

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of: )  
)  
POLYETHYLENE TEREPHTHALATE ) Investigation Nos.:  
(PET) RESIN FROM INDIA, ) 701-TA-439-440 and  
INDONESIA, TAIWAN, AND ) 731-TA-1077-1080 (Final)  
THAILAND )

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Tuesday,  
 March 15, 2005

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

The hearing commenced, pursuant to notice, at  
 9:35 a.m. before the Commissioners of the United States  
 International Trade Commission, the Honorable STEPHEN  
 KOPLAN, Chairman, presiding.

## APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

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

APPEARANCES: (cont'd.)

Staff:

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION  
WILLIAM R. BISHOP, HEARINGS AND MEETINGS  
COORDINATOR  
SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT  
RUSSELL DUNCAN, INVESTIGATOR  
RAY CANTRELL, INDUSTRY ANALYST  
NANCY BRYAN, ECONOMIST  
DAVID BOYLAND, ACCOUNTANT/AUDITOR  
IRENE CHAN, ATTORNEY  
DIANE MAZUR, SUPERVISORY INVESTIGATOR

In Support of the Imposition of Countervailing and  
Antidumping Duties:

On behalf of The United States PET Resin Producers  
Coalition:

HANS KINNER, Business Director, Polyester Products  
North America, Voridian, a Division of Eastman  
Chemical Co.  
MICHAEL DEWSBURY, Vice President, PET Resins,  
Wellman, Inc.  
ROBERT TAYLOR, Business Operations Manager, PET  
Resins, Wellman, Inc.  
TOM SHERLOCK, Business Director, PET Resins, DAK  
Americas LLC  
RICKY LANE, Public Affairs, Trade Relations &  
Corporate Communications, DAK Americas, LLC  
CHRISTOPHER PETERSON, Assistant Section Manager,  
Nan Ya Plastics Corp. America  
MARK ADLAM, Americas Commercial Manager, M&G  
Polymers USA, LLC  
SUSAN MANNING, Economist, The CapAnalysis Group,  
LLC  
  
JULIANA M. COFRANCESCO, Esquire  
MICHAEL A. HERTZBERG, Esquire  
Howrey Simon Arnold & White, LLP  
Washington, D.C.

APPEARANCES: (Cont'd.)

In Opposition to the Imposition of Countervailing and  
Antidumping Duties:

On behalf of Reliance Industries, Ltd.:

BRUCE MALASHEVICH, President, Economic Consulting  
Services, LLC

SUSAN G. ESSERMAN, Esquire  
TINA POTUTO KIMBLE, Esquire  
DAVID S. LORELLO, Esquire  
ANDREA MACK, Esquire  
Steptoe & Johnson, LLP  
Washington, D.C.

On behalf of South Asia Petrochem, Ltd. (SAPL):

ALEXANDER W. SIERCK, Esquire  
Cameron & Hornbostel, LLP  
Washington, D.C.

On behalf of The PET Users Coalition:

DAN MULLOCK, Vice President, Purchasing, Constar  
International, Inc.  
DREW M. DAVIS, Vice President, Federal Affairs,  
American Beverage Association

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P R O C E E D I N G S

(9:35 a.m.)

CHAIRMAN KOPLAN: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation Nos. 701-TA-439-440 and 731-TA-1077-1080 (Final), involving Polyethylene Terephthalate Resin from India, Indonesia, Taiwan and Thailand.

The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of subsidized imports of PET resin from India and Thailand and less than fair value imports of PET resin from Indonesia, Taiwan and Thailand.

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

As all written material will be entered in full into the record, it need not be read to us at this time. All witnesses must be sworn in by the

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1 Secretary before presenting testimony. I understand  
2 the parties are aware of the time allocations. Any  
3 questions regarding the time allocations should be  
4 directed to the Secretary.

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

9 Madam Secretary, are there any preliminary  
10 matters?

11 MS. ABBOTT: No, Mr. Chairman.

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

14 MS. ABBOTT: Opening remarks on behalf of  
15 Petitioner will be by Michael A. Hertzberg, Howrey  
16 Simon Arnold & White.

17 CHAIRMAN KOPLAN: Good morning.

18 MR. HERTZBERG: Good morning, Mr. Chairman  
19 and members of the Commission.

20 The PET resin case before you today is the  
21 reason that the United States has antidumping and  
22 countervailing duty laws. In fact, this may be the  
23 first time the Commission has confronted a foreign  
24 producer that openly admits to selling below variable  
25 cost.



1                   The April 19, 2004, *Asian Chemical News*  
2                   quoted a spokesman for Futura Polymers as stating the  
3                   U.S. petitions were "a matter of concern" as they came  
4                   at a time when, again I quote, "the global PET cycle  
5                   is at a low and convergent margins on PTA and MEG  
6                   aggregates have fallen below variable costs for many  
7                   months."

8                   Futura is, of course, an Indian PET resin  
9                   producer that has a particularly close relationship  
10                  with Pepsi Cola. The ITC staff report actually  
11                  confirms this admission and in doing so also  
12                  irrefutably proves that Respondent claims that there  
13                  was no evidence of underselling and no proven lost  
14                  sales are simply delusional.

15                  Our first slide summarizes the public  
16                  version of Appendix D of the staff report as it  
17                  relates to water bottle resin or Product 1A in the  
18                  staff's analysis. It is important to note that water  
19                  bottle resin represents the fastest growing segment of  
20                  the U.S. PET resin market and is a bread and butter  
21                  product for the domestic industry, yet in this segment  
22                  in 2003 and 2004 subject imports undersold the  
23                  domestic producers in seven out of eight quarters  
24                  analyzed by the staff.

1           The margin of underselling was up to 12  
2           cents a pound and pretty much averaged 10 cents a  
3           pound throughout 2003. This was an enormous margin of  
4           underselling in this industry and should be related to  
5           what a penny a pound means to these American producers  
6           as they will testify later.

7           This was bad enough and had enormous adverse  
8           impact on the domestic industry, but the next slide  
9           really illustrates for you why relief in this case is  
10          absolutely essential. The staff findings make it  
11          clear that the average subject foreign producer sales  
12          to the United States of water bottle resin in 2003  
13          were below variable cost for these producers.

14          In fact, at the prices enabled by their  
15          unfair trading, the foreign producers barely covered  
16          their raw material prices alone. This was true in  
17          three out of four quarters in 2003. These sales were  
18          predatory in economic terms and have had a disastrous  
19          and pernicious effect on the domestic industry.

20          Predictably, Reliance suggests that you  
21          should not consider Appendix D in your analysis, but  
22          Appendix D tells you very clearly what has actually  
23          happened in this case. The subject foreign producers  
24          at large have transferred their significant financial  
25          losses caused by their failure to price in

1 relationship to cost to the U.S. market.

2 By aggressively selling here at prices that  
3 bear no relationship to their actual cost, the foreign  
4 producers in the subject countries have caused  
5 significant damage to the U.S. PET resin industry in  
6 the form of lost sales, lost revenues, lost market  
7 share, lost profits, serious price suppression and  
8 price depression and severe exacerbation of the  
9 cost/price squeeze facing the domestic industry.

10 When you consider what effect the subject  
11 imports have, it is critical that you carefully review  
12 pages 16 through 42 of our APO brief. In doing so,  
13 you should consider who is the involved customer, who  
14 was competing for the customer's business, what were  
15 the price levels from each supplier, who obtained the  
16 business and how shares of the business changed and  
17 whether unfair trade practices affected the outcome.

18 We are confident in the results your  
19 analysis will reveal. The facts of this case are  
20 clear and the record is compelling despite the fact  
21 that there is substantial underreporting by the  
22 parties in opposition.

23 In the absence of affirmative relief in  
24 these trade cases, there is no possibility that the  
25 U.S. PET resin industry can return to a reasonable

1 level of profitability necessary to support the  
2 continuing demand.

3 Are we coordinated with this clock now? No.  
4 I understand. I'm done. Thank you.

5 CHAIRMAN KOPLAN: Certainly. Thank you.

6 MS. ABBOTT: Opening remarks on behalf of  
7 the Respondents will be by Susan G. Esserman, Steptoe  
8 & Johnson.

9 CHAIRMAN KOPLAN: Good morning.

10 MS. ESSERMAN: Good morning, Mr. Chairman  
11 and members of the Commission. My name is Susan  
12 Esserman. I'm with the law firm of Steptoe & Johnson  
13 representing Respondent Reliance Industries, an Indian  
14 PET producer. My opening remarks, however, relate to  
15 all of the countries subject to this investigation.

16 The Petitioners who stand before you today  
17 have presented a basic theory of the PET resin market  
18 that stands in stark contrast to the underlying  
19 record, the realities of the marketplace and their own  
20 statements.

21 The record shows a strongly performing  
22 industry with increasing sales, increasing shipments,  
23 increasing capacity, high capacity utilization,  
24 substantial new investment, a predominant market share  
25 and low and declining subject import volumes.

1           Petitioners certainly cannot credibly argue  
2           that the small volume of subject imports is injurious,  
3           especially since they state that their larger volume  
4           of imports from Mexico and Canada is not injurious.  
5           They are then left with a claim of price suppression,  
6           the weakest premise for an affirmative injury case.

7           They can point to no evidence of adverse  
8           price effects, including any meaningful underselling.  
9           In fact, there was substantial overselling in the  
10          product in which there is the greatest competition.

11          Faced with a record that provides no support  
12          for their case, Petitioners remarkably seek to rewrite  
13          the staff report. They attempt to supplant the  
14          Commission staff's methodologies and data with self-  
15          serving constructs that depart from established  
16          Commission practice or are wholly irrelevant to the  
17          Commission's inquiry.

18          What you heard is just an example of that.  
19          I would submit that while I don't concede in any way  
20          that Reliance Industries is selling below cost, I  
21          would submit the cost analysis is an inquiry properly  
22          before the Department of Commerce, not the ITC.

23          The essence of Petitioners' claim is that  
24          they have not passed through fully to their customers  
25          the record high raw material cost increases they have

1 experienced, yet the Petitioners themselves in their  
2 public statements have repeatedly attributed this  
3 situation to the combined effect of historically high  
4 raw material costs and their own expansion of  
5 capacity, and this is substantiated in the record.

6 The Petitioners sing a different tune in  
7 their prehearing brief, but even there they make  
8 little effort to draw the necessary causal link  
9 between subject imports and profitability declines.  
10 In fact, none exist.

11 Petitioners' threat of injury argument is  
12 equally implausible and unsubstantiated. The industry  
13 itself projects highly positive conditions for 2005  
14 and beyond, including strong demand in the U.S. and  
15 surging demand globally.

16 At the same time, subject imports have  
17 declined as escalating Asian raw material costs have  
18 put subject merchandise at a competitive disadvantage  
19 in this market. This has and will continue to  
20 constrain U.S. subject imports.

21 Moreover, rapidly growing home country and  
22 proximate emerging markets are demanding increasing  
23 volumes from subject countries. This case presents  
24 compelling circumstances for decumulating India from  
25 other subject countries for purposes of threat because

1 India is the only subject country to participate  
2 virtually exclusively in the eastern region.

3 It has a minuscule market share, a very  
4 narrow product mix and oversold the domestic product  
5 in nearly every quarter. The Commission has very  
6 strong data coverage from Indian producers.

7 Incredibly, Petitioners' threat case rests  
8 on a generalized claim of excess capacity on the Asian  
9 continent. Obviously this claim is woefully  
10 inadequate as a legal matter to establish an  
11 affirmative threat case. There must be positive  
12 evidence connecting the imports under investigation to  
13 imminent injury.

14 Further, Petitioners' theory is directly  
15 contradicted by the statement several weeks ago of  
16 Thomas Duff, chairman and CEO of Wellman, one of the  
17 leading Petitioners, noting that there is insufficient  
18 Asian raw material to feed PET resin capacity. Mr.  
19 Duff stated, and I quote, "The presence of excess  
20 capacity in Asia for fiber or resin continues to be  
21 largely irrelevant."

22 Petitioners' generalized Asian theory  
23 constitutes rank speculation, which is an  
24 impermissible basis for a threat determination.

25 Thank you.

1 CHAIRMAN KOPLAN: Thank you.

2 Madam Secretary, if you would call the first  
3 panel?

4 MS. ABBOTT: The first panel in support of  
5 the imposition of countervailing and antidumping  
6 duties, please come forward.

7 Mr. Chairman, the witnesses have been sworn.

8 (Witnesses sworn.)

9 CHAIRMAN KOPLAN: Thank you, Madam  
10 Secretary.

11 You may proceed, Mr. Hertzberg.

12 MR. HERTZBERG: Thank you. Mr. Sherlock  
13 will be our first witness.

14 MR. SHERLOCK: Good morning. My name is Tom  
15 Sherlock of DAK Americas, and I'd like to give you  
16 some understanding of what bottle grade PET resin is  
17 and how it is used by our customers.

18 PET resin is produced by a polymerization  
19 process using two principal raw materials, purified  
20 terephthalic acid or PTA, and monoethyleneglycol or  
21 MEG. These two materials, PTA and MEG, together make  
22 up 75 to 80 percent of the cost of PET resin.

23 This melt phase polymer is then pelletized  
24 and solid stated. Let me show you what PET resin  
25 looks like. As you can see from this product sample,



1       PET resin chips or pellets is in the form which the  
2       customers receive the product.

3               The U.S. PET resin manufacturers only  
4       manufacture the PET resin itself. The resins we  
5       supply are converted into end user products by our  
6       customers who are converters, bottlers and some brand  
7       owners. Some converters make a product called the  
8       preform, from which a bottle is made. This is an  
9       example of a preform.

10              There are four main applications for PET  
11       resin -- water bottles, carbonated soft drink bottles,  
12       which we call CSD, heat-set or hot-fill, and sheet and  
13       strapping. Sheet is used for making the clamshells in  
14       which you buy your strawberries at the supermarket.  
15       None of these areas are free from competition from  
16       these dumped and subsidized imports.

17              PET resin for water bottles is the fastest  
18       growing market segment in the market, and I have a  
19       number of examples of products made from PET resin  
20       here in front of me. The products that the ITC chose  
21       for their price analysis cover the gamut of resins.

22              PET is a popular packaging material because  
23       of its desirable physical properties of strength,  
24       thermostability and clear transparency. It is so  
25       popular that the demand in the United States has been

1 growing and is expected to continue to grow at five to  
2 seven percent in the foreseeable future.

3 PET resin from any source, be it imported or  
4 made in the U.S., is chemically similar and can be  
5 used in various applications that use bottle grade PET  
6 resin. Certain intrinsic viscosities are preferred by  
7 customers for their specific application. For  
8 example, customers use certain viscosity ranges for  
9 water bottles and other viscosity ranges for  
10 carbonated soft drinks.

11 I was very interested to read what Reliance  
12 had to say to the effect that there is limited  
13 competition between U.S. PET resin and subject country  
14 PET resin. I wish this were true. When we approach  
15 our customers, we negotiate prices regarding our whole  
16 PET product line and so do the imports. It makes no  
17 sense to say that the imports are not in competition  
18 with domestics at any customer account simply because  
19 they choose not to offer a hot-fill resin as part of  
20 their product line. Any one of them can make it.

21 Hot-fill refers to the use of PET resin for  
22 products like juices that are filled hot by the  
23 bottler. Some customers that buy hot-fill also buy  
24 cold-fill, and these customers are forcing down my  
25 prices by telling me I have to bring my prices down to

1 the level of imports or else I can take my business  
2 elsewhere, so this argument about limited competition  
3 based on hot-fill and cold-fill simply does not hold  
4 water.

5 The same goes for recycled PET resin.  
6 Anyone can make it, and anyone can sell it. It's a  
7 matter of choice for the importers.

8 The argument that converters won't switch  
9 suppliers over for one to two cent price differences  
10 because it's too much trouble for them is a ridiculous  
11 claim. When you are talking about millions of pounds  
12 of business, you can bet your bottom dollar that the  
13 converters can and will change suppliers.

14 I have experienced this myself over the past  
15 three years, and I'm here to tell you that this claim  
16 is malarkey. In any event, we have been undersold by  
17 much more than one or two cents a pound by the subject  
18 imports. In fact, it has been by as much as 10 to 12  
19 cents per pound difference over the period.

20 Another specious claim is that the U.S.  
21 customers don't buy imported hot-fill because they  
22 don't get much technical service from the imports  
23 involving on-site technical service. From what I've  
24 seen, most converters prefer not to let the technical  
25 service folks from the PET resin producers be involved

1 because of the potential loss of trade secrets or  
2 advantages that they have developed.

3 For the other side to argue that the subject  
4 imports can't participate in this segment of the  
5 marketplace is unfounded. The imports have  
6 deliberately chosen to target the large bread and  
7 butter segments that my company depends on to fill our  
8 capacity.

9 Now, another argument that they have gotten  
10 completely backwards concerns the domestic industry  
11 expansions. Reliance wants you to believe that the  
12 U.S. companies willy-nilly threw up a bunch of plants  
13 in 2003, and this has caused problems for the U.S.  
14 industry.

15 Well, let me tell you the story behind that  
16 situation in 2003. What we did was to convert an idle  
17 fiber production line in our Cooper River facility.  
18 Note that we announced this conversion in 2002, and  
19 all the planning that went into the conversion  
20 decision was all said and done before the subject  
21 imports were much of a factor at all.

22 Once the conversion was underway, we were  
23 committed to see Phase 1 through. We planned to do a  
24 Phase 2 conversion of another fiber line, but by 2003  
25 we had to put that plan on hold because our margins

1 could not justify it. We were getting hammered on  
2 pricing, and everywhere we turned the customer was  
3 forcing subject import prices down our throat.

4 Let me also point out two areas where the  
5 other side has not been completely honest. One is  
6 that DAK's converted fiber line only came in midyear.  
7 The Reliance folks are misleading you to believe that  
8 the full capacity was available in the year, which is  
9 nonsense. You cannot attribute a full year's capacity  
10 to this midyear addition of capacity.

11 There are a few other things you need to  
12 know about 2003 capacity that we will address  
13 confidentially, but the real capacity gain in 2003 is  
14 far below what Reliance claims. What I want to  
15 explain about this is confidential, so I'll put it in  
16 the posthearing briefing.

17 Point 2 is that Reliance's capacity argument  
18 doesn't properly account for the fact that the demand  
19 in the U.S. and NAFTA generally is growing very fast.  
20 The U.S. has had to add capacity unless we want to  
21 cede all future growth to the imports. At seven  
22 percent growth, the market requires 400 to 500 million  
23 pounds in additional capacity each year.

24 Another aspect of this is that the PET resin  
25 industry is highly capital intensive. A new

1 production plant is typically a \$100 million  
2 investment. It takes at least two to three years to  
3 plan and construct a PET resin production plant as  
4 I've described. In addition, production facilities  
5 have to run at high operating rates in order to be  
6 profitable.

7 Finally, I want to emphasize that the  
8 extremely low subject import prices that we have had  
9 to face within competitive situations have forced us  
10 into a very difficult bind. DAK has lost important  
11 sales, and we have had to walk away from millions in  
12 business since 2002 where we could not meet the import  
13 prices that our customers presented to us. We simply  
14 could not sell in such situations and lose money on  
15 all the sales.

16 In some situations we did maintain business,  
17 but only after lowering prices when faced with import  
18 price competition. This has had a serious and adverse  
19 impact on our company.

20 Thank you.

21 MR. DEWSBURY: Good morning. My name is  
22 Mike Dewsbury. I'm vice president of Wellman. I'll  
23 provide you with as much information as I can publicly  
24 to illustrate the serious adverse impact that PET  
25 resin imports from the subject countries have had on

1 Wellman.

2 Subject imports increased significantly from  
3 2001 to 2003 on both an absolute and a relative basis  
4 as you can see from this slide. As the staff report  
5 does not publicly report the level of subject imports,  
6 I am constrained to use the official Customs  
7 statistics. However, these are seriously understated  
8 due to misclassification and underreporting issues.

9 Subject import volume increased dramatically  
10 from 101.5 million pounds in 2001 to 430 million  
11 pounds in 2003 or by 324 percent. During the period  
12 of review, imports rose 60.8 percent from 2002 to 2003  
13 and then fell in 2004 when the trade cases took hold.  
14 Your preliminary determination shows that subject  
15 imports increased to more than 10 percent share of  
16 market in 2003 at the direct expense of the U.S.  
17 industry.

18 One thing that is very important to note,  
19 even though it is slightly outside your period of  
20 review, is that the EU issued dumping remedies against  
21 all the subject countries and subsidy remedies against  
22 Thailand and India imposing very high duties which  
23 effectively foreclosed exports from these countries  
24 into Europe in November of 2000.

25 The EU took this action because of the same

1 pattern of dumping and subsidies by the same subject  
2 producers into some of the same customers we are  
3 discussing today. Those duties are for the most part  
4 still in effect with some changes since 2000.

5 I am informed that European producers  
6 continue to have grave concerns about the subject  
7 country exporters and will be filing to initiate  
8 sunset proceedings to extend the Order beyond  
9 December 31, 2005.

10 Through 2003, the subject imports captured a  
11 lot of growth in the U.S. market at our direct  
12 expense, increasing 537 percent from 2000 to 2003.  
13 The volume growth for 2003 is most relevant as the  
14 subject imports surged to their highest level and were  
15 unrestrained at all by the pendency of the trade cases  
16 until late in the third quarter 2003 when word of the  
17 GSP case started getting around.

18 In 2004, as you can see by the drop of the  
19 subject imports, the threat of the trade cases  
20 directly influenced subject imports.

21 While the other side tells you that trade  
22 cases have had no impact on their participation in the  
23 market, that just isn't true. First, the peak in  
24 imports starts declining just at the time the GSP case  
25 and its implied threat of a dumping case were gaining



1 notoriety. Imports continued to decline with the  
2 ITC's and DOC's preliminary determinations.

3 An interesting point to note that refutes  
4 the claim that the decline had nothing to do with the  
5 trade cases and everything to do with the rising raw  
6 material cost is the Thailand import experience. Look  
7 at the huge surge of Thai imports in the spring of  
8 2004. This coincides with the time period by which a  
9 potential critical circumstances determination could  
10 be made.

11 If Thailand could get those imports in they  
12 would have no threat of extra duties no matter how  
13 these cases progressed. Obviously neither raw  
14 materials nor any of the other factors they mentioned  
15 to show why the U.S. market was no longer important  
16 deterred this surge. There was plenty of Thai  
17 capacity available, and cost consideration did not  
18 impede the push to get goods into the U.S. This same  
19 type of surge will recur if the provisional relief we  
20 have been given is lifted as a result of your vote.

21 I would also like to take on those who make  
22 the argument that imports are such a small portion of  
23 the market they cannot possibly have any effect.

24 Number one, these imports are knocking on the doors of  
25 the same customers that we visit, and those customers

1 have been shoving the price quotes down our throats  
2 for the past three years. Price is the number one  
3 consideration for the U.S. customer.

4 Number two, the argument that subject  
5 imports cannot supply a large customer is wrong.  
6 Millions of pounds have been lost to imports, and our  
7 large accounts attest to this.

8 At the preliminary conference I informed  
9 your staff that the big issue for us was pricing. I  
10 said then unfair pricing from producers in the subject  
11 countries have simply been at unsustainable levels for  
12 both American producers and for them. They are not  
13 covering their costs and are priced in the U.S. market  
14 substantially below our cost.

15 This hurts U.S. producers in many ways. I  
16 still feel this way, but the information in the staff  
17 report suggests to me that many of the subject country  
18 producers are actually selling below their variable  
19 cost.

20 Look at the water bottle example. The 36.6  
21 cent water bottle prices for the subject imports would  
22 barely cover raw material costs for producers in the  
23 subject countries in 2003. As such, these prices have  
24 to be below the foreign producers' variable cost. I  
25 can demonstrate this easily. If we adjust U.S.

1 importers' sales price by only international freight  
2 we derive an FOB Asian price of 32.25 cents per pound.

3 This calculation is very conservative as it  
4 does not account for importer margin, importer cost  
5 such as warehousing, administration or selling  
6 expenses or any possible export charges from Asia.  
7 Thus, the FOB Asia price can cover no more than raw  
8 material costs alone. It is virtual certainty that  
9 variable costs were not covered in this example.

10 If this unfair competition was in water  
11 bottles, one of our key products and the fastest  
12 growing segment in the U.S., and as your record shows  
13 domestic producers were undersold by the subject  
14 imports in seven out of eight quarters and by up to 12  
15 cents per pound, there is no industry that can survive  
16 this type of unfair competition.

17 Pricing like this suppressed our own price  
18 levels to such a low level that we couldn't catch up  
19 in 2004 even when imports started to ameliorate when  
20 the trade cases took hold. The imports put us so far  
21 down in the hole that it made it even more difficult  
22 to deal with the raw material cost increases we faced  
23 in 2004.

24 Had we started 2004 at unsuppressed prices  
25 without having been hammered by the imports for the

1 past two years, we would have been able to stay ahead  
2 of the substantial raw material increases. The  
3 subject imports have kept us in a severe cost/price  
4 squeeze through the POI.

5 Moreover, keep in mind that the imports did  
6 not leave entirely in 2004 as the other side wants you  
7 to believe. They continued to be priced below our  
8 prices and continued to impact us adversely through  
9 the POI.

10 Frankly, it galls me that Reliance is taking  
11 the position it does when it receives a 30 percent  
12 subsidy on PET resin exports. Thirty percent is more  
13 than the total cost after you take our raw materials  
14 in producing PET. How can I compete with that?

15 We don't get that benefit, and we pay taxes,  
16 a phenomenon that is not known to many of the Thai and  
17 Indian producers who have garnered huge losses for  
18 years. The approximate 10 percent import market share  
19 that they have reached during the height of the import  
20 surge resounds through the market.

21 The impact of the low pricing is magnified  
22 by large, multinational buyers who use these low  
23 prices to ratchet down our prices and to gain further  
24 concessions from us through the aid of dumping and  
25 subsidies.

1           Thus, in the POI several of our announced  
2 attempts to raise prices to cover rising costs failed.  
3 Similarly, in many individual sales situations we  
4 either walked away or lowered our price to where  
5 margins were badly eroded.

6           Wellman has publicly reported a one cent  
7 change in price if raw material is held constant  
8 results in over a \$14 million change in revenue. The  
9 impact of the subject imports has been several cents  
10 per pound. \$14 million is a significant sum for  
11 Wellman. You have our financials, and you can see  
12 what several cents per pound better pricing could have  
13 done for us during the POI.

14           One of the major disappointments we have  
15 with the staff report is that you apparently did not  
16 confirm any of our lost sales and lost revenue claims.  
17 This simply cannot be squared with the data your  
18 Appendix D reflects. That data reported by U.S.  
19 purchasers represents substantial lost sales, lost  
20 revenue and price suppression. This contributed to  
21 adverse employment consequences, including layoffs and  
22 compensation reductions.

23           These reductions included five percent pay  
24 cuts for all hourly employees, five to 10 percent pay  
25 cuts for all salaried workers and up to 40 percent

1 reduction for all executives at Wellman. Benefits  
2 were also reduced for all employees.

3 These are very real and very significant  
4 adverse effects that were brought about as a result of  
5 dumped and subsidized subject imports. Other  
6 financial consequences are discussed confidentially in  
7 our questionnaire response.

8 Let me close by talking a bit about the  
9 expansion and the other side's overcapacity claim.  
10 One of the conditions we have in the U.S. and in fact  
11 across NAFTA is demand growth. It is strong and  
12 projected to remain strong.

13 We have to be in a position to grow with the  
14 market or we lose out in competition to both our U.S.,  
15 NAFTA and subject country competitors. The other side  
16 tries to place blame for our condition on the growth  
17 of North American capacity that went onstream in 2003,  
18 but there are several things they didn't tell you.

19 First, a significant part of the growth was  
20 incremental. Most of it had been planned well before  
21 the harsh reality of the subject import surge  
22 occurred. The capacity that was added did not go  
23 onstream until mid 2003 and was not present for the  
24 full year.

25 Second, the other side doesn't point out the

1 major benefits we have obtained by participating in  
2 the North American market. The NAFTA imports have  
3 been fairly traded and are part of a two-way highly  
4 beneficial trade.

5 Another thing they don't let you know is the  
6 U.S. industry has consumed this added capacity in just  
7 over one year and is today essentially at capacity.  
8 The history of our recent expansion announcement is  
9 not an indication of an industry in rosy health.  
10 Rather, it is a calculated bet that there will be  
11 antidumping and subsidy orders that allow the domestic  
12 industry and any imports that enter the market fairly  
13 to earn a reasonable profit.

14 It is also a business necessity in our  
15 industry that Wellman can't cede cost-reducing growth  
16 to others and remain competitive, so we made the  
17 expansion decision and announced in August 2004 very  
18 carefully.

19 We had planned to convert a fiber line in  
20 Pearl River, Mississippi, to produce bottle grade PET  
21 in early 2002. This would have expanded our capacity  
22 by 285 million pounds, significantly lowering our  
23 costs. However, due to the deteriorating market  
24 conditions caused in significant part by low-priced  
25 imports, the expansion was delayed to December of

1 2002.

2 We had hoped conditions would change and the  
3 plan could be resurrected, but conditions worsened  
4 through 2003, and the decision was made to delay the  
5 plant conversion at least until 2006. As a result,  
6 Wellman took a \$140 million impairment charge on its  
7 2003 financial results.

8 As 2004 progressed and subject imports were  
9 disciplined through the effect of the trade cases, we  
10 decided that the balance towards expansion had shifted  
11 and that since the idle facility had an associated  
12 cost to Wellman the expansion should be carried  
13 through.

14 In complete candor, I have to tell you that  
15 should our petition be denied and subject imports  
16 return with the cut-throat tactics they employed  
17 during the period of review, as they will, Wellman's  
18 board of directors and shareholders would not be  
19 likely to authorize another U.S. expansion.

20 Wellman and most of the NAFTA PET resin  
21 producers can and do compete very well with fairly  
22 priced Asian imports. Unlike PET fiber production,  
23 labor is a very small part of PET resin production.  
24 However, we cannot compete with subsidized and dumped  
25 imports from the subject countries. We need your help



1 to create fair competition in the United States.

2 MR. PETERSON: Good morning. My name is  
3 Chris Peterson.

4 I cannot comprehend how the imports are able  
5 to sell in the U.S. at such low prices based on  
6 information given to us by our customers. A  
7 substantial volume of these imports are being sold  
8 directly to converters so we know that the prices at  
9 the port are the real prices being paid by some of our  
10 customers who import for their own use

11 Here's an example of that. Pepsi exports  
12 Futura PET resin from India. That resin is imported  
13 directly to make the bottles for Pepsi in the United  
14 States. It's the price that Pepsi pays to Futura that  
15 we have to compete against.

16 The sales process is something you should  
17 understand to see how the unfair price competition is  
18 squeezing Nan Ya. Low-priced imports from the subject  
19 countries have focused and gained the market share in  
20 the high volume water bottle and CSD PET resin  
21 products.

22 Supplier loyalty does not apply in PET  
23 resin. Customers are quite likely to switch suppliers  
24 for a small decrease in price, even for a penny a  
25 pound. This is a very critical point for you to

1 understand because I myself have been in negotiations  
2 with customers where I have lost business for less  
3 than one cent a pound. Such losses mean a lot of  
4 money to my company because a single sale can involve  
5 millions of pounds of lost business.

6 Even in those instances where I end up  
7 keeping the business, I still have lost a substantial  
8 amount of money on the sale when I have had to come  
9 down in price when the customer tells me that I have  
10 to meet the import price or hit the road.

11 I can't emphasize enough that a penny a  
12 pound matters in this business. A simple penny can  
13 and does mean \$8 to \$10 million to Nan Ya's bottom  
14 line.

15 Here's a sales strategy that the imports  
16 have used over the past three years to capture sales  
17 in the U.S. Brokers or the exporters themselves call  
18 on customers that are supplied by Nan Ya or other  
19 domestic producers and offer prices for imported PET  
20 for a couple of cents per pound less than the current  
21 selling price.

22 The customer will then take this import  
23 offer to the domestic producer and ask for a reduction  
24 in price or else the buyer will threaten to shift the  
25 purchases to the importer. It's just that simple.

1           The U.S. producer then is forced to either  
2 match the lower price or lose the business. Either  
3 way the domestic producer loses. Lower prices mean  
4 lost revenue, and when you're dealing with the rising  
5 raw material prices that we have the impact of the  
6 unfair pricing really takes a toll.

7           This is why the volume in this case is more  
8 significant than their impact in our business than  
9 would otherwise appear from the import penetration  
10 figures that you are looking at here.

11           Point number one is that there increasingly  
12 is a concentration of customers that actually make up  
13 the majority of shipments in the U.S. market. A very  
14 low-priced import offer at these large customers  
15 impact literally hundreds of millions of pounds of  
16 business. In fact, three end users, Nestle, Coke and  
17 Pepsi, control or influence pricing for 80 percent of  
18 the PET resin sold in the U.S. and benefit from the  
19 dumping and subsidized prices.

20           The second point is that customers know that  
21 there is substantial availability of capacity in these  
22 countries and that much more is coming on line there.  
23 Until the trade cases, these buyers could buy as much  
24 as they wanted from these exporters at what we feel  
25 have been impossibly low prices.

1                   We now understand that their pricing  
2 strategy is designed not to earn a profit at all.  
3 This type of unfair competition is simply not  
4 sustainable. They push the prices down so far that it  
5 has made it much harder to deal with covering our raw  
6 material cost, and, even though their participation is  
7 reduced in recent months, they are still around and  
8 still not pricing to reflect current cost.

9                   If the trade cases fail, there is no doubt  
10 the importers will again reenter the market in force  
11 at disastrously low prices. We cannot survive if this  
12 occurs.

13                   MR. TAYLOR: Good morning. I am Robert  
14 Taylor of Wellman.

15                   I'd like to shoot down the patently  
16 ridiculous argument there are two distinctly separate  
17 PET resin markets in the U.S. and that some of the  
18 Indian producers don't compete with us or the other  
19 subject countries on the west coast.

20                   We at Wellman have faced competition from  
21 the Indian producers and all others in all regions of  
22 the United States. There is more PET resin business  
23 on the east coast as converters have been concentrated  
24 around the major population centers because it makes  
25 more sense to ship bottles from regions that are

1 closer to the markets in which the bottles are going  
2 to be used to cut down on transportation cost.

3 CHAIRMAN KOPLAN: Could you move that  
4 microphone just a little bit closer?

5 MR. TAYLOR: Yes. While we would cede that  
6 the Asian competition originally focused more on the  
7 west coast, their efforts to penetrate the east coast  
8 have not been insubstantial. Indian imports are  
9 competing both on the east and west coasts with U.S.  
10 produced PET resin and with other subject imports.

11 In particular, a large percentage of the PET  
12 used in the U.S. is purchased by centralized groups  
13 within large converters, which is another point that  
14 the Reliance seems to not grasp. In fact, over 80  
15 percent of the PET resin used in the U.S. is purchased  
16 by centralized purchasing groups within the large  
17 converters, not by individual plants.

18 These specific individuals purchase resin  
19 for delivery to multiple plant locations in the entire  
20 U.S. and NAFTA markets. A single person negotiates  
21 prices with all producers, both domestic and Asian.  
22 The idea that east and west coasts are two separate  
23 purchasing zones and that they don't affect each other  
24 is completely false once you understand how PET resin  
25 is sold.

1                   It is also false for the other side to claim  
2                   that there's any kind of transportation cost advantage  
3                   for Asians when they ship to the west coast. Wellman  
4                   has done studies, and based on this we know simply  
5                   that their claim is wrong.

6                   This slide illustrates this comparison.  
7                   Transportation to the west coast from Asia and the  
8                   subject countries is about 4.5 cents a pound. When  
9                   you add on the import transportation cost of moving it  
10                  to a warehouse near the port, you have about another  
11                  half cent a pound.

12                  Add to that the inland transportation to  
13                  reach the customers' plants near the west coast, and  
14                  you end up with a total transportation cost of at  
15                  least seven cents a pound in bringing product from the  
16                  west coast, not including any other related import  
17                  costs and duties subject to the applicable imports.  
18                  Add another two cents a pound for ocean freight to the  
19                  east coast.

20                  For Wellman, transportation costs are about  
21                  four to five cents a pound to reach west coast  
22                  customers. This is at least two cents a pound less  
23                  than that for any Asian supplier. It costs Wellman  
24                  about 2.5 cents a pound for shipping to east coast  
25                  locations, so this is about a 6.5 cent a pound

1 advantage less than that from the Asian suppliers.

2 Another point that was mentioned is the  
3 logistical difficulties discussed by the other side,  
4 and I can speak of this from Wellman's point of view.  
5 We have no issues getting PET resin from our plant to  
6 the west coast. There are no problems getting rail  
7 cars to the west coast, nor is there any back haul  
8 charges.

9 Rail transportation is a function of  
10 distance. Yes, it costs more to ship longer  
11 distances, but the U.S. has a very well developed rail  
12 system, and for us there is no logistical difficulty.  
13 I honestly don't know where Reliance gets its facts on  
14 this, but they surely have gotten them wrong.

15 For another thing, I can tell you that  
16 there's no truth to the Reliance claim, and I quote,  
17 "It is sometimes easier for west coast converters to  
18 purchase from Asian producers who can ship by ocean  
19 freight and require little inland travel to reach west  
20 coast customers." This is from Reliance's brief at  
21 page 8.

22 Wellman can get PET resin to west coast  
23 customers much faster and cheaper than any subject  
24 country producers. We can easily beat the Asians in  
25 the race to get material to a customer on the west

1 coast. In fact, we can get product to west coast  
2 customers in one day if they need it.

3 It is a well-known fact that several  
4 domestic producers, including Wellman, maintain  
5 inventory on the west coast to support our customer  
6 base out there. Again, this goes to show that  
7 Reliance's sources of information are suspect when  
8 they are missing such basic information about the U.S.  
9 market.

10 MR. KINNER: Good morning. My name is Hans  
11 Kinner. I'm representing the Voridian Division of  
12 Eastman Chemical Company.

13 What the others have told you this morning  
14 so far has been our experience as well. As the  
15 subject import volumes exploded, most of this material  
16 was sold below domestic prices. These prices were  
17 quickly turned into competitive situations for  
18 domestic producers to meet or lose business, a very  
19 real and often followed up threat.

20 Others have talked about the specifics of  
21 how their companies have been affected by the subject  
22 imports. In Voridian's case, the impact of Asian  
23 resin has been real, it's been significant and it's  
24 been continuous.

25 Capacity plans have been delayed and

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1 canceled, and capacity has been shut down. One  
2 example of this is that we were forced to shut down  
3 100 million pounds of capacity at our Kingsport,  
4 Tennessee, facility because we lost the business of an  
5 important customer who had chosen to purchase cheap  
6 Indian imports instead.

7 A further example is the downgrading by both  
8 S&P and Moody's of Eastman's credit rating on  
9 October 6, 2003, which in no small part occurred  
10 because of the low margins in PET. This of course  
11 came about because subject imports were limiting our  
12 ability to raise prices, which was necessary to cover  
13 this increasing raw material cost.

14 Additional injury was also felt when  
15 everyone in the company took a three percent pay cut  
16 in the first quarter of 2003 due to poor business  
17 performance. Most painfully to me personally is the  
18 significant layoff at our Carolina facilities and  
19 Tennessee headquarters which occurred this past year  
20 in 2004. There were a lot of good men and women that  
21 I've known for many years who were impacted by these  
22 workforce reductions. These were real significant and  
23 have had negative impact on many good employees and  
24 their families.

25 With all these negative consequences, the

1 argument offered by the other side that U.S. producers  
2 are doing well and have not been hurt is disingenuous  
3 and fails to acknowledge the facts. The opposition  
4 lists numerous areas where they say the domestic  
5 industry has done well. You heard that in the opening  
6 remarks this morning.

7 One glaring omission, however, the most  
8 important omission, is profit. Why do they leave out  
9 profits? Because they know that their exports have  
10 driven prices so low that we cannot earn profits.

11 Prices have increased, but raw materials  
12 have increased faster. Subject imports have kept us  
13 from raising our prices sufficiently to cover the  
14 increasing costs. Hence, our profits have been  
15 squeezed to nothing.

16 Sales have increased, but we're not making  
17 money on those increased sales. Since exports  
18 exploded onto the U.S. market, profits have not been  
19 adequate to allow significant reinvestment, and now  
20 we're behind the curve from where we should have been  
21 with regard to capacity expansion necessary to meet  
22 U.S. demand.

23 Let me focus a moment on the issue of  
24 capacity expansion from Voridian's standpoint and our  
25 Integrex technology. As the U.S. market has continued

1 to grow, our customers continually ask us to grow with  
2 their needs. In 2001, Voridian began an effort to  
3 respond to our customers' requests while still meeting  
4 our investors' requirements.

5 In Voridian's analysis of the U.S. market,  
6 we determined that it would be very difficult for us  
7 to invest in new capacity and meet our shareholders'  
8 expectations primarily because of the huge excess  
9 capacity that exists in Asia, which has no place to go  
10 but the U.S., Europe or Latin America.

11 The commercial practice we observe from  
12 Asian producers indicate that sales from the subject  
13 countries will be made on a continuous basis at or  
14 below break even cost with little or no return on  
15 capital. That is a very high bar since our investors  
16 do require a profit margin.

17 The economics of Voridian's new technology  
18 were judged capable of competing with an integrated  
19 Asian producers' cash cost for PET delivered to the  
20 U.S. However, our investment assumptions do not  
21 include that this new technology would have to compete  
22 against dumped and subsidized PET.

23 No industry can compete against dumped or  
24 subsidized products. We frankly put trust in the  
25 system that says dumped and subsidized products are

1 not fair trade and will not be allowed.

2 Bottom line, the Integrex expansion is  
3 Voridian's attempt to insure the long-term health and  
4 viability of our business. We're fully prepared to  
5 compete against any producer in the world. Our  
6 customers require it. Voridian and our partners in  
7 South Carolina are counting on the trade relief to  
8 stay in place so we can get this new facility and  
9 technology up and operational and earn a fair return  
10 for shareholders.

11 The second point here is that Voridian's  
12 decision to go forward with Integrex technology, which  
13 has its risks, is a decision to invest new capital and  
14 new technology in the U.S. to meet the capacity of  
15 North America. By late 2006, North America demands  
16 expect to exceed supply, and this new capacity will be  
17 needed.

18 Furthermore, Voridian is the largest  
19 producer and seller of PET for packaging applications  
20 in the world. Voridian is reported by most industry  
21 followers to be one of the largest producers of PET in  
22 the U.S., Latin America and Europe. Further, we  
23 participate in Asian markets in buy, sell and tolling  
24 arrangements, so one might say we understand the  
25 dynamics of each major region as well as anyone.

1           The following has been our experience. The  
2 biggest threat to our business in Europe and the U.S.  
3 and Latin America and even in Asia is dumped and  
4 subsidized PET from Asia. Europe has seen dumping  
5 from Asia for some time, and duties have been levied.  
6 Imports to Europe started slowly, but then grew  
7 rapidly as they have here, and once duties were levied  
8 in Europe dumping increased dramatically in the U.S.

9           In Asia, we see and understand how the  
10 market works. Plants have been built on questionable  
11 strategies in our opinion with the primary objective  
12 of exporting if not the majority then certainly  
13 opportunistic volumes to the west at virtually any  
14 price regardless of cost as the staff has confirmed.

15           Voridian has not invested in PET capacity in  
16 Asia. This is the only region we have not invested in  
17 capacity even though we have had an objective to do  
18 so. Why? PET producers in this region historically  
19 appear to have no regard or expectation for return on  
20 investment.

21           As a public investor-owned company, we do  
22 not have a business model, investor or bank that will  
23 allow no return on PET capital invested, and we will  
24 not relax any environmental or safety expenditures in  
25 PET plant investments.

1           We also see the overcapacity of the subject  
2 Asian countries as a threat to our business because  
3 that excess capacity has to be placed outside that  
4 region. This means selling in the largest PET resin  
5 markets, especially the U.S. Here are some slides to  
6 illustrate these facts.

7           Voridian has analyzed what the supply and  
8 demand situation is in each of the subject countries  
9 using data from well-respected consultants. As you  
10 can clearly see, the excess supply in the subject  
11 countries as a percent of existing capacity there is  
12 an astounding 75 percent.

13           There is no way the ITC can accept as  
14 rational the argument that the subject country  
15 producers are intended to fulfill their own home  
16 market needs with this tremendous capacity overhang.  
17 This excess capacity is estimated to be 11 billion  
18 pounds globally, from a global standpoint, in 2004,  
19 and this is roughly twice the U.S. market demand.

20           Even at spectacular growth rates, the excess  
21 capacity in these countries cannot possibly be  
22 absorbed in the next decade. By contrast, the North  
23 American supply has grown in a disciplined manner.  
24 The current announcements are a reasonable response to  
25 PET demand growth. Customers and end users

1 continually ask domestic producers to invest in new  
2 capacity to support conversion as their customers  
3 prefer PET.

4           The industry has tried to respond. Contrast  
5 responsible capacity expansions in NAFTA relative to  
6 and versus that in Asia. As you can see, there is  
7 tremendous overcapacity in Asia, whereas in North  
8 America the capacity expansions have been in sync with  
9 growth in demand.

10           Their defense that the volume of their  
11 imports is so small as to not be a factor in the U.S.  
12 should be seen for what it is, only the beginning.  
13 The small level of imports argument was once used by  
14 these same producers in Europe. As history has shown,  
15 dumped and subsidized PET imports must be stopped  
16 sooner rather than later. They will otherwise have a  
17 devastating impact on the local market. Europe has  
18 seen this first.

