

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
HEDP FROM CHINA AND INDIA) Investigation Nos.:
) 731-TA-1146 and
) 731-TA-1147 (Final)

Pages: 1 through 190

Place: Washington, D.C.

Date: March 3, 2009

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888
contracts@hrccourtreporters.com

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation Nos.:
 HEDP FROM CHINA AND INDIA) 731-TA-1146 and
) 731-TA-1147 (Final)

Tuesday,
 March 3, 2009

Main Hearing Room 101
 U.S. International
 Trade Commission
 500 E Street, S.W.
 Washington, D.C.

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

APPEARANCES:

On Behalf of the International Trade Commission:Commissioners:

SHARA L. ARANOFF, CHAIRMAN (presiding)
 DANIEL R. PEARSON, VICE CHAIRMAN
 DEANNA TANNER OKUN, COMMISSIONER
 CHARLOTTE R. LANE, COMMISSIONER
 IRVING A. WILLIAMSON, COMMISSIONER
 DEAN A. PINKERT, COMMISSIONER

APPEARANCES: (Cont'd.)

Staff:

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION
BILL BISHOP, HEARINGS AND MEETINGS COORDINATOR
SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT
NATHANAEL COMLY, INVESTIGATOR
STEVEN WANSEER, INTERNATIONAL TRADE ANALYST
JAMES FETZER, ECONOMIST
DAVID BOYLAND, ACCOUNTANT/AUDITOR
KARL VON SCHRILTZ, ATTORNEY
DOUGLAS CORKRAN, SUPERVISORY INVESTIGATOR

In Support of the Imposition of Countervailing and
Antidumping Duties:

On Behalf of Compass Chemical International, LLC:

DANIEL MCCAUL, President and Chief Operating
Officer, Compass Chemical International, LLC
BRIAN FAILON, Vice President, Business Development
& Technology, Compass Chemical International, LLC

JEFFREY S. LEVIN, Esquire
Mondial Trade Compliance Services & Solutions,
Inc.
Bethesda, Maryland

In Opposition to the Imposition of Countervailing and
Antidumping Duties:

On Behalf of The Ad Hoc Water Treatment Chemical
Producers Committee and its individual members:

GEORGE COLLIAS, Treasurer, Uniphos, Inc.
DR. JEFF WANG, President, Bosgen, Inc.

DAVID J. CRAVEN, Esquire
Riggle & Craven
Chicago, Illinois

I N D E X

	PAGE
OPENING STATEMENT OF JEFFREY S. LEVIN, ESQUIRE, MONDIAL TRADE COMPLIANCE	5
OPENING STATEMENT OF DAVID J. CRAVEN, ESQUIRE, RIGGLE & CRAVEN	9
TESTIMONY OF DANIEL MCCAUL, PRESIDENT, COMPASS CHEMICAL INTERNATIONAL, LLP	10
TESTIMONY OF BRIAN FAILON, VICE PRESIDENT, BUSINESS DEVELOPMENT & TECHNOLOGY, COMPASS CHEMICAL INTERNATIONAL, LLC	18
TESTIMONY OF JEFFREY S. LEVIN, ESQUIRE, MONDIAL TRADE COMPLIANCE	29
TESTIMONY OF GEORGE COLLIAS, TREASURER, UNIPHOS, INC.	123
TESTIMONY OF DR. JEFF WANG, PRESIDENT, BOSGEN, INC.	150
TESTIMONY OF DAVID J. CRAVEN, ESQUIRE RIGGLE & CRAVEN	119
REBUTTAL/CLOSING REMARKS OF JEFFREY S. LEVIN, MONDIAL TRADE COMPLIANCE SERVICES & SOLUTIONS, INC.	184
REBUTTAL/CLOSING REMARKS OF DAVID J. CRAVEN, RIGGLE & CRAVEN	188

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(9:32 a.m.)

CHAIRMAN ARANOFF: Good morning. On behalf of the United States International Trade Commission I welcome you to this hearing on Investigation Nos. 731-TA-1146 and 731-TA-1147 (Final) involving HEDP from China and India.

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 less than fair value imports of subject merchandise.

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

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

Finally, if you will be submitting documents

1 that contain information you wish classified as
2 business confidential your requests should comply with
3 Commission Rule 201.6.

4 Madam Secretary, are there any preliminary
5 matters?

6 MS. ABBOTT: No, Madam Chairman.

7 CHAIRMAN ARANOFF: Very well. Let us
8 proceed with the opening remarks.

9 MS. ABBOTT: Opening remarks on behalf of
10 Petitioner will be by Jeffrey S. Levin, Mondial Trade
11 Compliance Services & Solutions.

12 MR. LEVIN: Thank you. Good morning,
13 Commissioners and members of the Investigation Team.
14 My name is Jeff Levin, I am with Mondial Trade
15 Compliance, and I have the great pleasure and distinct
16 privilege of representing Compass Chemical
17 International in this important proceeding. With me
18 today and here to testify this morning are Daniel
19 McCaul, President of Compass Chemical, and Compass's
20 Vice President for Business Development & Technology,
21 Brian Failon.

22 I think it is fair to say that there are no
23 persons in this country better equipped and better
24 positioned to describe the subject merchandise, HEDP
25 and the U.S. market conditions for this product than

1 these two gentlemen. On behalf of Compass Chemical we
2 respectfully submit that the domestic industry is
3 materially injured and threatened with material injury
4 by subject imports HEDP from China and India.

5 The Department of Commerce issued this past
6 October affirmative preliminary dumping determinations
7 with respect to these subject imports, and we
8 anticipate affirmative final determinations from the
9 Department later this week. Compass Chemical is
10 headquartered in Chicago, with manufacturing
11 facilities in Huntsville, Texas and Smyrna, Georgia.
12 The Smyrna plant alone manufactures HEDP. Compass is
13 the only producer of a full line of phosphonates,
14 including HEDP, in the United States. It is the last
15 and sole surviving U.S. manufacturer of HEDP. It is
16 the domestic industry.

17 These investigations are particularly
18 interesting on several bases. This is a one-company
19 domestic industry. That one company started life as
20 an HEDP importer from China. It was in fact a
21 significant importer of the product. However after
22 Compass made a very calculated business decision to
23 purchase the Smyrna plant in mid-2006 it made another,
24 perhaps more important and calculated business
25 decision, and that was to get out of the importing

1 business and to become solely a domestic producer.

2 In fact Compass ceased its importations of
3 the product in the fourth quarter of 2007. The
4 company is here today not to request a bailout to help
5 it survive. If that were the case they would have
6 hired a lobbyist and taken their cause down the street
7 a bit to another branch of the Federal government.
8 They are asking for a chance, a level and fair playing
9 field, so that they can compete on an even keel with
10 unfairly traded imports.

11 In these extraordinarily challenging times
12 this company is doing something rather laudable. It
13 has made considerable investments in their production
14 facilities to remain a domestic manufacturer, serving
15 their customers and their employees. In the face of a
16 severe economic headwind not seen for a generation or
17 more, this company has decided to take the cause of
18 ramping up its domestic production, make all of its
19 product here rather than to outsource or to revert to
20 imports.

21 That was certainly not the easy decision to
22 make, and no one can guarantee on this date that it
23 was the correct decision. But its decision to stand
24 and fight against what it perceives to be injurious
25 and unfairly traded imports, standards which we

1 respectfully submit are well supported by the evidence
2 of record, reflects well on the character of this
3 company, its ownership, its employees, and to Mr.
4 McCaul and Mr. Failon here today.

5 In the presence of relief, an opportunity to
6 compete fairly against dumped imports, this company
7 can well demonstrate in its own market the strength of
8 American manufacturing. In the absence of such relief
9 it is highly questionable whether such an operation
10 can endure or survive. We respectfully submit based
11 on the evidence of record in this proceeding that
12 subject imports have increased significantly, that
13 these imports have had a harmful pricing impact on
14 domestically manufactured HEDP, and that these facts
15 have resulted in material injury to the domestic
16 industry.

17 Moreover we respectfully submit that this
18 industry is further threatened with material injury by
19 reason of the subject imports. We look forward to
20 presenting our case this morning, to responding to the
21 Commission's questions, and to presenting additional
22 evidence in our posthearing brief next week. Thank
23 you.

24 MS. ABBOTT: Opening remarks on behalf of
25 Respondents will be by David J. Craven of Riggle &

Heritage Reporting Corporation
(202) 628-4888

1 Craven.

2 MR. CRAVEN: Good morning. My name is David
3 Craven. I'm with the law firm of Riggle & Craven.
4 I'm appearing today on behalf of the Ad Hoc Water
5 Treatment Chemical Producers Committee and its
6 individual members. The members are Zhang Tsu Zhang
7 Hai Chemical Group, Wu Jin Fine Chemical Factory, and
8 the Nan Jing University of Chemical Technology Chong
9 Xiou Wu Jin Water Quality Stabilizer Factory. I am
10 accompanied today by Mr. George Collias of Uniphos and
11 Dr. Jeff Wang of Bosgen Chemicals.

12 Rather than engage in a long opening
13 statement I would simply say we are pleased to be here
14 today to present our case to the Commission. We
15 believe that this is, as the domestic industry has
16 noted, an interesting industry. And we think that the
17 discussion today will be very productive and fruitful,
18 and we look forward to presenting our testimony.
19 Thank you.

20 MS. ABBOTT: Will the first panel in support
21 of the imposition of an antidumping duty order please
22 come forward and be seated?

23 Madam Chairman, all witnesses have been
24 sworn.

25 (Witnesses sworn.)

1 MR. LEVIN: Thank you, Commissioners. Our
2 first witness on behalf of Petitioners will be the
3 President of Compass Chemical International, Mr.
4 Daniel McCaul. Danny?

5 MR. MCCAUL: Good morning, Commissioners and
6 Staff and everybody else. Thank you for your time
7 today. A couple words about me first of all. Yes,
8 I'm the president of Compass Chemical and I graduated
9 with an honors degree in mechanical engineering from a
10 university in England which is now Portsmouth
11 University. I came to the United States about 34
12 years ago. I became a citizen about five years after
13 getting here. My wife and I have five children, seven
14 grandchildren. We're in the process of taking over
15 this country.

16 I have been in the chemical industry for
17 almost 40 years. The way things are going I may be in
18 it for another 40 years, but I became familiar with
19 the production and marketing of phosphonates
20 approximately 13 years ago when Calloway Chemical
21 Company acquired the facility which is in Smyrna,
22 Georgia, which is where we make the phosphonates today
23 and where we make HEDP today.

24 The plant had existed for about 50 years I
25 would say and made different products. And we started

1 manufacturing phosphonates and HEDP I would say maybe
2 30 years ago, 25 years perhaps. And there have been
3 different owners of the plant, and actually over the
4 period of the 50 years or so there's been four
5 different owners, and I have been responsible for the
6 operations there with the last three of those owners.
7 And so I'm very familiar with the manufacture of HEDP
8 and what we do at the plant there.

9 The plant is as Jeff said the only remaining
10 full line producer of phosphonates in the United
11 States. We are the only remaining producer and we are
12 the only producer of HEDP in the United States. We
13 make some other products, polymers, dispersants,
14 various other things, especially chemicals at the
15 plant. At Compass we probably have about 65
16 employees, so we're not a very large company but, you
17 know we're not tiny either. Those 65 employees
18 include sales people and management and office folk
19 and what have you.

20 The vast majority of our employees are
21 production workers, and they're very experienced and
22 very knowledgeable people. We have a good efficient
23 manufacturing operation, and over the years we've made
24 many improvements in cutting costs and improving cycle
25 times and all the things that you do in the chemical

1 industry in order to stay in business and to be
2 successful. Compass Chemical acquired the plant as I
3 mentioned, and they acquired it in July, 2006. And
4 Compass itself began life maybe 10 years ago as an
5 importer, mainly from China, various chemicals
6 including phosphonates.

7 And Compass grew from nothing really to
8 become a competitor of note in the business with
9 phosphonates and other water treatment chemicals. So
10 in 2006 Compass decided, okay we're going to acquire
11 this manufacturing plant, and believed as I believe
12 that we could be competitive, we could be successful
13 in the business, especially by importing the
14 competitively priced raw material from China,
15 phosphorous acid, and using that to produce
16 phosphonates rather than the method that had been used
17 up to that point, which was using PCL-3.

18 So we looked at the economics of that and
19 said, you know, with Compass's supply position with
20 this raw material we really can make phosphonates here
21 in Smyrna and really compete with anybody else. Why
22 bother to produce in the United States? You might
23 wonder, well what was the logic there and why would we
24 think it mattered? Well I think first of all we
25 believed, and we still believe, that we could compete,

1 we could make a profit, we could be successful making
2 products in the United States, and we could win
3 actually by competing with the lower cost raw
4 materials etcetera.

5 You know we are and we can continue to be a
6 low cost producer. We believe that there's a place
7 for a U.S. producer. Large U.S. customers of ours
8 have said to us, look we'd like to have you as a
9 supplier, we like the idea of the short supply line,
10 we like the idea of having a supplier of a key raw
11 material being right here in the U.S., somebody that
12 we can easily talk with, we can go and visit if we
13 need to, we can have somebody that can deal with
14 problems and, you know, deal with things quickly,
15 etcetera.

16 So there's a lot of advantages that they saw
17 with having us as a supplier. And there's a certain
18 degree of security in that, in having that situation
19 with a key supplier. So we understand of course that
20 we need to be competitive, and nobody can afford these
21 days to pay a premium to have us as a U.S. supplier,
22 and we weren't expecting that of course. So we looked
23 at this whole situation, we looked at the economics,
24 we became convinced that we could be successful.

25 The wild card in our plans was what was

1 going to happen with the importers of product from
2 China and India? How would they behave? How would
3 things go moving forward? We weren't concerned with
4 competing with companies importing product from the
5 U.K., and the reason there is that we were familiar
6 with their economics and their situation. Remember
7 prior to Compass acquiring this facility we had been
8 working with Rodia and manufacturing products for
9 Rodia. Rodia was manufacturing products in the U.K.

10 So I had a good sense and a good knowledge
11 and understanding of what Rodia's economics were, and
12 I was confident that we could take business away from
13 them, grow our business, and we certainly could
14 compete with those imports from the U.K. So that
15 wasn't a concern. The concern was China, the concern
16 was India, and how would we be able to compete with
17 those guys and what would happen with the importers as
18 time went forward.

19 Well the answer is that the imports from
20 China and India, the importers continued to offer
21 lower pricing and to grow marketshare. And if you go
22 back ten years or so, we had no concern about imports
23 from China or India, their marketshare was very very
24 small. And if you look at the pattern that's happened
25 over that period of time the volume of imports from

1 China has grown amazingly over that period of time.
2 So we started manufacturing as Compass, or continued
3 manufacturing, because the plant has been making
4 product as I mentioned for quite a few years.

5 So but using the phosphorous acid as the
6 main raw material and getting that going, how did we
7 do? Well in 2006 with HEDP we were losing money. In
8 2007 a little bit better but still losing money in
9 2007. 2008 was, the cashflow from HEDP was positive.
10 The net earnings if you deduct depreciation costs was
11 negative, but at least in 2008 it was a more
12 manageable situation.

13 2008 the first three quarters in particular
14 there were a lot of strange things going on with
15 shortage of supply of phosphorous from China. It
16 drove up the cost of phosphorous which is a base raw
17 material for making phosphorous derivatives, and drove
18 up the cost of everything else that had a phosphorous
19 element in it. And so our costs went up but pricing
20 went up also, and it was an unusual situation.

21 I would say this to you, that since that
22 period of time elapsed, and I would say in the last
23 three to four months, the prices have plummeted again,
24 and the Chinese and Indians are offering product at
25 incredibly low prices again. So we are headed right

1 now back to the situation back in 2006, and if
2 something doesn't happen here. So anyway, to get back
3 on track, after carefully studying the situation and
4 gathering data, etcetera, we concluded that, and this
5 was in 2007, we concluded that the Chinese and Indian
6 importers, they're dumping product into the United
7 States.

8 We were certain of this so we decided we
9 needed to file an antidumping petition. We decided
10 that if something wasn't done about it that it would
11 be difficult for us to continue manufacturing HEDP.
12 We have other products and, you know you can survive a
13 loss in one product as long as the other products are
14 profitable, but if the drain on your bottom line
15 results is too large then you just can't put up with
16 that too long.

17 So HEDP is an important product to us. It's
18 one that we don't have to get rich on HEDP, we've got
19 to be competitive with it. We've got to be able to at
20 least be on the break-even positive side with the
21 product. But the overall phosphonate business is
22 important. It's important for us to look at that as
23 well. And HEDP is the largest phosphonate that's used
24 in the water treatment industry.

25 And you could say, well you could stop

1 making HEDP but make the other phosphonates, and you
2 know that's a possibility but the problem for us with
3 that is that if we don't offer HEDP as part of our
4 portfolio, if we don't have that product along with
5 the others, then I think it would be difficult for us
6 to be a major player and to grow our business. Think
7 about it this way, if you are a customer and we came
8 to you and said, we're not going to supply HEDP
9 anymore, which is the largest volume phosphonate,
10 we'll supply you the other ones.

11 And here they were looking at us as saying,
12 okay you're a U.S. producer and we're going to work
13 with you and we'd prefer the short supply line that I
14 talked about, etcetera, and then all of a sudden they
15 have to get their HEDP from an importer, you know it's
16 an easy step for them then to say, well since we're
17 getting our HEDP from this Chinese importer we might
18 as well get our other phosphonates from this guy as
19 well because he can bring that over just as easily as
20 he brings over HEDP. And pretty soon our volume and
21 our business is going to disappear.

22 It would be a problem not to be supplying
23 the full range of phosphonates and not have HEDP in
24 our product line. So over this period of time then,
25 you know we've seen the Chinese volume growing, we've

1 seen the Indian volume growing from nothing to very
2 significant over the last ten, twelve years, and then
3 even over the period of investigation we've seen the
4 volumes increasing from imports. The pricing has
5 declined. Pricing is, you know it reached a point
6 where it was less than half of what the pricing used
7 to be at one point.

8 And there's a lot of data and evidence this.
9 I believe there's clear evidence of dumping, and we've
10 presented that information and it's been investigated,
11 and you know we're confident that dumping has
12 occurred. Our business has been damaged. We've lost
13 business, we've lost sales. We continue to lose
14 business. The importers today are bombing the
15 marketplace with extraordinarily low prices, and
16 prices are falling rapidly. And in general I fear for
17 our survival in this business if action is not taken.
18 Thank you.

19 MR. LEVIN: Thank you, Danny. Brian Failon,
20 Vice President for Business Development & Technology
21 with Compass Chemical. Brian?

22 MR. FAILON: Good morning, ladies and
23 gentlemen. My name is Brian Failon. I am currently
24 Vice President of Business Development & Technology
25 with Compass. I hold a B.S. in chemistry from the

1 College of William and Mary, an M.S. in chemical
2 engineering from the University of Virginia. While I
3 was at William and Mary as an undergrad I interned at
4 Nalco Chemical. By now I think you've seen that name
5 in the various submissions.

6 They are one of the largest if not the
7 largest consumer of HEDP, and they are also the leader
8 in industrial water treatment. I was there in the
9 summers from '83, '82, leading to a full time position
10 from '84 to '88. I was in research and development,
11 which included scale control formulation, and again I
12 was there '84 to '88. I joined Albright & Wilson in
13 1988. At that time they were a U.K. importer of its
14 Briquest Phosphonates, which included HEDP. And
15 through late 1999 I served in various marketing,
16 sales, and technical service roles.

17 When I left I was the product manager for
18 the Briquest line, again which included HEDP. We had
19 built a grass roots HEDP plant in Charleston, South
20 Carolina for the sole purpose of being self reliant on
21 domestic production. I should note that we effected
22 this independence from Britain without a revolution.
23 When it appeared that Albright & Wilson was going to
24 be acquired by Rodia, I left the company in October of
25 1999 and I joined Compass shortly after its startup.

1 Since October of 1999 I've served in various
2 sales and market development, sales management,
3 technical support, and now business development. I
4 brought the phosphonate business to Compass based on
5 my experience at Albright & Wilson, and now
6 cumulatively I've been in the phosphonate business,
7 and HEDP in particular, since 1988, so a little over
8 20 years. In March of last year I authored the
9 subject petition.

10 Now getting to the meat of the testimony,
11 over the next 15 minutes or so I'm going to review the
12 product history, the manufacturing process, the
13 interchangeability, how the product is sold, how the
14 product is priced, factors affecting demand, and then
15 wrap up with competition in the U.S. market. HEDP,
16 which is 1-hydroxyethylidenebisphosphonic
17 acid), I know the Commissioners get a kick out of
18 that. It was patented by Proctor & Gamble in 1968 but
19 it was licensed thereafter by Monsanto.

20 And Monsanto is generally acknowledged as
21 the pioneer of phosphonates. They manufactured and
22 marketed HEDP as their Dequest 2010, that was their
23 trade name. They marketed it throughout its patent
24 life and thereafter. They were making the product
25 domestically in Everett, Massachusetts. Mayo Chemical

1 in the U.S. in Smyrna, Georgia, the plant that we own
2 now, and Albright & Wilson in Oldbury, England near
3 Birmingham, began manufacturing HEDP after the patent
4 expired somewhere in the early to mid-80s.

5 Monsanto closed its Everett, Massachusetts
6 plant in 1992 and they moved their production back to
7 the U.K. in Wales. Very near this timeframe Albright
8 & Wilson commenced manufacture in Charleston and
9 discontinued its imports from the U.K. However by the
10 late 1990s profit margins on HEDP had started to erode
11 partially because lower cost product was becoming
12 available out of China and India, so the warning signs
13 were there.

14 Albright & Wilson was able to ship
15 production, albeit permanently, to an ag chemical
16 intermediate, thereby ending its relatively short run
17 as a domestic HEDP producer, and again that was
18 roughly 1992 to 1998, a pretty short life. Compass
19 began importing HEDP in 2000, followed by a conversion
20 to domestic production in 2006 and 2007. By the end
21 of 2007 we had ceased importation completely.

22 HEDP is one member of a family of
23 phosphonates that are used to inhibit the formation of
24 mineral scales and/or to sequester metal ions which
25 adversely affect the process or the product. The

1 applications for HEDP include industrial water
2 treatment, by far the biggest, reverse osmosis, which
3 is a growing application, industrial and institutional
4 compounding, sometimes just called I&I, oil field,
5 peroxide manufacture, and recreational water
6 treatment, for example swimming pools.

7 HEDP is unique among the phosphonates in
8 that it's the only one that combines the following
9 highly desirable physical and functional properties.
10 It's colorless, it's chlorine stable, so you add
11 chlorine to pools for example. It has low chlorides,
12 chloride being one of the impurities. It has
13 excellent calcium and iron sequestration, and it's an
14 effective scale inhibitor.

15 Turning to the manufacturing process there
16 are several routes to HEDP manufacture. You've
17 already heard mention of two of them. What they share
18 in common is they require a phosphorous acid source
19 and an acetic acid source. One route was phosphorous
20 trichloride, or PCL-3, reacted with acetic anhydride.
21 That's the route that the Smyrna plant was operating
22 it on at the time Compass acquired Smyrna. Another
23 route is the phosphorous acid crystal or flake reacted
24 with acetic anhydride. That's the process we switched
25 to shortly after we acquired the Smyrna plant.

1 And then the third process is PCL-3 reacted
2 with glacial or anhydrous acetic acid. Again Compass
3 switched to scheme 2 in order to take advantage of our
4 favorable cost position on PAC. The company has been
5 a leading importer and marketer of phosphorous acid
6 since our inception in 1999, so we were no stranger to
7 phosphorous acid. And based on our costs of both
8 phosphorous acid crystal and our PCL-3 cost in late
9 2006 we anticipated more than a 25 percent reduction
10 in our total raw material cost.

11 The Chinese producers are believe to operate
12 under the third scheme, the PCL-3 with the glacial
13 acetic acid. The byproducts from the process include
14 acetic acid, often 56 percent solution, hydrochloric
15 acid, almost invariably 36 percent, and/or acetyl
16 chloride. The only byproduct that Compass currently
17 generates is acetic acid. Sales of these byproducts
18 are usually necessary to ensure economic viability of
19 the process as a whole. And since the switch to PAC
20 we believe we are a low cost producer.

21 I'm going to touch now on the universe of
22 suppliers. Before I get into that, I need to make a
23 distinction between suppliers and producers.
24 Suppliers sell HEDP to distributors or compounders.
25 Producers make the HEDP and sometimes, but not always,

1 sell it to distributors or compounders. Compass is
2 both a producer and a supplier of HEDP. We were just
3 a supplier back in the 2000 to 2006 timeframe when we
4 were importing.

