's evidence that, in fact,
14 injury is not by reason of imports from Russia.

15 Two more quick points, and this is something
16 that's intuitive. Why did the Petitioners file this case if
17 they are not right? Certainly, we expect to file a case
18 because they are injured, and we believe that they are
19 injured, and you would them also to know who is injuring
20 them perhaps. But the mere filing of a case cannot be
21 evidence that they are correct. We need to look at the
22 evidence and see whether the data shows that they are
23 correct, based on the legal and logical standards, whether
24 injury is by reason of the imports.

25 The last point I have is the one I tried to say in

1 response to the questions. Imports transmit the world price
2 into the U.S. market. Here, the abundant volume of fairly
3 traded imports transmit that price into the U.S. market. We
4 believe, honestly, to the extent that the domestics are
5 suffering injury by reason of imports, and they may be, the
6 domestics are injured by fairly traded imports. The price
7 of fairly traded imports is below their price. The volume
8 of fairly traded imports is abundant and fungible and has
9 increased to replace any Russian imports, so they are
10 suffering injury by reason of fairly traded imports and not
11 be reason of imports from Russia. That's all I have. Thank
12 you.

13 MR. WAITE: Madam Vice Chairman, Commissioner
14 Miller, Commissioner Koplman, I have just a few points to
15 make briefly with your indulgence. First, I would like to
16 reinforce Mr. Wilner's comments about the difference between
17 this case and the case that was discussed at some length,
18 both this morning and this afternoon, involving Argentina
19 and China and Brazil.

20 As Mr. Wilner pointed out, and as the Commission
21 stated in its determination, China is by far the world's
22 largest producer as well as the world's largest exporter of
23 silicon metal. The Commission estimated, based on responses
24 of only five of 42 Chinese producers, that their capacity
25 was somewhere between 250,000 and 400,000 tons. Those are

1 numbers that simply dwarf everyone else. Brazil, likewise,
2 is a very significant producer. As Mr. Wilner said, it's
3 either the second or third largest, depending on the period,
4 and, according to the Commission, it's the world's second
5 largest exporter.

6 So you're dealing with magnitudes here that are
7 very different from Russia, which is one of the pack. It's
8 probably much closer to Argentina -- well, it's certainly
9 much closer to Argentina than it is to China.

10 Secondly, Dr. Button extrapolated from interim-
11 period 2002 data that without this investigation, Russian
12 imports would have surged to over 50,000 tons in 2002.
13 That's not correct, and I believe even the Petitioners'
14 industry witnesses recognized that this morning. In fact,
15 the interim data for 2002, absent this investigation, would
16 have been the full-year data for 2002. As Mr. Perkins
17 noted, the Russian inventory that was reported in this
18 investigation in 2002 was committed material. That is as a
19 result of long-term contracts, which I think everyone
20 acknowledges dominates all of these markets -- chemical,
21 primary aluminum, and secondary aluminum. Contracts had
22 been signed. Commitments had been made in the fourth
23 quarter of 2001 before this case was filed.

24 As a result of this case, Russian producers, with
25 those commercial commitments and the sense of obligation and

1 responsibility and reliability to meet those commercial
2 commitments, ensured that the material would be here for
3 their customers, and when the case was filed, they concluded
4 that the worst-case scenario might be an affirmative
5 preliminary determination at the Commerce Department, so
6 they ensured that the material was here to meet those
7 commitments. That was not material that was brought in, put
8 in inventory, and overhanging the market. As Mr. Perkins
9 said, once again, the Russian inventory was committed
10 material to customers who had already signed contracts with
11 representatives of Russian suppliers.

12 Finally, it's with some trepidation that I would
13 like to address very briefly the instruction which Gerald
14 Metals and Taiwan Semiconductors might add to this case, and
15 I think I would like to address the concerns that I heard
16 expressed by all three commissioners this afternoon in their
17 colloquy with our panel. Please keep in mind that Gerald
18 Metals was not a case involving Russian versus Russian
19 imports. We filed Gerald Metals on behalf of the Ukrainian
20 producer, who was found to be entirely trading in the United
21 States by the Commerce Department at less than fair value.

22 What Gerald Metals found, what the Court of
23 Appeals found, was that there was fairly traded Russian
24 material that was interchangeable with unfairly traded
25 Russian and with Ukrainian product, and as a result of that

1 interchangeability and availability, the court found that
2 the causal nexus between any injury that might have been
3 caused by Ukrainian material had been severed by the fairly
4 traded Russian material. We will address that in more
5 detail in our post-hearing brief because I'm sure you would
6 prefer seeing it in writing than hearing it once more.
7 Thank you very much.

8 MR. STEIN: I would like to briefly address
9 Commissioner Koplan's observation that Russian imports went
10 up as well as fair-value imports going up, and doesn't this
11 show that it must be true that Russian imports were having
12 an effect? There is no doubt in my mind that imports have
13 caused injury to the domestic industry. The only question
14 is, did Russian imports, which are a very small portion of
15 total imports, themselves have a material effect on the
16 domestic industry?

17 I have no interest in making it easier for
18 Respondents in general to get out of cases. I'm here
19 because General Electric, actually, Mike Adbaugh, was giving
20 me a very hard time about why the heck is it that here is a
21 case where there is absolutely no effect on the U.S. market,
22 and yet we're going to be deprived of a supplier. I said to
23 him, well, if that's true, then you should win. And here I
24 am about to lose another case that I should win.

25 In the meanwhile, I will at least try to explain

1 why this is. Incidentally, it is very corrosive to have a
2 situation like this. General Electric has more or less
3 stayed out of the trade wars pretty much. You may decide
4 that Russia matters. Marcia Haynes knows it doesn't, and
5 that's what General Electric takes away. I recognize you're
6 going to decide this case on the record as it is, but we
7 think that record demonstrates, yes, imports have cause
8 injury, but if the Russian imports weren't there, imports
9 still would cause injury because nobody is going to pay more
10 than world price.