19           The opposition has also argued that one cent  
20 a pound is not a very significant issue in the  
21 commodity PET business. One cent a pound in price can  
22 be the difference between an annual loss and making  
23 positive returns so that layoffs or capacity shutdowns  
24 are not needed. Customers switch for less than this.

25           We have also done research on another issue

1 where the other side is offering false claims. They  
2 are saying that substitute products have been one of  
3 the reasons PET producers have experienced low  
4 profits, specifically glass, aluminum and other  
5 plastics.

6 This is simply not the case. PET has  
7 continued to take market share away from aluminum and  
8 glass, and other plastics have not encroached. In  
9 fact, PET has remained one of the most economical of  
10 all packaging material, and PET producers have worked  
11 hard to keep consumers economically happy with PET on  
12 a relative price basis.

13 Lastly, I'm a bit disappointed that the ITC  
14 did not have the wherewithal to be able to investigate  
15 Voridian's lost sales statements that we submitted.  
16 Apparently the purchasers were able to come up with  
17 some kind of technicality to avoid telling the truth  
18 to the ITC.

19 The information we provided the ITC  
20 regarding the lost sales and lost revenue statements  
21 came straight from U.S. purchasers and situations. We  
22 as a supplier can't help it if purchasers are not  
23 being as candid with us as they should be.

24 It is really against their interests to  
25 corroborate the competitive situations that we related



1 to the ITC. Frankly, I'm not surprised that the ITC  
2 was not able to confirm these competitive situations  
3 since most of our customers are large, global  
4 companies with common buyers and buying groups, and  
5 they have learned from dumping actions in Europe to  
6 keep this information verbal.

7 In conclusion, the bottom line for Voridian  
8 is that we cannot sustain a profitable business in the  
9 face of such unfair import competition without the  
10 imposition of antidumping and countervailing duty  
11 orders to offset the unfair advantage of these  
12 imports.

13 Thank you.

14 MS. MANNING: Good morning. My name is Dr.  
15 Susan Manning. I am Vice Chairman of The CapAnalysis  
16 Group. I will address material injury and causation in  
17 my comments today. The Department of Commerce has  
18 determined that PET resin producers and importers from  
19 these subject countries have been engaged in dumped  
20 and subsidized pricing in the United States market.  
21 As you can see from the following chart, these dumping  
22 and subsidy margins are significant. This unfair  
23 trade practice occurred in the presence of rapidly  
24 rising raw material costs that are common to all  
25 domestic and foreign producers. These unfair pricing

1 practices have severely impaired domestic producers'  
2 ability to pass along these cost-justified price  
3 increases to their customers.

4 The result is dramatically declining  
5 profitability and an inability to make further  
6 investments in needed domestic capacity to keep up  
7 with the growing demand for products packaged in PET  
8 resin.

9 Respondents would like this Commission to  
10 believe that injury here is self-inflicted, caused by  
11 adverse conditions of competition affecting the  
12 domestic industry and competition among domestic  
13 producers, two common themes raised by Respondents in  
14 most antidumping and countervailing duty cases.

15 These explanations, however, are not  
16 supported by the economic evidence in this case. This  
17 is not a cookie cutter case for the Commission.  
18 Increasing the difficulty of the Commission's task  
19 here are major problems with the volume and price data  
20 collected on subject imports. We have discussed these  
21 issues in our prehearing brief and directly in  
22 conversations with the staff.

23 Respondent Reliance cites in its prehearing  
24 brief that, I quote, "It is the significance of a  
25 quantity of imports, not absolute volume alone, that

1 must guide ITC's analysis." We fully agree with that  
2 standard.

3 Under that metric, subject imports are  
4 significant and sufficient in volume and share to  
5 affect domestic pricing. There can be no doubt that  
6 the volume and share of subject imports sold in the  
7 United States market is grossly underestimated in the  
8 staff report.

9 Let me first address the significance of  
10 subject import volume, specifically the argument put  
11 forth in Respondent Reliance's brief regarding the  
12 lack of direct competition between subject imports and  
13 domestic products.

14 Reliance puts forth in its prehearing brief  
15 a reaccounting of the share of domestic production  
16 competing with subject imports. Let's assume arguendo  
17 that Respondent is correct that subject imports do not  
18 compete with certain domestic products in these  
19 applications. Recalculating subject imports' share of  
20 U.S. apparent consumption by eliminating the so-called  
21 non-competing domestic sales from the denominator  
22 results in shares well into the double digits and can  
23 only be deemed significant at these levels.

24 Most importantly, these shares are for end  
25 use products that represent the domestic industry's

1 highest volume and most important sales, namely PET  
2 resin used in packaging water and carbonated soft  
3 drinks.

4 Reliance argues that the Indian imports do  
5 not compete with other subject imports and should not  
6 be cumulated. This position is inconsistent with the  
7 actual competitive dynamics in this market. The PET  
8 resin market in the United States is one market, and  
9 its customer base, namely converters and packagers, is  
10 highly concentrated.

11 Mr. Taylor has testified today that although  
12 these customers may have multiple plant locations,  
13 their purchasing is centralized. Prices negotiated  
14 with a firm for delivery in one location necessarily  
15 affect prices negotiated for the firm in all other  
16 locations, so although Indian imports may be  
17 concentrated east of the Mississippi, their price  
18 impact is felt throughout the market. This is a  
19 commodity like product. Once certain qualifications  
20 are met, price becomes the determinative metric for  
21 the sale.

22 With respect to price underselling, price  
23 suppression and depression, our confidential  
24 prehearing brief discusses at great length on pages 16  
25 through 42 substantial underselling by subject

1 imports, including Indian imports represented here  
2 today.

3 This price competition occurs at the  
4 customer level. The Commission collected purchaser,  
5 importer and domestic producer questionnaire responses  
6 sufficient to examine customer specific underselling.  
7 The analysis presented in our brief captures hundreds  
8 of millions of pounds of purchased PET resin and shows  
9 quite clearly the significant price suppression  
10 occurring at the customer level in this market.

11 There can be no question that the domestic  
12 industry is materially injured. As shown in this  
13 slide, the domestic industry has suffered lower gross  
14 profits. The next slide shows the domestic industry's  
15 gross profit margins are sorely depressed. This lack  
16 of profitability makes its way directly to the  
17 industry's bottom line. As shown in this slide, the  
18 industry's net income is net at sustainable levels,  
19 and the industry's net income margins are severely  
20 depressed; in fact negative.

21 Respondents admit that the domestic  
22 producers' profitability has suffered greatly because  
23 of their inability to pass on increases in their raw  
24 material costs. Having agreed with Petitioners on  
25 this critical point, the inquiry switches to

1 causation, the source of the inability to pass on  
2 costs.

3 Respondents rely on the weak pricing  
4 analysis reported in the staff report for evidence and  
5 the supposed lack of verification by purchasers of  
6 lost sales and revenue allegations. We take serious  
7 issue with the staff report on these two analyses.

8 Analyzing the questionnaires directly as  
9 discussed in our brief clearly shows direct evidence  
10 of price underselling at significant customers from  
11 these subject imports resulting in lost sales and  
12 revenues irrespective of the self-serving explanations  
13 provided to staff in their purchaser interviews.

14 We urge the Commission to consider this  
15 evidence. To restate, this analysis is taken directly  
16 from questionnaire responses. Causation is clear.  
17 But for the underselling of dumped and in many cases  
18 below cost and subsidized sales of subject imports,  
19 the domestic industry would have been able to pass  
20 along raw material cost increases.

21 All domestic producers use the same MEG and  
22 PTA inputs. These two input costs are determined by  
23 the nuances in the oil and natural gas markets. There  
24 may be small variations in the prices paid by each  
25 domestic producer, but there can be no doubt that all

1 PET resin producers saw their raw material costs  
2 increase substantially over the period of review.

3 These increases were an exogenous event  
4 outside the control of any PET resin producer, and  
5 each and every one of them was affected. No domestic  
6 producer gained any cost advantage in the market from  
7 this exogenous cost increase.

8 In a competitive market where an exogenous  
9 cost increase affecting all producers, foreign and  
10 domestic, occurred, producers should be able to pass  
11 along a cost justified price increase. This did not  
12 happen.

13 As the next exhibit shows, raw material cost  
14 as a share of net sales value increased from 63.5  
15 percent in 2002 to 70.4 percent in 2003 and then to  
16 74.8 percent in 2004. The next slide shows the  
17 continuing impact of price suppression that occurred  
18 in 2002 and 2003 on 2004 prices.

19 If domestic producers had been able to  
20 maintain the same 63.5 percent ratio of raw material  
21 costs to the average net sales value, the price of PET  
22 resin would have been 51 cents per pound in 2003  
23 instead of 46 cents per pound and 62 cents per pound  
24 in 2004 instead of 53 cents per pound. However, with  
25 the dumped and subsidized imports in the market

1 domestic producers could not raise price enough to  
2 cover their shared cost increases.

3           What would have been the impact to the  
4 domestic industry had these firms simply been able to  
5 pass on raw material cost increases? As the next  
6 slide illustrates, the impact would have been  
7 significant, taking this industry back to  
8 profitability levels more akin to that achieved before  
9 the surge in these unfairly traded imports.

10           Respondents have also alleged the domestic  
11 producers' inability to pass on these cost increases  
12 had to do with a huge capacity expansion by domestic  
13 producers in 2003. That allegation cannot be further  
14 from the truth. As shown in this slide, there is no  
15 huge overhang of new capacity in the market affecting  
16 price. In fact, the lack of profitability has caused  
17 this industry to underinvest in new capacity that is  
18 necessary to meet growing demand in the U.S. market.

19           This graph shows available capacity  
20 throughout the period of review and planned capacity  
21 additions. Assuming demand grows at seven percent per  
22 year over the next several years, a rate consistent  
23 with both Petitioners' and Respondents' outlook,  
24 demand will outpace capacity in just a few years.

25           Remember that each year demand grows in the



1 U.S. by 400 to 500 million pounds. If additional new  
2 capacity is not brought on line, all growth will  
3 necessarily have to be ceded to imports.

4 The threat of continued material injury  
5 caused by subject imports remains. Excess capacity in  
6 these Asian markets continues to exist well into the  
7 near future as shown in this slide. Home market  
8 demand is unlikely to catch up to the capacity in  
9 these markets any time soon. Their export potential  
10 is substantial as shown in this slide.

11 Given unrestricted access to the U.S.  
12 market, subject imports are likely to resume. More  
13 importantly, the reaction of these subject imports to  
14 trade actions is foretelling. As Mr. Dewsbury  
15 discussed earlier, PET resin producers and importers  
16 in these subject countries are heavily influenced by  
17 trade actions.

18 As the slide indicates, the pattern of  
19 subject imports in the United States clearly shows  
20 that imports began their upward surge directly after  
21 the EU imposed duties on these countries in November  
22 2000 and continued to increase unabated until about  
23 the time the GSP petition was made public.

24 Thereafter, imports began to decline. This  
25 decline was abated temporarily as Respondents quickly

1 increased imports in anticipation of the DOC's  
2 countervailing duty preliminary and antidumping  
3 preliminary at which time subject imports began a  
4 further descent.

5 Without an affirmative finding in this  
6 matter, this downward trend will reverse, and these  
7 unfairly traded imports will reenter the U.S. market  
8 and continue to suppress prices.

9 I would also like to address the elasticity  
10 estimates in the staff report. Elasticities are  
11 important factors in determining how domestic and  
12 subject imports compete and thereby how effective a  
13 trade remedy will be once imposed.

14 The elasticity of demand for PET resin is  
15 inelastic, unlike the elasticity demands stated in the  
16 staff report. It is a derived demand meaning that  
17 independent of the demand, for example, for beverages  
18 contained in PET resin bottles it has no independent  
19 demand.

20 A PET resin bottle also has no independent  
21 demand, and consequently the portion of cost in  
22 producing a PET resin bottle is not the determining  
23 factor in estimating elasticity.

24 Beverages contained in PET resin bottles  
25 have an independent demand. Therefore, to determine

1 the elasticity of demand for PET resin we must know  
2 about the demand for beverages contained in PET resin  
3 bottles, substitutes for these products such as  
4 beverages contained in glass or aluminum cans and the  
5 portion of cost accounted for by PET resin that is  
6 incurred in producing beverages contained in PET resin  
7 bottles.

8 As we discuss in our brief and original  
9 petition, PET resin accounts for a very small portion  
10 of this overall cost. Consequently, the elasticity of  
11 demand for PET resin is inelastic. That is, below  
12 one.

13 I also disagree with the staff's assessment  
14 of the elasticity of supply, which I believe is too  
15 low, and the elasticity of substitution, also too low,  
16 as we discuss in our brief. I would be happy to  
17 answer any questions on that topic.

18 In summary, material injury caused by  
19 subject imports is supported by the record evidence.  
20 The Commission should take advantage of a customer  
21 specific pricing analysis set forth in our brief to  
22 determine price suppression and the cause of material  
23 injury to PET resin domestic producers.

24 I urge the Commission to make an affirmative  
25 determination to prevent further dumped and subsidized

1 imports from entering this market and causing further  
2 harm to this domestic industry.

3 Thank you.

4 MR. HERTZBERG: Thank you. That completes  
5 our affirmative presentation. We're happy to answer  
6 any questions.

7 CHAIRMAN KOPLAN: I just want to be sure I'm  
8 right. We haven't heard from either Mr. Adlam or  
9 Ricky Lane?

10 MR. HERTZBERG: They are both here to answer  
11 questions if you have any.

12 CHAIRMAN KOPLAN: Thank you.

13 MR. HERTZBERG: You're welcome.

14 CHAIRMAN KOPLAN: We will begin the  
15 questioning with Commissioner Miller.

16 COMMISSIONER MILLER: Thank you, Mr.  
17 Chairman, and thank you and welcome to the panel. I  
18 appreciate your willingness to be here today to help  
19 us understand your industry. It's been a very  
20 interesting and useful initial presentation. I know I  
21 have questions, and I'm sure my colleagues do as well.

22 I think I'd like to start, if I might, with  
23 asking some questions or asking the industry witnesses  
24 to talk a bit about their customers. I want to make  
25 sure I understand the customers and the industry that

1 you're selling into and just what the dynamics are  
2 like there and whether they've changed over the time,  
3 what the structure is in the industry.

4 I heard some talk about the converters and  
5 the bottlers and such. I could ask specific  
6 questions, but maybe in the first instance I'd just  
7 ask some of you to explain to me who your customers  
8 are, how much is going to the converters, bottlers,  
9 how they interact with the beverage industry.

10 Anyway, just tell me a little bit, and I'll  
11 ask more specific questions as we proceed.

12 MR. HERTZBERG: I think all of you have  
13 views on that. I'm happy to have any of you answer  
14 that question.

15 COMMISSIONER MILLER: Mr. Dewsbury, do you  
16 want to begin?

17 MR. DEWSBURY: Let me start. Mike Dewsbury  
18 with Wellman. I'm usually wordy, so I get sometimes  
19 first in these.

20 The market has changed a lot, but our  
21 customers primarily are eight major converters.  
22 There's differences. Those customers that we sell to,  
23 the eight converters, sell to primarily Coke, Pepsi,  
24 and Nestle-Waters. Those are three major, final what  
25 we call end users in the marketplaces, products you

1 might be familiar with.

2 The changes that have happened over the last  
3 five years, one, consolidation of the converters,  
4 converters being conversion of resin into bottles from  
5 more down to just the eight primary ones and then also  
6 that the end users are beginning to purchase their own  
7 resin.

8 Nestle-Waters, Coca-Cola today purchase or  
9 purchase and then toll produce their bottles almost  
10 exclusively. Coke has two wholly owned subsidiaries,  
11 Western Container and Southeastern. Those are two of  
12 the eight that produce 90 plus percent of the bottles  
13 for Coca-Cola carbonated soft drink and water  
14 products.

15 Nestle-Waters produces itself about 50  
16 percent of its own bottles and then toll produces the  
17 other 50 percent through another large converter,  
18 Amcor Containers, but again Nestle-Waters controls the  
19 purchase of all of its resin.

20 Pepsi remains one that is an end user, but  
21 they doesn't purchase directly in the United States a  
22 lot of their resin. They do in other countries and  
23 have moved towards that, but have not done that in the  
24 United States. They buy bottles, and their converters  
25 buy the resin from us for production of bottles for

1 their customers.

2 We have relationships as resin producers  
3 with converters and then end users -- Coke, Pepsi --  
4 and specification processes, manufacturing, are  
5 distributed across that full range of manufacturing.

6 COMMISSIONER MILLER: Okay. That's very  
7 useful. You work with both the converters and the  
8 bottlers then because there are a lot of relationships  
9 between those it sounds --

10 MR. DEWSBURY: Yes.

11 COMMISSIONER MILLER: -- from what you were  
12 saying on that between the converters and the bottlers  
13 themselves.

14 MR. DEWSBURY: Yes, because the final  
15 product on the shelf is the concern of the brand  
16 owners.

17 COMMISSIONER MILLER: Right.

18 MR. DEWSBURY: The brand owners are most  
19 concerned that product meets specifications that the  
20 consumer expects.

21 COMMISSIONER MILLER: Okay. Mr. Sherlock,  
22 you look like you were reaching for the microphone.

23 MR. SHERLOCK: Yes. I was just going to add  
24 to what Mike said that I think between those three  
25 companies, Coke, Pepsi and Nestle, they purchase

1 roughly 80 percent of the PET resin in the U.S. market  
2 or control.

3 They either purchase direct or indirectly  
4 influence those purchases of all PET resin that's  
5 produced in the USA.

6 COMMISSIONER MILLER: And do the converters  
7 -- I know Mr. Dewsbury mentioned a couple of them, but  
8 do the converters mostly produce for one of the three,  
9 or do they supply all?

10 MR. SHERLOCK: Generally with --

11 COMMISSIONER MILLER: What's the competition  
12 among the converters?

13 MR. SHERLOCK: Yes. That's a good question.  
14 Generally within the Coca-Cola system those are within  
15 the Coke system type converters.

16 COMMISSIONER MILLER: Okay.

17 MR. SHERLOCK: In contrast to the Pepsi  
18 system which incorporates the use of the three major  
19 independent converters who are actually in the bottle  
20 making business and sell some of their product or most  
21 of their product in some cases to Pepsi.

22 COMMISSIONER MILLER: Okay. Okay. All  
23 right.

24 MR. SHERLOCK: So there's a little bit of  
25 in-house --



1 COMMISSIONER MILLER: Yes.

2 MR. SHERLOCK: -- and a little bit of  
3 out-of-the-house type converting going on. Most of  
4 the Coke is done in-house.

5 In the case of Nestle it's split roughly  
6 half and half, and in the case of Pepsi it's mostly  
7 out-of-the-company converting going on.

8 COMMISSIONER MILLER: All right. What you  
9 just described, would that be a fair characterization  
10 of the global market as well? Does it operate outside  
11 of the United States in the same way it operates here?

12 MR. HERTZBERG: Hans, do you want to comment  
13 on that?

14 MR. KINNER: Yes, I can. I'll comment a  
15 little bit on that.

16 COMMISSIONER MILLER: Mr. Kinner?

17 MR. KINNER: Yes. Thank you, Commissioner  
18 Miller.

19 Yes. That was one thing that I was going to  
20 add is that this business also has a very global  
21 nature to it. For example, you see the Proctor &  
22 Gambles and the Nestles and the Cokes and the Pepsis,  
23 who if you studied those markets they've consolidated  
24 an incredible number of food and water and many other  
25 consumer products into those companies.

1           They leverage also their buying patterns  
2 globally so in many cases we deal with people in  
3 Europe or we have to coordinate various buy/sell  
4 relationships with different people across different  
5 regions and so there's a very large concentration of  
6 buyers.

7           Of course, the converters also supply these  
8 we call them brand owners, the large brand owners as  
9 well. That is a very important dynamic of this  
10 industry because those markets have consolidated quite  
11 a bit, and you've got a lot of packaging buying power  
12 that rests in a small group of buyers globally.  
13 There's a considerable leverage there around volume.

14           COMMISSIONER MILLER: Okay. Now, this  
15 industry exports a fair amount, so help me understand  
16 where the exporting occurs in the structure of this  
17 industry. I assume most of the bottling is local, the  
18 converting is probably local? But the resin is a  
19 little more fungible in terms of the global market?

20           MR. DEWSBURY: Yes. Resin -- after raw  
21 materials, our next most significant cost is  
22 transportation, for both ourselves and bottle  
23 converters. Once you've made a bottle, you like to  
24 have it close to the filler so you're not shipping  
25 air. So transportation is an issue for all of us.

1           Why we export, we have resin manufacturers  
2 who are close to us, but we have a seasonality in our  
3 marketplace, the summer season, and also the harvest  
4 season, when fruit juices become more predominant.  
5 It's somewhat ameliorated as the water market is more  
6 of an annual market, but with that seasonality we need  
7 to have product for our customers in supply such that  
8 they can meet the peak demands.

9           When they don't run peak demands because of  
10 the high capital investment of our plants, we like to  
11 keep them running, south of the equator the season is  
12 opposite ours and we tend to then export south of the  
13 equator in the softer seasons to keep our plants  
14 running at reasonable utilization rates. It is a  
15 fungible material at that point.

16           COMMISSIONER MILLER: Okay. The yellow  
17 light is on. I don't know if I have time to go down  
18 another -- I probably don't have time to go down  
19 another line of questioning and so I'll hold and let  
20 my colleagues get there and then come back to other  
21 questions in the next round.

22           I appreciate your answers. That was very  
23 helpful. It was just the kind of discussion I was  
24 looking for. Thank you.

25           CHAIRMAN KOPLAN: Thank you, Commissioner.

1 I neglected to say at the outset if you  
2 could re-identify yourselves each time when you're  
3 questioned, it will help the reporter. Thank you.

4 Commissioner Hillman?

5 COMMISSIONER HILLMAN: Thank you.

6 I, too, would join my colleagues in  
7 welcoming you to the commission and thank you very  
8 much for all the information that's been provided.

9 If I can follow on the discussion that  
10 you've just been having with Commissioner Miller to  
11 take it to the issue of pricing, we obviously have a  
12 lot of data in our staff report about how prices get  
13 set and a lot of you have talked about it, but I want  
14 to make sure I understand it in the context that  
15 you've just described, that you've gotten this change  
16 in your purchasers, consolidation in your purchasers,  
17 some of them moving to direct purchasing by the actual  
18 bottlers, some doing tolling.

19 How does it affect the way in which you are  
20 selling your product in terms of whether -- the use of  
21 contracts? I mean, our staff report discusses the use  
22 of both sales on a spot basis versus sales on  
23 short-term contracts versus long-term contracts.

24 Talk a little bit about those pricing  
25 aspects and whether they are different, whether you're

1 selling direct or whether you're selling through a  
2 converter.

3 Mr. Dewsbury?

4 MR. DEWSBURY: Yes. Mike Dewsbury with  
5 Wellman. Strategies for selling tend to be separate  
6 by company. At Wellman, we have several contracts,  
7 but we sell on a market basis with annual price  
8 movement or then quarterly price movement. I say  
9 annual, we renegotiate our price annually to begin a  
10 base for the year and then the price moves with market  
11 at the customer or the end user. There really has  
12 been no difference between end user selling and  
13 converter selling. We do sell to both. But because  
14 of the large component of our cost is raw materials,  
15 80 percent of our cost is raw material today, we  
16 aren't able to have a contractual cost that's locked  
17 in for any period of time. It will change with raw  
18 materials and also change with market conditions.

19 COMMISSIONER HILLMAN: How is that reflected  
20 in your contracts? Is there a specific escalator in  
21 the contract?

22 MR. DEWSBURY: Two ways. One is monthly  
23 negotiation because of the volatility in the  
24 marketplace. There are contracts, we don't have any,  
25 I think I can say that openly, that are tied to raw

1 materials, but there are raw material marker based  
2 contracts, and then there are a few reporting agencies  
3 that kind of track overall trends in the marketplace  
4 and there are contracts, again, we don't have any,  
5 that are tied to Chem Data, CMAI, which report average  
6 pricing in a marketplace and while their average  
7 pricing may not be exact, the movement of the pricing  
8 month to month tends to be reflective of what occurred  
9 in the marketplace, so contracts can get tied to that  
10 marker, adjusting with the CMAI or Chem Data basis.

11 COMMISSIONER HILLMAN: Okay. Now, has this  
12 changed? Have you always been doing this kind of  
13 contracting with changes on a monthly basis?

14 MR. DEWSBURY: Yes.

15 COMMISSIONER HILLMAN: Okay.

16 MR. DEWSBURY: Well, one difference,  
17 probably four years ago, and Hans Kinner may be able  
18 to address it more, but our raw materials used to move  
19 on a quarterly basis and they were locked in during  
20 that period. At that point in time, our pricing to  
21 our customers was also quarterly. Some four years  
22 ago, that shifted. Our raw materials shifted to  
23 monthly movement. Again, volatility in the oil  
24 industry and gas industry is what required that  
25 change. They needed to capture their costs as well.

1 The transition now is that the PET industry is  
2 converting from the former quarterly basis to monthly  
3 to mirror our raw materials.

4 COMMISSIONER HILLMAN: Okay. But you're  
5 saying no difference when you're selling direct versus  
6 selling through a converter.

7 MR. DEWSBURY: No, other than there's a  
8 globalization that happens where a Coke, Pepsi,  
9 Nestle -- we negotiate Nestle pricing in Paris, so  
10 there is a globalization of pricing that goes on.

11 COMMISSIONER HILLMAN: Okay. Mr. Sherlock,  
12 did you have any comments on this issue of how prices  
13 are set and how they're correlated to raw material  
14 costs?

15 MR. SHERLOCK: No, I would just corroborate  
16 what Mike said. I think he covered it pretty well,  
17 the difference being, as Mike also pointed out, that  
18 with the increasing influence of these three companies  
19 that they have tremendous influence and command over  
20 more of a critical mass of the industry as time goes  
21 on, as consolidations take place.

22 COMMISSIONER HILLMAN: Any others want to  
23 comment on this issue of prices and how they're  
24 correlated to material costs?

25 (No response.)

1 COMMISSIONER HILLMAN: All right.

2 I appreciate those answers.

3 I wanted to touch, if I could, for a minute  
4 on the issue of the use of PET resin to make either  
5 sheet or strap.

6 Mr. Sherlock, you commented that anybody can  
7 make it. I just want to make sure I'm understanding  
8 the testimony. In your view, are there currently any  
9 imports that are going into sheet or strap uses?

10 MR. SHERLOCK: Our company has very little  
11 exposure in that segment, so I'm probably not the best  
12 one to answer that question. Having said that, sheet  
13 makers and strappers can use the imported resin as  
14 easily as they do domestic resin. For the most part,  
15 strapping people use scrap. I mean, they just  
16 basically for the most part use scrap manufactured  
17 product that's really not sold on the first grade  
18 market. This is product that's used to make strapping  
19 for bales and those kinds of things.

20 COMMISSIONER HILLMAN: But why would you pay  
21 a premium price for a first grade product if what  
22 you're going to make is strap out of it? I mean, as a  
23 practical matter, does that happen?

24 Mr. Dewsbury?

25 MR. DEWSBURY: No. Strap manufacturers are



1 mostly integrated. They buy -- when I say integrated,  
2 they do some of the processing themselves. They would  
3 buy waste materials, oftentimes, those bottles in an  
4 empty form, grind them, clean them, pelletize them and  
5 solid state them themselves to their required  
6 viscosity. They buy very little prime material from  
7 any of us.

8 COMMISSIONER HILLMAN: So are the converters  
9 that are making bottles also making strap?

10 MR. DEWSBURY: No.

11 COMMISSIONER HILLMAN: You're saying strap  
12 producers are an entirely separate industry?

13 MR. DEWSBURY: That's a separate industry.

14 COMMISSIONER HILLMAN: Okay. Now, how about  
15 sheet?

16 MR. DEWSBURY: Sheet is also a separate  
17 industry.

18 COMMISSIONER HILLMAN: Separate converters?

19 MR. DEWSBURY: Separate converters. Yes.  
20 They do use imports as well as domestic prime and sub-  
21 prime material and also some wide spec material. The  
22 clarity, the food contact, isn't as constant as it is  
23 in a bottle, but strength requirements aren't as  
24 constant as they are on the bottle, so they have a  
25 wider specification window of what they can use.

1                   COMMISSIONER HILLMAN: Okay. So you're  
2 saying on the strap side, imports are not in the  
3 market in that part of the business.

4                   MR. DEWSBURY: Nor are the domestic players  
5 in any great -- they tend to be self-supplied by --  
6 well, wide spec material to a degree, but recycled  
7 material is a major supply.

8                   COMMISSIONER HILLMAN: So none of the U.S.  
9 producers are producing for the strap market.

10                  MR. DEWSBURY: I can't speak for everybody,  
11 but we do not supply that marketplace.

12                  COMMISSIONER HILLMAN: Okay. Does anybody  
13 want to comment on this?

14                  MR. PETERSON: My name is Chris Peterson of  
15 Nan Ya Plastics. Nan Ya Plastics does support and  
16 sell to some strapping industry customers and  
17 converters who just make strap.

18                  COMMISSIONER HILLMAN: So you would agree  
19 that's a separate set of customers, kind of a separate  
20 market?

21                  MR. PETERSON: Yes. Totally separate set of  
22 customers, separate group, separate everything,  
23 basically.

24                  COMMISSIONER HILLMAN: Okay. And imports?  
25 Are they a role in the strap market?

1 MR. PETERSON: In some cases, yes.

2 COMMISSIONER HILLMAN: Okay. Now, how about  
3 sheet?

4 MR. PETERSON: Same. They are.

5 COMMISSIONER HILLMAN: Imports are there,  
6 separate market?

7 MR. PETERSON: Yes.

8 COMMISSIONER HILLMAN: Separate also from  
9 strap?

10 MR. PETERSON: Yes. But it's not -- the  
11 resin that we make, it's just a matter that we choose  
12 to be in that market. We can be there or not. It's  
13 not that we make a special resin in some cases for  
14 these sheet applications, it's just another one of our  
15 resins that we choose to be in that market. So the  
16 imports are there with the same resin that I compete  
17 with in the bottle industry in some cases.

18 COMMISSIONER HILLMAN: Okay. Now, would  
19 prices in the bottle industry translate or affect in  
20 any way the prices in strap or sheet?

21 MR. PETERSON: Typically, not directly.  
22 They are running parallel in some cases, but not  
23 directly, when one moves, the other has to move.

24 COMMISSIONER HILLMAN: Okay. And does it go  
25 the other way? I mean, do the people in the bottle

1 segment know what your prices are in the sheet  
2 segment?

3 MR. PETERSON: Not necessarily.

4 COMMISSIONER HILLMAN: Would they care?

5 MR. PETERSON: Not necessarily.

6 COMMISSIONER HILLMAN: Okay. Okay.

7 MR. HERTZBURG: Ms. Hillman, may I address  
8 this? Our approach is to have you hear from the  
9 business men as much as possible and not from the  
10 hired guns, but your question kind of raises one of  
11 the concerns we have and one of the issues we have  
12 with the staff report and that is that we feel there  
13 was significant under-reporting, so we think that some  
14 of the conclusions reached in the staff report or  
15 facts set forth in either the confidential or public  
16 staff report are demonstrating some less than accurate  
17 observations of the actual market.

18 I think when you go back and try to figure  
19 out whether you got an adequate response from the  
20 respondent community in the particular market segment  
21 you're looking at, you probably will find you did not.

22 COMMISSIONER HILLMAN: I want to make sure  
23 I understand what you're saying. Obviously, it is for  
24 us to determine the reliance that we place on the data  
25 in the staff report, but what I'm trying to make sure

1 I understand, with this point exactly what are you  
2 saying? You're suggesting that we have under-  
3 reporting of imports of scrap and sheet product?

4 MR. HERTZBURG: Under-reporting by  
5 importers, purchasers and foreign respondents has  
6 affected a number of the statistical data that you're  
7 looking at.

8 COMMISSIONER HILLMAN: All right.  
9 I appreciate those responses.

10 Thank you, Mr. Chairman.

11 CHAIRMAN KOPLAN: Thank you, Commissioner.  
12 Commissioner Lane?

13 COMMISSIONER LANE: Good morning. In  
14 looking at this report, I'm struck by the emphasis on  
15 the increase in raw material costs and how that has an  
16 effect upon what you're able to charge for your  
17 product and I'm curious to know as to whether or not  
18 the relative percentage of raw material costs to your  
19 total cost of production has changed over the years or  
20 has it been pretty constant over the years?

21 MR. DEWSBURY: Mike Dewsbury with Wellman.  
22 As a percent of our product, it has been very  
23 constant. It is the same with our product as with any  
24 of our competitors within fractions of a percent, even  
25 the Asian competitors, the subject countries.

1                   What has changed is as raw material costs  
2                   have gone up with the price of oil and gas it takes a  
3                   relatively larger percent of our cost.

4                   COMMISSIONER LANE: Okay. So the cost of  
5                   the petroleum based raw materials has always been an  
6                   important and a big part of producing your goods, so  
7                   my question is have you all as businessmen taken an  
8                   attempt to try to level out those costs over the  
9                   years? Have you done anything or is there anything  
10                  that you can do to lock in prices when petroleum  
11                  products are low?

12                  MR. KINNER: I can address that maybe to  
13                  some degree since I used to be in purchasing for quite  
14                  some time. I used to buy these raw materials before  
15                  I got into the business of selling the resin. As you  
16                  know, most of these raw materials are basically, in  
17                  the case of one of the aromatic feedstock, comes from  
18                  refineries, so it's essentially associated with the  
19                  cost of gasoline or its alternate cost would be  
20                  gasoline or value would be gasoline. And with  
21                  ethylene glycol, it would be natural gas or imports of  
22                  ethylene glycol from, say, the Middle East. But to  
23                  answer your question specifically, yes, we have been  
24                  working on this very diligently and very hard,  
25                  probably for at least five years, to try to find some

1 way of being able to mitigate the price risk that we  
2 have on raw materials.

3 We're able to do this in some of the other  
4 parts of our company, for example, in our olefine  
5 stream where we have polyethylene and some other  
6 polymers where the markets have developed to a much  
7 larger degree where we can do some hedging or we can  
8 use futures markets to go out and at the request of  
9 our customers help them to set more predictable  
10 prices. But, unfortunately, even though we have tried  
11 very hard with Exxon, Mobil, the Chevrans and the Dows  
12 and the Shells of the world to try to create some kind  
13 of a market where we could hedge this price risk, we  
14 have not been able to do that, so as a result with  
15 this kind of volatility we have to have some way of  
16 being able to pass these prices through because we're  
17 pretty much stuck between the big oil companies who  
18 price on either a daily, hourly, or monthly basis and  
19 between our end use customers who would like to have a  
20 fixed price for as long as they can get it, which is  
21 just frankly we're not capable of doing.

22 So I hope that answers your question,  
23 Commissioner Lane.

24 COMMISSIONER LANE: Yes, it certainly does.

25 Did you want to say something?

1           MR. DEWSBURY: Yes, Ms. Lane. Again, Mike  
2           Dewsbury with Wellman. The U.S. is a net exporter of  
3           raw materials. We are not disadvantaged in the United  
4           States to Asia or anywhere else in raw materials. In  
5           fact, we can be advantaged because of the proximity.  
6           But you talk about can we hedge or whatever, hedge is  
7           a cost. If you saw the cost and the performance, even  
8           a cent per pound cost cannot be covered in the  
9           marketplace on the downside, so it's difficult to  
10          justify the cost of the hedge in this marketplace.

11          COMMISSIONER LANE: Okay. Thank you.

12          Ms. Manning, you said something that the  
13          volume of imports were grossly underestimated. What  
14          do you base that statement on, please?

15          MS. MANNING: The volume of imports that  
16          were in the staff report were based on three sources  
17          of information: one, customs data; another foreign  
18          producers' questionnaire responses; and third, I  
19          believe, were importers' questionnaires.

20          We know based on the information that we  
21          received that the responses to the questionnaires did  
22          not capture all of the foreign producers, nor did they  
23          capture all the importers.

24          We also know that the customs data itself  
25          has problems with the correct reporting within the HTS



1 code for PET resin. Imports are coming in not only on  
2 the 0010 code, but also another code, 0050, and, in  
3 fact, they may be coming in in another category.

4 So we see under-reporting or not complete,  
5 100 percent responses from foreign producers, we see a  
6 lack of complete, 100 percent responses from  
7 importers, so those two sources would be under-  
8 reported and then the customs data, just the problems  
9 with the customs data reporting would indicate that  
10 there may be some problems there.

11 MR. HERTZBERG: If I could amplify on that  
12 also, I think one thing that would be instructive --  
13 and we're not blaming the staff on this, this seems to  
14 be a problem that relates to the reporting by the  
15 people you sent the questionnaires to and with regard  
16 to the customs issue, there may be a more fundamental  
17 issue as to total compliance with the system. But  
18 there is significant under-reporting at customs, so  
19 the numbers are quite unreliable.

20 That was pointed out in the prelim as well,  
21 but one thing that would be instructive is that if you  
22 add up the total exports as indicated in the  
23 questionnaires from the foreign producers, and we're  
24 not necessarily agreeing that you got an adequate  
25 response from them, but add up the total number of

1 exports that are reflected, compare that with the  
2 number of imports that are reflected, and then compare  
3 that with the number of purchases and the only  
4 conclusion you can get is that you clearly have  
5 significant under-reporting. And we're talking  
6 about -- with this product, one of the things that has  
7 stunned me, we're talking about frequently hundreds of  
8 millions of pounds, we're speaking in billions of  
9 pounds. I can't imagine putting a billion pounds  
10 anywhere, but when it's missing, that's got to be a  
11 lot of stuff. And it's missing. It's missing in your  
12 responses.

13 COMMISSIONER LANE: Okay. Thank you.

14 Let's go back to the issue of raw material  
15 costs. Are the subject imports also subject to the  
16 higher raw material costs and how are the subject  
17 imports dealing with those costs?

18 MR. DEWSBURY: I've given presentations on  
19 this. Raw materials have become global. Oil is a  
20 global commodity. Parazylene, ethylene glycol are  
21 global commodities. There is some local pricing that  
22 still goes on in PTA that varies over time. U.S. PTA  
23 tends to be contractual, but that's not consistent  
24 across all the producers here. Some of the producers  
25 here are vertically integrated and purchase parazylene

1 on the global marketplace and, as such, U.S.-based  
2 production, NAFTA-based production, is very  
3 competitive, has the same raw material basis as Asia.

4 We all experience what happens at the gas  
5 pump. We know that energy costs are going up. We  
6 know that oil and natural gas both are increasing, are  
7 volatile. That is experienced both here and abroad.

8 COMMISSIONER LANE: And I guess is it your  
9 position that the subject imports are not properly  
10 reflecting the increase in raw material costs?

11 MR. DEWSBURY: That would be true. They are  
12 experiencing the same raw material costs and by the  
13 data we have shown they are covering, if at all, just  
14 their raw material costs. They are not covering added  
15 variable costs which are small, but significant. We  
16 need to earn a profit, we need to cover our costs,  
17 they apparently don't, at least in our market.

18 COMMISSIONER LANE: Okay. Thank you.

19 That's the end of my time. Thank you.

20 COMMISSIONER PEARSON: Thank you,  
21 Mr. Chairman. Welcome back. It's nice to have you  
22 here.

23 CHAIRMAN KOPLAN: Thank you.

24 COMMISSIONER PEARSON: I would just like to  
25 say that unlike some industries that come before us

1 I actually use the consumer version of your product.  
2 I'm not an expert, but I do know something about it.  
3 I think it's a great product.

4 What I'm trying to do is understand broadly  
5 what's happening here in the marketplace. If we look  
6 at Table C-1 in the public version of the report,  
7 we've got U.S. production capacity for PET resin  
8 having increased by over 600 million pounds during the  
9 POI, which is an increase of about 12 percent, a not  
10 insubstantial increase.

11 That table also indicates that total  
12 imports, that's subject plus non-subject, rose by less  
13 than 170 million pounds over the POI.

14 Now, we don't have in the public table  
15 specific information breaking out subject and  
16 non-subject imports, that is confidential, but permit  
17 me to characterize the trends that I see in the  
18 confidential staff report regarding imports of subject  
19 and non-subject product. Basically, subject imports  
20 are declining over the POI. Non-subject imports are  
21 rising.

22 Why shouldn't I conclude that the problems  
23 being faced by the domestic industry have a whole lot  
24 more to do with domestic capacity expansion or  
25 non-subject imports than they do with subject imports?

1 MR. HERTZBERG: Commissioner Pearson, could  
2 you give us a page number on that table you cited?

3 COMMISSIONER PEARSON: Table C-1, public  
4 report. It's on page C-3 in the appendix, in the  
5 appendices. The specific numbers aren't so important,  
6 what's important are the trends and why you're coming  
7 before us to say that the problem your industry is  
8 facing is coming from the subject imports, rather than  
9 from the other factors that I mentioned.

10 MR. HERTZBERG: I'm going to have anybody  
11 who wants to comment on the question do that, but I do  
12 want to comment on the specific trend as it relates to  
13 comparing the beginning of the POI with the end of the  
14 POI.

15 We have stated in our brief that we do  
16 believe very strongly that the way you need to look at  
17 this is the increase that occurred -- if you're going  
18 to stick just with the POI, to look from the beginning  
19 of the period through 2003, before there was an impact  
20 of the trade cases and even in 2003 because of the  
21 presence of the GSP cases, you would see some impact  
22 there, but that gives you a much truer look as to what  
23 the imports were doing and there were very substantial  
24 increases from 2002 to 2003 in the period. Then, as  
25 2004 occurred and we showed you the slides related to

1 the impact of the trade cases, that had a major impact  
2 on what the imports did. So we don't think there's a  
3 lot of validity in saying that the imports trended  
4 down uninfluenced by the trade cases.

5 I'm going to have people address the  
6 question that you raised related to the capacity  
7 question in the United States.

8 MR. KINNER: I think I can comment on that.  
9 First of all, I think that's a very good comment and  
10 an astute observation when you look at those numbers,  
11 especially when you put 2004 in there. But I think  
12 what you have to really look at is the dumped and  
13 subsidized or the absolute pricing and the competitive  
14 pricing situations that are created around the volume  
15 of that material that comes in from these subject  
16 countries.

17 When we see product -- for example, we  
18 operate a plant in Mexico, our business strategy, we  
19 don't import any material from Mexico into the United  
20 States, some other people have different strategies,  
21 but within the NAFTA region we do see some trade flows  
22 going across various borders which is probably not an  
23 unlikely sort of thing to happen because that's what  
24 NAFTA was sort of designed to do and you see some of  
25 those trade flows established over time, but we don't

1 see dumped product from any of those two regions, so  
2 while you are seeing some capacity come from Canada  
3 and/or Mexico and you see that changing, we don't  
4 really see a big impact on the market. However, we  
5 saw an explosive amount of material from the subject  
6 countries come in beginning sort of in the 2001  
7 timeframe. In fact, there's only two public companies  
8 here that are followed kind of by stock analysts and  
9 I'll read you just a comment I happen to have here by  
10 one of the analysts that follows Eastman. This was in  
11 2003 and it says here, this is Berenstein, Graham  
12 Copley, Berenstein Research Reports, saying, "With  
13 almost 50 percent of PET capacity in Asia, the U.S.  
14 industry is especially vulnerable. Asian PET  
15 producers not having to deal with expensive labor,  
16 rising pension costs, and now even higher feedstock  
17 costs have been able to maintain a steady price  
18 discount to their U.S. counterparts which has  
19 translated into dramatically changing trade patterns.  
20 Countries like India and Thailand, which until a few  
21 years ago were net importers of PET from the U.S., are  
22 now net exporters of the product to the U.S. These  
23 changing trade patterns have forced the U.S. producers  
24 to price their product based off Asian pricing to  
25 continue to remain competitive."

1           That's what has really damaged the market,  
2           was the absolute pricing, the dumped and subsidized  
3           pricing that we saw in the marketplace. In a  
4           commodity business like PET, you know, even a few  
5           percentage of these competitive offers that get passed  
6           through the entire market can impact the entire  
7           market.

8           COMMISSIONER PEARSON: Okay. But if unfair  
9           pricing of the subject imports is the big issue, why  
10          do we see in the confidential report a decline in  
11          imports from subject countries?

12          If their low pricing strategy is being so  
13          effective, ought we not to see some increase in those  
14          imports over the POI?

15          MR. KINNER: I think in 2004, I guess I  
16          would have to see all that data.

17          COMMISSIONER PEARSON: That data is  
18          confidential and you can see it, okay?

19          MR. KINNER: Okay. Okay.

20          MS. MANNING: Perhaps I can respond because  
21          I know the data you're talking about.

22          COMMISSIONER PEARSON: Please.

23          MS. MANNING: I think you do see a  
24          substantial increase in the volume of subject imports  
25          in 2002 and 2003 and those imports that entered were



1 dumped and subsidized, according to the Department of  
2 Commerce. What you see in 2004, as we pointed out, is  
3 very astonishingly -- or maybe not surprisingly -- a  
4 reaction to the filing of these trade cases, where  
5 product was removed from the market. Product that did  
6 come in, subject imports, continued to be dumped and  
7 subsidized and affect the market.

8 We are not arguing here that this is  
9 necessarily a volume case. This is very much a  
10 price-driven case based on the fact the imports that  
11 did come in and in substantial quantities in 2003 in  
12 particular affected the pricing that these companies  
13 were able to obtain in the market. And it is a  
14 commodity type market, so therefore small amounts of  
15 products can have tremendous price influences in the  
16 market.