5 Other producers whose HEDP ends up in the
6 U.S. include Thermphos out of the U.K., Rodia out of
7 the U.K., Aquafarm out of India, XL Industries out of
8 India, and then from China the following, Wu Jin Water
9 Stabilizer Company, Wu Jin Fine Chemical Factory,
10 Zhang Tsu Zhang Hai, Pew Hue Fine Chemical, and Xian
11 Dong Tai Hue. Other suppliers would include
12 distributors like Brentag and Univar. They would also
13 include importers like Wego and SDA.

14 I'm going to touch now on
15 interchangeability. HEDP from the U.S., U.K., India,
16 and China is completely interchangeable, period. When
17 Albright & Wilson discontinued HEDP manufacture in
18 roughly 1998 we looked at material from XL Industries
19 out of India, and we looked at one of the Chinese
20 producers to fill what we saw as an anticipated gap
21 between what our sales were and what we could
22 realistically source from our U.K. parent out of
23 Birmingham. Both of those sources met our
24 specifications.

25 In the decade since then HEDP has been

1 commoditized to the point where product made by all of
2 the producers above is interchangeable provided it
3 meets the widely accepted industry specifications.
4 Those generally include percent actives, the color,
5 and a few maximum allowable levels of impurities. How
6 the product is sold. HEDP is sold in bulk tank trucks
7 or in the case of import product in what's called ISO
8 containers, which are bulk import containers.

9 It's also sold in 55-gallon drums, and what
10 we call totes. They're roughly 300 gallons, they hold
11 the equivalent of five drums. They're often called
12 tote bins, sometimes they're called intermediate bulk
13 containers or IBCs. Customers for HEDP are
14 distributors, compounders, which are also sometimes
15 called formulators or blenders, and end users. Rarely
16 if ever is bulk product sold to distributors.

17 And if HEDP is sold to an end user -- an
18 example of an end user would be a utility. Sometimes
19 utilities buy HEDP in bulk because they're going to
20 treat the water themselves. Rarely are drums or totes
21 sold to an end user by one of the producers. This
22 leaves six channels of sale. In order of decreasing
23 importance, bulk to compounders, truckloads of drums
24 or totes to compounders. And a truckload is generally
25 defined as being 24,000 pounds or greater, some view

1 it as 40,000 pounds.

2 But the third channel of sale is truckload
3 of drums or totes to distributors, followed by less-
4 than-truckload quantities of drums or totes to
5 compounders, that would be LTL. LTL drums or totes to
6 distributors, and then finally bulk to end users. I
7 can't think of a single example of Compass selling
8 bulk to an end user at this time. How the product is
9 priced. Before the influx of import material from
10 China and India pricing was more or less a function of
11 if not proportional to a customer's volume, sometimes
12 called their requirement.

13 Also in this BC, before China, era, bulk
14 product was priced lower than drums or totes since
15 there was additional cost associated with the package
16 and the labor to fill the package. The surge in
17 Chinese and Indian imports led to a paradigm shift in
18 pricing practices however. Due to the much higher
19 cost of bulk import freight in ISO containers compared
20 to bringing over a full container of drums or totes,
21 bulk pricing began to carry a premium over drums and
22 totes. This was not intuitively obvious initially to
23 the customer base that was accustomed to getting
24 discounts for taking product in bulk.

25 It was not unusual for us as Compass to de-

1 drum a container of drums into a bulk tank or a tank
2 truck and then throw the drums away. It was simple
3 economics, it was cheaper for us to pay the container
4 freight and then pay the de-drumming and disposal of
5 the drums than to bring the product over in bulk. Not
6 a very brain practice but it was far cheaper. Some
7 importers unfamiliar with the concept of volume-
8 dependent pricing started offering the same price to
9 all customer FOB their warehouse or warehouses.

10 How we price product now at Compass, it
11 varies according to a somewhat subjective
12 classification of our customers. Our lowest prices
13 are to contract or large-volume accounts, followed by
14 loyal or longstanding accounts, and then lastly spot
15 or low-volume accounts. Contracts are usually 12
16 months in duration, and they can be arrived at by a
17 number of means. Customers often put forward an RFP
18 or an RFQ, standing for request for proposal or
19 request for quotation. They sometimes happen in
20 reverse auctions or direct negotiation between us and
21 our customer.

22 Some of the factors affecting demand. There
23 are just a few factors which can increase or decrease
24 demand. Warm weather generally increases demand due
25 to the increased use of cooling water and recreational

1 water. New or growing applications would increase the
2 demand for HEDP. An example of a growing application
3 is the reverse osmosis application in which brackish
4 or sea water can be passed through a membrane. That's
5 becoming more important as feed water quality
6 deteriorates and you have to clean up what you've got
7 to meet industrial and drinking water standards.

8 An overall slowdown in the economy such as
9 we have now would reduce demand as industrial plants
10 shut down or operate at reduced capacity. And then
11 finally migration of an entire industry such as
12 textiles will lower demand since HEDP is used in
13 alkaline peroxide bleaching of textiles. And finally
14 touching on competition in the U.S. market. Compass
15 has lost significant volume and marketshare to imports
16 of HEDP from China and India that have been sold at
17 less-than-fair value.

18 In many if not most cases the importers
19 themselves are mainly to blame. Many are little more
20 than brokers that are completely ignorant of the HEDP
21 market dynamics and settle into a cost plus pricing
22 mentality. They're satisfied with pricing their
23 product at 5 or 10 percent higher than their cost
24 rather than pricing at or slightly below the
25 prevailing market conditions. Thank you for your

1 attention. I'll look forward to fielding some
2 questions in a bit.

3 MR. LEVIN: Thank you, Brian. Good morning
4 again, Commissioners. On behalf of Compass Chemical I
5 would like to briefly walk through some of the legal
6 related issues in these investigations and to review
7 the material injury and threat factors to the extent
8 that I can in a public forum. Our principal arguments
9 regarding these matters were detailed in our February
10 24 prehearing brief, and we will address these matters
11 further in our posthearing brief.

12 First, there was no dispute by either of the
13 Respondent parties during the preliminary phase of
14 these investigations or by the Respondents here today
15 in their prehearing brief regarding the definition of
16 the domestic like product or the fact that there
17 should be a single domestic like product defined for
18 purposes of this proceeding. And as noted in the
19 prehearing report no party requested the collection of
20 additional information on domestic like product issues
21 in the final phase of the investigation.

22 Compass respectfully submits that the
23 definition of domestic like product is coextensive
24 with the definition of the subject merchandise. In
25 turn, as there should be no dispute that Compass is

1 the sole domestic manufacturer of HEDP and despite the
2 unfounded reference presented in Respondent's
3 prehearing brief, that is in fact the case. P-Chem is
4 not a domestic producer of HEDP. There is no dispute
5 that Compass constitutes by itself the domestic
6 industry.

7 Second, we respectfully submit that pursuant
8 to the Commission's well established analytical
9 framework and consistent with its determination in the
10 preliminary phase investigations, the Commission
11 should cumulate imports of HEDP from China and India
12 for purposes of these final investigations. The
13 petitions were filed on the same date, and the
14 evidence of record strongly demonstrates that the
15 subject imports compete with each other and with the
16 domestic like product in the U.S. market.

17 We note that the AWTCP, the Chinese
18 Respondents, did not dispute cumulation in its
19 prehearing brief, and of course no other Respondent
20 party presented a prehearing brief. Clearly the
21 imports are simultaneously in the market, as there was
22 substantial volumes of HEDP imported from both China
23 and India in each full and interim year covered by the
24 period of investigation.

25 In its preliminary determination the

1 Commission found that "On balance the record indicates
2 a reasonable degree of geographic overlap among the
3 subject imports from each country and the domestic
4 product." The Commission's preliminary determination
5 regarding overlap of geographic markets is supported
6 by evidence related in the prehearing report.
7 Although the specific percentages are confidential,
8 suffice it to say that in 2007 Compass's shipments of
9 domestically manufactured HEDP and subject imports
10 from both China and India were prevalent in the
11 Midwest, Northeast, and Southeast regions of the
12 United States.

13 In addition common or similar channels of
14 distribution exist with respect to both subject
15 imports and the domestic product. As detailed in the
16 prehearing report, and again avoiding confidential
17 references, we agree that sales to compounders are the
18 principal channel for both subject imports and the
19 domestic like product.

20 Lastly, Compass submits that there is a high
21 degree of fungibility between domestically
22 manufactured HEDP and subject imports from China and
23 India. Indeed as noted in the prehearing report, and
24 again I quote, "Staff believes that there is a high
25 degree of substitutability between domestically

1 produced HEDP and HEDP imported from the subject
2 countries." Consistent with this observation the
3 prehearing report notes that the elasticity of
4 substitution between U.S.-produced HEDP and subject
5 imported HEDP is likely to be in the range of 3 to 5
6 for HEDP, an estimate with which we agree.

7 The only argument regarding
8 interchangeability came during the preliminary phase
9 of these investigations and from the Indian producers
10 who evidently decided not to participate in this final
11 phase. And that had to do with the interchangeability
12 of product from China and product from India with
13 specific regard to NSF certification, and we address
14 that particular argument in detail in our prehearing
15 brief.

16 Furthermore we respectfully submit that
17 there is no reason for the Commission to exercise its
18 discretion not to cumulate imports for purposes of its
19 threat analysis, and no arguments on this issue have
20 been raised by the Respondents in the course of this
21 proceeding. We respectfully submit that the volume of
22 subject imports and the increase in subject imports in
23 both absolute and relative terms has been significant
24 over the period of investigation.

25 The data make clear that cumulated subject

1 imports increased from 2005 to 2006 before registering
2 a slight decline in 2007. We note that the slight
3 decline in 2007 is largely attributable to the fact
4 that Compass itself seriously curtailed its own
5 imports of the product in order to ratchet up domestic
6 production. We also note the reference in the
7 prehearing report to the fact that several importers
8 stepped into the void left by Compass's withdrawal
9 from the import market and increased their own imports
10 in 2007.

11 Despite the slight decline in 2007 subject
12 imports increased by a significant percentage between
13 2005 and 2007 and over the interim year periods. And
14 as a result of U.S. consumption, subject imports
15 increased throughout the period. Moreover on the
16 price of subject imports, subject imports had and
17 continues to have a depressive and suppressive impact
18 on the price of the domestic like product.

19 As we reviewed HEDP is a commodity product,
20 and subject imports are highly interchangeable with
21 domestically produced HEDP. As a result price is
22 almost always a substantial factor in purchasing
23 decisions. Indeed as recorded in the prehearing
24 report, price was named as the number one or two
25 factor in purchasing decisions by 25 of 41 respondent

1 purchasers. 33 of 41 respondent purchasers indicated
2 that price was a very important factor in purchasing
3 decisions, and 26 of 42 respondent purchasers stated
4 that the lowest priced HEDP will always or usually win
5 a sale.

6 The intense price competition within the
7 U.S. market is prompted by low priced imports from
8 China and from India. The prehearing report details
9 quarterly pricing comparisons for HEDP products. As
10 detailed in the report there were 62 instances where
11 prices for domestic HEDP and subject imports of HEDP
12 could be compared. Of these 62 comparisons there were
13 43 instances, 69 percent, where the subject imported
14 product was priced below the domestic product.
15 Margins of underselling averaged 20.2 percent.

16 Moreover, the intense pricing pressures on
17 Compass's domestic production of HEDP by subject
18 imports are illustrated by instances of lost sales or
19 revenues which we review in detail in our prehearing
20 brief, and which starkly demonstrate the importance of
21 lower price in purchasing decisions nearly always in
22 favor of the subject imports. Imports from China and
23 India have prevented Compass from receiving a price in
24 the U.S. market necessary to sustain operations at a
25 profitable level, and as such have an injurious price

1 effect on the domestic industry.

2 This Commission concluded in its preliminary
3 determination that the generally poor financial state
4 attributable in significant part to subject imports,
5 which were generally substitutable with the domestic
6 product and significant in volume and which undersold
7 the domestic product in a clear majority of quarterly
8 pricing comparisons. As that was true in May, 2008
9 under the preliminary determination standard, it is no
10 less true now.

11 Should the Commission determine that the
12 domestic industry is not currently suffering material
13 injury, it must determine that the industry is
14 threatened with material injury by reason of dumped
15 imports of HEDP from China and India. At the outset
16 we reiterate the testimony of Compass as set forth in
17 the petition and throughout the course of this
18 proceeding.

19 Namely, it may well be forced to cease
20 domestic manufacture unless a measure of relief is
21 imposed that would allow a level playing field in this
22 market and which will permit the opportunity for this
23 company to realize a reasonable level of financial
24 return. Under this very real contingency the domestic
25 industry is in the most tangible of senses threatened

1 with material injury by reason of dumped imports from
2 China and India.

3 We further note that a comprehensive
4 analysis of the Chinese and Indian producers and
5 exporters is preempted by the fact that many of those
6 companies failed to respond to the Commission's
7 request for information in these final phase
8 investigations. As such we respectfully submit that
9 the application of adverse inferences is necessary and
10 appropriate.

11 Notwithstanding this fundamental limitation,
12 the evidence of record indicates that the HEDP
13 industries in China and India are poised to threaten
14 the U.S. industry with material injury and to an even
15 greater extent than has been demonstrated to date. In
16 our prehearing brief we detail several probative
17 factors which indicate that, to the extent that
18 subject imports have not already caused the domestic
19 industry material injury, material injury will occur
20 by reason of subject imports unless antidumping orders
21 necessary to level the playing field are issued.

22 And again without going into business
23 proprietary information we respectfully submit that a
24 threat of material injury is demonstrated by
25 information relating to the production capacity of

1 HEDP producers in China and India, by inventory levels
2 for both those foreign producers that deign to offer a
3 response to the Commission's questionnaire, and by
4 U.S. importers.

5 It is demonstrated by the significant
6 increase in subject imports over the period of
7 investigation and by documented underselling of
8 domestically manufactured HEDP by subject imports from
9 both China and India throughout the period of
10 investigation. Compass's inability to gain a higher
11 price for its domestically manufactured product puts
12 in real jeopardy its continued existence as a U.S.
13 producer, let alone its ability to reinvest profits,
14 to the extent that they exist, in order to improve or
15 enhance production.

16 Although anomalous market conditions present
17 in 2008 allowed Compass to temporarily increase its
18 price in order to cover the extraordinary increase in
19 the cost of its raw material, it remains in a
20 precarious financial position. And now that market
21 conditions are reverting to that which existed prior
22 to 2008, Compass already sees a deterioration of its
23 selling prices and any temporary improvements that it
24 was able to achieve at the beginning of last year.

25 Incessant pricing pressures by subject

1 imports will exacerbate this reduction very possibly
2 to the point where this sole domestic producer will no
3 longer be able to maintain viable domestic production
4 operations. For these reasons we respectfully submit
5 that the Commission must find that the domestic
6 industry is threatened with material injury by reason
7 of subject import. And now Danny, if you would be so
8 kind as to bring our presentation on home?

9 MR. MCCAUL: Okay. Thank you for your
10 patience in this, and I'll just make a few final
11 points here and leave it at that. We believe that
12 there's a strategic value in having a water treatment
13 chemical manufacturer here in the United States,
14 someone who produces HEDP and supplies product for the
15 U.S. market. We are the only guy left standing in
16 that field, and we believe that we can compete. We
17 are happy to compete on a level playing field, but
18 we're deeply concerned about what's happening, what
19 has happened.

20 The situation is right now, pricing as I
21 mentioned is falling dramatically, and it's
22 appropriate that pricing should come down because
23 costs have come down. And we've been doing it of
24 course, moving pricing down because the raw material
25 cost from China had escalated so steeply in 2008. So

1 it is appropriate that prices should be coming down,
2 but the extent to which they're coming down now and
3 the pricing that's being offered in the market today
4 from China and India is just incredible.

5 And I believe that the Chinese and Indian
6 manufacturers are seeing a slowdown in their economies
7 just like we are. I believe that they are very
8 anxious to keep volume through their plants and
9 they're cutting prices like, you know, incredibly. So
10 that's what we're being faced with now, and it's a
11 serious concern for us. We have been materially
12 injured by dumping from China and India, and the
13 threat is very real that this will continue, which is
14 why we're asking for relief.

15 MR. LEVIN: Thank you, Danny. Thank you,
16 Brian. And thank you, Commissioners. That conclude
17 Petitioner's presentation. We'd be happy to respond
18 to any and all questions.

19 CHAIRMAN ARANOFF: Thank you very much, and
20 welcome to the Commission this morning. We appreciate
21 your taking time away from your business to come here
22 and tell us about your operations and to answer our
23 questions. We're going to begin the questioning this
24 morning with Commissioner Okun.

25 COMMISSIONER OKUN: Thank you, Madam

1 Chairman. And let me join in welcoming you here to
2 the Commission and thanking you for the information
3 you have provided thus far and for being with us today
4 to answer our questions. I think I wanted to start
5 and just get some more information about pricing
6 practices and, Mr. Failon, let me pick up on a couple
7 things that you were testifying to today to make sure
8 that I understand it.

9 You had talked about a change in the pricing
10 practice because of the imports, and you had talked
11 about, there had been a volume-based pricing but that
12 the imports were not doing that. And just in terms of
13 timing, make sure I understand, when you say there was
14 a change, was that a change after Compass started just
15 producing in the U.S. after the takeover or do you
16 think we would see that throughout the period of
17 investigation?

18 MR. FAILON: I think we're going to see that
19 throughout the period of investigation. It probably
20 occurred all the way back into the earlier part of
21 this decade, where again you had this shift where
22 you'd see bulk pricing offered at a discount, or
23 rather carried a premium, versus drum or tote product.
24 And then I recall from my days at Albright & Wilson
25 where we had a price sheet, a price schedule, that

1 would list all the products.

2 And that would list bulk price, a list price
3 for bulk, and then it would list several different
4 increments of volume for drums. It might list 0 to 4
5 drums, and then it might list 5 to 9 drums, and then
6 all the way up to 80 drums. That practice is
7 effectively gone, that's yesteryear. Now some of the
8 importers simply bring in a container of product to
9 their warehouse and they'll just slap one price on it.
10 This is the price FOB, my warehouse, doesn't matter
11 whether you take one drum or whether you take 50.

12 COMMISSIONER OKUN: Okay, and when you were
13 describing the different prices that Compass would
14 offer to large-volume, loyal customers, on the spot
15 market, distinctions, is there any further
16 distinctions with respect to where the product is
17 going? I mean who the end user would be or is it
18 really just based on those characteristics you
19 described?

20 MR. FAILON: Yeah, that's a good question.
21 We've got these guidelines we have. They are
22 internal, they're not published, but we do have
23 customer A, customer B, customer C, according to the
24 classifications I had, and the basis for those
25 baseline numbers are bulk product FOB our plant in

1 Smyrna, Georgia, that's the lowest possible number.
2 There are different upcharges that we apply. If we
3 put the product in drums we might add 6 cents per
4 pound upcharge for the drum.

5 And if we sell the product from one of our
6 warehouses -- we do have three warehouses, one in Long
7 Beach, California, another one in Huntsville, Texas,
8 and another up in Elgin, Illinois. The latter two we
9 own and operate, the Texas and the Illinois
10 facilities. But regardless of the facility we pass
11 along a surcharge to cover the freight in getting
12 product from our plant to that particular warehouse.
13 So for example out of Huntsville, Texas we may add 5
14 cents per pound to cover that freight, and when you
15 total that up from the drum itself you might be
16 looking at 11 cents per pound premium higher than the
17 bulk FOB Smyrna plant number.

18 COMMISSIONER OKUN: Okay, and so the
19 distinction then you see with the subject imports and
20 how they're pricing. And then if you could help me
21 understand, you both noted that nonsubjects were not
22 your concern because of their pricing, but just help
23 me understand whether the customers know that they're
24 getting a Chinese price. Are people highlighting
25 that? Or an Indian price? Kind of just the

1 competition you see out there.

2 MR. LEVIN: I'm sorry, Madam Commissioner,
3 you mean a particular customer knowing the origin of
4 his purchases?

5 COMMISSIONER OKUN: Right, and the reason
6 I'm asking, maybe you can just comment more generally,
7 in one of the arguments the Respondents have noted is
8 that there is a desire for dual sourcing from
9 purchasers, and so I'm trying to understand how much
10 the purchasers know and are they requesting that, or
11 whether you think that's a valid argument.

12 MR. MCCAUL: Let me speak to this, please.

13 COMMISSIONER OKUN: Okay.

14 MR. MCCAUL: As far as dual sources, that's
15 a common practice, and you know we're not looking to
16 get 100 percent of the business. That would be nice,
17 but that's never going to happen. Customers, many
18 customers will tell you that they are not going to
19 give all of their business to one supplier because
20 they have seen situations where shortages occur and
21 they can't get product from somebody and then they're
22 stuck.

23 So what often happens is that you'll get a
24 customer who might agree to let you have 80 percent of
25 his volume but 20 percent he'll place somewhere else.

1 So that's common. As far as the product itself, Brian
2 mentioned the product is interchangeable. Whether
3 it's Chinese product or it's product made in the
4 United States, that part itself isn't a critical thing
5 for a user of these, typically not anyway.

6 Sometimes there's a customer who'll have
7 very special requirements, and there are not many of
8 those customers, and if they have a very tight
9 specification, you know we can adjust our
10 manufacturing procedures and testing etcetera to make
11 sure that we meet that requirement. But typically
12 that's not the case. The product is interchangeable.
13 With regard to your question about where the product
14 is going and pricing etcetera, freight is an issue.

15 And obviously our plant is in Georgia, it's
16 Smyrna which is a suburb of Atlanta. And the product
17 is made there and it has to be shipped to various
18 locations. The freight, if it's bulk material the
19 cost per pound for shipping a full truckload obviously
20 is a lot less than if we were shipping a small
21 quantity. So whether we can be competitive with one
22 customer versus another, freight enters into the
23 picture.

24 The west coast for example, shipping product
25 to the west coast and being competitive against

1 product that's imported from China to the west coast
2 is more difficult. We can be competitive and we have
3 been, but that's a challenge. So you know there's a
4 whole picture there that we know we're never going to
5 have 100 percent of the volume.

6 COMMISSIONER OKUN: Well and on that, when
7 you have a customer who's let you know that they don't
8 want to put 100 percent with you, you're going to get
9 some portion of your business.

10 MR. MCCAUL: Yes.

11 COMMISSIONER OKUN: Tell me how the
12 competition works there. In other words, about
13 pricing. And is it different between the subject
14 imports and the nonsubject imports in terms of what
15 percentage of volume you'll get of that business?

16 MR. MCCAUL: Well typically what happens, I
17 mean it's not very complicated and we look at our
18 costs, we look at the raw material costs are the major
19 part of our costs. Our manufacturing costs is really
20 a small part of the whole picture. And we look at the
21 total and we say, okay we need to make some margin
22 here. This is a high-volume customer. We're going to
23 have a contract with them or -- most cases, by the
24 way, we don't have contracts.

25 But depending on whether it's a contract or

1 not a contract, depending on the volume, what's
2 involved with supplying this customer, are there
3 tighter specifications that have to be met, etcetera,
4 we make a decision on what we think is a reasonable
5 price. So then we go to the customer with that
6 pricing and what I'm telling you is that over and over
7 again we find that we're confronted with, well you
8 know we'd like to do business with you guys but we can
9 get Chinese material or Indian material for X amount,
10 you know?

11 And then you look at it and say, oh my god
12 are we going to take this on or not? Can we deal with
13 it? Or you know you may not get the opportunity, they
14 may have already awarded the business to somebody
15 else. But sometimes you get the opportunity if you
16 have a relationship with a customer to say, okay well
17 they might not tell you exactly what the pricing is
18 but they give you an indication that leads you to say,
19 okay in order to get this 80 percent of volume from
20 this guy I'm going to have to drop my price to this
21 level, can I do that?

22 We've done it over and over and over again
23 because we had to to hold on to business. And that's
24 why if you look at our results we show that we've lost
25 money on this product line. But that's how it

1 happens.

2 COMMISSIONER OKUN: Okay, thank you, Mr.
3 McCaul. My red light's come on. I'll come back on
4 another round. Thank you.

5 CHAIRMAN ARANOFF: Commissioner Lane.

6 COMMISSIONER LANE: Good morning, and
7 welcome to the Commission. And I want to thank you
8 again for the tour that you provided us of your
9 facility. I found it very helpful. And in listening
10 to your testimony this morning I have a question.
11 Compass began by being an importer of the HEDP and at
12 some point decided to produce HEDP. So I am assuming
13 that you did a pretty detailed analysis based upon
14 certain assumptions, certain benchmarks that you hoped
15 to achieve.