11 At lunch time, Sandy Merber said, This case
12 reminds me of the old joke about the guys who see a bear,
13 and one of them is quickly changing into his sneakers, and
14 the other guy says, "Well, you can't outrun the bear." He
15 says, "I don't have to outrun the bear. I only have to
16 outrun you."

17 As long as there are fair-value imports that are
18 offered at a price where they will take the business from
19 the domestic industry -- in fact, Russia isn't lower than
20 that. If Russia dragged down that price, then I think
21 Petitioners would be right. But the fact is, Russia can
22 jump up and down as hard as it can on the gunnels, and it is
23 not going to rock that boat. The price of this product is a
24 price that is determined by world supply and demand plus or
25 minus transport and other costs, and it may be that there is

1 a premium in the United States because of the China order.
2 I think that does cost a couple of cents a pound. China is,
3 you know, a very large beast in this particular jungle, but
4 Russia isn't. Russia is six percent of world production.

5 If Russia leaves, other people will come in. If
6 the dollar goes down, the price of silicon metal will go up.
7 If the dollar goes up, the price of silicon metal will go
8 down. It will go down. As the Petitioners said, there
9 comes a point where they won't sell anymore. I would argue
10 to you that as long as fair-value imports are below that
11 cutoff, that's it. I mean, at that point they do break the
12 chain of causation, and what you have on this record is a
13 demonstration that the price at which imports are offered,
14 they are all offered at just about the same price.

15 And where that's true, you're not in a position to
16 attribute the injury to Russian imports, and I go back to
17 Commissioner Miller's point. You said, Well, gee, we see
18 this all of the time. I don't think it's true that you see
19 this proportion between fairly traded imports and subject
20 imports. I think that's a highly unusual position. I think
21 it's unusual because the dollar was unusually strong, and I
22 think that if they could have brought the case against other
23 producers, they would have brought the case against other
24 producers. I think they knew they were losing their chance
25 at getting Russia because once Russia is a market economy,

1 they are not going to be dumping anymore. I think they
2 decided we want to get Russia under order; this is our last
3 chance to do it. When the dollar comes up, I fully expect
4 them to be back here if and when they find margins on the
5 fair-value imports.

6 But they made that choice. They made the choice
7 to go against only Russia. They have got to live with that
8 choice, and they really shouldn't on this record get an
9 affirmative determination. We've talked about the GE
10 auctions, and we've talked about what's happened since the
11 order extensively, and the reason isn't because we think
12 independently you have to look at it. The reason is because
13 we think -- basically, this is he said/she said. They are
14 saying, oh, boy, Russia has done it, and we're saying, no,
15 it's the fair-value imports.

16 How do you test who is right? One way to test is
17 to look at specific things to see what they tell you about
18 what people are saying. With respect to the GE auction, is
19 there any difference when Russia was in the auction and when
20 Russia wasn't in the auction? Can GE buy any more from
21 Americans? There are three American producers. One is not
22 qualified. One lost its qualification. GE will not buy
23 from them. The second would not sign a meet-or-release
24 clause. That alone takes them out. That has nothing to do
25 with Russian imports. The third sells at market to GE the

1 same amount every year. Again, did Russia have an effect?
2 Only if Russia drove the price down. Could Russia have
3 driven the price down? How is it that Russia is driving the
4 price down when the other imports increased twice as much as
5 the Russians did?

6 It's not possible. Any economist will tell you it
7 cannot happen. It cannot be true that the Russians are
8 driving the price in a commodity business where the other
9 people have increased more. The fact is, everybody is
10 selling at the same price. The domestic price is higher
11 than the import price. This really is a negative case.

12 Now that I've done my peroration, I'll screw it up
13 by noting one thing I did want to just mention. Brazil's
14 AUVs have been mentioned a number of times by the
15 Petitioners. There is APO information that explains exactly
16 why those AUVs are not represented, and we will address that
17 in our post-conference brief. But the fact is, look at the
18 AUVs. Look at the purchasers' questionnaire information,
19 that which is usable. Look at what's happened since the
20 order. We have asked you to go out and get this
21 information. It's getting kind of late in the day.

22 We've provided it. We've asked other companies to
23 provide it. We don't think it's going to show what the
24 domestic industry says it shows. The information that is
25 actually on the record that I'm aware of, there is some APL

1 stuff, but the GE stuff is consistent with that, and it
2 shows Russia left the market and plenty of imports. I
3 couldn't find anybody to come and testify. I said, Don't
4 you care? They said, No, we don't care. If they don't
5 care, there is a reason they don't care, and the reason is
6 that they know they are going to be buying at world price or
7 the U.S. equivalent of world price, and in those
8 circumstances this is not a case that justifies an
9 affirmative determination. Thank you.

10 VICE CHAIRMAN HILLMAN: Thank you. And I would
11 thank all parties. We very much appreciate your
12 participation in this hearing. Post-hearing briefs,
13 statements responsive to questions, and requests of the
14 Commission and corrections to the transcript must be filed
15 by February 12, 2003. Closing of the record and final
16 release of data to the parties will occur on February 28,
17 2003, and final comments are due by March 4, 2003. And with
18 that, this hearing is adjourned.

19 (Whereby, at 3:21 p.m., the hearing was
20 adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Silicon Metal from Russia
INVESTIGATION NO.: 731-TA-991 (Final)
HEARING DATE: February 5, 2003
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: February 5, 2003

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Contreica Dawson
Signature of Court Reporter