17 COMMISSIONER PEARSON: Okay. Now, you are  
18 alleging a causal link between the filing of the  
19 antidumping countervailing case and the decline in  
20 subject imports. Okay.

21 It wouldn't surprise me that Respondents,  
22 when they are up here, would say something like  
23 there's not a casual link that way, but rather the  
24 causal link has more to do with the increased domestic  
25 production capacity and increased imports from NAFTA

1 countries pushing out the subject imports, making less  
2 room for them in the marketplace and thus the decline  
3 in subject imports is due more to intense competition  
4 from others, rather than from the trade remedy case.

5 Could you comment on that, please?

6 MS. MANNING: Yes. I think that the  
7 position that we have is that the imports that are  
8 coming in that are fairly traded, specifically, those  
9 from Mexico and Canada, are not underselling U.S.  
10 producers, so they are not affecting or depressing or  
11 suppressing the prices of domestic producers.

12 Yes, they may gain some additional sales as  
13 a result of fair competition. Everyone believes that  
14 that's fine. No problems with that. If the imports  
15 come in, non-subject imports come in, and they're  
16 fairly traded, these producers are in a position to be  
17 able to compete with those prices.

18 COMMISSIONER PEARSON: Well, let me just  
19 observe that in my previous life before I became a  
20 commissioner here, I had direct experience with more  
21 than one industry, growth industry, where consumption  
22 was rising where one or more domestic producers would  
23 get overenthusiastic in terms of building new capacity  
24 and when that capacity would come on line, we would  
25 see margins go to pieces across the industry and find

1 the industry in a world of hurt until demand growth  
2 bailed it out of trouble again.

3 I'm out of time, but I'll be interested in  
4 hearing more comments on this in my next round. Thank  
5 you.

6 CHAIRMAN KOPLAN: Thank you, Commissioner.

7 I want to thank the witnesses for their  
8 testimony thus far. I want to begin, if I could, with  
9 what for me would be a housekeeping matter and that  
10 involves the exhibit, the slide exhibit that you all  
11 have used during your direct presentation. I think  
12 there are some 27 slides. There are seven of them  
13 that I would like to get backup data for, if I could.

14 The pages aren't numbered, so what I'll do  
15 is I'll just identify for you the subject headings on  
16 the seven I'm interested in.

17 I assume, Ms. Manning, that you prepared  
18 these?

19 MS. MANNING: I prepared a large volume of  
20 them, yes.

21 CHAIRMAN KOPLAN: Okay. Let me address it  
22 to you and then all I need is to identify it for you  
23 and if I can get it post-hearing, I'd really  
24 appreciate it.

25 The first one is headed "Subject imports

1 have no transportation cost advantage" and the source  
2 there is listed as Wellman data and what I'd like is  
3 the backup for that table.

4 The second one that I'm interested in is  
5 headed "Subject country demand versus capacity 2004,"  
6 and there the source is listed as Voridian data  
7 compiled from industry consultants. I'd like that as  
8 well.

9 Next, "Subject country excess capacity as a  
10 percentage of total capacity 2004." The source is  
11 listed as Voridian data compiled from industry  
12 consultants. The same request.

13 The fourth one is headed "Asian and North  
14 American demand and capacity forecast." The source is  
15 listed as Voridian data compiled from industry  
16 consultants.

17 Number five is "Current and planned capacity  
18 expansions is insufficient to meet growing U.S. PET  
19 resin demand." The source in part is listed as  
20 industry estimates of demand growth.

21 And the sixth one is headed "Excess capacity  
22 in Asia far exceeds estimated demand increases."  
23 Source listed is Voridian data compiled from industry  
24 consultants.

25 And the last one, and I have to confess I'm

1 not sure, the source is listed as SPA-CCI, Inc., the  
2 heading on the chart is "USA CSD Containers Metal  
3 Versus Plastic Percent Change Units." And I'd like to  
4 get that as well.

5 I think that this information, frankly,  
6 might be helpful to our staff as they go over the  
7 material.

8 I know you're nodding your head, but if you  
9 can state for the record that you will do that?

10 MS. MANNING: We would be glad to provide  
11 that backup data.

12 CHAIRMAN KOPLAN: Thank you very much.

13 Now, I'd like to turn to my first question  
14 and I'm following up on some matters that Commissioner  
15 Pearson has raised in his first round, this question  
16 is directed to the coalition witnesses.

17 Your pre-hearing brief references the period  
18 2002 through 2004 and argues at page 9 that, and  
19 I quote, "With the demands of PET resin growing at a  
20 projected rate of 5 to 7 percent a year, the rate of  
21 domestic capacity expansion greatly lags what would be  
22 expected from such healthy demand growth."

23 Now, Reliance Industry's pre-hearing brief  
24 argues at pages 18 to 20 that, and I quote, "Domestic  
25 producers substantially increased production capacity

1 over the POI, particularly in 2003. In 2003 alone,  
2 domestic producers' total capacity expansion in North  
3 America amounted to approximately 1 billion pounds,  
4 more than five times subject import volumes at their  
5 peak and substantially more than the contemporaneous  
6 increases in U.S. consumption and the large increases  
7 in domestic capacity in 2003 resulted in a temporary  
8 period felt most acutely in the second half of 2003  
9 and early 2004 when new capacity and production  
10 outpaced demand, resulting in downward pressure on  
11 domestic producers' margins."

12 I'd like to have the industry witnesses  
13 please respond to this and when doing so if you could  
14 quantify for me the extent to which your firms  
15 expanded capacity in Canada or Mexico to meet demand  
16 growth in the U.S. market. Shouldn't such expansion  
17 be factored into my analysis of the domestic PET resin  
18 market?

19 Who would like to begin?

20 MR. DEWSBURY: Mike Dewsbury with Wellman.

21 CHAIRMAN KOPLAN: Yes?

22 MR. DEWSBURY: We did not have an expansion  
23 during that period of time. We have one that is going  
24 now. I wanted to address, though, the question from a  
25 general standpoint.

1           Supply/demand does impact this market. We  
2 are not here saying that our only problem is subject  
3 imports. Supply/demand in any commodity market, high  
4 supply versus demand will depress pricing. That is  
5 also true in the PET market.

6           Capacity additions in this market, because  
7 of the high capital intensity, again, it's not labor  
8 that is our major cost, it is a capital intensive  
9 business, you must build large plants in order to have  
10 low costs. You can't afford to bring up small  
11 capacity, you must build large. But the capacity  
12 that's been built, the billion pounds, again, that was  
13 brought on mid-year in 2003 by two of the suppliers  
14 that are here today, is consumed and it was consumed  
15 by the 500, 600 million pound per year growth within  
16 this marketplace within a year and a half of it being  
17 built. It was not irresponsible growth. It did have  
18 a depressing effect, but at that same time, 2002 to  
19 2003, there was a commensurate surge in imports that  
20 we've seen and --

21           CHAIRMAN KOPLAN: I hear what you're saying,  
22 I'm trying to understand. Are you saying to me that  
23 you did not expand capacity in Canada or Mexico,  
24 though?

25           MR. DEWSBURY: Wellman did not.

1 CHAIRMAN KOPLAN: Wellman did not?

2 MR. DEWSBURY: No.

3 CHAIRMAN KOPLAN: Okay. What about Eastman  
4 Chemical? Mr. Kinner?

5 MR. KINNER: We did not. We actually shut  
6 some capacity down in 2002.

7 CHAIRMAN KOPLAN: All right.

8 MR. KINNER: IN fact, we shut a Canadian  
9 asset down during that same period of time.

10 MR. SHERLOCK: I believe the two  
11 companies -- this is Tom Sherlock from DAK Americas.  
12 I believe the two companies that engaged in expansions  
13 that year were DAK Americas, who brought about half of  
14 the 330 million pound capacity of that plant on in  
15 2003.

16 CHAIRMAN KOPLAN: Okay.

17 MR. SHERLOCK: So that was roughly half that  
18 number for the period 2003. And M&G, represented by  
19 Mark here, brought the Mexican capacity on, which  
20 I believe was primarily focused toward the growth in  
21 the Mexican market. So in the USA --

22 CHAIRMAN KOPLAN: Are you quantifying that  
23 for me, then?

24 MR. SHERLOCK: Mark, can you quantify that?  
25 Because I don't know that number.



1 MR. ADLAM: This is Mark Adlam from M&G  
2 Polymers.

3 CHAIRMAN KOPLAN: Yes?

4 MR. ADLAM: Yes, we did bring on capacity in  
5 2003, but the capacity really was running, I would  
6 say, more for the second half of 2003, so when you  
7 take over the whole capacity numbers, you have to  
8 really divide by two because they're only running for  
9 half a year.

10 CHAIRMAN KOPLAN: Can you quantify it for  
11 me?

12 MR. ADLAM: Yes. From our situation, we  
13 brought on about 270,000 tons total, so the total  
14 would be about 130,000 tons running for the second  
15 half of the year.

16 CHAIRMAN KOPLAN: That was in 2003?

17 MR. ADLAM: That's in 2003. You've got to  
18 compare that to the complete NAFTA demand growth,  
19 which is somewhere in the region of about 600 million  
20 pounds per year over NAFTA. So if you add up - we  
21 brought on roughly -- you know, putting that into  
22 pounds, we brought on roughly about 270 million, DAK  
23 Americas would have brought about 170, so what's  
24 that -- about 430 to 500 million and if you take the  
25 growth in NAFTA for the whole year, you're looking at

1 about 600 million pounds. So I would put to you that,  
2 yes, there was expansion in capacity, it was well  
3 planned expansions in capacity, and it's not the  
4 situation that I think Mr. Pearson was referring to,  
5 which I'm also familiar with, having worked in Shell  
6 where you can see some situations where people do go  
7 crazy with investments and you get this cyclical type  
8 of behavior.

9 Now, if you contrast that with what is  
10 happening in Asia right now with the subject import  
11 countries, that is a case where investment is  
12 completely out of control. They have completely  
13 eradicated the cyclical nature of the business because  
14 there is no timeframe that we can imagine where their  
15 own demand is going to come forward to allow them to  
16 use up the capacity that they've invested in. So  
17 right away, there's no cyclical nature in their  
18 business. We're going to be facing this huge Asian  
19 gun, subject import gun, for the next few years  
20 because there is no home for this resin. They have  
21 not planned their investments.

22 MR. SHERLOCK: This is Tom Sherlock. Just  
23 to kind of summarize that, our numbers are showing in  
24 2003 that DAK Americas brought on 165 million pounds,  
25 M&G in Mexico brought on 270 million pounds, for a

1 total of 435 million pounds, just doing the math, and  
2 that's against a NAFTA growth in 2003 of roughly 600  
3 million pounds. So that capacity expansion is very  
4 much in line, in fact, lagging slightly behind the  
5 industry growth for that year in NAFTA.

6 CHAIRMAN KOPLAN: Thank you for that. I see  
7 my light has come on. I appreciate your responses and  
8 I'll turn to Vice Chairman Okun.

9 VICE CHAIRMAN OKUN: Thank you,  
10 Mr. Chairman.

11 Let me join my colleagues in thanking all  
12 the witnesses for being here today and for providing  
13 us with your testimony which I found very helpful thus  
14 far.

15 Mr. Hertzburg, I just wanted to go back and  
16 follow up on one remark you made and, obviously, one  
17 of the things we try to do as we work toward a final  
18 staff report is to have everyone work with the staff  
19 to try to get the best numbers possible at the end of  
20 the day and it's often difficult for a number of  
21 reasons but that is what we're often trying to do, is  
22 figure out where the best statistics are.

23 You, though, had made a comment that there's  
24 a missing -- a billion pounds is, I think, what you  
25 just said in response to another question.

1           MR. HERTZBURG: I think I used a billion as  
2 an abstract reference. I don't want to try to  
3 characterize what was actually missing, but there was  
4 a large number of pounds missing.

5           VICE CHAIRMAN OKUN: Okay. I just want to  
6 make sure that you're not arguing anything different  
7 today than what you have argued in your briefs and  
8 what Chairman Koplman just asked Ms. Manning about in  
9 terms of what numbers you take issue with, it's the  
10 misreporting on one of the HTS numbers, and then you  
11 are looking at importer/exporter and the customs  
12 statistics and coming up with a missing figure.

13           MR. HERTZBERG: Again, we're hampered a  
14 little bit by the APO restrictions but I think what  
15 I was trying to say is if you take the total that's  
16 reported to you by foreign producers and everyone  
17 understands that certain foreign producers didn't  
18 report, so there's a question of that data being  
19 incomplete as well, but if you take that total and you  
20 take the total of what you've received from importers  
21 and you take the total of what you've received from  
22 purchasers, there is a complete disconnect. And if  
23 I go any further, I'm going to get into APO data, but  
24 it clearly suggests under-reporting of the actual  
25 amount of product that was imported into the United

1 States during the POI.

2 And it is a little bit of a frustration for  
3 us as well in trying to cooperate with you in the  
4 hearing to -- it looks almost like a false positive in  
5 a medical test. You're getting certain reads that you  
6 really shouldn't be drawing even preliminary  
7 conclusions from because the data is that inadequate.

8 VICE CHAIRMAN OKUN: Well, again, what I am  
9 trying to make sure is that I understand what you're  
10 arguing and whether it's consistent with what was in  
11 the pre-hearing brief because --

12 MR. HERTZBURG: We'll try and point out the  
13 specific --

14 VICE CHAIRMAN OKUN: Again, talking to  
15 staff, I think that they used very conservative  
16 estimates on the high end on those numbers and that's  
17 why I'm trying to figure out is there really as big a  
18 disconnect as you're saying, but I will go back and  
19 look at what --

20 MR. SHERLOCK: Can I just quickly comment on  
21 that?

22 VICE CHAIRMAN OKUN: Yes.

23 MR. SHERLOCK: This is Tom Sherlock from DAK  
24 Americas. The consultants in the industry generally  
25 speaking recognize and corroborate what Mr. Hertzburg

1 has just said and they in their reporting of imports  
2 go to great lengths to try to understand what has been  
3 misclassified. They consolidate it together and  
4 report it to the industry. So this is not a mystery,  
5 this is something that we know is a problem in these  
6 HS tariff categories, that it's easy to get the wrong  
7 number. And so consultants in the industry go through  
8 the process, painstaking process, of adding all of  
9 that up to determine how much is actually coming in.

10 VICE CHAIRMAN OKUN: I appreciate that.

11 Yes, Mr. Hertzburg?

12 MR. HERTZBURG: Commissioner Okun, we have a  
13 particular exhibit in mind for the confidential brief  
14 which we'll try to show you what I was just trying to  
15 articulate and I think it will make our position  
16 clear, whether you agree or don't agree.

17 VICE CHAIRMAN OKUN: Okay. Again, I would  
18 just encourage you to continue working with staff to  
19 be specific on where you see the discrepancies on  
20 that.

21 And then just also, I'm not sure that you've  
22 broken this out, which is in terms of what you think  
23 is under-reported, do you think there's any difference  
24 in the yearly data? In other words, do you think the  
25 under-reporting is different from '02, '03, '04 for

1 any reason? Or do you think it's just some percentage  
2 that's going to affect the whole period of  
3 investigation?

4 MR. HERTZBURG: One of the major problem  
5 areas seems to be consistent and we'll point that out  
6 as well. And we have also had effective dialogue,  
7 I think, with the staff on trying to resolve some of  
8 these things previously.

9 VICE CHAIRMAN OKUN: Okay.

10 MR. HERTZBURG: And we'll continue to try to  
11 do that.

12 VICE CHAIRMAN OKUN: Okay. I appreciate  
13 that.

14 And then just going back, I know in your  
15 charts and your presentation, you've talked about what  
16 effect you think the GSP petition had and the when the  
17 subject imports started to exit the market and I just  
18 want to be sure in terms of what the industry saw.  
19 I think the Respondents have included a lot of  
20 statements by different CEOs from your different  
21 companies regarding what was going on. There's one in  
22 particular I'm going to ask you to comment on and this  
23 would be for Mr. Dewsbury regarding when the subject  
24 imports began to decline.

25 Mr. Duff, the Chairman and CEO of Wellman,

Heritage Reporting Corporation  
(202) 628-4888

1 stated in an October 28, 2004 earnings conference  
2 call, "Asian imports into the U.S. markets have been  
3 declining since second quarter 2003." Is that your  
4 experience as well, Mr. Dewsbury, on the business end?

5 MR. DEWSBURY: The exact timing of it,  
6 Ms. Okun, I'm not sure of, but it was towards the  
7 second half or the end of the first half of 2004 that  
8 we saw in the marketplace a decline in imports to this  
9 country and a commensurate, then, pick up of sales for  
10 our product in this marketplace and an ability to  
11 recover from what had been disastrous pricing in the  
12 first half of 2004 and started to cover some of the  
13 raw material cost increases in the second half, then,  
14 of 2004.

15 VICE CHAIRMAN OKUN: Okay. And let me turn  
16 to that, because I know there's been a lot said in  
17 terms of what the cost price squeeze was and why, as  
18 I understand what you're arguing is that in '04, what  
19 you've just said is that you weren't able to kind of  
20 make up for what were rising raw material costs in '04  
21 because of -- is it because of what happened in '03 or  
22 because of what you still see as the presence of  
23 subject imports in '04?

24 And I'll start with you, Mr. Dewsbury, but  
25 I'd ask the other company representatives to comment



1 as well.

2 MR. DEWSBURY: Certainly the added domestic  
3 capacity had an impact in '03, but I would add that  
4 the subject country imports had risen to a very high  
5 level in '03. That added to the domestic capacity  
6 exceeded the demand increase during '03 and depressed  
7 pricing. The import pricing was not just capacity  
8 that was coming in, it was very low price, oftentimes  
9 below their cost. Again, they have sometimes  
10 protected home markets, they can export here without  
11 fear of retribution by the U.S. marketplace, so they  
12 bring those materials in at whatever price they care  
13 to have, large, multi-national buyers are not going to  
14 pass up on it. They do the right thing, they take  
15 that material and exaggerate the extent of it and push  
16 it across all of our pounds to try to move our pounds  
17 in more competition on a global basis in an unfair  
18 way.

19 VICE CHAIRMAN OKUN: And just before I turn  
20 to Mr. Sherlock, if you could just comment, though, on  
21 '04. In other words, I think what I've heard,  
22 regardless of whether you attributed the decline in  
23 subject imports to rising raw materials costs in Asia,  
24 the filing of a GSP petition or the filing of the  
25 petition, I think we can look at the statistics and

1 say there are less imports in the market in '04 than  
2 there are in '03, but your profits don't show  
3 improvement, even when the imports go out of the  
4 market and that's what I'm trying to understand. What  
5 happened in '04 in terms of pricing for you? And then  
6 I'll go to Mr. Dewsbury again and then I'll turn to  
7 the others.

8 MR. DEWSBURY: Mike Dewsbury with Wellman.  
9 Our profits for '04 were negative, but our profits in  
10 the second half of '04 were positive and, in fact, the  
11 fourth quarter, which we just released, I believe,  
12 last week, were the highest that we've had in the past  
13 several years. So we turned a corner, really, at the  
14 time of the issuance of the preliminary orders from  
15 this body. We turned a corner and began getting  
16 increases in price. And so our third and fourth  
17 quarter were not losing money. We gained share or we  
18 gained price at that point in time.

19 VICE CHAIRMAN OKUN: Okay. Mr. Sherlock?

20 MR. SHERLOCK: Yes. I would just complement  
21 what Mike said by saying that we were basically  
22 recovering from 2003 in 2004 and the damage that we  
23 saw in our business was largely, for the most part,  
24 concentrated in 2002 and 2003, so that when we went  
25 into 2004, in spite of the fact that the imports

1 volume were coming down in reaction to what we believe  
2 are the trade hearings, we were still in this catch-up  
3 mode in 2004, trying to recover back to zero our  
4 margins. In 2003 and 2002, we had to go very, very  
5 negative to respond to the competitive pricing that we  
6 were being faced with in those two years by the  
7 importers.

8 MR. KINNER: Can I make one comment, please?

9 VICE CHAIRMAN OKUN: My red light is on, but  
10 for completeness, can I ask him to respond?

11 CHAIRMAN KOPLAN: Let's complete the  
12 questioning on it. Yes.

13 VICE CHAIRMAN OKUN: Thank you,  
14 Mr. Chairman.

15 Mr. Kinner?

16 MR. KINNER: Yes, this is Hans Kinner with  
17 Voridian. There's also a global overlay here and  
18 I think it's very important for the commission to  
19 understand 2004. I think Commissioner Pearson's  
20 comments hit on it some, but 2004, there's three or  
21 four things that are important to understand and one  
22 of them, of course, in 2003, in North America, there  
23 was an overcapacity situation, you're correct, and  
24 that does impact the marketplace, but there was a lot  
25 of competitive activity also still from Asians in the

1 second half of '03 which had an impact of setting that  
2 price at a low level towards the end of the year.

3 Then in 2004, we saw unprecedented raw  
4 material volatility that we've never seen in this  
5 industry. We've never seen crude oil go to \$50 a  
6 barrel, we've never seen the world with energy pricing  
7 like we've seen in 2004, plus you had this commission  
8 begin the dumping effort. So there was a lot of  
9 uncertainty in the marketplace in 2004 that we've  
10 never seen.

11 Now, when you buy resin from Asia, you have  
12 to agree to a price, in a lot of cases, two months,  
13 maybe three months before you actually receive the  
14 price. Somebody has to take that risk. That's a lot  
15 of risk in a volatile market like last year, with both  
16 the raws and the pricing and the duty and who knows  
17 what's going to happen with the crude oil, so it  
18 became a period of time when people had to become very  
19 risk averse because if you made a bad decision on that  
20 pricing, on the raw materials, on setting that price,  
21 there's just no way you could recover from it. We saw  
22 that globally, those kind of risk averse types of  
23 activities.

24 VICE CHAIRMAN OKUN: Okay. I appreciate  
25 those comments.

1 I know there were others, but since my red  
2 light has been on --

3 CHAIRMAN KOPLAN: Mr. Adlam, I think, was  
4 the only other one.

5 MR. ADLAM: Yes. This is Mark Adlam from  
6 M&G. I would just add a similar comment, that  
7 basically we got ourselves into a big hole at the end  
8 of 2003 but the important thing to realize is there  
9 were still imports in 2004 and even though the volume  
10 was less those things were still undersold. So we  
11 were facing underselling from the subject countries in  
12 2004 as well which was preventing us from getting  
13 these record increases in raw materials, so they were  
14 still present. They may have been less and the impact  
15 was they slowed our recovery, I would say, but in 2003  
16 the real damage was done.

17 VICE CHAIRMAN OKUN: Thank you very much.  
18 I appreciate getting those comments.

19 CHAIRMAN KOPLAN: Commissioner Miller?

20 COMMISSIONER MILLER: Thank you,  
21 Mr. Chairman.

22 I sort of want to continue asking questions  
23 along the line that Vice Chairman Okun was just asking  
24 because some of it is understanding 2004 and I'm  
25 really trying to reconcile your comments about pricing

1 with what I see in pricing in the staff report and  
2 pricing data that you've used today in your charts.

3 Looking at this hearing, what you were  
4 saying just now, okay, yes, I see the price increases  
5 in the last half of 2004, but I sort of see those in  
6 the context of seeing rising prices throughout our  
7 period. So those didn't look different to me, because  
8 it looked like it was a consistent rise over that  
9 period of time. It didn't look like something  
10 different than the general trend.

11 MR. TAYLOR: I'll try to give you a little  
12 idea. I mean, I'm involved a lot with buying raw  
13 materials today and if you literally look back over  
14 the history of PET raw materials and you look back,  
15 say, 10 years, you're going to see lots of peaks and  
16 valleys related to oil pricing, natural gas and so  
17 forth. If you go back into the mid '90s, raw material  
18 costs were approaching 50 cents a pound, which is  
19 where we're at today from a raw material standpoint.  
20 If you go back into, say, a 2001 timeframe, if you  
21 remember back, oil prices, I think they got down to  
22 \$12, \$13 a barrel. I think the raw material costs for  
23 product, PTA and MEG that goes into PET, reached --  
24 I don't remember the exact number, but somewhere in  
25 the low 20s. So from that point in, say, 2001

1       timeframe raw materials have been going up every year.  
2       It was, say, 25 cents, which was maybe a historic low  
3       or close to a historic low in the early 2001-2002  
4       timeframe, but it gradually built a couple cents here,  
5       a couple cents here. It wasn't until we really got  
6       into -- I guess we saw the first sign of it in 2003.  
7       Raw materials in first and second quarter of 2003 shot  
8       up, I think, 10, 12, 15 cents in basically a six-month  
9       period. But then overnight, beginning in, say, June,  
10      July, they fell seven or eight cents. And then from  
11      that point there was a slow, gradual increase in the  
12      second half of 2003 and then the unprecedented rise  
13      that we saw in 2004 to where, I think, raw material  
14      costs today, I think they're like 55, 56 cents a  
15      pound. So, you know, it is -- I mean, over a ten-year  
16      period, it's been up, it's been down, but for the  
17      period of investigation, you're coming from pretty  
18      much the low point on raw materials to the highest  
19      peak we've ever had today.

20                   COMMISSIONER MILLER: Okay. All right.

21                   Mr. Dewsbury, you wanted to add something?

22                   MR. DEWSBURY: Yes, I would. Mike Dewsbury  
23      with Wellman. Just as a clarification, in this  
24      industry, you cannot look at price and get an  
25      understanding of what's happening to the producers.

1 You have to look at what we call raw material margin.  
2 That's our price minus our raw material costs, our  
3 most significant piece. Now you'll see a trend that  
4 tracks more the supply-demand in the injury that we're  
5 talking about.

6 COMMISSIONER MILLER: Right. And  
7 I understand. Clearly, the case that Dr. Manning  
8 presented and the case that I take it you're asking us  
9 to understand is this issue about, yes, prices are  
10 increasing, but not as much as raw materials, the  
11 ability to pass on the raw material price increase,  
12 and it's your view it's the imports that are keeping  
13 you from being able to do that, correct? I've stated  
14 your -- I know Dr. Manning in her presentation said in  
15 a competitive industry you should be able to pass on  
16 the increases, the cost increases, and my reaction to  
17 that is sometimes yes, sometimes no. I mean, we see  
18 industries here that have the ability to do that and  
19 we see industries that don't have the ability to do  
20 it. Imports may be a factor and the structure of the  
21 industries will be a factor as well.

22 I was still trying to understand the 2004  
23 situation and the import drop and whether you would  
24 have us very much look at 2004 and say the import  
25 decline in 2004 is due to the petition. Now, the



1 Respondents have cited some evidence that has industry  
2 CEOs talking about some of the raw material cost  
3 disadvantage that the U.S. producers had as compared  
4 to the Asians may have improved over that period of  
5 time. I'm sure you've seen them in their pre-hearing  
6 briefs, those comments by Mr. Duff and Mr. Ferguson.  
7 So other than just saying that the petition happened,  
8 imports dropped, prices went up, do you have any  
9 evidence of customers saying we're shifting back to  
10 you because of the petition? I mean, something that  
11 is more than just the petition happened and imports  
12 went down?

13 I'm kind of looking for more direct evidence  
14 that that's why it happened, as opposed to the  
15 statements of your own CEOs that in part attribute it  
16 to raw material changes, cost changes. Am I making  
17 sense? I'm sorry.

18 Mr. Kinner, maybe you want to comment, since  
19 I did mention your CEO.

20 MR. KINNER: Mr. Ferguson?

21 COMMISSIONER MILLER: Yes.

22 MR. KINNER: Yes. I know Brian Ferguson's,  
23 our CEO's, comments were mentioned quite a bit in the  
24 Reliance paper, but one thing you have to realize  
25 about Brian's comments also is that the PET business

1 within Eastman Chemical Company is, I don't know, 20  
2 or 25 percent of our company, so a lot of times when  
3 Brian is talking about raw materials, it's in a little  
4 bit broader context than just PET. In fact, some of  
5 those comments, he talks about propane and some of our  
6 other businesses. But in general, the entire  
7 petrochemical industry last year, we had unprecedented  
8 price increases in volatility in base raw materials  
9 and we've all seen that at the gas pump. We've never  
10 seen \$55 crude oil before and those things are all  
11 extremely real to us. We live that every day because  
12 that's the biggest source of cost that we have. Last  
13 year was just an incredibly volatile and hard to deal  
14 with year globally for everybody in this kind of a  
15 business.

16 So when you look at '04, you have to think  
17 about that a little bit as the environmental backdrop  
18 upon which you're seeing all these business things  
19 play out, but I'll give you one example. For example,  
20 in our polyethylene business, which we're also in  
21 polyethylene, you know, we were able to pass through  
22 costs considerably better than in this industry.  
23 Although we were still hurt by that, we were able to  
24 get more of those costs passed through in the market.  
25 But, okay, so you're asking why did these imports not

1       come in here and I think that's a really good question  
2       because the key to when you look at this set of data  
3       that you've got and you look at '03 and '03 is a  
4       strange looking year because things changed a lot.  
5       And we've had that discussion ourselves and part of it  
6       is the duty, there's no question that when the duty  
7       effort started people had to put in the back of their  
8       minds these importers and the brand owners that buy  
9       this product, somebody is going to have to potentially  
10      pay for the duties or the potential duties and the  
11      GSP. And, frankly, if you looked at most of the  
12      consultants at the time, they were predicting that the  
13      GSP would go through. Their intelligence to the  
14      marketplace was that the GSP will happen, so that was,  
15      I guess, the middle of last year.

16                 Is that right, Mike? I think it was the  
17      middle of last year.

18                 And then the dumping was still to be seen  
19      whether that was going to go through.

20                 Now, the disruption in the raw materials  
21      globally that was happening, again, threw a lot of  
22      risk into Asia as well because what you have to  
23      understand is a lot of the buyers in Asia, and we talk  
24      about Asia, Asia is a gigantic place, as you know,  
25      have not historically used contracts, they have not

1 had very good relationships in some cases with their  
2 suppliers.

3 Now, I'm not aware of any of them that  
4 didn't get all of the raw materials that they needed  
5 when they needed them, but this was also a time in  
6 that region where there were some commercial practices  
7 that suppliers were trying to clean up to some degree.  
8 You also had the WTO rules were changing with China  
9 this year. You saw that happen. There was a lot of  
10 turmoil. This is the polyester market, so this is  
11 also related to polyester fiber. And with the rules  
12 changing for China, the fact that these quotas were  
13 going away, that was a huge overlay in Asia because a  
14 lot of these people also produce fiber. In fact,  
15 fiber is their main business. So you had between the  
16 raw material, the dumping, the WTO changes in fiber  
17 and polyester fiber, 2004, there were so many things  
18 in the background going on in the environment that it  
19 becomes hard to really sort out, you know, what really  
20 happened and why did it happen this way.

21 COMMISSIONER MILLER: Okay.

22 MR. KINNER: And that's, unfortunately, the  
23 best explanation I've got.

24 COMMISSIONER MILLER: I appreciate that.  
25 I know Mr. Dewsbury wants to make a comment. Maybe

1 Commissioner will give him the opportunity to if we  
2 can't do it now or we can try.

3 I'll finish up on that.

4 CHAIRMAN KOPLAN: I'm feeling very liberal.  
5 Go ahead.

6 COMMISSIONER MILLER: You are?

7 CHAIRMAN KOPLAN: Yes. Go ahead.

8 COMMISSIONER MILLER: He's going to let you  
9 answer on my lack of time, Mr. Dewsbury, so please.

10 MR. DEWSBURY: Ms. Miller, simply to your  
11 question, we did see an immediate pick up in business  
12 with the announcement of the preliminary findings of  
13 this body. The customers never said it was because of  
14 that, but raw materials was not moving at that point  
15 in time. Raw materials tend to move on a monthly  
16 basis. This happened within the week of this  
17 announcement. More telling, the same customer told us  
18 that one of the subject companies who has gotten a  
19 free pass, they are not getting any duties, they told  
20 us that company saw its phone ringing off the hook and  
21 was completely oversold because of a switch from those  
22 that had duties imposed to this company which had not  
23 had any duties imposed.

24 COMMISSIONER MILLER: Okay. Thank you. And  
25 if I can clarify, just so you understand where I'm

1 coming from, I think petitions and investigations have  
2 an effect on trade. I've found that many times. It's  
3 business reality. So I don't question it, but --  
4 I don't question it usually, but in the face of  
5 statements by industry participants that suggest  
6 there's another reason for the decline, then I'm  
7 looking for some evidence of what you're saying. So  
8 that's why, even though I generally would think yes,  
9 there's some conflicting evidence on the record. I'll  
10 give you the opportunity in your post-hearing  
11 submission to show us otherwise.

12 Thank you. I appreciate it, Mr. Chairman.

13 CHAIRMAN KOPLAN: Sure.

14 Commissioner Hillman?

15 COMMISSIONER HILLMAN: Thank you.

16 I guess just following on on this further  
17 evidence, part of the other problem that I guess I'm  
18 having in terms of how to look at 2004 is a lot of the  
19 import dropoff to me looks like it occurred before the  
20 petitions were filed. And I realize you're citing the  
21 GSP petition issue as what's caused it, but that adds  
22 another sort of level of -- help me understand why  
23 I should assume that the filing of a petition to  
24 withdraw GSP was what was really driving it because  
25 some of the import volume, it looked from the data,

1 appeared to come out even before the antidumping  
2 petition was filed. So I would share some of the  
3 concern about I need to make sure I understand where  
4 is there evidence in the record to suggest that the  
5 fact that the imports came out of the market before to  
6 some degree this case was even filed, how do we put  
7 that into the context of everything that's been said?  
8 So if there is further information, again, from the  
9 market participants that focused on the filing of this  
10 GSP petition to help understand why imports came out  
11 of the market, I think that would be very useful.

12 MR. HERTZBURG: Commissioner Hillman, just  
13 one point. First, we agree that the information  
14 available does indicate that there was a decline in  
15 2004 and that seems to be the case, but by no means  
16 are we conceding that the imports were not having an  
17 impact in the marketplace. We still believe the data  
18 in our report and the information that if you look at  
19 specific questionnaires will show significant issues  
20 that relate to this case. And, again, I can't go into  
21 the APO data in 2004.

22 We think the Thai example of how they  
23 suddenly had the ability to get 30 million pounds  
24 despite so called raw material prices in just before  
25 critical circumstances might arise is very indicative

1 of the ability to turn the switch on whenever they  
2 want to and we also believe that raw materials, as  
3 Mr. Taylor just spoke, were going up quite  
4 consistently through the POI and the Department of  
5 Commerce's dumping margins and the information that  
6 your Section D shows is that a lot of this product was  
7 sold here without any regard to profit. And I think  
8 what is so critical here is that these people are  
9 trying to make a dollar, they're just trying to keep  
10 their employees alive, they're trying to make a  
11 profit. It's basic business interest that's involved  
12 in this case.

13 You cannot make a profit when major  
14 competitors are willing to sell volume. It's almost  
15 like -- my dad was in business and unfortunately he  
16 understood that he'd like to sell a lot to the big  
17 retailers and he didn't focus on the bottom line as  
18 well as he should, that everything should have a  
19 nickel profit in it. If these guys don't get profit,  
20 they cannot expand with the market, and those imports  
21 largely came in without any relationship to the cost.

22 COMMISSIONER HILLMAN: Okay. Mr. Hertzburg,  
23 I'm not sure that the commission has ever or it's  
24 within our mandate to really look at what the costs of  
25 production were overseas. I mean, that may be an



1 issue for the Commerce Department in determining  
2 margins. It's not relevant to our analysis.  
3 I understand it, obviously we've got to look at  
4 whether these products undersold in the U.S. market  
5 and whether that underselling had an effect, whether  
6 prices were depressed or suppressed, but what that  
7 does in terms of whatever the foreign costs of  
8 production were, at least speaking for me, is not  
9 relevant to our analysis. I understand the argument,  
10 but I'm not sure what the relevance is to our analysis  
11 of the injury on the domestic industry.

12 I think we need to focus more on whether --  
13 again, what were the price effects and that's --  
14 again, I'm trying to go back to understanding --  
15 I hear the story. What you're telling me is that you  
16 were not able to increase your prices, because there's  
17 no question -- this is an unusual case. Here we have  
18 imports declining throughout the period and prices  
19 rising. That is not a normal case. We don't normally  
20 see a pattern of consistently increasing prices and  
21 declining imports and say that that is a case of  
22 material injury. That's not the normal pattern.

23 Clearly, what you're telling me is this is a  
24 case of price suppression, so I'm trying to make sure  
25 I understand sort of where I can see that on the

1 record, which really gets me to some of the issues  
2 that we were talking about earlier in terms of how  
3 prices get set.

4           You all have described that this issue of  
5 your increases in your raw material costs were,  
6 I think as all of you described, unprecedented,  
7 unusual, you're not normally seeing this level of  
8 price increase in the period of time that you've seen  
9 it. I think you, Mr. Taylor, were talking about -- or  
10 maybe it was you, Mr. Kinner, I'm not sure, about this  
11 pace at which these price increases or your raw  
12 materials have occurred.

13           What I'm trying to understand is would you  
14 expect normally to be able to pass on that level and  
15 that speed of a raw material price to your customers?  
16 I mean, is it a normal business practice in this  
17 industry that no matter what happens in raw material  
18 costs you are always able to pass them on completely  
19 through to your customers in kind of real time basis?  
20 I mean, obviously, this is a fast moving price  
21 increase. Is that normal? I mean, would you always  
22 assume this level of price increase from your cost can  
23 be passed on that rapidly to all of your customers?

24           MR. KINNER: May I?

25           COMMISSIONER HILLMAN: Sure.

1 MR. KINNER: This is Hans Kinner of  
2 Voridian, if I can attempt to answer that.

3 Commissioner Hillman, what you're talking  
4 about is exactly what we hear from a lot of our  
5 customers. We had 31 cents of price increase last  
6 year. The PET price is as high as it's been in  
7 something like over ten years. Now, the fact is our  
8 suppliers look to us right now for our raw materials,  
9 we're paying the highest prices we've ever paid and  
10 they don't give us any option to say we want to pay  
11 that or not. It's very analogous to when you go to  
12 the gas pump and you want to decide if you're going to  
13 fill your car up with gasoline, are you going to pay  
14 \$2.50 when you used to pay \$1.25? That's exactly the  
15 situation we saw last year.

16 Do we like to have to put this much price  
17 increase in the market to stay at the same place and  
18 have the kind of results we had in 2004? No. I can  
19 guarantee you it affected my paycheck last year for  
20 the results that we got in this business.

21 The dynamics of last year, you have to  
22 understand the background of this environment of  
23 energy, the cost structure, and it's something that  
24 we're also having to make sure and pass through to our  
25 customers. They don't like to take these price

1 increases either because ultimately the consumer on  
2 the store shelf has to be able to pay these things.  
3 But our option is that we have to pass these costs  
4 through and, if we can't with the extremely low to  
5 nonexistent margins that we have, especially where we  
6 started out in 2003, there is no way that we can pass  
7 the cost through.

8           And I'll just give you one example. In  
9 2003, sitting in a customer's office in February, the  
10 customer telling me -- because in 2003, we had some  
11 significant volatility in raw materials as well, but  
12 not like what we saw last year -- telling me they had  
13 a price from an Asian fixed for the entire year  
14 irrespective of what raw materials did, asked me to  
15 meet that price and give them a fixed price for the  
16 year. I could not do that.

17           My company could not exist that way.

18           Now, I don't know whatever happened, I don't  
19 know if that contract was honored or not, but those  
20 are the kind of things that we've seen the last  
21 several years and this raw material volatility --  
22 really, it's been a price increase, it has not gone  
23 down, it has been another issue that we've had to deal  
24 with.

25           COMMISSIONER HILLMAN: Thank you.

1 Mr. Adlam?

2 MR. ADLAM: Yes. I'm Mark Adlam from M&G  
3 Polymers. I guess one of the questions you're asking  
4 is why are we saying that it's the subject importers  
5 that are hindering our ability to increase prices.  
6 And I think you have to look at the way we pass  
7 increases through.

8 We not only have to get the increase through  
9 to our direct customers, the converters, but they then  
10 have to get their increase through to the brand  
11 owners. And so if you like, the converters have to  
12 sell the concept of the price in the market to the end  
13 users, to the people like Pepsi. And I guess what  
14 happens and why the subject importers are so  
15 devastating is that Pepsi will receive an offer, say,  
16 from Futura Resin which is at very low prices,  
17 undercutting sales, and then they're going to turn  
18 around to the rest of the industry and say, well, why  
19 should I accept your price increase? Here I can  
20 physically buy resin, and I've done it, I'm actually  
21 going to bring some resin into the country and I'm  
22 buying it at a lower price than you guys, even though  
23 you're supposed to be buying a lot more resin than I'm  
24 buying from these people.

25 And so this very small quantity of resin is

1 then used by Pepsi to leverage their suppliers and  
2 tell people that increases are not going to go  
3 through. So a very small amount of resin has a huge  
4 impact. We have a very, very concentrated market in  
5 PET. There's a very few number of sellers. And if  
6 you've got an importer who is willing to sell at below  
7 cost, which we have demonstrated that these importers  
8 are willing to do, the brand owners will use that  
9 information and they will leverage not just us, but  
10 our customers as well, and they will prevent these  
11 price increases. And that's what has happened in  
12 swallowing up the increases of the raw materials. We  
13 are not able to pass them as quickly as we should have  
14 been and that's the reason.

15 COMMISSIONER HILLMAN: Okay. I appreciate  
16 those responses. Thank you.

17 CHAIRMAN KOPLAN: Thank you, Commissioner.  
18 Commissioner Lane?

19 COMMISSIONER LANE: I want to go back to one  
20 of the earlier answers and I don't remember who was  
21 talking about it, it might be -- I'm not sure.  
22 Anyway, it's about Coke, Pepsi and Nestle. Now,  
23 explain to me where they fit into this whole industry.

24 Are you saying that they buy some of the  
25 product themselves and then they convert it? Or just

1 explain to me how that works.

2 MR. TAYLOR: I guess I'll give it a try.

3 It's Robert Taylor with Wellman.

4 I guess the answer is yes to both of those.  
5 I mean, Coke, Nestle are converters themselves.  
6 Coca-Cola has two co-ops, Western Container and  
7 Southeastern, that make the majority of the bottles  
8 for the Coca-Cola system. Coca-Cola buys the resin,  
9 Coca-Cola Bottling Sales and Services buys the resin  
10 directly from those converters.

11 Coke also has a small percentage that's  
12 produced at outside converters, such as the AMCORs and  
13 stuff that you've heard mentioned earlier. And Coke  
14 does buy the resin and supply it to them through what  
15 we call tolling arrangements.

16 Nestle is the largest independent water  
17 company here in the United States. Coke and Pepsi, of  
18 course, have their own water brands that are very  
19 large. Nestle produces about half of their bottles  
20 for North America through their own manufacturing  
21 plants. The other half is through tolling agreements  
22 that they have with AMCOR that they actually purchase  
23 the resin, ship it to AMCOR and AMCOR tolls it.

24 From Pepsi's standpoint, the majority of  
25 Pepsi's business is through four or five converter.

1 Those four or five converters would supply bottles to  
2 Pepsi. Most of that, the resin is purchased through  
3 the converters. Some of it is actually supplied  
4 directly from Pepsi such as the Futura from India.  
5 But overall, it's through those four or five  
6 converters.

7 Like they mentioned earlier, Pepsi gets  
8 prices from some of the Asian importers. They go back  
9 and pressure these four or five converters who say --  
10 let's say 50 percent of the Pepsi business is these  
11 converters' business, but they also produce product  
12 for five, six, ten, a hundred different other  
13 customers. When these converters go out and negotiate  
14 pricing, their main concern is to cover their needs  
15 for Pepsi, but indirectly that Pepsi price that  
16 they're pushing these converters to cover is also  
17 affecting the other 50 percent of these four or five  
18 converters' business because they're negotiating one  
19 price, one deal, trying to get the best deal they can  
20 for everyone.

21 So from a direct standpoint, about 50  
22 percent of the resin used in the United States today  
23 goes into a Pepsi, Coke or Nestle bottle, but if you  
24 take this indirect influence, the other half of the  
25 business that these four or five converters who, when



1 they buy the resin to cover Pepsi, it's actually  
2 almost 80 percent of the PET resin sold in the U.S.  
3 gets back into that, indirectly or directly influenced  
4 by these three larger converters. And when someone  
5 goes to them and says I can get 200 million, 300  
6 million pounds and they push it back through the whole  
7 system, it can have a resounding effect on the whole  
8 market.

9 COMMISSIONER LANE: Now, the four or five  
10 converters that deal with Pepsi, are those in any way  
11 related to Pepsi or are they independent of Pepsi?

12 MR. TAYLOR: They're all independent.

13 COMMISSIONER LANE: Now, 80 percent, then,  
14 of PET resin is determined by Pepsi, Nestle and Coke.  
15 Is that right? I mean, the price.

16 MR. TAYLOR: The price. From a pricing  
17 pressure standpoint. Fifty percent of the resin  
18 that's actually used goes into a Coke bottle, a Pepsi  
19 bottle, or a Nestle bottle directly. And then, like  
20 I said, the other -- Mike mentioned earlier there's  
21 eight large converters, two of those are the two Coke  
22 co-ops, so the other six -- the extra resin that those  
23 purchase, let's say 50 percent, which is about the  
24 correct number, of their business is Pepsi business,  
25 that other 50 percent is what makes up -- that's what

1 takes it from that 50 percent level up to the indirect  
2 level of influence to about 80 percent.