16 And so I would like for you to tell me in
17 your own words and then in posthearing, because a lot
18 of it is probably confidential, provide me with the
19 analysis if you have it of what you looked at prior to
20 making this decision. And I would also like for you
21 to tell me has anything changed or did certain things
22 happen that you weren't expecting? Anyway, just tell
23 me in your own words what you can as to what you were
24 looking at when you made this decision.

25 MR. MCCAUL: Okay, let me have a go at that.

1 First of all, in the posthearing brief we will provide
2 you with some of the numbers, the analysis that led us
3 to believe that this was a good decision. The
4 situation at Smyrna was this. The plant was operating
5 and manufacturing products exclusively for Rodia.
6 Rodia was selling these products in the United States,
7 and Rodia was having difficulty making any money doing
8 that, in fact they were losing money.

9 So you might think, well why did you guys
10 think you could come in there and change that picture?
11 The key thing was that Compass understood and Compass
12 had the data to support that they could bring the key
13 raw material, phosphorous acid, in at good pricing,
14 and if we changed the operation at Smyrna to use
15 phosphorous acid to make HEDP and the other
16 phosphonates, that the economics would look much
17 better.

18 And that's a pretty straightforward, simple
19 calculation and we can show you that information. Now
20 when we did that, when we looked at that we said, okay
21 -- and by the way Rodia had considered making that
22 change also, but Rodia having basically suffered the
23 losses that they had, had grown disenchanted with the
24 business and decided, you know we don't want to
25 continue with this any longer. And they decided, they

1 had a plant and they still have a plant in England,
2 and that they would import the products from England.

3 So the first point is that we were convinced
4 that we could be competitive by changing the operation
5 and by using this different technology to make the
6 product. Secondly, the company that owned the plant
7 just before Compass owned it was having financial
8 difficulties and was unable to spend the money on the
9 plant that was needed for maintenance and for capital
10 replacements to make the plant operate as well as it
11 could.

12 Compass on the other hand understood and
13 believed that by coming in and being able to do that
14 work that was necessary at the plant that we could get
15 the plant economics looking a lot better. As well as
16 the raw material costs we would have the output from
17 the plant would be better, there would be less
18 shutdowns, breakdowns, etcetera. So all of that
19 looked like a good positive picture.

20 I don't want to suggest to you that HEDP by
21 itself was the decision and the only decision that was
22 made in order to acquire this manufacturing plant.
23 HEDP was one of a number of products that are
24 manufactured at the plant site. And the economics of
25 having that plant and being able to make this range of

1 products was part of the decision that Compass made.
2 It wasn't a decision made on HEDP alone.

3 As I think I mentioned earlier, HEDP is a
4 product that's important to us, we need to be
5 manufacturing it in order to provide the full range of
6 products to our customers, but we don't have
7 expectations that even with this antidumping thing
8 that HEDP is suddenly going to be a tremendously
9 profitable product for us. If we can reach the point
10 where HEDP is not draining us, then we can do fine
11 with the facility.

12 I think our results for the plant as a whole
13 would demonstrate that the decision that we made to
14 acquire the facility was a good one. And I think --
15 well you asked the question, has anything changed?
16 The aggressiveness of the pricing being implemented by
17 the Chines and Indians is a change. It's really
18 presenting a greater challenge than we had expected,
19 and I guess I'd leave it at that.

20 MR. LEVIN: Madam Commissioner, I'll just
21 note that there is some of this information,
22 particularly as to the reasoning behind the purchase
23 of the Smyrna facility on the record already in the
24 form of a supplement to Compass's producer's
25 questionnaire. And of course we'll provide the

1 additional information which as you note is inherently
2 of a BPI nature in the posthearing brief.

3 COMMISSIONER LANE: Mr. McCaul, let me stay
4 with you for a little bit. After you made your
5 analysis, and you were certainly familiar with the
6 pricing of the Chinese product because you were going
7 to switch from importing it yourself to producing
8 HEDP, did that pricing change after Compass became a
9 producer? And was that unexpected to you?

10 MR. MCCAUL: The pricing of the products
11 from China and India continue to decrease after we
12 acquired the Smyrna facility. And as I mentioned
13 before, today, the pricing from China and India is
14 very, very low. I mean, if you look at the pricing
15 over a period of time, however, in 2008, there was an
16 anomalous situation because of the shortages in China.
17 So, you know, you can't look at 2008 and say, okay,
18 that information doesn't support what you just said.
19 I know it doesn't. Two-thousand-and-eight has to be
20 removed from the picture, as it were, because what was
21 happening at that time in China was quite remarkable.
22 Phosphorous, for example, had gone up in price from
23 like \$1,600 a metric ton or \$2,000 a metric ton and
24 that ranged to \$9,000 or \$10,000 a metric ton. It was
25 incredible what was happening and prices had to go up,

1 as a result of that. So -

2 COMMISSIONER LANE: Okay. Mr. McCaul, I
3 will come back to you on my next round. I'm sorry,
4 but my light is on.

5 MR. MCCAUL: Okay.

6 COMMISSIONER LANE: Okay, thank you.

7 CHAIRMAN ARANOFF: Commissioner Williamson?

8 COMMISSIONER WILLIAMSON: Thank you, Madam
9 Chairman. I do want to thank the witnesses for coming
10 today to present their testimony and express my
11 appreciation for the tour, which I found very helpful.

12 Continue on the line of questions of
13 Commissioner Lane, what was - you said there were
14 shortages in China. What were the explanations? What
15 accounted for that?

16 MR. MCCAUL: In 2008, several things had
17 happened in China. But, one of the issues that
18 definitely had an impact was the Chinese Government
19 started being aggressively pursuing environmental
20 improvements and telling plants that they would need
21 to shut down their operations or move their
22 operations. So, that occurred. The speculation is
23 that some of that had to do with the fact that the
24 Olympic games were going to occur in China and they
25 wanted to present a good face to the world and they

1 had made promises about - the Chinese Government had
2 made promises regarding improving the situation
3 regarding pollution. So, there was a time in China
4 last year where furnaces that used the electricity in
5 order to manufacture phosphorous could not get enough
6 electricity and they were forced to shut down and
7 there was an extreme shortage of phosphorous as a
8 result of that.

9 Then, there were some terrible weather
10 conditions in China in 2008, as well. I seem to
11 recall there was a major earthquake and there was a
12 flood, as well, so that they had a lot of factors that
13 created this shortage situation.

14 And then the Chinese Government, at a
15 certain point, imposed a tax, I think it was 100
16 percent or 120 percent duty on phosphorous, in order
17 to keep enough phosphorous in China to have available
18 for their agriculture industry, as I understood it.
19 So, there was a time there when people trying to get
20 phosphorous and phosphorous-related products out of
21 China were having a very difficult time with it and
22 pricing for raw materials and the basic raw material
23 that we use, the phosphorous acid pricing, it went up,
24 I would say - I think it tripled in price.

25 COMMISSIONER WILLIAMSON: Do these changes

1 sort of impact the producers of the raw material the
2 same way they product the - in effect, the finished
3 producers ATDP in the same way, other than - I assumed
4 you mentioned something like - I think in an excise
5 tax.

6 MR. MCCAUL: Yes. It affected the producers
7 of the finished products using phosphorous-base
8 materials in China. But, it also affected people
9 outside of China, who were using phosphorous to make
10 PCL3, the make phosphonate. So, in other words,
11 people like Rodia, Thermphos, were experiencing for a
12 different reason increased costs. We were
13 experiencing increased cost because of the phosphorous
14 acid that we use. So, anybody, who was making
15 phosphonate last year was affected in some way by this
16 situation in China and it drove costs and prices
17 through the roof.

18 COMMISSIONER WILLIAMSON: Okay. Thank you.
19 You talked about the advantage, I think, of your
20 purchasers in having production in the U.S. and
21 limited why your decision to produce in the U.S. But,
22 I was curious, one of the - are you also concerned
23 about not having an alternative source of supply for
24 your raw material?

25 MR. MCCAUL: Do you mean with regard to

1 having phosphorous acid from -

2 COMMISSIONER WILLIAMSON: Yes, exactly.

3 MR. MCCAUL: Well, the phosphorous acid that
4 we were using doesn't just come from one supplier in
5 China. It comes from various producers. China
6 probably supplies maybe 75 percent or more of the
7 world's phosphorous. But, there are a lot of
8 different producers. So, we're not getting the
9 phosphorous acid from just one source. It's from
10 various people in China.

11 COMMISSIONER WILLIAMSON: Okay. So, there's
12 competition there as long as the government doesn't
13 impose some kind of, say, like an export band or
14 taxes, anything like that?

15 MR. MCCAUL: I don't know how that
16 competition works exactly. But, I'll just leave it
17 there.

18 COMMISSIONER WILLIAMSON: What about the
19 Indian suppliers, do they depend somewhat on the
20 phosphorous acid from China, also?

21 MR. MCCAUL: Indian producers, they import
22 phosphorous from China, but from other sources, as
23 well. There are people, who make phosphorous from
24 phosphate rock that is mined in some other parts of
25 the world besides China.

1 COMMISSIONER WILLIAMSON: Thank you.

2 MR. FAILON: Let me comment also, the
3 phosphorous acid supplier line. Yes, we would prefer
4 to have a phosphorous acid supply other than China.
5 However, that's just not possible. There is no
6 domestic producer of phosphorous acid. And Albright &
7 Wilson was a producer of phosphorous acid in the UK.
8 The no longer do that. So, for the phosphorous acid
9 route, we are reliant on import of that raw material
10 from China. However, we do have a backup plan, which
11 we don't want to implement, but we could. We could go
12 back to using PCL 3 and buy PCL 3 either from a
13 domestic producer, a European producer, or even an
14 Asian producer. So, that's what we consider as our
15 backup plan. It's undesirable, but the reason we're
16 sole-sourced on phosphorous acid out of China is that
17 there just is no alternative.

18 COMMISSIONER WILLIAMSON: Thank you. Since
19 Compass acquired the Smyrna facility, what have you
20 done to make the production and marketing of the U.S.
21 produced HEDP more competitive? You mentioned a few
22 things earlier.

23 MR. MCCAUL: When we - again, when we
24 acquired the plant, the first thing we did was change
25 the technology, and I mentioned that and I don't want

1 to belabor that point, but that made a big difference
2 in our cost per pound and our ability to sell HEDP at
3 what I would call competitive pricing. But in
4 addition to that, in the plant, itself, we improved
5 the plant operations considerably. The way the plant
6 operates today -- and we have the data and the
7 statistics. We've tracked this stuff. The yield is
8 consistently better at the plant. The cycle times are
9 better than they used to be. The plant runs more
10 smoothly, more consistently. Our cost per pound,
11 which we track, has come down quite a bit from what it
12 was when we first acquired the plant, before Compass
13 owned the plant. And that's all a result of better
14 attention, being able to invest some money in the
15 plant. And Compass has made a lot of improvements at
16 the plant site. In the two-and-a-half years that
17 they've owned it, we've been able to replace reactors.
18 We've been able to replace equipment that needed to be
19 modernized, plant operating equipment, et cetera.
20 And, we're actually very proud of the accomplishments
21 we've made in streamlining the facility and making it
22 more efficient.

23 COMMISSIONER WILLIAMSON: Okay, thank you.
24 Thank you, Madam Chairman.

25 CHAIRMAN ARANOFF: Commissioner Pinkert?

1 COMMISSIONER PINKERT: Thank you, Madam
2 Chairman, and thank you all for being here and helping
3 us to understand what is happening in this industry.
4 I'm having a little trouble trying to put in
5 perspective the question of profitability of this
6 industry and the reason I guess I'm having that
7 difficulty is because it seems that you want to
8 continue providing this product to your customers,
9 even if you're not able, as you say, to get rich off
10 of this product. So, I guess - I suppose my question
11 is how much -- over the long term, how much profit do
12 you need to make on this product in order to stay in
13 this market?

14 MR. MCCAUL: A difficult question to answer,
15 but I would like to take a shot at that in the post-
16 hearing brief. It's sort of confidential data
17 indicating what sort of profit margin we think allows
18 us to operate and to have reinvestment economics,
19 because running a chemical plant, chemical plants
20 require a lot of maintenance and a lot of replacement
21 of equipment. It isn't something you just build and
22 it's there and you're finished and you just keep
23 running it. It doesn't work that way.

24 I think the point I would like to make on
25 HEDP and when I said we don't need to get rich on

1 HEDP, HEDP is one of a number of phosphonates that we
2 manufacture. It certainly is the largest volume one.
3 But, if we were in a situation where HEDP was
4 marginally profitable, but we were able to make enough
5 profit on the other products in the line, so that the
6 whole phosphonate business is profitable and generates
7 enough of a margin, then we're fine. So, the problem
8 is that what's happening with HEDP and what has
9 happened with it is that these extremely low cost
10 imports are making that more and more difficult and
11 that's the challenge for us.

12 COMMISSIONER PINKERT: And this follow-up
13 question perhaps is more appropriate for the post-
14 hearing, as well, but in connection with your point
15 about obtaining marginal profitability, is there any
16 prospect of obtaining marginal profitability in the
17 current business climate?

18 MR. MCCAUL: I think if the pricing from
19 China and India was at fair value, that I think we
20 could probably be okay with HEDP. Let me put some
21 more facts together and supply those in the post-
22 hearing brief to support what I'm saying.

23 COMMISSIONER PINKERT: Thank you. I
24 appreciate that. Now, in your original testimony, you
25 talked about the imports from the UK and about why you

1 feel you can work with a market that has a substantial
2 segment of imports from the UK. I'm wondering if you
3 could be a little more specific about that. Are you
4 saying that the pricing of the UK product is
5 substantially different from the pricing of the
6 subject imports or is there something else about the
7 way that that product is sold that makes it possible
8 for you to work with that?

9 MR. MCCAUL: The UK product is imported by
10 Rodia and by Thermphos and we know from experience
11 that the cost position that they have in the UK is
12 similar to our cost position. Now, factors that enter
13 into their ability to compete would include, of
14 course, costs of - manufacturing costs and raw
15 materials costs, but also currency differences. And
16 sometimes, you know, when the British pound has been
17 two dollars a pound, it would be more of a challenge
18 for them to be able to bring product over from the UK
19 and compete here versus it being a dollar-fifty or
20 even lower. So, there's a lot of factors that enter
21 into their ability to compete with imported product
22 from the UK.

23 But, I think the main point would be that we
24 know that their economics are not very different from
25 our economics. We think, in fact, we have an

1 advantage over the product coming from the UK, and
2 this is just based on our experience. Brian mentioned
3 his background and experience and I mentioned some of
4 mine. So, as far as pricing of the products, the
5 importers from the UK are faced with the same
6 situation, I would say, that we are, the same
7 difficulty in that they, if they want to continue to
8 bring product over, are going to have to be
9 competitive with the Chinese and Indian imports. So,
10 they play - and we compete against these importers
11 from the UK everyday, just as we do with the Chinese
12 and Indians. But, those low cost imports, the low
13 fair value costs - pricing from China and India are
14 what dictates the market price in the United States.

15 MR. FAILON: Let me add to that. Again, I
16 want to reiterate that we believe we know that cost
17 basis for Thermphos and Rodia and Danny has pointed
18 out that they incur oftentimes an adverse currency
19 exchange effect. But in addition to that, they have
20 an additional freight component that we do not. They
21 have to ship product across the pond to get it here to
22 the U.S. And as Danny has touched on, we have not
23 seen Rodia or Thermphos initiate the down road spiral
24 in pricing. Of course, they need to be competitive
25 with Indian and Chinese imports, as do we. But,

1 again, we feel that it's a pretty level playing field
2 between us and the UK producers.

3 COMMISSIONER PINKERT: Is it fair to say
4 that from the period 2005 to 2007, that when there was
5 an increase in market share of subject imports, it
6 came at the expense of the non-subject import market
7 share?

8 MR. LEVIN: I believe, first of all, to some
9 extent that's BPI information, so I would like to
10 review it. But being careful here, I don't want to
11 accidentally say something. With all due respect, the
12 way that particular statement was phrased, I don't
13 believe would be fair to say.

14 COMMISSIONER PINKERT: If there is anything
15 in the post-hearing that you could -

16 MR. LEVIN: Absolutely.

17 COMMISSIONER PINKERT: - elaborate on that.
18 And also for purposes of the post-hearing, if you
19 could address, for purposes of a threat analysis, the
20 question of cumulation of India and China in more
21 detail? What I would be particularly interested in is
22 a discussion of the volume trends and the price trends
23 with respect to China and India and how that bears on
24 the question of cumulation.

25 MR. LEVIN: Absolutely, Commissioner, we

1 would be more than happy to. I do want to reiterate
2 the point, though, for the record, neither the
3 Chinese, in either the preliminary or the final phase,
4 disputed cumulation at all. The Indians did dispute
5 cumulation in the prelim, but they haven't - they're
6 not here and haven't submitted a brief for the final.
7 Obviously, we will put in that information.

8 COMMISSIONER PINKERT: Thank you.

9 CHAIRMAN ARANOFF: I wanted to ask you to
10 provide me with some more information, to the extent
11 that it's public, about the acquisition of Compass by
12 Cathay Pigments. I don't know that we have this
13 information on the record, but can you tell me what
14 that company is and what business it's in and where
15 its ownership is based?

16 MR. LEVIN: I'm sorry, Madam Chairman, I was
17 just double checking to make sure that this is public
18 information. Mr. McCaul will walk through it. It
19 gets a little complicated and we'll be happy to chart
20 it out and all of that fun stuff in the post-hearing
21 brief. But with your indulgence, if Danny can go
22 through it a little bit.

23 MR. MCCAUL: Okay. And I think the question
24 is with regard to the ownership of Compass. Is that
25 the question, Madam Commissioner?

1 CHAIRMAN ARANOFF: Right. This company that
2 acquired Compass, Cathay Pigments.

3 MR. MCCAUL: Yes, okay, okay. Compass
4 Chemical was basically formed by a couple of people
5 and one of them was a gentleman from the United
6 States, Bill Bella and he was the founder of the
7 company. I can't tell you exactly what percentage
8 ownership he had, but he was the majority owner of
9 Compass Chemical. But, he had a partner in Hong Kong
10 and that partner was someone, who was working with him
11 and helping him to source low-cost chemicals and raw
12 materials from China. And so they operated for a
13 number of years this way with Compass being a U.S.
14 entity, but having some ownership in Hong Kong.

15 So, there was another company in the United
16 States operating called Cathay Pigments USA and there
17 was some common ownership of Cathay Pigments USA and
18 about - I think it was in 2007, I can't remember the
19 exact date, but Cathay Pigments USA and Compass
20 Chemical were combined under Cathay Industries USA, as
21 one. Compass still operates as a separate company,
22 but the ownership is now under Cathay Industries USA.
23 Cathay Industries USA is, in turn, owned by Cathay
24 Pigments Holdings, which is a British Virgin Islands
25 company and the ownership of Cathay Pigments Holdings

1 is, in part, by the gentleman, who started Compass.
2 He's a major shareholder and there are other
3 shareholders from the United States. It's a
4 privately-owned company and there is some ownership
5 from Hong Kong, as well, in that picture.

6 CHAIRMAN ARANOFF: Okay. I think I followed
7 all of that.

8 MR. LEVIN: It reads better on paper.

9 CHAIRMAN ARANOFF: I will look forward to
10 that in the post-hearing, with a better sense of that.
11 I'm getting the sense that there is U.S. and Hong Kong
12 ownership in the company and then that answers one of
13 my main questions, which was the extent to which this
14 might be a Chinese-owned company and it doesn't sound
15 like it actually is.

16 Okay. Well, let me turn to something
17 different and ask some questions about demand in the
18 market. I know during the direct testimony, there was
19 mention of the fact that demand tends to go down in a
20 recession, at least in the industrial applications of
21 the product. I would have thought that a lot of the
22 other applications that this product goes into were
23 fairly recession proof when you're talking about water
24 treatment or soap, things like that. Can you give me
25 a sense of which of the end uses tend to hold up,

1 which don't, and how much of the market they each
2 account for?

3 MR. FAILON: As far as the percentage of
4 HEDP that is spread amongst the various applications,
5 I don't have the exact figures. The industrial water
6 treatment is by far the largest and that is for
7 cooling water, industrial cooling water. So, that
8 will be reduced slightly, as industrial plants shut
9 down or operate at reduced capacity. They're using
10 less water. The good thing about this business is
11 that because there are so many end applications, there
12 is a chance that some of them will remain healthy or
13 somewhat recession proof. We're certainly not
14 dependent, for example, selling into the auto
15 industry.

16 Some of the things that would probably be
17 recession proof, I would say the application for
18 treating reverse osmosis membranes. That's a
19 relatively new one. I don't think necessary the
20 market share or the percent of HEDP is all that large,
21 but it certainly is recession proof. Raw water
22 quality is decreasing. You're having access to world
23 quality feed water that you need to clean up to accept
24 industrial and drinking water standards, some case
25 using re-claimed water from industry or brackish water

1 or even sea water. So, that particular application, I
2 would say, is recession proof.

3 Pools and spas, the recreational water,
4 they're relatively recession proof; though with
5 decreased housing starts, you're going to see a
6 reduced number of swimming pools going in. You might
7 see - oil field, though HEDP volume into the oil field
8 is much lower than some of the other phosphonates that
9 are sold into the oil field, the oil field application
10 right now is down considerably. And that tracks with
11 one of the industry barometers, the rig count, the oil
12 rig count. I think, for example, the rig count in the
13 U.S. is now dipped below 1,300 and at its peak last
14 year, it was over 2,000. So, phosphonate use for oil
15 field and thereby extending to HEDP, it's going to be
16 down proportionately. But, again, the fact that we
17 have so many different industries and applications
18 does recession proof the product to a degree, but we
19 do expect a decline in demand in 2009.

20 CHAIRMAN ARANOFF: Okay. I appreciate that.
21 I was looking at the national news last night that a
22 helicopter going over southern California, where there
23 has been a lot of foreclosures, and they were showing
24 all these either empty or sort of brackish swimming
25 pools that no one is taking care of that actually, I

1 guess, they were having to - the State was having to
2 treat them, because they're breeding so many
3 mosquitoes. So, that wasn't an optimistic thing, but
4 it was interesting. In any event, thank you for your
5 answers and let me turn it over to Vice Chairman
6 Pearson.

7 VICE CHAIRMAN PEARSON: Thank you, Madam
8 Chairman. I would like to join my colleagues in
9 welcoming all of you to this hearing. This might be a
10 miscellaneous question, but you can certainly clear it
11 up for me. What is the difference between the
12 production of phosphorous acid and phosphoric acid?

13 MR. FAILON: The difference between
14 phosphoric acid and phosphorous acid, chemically, the
15 phosphoric acid is H_3PO_4 . Phosphorous acid is H_3PO_3 .
16 Phosphorous acid is made by taking elemental
17 phosphorous, which is sometimes called yellow
18 phosphorous or P_4 . That is reacted with chlorine to
19 make phosphorous trichloride or PCl_3 , the term we've
20 been using pretty liberally this morning. Then that
21 PCl_3 is reacted with water to generate phosphorous
22 acid and that generates a byproduct hydrochloric acid,
23 HCL.

24 Turning to phosphoric acid, one route to
25 making phosphoric acid is to start with the same base

1 raw material, the elemental phosphorous P4. And you
2 could convert that to P2O5 or phosphoric and hydride.
3 You're basically burning it, just reacting with
4 Oxygen, to make P2O5 and from there, react with water,
5 P2O5 with water to make phosphoric acid. That's the
6 route used in China.

7 The prevalent manufacturing process for
8 phosphoric acid here in the U.S. and elsewhere in the
9 world is to start with what's called a green acid.
10 It's an agricultural grade acid that's made not
11 starting from elemental phosphorous, but starting from
12 calcium phosphate rock and digesting that calcium
13 phosphate rock with sulfuric acid. And if you've ever
14 been to central Florida, I think it's Bartow and
15 Lakeland and Mulberry and all those areas, you see
16 huge mountains of gypsum. It's a byproduct from that
17 reaction. The finished product is phosphoric acid.
18 It's called green acid. And you've got this waste
19 produce, which, unfortunately, contains just enough
20 trace radioactivity that it can't be used as road
21 fill. So, you see these mountains of gypsum all
22 throughout central Florida. That green acid,
23 phosphoric acid, is then cleaned up through a series
24 of solvent exchange to basically clean it up to meet
25 industrial phosphoric acid specifications, both

1 technical grade and food grade. So, because that
2 route is much less energy intensive, the elemental
3 phosphorous route is very energy intensive, it's much
4 more cost of manufacture to get to the same finished
5 product. But phosphoric acid, there is no lower-cost
6 route. It all goes back to the elemental phosphorous.

7 VICE CHAIRMAN PEARSON: Okay. So, the
8 minerals source for producing elemental phosphorous is
9 just a different mineral source than is generally used
10 to produce commercial quantities of phosphoric acid;
11 is that correct?