3 COMMISSIONER LANE: And so when your raw  
4 material costs increase and you try to raise your  
5 prices to cover those costs, if Coke, Nestle and Pepsi  
6 say no, then you have to do something else. Is that  
7 correct?

8 MR. TAYLOR: That's correct. You always  
9 have a choice and many times we've taken that choice.  
10 No matter how much you try to push prices through into  
11 the market, Coke, Pepsi and Nestle always come back  
12 with the Asian option. When you look at the supply  
13 situation in Asia, the subject countries, I think  
14 there's a couple billion pounds, I think there's like  
15 a billion and a half pounds of excess capacity in the  
16 subject countries, there's 10, 11 billion as Hans  
17 mentioned earlier with Asia in general, and when  
18 somebody comes to you and says, hey, I can bring in  
19 subject country imports 5 cents below your price, 4  
20 cents below your price, there's a serious threat  
21 there. I mean, both of the companies -- all three of  
22 the companies mentioned, they have people that they  
23 have stationed in Asia, the sole purpose of their job  
24 is to find ways and qualify Asian material from  
25 subject countries and bring it here to the United

1 States at the lowest price they possibly can. They  
2 don't care if we make money, the Asians make money,  
3 that's not in their job description one bit.

4 COMMISSIONER LANE: Okay. Thank you.

5 MR. SHERLOCK: Can I just add to that?

6 COMMISSIONER LANE: Yes.

7 MR. SHERLOCK: My observation, and this is  
8 Tom Sherlock from DAK America, my observation was that  
9 without this massive increase that we experienced in  
10 the subject imports previously we had been able to  
11 push through over a reasonable period of time our raw  
12 material cost increases that globally are within plus  
13 or minus a little, basically the same for all of us.

14 During the period of import build up, we  
15 were experiencing very much like one of my competitors  
16 here were suggesting, that these importers were  
17 holding prices down, they were not allowing raw  
18 material increases to go through in selling price.  
19 They were offering longer term fixed price deals where  
20 we could not even begin to respond to those because we  
21 would absolutely drown in red ink if we were to  
22 respond to those.

23 This is the kind of thing that we're very,  
24 very concerned about and I think the major concern we  
25 have is the future. When these hearings are over, if

1 something isn't done about that, we are going to be  
2 decimated because they're going to go straight back to  
3 those predatorial kinds of pricing behaviors that were  
4 taking place in 2003 and still existed in 2004, even  
5 though the volumes have come down. This is the major  
6 concern we have, it's really looking forward.

7 It was very, very damaging, we still have  
8 not recovered from it, and we're trying our best to  
9 recover from that and at the same time be competitive  
10 in the marketplace, but clearly before this was taking  
11 place we were able to recover our raw material cost  
12 increases over a reasonable period of time. And that  
13 changed during the period of inquiry for sure.

14 COMMISSIONER LANE: That brings me to  
15 another question that I had. When you sell your  
16 product to the converters, do you do this on a  
17 contract basis, a spot basis, or exactly how do you do  
18 that?

19 MR. SHERLOCK: For the most part, and I'm  
20 just speaking for DAK Americas now. For the most part  
21 we cover our commitments with contracts. In those  
22 contracts we have specified our ability to move prices  
23 during a period of contract. So they are not fixed  
24 pricing contracts. They move, generally speaking,  
25 with raw materials and with the market. Those prices

1 can move.

2 In other words, if I have a contract let's  
3 say for a year, that contract is not for a price for  
4 one year. That contract is for a beginning price that  
5 will move during that year with the market primarily.

6 COMMISSIONER LANE: Is your customer  
7 required to take product from you for the period of  
8 the contract?

9 MR. SHERLOCK: In order to receive the  
10 price, yes. The generally speaking make a volume  
11 commitment for a beginning price with an agreement to  
12 change during the period of time per some criteria.  
13 That's a very general statement, but that's basically  
14 the way the contracts work.

15 COMMISSIONER LANE: Can your customer then  
16 decide to pay less?

17 MR. SHERLOCK: Our customer can decide to  
18 present us with a lower price and if we don't meet  
19 that lower price they have the ability to release us  
20 in most cases.

21 COMMISSIONER LANE: Thank you.

22 CHAIRMAN KOPLAN: Thank you, Commissioner.  
23 Commissioner Pearson?

24 COMMISSIONER PEARSON: Mr. Kinner, I just  
25 wanted to thank you for clarifying the complexity of

1 the marketplace in 2004. I the initial presentation  
2 to this panel I had gotten the impression that the  
3 marketplace was really quite simple and  
4 straightforward and that wasn't entirely corroborated  
5 by the data I had in front of me, so I appreciate  
6 those comments.

7 Do PET plants require regular down time for  
8 maintenance? Or once you get them up and running do  
9 they just keep going?

10 MR. ADLAM: PET plants do require  
11 maintenance. We can estimate that the industry can  
12 run I would say fairly comfortably at 95 percent or  
13 even a little higher than that, typically allowing for  
14 maintenance shutdowns.

15 COMMISSIONER PEARSON: Is it the custom to  
16 take an annual maintenance shutdown for welding or --

17 MR. ADLAM: No, it's not the custom to take  
18 an annual shutdown. It just depends on the unit and  
19 the requirements of that particular unit in terms of  
20 maintenance. It varies across the industry, but some  
21 of our units have run for seven or eight years without  
22 requiring a maintenance shutdown.

23 COMMISSIONER PEARSON: But eventually you've  
24 got to go in and --

25 MR. ADLAM: Eventually you certainly do,

1       yes.

2                   COMMISSIONER PEARSON:  Are there costs in  
3       taking down time other than the lost production and  
4       perhaps labor costs that aren't being utilized?  Are  
5       there other costs associated with the down time?

6                   MR. DEWSBURY:  Yes, you have maintenance  
7       costs for the shutdown itself which would occur --  
8       Again, a plant isn't necessarily just an entity.  Our  
9       plants contain seven lines which all operate  
10      independently, so one-seventh of a plant may go down  
11      for a period of time.  You'd have a  
12      maintenance cost and if you're not running those  
13      pounds during that period you've got some fixed costs  
14      which don't go away.  Your variable cost goes away but  
15      your fixed cost remains so your overall cost for the  
16      plant during a period of shutdown does increase  
17      somewhat.

18                  COMMISSIONER PEARSON:  And under good  
19      circumstances you can kind of plan in advance when  
20      you'll take certain lines down.

21                  MR. DEWSBURY:  Yes.

22                  COMMISSIONER PEARSON:  It sounds to me a  
23      little more workable than taking down a blast furnace  
24      in a steel mill which we've learned some things about  
25      too.  Okay.

1           Mr. Kinner, perhaps you're the person who  
2 could best help me with this because I need to review  
3 some organic chemistry and petroleum refinery  
4 operation. It's been a long time since I studied much  
5 about this.

6           I believe earlier that both aromatics and  
7 olisens [ph] were mentioned as components for, is one  
8 of them for ethylene glycol and the other for TPA?

9           MR. KINNER: Yes, sir. This is Hans Kinner  
10 with Voridian.

11           Yes, sir. The two main raw materials for  
12 polyester in general, both fiber and PET, are  
13 terephthalic acid and ethylene glycol. Let's talk  
14 about the terephthalic acid first.

15           Terephthalic acid essentially is an acid you  
16 create by oxidizing paraxylene. Paraxylene is an  
17 aromatic that comes out of a reformer in a refinery  
18 where you take typically naphtha. You reform it into  
19 an aromatic stream benzene, toluenexylenes. You  
20 separate it out. So it's sourced out of what would  
21 typically be called a high conversion refinery of  
22 which the U.S. has a lot of capacity in high  
23 conversion refineries since we use a lot of gasoline  
24 as a percent of our total fuel mix. So that's the  
25 bigger part of the molecule.



1           The other part is ethylene glycol which  
2 comes from ethylene. You oxidize ethylene, then you  
3 turn it into a glycol. And ethylene glycol is  
4 essentially produced all over the world. It's  
5 produced in the U.S., significant volumes  
6 historically. Most new production is located in  
7 places in the world where they have low cost, trapped  
8 natural gas so that they recover ethane, make it into  
9 ethylene and then put it on ships. It's very easy to  
10 transport.

11           COMMISSIONER PEARSON: That's a C4, C5  
12 olafin?

13           MR. KINNER: No, C2 olafin derivative. And  
14 both of those are very global in both movement and in  
15 the marketplace and in producers.

16           COMMISSIONER PEARSON: And the aromatics,  
17 then, that's a heavier compound?

18           MR. KINNER: The paraxylene, if you saw  
19 paraxylene you would think that it's very similar to  
20 gasoline in properties although it does actually sort  
21 of crystalize and freeze at I don't know, 45, 50  
22 degree, 40, 45 degrees, something like that.

23           COMMISSIONER PEARSON: So how many carbons  
24 are we talking about?

25           MR. KINNER: It's a C8.

1                   COMMISSIONER PEARSON: The reason for asking  
2 is that I know in the United States there is some  
3 considerable seasonality in refinery operations for at  
4 least two reasons. One is the production of more  
5 heating oil in the winter, and the other is the shift  
6 in both the winter and summer to and from low  
7 emissions types of gasoline that have lower read vapor  
8 pressures in the summer.

9                   Do those changes in refinery operations have  
10 an influence on the supply of your inputs?

11                   MR. KINNER: They do a little bit. Just in  
12 a very simplistic way to sort of explain that is that  
13 the chemical industry, we buy feedstocks away from the  
14 fuels industry and the fuels industry is many times  
15 larger than the products that we purchase off of the  
16 fuels marketplace for our petrochemical feedstocks.

17                   The U.S. is blessed with a lot of very  
18 complicated and flexible refinery operations so  
19 they're able to change the way that they operate the  
20 refineries so it essentially just becomes an alternate  
21 value for somebody that owns a refiner. You can leave  
22 aromatics in gasoline or you can convert it to an  
23 aromatic and sell it into the chemical industry. So  
24 there's got to be enough differential there constantly  
25 for the refiners to make it worth their while to

1 produce and recover petrochemical feedstocks.

2 But in the U.S. with the refinery structure  
3 that we've had, so far that's not been a big issue.  
4 Although last year you saw benzine supply/demand  
5 change considerably. But with paraxylene, it's not  
6 been an issue.

7 COMMISSIONER PEARSON: So you don't see much  
8 seasonality in the U.S. supply of --

9 MR. KINNER: Not in the supply. We do in  
10 the alternative values. In this time of the year when  
11 they begin producing more gasoline to get ready for  
12 the gasoline season, typically, well you've seen that  
13 the gasoline prices are going up right now so the  
14 alternate value for aromatics in the gasoline pool  
15 tends to increase. So we will see some pricing  
16 pressure and we're seeing it right now, as a matter of  
17 fact. Paraxylene prices are going up and they usually  
18 do, and then in the third, fourth quarter there's  
19 usually less demand in the gasoline pool.

20 COMMISSIONER PEARSON: I assume there's  
21 quite an active merchant market for imports of both  
22 components.

23 MR. KINNER: The U.S. is a fairly  
24 significant, large exporter of paraxylene because of  
25 the refinery system that we have. But ethylene glycol

1 is moved pretty freely all over the world, although  
2 we're fairly self-sufficient in North America.

3 COMMISSIONER PEARSON: Is there an argument  
4 that the abundant supply of paraxylene, of TPA -- The  
5 abundant supply in the United States, does that give  
6 an advantage to the manufacture of PET resin here  
7 compared to some other countries? Or is that too  
8 strong to make that statement?

9 MR. KINNER: I apologize, Commissioner, I've  
10 probably left out one step that in my mind -- Eastman  
11 is the only completely integrated producer of I guess,  
12 well I guess DAK is as well, of PET. In other words  
13 we buy paraxylene and make PTA. Many of the people  
14 sitting here actually buy PTA. So I've left out one  
15 important piece of the raw material chain which is the  
16 terephthalic acid itself. And so there's some  
17 dynamics in the terephthalic acid market that are  
18 fairly unique to the North America region. You have  
19 to kind of understand the history of the terephthalic  
20 acid market as it relates to the old Amoco way that  
21 they have sold PTA in this marketplace which is  
22 different than in some other regions, although that's  
23 beginning to change.

24 I don't know if that quite answered your  
25 question or not, but the advantage -- So getting back

1 to your comment of advantage. Typically when we look  
2 at it you would look at freight, duties, those kind of  
3 things. It's not really anything more than that. And  
4 there will be some periods of time where one region  
5 will be slightly different in price than another one,  
6 but in general they really equilibrate fairly quickly.  
7 There's a lot of arbitrage between regions if the  
8 price gets out of whack, and in fact there are prices  
9 set globally based on say Asian price. It has a very  
10 big influence on setting raw material prices globally.

11 COMMISSIONER PEARSON: So the market works  
12 fairly well such that there is no structural advantage  
13 over time to produce PET in any one portion of the  
14 world or another.

15 MR. KINNER: Not really, no. There's  
16 significant arbitrage in the feedstock markets to keep  
17 it fairly equilibrated.

18 COMMISSIONER PEARSON: My time has expired.  
19 In the spirit of the way we've been running it today,  
20 if anybody else wanted to add a comment here, please  
21 do it now briefly.

22 (Laughter).

23 CHAIRMAN KOPLAN: It's okay. I'm feeling  
24 very kindly.

25 MR. DEWSBURY: I think Hans Kinner -- This

1 is Mike Dewsbury with Wellman. I believe Hans Kinner  
2 answered that very accurately.

3 PTA, there is arbitrage. There are three  
4 markets. There's the European market, the Asian  
5 market and the U.S. market, and over time there are  
6 differences in the pricing level of PTA, terephthalic  
7 acid, in those regions. At times the U.S. market is  
8 advantaged, at times it is disadvantaged as Europe and  
9 Asia could be advantaged and/or disadvantaged. It  
10 really flows, depending on supply/demand and the  
11 vagaries of how PTA is traded, either on contract or  
12 spot basis, and it fluctuates by month, by quarter, by  
13 year, across that market.

14 But there is no inherent advantage or  
15 disadvantage of any of the producers globally.

16 COMMISSIONER PEARSON: Thank you very much,  
17 and thank you, Mr. Chairman.

18 CHAIRMAN KOPLAN: Sure. And I'm finding  
19 your answers very helpful. I appreciate your  
20 responses thus far.

21 I know, Mr. Hertzberg, you said you were  
22 going to sit back and let your witnesses do the  
23 talking but I'm going to come at you with one. That's  
24 sort of a followup to something that Commissioner  
25 Pearson got into I think on his first round.

1           What I'm referring to is your pre-hearing  
2 brief asserts at page 48, and I quote, that "In 2003  
3 and 2004 the combination of competition from low  
4 priced subject imports and rising production costs  
5 caused the domestic industry to experience a  
6 cost/price squeeze."

7           Now according to the data in the staff  
8 report at Table C-1, in fact in both 2003 and 2004 the  
9 average unit value of non-subject imports was lower  
10 than the average unit values of subject product from  
11 both India and Taiwan. And in 2004 the volume of non-  
12 subject imports actually exceeded the volume of  
13 cumulated subject imports.

14           Why should this cost/price squeeze to which  
15 you refer be attributed to subject imports rather than  
16 the global supply of PET resin?

17           MR. HERTZBERG: We will address in our post-  
18 conference brief specifically some of those  
19 relationships.

20           I think part of the issues again relate to  
21 data issues. We have raised what we would consider to  
22 be quite a serious methodological error related to the  
23 way a particular major purchaser reported its data and  
24 how it was used in the staff report which we think has  
25 a large influence on some of the results that you have

1 obtained and we've raised that directly with the staff  
2 report both informally and more formally through the  
3 brief.

4 We think that some of the findings in the  
5 staff report are influenced by those kinds of issues.  
6 We pointed out, for example, that if the one  
7 methodological change that we felt quite strongly  
8 about was made, a number of instances in which  
9 underselling was not found for particular country  
10 would change quite dramatically in the staff report.

11 Another example is just the one we put up on  
12 the board at the beginning of the talk where in  
13 another part of the staff report there is clearly  
14 significant underselling shown and yet you're getting  
15 different, and again I'm constrained by the  
16 confidentiality, you're getting different conclusions  
17 drawn in other sections of the staff report.

18 CHAIRMAN KOPLAN: Why don't you do this the  
19 post-hearing.

20 MR. HERTZBERG: I think I have to.

21 CHAIRMAN KOPLAN: But you can understand the  
22 basis of my question. I'm looking at Table C-1 and  
23 what's in there and that causes me to ask this.

24 MR. TAYLOR: Excuse me, one thing I wanted  
25 to add to Mr. Hertzberg and maybe Mark can follow up



1 on this later.

2 CHAIRMAN KOPLAN: Can you please identify  
3 yourself again?

4 MR. TAYLOR: It's Robert Taylor with  
5 Wellman.

6 One of the things you mentioned was the non-  
7 subject imports and Mark can probably talk a little  
8 more on this but a lot of what you're seeing with the  
9 non-subject imports is actually shipments that are  
10 transfers between different divisions within the same  
11 company. The prices that you're seeing on the import  
12 data for those non-subject imports are not actually  
13 direct sales to the end user that the subject imports  
14 are, it's actually transfers internally. I know Mark  
15 can probably give you some more details on that.

16 CHAIRMAN KOPLAN: Mr. Adlam?

17 MR. ADLAM: It's Mark Adlam from M&G.

18 Certainly all of our imports from Mexico  
19 will be transferred at an internal transfer price so  
20 yes, the selling price is significantly more than the  
21 transfer price.

22 CHAIRMAN KOPLAN: Could you both quantify  
23 that for me for purposes of post-hearing, what you're  
24 saying? If you can document that. I mean I understand  
25 what your argument is, but if you can document it and

1 quantify it I'd appreciate it.

2 MR. ADLAM: Sure.

3 CHAIRMAN KOPLAN: Will you do that, Mr.  
4 Taylor or Mr. Adlam?

5 MR. TAYLOR: Yes.

6 CHAIRMAN KOPLAN: This is a followup I think  
7 to something Commissioner Miller had touched on  
8 actually.

9 In the preliminary phase of these  
10 investigations it was alleged that the difference  
11 between raw material costs in the United States and  
12 Asia gave an advantage to subject producers but that  
13 this cost advantage was narrowing over time. My  
14 question is to Mr. Kinner or Mr. Dewsbury. Have  
15 prices for raw materials risen faster in Asia over the  
16 period of investigation as alleged, erasing a cost  
17 advantage that subject producers enjoyed early in the  
18 period? The PET Users Coalition claims this is a  
19 result of high Chinese demand for paraxylene and PTA.

20 In addition, have increases in the cost of  
21 bunker fuels used by ocean freight liners adversely  
22 affected shipping costs from Asia because PET resin is  
23 a low value product shipped in bulk?

24 If I could hear from Mr. Kinner and Mr.  
25 Dewsbury on this.

1 MR. KINNER: Yes, sir. I'd be glad to try  
2 to answer that.

3 As we talked just a minute ago about the  
4 very commodity nature of the raw materials that go  
5 into PET, even moreso of a global commodity, they're  
6 subject to the swings and the cycles of a normal  
7 commodity. So yes, there are different pricing swings  
8 that are the result of supply/demand situations in any  
9 given region.

10 Right now probably beginning about the  
11 middle of last year both MEG in particular was hitting  
12 the part of its cycle where it, more in balance with  
13 demand than it has been in quite some time and you've  
14 seen prices of MEG globally increase significantly and  
15 you've also seen margins in that product increase.  
16 You've seen the same thing with paraxylene and this  
17 year you're seeing the same thing with PTA which are  
18 all the main building blocks for polyester.

19 Asia in particular has probably seen a  
20 little bit more tightening than the rest of the world.  
21 Again, for some of the comments we made earlier in  
22 that the U.S. is a little bit more structurally  
23 balanced because of the refinery structure that we  
24 have. So exports are having to increase from say here  
25 to Asia and so you've got a little bit more freight

1 cost that's built into the raw materials.

2 So when you look at this over the course of  
3 a cycle the Asians were probably slightly advantaged  
4 in the past. Maybe the last 12 to 18 months they've  
5 been slightly less advantaged and in the next 12 to 18  
6 months it will go back to say more where it was  
7 historically as they build huge new plants for both  
8 ethylene glycol, PTA, and paraxylene.

9 So I think it's mostly some of the normal  
10 commodity cycle that you're going to see in these  
11 kinds of products, and you do see some regional  
12 differences then that become evident primarily, I  
13 would say, boundaried by the difference in  
14 transportation costs to haul these things from one  
15 region to the other. That's sort of the raw material  
16 piece.

17 The other piece that they're talking about  
18 with regard to freight, we know what the trade flows  
19 are like between Asia and the West.

20 CHAIRMAN KOPLAN: You're referring to the  
21 bunker fuel issue?

22 MR. KINNER: Yes, sir. Well, bunker fuel  
23 and then just freight in general. You're probably  
24 familiar with that. You know that freight rates have  
25 gone up.

1 CHAIRMAN KOPLAN: I appreciate that.

2 Mr. Dewsbury?

3 MR. DEWSBURY: I think Mr. Kinner -- This is  
4 Mike Dewsbury, Wellman.

5 Mr. Kinner answered the changes in raw  
6 material pricing I think quite well. It did have an  
7 impact. I think Commissioner Miller was trying to  
8 discern is it just the dumping. Certainly the Asian  
9 raw material costs have gone up as have ours, and at  
10 this point in time theirs have gone up marginally more  
11 than ours have.

12 The case still remains, though, the subject  
13 companies have been dumping here. Their ability to  
14 dump what we showed in our charts is limited by their  
15 raw material costs. They go down to the place -- They  
16 have to pay real dollars, raw materials -- paraxylene  
17 and glycol are sold on a U.S. dollar basis. They have  
18 to pay U.S. dollars for that material. They don't do  
19 it on credit.

20 When they sell that raw material they have  
21 to replace that raw material. When that raw material  
22 cost goes up that sets the floor at which they can  
23 dump at.

24 The other costs, their added costs, they  
25 seem to not care about. And so yes, we have seen,

1 they have had an impact by the rising -- It hasn't  
2 stopped the dumping, it's just raised the level at  
3 which they dump at.

4 CHAIRMAN KOPLAN: Thank you.

5 Mr. Adlam, I see you nodding. Do I take it  
6 you agree with everything Mr. --

7 MR. ADLAM: Yes, I agree with everything  
8 Mike was saying for sure.

9 CHAIRMAN KOPLAN: Thank you.

10 Vice Chairman Okun?

11 VICE CHAIRMAN OKUN: Thank you, Mr.

12 Chairman. I know a number of the issues that I'm  
13 interested in have been covered. I think I just had a  
14 few more follow-up questions.

15 One, Mr. Hertzberg, I would join in  
16 Commissioner Hillman's comments to you regarding, when  
17 I read the brief a lot of what was in there to me on  
18 kind of the fully loaded value and some of the  
19 comparisons you were making seemed a lot like what  
20 Department of Commerce would care a great deal about,  
21 but that the ITC needs to, once the Commerce  
22 Department has made those findings then we are looking  
23 at those subject imports and the prices they're  
24 selling in here and the underselling and the impact.  
25 So that's what I think is relevant.

1           Dr. Manning looked like she had her hand up  
2           after Commissioner Hillman's questions, so I was going  
3           to go first to her for what her comment was and then  
4           I'll come back to you.

5           MR. HERTZBERG: I agree, it should always be  
6           ladies first.

7           MS. MANNING: First I wanted to say that  
8           with respect to Commissioner Hillman's question  
9           regarding, about the subject imports going down.  
10          There is some information which we can address in the  
11          post-conference brief regarding, that may in fact give  
12          you some indication of the impact of the GSP on the  
13          decline in subject imports.

14          With respect to your question, when you have  
15          products being sold at what in classic economics would  
16          be considered predatory levels, that is being sold  
17          below your variable cost, and you're competing against  
18          producers that have very similar variable costs, they  
19          do affect this industry.

20          It forces basically, in a commodity type  
21          market, it forces this industry to be pricing, all  
22          market prices to be at or below variable cost in order  
23          to be able to compete.

24          This is the problem that this industry has  
25          had. When you're engaged in predatory pricing such as

1 these subject imports have had, these domestic  
2 producers have not been able to recover even their  
3 variable costs, or they've been able to only raise  
4 prices slightly above their variable cost.

5 I'm not saying that this industry itself has  
6 engaged in predatory pricing. What I'm saying is that  
7 because many of these subject imports are engaged in  
8 predatory-level prices in the United States market, it  
9 is negatively impacting this industry's ability to  
10 recover their own costs and hence the lower  
11 profitability that you're seeing.

12 VICE CHAIRMAN OKUN: Again, all I'm saying  
13 is that for me dumping doesn't equal injury. The  
14 purpose of the ITC is to look at the record and  
15 determine whether what you're saying is in fact true  
16 and so I want to talk a little bit about the pricing.

17 Mr. Hertzberg, you had another comment.

18 MR. HERTZBERG: I really do want to address  
19 this because I think that, and I was a mid-level law  
20 student, but I did teach for a short time so I have  
21 some legal teaching credentials.

22 I think the Commission is not constrained to  
23 fail to look at what is happening with regard to cost  
24 and how Respondents are dealing with cost. There is  
25 nothing in your statute that prevents you from looking



1 at whether the participants in the market are earning  
2 profits or not. If it's relevant for the domestic  
3 industry why isn't it relevant for the people who are  
4 shipping the goods into the United States?

5 You are supposed to look at what the causes  
6 of injury are and you have great breadth in looking at  
7 that. In fact the Department of Commerce doesn't  
8 really measure the extent to which, other than through  
9 its dumping calculations in general, what they  
10 actually look at is below cost sales in the home  
11 markets, and then they throw those out to get to a  
12 reference point if they find they're below cost and  
13 there are enough of them in making the comparisons  
14 that you actually get a percentage on. But they don't  
15 measure the results on each U.S. import or for the  
16 U.S. imports from the Respondents.

17 I just have to strongly emphasize what Dr.  
18 Manning had to say with regard to the impact of the  
19 kind of pricing that we have seen fits right into  
20 exactly what you're supposed to do in looking at  
21 causation and you can't ignore that aspect of the  
22 imports that are coming into the U.S..

23 VICE CHAIRMAN OKUN: Let me turn to the  
24 pricing data.

25 In response to an earlier question you

1 talked about one of the problems you have with the  
2 data in the staff report regarding a large purchaser  
3 of subject imports and I'm trying to make sure that I  
4 understand what you're -- You talked about the  
5 methodology which you said would then change, and I  
6 want to make sure I understand, after having looked at  
7 it.

8 If the methodology you're talking about is  
9 that you want us to compare the import price with what  
10 a domestic producer would sell PET resin to a  
11 converter for. Is that the comparison you think is  
12 relevant?

13 MR. HERTZBERG: The one major instance where  
14 we raised that, it was a very specific instance and it  
15 is protective order information. But what happened in  
16 that particular instance, I'm actually not sure I can  
17 get into it publicly.

18 VICE CHAIRMAN OKUN: That's fine. For  
19 purposes of post-hearing when you're looking at the  
20 pricing which you take issue with and the pricing  
21 which you would like us to compare for purposes of the  
22 underselling analysis. If you could look to  
23 Commission precedent and see if there is something in  
24 Commission precedent you could point to as the  
25 Commission having done something similar, I would

1 appreciate that.

2           If not, obviously we'll listen to your  
3 argument. I think the Commission is at this point  
4 seeing a fair amount of direct importer pricing and  
5 where there are different levels of trade a  
6 traditional underselling analysis has problems I  
7 think. You can't just put different levels of trade  
8 and say therefore this is the underselling -- In my  
9 point of view.

10           So I'm trying to say is there precedent for  
11 what you're asking us to do? If not, what would you  
12 point us to to justify the analysis you'd like us to  
13 undertake.

14           MR. HERTZBERG: I think all we're really  
15 asking you to do is what you usually do very well in  
16 all the cases and that is to look where the exact  
17 point of competition is. What I think the problem  
18 relates to is that you have certain purchasers that  
19 have multi-facets in this industry. So there are  
20 instances where a particular purchaser might be  
21 importing for its own account and then might be  
22 supplying that information, that PET resin to a  
23 converter in a tolling type of operation and then  
24 receiving back the bottles.

25           In that kind of an instance the price at

1       which the buyer buys the merchandise from the exporter  
2       is a very relevant price that has to be compared with  
3       what the U.S. industry is trying to sell to the same  
4       buyer at that level.

5               Now that same purchaser may have completely  
6       other commercial relationships where it would be  
7       inappropriate to make the price comparison at that  
8       level. Again, the one instance is a very large  
9       instance but it's laid out in the brief and we think  
10      it's very clear both as a matter of commerce, as a  
11      matter of law, that our analysis is correct.

12              VICE CHAIRMAN OKUN: Again, if you can just  
13      address the issues that I raised earlier in my  
14      question with regard to that I'd appreciate that.

15              MR. HERTZBERG: That's great, thank you.

16              VICE CHAIRMAN OKUN: Also just for post-  
17      hearing I think in some of the questions I raised and  
18      some of my colleagues, there are a number of, in the  
19      Respondent's post-hearing brief and I'm sure we'll  
20      hear it this afternoon, the discussion of these  
21      earnings conference calls by Wellman and Eastman in  
22      particular. And again, to me, I look back over and it  
23      looks like many of them are specific to PET resin. So  
24      I hear what you're saying, Mr. Kinner in terms of  
25      you've got a CEO who's talking about a business where

1 different things are going on, but if you could just  
2 respond in post-hearing on the specifics of those  
3 statements and how they relate to the arguments you've  
4 made here to the extent that Respondents raise a  
5 number of inconsistencies.

6 MR. HERTZBERG: We'd be happy to do that.

7 VICE CHAIRMAN OKUN: Mr. Kinner, let me go  
8 back to you just on raw material. There's been quite  
9 a bit of discussion about it and I think I understood  
10 what your responses were, but the one thing I think it  
11 was Commissioner Miller had mentioned, which is is  
12 this an industry where we should expect you to be able  
13 to raise your prices to cover raw material costs in  
14 what was, as you've described it, kind of a remarkable  
15 year in '04 where prices were going up, and how that  
16 would compare. To me it relates to what the demand  
17 for your product is whether you can do that.

18 So my yellow light's on, but I don't know if  
19 there's anything additional you wanted to say on that.  
20 You had made a number of comments about it.

21 MR. KINNER: Thank you. Again, 2004 is  
22 going to be a very important year for I think the  
23 Commission to try to get a flavor for and understand  
24 because the numbers in that year look funny in some  
25 ways that you've already noticed.

1           What you have to realize, again, is that in  
2   2004 raw materials increased pretty much every single  
3   month for about nine or ten months in a row. I think  
4   we didn't get any relief until maybe December. We saw  
5   \$55 crude oil, for example.

6           What happened is we increased the price, you  
7   saw the price of PET going up rapidly all during that  
8   year, yet you saw what the profitability of this  
9   industry looked like. I think it was Commissioner  
10  Hillman that mentioned that you raised the price, we  
11  don't understand this, but it's really what Mr.  
12  Dewsbury talked about in that what we look at,  
13  absolute price is really not the driver of our  
14  business. It's the margin between what we pay for raw  
15  material since they are 70-85 percent of our cost  
16  structure and our selling price. So we have to be  
17  able to almost immediately pass that price increase  
18  through.

19           Last year, if you can put this in remarkable  
20  terms, we had approximately 31 cents of price  
21  increases that we announced and that is not something  
22  that we like to do in the marketplace but we were  
23  absolutely forced to do that because you saw where we  
24  were at the beginning of the year as far as the  
25  profitability of this industry and we were just never

1 able to catch up. You can only raise the price and  
2 get it through the marketplace and get it through this  
3 entire value chain so quickly.

4 So that was really one of the things that  
5 hurt us bad in 2004 was just the ability to catch up  
6 with how fast the raw materials were increasing.  
7 Twelve months in a row.

8 VICE CHAIRMAN OKUN: My red light's on.  
9 Thank you, Mr. Chairman.

10 CHAIRMAN KOPLAN: Commissioner Miller?

11 COMMISSIONER MILLER: Thank you, Mr.  
12 Chairman.

13 Let me also just say that I'll be interested  
14 in your responses to Vice Chairman Okun regarding the  
15 appropriate level for making price comparisons. I  
16 think that is an issue that I share.

17 When I look at what you presented in your  
18 pricing analysis in the tables that you pulled from  
19 Appendix D, to me those are two different levels of  
20 trade that you showed for the domestic price and the  
21 importer price. It's not clear to me that's an  
22 appropriate comparison.

23 MR. HERTZBERG: Now that comes as a real  
24 surprise to me if you're talking about the table we  
25 showed here?

1 COMMISSIONER MILLER: Right.

2 MR. HERTZBERG: As we were informed, that  
3 comes directly from the, the domestic side of that  
4 came from the purchaser questionnaires, so it  
5 represents the domestic prices to the purchasers and  
6 the import side of that came from the importer sales  
7 in the United States. So it's the same level of  
8 trade. That's how it was explained to us.

9 COMMISSIONER MILLER: That's not my  
10 understanding. My understanding is those are two  
11 different levels of trade in terms of what is  
12 expressed as a purchaser price versus the importer  
13 price.

14 But you understand this is the issue we're  
15 trying to clear up. I'll give you the opportunity to  
16 do it in the post-hearing brief.

17 MR. HERTZBERG: We'll do that.

18 COMMISSIONER MILLER: A couple of you, Mr.  
19 Kinner and Mr., I think it was you, Mr. Dewsbury, both  
20 have referenced analysts reports. Are there analysts  
21 in the industry that are commonly looked to, reports  
22 that are commonly looked to by the industry in terms  
23 of discussions? You cited them several times in the  
24 testimony this morning and that's why they caught my  
25 attention.



1           If there are and if there are reports that  
2           can be submitted to the Commission, particularly to  
3           the extent you've been citing them and citing parts of  
4           them, I find those kinds of things interesting, but I  
5           don't like to just hear from pieces of them. I want  
6           to make sure that I'm getting a comprehensive view.

7           As soon as I say that, I'm not asking you to  
8           submit mountains. So if there is a reasonable amount  
9           of information that can be submitted, analyst reports  
10          over the period of investigation, I would find that  
11          interesting to see. Again, it's because you've been  
12          quoting them today in particular that I wanted to ask  
13          that question.

14          MR. HERTZBERG: I think I followed you on  
15          that and we'll certainly look at the transcript too.

16          COMMISSIONER MILLER: It's one of those  
17          moments when you have to be careful what you're asking  
18          for.

19          MR. HERTZBERG: We'll certainly try to  
20          comply.

21          COMMISSIONER MILLER: I don't want to ask  
22          for mountains of reports.

23          MR. HERTZBERG: Commissioner Miller, can I  
24          go back just one second to the discussion we just had.  
25          It does upset me that we're on very different wave

1 lengths on that.

2 That chart came right our of Appendix D so  
3 it's comparisons that the staff drew with regard to  
4 underselling.

5 COMMISSIONER MILLER: But I think there's a  
6 reason it's in Appendix D as opposed to being in the  
7 pricing chapter in the report. The staff will provide  
8 us mountains of information even when they don't think  
9 it's a direct comparison. The information is there  
10 for us to use and take what we may out of it, but they  
11 may not present it as a direct comparison if they  
12 don't believe it is exactly that, a comparison of the  
13 same level of trade.

14 MR. HERTZBERG: We will go into that, and we  
15 did make inquiry and as it was explained to us, that  
16 was a direct comparison.

17 COMMISSIONER MILLER: All right. I may have  
18 it wrong.

19 MR. HERTZBERG: That's why we're here.

20 COMMISSIONER MILLER: There's a lot of  
21 information here.

22 MR. HERTZBERG: That's why we're here.

23 COMMISSIONER MILLER: Okay.

24 With that I think given the hour, and we've  
25 had a lot of questions, I won't pose any more to you.

1 There's been a lot of interesting information,  
2 interesting testimony. I appreciate all of the  
3 knowledge you've shared with us today.

4 Thank you.

5 CHAIRMAN KOPLAN: Thanks.

6 Commissioner Hillman?

7 COMMISSIONER HILLMAN: Thank you.

8 Mr. Hertzberg, along with the response to  
9 Commissioner Okun and Commissioner Miller on the  
10 pricing comparisons, I guess I would ask similarly for  
11 you to brief the issue of the way that you've  
12 suggested that we look at the financial data. As I  
13 read your brief, you're presenting results of what you  
14 term a same store sales methodology as a different way  
15 of looking at the financials.

16 Again, I would ask the same kind of  
17 question. Exactly how did you do it, why did you do  
18 it, and why should we use this analysis as opposed to  
19 the traditional financial analysis that the Commission  
20 always does. Again, I think more appropriately for a  
21 post-hearing brief.

22 MR. HERTZBERG: That's fine, although I will  
23 rely heavily on Dr. Manning for that.

24 COMMISSIONER HILLMAN: I appreciate that.

25 I also wondered if you could comment on any

1 third country antidumping or countervailing duty  
2 investigations that you're aware of, particularly in  
3 Malaysia or Brazil. As you may know in the Steptoe  
4 brief there were some issues raised with respect to  
5 Malaysia. So again, I don't want to go into any  
6 confidential information or anything else, but if  
7 there is any information on third country antidumping  
8 or countervailing duty investigations involving PET  
9 resin, I would appreciate your responding to it in the  
10 post-hearing.

11 MR. HERTZBERG: That's fine.

12 COMMISSIONER HILLMAN: Also, I noted in your  
13 tables on subject country imports and in other tables  
14 you have put in 2000 and 2001 data. Obviously as  
15 we're all struggling to sort through what's the most  
16 appropriate data to look at, you've suggested that the  
17 drop in subject imports in 2004 from your perspective  
18 is very much affected by the petition being filed.

19 Often in cases in which there are strong  
20 allegations made that the level of imports is very  
21 affected by the filing of a petition we place less  
22 weight on post-petition data on the theory that it has  
23 been tainted by the filing of the petition and  
24 therefore we place less weight on it.

25 In this instance because of the timing of

1 the filing, that to some degree means we're not  
2 looking at any 2004 data.

3 If the Commission were to do that, place  
4 less weight on the 2004 data, and I'm not suggesting  
5 we will or we won't, but if we were to do that, in  
6 this instance would it then be appropriate or not to  
7 pull in 2001 data from the prelim?

8 Again, I would ask you to brief that for the  
9 post-hearing brief because I don't want to go into  
10 what all that data is or isn't, but I would ask you to  
11 take a look at whether you think that is appropriate  
12 in this instance and to brief that in the post-hearing  
13 brief.

14 MR. HERTZBERG: I'm happy to do it in the  
15 post-hearing brief.

16 COMMISSIONER HILLMAN: I guess my final  
17 question is more to the industry to make sure, again,  
18 I'm pulling all this together and understanding it.  
19 Because I'm trying to square a lot of the information  
20 with the data that we have on the record and make sure  
21 I'm coming away with an accurate picture.

22 Clearly you're describing this as a  
23 commodity product in which the subject imports are  
24 competing your large volume purchasers. These three,  
25 the Pepsi, Coke and Nestle Water. These are big, big

1 players, the imports are very much competing. You've  
2 all described a number of instances in which you were  
3 presented with the meet this price, and you've  
4 described a number of instances in which the request  
5 was meet this price for the entire year contract, and  
6 you're describing that you couldn't go there so you  
7 did not in fact lower your prices to meet this  
8 competition.

9 I will say when I've heard this story in the  
10 past I've then looked at a record in which I've seen  
11 subject imports gain a lot of market share and sort of  
12 consistently gain a lot of market share. Here I'm  
13 looking at a record in which there was some gain in  
14 market share by the subject imports between 2002 and  
15 2003, but then a significant loss in market share such  
16 that imports have ended up with less market share in  
17 2004 than they had even in 2002. So we've actually  
18 seen an actual decline in subject import market share  
19 over the POI and no price reduction, none at all.

20 So again you're saying okay, I didn't lower  
21 my price to meet competition but I'm not seeing this  
22 big volume gain, I'm not seeing any reduction in  
23 price.

24 I understand that you're really looking at a  
25 cost/price squeeze so I shouldn't be looking for a

1 price decline, I should be looking for less of an  
2 increase than what you would have predicted, but I'm  
3 still having trouble squaring this with, again, lack  
4 of a big market share gain, and in fact market share  
5 decline over the POI, rising prices with this story  
6 that you were pushed to meet these prices. You were  
7 pushed to meet this at these high volume purchases.

8           Again, normally if I've got a high volume  
9 purchase I would see big movements in market share.  
10 There aren't any on this record.

11           So that's the story I'm trying to make sure  
12 I understand either in post-hearing or now, whether  
13 you can help me understand why if it is this commodity  
14 being sold to high volume purchasers, I don't see big  
15 volume changes and I don't see price declines.

16           MR. DEWSBURY: Mike Dewsbury. I'll take a  
17 shot at it. Others may want to as well.

18           It comes back to what Commissioner Miller  
19 was asking before, Commissioner Hillman.

20           The effect of the preliminary hearing did  
21 have, it was an effect. That chased some of them out.  
22 But we also saw rising raw materials, more so in Asia  
23 than here. We saw rising bunker fuel costs and rising  
24 demand on ocean freight coming from Asia to here such  
25 that there was a shortage which increased both their

1 real cost and their ability to charge for ocean  
2 freight so they saw an increase in their manufacturing  
3 costs. Raw material costs. Again, they have to pay  
4 raw material. They also have to pay freight to get  
5 here. That's real dollars that are paid by these  
6 subject companies.

7 The costs they are not passing through are  
8 their variable in-house and fixed costs that they have  
9 in the plant themselves -- their utilities, labor.  
10 That's what's not being passed through.

11 So it was a combination, I believe. The  
12 impact of the actions in the preliminary certainly  
13 caused some of the buyers to not purchase there and  
14 we've seen direct impact of that, but then there's an  
15 underlying floor at which they cannot go because they  
16 could not replace their raw materials. That also has  
17 caused some of the dropoff.

18 But they haven't gone away. They are still  
19 here at low prices. We are still facing cases today  
20 where customers are telling us if, especially if this  
21 proceeding goes against us, we're going to lose  
22 business. We've been told that pointedly by customers  
23 that it will happen.

24 So it's the level at which they can no  
25 longer participate. It's not just the dumping.



1 COMMISSIONER HILLMAN: Okay.

2 Obviously my question stems from, again,  
3 companies always make a decision about how to respond  
4 to import competition. You can either lose market  
5 share and hang onto your price or you can lose price  
6 and keep your market share. I guess I was hearing you  
7 all describe that most often you were trying not to  
8 meet price, you were not going down there. You were  
9 not entering into these year-long contracts at a fixed  
10 price that you couldn't afford, which again, I'm  
11 trying to square the data I'm looking at with that  
12 story. And maybe that's not really what you're  
13 describing happened. Maybe in these anecdotal  
14 instances you're describing that but in the main that  
15 was not the response of the industry.

16 Mr. Sherlock and then Mr. Taylor.

17 MR. SHERLOCK: I think you have to look at  
18 the area under the curve over the POI because you have  
19 kind of different phases within the POI. Certainly in  
20 2003 it can be said by anybody purchasing PET that  
21 they were getting enormous deals from Asian suppliers  
22 and the domestic suppliers were unable to meet those  
23 deals. Therefore in this period -- 2002, 2003, you  
24 saw this enormous run-up of imports coming in.

25 Then you see in 2004 that the curve begins

1 to come down. And one has to ask themselves well,  
2 during two consecutive years where raw material prices  
3 were going up in both of those years, why did they go  
4 down in 2004 but not in 2003? Why did they increase  
5 in 2003?

6 So it's this area under the curve where you  
7 have this beginning point and this end point which  
8 leads you to believe that there's a total loss of  
9 market share but the total area under the curve is  
10 enormous. It's quite a significant gain.

11 COMMISSIONER HILLMAN: Mr. Taylor?

12 MR. TAYLOR: One thing that's been mentioned  
13 several times earlier, Hans has mentioned I think a  
14 couple of times, there was about 31 cents, 32 cents in  
15 price increases announced in 2004. You've got the  
16 data. We as an industry never realized all those  
17 gains. We announced those as an effort to recover the  
18 raw material cost that was being presented to us and  
19 improve the profitability for our companies.

20 A lot of the pressure that we're facing as  
21 was mentioned earlier is the Asian imports, even  
22 though they have slowly declined, the offers, the  
23 presentations of the prices, the overhanging capacity  
24 in Asia that could come here, the incidents Hans  
25 mentioned about the yearly price. Those are probably

1 more the exception than the rule, but the rule is an  
2 Asian offer to the converter comes in, they offer,  
3 hey, I've got 50 million, 100 million pounds four  
4 cents beneath, below domestic, meet it or lose it.

5 We're a very capital-intensive business. We  
6 have to run at high operating rates. You do the  
7 analysis yourself. Is there a viable threat? Is  
8 there enough capacity over there? Is there enough raw  
9 materials? You make the best educated decision for  
10 your company.

11 So even though our earnings in 2004  
12 declined, we did make an effort to get them up and  
13 it's that continued effort that you see by the  
14 domestic industry.

15 MR. ADLAM: If I've got time --

16 COMMISSIONER HILLMAN: Mr. Chairman, could  
17 Mr. Adlam just finish his response to the question?

18 CHAIRMAN KOPLAN: Absolutely. I had nothing  
19 to do with that buzzer.

20 (Laughter).

21 MR. ADLAM: Mark Adlam from M&G.

22 I would just amplify the same comments. I  
23 guess the measure of injury is profitability. I think  
24 that story's pretty clear from the whole industry. We  
25 have been damaged. And it's not easy, as Mike was

1 saying earlier, you have to look at the difference  
2 between the raw materials and the selling price.