12 MR. FAILON: Well, calcium phosphate rock or
13 the phosphate ore is the same in both cases. You have
14 to start with calcium phosphate to make the elemental
15 phosphorous. That is the very energy intensive
16 process to make the elemental phosphorous. Whereas
17 when you're making phosphoric acid by the wet process
18 or by the green acid route, you're just taking that
19 calcium phosphate rock and just reacting it, digesting
20 it with sulfuric acid. It's not energy intensive at
21 all. So, it's a much lower cost route to make the
22 phosphoric.

23 VICE CHAIRMAN PEARSON: Okay. I think I
24 understood earlier that it was said that China is the
25 source of some 70 percent of phosphorous acid, is that

1 - or 70 percent of phosphorous supplies. I'm not sure
2 how it was stated.

3 MR. FAILON: Yeah. The world has come to
4 rely on phosphorous out of China. That's not always
5 been the case. There has been phosphorous production
6 here in the U.S. and when I was with Albright &
7 Wilson, we had a phosphorous furnace up in Virren, up
8 in Quebec. Because of the low cost and great supply
9 out of China, the world's producers of phosphorous
10 have come to rely on phosphorous, they've shut down
11 their furnaces, done the site remediation work, and
12 have just started importing phosphorous from China.
13 And, again, that's probably 75 or 80 percent of the
14 world supply of phosphorous is coming out of China.

15 VICE CHAIRMAN PEARSON: What is the energy
16 input into the elemental phosphorous process? Is it
17 electricity or -

18 MR. FAILON: Generally, hydroelectric power.
19 There is one producer left in the U.S. It's Monsanto.
20 But, it's a captive source of phosphorous. It's in
21 the western United States. They make the phosphorous,
22 they convert it to PCL3, and they use that PCL3 stream
23 entirely to make clivasatin, which is the roundup
24 herbicide, which is their cash cow.

25 VICE CHAIRMAN PEARSON: Yes. It's a good

1 product actually. I've been known to use it once or
2 twice.

3 So, it's actually kind of an interesting
4 anomaly. Now, these questions, I understand, relate
5 only tangentially to the subject at hand. But, China
6 isn't possessed with an overabundance of electrical
7 energy relative to its needs. And so to think that
8 China has undertaken to do most of the world's
9 elemental phosphorous production at high energy, high
10 electricity usage is somewhat interesting.

11 MR. FAILON: It is interesting. And
12 actually in periods of drought, they've run into
13 shortages of hydroelectric power and they've had to
14 put various plants on electricity allocations and
15 large percentages of the electricity output were
16 diverted to the industrial cities, such as Hong Kong
17 and Shanghai, leaving some of the plants running on a
18 bare minimum of electricity. They have invested in a
19 major upgrade to that system, the Three Gorges
20 project. You've probably seen it or read about it.
21 But, yeah, they've clearly increased their
22 hydroelectric power capabilities.

23 VICE CHAIRMAN PEARSON: Did the shortage of
24 electricity play some role in boosting the price of
25 elemental phosphorous in 2008?

1 MR. MCCAUL: Absolutely. The shortage of
2 electricity in China or the allocation of the
3 electricity that was available in China, if I can put
4 it that way, created a shortage of phosphorous.

5 VICE CHAIRMAN PEARSON: Looking forward over
6 the next year or two, would it be reasonable to assume
7 that there will be further constraints on electricity
8 in China that would tend to keep the price of
9 elemental phosphorous high or is that not likely?
10 They have this one licked and they're just going to
11 keep cranking it out?

12 MR. LEVIN: We would like to that
13 speculation and we would like to think through, with
14 your indulgence, our response to that in the post-
15 hearing brief. My understanding was that to a large
16 extent, it was due to the Olympics and the ramp-up to
17 the Olympics, which was the triggering event for the
18 electricity diversion and then the spillover effects
19 into phosphorous production. But, if we can go back
20 to some sources and give a more informed answer on
21 that. I understand where you're going.

22 VICE CHAIRMAN PEARSON: Okay. That would be
23 useful. For purposes of threat -

24 MR. LEVIN: Yeah, absolutely.

25 VICE CHAIRMAN PEARSON: - we try not just to

1 speculate. We would like to have projections and to
2 look at trends and understand what is reasonably
3 probable.

4 MR. LEVIN: Well understood, Vice Chairman
5 Pearson. I will make the point that to the extent
6 that future reductions in electricity output may or
7 may not occur in the future, the 2008 instance stands
8 as an anomaly in recent memory that had not come to
9 bear certainly in the prior years of the period of
10 investigation, nor to our awareness at an earlier part
11 in the decade. But, we'll try to, like I said, give
12 you a more informed response on that.

13 VICE CHAIRMAN PEARSON: Just a very quick
14 question. Would it be fair to assume that most of the
15 phosphorous acid production in China is in Yunan
16 Province in the southwest, where the phosphate rock
17 deposits are mostly located? Okay, not a real issue.
18 I'm on red light, Madam Chairman, so let me stop now.

19 CHAIRMAN ARANOFF: Commissioner Okun?

20 COMMISSIONER OKUN: Thank you. I want to
21 return to a few questions with respect to the non-
22 subjects and just make sure I understood, again, to
23 some of the price competition. In terms of the
24 customers for non-subjects versus your customers, when
25 we, Mr. McCaul, having a conversation before about

1 when there is dual sourcing going on. Would you be
2 able to or do you know whether for non-subjects, they
3 are more in a situation of being a single supplier to
4 particular customers or do you feel like you're
5 competing with them for this dual sourcing just like
6 you are with the imports, other than the testimony
7 that you've already given, that the Chinese and Indian
8 are offering lower prices in that situation?

9 MR. MCCAUL: In general, I would say that
10 we're competing with them, just as we are with
11 imported product. However, I would say that there are
12 probably some customers, who have traditionally been
13 supplied by a company like Thermphos. Thermphos used
14 to be Solutia and used to be Monsanto before that.
15 That company is a company that invented the product
16 line. And the D-quest product name that they use is
17 something that even though the product is
18 interchangeable, I don't know if it is that some
19 customers don't know that or they don't want to know
20 that or they have this trust and belief in the D-quest
21 product and they don't want to consider changing to
22 another supplier. So, I think that there are cases
23 like that. And perhaps Rodia has some customers like
24 that, too, where they would not move easily away from
25 using that product line that they've used for so many

1 years and that they believe that this trade name
2 brings with it something that they can rely upon and
3 is sort of risk-free as it were. So, there is some of
4 that, but I - it's always been my belief anyway that
5 Thermphos has some customers there that are going to
6 always be very hard to break into because of that
7 tradition of being supplied by the D-quest product.

8 COMMISSIONER OKUN: Okay. And are you aware
9 of any restrictions out there with respect to the non-
10 subjects that would keep them from being sold to other
11 customers for competitive reasons?

12 MR. MCCAUL: They are free to compete
13 everywhere just like we are.

14 COMMISSIONER OKUN: Okay.

15 MR. LEVIN: Madam Commissioner, if I may.
16 There is some numerical restrictions that we'll go
17 into in the post-hearing brief. And we would be happy
18 to give - volunteering to give a further analysis on
19 the non-subject imports. I just want to make a couple
20 of very brief points.

21 First of all, there are certain
22 relationships, as Danny had indicated. Second of all,
23 there are some significant differences in the channels
24 of distribution for the non-subject imports and that's
25 clear from the pre-hearing report. There is some

1 fairly significant limitations on price competition,
2 as is clear from the pre-hearing report, and I will
3 leave it at that. I don't want to step accidentally
4 into confidential information.

5 And there's two basic points. First of all,
6 I did find it, as the lawyer, interesting that the
7 Respondents have never raised non-subject imports in
8 the context of this investigation. They are not
9 pointing to non-subject imports as a possible
10 alternate cause of injury. Obviously, Compass is not
11 looking at non-subject imports as a cause of the
12 travails, which is suffering from. The non-subject
13 imports are fairly-traded imports. Compass's
14 position, we were just discussing this over breakfast,
15 Compass is more than willing to go out into the
16 marketplace and compete fairly with fairly-traded
17 imports and if they're going to lose some sells to
18 fairly-trade imports, that's the nature of the
19 marketplace and that's the nature of our economic
20 system and that's acceptable. That's the ball game.
21 It's when they are losing out to the unfairly-traded
22 imports, which is triggering the dire concerns that
23 the company has.

24 COMMISSIONER OKUN: Okay. That's fair. And
25 I look forward to seeing that information in the post-

1 hearing, because, again, just in terms of looking at
2 the record as a whole and seeing a significant amount
3 of non-subjects in this market, it would be helpful to
4 understand, you know, are they going to different - I
5 mean, I know where the channels of distribution are,
6 but sometimes that doesn't explain the whole story for
7 us in terms of where they compete and how they
8 compete. So, any additional information that you
9 could provide that helps us better understand the
10 market and where the competition is, that's obviously
11 relevant.

12 MR. LEVIN: Of course; please to do so.

13 COMMISSIONER OKUN: Okay. That's helpful.
14 And then I wanted to go back, Mr. Failon, to you and
15 if you've already responded to this and I didn't hear
16 it, you can tell me that and I'll look at the
17 transcript. But, when you had talked about - I think
18 both you and Mr. McCaul had talked about one of the
19 reasons that you're producing is that it's helpful to
20 offer a range of portfolio - I think you said it was a
21 portfolio of phosphonates, if I have my ling down
22 correctly without trying to go into the actual name of
23 HEDP. Is there anything - when you are offering a
24 portfolio, would most customers be asking for
25 portfolio products when you're out selling your HEDP,

1 you're offering it along with some other products? Is
2 that kind of the majority of the business? I'm just
3 trying to make sure if I understood that is kind of
4 mostly what's going on or just for some selected big
5 accounts.

6 MR. FAILON: I would say that's the majority
7 of the accounts, that they use HEDP and at least one
8 additional phosphonate. In some cases, they want to
9 receive a split bulk shipment of HEDP and one of the
10 other products, which we're happy to do. Or they may
11 want to take a mixed truckload of products from either
12 our plant or from one of our warehouses in order to
13 minimize the freight component of the total cost.
14 And, again, we're able to do that, because we have
15 HEDP and the full range of other phosphonates.

16 COMMISSIONER OKUN: And then when you were
17 talking about the producers and the suppliers and the
18 different channels, are the subject imports also being
19 offered in a portfolio? Are the importers also
20 offering a portfolio in the same way that you would be
21 offering a portfolio of products?

22 MR. FAILON: Yes, they are.

23 COMMISSIONER OKUN: Okay. And has there
24 been any change over the period in whether people are
25 choosing not to purchase the whole portfolio? In

1 other words, they're saying, well, we're going to
2 stick with you on your other products here, but we're
3 going to switch out the HEDP because we can get them
4 at a lower price?

5 MR. FAILON: Generally, the bundle sticks
6 together.

7 COMMISSIONER OKUN: Okay.

8 MR. FAILON: If we lost the HEDP component,
9 we would probably lose the rest of the business, as
10 well.

11 COMMISSIONER OKUN: Okay. And has the - Mr.
12 McCaul, you had talked about how, again, when you saw
13 these offers come in, prices come in from the subject
14 countries that were lower, you had to make a decision
15 about were you lowering prices to meet those subject
16 imports or losing the business, if you had the
17 opportunity. And I understood you were saying you
18 don't have that opportunity, but if you had the
19 opportunity, would you lower your prices. Would that
20 affect the portfolio, as a whole, or are you pricing
21 individually the HEDP component, the other products,
22 which I'm forgetting the names, but the other
23 products, as well?

24 MR. MCCAUL: The products are all priced
25 individually. However, the larger customers look at

1 the full package and they consider the whole package
2 when they make their decisions. Preferring, Judge
3 Bryant said, to buy the products from one place, you
4 can go and order some of this and some of that and
5 some of the other.

6 COMMISSIONER OKUN: Okay. I had another
7 question, but I see my red light has come on. Thank
8 you for those answer.

9 CHAIRMAN ARANOFF: Commissioner Lane?

10 COMMISSIONER LANE: This is a follow-up
11 question for Mr. McCaul of Commissioner Pinkert's
12 question on profit margin. You stated that HEDP is
13 one of many phosphonates produced at the Smyrna,
14 Georgia facility and is the largest volume. Is that
15 the largest volume in terms of Compass production of
16 all phosphonates or is it the largest U.S. - or is it
17 the largest U.S. demand of phosphonates?

18 MR. MCCAUL: Of the full range of
19 phosphonates, HEDP is the most widely used
20 phosphonate. So, it's the largest volume of the
21 single phosphonate that is used in the United States
22 would be HEDP and it's the largest volume of
23 phosphonate that we produce.

24 COMMISSIONER LANE: Okay. Now, is that
25 because - is that in response to demand for the

1 product or is it the acidic acid byproduct?

2 MR. MCCAUL: It's the demand for HEDP.
3 There's a higher demand for HEDP phosphonate than
4 there is for any other phosphonate. It's nothing to
5 do with acidic acid.

6 COMMISSIONER LANE: Okay. What chemical
7 products compete against HEDP and can they be used for
8 the same job that HEDP does?

9 MR. MCCAUL: PBTC is the main competitor for
10 HEDP. But, Brian can probably answer that question
11 better than I can.

12 COMMISSIONER LANE: Okay, thank you.

13 MR. FAILON: Yeah.

14 COMMISSIONER LANE: Mr. Failon, if you want
15 to -

16 MR. FAILON: PBTC is really the only viable
17 substitute for HEDP. The drawbacks to converting to
18 PBTC is that it's more expensive. So, you might be
19 getting a Cadillac when a Chevy will do the job just
20 fine. But, also, there are certain applications where
21 PBTC functions, but not as well as HEDP. And one
22 example I'll use is for the swimming pool application,
23 the stain and scale control product, in particular.
24 PBTC is just not as good at controlling iron stain in
25 recreational water, when compared to HEDP. So, it's

1 almost across the board, PBTC could be substituted at
2 a premium, but there are certain applications where
3 HEDP is cheaper and more effective.

4 COMMISSIONER LANE: Okay, thank you. Now,
5 would you explain to me, as I understand, at the
6 Smyrna plant, you also produce ATMP?

7 MR. FAILON: Correct.

8 COMMISSIONER LANE: Okay. What are the
9 similarities and differences in the products of those
10 two products and what kind of training and employees,
11 are they different, and what kind of equipment do you
12 need for one versus the other?

13 MR. FAILON: I'll start the answer and Danny
14 can probably continue with what kind of training the
15 employees need. The only - as far as the process
16 goes, the only commonality is phosphoric acid. ATMP
17 is made from phosphorous acid, ammonia, and
18 formaldehyde. Furthermore, you don't even need
19 phosphorous acid crystal to make ATMP. You can start
20 with 70 percent phosphorous acid. You can also start
21 from PCL3. But, that's the only raw material it
22 shares in common with the HEDP production.

23 The ATMP is made in the same reactors as all
24 the other phosphonates, except for HEDP. HEDP is run
25 on dedicated equipment. That's all used for HEDP

1 manufacture. You want to continue on?

2 MR. MCCAUL: Yes. ATMP, of course, is
3 probably the second largest volume of phosphonate
4 that's used and it's call an amino phosphonate
5 because, as Brian mentioned, we've got - ammonia
6 chloride is used in the manufacture of ATMP. ATMP is
7 manufactured in equipment that looks similar to the
8 equipment that's used for HEDP and it is similar in
9 many regards. The basic difference in making HEDP
10 versus ATMP is that you have to use a high-risk
11 phosphoric acid to make HEDP, whereas you can use 70
12 percent phosphoric acid to make ATMP. So, there are
13 other differences, but looking at the equipment, et
14 cetera, it's not that much different, the type of
15 equipment. And for example, if the demand for HEDP
16 was large enough, you know, if the business was
17 better, we could make more HEDP by converting some of
18 the equipment that we currently use for amino
19 phosphonates to make more HEDP. We don't have that
20 need today, but it's something we can do.

21 As far as training employees, et cetera, all
22 of the processes that we use are very well defined and
23 every process has a batch sheet, as we call it. It's
24 like a recipe. The batch sheet describes how you need
25 to add so many pounds of this chemical and so many

1 pounds of this chemical and hold it at a certain
2 temperature for a certain amount of time and et
3 cetera, et cetera. All of those steps that are
4 required to make the product are very well defined and
5 the employees are trained to follow those steps and to
6 make the product according to the specifications and
7 meet the quality requirements, et cetera. So, it's
8 just one of many processes, but the training is very
9 similar.

10 COMMISSIONER LANE: Okay, thank you. I'm
11 sure you have answered this before, but I'll ask it
12 again. What are the advantages of producing HEDP in
13 the United States, as opposed to purchasing and
14 reselling Chinese HEDP?

15 MR. MCCAUL: We ask ourselves that question
16 everyday. Making the range of products in the United
17 States allows us to provide a product line and a
18 service to customers that is valued by many U.S.
19 producers. Many U.S. consumers of our products, they
20 - again, they like the fact that they can have us jump
21 on a plane and be at their facility within a few hours
22 or they can pick up the phone and speak to us about
23 issues or problems or if they have an immediate
24 shortage of raw material, that we can jump in there
25 and do something about it, help them out. The short

1 supply line, I think, is a key part of what we are
2 providing.

3 Of course, we are an ISO-certified plant.
4 We manufacture a good quality product. We have
5 competitive pricing. All of those things are part of
6 it. But, I think there is something that would be
7 lost, however, if we, as the last U.S. producer, were
8 gone from the marketplace, that I think the U.S.
9 industry would find that in time, prices are going to
10 go up.

11 COMMISSIONER LANE: Okay, thank you. Thank
12 you, Madam Chairman.

13 CHAIRMAN ARANOFF: Commissioner Williamson?

14 COMMISSIONER WILLIAMSON: Thank you, Madam
15 Chairman. In assessing the volume of subject imports,
16 should the Commission focus on the non-Compass
17 imports?

18 MR. LEVIN: I think the Commission should
19 look at it both ways and I think that if the
20 Commission looks at it either way, as suggested by the
21 Chinese companies in their pre-hearing brief, the same
22 conclusion would be reached. That's from a data
23 analysis. Whether or not you include Compass's
24 imports, the volume and the increase, we respectfully
25 submit are significant. There is no change.

1 That being said, the fact that Compass was
2 an importer, the fact that Compass was more than a bid
3 importer I think is an important fact in the general
4 context of these investigation, as is the related fact
5 that it decided to get out of the importing business,
6 in order to become solely a domestic manufacturer.
7 Obviously, it would be a lot cleaner for us, in terms
8 of presenting a case, if Compass was not an importer.
9 But, that's the - that's what has happened and that's
10 a key aspect of changes in the marketplace over the
11 last several years. It's a long winded way of saying,
12 yes.

13 COMMISSIONER WILLIAMSON: Okay, thank you.
14 For 2007 and the interim period, there appears to be
15 some lack of correlation between subject import trends
16 and the industry's financial performance. Can you
17 explain why this is, if subject imports are injurious?

18 MR. LEVIN: If we may, especially since
19 that's inherently confidential, if we can address that
20 particular point in the post-hearing brief, we would
21 be more than happy to do so?

22 COMMISSIONER WILLIAMSON: Sure. Thank you.

23 MR. LEVIN: Thank you.

24 COMMISSIONER WILLIAMSON: Okay. Mr. Failon,
25 you talked about this unusual trend where, I guess, if

1 I understand you correctly, subject imports usually
2 don't come in the bulk form and that the pricing - and
3 they seem to offer really no discount for bulk sales,
4 whereas for you there is a difference. And I was
5 wondering why that was. I think your suppliers - your
6 purchasers would want to be negotiating and you seem
7 to imply that the normal dynamics that one expects,
8 that when somebody was buying a bulk commodity -

9 MR. FAILON: Right.

10 COMMISSIONER WILLIAMSON: - a discount
11 doesn't work. Can you address that?

12 MR. FAILON: Yeah. The ocean freight from
13 China and India for bulk ISO container is considerably
14 higher than for a container, what's called an FCL,
15 full container load of drums or totes. So, that puts
16 the imports at a particularly advantage in selling
17 drums and totes, as a domestic manufacturer. Now, our
18 lowest cost is selling bulk product from our plant and
19 we incur additional costs to put the product into a
20 package. What we found is as an importer eight years
21 ago or so, it costs us money to take product out of
22 the drum and put it into a bulk tank truck. So, it
23 kind of turned the pricing practices upside down. You
24 know, purchasers, that have been accustomed to getting
25 a discount for bulk product were finding that that was

1 not always the case. Bulk product might be sold at
2 the same price as drums or totes or bulk product might
3 even be higher priced than drums or totes because of
4 the real cost we saw in taking the product out of the
5 drum, throwing the drum away and pumping it into a
6 tank truck.

7 COMMISSIONER WILLIAMSON: Now does this mean
8 that from many of the people who purchase large
9 quantity of the product that it doesn't make any
10 difference to them whether it's in a bulk or whether
11 it's in the drums?

12 MR. FAILON: The large users are going to
13 continue to take product in bulk, because they've got
14 such a large requirements -- you know, maybe a million
15 pounds a year or more. It's just impractical for them
16 to handle that many drums.

17 They've got bulk storage tanks in place at
18 their plants. Those bulk storage tanks are piped in
19 to arrange for product directly from the storage over
20 to their mixed tanks, where they're blending HEDP from
21 other components; and there's no way that they would
22 be willing to save a few cents a pound in order to
23 deal with the monumental hassle of pumping product out
24 of drums, disposing of all the mountain of drums. So
25 the large customers that have always used bulk will

1 continue to buy bulk.

2 COMMISSIONER WILLIAMSON: Does that mean
3 that subject imports are not really competing in the
4 market?

5 MR. FAILON: Well, subject imports are
6 competing at bulk accounts; and they are doing it in
7 some cases by importing in bulk iso-container. They
8 are also doing it by importing in bulk container drum
9 quantities and de-drumming straight to a storage tank.

10 I know of the Indian producers is doing
11 exactly that in Decatur, Alabama, where they're taking
12 full container of drums and pumping it into a storage
13 tank there.

14 COMMISSIONER WILLIAMSON: So even though
15 that adds to their costs, it's still being done.

16 MR. FAILON: Yes.

17 COMMISSIONER WILLIAMSON: Okay, thank you;
18 this question has somewhat been addressed. But I was
19 wondering to what extent you can maybe add something
20 now. To what extent does non-subject important
21 competition affect the conference's ability to raise
22 prices? I don't know if you want to address that now
23 or post-hearing.

24 MR. MCCAUL: The non-subject imports, we
25 compete against them; and they have an impact, just

1 like any competitor would. But I would have to say
2 that the non-subject imports are fixed with the same
3 pressure from the Chinese and Indian imports. The
4 Chinese and Indian imports set the price in the market
5 place, and that's just a fact.

6 MR. LEVIN: And adding on to what I had
7 indicated before, we'll address the entire issue of
8 non-subject imports in much greater detail in the
9 post-hearing brief.

10 That being said and, again, skirting the
11 confidentiality, the vast majority of the non-subject
12 imports are concentrated in one of the products for
13 which the Commission collected quarterly pricing data.
14 In that one product, you would see that there is a
15 distinction between the subject imports and the non-
16 subject imports.

17 COMMISSIONER WILLIAMSON: Thank you for that
18 clarification. Commissioner Aranoff asked some
19 questions about a demand, I think, primarily related
20 to the recession. I was wondering what other comments
21 you might just see in general demand trends going
22 forward; say, particularly what might have happened if
23 we hadn't had a recession or underlying trends that
24 may even continue.

25 MR. MCCAUL: The demand for phosphates,

1 again, over the years has grown with the general
2 economy. As there will be more uses of water, the
3 quantity of phosphonates required would grow. In
4 recent years, it's been probably more like GDP growth;
5 maybe three or four percent, that type of thing -- not
6 huge growth in the United States.

7 But with the recession, and I don't that
8 this has been addressed before, 2009 is going to be a
9 tough year. There doesn't seem to be much doubt about
10 that. We're seeing it already; and we're having to
11 address that by making sure we have our costs under
12 control, et cetera, et cetera. But this year, we
13 certainly won't see any growth.

14 To what extent there will be a decline in
15 the volume of the use of phosphonates, it's difficult
16 to predict right now. But I would say that it will be
17 done in at least 10 percent; and probably more than
18 that.

19 To an extent, there will be a level of use
20 of phosphonates that stays there. So it's not going
21 to go away completely. Because you just can't replace
22 HEDP in a lot of applications with something else.
23 There isn't really a substitute for it. So there will
24 be a certain level of usage, regardless of what the
25 economy does.

1 COMMISSIONER WILLIAMSON: Thank you, Mr.
2 McCaul; my red light is on, and has been on for
3 awhile. But thank you very much.