3 Why aren't you seeing impacts immediately on  
4 selling price? We have to look at the difference  
5 between the raw materials and the selling price.  
6 You'd have to look at that on a monthly basis, and I  
7 don't know whether the data that you have allows you  
8 to do that very easily, but I'm guessing probably not.

9 The second thing I would say is you don't  
10 see the volume necessarily increasing, is your other  
11 comment. The problem for us is the volume is  
12 leveraged. That's the key point. Our concentrated  
13 market leverages the small volumes of imports against  
14 us. So the volume doesn't have to increase. It  
15 doesn't have to be that much to have a pretty  
16 devastating effect on the industry.

17 Right now as we're moving into second  
18 quarter 2005 I believe that Pepsi still has not agreed  
19 fourth quarter pricing with some of the converters.  
20 The amount of leverage that these people have is  
21 incredible. I mean I haven't seen an industry before  
22 where you could go five months, six months, without  
23 settling price with somebody, and people would still  
24 keep on supplying you.

25 You have to understand the leverage and the

1 concentration in our industry is very very powerful.  
2 It doesn't take an awful lot to really hit us, and  
3 when you've got importers from subject countries  
4 importing at levels of pricing which is clearly  
5 dumping, below cost, we just cannot compete. It's the  
6 way that information is presented to us which is so  
7 damaging.

8 COMMISSIONER HILLMAN: I appreciate those  
9 responses. Thank you.

10 Thank you, Mr. Chairman.

11 CHAIRMAN KOPLAN: Thank you, Commissioner,  
12 Commissioner Lane?

13 COMMISSIONER LANE: First of all, I would  
14 like to say that I like the exhibit and I like the  
15 fact that it's all in color and that I didn't get just  
16 a black and white version with little shades. This is  
17 very impressive and I can even understand it, so I  
18 appreciate your counsel or whoever provided this for  
19 us.

20 Now I have a question about the capacity in  
21 the subject countries. From your chart there is a  
22 huge excess capacity. From a practical standpoint and  
23 recognizing that right now only a small volume is  
24 coming into this country from those countries, and  
25 recognizing that raw material costs are huge, how long

1 would it take those countries to ramp up their output  
2 in order to start bringing more into this country?

3 MR. DEWSBURY: Mike Dewsbury, with Wellman,  
4 Commissioner Lane.

5 It would be almost instantaneous. They  
6 would be able to ramp up from the time they got an  
7 order. The delay would really be in shipment from  
8 their country to our country which can take a few  
9 weeks, but that's about it.

10 COMMISSIONER LANE: And those countries  
11 would not have any problem in getting the increased  
12 raw materials?

13 MR. DEWSBURY: As far as the availability of  
14 raw material?

15 COMMISSIONER LANE: Yes.

16 MR. DEWSBURY: No. There's a limit on raw  
17 materials today. Glycol, PTA, paraxylene are in tight  
18 demand and I think it was commented that our Chairman,  
19 Tom Duff, said they are tight. But that really  
20 addresses the excess capacity that exists across Asia  
21 that's not participating in any place today. It's  
22 capacity that's still being built, and Mr. Kinner  
23 showed that ever-increasing capacity, but there is  
24 capacity available to come here, no shortage. If I  
25 wanted to buy 200 million pounds, 500 million pounds

1 of material, we could go out and access that material  
2 in Asia today.

3 COMMISSIONER LANE: Okay, thank you.

4 The other question I have is relating to  
5 aluminum and glass as being substitutable for PET  
6 resin. How expensive is that substitutability and  
7 what effect does that have on PET resin prices?

8 MR. KINNER: This is Hans Kinner with  
9 Voridian. I'll take a stab at that answer,  
10 Commissioner.

11 So far we really have seen that the PET  
12 package, as you mentioned at the beginning of your  
13 question, seems to be a preferred package by the  
14 consumer. In fact we know that most of our customers  
15 and brand owners, when they put a package in PET they  
16 seem to be able to differentiate their product from  
17 others and they sell more.

18 You may have seen the new 12 ounce Coca  
19 Cola, for example, and I guess Pepsi bottles that are  
20 coming out now as actually somewhat of a can  
21 replacement, an aluminum can replacement, the smaller  
22 bottles.

23 So we actually continue to see good growth  
24 in this marketplace and we really have seen little to  
25 no market shift back to aluminum or glass at this

1 point in time. Consumer prefer the package.

2 MS. MANNING: Commissioner Lane, may I also  
3 comment on that?

4 COMMISSIONER LANE: Yes.

5 MS. MANNING: This is really very much a  
6 consumer driven preference for PET resin bottles.  
7 Consumers prefer to have the 20 ounce bottle of Pepsi  
8 and Coke. That is Pepsi and Coke's most profitable  
9 form of delivery, one of their most popular forms of  
10 delivery for their product. Consumers like it, and  
11 because PET resin as a portion of the overall cost of  
12 producing that carbonated soft drink in that product  
13 form is so small, it's very unlikely that an increase  
14 in the price of PET resin would have any effect on  
15 ultimately the demand for that bottle. Pepsi and Coke  
16 will be driven by consumers' preference for that form.

17 With respect to water bottles, the other  
18 most important area of consumption for PET resin.  
19 Consumers want their water in PET resin bottles. They  
20 don't want it necessarily in glass. Glass is less  
21 convenient for consumers that necessarily use or  
22 prefer to use or want to drink bottled water. The  
23 presence of PET resin water bottles in the country is  
24 just astounding. The growth that you're seeing. The  
25 seven percent growth is largely, in many ways largely



1 driven by the fact that people are buying more and  
2 more of their water in PET resin bottles. It's just a  
3 very convenient form in which to consume water.

4 MR. KINNER: I might add that, actually I  
5 was having this conversation with one of the  
6 consultants that works for the industry. PET is still  
7 actually the most economical package and prices  
8 actually for PET, the polymer, have not gone up as  
9 much on a relative basis than some of the other  
10 polymers. That's part of the -- We want to keep the  
11 industry growing but in order to do that we've got to  
12 invest and there has to be some reasonable amount of  
13 profitability in the industry to be able to continue  
14 to grow and expand this market.

15 MR. ADLAM: Commissioner Lane, may I answer  
16 as well?

17 COMMISSIONER LANE: Yes.

18 MR. ADLAM: From M&G Polymers, Mark Adlam  
19 again.

20 I'd say a couple of things along the same  
21 lines. But basically the cost of PET in any one  
22 bottle is very small. You're looking maybe at four  
23 cents a bottle or something like that for a 20 ounce.  
24 So if we were to increase our price by 25 or 30  
25 percent that would only represent like an increase of

1 a penny on a bottle for a consumer. So when we're  
2 talking about all these numbers, when it comes down to  
3 individual bottles, the numbers are quite small.

4 The second thing I would say is echoing the  
5 point that Susan just made. The profitability in some  
6 of these packages is huge. If you were looking at  
7 would you transfer those back to glass or would you  
8 transfer those back to aluminum, it doesn't really  
9 make a lot of sense. If you're making 20 cents, 25  
10 cents on a PET bottle, transferring that back to a  
11 can where you're making two or three cents per can,  
12 would you make that decision even if the PET bottle  
13 increased by one penny? I don't think so. It's just  
14 not logical to do that.

15 So the substitutability is kind of not that  
16 high really.

17 COMMISSIONER LANE: Thank you.

18 Chairman Koplan, that's all the questions I  
19 have.

20 CHAIRMAN KOPLAN: Thank you, Commissioner.  
21 Commissioner Pearson?

22 COMMISSIONER PEARSON: Mr. Dewsbury, you had  
23 mentioned a couple of minutes ago that you would  
24 expect a relatively instantaneous reaction in the  
25 marketplace and a resurgence of imports from subject

1 countries if the preliminary duty went away. looking  
2 at Chart 7, the seventh slide that you handed us  
3 today, this shows the volume of imports quarterly from  
4 2002 to 2004 with the various trade actions indicated  
5 on there.

6 If we go back to late in 2000 when the EU  
7 trade remedy went into effect, there must have been  
8 somewhere in the neighborhood of 25 million pounds per  
9 quarter of imports coming from subject countries. I  
10 look at the pattern of growth that is there going into  
11 the third or fourth quarter 2003 when it peaked at it  
12 must be somewhere around 125 million pounds. This is  
13 a somewhat gradual pattern rather than an  
14 instantaneous pattern. Why in this instance when it  
15 was indicated in the testimony that the EU trade  
16 remedy was a meaningful factor in shifting supplies to  
17 the United States, why did that shift occur relatively  
18 gradually over a period of some two and a half years  
19 instead of instantaneously?

20 MR. DEWSBURY: Mike Dewsbury with Wellman.  
21 We competed, quite frankly. We were  
22 presented with opportunities to either match or  
23 release. If we had released them you would have seen  
24 an immediately decline, but we competed as an  
25 industry. As a company we competed which meant we

1 lost price, margin.

2 COMMISSIONER PEARSON: And your conclusion  
3 from that or following on from that, you're suggesting  
4 it would be difficult to compete?

5 MR. DEWSBURY: Again, in fair competition  
6 Wellman can compete with any company in the world.  
7 And certainly an Asian company which has added freight  
8 costs which we will document in our followup how we've  
9 arrived at those freight costs. With the added  
10 freight costs coming from the subject companies, our  
11 costs do compare very well and we can compete. It's  
12 the fact that they came at below cost, what we  
13 considered dumping, that we were, when we did compete  
14 it took us to levels of unprofitability. But we did  
15 compete because, again utilization is key to us. If  
16 we do lose a significant amount of volume our costs  
17 then go up across the chain. So we did fight to  
18 maintain, but we gradually lost because we got pressed  
19 to the point at the end of 2003 where we basically  
20 were below cost. You can see that from the records  
21 that we've turned in, that we did get below cost.

22 COMMISSIONER PEARSON: Right, but in 2002  
23 when that intense competition started following the EU  
24 trade remedy going into effect, the publicly available  
25 data indicate that your industry has an operating

1 income of a percentage of sales of 7.4 percent which  
2 is not too bad. So you were competing, but you were  
3 making money doing so, which is a good thing. I'm all  
4 in favor of making money. But --

5 MR. DEWSBURY: We were competing and  
6 gradually losing. It's not instantaneous. You've been  
7 in this or similar chemical markets it sounds in your  
8 comments, and as that capacity was available, and it  
9 was all available, it took time for our customers then  
10 to place those against us and against our competitors  
11 and you selectively choose which ones to compete with.  
12 A customer you might consider strategic or you might  
13 be in a position where you could not afford to walk  
14 away from the volume at any cost and you fought it  
15 down.

16 So yes, it was a gradual, and over that same  
17 period of time you saw our margins decline and their  
18 volumes gradually increase. It was a natural  
19 competitive situation.

20 COMMISSIONER PEARSON: Mr. Adlam?

21 MR. ADLAM: I was simply going to make the  
22 comment that gradual increase I guess is a relative  
23 term depending on how you look at stuff. We're in a  
24 market that's growing maybe seven percent per year.  
25 My understanding of the import numbers was that they

1 grew 500 percent in three years from the subject  
2 countries. So we're growing at seven percent, they're  
3 growing at 500 percent. Seven percent via 500 percent  
4 over three years. My point was really to say it  
5 depends on how you define gradual.

6 I can concur that the volumes were, relative  
7 to the whole market size, not at this point reaching  
8 huge numbers, but the growth level if that continued  
9 for any length of time, it's just a couple of years  
10 down the road and they will be very high levels.

11 COMMISSIONER PEARSON: Mr. Taylor?

12 MR. TAYLOR: Mr. Taylor from Wellman.

13 A lot of what you saw in addition to what  
14 Mike mentioned from the price competition is, and it  
15 even goes back into Europe, is it takes time and  
16 effort to develop the infrastructure to import the  
17 Asian resin. That time and effort was put into  
18 Europe. Import levels got up to 25-30 percent of the  
19 European market. The same thing was going on here in  
20 the States. The European remedies went into place,  
21 they had to, some of the things they mentioned, you do  
22 have to qualify your resin, you do have to ship it  
23 over here, you've got to develop the infrastructure to  
24 debug it, to ship it to customers here. That  
25 infrastructure is definitely in place today to go back

1 up to that, what we thought from a total standpoint  
2 was the 500-600 million pound rate. And actually, we  
3 know people who further developed it.

4 So I think there's a belief that the  
5 infrastructure is in place, that the imports could  
6 immediately jump up, they could be delivered into the  
7 country, and it's basically -- There's no barrier from  
8 that transportation standpoint. It's just a matter of  
9 focusing your effort and your energy. And like Mike  
10 mentioned earlier, we know several direct instances  
11 where if I wanted to go out tomorrow and buy 200, 500  
12 million pounds, I could. No problem.

13 COMMISSIONER PEARSON: Other comments?

14 MR. DEWSBURY: I think Mr. Taylor addressed  
15 it quite well. It was a dramatic rise from my  
16 perspective of the imports. We did compete with it.  
17 We lost margin because of the competition. And  
18 certainly the infrastructure does exist today. A  
19 whole cottage industry has sprung up around those  
20 imports. Imports are typically supplied in thousand  
21 pound bags or two thousand pound bags, one ton bags,  
22 where we supply in rail car or bulk truck quantities.  
23 There is an infrastructure now of stand-alone  
24 companies and some of the importers themselves have  
25 established sites to take the bags and convert them

1 into bulk truck and/or rail car quantity.

2 That facility exists and it's capital in the  
3 ground. It has not gone away.

4 So if an order went today, if we placed an  
5 order today we could buy material immediately.

6 COMMISSIONER PEARSON: Okay. No one's going  
7 to argue that the subject producers have greater  
8 capacity than in the earlier part of the period and  
9 that that increase the risk that you'd face?

10 MR. DEWSBURY: We don't argue that because  
11 they've always had far more capacity than what's been  
12 coming here already. It's coming now more to this  
13 country again because the EU closed off their  
14 countries due to the same practices in Europe. That's  
15 expanded now from Western Europe into Eastern Europe  
16 with the allowance of the Eastern Bloc countries into  
17 the EU. So they have less of a market, so there's  
18 more availability of that material.

19 But if they've got an excess of a billion  
20 pounds or an excess of two billion pounds, that really  
21 becomes irrelevant. They have plenty of material to  
22 supply this market. Always have.

23 COMMISSIONER PEARSON: Thank you very much.

24 Mr. Hertzberg, I would just echo comments of  
25 my colleagues that if there are data issues here, we



1 really need to sort them out fairly quickly. I had the  
2 opportunity  
3 yesterday to have a discussion on this issue with our  
4 professional staff and was left with the impression  
5 that the data issues in this case are not entirely  
6 dissimilar from what the staff deal with in some other  
7 cases. So they continue to receive responses from  
8 some firms that were slow with the questionnaires and  
9 the record ought to be a bit more complete in the  
10 final report. But I also got the impression that we  
11 probably wouldn't expect to see dramatic changes in  
12 the final report. If there ought to be and if you can  
13 document them we need to see them soon because you're  
14 well aware, we're required to deal with the industry  
15 as we find it and right now we're finding it as it is  
16 in the staff report.

17 MR. HERTZBERG: We will address that. We  
18 did address it in this brief. A couple of things that  
19 we think you need to take a look at and resolve, there  
20 are -- It's not only a question of missing data.  
21 There are some methodological issues. And yes, people  
22 can have different views on those but we do think the  
23 views we have need to be considered in resolving that.

24 COMMISSIONER PEARSON: Thank you, Mr.  
25 Chairman. My time is done.

1 CHAIRMAN KOPLAN: Thank you, Commissioner.

2 I have three questions left. Let me see if I  
3 can get through them. These are all for the industry  
4 witnesses.

5 First, the staff report indicates at Chapter  
6 2, page three, that the machinery and equipment used  
7 in the meltdown or polymerization stage of PET resin  
8 production can also be used in the production of  
9 polyester fiber. It cites four firms, the identity of  
10 which are BPI, that also produce polyester fiber and  
11 can divert their melt phase capacity from PET resin  
12 production to polyester fiber production with  
13 relatively minimal conversion time and cost and  
14 mention that oftentimes the same workers can be used.

15 Would raw material margins falling for PET  
16 resin have domestic producers shift some capacity? If  
17 not, why not?

18 Mr. Dewsbury?

19 MR. DEWSBURY: Mike Dewsbury from Wellman, I  
20 guess the largest fiber producer here in the room  
21 today from PET resin.

22 Fiber production, unlike resin production  
23 where we are very competitive with Asia and the  
24 subject countries, we are not competitive because  
25 fiber has a high labor component. Both our labor and

1 that of our customers, which make fabric and garments.  
2 There are very few garments worn in this room today  
3 that are manufactured in the United States.  
4 Manufacturing of our customers has shifted to Asia.

5 CHAIRMAN KOPLAN: So you can't use the same  
6 workers?

7 MR. DEWSBURY: Let me get to that.

8 The fiber market is declining. You cannot -  
9 - If you convert a fiber plant to resin you reduce  
10 somewhat the labor which makes us competitive.  
11 Converting back to fiber is a highly capital-intensive  
12 process. The polymerization is the same but after  
13 polymerization you go through a spinning process which  
14 is twice the cost of polymerization expense. That  
15 piece of capital is something that if we invested  
16 there would be no return for because the fiber market  
17 has been completely decimated by Asian imports to both  
18 fiber and the downstream products. So it's not an  
19 avenue that's left open to us.

20 CHAIRMAN KOPLAN: Thank you.

21 MR. TAYLOR: I'd like to add one quick  
22 comment there.

23 CHAIRMAN KOPLAN: Mr. Taylor.

24 MR. TAYLOR: Mr. Taylor from Wellman.

25 Wellman actually has a public announcement

1 out there so I can actually talk about this. We have  
2 announced we are converting an idle fiber line at our  
3 Pearl River, Mississippi plant to PET resin. Wellman  
4 has announced that we are spending \$50 million and it  
5 is taking us approximately 18 months to convert that  
6 fiber line.

7 CHAIRMAN KOPLAN: When did you make that  
8 announcement?

9 MR. TAYLOR: We made that announcement in  
10 August of 2004.

11 The melt phase process which is the initial  
12 phase of making polyester is very similar in PET resin  
13 and fiber. The second step, solid stating for bottle  
14 resin or spinning for fiber is completely separate.  
15 You must have the second step or it does no good to  
16 swing the melt phase or amorphous line.

17 It's been announced, Wellman wrote off a  
18 \$140 million investment in this fiber line in our  
19 Pearl River, Mississippi plant. So for a company to  
20 invest \$140 million in a fiber line for the second  
21 step or \$50 million for the second step of a PET line,  
22 and then choose to swing those lines back and forth  
23 makes no economic sense whatsoever with the margins we  
24 see.

25 Pretty much every pound of polyester

1 capacity in North America today is dedicated to  
2 polyester. PET amorphous that goes to a PET solid  
3 stater or a PET amorphous that goes to a fiber plant.  
4 All of the conversions, the DAK conversion you hear  
5 earlier, the Wellman conversion, those are all taking  
6 idle lines, they all take -- only the Wellman number  
7 is public so I can't comment on anybody else, but they  
8 all take 12 to 18 months and roughly \$50 million to  
9 convert.

10 CHAIRMAN KOPLAN: Anybody else?

11 MR. SHERLOCK: Yes, Mr. Chairman. I'd like  
12 to comment on that. This is Tom Sherlock from DAK  
13 Americas. We also manufacture fibers as well as resin  
14 at DAK Americas. I can tell you in our long term  
15 strategic plan we see no circumstance under which we  
16 would ever convert a PET line back to fiber given the  
17 shrinking market conditions in the fiber industry.

18 MR. KINNER: Mr. Chairman, this is Hans  
19 Kinner with Voridian.

20 Just from a technical standpoint, we produce  
21 PET only. We are not capable of producing suitable  
22 fiber grade resin with our assets without reinvesting  
23 in some capital.

24 MR. ADLAM: At M&G Polymers we're the same  
25 way. We only can produce PET in North America and

1 we're thankful for that. I think the idea of  
2 converting a PET line to a fiber line is like putting  
3 a frying pan in a fire. I think it would be horrible.

4 MR. PETERSON: Chris Peterson with Nan Ya.

5 I've been told by my top executives at Nan  
6 Ya that we would mothball a stable fiber or fiber  
7 producing plant in lieu of converting one back to,  
8 build another polymerization line and solid stater  
9 before we would convert one.

10 CHAIRMAN KOPLAN: Thank you for that. I  
11 thank all of you for answering that question.

12 Next, the PET Users Coalition argues on  
13 pages nine to eleven of their pre-hearing brief that  
14 domestic producers have advantages in access to  
15 railways, ensuring just in time delivery, enhanced  
16 product support, long term relationships with  
17 converters and a global presence that leads to a  
18 greater confidence in the quality and reliable  
19 delivery of a domestic product.

20 In some prior investigations it's been  
21 generally agreed that domestic producers have  
22 advantages in lead time availability or reliability of  
23 delivery simply due to proximity of their customers.

24 Assume all other things are equal, does PET  
25 resin sell at a premium to subject imports for a

1 specific product? If so, what might such a premium  
2 be?

3 MR. KINNER: This is Hans Kinner with  
4 Voridian. I'll take an attempt to answer that.

5 I'm not aware that we sell at any premium.  
6 If we attempt to get premiums we usually are asked to  
7 remove those premiums fairly rapidly. This is pretty  
8 much a commodity in pricing.

9 But I will comment a little bit on the  
10 logistics I would like to. And I don't want to get  
11 into too much detail. Logistics in this country is a  
12 pretty big issue right now and probably a lot of  
13 people are aware. But we are served by essentially a  
14 monopoly rail system. Our plants are not movable. So  
15 in many cases, frankly, I would consider the ability  
16 to be able to move my logistical systems around, if I  
17 had that option, to be actually somewhat of a benefit.

18 Right now the logistical systems that we  
19 have to deal with in the railroads and the fact that  
20 they're one supplier has given us a great deal of  
21 discomfort and additional cost.

22 CHAIRMAN KOPLAN: Anyone else?

23 MR. SHERLOCK: Yes, this is Tom Sherlock  
24 from DAK Americas.

25 I would echo that there's no significant

1 barrier to using the railroads. It only requires one  
2 to lease rail cars which are readily available on the  
3 market and as I believe Mike was saying there's a  
4 cottage industry available to readily move product  
5 into rail cars as it's imported. So I really don't  
6 see that as being a major barrier to entry, so to  
7 speak. If that's what you were asking.

8 CHAIRMAN KOPLAN: Thank you, yes.

9 MR. DEWSBURY: Commissioner Koplan, Mike  
10 Dewsbury, Wellman.

11 I would concur. It is a commodity market.  
12 We don't get premiums for our material. What they've  
13 stated about connection to railroads, being able to  
14 deliver faster is true. It is something we pitch when  
15 we walk in to try to sell our product.

16 What it gains us is hopefully to win the  
17 tie. If our price is equivalent to that of the Asian,  
18 we would then, we think, get the sale. But not always  
19 the case. But getting a premium price is -- Again,  
20 where our raw materials are a major cost to us, PET is  
21 a major cost to the bottle converters. So getting a  
22 penny reduction is important to them.

23 CHAIRMAN KOPLAN: Thank you.

24 The PET Users Coalition pre-hearing brief  
25 asserts that subject imports are necessary to avoid



1 supply disruptions. That's at page 12. I'm quoting.

2 "In the summer months when drink consumption  
3 is at its zenith, PET demand explodes. Whatever the  
4 overall capacity utilization picture of the U.S.  
5 industry may be, it is indisputable that U.S.  
6 producers have a supply shortfall at the high point in  
7 this cycle."

8 Do your firms produce at maximum capacity at  
9 the high point in the cycle? What are the effects of  
10 the seasonal increased peak demand?

11 Let me keep going with this.

12 Are delivery times longer in the spring and  
13 summer? Are some customers placed on allocation or  
14 controlled order entry?

15 MR. DEWSBURY: Mike Dewsbury, Wellman.

16 You've asked several questions. If I miss  
17 some, please ask them again.

18 We do see seasonality. We do not change our  
19 delivery times from soft season to tight season. We  
20 have ample capacity to meet the increased demand of  
21 the up season. We do that strategically by shipping  
22 into southern hemisphere markets during the off season  
23 to keep our plant running and bringing that material  
24 back during the peak season such that the U.S.-based  
25 customers are not affected by supply/demand.

1                   CHAIRMAN KOPLAN: So there's no need for  
2 allocation or controlled order entry?

3                   MR. DEWSBURY: We have never placed people  
4 on allocation due to market conditions.

5                   CHAIRMAN KOPLAN: I think you've covered all  
6 four parts.

7                   MR. KINNER: Hans Kinner with Voridian.  
8 I'll take a stab at that answer as well.

9                   No, I don't think the fact that there is --  
10 There is seasonality in the business in the U.S. as  
11 you've been told by several folks, but typically there  
12 is enough capacity in North America to supply that.

13                   However, we do require customers to give us  
14 a reasonable plan of what their demand profile will  
15 look like because we have to also order raw materials.  
16 In fact right now we are in a time period when our  
17 suppliers require us to give them a much more  
18 stringent requirement, planning horizon than we  
19 actually give our customers.

20                   So when you look down the chain I think it's  
21 very important that our customers give us a decent  
22 plan so we can make sure we have the raw materials and  
23 we can produce what they want when they want it.

24                   Historically the industry has not been real  
25 good at that planning process. During the busy times

1 of the year we do have to have a good plan, a month to  
2 six weeks out.

3 CHAIRMAN KOPLAN: Thank you.

4 Mr. Adlam?

5 MR. ADLAM: I have to say I struggled to  
6 understand some of those comments in the brief, too,  
7 because on one side it seemed to say that we had over-  
8 invested we had too much capacity. Then on the other  
9 side it was saying but in the summer you don't have  
10 enough.

11 The other concept which I found kind of hard  
12 to understand was that the converters would really  
13 rely on supply from I don't know how many miles away  
14 to cover them through the difficult period of the  
15 summer, through the time where they're busiest.

16 I would echo the comments of my competitors  
17 here, that we have plenty of capacity to supply the  
18 U.S. market during the peak demand, and I think it's  
19 at that point which our converters, our customers,  
20 truly rely upon us. I've never seen a converter  
21 decide to try and buy from subject importers to try  
22 and get through the summer rush. Quite the reverse, I  
23 would say.

24 CHAIRMAN KOPLAN: Thank you.

25 MR. SHERLOCK: Tom Sherlock from DAK

1 Americas.

2 We've never allocated, had to allocate  
3 products to our customers due to seasonality. We've  
4 never had that experience.

5 CHAIRMAN KOPLAN: Thank you all very much  
6 and I thank you for indulging me.

7 Vice Chairman Okun?

8 VICE CHAIRMAN OKUN: I had nothing to do  
9 with it.

10 CHAIRMAN KOPLAN: That's true.

11 VICE CHAIRMAN OKUN: We've covered a lot of  
12 ground this morning and this afternoon and I really  
13 appreciate all the answers you've given us.

14 I had some questions with regard to threat.  
15 I'm going to pose a couple for post-hearing because  
16 you did respond to some of them in response to  
17 colleagues.

18 For post-hearing, Mr. Hertzberg, if you  
19 could include demand forecasts both from the company's  
20 looking forward, demand forecasts for '05, '06, '07,  
21 and then also if, I think Commissioner Miller has  
22 asked if there are industry analysts that are looked  
23 to and if they have demand forecasts for the industry  
24 I'd appreciate seeing those.

25 And then with respect to Voridian and

1 Wellman, the expansion plans that they have noted  
2 which I believe are coming on in '06, if there is  
3 information that you could supply with regard to when  
4 those expansion plans were improved and whether there  
5 were demand forecasts made at that time that you could  
6 share as well, just to put it into perspective when  
7 those decisions were made and what the business  
8 outlook was.

9 With that, again, I really want to thank all  
10 of you for your answers this afternoon, and in  
11 particular to the industry witnesses for spending  
12 this time with us and telling us a lot about your  
13 industry. I found it very helpful and have a lot to  
14 think about.

15 Thank you, Mr. Chairman.

16 CHAIRMAN KOPLAN: Thank you.

17 Commissioner Miller? Commissioner Hillman?  
18 Commissioners Lane, Pearson?

19 It looks like there are no other questions  
20 from the dais.

21 Ms. Mazur, does the staff have questions?

22 MS. MAZUR: Mr. Chairman, staff has no  
23 questions.

24 CHAIRMAN KOPLAN: Thank you.

25 Ms. Esserman, before I release the panel do

1 you have any questions of the panel? No.

2 With that I think we'll break for lunch.

3 I want to thank all of you for your  
4 testimony. As you can tell by the lateness of the  
5 hour, it was helpful, the questions were rather  
6 exhaustive. Thank you very much.

7 We will come back at ten minutes of 3:00.

8 I would say to you that anything that is  
9 business proprietary you need to take with you because  
10 the room is not secure.

11 We'll resume at ten of 3:00.

12 (Whereupon, at 1:50 p.m. the hearing was  
13 recessed, to reconvene at 2:50 p.m. this same day,  
14 Tuesday, March 15, 2005.)

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1 Andrea Mack. You're going to also hear from Bruce  
2 Malashevich, President, Economic Consulting Services;  
3 and we are going to share our time with the PET Resin  
4 Users Coalition.

5 We stand before the Commission today for the  
6 second round of the domestic industry's attack on the  
7 small volume of imports from India, Indonesia, and  
8 Thailand. In the first round, where the Petitioners  
9 sought removal of GSP based on similar arguments, they  
10 were unsuccessful. In this investigation as in the  
11 GSP case, the record affords no support for  
12 Petitioners' arguments.

13 This morning and in their pre-hearing brief,  
14 the Petitioners raised a litany of issues regarding  
15 the underlying data in the staff report and they  
16 appear to be advocating nothing short of a full-scale  
17 redrafting of the Commission's pre-hearing report to  
18 suit their factual needs.

19 We believe the staff has done a thorough job  
20 but of course would be pleased to respond to any  
21 questions the Commission might have regarding  
22 Petitioners' arguments, which I think the Commission  
23 will find are both unfounded and immaterial to the  
24 ultimate outcome of this investigation.

25 Today we're going to focus on the underlying

1 record including the wealth of publicly available  
2 information on the domestic industry.

3 I'd like to begin by putting into context  
4 the domestic producers who appear today as  
5 Petitioners. They are large, global companies. You  
6 heard a bit about that this morning. They and their  
7 overseas operations control over half of all global  
8 PET resin production.

9 Petitioners quite explicitly identify  
10 themselves as participating not in a local, vulnerable  
11 U.S. market, but as you heard again this morning, in a  
12 fully integrated NAFTA market.

13 As they state in their pre-hearing brief at  
14 page 76, and I quote, "The North American producers  
15 treat NAFTA as a single market and the related  
16 Canadian and Mexican supplies are treated in the same  
17 manner as their domestic sales."

18 The integrated nature of the Petitioners'  
19 NAFTA operations is of particular relevance in this  
20 investigation. For example, the Petitioners make much  
21 of the fact that they have had to close certain plants  
22 during the POI and in support of that argument,  
23 interestingly, they highlight the fact that one  
24 producer, M&G Polymers, closed a production line in  
25 West Virginia in 2003. Yet what they've conveniently

1 omitted is that around the same time that M&G opened a  
2 massive new facility in Mexico, indeed the largest in  
3 the world, with a capacity ultimately of one billion  
4 pounds.

5 A substantial portion of that plant's  
6 production, moreover, has been sold to M&G's customers  
7 in the United States. As a result, M&G's market  
8 presence in the United States is stronger than ever.  
9 Its decision to switch its operations to Mexico is not  
10 a sign of injury and certainly not a sign of injury by  
11 reason of subject imports and that is why M&G made  
12 absolutely no mention of imports when it announced  
13 closure of the West Virginia line.

14 Obviously the U.S. trade laws should not be  
15 used to protect the industry's Mexican investments.

16 Petitioners' latest theory that they have  
17 been unable to increase capacity to match increasing  
18 demand is mystifying. In fact the pre-hearing report  
19 shows the contrary. Domestic producers have expanded  
20 total U.S. capacity substantially during the POI at a  
21 rate, particularly in 2003, that exceeded the  
22 corresponding increase in domestic demand. This is so  
23 even without accounting for M&G's massive new  
24 production capacity in Mexico that largely supplants  
25 its U.S. production.

1           Indeed, all of the major U.S. producers have  
2 taken measures during the POI to increase U.S.  
3 capacity and more capacity additions are scheduled in  
4 this and in the coming year.

5           Voridian has been engaged throughout the POI  
6 in planning a world-scale plant developed from cutting  
7 edge technology. The fact that Voridian cites this  
8 investment as an example of import-induced injury  
9 shows that the Petitioners are really grasping at  
10 straws.

11           Now let's look first at the import volume,  
12 and as I said at the outset, it's getting smaller  
13 since Taiwan is no longer a part of this  
14 investigation.

15           Imports have been extremely small throughout  
16 the POI while the domestic industry share has been  
17 dominant. Again, this is so even without accounting  
18 for the fact that all of the non-subject imports from  
19 Canada and Mexico are coming in from facilities  
20 controlled by U.S. producers which Petitioners remind  
21 us operate, and I quote, "in the same manner as their  
22 domestic sales."

23           Petitioners claim that their NAFTA imports,  
24 which were greater in volume than subject imports  
25 during the POI, were non-injurious. Therefore the

1       Petitioners have no viable theory that they are  
2       injured by reason of the smaller subject import  
3       volumes.

4               But the point goes even further. As my  
5       colleague, Mr. Malashevich, will discuss, the domestic  
6       industry's natural market for sales in the United  
7       States is to bottle converters located in the Eastern  
8       region of the United States, near their own production  
9       facilities.

10              It is apparent from the Commission's own  
11       data that in the East the U.S. producers' control over  
12       the market has been overwhelming, with cumulated  
13       subject imports at a truly negligible level.

14              Moreover India, which was the only subject  
15       country to sell virtually exclusively in the Eastern  
16       region, had a minuscule market share.

17              The impact of the small volume of cumulated  
18       imports is even more limited as imports do not compete  
19       with a number of important segments in the market, and  
20       you heard about that this morning.

21              In sum, any way you view the record, subject  
22       import volumes cannot be considered significant.

23              This is not a case for discounting post-  
24       petition imports as Petitioners urge, since there is  
25       record evidence linking the decline in imports to non-

1 case-related factors. In this case the decline in  
2 subject imports began several months before the filing  
3 of the petition and was caused by a shift in the  
4 relative price levels of the Asian and U.S. raw  
5 materials which have put Asian imports at a  
6 disadvantage in this market. But of course you don't  
7 have to take my word for it. Brian Ferguson, the CEO  
8 of Voridian's parent company recently explained the  
9 phenomenon this way, and he was talking about PET  
10 resin.

11 I quote, "The Asia Pacific situation is a  
12 different situation than it was a couple of years ago.  
13 There is a reverse arbitrage where raw materials were  
14 cheaper in Asia for reasons I never fully understood,  
15 and that has clearly reversed, so the Asian volumes  
16 coming into North America have been lower." That was  
17 a comment earlier this year.

18 Now let me turn to the issue of price  
19 effects. First, it's important to note that  
20 Petitioners have increased their prices quite  
21 substantially over the POI. The only argument they  
22 have as to price-based injury, therefore, is that they  
23 have not been able to raise their prices to recover  
24 all of the increases in raw material costs over the  
25 POI.

1           It was clear from the discussion this  
2 morning that the record shows a period of historically  
3 high raw material costs. Voridian's Mr. Ferguson  
4 described this as, quote, "chasing a rising mountain  
5 of steadily rising raw material costs."

6           Indeed, as shown in Exhibit 11 to our brief  
7 which we have appended to our exhibits, and as we  
8 heard from the Voridian witnesses today, raw materials  
9 rose from historic lows in 2000 and 2001 to  
10 unprecedented highs. That's using their words.

11           If you believe the Petitioners you will have  
12 to conclude that but for the minimal and non-injurious  
13 volumes of subject imports over the POI, the domestic  
14 producers would have been able to pass on all of those  
15 historically high costs to their customers,  
16 irrespective of the supply and demand conditions  
17 prevailing in the industry. That conclusion, however,  
18 is not supported in the record. And I must say it  
19 strikes me as extremely unrealistic for Petitioners to  
20 expect to pass on every penny increase, especially  
21 given the magnitude of the raw material increase here  
22 without any resistance from customers.

23           You will hear more on that from the PET  
24 Users Coalition.

25           But more fundamentally, as Mr. Malashevich

1 will discuss in greater detail, the decline in  
2 domestic profitability was caused by the confluence of  
3 universally recognized factors. The introduction of  
4 substantial new production at a time of record raw  
5 material costs, and this had nothing to do with  
6 subject import competition.

7           And it's no coincidence that industry  
8 executives have seen it exactly the same way. To  
9 quote Wellman's CEO, Mr. Thomas Duff, "PET resin  
10 margins declined during the third quarter of 2003  
11 because of industry capacity additions during the  
12 third quarter, volatile raw material prices, customers  
13 reducing their inventory levels, and poor weather  
14 conditions, especially in the eastern part of the  
15 United States. While margins were low at the end of  
16 the third quarter, we expect lower margins in the  
17 fourth quarter due to higher raw material costs and  
18 producers attempting to place the 2004 volume."

19           Mr. Ferguson of Voridian concurs stating  
20 several weeks ago, and I quote, "The dynamic we faced  
21 12 months ago was that we were absorbing capacity that  
22 came into the market. Somebody put about 18 months'  
23 worth of growth into the market."

24           It is striking that neither executive of the  
25 two largest PET resin companies nor any of the other



1 public industry statements make any mention of  
2 imports. None whatsoever.

3 This is not the language you typically see  
4 from CEOs concerned about import competition. The  
5 omission is all the more telling considering that  
6 elsewhere in these companies' reports they  
7 specifically reference the influence of Chinese fiber  
8 imports when discussing the company's fiber  
9 operations. Not surprisingly, and most importantly,  
10 the record is fully consistent with these executives'  
11 statements, showing no relationship between the  
12 presence of subject import volumes and profitability  
13 trends in the U.S. industry.

14 When subject imports declined in 2004 to the  
15 lowest point in the POI, domestic profitability also  
16 declined to its lowest point in the period. In  
17 response to that fact the Petitioners retreat to the  
18 perilous argument that although subject imports  
19 declined in 2004 the residual impact of their 2003  
20 import volumes continued to affect the market in 2004.

21 The notion that some invisible hand of  
22 subject imports which were small at all points in the  
23 POI caused 2004 price declines is fantasy.

24 In point of fact, however, and fatal to even  
25 the most basic premise of the Petitioners' case, the

1 staff pre-hearing report found that subject imports  
2 largely oversold domestic production in the product  
3 category where there is the greatest competition.

4 The bulk of Petitioners' pre-hearing brief  
5 constitutes a last-ditch effort to get around that  
6 fundamental fact.

7 Petitioners' arguments on threat of injury  
8 are equally unavailing. The evidence in the record  
9 demonstrating positive trends and surging domestic and  
10 global demand flatly contradict a threat finding. Far  
11 from being vulnerable to imports, the industry's  
12 future, by all accounts, is bright.

13 First, the record shows over the POI  
14 increasing domestic production, increasing shipments,  
15 both domestic and export, increasing prices,  
16 increasing U.S. demand, and high capacity utilization.  
17 Industry executives and experts alike project  
18 continued strong trends in sales, in operating rates,  
19 and in prices for 2005.

20 Second, three of Petitioners have announced  
21 capacity expansion plans for 2005 and 2006 including a  
22 world-scale plant incorporating breakthrough  
23 technology.

24 Third, all available forecasts show robust  
25 growth in U.S. PET resin demand between approximately

1 seven and nine percent in 2005 and in 2006. In fact  
2 according to the Wellman Chief Executive, there is  
3 currently, and I quote, "an industry-wide sold-out  
4 situation."

5 Tight supply of PET resin is projected for  
6 2005 even accounting for the substantial increases of  
7 domestic capacity recently brought on line and  
8 underway. And the greatest opportunity for demand  
9 growth is expected to be in the hot-fill segment which  
10 faces no competition from subject imports.

11 Increased water bottle demand is also  
12 expected with Petitioner Voridian recently noting  
13 increased exports going to the tsunami region. Hardly  
14 the picture of an industry facing the dismal  
15 circumstances that Petitioners present.

16 Against this promising backdrop all record  
17 evidence indicates that subject imports will continue  
18 to be constrained at low levels in the U.S. market.  
19 As noted earlier and as widely recognized by industry  
20 executives, Asian raw materials are expected to remain  
21 scarce as booming Chinese polyester production is  
22 soaking up Asian PTA and MEG needed for PET resin  
23 production.

24 According to M&G earlier this year, and I  
25 quote, "Asian based producers will again have to cope

1 with larger regional raw material deficits compared to  
2 Europe and North America."

3 This Asian competitive disadvantage is  
4 expected to continue to restrain imports for the  
5 foreseeable future.

6 Furthermore, an increasing volume of subject  
7 production will be needed to serve the strong growth  
8 in each of the home markets of the countries under  
9 investigation. This is particularly the case for  
10 India.

11 A detailed study prepared by IMA India, an  
12 associate of the Economist Corporate Network, projects  
13 demand increases of 25 percent in 2005 and a further  
14 21 percent in 2006. Similarly, growing third country  
15 markets are placing a greater pull on subject country  
16 production. In fact this is already evident from the  
17 record data showing a decreasing share of subject  
18 production directed to the U.S. market during the POI.

19 Given the relative Asian raw material  
20 disadvantage and the recent capacity additions in  
21 North America, these third country markets are more  
22 attractive than the United States for the subject  
23 producers in the imminent future. India in particular  
24 has targeted emerging markets in the Middle East,  
25 Eastern Europe and Africa. The record shows that

1 several long-term relationships have been established  
2 with buyers in these markets. These emerging markets  
3 share several common characteristics including  
4 insufficient local production, increasing demand,  
5 limited foreign competition, less rigorous product  
6 prequalification and proximate locations to India that  
7 involve less burdensome logistics and lower shipping  
8 costs.

9 Indian producers have been especially  
10 interested in positioning themselves in these markets  
11 to take advantage of tariff preferences arising from  
12 India's FTA negotiations with South Africa and its  
13 planned negotiations with the GCC, the Gulf  
14 Cooperation Council.

15 This case presents compelling circumstances  
16 for decumulating Indian imports from other subject  
17 country imports because of disparate regional import  
18 penetration, export market concentration, volume and  
19 price trends, and overall low subject import  
20 penetration.

21 India is the only subject country that  
22 imports almost exclusively into East Coast ports and  
23 in only one of the seven PET resin product categories  
24 examined at prices that largely oversold the U.S.  
25 product.

1           Clearly, the hammering effect, the rationale  
2           underlying cumulation, is not present in this case.  
3           Under similar circumstances the Commission has  
4           decumulated for purposes of threat.

5           As you've heard today, and seen in the  
6           Petitioners' pre-hearing brief, they seek to divert  
7           attention from these fundamental and well documented  
8           facts by citing to generalized excess capacity in Asia  
9           at large. Even if true, the mere presence of excess  
10          capacity on the continent of Asia would never suffice  
11          to provide the positive evidence necessary to  
12          establish an affirmative threat determination.

13          But more to the point, any such excess  
14          capacity in the broader Asian region has no relevance  
15          here. As the Wellman Chief Executive recently noted,  
16          "Excess Asian capacity is," in his words, "irrelevant  
17          since there is insufficient Asian raw material  
18          available to feed capacity."

19          Second, Petitioners seek to cast doubt by  
20          questioning the data in the staff report. However,  
21          there is full coverage for two of the countries under  
22          investigation, and I'm now just realizing there's only  
23          one other remaining, and the Commission has relied on  
24          the best evidence available for the other country.

25          Finally, Petitioners claim that subject

1 imports will threaten the market because of diversion  
2 arising from the longstanding European dumping order  
3 simply defies logic. Any purported diversion would  
4 have occurred when the order was imposed in 2000, yet  
5 U.S. subject imports have remained low since then, as  
6 Commissioner Pearson noted this morning.

7 At this juncture five years after imposition  
8 of the order the effect of the order on the U.S.  
9 market, if any would be the reverse, leading to fewer  
10 subject imports in the U.S. in the near future.  
11 Indeed, with regard to India, a price undertaking and  
12 a new shipper review for key Indian producers will, if  
13 anything, lead to increased exports to Europe.  
14 Moreover, the order is slated to expire in 2005 and  
15 there is no certainty it will be extended.

16 As a final note, we urge the Commission to  
17 review the domestic industry's public statements  
18 carefully on a number of matters relevant to this  
19 investigation. You'll find them remarkably explicit  
20 about the realities of this industry, remarkably  
21 consistent with the data collected by the Commission  
22 staff, and disturbingly inconsistent with the  
23 arguments raised by the Petitioners in their pre-  
24 hearing brief and today.

25 Let me end by returning to Commissioner

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1 Hillman's observation earlier today. That is you have  
2 in this case a small and declining import share with  
3 rising prices. This is a highly unusual case to come  
4 before the Commission.

5 Now I'm going to turn to my colleague, Mr.  
6 Malashevich.

7 CHAIRMAN KOPLAN: Excuse me, Ms. Esserman. I  
8 have one very brief question.

9 MS. ESSERMAN: Yes.

10 CHAIRMAN KOPLAN: Your basis for saying that  
11 Commerce has issued. Do you have a document on that?

12 MS. ESSERMAN: I don't. They released the  
13 results at noon today so I was here so I don't have  
14 the document, but it was e-mailed to me that they have  
15 indicated that the results for Taiwan are de minimus.

16 CHAIRMAN KOPLAN: Do we have that yet, Ms.  
17 Mazur?

18 MS. MAZUR: Chairman Koplan, I've been in  
19 contact with Commerce. They have not yet released the  
20 Federal Register notice or the fact sheets, they're  
21 still withholding paper copy but I have received  
22 verbally the margins. I am preparing something right  
23 now.

24 CHAIRMAN KOPLAN: Thank you.

25 MS. MAZUR: I will distribute it today.



1                   CHAIRMAN KOPLAN: Thank you. Sorry to  
2 interrupt.

3                   MR. MALASHEVICH: Good afternoon Mr.  
4 Chairman, members of the Commission. Bruce  
5 Malashevich from Economic Consulting Services.

6                   My testimony here today addresses certain  
7 arguments made by Petitioners in their brief which are  
8 quite fundamental to the case on causation. First is  
9 the competitive dynamics of the U.S. market for PET  
10 resin in the region east of the Rocky Mountains versus  
11 the west coast.

12                   The Commission itself made clear during its  
13 preliminary determination that it would explore these  
14 regional dynamics in any final phase investigation.  
15 Staff requested that domestic producers break out  
16 their domestic shipments as between these two regions,  
17 and of course public trade data permit the same  
18 breakout for imports.

19                   As the Commission knows, 100 percent of U.S.  
20 production is concentrated in the U.S. east, a region  
21 that historically has served as the industry's natural  
22 marketing area. I urge you to take a look at the map  
23 expanded before you. The red dots is the universe of  
24 the U.S. industry and you can see they're all located  
25 in the southeastern pocket of the United States. The

1 blue dots are converters which are scattered  
2 throughout the country but really concentrated west of  
3 the Rockies and east of the Rockies.

4 This morning Petitioners dismissed this  
5 regional distinction but it frequently is alluded to  
6 in the trade press that I reviewed and otherwise  
7 supported by evidence in the APO record.

8 So the U.S. industry naturally focuses its  
9 sales in the eastern region of the U.S. which is a  
10 function of an inherent logistical difficulties in  
11 shipping PET resin across the United States and the  
12 comparative ease of shipping to nearby eastern region  
13 purchasers, a fact that Petitioners agreed with in  
14 their testimony earlier today as a selling point for  
15 them.

16 No U.S. producer enjoys such advantage in  
17 the west. Once again, I call your attention to the  
18 map.

19 The regional nature of the U.S. market is  
20 reflected in the considerable dispersion of subject  
21 imports with practically nothing from Indonesia or  
22 Taiwan, although Taiwan is now out of the picture,  
23 answering the east coast and practically nothing from  
24 India on the west coast.

25 So failure to examine these peculiar

1 regional distinctions yields less than a fully  
2 informed view of the subject imports' very limited  
3 market power as measured in their market share.

4 I've passed out before you a duplicate of  
5 one page of Exhibit 5 to the Reliance pre-hearing  
6 brief. I urge you to take a look at it. It was  
7 prepared by my colleagues and me to calculate  
8 shipments, imports, apparent consumption and market  
9 shares in the eastern region only.

10 Now you heard a lot about Futura earlier  
11 today. I would urge you to give the Petitioners'  
12 benefit of the doubt about the volume of imports from  
13 India. I will assume, arbitrarily, let's double the  
14 volume and market share of imports from India in the  
15 eastern region in Exhibit 5. Let's just assume that  
16 for the moment.

17 Look at the market share occupied by the  
18 combination of U.S. producers and, as we heard this  
19 morning, their transferred imports from related  
20 facilities in Canada and Mexico. Look at what's  
21 happened to the volume of imports from Mexico.

22 Combine the two and look at the U.S. market  
23 share in the eastern region. Now look at what we are  
24 assuming to be doubled imports from India.

25 Consider that Futura is one of four

1 companies publicly identified by the Commerce  
2 Department as exporting to the United States. So  
3 Futura has some fraction of the market share and  
4 volume attributed to imports from India in Exhibit 5.

5 So considering that the eastern region is  
6 most important to the United States, considering the  
7 U.S. industry's market share, with or without  
8 transferred imports from Canada and Mexico, is it  
9 realistic to assume that they're losing sales of any  
10 magnitude to subject imports?

11 CHAIRMAN KOPLAN: Mr. Malashevich, is this  
12 chart available in any other form than what we're  
13 straining to see up here? Is it available to the  
14 other side? Do you have copies of it?

15 MR. MALASHEVICH: There's a map like this in  
16 the pre-hearing brief of Reliance.

17 CHAIRMAN KOPLAN: Identical to this?

18 MR. MALASHEVICH: I think the colors may  
19 have been reversed in the brief. I don't know if that  
20 was corrected.

21 CHAIRMAN KOPLAN: That would be a problem.  
22 Okay. It's just a little hard to work with from --

23 MR. MALASHEVICH: Sorry. I'll be happy to  
24 resubmit it in the post-hearing brief in this form.

25 CHAIRMAN KOPLAN: That would be good.

1                   MR. MALASHEVICH: Getting back to the  
2 picture here, whatever purchasers may have told U.S.  
3 salesmen orally, how much more likely is it that they  
4 lost sales in fact to another U.S. producer,  
5 particularly one who is expanding capacity, than to  
6 the volume of imports by Futura? It's ridiculous,  
7 quite frankly, when you consider the relative market  
8 shares involved.

9                   Now consider that Exhibit 5 looks at the  
10 eastern region. India's and Futura's market share is  
11 even lower if you expand it to the nation. And if you  
12 accept Petitioner's view that it's really a NAFTA  
13 region that's forming the supply and demand balance  
14 that affects price, they are smaller still when you  
15 take it as a share of NAFTA consumption.

16                   Subject imports simply did not have the  
17 market power to affect the price in anywhere like the  
18 domestic industry is alleging.

19                   Notwithstanding these facts, should the  
20 Commission nonetheless find that subject imports are  
21 significant -- and I submit they are not --  
22 Petitioners claims of downward price effects come into  
23 play. Lacking a record showing significant volume of  
24 subject imports and given the fact that domestic  
25 selling prices rose quite remarkably in absolute terms

1 over the POI, the essence of Petitioners' economic  
2 theory of this case rests on price suppression.

3 I note at the outset that whatever the cause  
4 of subject imports declining trend in the latter part  
5 of the POI, the downward trend in domestic  
6 profitability continued even as the volume of subject  
7 imports shrank substantially. The kind of temporal  
8 correlation that often guides the Commission exists,  
9 but in a direction that shows the behavior of subject  
10 imports to be generally irrelevant to the domestic  
11 industry's profitability and overall condition.

12 As for Petitioner's claims of cost/price  
13 squeeze, the pre-hearing brief of Indian Respondent  
14 contains extensive documentation, mostly originating  
15 from petitioning U.S. producers, showing the  
16 volatility of material prices relative to PET resin  
17 selling prices is a natural condition of competition.  
18 This sort of risk is inherent in the PET resin  
19 business.

20 Unfortunately, the domestic industry  
21 encountered an unprecedented increase in PET's raw  
22 material prices over a sustained period during the  
23 POI. Much commentary on that this morning. Normally  
24 PET resin prices do move broadly in the direction of  
25 raw material costs and move upward. They certainly

1 did during the POI. But it's unreasonable to expect  
2 that they would move in lockstep given the competing  
3 demands for the same raw materials from industries  
4 producing quite other products.

5 The prices for PTA and MEG are derived from  
6 very different conditions than those prevailing in the  
7 PET resin industry. PTA and MEG are used for a number  
8 of non-packaging polyester products. PET resin, in  
9 fact, accounts for less than half of the total annual  
10 PTA and MEG used in the United States. The different  
11 products manufactured with PTA and MEG are sold in  
12 diverse industries with pricing and demand tendencies  
13 wholly distinct from those applicable to PET resin.  
14 PTA, for example, is derived from paraxylene which is  
15 made from raw materials also used in gasoline. Thus  
16 in periods where petroleum prices are high, obviously  
17 now, those prices place upwards pressure on both  
18 paraxylene and PTA prices, without regard for what's  
19 happening in the PET resin market.

20 It's inevitable, therefore, that periods  
21 will exist when high demand for PTA and MEG will drive  
22 the cost of those materials upward but where  
23 circumstances in the market for PET resin will not  
24 allow perfectly commensurate increases in prices.

25 As noted in the pre-hearing report,

1 purchasers of PET resin have recourse to alternative  
2 materials such as aluminum and glass allowing  
3 purchasers to apply downward pressure on PET resin  
4 prices if prices become misaligned.

5 It also should be noted that PTA and MEG  
6 prices have risen quite steadily through almost every  
7 quarter of the POI. Domestic producers are generally  
8 able to renegotiate prices only periodically -- a fact  
9 confirmed in today's testimony this morning.

10 So given the steady, relentless increase in  
11 raw materials costs, domestic producers often have  
12 found themselves fixed at a price that may have been  
13 advantageous vis-a-vis costs at the beginning of the  
14 month, but became much less so over the month as costs  
15 steadily increased.

16 Furthermore during the POI raw material and  
17 U.S. resin prices could not move perfectly in lockstep  
18 owing to the huge additions to North American PET  
19 resin capacity which came onstream mostly in the  
20 latter part of the POI.

21 On this point I'd like to correct, Mr.  
22 Chairman, I think an inadvertent error in Mr. Taylor's  
23 testimony this morning. They were examining the change  
24 in capacity in 2003 and they suggested split it in  
25 half because it came in the latter part of the year.



1 I'm not sure it's that simple, but when he compared it  
2 to the increase in NAFTA demand it was to the entire  
3 year, an annual figure.

4 So it seems to me if you're going to cut  
5 half of the capacity figure you also have to cut half  
6 of the demand figure and you'll see that capacity rose  
7 considerably faster than demand, and in any event, a  
8 more probative calculation relying on APO information  
9 of that difference between the capacity additions and  
10 demand change appears in Reliance's pre-hearing brief.  
11 I call your attention to it.

12 My final remarks address Petitioners' claims  
13 of numerous compilation arithmetic errors on the part  
14 of staff in assembling the statistics in the pre-  
15 hearing report. I believe I can best address these  
16 claims here and now by stating the following.

17 As we normally do when preparing for ITC  
18 investigations, ECS received and compiled the  
19 questionnaire data in the format normally used by the  
20 Commission in these proceedings. Upon receipt of the  
21 pre-hearing report we compared, as we normally do, our  
22 compilation against the staff's as a form of cross-  
23 check. In this case after adjustments for late-  
24 arriving questionnaire revisions and adjustments made  
25 by staff as a consequence of followup inquiries made

1 by them to questionnaire preparers, our statistics and  
2 staffs were very nearly identical. If there are  
3 issues remaining in this regard, they must be narrow  
4 and small.

5 Petitioners also attempt to argue that staff  
6 erred simply in following the Commission's  
7 longstanding and standard practice in the calculation  
8 of underselling and overselling by subject imports,  
9 relying as they do on Appendix D.

10 I agree, there are differences in level of  
11 trade in Appendix D, and I could go into that further  
12 if you'd like. But as a practical matter, the entire  
13 testimony today ignored part five which consists of  
14 the standard margins of underselling properly  
15 calculated in the pre-hearing report.

16 The Commission rarely departs from this  
17 standard practice of comparing U.S. producers and  
18 imported prices to unrelated customers of the same or  
19 very similar products sold to unrelated purchasers at  
20 the same level of trade. The Commission has departed  
21 from this practice on very few occasions and only for  
22 good cause based on the circumstances of the case at  
23 hand.

24 Such circumstances do not exist in this case  
25 so Petitioners' alternative price comparisons should

1 be given no weight.

2 Thank you very much.

3 MR. DAVIS: Good afternoon. My name is Drew  
4 Davis and I am Vice President of Federal Affairs of  
5 the American Beverage Association. I am here today on  
6 behalf of the PET Users Coalition to voice an  
7 objection to the imposition of duties on PET resin  
8 from India, Indonesia, Taiwan and Thailand. The PET  
9 Users Coalition consists of the American Beverage  
10 Association, American Frozen Food Institute, Cadbury  
11 Schwepes, America's Beverages, the Coca Cola Company,  
12 Constar International Inc., the Distilled Spirits  
13 Council of the United States, Graham Packaging, the  
14 Grocery Manufacturers Association, the International  
15 Bottled Water Association, Lion Chemical Industries,  
16 Food Products Association, Nestle USA, Nestle Waters  
17 North America, PepsiCo Inc. and Proctor & Gamble  
18 Company.

19 Bottle grade PET resin is used in packaging  
20 for a wide array of products such a carbonated soft  
21 drinks, water, juices, peanut butter, salad dressing,  
22 frozen foods, soup, snack foods, alcoholic beverages,  
23 toiletries and cosmetics.

24 As you can see, then, the members of the PET  
25 Users Coalition represent a full range of PET resin

1 consumers.

2           Our members are extremely concerned about  
3 this case because it has the potential to greatly  
4 interfere with their supply chain, causing significant  
5 disruption to their business. While the U.S.  
6 producers provide them with the overwhelming majority  
7 of PET resin needs, the members of the PET Users  
8 Coalition rely on subject imports as a secondary  
9 source of supply. Especially during peak times of the  
10 market, subject imports are instrumental in ensuring  
11 that consumers' facilities remain fully operational.

12           To make matters worse, the users of PET  
13 resin strongly believe that duties on subject imports  
14 would have a detrimental effect on their operations  
15 while providing little benefit to the U.S. industry.  
16 Placing duties on subject imports will do little to  
17 alleviate the intense competition between domestic  
18 producers to keep their plants fully operational or to  
19 relieve the pressure of increasing raw material costs.

20           Demand for PET resin is growing and the  
21 future for this product looks bright. Indeed, PET  
22 resin demand has even been buoyed by the tragedy of  
23 the tsunami that recently decimated some parts of Asia  
24 because the damage to the infrastructure there has  
25 caused an increased need for bottled water and other

1 beverages in that region.

2 U.S. producers are expanding their capacity  
3 to meet the expected high demand growth and members of  
4 the coalition look forward to continuing their  
5 relationships with the domestic industry. However,  
6 with this demand growth also comes room for other  
7 players in the market. We expect that as demand  
8 continues to grow, subject imports will continue to  
9 play a tangential but necessary role in the U.S.  
10 market. Consequently, the members of the PET Users  
11 Coalition strongly advocate against the imposition of  
12 duties in this strong and growing market.

13 Here to testify today is a representative  
14 from one of those consumers, Dan Mullock, Vice  
15 President, Purchasing, Constar International, Inc.

16 While as an industry representative I have a  
17 general idea about the domestic PET resin market, Mr.  
18 Mullock will be able to provide you with detailed  
19 insights from the perspective of the consumer and he  
20 will be able to also answer any specific questions you  
21 might have for the Users Coalition.

22 MR. MULLOCK: Thank you, and good afternoon.  
23 Constar International is one of the largest suppliers  
24 of PET plastic containers for conventional  
25 applications in North America and Europe. We're based

1 in Philadelphia and we have 14 plants in the United  
2 States, all in the eastern region, as well as four in  
3 Europe. We're a wholly independent company whose  
4 overall growth strategy is designed to enhance our  
5 market leadership and maximize shareholder value.

6 As VP of purchasing, it is my job to ensure  
7 that our PET procurement strategies meet these goals.

8 Constar's customers include major global  
9 consumer food and beverage brands, a lot of whom are  
10 members of the ad hoc coalition. Constar manufactures  
11 two types of containers serving different markets. It  
12 produces conventional containers, such as those used  
13 for soft drink and water bottles, as well as custom  
14 hot filled PET containers designed for food, juices,  
15 teas, sports drinks, beer and flavored alcoholic  
16 beverages.

17 We are a packaging solutions leader,  
18 designing and manufacturing innovative methods for  
19 customers to address their production and marketing  
20 challenges. Nonetheless, competition from the many  
21 other converters serving the bottling needs of these  
22 companies is very fierce.

23 There are several points about the PET resin  
24 market that I would like to make because I think they  
25 are relevant to your determination.

1                   First, the domestic industry has been an  
2                   excellent source of supply and I rely on the U.S.  
3                   producers for the overwhelming majority of my PET  
4                   resin requirements. So it is a little disappointing  
5                   that I have to be here today to take a position  
6                   contrary to those articulated by people with whom  
7                   I regularly work and with whom we have an excellent  
8                   relationship. However, I think it is important that  
9                   you have a complete understanding of the PET resin  
10                  market and especially that you understand the position  
11                  of the consumers of this increasingly important  
12                  product.

13                  The growing importance of PET resin is a key  
14                  point to keep in mind as you consider this case. PET  
15                  resin is steadily becoming more pervasive in the  
16                  packaging industry. Demand has been growing  
17                  exponentially and is expected to continue to grow at a  
18                  rapid pace. Demand for cold fill resin will continue  
19                  to expand, particularly demand for water and soda as  
20                  those markets continue to grow. Demand for hot fill  
21                  resin has a lot of growth potential because that's  
22                  where new technologies allow expansion of PET resin  
23                  packaging into products where it has never been used  
24                  before.

25                  Hot fill and cold fill resins are two

1 distinct products. We use both, but would not  
2 substitute one for the other. Hot fill resin contains  
3 chemicals that make it much more difficult to run than  
4 cold fill and it simply makes no sense to run a hot  
5 fill product when a cold fill is available.

6 Demand for cold fill resin PET is highly  
7 seasonal. The peak time for PET demand is in the  
8 second quarter, as converters manufacture the bottles  
9 for the drinks that will be consumed during the summer  
10 months. During this peak time in particular, supply  
11 to the U.S. market is often extremely tight. At this  
12 time, prices are also at their highest point during  
13 the year often.

14 U.S. producers are well positioned to take  
15 advantage of the huge and growing demand for PET  
16 resin. They currently dominate the U.S. market and  
17 are ensuring that they continue to do so as the market  
18 grows by adding more capacity to their already  
19 existing lines and drawing upon their plants in Mexico  
20 and Canada to serve the market. Their preeminence in  
21 the market remains unchallenged.

22 Due to their sheer volume alone, U.S.  
23 producers naturally dictate the movements of the  
24 market. Through their competition with each other,  
25 they set prices for PET resin in the United States.



1 As the domestic producers themselves admit, they must  
2 keep their plants fully operational in order to remain  
3 profitable. When producers have excess supply, they  
4 therefore bid against each other to fill this  
5 capacity. When an announced price increase by a U.S.  
6 PET producer does not stick, generally another U.S.  
7 producer has knocked the wind out of those price  
8 increases.

9 While domestic industry competition is  
10 fierce, subject imports largely play very little role  
11 in this fray. Like the other U.S. consumers, I use  
12 imports, subject or otherwise, in limited amounts and  
13 prefer to purchase domestic products. While I would  
14 like to say that this preference stems from my desire  
15 to support U.S. companies, and that is true as far as  
16 it goes, the real reasons go beyond this.

17 First of all, as a matter of logistics, it's  
18 just much easier to use U.S. products. U.S. producers  
19 are generally located near my production facilities,  
20 all of which are located in the eastern United States,  
21 and have easy and cheap rail access that makes their  
22 product go directly and easily from their door to  
23 mine. For a bulk product such as PET resin,  
24 transportation cost logistics are a significant  
25 portion of the bottom line. Keeping Constar's bottle

1 making facilities fully operational requires a lot of  
2 material, rail car after rail car of PET resin.

3 Moreover, the U.S. industry's proximity to  
4 my plants also facilitates just in time delivery that  
5 is essential to my operations, because similar to rail  
6 transportation the cost of storing PET can be unduly  
7 burdensome.

8 Finally, when using U.S. product, I know  
9 that my suppliers can quickly change a product  
10 specification or replace a defective shipment.

11 A second reason for my preference for U.S.  
12 product is that the industry often offers me services  
13 that I may not be able to get from subject producers.  
14 For example, U.S. producers often provide me with  
15 enhanced support such as consignment inventories or  
16 the ability to quickly expedite additional unplanned  
17 volumes by truck when conditions warrant. My  
18 customers don't always forecast that well and I have  
19 to react to that, so having supply near our plants is  
20 quite helpful to that.

21 Further, U.S. producers are willing to meet  
22 at least some of my requirements through long-term,  
23 steady volume contracts thus providing me with  
24 assurance of supply. They also provide me with  
25 technical support that I generally cannot get from the

1 subject producers. This technical support is  
2 particularly crucial for my hot fill requirements.  
3 The fact that this support is basically unavailable  
4 from the subject producers largely shuts out subject  
5 imports out of this segment of the market.

6 Third, I have longstanding supply  
7 relationships with U.S. producers which give me  
8 confidence in them that I may not have in the subject  
9 imports. Converters, like the PET resin producers  
10 must run their plants with very little down time in  
11 order to remain profitable. Working with a PET resin  
12 producer with whom I've had a longstanding  
13 relationship provides me with comfort that my  
14 facilities will not run into trouble because of faulty  
15 supply input.

16 U.S. producers not only have undergone my  
17 stringent qualification process, but have proven time  
18 and again that their product is reliable. I recently  
19 have had to contend with poor quality subject imports  
20 and, especially in light of the logistic hurdles of  
21 fixing these type problems when subject imports are  
22 involved, I certainly prefer to use U.S. product which  
23 I feel gives me a more reasonable comfort level.

24 Moreover, I have assurance of supply at  
25 times of peak demand due to my longstanding

1 relationships with U.S. producers.

2 Finally, U.S. producers afford me one-stop  
3 shopping in terms of product offerings. Subject  
4 imports are generally limited to the cold fill and CSD  
5 applications, while the US industry offers the entire  
6 spectrum of products I need.

7 As already noted, subject producers'  
8 inability to provide me with technical support  
9 precludes me from purchasing hot filled resin from  
10 them. In addition to offering superior product  
11 variety, the U.S. industry is also able to satisfy my  
12 global procurement needs. With operations in North  
13 America and Europe, I sometimes purchase PET resin  
14 from a single producer for the ease of filling all of  
15 my requirements from one supplier and to leverage my  
16 global volumes.

17 With all of these advantages of purchasing  
18 domestic supply, subject imports do not displace U.S.  
19 products in my procurement decisions. They complement  
20 them. I would not and cannot dramatically shift to  
21 subject imports solely to save a cent or two per  
22 pound. In the long run, the inherent risks and the  
23 need to purchase from multiple suppliers to meet all  
24 my requirements could well result in additional costs  
25 that would more than offset what I might save on the

1 initial PET resin procurement.

2           Nonetheless, subject imports have a  
3 productive role in the United States. First, as has  
4 been mentioned, U.S. production facilities are  
5 concentrated in the southeastern U.S. If a natural  
6 disaster were to strike that area of the country,  
7 I would be left without a supply source. Moreover,  
8 most U.S. producers also use the same supply sources  
9 for their raw materials. If their input supply  
10 somehow becomes disrupted, much of the U.S. producers  
11 could be unable to meet my resin needs. Consequently,  
12 subject imports serve to guard against certain risks  
13 in relying exclusively on U.S. supply.

14           Also, imports provide supplemental supply at  
15 times of peak demand. The U.S. industry currently  
16 does not always have the capacity to supply demand  
17 during peak consumption periods, particularly in the  
18 second quarter. Subject imports take the pressure off  
19 a tight supply situation during this critical period.

20           However, bear in mind that converters cannot  
21 simply turn to the subject imports during this peak  
22 period alone. Relationships with producers of PET  
23 resin must be cultivated and developed, especially  
24 given the need for qualification. For this reason,  
25 converters will purchase from different suppliers even

1 at low volumes on a year-long basis.

2 Finally, subject imports are particularly  
3 needed on the West Coast, where transportation costs  
4 make it difficult to send product from East Coast  
5 producer plants across the United States to converters  
6 located in the west. U.S. producers do not have the  
7 same high volume relationship with West Coast rail  
8 lines, so they have to pay more to get shipments to  
9 that part of the country. Further, U.S. producers  
10 incur significant costs in returning rail cars from  
11 the west to their operations located in the east and,  
12 in addition, many West Coast producers do not have  
13 rail sitings at their facilities, that is, bottle  
14 producers, thus requiring the PET producer to incur  
15 the expense of removing the product from the rail car  
16 and putting it on trucks.

17 Subject imports from Asia do not face many  
18 of these same logistic hurdles. Of course, whether  
19 the PET reaches the West Coast by rail, across the  
20 U.S., or by sea, across the Pacific Ocean, the  
21 transportation logistics of moving product to West  
22 Coast converters adds significant cost to PET resin  
23 sold there, as compared to the resin sold on the East  
24 Cost.

25 So what's the real issue affecting domestic

1 producers?

2 First, there are high raw material costs.  
3 PTA and MEG make up the primary raw material costs for  
4 PET resin and the price of these products has been  
5 increasing at incredible rates. When these raw  
6 material input prices skyrocket, U.S. producers cannot  
7 expect to make money hand over fist as they do in an  
8 expanding market when their costs are low. Keep in  
9 mind, however, that U.S. PET resin prices are  
10 currently at record levels.

11 The U.S. producers appear to be arguing that  
12 they have a right to fully pass on the costs of their  
13 rising raw material prices even when their raw  
14 material prices are at all time highs. I pose this  
15 question. What makes them think they should? In  
16 2003, for example, there was a supply demand imbalance  
17 in the market that prevented price increases. Demand  
18 did not increase as much as was expected, due in part  
19 to an unseasonably cold summer. The domestic  
20 industry, however, made many of their capacity  
21 expansions just at that time. Moreover, the cost of  
22 raw materials are increasing at a far greater rate  
23 than the demand increases for PET resin, preventing  
24 producers from fully passing on their costs.

25 And, finally, there are substitute products

1 for PET resin in the form of aluminum and  
2 polypropylene to which downstream users of PET could  
3 switch if the prices for PET packaging go too high.  
4 While there are advantages to using PET resin, there  
5 are available alternatives.

6 Finally, I would like to talk a bit about  
7 the future of the resin industry. As I have already  
8 stated, the future is bright. U.S. producers control  
9 the market for a product experiencing explosive  
10 growth. I do not foresee anything in the future that  
11 is going to make the subject imports injurious to the  
12 U.S. industry.

13 I told you during the preliminary conference  
14 that subject imports were going to exit the market and  
15 I was right. I wouldn't go running off to the stock  
16 market with my next hot tip, but I think that that  
17 observation about the importers leaving the  
18 marketplace in large numbers was an obvious one for  
19 anyone who pays attention to what's going on and the  
20 workings of the Asian PET market.

21 Asian producers participate in the U.S.  
22 market when they have a raw material advantage. That  
23 advantage disappeared by 2004 and so have much of the  
24 subject exports. Given the strong demand in China for  
25 PTA and MEG that is driving up prices for these



1 inputs, I see subject imports largely unable to  
2 penetrate the U.S. market any time soon.

3 Also negatively impacting subject imports'  
4 ability to participate in the U.S. market are high  
5 crude prices. PET resin is a bulk product. High  
6 crude prices discourage the shipping of bulk products  
7 from Asia. Nothing I see in the news leads me to  
8 believe that crude prices are going down in the near  
9 term.

10 The confluence of these factors means that  
11 the subject imports are not going to have any  
12 significant role in the U.S. market for some time.  
13 Regardless of what the capacity utilization situation  
14 is, it is simply generally not cost effective to ship  
15 Asian PET resin to the United States.

16 To the extent that I see changes in the U.S.  
17 market, it is in the role of Mexican imports. With  
18 such large new production facilities coming on line in  
19 Mexico in recent years, it is logical that these  
20 imports will serve at least some of the need for  
21 alternate supply once served by the subject and other  
22 imports.

23 The Mexican producers' proximity to the U.S.  
24 converters affords some of the same advantages as U.S.  
25 supply, but can still ameliorate some of the risk

1 associated with relying on a single source. In my  
2 view, imports from Mexico coming from producers  
3 related to the domestic industry are the likely  
4 sources of import growth in the U.S..

5 The future of PET production, in my view, is  
6 in very large and technically advanced facilities  
7 within a consuming region. Meridian and M&G have  
8 built or are building such very large facilities that  
9 combine new production technologies with very large  
10 volumes and some integration into raw materials to  
11 achieve never before seen economies of manufacturing.  
12 These plants will define the competitive economics of  
13 the industry in 2005 and beyond.

14 This concludes my testimony and I'd be happy  
15 to answer any questions you may have.

16 MS. ESSERMAN: That concludes our  
17 presentation.

18 CHAIRMAN KOPLAN: Thank you.

19 We will begin the questioning with  
20 Commissioner Hillman.

21 COMMISSIONER HILLMAN: Thank you.

22 I would like to thank this panel for all of  
23 the information that you have provided in your  
24 pre-hearing briefs as well as in your testimony this  
25 afternoon. It's been very helpful.

1           Mr. Mullock, if I could start with you a  
2 little bit, first, just to clarify a few things in  
3 your testimony. You mentioned the issue of  
4 qualification of suppliers. Could you describe a  
5 little bit for me what that qualification process  
6 involves, how long does it take and typically how many  
7 suppliers do you have qualified at any given point in  
8 time?

9           MR. MULLOCK: Yes. It takes about three to  
10 four months, typically, for Constar to qualify a  
11 supplier. It's a four-step process that begins with  
12 an initial lab evaluation of the quality of the resins  
13 being offered and it goes through three stages of the  
14 operational evaluation before we confer on them  
15 qualification status. We typically have all the  
16 domestic suppliers and one or two import suppliers  
17 qualified on CSD resins at any given time. We  
18 currently have no qualified import suppliers of hot  
19 fill resins.

20           COMMISSIONER HILLMAN: Okay. Thank you. I  
21 appreciate that answer.

22           Then going to the issue of the imports, you  
23 heard a lot of testimony this morning about a couple  
24 of changes, if you will, that may have been occurring  
25 in terms of both a consolidation within the industry

1 and then the issue that I would like you to talk a  
2 little bit about is this issue of the bottlers  
3 themselves becoming direct purchasers of the resin  
4 that is then toll produced by companies such as  
5 yourself.

6 Can you talk a little bit about that?  
7 Do you do all of the purchasing of your own resin or  
8 are you producing bottles from resin that has been  
9 purchased by the bottling company itself?

10 MR. MULLOCK: Constar is a large merchant  
11 bottle manufacture and we do very little business with  
12 people who buy the resin. We do a little bit of toll  
13 processing, but that's a very small part of our  
14 business in the United States.

15 COMMISSIONER HILLMAN: And when you do do  
16 toll processing, how does that work? Is it just a set  
17 fee per every bottle?

18 MR. MULLOCK: Correct.

19 COMMISSIONER HILLMAN: Okay.

20 MR. MULLOCK: Normally, that's the case.

21 COMMISSIONER HILLMAN: So the purchaser of  
22 the resin would be providing you with the resin and  
23 with specifications for exactly what bottles they  
24 want.

25 MR. MULLOCK: Correct.

1                   COMMISSIONER HILLMAN: And then simply  
2 paying you a fee to blow it into a bottle?

3                   MR. MULLOCK: Right. There may be an  
4 exchange of money for the value of the resin as an  
5 inventory and accounting practice, but it's exchanged  
6 at whatever face value we agree to. So if they give  
7 it to me for a dollar, we give it back to them for a  
8 dollar.

9                   COMMISSIONER HILLMAN: Okay. And then  
10 either you or Mr. Davis, can you comment more broadly  
11 on this phenomenon of the bottlers becoming  
12 increasingly purchasers of the PET resin themselves  
13 and having it toll produced?

14                   Have you seen a change? Again, Mr. Mullock,  
15 you're describing your operations but could you say  
16 broadly within the rest of the industry? Has there  
17 been a move to more of this?

18                   MR. MULLOCK: Let me say that that many of  
19 the water bottlers in the United States have chosen to  
20 become integrated in bottle blowing because that is a  
21 very narrow margin, highly sensitive to distribution  
22 and operational costs business.

23                   COMMISSIONER HILLMAN: You mean the bottlers  
24 are doing, in essence, the converting themselves?

25                   MR. MULLOCK: That's right. They're --

1                   COMMISSIONER HILLMAN:  It's not even a toll  
2 production, they're actually owning --

3                   MR. MULLOCK:  They're blowing the bottles  
4 themselves.  Earlier, the producers' counsel showed  
5 you a pre-form in a bottle?

6                   COMMISSIONER HILLMAN:  Correct.

7                   MR. MULLOCK:  In some cases, bottlers -- or  
8 I should say brand owners who are making their own  
9 bottles are receiving pre-forms and blowing them for  
10 themselves.  In other cases, they're doing both making  
11 the pre-form and making the bottle.  That's pretty  
12 common and becoming increasingly so in the water  
13 business for a number of reasons, but those are  
14 related to, I believe, that the added value of the  
15 water itself is obviously small and it's a very  
16 compressed margin business.

17                   COMMISSIONER HILLMAN:  Okay.  Now, do you  
18 make pre-forms that you sell to bottlers?

19                   MR. MULLOCK:  We do make some pre-forms that  
20 we sell to bottlers, but that's not the majority of  
21 our business.  Overwhelmingly, our business is  
22 selling -- we deliver fully made bottles to our  
23 customers in the United States.  And the pre-form  
24 business that we have is mostly by dollar value in the  
25 hot fill area and not in the cold fill.

1                   COMMISSIONER HILLMAN: Okay. Okay. Then  
2 talk a little bit about prices. I mean, you discussed  
3 a little bit of it, but I want to understand the issue  
4 of -- we heard a lot of testimony this morning about  
5 contracts and what the contracts did or did not do.  
6 Describe for me how you go about setting prices,  
7 whether that's contracts or whether you're looking to  
8 the spot market in terms of prices.

9                   MR. MULLOCK: Well, we do typically have  
10 annual contracts for most of our supply and as many  
11 people have pointed out already this is a business  
12 where you use a very large volume of bulk material on  
13 relatively small margins and where the cost of that  
14 raw material is a very, very large component of the  
15 total cost of our doing business. So you have to be  
16 very sensitive to the impact of that cost on your  
17 business so you can deliver to your shareholders the  
18 results that you promise.

19                   So typically we set annual agreements where  
20 we have some mechanism by which we can pass through to  
21 our customers the price changes that occur in the  
22 marketplace and that's important to us because the  
23 value of the resin is far greater than any other  
24 aspect of our total cost of goods sold or margin or  
25 anything else. And we buy primarily from the domestic

1 supply community and, in addition, we buy a certain  
2 percent, which has not varied a lot over the last  
3 couple of years, from the import community.

4 The domestic community does a great job of  
5 supplying us. They provide a wide scope of products,  
6 good technical support. They'll fix tonight what went  
7 wrong this morning, so there's a real responsiveness  
8 to our needs. We run our facilities 24/7. If they go  
9 down because we have a resin problem, we need it fixed  
10 right away, so there is a real risk aversion with  
11 doing business with the domestic suppliers.

12 On the other hand, we are a global business  
13 with a very large regional operation east of the  
14 Rockies in the United States and we want a diverse  
15 supply base so that we can have a robust supply in all  
16 kinds of market conditions and so we dedicate a  
17 certain percent of our purchasing to imports because  
18 they're coming from an out of region place and they  
19 just make that supply environment more robust.

20 COMMISSIONER HILLMAN: And for how long have  
21 you had the policy of sourcing at least some of your  
22 product from outside the United States?

23 MR. MULLOCK: Well, I've been in this job  
24 since 2002 and it's been our policy since then to do  
25 that. And it's been a fairly constant amount.



1                   COMMISSIONER HILLMAN: Do you know whether  
2 that was the policy before you got there?

3                   MR. MULLOCK: There were purchases of  
4 imports before. I can't speak to exactly all the  
5 strategy behind it prior to my taking this, but they  
6 never exceeded by a significant amount what the  
7 percentages have been during my tenure.

8                   COMMISSIONER HILLMAN: Okay. So you're  
9 describing how you negotiate with the bottlers for  
10 what they pay for their bottles. They're paying a  
11 contract price to you that reflects your resin price  
12 plus some presumably --

13                   MR. MULLOCK: I was describing my  
14 negotiations with my resin producers. I'm a  
15 purchasing guy, not a sales guy.

16                   COMMISSIONER HILLMAN: Okay. So when you're  
17 purchasing resin, you're saying you're purchasing it  
18 on a contract --

19                   MR. MULLOCK: Normally. Normally.

20                   COMMISSIONER HILLMAN: That presumably sets  
21 volume?

22                   MR. MULLOCK: Well, it sets volume  
23 expectations that may have min or max associated with  
24 them. They're not typically take or pay. Our promise  
25 to people is if business is good you benefit from that

1 and if business is not, you suffer with me.

2 COMMISSIONER HILLMAN: Okay. And then on  
3 the price side, what exactly do you correlate the  
4 price to? How often does the price change within your  
5 contracts?

6 MR. MULLOCK: Well, typically, prices are  
7 related to a starting point at that moment in time  
8 when you're setting the negotiation and what you  
9 believe that the current price in the market is and  
10 you can get that information from all the price  
11 offerings that you receive and also from the movement  
12 of raw materials and this is a very important  
13 commodity to us so we can put a resources into focus  
14 on the relationship between raw material costs, cost  
15 of conversion and ultimate price. And so when you've  
16 established what you feel the moment in time price is,  
17 you then decide how can I best allow for the  
18 possibility of market price change in the coming year  
19 and how can I pass that through to my customers and  
20 then have a portfolio of supplier price agreements  
21 that allow you to match that so it's neutral on your  
22 business.

23 COMMISSIONER HILLMAN: Okay. And what do  
24 you typically key it off of? I mean, is there an  
25 index?

1 MR. MULLOCK: Well it's usually a mix of  
2 mechanisms because we have a mix of mechanisms with  
3 our customers, so we don't have one mechanism of price  
4 change with our customers.

5 COMMISSIONER HILLMAN: Okay. And typically  
6 how often would the price change in a given contract?  
7 If it's an annual contract --

8 MR. MULLOCK: Well, it has not been very  
9 typical lately, but typically quarterly or monthly  
10 price adjustments.

11 COMMISSIONER HILLMAN: Quarterly or monthly?

12 MR. MULLOCK: Yes.

13 COMMISSIONER HILLMAN: Okay. And contracts  
14 would be different with different suppliers?

15 MR. MULLOCK: Yes.

16 COMMISSIONER HILLMAN: Okay. That's very  
17 helpful.

18 You described the second quarter as being  
19 tight. Have there been any shortages? Have you ever  
20 had trouble getting product during this POI?

21 MR. MULLOCK: Yes, I have. We always get it  
22 because we have a robust sourcing plan, but we've had  
23 to work harder to get it on occasion than is  
24 necessary. Than is typical, I should say.

25 COMMISSIONER HILLMAN: All right.

1 I appreciate those responses.

2 Thank you, Mr. Chairman.

3 CHAIRMAN KOPLAN: Thank you, Commissioner.  
4 Commissioner Lane?

5 COMMISSIONER LANE: Good afternoon. I'd  
6 like to start with Mr. Malashevich.

7 MR. MALASHEVICH: I'm honored and  
8 privileged.

9 COMMISSIONER LANE: Well, save that until  
10 you hear my question.

11 You sat through the morning session and in  
12 summary we hear that the volume coming in from subject  
13 imports is not really large and that the profits of  
14 the domestic industry are going down and that that is  
15 attributable to the inability of the domestic industry  
16 to pass on all of the increased costs of the raw  
17 materials because then if they did that then the  
18 subject imports would be -- the customers would buy  
19 subject imports.

20 Okay. Now, tell me your take on that  
21 argument.

22 MR. MALASHEVICH: It's just not plausible  
23 for a number of reasons, first of all, the size and  
24 direction of change in subject imports, which  
25 I addressed in my testimony.

1 COMMISSIONER LANE: Right.

2 MR. MALASHEVICH: Also, think about other  
3 aspects of Petitioners' case this morning that just do  
4 not compute. For example, in their brief, they talk  
5 about imports from affiliated facilities in Canada and  
6 Mexico as being, if you will, benign, or I think they  
7 used the term non-injurious. In terms of their  
8 volume, they are greater to a considerable degree than  
9 the sum total of subject imports, but there's more to  
10 it than that. To me, it was very interesting what was  
11 said today.

12 The essence of the case against subject  
13 imports are there are these low priced imports out  
14 there that are putting a ceiling on their ability to  
15 pass through 100 percent of their raw materials cost.  
16 Remember, they are passing through already the great  
17 majority of their raw material costs, so we're only  
18 talking about one increment of same.

19 I don't think it's plausible of subject  
20 imports to be preventing the last increment when they  
21 are falling in absolute terms and in terms of market  
22 share. And they specifically noted that imports from  
23 Mexico are sold at the same or higher price than the  
24 domestic price is. So think about the way their story  
25 just doesn't compute.

1           On the one hand, they're saying low priced  
2 imports gain market share. On the other hand, the  
3 entity that gained the most market share ostensibly  
4 had prices the same or higher than the prevailing  
5 domestic price. There's something wrong with that  
6 picture and I think the picture is the whole theory of  
7 the case. In fact, subject imports were there, they  
8 were by no means lower priced in the predominant  
9 amount of situations that matter, looking at part 5 of  
10 the pre-hearing report.

11           So their entire theory of the case is  
12 subverted by their own testimony. The people gaining  
13 the share are at the same or higher price, so either  
14 price doesn't matter or subject imports didn't matter.  
15 They can't have it both ways.

16           COMMISSIONER LANE: Okay. Thank you.

17           Mr. Davis, as I understand it, you are Vice  
18 President of Federal Affairs for the American Beverage  
19 Association.

20           MR. DAVIS: That's correct.

21           COMMISSIONER LANE: And you are appearing on  
22 behalf of the PET Users Coalition and you've got all  
23 of these members. Do you also represent the segment  
24 of the industry that uses cans and bottles like --

25           MR. DAVIS: Yes. My members utilize all

1 three types of those packaging materials.

2 COMMISSIONER LANE: Okay. So you're  
3 familiar, then, with both plastic bottles and cans and  
4 bottles.

5 MR. DAVIS: Yes.

6 COMMISSIONER LANE: Okay. Would you tell me  
7 what you think is the substitutability between PET  
8 resin and aluminum and glass and what effect this has  
9 on PET resin prices?

10 MR. DAVIS: Well, I'd have to defer to  
11 Mr. Mullock as the expert on various commodity prices  
12 and, Dan, help me out here, if you will.

13 MR. MULLOCK: I'm sorry. Could you restate  
14 the question?

15 COMMISSIONER LANE: Oh, my goodness. I want  
16 to know how extensive the substitutability is between  
17 PET resin and aluminum and glass and what effect that  
18 has on the prices for PET resin.

19 MR. MULLOCK: Most of the -- well, in fact,  
20 all of the CSD producers, carbonated soft drink or  
21 soda producers, produce both cans and PET bottles.  
22 And so let me focus my answer on that.

23 Particularly as the package size gets  
24 smaller, the can is a very cost competitive  
25 alternative to the PET bottle and so the brand owners,

1 the big distributors, are able to switch back and  
2 forth between PET and cans in their bottling  
3 operations to adjust for relative shifts in price  
4 between the two. So there is a real sensitivity  
5 there.

6 In glass, the shift is typically a threshold  
7 one, where glass is a very inexpensive commodity and  
8 it is a good packaging form for oxygen barrier and for  
9 clarity, but it has other things like it's heavy, it's  
10 brittle, it can break. And so typically with glass to  
11 PET conversions, there has to be a threshold of price  
12 attractiveness or total package attractiveness that's  
13 touched before they'll convert, so high PET prices  
14 discourage conversion to glass, but they typically  
15 don't go backwards.

16 By the way, if I may, I'd like to correct  
17 something I think may have said in my original opening  
18 statement. I may have said I had an aversion to  
19 domestic producers, I am told. What I meant to say is  
20 I have a preference for domestic producers and I have  
21 to say I did see some funny looks on the part of the  
22 panel and I thought there was something going on  
23 behind me and I didn't realize I had said that, so I  
24 apologize for that. And to the domestic producers.

25 COMMISSIONER LANE: I missed that. Thank



1 you for that clarification.

2 I would like now to talk about the effect  
3 the increased raw material costs have on both the  
4 domestic industry and the subject imports. Is there a  
5 difference?

6 Mr. Malashevich, why don't you give me your  
7 take on that, please.

8 MR. MALASHEVICH: I'll try my best and  
9 invite Mr. Mullock to chime in if he has any  
10 additional thoughts.

11 Basically, in the latter part of the  
12 morning, in the closing hour, roughly, or so, there  
13 was considerable amount of testimony from the domestic  
14 industry essentially agreeing with the proposition  
15 that while there is world trade in PTA and MEG at any  
16 particular time different regions could have different  
17 balances. And during the beginning of the POI, there  
18 is, I think, voluminous evidence, including in the  
19 words of senior executives of the Petitioners  
20 themselves and Mr. Mullock testified during the  
21 preliminary to this effect, earlier on in the POI the  
22 Asian producers had an advantage. The supply/demand  
23 balance for those raw materials happened to favor them  
24 at that particular time.

25 During the POI, that reversed, with the

1 anticipated consequences that the U.S. market became  
2 less attractive at the same time that markets more  
3 proximate to each of the exporting countries at issue  
4 were booming and became more favorable to them with an  
5 even more favorable outlook, double-digit growth  
6 instead of high single-digit growth expected in the  
7 United States.

8 That situation might very well reverse  
9 itself at some point in the future, but I don't think  
10 we could identify that point here and now.