4 MS. MCCOY: I thought that light was for
5 you, not for me.

6 (Laughter.)

7 COMMISSIONER WILLIAMSON: That's the first
8 time I've heard that.

9 CHAIRMAN ARANOFF: That is, in fact, true.

10 (Laughter.)

11 CHAIRMAN ARANOFF: We usually let the
12 witness finish what they're saying. But sometimes we
13 feel an urgency to move on to our next colleague;
14 Commissioner Pinkert?

15 COMMISSIONER PINKERT: Thank you, Madam
16 Chairman.

17 You talked a little bit about the
18 anticipated demand going forward. I'm wondering if
19 you can talk about the anticipated prices and demand
20 going forward for acetic acid, the by-product.

21 MR. MCCAUL: We can elaborate more in the
22 brief, as far as acetic acid is concerned. But let me
23 just say this. There have been time when acetic acid,
24 in making sure we had a home for all the acetic acid,
25 was an issue. That has, you know, periodically

1 cropped up, and it's something we have to deal with.

2 Fortunately, acetic acid is widely used in
3 the United States for lots of different applications.
4 There was a time when, because of our location in
5 Georgia, a lot of the acetic acid was being used in
6 the textile industry. It was commonly used by textile
7 manufacturers, and the volume of consumption there was
8 very large.

9 Over time, we've been selling acetic acid to
10 a wide range of industries. In recent times, for
11 example, we sell acetic acid to people who manufacture
12 inks; and the amount of consumption there is
13 considerable.

14 Acetic acid, I think what we'll do is we'll
15 write up an explanation for you about where it goes
16 and where it's used and what markets it's in. But I'm
17 very happy to tell you that today, I'm not worried
18 about acetic acid.

19 You know, our inventory of acetic acid used
20 to be quite high at one point. Today, our inventory
21 of acetic acid is very low, and we have quite a few
22 people who are interested in buying acetic acid from
23 us. So the balance is working out well.

24 COMMISSIONER PINKERT: Now this next
25 question is more of a legal question. But I'm

1 wondering how the Commission should evaluate the
2 impact of revenues for acetic acid, the bi-product, on
3 the performance of the domestic industry.

4 MR. LEVIN: I would like to give a little
5 bit more of a detailed answer in the post-hearing
6 brief. Quite honestly, I would like to look at
7 analogous situations and determinations in the past.

8 That being said, there is line item for the
9 bi-product revenue in the financial information page
10 of the producer's questionnaire. I believe it comes
11 right on top of the gross profits; so that it is taken
12 into account when you look at the gross profit and the
13 operating income and the net income, or the loss, as
14 the case may be. So almost by definition, it's built
15 into the financial analysis.

16 Beyond that, with the Commissioner's leave,
17 I would like to take a closer look at that question.

18 COMMISSIONER PINKERT: Staying with you, Mr.
19 Levin, for a moment, I understand the testimony about
20 the impact of general market conditions on demand in
21 the industry.

22 But I'm wondering how you would cast the
23 relevance of the financial crisis on the analysis we
24 would have to do in the context of a threat
25 determination.

1 MR. LEVIN: That's a complicated question.
2 I mean, obviously, the issue before the Commission in
3 this investigation, and in other investigations that
4 were filed right around the same time, and petitions
5 that are going to be filed now, is how much can you
6 attribute injury -- either material injury or threat -
7 - to general economic conditions; how much can you
8 attribute it to subject imports; where's the dividing
9 line; what's significant and what's not insignificant.

10 We'll give a further detailed analysis on
11 that, and put forward some of our thoughts looking
12 forward in the post-hearing brief.

13 However, there's two things that may come
14 into play here. First, to some extent, some of the
15 end uses of the HEDP are, as Brian had indicated
16 before, are recession -- if not proof -- they're going
17 to be hit less by the poor economic climate than
18 would, I don't know, kitchen carpentry for new homes
19 or something like that. I'm just thinking off the top
20 of my head.

21 But to some extent, and I believe it's
22 consistent with Commission determinations in the past,
23 industries that are operating in difficult economic
24 times are even more vulnerable to the effects of
25 unfairly traded imports. I really think that that is

1 what is beginning to emerge here; especially when we
2 see the fairly -- or the more than fairly -- the
3 significantly precipitous drop in prices that have
4 occurred over the past several months.

5 There's a lot of factors that go into play:
6 the raw material factor and how that washed through
7 the system; the general economic climate around the
8 globe, and the fact that China and India are keeping
9 at incessant pricing pressures. We have almost the
10 perfect storm that's occurring, right at this
11 particular time.

12 COMMISSIONER PINKERT: I have two follow-up
13 questions on that. First off, is there an argument to
14 be made that the overall downturn makes the U.S.
15 market less attractive for potential exporters to
16 export to the United States?

17 MR. LEVIN: I'm just speculating; but I
18 doubt that. This is a global economic crisis. So I'm
19 not sure that there's a whole lot of export markets
20 out there that are more attractive or significantly
21 more attractive than the United States, at this point.

22 The U.S. may be, even in this climate, the
23 most attractive export markets for foreign producers
24 that have geared their operations towards exports.

25 COMMISSIONER PINKERT: The second follow-up

1 question, and this relates to something that I asked
2 Mr. McCaul earlier today, I'm particularly interested
3 in the issues that you're raising right now in the
4 context of the point you made in your original
5 testimony that the survival of this industry is
6 potentially affected by the imposition or non-
7 imposition of an order. I'm wondering again, how does
8 the recession issue fit into that claim that you made?

9 MR. LEVIN: Understood; I don't want to
10 repeat what I said two minutes ago, because I think it
11 would be pretty much the same answer. With your
12 leave, we'd like to give a more detailed explanation
13 in the post-hearing brief.

14 COMMISSIONER PINKERT: Thank you; now
15 there's been a lot of discussion today about non-
16 subject imports, and I recognize that there are issues
17 about proprietary information there. I'm not trying
18 to get you to revisit any of that discussion.

19 But I'm wondering whether, in the post-
20 hearing submission, you can give us an analysis of
21 what our obligations are with respect to the analysis
22 of non-subject imports, in light of the recent
23 decision in the Mattel litigation.

24 MR. LEVIN: Absolutely; because I need to
25 get out of the house more often, I was looking at

1 Mattel last night, just to refresh my memory. So I'd
2 be happy to do so.

3 COMMISSIONER PINKERT: Thank you; thank you,
4 Madam Chairman.

5 CHAIRMAN ARANOFF: We talked a little
6 earlier today about the interesting and unusual
7 situation that was going on with respect to raw
8 material prices in the first three quarters or so of
9 2008.

10 As you know, the statute normally tells us
11 that if things start to look better for the domestic
12 industry after the filing of a petition, we can
13 disregard those improvements as being induced as an
14 effect of the petition.

15 But what I hear you telling me is that the
16 reason that prices went up is not because this case
17 was filed; but because of the raw material shortages.
18 So I'm trying to sort out what that means. Does that
19 mean that the normal statutory presumption is not
20 operative in this case; that we should not disregard
21 those 2008 data as being affected by the pendency of
22 the investigation?

23 MR. LEVIN: That's a great question. I
24 think the timing of this is highly unusual. Because
25 you do have this completely extraneous factor that

1 came into play exactly at the time that the petition
2 was filed and it was going through its preliminary
3 phases.

4 So, no, I wouldn't attribute too much, if
5 any, of the improvement in the domestic industry's
6 performance in 2008 as being a function of filing the
7 petition. I think there's a couple of factors that
8 need to come into play on that.

9 First of all, you have the phosphorous
10 situation, which was completely apart from the
11 petition filing itself. You had the phosphorous
12 situation that began to completely wash through the
13 system after the interim year period was concluded;
14 meaning the fourth quarter of 2008 and now the first
15 quarter of 2009, where things are beginning to revert
16 back to what we had seen before the 2008 period.

17 In addition, although it wasn't quite a
18 critical circumstances situation, the deposit
19 requirement on the imports did not go into place until
20 after the conclusion of the interim year period. So
21 the imports were still coming in at a pretty good clip
22 through 2008; and I believe the data collected in the
23 prehearing demonstrate that.

24 The understanding that we have -- Brian
25 sends me his report information like every other day

1 saying, you know, is there some way we could check if
2 the deposit is being met on this -- this stuff coming
3 through this port, this stuff coming through this
4 port. There's a lot of it out there. So I'm not sure
5 that the deposit requirement, the imposition of the
6 deposit requirement has had quite the effect that you
7 would think that it normally would have.

8 That may be because of the fact that it's
9 still under a bond requirement. That may be because
10 of the fact that you have estimated dumping margins
11 from the prelims that the Chinese and Indian producers
12 and/or importers feel that they can swallow,
13 especially in tough economic times.

14 CHAIRMAN ARANOFF: Okay, it's a very unusual
15 fact pattern. Because normally, once the case is
16 filed, you see the volume of imports fall off. You
17 don't see that here. That's one of the reasons, you
18 know, why I asked you how much of this can we
19 attribute to the filing of a case; and you've said
20 probably not --

21 MR. LEVIN: Not much.

22 CHAIRMAN ARANOFF: So we have a case then
23 where we see, you know, the condition of the domestic
24 industry improving in some respects in the interim
25 period; and yet imports continuing to rise. Then we

1 have to look back and go, well, what does that say
2 about our causation analysis for the period as a
3 whole.

4 MR. LEVIN: Absolutely, including the fact
5 that it was a highly unusual situation, which quite
6 honestly would not have been anticipated as of the
7 date of the filing of the petition.

8 But nevertheless, you still do have a
9 significant increase in the subject imports. You
10 still do have evidence of price injury; and you have,
11 especially in the much more recent time, the testimony
12 of the industry here that things are going back to the
13 way they were, and putting the industry in an even
14 more precarious position than what they started out
15 with. But it's one of several unusual aspects of this
16 particular fact pattern.

17 CHAIRMAN ARANOFF: Okay, well, anything that
18 you can do in a post-hearing to help me reconcile why
19 it is -- I mean, I understand that, you know, the raw
20 material situation drove costs up for everyone. So
21 you would expect it to drive everybody's prices up in
22 the market.

23 I don't want to get into confidential
24 information. But if you look at the net sales values
25 relative to the cost of goods sold and what happened

1 during that 2008 period, and bearing in mind that the
2 import volume is going up, I'm having trouble sorting
3 out what that means.

4 MR. LEVIN: Understood, and I know Brian
5 wanted to get in a point in here.

6 MR. FAILON: Yes, if I could add another
7 fact to the unusual fact pattern, and since we've been
8 talking quite a bit about non-subject imports here,
9 what you might expect when their preliminary
10 determination came out, you would expect a decrease in
11 the level of subject imports.

12 But on a flip side, you might expect a surge
13 in non-subject imports. Since you're going to have
14 presumably less Chinese and Indian product on the
15 market, it could be an opportunity to boost sales.

16 What we saw actually was just the opposite.
17 We looked at the imports from the non-subject country
18 three months prior to the preliminary determination;
19 and then we looked at the period three months after
20 the preliminary determination, and we saw imports half
21 the level after the preliminary determination as they
22 were before the preliminary determination. So that
23 was definitely counter-intuitive, and I don't have an
24 explanation for it.

25 CHAIRMAN ARANOFF: Okay, well, based on your

1 experience, Mr. Failon, back when you were in the
2 importing business, what's the lag time between when a
3 Chinese product is ordered and when it's available for
4 delivery to customers in the U.S.?

5 MR. FAILON: It's probably six or eight
6 weeks from the point where you order it to the point
7 where it's in your warehouse.

8 CHAIRMAN ARANOFF: That's short. I've been
9 dealing with a lot of products from China that we've
10 heard from lately and we hear, you know, three months
11 is a typical lag, particularly at the point in time --
12 not now -- when it was difficult to get containers
13 coming this way.

14 Okay, so it's six to eight weeks, you think.
15 So from the time when the preliminary duties went into
16 effect, you would expect there might be some time
17 between then and when you might see a fall-off in
18 imports, right? You'd be looking all the way to the
19 end of the year, by that point.

20 MR. FAILON: Yes, I think we did see a fall-
21 off early on in November and December. They've turned
22 around. They are increasing. I think both India and
23 China recognize that a determination was coming. So
24 they were able to anticipate and lower their level of
25 exports in August and September. But I do believe

1 those imports are on the rise now.

2 CHAIRMAN ARANOFF: Okay, and just because I
3 didn't ask you this, are you familiar with whether the
4 lag time from India is similar?

5 MR. FAILON: I don't know what that lag time
6 is.

7 CHAIRMAN ARANOFF: Okay, all right, well,
8 thank you for those answer, and I'll turn it over to
9 Vice Chairman Pearson.

10 VICE CHAIRMAN PEARSON: Thank you, Madam
11 Chairman. Mr. Levin, as you know, we need to write an
12 opinion for every Title VII case; and the opinions are
13 based on volume, price, and impact to the domestic
14 industry.

15 So what I wanted to do is briefly walk
16 through some of the trends that I observe here, and
17 I'll stay away from any reference or any mention of
18 confidential business information. But I wanted to
19 characterize some trends, and then get your thoughts
20 on how we might approach the opinion, okay?

21 So if we look at volume, we see that the
22 domestic industry increased production over the three
23 full years of the POI. There was a decline in the
24 second year, but that may have been due to the change
25 in ownership of the domestic business. The domestic

1 industry increased its market share over the full POI.
2 Subject imports also increased market share, but that
3 was largely at the expense of non-subject imports.

4 If we look at price, price depression
5 frankly isn't terribly obvious, because the prices
6 rose towards the end of the POI. Price suppression
7 also is not terribly obvious, because we see the cogs
8 to sales ratio trending down, both over the three full
9 years and the entire POI.

10 We don't have many conformed lost sales, and
11 we have no confirmed lost revenues. Then we switch to
12 impact on the domestic industry.

13 Domestic production was up over the three
14 full years of the POI. Capacity utilization was up.
15 U.S. shipments were up. The value of those shipments
16 was up. The number of production workers did decline
17 by XXX people. Wages paid were up. Hourly wages were
18 up. Productivity per worker was up slightly. The net
19 sales quantity is up. The net sales value is up.

20 Operating income is rising albeit from a low
21 level. Capital expenditures or operating income to
22 sales ratio also is increasing, and capital
23 expenditures rose over the three full years.

24 So my question is, how does this set of
25 facts demonstrate a causal relationship between

1 subject imports and the condition of the domestic
2 industry? If you do think we should vote in the
3 affirmative, you've got to explain to me how you would
4 you have us write an opinion that would be sustained
5 upon appeal at the Court of International trade.

6 MR. LEVIN: Absolutely, I understand the
7 question; and instead of doing this off the cuff, I
8 will walk through the full analysis in the post-
9 hearing brief, if I may.

10 That being said, you have the over-arching
11 issue here of a single domestic producer that started
12 up its operations in the middle of the period of
13 investigation; and that switched from an
14 importing/producing operation to a full producer
15 operation about two thirds of the way through the
16 period of investigation. So some of the increases,
17 and in fact a significant degree of the increases that
18 you're noting, are the natural operational or the
19 natural result of that factual occurrence, number one.

20 Number two, you have an increase of the
21 volume of subject imports. The volume itself, we
22 submit, is significant. The increase in the volume is
23 significant, we submit, in both absolute and relative
24 terms.

25 Two, the value of the imports and its effect

1 on prices -- I believe this is confidential. But let
2 me say that the price of the subject imports were of
3 such a nature in the period of investigation that they
4 did not really allow the opportunity for the domestic
5 manufacturers to raise their prices. You do have a
6 significant majority of the quotas encompassed by the
7 period of investigation for which there was under-
8 selling by the subject imports.

9 On the lost sales information, I've to be
10 very careful here. But to some extent, they were
11 confirmed, and to some extent, you have to read the
12 responses a little closely to get to what the
13 customer's answer actually was, as opposed to affirmed
14 or denied.

15 So you do have an increase in volume. We
16 believe that the under-selling and the lost sales
17 information that is present in the record establishes
18 a harmful effect on the domestic price.

19 On the operation of the domestic industry
20 itself, again, couched in the context of the unique
21 attributes that are present here, in terms of
22 Compass's operations, we submit and we believe the
23 evidence supports the fact that there is a significant
24 harmful impact, especially on the financial aspect.

25 Yes, the operating loss has improved through

1 the period of investigation. But it's still far from
2 good, with little prospect that it's going to get any
3 better, especially in the face of unfairly traded
4 imports.

5 VICE CHAIRMAN PEARSON: Okay, thank you for
6 that response, and I'll look forward to the post-
7 hearing brief on these topics.

8 I also would like to apologize, because I
9 inadvertently made reference to a specific number of
10 production employees that I should not have; and I'm
11 advised that will be removed from the record. I'm
12 often possessed of normal human clumsiness, and that
13 was one of those examples.

14 (Laughter.)

15 MR. LEVIN: No harm; no foul.

16 VICE CHAIRMAN PEARSON: Okay, Madam
17 Chairman, I have further questions.

18 CHAIRMAN ARANOFF: Commissioner Okun?

19 COMMISSIONER OKUN: Just a couple of things,
20 going back to the responses with respect to how we
21 evaluate what's going on in 2008, I didn't hear this
22 response. With respect to the pricing, I mean, I
23 understand we've talked about the raw material and
24 what was going on with respect to raw materials.

25 But the reason that you were able to push

1 through the price increases, when there are increasing
2 imports at the same time, what do you largely
3 attribute that, that you were able to do that during
4 that time period? Is it because your competitors were
5 having more difficulty than you, or was it an
6 availability issue?

7 MR. MCCAUL: It was an availability issue.
8 Getting raw materials to make enough product was a
9 problem for us in 2008. Other people were having
10 great difficulty in getting enough material, as well.

11 But the biggest thing was the cost. The
12 cost of the raw materials, as I mentioned, as far as
13 an asset, for example, tripled in cost during that
14 period of time. We had no option but to raise prices.
15 Absolutely everybody was raising prices. They had to,
16 at that same time.

17 COMMISSIONER OKUN: Okay, so you didn't see
18 yourself in an advantageous position during that
19 period, in terms of either your ability to go to your
20 customers and say, you know, we know it's tight, but
21 we can supply you? I mean, it's kind of this question
22 about how important availability is, and whether it
23 was particularly influencing the 2008 prices.

24 MR. MCCAUL: No, I would say we had an
25 advantage in some cases; I mean, not all cases. But

1 there were times during that period where we might
2 have had some raw material and could make some product
3 and, you know, were better positioned to negotiate
4 better prices, yes. I don't think there's much doubt
5 about that.

6 But you know, there still was competition
7 out there, and there were other people who were
8 dealing in the same circumstances. You know, 2008 was
9 a very unusual set of circumstances. I've never seen
10 anything like what happened in 2008 in my life, as far
11 as raw materials.

12 Most people in the industry will tell you
13 the same thing; that they've never seen anything like
14 it; the rapid increase in costs and the shortages and
15 the prices going through the roof. It was an
16 incredible situation. I think drawing any conclusions
17 for the long term on what happened in 2008 would be a
18 mistake. That's my opinion.

19 COMMISSIONER OKUN: Okay, and then my final
20 question, I know in response to Commissioner Lane, you
21 had indicated that you would provide additional
22 details about your business plan during the
23 acquisition, and I know that you submitted some
24 information in the supplemental questionnaire with
25 respect to your business plan. But I would also

1 appreciate looking at those numbers.

2 As part of that, if you could indicate
3 whether you had an plans to expand capacity; whether
4 that was part of it at that point or not, or if there
5 were any more plans at this point. I'll look at that
6 at post-hearing. With that, Madam Chairman, I don't
7 have any other questions.

8 CHAIRMAN ARANOFF: Commissioner Lane?

9 COMMISSIONER LANE: Mr. Levin, this is a
10 follow-up to Vice Chairman Pearson's question, and I
11 don't want to get into any business proprietary
12 information.

13 But when you answer his question post-
14 hearing, I'd like for you to specifically focus on
15 what you think the best estimate of the effects would
16 have been in the market, if subject imports had been
17 fairly traded during the period of investigation.

18 What do you think the specific volume
19 effects would be on the domestic industry deliveries
20 and non-subject imports, price effects in the U.S.
21 market, and how these effects would have impacted the
22 profitability and employment levels in the U.S.
23 industry?

24 MR. LEVIN: I'd be happy to.

25 COMMISSIONER LANE: Okay, thank you; now at

1 pages three and four of its pre-hearing brief, AWTCP
2 argues that the relative increase in the volume of
3 subject imports should be measured against the sales
4 of the current entities involved in production,
5 regardless of the source of those volumes, and
6 regardless of changes in the industry over the period
7 of investigation.

8 Do you believe that such a measure to
9 determine whether the increase in subject imports has
10 been relatively small or large is reasonable?

11 MR. LEVIN: I'm sorry, where are you
12 looking, page three and four?

13 COMMISSIONER LANE: Pages three and four of
14 the pre-hearing brief of the Respondents.

15 MR. LEVIN: Right.

16 COMMISSIONER LANE: It's where they talk
17 about the relative increase in the volume of subject
18 imports measured against the current entities in the
19 market, as opposed to the subject imports, over the
20 period of investigation.

21 MR. LEVIN: Again, I don't want to do this
22 off the cuff, so I'd like to walk through it in the
23 post-hearing brief. With my apologies, I'm not sure
24 if I'm capturing your question correctly.

25 COMMISSIONER LANE: The Respondents are

Heritage Reporting Corporation
(202) 628-4888

1 talking about the surge in imports, and are saying
2 that the Petitioner's estimation of that surge should
3 be really based upon the sales volumes, as opposed to
4 how much the subject imports have increased. They're
5 taking into effect the fact that Compass used to be an
6 importer.

7 MR. LEVIN: Right.

8 COMMISSIONER LANE: And so I want to look at
9 your sales volumes, as opposed to total volumes.

10 MR. LEVIN: Okay, and that's where I thought
11 the question was geared towards. The subject imports
12 increased significantly, whether or not you include
13 Compass's imports.

14 COMMISSIONER LANE: Yes.

15 MR. LEVIN: I'm making that as an
16 affirmative statement.

17 COMMISSIONER LANE: I'm asking you to
18 respond to the methodology that the Respondents are
19 advocating, as opposed to whether or not there has
20 been a surge, based upon your production, or the
21 domestic production and the subject imports.

22 MR. LEVIN: If I may, can I look at this and
23 address that particular point in the post-hearing
24 brief?

25 COMMISSIONER LANE: Yes.

1 MR. LEVIN: Okay.

2 COMMISSIONER LANE: Okay, now this is going
3 back to something that we have discussed earlier. I'd
4 like for you to discuss the production process and the
5 differences between raw material inputs that were used
6 in the Smyrna facility when LINX was operating yet,
7 and the raw material inputs used by Compass.

8 In answering, could you indicate the
9 differences in raw material costs and net production
10 costs between the LINX operations and Compass, and
11 whether there might be different raw material costs
12 versus other factory costs in 2005 versus 2007, solely
13 because of different raw material inputs?

14 MR. FAILON: I'll start the answer to that
15 question. I believe I may have touched on that
16 briefly in my direct testimony.

17 I've looked at a snapshot in time, October
18 2006, a period when we were still using phosphorous
19 trichloride at the Smyrna plant. We were in the
20 process of transitioning over to phosphorous acid
21 crystal.

22 Looking at those figures, we anticipated and
23 then realized a greater than 25 reduction in the total
24 raw material cost by switching from PCL-3 to
25 phosphorous acid crystal. That was the only change we

1 made to the raw material scheme after Compass acquired
2 the Smyrna plant.

3 Again, the first route was PCL-3 reacted
4 with acetic anhydride. We swapped out the phosphorous
5 acid crystal for the PCL-3; but again, continued to
6 use acetic anhydride. So again, our raw material cost
7 total was going to be about 25 percent or so lower;
8 just in that shift of the one raw material.

9 MR. MCCAUL: Let me just add something here
10 briefly. The big change then was from phosphorous
11 trichloride or PCL-3 to using phosphorous acid. We
12 knew that going in, that we needed to make that
13 change. It would reduce our costs considerably, and
14 that was part of the whole economics of looking at the
15 acquisition.

16 Additionally, there's a point here that I
17 think is maybe being missed. We haven't explained
18 this well enough. It's that when Compass acquired
19 this manufacturing facility, this plant that was
20 producing and selling, albeit through another company,
21 a large volume of phosphonates, Compass assumed that
22 it would immediately have a sudden increase in total
23 sales of phosphonates, because now it would have the
24 product that had been importing previously, it kept
25 those customers.

1 And because we were manufacturing from that
2 plant, that we would immediately have a large increase
3 -- maybe not one and one making two; but one and one
4 making, you know, 1.8 or something like that. That
5 was a big part of the whole economics.