11 COMMISSIONER LANE: Okay. Does anybody else  
12 have anything they would like to add?

13 Mr. Mullock?

14 MR. MULLOCK: Just simply that spot  
15 purchasers of raw material used to be rewarded often  
16 with a low price. They were rolling the dice each  
17 time, but it was a good roll because for years the low  
18 cost of petrochemicals and their adequate supply meant  
19 that somebody who bought right now often got the  
20 lowest price and that's what the Asian buyers did.  
21 The world changed, though, 24 months ago or so, 18  
22 months ago, when raw materials got tight and the spot  
23 buyers started paying the high price. And that's what  
24 has changed.

25 COMMISSIONER LANE: Well, do you agree with

1 the testimony this morning that the same high cost of  
2 raw materials is affecting the domestic industry and  
3 the foreign industry?

4 MR. MULLOCK: Yes, I do.

5 COMMISSIONER LANE: Okay. Thank you.

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

7 CHAIRMAN KOPLAN: Thank you, Commissioner.

8 Commissioner Pearson?

9 COMMISSIONER PEARSON: Thank you,  
10 Mr. Chairman.

11 Welcome to the afternoon panel.

12 I appreciate your persistence, tolerance, whatever.

13 Petitioners have made the case that trade  
14 actions, the filing of the GSP petition, the CVD and  
15 antidumping petitions, that those trade actions had  
16 the effect of reducing imports late in 2003 and in  
17 2004 and that's illustrated in their Chart No. 8 that  
18 I think you have a copy of.

19 It certainly appears that subject imports  
20 declined following the petitions, so as I look at  
21 that, why shouldn't I conclude that the petitions  
22 caused subject imports to peak and then decline? If  
23 not for the petitions, wouldn't subject imports have  
24 continued to rise in 2004?

25 MS. ESSERMAN: Commissioner Pearson, I don't

1 think there's any basis for concluding that for a  
2 number of reasons. One, just going to the law for a  
3 moment, in terms of the issue before the  
4 communication, whether you reduce the weight to be  
5 attributed to post-petition data, the law talks about  
6 dumping petitions, not GSP petitions. Number one. So  
7 there isn't authority under the law to be reducing the  
8 weight, just assuming arguendo the product dropped  
9 after the GSP petition was filed.

10           Number two, I don't think that's the case  
11 for several reasons. The first is you've heard a  
12 great deal of discussion today about what was really  
13 going on in the market and if I just might add there  
14 an additional factor that's driving Asian raw material  
15 is that this rapidly growing polyester production in  
16 Asia is soaking up the Asian PTA and MEG and that's  
17 what's causing the scarcity in Asia and that has been  
18 well documented.

19           But, third, I must say that it is quite  
20 unusual for a GSP and a dumping and countervailing  
21 duty case to be filed at the same time, so it would  
22 certainly not be my thought that if a GSP case were  
23 filed, then a dumping case would be filed around the  
24 same time. I think it's quite rare, actually. So for  
25 many reasons, I think it would not be appropriate to

1 consider that in any way as a benchmark but most  
2 importantly is what is happening with the Asian raw  
3 materials is an important market factor for the  
4 commission to consider.

5 COMMISSIONER PEARSON: Mr. Mullock?

6 MR. MULLOCK: Thank you, Mr. Pearson.

7 I would also add that decisions to purchase Asian  
8 resin in the United States are made 60 to 90 days in  
9 advance of the arrival of the resin at the shore. If  
10 you look at the three or four lines that were depicted  
11 on that graph, only one of them was still going up, I  
12 believe, and that was the Thai material at the time of  
13 the announcement. That material had been bought 60 to  
14 90 days before and so people had already committed to  
15 it. It's not unusual for accelerated commitments in  
16 the end of the year in preparation for the coming  
17 season, so there is a seasonality to the import there  
18 that was going on, but the basic dynamics of the  
19 marketplace stopped people from buying and so you saw  
20 that peak because 60 or 90 days before people had  
21 stopped buying and it fell off. So it was in fact  
22 prior to that period that most of the trend downward  
23 had begun.

24 COMMISSIONER PEARSON: So should I  
25 understand, then, that -- should I find that the

1 pendency of this investigation had no influence in the  
2 marketplace?

3 MS. ESSERMAN: I believe that the record  
4 shows that the predominant influence is this change,  
5 this relative change in Asian raw materials. And so  
6 for purposes of the legal analysis, the commission has  
7 the discretion to reduce antidumping related --  
8 actions relating to the antidumping case in the  
9 absence of record evidence showing there are non-trade  
10 case related factors and here I think you have those  
11 non-trade related case factors being the predominant  
12 influence here so therefore I don't think there would  
13 be a basis for reducing the weight of the  
14 post-petition data.

15 COMMISSIONER PEARSON: Mr. Mullock?

16 MR. MULLOCK: And I would just add, again,  
17 that while the economics of importing were becoming  
18 marginal by that point on the basic problems of raw  
19 materials and rising freight costs that there's just  
20 one more business uncertainty and risk that people  
21 would have to take if they're facing an  
22 increasingly -- excuse the word, but hostile import  
23 environment. It's just one more risk in already a  
24 pretty marginal situation.

25 COMMISSIONER PEARSON: Okay. Following up

1 on that point, there was, of course, discussion this  
2 morning about U.S. PET users becoming somewhat more  
3 risk averse in regard to their purchasing of subject  
4 imports following the filing of these petitions. Are  
5 you saying that indeed there was -- that purchasers  
6 were becoming a little more skittish regarding the  
7 imported product, the subject product?

8 MR. MULLOCK: It's another risk factor that  
9 you take into account when you source import resin.  
10 There are already risks associated with that that I've  
11 articulated; it's one more. So it's not the dominant  
12 issue, but in a situation where there are other  
13 compelling market-based reasons for those imports to  
14 reduce anyway, it's just one more reason to go in that  
15 direction.

16 COMMISSIONER PEARSON: And have you  
17 purchased subject imports both before and after the  
18 filing of the petitions?

19 MR. MULLOCK: I did before the filing of the  
20 petition and I had material on order that I continued  
21 to buy after it and I'm trying to be very precise with  
22 my answer. I believe I have bought since the filing  
23 of the petitions. Yes.

24 COMMISSIONER PEARSON: Are you able to say  
25 in public how you and the seller divvied up the

1 potential margin that may or may not ever have to be  
2 paid? I'm curious about that and if you're able to  
3 comment now, I'd be happy, otherwise, in the  
4 post-hearing, that would be fine. This is an  
5 interesting form of risk.

6 MR. MULLOCK: May we reply later to that  
7 question? Do you mind?

8 COMMISSIONER PEARSON: Sure. That's fine.

9 MR. MULLOCK: Thank you. I want to be real  
10 precise with the details because it was a small amount  
11 and I want to make sure I get it right in my response.

12 COMMISSIONER PEARSON: Okay.

13 MR. MULLOCK: I will say that when it became  
14 clear that there was the possibility that there were  
15 going to be retroactive penalties on resin shipments  
16 and all that that was a possibility, that that was  
17 obviously impactful on people's decision about whether  
18 to import or not.

19 COMMISSIONER PEARSON: Well, if there were  
20 no duties in place or likely to be put in place, what  
21 percentage of your U.S. consumption of PET resin do  
22 you think should be coming from non-NAFTA countries?  
23 Because you talked about the desirability of the  
24 diverse supply base. Can you give me some sense of  
25 how that diversification would work?



1 MR. MULLOCK: Well, broadly speaking, 10 to  
2 20 percent of our purchases are import material.

3 COMMISSIONER PEARSON: Non-NAFTA import  
4 material?

5 MR. MULLOCK: Are non -- I'm sorry? Are  
6 non-NAFTA material. Yes. And we've been pretty  
7 constant with that. It just fits our discussed  
8 procurement strategy as a good number, that balances  
9 the risks of regional supply and local supply.

10 COMMISSIONER PEARSON: And do you  
11 differentiate between NAFTA imports and non-NAFTA  
12 imports? For instance, do you see product coming out  
13 of Mexico or Canada as a product of foreign origin  
14 that has certain import risks associated with it or do  
15 you treat it the same as U.S. product?

16 MR. MULLOCK: Well, it's kind of a hybrid in  
17 that it's not dependent on the same raw material  
18 sources in that region and it's not subject to the  
19 same possibilities of -- like, for example, a March  
20 snowstorm in the southeast that ties up rail traffic  
21 for ten days, okay? If you're coming out of Mexico,  
22 you don't have that problem. March is a busy month for  
23 me, I can't afford to have all my resin in rail cars  
24 not moving. So we look at it as that, but obviously I  
25 don't consider it the same kind of risk of buying all

1 the way across the Atlantic or Pacific Ocean where  
2 there's timing issues and it's much harder to have a  
3 lot of contact with the producer.

4 COMMISSIONER PEARSON: Would it largely be a  
5 matter of some currency risk on Canadian or Mexican  
6 imports?

7 MR. MULLOCK: No, there's no currency risk  
8 because we buy in dollars.

9 COMMISSIONER PEARSON: Okay. So the  
10 currency risk is being taken by the seller.

11 MR. MULLOCK: Correct. But the seller buys  
12 his raw materials in dollars as well, too.

13 COMMISSIONER PEARSON: Okay. Okay. Good.

14 Mr. Chairman, my light is changing, so I'll  
15 quit while I'm ahead. Thanks.

16 CHAIRMAN KOPLAN: I'll accept that. Thanks.

17 Mr. Mullock, Petitioners testified this  
18 morning that converters would switch sources of supply  
19 for as little as a cent a pound. What is your  
20 experience?

21 MR. MULLOCK: We don't make supply changes  
22 in isolation of just the cost per pound. I have not  
23 switched suppliers for more money per pound than that  
24 difference and I have switched suppliers for less.

25 CHAIRMAN KOPLAN: You have switched

1 suppliers for less?

2 MR. MULLOCK: Yes. And I've also not  
3 switched suppliers for more because we don't make  
4 those decisions in isolation on the cost per pound.  
5 But I don't want to understate the impact of costs on  
6 our system. It's a very large volume one and the  
7 costs per pound are very important.

8 CHAIRMAN KOPLAN: So you don't challenge  
9 what they've said, it's just that has not been your  
10 experience? Is that right?

11 MR. MULLOCK: Our decisions are a total  
12 value decision.

13 CHAIRMAN KOPLAN: Thank you.

14 Ms. Esserman and Mr. Malashevich, do you  
15 have the confidential version of the staff report with  
16 you?

17 MR. MALASHEVICH: I do not.

18 MS. ESSERMAN: Here.

19 CHAIRMAN KOPLAN: You do now, though?

20 MR. MALASHEVICH: I do now.

21 CHAIRMAN KOPLAN: Okay. In chapter 5, page  
22 18, beginning with the last three lines on page 18 in  
23 the confidential version, the staff report is  
24 discussing there a series of lost revenue allegations  
25 at the bottom of that page and at the top of page 19.

1           The details of this are business  
2     proprietary, okay? However, the report notes, and  
3     I think I can do it this way, the report notes that  
4     with regard to a particular purchaser that was named  
5     in the majority of lost revenue allegations, the  
6     purchaser, and I quote, "did not receive initial price  
7     offers from its domestic supplier and therefore did  
8     not reject any U.S. price."

9           The domestic supplier whose identity is  
10    BPI states, "The domestic supplier met the agent price  
11    in each instance." Do you see that?

12           MR. MALASHEVICH: Yes, I do.

13           CHAIRMAN KOPLAN: Petitioners' pre-hearing  
14    brief asserts at page 42 that "it is a clearly  
15    confirmed claim of substantial lost revenues to  
16    subject imports and a great general description of how  
17    the subject import prices have been used to ratchet  
18    down U.S. producer prices."

19           How can this be reconciled with what I heard  
20    today from the PET users coalition argument that the  
21    limited participation of subject imports in the U.S.  
22    market hinders the ability of these products to  
23    seriously enter into any price discussion?

24           MR. MALASHEVICH: I'd have to respond to  
25    that, sir, in the post-hearing because I don't think

1 I could answer that question simply by looking at the  
2 narrative in the report. I'd like to examine the  
3 questionnaire at issue and whatever other evidence  
4 there is about the role of that particular customer.

5 CHAIRMAN KOPLAN: I appreciate that and  
6 I would look forward to getting that from you. I  
7 didn't know how to address it any other way.

8 MR. MALASHEVICH: I understand.

9 CHAIRMAN KOPLAN: In this limited fashion  
10 but by directing you to the language in the staff  
11 report, I think you know where I'm coming from.

12 MR. MALASHEVICH: I know exactly what you're  
13 talking about. Yes.

14 CHAIRMAN KOPLAN: Okay. That would be very  
15 helpful. I would appreciate it. Thank you.

16 Ms. Esserman, Reliance Industries states in  
17 its pre-hearing brief at page 6, and I quote, "By  
18 determining to locate its major new North American  
19 plant in Mexico at the expense of its U.S. operations,  
20 Petitioner M&G has chosen to serve and strengthen its  
21 position in the U.S. market through its Mexican  
22 imports. Likewise, as noted in the post-hearing  
23 report Invista has made a similar choice through  
24 operation of its facility in Canada."

25 And then it concludes by saying, "The

1 minimal share of subject imports should be assessed in  
2 the context of the U.S. industry's dominance in the  
3 U.S. market, both through its U.S. production and its  
4 imports from its NAFTA facilities."

5 Now, Petitioners dealt with this issue,  
6 I believe, beginning at page 76 of their pre-hearing  
7 brief and they also discussed it in answer to a  
8 question that I asked this morning.

9 First, I wonder whether you have any basis  
10 to doubt the numbers that they provided this morning  
11 in answer to my question with regard to Mexico. Your  
12 microphone.

13 MS. ESSERMAN: I'm sorry.

14 CHAIRMAN KOPLAN: Go ahead.

15 MS. ESSERMAN: The numbers regarding imports  
16 into the United States?

17 CHAIRMAN KOPLAN: Yes. From Mexico.

18 MS. ESSERMAN: Yes. My understanding, and  
19 again I'd like to provide documentation to you in the  
20 post-hearing submissions, is that a substantial amount  
21 of the production of the M&G plant in Mexico comes  
22 into the United States. I don't recall the precise  
23 amount that the gentleman mentioned, but that is my  
24 understanding. I think it is reflected in the  
25 substantial increase in the Mexican imports in 2004, a

1 very substantial jump in imports into the United  
2 States from Mexico.

3 CHAIRMAN KOPLAN: Well, I'm struggling with  
4 this a bit and let me tell you why. When I look at  
5 Table C-1, C-1 takes into account non-subject imports,  
6 which would include the imports coming in from Mexico,  
7 correct? So how should I be looking at this  
8 differently? I'm not clear on what your authority is  
9 for the argument that I should be taking this into  
10 account with regard to the producer's share of the  
11 domestic market.

12 MS. ESSERMAN: Well, I think that page 76 of  
13 their brief is a very good guide and as I recall it,  
14 it says that the imports from Mexico and Canada, from  
15 their affiliates, should be treated as if they -- you  
16 know, I ought to get the exact language here. The  
17 same as their U.S. supply. And so I think that is a  
18 guiding force. In other words, they're using that  
19 production from Canada and Mexico to serve this market  
20 and that's what we thought was a very important  
21 condition of competition here in that when you're  
22 looking at the share commanded by the U.S. industry  
23 you have to take into account the share represented by  
24 the imports coming from Canada and Mexico from their  
25 affiliates.

1           CHAIRMAN KOPLAN: But what I'm saying is,  
2           and this is where my confusion is, that when I look at  
3           Table C-1, and actually it appears that these numbers  
4           are public, that those imports would fall into the  
5           category of other sources in Table C-1.

6           MS. ESSERMAN: Right.

7           CHAIRMAN KOPLAN: So it is reflected in our  
8           numbers now.

9           MS. ESSERMAN: Right. Oh, yes. Yes.  
10          They're reflected in the numbers. I think it just  
11          gives --

12          CHAIRMAN KOPLAN: So we are taking that into  
13          account.

14          MS. ESSERMAN: Yes, but I think that it goes  
15          to -- it provides context for looking at the volume of  
16          imports here. I think that issue is conceded in the  
17          sense that the Petitioners have said that the larger  
18          volume of Mexican and Canadian imports they bring in  
19          are not injurious, so therefore it's hard for our  
20          small volume to be injurious. We simply wanted to  
21          present that to you by way of evaluating whether or  
22          not the volume operates in an injurious role and in  
23          that context we thought it appropriate to take into  
24          account the fact that that which is listed as  
25          non-subject imports is the production coming from the



1 U.S. producers' affiliate companies and that that  
2 should provide a context for your evaluation in this  
3 case.

4 CHAIRMAN KOPLAN: I guess what I'm saying is  
5 I think it does in the sense that that's included in  
6 the category of other sources and I can look at that,  
7 I can also compare it to the subject imports coming  
8 in, so what I'm saying is that all that information is  
9 reflected in that table and I'm not clear why I would  
10 be looking at it any differently than I would in any  
11 other case.

12 If you have some authority for my treating  
13 this differently than it's treated in C-1, I would  
14 appreciate it.

15 MS. ESSERMAN: And I'll just make one quick  
16 comment and we'll follow up in our post-hearing, but  
17 I would simply say that, yes, it is reflected there,  
18 absolutely, as you say. What makes it different than  
19 most cases is all of the non-subject imports coming in  
20 from Canada and Mexico are their own production.  
21 That's what makes it different. And it's a context  
22 and condition of competition in which you should be  
23 considering the volume and the impact of these imports  
24 and that you consider not only the domestic  
25 production, which is large on its own, the share is

1 large on its own, but also the fact that the  
2 non-subject category from Canada and Mexico is their  
3 companies' product.

4 CHAIRMAN KOPLAN: I appreciate that and  
5 I would look forward to any citation of authority for  
6 that that you could provide post-hearing. Thank you.

7 Vice Chairman Okun?

8 VICE CHAIRMAN OKUN: Thank you,  
9 Mr. Chairman.

10 Let me join my colleagues in thanking all of  
11 you for being here this afternoon. I appreciate your  
12 testimony and your willingness to answer our  
13 questions.

14 I'm going to start with you, Mr. Mullock.  
15 I had listened to your exchange with Commissioner  
16 Hillman regarding pricing which I found very helpful  
17 in trying to understand how pricing is set and the  
18 role of contracts in this market and how that relates  
19 to how prices move.

20 One thing that I wanted to follow up on is  
21 one of the things that the Petitioners talked about  
22 this morning, just the role of Pepsi, Coke and Nestle  
23 in terms of how much of the PET resin market they  
24 control. I wonder if you can give any sense in terms  
25 of whether kind of those big three how they impact,

1       how you are trying to get prices with these suppliers,  
2       the market. I mean, you talked about their domestic  
3       competition, I guess I'm thinking about your domestic  
4       competition and how that plays a role.

5                 MR. MULLOCK: Well, I don't know much about  
6       my competitors' procurement practices because we don't  
7       talk to each other. That would be collusion.

8                 VICE CHAIRMAN OKUN: That would be  
9       collusion.

10                MR. MULLOCK: But we are the third largest  
11       merchant manufacturer of PET bottles in the United  
12       States. The Coke affiliates, Western Container and  
13       Southeastern Container, are also large players as  
14       well. I don't consider them merchant manufacturers  
15       because they only sell to Coke. So I struggle a  
16       little bit to answer your question as to how does the  
17       industry behave, but from my limited experience, the  
18       five large direct buyers of resin obviously consume a  
19       disproportionate share of it and have a very large  
20       number of facilities and most of them have operating  
21       site outside of the United States. So we do take a  
22       global approach to both purchasing and to supply in  
23       our manufacturing operations.

24                I don't think I'm being very helpful here  
25       because I don't --

1                   VICE CHAIRMAN OKUN: Well, let me ask it  
2 this way, then, which is part of the Petitioners'  
3 price suppression argument, as I hear it, is  
4 regardless of whether I believe the volume of imports  
5 is significant or not significant in terms of your  
6 argument for 2003, the argument they make is even a  
7 small volume of the imports where you have buyers  
8 highly concentrated, and so I'm going to now put you,  
9 I guess, in that camp --

10                   MR. MULLOCK: Okay.

11                   VICE CHAIRMAN OKUN: That you can leverage  
12 the import prices to suppress their prices and that's  
13 what I guess the question would be.

14                   MR. MULLOCK: Well, I mean, it's the buyer's  
15 job to leverage price regardless of the source, isn't  
16 it? And in fact, it's a more credible source if it's  
17 coming from a domestic supplier, particularly if it's  
18 a big one, because then you can say, hey, I can have  
19 it tomorrow here, right now, I don't have to go to  
20 extraordinary lengths, worry about my supply chain  
21 halfway around the world and all that, so typically  
22 the U.S. buyer prefers to use the credibility of a  
23 domestic supplier's competitive proposal for creating  
24 competition in the marketplace.

25                   Is that limited to domestic? No, but it's

1 frankly more compelling, particularly given the level  
2 of imports that have occurred because, after all, you  
3 know, even with ourselves who are a pretty aggressive  
4 compared to the rest of the industry importer of  
5 resin, it's still a relatively small part of our  
6 overall consumption and, in the short term, could not  
7 replace what we get from the domestic industry.

8 VICE CHAIRMAN OKUN: And you may have said  
9 this in response to Commissioner Hillman's question,  
10 which was do you then -- when you're going through  
11 what I understand to be kind of annual contracts where  
12 you're talking about volume and then the price is  
13 linked to these different mechanisms, that you're  
14 talking to more than one domestic supplier?

15 MR. MULLOCK: Yes, we speak to all of them.

16 VICE CHAIRMAN OKUN: All of them?

17 MR. MULLOCK: Yes. I know all those  
18 gentlemen over there.

19 VICE CHAIRMAN OKUN: I wasn't sure I heard  
20 that. Okay. I appreciate that. Okay.

21 Then the other thing that I just wanted to  
22 make sure that I understood and I guess you just do a  
23 small amount of converting, if I understand --

24 MR. MULLOCK: Toll converting?

25 VICE CHAIRMAN OKUN: Yes.

1           MR. MULLOCK: Yes. In the United States, we  
2 do a very small amount of toll converting.

3           VICE CHAIRMAN OKUN: Yes. And when you were  
4 describing -- I think I heard you say it was like a  
5 dollar -- I was trying to understand, is there money  
6 involved? Where does the money --

7           MR. MULLOCK: Okay. What I was saying is  
8 that -- you had asked do you then just pay a fee,  
9 you're paid a fee for conversion and I was answering  
10 that, yes, we do get paid a fee for each thousand of  
11 bottles that we produce, but there is an accounting  
12 mechanism for transferring the resin in and out so  
13 that my customer knows that they're getting the  
14 appropriate number of bottles for the pounds of resin  
15 that they gave us, right? So there's a physical  
16 mechanism for doing that and that is recorded at a  
17 nominal value, so we say, you know, whatever price per  
18 pound you want the resin coming in is the same as the  
19 price of it going out.

20           VICE CHAIRMAN OKUN: Okay. Okay. Thank you  
21 for that clarification.

22           Then let me turn to Ms. Esserman and  
23 Mr. Malashevich with regard to pricing. You  
24 obviously for your purposes pay a lot of attention to  
25 chapter 5 and I've heard you describe that in terms of

1     what the commission traditionally looks to and  
2     comparing that with what we've collected in Appendix  
3     D.  But, again, in looking at some of the Petitioners'  
4     arguments and, again, with respect to the one that  
5     I think we spent the most time on, the details of  
6     which are confidential, but involving a large  
7     purchaser of subject imports from India, in trying to  
8     understand where the competition is and what prices we  
9     should be looking at, whether the information  
10    currently in chapter 5 and particularly, I think,  
11    products 3A and maybe 1A as well, whether that  
12    actually captures the appropriate level of  
13    competition.  And I will say I think that the  
14    commission -- I feel like I'm struggling with this a  
15    lot more in cases where we see someone who is  
16    characterized as a direct importer but they're also in  
17    the market purchasing other things.  And so I guess  
18    it's easy to make the argument that's how the  
19    commission normally does it and you've collected this  
20    pricing, when there's questions about where the  
21    competition really is, I think the commission has to  
22    look at some of the things the Petitioner is saying  
23    about where the competition is and what prices we  
24    should be looking at.  So I wanted the opportunity to  
25    have you comment on that here to the best you can,

1 realizing the actual information is proprietary, but  
2 just in terms of where the competition is and whether  
3 chapter 5 prices really reflect that in your view.

4 MR. MALASHEVICH: I'll start, if I may,  
5 Commissioner. It's not just how the commission  
6 usually does it, it goes much deeper than that. In  
7 Appendix D, that is the price -- well, let me start  
8 here. In terms of what's more representative, we did  
9 a comparison of the total quantities purchased as per  
10 Appendix D versus the total quantities reported as  
11 sold in part 5 and in terms of its representativeness,  
12 on a sheer volume basis, the volume in part 5 is  
13 orders of magnitude larger than the volumes reported  
14 as purchased for products 1, 2, 3, et cetera, in  
15 Appendix D. So Appendix 5 is more representative of  
16 the market as a whole.

17 Another problem with Appendix D is there is  
18 a mixture of levels of trade. Even if you have  
19 purchasers importing directly, I would not call it a  
20 price per se that's comparable to the U.S. price in  
21 the circumstances of this case for the following  
22 reasons. From the top, it's really not a price  
23 equivalent to the U.S. producers' price because it's  
24 really an export price plus freight from the foreign  
25 producer, so all of the functionality associated with



1 an independent importer reselling the goods is done by  
2 the purchaser. So unless you have some bona fide way  
3 of adjusting for the costs of that difference in  
4 functionality, you're not dealing with a price that is  
5 directly comparable to U.S. price.

6 And in my experience, the commission has  
7 been very reluctant to make any form of adjustment to  
8 an actual transaction price. So I just don't think  
9 it's something you would want to do. The reasons for  
10 going down that path don't appear in this case.

11 We also did an analysis of the pricing data  
12 taking all the questionnaires together, independently  
13 of whether it was a direct purchase or a purchase  
14 through an importer, to get a feeling of the  
15 magnitude, looked at every questionnaire. And there  
16 were some instances where purchasers said they were  
17 importing directly, did not have an importer's  
18 questionnaire. We weren't sure, but we threw them in  
19 the direct importers column to be conservative. And  
20 there's a very modest minority of the total trade  
21 captured in part 5 and Appendix D that is importer on  
22 a direct basis. By far, the preponderate share of the  
23 trade occurs through importers and therefore would be  
24 reflected in the data in part 5.

25 VICE CHAIRMAN OKUN: Okay. I appreciate all

1 those comments and I look forward to additional  
2 analysis in the post-hearing on that particular  
3 question on Petitioners' argument.

4 Thank you, Mr. Chairman.

5 CHAIRMAN KOPLAN: Thank you.

6 Commissioner Miller?

7 COMMISSIONER MILLER: Thank you,  
8 Mr. Chairman.

9 Let me join in welcoming and thanking the  
10 panel for being here. We appreciate you taking time  
11 away from your business to help us understand it for  
12 purposes of our business.

13 Ms. Esserman in particular, let me welcome  
14 you to the commission. I'm not sure we've seen you in  
15 this role on a case here, at least for a while, so  
16 welcome. It's nice to have you here and we appreciate  
17 your representation. It's good to see you.

18 Let me just finish up on the point that Vice  
19 Chairman Okun was raising with you, and I understand  
20 you're going to brief, because, Mr. Malashevich, you  
21 know we've been seeing this increasingly in cases and  
22 you're very -- you're here on both sides of cases,  
23 both respondent's and petitioner's side, so you know  
24 it's something we're struggling with and I do feel  
25 like it's a phenomena we can't ignore, to see

1 purchasers importing directly large quantities that do  
2 take sales from the domestic industry.

3 So I will be interested in your comments in  
4 the post-hearing submissions to help the commission  
5 figure out how to cope with these things. This case  
6 is maybe a little different from other cases where  
7 we're seeing it with retail kind of ready product  
8 going straight to the shelves. We have to figure out  
9 how to deal with it.

10 MR. MALASHEVICH: I'll only say now that the  
11 proportions are just very different. I can count,  
12 I think, on one hand in the last ten years when the  
13 commission has relied -- I'm saying relied, I'm not  
14 saying considered in testimony, but actually relied on  
15 comparisons at what I call two different levels of  
16 trade and it's situations where practically all of the  
17 imports occur on that basis. So there's a limited  
18 amount of, shall we say, traditional pricing data  
19 available for the commission to consider. In this  
20 case, there's ample amount of pricing data that  
21 accounts for the great majority of the quantities  
22 reported in section 5 and Appendix D, so there's just  
23 no need to go down that route, combined with you  
24 always consider changes in relative market share. In  
25 the final analysis, the causation issue is did any

1 perception of lower price translate into material  
2 effects on volume and price?

3 And I urge you in the final analysis to look  
4 at the market shares and you'll find that they didn't.

5 COMMISSIONER MILLER: All right. Thank you.  
6 And I look forward to your post-hearing comments on  
7 that. Let me go, if I could, to --- in a sense I want  
8 to ask the same question I started with this morning  
9 of the representative of the PET User's Coalition  
10 about the structure of the purchasing side, and there  
11 have been some questions along that line already.  
12 But, let me first start by clarifying one thing with  
13 Mr. Davis. The PET User's Coalition, tell me, was it  
14 organized for purposes of participating in this case  
15 or is it a coalition that has existed earlier  
16 otherwise? Give me the history of your coalition.

17 MR. DAVIS: It was originally organized to  
18 participate in the GSP proceedings before the  
19 Commission last year and it has been revived or  
20 carried on into this proceeding --

21 COMMISSIONER MILLER: Okay.

22 MR. DAVIS: -- at the request of the members  
23 of the Coalition.

24 COMMISSIONER MILLER: Okay. And it looks to  
25 include both the large Pepsi, Coke, Nestle producers

1 that -- bottlers that were referred to earlier this  
2 morning? It sounds like they are the big three of the  
3 beverage industry more or less. But, it also includes  
4 a lot of other products.

5 MR. DAVIS: Yes, that's correct. And, also,  
6 remember, within the traditional soft drink industry,  
7 that you have independent franchise bottlers, who are  
8 actually, in most cases, the purchasers of the  
9 packaging material. So, you're not just talking about  
10 Coca Cola or Pepsi buying the stuff. You're also  
11 talking about the Pepsi bottler out there on  
12 Kennilworth Avenue. I mean, we're down to that small  
13 --

14 COMMISSIONER MILLER: Absolutely, and that's  
15 actually where I want to go to, sort of the -- I feel  
16 like I'm still kind of confused between two different  
17 parts of this market: the converters, who actually  
18 turn the PET resin into the bottles; and those, who  
19 are using the bottles in their production operations.  
20 Because, it seems like the lines are kind of blurred  
21 here for me.

22 Mr. Mullock, you describe your company as a  
23 merchant bottler. You've used that phrase a couple of  
24 times, a merchant bottle maker, which means for you --

25 MR. MULLOCK: We're not a brand owner and we

1 don't fill the bottles with product. We sell bottles--

2 -

3 COMMISSIONER MILLER: Okay.

4 MR. MULLOCK: -- unlike, for example, Coca  
5 Cola, who makes many of their own bottles --

6 COMMISSIONER MILLER: Right; okay.

7 MR. MULLOCK: -- and fills them.

8 COMMISSIONER MILLER: Okay. And describe  
9 for me the merchant bottle making industry. This  
10 morning, we heard about eight converters.

11 MR. MULLOCK: Correct, and five of them are  
12 merchant.

13 COMMISSIONER MILLER: Okay. Five of them  
14 are merchant --

15 MR. MULLOCK: And those five are Graham,  
16 Amcor, Ball Plastic Pack, and Constar, the big ones.  
17 There's a number of smaller ones, but those are the  
18 five big ones. The other three are non -- what I  
19 consider non-merchant ones: Southeastern Container,  
20 Western Container, and Nestle.

21 COMMISSIONER MILLER: Okay.

22 MR. MULLOCK: Southeastern and Western are  
23 owned by Coke. So, those are the eight that I believe  
24 the gentleman was referring to.

25 COMMISSIONER MILLER: Okay.

1 MR. MULLOCK: And I'm in the group of five -

2 -

3 COMMISSIONER MILLER: Okay.

4 MR. MULLOCK: -- of the merchant group.

5 COMMISSIONER MILLER: All right. The group  
6 of five will supply many of the different PET User  
7 Coalition --

8 MR. MULLOCK: Absolutely. We --

9 COMMISSIONER MILLER: -- customer.

10 MR. MULLOCK: As a group, we probably are 60  
11 or 70 percent of the merchant supply in the United  
12 States.

13 COMMISSIONER MILLER: Okay. As a group,  
14 meaning the PET User's Coalition?

15 MR. MULLOCK: No, I mean there are five  
16 merchant suppliers.

17 COMMISSIONER MILLER: I'm sorry, if I keep -  
18 -

19 MR. MULLOCK: That's okay.

20 COMMISSIONER MILLER: -- having this  
21 problem, but I'm just --

22 MR. MULLOCK: I'm guessing we have about 60  
23 percent as a group of the PET supply in the United  
24 States.

25 COMMISSIONER MILLER: Okay. And tell me,

1 have you seen that part of the industry changing over  
2 time, becoming -- we've talked about some of the  
3 consolidation of the purchasers earlier this morning.

4 MR. MULLOCK: Well, yes, there has been a  
5 real trend towards consolidation. One of our larger  
6 competitors became -- purchased another of our large  
7 competitors and became the largest or the second  
8 largest PET in bottle-making company in the world, and  
9 that's Graham-OI, which occurred in 2004. And further  
10 consolidation is expected.

11 COMMISSIONER MILLER: And what does that  
12 consolidation mean for the pricing power and the  
13 market power of the PET resin users?

14 MR. MULLOCK: Well, typically, when an  
15 industry consolidates it's because it needs to do so,  
16 in order to have more leverage in its control over its  
17 business. Would you agree with that?

18 COMMISSIONER MILLER: Uhm-hm.

19 MR. MULLOCK: And, certainly, if you look at  
20 the return on investment of the five merchant  
21 manufacturers, that as a group, that it's just okay.  
22 And some of us are less than okay and we do need to  
23 improve that. And it's that failure to consistent  
24 return the value to the private or public shareholders  
25 that is driving that consolidation by that group. And



1 to the extent that they have more control over their  
2 costs, their larger buyers and all, that should make  
3 them more effective procurers of that. But, if you  
4 look at that in a win-lose kind of way, then it would  
5 argue for the resin producers having a tougher  
6 situation. It doesn't have to be that way.

7 COMMISSIONER MILLER: Do you think it has  
8 been that way?

9 MR. MULLOCK: Again, our strategy is -- you  
10 know, we're very straightforward. We think we're good  
11 collaborators. We care about the manufacturing  
12 economics of our suppliers. So, we try and behave  
13 like a preferred customer and we expect to be treated  
14 one in return. That's our purchasing strategy. It's  
15 a little different, I think, than some of the others;  
16 but, again, as I said before, I don't know them that  
17 well.

18 But, this is a tough business. I mean, it's  
19 a low margin, high volume, very sensitive to price  
20 business. And we have a very lean operation, as do  
21 our competitors and our suppliers, as well. We've all  
22 trimmed. And the resin industry spoke about some of  
23 their headcount trimming. Constar experienced that in  
24 the last 24 months, as well.

25 COMMISSIONER MILLER: Do you produce -- you

1 refer to yourself or to Constar earlier as a -- oh, I  
2 have to go back and find it -- but, you were talking  
3 about being a container solution, more or less. Do  
4 you produce other kinds of containers that compete  
5 with the kinds of bottles that we're looking at here?  
6 I mean, do you make --

7 MR. MULLOCK: No.

8 COMMISSIONER MILLER: -- you don't make  
9 aluminum cans?

10 MR. MULLOCK: We just make bottles.

11 COMMISSIONER MILLER: You just make bottles  
12 for PET resin --

13 MR. MULLOCK: We are the only large pure PET  
14 company, basically. All of our competitors make  
15 things other than PET bottles and some of them make  
16 cans.

17 COMMISSIONER MILLER: Okay. Thank you. On  
18 that point --

19 MR. MULLOCK: You're welcome.

20 COMMISSIONER MILLER: -- I appreciate your  
21 answers.

22 CHAIRMAN KOPLAN: Thank you, Commissioner.  
23 Commissioner Hillman?

24 COMMISSIONER HILLMAN: Thank you. I'd like  
25 to follow on a little bit. Mr. Mullock, I don't know

1 whether you can answer this. You said earlier, you're  
2 a purchaser of PET, as opposed to a seller of bottles.  
3 But, I'm trying to understand the degree to which the  
4 converters, your group, has the ability to pass on  
5 your increased PET costs. Can you describe for me  
6 generally how prices work in the bottle market?

7 MR. MULLOCK: Well, we have to pass on our  
8 price costs in PET or else we couldn't survive. It's  
9 as simple as that.

10 COMMISSIONER HILLMAN: Okay. And is it a  
11 direct pass through? I mean, how does it work?

12 MR. MULLOCK: There are -- you know, each  
13 customer, you negotiate at a different time and  
14 different circumstances, the details on which pass  
15 through occurs. But, we have to have a mechanism for  
16 price pass through, because it's such a large  
17 component of our costs. And so, our publicly-stated  
18 objective is to have as perfect a pass through of  
19 price change as possible.

20 COMMISSIONER HILLMAN: Okay. And do you  
21 have -- I mean, typically, that's the way the whole  
22 industry operates, everybody gets pretty close to a  
23 perfect pass through?

24 MR. MULLOCK: Well, I think everybody would  
25 like to, but -- one of the gentleman testifying this

1 morning, I believe Mr. Kinner, referred to the change  
2 in how raw materials were negotiated starting in 2002,  
3 where it had been quarterly and it went the monthly.  
4 And I kind of smiled as I heard them say that, a sad  
5 smile, because, unfortunately, I don't think the  
6 industry told everybody else that we were going to  
7 monthly price changes. And so, part of the reasons  
8 why I think that -- you know, many, many players in  
9 the industry find themselves in a squeeze, because raw  
10 materials have only gone up since that time. That was  
11 maybe not the best time in the world to get closer to  
12 the raw material changes. Maybe it was a good thing  
13 to have a 90-day delay, if raw materials are only  
14 going like that, because our historic experience had  
15 been this, okay. And so, I'd say if you asked all the  
16 CEOs of my competitors that question, they would say,  
17 well, when we're doing our job right, we have perfect  
18 pass through; but, we do it imperfectly. And we  
19 usually lose when it doesn't happen right.

20 COMMISSIONER HILLMAN: Now, has the timing  
21 on the passing through of the increases to the bottle  
22 companies also gone from a sort of quarterly down to a  
23 monthly, or an even more frequent basis?

24 MR. MULLOCK: We pass through price  
25 increases as they occur and influence us. But, there

1 is a lag. I mean, customers can get -- you know,  
2 typically, industry standard is 30 days after a price  
3 increase is announced by the resin industry, we take  
4 it, we announce it, and 30 days after that, our  
5 customers take it. So, for our customers, there's a  
6 60-day lag from the day that a price increase is  
7 announced by a resin producer. Now, a resin producer  
8 may see a raw material price increase immediately and  
9 that absence of lag in a time of continually raising  
10 increases that I've been talking about.

11 COMMISSIONER HILLMAN: Okay. Mr. Davis,  
12 from a broader perspective, do you have anything to  
13 add to that?

14 MR. DAVIS: No. I think that's an accurate  
15 summary of how the system works.

16 COMMISSIONER HILLMAN: Okay. I appreciate  
17 it. Turning to our map, you're arguing that the  
18 domestic industry is facing a -- domestic producers  
19 faced disadvantages, in terms of serving customers  
20 west of the Rockies. I'm trying to understand, before  
21 the period of investigation, who supplied the  
22 converters on the west coast? Where have they been  
23 getting their PET resin from?

24 MR. MALASCHEVICH: I can't speak to the  
25 period before the period of investigation. My only

1 point is that there are higher costs associated with  
2 selling across the country to the west coast, owing to  
3 transportation, other factors. So, there's a price  
4 distinction. And if you would just peruse the Exhibit  
5 referred to earlier, you, also, see that there are a  
6 different mix of suppliers serving the eastern region  
7 versus the west. There are different dynamics of  
8 supply and demand.

9 COMMISSIONER HILLMAN: I'm just trying to  
10 understand whether that has changed. Again,  
11 presumably, these converters have been out there on  
12 the west coast since way before 2002. Presumably,  
13 they've been getting resin from somewhere. I'm trying  
14 to understand whether there is something, you know,  
15 specific about this period of investigation that you  
16 think suggests a different pattern of trade going on  
17 here.

18 MR. MALASHEVICH: I simply have no  
19 information before the period of investigation.

20 COMMISSIONER HILLMAN: Okay. Mr. Mullock,  
21 do you have any -- I understand, you're only on the  
22 east coast, but can you tell me anything about the  
23 west coast converters?

24 MR. MULLOCK: Despite my youth, I believe  
25 that the situation was that prior to 2000, imports to

1 the United States, in general, were quite small and  
2 were mostly limited to the west coast, but much of the  
3 west coast supply was also coming from the eastern  
4 United States.

5 COMMISSIONER HILLMAN: Okay. And that has -  
6 - and then, again, describe what you see as the change  
7 since now.

8 MR. MULLOCK: Well, the change has been in  
9 the global growth of PET production. PET bottle  
10 production was heavily concentrated in the United  
11 States and it was also an easy conversion from  
12 textiles, as textiles began to come down and people  
13 moved their textile lines into PET bottle grade. So,  
14 I believe that's the evolution that occurred.

15 COMMISSIONER HILLMAN: Okay.

16 MR. MULLOCK: And that the Asian capacity, a  
17 lot of it is pretty new and wasn't there in the 1990s.

18 MS. ESSERMAN: Although I might add,  
19 Commissioner Hillman, if you look at that confidential  
20 exhibit, you'll see still that it's -- broadly  
21 speaking, there's still a very large share held by the  
22 U.S. industry in that market.

23 COMMISSIONER HILLMAN: Okay. I appreciate  
24 those comments. I was just trying to make sure I  
25 understood whether there was something different going

1 on, on the west coast. Okay.

2 Ms. Esserman, a question to you, sort of the  
3 similar question that I asked to the Petitioners.  
4 Because of the drop in subject imports in 2004, which  
5 may or may not -- again, obviously, I understand your  
6 argument on it, whether it was or was not due to the  
7 petition. I may or may not decide to put less weight  
8 on the post-petition data. And, unfortunately, from  
9 the data that we have, that pretty much means you're  
10 putting less weight on all 2004 data. If we were to  
11 do that, would you suggest that it's appropriate to  
12 look back at the 2001 data from the preliminary  
13 investigation? Obviously, it was appropriate  
14 adjustments to make it compatible or fairly  
15 comparable. But, would you recommend that we do that,  
16 if we were to place -- I understand, you are not  
17 recommending that we do that, but if we go that route,  
18 is it appropriate to pull in the 2001 data, in order  
19 to have a three-year period, which we would normally  
20 have?

21 MS. ESSERMAN: I would just say that as I  
22 recall it, in the past where there has been some  
23 discount, the Commission has still used the period of  
24 investigation; that is the period where you have the  
25 most extensive data, the pricing data that's relevant



1 to your analysis.

2 COMMISSIONER HILLMAN: Okay; all right.

3 MR. MULLOCK: Can I just say one other thing  
4 though there, just one thing to be clear about for the  
5 record? Just, it's important to note, though, that  
6 the drop -- we're not talking a drop that occurred  
7 post the filing in the case. It occurred prior to the  
8 filing of the case. I just want to make sure that was  
9 clear, beginning in fourth quarter 2004.

10 COMMISSIONER HILLMAN: Yes.

11 MR. MALASCHEVICH: And I simply wanted to  
12 add that I think all parties would have to make an  
13 assessment of the completeness of the preliminary  
14 record and whether if you choose to go that route,  
15 they're reasonably comparable to the completeness of  
16 the current record.

17 COMMISSIONER HILLMAN: Well, again, if you  
18 want to take a look at that and, again, obviously, no  
19 decision has been made about whether this is the right  
20 route to go, but I think we would want to hear any  
21 argument that you have about why we should or should  
22 not view the 2001 data as appropriately included  
23 within this, if there was a reason to discount the  
24 2004 data.

25 MR. MALASCHEVICH: We certainly will.

1                   COMMISSIONER HILLMAN: I would welcome any  
2 argument you have on whether it is appropriately  
3 comparable and complete enough to rely on that 2001  
4 data.

5                   Then, I wondered, also, in post-hearing  
6 brief, if you could explain the change in reliance's  
7 exports to the United States, particularly in 2004.  
8 Again, it's no doubt BPI information, but if you could  
9 explain whether they're -- the cause for any change in  
10 their export pattern to the United States.

11                   MS. ESSERMAN: We'd be happy to do that.

12                   COMMISSIONER HILLMAN: Okay. And I think  
13 with that, I have no further questions, at this time,  
14 Mr. Chairman. Thank you.

15                   CHAIRMAN KOPLAN: Thank you, Commissioner.  
16 Commissioner Lane?

17                   COMMISSIONER LANE: Mr. Mullock, I want to  
18 go back to you. Obviously, we only drink these  
19 beverages and we don't know how they are actually  
20 produced. So, I have a few more questions to ask you.

21                   As I understand it from the testimony this  
22 morning, there are three big consumer or users of PET  
23 resin for bottles and that's Pepsi, Coca Cola, and  
24 Nestle Waters. And then, you are in a group of five  
25 that apparently are independent bottlers --

1 MR. MULLOCK: Independent bottle makers.

2 COMMISSIONER LANE: Okay. Independent  
3 bottle makers and that does not include Coke, because  
4 they do their own.

5 MR. MULLOCK: Correct.

6 COMMISSIONER LANE: Okay.

7 MR. MULLOCK: They do buy some; but largely  
8 on the soda side, they make their own.

9 COMMISSIONER LANE: So, your company buys  
10 PET resin and makes them into bottles that are  
11 unlabeled and then you sell them to people, who  
12 actually put the product in the bottles?

13 MR. MULLOCK: That's correct. And we will  
14 label them for customers, who want us to.

15 COMMISSIONER LANE: Okay. Now, is Pepsi one  
16 of your bottlers?

17 MR. MULLOCK: Pepsi is one of my customer  
18 bottlers, yes.

19 COMMISSIONER LANE: I mean, one of your  
20 customers. Okay. And do you have any legal  
21 affiliation with Pepsi?

22 MR. MULLOCK: None whatsoever.

23 COMMISSIONER LANE: And are you the only  
24 manufacturer that produces bottles for Pepsi?

25 MR. MULLOCK: Oh, no. All of my major

1 competitors do.

2 COMMISSIONER LANE: Okay; all right. So,  
3 let's talk about pricing. If when you buy PET resin  
4 and let's say, it costs -- and I'm just going to do  
5 this for around a dollar, a dollar a pound, and then  
6 you make a bottle. Do you -- when you sell that  
7 bottle, do you figure in the sale of the bottle you --  
8 how do you account for the price of the raw material  
9 or the PET resin, itself?

10 MR. MULLOCK: Well, we -- as with any of our  
11 customers, we have an agreement on how much we can  
12 charge for the resin in the bottle. Or we may have a  
13 rolled up bottled price that says, you know, each  
14 bottle is 15 cents each and that includes the resin in  
15 the bottle or six cents each, whatever the price is.

16 COMMISSIONER LANE: Okay. If you have to  
17 pay more for the PET resin because of price increases,  
18 do you pass that on to your customers?

19 MR. MULLOCK: Yes, we do.

20 COMMISSIONER LANE: In every instance?

21 MR. MULLOCK: Well, again, we try and do it  
22 in every instance and we generally do a pretty good  
23 job.

24 COMMISSIONER LANE: Are there any times that  
25 you can't?

1           MR. MULLOCK: Well, it does happen where  
2           circumstances prevent us from passing through price  
3           increases that we would like to pass through. But,  
4           our business strategy is to pass them through and I  
5           would say it's a largely successful one.

6           COMMISSIONER LANE: I think we heard this  
7           morning that the price of the PET resin did not really  
8           have much affect on the actual -- the finished price  
9           of the bottle. Did you hear that testimony and what  
10          is your -- do you agree with that statement?

11          MR. MULLOCK: I think that when Mr. Adlan,  
12          who I believe made that statement, the point that he  
13          was making, that the change in the bottle price  
14          compared to the total revenue that the brand owner got  
15          for the bottle was quite small. But, typically, the  
16          bottle is the largest packaging cost that the bottler  
17          has after the product going into the bottle, if it's  
18          flavored. If it's water, then the bottle is the  
19          largest cost that they have. And so like any cost  
20          that's a big element of their total cost of sales, our  
21          customers are sensitive to that and the extraordinary  
22          run up in PET prices has, of course, only inured to  
23          greater sensitivity on their part.

24          COMMISSIONER LANE: Generally, would you say  
25          that in the last year, you have been charging your

1 customers more for the bottles than you did the year  
2 before?

3 MR. MULLOCK: Without a doubt.

4 COMMISSIONER LANE: All of your customers?

5 MR. MULLOCK: Every one.

6 COMMISSIONER LANE: Okay. Thank you.

7 That's all I have, Mr. Chairman.

8 CHAIRMAN KOPLAN: Thank you, Commissioner.  
9 Commissioner Pearson?

10 COMMISSIONER PEARSON: We've heard some  
11 comments earlier today about what might be temporary  
12 in price differentials in different parts of the world  
13 for PTA, MEG, PET. Can you shine any light on this?  
14 I mean, are there markets where you can observe prices  
15 for these products and have a sense of how prices are  
16 behaving in different parts of the world? I don't  
17 know, Mr. Mullock or Mr. Maleshevich?

18 MR. MULLOCK: Are you talking about PET  
19 resin or its precursors, MEG and PTA?

20 COMMISSIONER PEARSON: No. All three.

21 MR. MULLOCK: Okay.

22 COMMISSIONER PEARSON: I mean, if I had -- I  
23 know you're buying resin. But, I mean --

24 MR. MULLOCK: Right.

25 COMMISSIONER PEARSON: -- you probably have

1 -- because you buy a lot of resin and it's very  
2 important to your business, you probably have some  
3 idea what's happening to the precursor products;  
4 right?

5 MR. MULLOCK: I do; I do, though we don't  
6 buy it. We buy its end result. What has happened  
7 over the last 18 months is there's been a real  
8 convergence of price for PTA and MEG around the world.  
9 And that is because on the two components MEG, the  
10 production of MEG requires very, very large highly  
11 capitalized plants with excellent access to ethylene.  
12 And so -- and there is a -- and that capacity, the  
13 three largest producers of that represent, I believe,  
14 something like 70 percent of the world supply. So,  
15 they're very large and they have done some recent  
16 consolidation. So, one or two of the largest of them  
17 have been able to set a list price that the industry  
18 has followed in a disciplined fashion and they've been  
19 willing to close or open capacity to maintain a  
20 relatively snug supply and demand in this 18 months.

21 This has been a very good strategy for them  
22 for forcing MEG up to a consistently high price, well  
23 above where it's been historically before that, to a  
24 whole different level. And MEG used to be one of  
25 those traditional basic chemical industries where, you

1 know, in 10 years, you were lucky to make money in  
2 three. And now, in three years, they've made money in  
3 three. And so, they're doing very well with their  
4 strategy.

5 A slightly different driver on the PTA side  
6 is -- but still resulting in higher prices is just the  
7 worldwide cost of gasoline. You know, again, I  
8 believe it was Mr. Kinner, who so well described the  
9 dynamics of paraxylene to PTA marketplace. And Mr.  
10 Dewsbury talked about the export of paraxylene from  
11 the United States into Asia. It used to be, I  
12 believe, prior to 18 to 24 months ago, that the U.S.  
13 producers of paraxylene dumped into Asia, to protect  
14 their North American market. But what happened is all  
15 of a sudden, Asia needed that paraxylene, a lot for  
16 polyester and some for PET for bottle grade, and so it  
17 went from a situation of dumping, to who gets the  
18 supply. And that's what drove paraxylene to become,  
19 in effect, a world price, as well, which has driven  
20 the price of PTA up.

21 There's an additional complication in North  
22 America, in that the PTA supply, with the exception of  
23 a few integrated people like DAK and Voridian, it's  
24 highly held in one or two hands. And so, there is  
25 another bottleneck there that could help influence the



1 cost and availability of PTA in North America.

2 But, today, the dynamics of the MEG market  
3 and the paraxylene market have resulted in a worldwide  
4 leveling of the cost of those raw materials, which is  
5 why the Asian struggled to be competitive in North  
6 America, because, now, they're paying the U.S. price,  
7 plus freight for their own.

8 COMMISSIONER PEARSON: And how does the  
9 price discovery occur in these markets? Are there  
10 published prices or is it just --

11 MR. MULLOCK: Well, there are published  
12 prices. There are published prices. There are a lot  
13 of people, who make offers for supply. We don't buy  
14 one piece of PET once a year, you know, so we're not a  
15 farmer, who brings his crop in and so he needs to go  
16 out and sell it in some kind of commodity marketplace  
17 to make sure that that's not the wrong price. We do  
18 set up annual agreements, but some of those may  
19 involve some like short-term market discussion,  
20 mechanisms, and things. You know, there could be some  
21 of that. So, we're constantly calibrating price, as  
22 we go through the year. We have small and large  
23 suppliers, who offer us price, brokers. We see the  
24 wide spec market. We buy PCR. We're one of the  
25 world's largest buyers of PET, so we have a dedicated

1 function that looks at that globally. And so, we get  
2 a lot of data points about what the price should be  
3 and, of course, build up through the raw material  
4 chain. So, we're reasonably confident we know what a  
5 good price in PET is.

6 COMMISSIONER PEARSON: Okay. Well, I don't  
7 think we have much data on the record that would help  
8 us understand how this price convergence has happened  
9 around the world for the precursors. And if you're  
10 able to provide some of that information through  
11 either publicly available data or private data, if  
12 that's available, that might be helpful. And,  
13 frankly, let me address that same question to  
14 Petitioners, because I was remiss in not raising it  
15 this morning. To some degree, this case is about  
16 rapidly rising input prices for your production of PET  
17 and --

18 MR. MULLOCK: There used to be a lot of  
19 divergence in regional markets. And now, it's gotten  
20 to the point where the spot price in Asia becomes the  
21 contract price in the United States the next month and  
22 it's pretty locked up. So, that divergence has really  
23 converged. And I'm sure that you'll hear that from  
24 all the parties, who respond.

25 COMMISSIONER PEARSON: Okay, good. So, put

1 something together, please, for the post-hearing and  
2 then I'll understand it better. But, your explanation  
3 has been very helpful. Thank you.

4 MR. MULLOCK: You're welcome.

5 COMMISSIONER PEARSON: My last question and,  
6 normally, I tend to stay away from these strictly  
7 legal questions, because my learned colleagues, at  
8 least my colleagues learned in the law, usually get to  
9 them before I do.

10 CHAIRMAN KOPLAN: They were doing so well  
11 until you clarified it.

12 COMMISSIONER PEARSON: Sorry. It has to do  
13 with cumulation, okay. You, I think, are making an  
14 argument that at least India should not be cumulated  
15 in a threat analysis, okay. But, then, you've also go  
16 this map up here, looking at the concentration or  
17 production facilities in the eastern United States and  
18 saying that the west coast is different. And so  
19 what's not clear to me, are you arguing that the  
20 statutory factors for cumulation have not been met in  
21 a present injury case?

22 MS. ESSERMAN: First of all, let me say that  
23 the reason that we're arguing for threat is because,  
24 in fact, the Indians participate almost exclusively on  
25 the east coast and they're the only ones to do that.

1 They sell only one product. They sell in different  
2 export markets. They're overselling in all quarters.  
3 And you consider a broader range of factors, of  
4 course, when you do threat. Certainly, there's no  
5 hammering effect when you look at injury or threat  
6 and, therefore, I think, at a minimum, it's a factor  
7 you ought to look at in causation, because these  
8 imports are participating in different markets.

9 To be very direct with you, Commissioner,  
10 the only fact that prevents it from being an absolute  
11 basis for cumulation on the basis of injury is that  
12 there is a minority of the product coming from  
13 Thailand that comes also in the east coast. A huge  
14 proportion of what comes in from India goes actually  
15 through the New York port. That's public information.  
16 But that is the reason that, you know, we were very  
17 careful in what we put forward in our brief. There's  
18 no question in our mind that there are bases for  
19 decumulating on the basis of threat. Certainly, it  
20 would seem to me, there's a reasonable base for saying  
21 it's appropriate even in an injury context. But  
22 whatever, in whatever context, I think the important  
23 thing to take from all of this is that you have a  
24 situation in this case that is different, where you've  
25 got the Indians on the east coast, only on the east

1 coast. You've got the -- well, I guess Taiwan is out  
2 now. But, you've got Indonesia and it was Taiwan only  
3 on the west coast and you've got Thailand, a majority  
4 of what they're shipping on the west coast. So -- and  
5 you, also, have Indian shipping in a very narrow  
6 product category.

7 So, that's a long answer to say, we didn't  
8 frontally argue cumulation for the reason -- in the  
9 injury context for the reason that I mentioned.  
10 Certainly, I think the rationale for decumulation is  
11 appropriate for injury and definitely for threat.

12 COMMISSIONER PEARSON: Okay, thank you, very  
13 much. And later, I will inquire of my colleagues what  
14 exactly we can do with that, in terms of whether there  
15 is too much overlap or whether there isn't. But,  
16 thank you, very much. No further questions, Mr.  
17 Chairman.

18 CHAIRMAN KOPLAN: Thank you, Commissioner  
19 Pearson. I have just a few, I hope, short matters  
20 left. First, Mr. Maleshevich, Petitioners' pre-  
21 hearing brief note that at pages 12 and 13 that 'the  
22 commencement of the surge of imports coincides  
23 virtually precisely with the imposition of the EU  
24 antidumping and countervailing duty trade remedies in  
25 2000.' I note that Mr. Dewsbury said this morning, I

1 believe, in his direct, that there have been some  
2 changes since those went into effect. They didn't  
3 indicate what the changes were. This is the question:  
4 how did the EU duties affect the volume of subject  
5 imports to the EU and how has the level of duties  
6 applied in the EU changed since November of 2000?

7 MR. MALASCHEVICH: With respect, Mr.  
8 Chairman, Ms. Esserman is closer to those details than  
9 I am. If you would, please?

10 CHAIRMAN KOPLAN: Sure.

11 MS. ESSERMAN: I think it may have been  
12 Commissioner Pearson, who may have commented on this  
13 earlier today. I think you can -- if you look at the  
14 effect of the order, it's very little effect here in  
15 the United States, because imports were actually --  
16 have remained small and the order was put in, in the  
17 year 2000 and even several years later, the imports  
18 remained small.

19 CHAIRMAN KOPLAN: But how were they  
20 affected, in terms of subject imports going into the  
21 EU? Actually, I think it went in, in November of  
22 2000.

23 MS. ESSERMAN: How they affected subject  
24 imports going into the EU?

25 CHAIRMAN KOPLAN: Yes.

1 MS. ESSERMAN: No question, the order had an  
2 impact on subject imports going in EU. I think the  
3 important thing to look at is what's happening in the  
4 future. That's where I, frankly, don't even  
5 understand Petitioners' argument that the EU order  
6 provides any support for their threat argument.

7 CHAIRMAN KOPLAN: Has that order, though,  
8 been modified since November of 2000?

9 MS. ESSERMAN: Well, first of all, it's  
10 slated for expiration this year, number one. Number  
11 two, there has been -- a new shipper review is  
12 underway, which is at the high threshold to get for  
13 one of the Indian producers and another has recently  
14 assigned a suspension agreement. So, certainly, with  
15 respect to India, you would expect more product, not  
16 less, going to the EU. So, therefore, it's the  
17 opposite of diversion.

18 But, again, when you're looking at threat,  
19 you're looking at what -- is there going to be an  
20 increase. And if the order has been in effect five  
21 years, any diversion that would have occurred would  
22 have already occurred. And, frankly, I don't see very  
23 much, because still throughout the period of  
24 investigation, the volumes have been small. So  
25 whether it's India or any other source, it would seem

1 to me the EU order has no bearing on threat and to the  
2 extent it has any bearing, it would be that you would  
3 expect more volume going to Europe than the current  
4 situation.

5 CHAIRMAN KOPLAN: But if I'm looking at  
6 present?

7 MS. ESSERMAN: I think it has -- the  
8 question is not why the imports are here. Frankly, I  
9 think it has little to do with the European order.  
10 The question is what is their effect in the market and  
11 you know our view about that.

12 CHAIRMAN KOPLAN: Yes, I do.

13 MS. ESSERMAN: They're too small and there's  
14 no price effects.

15 CHAIRMAN KOPLAN: Thank you. I appreciate  
16 that. Mr. Davis, the PET User's Coalition pre-hearing  
17 brief, on the first page, describes the subject  
18 imports as 'generally providing less complex and less  
19 expensive resins than those provided by U.S.  
20 producers.' What share of the overall U.S. PET resin  
21 market is accounted for by these less complex resins  
22 and are negotiations any different for these products  
23 than for hot-filled PET resin?

24 MR. DAVIS: Mr. Chairman, I need to defer to  
25 Mr. Mullock here, as a buyer of that resin, to



1 accurately answer that.

2 MR. MULLOCK: Mr. Chairman, I believe that  
3 about 30 percent of the market is hot-fill and about  
4 70 percent is conventional. And so let me first say  
5 that Constar, we have no qualified suppliers of hot-  
6 fill resins from import sources. It's strictly U.S.  
7 domestic producers. And so, I believe this to be true  
8 and my only experience is, it's absolutely true is  
9 that the amount of hot-fill resin imports into the  
10 United States are very small. They're a very small  
11 percent of imports and almost, you know, non-existent  
12 as a physical arrival into the United States.

13 As to their -- or how the prices of resins  
14 are negotiated for, there are -- while generally  
15 speaking, there is a single cost per pound that's  
16 negotiated for a family of resins, which is just an  
17 efficient way to do it, particularly for someone like  
18 Constar, who might use 15 different specifications.  
19 There are several specifications that because of  
20 barrier properties or ultraviolet or some other  
21 specialty aspect to them, where there is up charge  
22 paid for them. And so, that's typically negotiated as  
23 a cost plus to the base price for the broad family of  
24 resins being negotiated.

25 CHAIRMAN KOPLAN: Thank you.

1 MR. MULLOCK: You're welcome.

2 CHAIRMAN KOPLAN: Ms. Esserman, Reliance  
3 Industry's brief asserts at page 38 that subject  
4 imports do not compete with the domestic industry in  
5 several areas, such as for hot-fill resins, blended  
6 resins, and certain application specific resins.  
7 Petitioners' claim, however, in their brief, on page  
8 78, that subject producers are fully capable of  
9 producing the hot-fill grade, if they choose to do so.  
10 Do barriers to entry exist for subject producers in  
11 the market for hot-fill resin or blended resin; for  
12 example, pre-certification, lack of technical support?  
13 Mr. Sherlock, I think, stated this morning that these  
14 factors are not particularly important.

15 MS. ESSERMAN: Well, let me answer and then  
16 I'm going to turn to Mr. Mullock. First, most of the  
17 foreign producers can't make -- excuse me, don't make  
18 hot-fill right now.

19 But number two, they haven't sold it at all  
20 during the period of investigation. I think that's  
21 important for you to consider.

22 Number three, I think you heard from Mr.  
23 Mullock earlier, just by way of example, there are no  
24 foreign subject producers that have been certified --  
25 that he has certified for a hot-filled application.

1                   So, the -- I think that -- I had one  
2 additional point, but I'm going to turn to Mr.  
3 Mullock, because I have to tell you, I've forgotten  
4 it. Sorry.

5                   MR. MULLOCK: I think her additional point  
6 was with respect to the barriers to the marketplace.  
7 They are certainly capable of formulating hot-fill  
8 resins and the market is free to receive them. But  
9 the real barrier is that unlike the conventional CSD  
10 and water business, where it's very generic high  
11 volume in packages, that each custom package is custom  
12 designed for that particular application, for that  
13 customer.

14                   CHAIRMAN KOPLAN: I think you just bailed  
15 her out.

16                   MR. MULLOCK: That's my job, sir.

17                   MS. ESSERMAN: I'm going to, then, bail  
18 myself out, too. My understanding is, certainly, from  
19 my own client, that they're reluctant to do this.  
20 There's additional costs involved because of the need  
21 to have technical assistance on the ground. That's  
22 just a much more expensive proposition for an Asian  
23 producer to engage in.

24                   CHAIRMAN KOPLAN: Thank you. Thank you,  
25 both. With that, I have no further questions. I'll

1 turn to Vice Chairman Okun.

2 VICE CHAIRMAN OKUN: Thank you, Mr.  
3 Chairman. I think just a couple of things. One, just  
4 a follow-up on the price question, Mr. Maleshevich,  
5 which is, if we were to decide to take out the  
6 information from the one I was talking about, the  
7 Petitioners raise on page 18 -- I'm going to forget my  
8 question. It's a long day.

9 MS. ESSERMAN: Thank you.

10 VICE CHAIRMAN OKUN: The purchaser of  
11 imports from India, who the Petitioners have said are  
12 not properly in -- how they're not properly reported  
13 in Chapter 5. If we were to agree and to take them  
14 out of the Chapter 5 data, if you could tell me  
15 whether the analysis of the pricing and underselling  
16 would change and how we would evaluate that. Again, I  
17 understand you disagree with that.

18 MR. MALASCHEVICH: And I have to look at the  
19 details.

20 VICE CHAIRMAN OKUN: No, I understand.

21 MR. MALASCHEVICH: But, certainly, I will  
22 address your question.

23 VICE CHAIRMAN OKUN: Okay, okay. And then  
24 just one final question just on volume, which is, if  
25 we're looking at the 2003 volume and, again, you've

1 put in a lot of information regarding what was going  
2 on with capacity in the U.S. market in 2003 and  
3 ratings going on or the downgrading of Wellman's and  
4 others, because of this and because of the threat of  
5 Asian competition. My question is why, then, if we're  
6 acknowledging that there is a domestic -- if you think  
7 there's a domestic over capacity based on the  
8 information you put in here, why is that the year that  
9 the subject imports would increase? Why come into  
10 that market, a market with domestic overhang, if  
11 you're accurate in your description?

12 MS. ESSERMAN: Well, first of all, I think  
13 you heard today that a lot of the capacity came in, in  
14 the second half of 2003. So, the imports were already  
15 in the market. Again, I think the thing that you  
16 really ought to look at, when you're looking at what  
17 the effect of those imports were in 2003, is that was  
18 a time that -- the only time that share went up a  
19 little from its small volume. And what happened  
20 during that period, the product where there was the  
21 greatest competition, you know, particularly in that  
22 difficult period, the second half of 2003, where there  
23 was more profitability, that's where the Asian product  
24 -- where there was greatest competition, there was the  
25 most overselling.

1 VICE CHAIRMAN OKUN: Okay.

2 MS. ESSERMAN: You just wouldn't expect to  
3 see that, if imports were dragging down the market.

4 VICE CHAIRMAN OKUN: Okay. With that, I  
5 think that I have covered -- my colleagues have  
6 covered my other questions. But, I very much  
7 appreciate all of your testimony and your answers to  
8 our many questions this afternoon. Thank you, Mr.  
9 Chairman.

10 CHAIRMAN KOPLAN: Thank you. Commissioner  
11 Miller?

12 COMMISSIONER MILLER: Thank you, Mr.  
13 Chairman. I do have really just kind of one more  
14 thing, because thank you to Commissioner Pearson. He  
15 asked Ms. Esserman the one question that I did have --  
16 wanted to address to you, regarding cumulation, and  
17 giving you an opportunity to expand on that. So, I  
18 appreciate that. And unfortunately, what it means is  
19 that I'm then going back to pick on Mr. Mullock again,  
20 a little bit, only because as I listened to your  
21 comments to a couple of my colleagues regarding your  
22 more or less successful ability to pass your raw  
23 material prices through, your raw material cost  
24 increases through, I went back to your testimony when  
25 you were talking about the PET resin producers and

1 saying that they seemed to be arguing that, you know,  
2 they have a right to fully pass on the cost of their  
3 raw material prices and you wrote the question, what  
4 makes them think they should. And I'm sure they're  
5 sitting there saying, why is it you get to, but they  
6 don't.

7 MR. MULLOCK: I don't think I'm responsible  
8 for that comment. The matter is --

9 COMMISSIONER MILLER: It's not just because  
10 you're a better negotiator?

11 MR. MULLOCK: No. No, I mean, it's what  
12 will the market bear.

13 COMMISSIONER MILLER: Right.

14 MR. MULLOCK: And if -- you know, their cost  
15 of raw materials is a very high percent of their  
16 manufacturer; so is mine. But, I'm not going to get  
17 into the resin production business. My customer can  
18 blow bottles. So, it's easier for my customer to go  
19 into integration than it is for the resin producer,  
20 and that's just a -- so, we are different, you know,  
21 in where we're at. I mean, I have to have a very low  
22 cost, very like a pass through mechanism where a whole  
23 bunch of what I deliver is service. So, I'm  
24 delivering mostly air in the form of a bottle. And  
25 so, we have a little different market mechanism. We

1 wouldn't survive a day, frankly, or over a long period  
2 of time, if we couldn't absolutely pass through all of  
3 the increases that we experience in resin.

4 But, if you're in our -- like our lines are  
5 dedicated to customers. We might have three- to five  
6 year-year supply agreements. That's quite different  
7 than the mechanism of the PET resin producers, who  
8 probably don't have that many multi-year agreements  
9 with their customers. So, they're different markets  
10 and their ability to pass through that price is  
11 different in each of those markets.

12 I don't mean to say by that, that I don't  
13 care. I just -- you know, that's the way the market  
14 is and I don't control that.

15 COMMISSIONER MILLER: And your answer is  
16 exactly why I've asked so many questions today, to try  
17 to understand the nature of the market, because I  
18 think the nature of the market does tell you something  
19 about the ability to pass through cost increases. So,  
20 I'm just trying to understand why you can, but they  
21 can't.

22 MR. MALASCHEVICH: I think I have a little  
23 bit of insight on that --

24 COMMISSIONER MILLER: Sure.

25 MR. MALASCHEVICH: -- Commissioner. And to



1 the extent Mr. Mullock's experience is representative  
2 of converters as a group, and I don't know whether it  
3 is or it isn't, but if you look in the details of the  
4 questionnaires and are summarized in the staff report,  
5 the institutions -- I can't put it in greater detail  
6 in the public, but the institutions for passing on  
7 prices are different among the PET resin producers  
8 vis-a-vis their customers, than between Mr. Mullock's  
9 group and his customers. And I would posit the  
10 difference during this particular period and why the  
11 domestic industry were not able to pass on cost  
12 increases arguendo to the extent that converters as a  
13 group did, is because the domestic industry was in the  
14 process of absorbing a major change increase in  
15 capacity versus demand and the converters were not.

16 MS. ESSERMAN: Might I just add there, too -  
17 -

18 COMMISSIONER MILLER: Sure.

19 MS. ESSERMAN: -- one important fact to take  
20 into account and that is, to add on to what Mr.  
21 Maleshevich is saying, is I think it's important to go  
22 back and look at what actually happened in the pricing  
23 here. In fact during these years, Petitioner  
24 companies did increase their prices quite  
25 substantially over the period of investigation, quite

1 substantially. Obviously, we can't talk about the  
2 precise amount, because of the APO data. But, the  
3 only thing that they're saying is they haven't fully  
4 passed through all of their costs, which, today,  
5 they've described as being, during this period, from a  
6 low point, a low point, to a historic high point. I  
7 think that, in conjunction with what Mr. Maleshevich  
8 is talking about, might explain why it would have been  
9 difficult in this situation. But, keep in mind, they  
10 did increase their prices quite substantially.

11 COMMISSIONER MILLER: Right. And I do  
12 recognize that and, you know, it's absolutely true.  
13 All right. I had to ask you that question, Mr.  
14 Mullock, because I was just struck by it, as I  
15 listened to your testimony. So, I appreciate your  
16 answer and I appreciate all of the answers of the  
17 panel today. Thank you.

18 CHAIRMAN KOPLAN: Thank you, Commissioner.  
19 Let me see if there is another round.

20 COMMISSIONER HILLMAN: I've got just a  
21 couple of questions for post-hearing. First, this  
22 chart on historical raw materials prices, two-year  
23 averages, I wondered if you could give us the actual  
24 data and if the data is annual or if it only came to  
25 you in two-year increments. In other words, I would

1 like the underlying data that went into this bar  
2 graph, titled 'historical raw material prices, two-  
3 year averages.' If you could give me the individual  
4 data points that went in there, that would be very  
5 helpful.

6 MS. ESSERMAN: We'd be happy to do that.

7 COMMISSIONER HILLMAN: Thank you. Secondly,  
8 I would pose the same question to you, Ms. Esserman,  
9 that I posed earlier, that if you have information on  
10 third country, antidumping of countervailing duty  
11 investigations that you're aware of and I would -- I  
12 noticed in Exhibit 42 of your brief that there was a  
13 reference to Malaysia -- but, if there are any that  
14 you're aware of, if you could comment. I mean, the  
15 two countries that I've heard mention are Malaysia and  
16 Brazil. But, if there's anything that you could tell  
17 us about third-country antidumping or countervailing  
18 actions involving PET resin, that would be very  
19 helpful.

20 MS. ESSERMAN: Yes. If I might just say,  
21 though, with regard to Brazil, just for the same  
22 reasons that it's a difficulty for Asians to ship to  
23 North America, it's a market of no consequence to the  
24 Asians now for the same reasons, because of the high  
25 raw material costs. And I believe a lot of the

1 subject countries, India, certainly, doesn't ship to  
2 Malaysia.

3 COMMISSIONER HILLMAN: Okay. I appreciate  
4 that. If there's anything further in the post-  
5 hearing, that would be great. And, finally, Mr.  
6 Davis, I know you heard a lot of the testimony this  
7 morning about Petitioners complaining about some of  
8 the data. It's my understanding that at least some of  
9 the members of the PET User's Coalition are among  
10 those that have not yet returned questionnaires to the  
11 Commission. If there are any of them out there, if  
12 you could encourage a full response from all the  
13 members of your Coalition of returning their  
14 questionnaires to the Commission, I know we'd really  
15 appreciate getting all of the data that we can get, so  
16 that the record is as complete as possible.

17 MR. DAVIS: Well, I can certainly send out a  
18 generic call for compliance. But, if you have someone  
19 specifically in mind, I'd be happy to discuss it with  
20 the staff --

21 COMMISSIONER HILLMAN: Then I would  
22 encourage you to get in touch with our staff on that.

23 MR. DAVIS: -- or whatever. Okay.

24 COMMISSIONER HILLMAN: And with that, I have  
25 nothing further. I, too, would like to thank this

1 panel for all of the good answers that you've provided  
2 and for your tremendous patience in hanging with us  
3 here until 5:30 in the evening. We very much  
4 appreciate it. Thank you.

5 CHAIRMAN KOPLAN: Thank you, Commissioner.  
6 Are there any other questions from the dais? Yes?

7 COMMISSIONER PEARSON: Mr. Chairman,  
8 following up on Commissioner Miller's excellent  
9 question, I just have a small clarification for Mr.  
10 Mullock. In essence, are you saying that your  
11 contracts with your bottler customers, these are  
12 relatively long-term contracts, are they set up in  
13 such a way that so that, in effect, the customer  
14 absorbs the price risk on the PET?

15 MR. MULLOCK: Yes.

16 COMMISSIONER PEARSON: Okay. And so, you,  
17 then -- you mentioned you're providing a service.

18 MR. MULLOCK: Our typical contract is often  
19 a multi-year one, where a certain -- we're basically  
20 selling capacity of a machine and the service of  
21 making and delivering those bottles consistent with  
22 their needs. And it could be as long as five years, a  
23 contract, that ties up a certain part of a plant and  
24 equipment. So, yes.

25 COMMISSIONER PEARSON: Okay. But,

1 basically, then, we could understand that it's the  
2 nature of the contracts that you have with bottlers  
3 that allow the cost to pass through you, because there  
4 was this discussion about --

5 MR. MULLOCK: I have to be careful how I  
6 answer in public, because we're a public company --

7 COMMISSIONER PEARSON: Right.

8 MR. MULLOCK: -- and on the insider, we have  
9 made a public statement that says, we pass through  
10 resin price increases as part of our business  
11 practice. And my answer to you is, yes, consistent  
12 with that.

13 COMMISSIONER PEARSON: Okay. Well, if  
14 there's anything more we should know, you can provide  
15 it in the post-hearing.

16 MR. MULLOCK: Okay.

17 COMMISSIONER PEARSON: But, I understand now  
18 this issue and why you have been able to pass through  
19 and the Petitioners have not yet had full success.

20 MR. MALASCHEVICH: I would just mention,  
21 that goes precisely to my point earlier, in response  
22 to Commissioner Miller's question, that there are  
23 differences in the institutions of pricing for the  
24 resin producers versus the converters, on one hand,  
25 and the converters versus the bottlers on the other.

1                   COMMISSIONER PEARSON: Thank you, very much.  
2                   No further questions, Mr. Chairman.

3                   CHAIRMAN KOPLAN: Thank you, Commissioner.  
4                   I think Commissioner Lane had something she wanted to  
5                   ask.

6                   COMMISSIONER LANE: Okay. Mr. Mullock,  
7                   you've completely confused me now.

8                   MR. MULLOCK: I thought I was done.

9                   COMMISSIONER LANE: It was my understanding  
10                  that in answer to my question, you said that the price  
11                  increases for raw materials were directly passed on to  
12                  your customers. And then with Commissioner Pearson,  
13                  you said that you have contracts of, I don't know,  
14                  three to five years. And so, do you have a built-in  
15                  price escalator in those contracts?

16                  MR. MULLOCK: We have a price setting  
17                  mechanism in those contracts, generally speaking, yes.

18                  COMMISSIONER LANE: I get real worried when  
19                  I hear people talk about 'generally speaking.' Do  
20                  you, in every instance, have a mechanism that passes  
21                  on to each of your customers the price increase for  
22                  raw materials?

23                  MR. MULLOCK: I'd like to answer that  
24                  absolutely yes, but I'd also point out that to the  
25                  best of my knowledge, yes. But, I'm not in sales.

1 I'm in purchasing. And so, as a business strategy,  
2 absolutely, yes; as an execution of that, I believe,  
3 yes. But maybe I have one small bottle contractor,  
4 something where for whatever reason, the price is more  
5 stable over a long period of time. So, if you accept  
6 it that way, the answer is, yes.

7 COMMISSIONER LANE: Okay. So, the contract  
8 would say, if x increase in raw materials comes into  
9 play, that will be passed on to my customers?

10 MR. MULLOCK: Correct.

11 COMMISSIONER LANE: Okay. Thank you.

12 CHAIRMAN KOPLAN: Thank you, Commissioner.  
13 Anything else from the dais?

14 (No questions from the dais.)

15 CHAIRMAN KOPLAN: No. I'll take that as a  
16 no. Ms. Mazur, does staff have questions of this  
17 panel?

18 MS. MAZUR: Mr. Chairman, staff have no  
19 questions.

20 CHAIRMAN KOPLAN: Thank you. Before I  
21 release the panel, Ms. Cofrancesco, you have one  
22 minute remaining from your direct presentation. Do  
23 you have any questions of this panel?

24 MS. COFRANCESCO: No.

25 CHAIRMAN KOPLAN: No. All right. With



1 that, I want to thank all of you for your testimony.  
2 And we will now move to the final phase of today's  
3 hearing, after everybody has a stretch. Well, let me  
4 announce what we have left here. Petitioners have one  
5 minute remaining from their direct presentation, plus  
6 five minutes for closing. Respondents have a total of  
7 six minutes remaining from the direct presentation,  
8 plus five minutes for closing. When everyone is  
9 ready, I will ask how you all want to proceed.

10 (Whereupon, a brief recess was taken.)

11 CHAIRMAN KOPLAN: Now, if I could ask, does  
12 either side wish to use the remaining time from their  
13 direct presentation or do you all want to move  
14 directly to closing? Ms. Cofrancesco?

15 MS. COFRANCESCO: I would like to use my one  
16 minute of time, please.

17 CHAIRMAN KOPLAN: Okay. And Ms. Esserman?

18 MS. ESSERMAN: I'll just move directly to  
19 closing.

20 CHAIRMAN KOPLAN: You'll move directly to  
21 closing? Okay. Why don't you proceed, Ms.  
22 Cofrancesco.

23 MS. COFRANCESCO: Thank you, very much. I'd  
24 just like to address some points briefly in the  
25 rebuttal. Number one, regarding NAFTA expansion, what

1 you heard from the other side was they were going back  
2 and forth, there's too much capacity expansion,  
3 there's not enough capacity expansion. The real story  
4 is what you heard from Mr. Sherlock this morning,  
5 capacity expansion in NAFTA is a reasonable expansion.  
6 It is reasonable in relation to demand in NAFTA.

7 Second, about NAFTA imports, the NAFTA  
8 imports from Canada and Mexico has to be balanced  
9 against U.S. exports to Mexico and Canada, as well.  
10 It's not a one-way trade; it's a two-way trade. And  
11 the plans that you have for expansion coming on that  
12 have been announced, that you heard about this  
13 morning, are decisions to expand further reasonably in  
14 the United States, plants in the United States. We're  
15 not talking about plants in Canada or plants in  
16 Mexico. Those are plants in the United States.

17 CHAIRMAN KOPLAN: That took care of the one  
18 minute. We can now move to closing.

19 MS. COFRANCESCO: Thank you.

20 CHAIRMAN KOPLAN: Okay, thank you.

21 MS. COFRANCESCO: I would just like to  
22 briefly summarize the testimony and economic evidence  
23 that you had before you today within the framework of  
24 the legal issues that the Commission has to resolve.  
25 With regard to the Commission's final determination on

1 material injury, the legal standard of what  
2 constitutes material injury is harm that is not  
3 inconsequential, immaterial, or unimportant. Applying  
4 that standard, there is no doubt that the industry,  
5 the U.S. industry, is materially injured.

6 The impact on the unfairly-traded imports on  
7 the domestic industry is demonstrated by the decline  
8 in profits due to the domestic producers trying to  
9 meet the pricing of the dumped and subsidized subject  
10 imports. What you heard from Mr. Mullock today is  
11 that one cent a pound indeed does make a very  
12 important difference in the purchasing decisions of  
13 the purchasers here. And Mr. Mullock represents a  
14 converter. That is a quite large converter, as you  
15 heard, the third largest, I believe, he may have said.

16 Second, you've heard that there is not an  
17 adequate return on previous investments that the  
18 domestic industry has made. There were closures of  
19 capacity in the United States and there were negative  
20 effects on employment, as you heard, as well, and on  
21 credit ratings, which is not inconsequential damage to  
22 the domestic industry. Mr. Kinner read to you that  
23 industry analysts reports attribute the profit margin  
24 squeeze to these Asian imports. There are many other  
25 industry analysts that have said the same thing, and

1 we will bring those to your attention.

2           There is, in fact, one that is in the  
3 Respondents' exhibits and it is Moody's downgrading  
4 Wellman's credit rating, in which they say that part  
5 of it is new North American capacity and 'the threat,  
6 if not the actuality, of Asian competition.' It is  
7 not just us that is saying this; it is Moody's  
8 downgrading Wellman, because of the Asian import price  
9 competition and the margin effect that it had.

10           With regard to India, whether it should be  
11 cumulated, the Indian material is competing for sales  
12 that large customer accounts, accounts that have  
13 plants all over the United States, in the east and the  
14 west. And I would urge you to take a look at their  
15 Exhibit 5, you can see that there is competition  
16 between at least two countries on the east coast, even  
17 if that is their argument.

18           With regard to volume, the subject imports  
19 rapidly accelerated after the EU orders were entered  
20 through 2003 and the pendency of this litigation  
21 tempered those imports somewhat in 2004, but they  
22 remain significant. There was an observation that the  
23 GSP case could not possibly have had an effect. They  
24 were tempered earlier than the present petition was.  
25 But if you take a look at Exhibit 28 of Respondents'

1 exhibits, you'll see that there is an analysis of the  
2 GSP case and in there, it was observed that there  
3 could be a dumping petition following on. And that  
4 was in November 2003. So, the subject import -- the  
5 subject producers were observing those effects and  
6 they are responding to the trade actions when they  
7 reduced their imports to the United States.

8 Now, let's talk about whether those imports  
9 were small. The 2003 volume, according to Customs,  
10 was 430 million pounds. If you take demand growing in  
11 the United States at seven percent a year, one year,  
12 that is 400 to 500 million pounds. So what you saw  
13 there was the subject imports taking a full year of  
14 growth in the United States, a full year of growth.  
15 So, those volumes were displacing U.S. sales and they  
16 are significant.

17 Let us go to price effects. The U.S.  
18 producers testifying here reported their own  
19 experience of underselling by subject imports of up to  
20 12 cents per pound. Mr. Mullock said, he concedes.  
21 He is going to switch suppliers for less than one cent  
22 a pound and for more than one cent a pound, as well.  
23 We believe that's significant testimony that  
24 corroborates what we have been saying.

25 Also, corroborating the testimony you heard

1 today is our confidential analysis of the --

2 CHAIRMAN KOPLAN: Ms. Cofrancesco, if you  
3 could wind it up, because your time has expired.

4 MS. COFRANCESCO: Thank you. I would also  
5 like to point out that Mr. Mullock's testimony about  
6 his ability to pass through and he must pass through  
7 the raw material costs or else he cannot survive, goes  
8 directly to the testimony we have offered today.  
9 Without the ability to pass on raw materials, this  
10 industry cannot survive either, and it is the subject  
11 imports that prevented them from doing so. Thank you.

12 CHAIRMAN KOPLAN: Thank you. Ms. Esserman,  
13 if I can -- before you start, this has just come to my  
14 attention from staff, investigative staff, and I'd  
15 like to address this to Mr. Mullock, as a result. It  
16 happened a moment ago. Mr. Mullock, you testified  
17 that your firm does have sales to Pepsico. This  
18 morning, we heard that Pepsico was one of the three  
19 largest brand owners in the market. Can you provide  
20 confidentially the details of your contract with  
21 Pepsico to the Commission for purposes of the post-  
22 hearing? We'll take that confidentially. I need you  
23 to use a microphone to respond.

24 MR. MULLOCK: Yes, Mr. Commissioner. This  
25 is not working?

1                   CHAIRMAN KOPLAN: It's working.

2                   MR. MULLOCK: This is working. My answer  
3 is, we do have a written contract with them, but that  
4 contract can only be released with the permission of  
5 the senior executive of my company. So, I don't feel  
6 comfortable responding in the affirmative here until I  
7 have communication with him and our attorney.

8                   CHAIRMAN KOPLAN: Would you do that and then  
9 let Ms. Mazur of our staff know --

10                  MR. MULLOCK: I will.

11                  CHAIRMAN KOPLAN: -- whether you can comply  
12 with my request?

13                  MR. MULLOCK: Yes, sir.

14                  CHAIRMAN KOPLAN: Thank you. I'd appreciate  
15 it.

16                  MR. MULLOCK: You're welcome.

17                  CHAIRMAN KOPLAN: All right. I'm sorry for  
18 that, Ms. Esserman. You may proceed.

19                  MS. ESSERMAN: Thank you, Mr. Chairman. We  
20 submit this is a very unusual case to come before the  
21 International Trade Commission. You have small and  
22 declining volume. You have rapidly rising prices and  
23 increasing trends, as I've indicated earlier.

24                  Clearly, Petitioners have conceded that  
25 volume is not injurious. They've indicated that the

1 larger NAFTA volume that they, themselves, import is  
2 not injurious. So, it is inconceivable that this  
3 smaller volume could be injurious. In fact, they have  
4 no price case and no evidence to tie any adversity  
5 they face to the small volume of imports, whatever  
6 period you use, whether it's -- whether you consider  
7 2004 or not.

8 In fact, prices have been rising rapidly.  
9 What they -- their only price case is that they claim  
10 that they should have increased prices a 100 percent  
11 to reflect the astronomical raw material price  
12 increases, which they, themselves, today, indicated as  
13 going from an almost historic low, to historic high  
14 during the period of investigation. That would be  
15 difficult to do in any case; but as the record shows,  
16 there was an additional factor and that is that they  
17 introduced in 2003 substantial capacity in the market.  
18 And, in fact, if you listen carefully to the testimony  
19 this morning, they indicated it took some time to  
20 absorb that capacity in the market.

21 And I ask and bring to your attention the  
22 exhibit they submitted today, current and planned  
23 capacity expansion is insufficient to meet growing  
24 U.S. PET resin demand. You will see here that the  
25 capacity in 2003 that they have here, the year in



1       which -- that we believe really did affect their  
2       situation, the difference between capacity and demand  
3       is the greatest.

4                 In any event, I think you need to -- you've  
5       been presented with two different theories of the  
6       case. They have alleged that this small volume of  
7       imports have come in at very low prices and taken away  
8       a huge volume of sales from them. You would expect in  
9       that kind of situation a much bigger market share and  
10      pervasive underselling. I think the record shows to  
11      the contrary and that's why they're urging you to use  
12      alternative data. To the contrary, in 2003, what you  
13      see, the only point in which there was a slight  
14      increase in market share for the subject imports, you  
15      see significant overselling in the product category  
16      where there's the most competition.

17                Finally, I think there can be no case for  
18      threat. The import volumes are small. They are going  
19      to be impeded, continued to be impeded by this Asian  
20      raw material disadvantage. There is very promising  
21      growth in this market, as you've heard from many  
22      witnesses today and robust growth in the home markets  
23      and in the country-- the third country, whose markets  
24      are targeted. That is particularly the case for  
25      India, again, which we believe should be decumulated,

1 as it's only in the east coast, sales a narrow range  
2 of product substantially oversold the domestic  
3 producer, it has a substantial export markets to which  
4 it sells, and very, very vigorous growth in its own  
5 home market. Thank you, very much.

6 CHAIRMAN KOPLAN: Thank you, Ms. Esserman.  
7 Before I close, I want to complement both sides on  
8 their detailed direct presentations and their  
9 responses to our questions. I, also, look forward to  
10 the post-hearing submissions.

11 Post-hearing briefs, statements responsive  
12 to questions, and requests of the Commission and  
13 corrections to the transcript must be filed by March  
14 22, 2005; closing of the record and final release of  
15 data to the parties by April 6, 2005; and final  
16 comments are due April 8, 2005. And with that, this  
17 hearing is adjourned.

18 (Whereupon, at 5:48 p.m., the hearing was  
19 concluded.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Polyethylene Terephthalate (PET) Resin  
**INVESTIGATION NO.:** 701-TA-439-440 & 701-TA-1077-1080 (Final)  
**HEARING DATE:** March 15, 2005  
**LOCATION:** Washington, D.C.  
**NATURE OF HEARING:** Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

**DATE:** 3/15/05

**SIGNED:** LaShonne Robinson  
Signature of the Contractor or the  
Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 600  
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

**SIGNED:** Carlos Gamez  
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

**SIGNED:** Jacqueline Richards-Craig  
Signature of Court Reporter