6 I would make one other comment, had we not
7 made that change, to produce from phosphorous acid, we
8 would definitely be out of business today. Because
9 today's economics, using the old technology of PCL-3,
10 with the pricing of PCL-3 today, we would definitely
11 not be selling one pound of HEDP in the market.

12 COMMISSIONER LANE: Okay, thank you; Madam
13 Chair, that's all I had.

14 CHAIRMAN ARANOFF: Commissioner Williamson?

15 COMMISSIONER WILLIAMSON: Thank you; I have
16 no further questions. But I do want to thank the
17 panel for their testimony today; thank you.

18 CHAIRMAN ARANOFF: Commissioner Pinkert?

19 COMMISSIONER PINKERT: I, too, would like to
20 thank the panel, and I look forward to the submission
21 post-hearing.

22 CHAIRMAN ARANOFF: Are there any further
23 questions from Commissioners?

24 (No response.)

25 CHAIRMAN ARANOFF: Does the staff have

1 questions for this panel?

2 MR. CORKRAN: Douglas Corkran, Office of
3 Investigations -- thank you, Chairman Aranoff, the
4 staff has no additional questions.

5 CHAIRMAN ARANOFF: Mr. Craven, do you have
6 any questions for this panel?

7 MR. CRAVEN: No, Your Honor.

8 CHAIRMAN ARANOFF: I've been promoted.

9 (Laughter.)

10 CHAIRMAN ARANOFF: All right, well, in that
11 case, we will take a lunch break and re-convene at
12 1:45. In the meantime, I need to advise everyone that
13 this room is not secure, and you should not leave any
14 proprietary information or, in fact, anything of any
15 value in this room, if you're not here to guard it.

16 I do want to thank this morning's panel for
17 your time and your attention to all of our questions.
18 With that said, we will stand in recess until 1:45.

19 (Whereupon, a lunch recess was taken.)

20 //

21 //

22 //

23 //

24 //

25 //

1 our direct comments today will necessarily be very
2 brief. We are primarily here to address any questions
3 or concerns that the Commission may have. We'll be
4 happy to answer these questions, to the extent that we
5 can, in today's hearing; and if they refer to
6 proprietary information, we will address these issues
7 in our post-hearing submission.x

8 I would now like to briefly move to the
9 substance of my comments. It is our position that the
10 Commission needs to examine the unique circumstances
11 of the industry in evaluating each of the statutory
12 factors. The Commission needs to look beyond the raw
13 numbers to the real numbers.

14 One of the few numbers that we could have
15 discussed at this hearing is the magnitude of the
16 dumping. Unfortunately, the department's final
17 results will not be issued until later this week.

18 What we do know is that the department will
19 only be calculating a margin for one Chinese producer,
20 based on the data for that producer; and will be
21 assigning two other producer's rates based on that
22 producer's data.

23 We submit that when the Commission receives
24 these numbers, it should give the greatest weight to
25 the producer that had their actual data reviewed.

1 We also note that contrary to Mr. McCaul's
2 assertions this morning, we are confident that dumping
3 is not occurring; and this will, in fact, be reflected
4 in the producer who had their actual data reviewed.

5 Further, in addition to the factors normally
6 examined by the Commission, we submit the Commission
7 should take into account a number of other issues.
8 Initially, the Commission should recognize that
9 customers do not wish to expose themselves to a risk
10 of using a single source for products. This, in fact,
11 was confirmed this morning by the Petitioner.

12 A number of factors were, in fact, set forth
13 in Table 23 to the public prehearing staff report that
14 were, in the aggregate more important than price.
15 These were availability, quality meeting
16 specifications, product consistency, and reliability
17 of supply, as being more important than price.

18 Purchasers prefer to purchase directly from
19 a producer of the chemicals or a distributor that uses
20 a single source for their chemicals, to ensure
21 consistency of quality and reliability of supply.
22 This is reflected in the fact that 28 of the
23 responding purchasers require certification or pre-
24 qualification for its suppliers.

25 Where a supplier is providing product from

1 two or more sources, the certification or pre-
2 qualification process becomes far more complex.
3 Purchasers prefer to have at least two sources of
4 chemical which meet their specifications. This is
5 important in the event of a problem in supply
6 occasioned by a labor dispute, a natural disaster, an
7 industrial accident, or some other disruption in
8 supply, such as China's winter storms of 2008.

9 If Chinese and Indian sources of supply were
10 excluded from the market, the primary beneficiary
11 would be other non-U.S. sources of supply.

12 Secondly, the Commission should take into
13 account the nature of Compass's prior presence in the
14 market, and their former position as an importer and
15 distributor of imported products. Many of the
16 entities that might purchase from Compass are similar
17 in structure to the pre-manufacturing Compass
18 operations -- the very distinction they discussed this
19 morning, between a manufacturer and a supplier.

20 In sum, Compass was a competitor to these
21 entities. Now Compass has expanded to manufacture
22 product in the U.S. Accordingly, these entities
23 cannot buy from Compass, as to do so would place them
24 at a significant competitive disadvantage.

25 This is similar to the sediments expressed

1 by Compass, as reported in the public prehearing staff
2 report, when they stated they could no longer rely on
3 Rodia as a supplier of PCL-3, because Rodia in effect
4 became a competitor.

5 I would now like to address a number of
6 issues presented by Mr. Levin this morning. We have
7 no dispute with the domestic like product. We agree
8 that a single like product is appropriate in this
9 investigation.

10 With respect to cumulation, we are not
11 taking a position. We believe that the facts speak
12 for themselves, and we are confident the Commission
13 will make an appropriate finding.

14 I will now turn the microphone over to Mr.
15 George Collias, who will offer some observations on
16 the market and on the testimony that the Commission
17 heard this morning. After he completes his testimony,
18 Mr. Collias, Dr. Wang, and myself will be available
19 for any questions the Commission may have; thank you
20 very much.

21 MR. COLLIAS: Good afternoon, can you hear
22 me? I'm George Collias. I am a U.S. citizen. I am
23 an officer of Uniphos, Incorporated, and Uniphos
24 Incorporated is a wholly owned company of Woo Jing
25 Fine Chemical Factory.

1 I helped form this corporation in October of
2 2006 with Woo Jing; and the intention has been, from
3 that point forward, to better serve customers in the
4 United States and Canada.

5 Woo Jing is one of the three HEDP
6 manufacturers located in China that has responded to
7 the inquiries that came from your Commission, as well
8 as the Department of Commerce. I'd like to make that
9 known, because there is a perception that there is a
10 reluctance to participate in the dialogue for you to
11 do your job.

12 I'd also like to say that after reading this
13 report, I'm very impressed by the findings of the
14 Commission and the staff who did this. There are many
15 things that even I, who have the experience in the
16 market, have learned by reading the report.

17 Now my background is marketing, and I've
18 worked for 21 years in the largest water treatment
19 chemical company in the world; and for approximately
20 eight years, I've been involved in the purchase and
21 marketing of phosphonates that include HEDP.

22 One of the things I can tell you about
23 marketing is that each person has a view that's based
24 on experiences, and they are solid experiences. But
25 each person has a somewhat different view, because

1 they have experiences in talking to a certain group of
2 people. Your challenge, and I don't envy your
3 challenge, is to try to understand the nature of the
4 marketplace.

5 One example I would like to point out that
6 there were many questions on is that there was a
7 perception that there is very little competitiveness,
8 or most equal competitiveness, by what you refer to
9 as, I think you call them the non-subject importers.

10 Having talked to one of the largest users of
11 HEDP in the United States, I would rank them either
12 five or eight. I can assure you that they haven't
13 even been contacted in the survey that you did on the
14 HEDP inquiry.

15 It happens to be that one of those largest
16 users is a customer of a UK phosphonate manufacturer.
17 So you can only do your best with the time and the
18 resources available. What I'd like to point is, you
19 know, the competitiveness of the UK HEDP
20 manufacturers, I believe, is healthy and they play a
21 role.

22 I would just like point out that so much of
23 today's discussion has been focused on what is
24 perceived to be the nature of the Indian and the
25 Chinese HEDP manufacturers. We're all competing to

1 make a living. The year 2008 was a very unique year,
2 and it goes to show how challenging to showing how
3 challenging supply channels can be.

4 Quite honestly, I didn't even know until
5 reading the Commission's report that 80 percent of the
6 phosphorous reserves in the world come from China.
7 That requires a considerable dependency on China at
8 some point for phosphorous derived chemicals; whether
9 it's the HEDP that comes to us that is Uniphos, or
10 whether it's the phosphorous acid that might come to
11 the Petitioner.

12 There is a very high dependency on that
13 country for phosphorous; much higher in proportion
14 than our country's dependency on oil. That's a
15 surprise to me, but this is what I learned in the
16 report.

17 China had a tremendous snow storm, a
18 historic snow storm in 2008. It affected the mines.
19 It affected the harbors. It affected the railroads.
20 It affected the highways. It affected the utilities
21 to the point where electricity was rationed.
22 Electricity was rationed so that it could go to homes
23 versus factories.

24 Consequently, many of the HEDP manufacturers
25 were forced to close; and rightfully so, the

1 Government made decisions on the safety of its people
2 in that time of cold during the winter.

3 After that happened, the industry had
4 challenges in, I'll call it, rebuilding and re-
5 establishing inventory for their customers throughout
6 the year. One thing that I told one of your staff
7 people, as they did ask this question, was why did
8 costs go up so much?

9 I just need to point out, and it was pointed
10 out little bit this morning, the HEDP industry and the
11 phosphonate industry is a relatively small industry,
12 when compared to the power of the agricultural
13 chemistry industry.

14 The demand is dictated by agricultural
15 chemicals. The pricing is dictated by the supply and
16 demand relationship with agricultural chemicals and
17 the phosphorous-derived chemical manufacturers; and
18 the manufacturers of HEDP basically have to accept the
19 prices that are offered to them, based on those
20 conditions.

21 I'd like to leave it at this point, and then
22 offer to answer any questions that you might have
23 later; thank you.

24 MR. CRAVEN: That concludes our direct
25 presentation; thank you.

1 CHAIRMAN ARANOFF: Thank you very much;
2 welcome to the afternoon panel, and thank you for
3 taking time out of your day to be available to answer
4 our questions. We're going to start the questioning
5 this afternoon with Commissioner Lane.

6 COMMISSIONER LANE: Thank you for coming
7 this afternoon. Mr. Collias, let me start with you
8 and go back to some basics. Would you tell me exactly
9 what your company does and how long you've been in
10 business, what is the nature of your business, where
11 you get your product from, et cetera?

12 MR. COLLIAS: As I said, we're a wholly
13 owned company of Woo Jing Fine Chemical Factory. Woo
14 Jing Fine Chemical Factory is one of the leading
15 manufacturers of phosphonate in the world. We buy
16 only phosphonates from Woo Jing Fine Chemical Factory.

17 I helped the General Manager of the company
18 form Uniphos in October of 2006. It's an Illinois
19 based corporation. I had known the General Manager
20 for approximately five years, and he had asked me to
21 help establish the distribution network, the
22 warehousing network, and to interact with customers in
23 the United States on their behalf. Does that answer
24 your question?

25 COMMISSIONER LANE: Well, sort of -- I have

1 a few more.

2 MR. COLLIAS: Go ahead.

3 COMMISSIONER LANE: So you're located in
4 Illinois.

5 MR. COLLIAS: Yes.

6 COMMISSIONER LANE: And you buy solely from
7 your parent company, and you distribute to your
8 customers.

9 MR. COLLIAS: That's correct.

10 COMMISSIONER LANE: Okay, so what is the
11 nature of your customer business?

12 MR. COLLIAS: Well, I'm trying to see if I
13 understand your question.

14 COMMISSIONER LANE: Well, I mean, do you
15 have customers other than in the water treatment
16 facilities?

17 MR. COLLIAS: Well, we sell to distributors,
18 as well as we call them custom blenders, who formulate
19 products on behalf of water treatment service chemical
20 companies, who don't have that manufacturing
21 capability.

22 We also sell to companies who do have the
23 ability to both formulate their products, as well as
24 provide the service. Those are more integrated water
25 treatment chemical companies. There are also

1 companies who sell cleaners -- industrial and
2 institutional cleaners. They are a major segment that
3 uses phosphonates in this country, as well.

4 Mr. Craven is asking me if water treatment
5 chemicals are the only chemicals that we sell.

6 COMMISSIONER LANE: Yes, I think that's what
7 I asked.

8 MR. COLLIAS: Well, in trying to respond to
9 that question, we sell a product line of chemicals,
10 most of which are used in water treatment. You would
11 not describe the cleaner market as a water treatment
12 market. But it would still utilize HEDP and other
13 phosphonates that are coincidentally used in water
14 treatment. Does that help answer your question?

15 COMMISSIONER LANE: Yes, well, you had said
16 that you had spent most of your career in the water
17 treatment industry.

18 MR. COLLIAS: Yes.

19 COMMISSIONER LANE: So that's why I was
20 wondering if the business now is geared solely toward
21 water treatment.

22 MR. COLLIAS: Well, Woo Jing is
23 approximately 30 years old. So they had been in
24 business a long time before I came and helped manage
25 the Uniphos business.

1 Their major customers are global customers
2 in the water treatment industry. The largest water
3 treatment chemical companies do business in many
4 continents throughout the world; and Woo Jing has
5 worked to be a major supplier to companies like that.

6 COMMISSIONER LANE: Okay, and so I
7 understand that you deal solely with product coming
8 from Woo Jing.

9 MR. COLLIAS: That's correct.

10 COMMISSIONER LANE: Okay, so in the post-
11 hearing, can you compare the prices you pay for the
12 product, compared to the prices that you would be
13 paying if you were buying the product from Compass?

14 MR. COLLIAS: I've never asked Compass for a
15 price quote. That's a challenging request.

16 COMMISSIONER LANE: Well, I guess maybe if
17 you tell us what prices you pay for your product, then
18 we can look in the staff report to figure out how that
19 compares to what Compass is paying.

20 MR. COLLIAS: I believe I've disclosed that
21 in the inquiry that I was sent by your staff.

22 COMMISSIONER LANE: Okay, so it's in the
23 questionnaire response.

24 MR. COLLIAS: Yes.

25 COMMISSIONER LANE: Okay, thank you.

1 MR. CRAVEN: Madam Commissioner, I will also
2 see if I can synthesize something. He's very limited,
3 as you know, by the data that's available to him
4 directly.

5 COMMISSIONER LANE: Okay, thank you; what
6 chemical products compete against HEDP, and can they
7 be used for the same job that HEDP does?

8 MR. COLLIAS: Is that a question for me?

9 COMMISSIONER LANE: Yes, unless Mr. Craven
10 wants to answer it, or Dr. Wang.

11 MR. CRAVEN: No, George, really, I'm just a
12 lawyer.

13 MR. COLLIAS: Okay, I'll be glad to try.
14 Well, there are a variety of phosphonates that are
15 made by Woo Jing Fine Chemical Factory. Having come
16 from a water treatment chemical company that focuses
17 on what I call specialty chemicals, there are
18 scientists and engineers who are always trying to
19 understand the nature of the technical conditions that
20 exist in their customers' processes.

21 There are many, and people work to try to
22 sort out the variety of technical challenges that are
23 in each process and in each water; and then they
24 formulate a product.

25 I'd like to go back and just make sure that

1 you understand that, generally speaking, in the water
2 treatment chemical industry, when HEDP or any other
3 phosphonate is used, it is used in combination with,
4 I'll say, anywhere from four to ten other chemicals
5 that are blended together to meet a multi-functional
6 purposes -- all the various demands that exist in the
7 customer's process and water.

8 So a formulating chemist will make a
9 decision on, is there going to be a high amount of
10 chlorine in the customers' water. Maybe I'll pick a
11 more chlorine resistant phosphonate. Would there be a
12 higher heat flux? Would some heat exchangers require
13 that the decision to use a certain phosphonate, or
14 maybe to go to a polymer?

15 The formulating chemist has to go through a
16 process of sorting out a variety of different
17 chemicals that best serve the customer's technical
18 requirements; and some of those were disclosed also in
19 my response to your inquiry.

20 COMMISSIONER LANE: Okay, thank you; would
21 you agree that when HEDP is used as an input in other
22 chemical products, that the cost of the HEDP
23 represents a relatively small portion of the cost of
24 the formulation that it is added to?

25 MR. COLLIAS: Yes.

1 COMMISSIONER LANE: To what extent do large
2 companies that make these formulations that use HEDP
3 exercise their purchasing power to influence HEDP
4 prices in the United States and in other markets?

5 MR. COLLIAS: Some companies conduct annual
6 requests for proposal. In that case certain companies
7 have their business for one year, maybe two years, but
8 generally speaking one year, and so the industry must
9 recompute for that business on a yearly basis. And
10 requests for proposal are generally issued to
11 companies who have submitted their products, have
12 qualified their products on a technical basis, perhaps
13 have met other specifications of capability, and then
14 the requests for proposal go out and we compete for
15 business with everybody.

16 COMMISSIONER LANE: Thank you.

17 CHAIRMAN ARANOFF: Commissioner Williamson?

18 COMMISSIONER WILLIAMSON: Thank you, Madame
19 Chairman. I do want to welcome the panel to this
20 afternoon's hearing.

21 Mr. Craven, we are required by statute to
22 examine the industry as a whole, and we're often faced
23 with situations where companies leave or enter the
24 market during a period of investigation. We look at
25 data of all firms over the period.

1 Can you provide any legal basis for your
2 argument that we should be looking at Compass' data
3 only in our analysis?

4 MR. CRAVEN: I would suggest that it falls
5 under the provision which entitles you to look at all
6 economic, other economic factors. That while
7 technically you have to look at the industry as a
8 whole, I think you also cannot divorce yourself from
9 commercial reality and from factual reality, and that
10 falls under the, I'll give you the exact citation in
11 the brief, but there is a provision providing for the
12 Commission to look at other relevant economic factors,
13 and I would argue that in fact that's the basis on
14 which you should be looking at the Compass trends as
15 opposed to the industry trends.

16 Because this is not a situation, here this
17 is clearly a situation where any prior market
18 participants are clearly gone. This is a very
19 different situation factually, and I think that would
20 justify resorting to that examination.

21 I really don't want to go into much more
22 detail here because it really starts getting into BPI
23 relationships, I believe.

24 COMMISSIONER WILLIAMSON: Okay, because I
25 was about to ask you what was it that we would find

1 differently than what we did.

2 MR. CRAVEN: But I will --

3 COMMISSIONER WILLIAMSON: -- make any
4 difference actually.

5 MR. CRAVEN: I disagree, and I think our
6 brief sets forth, I think it depends on what numbers
7 you're looking at, and that's where it gets heavily
8 into the BPI. I apologize.

9 COMMISSIONER WILLIAMSON: Anything you can
10 add to what you submitted in your pre-hearing brief.

11 MR. CRAVEN: Yes.

12 COMMISSIONER WILLIAMSON: Do you agree with
13 Petitioner's argument that we should cumulate subject
14 imports?

15 MR. CRAVEN: We have no position on that.
16 We think it doesn't matter. We think whatever you
17 decide you're going to read the same conclusion. We
18 leave it to your discretion and we promise we won't
19 appeal.

20 COMMISSIONER WILLIAMSON: Thank you.

21 Our data show that the subject imports from
22 China imported by companies other than Compass
23 increased over the POI. Why would this not be
24 evidence of significant subject import volume?

25 MR. CRAVEN: I hate to go back to the

1 confidential information, but that relates to the very
2 first question you asked and it relates to trends and
3 related matters. I think we can explain it, but I
4 don't think we can explain it here.

5 COMMISSIONER WILLIAMSON: Okay, fine.

6 What conclusions should the Commission draw
7 from the pricing comparisons on the record and the
8 underselling they indicate? Same answer?

9 MR. CRAVEN: To some extent. We I think in
10 the brief went into a little bit as to why looking at
11 underselling -- It becomes particularly complex
12 because it's theoretically possible that Compass are
13 the ones that are on both sides of the trend in
14 certain cases. And again, I really can't go into that
15 in the public hearing. Sorry.

16 COMMISSIONER WILLIAMSON: The data is
17 confidential, but anything you want to say about
18 whether or not we should find injury here now?

19 MR. CRAVEN: I don't think you should find
20 injury. I wish there were more data I could discuss
21 here.

22 COMMISSIONER WILLIAMSON: Okay.

23 You point to some supply disruptions in
24 China for raw materials. What indications do we have
25 on the record that those disruptions are not

1 temporary? Do you think they're temporary or not, or
2 --

3 MR. CRAVEN: Supply disruption is temporary.

4 MR. COLLIAS: My believe is that the supply
5 disruptions were first because of the storm in the
6 winter; second, I'll say because of the significant
7 demand by another industry that influenced the amount
8 of raw material available to phosphonate
9 manufacturers; and third, the Olympics which
10 restricted the ability to distribute materials within
11 the country and the manufacturer within the country.

12 To the best of our knowledge, at this time
13 there is not the degree of competition for the
14 phosphorous derived chemicals by the agricultural
15 chemical industry. So we believe that the supply of
16 these phosphorous derived chemicals such as PCL3 is
17 much better for the availability to make and supply
18 HEDP and other phosphonates as required by the
19 industries.

20 MR. CRAVEN: These were temporary
21 restrictions for the most part.

22 COMMISSIONER WILLIAMSON: So to the extent
23 that exports of HEDP from China have been causing a
24 problem to the domestic industry, that's going to
25 continue, isn't it?

1 MR. CRAVEN: If that were in fact the case.
2 But again, we don't believe that is the case. There
3 are other issues involved here. It's not an import
4 related problem.

5 COMMISSIONER WILLIAMSON: So any export
6 trends or shipment trends that were prior to 2008,
7 taking into account the recession too, which is
8 another factor.

9 MR. CRAVEN: Yes, the Commission has a very
10 tough task factoring out different covering factors
11 here.

12 I think the third factor you have to also
13 take into account when looking at the data, of course,
14 is the impact of Compass. That's also going to be
15 very difficult to determine how to factor in or out of
16 the equation. We'll be glad to provide something more
17 in the post-hearing brief on how we think you can
18 address that.

19 COMMISSIONER WILLIAMSON: Thank you.

20 Any comments you can give us on what you
21 think the near term demand for HEDP in the U.S. or
22 globally?

23 MR. COLLIAS: Some of the demand for
24 phosphonates in general will be reduced because of the
25 reduction of economic activity in this country. It's

1 hard, I listen to the news and hear that many people
2 have difficulty of projecting the future at this time
3 even on a quarter by quarter basis.

4 There's another aspect to demand that was
5 not discussed this morning. It might be commonly
6 known when somebody uses the term of a cooling water
7 chemical. But a cooling water chemical is used in
8 what we call process cooling where water is being used
9 to cool a product. For example hot steel, we're
10 cooling it as it goes through a mold. Oil and other
11 chemicals are cooled by water. That's process
12 cooling. That is again, the demand for the chemicals
13 is influenced by the demand for those products. But
14 there is another market called comfort cooling. You
15 commonly know it as air conditioning, but many air
16 conditioning units in big buildings are handled by
17 water processes, not just a simple little freon based
18 air conditioner that we might have in our homes. And
19 that demand is seasonal. It depends on how hot the
20 summer is. If it's a hotter summer, there's a greater
21 demand for HEDP and other phosphonates because they're
22 processing water to operate the air conditioning
23 systems for those bigger buildings.

24 COMMISSIONER WILLIAMSON: I really meant to
25 ask this this morning. Do you have any idea what

1 percentage of the market for HEDP is used in cooling?

2 MR. COLLIAS: I don't have that data with
3 me. I can attempt to try to answer that, but I don't
4 have it with me now.

5 COMMISSIONER WILLIAMSON: I think what
6 you're saying is that use may be more affected by the
7 recession than --

8 MR. COLLIAS: No, what I said is that each
9 use is affected by different conditions. The comfort
10 cooling market is affected by seasonality and the
11 degree that, we actually call it degree days. The
12 amount of heat that exists in summertime conditions
13 which creates the demand for phosphonates and other
14 water treatment chemicals. That has a different
15 demand than one for the manufacture of steel or the
16 manufacture of oil and other chemicals.

17 COMMISSIONER WILLIAMSON: Would both those
18 uses more likely be affected by a recession than the
19 water treatment? They can live with a little bit more
20 heat if --

21 MR. COLLIAS: I would argue that in a
22 hospital you wouldn't do it.

23 MR. CRAVEN: Also I think a key here, water
24 treatment is what we're referring to when we talk
25 about this as well. This is also water treatment of

1 the boiler water or the cooling water.

2 MR. COLLIAS: But the majority of
3 phosphonates, in my opinion are used in cooling water.

4 COMMISSIONER WILLIAMSON: Thank you.

5 CHAIRMAN ARANOFF: Commissioner Pinkert?

6 COMMISSIONER PINKERT: Thank you, Madame
7 Chairman. I too would like to thank all of you for
8 being here today to help us understand what's going on
9 in this industry.

10 I know Mr. Craven that you've been asked
11 some questions about cumulation and I understand the
12 position that you've expressed, or the lack of
13 position that you've expressed on that issue. But I
14 want to ask you one more question along those lines
15 just to make sure that we've covered all the ground on
16 that.

17 Is it your position that you don't take a
18 position on cumulation with respect to threat or with
19 respect to present injury?

20 MR. CRAVEN: I think realistically we don't
21 take a position on cumulation because we don't really
22 think there's an issue. We think the competition
23 between the products, all of the factors that you
24 examine looking at cumulation suggest that cumulation
25 is appropriate and we can't really come up with a

1 discretionary reason why you shouldn't cumulate. And
2 we believe that, we don't want to advocate that you
3 cumulate because it's not necessarily something to our
4 benefit, but we can't in good conscience suggest that
5 you shouldn't cumulate. So we're not going to take a
6 position on that.

7 COMMISSIONER PINKERT: Concerning 2008,
8 you've heard some testimony today about the change in
9 prices for HEDP from all sources during 2008, and I'm
10 wondering if you have an explanation for that change.
11 Or whether anybody on the panel has an explanation for
12 that change.

13 MR. COLLIAS: It was very hard to get the
14 raw materials. We had to compete with, my parent
15 company and I believe other manufacturers of HEDP had
16 to compete for phosphorous derived chemicals.

17 I remember last year, and it's an anecdotal
18 experience, but the agricultural demand for corn
19 products, beans, but especially with the ethanol
20 industry, was intense last year. I believe that that
21 contributed to the significant demand for chemicals
22 that the HEDP manufacturers use.

23 MR. CRAVEN: That would be what my other
24 producers have related to me as well. But it was an
25 issue with the ethanol with the four dollar U.S.

1 gasoline price and the demands that the agricultural
2 industry was placing, the dog was wagging the tail
3 here. The dog being the agricultural industry as
4 opposed to the tail wagging the dog. And because of
5 the intense demand for alternate fuels using
6 phosphonates to grow those alternate fuels,
7 phosphorous chemicals, I'm sorry. Phosphorous
8 chemicals that had created the demand which made it
9 very difficult for all the raw materials.

10 COMMISSIONER PINKERT: You also heard some
11 testimony earlier today about the non-subject imports
12 and I have a series of questions about that.

13 First of all, I had asked a question about
14 whether it was reasonable to conclude that the decline
15 in, I'm sorry, the increase in market share of the
16 subject imports from 2005 to 2007 came at the expense
17 of the market share of the non-subject imports. I
18 want to give you an opportunity to comment on that
19 question as well.

20 MR. COLLIAS: That was a surprise to me.
21 It's based on the data that is presented here that
22 you're forming your question. From my perspective,
23 again, which has a limit on its overall completeness.
24 I just know that people were having difficulty getting
25 phosphonates. And it wasn't just phosphonates. It

1 was other phosphorous derived chemicals as well.
2 Sodimexamata phosphate and other chemicals like that.
3 So it was a challenging time to get a phosphorous
4 derived chemical.

5 MR. CRAVEN: I would simply suggest that I
6 think that might well be a reasonable conclusion that
7 the increase in subject came at the expense of non-
8 subject. The whole world economy is undergoing
9 certain factors right now and it's changing the whole
10 dynamic of what is and isn't available.

11 COMMISSIONER PINKERT: There was also
12 testimony about what happened after the petition was
13 filed. And there's this question of what happened to
14 the non-subjects. I wanted to give you an opportunity
15 to comment on that as well as what possible
16 explanation there might be for that.

17 MR. CRAVEN: As the domestic industry was
18 somewhat puzzled, I'm somewhat puzzled by those
19 numbers as well. I really can't, I would only be
20 speculating and I really don't want to do that here.

21 COMMISSIONER PINKERT: Mr. Collias?

22 MR. COLLIAS: I don't have enough
23 information to respond.

24 COMMISSIONER PINKERT: Assuming for a moment
25 that we had to do some sort of a Bratsk analysis or

1 some sort of a Bratsk/middle analysis. Do you have a
2 view of whether the, had the subject imports not been
3 in the market during the period that we're looking at,
4 that the non-subjects would have increased and
5 replaced the subjects without benefit to the U.S.
6 industry?

7 MR. COLLIAS: I think absolutely the non-
8 subjects would have increased. As even noted this
9 morning by the petitioner, companies don't like having
10 a single source. And if the subject product is
11 unavailable and they're already sourcing from the
12 domestic portion of their supply, they can't go to the
13 domestics for the rest of their supply because to do
14 so would essentially eliminate the multiple sourcing.

15 So I think it's very clear, and we'll be
16 happy to expand upon why we think that's the situation
17 in the brief.

18 COMMISSIONER PINKERT: I'd appreciate that,
19 but I do want to ask the panelists, what is the role
20 of the UK import in the U.S. market? Do those imports
21 get priced similarly to the subject imports? Or are
22 there some differences in the way that they're priced
23 and marketed in the U.S.?

24 MR. COLLIAS: It's my experience that
25 suppliers get very very little information about the

1 overall pricing from their customers. I have some
2 good relationships with some of our customers. Many
3 companies believe it's not in their company interest
4 and policy to disclose pricing. So I can only have
5 potentially maybe an anecdotal experience here and
6 there. But by and large I can't say I know the
7 pricing of my competition.

8 COMMISSIONER PINKERT: Do you see
9 competition from the UK?

10 MR. COLLIAS: Are you asking if I see
11 competition from UK producers?

12 COMMISSIONER PINKERT: Well, tell me what
13 you see about the way that those imports operate in
14 the U.S. market. Any observations would be of value.

15 MR. COLLIAS: In some cases they will
16 compete and have direct contact and what we call
17 directly to a customer. Some of the larger customers
18 I know that that is done. But in some other cases I
19 believe, and I can't say I know, that they would sell
20 through distributors. We do the same thing.

21 There are various ways to get to certain
22 customers. Some of them are big enough that they
23 demand to have direct contact with the manufacturer.
24 Some of them, they're not that big and they actually
25 seek distributors to help them.

1 COMMISSIONER PINKERT: How should the
2 Commission evaluate the impact of revenues from sales
3 of the byproduct acetic acid on the performance of the
4 domestic industry?

5 MR. CRAVEN: I think you have to consider
6 the production process as a whole when looking at
7 revenue, and the byproducts are clearly an important
8 part of the production process. Otherwise you're
9 essentially creating -- Well, I think that's the
10 extent I'm going to talk in public on this, but I
11 think there is certainly some information we can
12 provide about other similar processes where the by
13 product becomes very important.

14 COMMISSIONER PINKERT: Thank you very much.
15 Thank you, Madame Chairman.

16 CHAIRMAN ARANOFF: Thank you.

17 Mr. Craven you've exercised admirable
18 restraint with respect to confidential information.
19 You may, I think, even be being a little overly
20 cautious so I did want to remind you that even where
21 information is confidential, it is appropriate in
22 public to describe a trend and a particular indicator
23 as increasing or decreasing, as long as you don't
24 describe it with any vivid adjective. Also the basic
25 circumstances surrounding the purchase by Compass of

1 the Smyrna plant, those are public.

2 MR. CRAVEN: Yes, thank you. I tend to use
3 vivid adjectives too often, and I have to be very
4 careful.

5 CHAIRMAN ARANOFF: Okay.

6 Let me go to my first question. One of the
7 arguments that you've made about how we should be
8 looking at the significance of the volume of imports
9 here is that what's going on really is about
10 purchasers not wanting to rely on a sole source. I
11 want to test the limits of that a little bit.

12 First of all, and this would be confidential
13 information, but Mr. Collias, if you could tell us, if
14 it's confidential do this in the post-hearing, if you
15 have any customer for whom you are the sole source and
16 about what volume that accounts for.

17 MR. COLLIAS: On HEDP.

18 CHAIRMAN ARANOFF: Yes.

19 MR. COLLIAS: The larger customers, we are
20 not sole source. There may be some smaller customers.
21 But in general the customers make decisions to share
22 the supply between let's say us and somebody else.

23 I would say we have very little business in
24 which we are a sole supplier.

25 CHAIRMAN ARANOFF: Okay.

1 MR. COLLIAS: In the larger sense when it
2 comes to dollars, definitely the case.

3 MR. WANG: I would like to add some points.

4 The reasoning. I'm kind of the old side of
5 this industry. I saw this trading business a couple
6 of years ago and the primary is the exporting, and up
7 to last year we try to have some business importing
8 primary chemical industry, chemical, nutritional
9 supplements, nutritional raw material. So we do some
10 of the web, like free web advertisement.

11 The reason I was pulled into this HEDP
12 industry is because the customers are looking for
13 multiple sources. They are inquiry. I think one
14 reason could be this antidumping case, so people are
15 looking for multiple sources. That's why they ask us
16 to, looking for another source, looking for another
17 way to get this material. That's why we -- I'm kind
18 of still new, but that's why I got in.

19 So regarding the price, again, I heard in
20 the morning and this afternoon, it could be
21 speculation because I'm kind of new. I'm just
22 wondering too, the price dynamic is caused by the
23 condition itself. I don't know how much is influenced
24 by that. That's what I want to say.

25 CHAIRMAN ARANOFF: Dr. Wang, since you've

1 spoken up, and I know Mr. Craven didn't really
2 introduce you or your company and I asked our staff,
3 and we're not quite sure what your company does.
4 Could you provide us with some information? Are you
5 an importer or a purchaser in the United States of
6 this product?

7 MR. WANG: For this product so far we don't
8 have any business yet. I have a couple of customers,
9 two compounders, one is actually a utility company,
10 Applied Generation company. They're looking for
11 alternative source. What I can deduce so far, if they
12 would like to engage this HEDP with us, the only way
13 we can do it is, based on this determination rate, has
14 to be the eventual rate and then no rate, so that we
15 can engage with a new customer. That's what I can
16 know.

17 CHAIRMAN ARANOFF: So right now you're not
18 an importer of HEDP but you're considering that
19 business.

20 MR. WANG: Right.

21 CHAIRMAN ARANOFF: You're an importer of
22 other chemicals?

23 MR. WANG: My business, the majority of
24 business is actually the exporter, exporting some of
25 the recycle business and some other business, other

1 materials.

2 CHAIRMAN ARANOFF: So right now you're not
3 in the phosphonate business at all.

4 MR. WANG: You could say that.

5 CHAIRMAN ARANOFF: Okay. Thank you for
6 clarifying that. That's helpful.

7 Let me veer back towards the line of
8 questioning that I was on when we sort of took this
9 detour. On this issue of dual sourcing and what that
10 means for the significance of the volume of imports.

11 We know the volume of imports have been
12 increasing during the period and that it's increasing
13 even since Compass stopped being an importer. What
14 I'm trying to test is what's the limit of this second
15 source idea?

16 If, for example, we find that subject
17 imports through underselling or other pricing
18 practices are increasing their market share at the
19 expense of the domestic industry so that instead of
20 say a domestic producer being the primary supplier and
21 imports being the secondary supplier, that starts
22 flipping at a lot of the count. Should we find that
23 that's volume injury?

24 MR. CRAVEN: I think you probably could find
25 that's volume injury, yes.

1 CHAIRMAN ARANOFF: But is that what's
2 happening or not what's happening?

3 MR. CRAVEN: I think that George can
4 probably expand upon this, but this is however, not
5 the reason why customers are shifting. There are many
6 factors involved in the purchasing decisions. And
7 again, when we focus on, focusing on the volume
8 doesn't focus on the basis for the change.

9 MR. COLLIAS: I think I described this, I'm
10 trying to think if I sent a letter on this subject,
11 but some of our customers of HEDP or phosphonates or
12 other chemicals that go into water treatment
13 formulators products have the challenge of inventory
14 control. We're talking in some cases a factory could
15 be using 1500 different chemicals. That's a heck of a
16 lot of chemicals to manage the inventory for. And
17 while companies try to balance the inventory so that
18 they don't have too much, to make sure that they have
19 the minimum amount invested in inventory, they asked
20 in many cases for that inventory to be replaced on a
21 monthly basis.

22 If they experience problems in getting HEDP
23 when they need it, that could present a delay in a
24 manufacturing schedule for making a particular product
25 for either one or many customers. These people don't

1 have the time to focus in on problems in getting one
2 chemical when they've got 1500 that they hope can just
3 be delivered when they want it so that they can make
4 the products when they need to.

5 We've been told that because of our
6 diligence in meeting, changing delivery date
7 requirements or even delivery date requirements, that
8 we have gained an advantage, a distinction. We have
9 gained business because of our commitment to supply
10 the customers when needed. And 2008 was a phenomenal
11 example to test the entire industry on its ability to
12 take care of customers when it comes to replacing the
13 inventory needs.

14 CHAIRMAN ARANOFF: When you talk about
15 logistics advantages and logistics services, which is
16 what you're really talking about there, are you
17 talking about specifically to HEDP or are you telling
18 me that you add value to these large customers by
19 supplying them with many many chemicals at the same
20 time?

21 MR. COLLIAS: In this particular case I'm
22 talking HEDP, but the subject applies to other
23 chemicals as well. We got business because of our
24 performance in making sure our customers didn't run
25 out when others did let their customers run out.

1 CHAIRMAN ARANOFF: So just to make sure that
2 I understand you, what you're saying is that it's the
3 reliability of your ability to supply HEDP even in
4 times of shortage as opposed to saying it's your
5 ability to help people with their multi-chemical
6 inventory problems by providing a package of products.

7 MR. COLLIAS: We do that too, but in this
8 particular case with your question, I think you were
9 talking about why do people split the business. It's
10 a risk of not getting the chemical when you need it.

11 CHAIRMAN ARANOFF: I understand that and I
12 understand the need to dual source. What I'm trying
13 to do is test the limits of that theory. It's one
14 thing to say I need a second source for 20 or 30 or 40
15 percent of my supply, and it's another thing to say
16 gosh, these imports are cheaper so now I think I'll
17 use them for 80 percent and save the domestic industry
18 for the 20 percent second source.

19 MR. COLLIAS: Last year on, I'll call it a
20 related chemical, another company did not supply our
21 customer and we were sharing the business. We did not
22 supply this particular location, we supplied other
23 locations. I was told by the person responsible for
24 managing the inventory that the other supplier
25 continually gave I'll call it delays in delivery

1 dates. We're talking weeks and they never responded.
2 So when they learned that we had inventory they were
3 desperate and they bought chemical from us. At this
4 time we're supplying that plant as well.

5 CHAIRMAN ARANOFF: Thank you very much. My
6 light's turned red. I may come back to this in my
7 next round.

8 Vice Chairman Pearson?

9 VICE CHAIRMAN PEARSON: Thank you, Madame
10 Chairman.

11 It's good to have you here this afternoon.

12 Mr. Craven you have placed a lot of emphasis
13 on the unique circumstances of this case and you've
14 directed our attention to them. From that, should I
15 infer that if we looked at the case without
16 considering the special circumstances that we should
17 see it as an affirmative?

18 MR. CRAVEN: I think that's a strong
19 possibility, yes. If you look at the traditional
20 trends and the traditional analysis and you divorce
21 that from looking at the special circumstances, the
22 traditional analyses would tend to support an
23 affirmative finding.

24 VICE CHAIRMAN PEARSON: So kind of looking
25 individually at volume, price and impact, without

1 considering the special circumstances. For volume,
2 should we see this increase as significant, the
3 increase in volume of subject imports?

4 MR. CRAVEN: Again, it's difficult to look
5 at it without looking at the filter, but if you don't
6 want to take into account the unique circumstances,
7 yeah, there have been some volumes that you could
8 probably characterize as, without any adjectives,
9 significant.

10 VICE CHAIRMAN PEARSON: For price of course
11 we have a record that does show predominant
12 underselling and the prices have been low enough so
13 the domestic industry hasn't really made any money
14 during the POI. So under those circumstances would
15 see the price affect as significant?

16 MR. CRAVEN: Again, the unique circumstances
17 of the industry make that a very difficult question to
18 answer because looking at the data, yes. But you also
19 have to take into account who are the parties engaging
20 in the underselling. That has to factor into that.

21 But divorcing yourself from the unique
22 circumstance of the case, yes, I would say that you
23 probably do have significant price underselling.

24 VICE CHAIRMAN PEARSON: and with impact, we
25 have a decrease in the number of employees in the

1 domestic industry over the POI in the face of this
2 continued lack of profitability, so would we also find
3 that there's a significant impact on the domestic
4 industry?

5 MR. CRAVEN: Again, reiterating the same
6 answer I've given you, that's what makes them unique
7 circumstances is because this is not a traditional
8 circumstance where a traditional analysis is
9 appropriate under the facts of the industry.

10 VICE CHAIRMAN PEARSON: This has been
11 touched on before, but I just want to make sure. In
12 the post-hearing, or now as far as that goes, you'll
13 provide both the legal and factual arguments for
14 focusing on the portion of the POI in which Compass
15 was a domestic producer rather than looking at the
16 whole POI, right? I mean you're going to flesh that
17 out for us in some detail?

18 MR. CRAVEN: I'll try.

19 VICE CHAIRMAN PEARSON: And for Petitioner's
20 counsel, if you in the post-hearing also have things
21 that you would like to say about this, I just don't
22 recall whether we addressed that specifically this
23 morning. I wouldn't want you to think that you're not
24 welcome to elaborate on it.

25 MR. LEVIN: Thank you, Vice Chairman. I

1 appreciate the invitation and we will take you up on
2 it.

3 VICE CHAIRMAN PEARSON: Thank you very much.
4 Madame Chairman, I think I have no further
5 questions at this point.

6 CHAIRMAN ARANOFF: Commissioner Okun went to
7 get her eye drops. I think she's coming back.

8 (Pause.)

9 COMMISSIONER OKUN: That's okay. I'm hoping
10 I can ask questions without being able to see because
11 my eye is just killing me, so apologies.

12 CHAIRMAN ARANOFF: Do you want to wait and
13 we can go to Commissioner Williamson and then come
14 back to you?

15 COMMISSIONER OKUN: That would be good. I
16 really can't see. Thank you.

17 CHAIRMAN ARANOFF: With everyone's
18 indulgence we're going to go out of order, if that's
19 okay with Commissioner Williamson, and then we'll come
20 back.

21 COMMISSIONER WILLIAMSON: Thank you, Madame
22 Chairman.

23 Mr. Craven, is Cheng Hu Sui Fine Chemical
24 Company part of the ad hoc Water Treatment Chemical
25 Producers Committee?

1 MR. CRAVEN: I'm sorry, which company?

2 COMMISSIONER WILLIAMSON: Cheng Hu Sui Fine

3 --

4 MR. CRAVEN: Cheng Jo Keiwi?

5 COMMISSIONER WILLIAMSON: Yes.

6 MR. CRAVEN: Not any more.

7 COMMISSIONER WILLIAMSON: So they did not
8 provide a foreign producer questionnaire.

9 MR. CRAVEN: They also did not provide a
10 response to the Department of Commerce. Apparently
11 they have made some decisions about participation or
12 lack thereof in the U.S. market.

13 COMMISSIONER WILLIAMSON: Thank you.

14 You state that the reported capacity for
15 China is theoretical capacity, in this case 12 UV.
16 However, our foreign producer questionnaires require
17 producers to report the level of production that they
18 could reasonably have expected to attain under normal
19 operating conditions.

20 Given these instructions what is it
21 basically saying, theoretical capacity?

22 MR. CRAVEN: It's my understanding that the
23 Commission's definition of production capacity
24 doesn't take into account what I would call supply
25 limitations and the demands for the phosphorous

1 chemicals that make up the raw material. And that
2 there is at some point a limitation which prevents
3 them from reaching the other capacity. The
4 theoretical capacity is just that. It's a theoretical
5 capacity assuming an unlimited supply of raw material.

6 COMMISSIONER WILLIAMSON: Are you saying the
7 limitations on raw material are always the same? Are
8 these temporary limitations?

9 MR. COLLIAS: I can't answer that. I don't
10 know.

11 MR. CRAVEN: I would say the limitations on
12 raw material relate to the demands for the product.
13 As Mr. Collias has noted, the raw material that is
14 used in this industry is also used in the agricultural
15 chemical industry and when gasoline prices in the
16 U.S., for example, reached \$4 a gallon the demand for
17 the raw material used to make these products creates
18 such a demand so that it ends up providing a
19 limitation on the available material for this
20 industry.

21 COMMISSIONER WILLIAMSON: I think I heard
22 earlier Mr. Collias said something about the
23 agriculture demand may not be as great as it was
24 before.

25 MR. COLLIAS: Right now gasoline prices are

1 currently not \$4 a gallon.

2 MR. CRAVEN: Ethanol.

3 MR. COLLIAS: Ethanol prices, sorry.

4 Petroleum prices which have an impact on ethanol
5 prices. Right now your price at the pump and your
6 demand is lower because of changes again in the world
7 energy market. But this again relates to the
8 recession in theory --

9 COMMISSIONER WILLIAMSON: What about the
10 situation in China in terms of the chinese firms'
11 capacity? I thought the reference to the agriculture
12 demand was really demand for agriculture inputs in
13 China.

14 MR. CRAVEN: But it all relates to the whole
15 world petroleum price situation as well.

16 MR. COLLIAS: I can't answer that part of
17 it. I just know there was a tremendous demand for
18 agricultural chemicals which use phosphorous derived
19 chemicals. And I can tell you there was a tremendous
20 demand for those chemicals in the farming of corn
21 products.

22 MR. CRAVEN: And remember --

23 COMMISSIONER WILLIAMSON: That was what time
24 period?

25 MR. COLLIAS: Last summer.

1 COMMISSIONER WILLIAMSON: Any idea what the
2 demand is now?

3 MR. COLLIAS: No. The demand for what now?

4 COMMISSIONER WILLIAMSON: The phosphorous to
5 be used for farming.

6 MR. COLLIAS: We're told that the
7 availability of phosphorous for manufacture of
8 phosphonate products is good at this time.

9 COMMISSIONER WILLIAMSON: So the theoretical
10 capacity may be actual capacity now?

11 MR. CRAVEN: Right now potentially, yes.
12 But again, you're asking a question which we don't
13 know the answer to which is what is going to be the
14 demand for agricultural chemicals. Even the chemicals
15 are used in the U.S., as was noted this morning, 80
16 percent of the world's phosphorous reserves are in
17 China. So a demand in the U.S. for phosphorous used
18 to make agricultural chemicals, for example Roundup,
19 is going to have an impact on demand in China.
20 There's an inter-relationship here.

21 The answer is, is there capacity in China
22 right now that's unused? Sure. Absolutely. And
23 probably right now, today, there's raw material
24 available. Will there be raw material available in
25 three months? If I knew, I would be able to predict

1 the energy markets and I wouldn't be here.

2 COMMISSIONER WILLIAMSON: The recession's
3 going to be over in three months. This is great news.

4 MR. CRAVEN: I wish that were the case. But
5 I can't predict the energy markets any more than I
6 think anyone else can.

7 COMMISSIONER WILLIAMSON: Thank you for
8 those answers.

9 I have no further questions.

10 CHAIRMAN ARANOFF: Now my colleagues are
11 going to have to keep me on my toes but we're going to
12 go back to Commissioner Okun for her first round of
13 questions and then Commissioner Lane for her second
14 round, and then over to Commissioner Pinkert. So if I
15 mess that up, somebody stop me.

16 COMMISSIONER OKUN: Thank you, Madame
17 Chairman. I apologize for messing up the regular
18 order there with stepping out, but I appreciate the
19 opportunity to pose some questions to these witnesses.

20 Mr. Collias, let me start with you. Uniphos
21 started in 2006?

22 MR. COLLIAS: Yes.

23 COMMISSIONER OKUN: Was Wujen importing or
24 using another distributor prior to that? Do you know?
25 You may not.

1 MR. COLLIAS: Not much of a position in the
2 United States prior to 2006.

3 COMMISSIONER OKUN: In talking about the
4 case with the Petitioners this morning one of the
5 things that Mr. McCaul had described was here's a
6 company that's been an importer of Chinese product,
7 sees an opportunity to purchase a production process
8 and sell in the U.S. market and basically thinks they
9 know where they're going to get their raw material
10 for, and there was a customer base they thought, an
11 existing customer base of the U.S. producer that they
12 would pick up that customer base plus continue to sell
13 who they were importing to. That didn't happen. That
14 would be some of the injury here.

15 Is there anything you know about the market
16 or what else was going on to explain whether you think
17 that was something that was ever going to happen?
18 When I listen I can say yeah, what happened to them
19 that they couldn't keep the base that the existing
20 producer had and continue to sell their own customers?
21 Why couldn't they do that? What's the reality?

22 MR. COLLIAS: Did you ask them that this
23 morning?

24 COMMISSIONER OKUN: That was their
25 description of the market they saw. In other words

1 when they had their business plan.

2 MR. COLLIAS: Again, we started slow,
3 October of 2006. I don't think we had any sales in
4 the fourth quarter. It just took some time to
5 establish inventory and things like that. So I can't
6 say I know a lot about what happened in the
7 marketplace that caused them to lose their business.

8 The only thing I have available to me, and -
9 -

10 COMMISSIONER OKUN: Do you know if you've
11 got any of their former customers?

12 MR. COLLIAS: Pardon me?

13 COMMISSIONER OKUN: Do you know if you took
14 their customers? Former customers. In 2007.

15 MR. COLLIAS: In 2007?

16 MR. CRAVEN: Just to clarify, let me clarify
17 what I think the question is.

18 You're asking, the assumptions this morning
19 they stated is that they intended to keep their
20 existing customer base plus they expected to add
21 essentially the existing customer base of the then
22 domestic producer.

23 COMMISSIONER OKUN: Right.

24 MR. CRAVEN: I think she's asking whether
25 you took any of which, the existing --

1 COMMISSIONER OKUN: That may be
2 confidential. I put that out there a little bit just
3 to try to understand --

4 MR. CRAVEN: Wait a second, I thought you --

5 COMMISSIONER OKUN: -- selling.

6 MR. COLLIAS: I thought you were talking
7 about the time that we formed our company which was
8 very close to the time that Compass started making --

9 COMMISSIONER OKUN: Right.

10 MR. COLLIAS: I personally don't think we
11 took any of their business at that time. I don't
12 think we were a factor. I think we're a much greater
13 factor right now, and I believe we've gotten a fair
14 share of business in the last three to six months.

15 COMMISSIONER OKUN: In discussing the nature
16 of competition, the market with the petitioner this
17 morning, they had described the dual sourcing. I know
18 you've responded to some of these questions, but one
19 of the things that Mr. McCaul had said was if they
20 have a customer who indicates to them we're going to
21 spread out our business, they may or may not let them
22 know what the competitive bid is that they are bidding
23 against.

24 MR. COLLIAS: We don't know either.

25 COMMISSIONER OKUN: That was going to be my

1 question. Do you know whether, well domestic is only
2 one person, but do you know if there's non-subject
3 competing as well for your customers? Or would you
4 know --

5 MR. COLLIAS: The customers of higher volume
6 do not want to tell us that kind of information. We
7 may get little bits and pieces, but we're not privy to
8 that kind of information often.

9 COMMISSIONER OKUN: And do you have the
10 opportunity to go back and rebid something? Would
11 your customers say we can do better?

12 MR. COLLIAS: No.

13 COMMISSIONER OKUN: So you do a one time
14 bid.

15 MR. COLLIAS: When there are bids it's one
16 year.

17 What can happen where you get the second
18 chance, and we got some second chances, is when in
19 2008 some people didn't supply when the customers
20 needed. In some cases we were told it was Compass who
21 couldn't supply and we were asked to supply the
22 chemical urgently, and we did.

23 COMMISSIONER OKUN: And you've described a
24 little bit the 2008 period. I don't know, Mr. Craven,
25 if you had, I don't recall seeing this in your brief,

1 any view on this issue of how we should evaluate the
2 post-petition information, whether we should give
3 reduced weight as we sometimes would because of the
4 statute allowing you to. Or in this case where
5 subject imports continue to increase even after the
6 petition was filed, what weight we should put on that
7 in our analysis.

8 MR. CRAVEN: That's a tough question because
9 there were some very strange things going on in 2008.
10 It's hard to draw any valid conclusions from the data
11 with the different issues with the China supply, the
12 storms, the economic conditions, and frankly, because
13 as Petitioner noted this morning, they buy their raw
14 material from China and it's subject to the same kinds
15 of controls, the same kinds of issues of supply that
16 the HEDP was subject to. There's a legitimate
17 question on are we looking at a time lag situation
18 because of delays? It's hard to quantify and we'll
19 try to see what we can do on explaining that better,
20 but 2008 is hard to address simply because there were
21 so many unique circumstances of the industry going on.

22 COMMISSIONER OKUN: In your brief you had,
23 and actually in our preliminary opinion we had noted
24 that we would examine other non-price factors that
25 purchasers had commented on and we talked a little bit

1 about availability and I think that goes to the dual
2 sourcing issue.

3 What else in the record would you point us
4 to to show that the non-price factors are more
5 important in this market than lowest price getting the
6 business?

7 MR. COLLIAS: You're asking me?

8 COMMISSIONER OKUN: I know you don't have
9 access to everything that's in the record, but
10 anything in your experience that you could tell us,
11 and then Mr. Craven, if there's anything else that you
12 would want to point me to.

13 MR. COLLIAS: There are many different
14 factors. Of course there is the, you have to prove
15 that you're able to deliver the kind of quality of
16 product that the customer requires; you have to
17 deliver it in the form, whether it's drums, we call
18 them tote tanks or bulk. Some companies require NSF
19 certification. Our parent company has taken the time
20 and money to invest in NSF certification which your
21 report shows some people use that as one of their key
22 criteria in selecting their supplier.

23 So there are many different factors that
24 people go through, and I'm not trying to minimize that
25 price is also requested, but I would say that people

1 want to know that you have that.

2 In some cases the believability of supply is
3 based on establishing inventory, track record. In
4 some cases when we started, and I can't remember who
5 it was, but we started just with one chemical with
6 some companies, and now with some companies we supply
7 them five or ten. So you build a reputation for
8 fulfilling a variety of different customer
9 requirements. Sometimes you're rewarded and you do
10 get more business.

11 COMMISSIONER OKUN: Mr. Craven, anything
12 else that you would --

13 MR. CRAVEN: I would think that the few
14 things that we would like to point to in the record
15 are probably in the confidential record and go beyond
16 just trends.

17 COMMISSIONER OKUN: Help me understand on
18 the pricing argument, I understand you think, I read
19 your pre-hearing brief with respect to why you think
20 we should look at particular, only a particular period
21 for the pricing data for Compass. And you've been
22 asked to provide legal backup for that.

23 But in terms of the underselling. If there
24 are many other factors that are affecting, that would
25 impact why a purchaser would choose Chinese or Indian

1 product, would I expect to see a different pattern in
2 the pricing? Or if you're saying if I only focus on
3 the period you want me to, I would see a pattern
4 consistent with non-price reasons being --

5 MR. CRAVEN: By the way, let me just correct
6 something. I'm not suggesting you shouldn't look at
7 Compass' pricing throughout the period. What I'm
8 suggesting is looking at underselling. You need to
9 take into account other factors. You need to take
10 into account a different period because Compass'
11 position as both a producer and importer during this
12 period means in theory they could end up on both sides
13 of the equation.

14 COMMISSIONER OKUN: My red light's come on.
15 I know you've had a chance to see the brief, I know
16 Petitioners have responded on that particular point.
17 But if there's anything else you want me to see for
18 post-hearing I'd appreciate seeing that then.

19 Thank you, Madame Chairman.

20 CHAIRMAN ARANOFF: Commissioner Lane?

21 COMMISSIONER LANE: Thank you.

22 Mr. Collias, I just have a couple of
23 questions.

24 I'd like for you to describe what sort of
25 lag there is between the time that you order the

1 product from China and you get it and what the typical
2 lag time is. Then I'd like for you to describe your
3 inventories and how much inventory you generally keep
4 of HEDP on hand.

5 MR. COLLIAS: The typical order to deliver
6 response time is four to eight weeks. We typically
7 maintain two months of inventory for emergencies in
8 case something happens that could cause a delay. So
9 we try to maintain an inventory to make sure that our
10 customers don't run out of chemical.

11 COMMISSIONER LANE: So if you have a
12 customer that wants HEDP you would then order it from
13 your source in China rather than selling it out of
14 inventory.

15 MR. COLLIAS: Almost all of our chemical is
16 sold out of inventory. There are a few times, U.S.
17 inventory. We basically buy the chemical from our
18 parent company. It comes into one of our four
19 different warehouse locations. We have that inventory
20 available. And then we await the customer orders.

21 COMMISSIONER LANE: So I misunderstood you.
22 It takes generally four to eight weeks to get the
23 product into your inventory and then you just
24 continually sell and replace inventory.

25 MR. COLLIAS: That's correct.

1 COMMISSIONER LANE: Thank you.

2 That's all I have.

3 CHAIRMAN ARANOFF: Commissioner Pinkert?

4 COMMISSIONER PINKERT: Thank you, Madame
5 Chairman.

6 I just have a few questions pertaining to
7 the issue of threat of material injury.

8 First of all, could you please address the
9 change in U.S. importers' reported inventories,
10 subject merchandise, from 2005 to 2007? And perhaps
11 this is more appropriate for post-hearing submission.
12 But to the extent that you can explain that change,
13 what does it say about the likelihood of increased
14 imports of the subject merchandise in the near term
15 future?

16 MR. CRAVEN: I would really prefer to
17 address that in the post-hearing brief.

18 COMMISSIONER PINKERT: Thank you.

19 Secondly, and this would probably be a
20 question for the non-lawyers on the panel. But would
21 Chinese export taxes on yellow phosphorous encourage
22 Chinese producers to increase their exports of HEDP to
23 the United States by reducing the relative cost of
24 producing HEDP in China?

25 MR. COLLIAS: I don't think I have the

1 knowledge to be able to answer that question.

2 I read something about that in this report,
3 but I don't have the knowledge and the experience to
4 comment on and answer that question.

5 COMMISSIONER PINKERT: Mr. Wang, do you have
6 any comments on that issue?

7 MR. WANG: Sorry, no. I don't have any
8 comments.

9 COMMISSIONER PINKERT: Thank you.

10 It's my understanding, and correct me if I'm
11 wrong, that it's possible to shift production readily
12 from HEDP to other phosphonates and vice versa. What
13 limits the ability to make a rapid shift from HEDP to
14 other phosphonates?

15 MR. COLLIAS: Again, I don't have the
16 knowledge and experience to answer that question. I
17 can tell you that our company makes almost all the
18 phosphonates that are marketed. We have a fairly
19 broad capability of making many products at the same
20 time.

21 COMMISSIONER PINKERT: Mr. Wang, would you
22 like to add anything to that?

23 MR. WANG: Again, I haven't really started
24 business yet, but one company I talked quite often, we
25 trying to, again, the manufacture in China. Is the

1 company also manufactures eight, ten different
2 products, phosphonate product lines. And the company
3 actually in terms of a global supply exporting to
4 Europe is, they have quite a significant share.

5 So in a way the company is competing
6 globally, but United States, we have this case that's
7 going on right now so.

8 MR. CRAVEN: I will make some discrete
9 inquiries and expand upon that in the post-hearing
10 brief as well.

11 COMMISSIONER PINKERT: Thank you very much.
12 I appreciate it, and I thank the panel for answering
13 our questions today.

14 Thank you, Madame Chairman.

15 CHAIRMAN ARANOFF: One of the things that
16 we've heard is that some purchasers in this industry
17 use reverse internet auctions to purchase the product.
18 Mr. Collias, have you ever participated in a reverse
19 internet auction?

20 MR. COLLIAS: No, I haven't.

21 CHAIRMAN ARANOFF: Okay. That one's checked
22 off the list.

23 I wanted to go back to some of the questions
24 I was asking in my first round about this issue of
25 second sourcing and reliability of sources.

1 Normally in these cases when we send out
2 questionnaires to purchasers we ask them, have you
3 suffered any interruptions in supply? Have any of
4 your suppliers failed to deliver what they said they
5 were going to deliver when they said they were going
6 to deliver it? I've just looked back over my copy of
7 the staff report and I just don't see that in there,
8 that anybody was complaining about that even in 2008.

9 Mr. Collias, I know you said you're
10 developing a reputation with customers for being
11 reliable and especially during this difficult period
12 in 2008, so I have to ask you, maybe you can provide
13 this confidentially, if you know who the unreliable
14 suppliers who you may be replacing are. Because my
15 impression is that it's not the domestic producer. It
16 may be other providers of subject import.

17 MR. COLLIAS: Certain companies have
18 policies of not disclosing their identity on
19 commercial issues. That is the case with some of our
20 customers.

21 I have a letter from one of our customers
22 that communicated exactly what I communicated to you,
23 but requested that the identity be maintained in
24 confidentiality. I could ask again, but I was told
25 that they wanted their position to be confidential.

1 CHAIRMAN ARANOFF: That's the purchaser
2 didn't want you to tell us who the customer was.

3 MR. COLLIAS: That's correct. And I've done
4 this with more than one customer.

5 CHAIRMAN ARANOFF: I certainly invite
6 Compass in your post-hearing, if you can add any light
7 to the issue of whether or not there have been short
8 supply situations, that would be helpful.

9 Let me move on to my next question now.

10 One of the things I'm curious about, and you
11 may not be able to answer this but give it some
12 thought. Because we've heard that so much of the
13 world supply of phosphorous and phosphorous containing
14 chemicals is coming from China right now, when there
15 is a shortage situation as there was in 2008 and you
16 never know when the next time might be, if there's a
17 short supply and there's a choice amongst Chinese
18 suppliers or whoever makes these decisions in China
19 about exporting the product in a less processed form
20 as in the form of the input that Compass uses, or
21 further processing it into HEDP or other chemicals and
22 then exporting those, are you aware that there would
23 be a preference?

24 It seems to me, Mr. Collias, that your
25 company would have a more secure access to supply, for

1 example, than Compass would.

2 MR. COLLIAS: I would not assume that we do.
3 One thing I can tell you is that there is no long term
4 price commitment by suppliers of chemicals that supply
5 chemical to phosphonate manufacturers. We consider
6 our parent company to be, if not one of the top five,
7 maybe one of the top three phosphonate manufacturers
8 in the world. They cannot secure long term agreements
9 on pricing with their raw materials. I haven't asked
10 them whether they can secure agreements on supply, but
11 I don't think so. That was evident in 2008.

12 Let me turn to another area that I'm curious
13 about. We debated at some length with the witnesses
14 for Compass this morning about how we should look at
15 whether there was an effect on what was going on in
16 the U.S. market after the petition was filed in this
17 case or after the preliminary duties went into effect
18 later in 2008. Their view was largely that there
19 wasn't much of an effect or at least whatever there
20 was was very small relative to the effect of the short
21 supply situation.

22 So I wanted to ask you, Mr. Collias, what
23 effect, if any, was there on your business here in the
24 United States from either the filing of this case or
25 the point at which the preliminary duties were

1 imposed?

2 MR. COLLIAS: I think I wrote in a response
3 to Mr. Comly who asked a question somewhat similar to
4 yours that we're approaching our third year. It takes
5 time to establish a reputation and for people to get
6 to know you and maybe start trusting you. And of
7 course during 2008, having known a little bit more
8 about us, we did get more business because people were
9 desperate to get some chemical. So we had an
10 opportunity to at least start supplying some companies
11 in 2008 that we never supplied in 2007.

12 Does that answer your question?

13 CHAIRMAN ARANOFF: In part. I guess what
14 you're telling me, I don't want to put words in your
15 mouth, is that the pendency of this case and the
16 imposition of the preliminary duties have not so far
17 impacted your ability to grow your business. Or maybe
18 you think they've slowed you down but they haven't
19 stopped your growth. I don't know how you would
20 describe it.

21 MR. COLLIAS: We're supplying certain
22 chemicals, the HEDP, paying the 24 percent duty. And
23 I'm responsible for seeing all of the bills being
24 paid. I can assure you the bills are being paid, that
25 24 percent duty that we're responsible for paying.

1 We're maintaining our business. We have maintained a
2 fair share of business. I think the reason for that
3 still is because of the desire to have at least two
4 suppliers that they can count on.

5 CHAIRMAN ARANOFF: Okay. Thank you for
6 those answers.

7 Perhaps you want to answer this post-
8 hearing, but just to follow up on this line of
9 questioning, because I think we've addressed sort of
10 the volume issue in terms of how you're interacting
11 with customers after the case was filed, but I do also
12 want to ask about pricing, whether there's been any
13 change in your pricing practices and whether you would
14 ascribe them to the effects of the case or the
15 preliminary duties, or whether you would just say
16 pricing has been driven by the situation with raw
17 materials.

18 MR. COLLIAS: In my marketing training there
19 are three ways to price. You use cost plus pricing
20 where you try to achieve if possible a certain
21 profitability; you price to value if you believe your
22 product offers value to the customer significantly in
23 excess of the cost; and the third one is a
24 competitively referenced price where the customer
25 basically informs you whether you are affordable or

1 unaffordable.

2 In general we are cost plus pricers. We try
3 to achieve a certain level of profitability.
4 Customers will tell us if we're acceptable or
5 unacceptable. That's generally how it works.

6 CHAIRMAN ARANOFF: If the customer tells you
7 that at your preferred cost plus margin you are
8 unacceptable will you lower your margin?

9 MR. COLLIAS: There isn't that much room.

10 CHAIRMAN ARANOFF: Okay.

11 Thank you. I appreciate all those answers.

12 Vice Chairman Pearson, do you have further
13 questions?

14 Do any Commissioners have further questions?

15 Okay.

16 Do the staff have any questions for this
17 panel?

18 MR. CORKRAN: Douglas Corkran, Office of
19 Investigations. Thank you, Madame Chairman. Staff
20 has no additional questions.

21 CHAIRMAN ARANOFF: Mr. Levin, do you have
22 any questions for this panel?

23 MR. LEVIN: No thank you, Madame Chairman.

24 CHAIRMAN ARANOFF: Okay.

25 The time remaining, Petitioner has ten

1 minutes left from direct presentation as well as five
2 minutes for closing for a total of 15 minutes.

3 Respondents have an astounding 48 minutes left from
4 direct presentation as well as five minutes closing
5 for a total of 53 minutes.

6 Normally what we do absent objection from
7 the parties is we allow the parties to combine those
8 two so you can do rebuttal and closing all at once
9 with the Petitioners going first. If no one objects,
10 that's I guess the way we'd like to proceed.

11 So I will thank this afternoon's panel very
12 much for your testimony and ask you to take up your
13 places further back in the room so that we can bring
14 Mr. Levin up for his closing.

15 While you do have this amount of time
16 available to you, we don't necessarily encourage you
17 to use all of it. Although it is our job to be here
18 and we're happy to listen to whatever arguments you'd
19 like to present.

20 MR. LEVIN: I will only use the time allowed
21 for Petitioners if Respondents will be using their
22 full 53 minutes.

23 (Pause.)

24 MR. LEVIN: If I can ask the Chair's
25 indulgence, may I take a moment to confer with Mr.

1 McCaul and Mr. Failon before we come up, just for one
2 minute?

3 CHAIRMAN ARANOFF: Sure. One minute.

4 (Pause.)

5 MR. LEVIN: I will make our rebuttal and
6 closing statement brief as well. We thank the
7 Commissioners very much for their attentiveness, for
8 their as usual on target questions. We have quite a
9 few things to get to in our post-hearing brief and we
10 look forward to it and are terrifically optimistic
11 that we will satisfy all of the Commissioners'
12 requests for additional information, narrative, data
13 and otherwise. We appreciate that opportunity.

14 I thought today was a fascinating discussion
15 both in the morning and from what we were able to
16 glean from the Respondents in the afternoon session.

17 I will reiterate as I noted this morning,
18 this is an interesting case no several bases and
19 obviously the Commission has several methodological
20 issues to work with regarding how to handle different
21 aspects and the unique position of what is now the
22 sole surviving domestic manufacturer of HEDP.

23 That being said, as I heard it this
24 afternoon, there were several interesting concessions
25 made by the Respondents. They in essence conceded

1 cumulation, which in my understanding of the statutory
2 directive concedes amongst other things the
3 interchangeability of the subject imports and the
4 domestic product. That the subject imports, India and
5 China, as well as the domestic product compete
6 directly with each other in the U.S. market.

7 They appear to have conceded the term that
8 was used was volume injury. Apparently noting that
9 yes, the increase in subject imports in volume terms
10 was in fact significant. They in effect conceded what
11 was termed price injury and as demonstrated by,
12 amongst other things, the quarterly pricing
13 comparisons and the very high degree of underselling
14 that had occurred within the period of investigation.

15 And they appear to have conceded material
16 injury by reason of subject imports, noting that
17 without the "unique circumstances" p[resented by this
18 investigation, this would be an affirmative
19 determination. We respectfully submit that even if
20 you do consider the unique circumstances, this is an
21 affirmative determination.

22 Compass took the bull by the horns in this
23 situation. As you probably know, the petition was
24 authored by Mr. Failon. He noted that this morning.
25 They have carried to a large extent the ball

1 throughout this proceeding, both in front of the
2 Commission and before the department. I think that
3 stands as a very strong testament to their belief in
4 the fact that from what they have experienced and from
5 what they see in the marketplace, they are suffering
6 injury because of these dumped imports. They would
7 not have gone to the extent of preparing a petition
8 and processing the petition as they have were that not
9 a function of what they are actually experiencing in
10 the marketplace.

11 The fact that they have switched from being
12 an importer and producer to a producer only is also a
13 testament to the fact that they believe now, they
14 believed at the beginning of 2008 when that switch was
15 affected, they believed in the middle of 2006 when
16 they bought the Smyrna facility that HEDP production
17 in the United States was important and that it was
18 realistic to make a viable go of it.

19 We were discussing at lunch, we have
20 discussed previously some of the assumptions that went
21 into these decisions. The decision to buy Smyrna in
22 the first place, the decision to change to solely a
23 domestic manufacturer. These assumptions were
24 realistic. These were not pie in the sky, let's see
25 what happens. Let's buy ourselves a production plant

1 and get operations rolling and see how it all plays
2 out.

3 They did this according to certain
4 benchmarks. They did it according to their history in
5 the industry and their extended history with not only
6 this product in particular but the family of
7 phosphonates in general.

8 As I noted, this morning and I'd like to
9 state again, there are probably no two people in this
10 country that are more familiar with the product and
11 with the marketplace for the product than are Mr.
12 McCaul and Mr. Failon.

13 Whether the decision to purchase the plant
14 and the decision to turn solely into a domestic
15 manufacturer turns out to be the correct decision
16 financially in the long run is yet to be seen. What
17 we do know now is that based on their experience,
18 based on what they had anticipated when these
19 decisions were made, and based on the evidence of
20 record, surely the subject imports have become and
21 still are a fundamental obstacle to their remaining a
22 viable operation.

23 On the basis of the evidence of record, the
24 testimony today and our post-hearing brief submitted
25 next week, we respectfully submit that the domestic

1 HEDP industry is suffering material injury and is
2 threatened with material injury by subject imports.
3 We look forward to our further submission and again we
4 thank the Commission very very much and the
5 investigation team for their extremely thorough job in
6 this proceeding.

7 Good afternoon, and thank you.

8 CHAIRMAN ARANOFF: Thank you very much.

9 MR. CRAVEN: I too would like to thank the
10 Commission for taking the time for asking some very
11 thoughtful questions and taking the time for hearing
12 our presentations today.

13 I would simply suggest that the unique
14 circumstances are important and that we haven't
15 actually conceded several of the injury factors that
16 have been suggested. We have simply suggested that
17 absent the unique circumstances of the industry there
18 may be some factors involved.

19 That being said, we think that when the
20 Commission examines the totality of the record and
21 places it all in the proper context, that there's only
22 one reasonable conclusion in this case. That's that
23 there is no threat of injury and there is no injury by
24 reason of imports from China and India.

25 Again, I'd like to thank the Commission and

1 I'd like to yield back the rest of my time. Thank
2 you.

3 CHAIRMAN ARANOFF: Thank you very much.

4 I do want to express on behalf of the
5 Commission our thanks to all of the counsel and
6 witnesses for your helpful participation today and
7 also the Commission staff for your work in getting us
8 such a complete report to work with.

9 Post-hearing briefs, statements responsive
10 to questions and requests of the Commission and
11 corrections to the transcript must be filed by March
12 11, 2009.

13 Closing of the record and final release of
14 data to parties will take place on March 30, 2009.

15 Final comments are due on April 1, 2009, but
16 probably should not involve any April Fool's Day
17 jokes.

18 With that said, thanks again to everyone for
19 your participation, and this hearing is adjourned.

20 (Whereupon, at 3:34 p.m., the hearing in the
21 above-entitled matter was concluded.)

22 //

23 //

24 //

25 //

CERTIFICATION OF TRANSCRIPTION**TITLE:** HEDP from China and India**INVESTIGATION NO.:** 731-TA-1146 & 1147 (Final)**HEARING DATE:** March 3, 2009**LOCATION:** Washington, D.C.**NATURE OF HEARING:** Public 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: March 3, 2009

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: Rebecca McCrary
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: John Del Pino
Signature of Court Reporter